In This Issue

This issue of the *Law and History Review* features four articles. Although the authors use different historical methods to reconstruct past assumptions, practices, and rules of law, they share an interest in how context and custom shape legal-historical development and social consciousness. Together, these articles raise profound questions about the limits and possibilities of living at a particular moment in time and about how historians interpret those moments.

Our first article, by Kunal M. Parker, provocatively argues that legal historians have become much too complacent in their use of context as an explanatory technique and much too critical of legal thinkers for not taking context seriously enough. Instead of judging the adequacy of common lawyers' historical consciousness from the perspective of contemporary historical consciousness, the article uses a fragment of late nineteenth-century historicist American legal thought—the jurisprudence of custom—to reflect upon forms of context that are influential in contemporary historical thought and practice. Late nineteenth-century American legal thinkers conceived of custom as a frame or context for law. However, influenced by Darwinist conceptions of time, life, and death, they explicitly associated custom with "life" and posited it as forever slipping ahead of law even as it operated as law's grounding. In relation to custom or "life," in other words, law was always a little "dead." As such, custom was a form of context that was never fully equal to the object it allegedly contextualized. This late nineteenth-century apprehension of a mismatch between custom and object stands in sharp contrast to our contemporary historical frames, which operate on the basis of complexity and as such are infinitely extendable, capable of absorbing any and every object. In addition to using the late nineteenth-century American jurisprudence of custom to reflect upon the forms and limits of contemporary historical consciousness, the article contributes to a growing body of literature on the significance of the historical sensibility of late nineteenth-century American legal thinkers.

In our second article, Chris Briggs continues the issue's engagement with custom and context. Research on the medieval manor court carried out in the last two decades or so has given renewed attention to the origins and development of manorial customary law. This shift to a predominantly

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legal-historical and institutional focus questions some of the assumptions made in the social-scientific studies of village life for which manorial court rolls have traditionally been used. In light of the centrality of the court roll as a source for medieval English rural society, this article examines how manorial law and its effects shaped court roll data on social and economic relationships. It does this by comparing the chronological incidence of debt litigation in two well-documented manor courts in order to discover whether differences between the jurisdictions in civil litigation procedure can help explain contrasts in patterns of new lawsuits. In addition to identifying differences between the courts' procedures, it suggests that changing numbers of lawsuits cannot be understood solely in terms of response to economic pressures; rather, they might also reflect the fact that some courts were more attractive to sue in than others. As well as providing a detailed demonstration of the importance of the legal-historical approach to the manor court for social and economic historians, the article emphasizes a broader point: the substantial influence that local legal institutions exerted on peasants' economic decision making.

Our third article, by Richard B. Kielbowicz, moves the discussion of popular understandings of law and custom to the antebellum United States. As the article demonstrates, when confronted with an abolition newspaper in their midst, communities could credibly draw on the law's doctrines, procedures, language, and personnel to limit objectionable expression. Thus, historians should not simply dismiss as mere sophistry the legal justifications that mobs gave for attacking antislavery newspapers. Most powerfully, towns justified their actions by grounding them in doctrines, notably nuisance law, long used to regulate many other community activities in which an individual's actions impinged on the ostensible common good. Although historians have thoroughly traced how the abolitionists' free-speech arguments affected the emergence of modern jurisprudence, the legal discourse of the mobs also deserves attention in order to recover antebellum communities' understanding of their latitude to regulate expression. The article explicates the place of law as a substantive claim and as a tactical resource for mobs that attacked a dozen antislavery newspapers in approximately twenty incidents.

The fourth article, by George Van Cleve, is the foundation for this issue's forum on "*Somerset's Case* Revisited." Van Cleve offers an "imperial conflict of laws" interpretation of *Somerset's Case,* Lord Mansfield's 1772 decision in a habeas corpus action challenging the forcible shipment of a black slave out of England, and its English law antecedents. It shows that the Somerset decision was motivated by domestic and imperial law and politics, as well as by Mansfield's personal beliefs. It argues, contrary to earlier writers, that *Somerset* subtly but powerfully changed the law both

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in England and in its colonies and that his opinion represented the historic emergence of a new English legal idea of freedom based on the "rights of man." In separate comments, two members of the *Law and History Review* Editorial Board, Daniel J. Hulsebosch and Ruth Paley, critique Van Cleve's contextualization of this famous case. Van Cleve's response concludes this fascinating discussion of the contexts and consequences of Lord Mansfield's controversial ruling—and of this issue's thread of legal and historical contexts.

As always, this issue contains a comprehensive selection of book reviews. We 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/. This system facilitates the submission, refereeing, and editorial management of manuscripts.

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