In This Issue

This issue of *Law and History Review* presents four articles and a forum on the newly discovered judgment roll for *Pierson v. Post,* the case that has introduced generations of students to property law. As the band Talking Heads reminded their listeners "facts all come with a point of view"; our authors in this issue all address problems in the interpretations of supposedly well-known historical relationships. Collectively, they help us to rethink the relationships between China and the West, ancient and modern conceptions of rights, the Mexican Supreme Court and jurisprudence, law and the construction of citizenship, and Pierson's and Post's famed dispute over a fox.

Our first article by Li Chen begins our reexamination. Western extraterritoriality in China (1843–1943), according to Chen, exerted an enormous impact on Sino-Western relations and on modern Chinese national identity and historical consciousness. The *Lady Hughes* dispute in Canton [Guangzhou] in 1784, he demonstrates, has been the most powerful and often the single piece of "evidence" for commentators over the past two centuries to justify this extraterritorial regime by claiming that imperial Chinese laws were too arbitrary and sanguinary to govern "civilized" Westerners in China. To better understand this issue of crucial historical significance, he shows how the "colonial archives" of such early Sino-Western disputes can be "read against the grain" to recover histories from the grips of the traditional narratives of these events. In contrast with the typically oversimplistic accounts, his microscopic case study highlights the complex process of accommodation and contestation between two empires and their respective agents in South China, with conflicting claims for sovereignty and imperial honor. Through a critical reexamination of the original English and Chinese records, his study challenges the still dominant discourse of this case and the preexisting historiography of Chinese law, politics, and foreign relations implicated thereby. Thus, it contributes to the recent debates on how empire shaped the making of international law and the historiography of modern international relations.

In our second article, Benjamin Straumann contends that Hugo Grotius (1583–1645), a major protagonist in the history of individual natural rights, developed his highly influential secular rights doctrine by reference to

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ancient Roman legal remedies and Cicero's moral philosophy. Straumann thus offers a fresh account of the historical background of modern thinking on rights, one that runs counter to the traditional liberal historical account, epitomized by Benjamin Constant, according to which modern liberty is distinct from ancient liberty precisely on account of the alleged lack of a concept of individual rights in classical antiquity. Grotius, a humanist steeped in Roman law, had substantive reasons for using his Roman sources: Roman law was secular, and it had already developed a doctrine of the freedom of the high seas. Furthermore, Roman law and Cicero's ethics provided a fair amount of commerce driven remedies in contract law, which were part of the law of peoples (*ius gentium*), a body of law initially created to accommodate foreigners, especially merchants, and give them standing in Roman courts. The fact that Grotius's rights doctrine acknowledged both private entities and states as subjects, Straumman argues, had a decisive impact on subsequent political and constitutional thought, with a double-edged implication for sovereignty: not only were states endowed with certain rights, but so were individuals and private entities.

Our third article by T. M. James analyzes the Mexican Supreme Court's labor jurisprudence between 1917 and 1924. In so doing, he attempts to reconcile two conflicting scholarly interpretations: the first sees this jurisprudence as evidence for an activist and independent judiciary; a second denies autonomy altogether, claiming that this jurisprudence simply mirrored the executive policy of the time. By focusing on the legal content of the jurisprudence, his article charts a middle course and reassigns the label of judicial activism from the original jurisprudence to its 1924 reversal. Thus, it shows the importance of past precedent in structuring the Supreme Court's original judicial interpretation.

Our fourth article by Kif Augustine-Adams also focuses on twentieth-century Mexico. "Take the census; make the country. Let's do both together!" cajoled one bold, bright poster in the days before May 15, 1930 when census takers dispersed across Mexico to count its inhabitants. In government propaganda, the 1930 census made Mexico and drew its inhabitants into the national fold, an ongoing, delicate project after the fratricide of the 1910 Revolution. In its nation-building effort, the 1930 Mexican census purported to count individuals by legal nationality, not by race. Data taken directly from census ballots for Sonora, the state which hosted the largest Chinese population, nonetheless demonstrate powerful social constructs of identity in contest with the census ballot's elision of race. The census ballot in turn contests constructions of the Mexican nation found in the legal categories of nationality and marital status. Analysis of the count of Chinese in Sonora demonstrates the difficulties individuals, census enumerators, and civil service employees had in agreeing on what

made someone Mexican. Although it purports not to, by referencing and reifying race rather than strictly counting by nationality, the 1930 census transforms some Mexicans into Chinese. Thus, she concludes, that her findings challenge both the power of law to make citizens and the ease with which race can be officially discounted in government-sponsored, nation-building endeavors.

Angela Fernandez's article on the judgment roll for *Pierson v. Post* is the subject of the forum. Alfred Brophy's introduction to the forum likens Fernandez's find to a lost Beatles' recording. And *LHR* is proud to present her discovery in our on-line version available on the History Cooperative, along with Fernandez's transcription of it. Her article in the forum highlights the new information that this primary source provides about the case, including the account of Post's jury trial before a justice of the peace, the amount of money he was awarded, and the grounds of Pierson's appeal. The new record does not answer every question about this case, but as the Talking Heads also noted, "Facts are never what they seem to be." Commentaries by Charles Donahue, Jr. and Stuart Banner illustrate how Fernandez's discovery alters (or confirms) the facts as they've seemed to be, while James E. Krier questions whether property professors (as opposed to legal historians) will find these new facts illuminating.

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 web site at http://www.hnet.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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