

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.

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 Daniel W. Hamilton, Associate Editor, *Law and History Review*, Professor of Law, University of Illinois College of Law, 504 East Pennsylvania Avenue, Champaign, IL 61820, USA (tel.: 217-244-5084; fax: 217-244-1478; e-mail: dhamltn@law.illinois.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 29 (2011) USA, Canada, and Mexico / Elsewhere are \$189 / £102 for print and electronic subscriptions. Single part: \$52 / £28. Prices include postage and insurance. *Law and History Review* and all other Cambridge journals can be found at <http://journals.cambridge.org/>.

© the American Society for Legal History, Inc. 2011. 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. Policies, request forms, and contacts are available at: <http://www.cambridge.org/rights/permissions/permission.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.

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.

Abstracting and Indexing Information: America: History and Life; CSA Worldwide Political Science Abstracts; Current Law Index; Current Abstracts; SocIndex; SocIndex with Full Text; TOC Premier; Scopus; Family Index; Academic OneFile; General OneFile; InfoTrac Custom; LegalTrac; Biography Index; Index to Legal Periodicals & Books; Historical Abstracts.

Law and History Review

Volume 29, Number 2

May 2011

*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)**

Daniel W. Hamilton
*University of Illinois College
 of Law*
 504 East Pennsylvania Avenue
 Champaign, IL 61820
 217.244.5084
 FAX: 217.244.1478
 E-Mail: dhamilton@law.
 illinois.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
Harvard University
 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

Contents

Law and History Review

Vol. 29, No. 2, May 2011

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

In This Issue vii

Articles

- Claiming the New World: Empire, Law, and Indigenous Rights in the Mohegan Case, 1704–1743
Craig Bryan Yirush 333
- The First Liability Insurance Cartel in America, 1896–1906
Sachin S. Pandya 375
- Marriage and *Mestizaje*, Chinese and Mexican: Constitutional Interpretation and Resistance in Sonora, 1921–1935
Kif Augustine-Adams 419

Forum: Racial Determination and the Law in Comparative Perspective

- Introduction
John W. Wertheimer 465
- “The law recognizes racial instinct”: *Tucker v. Blease* and the Black–White Paradigm in the Jim Crow South
John W. Wertheimer, Jessica Bradshaw, Allyson Cobb, Harper Addison, E. Dudley Colhoun, Samuel Diamant, Andrew Gilbert, Jeffrey Higgs, and Nicholas Skipper 471
- Jus Soli* and *Jus Sanguinis* in the Colonies: The Interwar Politics of Race, Culture, and Multiracial Legal Status in British Africa
Christopher J. Lee 497
- “In the Interest of the *Volk*. . .”: Nazi-German Paternity Suits and Racial Recategorization in the Munich Superior Courts, 1938–1945
Thomas Pegelow Kaplan 523

Essay

- Race, Law, and Comparative History
Ariela J. Gross 549

Comment

When the Complexity of Lived Experience Finds Itself Before
a Court of Law

Peter C. Caldwell

567

Reflections on Further Research in Comparative

Legal History

Immigration and Techniques of Governance in Mexico and the
United States: Recalibrating National Narratives through
Comparative Immigration Histories

Theresa Alfaro-Velcamp and Robert H. McLaughlin

573

Rethinking ‘the Nation’ in National Legal History: A Canadian
Perspective

Philip Girard with Jim Phillips

607

Book Reviews

*Empty Bottles of Gentilism: Kingship and the Divine in Late
Antiquity and the Early Middle Ages (to 1050)*—Francis Oakley
reviewed by Geoffrey Koziol

627

Habeas Corpus: From England to Empire—Paul D. Halliday
reviewed by Mike Macnair

629

Copyright Law and the Public Interest in the Nineteenth Century
—Isabella Alexander
reviewed by Oren Bracha

630

*The Measure of Woman: Law and Female Identity in the Crown of
Aragon*—Marie A. Kelleher
reviewed by Núria Silleras-Fernández

632

*The Crisis of the Twelfth Century: Power, Lordship, and the
Origins of European Government*—Thomas N. Bisson
reviewed by William Chester Jordan

634

*Conscience, Equity and the Court of Chancery in Early Modern
England*—Dennis R. Klinck
reviewed by Timothy S. Haskett

636

*A Social History of Company Law: Great Britain and the
Australian Colonies, 1854–1920*—Rob McQueen
reviewed by George Robb

638

*Subject Stages: Marriage, Theatre, and the Law in Early Modern
Spain*—María M. Carrión
reviewed by Anne J. Cruz

640

The Double Helix and the Law of Evidence—David H. Kaye
reviewed by Christopher Buccafusco

642

*In Reckless Hands: Skinner v. Oklahoma and the Near Triumph
of American Eugenics*—Victoria F. Nourse
reviewed by Stephen Siegel

644

<i>Migra! A History of the U.S. Border Patrol</i> —Kelly Lytle Hernández	
reviewed by Allison Brownell Tirres	647
<i>Industrial Violence and the Legal Origins of Child Labor</i> —James D. Schmidt	
reviewed by Joanna Grisinger	649
<i>Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi</i> —Christopher Waldrep	
reviewed by Christopher W. Schmidt	651
<i>Emancipation's Diaspora: Race and Reconstruction in the Upper Midwest</i> —Leslie A. Schwalm	
reviewed by H. Robert Baker	652
<i>Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries</i> —Gelya Frank and Carole Goldberg	
reviewed by Karl Jacoby	654