

cherche utile, sinon commode, car elle ne fait double emploi avec aucune autre bibliographie existante. Les compilateurs nous annoncent une suite : souhaitons que les bibliographies à venir reposent sur un plus large éventail de sources et que leur classement réponde davantage aux besoins des chercheurs.

André LAROSE
Université d'Ottawa

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PETER WAITE, SANDRA OXNER and THOMAS BARNES — *Law in a Colonial Society: The Nova Scotia Experience*. Dalhousie/Berkeley Lectures on Legal History. Toronto: Carswell Company Limited, 1984. Pp. xii, 212.

Legal history in Canada remains a relatively underdeveloped field of research. This volume is one of the most recent contributions to understanding legal developments in the Maritimes, particularly in the eighteenth and nineteenth centuries. The nine essays are framed by a preface, a nineteenth-century reflection on Nova Scotia law and a bibliography. As Chief Justice Ian M. MacKeighan notes in his preface, "these essays do not collectively constitute even the skeleton of Nova Scotia's legal past; rather, they represent the interest and the knowledge — perhaps most significantly, the enthusiasm of their individual authors" (p. x). The essays were presented as papers in two symposia — one at Berkeley and one at Dalhousie in 1983, and the authors by and large are historians, although not all are primarily historians of law.

One of the problems of the volume is its scope; it ranges over the colonial and provincial experience and deals with legal institutions and practices as well as resistance to both at the highest levels (the Supreme Court of Canada) and the lowest (individual justices of the peace). The reader will find a necessarily fragmented portrait which tantalizes but does not totally satisfy. Geographically, the volume extends from Nova Scotia and the Maritimes generally to Ontario, Quebec and New England. Thus the title of the volume is somewhat misleading since three of the nine essays do not, strictly speaking, deal with Nova Scotia *per se*. No doubt the authors of the three non-Nova Scotia pieces hope, as M.J. Pritchard explicitly states, to prompt interest in questions related to Nova Scotia's legal history (p. 43).

The essays which deal with Nova Scotia range from thought-provoking assessments to standard chronicles of institutional evolution. Thomas Barnes' lead essay examines "legal birthright and legal baggage" and, as such, it suggests the importance and complexity of Nova Scotia's initial legal development, in the context of British statute and common law. He argues that in Nova Scotia, as in other British colonies, legal birthright became legal baggage to be discarded or reworked in new circumstances. Thus Nova Scotia, like Massachusetts, eschewed the British practice of legislating numerous capital felonies; in some instances, however, such as in the case of the notorious Black Act (1723), the governor and council were prepared to use the device of proclamation to ensure that Nova Scotia law embraced this particular piece of legislation. By and large "the same process of sorting out legal baggage" occurred in seventeenth-century Massachusetts and eighteenth-century Nova Scotia although the societies were not identical. The parallels between the two societies are explored in Sandra Oxner's essay on the initial creation of Nova Scotia courts similar to those of Massachusetts — the General Sessions of the Peace and the Inferior Courts of Common Pleas, the main lower courts of criminal and civil business until the mid-nineteenth century. By the early nineteenth century the men who filled these offices were trained and salaried as opposed to their lay predecessors. The creation of the Halifax police court in 1815 and its replacement in 1841 by a court composed of aldermen and the mayor provided more accessible and regular courts for minor infractions and prepared the way for a more professionalized justice system. The difficulties of obtaining juries and getting speedy justice also led to the frequent use of summary procedure both within Halifax

and in the rest of the colony. By 1841 allegations of corruption surrounding the Halifax magistracy led to the conferring of judicial functions upon elected officials rather than appointed office holders. In more remote areas the need for more expeditious justice gave rise to the controversial measure of appointing experienced lawyers as First Justices of the Courts of Common Pleas and Presidents of the Courts of General Sessions in three districts. Eventually this too was rejected in favour of enlarging the Supreme Court to take over the functions of Common Pleas. From this point on (1841) the jurisdiction of Sessions Court was also reduced and grand and petit juries (excluding Halifax County) sat only with a Supreme Court judge. The result was centralization of the administration of justice in Halifax but more extensive civil jurisdiction for individual justices in remote areas in the absence of lower courts for civil causes. In the 1860s the trend was towards stipendiary magistrates, signalling the end of the voluntary lay magistrate's role.

Three essays in the volume tackle institutional developments largely through a biographical approach. J.M. Beck examines "The Rise and Fall of Nova Scotia's Attorney-General, 1749-1983" through biographical sketches, noting the close ties between this office and other political roles such as speaker of the assembly and, after 1848 and responsible government, premier. Beck also notes that the characters of post-confederation attorneys-general often detracted from the stature of the office, at least into the 1920s. The one exception noted was John Thompson, later prime minister, and ostensibly the subject of Peter Waite's essay in this volume. Curiously, one learns very little from Waite about Thompson's role as Attorney-General but rather more about the cases which came to trial. In short the "cheerful eclecticism" referred to in the first paragraph of this essay summarizes Waite's approach. The third essay partially dependent on biography is James G. Snell's piece on "Relations between the Maritimes and the Supreme Court of Canada: The Patterns of the Early Years." Snell finds a paradoxical pattern of Maritimes support for the Court in the nineteenth century and apathy towards assuring Maritimes representation on it, when compared to the West. Central to the questions raised by Snell is his centre-periphery approach which needs more explicit development and clearer application to his subject. Even within the region, as he himself notes, there are strong provincial differences and perhaps different senses of community at work which undercut a single Maritimes perspective.

Two further essays exhibit the potential usefulness of biography but from a distinctly different perspective. Judith Fingard and Michael Cross effectively use case materials in combination with biography to present a social history of some of those on the receiving end of the law. Cross's essay on popular resistance to authority in what becomes Quebec and Ontario draws on the social history of law approach and suggests what might be done specifically in the Maritimes. Fingard's "Jailbirds in Victorian Halifax" rejects study of popular resistance for a look at common offenders and their criminal careers. Drawing on the records of courts and carceral institutions in Halifax, Fingard provides the reader with a "penal and criminal geography", a portrait of repeat offenders and future research questions. Her population is a very particular one — those civilians with frequent committals to jail (the 5.3 percent of the offenders who were responsible for 32 percent of the committals in the decade 1864-73). Thus, her generalizations must be qualified in light of this. Fingard does suggest that such an approach needs to be integrated with the statistical evidence so commonly used by other social historians of crime. Statistical evidence overlooks interrelationships between criminals and glosses over the career aspects of criminal life. Her study is a beginning for such an approach and it yields other insights on the jail as an institution which need follow-up in future research.

In total the volume displays a number of approaches and methods of studying legal history, and as such, leaves the reader wishing that the editors had provided a more comprehensive framework for integrating the various bits and pieces. An index would also have been helpful. Given the undeveloped state of legal history in the region this volume will no doubt prompt others to undertake the task of providing a more comprehensive treatment as well as more specialized studies.

Linda KEALEY
Memorial University of Newfoundland