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Introduction

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If law and legal systems may be said to grow and develop in a way analogous to natural organisms, the shape into which they grow is not predetermined, but is fashioned by the choices and actions of individuals who present questions for lawyers to resolve, and by the intellectual choices made by lawyers, lawmakers, and judges, when faced with how to deal with new problems. In recent years, historians have become increasingly interested in exploring how legal development has been shaped by networks of particular individuals and groups, and by the connections are made between different ideas and concepts. Whether law changes as a result of litigation initiated in the courtroom or through legislation, the form which it takes may be shaped by the groups of people initiating the change, by the networks of legal intermediaries – whether lawyers or legislators – who are tasked with implementing it, and by the wider community networks with whose expectations the law must cohere.

The history of the English common law is one of constant adaptation and renewal.[1] As is well known, it was the failure of the common law courts in the later middle ages to provide sufficient remedies to litigants which led them to petition the king and his chancellor for help, paving the way for the development of the jurisdiction of the Chancery. In turn, officials in the common law courts simplified their procedures and expanded their scope, to attract new litigants, often at the expense of other courts, such as the ecclesiastical courts.[2] With the expansion of the British Empire, modified versions of these English courts were created in different contexts, where they might have to compete with existing local ways of doing justice, and adapt their procedures to the needs of local conditions. As lawyers and judges developed the law applied in the

[1] See S. F. C. Milsom, *A Natural History of the Common Law* (New York: Columbia University Press, 2003).
[2] See, in general, Sir John Baker, *An Introduction to English Legal History*, 5th ed. (Oxford: Oxford University Press, 2019).

courtroom, they drew not only on the bodies of settled doctrine associated with the Inns of Court or Doctors Commons, but shaped their law by reference both to the customary practices of particular communities – as when looking to the customs of merchants – and by borrowing from the ideas and concepts of other legal systems.

The essays assembled in this collection derive from papers delivered at the twenty-third British Legal History conference, held at University College, London in July 2017, which sought to explore the theme of networks and connections in legal history. The theme was intentionally broad and inclusive: the networks sought to be uncovered might be loose or tight, formal or informal, self-conscious or accidental, clearly identifiable or metaphorical. This was to encourage a broader approach than is sometimes taken by those who define 'networks' in more specific terms. Sociologists have long been interested in using social network analysis to explore how social networks can influence the behaviour of individuals.[3] In this field, scholars have sought to map out networks between individuals and their interactions, tracing patterns of communications between various actors who have been identified as part of a network. By mapping such connections – often using mathematical models producing visual representations – previously hidden influences and connections can be revealed, and the shape of social structures better understood. For instance, such modelling can reveal that particular individuals have a greater influence on a social network than would otherwise be noticed; and that knowledge may be transmitted in particular ways. There has also been a growing interest among historians to use the tools of social network analysis in analysing historical material.[4] Where the researcher has relatively comprehensive data relating to a particular network – for example, the letters passing between members of a religious community,[5] or the ports visited by the ships of the East India Company[6] – much

[3] See Mark S. Mizruchi, 'Social Network Analysis: Recent Achievements and Current Controversies', *Acta Sociologica*, 37 (1994), 329–343 and Mark Newman, *Networks: An Introduction* (Oxford: Oxford University Press, 2010).

[4] See Charles Wetherell, 'Historical Social Network Analysis', *International Review of Social History*, Supplement, 43 (1998), 125–144.

[5] Ruth Ahnert and Sebastian E. Ahnert, 'Protestant Letter Networks in the Reign of Mary I: A Quantitative Approach', *English Literary History*, 82 (2015), 1–33; Bronagh Ann McShane, 'Visualising the Reception and Circulation of Early Modern Nuns' Letters', *Journal of Historical Network Research*, 2 (2018), 1–25.

[6] Emily Erikson and Sampsa Samila, 'Social Networks and Port Traffic in Early Modern Overseas Trade', *Social Science History*, 39 (2015), 151–173.

information may be teased out about the behaviour of the communities under study. Besides the study of such social networks, there has also been some interest in the legal community to explore the development of the common law in terms of network analysis.[7]

Network analysis lends itself to both quantitative and qualitative approaches. The essays in this volume do not follow the quantitative approach, which seeks to explore patterns of interaction in large social structures by drawing on mathematical models, nor do they seek to draw conclusions from comprehensive statistical analyses. The studies offered here are rather qualitative in nature. One reason for this derives from the nature of the data used: often, the available sources of information about lawyers and litigants do not lend themselves to quantitative analysis, given that the data might be limited in extent, or patchy in coverage.[8] This means that in many cases, more can be learned from a qualitative examination of the networks that a person participated in than from a quantitative one. Furthermore, the chapters offered here in general do not seek only to trace *patterns* of behaviour of the kind revealed by a form of quantitative analysis which owes much to the structural or functionalist tradition in sociology, but rather look also for the *reasons* for behaviour as articulated by the actors (or embodied in the law), a pursuit which may be said to have more in common with normative sociology or the Weberian concept of *Verstehende Soziologie*.

The chapters which follow unfold a number of different, yet inter-related themes, involving networks and connections between people, places, and ideas. The networks created by particular groups of people are explored in a number of the chapters here. Several authors explore the nature of particular networks of lawyers, practising in a number of different courts. Anthony Musson looks at the personnel and practices of the Court of Chivalry in the late fourteenth and early fifteenth centuries. This court, which dealt with matters of military organisation and military discipline, largely followed the procedures of the *ius commune* tradition. At the same time, as a court in which men of high social and political status were both litigants and judges, it also often used terminology and language borrowed from the common law and royal administration, which

[7] E.g., Thomas A. Smith, 'The Web of Law', *San Diego Law Review*, 44 (2007), 309–354.

[8] Adelyn Wilson's chapter constructs three 'sample' networks out of the surviving material, and neglects consideration of some men of law who might have been connected to those in the networks. However, as she notes, the surviving records do not provide sufficient information to make these connections.

might be more familiar to these men. Legal knowledge was provided here both by the civilian advocates who argued cases, and by the civilian lawyers who acted as judges. These men generally had experience in other courts, particularly the Court of Arches and Admiralty. They also often had a strong connection with the business of government, notably in the clerical work of the Chancery, and could also act in matters of international diplomacy. Indeed, it was the clerks of the crown who gave the most significant input to this court: their wide experience in political matters made them suitable to act in the politically sensitive cases which came to it. As Musson shows, the particular network of men who practised in the Court of Chivalry fashioned a procedure for a court seeking to apply an internationally recognised set of norms pertaining to chivalry, in a manner and in a venue where great magnates of the kingdom might feel at home.

In contrast to this central court, which applied the transnational 'law of arms' in often contentious political contexts, the courts of Aberdeen studied by Adelyn Wilson focused on more local matters. Wilson examines the surviving records relating to the legal profession of this city in the first half of the seventeenth century, and identifies the importance of kinship and personal ties to advancement in the profession here. She shows how important particular local networks were. First, she demonstrates the importance of apprenticeship networks: not only was this a highly important mechanism of training, but it also introduced the aspiring lawyer to his master's networks of clients. Furthermore, there was a significant coincidence of professional and kinship relationships, with apprentices often being kin of the master. Turning secondly to the sheriff and commissary courts, she shows that there were strong personal and kin connections between the officers of these courts, who owed their place to their connection with the powerful men who held the judicial office. As this chapter reveals, social and professional connections were of central importance to both personal and career advancement in Aberdeen.

Matthew Mirow offers another close prosopographical study of the legal personnel in a particular place: this time, St Augustine, the capital of East Florida, which was a British colony for twenty years between the end of the Seven Years War in 1763 and the end of the American Revolutionary Wars. In this context, career advancement could owe nothing to long-standing local connections. Rather, the governor was instructed to introduce a new legal system, modelled on the common law structure to be found in the mainland colonies, to replace the Spanish one. Mirow's

study reveals that, in this part of the empire, a different set of connections proved particularly important. After the Treaty of Paris, the Scottish Prime Minister Bute ensured that his countrymen obtained the lion's share of crown appointments in this colony, and many of its judges would be men educated at Scottish universities. They were not, however, trained in Scots law: those judges appointed here with a legal training tended to have been trained in the English common law, and to have been appointed from mainland colonies, such as South Carolina. The connections between these men did not prevent discord arising between governors and judges, particularly when they disagreed over key constitutional questions (such as the need for an assembly). However, in an era of increasing tensions between the crown and its North American colonies, during which East Florida remained loyal and welcomed other loyalists from South Carolina and Georgia, loyalty served as a unifying force among the judiciary, and tensions diminished. Though short-lived as a colony, newly discovered sources about East Florida give a fascinating glimpse into how the British Empire sought to construct a properly staffed legal system in a new settler colony.

The importance of Scottish connections in the British Empire is also evident from Raymond Cocks's article on the great Bengal indigo litigation and the judicial politics that ended in the reversal of Chief Justice Peacock's landlord-friendly view of the law relating to rents. Cocks asks how it was that the dominant figure on the Indian Bench could find himself suddenly and comprehensively outvoted in the 'Great Rent Case' in 1865. He traces the explanation to the reform of the judicial system in 1862, and the creation of a new High Court in Calcutta, which combined personnel who had the traditional legal formation of the common lawyer (and who had practised in the old Supreme Courts in the Presidency towns) with men from the Indian Civil Service, who had administered law in the interior after a very different kind of administrative training, and who were much more aware of the needs of the Indian rural population. Although these 'civilian' judges could not by themselves overturn Peacock's law, their view was supported by another judge, George Campbell, whose personal connections tilted the balance. Not only was Campbell (like them) a graduate of Haileybury, he was also a Scot, who was able to draw on his Scottish connections to secure wider support for his view among Indian administrators. In this crucial mid-nineteenth century case, the doctrinal result fashioned by the court was itself in large part brought about by the co-operation of a group of men who were linked together not by shared legal training or experience but

by a particular set of social networks based on Scots ancestry and Haileybury education. As this example illustrates, the outcome of important legal cases often turns on judicial politics, which are themselves under the influences of wider social and educational networks.

Turning to the impact of social networks in driving the process of legislation, Judith Bourne explores the late nineteenth and early twentieth century campaign to open up the legal profession to women. Historians have long recognised the importance of the legal challenges made by individuals such as Gwyneth Bebb and Helena Normanton in paving the way for reform, but Bourne shows that these women were part of a larger group of organised campaigners. As she shows, women had a century-long history of organising themselves into groups to campaign against injustices, beginning with campaigns against slavery and leading to the mid-nineteenth century campaigns to reform married women's property law and to secure votes for women. While the membership of these groups is well known, what has been less noticed hitherto is the overlap between membership of these groups, and the networks of women who campaigned for improved education for women, and in particular for access to legal education. At the same time, networks developed which gave support to women seeking to practice as 'quasi-lawyers', often as clerks in law offices. Tracing the passage of the Sex Disqualification (Removal) Act 1919, Bourne shows that this legislation cannot be seen simply as the response of a parliament grateful for women's work during the First World War, but was the result of a longer campaign of petitioning, lobbying and litigating, in which a number of women made effective use not only of their own networks of support, but their wider social and political connections as well.

If social connections can shape particular legal outcomes, they can also shape the world-view of particular lawyers, who can then exert a significant influence on legal development. Two chapters focus on the careers of individual lawyers. Philip Handler's chapter looks at the career of Sir John Taylor Coleridge, and his approach to criminal law at a time when the 'Bloody Code' was being dismantled. By a close study of his diaries, Handler shows the importance of Coleridge's Anglican and Tory connections to his world-view, and to his approach to the punishment of crime. As he points out, criminal judges retained much power in this era to shape the law according to their own views of crime and social relations. Coleridge's organic view of the law was influenced by the wider philosophy of his uncle, the poet, and his own view of the judge's role as providing moral and religious guidance to the

community, which echoed the older Coleridge's views of the 'clerisy'. He continued to tailor sentences to the particular circumstances of each case, rather than seeking a fixed system of punishments. By the end of his career, Coleridge's views were beginning to look outdated, but the nuanced and careful approach he took – which included close consultation with the Home Office on sentences where necessary – remained a feature of mid-Victorian judging.

Catharine MacMillan's chapter explores the career of Judah Benjamin, who was to exert a strong influence on the shape of English commercial law, both through his practice as a barrister in the English courts, and through his *Treatise on the Law of Sale of Personal Property*.[9] Benjamin's career was itself shaped by a number of social networks – including the Sephardic Jewish community into which he was born, and the French creole community of New Orleans into which he married. Having been secretary of state for the Confederacy, his American career ended when he had to flee at the end of the Civil War; but he was able to rebuild a career in London thanks in part to a network of Confederate sympathisers. Benjamin's career not only shows the importance of professional and client networks to the practising lawyer, but shows how the agency of one individual can be the catalyst for the migration of legal ideas. For, as MacMillan shows, it was Benjamin's familiarity with the French and Spanish roots of Louisiana law, as well as his knowledge of American commercial law, which gave him the foundation to write his influential treatise, which introduced many English lawyers to unfamiliar civilian conceptions.

A number of other chapters in this volume explore the geographical operation of networks and connections, a theme already touched on in the work of Mirow, MacMillan, and Cocks. These chapters look at how legal practices migrated and were adapted as they moved from the metropolis to an imperial periphery through the agency of particular networks and connections. The British Empire itself, of course, represented a complex network of law. If sovereign power to legislate for the empire ultimately lay in London, the law which applied in various parts of the empire could be highly variable, with the crown – whose legislative powers were circumscribed at the metropolis – itself retaining extensive powers of legislation, at least in conquered and ceded colonies.

[9] J. P. Benjamin, *A Treatise on the Law of Sale of Personal Property* (London: H. Sweet, 1868).

Although settlers were supposed to carry the English common law with them, it was only applicable so far as local conditions allowed;[10] and with the acquisition of new territories which attracted few British settlers – from Quebec to Bengal to Sierra Leone – increasingly large areas of empire continued to apply non–common law rules.[11] At the same time, far-flung colonies were often closely integrated into an imperial economic or military system, which saw frequent communications between centre and periphery, both official and non-official. In a system in which the rules applied needed to satisfy both local and imperial needs, and where economic interests might transcend the locality, there was much room for adaptations and developments in law. These could be dictated simply by the practical exigencies of the place, or be driven by the agency of particular actors advancing their own interests.

Julia Rudolph explores how legal developments facilitated imperial economic networks, and how the particular needs of investors in turn shaped legal developments. She demonstrates how the development of the mortgage allowed for new forms of credit and investment, often at long distance, as lenders in one part of the empire acquired securities from borrowers in another part. Widespread networks of lawyers, brokers, and merchants stimulated the use of mortgages in this era, bringing together borrowers and lenders, and advising clients on the opportunities and pitfalls of such investments in different areas. She also shows that English legal concepts relating to the mortgage were not simply transplanted from one part of the empire to another. Rather, mortgages could be used for different purposes in different places, and could elicit diverse responses from local lawmakers, as in Ireland, where mortgages were often used to circumvent the anti-Catholic penal laws. Rather than being an uncomplicated form of investment, increasing usage of the mortgage was accompanied by growing worries about fraud, which often made the investor reliant on their lawyer's particular knowledge of the market in question.

[10] See, e.g., Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and United States, 1607–1788* (New York: W. W. Norton & Co., 1990); Hannah Weiss Muller, *Subjects and Sovereign: Bonds of Belonging in the Eighteenth-Century British Empire* (Oxford: Oxford University Press, 2017).

[11] For a discussion of the multiple legalities in the empire, see Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge, MA: Harvard University Press, 2016).

In the wider empire, administrators often encountered a plurality of local traditions and expectations, which could not simply be overridden by the transplantation of a new system of law. Indeed, in newly developing colonies – often under military control – the connection with the metropolitan common law could be tenuous, with colonies being run by men with little formal experience, and with the institutional bonds to the metropolis being slight. In newly acquired lands, the problem could arise as to how to fashion a workable legal order, which could mediate between various communities. Tim Soriano's chapter explores the legal challenges presented by the British acquisition of Sierra Leone. Unlike East Florida, this was not an area ripe for the importation of a system of law modelled on that of the typical settler colony: rather, the governor – often a man with naval connections – had to improvise in an environment which was frequently changing. Soriano shows that in Sierra Leone, there were a number of different communities which came with different legal experiences. Alongside the indigenous Temne people (who applied African customary and Islamic law), Sierra Leone was populated by a large number of immigrants, beginning with the Black Poor of London, for whom a legal system based on the medieval system of frankpledge was devised by their philanthropic sponsors, including Granville Sharp. A second wave of immigrants soon arrived, in the form of loyal black former soldiers from the American colonies, who had settled initially in Nova Scotia. A third group followed, as rebellious Maroons originally from Jamaica arrived in Sierra Leone. This era also saw a number of different systems of governance, with Sierra Leone only becoming a crown colony in 1808. As Soriano shows, in this context, the most influential source of legal ideas was often the Royal Navy, whose officers applied a combination of naval customs and what they perceived to be the needs of the common law in navigating between the various systems.

A final tranche of chapters explores connections in the development of legal ideas. Lorenzo Maniscalco examines the development of ideas of equitable interpretation in late medieval and early modern jurisprudence. He shows that the view which had emerged by the mid-seventeenth century was a product of interactions and borrowings across a wide-ranging network of scholars, which resulted in the assimilation of the concepts of *aequitas* and *epieikeia* which had been treated distinctly by lawyers and theologians into a single vision of interpretation *ex aequo et bono* (according to what is equitable and good). He shows that medieval legists did not associate the legal notion of *aequitas* (which they

associated with equitable rules) with the Aristotelian notion of *epieikeia* (which theologians saw as justifying setting aside an unjust rule). It was only under the influence of humanist theologians that the two concepts began to be assimilated in the minds of jurists, who now began to mould equity as *epieikeia* into a tool of interpretation, allowing the judge to look for the legislator's equitable intention. The fullest articulation of the new theory was to be found in the work of Francisco Suarez. Maniscalco's chapter shows that we should see the association of equity with *epieikeia* neither as a continuing feature of *ius commune* thinking since the middle ages, nor as a product of humanistic jurisprudence, but realise that it was the product of interactions and influences among scholars in different disciplines. As ideas from these different scholars connected and reconnected, new ideas about equitable interpretation could emerge.

Richard Helmholz's chapter also looks at ideas from the civilian tradition, by examining Shakespeare's knowledge and use of ideas from the *ius commune*. This chapter is based on a paper which was delivered at the British Legal History Conference as the 2017 Selden Society lecture, and is published here in that form. The role of law in Shakespeare's plays has long occupied the attention of scholars, who have spent much time discussing how familiar the bard was with the common law. Helmholz argues that scholars who call into question the accuracy of Shakespeare's knowledge often fail to see that the law alluded to was not the English common law, but aspects of the *ius commune*. This lecture makes three important points: that it can be demonstrated that Shakespeare was familiar with the terms and concepts of the *ius commune*; that it played a significant part in some of his plot lines; and that the topics to which he referred were often matters of current controversy in the legal community. Helmholz thus reveals a set of connections, hitherto unnoticed by Shakespeare scholars, to a specific set of ideas associated with the continental legal tradition to which the playwright would have had access thanks to their continued application in the ecclesiastical courts.

Chantal Stebbings's article on the reporting of tax law cases in the nineteenth century draws attention to the intellectual consequences of exclusion from a network. She shows that, although only a small proportion of tax cases could be appealed to the courts of common law, such cases might have laid the foundation for the development of a substantive tax law developed in courts. The fact that this did not happen may be attributed to the fact that the cases were not reported by barristers but by a government department, and gave neither the reasons for judgment nor any legal arguments. While tax commissioners were prepared to treat the

reports as precedents, lawyers and judges were not prepared to do so. As a result, the reports of tax cases were seen to be of use only for administrators, and were not seen as laying the foundation for a case-law based system, of the sort found in the wider common law. As a result of this, Stebbings suggests, tax law remained isolated from the rest of the common law, as a largely administrative matter dealt with by inferior tribunals. Tax law's very exclusion from the professional networks who reported common law cases had long-term ramifications for its very place in the legal system.

The chapters offered here aim to illustrate some of the multifaceted ways in which different kinds of networks help to shape the development of law. The personal connections between the members of the legal profession who dominate the bench or bar in a particular locality will give shape to the culture of the forum in which they work, and (as Cocks's Indian case demonstrates), extra-curial connections may have a significant impact on the direction taken by the court when applying law. Personal connections can also be crucial in generating effective pressure to induce the legislature to make changes. Even where – as in the case of opening the legal profession to twentieth-century women – it might seem that reform could appear to be irresistible in view of wider social changes, it could take the focused activism of particular groups to put it into effect. In this way, networks could operate in a purposive way to push the law in a particular direction. As some of the other essays show, networks could also operate in a less purposive, even serendipitous way, as individuals and groups crossing from one jurisdiction to another brought with them ideas and practices which could be experimented with in new contexts. Ideas did not transmit themselves – they were carried by particular people, who were engaged in particular projects, and with particular objects in mind. What happened to those ideas was not predetermined, but by making new connections and being introduced into new networks, they could assume a new life.