In This Issue

The five articles in this issue of *Law and History Review* examine the life of the law, including its theory, practice, performance, and administration. Collectively, they address the uneasy relationship between law and social norms, including the implications of this tension for historiography. These essays examine some familiar *Law and History Review* terrain, such as Puritan New England and Cold War America, but they also carry our readership into new places, such as late nineteenth-century Ghent as well as Manchukuo in the 1930s. Most importantly, they do so in refreshing ways.

Our first article, by Richard J. Ross, examines the long, complex history of an idea often taken for granted today: that early Massachusetts lived under something called "Puritan jurisprudence," a distinctive legal order strongly shaped by Puritan religious commitments and social thought. While this notion is a commonplace in the historiography of early New England, the idea has not always been accepted. In particular, the Puritans themselves did not assume that they lived under a distinctive jurisprudence that could be termed "Puritan." In light of contemporary opinion, Ross questions what intellectual and political commitments encouraged later interpreters to give credence to the notion of Puritan jurisprudence. He explores the gradual acceptance between the seventeenth and nineteenth centuries of two presuppositions underlying the concept: first, that early Massachusetts had a legal order sufficiently distinctive to be styled a "jurisprudence"; and, second, that Puritan theology and social thought served as the "central characteristic" or "essence" of this jurisprudence. As Ross demonstrates, the mature synthesis of Puritan jurisprudence that crystallized in the twentieth century rested upon these assumptions. Moreover, his article adds a tincture of irony or poignancy to the notion of Puritan jurisprudence by revealing that those founders did not use the concept and that later generations only slowly came to accept it as a result of political and forensic maneuvers far removed from the concerns of the Puritans.

In our second article, Josephine Hoegaerts analyzes the multiple layers of speech in divorces cases before the Regional Court in the Flemish city of Ghent between 1885 and 1890. Drawing on the accounts of litigants

Law and History Review Summer 2008, Vol. 26, No. 2

and witnesses, she interprets the divorce proceeding as a staged and public performance in which upper- and lower-class men and women (re)produced their and others' identities and marital norms and conventions. Using the standards regarding adultery in both legal codes and practices as an example of the creation of acceptable marital behavior, she shows that the "double standard" for which the Code Napoléon became infamous was not so much taken for granted, but that it rather functioned as the unstable and contested symbol of a site of gendered conflict.

Our third article, by Thomas David DuBois, builds on a new wave of scholarly interest in Manchukuo during the 1930s, which questions whether it served simply as a puppet of Japanese wartime aggression. Instead, these scholars argue that Manchukuo should be understood as a precursor to a new imperialism in which putatively sovereign states voluntarily acquiesce to an ideological metropole. As DuBois demonstrates, the nature of this imperialism was evident in the legal sphere of Manchukuo, a state that was to be simultaneously an independent polity and a willing recipient of Japanese tutelage. Law was a high priority in Manchukuo, and in a short time, jurists from throughout the Japanese empire created new legal codes and the foundation of a constitution, trained a coterie of jurists, vastly expanded the judiciary, and oversaw the abrogation of extraterritoriality. Yet despite these efforts, the legal institutions of Manchukuo remained visibly dependent upon Japan, in a manner that more resembled a colony than an independent state. This weakness became evident after Japan invaded China in 1937, when Manchukuo moved to a wartime footing, and shifted toward the real needs of security and procurement. Yet even as the exercise of law became increasingly draconian, the rhetoric of legal developmentalism intensified, demonstrating the importance of law to the self-definition of the short-lived state.

The fourth and fifth articles, by Sophia Z. Lee and Karen M. Tani, are the foundation for this issue's Forum, "'Poking Holes in Balloons': New Approaches to Cold War Civil Rights." The late Kathryn T. Preyer, a Fellow of the American Society for Legal History, inspired this Forum. To honor her, the Society established the program of Kathryn T. Preyer Scholars to help legal historians at the beginning of their careers. At the annual meeting of the Society two younger legal historians, designated Kathryn T. Preyer Scholars, present what would normally be their first papers to the Society. In 2006, Lee and Tani were selected as the inaugural Preyer Scholars and delivered the initial versions of their articles at the annual meeting.

Preyer Memorial Committee chair Laura Kalman introduces our Forum and Reuel Schiller concludes it with a comment. In her article, Lee argues that throughout the Cold War 1950s, the NAACP sustained an ambitious

campaign for African-American workers' constitutional right to join unions and access decent jobs. Surprisingly, it did so not in the courts, but in executive branch agencies and committees. Blending law and politics, the NAACP worked closely with labor leaders, varying its campaign according to the racial practices of unions and employers. In 1964, in one of the era's most expansive state-action rulings, the NAACP won its workplace constitutional claims—not in the Supreme Court, but in front of a classic New Deal agency: the National Labor Relations Board. As Lee reveals, the NAACP's Cold War–era struggle against workplace discrimination not only challenges our current understanding of NAACP organizational history and of Cold War politics, but also of the scope and nature of civil rights-era constitutional change.

Tani's article, like Lee's, challenges the conventional wisdom about Cold War constitutionalism. She shows that the 1960 Supreme Court case *Flemming v. Nestor,* in which deported ex-communist Fedya Nestor demanded his accrued Social Security benefits, was connected to Cold War anticommunist politics, the development of the American welfare state, and Charles Reich's famous article "The New Property." The case, she argues, illustrates how Americans were at once battling "the enemy within," working out the details of New Deal social welfare programs, and readjusting the meaning of sacred constitutional categories like "liberty" and "property." Consequently, the Supreme Court's decision in *Nestor*—that contributors to Social Security had no "right" to their benefits—placed an important boundary on the welfare state. It also added another link to a chain of cases in which individuals were punished or silenced via their dependence on government largesse. Reich seized on this trend in "The New Property," in which he urged courts to give government licenses, pensions, and welfare checks the same procedural protections as traditional property. Together *Nestor* and "The New Property" highlight the many open questions about the American welfare state at mid-century and the way that unanticipated legal disputes could resolve them, as well as the unexplored connections between Cold War political repression and the development of the welfare state.

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.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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