

In This Issue

This issue of the *Law and History Review* concentrates upon seventeenth- and eighteenth-century legal history, emphasizing both the procedural and the public aspects of law in their impact upon popular attitudes, habits, and not least, political understandings. Articles in the issue examine court procedure and trials, both famous and obscure, for what they can tell us about the period's European (English and French) legal culture. Our forum, meanwhile, examines an eighteenth-century debate crucial to one of the most fraught issues in contemporary American popular culture—the right to bear arms.

Our first article, by Sean Kelsey, offers an analysis of the unprecedented judicial proceedings conducted at Westminster in 1649 against Charles I, the anointed sovereign of three kingdoms. Kelsey finds that this exceptional trial followed the forms and formalities of due legal process. The trial was conducted in a High Court of Justice erected, nominally at least, by parliamentary statute. The drawing of charges against the king and the management of his prosecution, the examination of witnesses and other evidence against him, and the eventual sentencing and condemnation of the accused all emulated normal legal procedure. Kelsey notes that several of the procedural aspects of the trial appear to have prompted significant debate among the king's judges. He concludes that these debates reflected political divisions among the members of the High Court of Justice over the constitutional settlement of England attendant on the outcome of the trial. The debates also help demonstrate just how far many trial commissioners were prepared to go to avoid regicide and to preserve the incumbent monarch.

Our second article, by Antony Simpson, considers another historic English trial, the 1730 trial of Colonel Francis Charteris at the Old Bailey for the capital crime of raping Ann Bond. The author's goal is to analyze the case to illuminate social themes of the age, but also to use the case as a means to assess the advantages and disadvantages of using "famous" or "sensational" trials as historical exemplars of their eras' legal practices. The Charteris trial was indisputably one of the most sensational of its time. The widespread attention it attracted generated unusually detailed documentation and provides the historian with a means to examine the case at a number of levels. Simpson first considers the trial itself as a media event and social artifact of its age, dramatized by the character and political affilia-

tions of the defendant. Second, the well-documented procedures used in this trial are compared to those customarily applied in similar prosecutions in the same period. Simpson's analysis suggests that the conduct of this trial, and the overall progress of the case through the criminal justice system, was both well-publicized and quite atypical. He concludes that one legacy of the *Charteris* case lay in misinforming the public about the nature of prosecutions for this crime and their handling by the judicial system, suggesting that this legacy perhaps had a lingering effect on popular understanding throughout the remainder of the century.

In our third article, Amalia Kessler explores the role of norms in the law through an archival study of a merchant court in eighteenth-century Paris. Situating the court within a web of interlocking communal institutions, including guilds, confraternities, and parish churches, Kessler argues that the court was animated by norms of Christian virtue shared by all these institutions. These norms mandated that love of others take precedence over love of self and disdained commercial activity as a manifestation of sinful self-interest. Because public adherence to norms of Christian virtue was necessary to maintain social standing in the Old Regime, the merchant court actively sought to enforce such norms through its substantive decisions, evidentiary procedures, and legal reasoning. Anticommercial norms of Christian virtue, Kessler continues, nevertheless served to promote commercial investment and growth by lowering transaction costs. By encouraging merchants to place communal well-being above short-term self-interest, these norms facilitated the development of long-term, trust-based commercial relationships, which in turn promoted the transmission of vital information at relatively low cost. And because the merchant court, in enforcing these norms, could tap into a preexisting network of communal institutions to which it was integrally linked, it was able cheaply and effectively to monitor and regulate commercial behavior.

This issue's forum launches the *Law and History Review* on the hazardous seas of Second Amendment debate, offering a discussion of the historically appropriate context for the Second Amendment's "right of the people to keep and bear arms." In his lead article, David Konig argues that the present debate about the amendment's meaning, which has largely coalesced around two mutually incompatible normative positions, is ahistorical. Neither the "collective" model nor that of an individual right is appropriate to the eighteenth-century debate on the constitutional right in question. In their place, Konig presents a model more consistent with eighteenth-century thought—that of an individual right exercised collectively, much like voting or service on a jury, all of which were "necessary to the security of a free state." This right was articulated in a context now largely ignored and missing from the present debate but well known to consti-

tutional polemicists framing the Constitution and the Second Amendment. Reflective of the struggle of provincial Britons in Scotland who had been disarmed and then denied the right to constitute their own militia, eighteenth-century debate over the right to bear arms rested on two mutually dependent assumptions: First, that no militia could serve its purpose without an armed citizenry possessing the right to keep and bear arms; and second, that such a right existed as a means to assure the effectiveness of the militia. Commentaries by Saul Cornell and by Richard Uviller and William Merkel explore Konig's contentions. The forum concludes with a response from the author.

As always, the issue concludes with a comprehensive selection of book reviews. As always, too, we encourage readers to explore and contribute to the American Society for Legal History's electronic discussion list, H-Law. Readers are also encouraged to investigate the *LHR* on the web, at <http://www.historycooperative.org>, where they may read and search every issue, including this one, published since January 1999 (Volume 17, No.1). In addition, the *LHR*'s own web site, at <http://www.press.uillinois.edu/journals/lhr.html>, enables readers to browse the contents of forthcoming issues, including abstracts and, in most cases, full-text PDF "preprints" of articles.

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