In This Issue

This issue of *Law and History Review* features three articles and a field review essay. The articles address several issues at the center of current legal-historical scholarship: the problem of individual and collective identities in racially structured societies; the evolution of the common law writ system; and the history of torture in early modern Europe. Together, they demonstrate the journal's commitment to publish original scholarship without regard to temporal or geographical boundaries. In addition, while *LHR* strives to promote the expansion of legal history into new topics and territories, it also has a responsibility to take stock of familiar terrain, especially when research in these areas flourishes. Consequently, this issue presents a splendid field review of the burgeoning scholarship on the administration of English criminal justice in the long eighteenth century.

Our first article, by Ariela Gross, examines nineteenth-century America's "little races," composed of racially ambiguous communities of African, Indian, and European origin along the Eastern seaboard. She reveals how these mixed communities navigated the increasingly rigid black-white color line. Drawing on trial records of cases litigating the racial identity of the Melungeons of Tennessee, the Croatans/Lumbee of North Carolina, and the Narragansett of Rhode Island, she reveals how these communities responded to Jim Crow. As she demonstrates, the Melungeons claimed whiteness; the Croatans/Lumbee asserted Indian identity and rejected association with blacks; while the Narragansett asserted Indian identity, but did not deny their African origins. Ultimately, she contends that these people learned that they could achieve full citizenship in the U.S. polity, but it depended upon them abandoning self-government and distancing themselves from people of African descent.

In our second article, Joseph Biancalana examines the origins and early history of the writs of entry, which were among the earliest writs to be invented after the legal reforms of Henry II. The distinctive feature of a writ of entry was that it challenged what plaintiffs thought was the basis of defendant's claim to disputed land. A writ of entry alleged that a defendant "had no entry" into the land other than by a transaction or taking that did not authorize him to hold the land. Although writs of entry were invented to serve as supplements to the possessory assizes of novel disseisin and mort d'ancestor, it was not clear how to limit their substantive scope so

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that they would not become substitutes for the writs of right. The solution was to limit the writs to three degrees and thus limit the generations of inheritance that could be included within the writ. That precarious solution did not fare well as markets for land developed in the thirteenth century. The degrees increasingly functioned to limit the number of conveyances linking defendant to entrant, which had nothing to do with the reason for the limitation to three degrees. As Biancalana concludes, the authorization of writs of entry in the *post* in 1267 accommodated writs of entry to the market for land.

Our third article, by Heikki Pihlajamäki, contends that Swedish legal history, with regard to judicial torture, differs considerably from the continental main stream of *ius commune.* He argues that judicial torture never existed as a systematic and large-scale practice in Sweden because the strong lay element in lower courts prevented its adoption. Yet, Swedish legal history does partly resemble Continental history in that, because of a wide-spread use of extraordinary punishment, torture was not necessary to produce confessions. Swedish criminal procedure, for example, allowed the use of hard prison, which modern researchers have sometimes confused with judicial torture. He argues that in the early modern conceptual system hard prison was distinguishable from judicial torture, even though both institutions aimed at pressing confessions by harsh treatment of the suspects. The distinction was possible because judicial torture was a purely legal concept without any moral connotation. By the beginning of the nineteenth century, the changing moral connotations of torture helped to elide this earlier distinction and contributed to modern scholars conflating torture with the use of hard prison.

A review essay, by Bruce Smith, serves as our fourth article. In the past half century, the history of English criminal justice administration from roughly 1650 to 1850 has emerged as a dynamic area of legal-historical research. Smith's essay chronicles the origins of the subject among historically minded criminologists in the 1940s, its treatment by social historians in the mid-1970s, and its emergence as a distinct field of legal-historical study in the late 1970s and early 1980s. Smith then reviews the scholarship, published over the past two decades, on English criminal justice in the long eighteenth century, focusing on six areas: criminal legislation; policing; prosecution; pretrial procedure; adjudication; and punishment. After surveying the range of primary source materials made available to scholars of English criminal justice history in recent years, he recommends two methodological initiatives: an increased commitment to comparative legal-historical scholarship in the area of criminal justice administration; and a more sustained engagement by criminal justice historians with the research of academics on Anglo-American law faculties working in the areas of criminal law and criminal procedure.

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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