

## In This Issue

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We begin in the eighteenth century, as Wendell Bird takes us back to 1798 to challenge what we know about prosecutions under the Sedition Acts. Building on research that reveals twice as many prosecutions and attempted prosecutions under the Acts than conventional historical accounts record, Bird suggests the possibility that there were other prosecutions, as well. More prosecutions meant more victims. Bird argues that his research means we must reconsider the constitutional and political responses to the Sedition Acts, rethinking the Virginia and Kentucky Resolutions and the election of 1800.

The second article, by Christian Burset, takes on the received historical wisdom about the lack of special merchant courts in Anglo-American law. Arguing against the assumption that England never created special commercial (or merchant) courts because merchants never wanted a special court, Burset shows that the creation of specialized merchant courts first was blocked by lawyers who wanted to maintain their monopoly on litigation and then, in the middle of the eighteenth century, by sustained opposition by the radical Whigs.

From there, we skip forward several centuries, to reconsider the mid-twentieth century legal philosopher Gustav Radbruch, who claimed that Nazi-era judges had been led astray by legal positivism and its notion that “law is law.” Noting that legal historians have demonstrated that Radbruch’s conclusions about Nazi-era jurisprudence misinterpreted (and ignored) historical evidence that offered a much less sympathetic portrait of the Nazi judiciary, Douglas Morris argues this historical evidence requires us to reconsider Radbruch’s thought. Morris’s article unpacks the origins and implications of Radbruch’s post-war jurisprudence and his own intellectual independence.

The next article, by Jim Phillips, looks at judicial independence. Phillips traces the development of the idea of judicial independence in Canada from the 1820s through Confederation. In the process, he demonstrates that judicial independence was never simply a matter of life tenure. Instead, discussions and debates over judicial independence in Canada turned on

questions about the appointment and removal of judges, the financial security of those appointed to the bench, and judicial involvement in other branches of government.

This issue closes with two studies of South Asian legal history. Sarath Pillai's article offers a postcolonial constitutional history of India that questions the idea that decolonizing empires must give rise to new nation-states. Pillai's article looks at debates over sovereign power in the last two decades of the British Empire in Travancore and other princely states, where sovereignty under the imperial constitution was both divisible and vested in a ruler alone. Those debates, Pillai argues, offered an alternative constitutional reality, which rested on an idea of a federated, rather than a national constitutional order in post-colonial India.

In the final article in this issue, Radhika Singha explores the convoluted history of the nearly century-long process that abolished flogging in the Indian Army. Beginning with the moment in 1835 when corporal punishment was discontinued for Indian soldiers even as it was retained for their British counterparts, Singha's article traces the twists and turns of policies that reintroduced corporal punishment for the "native army" in 1845, ended flogging for British soldiers in 1881, and finally abolished corporal punishment for Indian soldiers and non-combatant laborers in 1920. As she works her way through those shifts, Singha ties together legal, labor, and military history to show how the Indian Army used military law to preserve racial segmentation.

This issue concludes with a selection of book reviews. We invite readers to also consider American Society for Legal History's electronic discussion list, H-Law, and visit the Society's website at <http://www.legalhistorian.org/>. Readers may also be interested in viewing the journal online, at <http://journals.cambridge.org/LHR>, where they may read and search issues of the journal.

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