

In This Issue

In this issue of the *Law and History Review* we address law as an instrumentality of social categorization and classification, as a medium of social regulation and reform, as an emerging professional practice, and as a taught tradition, across three continents and several centuries. In addition, articles in this issue bring to light crucial historiographical, methodological, and interpretive debates.

Our first article, by Rebecca Bryant, examines the relationship between law and social identity in Cyprus during the early British colonial period in the island. Bryant focuses on the loose category of the “bad character,” a classification used during the colonial period in order to blacklist and shame persons seen as potential or actual troublemakers. The “bad characters” of Cyprus represented the “other” to the honest, law-abiding citizen-subject, and the category itself was loose enough to encompass all those persons who appeared to threaten the social order, from sheep thieves to bandits to town youths roused by elite agitators. What sheep thieves and town ruffians had in common, Bryant argues, is their complete otherness to governmentality, as chaos to order. The solution to the problem of their chaos was not found, however, in the mechanisms of individual discipline described so well by Foucault. Rather, it was found in a corporate, social discipline that, Bryant suggests, had implications for later politics in the island.

Our second article, by Dominiek Delporte, investigates the character of law as social regulation, and the determinants of its success, in imperial China. Dissolutions of marriage agreements on the initiative of women who had been “abandoned” by their partners, and on the initiative of these women’s natal families, were long problematic in imperial China. Basic legislation regulating these matters proved insufficient. In the second half of the fifteenth century, during the Ming dynasty (1368–1644), stipulations (in the form of *li*, “precedents”) were issued to facilitate dissolutions of marriage agreements and remarriage of women, and to prevent abuses. Between 1452 and 1483, three such stipulations were issued to ensure the legal protection of these women. The stipulations remained valid for the remainder of the Ming dynasty, and their basic principles were adopted in legislation of the Ch’ing dynasty (1644–1912). Yet enforcement proved problematic. In this article, Delporte examines the stipulations, and the memorials to the throne that led to their promulgation, in order to determine the factors that interfered with consistent application of the new legislation. Special atten-

tion is given to such elements as the general social attitude toward matters of marriage and divorce (dating from the Yüan dynasty, 1279–1368, and subsequently), the personal, financial, and other interests of the families involved and their influence on local officials, and problems in the nature of the legislation itself (the difference between the *li* legislation and codified statutes) that affected its enforceability.

Our third article, by Ron Harris, switches the emphasis to matters of interpretation and methodology in American legal history, concentrating on the essentially unrealized potential of legal-economic history and the possibilities for fruitful interaction in the future. Both legal history and economic history were reshaped as interdisciplinary fields in the 1960s, Harris tells us, but have not interacted since. Indeed, over the last two decades legal historians have gradually disassociated themselves from economic theory and economic history. Ironically, at the same time, economists and economic historians have discovered the relevance of the law and legal change to their field. Several trends within economic theory, embodied in the Historical New Institutional Economics, raised interest in legal history: the turn from static to dynamic theory, growing interest in the explanation of change, the shift of focus from markets to institutions, and their endogenization. These trends, Harris argues, are good evidence for the new relevance of recent economic history to the projects of legal historians. Harris first examines, from a legal historian's perspective, the reasons for the failure of past legal historians—notably James Willard Hurst—to interact with economic historians. He acknowledges the adverse effects that law and economics had on the prospects for interaction but argues that the rise of Historical New Institutional Economics presents new opportunities. Harris gives examples of studies associated with HNIE that deal with various aspects of legal history and introduces us to several groups of legal historians that are currently interacting with economic history and theory. The border zone between legal history and economic history is changing rapidly, Harris concludes. Its future shape may enlighten us as to the prospects of discourse across the great divide between the economic sciences and the humanities.

This issue's Forum blends substantive consideration of law as practice with further historiographical and interpretive debate. Its subject is the emergence of professional law, as distinct from academic law, in the twelfth century and later. Susan Reynolds argues that the twelfth century did not see a change from irrational to rational law. Instead, nonprofessional, diffused, customary law became expert, esoteric, and professional law. Roman law contributed to this, and Reynolds uses a case from Verona to illustrate its influence. But the change, in various forms, is just as discernible where it affected practice relatively little, for example in England, North France, and

Germany. Reynolds stresses that the differences among the different forms of expert or professional law were in some ways less than that between them and the old law. Literacy and bureaucracy, the demands of politics and economics, and methods of study cultivated more generally in the schools mattered more than the particular texts on which the new kind of lawyers were trained. Records of practice (however scanty) and the growth of common form in charters, records of disputes, and notarial documents suggest that notaries, scribes, and the lower ranges of legal advisers made a more significant contribution to the new law than has always been recognized. Reynolds's views are debated in commentaries by Piotr Górecki, Charles Radding, and Paul Brand. The Forum concludes with Reynolds's response.

The final contribution to this issue is a research note by W. Hamilton Bryson and E. Lee Shepard that describes the proprietary law school of Henry Tucker in Winchester, Virginia, and places the school in the broad context of legal education in nineteenth-century America. Bryson and Shepard provide a brief biographical account of Tucker, including his familial connections to notable legal and political personages of the period. They also describe the materials that Tucker prepared for his students, showing how his highly successful and encyclopedic *Commentaries on the Laws of Virginia* (1831) came into existence. Tucker's opinions on Blackstone are quoted, and the Note provides insights into his teaching methodology. Tucker's law school was preferable to a legal apprenticeship in many ways. It was more academic than reading law, although not as theoretical an institution as either Wythe or Jefferson would have thought to be ideal. The authors list the students who can be determined to have attended this law school, which lasted for only seven sessions, and tabulate the comparative enrollments of the Winchester Law School and several other law schools.

As always, the issue concludes with a comprehensive selection of book reviews. As always, too, we encourage readers to explore and contribute to the American Society for Legal History's electronic discussion list, H-Law. Readers are also encouraged to investigate the *LHR* on the web, at www.historycooperative.org/home.html, where they may read and search every issue, including this one, published since January 2001. In addition, the *LHR*'s own web site, at www.press.uillinois.edu/journals/lhr.html, enables readers to browse the contents of forthcoming issues, including abstracts and full-text "pre-prints" of articles.

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