In This Issue

In this issue of the *Law and History Review* we put on display the results of original legal-historical research undertaken across widely differing chronological and empirical settings. Although diverse in methodology and approach, these articles are united in demonstrating the virtues of sustained careful inquiry into matters basic to our field—the origins and implications of early common law doctrines; the social relations and power relations always present and implicated in the processes of legal institutions, and in the thought and behavior of lawyers; the revelation of new meanings in ancient ideas and texts long taken as settled.

Our first article, by Joseph Biancalana, addresses actions on writs of covenant in the common law courts from 1200 to 1330. The article poses two crucial questions, both with important implications for the common law of covenant in much later periods. First, when and why did the courts impose a requirement that plaintiffs produce a writing of the covenant? Second, what was the remedy in covenant and did it change? Biancalana tackles these questions of proof and remedy by dividing claims made by writ of covenant into three types: proprietary claims, claims of special obligation, and claims to freehold. When plaintiff made a proprietary claim he needed a writing. The remedy was the real remedy of putting plaintiff in seisin. When plaintiff made a claim of obligation he needed only suit, until the later 1270s when suit and wager of law was removed from a number of writs, including covenant. The remedy, from fairly early on, was damages. Claims to freehold presented special difficulties. Analysis of claims to freehold reveals uncertainty as to whether they were proprietary claims or claims of obligation, and hence uncertainty of remedy. The persistence of uncertainty, Biancalana concludes, resulted in the early fourteenth century in a decline in reliance upon covenants and covenant actions in favor of conditional bonds and debt.

Our second article, by Joan Sangster, examines Aboriginal teenaged girls sentenced to a reform school, the Ontario Training School for Girls (OTSG), from its founding in 1933 to 1960. Sangster finds that the percentage of First Nations girls in OTSG increased steadily over these years, mirroring the growing overincarceration of all Aboriginal peoples and exposing the state's increasingly interventionist approach to child welfare within Aboriginal communities. Drawing on feminist, materialist, and critical race theory, Sangster argues for an intersectional analysis of the unequal power dynamics

of class, gender, and race underpinning the youth justice system of this period. The treatment of Native girls in some senses paralleled that of poor, working-class non-Native girls sentenced to OTSG, particularly the emphasis put on sexual immorality as a cause of incarceration. However, the diagnosis and treatment of Native girls was also distinct, shaped by the destructive relations of racism and colonialism. Native girls were perceived through the lens of cultural racism as passive and unreachable, even though they and their families actively responded to their sentencing and incarceration by adapting to, negotiating with, and also protesting the imposition of Euro-Canadian legal norms on Native communities.

Our third article, by Susan Carle, is the subject of this issue's forum. In its original form as a scholarly manuscript, Carle's article was also the winner of the Association of American Law Schools' Best Scholarly Paper Award for 2001. In her award-winning essay, Carle systematically explores vital aspects of the legal history of the NAACP, overshadowed until now by scholarly concentration on the familiar story of the road to *Brown*. As Carle notes, that story has played a key role in American conceptions of how to achieve social change through law. Yet despite the vast literature on the NAACP, no one has explored how the early NAACP navigated traditional legal ethics strictures in developing its innovative test case litigation strategies. This article examines that question, focusing on the activities of the elite white New York City practitioners who dominated the NAACP's first national legal committee between 1910 and 1920. Carle shows that the committee experimented with litigation strategies that included soliciting clients, advertising legal services to strangers, and staging facts for test cases at the same time as its members were involved in local bar associations that were enforcing legal ethics prohibitions against exactly these practices—solicitation, advertising, and "stirring up" litigation. Carle explores the world view that allowed early NAACP lawyers to champion innovative legal work while simultaneously supporting the bar's traditional views on legal ethics. She argues that the committee members' universalist understanding of the public good allowed them to endorse the NAACP's techniques while sitting on bar committees that penalized other practitioners for similar conduct and that their professional and social privilege gave them such freedom to maneuver around inconvenient legal ethics norms in experimenting with new forms of public interest practice. David Wilkins provides the commentary on Carle's article. The forum is completed by her response.

Our final article is by Stefan Jurasinski, a doctoral candidate in English at Indiana University. It takes the form of an extended commentary upon interpretation of chapter 56 of Cnut's "secular" laws (referred to by editorial convention as II Cnut), promulgated at Winchester in 1020. Accord-

ing to the traditional interpretation of chapter 56, offered in every edition and study of Cnut's legislation from Lambarde's *Archaionomia* (1568) to Whitelock's *English Historical Documents* (1955), the law requires that persons guilty of homicide be abandoned to the vengeance of the victim's kin. Jurasinski contends that such an interpretation was never supported by the evidence of the manuscripts and that the law more plausibly refers to the return of the corpse to the kin, a legal ceremony present in the earliest legal literature of Scandinavia and the Continent.

This issue presents our normal complement of book reviews. As always, we encourage readers of the *Law and History Review* to explore and contribute to the American Society for Legal History's electronic discussion list, H-Law, which offers a convenient forum for, among other matters, discussion of the scholarship on display in the *Review.* We also encourage readers to explore the on-line edition of the journal at <http://www.historycooperative.org/home.html>, where they will find highly refined search capacities and opportunities to cross-link to all other cooperative members.

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