In This Issue

This issue of *Law and History Review* presents four articles. Collectively, they span more than a millennium and analyze such disparate topics as capital punishment, the administration of charity, dispute resolution, and contract theory. What unites these articles is their focus on relationships. As our authors meticulously demonstrate, relationships (whether personal, institutional, or associational) can unleash law's creative as well as its destructive force.

Our first article, by Randall McGowen, focuses on the Bank of England to offer a new perspective on the motives and strategies that guided the operation of capital justice in the last decades of the long eighteenth century. McGowen notes that the place of the gallows in English justice has been a matter of dispute since the controversy over the criminal law in the early nineteenth century when reformers portrayed the capital code as irrational and unpopular. More recently, the management of the gallows has been the subject of sharp debate. Some understand it as functioning within the judicial system to preserve social order. But others argue that it contributed to diffusing discretion widely throughout society. The conduct of the Bank of England, during the period of suspension of cash payments when the corporation faced a massive threat from forgery, permits McGowen to demonstrate how this crucial institution manipulated the threat of death. Paradoxically, the Bank exploited its discretion to the full, while it sought to limit that of other officials and individuals.

Our second article, by Christine Adams, analyzes the complicated relationship between charitable associations, such as the Society for Maternal Charity, and the state in nineteenth-century France. The state, which regulated all associations, exercised control in multiple ways: through legislation, surveillance, and subventions to favored organizations, some of which were granted the legal status of *utilité publique.* The state was willing to cede some power over the operations and property of associations which served the "general interest." But only associations whose usefulness was recognized and that possessed sufficient resources could obtain public utility status, and subsequently accept donations and legacies. The efforts by maternal societies to solicit bequests, as well as governmental subsidies, invited scrutiny of their statutes, bylaws, and finances. As long as

Law and History Review Summer 2007, Vol. 25, No. 2

associations did not come into overt conflict with governmental goals and submitted to its tutelage, the ministry was willing to allow some autonomy. But the state was well aware of the political potential of these maternal societies and was determined to exercise surveillance—at the same time that the societies themselves sought autonomy and local control, which they justified on the basis of their utility. This contested relationship highlights the centralizing tendencies of the French government in the mid-nineteenth century, as well as the complicating role that gender could play in civil society.

In our third article, Warren Brown investigates how personal relationships served as channels for dispute resolution in Europe during the Carolingian period (ca. 750–900). He focuses on models, or formulas, for letters that are contained in collections of formulas from the late eighth and ninth centuries. These letter formulas capture a process of dispute resolution in which people engaged in disputes asked patrons, lords, kin, or friends to intercede for them to gain assistance from other powerful people. This supplication/intercession mode of handling disputes existed alongside, and sometimes interacted with, the more commonly discussed modes of dispute resolution in the period reflected by other source genres, especially the formal judicial processes and the extra-judicial negotiation highlighted by charters. In this regard, the formulas reflect the way that personal relationships of this kind pervaded Carolingian society and both complemented and enabled its institutions. Similar evidence from the periods before and after highlights the continuities linking Carolingian dispute resolution to similar processes throughout the early Middle Ages.

Our fourth article, by Bruce Kimball, offers a fresh interpretation of C. C. Langdell's seminal writings on contracts and of his mode of legal reasoning, which challenges the Holmesian caricature of Langdell as a formalist. Instead, Kimbell argues that Langdell made five significant contributions to contract doctrine. First, Langdell identified abstract, parsimonious dimensions of contract. Second, he identified offer, acceptance, and consideration as those dimensions. Third, he advanced the distinction between sales and contract in the United States. Fourth, he rejected the will theory and introduced the bargain theory of contract. Fifth, he promulgated the distinction between bilateral and unilateral contracts. Kimbell also proposes that Langdell's characteristic mode of reasoning—even on issues traditionally invoked to demonstrate his "formalism"—was actually three-dimensional, exhibiting a comprehensive yet contradictory integration of induction from authority, deduction from principle, and analysis of justice and policy. The contradiction lies in Langdell's combining all three while claiming to emphasize logical consistency and disregard justice and policy. Consequently, Kimball argues that scholars should reconsider

the relationship of Holmes, Langdell, and the development of American legal thought.

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.h-net.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 "pre-prints" of articles. Finally, I invite all of our readers to examine our administration system at http://lhr.law.unlv.edu/, which facilitates the submission, refereeing, and editorial management of manuscripts.

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