Law and History Review

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.

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. Address manuscripts and all general editorial correspondence to David Tanenhaus, 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-m <tanenhaus@ccmail.nevada.edu>). Address books for review and correspondence regarding book reviews and reviewing to Alfred L. Brophy, University of Alabama, 101 Bryant Drive East, Box 870382, Tuscaloosa, AL 35487-0382 (tel 205 348 0841; fax 205 348 5829; e-m <abreve typescript (abrophy@law.ua.edu>). Manuscripts must be double-spaced typescript throughout, with citations prepared according to the Chicago Manual of Style, 14th ed. The Review's style guides for articles and book reviews are available on the *LHR* web page <www.press.uillinois.edu/journals/lhr.html>. Please use word processing. Submission of manuscripts by file attachment is welcome. 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.

© 2005 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 23, Number 1

Spring 2005

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 702.895.1782 FAX: 702.895.1782

E-Mail: tanenhaus@ccmail.

nevada.edu

Associate Editor (Book Reviews)

Alfred L. Brophy University of Alabama 101 Bryant Drive East, Box 870382 Tuscaloosa, AL 35487-0382

205.348.0841

FAX: 205.348.5829

E-Mail: abrophy@law.ua.edu

Immediate Past-Editor

Christopher L. Tomlins American Bar Foundation 750 North Lake Shore Drive Chicago, IL 60611 312.988.6553 FAX: 312.988.6579 E-Mail: clt@abfn.org

Editorial Board

David Abraham University of Miami

Jeremy I. Adelman Princeton University

David A. Bell
The Johns Hopkins University

Mary Frances Berry University of Pennsylvania

Mary Sarah Bilder Boston College

Bettina Bradbury York University, Toronto

Elizabeth R. Dale *University of Florida*

Adrienne Dale Davis
University of North Carolina

Martha F. Davis NOW Legal Defense New York

Thomas J. Davis

Arizona State University

Cornelia Hughes Dayton University of Connecticut

Christine A. Desan Harvard University

Charles R. Donahue *Harvard University*

Markus Dirk Dubber SUNY, Buffalo

Laura Engelstein Princeton University

Daniel R. Ernst Georgetown University

William E. Forbath University of Texas at Austin Judy Fudge

York University, Toronto

Stephen Garton University of Sydney

Paul Hyams Cornell University

Nancy Isenberg University of Tulsa

Bruce Kercher Maquarie University

Diane Kirkby
La Trobe University, Melbourne

Michael Klarman University of Virginia

Louis A. Knafla University of Calgary

Mindie Lazarus-Black University of Illinois, Chicago

Kenneth F. Ledford Case Western Reserve University

Brian P. Levack University of Texas at Austin

Sanford V. Levinson University of Texas at Austin

Jeanette M. Neeson York University, Toronto

William J. Novak University of Chicago

James P. Oakes CUNY Graduate Center

James 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

Carolyn Strange
University of Toronto

Emily Z. Tabuteau *Michigan State University*

Kendall Thomas

Columbia University

Barbara Y. Welke University of Minnesota

James Q. Whitman Yale University

Martin J. Wiener Rice University

Andrew Wood University of East Anglia

Contents

Law and History Review	Vol. 23, No. 1, Spring 2005
Full text available at www.historycooperative.or <i>LHR</i> home page at www.press.uillinois.edu/jour	
In This Issue	vii
Articles Unmanageable Risks: <i>MacPherson v. Buick</i> and Mass Consumer Market Sally H. Clarke	the Emergence of a
Travelers, Strangers, and Jim Crow: Law, Public and Civil Rights in America A. K. Sandoval-Strausz	e Accommodations,
Why <i>Terra Nullius?</i> Anthropology and Property Early Australia Stuart Banner	Law in 95
Forum: Presuming Guilt in English Law, 1	750–1850:
Variation or Theme? The Presumption of Guilt and the English Law Bruce P. Smith	of Theft, 1750–1850
Comment Summary Conviction and the Development of Norma Landau	f the Penal Law
Response Did the Presumption of Innocence Exist in Su Bruce P. Smith	ummary Proceedings?
Book Reviews Separation of Church and State—Philip Hambu reviewed by William R. Hutchison	rger 201

The Fee Tail and the Common Recovery in Medieval England, 1176–1502—Joseph Biancalana reviewed by Joshua C. Tate	205
Documentary Culture and the Making of Medieval English Literature—Emily Steiner reviewed by M. T. Clanchy	206
The Private Trustee in Victorian England—Chantal Stebbings reviewed by Michael Lobban	208
Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands—James F. Brooks reviewed by Robert Francis Castro	210
The Great New York Conspiracy of 1741: Slavery, Crime, and Colonial Law—Peter Charles Hoffer reviewed by Winthrop D. Jordan	212
The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism—Paul O. Carrese reviewed by Stephen A. Siegel	213
Joseph Henry Lumpkin: Georgia's First Chief Justice— Paul DeForest Hicks reviewed by James L. Hunt	215
Homesteads Ungovernable: Families, Sex, Race, and the Law in Frontier Texas, 1823–1860—Mark M. Carroll reviewed by Pablo Mitchell	217
Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846–1862— Judith Kelleher Schafer reviewed by Bernie D. Jones	219
"Whores and Thieves of the Worst Kind": A Study of Women, Crime, and Prisons, 1835–2000— L. Mara Dodge reviewed by Dawn Rae Flood	220
The Reconstruction of American Liberalism, 1865–1914— Nancy Cohen reviewed by Michael S. Green	222
Interracial Intimacy: The Regulation of Race and Romance— Rachel Moran reviewed by Joshua D. Rothman	224

Dividing Lines: The Politics of Immigration Control in America—	
Daniel J. Tichenor	
reviewed by Kunal M. Parker	226
Emblems of Pluralism: Cultural Differences and the State—	
Carol Weisbrod	
reviewed by Milner S. Ball	228
Correspondence	231

Unmanageable Risks, Appendix: Automobile Dealer Agreements and Sales Manager Contracts, 1900–1914, available at http://www.historycooperative.org/journals/lhr/23.1/clarke.html