Michigan Law Review

Volume 81 | Issue 4

1983

Law in Colonial America: The Reassessment of Early American Legal History

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LAW IN COLONIAL AMERICA: THE RE-ASSESSMENT OF EARLY AMERICAN LEGAL HISTORY

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LAW AND SOCIETY IN PURITAN MASSACHUSETTS: ESSEX COUNTY, 1629-1692. By *David Thomas Konig.* Chapel Hill: The University of North Carolina Press. 1979. Pp. xxi, 215. $21.

DISPUTE AND CONFLICT RESOLUTION IN PLYMOUTH COUNTY, MASSACHUSETTS, 1725-1825. By *William E. Nelson.* Chapel Hill: The University of North Carolina Press. 1981. Pp. xi, 212. $21.

FAITHFUL MAGISTRATES AND REPUBLICAN LAWYERS: CREATORS OF VIRGINIA LEGAL CULTURE, 1680-1810. By *A. G. Roeber.* Chapel Hill: The University of North Carolina Press. 1981. Pp. xx, 292. $24.

In a profession whose practitioners are not ordinarily distinguished by a capacity for silence, historians have kept one secret fairly well. The legal variety of Clio's calling is being resurrected. Ever since the late 1960's historians in increasing numbers have discovered American law as an object worthy of close scrutiny.[1] Nowhere is the resurrection more evident than in the work now under way on the colonial origins of our law. Indeed, the outpouring of books, articles, dissertations, theses, and papers, of which the three books under review here are but more recent examples, threatens to turn legal history into the new wave in early-American studies. That is an encouraging sign. It holds the promise that, finally, the investigation of legal things may someday be joined to the larger field of colonial history, where it properly belongs. Additionally, it serves notice of the need for an occasional evaluation of the direction and content of current research. The appearance of Messrs Konig's, Nelson's and Roeber's books provides one such opportunity.

For legal historians, the central theme of the colonial period has been to

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1. Fixing a date for such beginnings is always difficult to document precisely, and so when the so-called "second revival" of legal history started is subject to debate. A useful index is when the architects began to write in terms of new beginnings. By that measure, the late sixties and early seventies marked the start of a renewed interest in legal history. *See, e.g.,* Flaherty, *An Introduction to Early American Legal History,* in ESSAYS IN THE HISTORY OF EARLY AMERICAN LAW 3 (D. Flaherty ed. 1969); 5 PERSPECTIVES IN AMERICAN HISTORY (D. Flaherty & B. Bailyn eds. 1971); Gordon, *Introduction: J. Willard Hurst and the Common Law Tradition in American Legal Historiography,* 10 LAW & SOCY. REV. 9 (1975).

emphasize the transfer and transformation of common law in its American setting. From the 1880's to the 1960's, that accent caused them to regard colonial law in a particular way. First, by training and temperament, they were inclined to investigate what Robert W. Gordon has called the internal aspects of law; that is, to treat it as an independent entity, whose autonomous features must be understood.[2] Their concern was therefore with the development of colonial precedents, procedures, courts, and jurisdictions, and in explaining these technicalities, they assumed, sometimes quite without compelling proof, that certain English rules or customs dictated direct American borrowings. Attorneys, law professors, or judges, they frequently glossed over the seventeenth century, which they regarded as populated with legal primitives, preferring instead to devote their energies to discovering the circumstances leading to such things as the rise of the professional bar. Next, these scholars, because they trained or taught at the great eastern law schools, tended to equate the New England and the Middle Colonies with the center of the colonial universe. Thus their work took on a decidedly Yankee flavor to the point where it sometimes seemed as though nothing of importance occurred south of Pennsylvania. Finally, they undertook the printing of the stuff of legal history — statutes, court records, and other such documentation. Again, with a few noteworthy exceptions, New England sources comprised the bulk of what was rendered into print.[3]

The attention given to the autonomy of early American law had a consequence that was as predictable as it was harmful. By stressing technicalities, legal scholars engendered the myth that only they who spoke the special language of law were capable of interpreting the law's history to others. It is quite understandable how such men, given their orientation, should seek to cloak their discipline with professional mysteries. Moreover, the nature of law, like that of natural sciences, does require special skills of its historians which others obviously do not need. But, by making the mysteries and skills appear so unusual, if not downright arcane, they erected a body of knowlege so peculiar that it seemed to say almost nothing to the uninitiated colonialist. And so, colonial historians tended to ignore their period's legal history and its sources altogether.

While their emphasis now seems misplaced, the old legal scholars did make important contributions. They were the pioneers who pointed ways for others to follow. Many of their institutional studies are now classics that are fundamental to modern students' grasp of the outlines of early legal history. What is more to the point of this essay, however, is the effect of their interpretations. There is a direct link between disaffection with the older views and the resurgent interest in doing the colonies' legal history.

What are the impulses that caused the dissent? In the first place, even in its heyday, internal legal history never lacked critics, just as there were always venturesome scholars who followed independent directions. Of them, none has been more influential than James Willard Hurst. A prolific author, his writings have a transcendent importance because of their singular

2. Gordon, *supra* note 1, at 9-11. Gordon's article also provides a general summary of the growth of American legal historiography down to 1975, and it is upon this summary that my short sketch rests.

3. *See* Flaherty, *supra* note 1, at 20-32.

insights. The most valuable of these for the colonial era is one that now seems quite obvious: there is more to the American legal system than its rules and institutional buttresses. Apart from the technicalities, law has a social function. It defines and governs the social order, but not in splendid isolation; instead, it is susceptible to economic, political, or social imperatives because these are the obligations that give it definition. Thus to study even the most ordinary components of the legal order through time is to illuminate society's values, as well as how they change with the passage of years.[4]

David H. Flaherty also had a hand in the revival. His article, "An Introduction to Early American Legal History," which opens the collection, *Essays in the History of Early American Law*, was a skilled survey of the writings on colonial law as of 1969. He repeatedly drew attention to the gaps in existing knowledge while he simultaneously suggested topics or sources that awaited exploration. Among other things, he reminded his readers that much remained to be done on the seventeenth century and the southern colonies. The entire essay reads as a brief for fresh conceptions and approaches to the legal problems of the settlement, growth, and maturing of colonial America. Flaherty was also among the first to recognize the possible application of Hurst's intuitions to colonial legal studies. Both in the "Introduction" and elsewhere he advanced the proposition that with careful employment Hurst's ideas might take colonial legal history "beyond the traditional framework."[5]

Even as Flaherty wrote, other changes were afoot. A harbinger of things to come was the publication of a spate of New England town studies. Their relevance to reviving interest in colonial law lay in their advocacy of what is now called "the new social history" as a way of interpreting the past.[6] The new social historians concern themselves mainly with the past's little people, and in writing history from the bottom up, they accord weight to every fact, irrespective of its significance. What makes such a democracy of data manageable is the reliance upon quantitative methodologies first developed by French and English historical demographers. The new learning also draws intellectual sustenance from the social sciences, principally cultural anthropology, economics, and psychology, as well as sociological theories about the family and modernization. Given the serial nature of court records, plus some social historians' own employment of them, it was inevitable that scholars with interest in law should be attracted to the new methodologies. After all, these methods, with their reliance upon statistical sampling techniques and computers, did ease the tasks of sorting through

4. *See* Hurst, *The Law in United States History*, 104 PROC. AM. PHIL. SOCY. 518, 518-20 (1960); Hurst, *Legal Elements in the United States History* in 5 PERSPECTIVES IN AMERICAN HISTORY 3, 73-74 (1971); *James Willard Hurst: A Bibliography*, 10 LAW & SOCY. REV. 325 (R. Eskin & R. Hayden Comps. 1976).

5. Flaherty, *supra* note 1, at 38. *See* Flaherty, *An Approach to American Legal History,* 14 AM. J. LEGAL HIST. 222, 233-34 (1970).

6. Five of these were published in 1970. They were subsequently reviewed at length by John M. Murrin in II *Hist. & Theory* 226 (1972). Those books were also to influence southern colonial history. The major statement of the new social history for the colonial South is THE CHESAPEAKE IN THE SEVENTEENTH CENTURY: ESSAYS ON ANGLO-AMERICAN SOCIETY (T. Tate & D. Ammerman eds. 1979).

great masses of records. Then too, some of the theories undergirding social history seemed to form links to Hurst's ideas. Here were techniques and thinking that could aid the quest for a basis upon which to reassess early American law, and they soon began to influence how legal history is written. This effect is clearly seen in the work of Professors Konig, Nelson, and Roeber.

In *Law and Society in Puritan Massachusetts,* David Konig investigates the growth of law in Essex County. He is concerned not only, as he puts it, with "the internal development of legal doctrine and procedure, but [with the discovery] of the demands that social, economic, and political contingencies placed on legal institutions and how those institutions changed in order to become important in society." Also, he examines "the position of the legal system in a society with a multiplicity of institutional power sources," as he develops the theme that "the county magistracy and legal system must be viewed as serving many of the functions previously identified with the town or congregation" (p. xiv).

Konig has limited the study to the years between the founding of Massachusetts and the crown's grant of the second charter. What is striking about Essex in those years was the Essexmen's propensity to sue one another. For example, he finds that between 1672 and 1684, county residents filed some 3000 actions in the courts at Ipswich and Salem, a remarkable number indeed, when the reader recalls the expense of filings and the dangers of travelling about in a colony wracked by Indian wars.

For Konig, the question becomes why so much litigation? Traditionally, Puritan historians have maintained that such contentiousness evidenced the decline of missionary zeal among Bay colonists. As that sense of piety eroded, settlers turned more aggressive and acquisitive, and they looked to the courts to resolve their differences, thereby making those bodies instruments of restraint. Konig casts that formulation aside, preferring to replace it with another possibility. An increase in the amount of litigation does not prove Massachusetts Bay to have been a pathological society; instead, it indicates the movement toward social stability.

Konig makes the point that from the start the saints always had courts. In those early years, when the sense of mission was keenest, the legal system served largely to reinforce common ideals. In time, the force of those ideals slackened, and with that loosening came the transformation of the legal order. It became the pattern after which a coherent society might be fashioned. At that point, it was the chief conservator of order as well. Lawsuits were the agency of change, and rather than being a signal of decay or a way to exact personal revenge, litigation supplied the Puritans with the means to resolve ordinary community problems or to gauge acceptable personal behavior. Constant resort to the courts also was the device for testing what was useful about the English legal heritage in an American setting.[7]

Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825, grew out of William E. Nelson's earlier investigation of how common

7. This summary derives from my earlier review of Konig's book. *See* Billings, Book Review, 53 NEW ENG. Q. 264 (1980).

law was Americanized.[8] Like Professor Konig, Mr. Nelson in this slim little book concentrates his attentions upon a single geographic region in the Bay Colony. Where Konig treated a community in the throes of being and becoming, Nelson deals with one that had existed for a hundred years, and he is curious about how its inhabitants handled disputes and conflict during its second century. Early on, he concludes the impossibility of ascertaining "how disputatious eighteenth-century New England was," and so, he determines to "focus upon the techniques by which disputes were resolved rather than upon the frequency at which they arose." To obtain these objects he finds it necesary to construct two "typologies" which he contends were used in Plymouth County's several towns. Some towns, he argues, settled their disputes "without recourse to outside institutions such as courts," while others "frequently did turn to the courts" (p. 4).

Nelson identifies three principal agencies of conflict resolution: the town meeting, the courts, and the church congregation. Town meetings worked primarily as instruments of governance. The inhabitants turned to them only in case of "group conflict," and Nelson concludes that "the town meeting was not a prominent institution for adjudicating disputes" (p. 22). The courts were more likely to control what is called "the dispute resolution process." Their main purpose "was dispute resolution, even though the Court of Sessions, in particular, did possess some broader governmental jurisdiction" (p. 26). While the third agency, the church congregation, worked in a fashion similar to the courts, it was distinguished from them by the greater frequency of its meetings and its informality, as well as by the different sanctions it employed and its judging of moral rather than criminal misdeeds.

Having described the devices for settling disputes, Nelson next compares what conditions in the fourteen towns, of which Plymouth County consisted, led their residents to turn to "their local congregation for the resolution of their disputes with the circumstances under which they brought their disputes to formal legal institutions" (pp. 74-75). Most of the time the church, at least down to the onset of the Revolution, appears to have been the preferred agency. But certain conditions, such as the recalcitrance of suitors who refused to submit to church discipline, the presence of dissenters or schismatics, and what are denominated "commercial litigants" dictated recourse to the courts.

The Revolution worked great changes in these patterns. Both during and after the conflict for independence, citizens of all the towns turned more fractious, and the informal agencies declined in their effectiveness as more suitors sought relief through the courts. There were several reasons for this change in Nelson's estimation. There were more suits involving commercial litigants, suggesting that the intrusion of more worldly men into the affairs of Plymouth County eroded the bonds of religious cohesion. Then too, Nelson finds an increase in the number of dissenters living in the county, and clearly, these people had little inclination to turn for help to the Congregationalists. There was also the effect of the rise of party politics in the 1790's, which became institutionalized early in the new century. By

8. W. NELSON, THE AMERICANIZATION OF THE COMMON LAW: THE IMPACT OF LEGAL CHANGE ON MASSACHUSETTS SOCIETY, 1760-1830 (1975).

1810, therefore, these intrusions into a formerly stable community bonded by common agreement in religion and social mores led to the emergence of groups who saw the courts, not the church and town meetings, as the vital forum for adjudicating disputes. In short, that change signalled the dissolution of the social contract which held the county together since its beginnings.

A. G. Roeber paints on a much grander canvas than those of Konig and Nelson. His subject in *Faithful Magistrates and Republican Lawyers* is the place of lawyers in what he terms "Virginia legal culture" throughout the century and a quarter following 1680. In portraying that object, he endeavors to challenge Charles S. Sydnor's conclusions about the impact of the Revolution on the Old Dominion's law and political institutions.

Some thirty years ago, Sydnor wrote the classic exposition of Virginia politics in the age of George Washington. Lawyers did not occupy a prominent place in the Sydnor formulation. Although some in the Virginia dynasty trained in the law, he maintained "planters, not lawyers, dominated politics." Those planters controlled that first stepping stone to political preferment, the county courts, and that monopoly insured their dominance, as well as the initiation of those whom they chose for advancement. They helped make a revolution, but the struggle to cut the English ties left them pretty much as they had entered it, at the head of society.[9]

Roeber regards this as a superficial assessment of the situation, and so he sets about constructing an alternate interpretation. A necessary ingredient to his purposes is what he discerns as the professionalization of the colony's law and the modernization of its society (p. xvi). Throughout the eighteenth century, the law's complexity grew, the number of lawyers proliferated, and something he calls "print culture" spread across a "nonliterate plantation society." Before 1750, however, no colonist talked of modern society, of law as science, or of lawyering as a professional calling. Instead, Virginians "interpreted events according to their identification with one of two opposing traditions—'Court' and 'Country' " (p. xvii).

By these lights, most Virginians were Countrymen. That is to say, down to mid-century, they conceived law to be of a highly local and personal nature. Lawyers they distrusted for being lawyers, but more so because trained barristers were Courtmen who viewed themselves as a group with a collective interest in centralizing power in the capital. The colonists had long existed without lawyerly pettifoggery; indeed, early on few trained lawyers went to the Old Dominion because of the slender pickings there. Every county had its bench comprised of members drawn from the leading planter families, and at their regular sessions, these judges dispensed a justice rooted deeply in the demands of deference and dependence which defined English and Virginia Country ways. These sessions were important beyond their judicial purpose; they were encrusted with rituals whose performance served as a reminder of every man's place in the rural social order. In fact, Roeber maintains the proposition that these rituals, thickly described, reveal the extent to which Virginians adhered to Country ideals.

Although temperamentally hostile to Courtmen, Virginians came

9. C. SYDNOR, GENTLEMEN FREEHOLDERS: POLITICAL PRACTICES IN WASHINGTON'S VIRGINIA (1952).

grudgingly to accept them. A reason for their acceptance, Roeber informs his reader, was tied to the development of towns and commerce. These indices of modernity engendered litigation that transcended county boundaries as it revealed the incompetence of local magistrates to manage more complicated legal issues than those they ordinarily confronted. Moreover, as the eighteenth century unfolded, there was a greater need for the law's revision and standardization, as well as for formally trained men to administer a growing corpus of law. As statutes increased in quantity and complexity, the professional bar, committed to the centralizing tendencies in Court philosophy, emerged. Its members began to subvert the oral culture of Country society, and on the eve of the breach with England, the lawyers had elbowed themselves to places of leadership.

Lawyers not only revolutionized the legal order, but they helped lead the Old Dominion through the Revolution. They did so by persuading their Country cousins that Courtmen could be as good republicans as they. All the while, the professionals continually eroded the power of the local magistracy until their triumph came in the complete overhaul of the commonwealth's entire court structure. In the end, then, Virginia's legal culture was "created by both faithful magistrates and republican lawyers" (p. 261).

Law and Society in Puritan Massachusetts is the most compelling of these volumes. Its success is due to Konig's judicious development of its major themes, a result of evidence carefully considered and cogently employed. Konig draws freely from, among other things, those contemporary English treatises and manuals that influenced the saints' attempts to tailor the home country's legal customs to new uses. The arguments are usually persuasive because their author writes with flair. He owns a keen eye for the apt quotation, just as he has an ear for the neatly-turned phrase. What mars though is the occasional lapse into social-science-speak, which clouds rather than illuminates the exposition. On balance, the book stands as a fine illustration of work that takes the examination of colonial law beyond traditional boundaries toward considering the law's wider implications for the transfer of British culture to the New World. It is, in short, the sort of study Willard Hurst has called for.

Analyzing the connection between law and dispute resolution is a worthy enterprise, but Nelson's treatment is unsatisfactory. Too often Nelson exhibits excessive concern for the statistical purity of his evidence, creating thereby the perhaps unwarranted impression that means count for more than results. What results are produced frequently state the obvious, inflate conclusions, or obscure the significant. Is it edifying to learn that in the 1790s most Plymouth men still farmed? Is it in the least surprising to discover that Quakers were more likely to take their troubles with the saints to court instead of to church? And, is every disagreement over hiring or maintaining a Congregational minister necessarily a sign of religious disputation? Plainly, some of this difficulty derives from Nelson's resort to statistical methodology. Its employment automatically has a limiting effect upon prose style. There are just so many ways by which tabular evidence may be rendered into words.

Even allowing generously for such limitations, Nelson's writing is very nearly impenetrable at times, and comprehending the book requires strict concentration. That done, comparing it with Konig's leaves a reader to

wonder if the two works do not come to opposite conclusions about the place and role of legal institutions in Bay communities. Konig downgrades the significance of the town meeting and the church congregation, just as he sees in rising numbers of court cases a sign of Essex's vitality and stability. Nelson regards the town meeting and the congregation, especially the latter, as important agencies for settling conflicts. He interprets the greater recourse to the courts in the period after the Revolution as a sign of the breakdown of an old social consensus. His stand seems closer to that of earlier Puritan students. This contradiction, if such it be, cannot be reconciled without further inquiry.

Faithful Magistrates and Republican Lawyers piques one's interest because of its subject matter, but reading it soon dulls that curiosity. The book is misconceived in ways that severely flaw it. Revising Charles Sydnor's work is a plausible enough undertaking. Classic though it is, it is not the last word on eighteenth-century Virginia. But Sydnor was quite unconcerned with the place of lawyers in the Old Dominion's golden age. He dismissed them as unimportant. Hence, he is more Roeber's straw-man than his foil.

Roeber also tries to fit his facts into a curious view of colonial politics and society. They will not go into the mold because the viewpoint is wrong. He insists on tying the professionalization of lawyers to what he perceives as a wider contest between English imperial authorities and growing numbers of colonial republicans. In itself, the rise of the Virginia bar is a significant, though by no means new, concern of legal historians. Actually, it is the topic of Alan McKinley Smith's 1967 dissertation and E. Lee Shepard's recent article, both of which have more to offer on the subject than Roeber presents.[10] In Roeber's hands, the Court-Country model distorts events and evidence to the extent that it loses whatever usefulness it might have. The technique of "thick description" as a device to illuminate the attachments of lawyers and magistrates to the ideals of Court and Country obfuscates rather than clarifies. How details relate to actions or changed circumstances is seldom revealed. Phrases like "legal culture," "print culture" or "non-literate plantation society" lack precise definition, causing the reader to ponder their meaning as well as their import. At the last, he is never sure whether Roeber is doing legal history, social history, or a little of both.

In conclusion, these books invite comment on the condition of the legal history revival. Apparently, few scholars have heeded Flaherty's plea for a more intensive investigation of the colonial South. Massachusetts Bay still garners a disproportionate share of attention. If that imbalance does not abate, we may be verging on that dreadful day when we know more about the Bay Colony than we need or ought to know. Another result is evident in the Roeber volume. It is a pioneer study that is clearly impaired by its author's misapprehensions of Virginia's legal and political arrangements.

10. Alan M. Smith, *Virginia Lawyers, 1680-1776: The Birth of an American Profession* (1967) (unpublished manuscript available through Johns Hopkins University or University Microfilms International); Shepard, *Lawyers Look at Themselves: Professional Consciousness and the Virginia Bar, 1770-1850*, 25 AM. J. LEGAL HIST. 1 (1981).

Had there been a fund of basic research on the courts, their officers, and the laws themselves, Roeber might well have avoided many of those mistakes.

All three are part of the series Studies in Legal History published under the auspices of the American Society for Legal History. Since its inception, it has achieved distinction as an important outlet for new work. Such prominence merits recognition, as well as continued support, for the Society, just as it places special responsibilities upon the series editors. They must exercise rigorous care in considering and preparing manuscripts for print.

Sad to report, such attention to these volumes is not always evident. Nelson's and Roeber's are especially marred by sloppy preparation. Typographical and spelling errors, as well as infelicitous phrasing and imprecise usage afflict both. If the authors failed to catch these, then the editors should have. After all, the process of publication is a cooperative venture, the purpose of which is to produce books that express the author's findings clearly, concisely, compellingly. These three books do not always meet the standard, and to the degree they do not their worth is diminished.

The purpose for commenting upon these editorial slips is to make this point in the words of Ben Johnson: "Neither can his mind thought to be in Tune, whose words do jarre, nor his reason in frame, whose sentence is preposterous; . . . How shall we look for wit from him whose leasure and head, assisted with the examination of his eyes, yield you no life or sharpness in his writing?"[11] Each of us who does legal history should keep sight of our unique dependence upon the written word. If we write poorly, we shall be condemned to obscurity.

Before the social historians' techniques and assumptions work their way too deeply into the legal scholar's thinking, it is well worth a hard look at the implications of such a commitment. Two of these, one technical, the other philosophical, possess the greatest moment for the new legal history.

The utility of quantitative methods is not in doubt; some of its results are. Quantification is too often employed to measure the obvious, and the product it achieves necessarily seems banal. Its disciples frequently labor under the misguided conviction that the very use of quantifiable evidence somehow invests findings with superior authority. Colonial court records seldom were kept in a fashion that allows reconstruction of what they recall with mathematical precision. At best, no matter the technique, all the records reveal an approximation of reality, which is all any mode of historical investigation is capable of achieving.[12]

By the same token, legal scholars should approach social history's theories with an open skepticism.[13] How valuable is Roeber's use of an anthropological concept like "thick description," for example? Describing cultures is very much a part of what anthropologists do, but description performs a much less prominent role for legal historians, who are about the business of interpreting the significance of their evidence as it relates to

11. 5 *The Underground Grammarian,* 1 (1981).

12. *See* Jones, *From Historical Sociology to Theoretical History,* 27 BRIT. J. SOC. 295, 302-03 (1976).

13. *See id.* at 300-04 (criticizing the "eclectic manner in which historians have "shopped around" in sociology for usable concepts).

change over time. If they are content merely to describe every fact they find, they have interpreted nothing. Anthropological description and historical interpretation are different species of intellectual enterprise. The latter implies a willingness to discriminate among bits and pieces of evidence and to decide that some are more significant than others, just as it means arraying the chosen facts in a fashion that gives them meaning. And what of an idea like modernization, which has gained such extraordinary popularity lately? Created by social scientists as a theoretical device to describe the emergence of developing nations in the modern era, colonialists have found it a most seductive theory. It is, in the words of one enthusiast, "far more critical to an understanding of the first two centuries of American life and far more worthy of scholarly attention than the American Revolution."[14] D.H. Murdock terms such expressions of enthusiasm "regrettable," observing that modernization posits a crudely linear historical development. It also imposes artificial categories on the growth of social entities, as it "leaves no room for the discontinuities, divergent developments and persistent survivals of the obsolete which characterize the history of most societies."[15]

Raising such criticism does not automatically brand the critic a Luddite. The reason for calling attention to them is not to condemn social history, let alone to argue that it holds no relevance for the legal historian. Quite clearly, it does. In the hands of a sensitive, skillful, and imaginative scholar like David Konig, its approaches yield impressive results. The point of the objection is that social history is no sovereign cure for the problems of a newly emergent legal history; it has its limitations.[16] And so, before rushing to quantification and social scientific theory willy-nilly, legal historians should heed the advice of that ancient precept, *caveat emptor*.

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14. Greene, *The Social Origins of the American Revolution: An Evaluation and an Interpretation,* 88 POL. SCI. Q. 1, 21 (1973).

15. Murdock, Book Review, 23 HIST. J. 949, 965-66 (1980).

16. *See* Himmelfarb, Book Review, N.Y. TIMES, Jan. 10, 1982, § 7 (Book Review), at 9, col. 2 (late city ed.).