

From Tavern to Courthouse: Architecture and Ritual in American Law, 1658–1860. By MARTHA J. MCNAMARA. Creating the North American Landscape. Baltimore: Johns Hopkins University Press, 2004. 182 pages. \$39.95 (cloth).

The Courthouses of Early Virginia: An Architectural History. By CARL R. LOUNSBURY. Colonial Williamsburg Studies in Chesapeake History and Culture. Charlottesville: University of Virginia Press, 2005. 448 pages. \$65.00 (cloth).

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During the last three decades, legal-historical research has become an extraordinarily vigorous, empirically rich, and conceptually adventurous realm of scholarship. Early American legal history, largely overlooked in the grand historical metanarratives of American law propounded by writers such as Roscoe Pound, Willard Hurst, and even Perry Miller, has emerged as a key component area of legal history's revival through the pathbreaking work of scholars including David Thomas Konig, Bruce H. Mann, Mary Sarah Bilder, and Holly Brewer.¹ Such is the cumulative strength of this base literature in early American legal history that it can well support new genres of scholarship that are less sociolegal or legal-intellectual in orientation than broadly cultural: scholarship that seeks to locate with precision the place of legal practices and legal phenomena in the webs of institutional power and cultural authority that created and sustained settler societies in the English colonies.

Law quite decidedly had its place, or places, in early America: courthouses in which and by which its authority was materially manifested in civil, criminal, and administrative proceedings; public spaces through which law's ritualized processions moved to claim them for its rule; private spaces, for example, the dwellings of magistrates where supplicants might be required to go to initiate or answer to low-level legal proceedings (and be reminded thereby how the ostensibly public processes of law were woven into the real geography of local power); and places of punishment, where abused, lacerated, dismembered, rotting bodies eloquently signified that law had its own terrible swift sword.

Martha J. McNamara and Carl R. Lounsbury engage with early American law's material culture by focusing on those places. Each begins with the courthouse, or more accurately with the variety of little rooms—in taverns, private houses, meetinghouses, as well as courthouses—in which law first called men to order. Each traces and explains the increasing attention given to the specialization of design of the exterior and interior space of the courthouse during roughly similar periods, from the mid-seventeenth to the mid-nineteenth century. Each documents the transformation of law's place from relatively undifferentiated general-purpose quarters to elaborate juridical-penal complexes where, by the early nineteenth century, the physical proximity of specialized court and specialized prison created, in McNamara's words, a "landscape of justice" (3) that testified to law's assumption of majesty and to the consequences of contravention.

Read together the two books are nicely complementary. Each is grounded in a different colonial culture: Massachusetts in McNamara's case and Virginia (with a few traces of Maryland and North Carolina) in Lounsbury's. Without in any sense targeting each other's work—the books were

¹ Roscoe Pound, *The Formative Era of American Law* (Boston, 1938); Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth Century United States* (Madison, Wis., 1956); Perry Miller, *The Life of the Mind in America, From the Revolution to the Civil War* (New York, 1965); David Thomas Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629–1692* (Chapel Hill, N.C., 1979); Bruce H. Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill, N.C., 1987); Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, Mass., 2004); Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill, N.C., 2005).

published in too close succession to have informed each other, though McNamara does cite earlier work by Lounsbury—each fills empirical gaps left by the other, or raises in the reader’s mind questions about the other’s interpretive perspective. Purposively illustrated, each leaves far behind the coffetable stage of lavishly antiquarian treatments of past built environments. Following in the footsteps of Katherine Fischer Taylor’s impressive analysis of the representation of French criminal justice in *In The Theater of Criminal Justice* (though with perhaps less of her eye for the detail of legal dramaturgy), they confidently and sure-handedly establish a point of departure for the history of American law’s material culture.²

In *From Tavern to Courthouse*, McNamara embeds an architectural history of the transformation of civic space in an argument that stresses the causal imperatives of professionalization. During the course of the eighteenth century, accelerating in the fifty years following the Revolution, the material settings in which law was performed changed from undifferentiated accommodations put to civic use—meetinghouses, taverns, and especially multipurpose town houses, in which law rubbed shoulders with the populace in general and market stall holders and merchants—to “purpose-built structures devoted exclusively to judicial proceedings” (2). The transformation distanced law and its personnel from public opinion and the low taint of commerce and simultaneously incorporated “the presence of lawyers both at the bar and on the bench of Massachusetts courtrooms” in interior design, thus giving “physical expression to legal professionalization” (2). Ceremony—the public display of law—underscored both tendencies, emphasizing how the countenance of authority in Massachusetts changed over time. With the development of the distinct courthouse building, the opening of court sessions came to be marked by robed processions of judges and lawyers escorted by local officials (sheriffs bearing their staffs of office) from a point of assembly (often a tavern), through public streets, past places of business, and into the sequestered courthouse. As in ceremonies that beat the bounds of an English parish, law’s processions declared authority over the spaces through which they moved. Once inside the courthouse, each element of the procession took an assigned place: judges to the (elevated, authoritative) bench, the clerk to his table at their feet, lawyers to reserved seating within the bar that created the court’s arena, and spectators to the standing room outside the bar. McNamara particularly stresses the significance of the inclusion of lawyers in law’s ceremonies and built environments. From early in the eighteenth century, Massachusetts’ lawyers became engaged in processes designed to redefine the law as a dignified and indispensable occupation, professionally and socially distinct from the wretched and conniving laymen (pettifoggers, scribes, writ servers and the like) who preyed on the gullible. Including lawyers within law’s displays of authority, creating close physical associations between lawyers and law’s places, and distancing law’s places from those of commerce were all elements in a conscious professionalization strategy by which lawyers sought to overcome the poor reputation and negative image that attended them throughout much of the seventeenth and eighteenth centuries, while building a physical monopoly of the market for legal services. For McNamara it is lawyers’ ambition to professionalize that explains the transformation of law’s built environment. In realizing their desires, she notes, they were assisted by architects engaged in exactly the same process.

Are reviewers duty-bound to quibble? If so, and in short order: *From Tavern to Courthouse* is really quite a brief excursion into the big subject of how professional and state authority is constructed. Even in its brevity, it is somewhat repetitive in its statements of theme and in writing. As a work of scholarship it retains more of the feel of a dissertation than its author perhaps would wish. Much more could be made of the nineteenth century’s antinomian retorts to professional

² Katherine Fischer Taylor, *In The Theater of Criminal Justice: The Palais de Justice in Second Empire Paris* (Princeton, N.J., 1993).

juridical authority, which is the subject of the book's final chapter (an epilogue rather than a conclusion). The chapter simply yokes together two suggestive but incomplete sketches—one of the Massachusetts fugitive slave cases, the other of “Bartleby the Scrivener”—and leaves it at that. McNamara's main causal hook, her professionalization argument, is substantial and interesting yet not fully persuasive. On the one hand, it seems that transformations in the function, design, and display of legal and penal authority during the eighteenth and early nineteenth centuries require consideration of a wider range of factors than lawyers' self-presentation (though that is surely one of them) and a more precise chronology; on the other, if one is going to make legal professionalization a key explanatory theme, then one should give due weight to the full panoply of professionalization's strategies, precisely how at this juncture expertise is manufactured, rule-making monopolized, and credentialing controlled. Each is as vital to efforts to monopolize the provision of services as infiltration of the space of provision. Finally, it seems worth noting that one can observe during the course of the eighteenth century all sorts of activities moving out of a common undifferentiated realm of practice into discrete, more specialized spaces. To draw one example from McNamara's book, merchants were withdrawing from town houses by the early eighteenth century and using coffeehouses as more discrete, less public locales for conducting business predicated on gaining edges in exchanges of information. If law and commerce were both engaged in a long-term withdrawal into their own places, who was leaving whom?

Critical duty done. *From Tavern to Courthouse* is to be recommended precisely for the way McNamara uses the professionalization argument, notwithstanding its incompleteness, to brush the elaboration of law's professional domain against the grain by making its accommodation of lawyers in courthouses problematic rather than inevitable. Her achievement is best measured by using it to interrogate Lounsbury's *The Courthouses of Early Virginia*.

Simply considered as an artifact, *The Courthouses of Early Virginia* is the superior product. This book is beautifully designed. The sheer quality of the paper, typesetting, and layout induces an apologetic quiver for every comment scribbled in the generous margins. Lounsbury's volume far surpasses McNamara's in the sheer richness and attractiveness of illustration. And Lounsbury's text meets the challenge of his illustrations. It conveys the reader through a forest of detail—on county government and its spatiality, on the interior and exterior design of all manner of buildings, on the organization of the building trades and the recruitment of building labor—with great intelligence, grace, and skill. This book is architectural history at its finest, beautifully written and broadly conceived as social and cultural history. Lounsbury has organized his material with enormous care. His work for this book began more than twenty years ago; it is a labor of love, which shows on every page.

There is little on its face that one could wish to criticize. *The Courthouses of Early Virginia* is not only an outstanding history of the law's built environment in the Chesapeake but also a comprehensive and sophisticated sociocultural history of law and legal order itself. That is, the book handsomely exceeds the promise of the title. We encounter not only courthouses but also a careful elaboration and analysis of their context.

In general outline Lounsbury's narrative of the development and transformation of the Virginia courthouse is not distinctively different from McNamara's work on Massachusetts. Lounsbury traces a trajectory from undifferentiated, rudely conceived civic structures to a purposebuilt environment, from plain song interiors to elaborately differentiated spaces, minutely designed to effect and reinforce spatial hierarchy. Lounsbury's more precise chronology, however, leads one to conclude that the purpose-built legal environment made its appearance in Virginia well in advance of Massachusetts. His explanation for this development differs significantly from McNamara's as well. For Lounsbury the drive to interior specialization and elaboration is rooted in the social and political history of the colony: the consolidation and self-differentiation of the gentry

outside the courthouse by the early eighteenth century is mirrored by the self-conscious consolidation and self-differentiation of the magistracy (drawn from the gentry) within. Colonial law, though it obeys its own dynamic of growing complexity, technical sophistication, and bureaucratization, ultimately reflects a social order. Contrasted with McNamara's stress on professional desire, in *The Courthouses of Early Virginia* one sees distinct sociocultural dynamics at work. By examining Lounsbury's book through McNamara's eyes, one begins to notice that Lounsbury tends to assume, rather than problematize, the advent of legal professionalism. Though the adversary process was not at all common before the middle of the eighteenth century, lawyers were present in Virginia courts from late in the seventeenth century, and accommodations for them in courthouse design appear from Lounsbury's evidence to be normalized in the sophisticated purpose-built courthouses that he dates from the 1720s. Effectively, Lounsbury takes this for granted. In turn one could use Lounsbury's emphasis on the sociocultural distinctiveness of the bench to criticize McNamara's tendency to treat Massachusetts' justices and judges merely as a subset of an emerging legal profession.

But if it is informative to use each of these fine books as a window on the possible shortcomings of the other, it is also condescending. Neither author had the advantage of the other's book. Both have in the meantime made their own distinctive marks in a new realm for legal and other historians to explore. Law's spatiality—whether expressed in floods of settlers skirmishing their way through the Ohio Valley, in the order of procession through the streets of eastern towns, in boundaries drawn on maps, in architectural drawings dividing who may sit from who must stand, in dubious land titles studiously upheld, or in slaves beaten back to quarters by order of learned Massachusetts judges—is fully part of law's history. Starting at the courthouse door, McNamara and Lounsbury have begun to map this fresh territory. They have pointed scholars toward a road to follow and begun the process of tracing its route.