

In This Issue

This issue moves from studying the law-in-action in the Empire State to seeing how law operated in the British Empire. It begins with two histories of law in New York during the late nineteenth century. These studies emphasize how assumptions about the roles of men, women, and law shaped the administration of criminal justice as well as the delivery and definition of legal aid. Building on the theme of gender and justice, this issue's forum analyzes how women in colonial India negotiated the personal law system.

In our first article, Carolyn Strange shows how clemency, pardoning, and executive justice were inextricably connected to criminal justice in Reconstruction-era New York. Through the pardoning of one convicted murderer in 1877, she demonstrates how mercy operated as a mechanism of substantive justice that hinged on appraisals of the offender's character and circumstances. Frank Walworth, convicted for the murder of his father, Mansfield, argued that filial concern for his mother's safety had prompted his chivalrous act. Strange contends that this line of defense tested the boundaries of the "unwritten law." Although the defense's characterization of the dutiful son failed to produce an acquittal, it later helped persuade the governor to pardon him. The Walworth case suggests that historians need to pay closer attention to executive justice as a site of "lawless law," where preemptive honor-based violence could find a receptive audience. Equally, it draws attention to the persistence of sentiment in nineteenth-century law and the particular significance of men's feelings about authorized and unauthorized masculine violence. Although women could petition for mercy, it still took men to judge men fit for punishment or pardons.

Our second article by Felice Batlan shows how organized legal aid societies first developed through the delivery of legal services by women to women. The Working Women's Protective Union, which was founded in 1863, had by 1888 conducted over 10,000 prosecutions and mediated 25,000 disputes on behalf of women. The complex history of the Union reveals how shifting gender ideologies intersected with the nascent labor movement, understandings of wage labor, newer ideas about philanthropy,

and the changing nature of the legal profession. Significantly, by the turn of the century, when the New York Legal Aid Society had become the dominant provider of legal aid services to the poor, it further expanded women's roles as legal providers and recipients of legal aid. Thus Batlan contends that women not only played crucial roles as lawyers, benefactors, and clients but that gendered assumptions also mattered. These assumptions helped determine who should be the beneficiaries of legal aid, who should provide legal aid, and how lawyers should construct claims. And, as Batlan highlights, the idea of legal aid itself was connected to the image of the legal profession.

Elizabeth Kolsky introduces the forum on "Maneuvering the Personal Law System in Colonial India" and Sally Engle Merry explains its contribution to the literature on law and colonialism. The first article by Mitra Sharafi builds on Lauren Benton's important work on empire and legal pluralism. Like Benton, who used the phrase "jurisdictional jockeying" to describe the ways colonial parties secured legal advantage for themselves by exploiting jurisdictional ambiguity, Sharafi examines a similar phenomenon in colonial India circa 1900. She argues that the often clumsy nature of litigants' moves makes the phrase "jurisdictional jostling" more apt. Discrepancies in the matrimonial law of colonial Bombay, imperial England, the Indian princely state of Baroda, and the sovereign kingdom of Persia encouraged optimistic litigants to move toward the jurisdiction promising the best results. Parties tried to forum shop to counteract spousal abandonment, to divorce a spouse without proving fault, and to enter into polygamous unions. Through three case studies, Sharafi suggests that more often than not, these attempts failed. In particular, wealth and privilege did not ensure success in forum shopping. Rather, one needed to be willing to move to one's desired jurisdiction—and stay there. Rather than reflecting real agency on the part of colonial subjects, the fact that litigants continued to *try* to forum shop reflects the effective functioning of the "legal lottery" mechanism within rule-of-law proceduralism. Colonial law's hold upon its subjects was reinforced, she concludes, through the promise that forum shopping *could* work this time, even if it probably would not.

In his article, Rohit De focuses on the role of religion in the personal law system. As he explains, scholars often describe the transformation of South Asia during colonial rule as the movement from "Indian status" to "British contract." Through a study of the instrumental use of the Islamic law on conversion by women to dissolve their marriages, he seeks to complicate this narrative. First, he contends that a more rigid understanding of Islamic law by courts actually opened up new spaces for women to maneuver. Second, he highlights how jurisdictional play within and across communities by women complicated the responses of the colonial state

and other publics to the question of jurisdictional mobility. Finally, he shows that strategic litigation only partially reinforced the state's hold over its subjects. In cases of matrimony, as opposed to property, women could and did treat the state system as only one of several options.

In the final forum article, Chandra Mallampali also addresses how religion complicated the administration of the personal law system. As the British implemented their system of law in India, he notes that they recognized different personal laws for different religious "communities." What began as an attempt to conserve local traditions and respect religious differences gradually evolved into a system that militated against local customs. He then describes attempts of Indian litigants, mostly women, to contest the "laws of their religion" by claiming to practice customs at variance with those laws. Proving custom provided for a time a means of interrogating abstract and gendered notions of Hindu, Muslim, Sikh, or Christian identity. "Proof of custom" cases thus represented a more dialogical view of colonialism whereby courts solicited and carefully considered ethnographic evidence supplied by witnesses. Yet, in the decades following India's Sepoy Rebellion of 1857, the British attempted to impose a greater degree of legal uniformity upon religious communities. Courts interpreted personal laws more rigidly and were less willing to admit ethnographic evidence. By examining a series of "proof of custom" cases, he traces the shift from a dialogical to a more hegemonic deployment of personal laws. This transition offers a unique lens into currents of South Asian historiography centered upon the issue of colonial intrusiveness. Significantly, it also documents resistance to Orientalist notions of an India fundamentally constituted by religious communities.

As always, this issue includes a comprehensive selection of book reviews. We also encourage readers to explore and contribute to the ASLH's electronic discussion list, H-Law, and visit the society's Web site 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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