

In This Issue

This issue of the *Law and History Review* features articles that examine the potent intersection of law with issues of nationalism, and of national and regional identity, and the construction of the ideologies that sustain senses of solidarity and separation. Three of the four authors are primarily concerned with political science and sociology. Thus, their articles testify to the wide interest in legal-historical analysis current in the social sciences.

In our first article, “Racial Constructions: The Legal Regulation of Miscegenation in Alabama, 1890–1934,” Julie Novkov offers a detailed empirical study of the role of law in the early twentieth-century United States in the regulation of racial interaction and, in particular, in the formation of ideas of race and of the nature of whiteness. For over one hundred years—from the post–Civil War era to the post–Civil Rights era—the state of Alabama used criminal prosecutions to prevent blacks and whites from engaging in long-term sexual relationships with each other. These prosecutions for miscegenation were an important component in the process of defining race and entrenching white supremacy. From the 1910s through the 1930s, Novkov shows, eugenic theories about blacks’ natural and irremediable inferiority influenced legal discourse in the context of prosecutions for miscegenation. The new focus on genetic framings of race, however, had an ironic result: defendants criminally convicted of miscegenation were able, often successfully, to challenge their convictions on the ground that the state had not adequately proven that they were black. Their efforts temporarily undermined the state’s efforts to maintain whiteness as a separate and impenetrable category. They also provided an impetus for the state to develop legal definitions of whiteness and blackness that would incorporate commonly held beliefs about the significance of appearance and associations.

Our second article, by Ronen Shamir, addresses the system of “Comrades Law,” established in 1920s Palestine by the General Federation of Hebrew Workers in Palestine (Histadrut) to dispense socialist justice through an internal network of “comrades’ tribunals.” The Histadrut was the single most important institution of the Jewish colonizing community in Palestine. Shamir examines the nature and type of justice dispensed by the Histadrut in Palestine against the institutional background of British mandatory rule, the imperatives of the Jewish national project (Zionism), and the Histadrut’s own dual commitments to socialism and nationalism. His object is to discover to what degree the Comrades Law could offer a

viable procedural and substantive alternative to state law and state-sponsored courts. Regardless of original intentions, Shamir finds, the Comrades Law quite rapidly became a quasi-state apparatus, displaying a clear bias in favor of institutional interests over those of individual workers. Rather than becoming a liberating, alternative form of justice, in other words, the Histadrut's form of socialist justice ended up reinforcing existing relations of power and working as a mechanism of bureaucratic control. Shamir's conclusion evaluates his findings in light of extant research on socialist justice in other countries and theoretical debates about the possibility of popular forms of justice in general and socialist justice in particular.

The two remaining articles together comprise this issue's Forum, which continues the issue's emphasis on questions of law, nationalism, and identity with two distinct examinations of the significance of legal codification for expressions of nationalism in nineteenth- and early twentieth-century Catalonia. In the first, Stephen Jacobson investigates the relationship between law and identity in nineteenth-century Catalonia, focusing in particular on intellectual endeavor and political culture in Barcelona, the historic capital of the former principality. Catalan lawyers, Jacobson tells us, worked to modernize and preserve the region's unique regime of civil law, rooted in the middle ages and deemed to be an essential component of the region's economic health and spiritual personality. In so doing, they successfully combated uniform codification on the French model in Spain, an accomplishment imbued with symbolic import and political significance that served as a precursor to the launching of electoral politics of Catalan nationalism in the twentieth century. Jacobson's assessment brings to light and analyzes influential theories that associated law with "spirit," "custom," "history," and "nation," a method derived from English ancient constitutionalist traditions, elaborated by thinkers from Montesquieu to Savigny, and disseminated by erudite and hack authors throughout all of Europe. He argues that the making of a civil law tradition—whether consisting of the formal writing of codes or the rationalization of a common set of norms—was a subjective undertaking, often based on popular ideas as much as scholarly jurisprudence. It was fraught with ideological considerations, borrowed law, images of exemplars and rivals, and discursive conceptions of the nation.

Our second Forum article, "Lawyers, Codification, and the Origins of Catalan Nationalism, 1881–1901," by Siobhán Harty, offers a different perspective on the same subject. Through a case study of Catalan opposition to the Spanish Civil Code, Harty seeks to refine our understanding of the range of responses to civil law codification on display in nineteenth-century Europe. The Catalan case, she argues, is an important variant in the history of European codification: Resistance to legal unification secured

the continued existence of Catalan civil law alongside the code. Harty addresses the sources of Catalan opposition to codification and explains the strategies used to mobilize against it. Catalan conservatism, which provided the impetus to oppose the code, was grounded on a system of indivisible property that the civil code threatened to erode. Nascent Catalan nationalism, meanwhile, provided the means to mobilize against the code. By making Catalan civil law a central feature of the national identity that they helped construct, Catalan lawyers were instrumental in building a principled argument for preserving Catalan legal institutions through political autonomy and institutionalizing this argument in a nationalist political party. Harty's article situates these arguments in the broader literature on codification and lawyers.

The Forum continues with Kenneth Ledford's commentary on both articles. It concludes with the two authors' responses. The issue is rounded out by our normal selection of book reviews. Users are encouraged to read the *LHR* on the web, at www.historycooperative.org/home.html, and to visit the *LHR*'s own web site, at www.press.uillinois.edu/journals/lhr.html, where they can browse the contents of forthcoming issues, including abstracts and selected full-text "pre-prints" of articles.

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