Lawand Histo

### **Law and History Review**

Editor
Christopher Tomlins
American Bar Foundation

Book Review Editor
William I Novak

William J. Novak University of Chicago Managing Editor

Diane Clay

American Bar Foundation

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 61820-6903. 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.

© 1998 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 16, Number 2

Summer 1998

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

#### **Editorial Board**

David Abraham
University of Miami

William P. Alford Harvard University

Mary Frances Berry University of Pennsylvania

Thomas Brennan U.S. Naval Academy

Martin Chanock

La Trobe University,

Melbourne

Elaine Clark
University of Michigan,
Dearborn

Martha F. Davis NOW Legal Defense, New York

Thomas J. Davis SUNY, Buffalo

Cornelia Dayton University of California, Irvine

Laura Engelstein
Princeton University

Jean-Marie Fecteau Université du Québec à Montreal

Christian G. Fritz University of New Mexico

Judy Fudge

York University, Toronto

Paul Hyams Cornell University Nancy Isenberg University of Northern Iowa

Bruce Kercher

Macquarie University, NSW

Diane Kirkby

La Trobe University,

Melbourne

Michael Klarman University of Virginia

David Konig
Washington University,
St. Louis

Mindie Lazarus-Black University of Illinois at Chicago

Kenneth F. Ledford
Case Western Reserve

University

Brian P. Levack University of Texas at Austin

Janette Neeson York University, Toronto

Kent Newmyer University of Connecticut

James P. Oakes Northwestern University

John V. Orth University of North Carolina

Steven Pincus
University of Chicago

W. Wesley Pue University of British Columbia Nicole Hahn Rafter Northeastern University

Gerry R. Rubin
University of Kent,
Canterbury

Lucy E. Salyer University of New Hampshire

John Henry Schlegel SUNY, Buffalo

Stephen A. Siegel De Paul University

Rayman L. Solomon Northwestern University

Robin Chapman Stacey University of Washington

Robert J. Steinfeld SUNY, Buffalo

Emily Z. Tabuteau Michigan State University

Victor M. Uribe Florida International University

Barbara Y. Welke University of Oregon

James Q. Whitman Yale University

Stephen C. Yeazell University of California, Los Angeles

#### **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 William J. Novak, Department of History, University of Chicago, 1126 East 59th Street, Chicago, IL 60637 (tel 773 702 7938; fax 773 702 7550; e-m <nov9@midway.uchicago.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 wherever possible. 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.

## Contents

Law and History Review www.press.uillinois.edu/journals/lhr.html	Vol. 16, No. 2, Summer 199	<u>-</u> 8€
Dedication	i	iii
In This Issue	j	ix
Articles Blackstone and Law Reform by Education: and Lawyerly Culture in Eighteenth-Centur David Lemmings	-	i 1
Forum. Constitutions on Edge: Empire, Sin Eighteenth-Century New York Remaking Constitutional Tradition at the M The Creation of Legislative Adjudication in Christine A. Desan	Margin of the Empire:	57
Imperia in Imperio: The Multiple Constitut New York, 1750–1777 Daniel J. Hulsebosch	tions of Empire in	19
Comment Contingency and Constitutionalism in David Thomas Konig	Colonial New York	31
The Multiple Constitutions of Constitu Bruce H. Mann	utional History	37
Response Writing Constitutional History beyond Institutional/Ideological Divide Christine A. Desan	I the	91
The Constitution in the Glass Case and in Action Daniel J. Hulsebosch	d Constitutions	97

Book Reviews	
The Common Legal Past of Europe, 1000–1800—Manlio Bellomo reviewed by Charles J. Reid, Jr.	403
Thomas Hobbes and the Natural Law Tradition—Norberto Bobbio reviewed by Peter G. Stein	405
Sir Matthew Hale (1609–1676): Law, Religion and Natural Philosophy—Alan Cromartie reviewed by Michael de L. Landon	408
Of Bridles and Burnings: The Punishment of Women—E. J. Burford and Sandra Shulman reviewed by Peter Linebaugh	410
Clandestine Marriage in England, 1500–1850—R. B. Outhwaite reviewed by David Cressy	412
The Early History of the Law of Bills and Notes: A Study of the Origins of Anglo-American Commercial Law—James Steven Rogers reviewed by Richard H. Kilbourne, Jr.	414
Urbanization and Crime, Germany 1871–1914—Eric A. Johnson, and Crime and Punishment in New Hampshire, 1812–1914—Timothy Dodg reviewed by April Pattavina	e 417
Of "Good Laws" and "Good Men": Law and Society in the Delaware Valley, 1680–1710—William M. Offutt, Jr. reviewed by Christopher L. Tomlins	420
To Secure These Rights: The Declaration of Independence and Constitutional Interpretation—Scott Douglas Gerber reviewed by Howard Gillman	424
His Soul Goes Marching On: Responses to John Brown and the Harpers Ferry Raid—Paul Finkelman, editor reviewed by Thomas J. Davis	426
Gastonia, 1929: The Story of the Loray Mill Strike—John A. Salmond reviewed by Melton McLaurin	428
The Martinsville Seven: Race, Rape, and Capital Punishment—Eric W. Rise reviewed by Hannah Rosen	430
A Time to Lose: Representing Kansas in Brown v. Board of Education—Paul E. Wilson	400
reviewed by Mary Frances Berry	432

Indian Territory and the United States, 1866–1906: Courts, Governmen and the Movement for Oklahoma Statehood—Jeffrey Burton	t,
reviewed by Nancy Shoemaker	434
Braids of Feather: American Indian Law and Contemporary Tribal Life—Frank Pommersheim reviewed by Wendy Nelson Espeland	436
Saving "Old Glory": The History of the American Flag Desecration Controversy—Robert Justin Goldstein reviewed by Wayne K. Hobson	438
A Legal History of Asian Americans, 1790–1990—Hyung-chan Kim reviewed by Lucy Salyer	440
The H-Law Resource Page	443