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Book Review of Legal Hermeneutics: History, Theory and Practice, edited by G. Leyh

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garding recent historiographical innovations. In particular, Peter Burke's lucid introductory essay exploring the premises behind much of the "new history" of recent years will likely prove useful henceforth in classrooms and graduate seminars. But Burke is careful to remind us that the new history itself has a history; James Harvey Robinson employed the term long before Jacques Le Goff came on the scene, and, depending upon how one defines it, its characteristics can be found in even more remote antecedents, such as the work of Voltaire, Giambattista Vico, and Jacob Burckhardt. In fact, one could argue that the replacement of "old" history by "new" is one of the oldest rhetorical patterns in the history of historical writing.

It is not Burke's purpose, however, to diminish the claims of the current new history, but to bring some of its purposes, strengths, and weaknesses into clearer focus. This is accomplished through nine essays by leading scholars in microhistory, history from below, "overseas history," oral history, and histories of the body, of women, of political thought, of reading, and of images; the essays are then capped off by Burke's essay on the revival of narrative and *histoire événementielle.* Both of Burke's contributions are excellent, and his effort to define the new history as an oppositional term makes good sense. But the volume's other essays are not all of the same quality. The best is Robert Darnton's supple treatment of the history of reading, which reflects his trademark combination of vast, shrewd research and engaging prose; his essay may prove of practical value to Americanists working in that growing subfield. Some essays, notably Jim Sharpe's on history from below and Richard Tuck's on the new history of political thought, show a self-critical reflexivity that points to the intellectual maturation of their fields. But others, such as Roy Porter's "History of the Body," leave one feeling that valuable insights are being hyperextended to create subdisciplines that need not exist. Indeed, most of the essays occasionally manifest an undercurrent of special pleading, which sometimes swells into a roaring rapids. But that is perhaps to be expected and is not a fatal fault.

Rather, it is the book's British provenance that renders its use problematical for this journal's constituency. There is irony in that fact. The new history set out to transcend the national orientation of traditional history; but most of the essays in this book seem, well, extremely *British,* reflecting rather different questions and debates than those current in the United States. The essay on oral history, for example, re-argues issues that were long ago settled here. And of what use to an Americanist is an essay on the odd (to us) concept of "overseas history"? One is also struck by the virtual absence here (except in the essay on women's history by Joan W. Scott, an American) of the post-structuralism that has been so influential in the United States.

Such criticisms merely suggest that the new history, like anything else, will inevitably reflect the enduring peculiarities of the national cultures and national academic subcultures and discourses within which it is being practiced. When Sharpe concludes his essay by affirming that the new history "cocks a snook at the mainstream," it is not difficult to see, both from his idiom and his meaning, how deeply the new history relies upon the old for its very self-definition. If it is hard now to imagine our historical writing stripped of such innovations, it is equally hard to imagine those innovations standing on their own with no mainstream to cock a snook at.

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Legal Hermeneutics: History, Theory, and Practice. Ed. by Gregory Leyh. (Berkeley: University of California Press, 1992. xx + 325 pp. Cloth, $45.00, ISBN 0-520-07283-9. Paper, $15.95, ISBN 0-520-07284-7.)

Legal Hermeneutics is a collection of fourteen essays exploring the contributions that hermeneutics can make to legal theory and analysis. Centering for the most part around the ideas of the German theoretician Hans-Georg Gadamer, the essays range from general introductory discussions (Fred Dallmayr relating hermeneutics to the rule of law and Jerry H. Stone tracing its use in biblical scholarship) to analyses of specific problems in legal theory.

Included are two essays in the history of legal hermeneutics (Peter Goodrich on the influence of Ramism on the common law and James Farr on Francis Lieber's constitutional theory), several that focus on contemporary problems in American legal and constitutional theory, and a thoughtful essay by Stanley Fish that evaluates the book and criticizes many of its essays.

Historians will probably find the book useful for two primary reasons. First, it is both a helpful guide to recent interpretavist thinking and a representative example of contemporary intellectual attitudes. Hermeneutics is the study (or, some would say, the science) of "interpretation," the disciplined analysis of the ways "readers" determine the "meaning" of "texts." Hermeneutics, writes David Couzens Hoy, "maintains that understanding is already interpretation, suggesting thereby that understanding is always conditioned by the context in which it occurs." While the interactive and contextualist approach of hermeneutics seems "antifoundationalist" and perhaps subjectivist (as Jurgen Habermas, for example, maintains), the contributors to this collection often stress its formalist and even objectivist potential. "Hermeneutics sets for itself an ontological task," explains Gregory Leyh, the book's editor, "namely, identifying the ineluctable relationships between text and reader, past and present, that allow for understanding to take place at all."

Second, the book casts light on legal issues that historians frequently confront, most prominently the so-called theory of constitutional originalism (the claim that the "intent of the framers" should control interpretation of the Constitution) and the indeterminacy thesis (the claim that legal rules do not control judicial decisions). With its stress on the unavoidable ways in which reader and context shape understanding, hermeneutics looms inevitably as the theoretical mongoose to Edwin Meese's cobra. Several contributors, in fact, concentrate on showing the impossibility of identifying a true intent of the Framers (for example, George L. Bruns and Terence Ball) or on demonstrating that, in any event, intentionalism is "methodologically useless" (Steven Knapp and Walter Benn Michaels). For balance, the book includes a thoughtful essay by Michael J. Perry that defends a relatively sophisticated if somewhat open-ended version of originalism, a version, however, that would hardly satisfy the ex-attorney general. Similarly, other essays illuminate the indeterminacy thesis. Ken Kress offers a provocative consideration of the relationship between indeterminacy and political legitimacy; Drucilla Cornell emphasizes the unavoidable moral responsibility that arises from the need to interpret indeterminate legal sources; and Lief H. Carter describes the de facto views of a group of state court judges who say that they rely for the most part not on legal rules but on their own "vision of community values and experiences."

In spite of its strengths, *Legal Hermeneutics* may prove unsatisfying to some historians. The emphasis it places on the importance of contextuality and of the interaction between reader and text may suggest that Charles Beard and Carl Becker have been reincarnated as postmoderns. The book's text-centered orientation may seem unduly literary (though, for hermeneuticians and many others, of course, anything may be a text), and its stress on the complexity of interpretation may seem excessive in light of some of historians' concerns and sources. Further, the book's recurrent emphasis on context, specificity, and interaction suggests ultimately that the hermeneutical approach—though compelling in its own terms—remains more a sensibility than a method. Indeed, a number of the essayists in *Legal Hermeneutics* would probably agree with that proposition. Finally, to the extent that at least some hermeneuticians either disdain the importance of or deny the possibility of recovering authorial intent, many historians may simply wish to disagree with them and to believe that the effort to understand the intentions of historical figures—regardless of the difficulties and uncertainties involved—is far too interesting, important, and unavoidable either to abandon or to slight.

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