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Article Title: Law's Empire: English legal cultures at home and abroad

Year of publication: 2005

Link to published version: <http://dx.doi.org/10.1017/S0018246X04004315>

Publisher statement: None

REVIEW ARTICLES

LAW'S EMPIRE: ENGLISH LEGAL CULTURES AT HOME AND ABROAD

The common law tradition: lawyers, books and the law. By J. H. Baker. London: Hambledon, 2000. Pp. xxxiv + 404. ISBN 1-85285-181-3. £40.00.

Lawyers, litigation and English society since 1450. By Christopher W. Brooks. London: Hambledon, 1998. Pp. x + 274. ISBN 1-85285-156-2. £40.00.

Professors of the law: barristers and English legal culture in the eighteenth century. By David Lemmings. Oxford: Oxford University Press, 2000. Pp. xiv + 399. ISBN 0-19-820721-2. £50.00.

Industrializing English law: entrepreneurship and business organization, 1720–1844. By Ron Harris. Cambridge: Cambridge University Press, 2000. Pp. xvi + 331. ISBN 0-521-66275-3. £37.50.

Between law and custom: 'high' and 'low' legal cultures in the lands of the British Diaspora – the United States, Canada, Australia, and New Zealand, 1600–1900. By Peter Karsten. Cambridge: Cambridge University Press, 2002. Pp. xvi + 560. ISBN 0-521-79283-5. £70.00.

The past few decades have witnessed a welcome expansion in historians' understanding of English legal cultures, a development that has extended the reach of legal history far beyond the boundaries circumscribed by the Inns of Court, the central tribunals of Westminster, and the periodic provincial circuits of their judges, barristers, and attorneys. The publication of J. G. A. Pocock's classic study, *The ancient constitution and the feudal law*, in 1957 laid essential foundations for this expansion by underlining the centrality of legal culture to wider political and intellectual developments in the early modern period.¹ Recent years have seen social historians elaborate further upon the purchase exercised by legal norms outside the courtroom. Criminal law was initially at the vanguard of this historiographical trend, and developments in this field continue to revise and enrich our understanding of the law's pervasive reach in British culture.² But civil litigation – most notably disputes over contracts and debts – now occupies an increasingly prominent position within the social history of the law. Law's empire, denoting the area of dominion marked out by the myriad legal cultures that emanated both from parliamentary statutes and English courts, is now a far more capacious field of study than an earlier generation of legal scholars could imagine. Without superseding the need for continued attention to established lines of legal history, the mapping of this imperial terrain has underscored the imperative for new approaches to legal culture that emphasize plurality and dislocation rather than the presumed coherence of the common law.

¹ J. G. A. Pocock, *The ancient constitution and the feudal law: a study of English legal thought in the seventeenth century* (Cambridge, 1957).

² See esp. David Cairns, *Advocacy and the making of the adversarial criminal trial, 1800–1865* (Oxford, 1998), and John Langbein, *The origins of the adversary criminal trial* (Oxford, 2003).

The articles collected in J. H. Baker's *Common law tradition* illustrate the characteristic preoccupations of legal history before its practitioners turned their full attention to the law as a social formation. Baker is the doyen of what one might term 'lawyer's law' – the field of inquiry in which case law (embodied in law reports, year books, and plea rolls) enjoys pride of place. All but one of the articles published in this volume have previously appeared in print; their original publication dates range from 1970 to 1998. The contents, unsurprisingly, constitute something of a miscellany. They range in topic from highly specialized case studies that are of interest chiefly to legal historians to interventions that engage with issues central to early modern English history. Case studies of topics such as 'John Bryt's reports on the year books of Henry IV' and 'Sir John Melton's Case' fall within the former category. But Baker's reflections on the nature of legal sources and legal training in medieval and early modern culture open up questions about English law that social and political historians will ignore at their peril.

Several of Baker's chapters address the nature and significance of legal education in shaping the common law tradition. Borrowing Tudor nomenclature, Baker terms the inns of court England's 'Third University' and emphasizes their role in educating not only legal practitioners but also the gentlemanly governing classes more broadly. Originating in the mid-fourteenth century, the medieval inns of court, rather than the royal courts themselves, provided the primary institutional context for the evolution of legal thought, and for the training of barristers and benchers. Performing moots, oral arguments that tested the student's ability to frame writs and pleadings, provided the pathway to the medieval and early modern bar; delivering a course of lectures to the students of an inn served as the prerequisite to a seat on the bench. In Baker's interpretation, the inns' reputation as colleges was justly earned, for 'the two degrees of barrister and bencher ... correspond exactly with those of bachelor and master in the universities' (p. 71). Crucially, the inns of court served not only as 'repositories' of law, but also as 'makers of law' in this period (p. 50). Channelling legal argument along some lines, but not others, and serving as the mandatory site of aspiring lawyers' apprenticeships, the medieval inns endowed the common law with its underlying coherence. In the course of the sixteenth century, however, their ascendancy began to wane. Increasingly supplanted by judicial rulings, the legal reasoning of the inns of court gave way to case-law that issued from the courtroom. As moots fell into desuetude, the inns' educative function also fell into abeyance. 'By the eighteenth century no one could seriously compare the inns of court with a university', Baker observes (p. 27). Once institutions renowned for their critical engagement with legal reasoning, these bastions of the common law tradition now functioned chiefly as exclusive dining clubs for the sons of the English gentry.

In their heyday, the inns of court appear to have played a vital role in fostering the proliferation of legal texts alongside legal learning. Many of Baker's chapters grapple with the origin and accuracy of law reportage in medieval and early modern England. Highly reliant upon precedent, the common law tradition was necessarily dependent upon the circulation of texts, whether manuscript or printed, that documented judicial proceedings. Parchment plea rolls, which recorded the proceedings and judgements, but not the reasoning, of the central courts were, in quantitative terms, the primary textual repositories of the common law. Their preservation of common law traditions was predicated, in Baker's estimation, on the slaughter of over six million sheep. Containing perhaps '500 miles of abbreviated Latin' the Common Pleas rolls alone for the reigns of Henry VIII and Elizabeth I cover both sides of some 102,566 membranes (p. 220). Augmented from the

mid-thirteenth century by year books that purported to provide verbatim Anglo-French accounts of Common Bench argumentation and reasoning, these records emerged and flourished alongside the inns of court, promoting the educative function of these institutions by providing apprentice lawyers with a body of textual materials with which to hone their knowledge and skills.

The languages employed in the medieval and early modern central courts provide the subject of one of Baker's most intriguing interventions. If English, first used in deeds that date from 1376, was the language of the realm, Anglo-French was the language of lawyers and Latin the essential language of record of the common law tradition. The primacy of French as the language of legal business and argumentation lay not, Baker reminds us, in the legacies of the Norman conquest, but rather in the currency of French in medieval courtly circles as the language of diplomacy and scholarship. Latin, less suitable for oral use than French, was ideally fitted by its grammatical precision to serve as the language of legal record. Its forms lent the common law its characteristic tenor and tendencies. As Baker observes, 'The formulaic nature of the plea rolls made the common law very different from the law of the Chancery and conciliar courts, where the facts gushed out in the mother tongue' (p. 234). Yet adherence to Latin formalism, as critics were to protest from at least the seventeenth century onwards, maintained the integrity of common law traditions only at a price. Lapses of Latin language could and did compromise a litigant's case in court, as one hapless upholsterer found to his distress in 1667. In a suit to recover the cost of four painted hangings, he employed a lawyer whose shaky Latin rendered the cause of the complaint the price of four painted prostitutes, prompting the indignant judge to rule the contract illegal. Equally troublesome was the incorporation of modern terminology into ancient Latin, a process that necessitated constant philological sleights of tongue. A helpful treatise of 1685 thus provided clerks with lists of 'Latin' terms for novel items such as footballs, corkscrews, and spatterdashes.

Just as legal Latin existed within a hybrid linguistic universe in medieval and early modern law, so too the common law tradition itself is increasingly understood to have nested within a complex, conflicted reticulation of legal beliefs, practices, and norms. Christopher Brooks's collected articles, *Lawyers, litigation and English society since 1450*, share several concerns with Baker's book, but they do so from a vantage point that reflects this wider network of legal thinking and praxis. Whereas Baker identifies cases and statutes as the principal primary sources for the history of the law, Brooks supplements these materials with legal tracts, personal correspondence, parliamentary papers, newspaper reports, and articles of apprenticeship. Whereas Baker focuses predominantly on London's superior central courts, Brooks also repeatedly draws our attention to the vitality of law in the provinces and in inferior court systems. And whereas Baker sees legal training as analogous to elite university education, Brooks emphasizes the comparability of legal education with the mercantile and professional apprenticeships entered into by the sons of 'the middling sort'. In part, these differences reflect each author's chronological emphasis: Baker is concerned chiefly with medieval and early modern common law, Brooks with early modern and modern civil (in the sense of non-criminal) litigation. More fundamentally, however, their differences reflect distinctive conceptualizations of the law. Figuring in Baker's interpretation as a coherent system of traditions, the law emerges from Brooks's volume as a fluctuating and flexible series of interlocking structures that took its shape as much in reaction to external forces as in response to its own internal logic or dynamics.

Of Brooks's nine chapters, four (dating from 1978 to 1994) were earlier published elsewhere, but most appear in this volume for the first time. Perhaps in consequence, the book as a whole exhibits much more coherence than is typical in volumes of collected essays. The chapters range widely over time and topic. Spanning the period from 1200 to the present, they address three issues in particular depth: long-term trends in English litigation, the training and social significance of lawyers, and the political and ideological significance of the law in English culture and society since 1500. Throughout, Brooks is intent to underline the law as an integral part of the fabric of social relations. In doing so, he takes issue with legal historians' tendency to depict the law 'as the creature of the state, a monster descending downwards and outwards to conflict with and confront the values of "the community"' (p. 179).

Brooks's research has provided the most comprehensive analysis to date of patterns of civil litigation in England from the medieval era to the present. The limitations of the available source material preclude a definitive numerical assessment of these trends, but the five secular waves of increasing litigation identified by Brooks provide an essential backdrop for historical analysis of English social and economic development. The first phase of growth, from c. 1250 to 1330, coincided with the early professionalization of English justice, and saw litigation in the Common Pleas rise by a factor of perhaps thirty in the thirteenth century as a whole. Arrested by the impact of the Black Death, litigation levels enjoyed a renewed resurgence from the later fourteenth century until the 1440s, and then declined to a low point in the 1520s. The Elizabethan era witnessed the onset of a dramatic increase in litigation that was to continue, with some brief setbacks, until the early eighteenth century and which marked the late sixteenth and early seventeenth centuries as 'the most litigious periods in English history' (p. 12). A sharp contraction of recourse to the law reversed this upward trend until the onset of a fourth phase of growth in the later eighteenth century, a trend that owed much of its force to the creation of local small claims courts known as courts of requests. Bolstered by the creation of the Victorian county court system and continuing through the 1880s, this period of expansion was followed by a trough that reached its nadir in the 1950s. The institution of a comprehensive system of legal aid and the increasing resort of married couples to civil divorce brought this period of decline to an end, marking the later twentieth century as an increasingly litigious period of English history.

The statistical trends that Brooks details so comprehensively in this volume provide a backdrop for his interpretation of the law as an integral component of English social life and consciousness. Together with the wide range of social groups that appear in court records as plaintiffs and defendants, the high levels of litigation achieved in the early modern period suggest that, from an early date, familiarity with the law was pervasive, not exceptional, in English society. In 1600, Brooks estimates, there were 1,351 suits in the central courts per 100,000 of total population; recourse to a variety of local and special jurisdictions further widened access to the legal system. The following years, moreover, arguably saw the law shed its associations with the gentry and aristocracy that had been characteristic of earlier decades. Litigants styled 'peer', 'gentleman', 'esquire', and the like suffered a significant decline in the Common Pleas between 1640 and 1750; the ascendancy gained over civil litigation by the courts of requests and county courts in the nineteenth century was to consolidate this trend in the modern period. Expanding the reach of the law to the lower classes, this trend was paralleled by a tendency for women to be excluded increasingly from the courtroom. In an intriguing (if regrettably brief) excursion into the

gender history of litigation, Brooks notes that whereas women constituted between 5 and 13 per cent of litigants in early modern metropolitan common law courts, they accounted for only 2 per cent of Victorian litigants.

The trends and counter-trends of litigation analysed by Brooks provide compelling evidence of his central thesis, that the long history of English law defies simplistic narratives of professionalization and modernization. The decline of litigation in eighteenth-century England, for example, encouraged a profound de-professionalization of English lawyers, a retreat from standards of training and practice established in the medieval period that was to be reversed only gradually in the course of the nineteenth century. 'If there is one thing that recent research on early modern lawyers has demonstrated ... it is that the unique association of the professions with modernity is mistaken', Brooks asserts. 'Between 1500 and the present day the trajectory of professional change has, if anything, been circular rather than linear' (p. 182). One of the real strengths of Brooks's emphasis on long-term legal developments is his ability to interrogate (and refute) the schematic predictions of modernization theory, replacing them with an interpretation that takes account of the ironies of historical development without falling prey to an antiquarian emphasis on the vagaries and peculiarities of the legal record.

Both Baker and Brooks identify the eighteenth century as a period of torpor for the common law. The declining rates of civil litigation in the central courts combined with the degeneration of legal education in the inns of court to compromise the role and reputation of the English bar. In *Professors of the law*, David Lemmings effectively rescues eighteenth-century barristers, if not from the ignominy then at least from the ignorance of posterity. Based on deep and impressive primary research, demonstrating a sure command of the relevant secondary literature, buttressed with detailed footnotes and appendices, and supported by a full bibliography, this book illustrates the many virtues of the monograph as a genre of historical writing and analysis. Like Brooks, Lemmings rejects any simplistic association between legal professionalization and socioeconomic modernization in England. But rather than predicating his argument on long-term changes over time, Lemmings offers a densely layered interpretation of the eighteenth-century English bar, with attention as well to colonial barristers in Ireland and America. Beginning with assessments of barristers' education, professional prospects, and working lives, Lemmings turns to legal practice in Westminster Hall, the Old Bailey, and the colonial bars before concluding with chapters that discuss legal advancement, patronage, and culture more broadly.

Lemmings is especially successful in situating barristers within the wider social contexts of eighteenth-century English culture. His extensive research in private papers helps to reveal barristers' daily routines and personnel dilemmas, illuminating the tribulations of life on the legal circuit with particular clarity. As litigation levels fell and competition for business mounted, aspiring barristers 'were compelled to lead a mobile, sometimes itinerant existence' in the provinces, distant from friends and family. Mitigated in part by the boisterous masculine camaraderie of gatherings such as the bar messes that began to develop barristers' professional culture in this period, the isolation of lawyers on circuit was also reduced by improvements in public transport and the rise of urban gentility. By the century's close, Lemmings concludes, English barristers found 'that going on the circuits mixed business with pleasure, and was increasingly a test of manners, as much as of endurance and learning' (p. 55).

Lemmings provides ample evidence that eighteenth-century barristers – and the eighteenth-century law more broadly – struggled against a concatenation of adverse conditions.

His analysis of the intellectual consequences of the decline of the inns of court is damning. Despite the efforts of luminaries such as Sir William Blackstone, he concludes, the 'poor quality of ... legal literature certainly made conscientious education for the bar an ordeal from which few emerged unscathed' in the Georgian era (p. 138). Although a handful of elite barristers enjoyed dramatic increases in lifetime earnings compared to their early modern predecessors, declining litigation levels forced the great majority to consider expedients disdained by the fortunate few. A range of new frontiers beckoned the importunate eighteenth-century barrister. The gradual acceptance of counsel for the accused in criminal trials – a practice that gained pace from the 1780s and was consolidated with the enactment of the Prisoners' Counsel Act of 1836 – provided one new source of employment; migration to the Irish or colonial American bars afforded another. Successful in garnering business for some barristers, these developments failed, however, to halt a wider contraction of the bar's 'national role, and ultimately assisted in the decline of the common law itself' in the following century (p. 319).

If the inns of court, the bar, the central courts of Westminster, and the common law more broadly experienced declining fortunes in the eighteenth century, statute law arguably gained new significance in this period. Less well studied by legal historians than case law, statutory developments played an essential (if often problematic) part in accommodating legal structures to commercial and industrial society in the eighteenth and nineteenth centuries. In *Industrializing English Law*, Ron Harris attempts to integrate the analysis of judicial decisions, parliamentary legislation, and business organization. Located 'in the border zone between legal history, economic history, and a variety of mainstream histories' (p. 292), his study explores the relationship between legal and economic developments by assessing the changing significance to business organization over time of individual proprietorship, family firms, partnerships, and joint-stock corporations. Methodologically, Harris attempts to negotiate between two ideal types of scholarly analysis: a school of legal history that depicts the legal system as largely autonomous from society and economics, and a functionalist interpretation according to which the law was responsive to economic development 'and placed no constraints on growth during the industrial revolution' (p. 6). Substantively, his book is designed to address a perceived discrepancy between the vitality of British economic development in the Georgian era, on the one hand, and 'the stagnant legal framework of business organization during the same period', on the other (p. 2). To this end, Harris surveys topics that include the legal framework of business organization, the passage and repeal of the Bubble Act, the organizational development of business in sectors such as transport and insurance, and the fortunes of joint-stock companies in the central courts.

Harris offers lucid (if often annoyingly repetitive) synopses of many technical issues of business law, but his highly schematic interpretation of business organization and industrial growth suffers from significant limitations as a contribution to both legal and economic history. The analytical framework he employs places a stereotypically Whiggish question at the heart of his analysis. Why, given the availability of joint-stock organization to entrepreneurs in the industrial revolution, Harris asks, did these men of modern commerce fail to embrace wholeheartedly these superior institutions, 'obviously the natural candidates for this dominant position (particularly as we know the end of the story)?' (p. 85). The obsolescent structures, doctrines, and practitioners of the common law bear much of the blame for this historical failure in Harris's analysis, for 'the detachment of the judiciary from the practice of commerce and manufacturing, and from daily problems faced by men

of business, was total' (p. 232). Only the triumph of statute law, manifest both in the repeal of the Bubble Act in 1825 and the passage of Gladstone's Joint-Stock Companies Registration Act of 1844, brought English law into accordance with the demands of the industrial economy, by allowing joint-stock organization to assume its rightful place at the heart of the business community.

Harris's teleological approach to legal and economic modernization stands in sharp contrast to the more sophisticated (and more historical) assessments offered by both Brooks and Lemmings, and suffers as well in comparison to the important related studies of Timothy Alborn and R. E. Kostal.³ Drawn overwhelmingly from interpretations of the available secondary literature, with occasional, brief forays into business records, the book relies on simplistic ideal types rather than textured historical arguments. Entrepreneurs, merchants, and industrialists were hardly a unified socioeconomic group in England, nor (as the history of mining clearly demonstrates) were they hermetically sealed from the landed aristocracy and the elite world of law and politics. The concept of the industrial revolution itself, which Harris uses uncritically to frame his narrative of modernization, is moreover notoriously problematic. An understanding of the troubled relations between law and economy in eighteenth- and nineteenth-century England will require historians of business law to attend more carefully to the social history of the law and economics than Harris has chosen to do in this volume.

Peter Karsten's ambitious and compelling study of 'Diaspora law' provides an excellent example of just such an engaged social history of legal change over time (and space). Like Harris, Karsten is alive to the common law's limitations as a mechanism for regulating economic transactions in the modern period. But unlike Harris he is also sensitive to the law's many mansions – and its myriad outhouses and outposts. In his interpretation, 'the law' invariably assumes a succession of both formal and informal configurations, a kaleidoscopic tendency that has lent English legal cultures (at home and abroad) far more flexibility than adherence to the strict letter of case law and statutes would initially suggest. Historically, the 'high' legal cultures of the inns of court, the bar, and the bench have not only vied but also interacted with and influenced the 'low' legal cultures of custom and everyday practice. Assessing the nature and consequences of this interaction within England alone in the eighteenth and nineteenth centuries would pose a formidable historiographical task. By including the lands of the British imperial Diaspora within his purview, Karsten has magnified the difficulty of this task several fold. At times, his sweeping remit detracts from his study's coherence. Focused primarily on the implications of English law for 'CANZ' jurisdictions – that is, the law of Canada, Australia, and New Zealand – *Between law and custom* also devotes substantial attention to the American colonies and nineteenth-century United States law, and ventures episodically into the legal terrain of the Cape colony and the southern Pacific islands. This shifting geographical focus has the virtue of replicating the fluid and ragged frontiers of English legal dominion in the lands of the British Diaspora, but detracts in places from the author's ability to synthesize and summarize his extraordinarily wide-ranging research findings. The book's exiguous subject index and lack of bibliography compound this shortcoming, exacerbating the reader's difficulty in navigating the vast legal territory that Karsten has sought to map. But these are errors of inclusion and omission that detract from this book without obviating its

³ Timothy Alborn, *Conceiving companies: joint stock politics in Victorian England* (London, 1998); R. E. Kostal, *Law and English railway capitalism, 1825–1875* (Oxford, 1994).

wider contribution to the literature. *Between law and custom* provides a bold, imaginative, and pioneering interpretation of the enduring reach of English law outside the narrow confines of the central courts of Westminster.

Karsten's topical approach is necessarily selective. He devotes little attention to subjects such as debt recovery and crime, choosing to emphasize instead the history of land rights, labour and service contracts, and accidents. This emphasis provides rich material for comparative analysis, and also ensures that the 'lesser sort' – servants, shepherds, squatters, and aborigines in particular – are given due consideration alongside landlords, industrialists, corporations, and colonial officials. These topics are explicated through analysis of an impressive range of primary and secondary sources. Case law and statutes provide the backbone of Karsten's primary materials, but he has read widely as well in printed colonial autobiographies and pamphlets and in manuscript sources that include both official correspondence and the personal diaries and letters of the Diaspora's settlers.

In surveying Diaspora land law, Karsten traces a trajectory familiar from the history of English law, a trend away from common law acceptance of customary rights. Both indigenous inhabitants (with the significant exception of Australian aborigines) and Diaspora colonists, he argues, 'enjoyed vibrant customary property rights' in the early phases of settlement in North America and the Antipodes, only to lose them to statutory incursions over time (p. 116). But land law, as understood in both 'high' and 'low' legal culture, also developed in the lands of the Diaspora along lines that distinguished the colonies from the metropole. The theoretical availability of 'open' land – land *de facto* occupied by indigenous people – combined with endemic shortages of labour to privilege informal legal conventions even where the formal law continued to adhere to strict legal niceties. Frontier conditions militated against landlords' leverage over tenants, allowing tenants to claim 'rights' such as the use of leaseholders' timber resources, to which they had scant legal entitlement. More significantly, throughout the Diaspora territories, squatters succeeded not only in wresting land from aboriginal populations and the crown, but often in convincing first equity judges, and then colonial responsible governments, to confirm their title to this property.

Contractual relations between labourers and their employers similarly exhibited a tendency to develop along lines that reflected the fundamentally different social and political conditions that obtained in the colonies of settlement. Here the workers of the settlement colonies appear to have enjoyed the best of both contractual worlds. Whereas coercive Master and Servant legislation restricted British workers' ability to enter into free contracts in the labour market, Diaspora labourers benefited from legal developments that were rooted in their relative scarcity. From the early nineteenth century, United States courts not only recognized workers' right prematurely to quit contracts that they had entered for specific sums for specific periods, but also enforced *quantum meruit* payments for the partial work thus performed. Canadian and Antipodean labourers, in sharp contrast to their English compeers, likewise succeeded in securing these rights from employers through appeal to the court system. Unlike American workers, however, Diaspora labourers remained insulated from the later nineteenth-century legal innovation of employers' right to sack workers 'at will'. CANZ courts, indeed, appear from an English perspective to have been remarkably solicitous of Diaspora workers' rights. The Toronto magistrate who refused to ruin the prospects of a young woman servant whose master wished to see her imprisoned for a statutory week as punishment for having taken a day's holiday from work was exemplary in this regard. So too was the case of a servant in New

South Wales who received ten pounds as a compensation award when her master beat her and drove her from his home for purchasing a goose for his dinner in a dilatory manner. At issue here was not so much the nature of the formal law, as the character of 'low' legal culture in the context of Diaspora social relations. As Karsten concludes, 'Cursings and cuffs became virtually unacceptable behavior in North America and the Antipodes in the nineteenth century, as the relative scarcity and consequent higher cost of "the help" generally precluded such treatment, inasmuch as "the help" were simply intolerant of it' (p. 326).

Although distance from London clearly afforded CANZ litigants an opportunity to exercise their legal independence from the common law, parliament, and the crown, Karsten ultimately underlines the extent to which Diaspora law remained broadly within the fold of English legal traditions. To be sure, the use of American precedents was not unknown in these settler jurisdictions, and Karsten is intrigued by the potential mechanisms by which knowledge of them permeated the consciousness of Diaspora settlers. Typically, however, he finds that CANZ jurists were 'wedded to English solutions, and even on those occasions when one did offer an American solution to a particular dilemma, he generally trumped it in the same opinion by offering English citations that came to the same, or a similar, conclusion' (p. 504). Formal colonial departures from the common law tradition, in consequence, were primarily the consequence of legislative action, rather than judicial decisions. To these formal departures, however, must be added the constant depredations suffered by both English and Diaspora 'high' legal culture at the hands of the common man and the common woman. Law's empire, as Karsten's book reminds us forcefully, was both an extensive and an unstable kingdom. Spanning across the full extent of the Diaspora, it was constantly undercut from beneath by instances of 'low' legal behaviour. In New Zealand, Australia, the United States, and Canada (as in England itself), men and women 'made their own "common law", created their own norms and rules' in defiance of barristers, judges, and legislators (p. 529).