

Law and  
History  
Review

## Law and History Review

---

### **Editor**

Bruce H. Mann  
*University of Pennsylvania*

### **Book Review Editor**

Adam J. Hirsch  
*Florida State University*

---

*Law and History Review* (ISSN 0738-2480) is published twice a year, in spring 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, 54 E. Gregory Drive, Champaign, IL 61820. Requests for replacement of damaged or undelivered issues will be honored for up to six months after publication of the issue.

Address manuscript submissions and books for review to Bruce H. Mann, University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, Pennsylvania 19104. Instructions for preparation of manuscripts are printed on page iv.

Postmaster: Send change-of-address notices to University of Illinois Press, 54 E. Gregory Drive, Champaign, IL 61820.

---

© 1992 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 10, Number 1

Spring 1992

---

*Published twice a year by the University of Illinois Press  
for the American Society for Legal History*

## Editorial Board

Constance B. Backhouse  
*University of Western  
Ontario*

Lloyd Bonfield  
*Tulane University*

C. W. Brooks  
*University of Durham*

John W. Cairns  
*University of Edinburgh*

Elizabeth B. Clark  
*Boston University*

Robert J. Cottrol  
*Rutgers University,  
Camden*

Stephen M. Diamond  
*University of Miami*

Paul Finkelman  
*Brooklyn Law School*

Richard M. Fraher

Robert Jerome Glennon  
*University of Arizona*

Michael Grossberg  
*Case Western  
Reserve University*

Hendrik A. Hartog  
*University of  
Wisconsin–Madison*

Douglas Hay  
*York University*

M. H. Hoeflich  
*Syracuse University*

Alfred S. Konefsky  
*State University of  
New York at Buffalo*

Maeva Marcus  
*United States  
Supreme Court*

William E. Nelson  
*New York University*

John V. Orth  
*University of  
North Carolina*

Russell Osgood  
*Cornell University*

L. R. Poos  
*The Catholic University  
of America*

Stephen B. Presser  
*Northwestern University*

Richard Smith  
*All Souls College,  
Oxford*

Aviam Soifer  
*Boston University*

Christopher L. Tomlins  
*American Bar  
Foundation*

Mark Tushnet  
*Georgetown University*

Sue Sheridan Walker  
*Northeastern Illinois  
University*

William M. Wiecek  
*Syracuse University*

---

Authorization to photocopy items for internal or personal use, or the internal or personal use of specific clients, is granted by the Board of Trustees of the University of Illinois for libraries and other users registered with the Copyright Clearance Center (CCC) Transactional Reporting Service, provided that a fee of 5 cents per page is paid directly to CCC, 21 Congress St., Salem, MA 01970. The CCC code for *Law and History Review* is 0738-2480/88 \$0 + .05.

The rate stated applies to library copying, photocopies placed on reserve, and copying for classroom use beyond the number of copies and frequency permitted by Sections 107 and 108 of the U.S. Copyright Law. For issues with a publication date prior to 1978 there is a uniform fee of 50 cents per copy of an article. Permissions and rates given above do not extend to copying for advertising or promotional purposes or creating new collective works.

# Contents

Law and History Review

Vol. 10, No. 1, Spring 1992

## Articles

- Legal Change, Customary Right, and Social Conflict in Late  
Eighteenth-Century England: The Origins of the Great  
Gleaning Case of 1788 1  
Peter King
- After the Revolution: “Reform” of the Law of Inheritance 33  
John V. Orth
- Explaining the Fight over the Attractive Nuisance Doctrine:  
A Kinder, Gentler Instrumentalism in the “Age of  
Formalism” 45  
Peter Karsten
- Creating an Agricultural Trust: Law and Cooperation in  
California, 1898–1922 93  
Victoria A. Saker
- A Pacific Rim: Crime and Punishment in Santa Clara  
County, 1922 131  
Lawrence M. Friedman and Paul Tabor
- Review Essay**
- Idea-Systems in Law: Images of Nineteenth-Century  
Germany 153  
David J. Gerber
- Book Reviews**
- The Marshall Court and Cultural Change, 1815–1835—*  
G. Edward White 169  
reviewed by Kent Newmyer
- The Magic Mirror: Law in American History—*  
Kermit L. Hall 173  
reviewed by Michael Grossberg

<i>Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy</i> —Jennifer Nedelsky	178
reviewed by Herbert Hovenkamp	
<i>Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865</i> —Louis P. Masur	182
reviewed by Michael Stephen Hindus	
<i>Married Women's Separate Property in England, 1660–1833</i> —Susan Staves	186
reviewed by Lloyd Bonfield	
<i>A Legal History of Scotland</i> —David M. Walker	188
reviewed by W. D. H. Sellar	
<i>Slave Law in the Americas</i> —Alan Watson	194
<i>Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705–1865</i> —Philip J. Schwarz	
reviewed by David J. Bodenhamer	

### Note to Contributors

The editors welcome unsolicited manuscripts, books for review, and suggestions concerning *Law and History Review*. Manuscripts should be submitted to Bruce H. Mann, University of Pennsylvania Law School, 3400 Chestnut St., Philadelphia, PA 19104. The text should be typed, double-spaced, on 8½" x 11" paper with ample margins on all sides. Type on one side of the paper only. Footnotes should be typed double-spaced and separate from the text, and should conform to either the style found in the *Chicago Manual of Style* (13th ed.) or to *A Uniform System of Citation* (14th ed.); the *Chicago Manual* is preferred. Authors of accepted manuscripts should contact the editorial office regarding computer compatibility. Because of the commitment we ask of our outside referees, *Law and History Review* cannot consider for publication manuscripts that have been submitted to other journals. A submission to the *Review* carries with it the implicit promise that the author will not submit the manuscript elsewhere while it is under consideration by *Law and History Review*.