

‘ON HISTORICAL CONTEXTUALISATION’: SOME FURTHER REFLECTIONS

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It has been chastening, instructive and encouraging reading the responses published in this edition to the position paper ‘On Historical Contextualisation’. Those writers have responded rather differently to the ‘manifesto’; indeed Williams’ use of that descriptor has made it clear to me how forcefully the paper reads as castigating doctrinal legal historians for their sin of omission in not contextualising laws’ past within its broader historical context. I would not wish to retract that argument, but would like to add that I came to the study of Law as a second degree, after History. As an historian I could make no intellectual sense of legal study until I turned to its historians; Maine, Maitland, Pollock, Milsom, Plucknett, Baker, Ibbotson, Brand, Lobban, Getzler and many more. However, it was that chasm between Maine and those who followed that continued to baffle me, even as I recognised and still support the position that understanding law’s history requires knowledge of a legal context. Specifically, and I am a lawyer, those legal skills acquired conventionally through the academic study of law. Such skills have, of course, been acquired in other ways by many non-legal academics whose work is discussed in my paper.

Nonetheless, it then appeared to me that traditional legal history had for over a hundred years, defeated by the failure of Maine’s over-ambitious project, thrown the baby out with the bath water. In the last thirty years however, another legal discipline, socio-legal studies, has advanced Maine’s project without acknowledging, recognising or articulating the significance of historical skills in their work. In addition, reconsidering the historiography of legal history across all the disciplines of law revealed that traditional legal history too is, as Williams points out (quoting Hobsbawm), moving from the: ‘self-insulation of the academy’ into a broader contextual approach. The paper was thus partially conceived as a ‘message’ to all those ‘doing’ history from within the discipline of law to be more self-aware of those existing interdisciplinary aspects of their research and writing. Bartlett underlines this point in his reconstruction of aspects of the genesis and development of socio-legal studies. His observations concerning proposed Mental Health Act reforms are

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particularly pertinent; especially that a member of the Parliamentary Joint Scrutiny Committee with a doctorate in nineteenth-century mental health law and administration could compartmentalise and exclude her expertise when considering the proposed bill. And yet, that very blindness to the relevance of historical knowledge for legal understanding is symptomatic of the attitudes that formed part of the genesis of my paper.

Indeed, such non-recognition has been the subject of, or sub-text to, my work for the last fifteen years. That interest, even concern, was further formalised when studying for my doctorate in social history at Manchester University. There I faced methodological problems in finding an intellectual framework that combined research in social history, local history, jurisprudence and doctrinal legal history, and here Sugarman's writings were invaluable.

However, there was an additional model upon which I have continued to draw extensively as a methodology for historical reconstructions. At this point I must admit that Bartlett has spotted this: 'dog that didn't bark' in the paper. Namely, that it does not contain any serious discussion of the intellectual significance for socio-legal histories that can be found in E.P. Thompson's work. Not just in a methodology that emphasises 'bottom' up' history, but also in the Marxist foundations of Thomson's work, an ideology that recognises the contingent transitory nature of legal rights in historical reconstructions. I had not considered, and am grateful for Bartlett's point, that such a position challenges the orthodoxy of black letter scholarship in both legal studies and traditional legal history. More importantly in this context, Bartlett also notes that this challenge destabilises the implicit reliance on traditional legal principles that form that intellectual certainty upon which socio-legal studies is founded.

In addition, the thought-provoking responses of Williams and Mawby from criminology, and history of crime perspectives demonstrate that the article's primary focus, from within law into history and then beyond may have been too narrow. Thus, Mawby, in considering how historical contextualisations enrich studies of policing in comparative international studies, demonstrates the value of such historical reconstructions.

Finally, the paper *is* polemical, but is not, nor was it intended to be, the last word. Its aim, albeit naively, was to underline the need for lawyers to recognise the need for and existence of, that movement into historical contextualisation that exists across swathes of research produced from within the discipline of law. It is very promising that criminologists support that position. However, as Bartlett astutely notes, there is another agenda forming a sub-text to the paper; one this writer did not acknowledge

as she wrote the piece, but does so now. That those political aspects concerning ideology, law, historical contingency and academic scholarship constitute a future battlefield if socio-legal historical reconstructions in their widest form are recognised as an integral part of both law's history and thus law's present. I am very grateful to the commentators who have added so much to this debate that I had not considered, much that has not been mentioned here. Perhaps this debate constitutes the beginnings, not of a manifesto but of a movement towards the acceptance of anti-orthodoxy and interdisciplinarity as models for socio-legal and other historical reconstructions of law's past.