In This Issue

In the beginning (of this issue) there was Holmes. This issue begins with an analysis of the canonization process that transformed a justice into an icon. It then examines lesser-known histories, such as African Americans using civil litigation against white Southerners in the late nineteenth and early twentieth centuries and Zionist settlers' using English trust law in British Mandate Era Palestine. The issue then examines early histories of the legal process, including the workings of courts in the Roman Empire's eastern providences and the compilation of the *Law of the Bavarians* in the eighth century. Rounding out the issue is an analysis of "official legality" in late imperial Russia. Collectively, these six articles demonstrate the vibrancy and breadth of the field of legal history in the early twenty-first century.

Our first article, by Brad Snyder, demonstrates how during the 1910s, Felix Frankfurter, Walter Lippmann, and other progressives turned a Dupont Circle row house into a salon, called the "House of Truth," invited Washington establishment figures to frequent dinner and cocktail parties, and adopted Justice Oliver Wendell Holmes Jr. as the House's hero. They canonized Holmes to attack the Court's antilabor decisions. And, as Synder reveals, Holmes participated in his own canonization to further his ambitions of elite recognition. At 70 years of age, he was frustrated on the Court and considered retirement. He wrote for what Laurence Baum has described as a "discrete judicial audience" at the House of Truth. Holmes's canonization matters, Synder concludes, because it exemplifies canonization as political instrumentalism.

Our second article, by Melissa Milewski, focuses on civil actions instead of constitutional law to analyze race relations in the American South. Drawing on more than 600 higher court cases from eight states, she shows that African Americans succeeded in litigating certain kinds of civil cases against white Southerners in Southern appellate courts. Through these suits, black Southerners continued to successfully assert the legal rights they had gained during Reconstruction, long after its

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end. Moreover, Milewski reveals that black litigants won the majority of civil cases litigated against white Southerners in higher state courts—not only during Reconstruction, but also during the post-Reconstruction and Jim Crow eras. Her article has important implications for understanding the judicial system's relationship to politics and race, as well as the role of the courts in African Americans' struggles for freedom.

Our third article, by Adam S. Hofri-Winogradow, analyzes how Zionist settlers in British Mandate era Palestine made use of the English private trust and trust company. This initially led to an ambiguous decision by the Supreme Court of Palestine about whether the private trust was part of Palestinian law. He then shows how, in the shadow of that decision, the Zionist settler population made significant use of the trust for a variety of purposes. This forgotten history provides a particularly sharp example of a colonial population adopting more of the colonizer's own law than that colonizer was willing to have it use. The trust company became a key instrument in encouraging Jewish settlement and investment in Palestine, contributing to the creation of a Jewish middle class. Moreover, thanks to a particularly sophisticated international trust structure set up in 1933, more than 50,000 German Jews escaped the Nazi noose with at least some of their property intact.

Our fourth article, by Ari Z. Bryen, addresses the recent debate on the interrelationship between law and imperialism by presenting a new model for understanding courtroom interactions. Specifically, he argues that courtroom interactions should be understood as ritualized spaces in which the realities of day-to-day power relations in empires are temporarily suspended and potentially renegotiated. He contends that the adoption of legal vocabularies by provincial populations is neither assimilation nor resistance, but rather an attempt to engage in a dialogue with imperial powers on terms that favor the provincials themselves. Drawing on papyri, monumental inscriptions, and literary texts, he demonstrates that in Rome's eastern provinces the government had no monopoly over legal texts or knowledge, a condition that provincials exploited through a process of selectively invoking and monumentalizing select legal texts, and forgetting others. Through a case study of how provincial populations generated and adopted ideas of the rule of law and how they deployed these concepts to influence and control Roman governors, he concludes that an approach to law as a ritual practice opens up new avenues for understanding the power dynamics of empires.

Our fifth article, by Jonathan Couser, moves our analysis from the role of law within empires to the role of law in legitimating regime change. He argues that the eighth-century *Law of the Bavarians* was compiled, not within Bavaria itself between 744 and 748, as current scholarly consensus

holds, but rather in the neighboring principality of Alemannia between 736 and 738. The new dating and location of composition allows a reinterpretation of the text's significance; rather than being a passive reflection of early medieval legal custom, it is actually a highly political production, designed to support a regime change—the imposition of a new duke from outside—with a minimum of compulsion. Three parties within Bavarian society, he explains, were granted new privileges in the document in order to secure their support for the new regime of Duke Odilo (736–748): the Church, servants of the ducal court itself, and a select set of aristocratic kin groups called *genealogiae*. In fact, as Couser points out, this innovative device appears to have been remarkably successful. Odilo was able to establish himself as duke in 736, and to survive a coup in 741, without any recorded military intervention. A generation later, when Charlemagne took the duchy over in 788, he was careful to do so in ways that made use of the Bavarian Law's political vision rather than suppressing it.

Our sixth article, by Tatiana Borisova, also examines the legacy of a legal vision, specifically the *Digest of the Laws of the Russian Empire*. The *Digest*, which included the law in force in late imperial Russia, has been often overlooked. The reason for this scholarly oversight, according to Borisova, is a remarkable difference between the original texts of laws adopted by the legislator, and their published form in the *Digest*. This difference came from the editing procedures that were necessary when each new piece of legislation was included in the existing system of the *Digest*. This practice produced two different versions of a particular law: the original one and the one codified in the *Digest*. Both remained in force. Borisova argues that scholars should consider both versions as a part of official autocratic legality in late imperial Russia, especially as this system of obligatory codification of laws in the *Digest* existed for nearly a century. Her article is part of a larger project to find possible explanations for the *Digest*'s prolonged existence in the context of political and legal culture of late imperial Russia, including answering the question: What did Russian 'official legality' actually mean on the levels of theory and action?

As always, this issue concludes with a comprehensive selection of book reviews. We also invite readers to explore and contribute to the ASLH's electronic discussion list, H-Law, and visit the society's website at http://www.legalhistorian.org/. Readers are also encouraged to investigate the *LHR* on the web, at http://journals.cambridge.org/LHR, where they may read and search issues, including this one.

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