

In This Issue

This issue of the *Law and History Review* includes four articles that focus on law, families, and social order—from an examination of a seventeenth-century Spanish church court dealing with the cases of women accused of impotence to the struggles of a teenage concubine in modern-day Guatemala. Collectively, the authors mine largely unexplored legal topics and territories to demonstrate the power of socio-cultural methods for explaining the logic and development of social policy, while simultaneously revealing how the participants in legal systems shape policy implementation in unexpected ways. In the process, these nuanced articles highlight the significance of gender and sexuality in structuring legal definitions of the family as well as the fluctuating boundaries of acceptable social and sexual behavior.

Our first article, by Alison Morantz, examines judicial constructions of the American family. In the late nineteenth century, most U.S. states passed laws granting special protections to family homesteads. As long as the head of a “family” resided on land with his or her dependents, creditors were prevented from seizing the homestead for non-payment of debts, and some immediate family members could enjoy such protections even after the death of the family head. Promoted as a means to deter family poverty and homelessness, the statutes perplexed contemporary jurists. The article explores why the homestead exemption proved so divisive and reconstructs the laws’ major doctrinal fault lines. Analysis of state high court opinions reveals that the laws had complex effects on women’s interests in homestead land. Ironically, although the laws formally vested married women with new rights over family property, their husbands may have been their primary material beneficiaries. More broadly, judicial decision making reflected a widespread concern with safeguarding the link between property ownership, manhood, and citizenship. Also, for the first time in U.S. history, homestead exemption laws transformed the definition of “family” into a politically charged locus of public policy. Instead of strictly limiting the scope of the protected class to nuclear families, most high courts exercised their discretion to permit several other groups of related cohabitants to enjoy the same privileges as husband and wife.

In our second article, Edward Behrend-Martínez investigates church court cases of women accused of impotence. Between 1673 and 1735,

the northern Spanish bishopric of Calahorra and La Calzada adjudicated eight suits against impotent wives and one case against a castrated woman. The article places these cases in the context of European cultural attitudes toward women's sexual power and demonstrates that communal interests were of primary importance in trying these women. Rather than simply repress sexuality, as the Catholic Church recommended, small communities linked social harmony with the correct use—or exploitation—of female sexuality. These cases reveal communal sexual interests connected with reproduction rather than salvation, magic rather than honor, and social order rather than the strictures of canon law. The essay specifically explores the legal arguments about female sexuality—magical, physiological, social, and productive/reproductive—finding that rural women's power and status in early modern Spain depended, in part, on their bodies. It concludes, however, that in court documents there was no dominant notion of women's sexuality at the time. Depending on the objectives of court rhetoric, medical experts in the seventeenth and eighteenth centuries could draw from different aspects of conflicting Western views of women's sex: either women's sex was unique and separate from men's sex or the female body was the same as the male body, though imperfectly formed.

Our third article, by Stephen Robertson, builds upon his recent book *Crimes against Children: Sexual Violence and Legal Culture in New York City, 1880–1960*, which was published in the University of North Carolina's Studies in Legal History series (<http://uncpress.unc.edu/bm-series.html#legal>). Robertson's article reveals that although campaigns to make seduction a crime are prominent in accounts of moral reform in the antebellum United States, prosecutions for that offense have received little attention. Yet seduction illuminates dimensions of American sexual culture barely visible in the prosecutions for rape that dominate historical accounts of sexual violence. An examination of cases in the courts of New York County, 1886 to 1955, reveals that seduction prosecutions expanded the range of criminal law to cover forms of sexual assault not treated by the narrowly interpreted rape law. They also offered adult working-class women the opportunity to marry their seducers. Women who had been coerced and assaulted are prominent among the significant proportion of plaintiffs who pursued, and often achieved, that outcome. Their actions highlight the blurred boundaries between coerced and consensual sex in turn-of-the-century United States and draw attention to the limited reach of the middle-class concept of romantic love that dominates histories of marriage in those years. The almost complete disappearance of seduction prosecutions after the mid-1930s illustrates how new understandings of gender, sexuality, and age transformed interpretations of sexual violence in the second half of the twentieth century.

The fourth article, by John Wertheimer, is the subject of this issue's forum on "The Promise and Perils of Family Law." Wertheimer's article explores Latin American adulterous concubinage (the infamous "casa chica," or "little house"). Despite its notoriety and cultural significance, this subject has attracted little legal-historical attention. The article uses a microhistory of one concubine—Gloria—and her married lover to explore the relationship between adulterous concubinage and the law in twentieth-century Guatemala. It comes to an unexpected conclusion: the "modernizing" legal reforms that Guatemala has adopted since the mid-nineteenth century have, on balance, bolstered the sexist institution of adulterous concubinage rather than suppressing it. Modernizing, anticlerical liberals in the 1870s decriminalized husbands' adultery. Egalitarian social reformers in the twentieth century's first half erased legal distinctions between "legitimate" and "illegitimate" children. Mid-twentieth-century "maternalist feminists" and others—acting in the name of social equality, family protection, women's rights, and the best interest of children—shifted the emphasis of that nation's family law away from the defense of marriage and toward the protection of family units. These reforms affected Guatemalans in a variety of ways, many of them good. Yet they appear, on the whole, to have fortified the sexist tradition whereby married men maintain concubines in "little houses." These findings challenge the common-sense assumption that "progressive" legal reforms would naturally discourage regressive institutions such as adulterous concubinage. In separate comments, Katherine Bliss and two members of *LHR*'s editorial board, Pablo Piccato and M. C. Mirow, critique Wertheimer's telling of "Gloria's Story." Wertheimer's response rounds out the forum.

As always, this issue concludes with a comprehensive selection of book reviews. We also encourage readers to explore and contribute to the ASLH's electronic discussion list, H-Law; visit the society's website at <http://www.h-net.msu.edu/~law/ASLH/aslh.htm>; and consider making a donation to the society's endowment campaign. Readers are also encouraged to investigate the *LHR* on the web, at www.historycooperative.org, where they may read and search every issue published since January 1999 (Volume 17, No. 1), including this one. In addition, the *LHR*'s web site, at www.press.uillinois.edu/journals/lhr.html, enables readers to browse the contents of forthcoming issues, including abstracts, and, in almost all cases, full-text PDF "pre-prints" of articles. Finally, I invite all of our readers to examine our new administration system at <http://lhr.law.unlv.edu/>. This system facilitates the submission, refereeing, and editorial management of manuscripts.

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