1994

English Legal History in the Age of Mansfield: Three Perspectives: Introduction

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Symposium

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Introduction

The recent publication of James Oldham’s monumental *The Mansfield Manuscripts and the Growth English Law in the Eighteenth Century* prompted Georgetown University Law Center to stage a symposium on legal history in early modern England. Oldham, Susan Staves, and James Cockburn presented papers at the March 1993 conference. Their subtle and innovative essays have been revised and reprinted in this issue of the *Review* to make them available to a larger audience.

As befits a symposium, the three articles are intentionally provocative. Each challenges our received understanding of age-old issues. Oldham gives lying a legal history. He contends that eighteenth-century English trials suffered from fundamentally incoherent rules that stymied the introduction of relevant evidence and thus prevented the truth from coming out. Yet, he suggests, however much rules like the party-witness ban may have impeded the search for truth in the courtroom, they served instrumental purposes of promoting peaceable dispute resolution.

Staves uses the law of chattel property to examine the legal sources of national identity. In a creative assessment of the law of merchant ships, army commissions, the opium monopoly, and dogs, she locates legal conceptions of Englishness in conflicting property claims. In the process, Staves suggests how personhood can be constructed out of ownership rights and how private property can be understood as a product of joint ventures between individuals and the state. Finally, Cockburn questions Whiggish assumptions about the history of violence. Through a graphic recounting of public physical punishment in early modern England, he suggests that the experience of corporal punishment was not universal and that popular hatred of institutionalized violence has been exaggerated. Public punishment did exist, of course, and in trying to explain it contextually, Cockburn asserts that despite the efforts of late eighteenth- and nineteenth-century reformers to distance themselves from a violent
past, a popular consensus on the desirability and efficacy of physical punishment existed then and has persisted into the twentieth century.

The symposium offers us new ways to understand legal life in the Age of Mansfield. It also raises questions for legal historians interested in other periods and places. Indeed, its very title should make us ponder the sources of periodization schemes and the legitimacy of era-labeling traditions. Though Mansfield makes repeated appearances in Oldham's essay, he is nowhere to be found in the other two articles. Conversely, Staves's intellectual history and Cockburn's social history offer differing methods of trying to recapture the popular legal experiences of particular eras in the past. In these and many other ways, the three essays are provocative examples of how legal historians can ask new questions, investigate new subjects, and provoke new debates.

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