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***LAWYERS AND VAMPIRES:
CULTURAL HISTORIES OF LEGAL PROFESSIONS***

**Edited by W Wesley Pue and David Sugarman
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I

Over the past quarter of a century or so, historians of law, lawyers and other legal institutions have begun an ambitious intellectual journey. Quite apart from its arresting title, the sub-title chosen by Professors Pue and Sugarman for this book of edited essays is indicative of the long distances some have already travelled, since the rise of cultural history is itself a relatively recent development in mainstream academic historiography. Indeed the voyage on which the co-editors and their 11 fellow contributors are embarked represents the most radical transformation of the discipline known as legal history since 1888, when F W Maitland launched the Anglo-American branch of the enterprise in his inaugural lecture at Cambridge University. Some legal history of that now traditional variety continues to be researched, taught and written in faculties and schools of law, at Cambridge and elsewhere. But since the 1970s a parallel project has in many respects inverted the priorities and preoccupations of legal historians, as they were once properly so-called.

Its proponents adopt a broadly critical and irreverent, rather than affirmative (let alone celebratory) approach to their subject matter, which has generally less to do with doctrines and rules of law than with the institutions and structures of legal practice. In chronological terms they are moderns, not ancients, focussing on the industrial recent rather than the agrarian remote, the last twenty or two hundred years in preference to the thirteenth or fourteenth century of the Christian era. They often adopt a distinctly colonial and provincial geographical perspective, privileging Birmingham or Melbourne over London, and Manitoba before Ontario. Last and not least, their work is consciously interdisciplinary and informed by anthropology, sociology, literary and political studies, as well as the whole sweep of general history, not least the social history of E P Thompson and his followers, rather than constructed upon a self-referential foundation of technical legal expertise; hence law

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and its institutions usually appear as figures within a broad economic, political and social landscape, not as a more or less self-contained theme or portrait.

The remarkably diverse contents of *Lawyers and Vampires* amply demonstrate the fruitfulness of these methodological characteristics and preoccupations. The various subjects on which they are brought to bear here include the professional formation of lawyers, lawyers' relations with each other and with the state, their career structures and economic prospects, their self-image and their popular reputation — or, as the editors put it themselves, 'the complex ways in which lawyers were imaginatively and institutionally constructed, and their larger cultural significance'.¹ To single out particular contributions to this feast of learning and imagination is both difficult and invidious. Two highlights are Wes Pue's ingenious and wide-ranging account of the attempts by some Western Canadian lawyers in the late nineteenth and early twentieth centuries to remodel not just their occupation, but also its surrounding community, polity and society and David Lemmings's long backward glance at 'Ceremony and the Law, 1500–1800', which traces the decline of traditional rituals among early modern English practitioners, as a fractured legal élite became both more inward-looking and pervaded by competitive individualism. An even more remarkable piece of synoptic scholarship is Hannes Siegrist's 'Juridicalisation, Professionalisation and the Occupational Culture of the Advocate in the 19th and early 20th Centuries: A Comparison of Germany, Italy, and Switzerland'. This masterly, systematic overview traces and explicates the quite different structural forms of legal education, organisation and practice which developed in these states between the Congress of Vienna and World War I. Otherwise the element of transnational comparison tends to be somewhat more casual and implicit, with England and post-revolutionary America serving as metropolitan yardsticks against which both contemporaries and later historians can highlight the distinctive experiences of, for example, "Finland's Route" of Professionalisation and Lawyer-Officials' (Esa Konttin), 'Swedish Judicial Culture in Transition 1870–1970' (Kjell Modeer) and 'The Victorian Legal Profession in Crisis 1890–1940' (Rob McQueen).

The search for meanings and perceptions — or, crudely, what people in the past thought was happening rather than what might 'really' have taken place — usually involves close reading of texts. In her "A Dry and Revolting Study": The Life and Labours of Antebellum Law Students', Ann Fidler provides an absorbing and exemplary account of popular images of the law student and legal studies in the mid-nineteenth-century United States. Contemporary diaries, letters, memoirs, novels, monographs, student handbooks, and such professional periodicals as *The Western Law Journal* and *The American Jurist and Law Magazine* are deftly mined to

¹ W Wesley Pue and David Sugarman (eds), *Lawyers and Vampires: Cultural Histories of Legal Professions* (2003), 1.

recreate a world in which ‘law books were more than cowhide containers of legal pronouncements’.² Emphasising the centrality of Blackstone’s *Commentaries*, ‘the urtext of ante-bellum law students’³ to the formation of the American attorney — ‘a catalyst of professional identity ... a site of social and cultural communion for law students’⁴ — Fidler notes that:

Blackstone, having penned a few poems himself, might have enjoyed Josiah Scott’s doggerel description of the labours of a legal pupil. One stanza read:

I sometimes at the lasses look
Sometimes hurrah for Jackson
Sometimes I read a musty book
Compiled by old Judge Blackstone.⁵

While Fidler remains focussed on the pre-civil war United States, Anne McGillivray’s “‘He Would Have Made a Wonderful Solicitor’: Law, Modernity and Professionalism in Bram Stoker’s *Dracula*” ranges widely through time and space, from Dublin to Whitby to London to Transylvania, and from the late fifteenth to the late twentieth century. For McGillivray reads *Dracula* (first published 1897) as a specifically legal novel, a work which reflects ‘complex post-1850 professional debates about the relationship between law and lawyering, law and morality’.⁶ Besides tracing the themes of law, modernity, and professionalism through the ‘peculiar rationality’ of Stoker’s text, McGillivray convincingly establishes the twin sources of that author’s legal knowledge, in his thirteen years with the legal department of the Irish civil service and subsequent call to the bar of the Inner Temple after becoming London business manager for the actor Henry Irving. McGillivray is an ingeniously inventive guide to the multi-layered associational complexities of the world of *Dracula*, his victims and pursuers, in which ‘*fin de siècle* Darwinian pessimism played out in fears of alterity, moral degeneration and racial decay also underlay professional debates about the modernisation of the legal professions’.⁷ Whether or not we accept her depiction of ‘junior solicitor Jonathan Harker, educated in the law ... poised against the pettifogging solicitor Marquand and the corrupt and corrupting *Dracula*, arguably the image of old barristry [sic] and old corruption’,⁸ it is irresistibly tempting to conclude that she does indeed manage to wring the last drop of blood from her subject.

2 Ibid 80.

3 Ibid 86.

4 Ibid 87.

5 Ibid 91.

6 Ibid 243.

7 Ibid 231.

8 Ibid 252.

II

According to Salman Rushdie,

[c]ulture is what we now have instead of ideology ... These days everything is culture. Food is culture and religion is culture and so is gardening. Lifestyle is culture and politics is culture and race is culture and then there's the proliferation of sexual cultures and let's not forget subcultures, too. Sport, of course is major culture.'⁹

Perhaps 'culture' is now so much part of 'the culture' (our daily media yoghurt, so to speak) that both the noun and its derivatives have lost whatever specificity of meaning they might once have possessed. Yet in one still widely accepted formulation, cultural history deals primarily with the meanings human beings attach to all aspects of their lives, from the mundane to the momentous. Cultural history in this sense is also part of a reaction against social history, the historiographical *nouvelle vague* of the 1960s, as too narrowly focussed on the material conditions of life, while paying insufficient attention to anthropological and ethnographic techniques for understanding (as distinct from explaining) past societies.

Without wishing to fuss over matters of definition, some essays in this volume seem markedly less cultural-historical in subject and method than others. Thus despite being modishly entitled 'Text and Subtext', Halperin's brief if erudite account of 'French Lawyers' Fees in the Nineteenth Century' is primarily concerned to establish how much money lawyers earned and how *avocats'* fees were set, rather than with the attitudes of lawyers (or indeed lawyers' clients) to issues of legal remuneration. The anomaly is highlighted by the fact that precisely that topic is canvassed at some length for the later nineteenth century by John Savage, in a richly-textured essay on 'The Problems of Wealth and Virtue: the Paris Bar and the Generation of the *Fin-de-Siecle*'. Again, much of McQueen's important overview of practitioners' organisations and regulation in Victoria from the 1890s to the Second World War could be classified as institutional history, a genre so long unfashionable as to presage its imminent return to intellectual respectability.

Among the great breadth and diversity of topics treated by the six historians, six lawyers and one sociologist whose work is brought together in this collection, issues of professional formation, organisation and status, in relation both to society and the state, provide the main common thread, in so far as there is one. No editorial template appears to have been imposed upon authors, even in respect of layout and format, let alone the substantive content of their pieces. Yet such a *laissez-faire*

⁹ *The Age*, 11 July 2000.

approach does not of itself enhance the variety of offerings presented. Indeed somewhat more internal coherence, or at least cross-referencing of themes and topics, would have been welcome. Thus while masculinity (their own, and that of the code they professed) was evidently a significant preoccupation of many nineteenth-century lawyers, not only in the United States, it is difficult to contrast and compare the illuminating discussions of this subject by Fidler, Savage, McGillivray, Pue and Harold Dick (who traces a 'Cultural Chasm' in his piece on "Mennonite Lawyers" in Western Canada'). The lack of an index (symptomatic of production values which give us a handsome yet poorly copyedited volume) merely exacerbates the problem. By much the same token, despite the 'interdisciplinary spirit' in which the collection was conceived,¹⁰ the contribution of the visual arts is difficult to track down, except in Modeer's fascinating account of changing styles of Swedish courtroom architecture in the transition from '*Rechstaat*' to welfare state.

It is also surprising to find, in a collection which offers such diversity of subject matter and approaches, relatively few comparisons drawn between lawyers and other professional groups (with the notable exception of Savage's study of the Parisian bar). Yet historians of the legal profession(s) may well acquire useful tips and wrinkles from ongoing historical work on medical practitioners, clergy, administrators and other professional groups, even if they eschew direct comparisons with the historical trajectories of these groups — although such parallels and contrasts can be exceedingly illuminating. And if we are to take due account of the worktasks whose performance constituted the main ostensible *raison d'être* of the professions, it is as important to look at lawyers' dealings with their clients from the latter's perspective, as it is to scrutinise the functions of physicians and surgeons from the vantage point of their patients. True, the task is not easy, because the evidential sources are likely to take the form of scrappy and widely-scattered manuscript accounts, correspondence and diaries, rather than printed material which may be conveniently consulted in major libraries. But the work of medical historians like Margaret Pelling, Charles Webster and the late Roy Porter demonstrates that the intellectual returns are likely to provide more than sufficient compensation for these difficulties.

III

Anyone who has been involved, directly or vicariously, in any sort of editorial enterprise must appreciate the enormous energy and enthusiasm required to gather and shepherd into print such a remarkably rich, wide-ranging and stimulating compilation. While some of the shortcomings identified above are acknowledged by the editors themselves, the positive value of their contribution to legal and

¹⁰ W W Pue and D Sugarman (eds), above n 1, 1.

professional historiography far outweighs these deficiencies. Apart from anything else, they force us to confront some interesting questions. If ‘culture’ now stands for just about everything, what, if anything, is distinctive about cultural history? Is there indeed such a beast as the *non-cultural* history of the professions? How much useful common ground or basis of comparison exists between historians of law and lawyers in different parts of the world? Are there any threads to help guide explorers through the labyrinthine details of national and international variance? Are professional identities and structures the crucial subjects for investigation, or should we rather seek to place the professions within broader national and even international contexts? How is the subject matter of professional expertise related to the institutional and cultural frameworks within which these ‘knowledge workers’ operate? No-one interested in pursuing these questions can afford to neglect the insights provided by this collection.