Lawand History Víew (e)

Law and History Review

Law and History Review (ISSN 0738-2480) is published three times a year, in spring, summer, and fall, by the University of Illinois Press for the American Society for Legal History. The purpose of the Review is to further research and writing in the fields of the social history of law and the history of legal ideas and institutions. The Review is sent to all members of the American Society for Legal History. Information about membership in the Society appears on the inside back cover of this issue.

Address all business inquiries (subscriptions, membership applications, back-issue orders, advertisements, and change-of-address notices) to the Journals Department, University of Illinois Press, 1325 South Oak Street, Champaign, Illinois 61820-6975. Requests for replacement of damaged or undelivered issues will be honored for up to six months after publication of the issue.

For authorization to photocopy from Law and History Review for uses exceeding those permitted by Sections 107 and 108 of the U.S. Copyright Law, contact the Copyright Clearance Center (CCC), 222 Rosewood Drive, Danvers, MA 01923. The CCC will send an invoice for permissions fees. Permissions given above do not extend to copying for advertising or promotional purposes or to creating new collective works.

Note to Contributors

The editors welcome unsolicited manuscripts and books for review. Address manuscripts and all general editorial correspondence to Christopher Tomlins, The American Bar Foundation, 750 North Lake Shore Drive, Chicago, IL 60611 (tel 312 988 6553; fax 312 988 6579; e-m <clt@abfn.org>). Address books for review and correspondence regarding book reviews and reviewing to Alfred L. Brophy, University of Alabama, 101 Bryant Drive East, Box 870382, Tuscaloosa, AL 35487-0382 (tel 205 348 0841; fax 205 348 5829; e-m abrophy@law.ua.edu). Manuscripts must be double-spaced typescript throughout, with citations prepared according to the *Chicago Manual of Style*, 14th ed. The *Review*'s style guides for articles and book reviews are available on the *LHR* web page www.press.uillinois.edu/journals/lhr.html. Please use word processing. Submission of manuscripts by file attachment is welcome. Submitted manuscripts are subject to double-blind peer review; authors should therefore identify themselves on the title page only. Accepted manuscripts are copyedited for style but not substance; authors remain responsible for citation accuracy and for all statements of fact or opinion. The *Law and History Review* will not consider any manuscript concurrently submitted for publication elsewhere. Submission of a manuscript is understood to commit its author to publish the manuscript in the *Law and History Review* if accepted by the editor.

© 2004 by the Board of Trustees of the University of Illinois. Manufactured in the United States of America.

This journal is printed on acid-free paper.

Law and History Review

Volume 22, Number 1

Spring 2004

Published three times a year by the University of Illinois Press for the American Society for Legal History

Editor

Christopher L. Tomlins American Bar Foundation 750 North Lake Shore Drive Chicago, IL 60611 312.988.6553 FAX: 312.988.6579

E-Mail: clt@abfn.org

Editorial Coordinator

Renee Brown American Bar Foundation 750 North Lake Shore Drive Chicago, IL 60611 312,988,6591 FAX: 312.988.6579 E-Mail: rjbrown@abfn.org

Associate Editor (Book Reviews)

Alfred L. Brophy University of Alabama 101 Bryant Drive East. Box 870382 Tuscaloosa, AL 35487-0382 205.348.0841 FAX: 205.348.5829

E-Mail: abrophy@law.ua.edu

Editorial Board

David Abraham University of Miami

Jeremy I. Adelman Princeton University

David A. Bell The Johns Hopkins University

Mary Frances Berry University of Pennsylvania

Mary Sarah Bilder Boston College

Bettina Bradbury York University, Toronto

Elizabeth R. Dale University of Florida

Adrienne Dale Davis University of North Carolina

Martha F. Davis NOW Legal Defense New York

Thomas J. Davis Arizona State University

Cornelia Hughes Dayton University of Connecticut

Christine A. Desan Harvard University

Charles R. Donahue Harvard University

Markus Dirk Dubber SUNY, Buffalo

Laura Engelstein Princeton University

Daniel R. Ernst Georgetown University

William E. Forbath University of Texas at Austin Judy Fudge York University, Toronto

Stephen Garton University of Sydney

Paul Hyams Cornell University

Nancy Isenberg University of Tulsa

Bruce Kercher Maquarie University

Diane Kirkby La Trobe University, Melbourne

Michael Klarman University of Virginia

Louis A. Knafla University of Calgary

Mindie Lazarus-Black University of Illinois, Chicago

Kenneth F. Ledford Case Western Reserve University

Brian P. Levack University of Texas at Austin

Sanford V. Levinson University of Texas at Austin

Jeanette M. Neeson York University, Toronto

William J. Novak University of Chicago

James P. Oakes **CUNY Graduate Center**

James Oldham Georgetown University Ruth Paley History of Parliament, Wedgwood House, London

Pablo Piccato Columbia University

W. Wesley Pue University of British Columbia

Gerry R. Rubin University of Kent, Canterbury

Lucy E. Salyer University of New Hampshire

Reva B. Siegel Yale University

Robin Chapman Stacey University of Washington

Robert J. Steinfeld SUNY, Buffalo

Carolyn Strange University of Toronto

Emily Z. Tabuteau Michigan State University

Kendall Thomas Columbia University

Barbara Y. Welke University of Minnesota

James Q. Whitman Yale University

Martin J. Wiener Rice University

Andrew Wood University of East Anglia

Contents

Law and History Review	Vol. 22, No. 1, Spring 2004
Full text available at www.historycooperat. <i>LHR</i> home page at www.press.uillinois.edu	
In this Issue	v
Articles	
Politics and Procedure in the Trial of Char Sean Kelsey	les I
Popular Perceptions of Rape as a Capital C Century England: The Press and the Trial of the Old Bailey, February 1730	of Francis Charteris in
Antony E. Simpson	27
Enforcing Virtue: Social Norms and Self-In Century Merchant Court	-
Amalia D. Kessler	71
Forum: Reconsidering the Second Am The Second Amendment: A Missing Trans the Historical Meaning of "the Right of the Bear Arms"	atlantic Context for e People to Keep and
David Thomas Konig	119
Comment A New Paradigm for the Second Amend Saul Cornell	ment 161
Scottish Factors and the Origins of the S H. Richard Uviller and William G. Merk	
Response Influence and Emulation in the Constitution David Thomas Konig	tional Republic of Letters

-		-	•	
KAA	١Ŀ	L OZ	views	۰

A House in Gross Disorder: Sex, Law and the 2nd Earl of Castlehaven —Cynthia B. Herrup reviewed by Margaret R. Hunt	183
The Perreaus and Mrs. Rudd: Forgery and Betrayal in Eighteenth- Century London—Donna T. Andrew and Randall McGowen reviewed by Victor Stater	185
Sources of Biographical Information on Past Lawyers—Guy Holborn reviewed by Albert J. Schmidt	186
The Death Penalty: An American Story—Stuart Banner reviewed by Randall McGowen	188
Debt's Dominion: A History of Bankruptcy Law in America —David Skeel reviewed by David Balleisen	190
The Lost World of Classical Legal Thought: Law and Ideology in America, 1886–1937—William M. Wiecek reviewed by David E. Kyvig	192
The Corporation as Family: The Gendering of Corporate Welfare, 1890–1930—Nikki Mandell reviewed by Jennifer Mittelstadt	194
Brandeis and the Progressive Constitution: Erie, the Judicial Power, and the Politics of the Federal Courts in Twentieth-Century America—Edward A. Purcell, Jr. reviewed by Linda Przybyszewski	196
The Constitution and the New Deal—Edward G. White reviewed by John Henry Schlegel	198
Uneven Ground: American Indian Sovereignty and Federal Law —David E. Wilkins and K. Tsianina Lomawaima, and Religious Freedom and Indian Rights: The Case of Oregon v. Smith —Carolyn N. Long	
reviewed by James T. Carroll Republic of Debtors: Bankruptcy in the Age of American	200
Independence—Bruce H. Mann reviewed by Heather Cox Richardson	202
The Anti-Rent Era in New York Law and Politics, 1839–1865 —Charles W. McCurdy reviewed by Elizabeth Blackmar	204
The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America—Sarah Barringer Gordon	
reviewed by Victoria Saker Woeste	206