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Review of *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844*

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discourse and, in the order of sentiment, with the suggestive power of the revolutionary discourse of both the left and the right" (p. 140). Within the framework of ideas such as these, the author develops numerous themes seeking to explain the realities of collective action by lawyers in France over the last century. He recognizes that the Classical Bar and Business Bar are to some extent intertwined. He explores professional markets such as "trust-exchange" and "reputation-exchange." The analysis is wide-ranging: the Dreyfus Affair and the image of the lawyer in society mix with arguments about what the author sees as being the dominant logic of the profession at any particular time.

The book is vulnerable to certain criticisms. Given the uneven division in the attention devoted to the phases of professional development, it cannot—in the opinion of this reviewer—lay claim to being a full and balanced study of its subject. Also, despite the author's occasional recognition of the need for self-qualification in respect of generalizations, it is easy for the reader to gain a schematic impression in which all professional events have to fit some pre-ordained category of time and type. It would be nice, too, to read more of international comparative analysis with further references to the work of Abel and others.

In fairness to the author, the book may be looked at in a different way. It may be seen as a series of arguments in which the author explores interesting ideas and considers the extent to which they may serve as instruments for understanding the legal profession in France. It is a provocative and thoughtful call to further work rather than an attempt at a definitive explanation. The book has about it an admirable quality of commitment to intellectual engagement even if it does not respond to the demands of a full and balanced legal history. To mention just one theme that is of interest, it draws attention again and again to the ideal of the lawyer as liberal defender of the unjustly accused. Why, one wonders, is there usually so much more interest in defenders than prosecutors? Does the explanation lie in Dupin's defense strategy in the Isambert trial in 1826? "Let us accustom ourselves at last to seeing the public interest in the interest of a single individual" (p. 129). At one and the same time the lawyer serves the public interest and defines it.

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RON HARRIS, *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844.* Cambridge & New York: Cambridge University Press, 2000. xvi, 331 pp. $59.95.

Ron Harris has written an entertaining and informative account of the development of the English law of business organization in the eighteenth and early nineteenth centuries. For expository purposes, Harris divides the account into three periods—before 1720, 1720-1810, and 1800-1844—with the points of division corresponding roughly to the enactment and repeal of the Bubble Act. A major theme of the work, however, is that conventional accounts of the history of the business corporation have placed undue emphasis on the Bubble Act.

The enactment of the Bubble Act in 1720 and its repeal in 1825 are often seen as the decisive turning points in the development of the business corporation. Although full corporate powers required a charter of incorporation, by the early eighteenth century unincorporated companies were becoming common and successful in raising capital by issuing transferable shares. That development

came to a halt in 1720 with the enactment of the Bubble Act in reaction against the speculative excesses of the early eighteenth century and the stock market collapse and the joint-stock company, the Bubble Act prohibited companies from issuing transferable shares unless specifically authorized by an incorporation charter granted by the crown or Parliament. For the balance of the eighteenth century, the hostile legal environment operated as a significant impediment to the development of joint-stock companies, although, in the view of some commentators, many of the objectives of the joint-stock form could be accomplished by complex partnership arrangements and trust devices. By the early nineteenth century, however, the capital needs of developing enterprises could not otherwise be met, and the constraints were dropped with the repeal of the Bubble Act in 1825 and enactment of general incorporation legislation in the 1840s.

Harris challenges the conventional wisdom, demonstrating that the Bubble Act was not a reaction against the South Sea bubble—indeed, it was enacted before the crash. He argues that the Act was in fact "special interest legislation for the South Sea Company" (p. 77) for it protected interests in the South Sea Company itself, thus both validating the Company's capital structure and excluding others from competing for capital by issuing transferable stock. More generally, Harris argues that neither the enactment nor repeal of the Bubble Act was a decisive episode in the development of the business corporation. Rather, the explanation of the path of development of English company law is to be found in a more complex set of factors, including the differing circumstances, capital needs, and market structures of different lines of business, as well the contingencies of particular paths of development of businesses and external political forces.

In his account of the development of business organization in the eighteenth century, Harris does not write with a broad brush, but examines particular industries separately. He presents a particularly rich account, drawn largely from primary sources, of the transport and insurance industries. The value of the sector approach is also seen in Harris' treatment of the shipping and mining industries. He notes that both of these industries had their own special legal devices that answered many of the purposes of the business corporation. In shipping, mechanisms for dividing ownership of ships into shares had long been used and recognized in the Admiralty Court. So too, a special form of transferable joint ownership, the "cost book system," was used in the mining industry and enforced in the local stannary courts.

The larger theme of Harris' book is the perennial question of the extent to which law is an autonomous discipline or a reflection of social, political, and economic forces. He notes that the development of the law of business organizations seems to present a particularly good vehicle for study of this question due to the "apparent discrepancy between the developing economy of 1720-1844 and the stagnant legal framework of business organization during the same period" (p. 2). His detailed, sector-by-sector account shows, however, that the discrepancy is more apparent than real. Once the conventional focus on the Bubble Act is placed to one side, the evolution of forms of business organization shows the same complex patterns of relationship between law and society that one would expect in other fields. Hence, Harris ultimately takes the view that "neither the strictly autonomous interpretation nor the strictly functional one can fully explain the development of the legal framework of business organization," and he expresses the hope that his work will "demonstrate the advantages of abandoning the poles and moving to the center" (pp. 7-8). That hope is certainly not ill-founded. The book succeeds in presenting a satisfying jurisprudential account precisely because

it retains its primary focus on the specific topic of the development of business organizations, drawing cautious larger lessons only to the extent warranted by the specific data, and examining the data for their own sake rather than to demonstrate a particular jurisprudential view.

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CHRISTOPHER A. ANZALONE, ED., *Encyclopedia of Supreme Court Quotations.* Armonk, N.Y.: M.E. Sharpe, 2000. 395 pp. $79.95.

Assessing a reference book that catalogues quotations from a two-century legacy of Supreme Court decisions may seem functionally equivalent to reviewing a telephone directory or dictionary. Typically, an encyclopedia is a repository for general knowledge on a range of discrete subjects. To the extent Anzalone's book casts a net across a broad range of case law, his effort accounts for that traditional purpose. It also is an effective point of entry for unhurried browsing through some of the Court's most pointed and memorable renderings and rhetoric.

The book's primary aim "is to provoke critical thinking about the Nation's history and its possible paths for its future" (p. xiii). It appears to be Anzalone's premise that, because the Court "struggles with its mission" (p. xii) of "decid[ing] what the law is,"[1] its decisions provide a prism through which it is possible to discern and understand the choices that have shaped the nation's destiny. Corollary to this notion is the author's sense that, with respect to policy, the political branches of government decide "what is good" and the Supreme Court decides "what is right" (p. 11). To the extent that "right" implies that the Court is a factoring agent for the nation's morality, the author appears to align himself with noninterpretivism. Such a theory of review is as debatable as the dispute between interpretivists and noninterpretivists is ancient.

The role of the judiciary is an apt starting point for any discussion of the Supreme Court which, although having the final say in defining the Constitution's meaning nonetheless remains a lightning rod with respect to whether it performs its function too aggressively or not. The author effectively captures one half of this baseline in citing Justice James Iredell's pre-*Marbury* assertion that:

> the Court cannot pronounce [a law] to be void, merely because it is, in their (sic) judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard: the ablest and purest men have differed upon this subject; and all that the Court could properly say, in such an event, would be that the Legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice (p. 54).[2]

Although it is difficult to fault the author for a single exclusion, particularly given a work containing more than a thousand quotations, the omission of Justice Samuel Chase's equally forceful and tidy pro-natural law counterpoint is striking.[3]

1. *Marbury v. Madison,* 5 U.S. 1, 137, 177 (1803).

2. *Calder v. Bull,* 3 U.S. 386, 399 (1798).

3. Justice Chase wrote that "[t]here was certain vital principles in our free republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security, for personal liberty, or private property, for the protection whereof government was established." Id. at 388.