In This Issue

This issue of *The Law and History Review* contains articles that pursue the significance of law and legal processes from early modern France to mid-twentieth century Texas. In these articles, the authors investigate law both as a mode of procedure and as a medium in which "great" questions—of sovereignty, nationalism, jurisdiction, citizenship, race, and identity—are given potent effect.

In our first article, Sarah Hanley presents an account of the wide-ranging historical implications of the activities of sixteenth- and seventeenth-century French jurists—lawyers, judges, and writers—later known as the Arrestographes. Adopting a historical and comparative view of society and law, engaging in judicial activism, and advancing a national legal theme on French cognizance of marital affairs, the Arrestographes abandoned the norm of judicial secrecy and instituted the practice of judicial publicity. To inform "the public" at large, they collected, printed in French, and sold volumes of "notable" decisions (arrêts) sought by women and men who pursued legal information to avoid the risks wrought by legal change touching marital union and family formation. By challenging traditional precepts of Roman law and canon law and amending French customary law, jurists and governments formulated a French Marital Law Compact unique in Europe. Despite church protests, marital affairs, subjected to precedent-setting arrêts and the edicts they provoked, were removed (on appeal) from church jurisdiction and canon law and brought under state cognizance and French law. The system of "French jurisprudence" thus developed, characterized as the "jurisprudence of the arrêts," framed a shared public space named "civil society," which bridged society and state and underwrote French claims to political sovereignty as a nation in Europe. Welded from elements of language, culture, custom, and law and distinguished from others in Europe, this juridically based notion of a sovereign French nation supplied the core concept from which modern notions of nationalism would evolve in France.

Our second article, by George F. Steckley, examines civil litigation in the Admiralty Court of seventeenth-century London. The growth of shipping traffic during the century resulted in numerous collision cases for the civil lawyers at this court. A sample of this litigation reveals that a dispute involving the collision of two ships in open sea or a crowded river was often difficult to resolve and that Admiralty judges responded with sensible new remedies. They began early in the century to recognize contributory neg-

ligence and to reduce damage awards accordingly. By 1675 they had provided a no-fault doctrine, including a formula for summing all losses from the mishap and dividing them equally between plaintiff and defendant. Civil law process was generally suitable for collision cases, even if the new substantive rules seem to have had the effect of prolonging litigation. But Admiralty judges, despite their resourcefulness, suffered a sharp contraction in their instance business during the last third of the century. Evidence from collision cases suggests the extent to which common lawyers and their writs of prohibition were responsible for this decline.

Our third article, by Mae M. Ngai, examines the advent of mass illegal immigration and deportation policy under the Immigration Act of 1924. Ngai argues that numerical restriction created a new class of persons within the national body—illegal aliens—whose inclusion in the nation was at once a social reality and a legal impossibility. This contradiction challenged received notions of sovereignty amd democracy in several ways. First, the increase in the number of illegal entries created a new emphasis on control of the nation's contiguous land borders, which reconstructed national borders and national space in ways that were both highly visible and problematic. Second, the application of the deportation laws gave rise to an oppositional political and legal discourse, which imagined deserving and undeserving illegal immigrants and, concomitantly, just and unjust deportations. These categories were constructed out of modern ideas about crime, sexual morality, the family, and race. As a result, during the 1930s, deportation policy became the object of legal reform to allow for administrative discretion in deportation cases. Just as restriction and deportation "made" illegal aliens, administrative discretion "unmade" illegal aliens. Admistrative law reform became an unlikely site where problems of national belonging and inclusion played out.

The issue's Forum, on Mexican Americans and whiteness in twentieth-century Texas, pursues further the examination of inclusion and exclusion in law, this time from the perspective of racial identity. As the first Forum author, Clare Sheridan, points out, Mexican Americans have occupied an ambiguous position in the nation's legal and social orders. Legally white, but treated as nonwhite, discrimination against them was not by statute and therefore not remedied by law. Sheridan focuses on *Hernandez v. Texas* (1954), in which the plaintiff moved to quash his indictment because Mexican Americans were systematically excluded from jury service. Civil rights lawyers were confronted with a paradox: because Mexican Americans were classified as white, lower courts held that they were not denied equal protection under the Fourteenth Amendment. Since Mexican Americans were tried by juries composed of their racial group—whites—their constitutional rights were not violated. Sheridan uses rhetorical anaysis to discuss the implications of the arguments in *Hernandez,* which held that "nationali-

ty" groups could be protected under the Fourteenth Amendment. She analyzes the terminology chosen by state attorneys, Mexican American activists, and the Supreme Court of the United States to construct Mexican Americans' place in the constitutional order and to define their participation as citizens. Sheridan's use of *Hernandez* to explore the congruence of whiteness with American identity leads her to conclude that the composition of juries reveals America's national self-conception as racialized.

In the second Forum article, Steven H. Wilson examines challenges to school segregation brought by Mexican American civil rights advocates to reflect further on issues of identity. Mexican Americans, he tells us, were slow to embrace the constitutional substance of the landmark 1954 *Brown v. Board of Education.* A long-prominent minority with their own history of successfully litigating, Mexican Americans could draw upon a succession of favorable judicial opinions to vindicate their community's civil rights claims. In the years that followed *Brown,* they deliberately disregarded its usefulness to achieving their goals and intentionally distanced their claims from the race-based elements of the *Brown* decision. This was because Mexican American lawyers—in numerous complaints, briefs, and courtroom arguments—continued to rely on a canon of judicial precedents established in both federal and state courts that, under the laws of Jim Crow, Hispanics were members of the "other white" race. As a result, the revolution in civil rights litigation that commenced with *Brown* bypassed Mexican Americans until the late 1960s. His article describes why and with what result Mexican American lawyers avoided making significant new claims under the revolutionary decision that African Americans found indispensable. Wilson then recounts a line of Texas state and federal trials to show how and why the "other white" legal stategy evolved until Mexican American lawyers finally argued in the late 1960s that *Brown* implicitly applied to and condemned discrimination of Mexican Americans, just as since the mid-1950s the decision had explicitly applied to and condemned the segregation of African Americans.

Ariela J. Gross continues the Forum with a commentary that addresses both articles and further explores the questions they raise. The Forum 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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