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Book Review of Our Lady The Common Law: An Anglo-American Legal Community, 1870-1930, by Richard A. Cosgrove

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take some credit, though, and, again from the organization's point of view, the ability to take credit for significant political action is a way of strengthening the organization in the eyes of supporters and opponents alike. Second, by opposing Hoover's nomination, the NAACP contributed to the construction of the emerging coalitioin in the Democratic party, soon to support Franklin Roosevelt's New Deal. After the fight over the Parker nomination, the NAACP and its constituency no longer felt strong ties to the party of Abraham Lincoln.

Goings may overstate somewhat the importance of the NAACP's opposition in contributing to the nomination's defeat, although he discusses the role of labor unions and of sheer partisanship as well as the role of the NAACP. Goings argues that, although labor union opposition to Parker was also strong, the key votes, and the ones that were up in the air when the nomination was announced, came from Senators who responded primarily to the position of the African-American community and only secondarily to the position of labor unions. As he acknowledges, because the vote was so close, virtually any factor can be called the critical one.

Goings also argues that the NAACP was right to oppose Parker, who had been, and continued to be, a relatively unimaginative judge whose positions rarely strayed from relatively narrow interpretations of Supreme Court precedents. Goings's discussion of Parker's civil rights decisions after *Brown v. Board of Education* probably criticizes Parker too much for betraying "the spirit of *Brown*" (p. 89). Parker did write, on remand in *Briggs v. Elliott*, that under *Brown* "the Constitution...does not require integration. It merely forbids discrimination." That statement did become a rallying cry for supporters of token desegregation. But, it is unclear that the so-called Parker dictum is inconsistent with the Supreme Court's understanding of *Brown* through the 1950s. Similarly, Parker did uphold North Carolina's Pupil Placement Act, which was a subterfuge designed to delay desegregation and keep it at token levels when it was inevitable. Yet, the Supreme Court itself summarily upheld Alabama's similar statute shortly thereafter. Though Parker was not a bold supporter of desegregation in the 1950s, neither was the Supreme Court.

In sum, Goings's book is a useful addition to the literature on the organizational aspects of the struggle for civil rights.

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Richard A. Cosgrove, *Our Lady the Common Law: An Anglo-American Legal Community, 1870-1930.* New York and London: New York University Press, 1987. x, 330 pp. $40.00.

Our Lady the Common Law is a collection of essays on eight English and American legal thinkers—Langdell, Bryce, Holmes, Pollock, Maitland, Pound, Frankfurter, and Laski—which are linked by the theme enunciated in the subtitle of the work. These scholars were intellectually bound together by a devotion to academic legal science and eventually driven apart by the inroads of politics and the clash of personalities. Along the way Cosgrove presents vivid intellectual portraits, fleshed out by extensive use of the personal papers of both major and supporting characters aided by a thorough

acquaintance with the published sources and the secondary literature. The notes and the full bibliography provide an outstanding guide to current scholarship on late nineteenth century Anglo-American legal thought. The result is solid collective intellectual biography which, by the author's admission, pays little attention to substantive law because the Anglo-American legal community, as opposed to individual members, "had little influence in this direction" (p. 4). The resulting study of legal culture brings to light ignored aspects of late nineteenth century legal history.

The most important aspect of this legal culture is the influence of the man Cosgrove calls "the grey eminence of the Anglo-American legal community," John Austin (p. 144). In fact, it is not unfair to summarize the content of the Anglo-American legal community as John Austin plus certain strong personalities. Whether explaining some of the perceived paradoxes of Holmes's thought by reference to Austinian ideas about the role of force in law, the separation of law and morals, and the nature of sovereignty (pp. 110-127), pointing out Pollock's rejection of Austin in favor of what he saw as the insights of Maine's historical jurisprudence (pp. 143-148), showing how Pound's modification of Austinian ideas diminished his English reputation and thus helped disrupt the community (pp. 208-211), or how Laski's rejection of analytical jurisprudence undid the intellectual underpinnings (pp. 250, 267-268), Cosgrove places the reaction to Austin's ideas at the heart of theorizing about the nature of the common law. By doing so he effectively shifts the terms of discussion away from the fixation on the identification of a structure of doctrine called "classical orthodoxy" which has come to dominate scholarly discussion of the period. The subsequent weakening of the community in the face of Frankfurter's and Laski's fascination with politics not only illustrates the nature of the shared outlook but also the uncritical acceptance of classical economic liberalism and opposition to socialism of the earlier generation of teachers (pp. 225, 259, 155-156). In short, Cosgrove's attempt to portray a legal culture is both challenging and successful within the compass he has set.

Criticism of the work, therefore, runs the danger of asserting that the author should have written a different book. I believe, however, that as valuable as the concept of legal culture is, the neglect of substantive law contributes to a weakness in one of the fundamental conceptions of the study. One of Cosgrove's important points is that the concept of legal science was meaningless, that it could not sustain any serious analysis of law or a true intellectual community. The failure started with Langdell, continued with Holmes, and came to a dismal fruition in Pound (pp. 27-33, 114-116, 206). Only Maitland, who understood that legal history required the interpretation as well as the collection of facts, seems to have been a true "scientist" (pp. 170-175).

Cosgrove's frustration with Langdell's cryptic comments on law and science is thoroughly justified. A consideration of how Langdell practiced legal science, however, may reveal that his "crudely inductive procedure" was in reality the same idea of legal science that had thoroughly dominated antebellum legal thought. Where his intellectual forebears, however, sought for great principles that would order all society, Langdell, a good Austinian, contented himself with elucidating the narrow principles of the technical law of contract and of equity jurisdiction in the name of training technically competent lawyers rather than vague theorists of the good life. His approach

appealed to Charles Eliot because it taught law not at second hand from treatises but from the original sources, the cases, and because when brought to the classroom it required, not the rote recitation of the old regime, but rather the effort to grapple with the sources just as a practitioner must. Langdell did indeed lay the foundations of a legal science, one dependent on the Austinian precepts and the separation of academics and politics which Cosgrove so well illuminates. Its collapse might then be explained not only by the clash of personalities and the allure of politics but also by legal realism's emphasis on non-rational motives in judging. Any such fuller explanation, however, will be built in good part on Cosgrove's work.

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Donna J. Spindel, *Crime and Society in North Carolina, 1663-1776*. Baton Rouge and London: Louisiana State University Press, 1989. xvii, 171 pp. $25.00.

The surviving records of criminal justice in colonial North Carolina are voluminous, a large number of them for years have been available in a definitive edition, and until the publication of this work they have been mostly unused for purposes of scholarly inquiry. Donna J. Spindel, professor of history at Marshall University, has done much to rectify this unfortunate omission. Spindel located in the welter of higher and lower courts in colonial North Carolina a total of 4,108 criminal actions for the years 1670-1776. What proportion of actions prosecuted during these years this represents is impossible to say, since significant gaps exist in all surviving series.

As might be expected from the nature of the highly heterogeneous file papers with which she had to work, the author was confronted with formidable challenges in the collection and analysis of her data. These challenges, along with her solutions, are stated in a note on methodology. Numerous tables present the erstwhile chaos of data clearly by various periods of time and often by type of court, and include such categories as numbers of prosecutions by type of crime, by region of the colony, by socioeconomic classification, and by sex; and disposition of actions, and punishments inflicted, by similar categories.

The author draws inferences from the data with commendable caution, with the result that her conclusions, though valuable, usually present few real surprises: justices tended to be plural office-holders and less well qualified than their counterparts in other colonies; theft of animals loomed large as a species of crime; prosecutions for crimes against morals declined in number as the colony grew, reflecting a "growing secularity of values"; assault was the most frequently prosecuted offense; contempt prosecutions were most numerous in the 1720s and 1730s, paralleling the political tempestuousness of those decades; women were prosecuted more for crimes against morals than for any other category of crime; laborers were in general more likely to be indicted and convicted than were planters. Occasionally, however, more venturesome conclusions are advanced, such as that women became more physically aggressive as time passed, or that courts were more tolerent of crimes of violence by the poor than by the gentry, or that sentencing appears