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Law and English Railway Capitalism: 1825–1875

R. W. Kostal

Oxford: Clarendon Press, 1994, 417 pp.

Reviewed by Jonathan H. Davidson†

Unlike the situation in Canada where the development of a national railway system was almost completely dependent upon government support, railways in Britain developed entirely without state assistance. This book chronicles the role of lawyers and the court system in alternately helping and hindering that development. In the larger scheme of things, it examines how the British legal system responded to the demands of the industrial revolution.¹

Rather than as single monograph, this book is structured as a series of long essays arranged in roughly chronological order. Each essay examines a different aspect of the development process, from the role of lawyers as promoters in early stock issues² to the courts' responses to railway accident litigation by both passengers and workers.³

The primary theme of this book, not surprising given the focus of the subject matter, is conflict. There is conflict between the fledgling railway companies and large landowners fighting expropriation of their lands, local authorities who wish to levy prohibitive tax rates, and small common carriers endeavouring to maintain profitability in a competitive market. As expressed in the introduction, "[r]ailway companies were hopelessly entangled in legal conflicts, and thoroughly infiltrated, exploited, and beset by lawyers."⁴

The author concludes that the legal profession served to inhibit the development of railway companies while, simultaneously, the increased demand for legal services served to bring the English legal profession into the modern era. In addition to the primary analysis, the author engages in several interesting digressions into such areas

† B.Comm. (Dalhousie), B.A. (Dalhousie). LL.B. anticipated 1996 (Dalhousie).

¹ R. W. Kostal, *Law and English Railway Capitalism: 1825-1875* (Oxford: Clarendon Press, 1994) at 3.

² *Ibid.* at 28.

³ *Ibid.* at 254.

⁴ *Ibid.* at 2.

as the difficulties in obtaining a private incorporation act,⁵ a brief discussion of the development of employer's liability for employee injuries,⁶ and the evolution of in-house corporate legal departments.⁷

One of the most significant strengths of this publication is the quality of the research. In addition to drawing from the usual sources such as parliamentary reports, the author makes extensive use of the numerous railway and legal trade publications that flourished during this period such as the *Railway Times*, *Railway Chronicle*, *Railway Gazette*, and the *Joint-Stock Companies' Law Journal*. This provides an insight into contemporary opinion of the situation from the perspective of both lawyers and railway financiers and operators. Professor Kostal also presents some quantitative data where relevant data is available, particularly when discussing patterns of railway passenger injury litigation.⁸

It should also be mentioned that the author includes a full bibliography of the sources consulted, both published and unpublished. This is quite a rarity in academic works but will certainly be appreciated by the researcher wishing to follow up a particular point. Scattered throughout the text are a number of illustrations from the Victorian era. These illustrations, particularly the political cartoons, serve to further illustrate contemporary opinion of the railways.⁹

The only real weakness of this book is the absence of any material on the larger historical or economic background. Obviously any in-depth discussion is beyond the scope of this work but a chapter giving an overview of the development of the railway industry would serve to place the other material better in context. A brief list of general references is provided¹⁰ as a partial remedy to this deficiency but is no substitute for even a minimal discussion of the background.

With this book, Professor Kostal has made a very significant contribution to the field of legal history and particularly to the un-

⁵ *Ibid.* at 110.

⁶ *Ibid.* at 257.

⁷ *Ibid.* at 373.

⁸ See, e.g., *ibid.* at 305, 309.

⁹ See especially *ibid.* at 312, "Costumes for Railway Travellers," for a very satirical look at period fashion.

¹⁰ *Ibid.* at. 3, n. 9.

der-studied area of the relationship between law and economic development.¹¹

¹¹ *Ibid.* at 3–5.