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Book Review

Law and Society in the South: A History of North Carolina Court Cases

John W. Wertheimer
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In the Introduction to Law and Society in the South: A History of North Carolina Court Cases, author John W. Wertheimer points out "one of the legal historian's central challenges: how to link law to society—that is, how to describe law and social change in light of each other" (1). In order to accomplish this goal, Law and Society focuses on North Carolina state court cases, rather than federal cases (a more typical focus of legal scholarship), because of the "proximity of state law to people's lives." This proximity arises due to states' jurisdiction over "property law, contracts, marriage, divorce, and crime and punishment" and other issues that have "day-to-day impact" on people's lives (1). This emphasis on day-to-day lives of individuals is central to Wertheimer's book. In fact, Wertheimer asserts, it is just this sort of extralegal study that makes the book unique; he writes that Law and Society "takes an 'external' approach to the study of legal history" in that it "foregrounds the impact of extralegal factors—social, political, and economic—on legal development" (2). He hopes that "the resulting legal history is less about the law in books than about the law as lived in society." For Wertheimer, this legal history fills a scholarly gap; he suggests that his project's "social-history emphasis casts legal disputes in a light that legal scholars do not regularly see" (2). He hopes the book "sheds new light on several standard themes of southern social history, including race relations, the role of religion in society, gender roles, and cultural mores" (2). For the most part, he succeeds.

The book is divided into eight chapters, arranged chronologically, each examining a court case and its historical context. The legal disputes range from interracial marriage to evolution; from voting rights to resistance to school integration. In each chapter, Wertheimer emphasizes how the close study of these individual cases disrupts the scholarly or popular consensus on the topics they

address.

In Chapter 1, "White Couples and 'Mulatto' Babies: Jacksonian Age Divorce and Democratization," Werthiemer examines a pair of 1830s court cases in which a white husband filed for divorce from his white wife because the wife allegedly gave birth to a mixed-race baby. The husband in the first case lost; the husband in the second prevailed. Wertheimer's study reaches a conclusion quite different from other scholars who have studied the same pair of cases. Wertheimer focuses on "the case's central conflict—marital sanctity versus 'racial' purity" which "divided antebellum whites along class lines" (18). Elites such as N.C. Supreme Court Justice Thomas Ruffin, who issued the rulings, valued marital sanctity because marriage was the foundation of the planter lifestyle. Poor whites gave "higher priority to white supremacy" in order to cling to their limited social power (18). Many historians assert that Ruffin's about-face—denying the first husband's divorce and granting the second—was caused public outcry after the first decision; Wertheimer disagrees. He argues that Ruffin gave "an illusion of public influence" and ruled in favor of the second husband, not because there was much of a public outcry (according to Wertheimer, there was none) but rather "in order to prevent such [popular] influence from materializing" in the first place (18).

Chapter 4, "Evolution and Defamation: The Case of Reverend J. R. Pentuff" disrupts the popular misconception—derived in part from the Scopes "Monkey" trial in Tennessee—that the two sides of the 1920s evolution debate could be defined in stark, simple terms: southern, rural, religious, scientifically ignorant creationists versus northern, urban, agnostic, scientifically knowledgeable evolutionists. In fact, Wertheimer suggests, "the vast majority of Americans at the time believed deeply in both science and religion" (65). The major leaders of the evolution debate in North Carolina were both knowledgeable in science and Baptist leaders. William Poteat, "the Christian evolutionist," was president of the Baptist Wake Forest University (66). Poteat's "top adversary" was James R. Pentuff, a Baptist minister and "religious fundamentalist." Pentuff, however, "was not ignorant of science. Indeed, he fancied himself a scientific creationist" (66). Thus, Wertheimer's examination of Pentuff v. Park, a libel suit Pentuff filed in 1925 to defend his character against a Raleigh newspaper columnist, reveals that today's popular view of the early fights over evolution oversimplify the situation, for "in the evolution debates of the 1920s, perceived expertise in both science and religion mattered" (69). According to Wertheimer, the Pentuff case "should prompt rethinking of many Scopes-based assumptions. The evolution debate in Pentuff did not pit North against South, city against country, or, in any simple way, religion against science" (87).

Chapter 8, "Native Americans and School Desegragation: The Chavis Case in Robeson County," examines a suit (State v. Chavis) brought in the late 1970s by Lumbee Indian school children; they protested racial integration of public schools. Wertheimer asserts that "Chavis challenges the assumption that all nonwhites during the civil rights era supported school desegregation. Recent studies have revealed pockets of African American opposition. Chavis reinforces these studies' important message: that opposition to desegregation, like support for it, was multicultural" (166). As these brief summaries show, Law and Society in the South—from start to finish—emphasizes that scholars should question the popular assumptions about major legal battles fought across the United States because closer studies of individual skirmishes reveal a far more complex history.

The book has only one theoretical challenge. Wertheimer repeatedly emphasizes "the value of venturing beyond 'book law' (contained in law reports) to 'living law' (experienced in society)" (3). This "venturing" allows the law to serve "as Oliver Wendell Holmes Jr. noted, as a 'magic mirror,' wherein we see reflected not just our predecessors' lives but also our own" (3). Wertheimer relies on this dichotomy—book law versus living law—throughout his book. For example, in the second chapter (which examines interracial marriage), Wertheimer suggests that legal historians tend to work "top down," focusing on "legislatures and lynch mobs" rather than the individual lives of interracial couples (28). In contrast, his book will do "a 'bottom-up' history," for the characters in the story are "more than flat names on the pages of a court record" (28). This dichotomy, between living history and flat law, is often used by humanists working in legal disciplines. In order to justify bringing law out of law schools (and out of the social sciences), humanists claim that their approach brings life to the law. The unstated converse, of course, is that law students, law professors, and other legal scholars merely focus on book law and ignore the social and historical context of the cases they study, which is simply false. When Wertheimer emphasizes the importance of archival research and the study of lives that rarely make it into major history texts (87), Wertheimer issues persuasive criticism.

Readers should note the collaborative nature of Law and Society's authorship. The book provides a list of "Student Contributors," with this explanation: "The chapters in this book ... originated as research papers produced collaboratively by John W. Wertheimer and his students in 'Law and Society in American History,' an upper-level legal seminar at Davidson College" (vi). Each chapter begins with a footnote specifying which ten or so students contributed. Although collaborative scholarship is common in the sciences, it is rare in the humanities. Wertheimer's well researched and eloquently written work suggests

that humanities scholars would do well to reconsider the value of collaborative research, even with—or especially with—our students.