

Law and History Review

Law and History Review

Editor

Christopher Tomlins
American Bar Foundation

Associate Editor

Laura Edwards
UCLA

Managing Editor

Diane Clay
American Bar Foundation

Law and History Review (ISSN 0738-2480) is published three times a year, in spring, summer, and fall, by the University of Illinois Press for the American Society for Legal History. The purpose of the *Review* is to further research and writing in the fields of the social history of law and the history of legal ideas and institutions. The *Review* is sent to all members of the American Society for Legal History. Information about membership in the Society appears on the inside back cover of this issue.

Address all business inquiries (subscriptions, membership applications, back-issue orders, advertisements, and change-of-address notices) to the Journals Department, University of Illinois Press, 1325 South Oak Street, Champaign, Illinois 61820-6975. Requests for replacement of damaged or undelivered issues will be honored for up to six months after publication of the issue.

For authorization to photocopy from *Law and History Review* for uses exceeding those permitted by Sections 107 and 108 of the U.S. Copyright Law, contact the Copyright Clearance Center (CCC), 222 Rosewood Drive, Danvers, MA 01923. The CCC will send an invoice for permissions fees. Permissions given above do not extend to copying for advertising or promotional purposes or to creating new collective works.

© 1999 by the Board of Trustees of the University of Illinois. Manufactured in the United States of America.

This journal is printed on acid-free paper.

Law and History Review

Volume 17, Number 2

Summer 1999

*Published three times a year by the University of Illinois Press
for the American Society for Legal History*

Editorial Board

David Abraham
University of Miami

William P. Alford
Harvard University

Mary Frances Berry
University of Pennsylvania

Thomas Brennan
U.S. Naval Academy

Martin Chanock
*La Trobe University,
Melbourne*

Elaine Clark
*University of Michigan,
Dearborn*

Martha F. Davis
*NOW Legal Defense,
New York*

Thomas J. Davis
Arizona State University

Cornelia Dayton
University of Connecticut

Laura Engelstein
Princeton University

Jean-Marie Fecteau
*Université du Québec
à Montréal*

Christian G. Fritz
University of New Mexico

Judy Fudge
York University, Toronto

Paul Hyams
Cornell University

Nancy Isenberg
University of Northern Iowa

Bruce Kercher
Macquarie University, NSW

Diane Kirkby
*La Trobe University,
Melbourne*

Michael Klarman
University of Virginia

David Konig
*Washington University,
St. Louis*

Mindie Lazarus-Black
*University of Illinois at
Chicago*

Kenneth F. Ledford
*Case Western Reserve
University*

Brian P. Levack
University of Texas at Austin

Janette Neeson
York University, Toronto

Kent Newmyer
University of Connecticut

James P. Oakes
Northwestern University

John V. Orth
University of North Carolina

Steven Pincus
University of Chicago

W. Wesley Pue
*University of British
Columbia*

Nicole Hahn Rafter
Northeastern University

Gerry R. Rubin
*University of Kent,
Canterbury*

Lucy E. Salyer
*University of
New Hampshire*

John Henry Schlegel
SUNY, Buffalo

Stephen A. Siegel
De Paul University

Rayman L. Solomon
Rutgers University, Camden

Robin Chapman Stacey
University of Washington

Robert J. Steinfeld
SUNY, Buffalo

Emily Z. Tabuteau
Michigan State University

Victor M. Uribe
*Florida International
University*

Barbara Y. Welke
University of Oregon

James Q. Whitman
Yale University

Stephen C. Yeazell
*University of California,
Los Angeles*

Note to Contributors

The editors welcome unsolicited manuscripts and books for review. Address manuscripts and all general editorial correspondence to Christopher Tomlins, The American Bar Foundation, 750 North Lake Shore Drive, Chicago, IL 60611 (tel 312 988 6553; fax 312 988 6579; e-m <clt@abfn.org>). Address books for review and correspondence regarding book reviews and reviewing to Laura Edwards, Department of History, UCLA, 6265 Bunche Hall, Los Angeles, California 90095-1473 (tel 310 825 3737; fax 310 206 9043; e-m <edwards@history.ucla.edu>). Manuscripts must be double-spaced typescript throughout, with citations prepared according to the *Chicago Manual of Style*, 14th ed. The *Review's* style guides for articles and book reviews are available on the *LHR* web page <www.press.uillinois.edu/journals/lhr.html>. Please use word processing wherever possible. Submitted manuscripts are subject to double-blind peer review; authors should therefore identify themselves on the title page only. Accepted manuscripts are copyedited for style but not substance; authors remain responsible for citation accuracy and for all statements of fact or opinion. The *Law and History Review* will not consider any manuscript concurrently submitted for publication elsewhere. Submission of a manuscript is understood to commit its author to publish the manuscript in the *Law and History Review* if accepted by the editor.

Contents

Law and History Review

Vol. 17, No. 2, Summer 1999

www.press.uillinois.edu/journals/lhr.html

In This Issue

v

Articles

Creating Order in the Wilderness: Transplanting the English Law to Rupert's Land, 1835–51

H. Robert Baker

209

Forum. Constructing Patriarchy: The Development of Interspousal Custody Law in England

De Manneville v. De Manneville: Rethinking the Birth of Custody Law under Patriarchy

Danaya C. Wright

247

Comments

Who Determines Children's Best Interests?

Michael Grossberg

309

Child Custody and the Decline of Women's Rights

Eileen Spring

315

Response

On Judicial Agency and the Best Interests Test

Danaya C. Wright

319

Field Review

Emerging from the Margins of Historical Consciousness: Chinese Immigrants and the History of American Law

Richard P. Cole and Gabriel J. Chin

325

Notes and Commentary

A Lawyer's Defense of a Wine Merchant against a Carpenter's Deposition: A Story about Friendship and Betrayal

Santo L. Aricò

365

The LHR Electronic Resource Page

Changing Our Minds: Legal History Meets the World Wide Web

Bernard J. Hibbitts

385

Book Reviews

- Imagining the Law: Common Law and the Foundations of the American Legal System*—Norman Cantor
reviewed by Donald R. Kelley 389
- Law, Violence and Community in Classical Athens*—David Cohen
reviewed by Ian Morris 391
- God's Just Vengeance: Crime, Violence and the Rhetoric of Salvation*—
Timothy Gorringe
reviewed by Rachel Fulton 393
- Legislation and Justice*—Antonio Padoa-Schioppa, editor
reviewed by Pietro Costa 396
- A History of Private Law in Europe*—Franz Wieacker
reviewed by James Q. Whitman 400
- The Golden Yoke: The Legal Cosmology of Buddhist Tibet*—Rebecca
Redwood French
reviewed by Geoffrey MacCormack 402
- Ebu's-su'ud: The Islamic Legal Tradition*—Colin Imber
reviewed by Wael B. Hallaq 404
- Citizen and Subject: Contemporary Africa and the Legacy of Late
Colonialism*—Mahmood Mamdani
reviewed by Ralph A. Austen 406
- Courts of Admiralty in Colonial America: The Maryland Experience,
1634–1776*—David R. Owen and Michael C. Tolley
reviewed by Carl Ubbelohde 408
- Original Meanings: Politics and Ideas in the Making of the
Constitution*—Jack Rakove
reviewed by Stephen A. Siegel 410
- The Transformation of Authorship in America*—Grantland S. Rice
reviewed by Mark Schmeller 413
- The Supreme Court and Juvenile Justice*—Christopher P. Manfredi
reviewed by David S. Tanenhaus 415
- Summer for the Gods: The Scopes Trial and America's Continuing
Debate over Science and Religion*—Edward J. Larson
reviewed by Emily S. Epstein 417