In This Issue

This issue first analyzes economic regulation in two contexts—England in the early seventeenth century and the United States in the mid-twentieth century—to examine the complicated relationship among governance, justice, and property. The issue then presents a forum on one of the most examined lives in the history of Anglo-American law: James Madison. The forum sheds new light on his legal education and contributions to constitutional interpretation and theory during the critical decade of the 1780s.

Our first article, by David A. Smith, reconstructs the development of the bill of conformity, an advanced insolvency remedy, during the reigns of Elizabeth I and James I. Arguments that conformity threatened the security of property convinced Parliament to condemn these proceedings in 1621 and later to abolish them, overcoming proponents of conformity who asserted that this remedy was a charitable solution for otherwise hopeless debtors. Smith explains the change by investigating the context of the credit economy, suspicion of equitable proceedings, and the trade depression of the 1620s. He links appeals to security of property and charity to the ideals of Jacobean kingship espoused by James I. The king was himself involved in conformity proceedings, which typically began as a petition to him, and their failure reveals the complex interaction between his own wishes and political theory and the ambitions of the equity courts that administered conformity. Thus, the development and ultimate failure of conformity is also an opportunity to explore and assess the workings of Jacobean government and the application of ideas of governance and justice. Smith contributes to the history of insolvency law, and he provides a window into early modern English attitudes towards law and its limits, property, and kingship.

In our second article, Mark R. Wilson focuses on the role of economic regulation in a modern context. Starting in 1942, as he points out. American military contractors were subject to a surprisingly invasive and apparently illiberal regulation of their prices and profits: statutory renegotiation. Under the novel renegotiation law that the U.S. Congress passed that year, military procurement authorities were given the power to demand

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ex post facto price reductions from contractors. Applied to thousands of major military suppliers, renegotiation became an important and highly controversial mechanism for controlling prices and profits in the World War II economy. Its history enriches existing accounts of government-business relations and American political development. Although many studies have described World War II as a time of integration and alliance between American corporations and the national state, the history of renegotiation suggests a more complex wartime political dynamic. In fact, the military establishment was a leading administrator of increasingly intrusive regulations. But renegotiation officials, more than their counterparts at civilian regulatory agencies, saw themselves as protectors of the public image of private enterprise. The strong resistance that they encountered, Wilson argues, serves as a reminder of the importance in the mid-twentieth century United States of a conflict between principled antistatists and regulatory pragmatists within the ranks of the many defenders of capitalist political economy.

Although bills of conformity and statutory renegotiation are obscure areas of the law, James Madison requires no introduction. Or does he? In his introduction to this issue's forum on "Law, Interpretation, and Ideology in the 1780s," David B. Mattern reminds us why Madison is so significant—but also elusive. In the first forum article, Mary Sarah Bilder begins by noting that James Madison was a law student, never a lawyer. To answer the question of whether his demi-lawyer status mattered, she first demonstrates that a law commonplace currently attributed to Thomas Jefferson is in fact a volume of Madison law notes missing since the 1850s. She contends that the notes date from Madison's second study of the law in the mid-1780s when he was already in his thirties. Although student law notes and commonplaces have been important for understanding the development of early American legal education, their relevance for the study of an individual's intellectual thought has proven more difficult. Madison's notes would appear to present a particularly difficult case because he never sought admission to the bar and did not consider himself as a member of the profession. Adapting recent work on the history of humanistic note taking, she shows that the law notes reveal a mind and note-taking style that was uniquely Madison's. Demonstrating a serious interest in law, the notes even more significantly reveal a deep and persistent interest in the problem of language. This interest in interpretation, combined with Madison's nonprofessional demi-lawyer status, Bilder concludes, may help to explain his ambivalence over who and which institutions should interpret the Constitution.

Although Madison never sought admission to the bar, historians and lawyers continue to grapple with his contributions to American

constitutionalism. In her forum article, Alison L. LaCroix analyzes the central issue for late eighteenth-century American constitutional thought: the problem of authority. The principal achievement of the Philadelphia convention, she argues, was assembling an institutional structure to confront that problem that was distinct from past Anglo-American practice and theory. The legislature-centered approaches to multiplicity that had characterized the 1760s and 1770s gave way in the 1780s to a reexamination of foundational questions of the location of authority within a composite polity, and to practical issues of how such a polity might actually operate. In particular, the debate surrounding Madison's proposal to give Congress the power to negative state laws required delegates to work through the meaning of multiplicity, the Revolutionary ideology that by 1787 demanded a new institutional structure. With a mandate to assemble that new structure, the delegates rejected Madison's legislative solution and turned instead to the judiciary to mediate between state and general governments. In so doing, their choice of a judicial approach to such matters took on a normative edge. The Revolutionary belief in multiplicity thus melded with a new structural commitment to a judicial solution. The result, she concludes, was both ideology and institution, and it was called federalism. The forum concludes with comments on the articles by David Thomas Konig and Peter S. Onuf.

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.

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