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February 1992

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Wunder, John R., "Law and Science: An Introduction" (1992). *Great Plains Research: A Journal of Natural and Social Sciences*. 46.

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LAW AND SCIENCE: AN INTRODUCTION

Law and science have been nervous partners for decades. Legal scholarship based upon scientific method, controversial at first, is now an established genre of the literature. It is particularly prominent in criminal justice studies, but it can be found in almost any aspect of legal research.

Social scientists in criminology, political science, and economics have addressed legal issues, but they are less apt to restrict their conclusions to locality or region or subject matter. For the study of regions, historians have the edge, and some historians have adopted scientific methodologies to investigate the history of law. One of the most important treatments of history, case study, and scientific method is Lawrence Friedman and Robert Percival's (1981) study, *Roots of Justice: Crime and Punishment in Alameda County, California, 1870-1910*. These authors accumulated massive amounts of data from many sources, including appellate court records, prison log books, arrest blotters, felony case files, court registers, and newspapers. Plowing new ground necessitated that the authors provide notes on methodology and sources.

Another attempt at applying social science method to legal history and regional studies is John Wunder's (1979) study, *Inferior Courts, Superior Justice: A History of the Justices of the Peace on the Northwest Frontier, 1853-1889*. Manuscript records, newspapers, journals, diaries, and over 1400 justice court cases for a 36-year period were collected. Seventeen variables were isolated to determine the quality of justice, from which four factors contributing to a "superior" quality of justice were identified. They included an assessment of accessibility to the courts for frontier residents, adjudication celerity, the level of community acceptance of court decisions, and the amount of training received by JPs. Court costs were computed, average time for court decisions were tabulated, and attorney and jury actions were evaluated.

Both these have contributed to a greater understanding of law and region. Such was the goal of the March, 1991, Fifteenth Annual Symposium sponsored by the Center for Great Plains Studies. The conference, "Law, the

Bill of Rights, and the Great Plains,” brought together nearly 200 scholars from a variety of disciplines to discuss law and the Great Plains region.

Four of the papers given at this symposium are part of this issue of *Great Plains Research*. Others will be seen in forthcoming issues. These four include three essays that broadly concern water policy and one essay that seeks to identify and describe the current legal careers of rural lawyers. Water policy is extremely important to all residents of the Great Plains. Law has played an especially crucial role in determining who can use this scarce commodity. James Sherow, in his study of the important United States Supreme Court decision, *Wyoming v. Colorado* 1922, explains how attorneys, ranchers, and justices interacted from the two states in order to determine the legal basis for the use and diversion of streams crossing state borders, in this instance in northeastern Colorado and southeastern Wyoming.

Otis Templer shows how confused and convoluted Texas water law is, particularly since it is both a humid and semi-arid region. For the Great Plains portion of Texas, the laws of surface water and groundwater are especially significant. The city of San Antonio’s current water supply is dependent upon very subtle legal distinctions.

Peter Longo and Christiana Miewald have considered a variable not present in some other regions of the United States, namely that Native American water claims predate those of non-Indians. Moreover, native peoples have a value system that sees water differently from an entrepreneurial, capitalist society. How clashing values are resolved in the courts is the subject of their essay.

Finally, Donald Landon has surveyed extensively the rural and urban bar of Missouri, a peripheral Plains state. He sought to determine basic questions from his data, such as why lawyers locate in rural areas, what kind of practice lawyers maintain, and what factors led lawyers to choose rural over urban locations. His data provide significant insight into the practice of rural, mid-sized city, and urban lawyers that can be applied to significant portions of the Great Plains.

These essays reflect a basic tenet of legal research today, that legal theory and empirical analysis are accepted if not required aspects of legal scholarship (Hall 1989, 270-271).

References

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