In This Issue

This issue of the *Law and History Review* continues and broadens our examination of topics in the culture and politics of pre-twentieth-century anglophone law, civil and constitutional. Our first article, by Stephan Landsman, explores the professional and social dynamics of the resort to expertise in trial testimony through an investigation of the use of medical experts as witnesses in Old Bailey criminal cases, 1717–1817. Partisan expert witnesses, selected, prepared, and presented by the parties, are a familiar feature of Anglo-American judicial proceedings. Landsman's data indicate, however, that, notwithstanding the growing adversarialism of courtroom confrontations during the period under examination, the testimony of medical witnesses was strikingly nonpartisan. Just as important, Landsman finds a subtle but nevertheless perceptible increase in the authority ascribed to medical evidence, coupled with a demand that medical testimony evince a degree of certainty not unlike the beyond-a-reasonable-doubt standard then coming into use. He invites us to consider the relationship between expert witness behavior and the constraints of eighteenth-century English medical practice and rules of scientific discourse that emphasized a reticent "gentlemanly" demeanor.

In our second article, David Schneiderman considers the extent to which late nineteenth-century anxieties about "class" rule, familiar to students of *Lochner* era jurisprudence in the United States and no less current at that time among British elites, supply an interpretive paradigm of use to students of Canadian constitutional law (and, by extension, to students of anglophone constitutionalism generally). It is conventional wisdom among Canadian scholars that late nineteenth-century Canadian constitutional discourse did not concern itself with the kinds of considerations that animated U.S. judicial interpretation in the *Lochner* era. Schneiderman argues that, in fact, those considerations can be detected in the Canadian case, specifically in judicial interpretation of the British North America Act undertaken by the Judicial Committee of the Privy Council, the court of appeal for the British empire. In the *Local Prohibition* case (1896), the Judicial Committee, with Lord William Watson at its head, denied Canada's national government the ability to "prohibit" trade under the federal power to "regulate" trade and commerce. Schneiderman contends that the decision was faithful to the edicts of constitutional interpretation in a federal regime outlined by A. V. Dicey in the *Law of the Constitution,* which

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called for careful policing of the bounds of legislative interference with private property and individual rights. Thus he connects the constitutional discussion to the intellectual currents of late nineteenth-century Britain and, through Watson and the Judicial Committee, to the wider empire.

The relationship between elite anxieties and the design of constitutional structures is also the subject of this issue's "forum" section, which on this occasion takes the form of an extended scholarly exchange. The lead article, by Shlomo Slonim, offers a critical reexamination of Gordon Wood's interpretation of the motivation of the Framers of the United States Constitution, first broached in Wood's foundational study, *The Creation of the American Republic, 1776–1787* (Chapel Hill, 1969), and sustained in his subsequent writings. Slonim argues that the documentary record fails to support Wood's "neo-Beardian" contention that the primary motive force behind the Convention was the Federalists' felt need to arrest the turbulent, untamed democratic spirit prevalent in the post-Revolution states; nor does it sustain Wood's conclusion that the Founders "failed miserably" in that task. The Founders' goal, Slonim argues, was to furnish the United States with the capacity for effective government lacking under the Articles of Confederation. Social conditions in the states were regarded as a matter for the states, provided only that federal authority was not infringed. In a courteous but vigorous response, Gordon Wood contends that Slonim's critique misinterprets his arguments and is built on a misunderstanding of both the political context and the larger significance of the documentary records that it cites. Wood states that in his zeal to make a case for the farsightedness of the Founders, Slonim has marshaled straw men and has evaded evidence that does not fit his case. He has also failed to take into account the work of other historians, such as Jack Rakove and Charles Hobson, that has refined and reinforced Wood's original arguments. In a brief rejoinder, Shlomo Slonim responds as courteously, but as vigorously, to Gordon Wood's rebuttal of his argument.

The final article is an extended commentary that brings original historical research to bear on a matter of continuing scholarly and popular fascination in the United States, the legal regulation of gun ownership and its constitutional legitimacy. Sadly, Michael Bellesiles reports, scholarly debate over the origins of the Second Amendment has degenerated in the last few years into an acrimonious squabble between two hostile camps. Adherents of the self-described "standard model" or "new consensus" have constructed a paradigm of legally sanctioned individual gun ownership as an uninterrupted American tradition. Many others posit an alternative "collective rights" reading of the Second Amendment that focuses primarily on the militia system in early America. Each side caricatures the other while developing narratives of early American history supportive of current pol-

icy goals, willfully attempting to create "useful" pasts that meet their particular conceptions of the origins of the Second Amendment. But the issue is not and never has been the false dichotomy of absolute rights to gun ownership versus confiscation. Legally and historically, Second Amendment questions revolve around degrees of regulation. Hence, Bellesiles's essay explores the statute law context of the second amendment, seeking through an examination of the legislative record to determine both the content and intent of early American gun laws and their relationship to contemporary social values. His tentative conclusion is that early American legislatures shared British perceptions that gun ownership should be precisely constrained in law.

As is our normal practice, the issue also presents numerous book reviews and the next in our continuing series of electronic resource pages. Readers of the *Law and History Review* are encouraged as always 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.* Readers will also find the address of the *Review*'s own web page displayed on the issue's contents page. Our next journal's electronic resource page will offer a brief tour of this site and our plans for its development.

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