In This Issue

This issue of the *Law and History Review* delves into the historical relationship between legal outcomes and the forms, processes, institutions, and narratives by which law constructs both itself and the subjects of its inquiries. Four articles explore the relationship and its effects, ranging in time period from the thirteenth to the twentieth century.

In our first article, Piotr Górecki investigates the invocation of norms as an avenue of dispute prevention in medieval Europe. Górecki draws to our attention a passage taken from the thirteenth-century history of the Henryków monastery in Silesia, in which the author, Abbot Peter, seeks to protect his monks from inheritance claims advanced by heirs of a Polish knight who had alienated an estate to the monstery. The abbot invokes a norm of "Polish law," distinguishing ancestral estates from acquisitions, and represents the estate as an acquisition, exempt from inheritance claims. Despite his confidence, his story and other contemporary evidence reflect uncertainty about the distinction between acquisitions and inheritances, and their implications for security of alienation. Like his contemporaries, Peter was aware of this tension and reduced it in several ways: by situating the invocation of the norm within the circumstances and relationships characteristic of knightly acquisitions in thirteenth-century Poland; by tacitly accepting, and then refuting, a presumption of heritability of the estate in question; and by coupling the invocation of the norm with several other approaches that were on their face inconsistent with it. The result was a negotiation among several elements of the law of thirteenth-century Poland and the articulation of the norm as a formal rule of "Polish law."

Our second article, by James Jaffe, examines the use of processes of arbitration in industrial dispute settlement in nineteenth-century England. Jaffe argues that during the first half of the century arbitration was a well-established component of the English industrial relations system. His evidence reveals the existence not only of a relatively vital voluntary system of industrial arbitration but also of statutory efforts to impose arbitration as public policy. Jaffe examines both the operation of informal systems of arbitration in industries as disparate as coal mining, printing, weaving, and pottery, and the effects of relevant statutes on the establishment of a formal system. He concludes that the success or failure of both informal and formal arbitration was determined by the parties' authority to impose arbitration, not by arbitration's inherent claims to justice or fairness. Jaffe's

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conclusion helps account for the forms in which voluntary schemes of arbitration were adopted and survived as well as the apparently inconsistent responses evoked by arbitration from employers and employees. It suggests that arbitration's equity promise, while not irrelevant, often was less important than the terms upon which arbitrated settlements were implemented. As was understood at the time, resort to arbitration in dispute settlement tended to consolidate asymmetrical relations rather than redress them.

Our third article, by Asher Maoz, is the subject of this issue's forum, which in turn is the first of three successive forums to be devoted to presentation and discussion of recent work in the burgeoning field of Israeli legal history. In this opening discussion, Maoz reflects on the capacity of law's institutional forms and processes to discover historical "facts" and to ascertain historical "truths," and the propriety of using them to do so. The substance for this reflection is taken from two painful episodes in the short history of Israel—the investigation into the 1933 murder of a prominent political figure, Haim Arlosoroff, and the 1954–55 trial involving Israel Kastner, an influential emigré Hungarian Jew. Arlosoroff was one of the leaders of the Zionist Socialist party, Mapai. He was murdered in Tel-Aviv. The rival Revisionist Movement was accused of incitement against Arlosoroff and two of its members were tried for the murder. They were acquitted for lack of corroboration of an eyewitness's testimony. Five decades later Prime Minister Menachem Begin initiated the establishment of a State Commission of Inquiry to investigate the accusations. Israel Kastner, a wartime leader of Hungarian Jewry, was denounced by one Malchiel Gruenwald for alleged collaboration with the Nazis during the Holocaust; the accusation then became part of a larger controversy over the alleged abstention of the Zionist leadership in Palestine from rescue operations during the Holocaust. The allegations spurred criminal defamation proceedings against Kastner's accuser. In both cases, Maoz argues, legal institutions were used to arbitrate between conflicting historical narratives and come up with "official" historical stories. His article criticizes these attempts. While it is doubtful whether there exists a "historical truth," the task of establishing it should not be left to legal institutions. History and philosophy should remain in the open market where people are free to debate and differ. Maoz's article is accompanied by commentaries by David Abraham and Eben Moglen. The forum is completed by the author's response.

Our final article, by John Witt, is a critical assessment and commentary on recent legal-historical scholarship examining the nineteenth-century law of the employment contract. According to Witt, recent scholarship has presented the employment contract as a prescriptive status hierarchy, created through judicial elaboration of implied doctrines of contractual construction. Witt's commentary faults the new histories of the employment con-

tract for failing adequately to distinguish between default rules and immutable rules. Parties could change the terms of their employment contracts and did so more often than the new histories would suggest. Accordingly, any account of the ways in which the law of the employment contract constructed workplace status relations must be tailored specifically to provide an explanation of the social consequences of default rules. The new histories lack such an explanation. In preliminary fashion, Witt surveys several alternative accounts of the impact of employment contract defaults on the employment relation. He suggests that the real work of constructing the employment relation was done not by the substance of the default rules themselves, but rather by the complexity and unpredictability of the rules, as well as the daunting complexity of contracting around them.

As usual, this issue presents numerous book reviews and the next in our continuing series of electronic resource pages, this one describing an ongoing project at Macquarie University, Australia, to recover and render available on-line Australia's earliest case law. 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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