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Law, Lawyers and Litigants in Early Modern England

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There is no more exemplary figurehead for the history of legal culture than the late Christopher W. Brooks. As the editors of this volume observe, by the time of his death in 2014 Brooks ‘had established a firm reputation as the most important and influential historian of law and society in early modern England’ (p. 1). In a career spanning almost 40 years, Brooks combined large-scale analysis of esoteric legal archives with consideration of the long-term dynamics between the people, institutions, and ideas therein realised. His scholarship made the seemingly intractable history of English law readable and compelling. More than any other before him, Brooks was therefore almost single-handedly responsible for promoting the centrality of the law and its records to historical research.

This volume from Brooks’ students and collaborators is comprised of 14 essays, originally delivered at a conference held in his memory in Durham in 2016. It brings together leading scholars in early modern history, law, economics, and sociology who are ideally placed to reflect on the audacious and ambitious nature of Brooks’ contributions to their respective fields. Each contribution reflects the careful archival analysis and curiosity for the broader questions of historical development central to Brooks’ work. Most take Brooks’ observations and arguments as their points of departure. Many employ fresh frameworks, evidence, and arguments to advance original conclusions.

Several historiographical chapters open the volume. They are effectively memorials to Brooks, emphasising his legacy in interweaving the traditionally at-odds strands of law and social history. Braddick represents the social history view, tracing Brooks' scholarship from an initial interest in the role of lawyers and legal ideas in 17th-century politics, through an extensive analysis of early modern litigation and the lower legal profession (published as *Pettyfoggers and Vipers of the Commonwealth* in 1986), and into the explorations of the overarching relationship between religion and the law that dominated his final years. The chapter reminds readers that whilst the 'law-mindedness' of early modern England was Brooks' 'headline' finding, his archival research grounded further observations about the middling sort, professionalization, agrarian relations, and other 'big modernization stories of historical sociology' (p.19).

Sugarman and Houston carefully situate Brooks within the intellectual heritage of legal history. Sugarman demonstrates Brooks' development of a nuanced vision of 'law-in-history' over the course of his career, which saw him upgrade law and legal records from evidence to subject of research and transition from an 'externalist' to an 'internalist' approach to the sources. With a critical but ultimately friendly eye, Sugarman also highlights some of the limitations of Brooks' core works. Brooks developed and executed a 'manifesto' for the integration of social and legal history in his later books, Sugarman argues, but he could never quite smooth over the tension between universal 'law-consciousness' and the existence of distinct spheres of elite legal thought and popular legal experience. Houston's chapter, meanwhile, explores the long-lasting influence of another great historian of law: F.W. Maitland. Like Brooks, Maitland thoroughly researched the law through its manuscript records. He spearheaded a strand of comparative legal history that served to characterise the English 'common-law mind', broke fresh ground on studies of civil law, and outlined a view of participatory government of England that has only recently come back into fashion. His attention to the differing methods and motivations of historians and lawyers, and his early calls for their collaboration, undoubtedly pre-empted the interdisciplinary work of the last few decades. Whereas the main Introduction to the volume is quite succinct and functional, these three reflective chapters offer an extended commentary on the scholarly tradition into which the following contributions fit.

The rest of the volume is arranged in a loosely chronological order. The next chapters set the scene of English law and legal culture in the early 17th century. R. W. Hoyle's chapter elucidates the 'untidy' legal system inherited by James I in 1603 and the debates already ongoing by that time between clergymen and common lawyers about the ultimate source of judicial authority. Through a careful and detailed analysis of the aristocratic inheritance cases in which James I expedited justice and passed his own judgment, Hoyle shows how 'evil precedent' for the oppression of royal subjects was unwittingly set by the king's (often very partial!) personal awards. Interestingly, he suggests that the court of Chancery began to emerge as a tool for the enforcement of Crown decrees by the eve of the Civil War. Though Hoyle readily admits that this is an exercise in imagining 'what may have been', his conclusions have clear implications for our typically optimistic conceptions of early modern litigation and royal justice-giving.

Phil Withington examines the long-debated relationship between the law, legal practitioners, and the Renaissance. Withington specifically explores the vernacularisation of discourse on the 'modern' in 16th- and 17th-century English literature. He argues that the term could be used in a pejorative sense, to unfavourably contrast the present day with the ancient world then being wistfully reconstructed, but that it might also denote a celebration of modern innovation. Withington illustrates how men of the Inns of Court, like Edward Coke, typically adopted the latter tone to defend the developed, peculiar practices of the English common law against external, humanist influences, as scholars have long suspected. Yet their training at the culturally inflected Inns meant that many lawyers were nonetheless responsible for engendering a Renaissance culture of 'ancient-modern' symbiosis within their vernacular printed literature. Hence, both Withington and Hoyle help to illuminate the consolidation of conflicting visions of legal authority at the highest levels in the early 17th century.

The next section of the volume examines engagement with the law at the local level. Steve Hindle's contribution utilises interrogatories and depositions produced in a 17th-century Warwickshire tithe dispute to

paint a vivid picture of parish life and the economic and social interactions therein contained. Hindle asks how far the rise of adversarial litigation so thoroughly outlined by Brooks affected the otherwise peaceable early modern culture of conciliation recently reconstructed by Craig Muldrew. Again, this chapter evokes the idea—-perhaps under-appreciated in Brooks' corpus—that 'defendants did not enjoy being sued and that plaintiffs did not enjoy having to sue them' (p.142). This was certainly the case for the apparently conscientious vicar of Chilvers Coton, whose suit against the tithe-dodging William Archer was an aberration in his efforts to calm village antagonisms. Ultimately, Hindle argues, the usual absence of final verdicts in the archives suggests that litigants did not always seek a final, favourable verdict. Rather, the initiation of a suit was designed to nudge opponents towards informal settlement. Litigation and reconciliation were not necessarily in conflict, then—even if, in certain circumstances, the law could serve to exploit social inequalities.

Broadening the geographical scope from Hindle's chapter, and returning to the realm of fractious litigation between commoners and authorities, John Walter examines popular knowledge of the law in the early modern politics of subsistence. At the heart of Walter's chapter is a range of fascinating cases, drawn primarily from Star Chamber, in which commoners either evoked the law to its absolute letter or wilfully manipulated legal ambiguities to legitimise and defend communal involvement in local protests. At the advice of their attorneys, protestors went in pairs to tear down enclosures so as to preclude any accusations of 'riot', which was defined by contemporary theorists as involving at least three people. Elsewhere, when physically preventing the exportation of food, the crowd might present themselves as the rightful administrators of publicised grain regulations. That communities could come together to put their combined knowledge of the law to strategic use, whether in action or in litigation, suggests a shared sense of lawful rights and, perhaps, a wider political consciousness, Walter argues.

It is with questions about national politics that Peter Rushton's chapter opens. Rushton explores the relationship between central and peripheral legal processes within a state which, paradoxically, still relied on efficient local governance for its stability. He addresses two models developed by historians: that of integration and the subordination of local legal practices through legislation, and that of continuous local autonomy supported by occasional state intervention. Cutting a path through these accounts, Rushton analyses 17th- and 18th-century northern church courts, demonstrating the acceptance of local customs in these venues, and examines the multifaceted role of the justice of the peace in providing creative remedies to his own neighbours. Together these studies underline the importance of individual discretion and local priorities to legal administration across early modern England. The implied distinction between central, statute-based *law* and more localised, arbitrary *justice* may be slightly overstated, given the increasing opportunity for flexible remedies in royal courts too. But this observation only adds support to Rushton's argument that the state 'was not a rigid institution, but a *process*', at every level (p.193). Rushton thus frames the experiential aspects of early modern law and justice, to which Hindle and Walter are also attuned, within the narrative of state formation.

The next set of chapters move into the 18th century, and to less established scholarly perspectives on the history of law and culture. Begiato's contribution continues the theme of provincial legal practice with a study of clandestine marriages in Lancashire. Previous research has emphasised the general conformity to canon law exhibited by 18th-century couples in seeking marriage by an ordained clergyman. Yet the jactitation of marriage suit uncovered by Begiato hinged on the validity of the priest himself: in this instance, the busy Christopher Bulcock, who performed perhaps hundreds of secret ceremonies in a public house, despite his widely acknowledged mental incapacities. Begiato argues that these marriers' attitudes and approaches to marital law were ultimately pragmatic. The status of the unions joined by Bulcock were evidently ambiguous. Some couples 'looked upon their marriages as good' and lived together as husband and wife (p.221), but others thought Bulcock's services improper and sought remarriage elsewhere. Yet the privacy and accessibility of his services typically overrode concerns for the letter of the law. The extent of conformity to the law was therefore shaped by personal and familial circumstances, as well as by the topographic and socio-economic conditions of regions like Lancashire. Hence it was possible to be 'wed enough' in a more popular conceptualisation of the law.

Craig Muldrew attends to larger-scale economic factors behind the decline in litigation in the 18th century that was observed by Brooks and other legal historians. Muldrew notes that the real expansion and downturn in common-law suits before and after the late 17th century was in actions of debt, but that the numbers of active attorneys in the country increased nonetheless. Muldrew therefore undertakes a wide-ranging analysis of country attorneys' accounts and practise manuals to explain the influence of changing credit mechanisms and the transforming functions of lawyers on litigation patterns. In the 18th century, credit was increasingly conducted through written notes, replacing the oral agreements that had so often resulted in the initiation of civil proceedings. Attorneys, solicitors, clerks, and scriveners were routinely employed to produce these notes. Yet Muldrew shows that their most significant contribution – and the reason for the expansion of their numbers – was in elucidating the complex terms of mortgaging and conveyancing that increasingly underpinned evolving credit arrangements. Their involvement in this area fostered a professionalised lower branch of lawyers beyond the metropolis, who themselves became active lenders. The same lawyers soon raised their fees for litigation in line with those they received for assisting in conveyancing deals. These increased costs, as well as the novel emphasis on security of loans through property, caused a shift towards a more 'class-based system' of litigation, no longer open to all. Hence, the decline in litigation had geographical, social, and—crucially—economic dimensions.

Gwenda Morgan's contribution offers the only trans-Atlantic study in the volume, comparing the lives and careers of two 18th-century JPs from Richmond County, Virginia, and County Durham in England, through their surviving journals. Colonel Landon Carter was one of the wealthiest planters in the North American colony and spent most of his life as a member of the powerful county court bench, though rarely got his hands dirty with the day-to-day work of law. Edmund Tew, the rector of Boldon, was, in contrast, a diligent magistrate. His surviving notebook details thousands of clients and cases who accessed him for justice within his own parlour. Tew fulfilled a communal role similar to that of the efficient vicar of Hindle's Warwickshire case study or the popular Lancashire priest from Begiato's chapter. Again, then, it seems clear that individual discretion, priorities, and work ethic shaped legal culture in a given setting. But Morgan principally concludes that the two justices worked in remarkably different institutional and legal structures. Whereas the anticlerical culture of Virginia and absence of church courts meant that Anglican clergymen had no place in the administration of law, the ecclesiastical courts remained active and influential within the personal lives of people in England. Morgan's comparison therefore demonstrates the peculiarity of the English system, where ministry and magistracy were often combined.

Adrian Green reflects further on provincial legal cultures in his chapter, on the architecture and *milieu* of 17th- and 18th-century Durham. Beginning with an outline of the Palatinate of Durham and its legal autonomy under the Bishop for much of the medieval and early modern periods, the chapter details the character, functions, and aesthetics of the legal spaces therein developed. Green considers the accessibility and presentation of courtrooms in the Cathedral, the Castle, and the now-lost courthouse. He principally

emphasises the significance of the lawyerly community to Durham in the centuries between the 1530s and 1830s. Green finds that the architecture of Durham supports Brooks' observations about the influence of London training on northern attorneys, with the premises and offices that they built and furnished around the Bailey bearing the aesthetic imprints of the Inns of Court and other chambers in the capital city. This is another striking part of the story of England's legal community and culture. In Durham, this profession found a home in the buildings that would later contain Brooks' own university office.

The volume closes with two of Brooks' previously unpublished articles. The editors ask readers to 'bear in mind that these pieces were very much works in progress on topics that [Brooks] was still developing', which might have become full monographs rather than articles (p. 5). The first weighs up the perceived continuities in the law and legal profession within the otherwise 'revolutionary' 17th century. It reflects on the short-term impact of interregnum-era calls for legal reform as well as long-term changes like the downturn in lawyers' prospects, which coincided with a decline in traditional forms of legal education and the renewed political importance of the clergy during the Restoration. The second chapter looks more closely at the relationship between the temporality and the spirituality through key debates from the 1530s to the 1680s. Across these two pieces, Brooks reconsiders the immediate effect of the civil wars' 'discontinuities' on English law, arguing that any revolution in this area had already occurred before 1640. The execution of Charles I and the interregnum period brought limited criticisms of lawyers and their institutions to the table, and even encouraged some practical adaptations in line with the new head of state. Yet more tangible change was not seen until after the Restoration, encouraged particularly by the debates around religious tolerance. Here, Brook argues, the weaknesses of the discordant lawyers were exposed, instigating the shifting fortunes between church and law thereafter.

As always, Brooks skilfully juxtaposes detailed vignettes of the life of early modern law with thought-provoking observations on its place in society and state. He broadly outlines a decline in 'judge-made law' and the participatory, litigation-based legal regime in favour of partisan politics, statutory prevalence, and the 'command of the state' between the Restoration and the Glorious Revolution (p.326). In so doing he pulls at the ties that have long bound law to history and monarchy in the minds of contemporaries and historians. Simultaneously, he presents another important dimension to be explored in more detail: the organic relationship between law and religion, and the professions and institutions thereof. As the volume has no concluding section, these chapters close the work—fittingly, the final word is left to Brooks. They neatly touch upon many of the topics and themes addressed throughout the other contributions, including tithes and marriages, debt and conveyancing, the culture and education of the legal profession, and the 17th-century battles between clergy and lawyers about the royal prerogative in the law. True to form, Brooks makes these moments speak to a rounded, sweeping narrative of early modern English and European state and society.

Overall, *Law, Litigants, and Lawyers* successfully handles its tricky brief of celebrating the work of the pre-eminent scholar of the field whilst inviting further research. The volume treads the familiar ground of elite jurisdictional disputes and local microhistories as well as the more unexpected, emerging avenues of architectural study and the interconnection of law and religion. In all, the inherent humanness of early modern English law-in-society comes to the fore. To the editors' enquiry into 'how law was understood and used in early modern England,' the contributors respond with a multitude of answers. Their research shows that the execution and experience of the law might be shaped by a variety of short- and long-term factors, and by local and national contexts. This open-ended conclusion itself seems a fitting tribute to Brooks' inquiring mind and pioneering work. With the task of synthesising these findings perhaps still to be achieved, Brooks' extraordinarily comprehensive scholarship will surely continue to set the standard.
