

Law and History Review

Law and History Review

The purpose of *Law and History 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 back cover of this issue.

Back issues of *Law and History Review* may be ordered directly from *Law and History Review*, Cambridge University Press, Journals Fulfillment Dept., 100 Brook Hill Drive, West Nyack, NY 10994-2133, USA.

Editorial Office: Department of History, University of Nevada, Las Vegas, 4505 Maryland Parkway, Las Vegas, NV 89154-5020, USA. David S. Tanenhaus, Editor; telephone: 702-895-3549; fax: 702-895-1782; e-mail: david.tanenhaus@unlv.edu

Address all general editorial correspondence to David S. Tanenhaus, Editor, *Law and History Review*, Department of History, University of Nevada, Las Vegas, 4505 Maryland Parkway, Las Vegas, NV 89154-5020, USA (tel: 702-895-3549; fax: 702-895-1782; e-mail: david.tanenhaus@unlv.edu). Address books for review and correspondence regarding book reviews and reviewing on the Americas to Alfred L. Brophy, Associate Editor, *Law and History Review*, University of North Carolina School of Law, 160 Ridge Road, CB #3380, Chapel Hill, NC 27599-3380, USA (tel: 919-962-4128; fax: 919-962-1277; e-mail: abrophy@email.unc.edu). Address books for review and correspondence regarding book reviews and reviewing on the non-Americas to Amalia D. Kessler, Associate Editor, *Law and History Review*, Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305-8610, USA (tel: 650-725-5800; fax: 650-725-0253; e-mail: akessler@law.stanford.edu).

Publishing, Advertising, and Subscription Offices: Cambridge University Press, 32 Avenue of the Americas, New York, NY 10013-2473, USA. (for USA, Canada, and Mexico); or Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, UK (for UK and elsewhere).

Law and History Review (ISSN 0738-2480) is published four times a year, in February, May, August, and November by Cambridge University Press, 32 Avenue of the Americas, New York, NY 10013-2473, USA / Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, England for the American Society of Legal History. Annual institutional subscription rates for Volume 28, 2010 are \$175.00 in the USA, Mexico, and Canada and £95.00 elsewhere for print and electronic subscriptions. Annual subscription rates for students are \$30.00 in the USA, Mexico, and Canada and £20.00 elsewhere. Single part: \$48.00 in the USA, Mexico, and Canada and £26.00 elsewhere. Prices include postage and insurance. *Law and History Review* and all other Cambridge journals can be found at <http://journals.cambridge.org/>.

Copyright © the American Society for Legal History, Inc. 2010. All rights reserved. No part of this publication may be reproduced in any form or by any means, photocopying, electronic, or otherwise, without permission in writing from Cambridge University Press. Permission inquiries from the USA, Mexico, and Canada should be addressed to the New York office of Cambridge University Press <http://www.cambridge.org/us/information/rights/contacts/newyork.htm>; permission inquiries from elsewhere should be addressed to the Cambridge office <http://www.cambridge.org/uk/information/rights/contacts/cambridge.htm>; permission inquiries from Australia and New Zealand should be addressed to the Melbourne office http://www.cambridge.org/aus/information/contacts_melbourne.htm.

Permission to copy (for users in the USA) is available from the Copyright Clearance Center (CCC), <http://www.copyright.com>, email: info@copyright.com. Specific written permission must be obtained for republication; contact the nearest Cambridge University Press office.

Forwarding and return postage guaranteed, address correction requested. Postmaster: Send address changes in the USA and Canada to *Law and History Review*, Cambridge University Press, Journals Fulfillment Dept., 100 Brook Hill Drive, West Nyack, NY 10994-2133, USA. Send address changes elsewhere to *Law and History Review*, Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, England.

Law and History Review

Volume 28, Number 2

May 2010

*Published four times a year by Cambridge University Press for the
American Society for Legal History*

Editor

David S. Tanenhaus
*University of Nevada,
 Las Vegas*
 Department of History
 4505 Maryland Parkway
 Las Vegas, NV 89154-5020
 702.895.3549
 FAX: 702.895.1782
 E-Mail: david.tanenhaus@
 unlv.edu

Associate Editor**(Book Reviews, Americas)**

Alfred L. Brophy
*University of North Carolina
 School of Law*
 160 Ridge Road, CB #3380
 Chapel Hill, NC 27595-3380
 919.962.4128
 FAX: 919.962.1277
 E-Mail: abrophy@email.unc.edu

Associate Editor**(Book Reviews, Non-Americans)**

Amalia D. Kessler
Stanford Law School
 559 Nathan Abbott Way
 Stanford, CA 94305-8610
 650.725.5800
 FAX: 650.725.0253
 E-Mail: akessler@
 law.stanford.edu

Editorial Board

Edward J. Balleisen
Duke University
 Stuart Banner
*University of California,
 Los Angeles*
 David A. Bell
Princeton University
 Mary Sarah Bilder
Boston College
 Elizabeth Borgwardt
*Washington University
 in St. Louis*
 Bettina Bradbury
York University, Toronto
 Holly Brewer
North Carolina State University
 Warren C. Brown
California Institute of Technology
 Peter C. Caldwell
Rice University
 Christopher Capozzola
*Massachusetts Institute
 of Technology*
 Andrew Wender Cohen
Syracuse University
 Jane Dailey
University of Chicago
 Elizabeth R. Dale
University of Florida
 Thomas J. Davis
Arizona State University
 Christine A. Desan
Harvard University
 Simon Devereaux
University of Victoria
 Charles R. Donahue
Harvard University
 Markus Dirk Dubber
University of Toronto

Mary L. Dudziak
University of Southern California
 Laura F. Edwards
Duke University
 Daniel R. Ernst
Georgetown University
 William E. Forbath
University of Texas, Austin
 Thomas P. Gallanis
University of Iowa
 Annette Gordon-Reed
New York Law School
 Mark Graber
University of Maryland
 Ariela J. Gross
University of Southern California
 Sally E. Hadden
Florida State University
 Ron Harris
Tel-Aviv University
 Peter C. Hoffer
University of Georgia
 Daniel J. Hulsebosch
New York University
 Nancy Isenberg
Louisiana State University
 Diane Kirkby
La Trobe University
 Daniel M. Klerman
*University of Southern
 California*
 Carl Landauer
General Counsel at Loyal3
 Mindie Lazarus-Black
University of Illinois, Chicago
 Kenneth F. Ledford
Case Western Reserve University
 Sanford V. Levinson
University of Texas, Austin

Michael Lobban
University of London
 M. C. Mirow
Florida International University
 Mae M. Ngai
Columbia University
 William J. Novak
University of Michigan
 James C. Oldham
Georgetown University
 Ruth Paley
History of Parliament
 Pablo Piccato
Columbia University
 W. Wesley Pue
University of British Columbia
 Stephen Robertson
University of Sydney
 Richard J. Ross
University of Illinois
 Reuel Schiller
*University of California,
 Hastings College of Law*
 Robin Chapman Stacey
University of Washington
 Emily Tabuteau
Michigan State University
 Michael Vorenberg
Brown University
 Barbara Y. Welke
University of Minnesota
 James Q. Whitman
Yale University
 Martin J. Wiener
Rice University
 Michael Willrich
Brandeis University
 John Fabian Witt
Yale University

American Society for Legal History

Officers, 2010

Constance Backhouse
University of Ottawa
President

Bruce H. Mann
Harvard University
President-elect

Craig Klafter
Oxford Brookes University
Treasurer
Sally Hadden
Florida State University
Secretary

Board of Directors

Mary Sarah Bilder
Boston College

Martha S. Jones
University of Michigan

Dylan C. Penningroth
*Northwestern University/
American Bar Foundation*

Holly Brewer
*North Carolina State
University*

Adam Kosto
Columbia University

Rebecca J. Scott
University of Michigan

Alfred L. Brophy
University of North Carolina

Michael Lobban
University of London

Karen Tani
(Graduate Student
Representative)
*University of
Pennsylvania*

Mary Dudziak
*University of Southern
California*

Maeva Marcus
(Immediate Past-President)
*George Washington
University*

John Wertheimer
Davidson College

Risa L. Goluboff
University of Virginia

M. C. Mirow
*Florida International
University*

Victoria Saker Woeste
American Bar Foundation

Annette Gordon-Reed
New York Law School

Publications Committee

Bruce H. Mann, Chair
Harvard University

Cynthia Herrup
*University of Southern
California*

Linda Przybyszewski
University of Notre Dame

Cornelia Dayton
University of Connecticut

Craig Evan Klafter
Oxford Brookes University

David S. Tanenhaus
*University of Nevada,
Las Vegas*

Daniel Ernst
Georgetown University

David Lieberman
*University of California,
Berkeley*

Christopher Waldrep
*California State University,
San Francisco*

Fellows of the American Society for Legal History

Honorary Fellows

Morris S. Arnold

Morris Cohen

Lawrence M. Friedman

R. H. Helmholz

Corresponding Fellows

J. H. Baker

Raoul C. Van Caenegem

Ennio Cortese

Robert Feenstra

Morton J. Horwitz

Harold M. Hyman

Laura Kalman

Stanley N. Katz

John T. Noonan, Jr.

André Gouron

Paolo Grossi

Peter Landau

Anne Lefebvre-Teillard

Hector L. MacQueen

John Phillip Reid

Harry N. Scheiber

A. W. B. Simpson

W. A. J. Watson

S. F. C. Milsom

Kjell Mod er

Peter G. Stein

Michael Stolleis

Contents

Law and History Review

Vol. 28, No. 2, May 2010

Full text available at <http://journals.cambridge.org/lhr>

In This Issue ix

Articles

The Error of Young Cyrus: The Bill of Conformity and Jacobean Kingship, 1603–1624 307

David A. Smith

“Taking a Nickel Out of the Cash Register”:
Statutory Renegotiation of Military Contracts and the
Politics of Profit Control in the United States during
World War II 343

Mark R. Wilson

Forum: James Madison: Law, Interpretation, and Ideology in the 1780s

Introduction

David B. Mattern 385

James Madison, Law Student and Demi-Lawyer 389

Mary Sarah Bilder

The Authority for Federalism: Madison’s Negative and
the Origins of Federal Ideology 451

Alison L. LaCroix

Comment

James Madison and Common-Law Constitutionalism 507

David Thomas Konig

The “Madison Problem” Revisited 515

Peter S. Onuf

Book Reviews

- The Cambridge History of Law in America, Vol. 2, The Long Nineteenth Century (1789–1920)* — Michael Grossberg and Christopher Tomlins, editors
reviewed by John Wertheimer 523
- History of the Common Law: The Development of Legal Institutions* — John H. Langbein, Renée Lettow Lerner, and Bruce P. Smith
reviewed by Morris S. Arnold 526
- Between Betrothal and Bedding: Marriage Formation in Sweden, 1200–1600* — Mia Korpiola
reviewed by Philip L. Reynolds 527
- From Wives to Widows in Early Modern Paris: Gender, Economy, and Law* — Janine M. Lanza
reviewed by Sarah Hanley 529
- The Last Witch of Langenburg: Murder in a German Village* — Thomas Robisheaux
reviewed by Laura Stokes 531
- Nefarious Crimes, Contested Justice: Illicit Sex and Infanticide in the Republic of Venice, 1557–1789* — Joanne M. Ferraro
reviewed by Tessa Storey 533
- Law Courts and Lawyers in the City of London, 1300–1550* — Penny Tucker
reviewed by Paul Brand 535
- Civil Justice in Renaissance Scotland: The Origins of a Central Court* — A. M. Godfrey
reviewed by Jane E. A. Dawson 537
- Law, Politics, and Society in Early Modern England* — Christopher W. Brooks
reviewed by Richard J. Ross 538
- A Protestant Purgatory: Theological Origins of the Penitentiary Act, 1779* — Laurie Throness
reviewed by Andrea McKenzie 540
- Creating Capitalism: Joint-Stock Enterprise in British Politics and Culture, 1800–1870* — James Taylor
reviewed by Ron Harris 542
- Hanging Between Heaven and Earth: Capital Crime, Execution Preaching, and Theology in Early New England* — Scott D. Seay
reviewed by Daniel A. Cohen 545

<i>Peaceable Kingdom Lost: The Paxton Boys and the Destruction of William Penn's Holy Experiment</i> — Kevin Kenny	
reviewed by Alan Tully	547
<i>The State as a Work of Art: The Cultural Origins of the Constitution</i> — Eric Slauter	
reviewed by Robert A. Ferguson	548
<i>Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South</i> — Bernie D. Jones	
reviewed by James W. Ely Jr.	550
<i>Law Touched Our Hearts: A Generation Remembers Brown v. Board of Education</i> — Mildred Wigfall Robinson and Richard J. Bonnie, editors	
reviewed by Christopher W. Schmidt	552
<i>Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party</i> — Paul Frymer	
reviewed by Sophia Z. Lee	554
<i>What Comes Naturally: Miscegenation Law and the Making of Race in America</i> — Peggy Pascoe	
reviewed by Thomas J. Davis	556
<i>Exporting American Dreams: Thurgood Marshall's African Journey</i> — Mary Dudziak	
reviewed by Henry Richardson	558
<i>The Selma of the North: Civil Rights Insurgency in Milwaukee</i> — Patrick D. Jones	
reviewed by Andrew R. Highsmith	560
<i>The Straight State: Sexuality and Citizenship in Twentieth-Century America</i> — Margot Canaday	
reviewed by David A. J. Richards	562
<i>The Sodomy Cases: Bowers v. Hardwick and Lawrence v. Texas</i> — David A. J. Richards	
reviewed by Carlos A. Ball	564
<i>Federal Judges Revealed</i> — William Domnarski	
reviewed by Jeffrey B. Morris and Barbara Burke	566
<i>The Yale Biographical Dictionary of American Law</i> — Roger K. Newman, editor	
reviewed by Steven J. Macias	567
<i>Does the Constitution Follow the Flag?</i>	
<i>The Evolution of Territoriality in American Law</i> — Kal Raustiala	
reviewed by John Fabian Witt	569

<i>Stages of Capital: Law, Culture, and Market Governance in Late Colonial India</i> — Ritu Birla reviewed by David Washbrook	571
<i>British Rule in China: Law and Justice in Weihaiwei, 1898–1930</i> — Carol G. S. Tan reviewed by Li Chen	573