

## Maurer School of Law: Indiana University Digital Repository @ Maurer Law

---

Articles by Maurer Faculty

Faculty Scholarship

---

1990

# Book Review. From Medieval Group Litigation to the Modern Class Action by Stephen C. Yeazell

Richard M. Fraher

*Indiana University School of Law - Bloomington*

Follow this and additional works at: <http://www.repository.law.indiana.edu/facpub>

 Part of the [Legal History Commons](#), and the [Medieval History Commons](#)

---

### Recommended Citation

Fraher, Richard M., "Book Review. From Medieval Group Litigation to the Modern Class Action by Stephen C. Yeazell" (1990).  
*Articles by Maurer Faculty*. 2511.

<http://www.repository.law.indiana.edu/facpub/2511>

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).

scientists. His book, after an extended introduction, contains two parts that address John Calvin's thought and a conclusion that explores recent discussion among political scientists about the origins of modernity.

Most of Hancock's introduction is devoted to presenting and criticizing how earlier historians of political thought, notably J. W. Allen, Quentin Skinner, and Michael Walzer, have analyzed and assessed Calvin's contribution to modern political theory. The bulk of the first major part explores the political ideas in Calvin's *Institutes of the Christian Religion*, especially the difficult last chapter (IV, 20) on civil government. Quoting liberally from many parts of the *Institutes* to illuminate Calvin's meaning, Hancock discusses the relation of religion and politics, Christian freedom and spiritual government, forms of government, authority and resistance (notably the right and duty of inferior magistrates to resist tyrannical monarchs), law and ethics, fallen reason and conscience. This section seems the strongest part of Hancock's work. He has read the text closely, and his writing is thoughtful and dense and sometimes shows a fine turn of phrase, although he is too fond of paradox. The second part, "Calvin's Antitheology: Transcendence without Another World," tries to relate Calvin's thought on politics to his theology of justification, sanctification, and man as the image of God. Here I felt Hancock's treatment was more elaborate than his purpose required. His conclusions try to rehabilitate but soften and refine Emile Doumergue's argument that Calvin was one of the founders of the modern world. To this end Hancock enters a prolonged critique of the theories of modernity developed by Leo Strauss, Karl Löwith, Eric Voegelin, and Hans Blumenberg, especially the tendency to equate modernity with secularism.

This book will please theologians and political scientists more than historians. Hancock writes a sort of abstract intellectual history that is no longer acceptable. There is nothing on excommunication, the problem that long bedeviled Calvin's relations with the Genevan government. There is nothing on Calvin's training as a lawyer and how he used it in the service of the Genevan government. Although there are detailed discussions of how recent political scientists understand Calvin, I noted references to only five contemporaries of Calvin. Under "B" in the index, for instance, there are no references to Theodore Beza, Martin Bucer, Heinrich Bullinger, Basel, or Bern. Indeed, I cannot recall Geneva itself being mentioned in the text. Can one understand Calvin without a historical context? His *Institutes* is also treated in a vacuum. Hancock ignores Calvin's letters, which often deal with concrete political problems, such as the persecution of French Calvinists. Calvin's Old Testament commentaries often touch political questions, but Hancock cites only a couple of secondhand references from Doumergue's biography. One cannot fault Hancock for not using William Bouwsma's recent *John Calvin* (1988), but Hancock could have profited from various works of André Bièler, Josef Boháček, Alexandre Ganoczy, Robert

Kingdon, William Monter, T. H. L. Parker, Charles Partee, and Suzanne Selinger.

JOHN PATRICK DONNELLY  
Marquette University

STEPHEN C. YEAZELL. *From Medieval Group Litigation to the Modern Class Action*. New Haven: Yale University Press. 1987. Pp. x, 306. \$33.50.

Stephen C. Yeazell's work traverses a vast chronological canvas, tracing the evolution of group litigation from the ecclesiastical courts of Canterbury in 1199 to the 1966 redaction of Federal Rule of Civil Procedure 23, which governs class actions in the federal courts. The book is essentially a narrative that breaks the history of Anglo-American group litigation into three periods: medieval, early modern, and modern. According to Yeazell, medieval law courts routinely entertained litigation involving diverse social groups without recognizing anything remarkable about treating unincorporated groups as litigative entities. The author found no medieval doctrine to explain or justify group litigation. During the sixteenth and seventeenth centuries, in contrast, the variety of group litigation shrank, the phenomenon itself began to be challenged, and the chancellors began to grope for a theoretical justification for permitting unincorporated groups to litigate. The answer lay in the idea of representation, which according to Yeazell was just creeping into the English consciousness. Finally, in the modern era, group litigation began to require elaborate justification because modern Anglo-American legal culture rests on individualistic assumptions rather than collective ones. As a result, group litigation lay nearly completely dormant during the nineteenth and early twentieth centuries until it was resuscitated in the guise of the class action. Yeazell's work makes a contribution to the literature of legal history by tracing the evolution of legal doctrines surrounding group litigation and, perhaps more importantly, by attempting to underscore the connection between this relatively narrow area of procedural law and broader social realities and ideas about representation.

At the intersection of judicial procedure and social and intellectual history, however, the author's work falls short of what he set out to accomplish. Yeazell painstakingly unearthed the legal doctrine concerning group litigation from case reports spanning eight centuries, but he does not do a convincing job of fitting the evidence from the case reports into the context of social and intellectual history. In part his failure results from reliance on some dubious secondary authorities. For example, Yeazell reiterates Susan Reynolds's assertion that "no system of medieval law developed any concept of legal personality or corporation before 1300" (p. 74). This statement would have dumbfounded the canonists of the twelfth century, who described the *universitas* or corporation as a *persona ficta*. Yeazell's reliance on Reynolds reflects unawareness of a rich

historical literature with continental roots. Like many lawyers before him, Yeazell disdains to recognize the existence of any ideas or institutions except those that appeared in the English case records. Because group litigation was in large part a phenomenon of ecclesiastical courts and chancery courts, both of which relied on the jurisprudence of Roman and canon law, and since ideas about representation, incorporation, and agency loomed large in the discourse of civilians and canonists before 1200, Yeazell's preoccupation exclusively with sparse English records impoverishes his analysis. In discussing group litigation in medieval, early modern, and more recent legal doctrine, Yeazell recognizes the vital importance of ideas about representation, but he fails to refer to a single thread of influence outside the Anglo-American tradition.

This book is a useful guide to the procedural ancestry of the modern class action. It is not a useful analysis of the social and intellectual history of groups, representation, and litigation.

RICHARD M. FRAHER  
School of Law,  
Indiana University

RONDO CAMERON. *A Concise Economic History of the World: From Paleolithic Times to the Present*. New York: Oxford University Press. 1989. Pp. xiv, 437. \$39.95.

The one-volume economic history of Europe from earliest times to the present, which seemed doomed to extinction, is making a comeback. The recent stimulating effort by Nathan Rosenberg and L. E. Birdzell, Jr., *How the West Grew Rich: The Economic Transformation of the Industrial World* (1986), was a milestone in this resurgence, as I noted in these pages (*AHR*, 91 [1987]: 96–97). Now Rondo Cameron has offered another more systematic survey, which he modestly describes as “a textbook for an upper division undergraduate course in European economic history” (p. vii). Well known for his seminal work on French economic development in the nineteenth century and for comparative studies in the history of banking and longtime editor of the *Journal of Economic History*, Cameron is well positioned to summarize and interpret the scholarly work of a generation.

An economist by training, Cameron follows a clear historical organization and has a historian's appreciation for factual accuracy. Beginning with an introductory chapter that outlines some basic economic concepts with admirable clarity, Cameron treats in successive chapters antiquity, medieval Europe, the non-Western world before 1500, European overseas expansion, and mercantilism. These chapters focus on well-established problems in economic history—for example, the rise of medieval towns, the price revolution, Spanish economic decline, agriculture and industrial technology, and the use of standard historical methods—while drawing gracefully on economic concepts

as needed. Turning to the era of industrialization in the remaining sixty percent of his work, Cameron provides in two interrelated chapters a general conceptual overview of modern economic growth and a dynamic historical account (to 1914) of its main determinants, population, resources, technological change, and social institutions. Case studies of industrial development in all European nations (plus the United States and Japan) compose two more chapters, as do the world economy (including imperialism) and three “strategic sectors” in the nineteenth century: agriculture, banking, and the state. The twentieth century is treated with an overview and two narrative chapters on the interwar and postwar eras.

Cameron has performed his ambitious task well. The writing is economical, precise, and eminently understandable. Differences in interpretation and major historical debates are noted and evaluated but without overwhelming the author's own judicious interpretations. Graduate students (and nonspecialist professors) will find this a most valuable guide and reference work. The bibliography is exceptionally well selected and annotated, for Cameron knows the literature and evaluates it with a judiciousness that infuses the entire book. There is also an abundance of illustrations, useful for the student and rare in general economic histories.

Certain limitations may also be noted. The “world” in the book's title is largely a misnomer, although there is enough non-European material to make it understandable. The chapters on the Middle Ages and the early modern period seem to parallel older treatments, with a heavy stress on political factors and government policy in explaining regional and national variations in economic performance. The chapters on nineteenth-century industrialization are the best in the book. The general stress is on the gradual, nonrevolutionary chapter of industrialization and the wealth of alternatives open to different countries in their march toward the industrial world. This stress grows out of Cameron's own work and reinterpretations, and it generally leads to more balanced judgments of the different national experiences. For example, Cameron effectively presents the revisionist view of generally good French economic performance in the nineteenth century, which he has done much to spread.

Cameron's strong opposition to the whole idea of an industrial revolution in Great Britain (or anywhere else) on the grounds that economic change was gradual and spotty, however, seems overdone. The question is complex and at least partly semantic, but it should be pointed out that Cameron's emphasis on technological change and “epochal innovation” (p. 195) in fueling long-term economic development actually fits rather well with the original concept of the industrial revolution as an interrelated cluster of revolutionary technological breakthroughs, of which the new “factory system” was the overarching expression and summation. The fact that macroeconomic rates of national economic growth moved up gradually and that agricul-