

In This Issue

This issue's articles offer variant investigations of a common theme—the construction of legal status in the nineteenth and early twentieth century, and, in particular, the interplay between legal status and state formation. In our first article, Lauren Benton discusses the implications of the status accorded to or claimed by foreigners for the creation of state sovereignty in postindependence Uruguay. Everywhere during the nineteenth century, Benton argues, debates over extraterritoriality had important repercussions for the pace and nature of state building. Her study of Uruguay shows how foreigners had resort to a combination of litigation and consular appeals to try to preserve or create a distinct legal status for themselves. On the northern frontier, for example, Brazilian ranchers engaged in “forum shopping” and other legal strategies that produced jurisdictional tensions. Brazilian and British consular officials urged the expansion of extraterritorial provisions. The resulting debate over foreigners' legal status became an important element in an emerging discourse on state sovereignty. Examining that discourse refines the common perception of nineteenth-century Latin America as merely disordered. The challenge to states like Uruguay was not so much to assert sovereignty by repressing “lawlessness” as it was to achieve an ascendancy amid a plethora of “other” law—other states' claims to extraterritoriality, litigants' recourse to legal strategies that placed them outside state control, and the legal authority of caudillos. As such, the legal history of the early postindependence period is best understood as a variation on the politics of legal pluralism, usefully linking the study of nineteenth-century Latin American legal reform to legal politics in other settings of informal empire and postcoloniality.

Themes of legal pluralism, transition from formal empire, and litigative status also resonate in Deborah Rosen's case study of *Acoma v. Laguna*. The case arose from a mid-nineteenth-century dispute between two New Mexico pueblos, Acoma and Laguna, over the ownership of a religious painting. Rosen gives careful attention to the historical context and cultural character of the litigation: she examines how disputes involving Pueblo Indians were resolved under Spanish and Mexican law prior to 1846 and the role taken by the United States court system in early territorial New Mexico; she investigates the social and political characteristics of the parties and their lawyers, the language of testimony, court processes, and the decisions. Rosen concludes that the case is significant for its demonstra-

tion of the effectiveness of rational, orderly legal procedures over the alternative of dispute resolution by local justices of the peace and priests. She also finds that this transition to courtroom processes did not silence the voices of Native peoples but rather respected and reinforced their leadership and acknowledged their culture. All told, the case is an important example of how the United States established its sovereignty in early territorial New Mexico. The construction of courtroom statutes that took cultural accommodation of litigants seriously facilitated the imposition of U.S. legal and political authority.

Our third article also pursues themes of legal status and state formation but in a very distinct context. David Tanenhaus considers the place of the regulation of dependent children in the creation of modern welfare governance. He argues that juvenile courts helped to lay the groundwork for the welfare state by establishing different methods for handling the cases of fatherless and motherless children. Beginning in 1911, when Illinois passed the Funds to Parents Act—the first statewide mothers’ pensions legislation, the Cook County Juvenile Court built a two-track system for dependency cases that relied upon the sex of single parents to track their children. The first or “institutional” track adhered to a nineteenth-century model of family preservation in which parents during hard times turned to institutions to provide short-term care for their children. The second or “home-based” track reflected a new “progressive” model of family preservation grounded in the belief that mothers and their children should remain physically together in their own homes. Study of the actual practice of family preservation in early twentieth-century Chicago does not show any particular ascendancy of the “home-based” model over the “institutional” but rather a mixture confirming adherence to the two tracks. In the case of fatherless children, the state in effect assumed the role of a father by partially supporting their mothers. In the case of the motherless, it appointed substitute mothers, often in the form of private institutions.

This issue’s forum takes us to what are, in the U.S., fundamental cultural symbols of social inclusion and legal status—immigration and citizenship—but offers a radically nonliberal reading of them as modalities of exclusion. In “State, Citizenship, and Territory,” Kunal Parker excavates the tortured historical process through which American citizenship emerged as a barrier to the individual’s territorial rights, that is, as a legal status that determined the individual’s rights to enter, and remain within, territory. Through an exploration of materials from antebellum Massachusetts, Parker argues that citizenship came to function as a barrier to the individual’s territorial rights as a result of the state’s needs to manage the poor relief expenses associated with resident immigrant paupers. Thus, incoming immigrants lost the right to enter territory, and resident immigrants the right to

remain within territory, on the ground that they lacked citizenship in ways that were carefully tailored to meeting the state's expenses in respect of resident immigrant paupers.

The state's deliberate creation of a strategic relationship between citizenship and territorial rights in order to defeat resident immigrants' claims upon the community was riddled with tensions. In late eighteenth-century Massachusetts, "settlement," not citizenship, was the legal-conceptual marker of the individual's territorial rights and legitimate claims upon the community. When the state started to deploy citizenship *against* immigrants in the 1830s, therefore, it confronted a localized administrative-regulatory world in which citizenship was simply not that relevant as a marker of territorial rights and the legitimacy of claims to relief. Therefore, to deploy citizenship against immigrants in the manner desired, the state was compelled to centralize both the administration of poor relief to immigrants and the regulation of their territorial rights. Parker supplies a detailed account of this process of centralization in justification of his contention that American citizenship operated as a form of refusal against immigrants. As such, his article stands as a critique, even refutation, of the liberal representation of American citizenship as membership, empowerment, and inclusion. In Parker's analysis, American citizenship is at least as much a legal-conceptual category of refusal, rejection, and exclusion. The forum continues with Robert Steinfeld's lengthy appraisal of the success of Parker's analysis. It concludes, as always, with the author's response.

This issue presents our normal complement of book reviews, beginning with an extended review of recent work in U.S. history bearing on the hardy perennial of the nation's "founding" and the identity of its participant "founders." As always, we encourage readers of the *Law and History Review* to explore and contribute to the American Society for Legal History's electronic discussion list, H-Law, which offers a convenient forum for, among other matters, discussion of the scholarship on display in the *Review*.

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