

MUIR, James – *Law, Debt, and Merchant Power. The Civil Courts of Eighteenth-Century Halifax*. Toronto: University of Toronto Press, 2016. Pp. 282.

Early in *The Wealth of Nations* (1776), Adam Smith attributes the division of labour to “a certain propensity in human nature ... the propensity to truck, barter, and exchange one thing for another.” In the then-new commercial port of Halifax, where such exchanges were based on credit rather than barter and where little else bound its small, fluctuating population together, the propensity to dispute the terms of those credit relations was a powerful corollary. The law offered the principal arena to adjudicate those disputes and allocated opportunities and costs across various litigation strategies. Economic exchange, then, was structured by the law.

As James Muir notes in this refreshingly empirical study, “civil litigation was ... a continuation of market transactions in another forum” (p. 126). To reveal patterns in that litigation, Muir has delved deeply into the extensive records of the civil courts of Halifax from the port’s founding in 1749 to 1766, a decade before Smith published his treatise. If Smith emphasized how widespread the advantages from the division of labour were, Muir stresses the unequal distribution of advantages from courts that favoured creditors over debtors and merchants and traders over others. Like Smith, however, Muir is primarily interested in the strategic decisions that diverse individuals made in pursuit of their own interests.

Muir thus joins other legal historians in shifting attention from the criminal to the civil law, and from the ‘high law’ of appellate jurisdictions, professional jurists, and legal doctrine to the ‘low law’ of everyday dispute-resolution by legal amateurs such as justices of the peace, jurors, and arbitrators. In early Halifax as elsewhere, civil and low law meant debt collection, the subject of more than three-quarters of the actions before the Inferior Court of Common Pleas. What choices did the law offer litigants, who were those litigants, and what choices did they actually make? It’s a herculean research agenda, which Muir ably fulfils by systematically mining the surviving minute books and case files of all five civil courts to create a database of more than 2,500 cases. Some readers may find the resulting level of detail daunting, but legal historians are much in Muir’s debt for his clear and comprehensive exposition of the constituent elements of civil actions and for mapping precisely how the law worked in practice.

Yet Muir is right to insist that this is also social history. It is concerned not with legal principles and specifics but with how litigants, jurors, and arbitrators acted in their own and their neighbours’ disputes. Indeed, social explanation often trumps legal analysis, as when Muir attributes the differential treatment of different types of debt (by note, on account, or for wages) to the livelihood of the plaintiffs most likely to be owed each type. This is undoubtedly part of the answer, but so too is the English law’s entrenched preference for written forms of evidence in contract and property transactions.

Reminiscent of an older social history typified by the work of Michael Katz on Hamilton and David Gagan on Peel, Muir’s book serves as a reminder of the promise of the quantitative analysis of routinely generated records to uncover the

behaviour of the wider population, here divided predominantly into commercial and craft occupations. Muir then compares his findings to those of similar studies of other times and places. Based on these comparisons, he emphasizes Halifax's typicality over its specificity. The question is more who and what than why. Meaning is inferred from observed behaviour and takes the form of possible explanations for patterns that emerge from the quantitative data. All this is thoughtfully done, but meaning in the cultural-history sense of the law's legitimizing symbols, rhetoric, and rituals or in what people said or thought they were doing makes only fleeting appearances. This reflects the sources available, but also the methodological choices made. What might a historian making different choices have done with the more than four hundred occupational identifiers opponents ascribed to individuals? Muir is transparent about his own decisions and the assumptions that underpin them, inviting us to think anew about the promises and risks of this sort of social history: its methodological rigour, interpretive modesty, attention to detail, and respect for the agency of otherwise-invisible people, but also how some of its hard-won results might prove not especially surprising or significant and its behaviourist allergy to politics and culture.

But what was the cumulative effect of all these individual decisions about litigation? The rather misleading nod in the title to "merchant power" and discussion of a "bourgeois system" or the law's "buttressing of bourgeois power" (pp. 8, 12) in the introduction and conclusion point to one answer. The analytical limits of these concepts are evident from how much of the book functions without reference to them. Certainly, the law sought to encourage the satisfaction of private obligations and, as Muir shows, favoured creditor-plaintiffs when debtor-defendants failed to meet those obligations. Naturally, it was used more often by those who extended more credit to more people. Distinguishing degrees of debtor protection rather than emphasizing the relative typicality of Halifax courts in aiding the enforcement of voluntary agreements might have paid dividends. Compare early Halifax to Upper Canada a few decades later, where more rigid legal formalities governed actions for all but the smallest debts, where imprisonment for debt appears to have been more rigorous, and where no equity of redemption existed to allow defaulters to regain property sold to satisfy their debts. Calling both 'bourgeois' gets us only so far.

More interesting are echoes, especially in the conclusion, of Douglas Hay's argument about how the eighteenth-century criminal law legitimated unequal property relations in England, in part, by being constrained by its own claims to uphold equal justice and by being open in limited ways to the interests of the less-propertied. Eighteenth-century civil (and property) law seems especially fertile ground for exploring a similar argument about the acceptance (or at least use) of a legal system by those whom scholars such as Hay and Muir believe were ill-served by it. Other sources and more cultural analysis would be necessary to flesh out the argument fully, but Muir does show that merchants and traders appeared before the courts as debtors (not just creditors) and had their property, including slaves, sold at public auction to meet demands against them. Defendants might find opportunities in the law to mitigate or even defeat the more dubious and

vexatious demands of their creditors. Finally, more marginal occupational groups participated in the legal process (yeomen were more likely to serve as jurors than were merchants, for instance), turned to the law to secure the credit they too extended to others, and relied on the law's promise to aid creditors to secure vital credit for themselves. Perhaps they also believed that promises ought to be kept.

Muir offers us a close reading of the largely routine workings of the civil law by mostly forgotten Haligonians. They had a propensity to exchange "one thing for another" but also to make the law their own in order to enforce, contest, and renegotiate their relationships. If those disputes were not always adjudicated on a neutral field by their peers, neither were resolutions imposed by distant authority.

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PELZ, William A. – *A People's History of Modern Europe*, Londres, PlutoPress, 2016, 273 p.

Depuis quelques années, nous assistons à une reprise intéressante d'une histoire « par en bas » qui reprend un langage et des thèmes plutôt chers à l'historiographie des années 1970 et 1980. En France par exemple, après la réédition en 2012 de son ouvrage majeur, *La formation de la classe ouvrière anglaise* (« Points », Seuil), un consortium d'éditeurs (EHESS, Gallimard, Seuil) a traduit en 2015 le volume d'essais d'Edward P. Thompson paru en anglais en 1991. En 2016, les éditions La Découverte ont publié le livre de Michelle Zancarini Fournel, « Les luttes et les rêves ». Une histoire populaire de la France de 1685 à nos jours ; et on attend dans le courant de 2017 un livre qui devrait également faire référence à l'histoire populaire dans son titre, de la part de Gérard Noiriel. Le volume de William A. Pelz s'inscrit dans ce mouvement, animé par des historien.nes militant.es qui ne font pas mystère de leurs affections politiques et de leurs filiations intellectuelles. L'auteur se propose de fournir aux lecteurs une vision de l'histoire européenne alternative à celle produite par la plupart des manuels et des synthèses existants. Alternative du point de vue de la chronologie retenue – du Moyen-Âge et de son effacement jusqu'au seuil du XXI<sup>e</sup> siècle – et du point de vue de la perspective, puisqu'il s'agit de souligner le rôle du *common people* dans les processus historiques. La citation du célèbre poème de Brecht, « Questions que se pose un ouvrier qui lit », accompagne la présentation de la perspective choisie et souligne la volonté de l'auteur de raconter une histoire nécessaire, celle des travailleurs (*working people*). L'introduction signale les difficultés d'une telle histoire et les biais susceptibles d'affecter la reconstruction de toute histoire : la présence des sources, leur accessibilité et la sélection opérée par l'historien.ne, naturellement, mais aussi les biais relevant des options intellectuelles et idéologiques des auteur.es : la classe, le genre et la race, l'idéologie elle-même et une approche dominée par la conscience des résultats de l'histoire sur la longue période. C'est