In This Issue

This issue is about transitions. After seven years of extraordinary service as associate editor for book reviews, Alfred E. Brophy has retired from this post. During his tenure, Al worked tirelessly to ensure that our coverage expanded to keep pace with this dynamic field. He played a vital role, for example, in recruiting Amalia D. Kessler to join the editorial team to serve as the book review editor for studies of non-American subjects. He also helped to recruit Daniel W. Hamilton, with whom he edited the splendid two-volume *Transformations in American Legal History: Essays in Honor of Professor Morton J. Horwitz*, as his successor associate editor for book reviews of the Americas. Beginning with our next issue, Dan will run this essential department. On behalf of our readership, let me thank Al Brophy for his outstanding contributions, and welcome Dan Hamilton.

Our first article, by Deborah Dinner, analyzes the changing relationship between feminism and the debate over universal childcare in the 1960s and 1970s. During that period, as Dinner demonstrates, the right to universal childcare echoed as a political demand across diverse strands of the feminist movement. By translating personal needs into a rights claim, feminists politicized the issue of childcare in ways that challenged cultural constructions of the boundaries between the family, market, and state. Despite the tensions in their aspirations, Dinner shows that the universal character of the rights claim enabled middle-class and working-class, white and African American, liberal and radical women to build coalitions on the basis of common policy interests. President Nixon's veto of the Comprehensive Child Development Act of 1971, however, exploited fault lines in the childcare coalition, and activists grew increasingly fearful that the state might also co-opt childcare's political purposes. In this changed context, feminist mobilization for the right to universal childcare waned. By uncovering the overlooked story of feminist thought and grassroots activism respecting childcare, Dinner reminds us that childcare once held far more robust and radical political meanings than it would later. In addition, she reveals that in specific and contingent historical

Law and History Review August 2010, Vol. 28, No. 3
© the American Society for Legal History, Inc. 2010
doi:10.1017/S0738248010000702

https://doi.org/10.1017/S0738248010000702 Published online by Cambridge University Press

circumstances, popular rights consciousness can challenge power hierarchies by fostering the imagination of transformed social structures as well as coalitions reflecting these alternate political realities.

In our second article, David A. Reichard demonstrates that the 1970s were also a transitional moment in civil rights history. In 1970, a group of Sacramento State College students and their faculty supporters organized the Society for Homosexual Freedom (SHF), one of the earliest gay and lesbian student organizations in California. When the SHF was denied recognition by the administration, students sued and won the case on free speech and association grounds. Although some scholars have examined such lawsuits for recognition, few have looked at the underlying social and political struggles accompanying them. Drawing on archival research and oral histories, Reichard analyzes the origins of the SHF lawsuit, assessing its impact on students, faculty, and the campus community. Although the struggle for recognition of the SHF reflected a larger struggle for student power on campus, he argues that this lawsuit empowered gay and lesbian students and faculty, in particular, to create a self-conscious gay liberation campus community. The favorable decision in the SHF case, he shows, also helped to ensure that future gay, lesbian, bisexual, and transgender student organizations in California could claim free speech and association constitutional protection to organize on public college campuses, and this influenced judges outside California to follow suit in similar lawsuits brought by gay and lesbian student organizations seeking official recognition for campus organizations.

Our next three articles take us from the United States in the 1960s and 1970s to medieval and early modern England and seventeenth-century colonial Lima. First, Peter Larson challenges the existing literature on manorial juries in England during the fourteenth and fifteenth centuries. As he notes, previous studies of local, manorial juries in England have emphasized the high turnover of jurors from session to session or year to year; thus, juries (despite drawing on well-established families) served as representative institutions, with the attendant implications for village society as a whole. In County Durham, however, he finds that the functions and procedures of the halmote court along with patterns of jury service after the Black Death suggest a different experience. Instead of reflecting the village, the halmote jury was an institution in its own right, and the existence of only one panel, performing all functions from presentment to judgment to assessment of penalties, allowed a few wealthy peasants to monopolize membership. Many had careers of over a decade, and the same men tended to serve alongside each other for years, and so the Durham halmote jury must be seen as a closed institution linked to a small, wealthy group of men within the village. Thus, he argues that Durham poses an alternative

https://doi.org/10.1017/S0738248010000702 Published online by Cambridge University Press

to, and calls into question, other studies that depict a representative, egalitarian nature of manorial juries with concomitant implications for rural society.

Whereas Larson sheds new light on the manorial jury, Dennis Klinck challenges the conventional wisdom about the role of the legal mandarin Lord Nottingham (1621–82) as a key figure in the transformation of English equity from a discretionary jurisdiction to something more systematic and rule-governed. Beginning with a consideration of seventeenth-century connotations of legal "measures" (a word that appears to have been closely associated with measurement, literally) and related notions, Klinck explores aspects of Nottingham's enterprise: his articulating of "rules" in equity, his modeling of equitable rules on the common law, his deference to precedent, his offering "learned" expositions of equitable doctrines, his presentation of cases as explicit rhetorical structures—even his invoking of "mathematical" reasoning. He argues that Nottingham did not disparage the "nicety" (fine measurement) of common-law rules; he invoked "conscience" (as opposed to legal "nicety") as the final measure in equity; he spoke of the "latitude" of equitable judgment; he departed from precedents, not only because they contain extraneous elements like "compassion" but also because they were "unjust"; he was prepared to exceed the bounds of what has already been established; he imported into his reasoning what might be called "nonlegal"—even "affective"—elements. There is, in other words, some disjuncture between what he professed to do, his "rhetorical stance," and what he actually did. Thus, Klinck concludes that the "certain measures" to which he aspired turned out to be in many ways less certain and limited than his aspirations and later accounts of his project suggest.

In our next article, Michelle McKinley examines the ways in which enslaved litigants engaged with the ecclesiastical courts in seventeenth-century colonial Lima. She analyzes a sample of the types of litigation instigated by Peruvian slaves to assert their conjugal rights, effect transfers of ownership, and enforce oral promises of manumission. The cases studied include complaints of domestic violence, abandonment, destitution, and infidelity brought by enslaved women to the attention of church procurators. She uses accusations of concubinage, adultery, and "crimes against public morality" to explore the role of church courts in policing the boundaries of interethnic relationships. Overall, her essay demonstrates the significant normative and political work marriage performed for law and society in colonial Lima.

The unification of law has been an enduring theme in French history and is the subject of this issue's forum on "The Idea of French Law," which begins with an article by Marie Seong-Hak Kim. Although the ideal of a

https://doi.org/10.1017/S0738248010000702 Published online by Cambridge University Press

unified legal system abounded since the late Middle Ages in France, Kim notes that the sixteenth century saw a dramatic wave of theories and specific methods of codification. Under Michel de L'Hôpital, chancellor of France from 1560 to 1568, legal unification, hitherto an intellectual conception embraced by legal humanists, was propelled into a full-fledged campaign to unify private law by means of royal legislation. L'Hôpital envisaged, with the kind of intensity already well exhibited in his assertion of royal authority in religious matters, extending the Crown's lawmaking power into the domain previously governed by local *coutumes* and implementing royal law throughout the kingdom across parlementary jurisdictions. There was, she argues, continuity between his religious policy and legal policy as both presupposed the supremacy of the king as the only guarantor of civil peace. It is remarkable that France, precisely when it was ravaged by religious wars and its unity was seriously threatened, witnessed an effluence of reforming zeal to rationalize and unify law. Along with contemporary movements to record provincial customs and harmonize them through jurisprudence, L'Hôpital's legislative reforms introduced a new juridical conscience representing the evolution from medieval legal pluralism to a distinct legal nationalism. Together, she concludes, they exhibited a clear vision toward the codification of French civil law. Comments by Sarah Hanley and Amalia D. Kessler, and a response by Kim, round out the forum.

As always, this issue includes 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.legalhistorian.org/. Readers are also encouraged to investigate the *LHR* on the Web at http://journals.cambridge.org/LHR, where they may read and search issues, including this one.

David S. Tanenhaus
University of Nevada, Las Vegas

---

https://doi.org/10.1017/S0738248010000702 Published online by Cambridge University Press