In This Issue

This issue of *Law and History Review* presents four articles and two legal history dialogues. The articles take the reader first to St. Martin Le Grand, a sanctuary in late medieval London, and then forward in time to examine interracial marriages in Napoleonic and Restoration France. Crossing the Atlantic, they examine a contested seventeenth-century will from Braintree, Massachusetts, and finally move west to explore why states, such as Oklahoma, adopted community property regimes in the 1930s and 1940s. The subsequent dialogues demonstrate how personal, professional, and political developments frame the historical problems, such as the role of law in social history, that legal historians have wrestled with in the pages of *LHR* since its inception more than a quarter of a century ago.

Our first article by Shannon McSheffrey provides a close examination of St. Martin Le Grand, a privileged territory in the heart of late medieval London. Her investigation reveals that pre-Reformation English sanctuaries must be understood not only in the context of complex intertwinings of conceptions of kingship, justice, mercy, and Christian religion, but in the quotidian practice and observance of the sanctuary space by those who lived in and around the sanctuary. By 1400, a number of English religious houses had come to offer permanent sanctuary to accused criminals, political refugees, debtors, and aliens. These small territories, which exercised varying extents of juridical and political autonomy, considerably complicated the jurisdictional map of late medieval England. Determining and recognizing the boundaries of the sanctuary territory was difficult: the bounds of the precinct were marked in some places by walls and gates, but in other places by notional, and often disputed, lines in the middle of streets. The meaning of the sanctuary was constituted through claims, counterclaims, and royal confirmations; through precedent and custom; and through how particular kinds of individuals—those "privileged" of the sanctuary—inhabited and used the territory. Although the royal free chapel and sanctuary of St. Martin Le Grand, like other English sanctuaries, was felled along with a host of ecclesiastical institutions in the dissolutions of the English Reformation, McSheffrey contends that scholars should not interpret its late medieval and early Tudor history through the hindsight of its dissolution. Instead, she argues that sanctuary and the sacrality that

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underpinned it continued to function in the early sixteenth century, not as an obsolete relic of earlier conceptions of law, punishment, and the role of the church, but because it dovetailed closely with late medieval and early Tudor conceptions of law, kingship, and Christian charity.

Our second article, by Jennifer Heuer, provides a new perspective on racial classification in Napoleonic and Restoration France. In 1803, the French Minister of Justice outlawed marriages between blacks and whites. The largely forgotten decree accompanied the re-establishment of slavery and applied to metropolitan France, but not to the colonies. Although it appeared to reinstate a similar 1778 ban, the law introduced a new distinction. In contrast to the "one-drop" rule in parts of the United States, in which anyone with black ancestry was prevented from marrying a white partner, the Napoleonic measure applied to blacks but not to those of mixed blood, whatever their actual skin color. Heuer examines the possible reasons behind this distinction and the ways in which the ban was actually applied. She explores how petitioners and authorities understood racial categories and balanced the relative importance of race against other factors, including religious devotion and the need to legitimate their children, the value of French citizenship, individual service to the state, and the conflicts between the ministerial circular and more fundamental French law. These negotiations, she argues, demonstrate the stakes and limits of racial classifications in the aftermath of the French Revolution. In addition, she contends, both the institutionalization of the ban and its ultimate end in 1818 demonstrate hidden connections—and divergences—between metropolitan and colonial histories.

Just as Heuer reveals the complexities of racial classifications in the age of democratic revolutions, our third article, by John Lund, reveals how the tensions of empire in the decades following the Glorious Revolution complicated property rules in New England. His essay presents the complex history of the contested 1688 will of a prosperous Braintree, Massachusetts, landowner named William Penn. The case of Penn's will spotlights the political struggle waged during the turbulent period from 1690 to 1720 by ordinary townspeople, who were committed to a distinct puritan jurisprudence, against the Anglicization of Massachusetts and the effort to fashion a British Atlantic empire based on uniform property laws. The efforts to overturn the probate administration provide an extraordinary glimpse into the complexity of colonial litigation, the reality of multiple visions of empire, and the relationship between law and politics and law and society in British North America.

Our final article, by Stephanie Hunter McMahon, also addresses property law. Her essay analyzes the forces that led five common law states to adopt community property regimes between 1939 and 1947. Focusing on Oklahoma, the first state to switch, she traces these laws from initial proposals

through their repeal after Congress enacted nationalized income-splitting in 1948. She shows that an economic goal, namely reducing married couples' federal income taxes, motivated state legislatures to champion community property. Thus, while examining state legislative processes, her essay demonstrates how the goal of federal tax reduction led to changes in an entirely separate area of state law. While states initially altered their domestic laws to give their residents a benefit under the federal tax code, using the federal system to win benefits for their residents vis-à-vis those of other states, these state law changes ultimately induced the federal government to adopt a uniform national policy on income-splitting. Her article thus provides a nuanced perspective on the American federal system, illustrating the complex and reciprocal relationship between state and federal laws and incentives.

This issue marks the return of Legal History Dialogues, an occasional series that former *LHR* editor Michael Grossberg inaugurated in 1994 with the publication of an interview of James Willard Hurst by Hendrik (Dirk) Hartog. Once the interviewer, Hartog is now the subject of an interview conducted by Barbara Welke at the 4th Biennial Hurst Summer Institute in Legal History. Hartog reflects on the influences that have shaped his career as a legal historian and on the development of the field of legal history since the 1970s. For Hartog, who entered legal and Ph.D. training in the 1970s, social history, critical legal studies, feminist legal theory, and the social movements that gave rise to them were especially important intellectual currents shaping his interest in law in everyday life. The interview also captures the importance of colleagues, academic and professional institutions, graduate students, and service to the profession in shaping questions, arguments, and meaning in Hartog's research, teaching, and service. As a whole, the interview suggests something of the complex interplay of intellectual currents, institutional affiliations, political and social movements, and the personal in shaping a scholar's career path, research questions, and worldview.

The original intent of Legal History Dialogues was "to raise questions difficult to pursue within the restrictive layout of articles and book reviews." Although conferences often include author-meets-critics sessions, too often these conversations, which are not recorded or published, fade away. To avoid such a fate, our second dialogue begins with a revised version of Kenneth W. Mack's critique at the 2008 American Society for Legal History conference of Nancy MacLean's *Freedom is Not Enough: The Opening of the American Workplace* (which fittingly won the Willard Hurst Prize). MacLean's research-agenda-setting response follows.

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, and visit the society's website at http://

www.hnet.msu.edu/~law/ASLH/aslh.htm. 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 "preprints" of articles.

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David S. Tanenhaus
University of Nevada, Las Vegas

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