In This Issue

The four articles in this issue of *Law and History Review* offer fascinating perspectives on the latter years of the long eighteenth century in England, the West Indies, and North America. As these engaging essays reveal, the characteristics of this period included not only war and revolution, but also a complex debate over the relationship between slavery and marriage, the development of pretrial procedures in felony cases, the silencing of capital convicts in the pardoning process, and a rethinking of gun regulation. Collectively, these articles remind us of the poignant contingency of "life, liberty, and the pursuit of happiness" in the Atlantic World.

Our first article, by Cecilia A. Green, reconstructs the ideological and legal idiosyncrasies and contradictions that belabored the official debate over slave marriage in the British West Indies. Central to her analysis is the correspondence of Rev. John Stephen, an Anglican rector in the Bahamas and a pro-slavery reformist. Beginning in 1814, he sought the legal opinions of the authorities and expounded at great length and with great erudition on the matter. She places Stephen's statements and ideas into a dialogue with the positions taken by the major parties to the debate, including the metropolitan authorities, the abolitionists and their missionary counterparts in the field, the West Indian planters, and, away from center stage, the enslaved themselves. To interpret the debates, Green places the various positions into the context of three sets of relations: the colonial relation, the slavery relation, and the patriarchy relation. She concludes that the question of slave marriage involved multiple intersecting dimensions and social relations that went far beyond the simple standoff between metropolitans and colonists over the slaves' right to marry. Stephen's imagined Christian slave community, based on a hierarchical and orderly chain of continuous patriarchal relations beginning with the master as supreme but benign paterfamilias, wholly assumed such a right, but was an anachronistic pipedream at best, a nightmare at worst. West Indian slavery simply did not concede the level of (shared) humanity to the enslaved that would be required to make this—dubious—vision come true.

Our second article, by J. M. Beattie, is an important contribution to the recent literature on felony trials in the eighteenth century. As Beattie notes, there has been little systematic scholarly work on the way London mag-

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istrates carried out their duties to conduct the pretrial procedures that laid the foundation for these felony trials. His article examines the innovations introduced to this aspect of criminal administration by Sir John Fielding, who was able to make his house in Bow Street the center of policing and prosecution in London during his tenure there (1754–1780) due to the financial support of the government. Beattie argues that Fielding's practice of "public justice" profoundly affected the nature of pretrial procedures. In his effort to strengthen the prosecution of serious crime in the capital, Fielding created what was essentially a new stage of "re-examinations" carried out in a court-like setting. He encouraged public attendance and press reporting of his pretrial proceedings. Fielding's intention was to send strong prosecution cases to the Old Bailey. The result was to encourage the further "judicialization" of the pretrial process. The extended procedures Fielding introduced also may have helped inspire one of the striking changes in the criminal trial in the eighteenth century—the increase in the number of lawyers acting as either prosecution or defense counsel at the Old Bailey in the years after Fielding's death.

In our third article, Simon Devereaux shifts the focus from pretrial procedures to the imposing of the royal pardon. The apparent willingness of several English capital convicts in 1789 to be hanged rather than accept pardons on condition of transportation to New South Wales sets the stage for his analysis. Devereaux considers the convicts' possible motives, including socio-economic and political protest, contempt for the decaying monarchical and religious bases of pardon procedure, genuinely suicidal impulses, and a simple desire to "die game"—that is, to die expressing defiance rather than displaying the fear and submission that the criminal justice system expected of all capital convicts, whether hanged or pardoned. While some of these concerns may have informed this passing defiance, he argues that their main inspiration was probably a shrewd grasp of the tensions and contradictions that beset the operation of English criminal justice during the last decades of the eighteenth century. Confronted with an unprecedented scale of convicted capital crime, government and judicial officials struggled to achieve a system of scaled punishments within a formally inflexible criminal code. In seeking to find legally acceptable means of obliging capital convicts to accept pardons on a specific condition—of forcing them to submit to the hierarchy of punishments that best suited their purposes—officials strove to create (and occasionally argued over) the legal means of precluding defiance of their authority. In so doing, ultimately, they managed to further silence voices of convict resistance.

Our fourth article, by Robert H. Churchill, launches this issue's forum, "Rethinking the Second Amendment." Churchill argues that in British North America, statute law departed from English precedent by mandat-

ing gun ownership for all free white men and requiring almost all free men to participate in regular military training. American militia laws also incorporated a language that described the "keeping" of arms as a practice incumbent upon every individual member of the body politic. Colonial legislatures exercised their military powers to impress guns at moments of public emergency, but Churchill contends that this practice was on the wane by the end of the eighteenth century. Most important, at no time between 1607 and 1815 did the colonial or state governments of what would become the first fourteen states exercise a police power to restrict gun ownership by members of the body politic. American law, he argues, thus recognized a zone of immunity surrounding the privately owned guns of citizens. In the late eighteenth century, free white men were accustomed to keeping guns, and American legislators' respect for the practice suggests that they perceived a right to keep arms. In this context, some Americans interpreted the Second Amendment as affording constitutional recognition of this right. This interpretation was contemporaneous with the amendment's framing and was recognized as authoritative in the first years of the nineteenth century. In separate comments, David Thomas Konig, William G. Merkel, and Saul Cornell all assess Churchill's contribution to the contentious debate over the original understanding of the Second Amendment. The author's response rounds out the forum.

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.h-net.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.

David S. Tanenhaus
University of Nevada, Las Vegas

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