

Law and History Review

Volume 27, Number 1 · Spring 2009

Law and History Review

Law and History Review (ISSN 0738-2480) is published three times a year, in spring, summer, and fall, by the University of Illinois Press for the American Society for Legal History. The purpose of the *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 inside back cover of this issue.

Address all business inquiries (subscriptions, membership applications, back-issue orders, advertisements, and change-of-address notices) to the Journals Department, University of Illinois Press, 1325 South Oak Street, Champaign, Illinois 61820-6975. Requests for replacement of damaged or undelivered issues will be honored for up to six months after publication of the issue.

Back issues of *Law and History Review* may be ordered directly from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209-1987. Orders may also be placed by calling Hein at (800) 828-7571, via fax at (716) 883-8100, or email to order@wshein.com. Back issues can also be found in electronic format for all your research needs on HeinOnline <http://heinonline.org/>.

For authorization to photocopy from *Law and History Review* for uses exceeding those permitted by Sections 107 and 108 of the U.S. Copyright Law, contact the Copyright Clearance Center (CCC), 222 Rosewood Drive, Danvers, MA 01923. The CCC will send an invoice for permissions fees. Permissions given above do not extend to copying for advertising or promotional purposes or to creating new collective works.

Note to Contributors

The editors welcome unsolicited manuscripts and books for review. Authors should submit their manuscripts on-line at <http://lhr.law.unlv.edu>. Step-by-step instructions on the website explain the submission process. 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 (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 (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 (tel 650 725 5800; fax 650 725 0253; e-mail: akessler@law.stanford.edu). Manuscripts must be double-spaced typescript throughout, with citations prepared according to the *Chicago Manual of Style*, 15th ed. The *Review's* style guides for articles and book reviews are available on the *LHR* web page at <http://lhr.law.unlv.edu>. Please use word processing. Submitted manuscripts are subject to double-blind peer review; authors should therefore identify themselves on the title page only. Accepted manuscripts are copyedited for style but not substance; authors remain responsible for citation accuracy and for all statements of fact or opinion. The *Law and History Review* will not consider any manuscript concurrently submitted for publication elsewhere. Submission of a manuscript is understood to commit its author to publish the manuscript in the *Law and History Review* if accepted by the editor.

© 2009 by the Board of Trustees of the University of Illinois. Manufactured in the United States of America.

This journal is printed on acid-free paper.

Law and History Review

Volume 27, Number 1

Spring 2009

*Published three times a year by the University of Illinois 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 27599-3380
 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

David A. Bell
Johns Hopkins University

Girish Bhat
SUNY, Cortland

Mary Sarah Bilder
Boston College

Bettina Bradbury
York University, Toronto

Peter C. Caldwell
Rice University

Andrew Wender Cohen
Syracuse University

Jane Dailey
Johns Hopkins University

Elizabeth R. Dale
University of Florida

Adrienne Dale Davis
University of North Carolina

Thomas J. Davis
Arizona State University

Christine A. Desan
Harvard University

Charles R. Donahue
Harvard University

Markus Dirk Dubber
SUNY, Buffalo

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 Minnesota

Sarah Barringer Gordon
University of Pennsylvania

Ariela J. Gross
*University of Southern
 California*

Sally E. Hadden
Florida State University

Daniel J. Hulsebosch
New York University

Nancy Isenberg
University of Tulsa

Bruce Kercher
Macquarie University

Diane Kirkby
La Trobe University

Daniel M. Klerman
*University of Southern
 California*

Mindie Lazarus-Black
*University of Illinois,
 Chicago*

Kenneth F. Ledford
*Case Western Reserve
 University*

Sanford V. Levinson
University of Texas, Austin

Thomas B. McAfee
*University of Nevada,
 Las Vegas*

M. C. Mirow
*Florida International
 University*

Mae M. Ngai
University of Chicago

William J. Novak
University of Chicago

James C. Oldham
Georgetown University

Ruth Paley
*History of Parliament,
 Wedgwood House, London*

Pablo Piccato
Columbia University

W. Wesley Pue
*University of British
 Columbia*

Gerry R. Rubin
*University of Kent,
 Canterbury*

Lucy E. Salyer
University of New Hampshire

Reva B. Siegel
Yale University

Robin Chapman Stacey
University of Washington

Robert J. Steinfeld
SUNY, Buffalo

Emily Z. Tabuteau
Michigan State University

Eric M. Tucker
York University, Toronto

Michael Vorenberg
Brown University

Barbara Y. Welke
University of Minnesota

James Q. Whitman
Yale University

Martin J. Wiener
Rice University

Michael Wilrich
Brandeis University

John Fabian Witt
Columbia University

Contents

Law and History Review

Vol. 27, No. 1, Spring 2009

Full text available at www.historycooperative.org/home/html
LHR home page at www.press.uillinois.edu/journals/lhr.html

In This Issue vii

Articles

- Law, Empire, and Historiography of Modern Sino-Western Relations:
A Case Study of the *Lady Hughes* Controversy in 1784
Li Chen 1
- Is Modern Liberty Ancient? Roman Remedies and Natural Rights
in Hugo Grotius's Early Works on Natural Law
Benjamin Straumann 55
- Liberal Jurisprudence, Labor Tribunals, and Mexico's Supreme Court,
1917–1924
T. M. James 87
- Making Mexico: Legal Nationality, Chinese Race, and the 1930
Population Census
Kif Augustine-Adams 113

Forum: *Pierson v. Post*: Capturing New Facts about the Fox

- Introduction: A Famous Fox, a Surfacing Whale, and the
Forgotten Slave
Alfred L. Brophy 145
- The Lost Record of *Pierson v. Post*, the Famous Fox Case
Angela Fernandez 149

Comment

- Papyrology and 3 Caines 175
Charles Donahue, Jr. 179
- 21st Century Fox: *Pierson v. Post*, Then and Now
Stuart Banner 185
- Facts, Information, and the Newly Discovered Record
in *Pierson v. Post*
James E. Krier 189

Book Reviews

- The Origins of Adversary Criminal Trial*—John H. Langbein,
and *Plea Bargaining's Triumph: A History of Plea Bargaining
in America*—George Fisher
reviewed by Andrea McKenzie 195
- Possessing the Pacific: Land, Settlers, and Indigenous People
from Australia to Alaska*—Stuart Banner
reviewed by Carl C. Christensen 198
- Crime and Justice in Late Medieval Italy*—Trevor Dean
reviewed by Simona Cerutti 200
- The Origins of Reasonable Doubt: Theological Roots
of the Criminal Trial*—James Q. Whitman
reviewed by R. H. Helmholz 203
- A Revolution in Commerce: The Parisian Merchant Court
and the Rise of Commercial Society in Eighteenth-Century
France*—Amalia D. Kessler
reviewed by John Shovlin 205
- The Paradoxes of Nationalism: The French Revolution
and Its Meaning for Contemporary Nation Building*—
Chimène I. Keitner
reviewed by Ronald Schechter 206
- Ruling Peasants: Village and State in Late Imperial Russia*—
Corinne Gaudin
reviewed by Esther Kingstonn-Mann 208
- Legal Foundations of Tribunals in Nineteenth Century England*—
Chantal Stebbings
reviewed by Michael Lobban 210
- Caught in the Machinery: Workplace Accidents and Injured
Workers in Nineteenth-Century Britain*—Jamie L. Bronstein
reviewed by Robert J. Steinfeld 211
- Liberty's Blueprint: How Madison and Hamilton Wrote the
Federalist Papers, Defined the Constitution, and Made Democracy
Safe for the World*—Michael I. Meyerson
reviewed by Erik J. Chaput 213
- Trial by Jury: The Seventh Amendment and Anglo-American
Special Juries*—James Oldham
reviewed by Daniel Klerman 215

<i>Entrepreneurs in the Southern Upcountry: Commercial Culture in Spartanburg, South Carolina, 1845–1880</i> —Bruce Eelman reviewed by Jenny Wahl	217
<i>The Judges of the New York Court of Appeals: A Biographical History</i> —Albert M. Rosenblatt, editor reviewed by Whitney S. Bagnall	218
<i>Establishing Justice in Middle America: A History of the United States Court of Appeals for the Eighth Circuit</i> —Jeffrey Brandon Morris reviewed by Miriam A. Cherry	220
<i>Freedom Is Not Enough: The Opening of the American Workplace</i> —Nancy MacLean reviewed by Risa L. Goluboff	222
<i>The Lost Promise of Civil Rights</i> —Risa L. Goluboff reviewed by Sophia Z. Lee	224
<i>Little Rock on Trial: Cooper v. Aaron and School Desegregation</i> —Tony A. Freyer reviewed by Judith Kilpatrick	225
<i>The Battle over School Prayer: How Engel v. Vitale Changed America</i> —Bruce J. Dierenfield reviewed by Mark McGarvie	227
<i>Free At Last to Vote: The Alabama Origins of the 1965 Voting Rights Act</i> —Brian K. Landsberg reviewed by Richard H. Pildes	228
<i>The Snail Darter Case: TVA versus the Endangered Species Act</i> —Kenneth P. Murchison reviewed by John C. Dernbach	230
<i>Manifest Destinies: The Making of the Mexican American Race</i> —Laura E. Gómez reviewed by Kif Augustine-Adams	231
<i>Courting Failure: Women and the Law in Twentieth-Century Literature</i> —Heidi Slettedahl Macpherson reviewed by Carla Spivak	233
<i>The Constitution as Social Design: Gender and Civic Membership in the American Constitutional Order</i> —Gretchen Ritter reviewed by Yvonne M. Pitts	235

<i>Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States</i> —Hiroshi Motomura reviewed by Hamsa M. Murthy	236
<i>The Age of Impeachment: American Constitutional Culture since 1960</i> —David E. Kyvig reviewed by Williamjames H. Hoffer	238