Law and History
Review

## Law and History Review

Editor

Michael Grossberg
Case Western Reserve University

**Book Review Editor** 

Christopher L. Tomlins American Bar Foundation

Law and History Review (ISSN 0738-2480) is published twice a year, in spring 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, backissue orders, advertisements, and change-of-address notices) to the Journals Department, University of Illinois Press, 54 E. Gregory Drive, Champaign, IL 61820. Requests for replacement of damaged or undelivered issues will be honored for up to six months after publication of the issue.

Address manuscript submissions to Michael Grossberg, Case Western Reserve University Law School, 11075 East Boulevard, Cleveland, Ohio 44106. Instructions for preparation of manuscripts are printed on page ii. Address books for review to Christopher L. Tomlins, American Bar Foundation, 750 North Lake Shore Drive, Chicago, Illinois 60611.

Authorization to photocopy items for internal or personal use, or the internal or personal use of specific clients, is granted by the Board of Trustees of the University of Illinois for libraries and other users registered with the Copyright Clearance Center (CCC) Transactional Reporting Service, provided that a fee of 5 cents per page is paid directly to CCC, 21 Congress St., Salem, MA 01970. The CCC code for Law and History Review is 0738-2480/93 \$0 + .05. The rate stated applies to library copying, photocopies placed on reserve, and copying for classroom use beyond the number of copies and frequency permitted by Sections 107 and 108 of the U.S. Copyright Law. For issues with a publication date prior to 1978 there is a uniform fee of 50 cents per copy of an article. Permissions and rates given above do not extend to copying for advertising or promotional purposes or creating new collective works.

Postmaster: Send change-of-address notices to University of Illinois Press, 54 E. Gregory Drive, Champaign, IL 61820.

© 1993 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 11, Number 2

Fall 1993

Published twice a year by the University of Illinois Press for the American Society for Legal History

#### **Editorial Board**

Constance B. Backhouse University of Western Ontario

Lloyd Bonfield Tulane University

C. W. Brooks University of Durham

John W. Cairns University of Edinburgh

Elizabeth B. Clark Boston University

Robert J. Cottrol Rutgers University, Camden

Stephen M. Diamond University of Miami

Paul Finkelman Brooklyn Law School

Richard M. Fraher

Robert Jerome Glennon University of Arizona Michael Grossberg Case Western Reserve University

Hendrik A. Hartog Princeton University

Douglas Hay York University

M. H. Hoeflich Syracuse University Alfred S. Konefsky

State University of New York at Buffalo Maeva Marcus United States

Supreme Court
William E. Nelson

New York University

John V. Orth University of North Carolina

Russell Osgood Cornell University L. R. Poos
The Catholic University
of America

Stephen B. Presser Northwestern University

Richard Smith All Souls College, Oxford

Aviam Soifer Boston University

Christopher L. Tomlins American Bar Foundation

Mark Tushnet Georgetown University

Sue Sheridan Walker Northeastern Illinois University

William M. Wiecek Syracuse University

#### Note to Contributors

The editors welcome unsolicited manuscripts, books for review, and suggestions concerning Law and History Review. Manuscripts should be submitted to Michael Grossberg, Case Western Reserve University Law School, 11075 East Boulevard, Cleveland, Ohio 44106. The text should be typed, double-spaced, on 8½" x 11" paper with ample margins on all sides. Type on one side of the paper only. Footnotes should be typed double-spaced and separate from the text, and should conform to either the style found in the Chicago Manual of Style (13th ed.) or to A Uniform System of Citation (14th ed.); the Chicago Manual is preferred. Authors of accepted manuscripts should contact the editorial office regarding computer compatibility. Because of the commitment we ask of our outside referees, Law and History Review cannot consider for publication manuscripts that have been submitted to other journals. A submission to the Review carries with it the implicit promise that the author will not submit the manuscript elsewhere while it is under consideration by Law and History Review.

# Contents

Law and History Review	Vol. 11, No. 2, Fall	1993
Articles		
Political Theory and the Growth of Defensive Criminal Procedure: The Origins of the Trease of 1696 Alexander H. Shapiro	•	215
Simple Images and Complex Realities: English Their Relationship to Business and Politics, 17 David Sugarman	=	257
Differing Perceptions of the Value of Pollution Across Time and Place: Balancing Doctrine in Nuisance Law, 1840–1906 Christine Rosen	Pollution	303
Progressive Judges in a Progressive Age: Regul Legislation in the Minnesota Supreme Court, Carol Chomsky		383
<b>Book Reviews</b>		
The State, Law, and Religion: Pagan Rome—Watson reviewed by Albert J. Schmidt	•	441
Roman Canon Law in Reformation England—Helmholz reviewed by Charles Donahue, Jr.	•	442

the English Civil War—edited by J. H. Hexter reviewed by David Wootton	448
"Beyond Reasonable Doubt" and "Probable Cause": Historical Perspectives on the Anglo-American Law of Evidence—by Barbara J. Shapiro reviewed by M. R. T. Macnair	450
The Rule of Law in a Penal Colony: Law and Power in Early New South Wales—by David Neal reviewed by Bruce Kercher	453
Regulating Big Business: Antitrust in Great Britain and America, 1880-1990—by Tony Freyer reviewed by Herbert Hovenkamp	455
Toward a Usable Past: Liberty Under State Constitutions—edited by Paul Finkelman and Stephen E. Gottlieb reviewed by Henry J. Bourguignon	458
From Local Courts to National Tribunals: The Federal District Courts of Florida, 1821-1990—by Kermit L. Hall and Eric W. Rise reviewed by Paul M. Pruitt, Jr.	461

### **Communications**