

## In This Issue

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The *Law and History Review* embarks on a new era in 1998. Since its first appearance in 1983, the journal has published two issues (Spring and Fall) each year. From now on we will publish three issues (Spring, Summer, and Fall) spaced at regular four-month intervals throughout the year. Greater frequency of publication will not mean slimmer volumes—the addition of a third issue is wholly a response to the rising tide of worthy scholarship in the field. Expansion of the journal thus signals the current vitality of legal history; but expansion would not have been possible without solid foundations built for the *Law and History Review* by its former editors, and particularly by my immediate predecessors, Bruce H. Mann and Michael Grossberg.



This first issue of the expanded *Law and History Review* offers a wide spectrum of research, historiography, commentary, response, and opinion. The journal has always been dedicated to presentation of the best work currently being undertaken across the discipline of legal history, considered in its broadest chronological and substantive sense. This issue reflects an equal commitment to see our pages used not only to present research but to encourage frank debate and response. To that end we present here three research articles; a further article, accompanied by solicited commentaries and the author's response, in a forum "on enlightened punishment"; an author's response to commentaries published in our Fall 1997 issue; a substantial number of book reviews, and the second in our series of electronic resource pages.

Readers of the first article, Patrick Wormald's critical celebration of the genius of F. W. Maitland, will recognize that it has the meter less of an article than of a lecture, which is precisely what it is. "Frederic William Maitland and the Earliest English Law" was the British Academy's Raleigh Lecture in English History for 1995 and is published here for the first time as such. An earlier and different version of the piece was presented to the Academy's Centenary Conference on "Pollock and Maitland" and appears in *The History of English Law*, volume 89 of the Academy's *Proceedings*.

Our second article, by Stuart Banner, addresses the highly topical question of the relationship between the common law and Christianity in America. Banner inquires into the hold of the idea that Christianity was part of the common law on the mid-nineteenth-century United States. He probes the idea's origins, examines what it meant concretely at the time, and assesses the reasons for its decline.

Our third article, by Michael Willrich, charts the appearance in early twentieth-century America of “eugenic jurisprudence.” Through an exhaustive study of America’s model “modern” court system, the Municipal Court of Chicago, Willrich traces the implementation of eugenics as an everyday legal practice and as a significant element in Progressive era ideologies of socialization. He argues that the goals of socialized criminal justice (judicial consolidation and expert-led “individualized treatment” of offenders) ignored major contradictions between eugenics and the rehabilitative ideal, often with distinctly negative outcomes for policed populations.

Our fourth article, by Markus Dubber, appears accompanied by critical commentaries from Kenneth Ledford and Michael Meranze and is this issue’s “Forum” essay. Dubber’s article represents an effort to employ a mode of intellectual-historical inquiry in order to throw light on contemporary penal practice. His is an extended historical reflection on the genealogy of modern penal thought, and in particular on the consequences of the displacement of Enlightenment notions of shared rationality and the autonomous individual’s “right to be punished” by rehabilitative ideals and practices. The existence of a certain shared trajectory between Michael Willrich’s article and Markus Dubber’s will be apparent to readers of both pieces. Professor Dubber’s response accompanies the comments.

This issue also includes James R. Hackney’s response to the commentaries that accompanied his article in our Fall 1997 forum (*On the Intellectual History of Law and Economics*), a full complement of book reviews, and the second column in our continuing series entitled “The H-Law Resource Page.”

The issue is prefaced by a tribute to the late Paul Murphy, who at the time of his death was the president of the American Society for Legal History. As this tribute and others have suggested, Paul Murphy was a scholar who valued above all the free and vigorous exchange of opinion. I think Paul would have liked this issue of our journal.

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