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## Review of *Law for the Elephant* By John Phillip Reid

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*Law for the Elephant.* By John Phillip Reid.  
San Marino, California: The Huntington  
Library, 1980. Illustration, index. x + 437  
pp. \$18.50.

Most Americans in the mid-nineteenth century lived within a society of laws. There are at least two opposed views with respect to what American attitudes and actions were like outside of such a lawful society. On the one hand, some historians have speculated that frontier life was lawless and violent. Might entailed right, according to this view. On the other hand, others have suggested that frontier life

was natural and good. Americans, freed of the restraints of law, intuitively acted justly.

John Phillip Reid here examines countless diaries and letters of American emigrants on the Overland Trail at mid-century. In particular, he examines their attitudes about property and how these attitudes influenced their behavior. He concludes that emigrants on the Overland Trail were neither peculiarly violent nor unusually just. Instead, they were universally lawful. They understood complex concepts of property, and these concepts influenced their behavior. Reid suggests that their understanding of legal ownership and its prerogatives (sometimes exaggerated) was the most important element in influencing their actions with respect to personal property on the trail.

Property law, as understood on the trail, was not simplistic. Persons understood the concept of ownership as distinct from mere possession. There was no doubt, for example, that an owner who had lost his property had a legal right to reclaim it. There was no rule of finders-keepers. At most, Reid concludes, a finder could assert a claim for a finder's fee. The abstract rights of ownership were so potent on the trail that an owner could even reclaim his property from a possessor who had purchased the property in good faith. Although Reid does not address the issue, this might have been an exaggeration of the owner's prerogatives. In several eastern states, the law at that time was beginning to protect some good faith purchasers.

Not only did trail emigrants have no trouble understanding abstract concepts of ownership, they were also conversant with several forms of concurrent ownership. Much property was owned in partnership. This frequently caused divisiveness when equal owners wanted to do different things with the property (e.g., go back home, speed up the journey, abandon the property). Although there were a number of solutions to these problems, all began with the unalterable premise that each owner had a legal claim to some portion of the property. Co-ownership also caused problems when a

particular resource grew scarce. The emigrants normally solved these problems by converting the jointly owned property to privately owned property. Thus, if sugar became scarce, and some owners were using more than their fair share, the emigrants would normally designate each person a private owner of a portion of the sugar. Each could then use his or her sugar at any rate he or she chose. Some may perceive such a solution as an exaggerated reliance on private property concepts.

The most prominent aspect of property ownership was that it gave exclusive rights to an owner to do whatever he chose with his property. Rarely did anyone claim, as a matter of legal rights, an interest in someone else's property. Even in the most difficult circumstances, neither force nor necessity entailed legal right. An owner could sell his property, even food or water, for as much as he could get, even though the owner might have a surplus and the buyer was in dire need. The owner could even destroy it. Emigrants might criticize an owner's morality, but no one questioned his legal right.

Emigrants sometimes exaggerated the legal rights of owners. Reid recounts an example in which an owner lent a team and wagon to a family for the trip. One of the family members became sick and had to ride. The owner, fearing that his team now had too much to pull, repossessed his property. The family was left on the trail. In the eastern states, the family might have had a legal claim, based either on equitable or contractual principles, to the team and wagon. On the trail, ownership was supreme. Emigrants believed the owner's act was morally wrong; most believed, however, that he was within his legal rights.

*Law for the Elephant* is a convincing study of the importance of law, particularly property concepts, on the trail. It is a remarkable contribution to American legal history.

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