Book Reviews

Martha J. McNamara, *From Tavern to Courthouse: Architecture and Ritual in American Law, 1658–1860,* Baltimore: Johns Hopkins University Press, 2004. Pp. 182. $72 (ISBN 0-8018-7395-9).

From Tavern to Courthouse examines the legal history of early Massachusetts through the lens of courthouse architecture. It describes an emerging professional legal bar struggling to elevate its prestige through the construction of increasingly specialized and dignified spaces for court proceedings. The strength of the book lies in its visual images and in the anecdotal descriptions of physical spaces and rituals that McNamara culled from primary materials. The book contains what is likely to remain a definitive collection of photographs and drawings of the courthouses built in Massachusetts between the mid-seventeenth century and the mid-nineteenth century. The numerous anecdotes peppered throughout the book—often comments by major historical figures like Samuel Sewall and John Adams—provide a fascinating glimpse into how architecture and ritual were experienced by participants in the system.

McNamara uncovers three broad phases in the evolution of the legal system during the period she studies. The most important discovery of the book is that, prior to the late eighteenth century, court proceedings took place in "townhouses": multipurpose buildings located in town centers that contained mixed-use space for commercial and government activities. In the typical townhouse, merchants and shopkeepers used the first floor as a market exchange. The second floor contained multi-purpose rooms that accommodated, at various times, civil, criminal, and probate courts, town meetings, and public land title and mortgage records. Judicial business in the form of jury deliberations and decision making by individual justices of the peace often spilled over into local taverns.

As McNamara notes, the townhouse design reveals the close connections between commercial interests and the legal system in early America. In Boston, part of a merchant's daily routine was to "walk the exchange" at the townhouse, which meant to literally walk around the market gathering information about market developments (such as ships arriving and departing, new regulations, and market conditions). These merchants were likely to have frequent encounters with the justices of the peace, clerks, and legislators who performed their duties on the second floor of the building and, again, who often moved to taverns to deliberate as members of a jury or to execute deeds and decide cases as justices of the peace.

Although not emphasized by McNamara, the townhouse is terrific evidence that a central function of the colonial legal system was to generate reputational and economic information about individuals in the community. Why was the courthouse placed above the merchants' exchange? One reason is that the design made sense in

Law and History Review Fall 2007, Vol. 25, No. 3

a society, like that of the American colonies, in which most economic transactions involved relations of indebtedness and extensions of credit were a primary form of investment for people with resources. News of the daily court judgments, the recording of mortgages, and judicial decisions related to the probate of wills and inheritance were the contemporary equivalent of a ticker tape charting the status of one's investments. The information generated at court was market information as important as the information gleaned from the merchants' exchange.

In such a society, reputation was possibly a person's most valuable asset and shame sanctions were an effective form of punishment. Surprisingly, McNamara does not examine in detail how the architecture of townhouses included prominent spaces allocated for the administration of shame sanctions. In a conjectural drawing of the 1658 Boston townhouse included in the book (fig. 1.1), the whipping post and pillory are placed prominently in front of and visible from the merchants' exchange. One law in effect during the mid-seventeenth century (not mentioned by McNamara), for example, penalized the altering of public mortgage records with either two months in jail or two *hours* in the pillory at the merchants' exchange with a sign "Defacer of Records" over one's head. A discussion of the relationship between shaming sanctions and architecture would have enriched her account.

McNamara instead emphasizes that, from the perspective of lawyers and others involved in the legal system, the architecture of the townhouse suffered from one principal weakness: its mixed-use spaces did little to elevate their standing and, therefore, "the weight of communicating judicial authority fell primarily to the justices and to their court rituals" (11). Without dignified architecture, legal actors had to emphasize protocol and rituals, such as horn-blowing, costumes, and processionals to gain legitimacy. Heavy emphasis on protocol and costume, however, was not always effective. In his description of the famous Writs of Assistance case that mobilized support for the American Revolution, John Adams described the judges as wearing dress "more solemn and more pompous than that of the Roman Senate when the Gauls broke in upon them" (59).

Between 1765 and 1840, the number of trained lawyers in Massachusetts rose from fifty to more than six hundred (57). McNamara asserts that lawyers led a successful movement for the building of courthouses that conferred greater legitimacy on the profession and that enabled them to elevate their status above that of untrained laymen, clerks, and scriveners. The second phase in Massachusetts courthouse architecture involved neo-classical buildings designed exclusively for judicial proceedings and land title recording. These courthouses were typically located in the center of town, near, but no longer above, the central market. In contrast to the townhouse form, these courthouses included the more modern innovations of special tables for lawyers immediately in front of the judges' benches and the removal of jury deliberations from taverns to sequestering rooms. The courthouse buildings were attached to jails that, McNamara notes, conveyed the legal system's ultimate authority over punishment.

The third architectural phase of the Massachusetts courthouse involved campuses of granite government buildings and jails, further removed from commercial life, which conveyed the "specialized and disciplinary" nature of the law (72). To McNamara, these groupings of specialized courts reflect the success of lawyers' efforts to

elevate their status within the legal system by isolating themselves from the bustle of town life and by excluding non-trained laymen from the competition.

The principal weakness of the book is that McNamara's evidence inadequately supports her thesis that the desire of the bar to professionalize is the principal causal explanation for the evolution of courthouse architecture. She provides very little evidence of lawyers as agents in the architectural transformation she describes. And why would it not have been the case that judges and other government officials desired a more dignified atmosphere? Why just lawyers? Moreover, although not mentioned by McNamara, the period she studies was a time of rapid economic growth. The architectural improvements are in keeping with changes in architecture more broadly, and likely reflect greater societal wealth to expend on courthouses and other buildings. In addition, with respect to the smaller rural towns she describes, her evidence suggests that architecture evolved because the desire for legal business led these towns to constantly upgrade their courthouses as they competed for status as the location for the official county court. It is not obvious that lawyers were directly involved in this process. In light of such issues, the repeated return to unsubstantiated assertions that lawyers' ambitions to professionalize were causally related to architectural developments weakens the account.

The book, however, will remain as a highly valuable resource for those studying early American law because the visual images and detailed descriptions of the locations where justice was administered reveal new features of colonial law. The book raises the issue of how architecture might have affected other legal developments. Three possible areas of inquiry are, for example: How was architecture—the move from tavern to courthouse—related to the decline of the self-informing jury? Is the decline in the use of shame sanctions related to the isolation of courthouses from commercial centers? How was architecture affected by Revolutionary politics and republicanism? *From Tavern to Courthouse,* particularly the extensive visual images and anecdotes it provides, is likely to add greater subtlety to legal historians' accounts in these and in many other areas.

Claire Priest
Northwestern University

Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality,* New York: Oxford University Press, 2004. Pp. xii + 655. $35.00 cloth (ISBN 0-19-512903-2); $19.95 paper (ISBN 0-19-531018-7).

Michael Klarman has written an exhaustive—and according to many reviewers a definitive—account of the United States Supreme Court's twentieth-century jurisprudence of race. Klarman describes in varying degrees of detail every Supreme Court decision involving race from the beginning of the *Plessy* era through *Brown v. Board of Education.* Klarman organizes the cases into seven historical periods and accompanies his case discussions with short surveys of each period's "context." Klarman's method underlies his related theses: that Supreme Court

decisions are largely reflective of the political and social mores of the times, and that the decisions did not have great independent significance (5, 448–49, 454). Klarman is not suggesting that law and politics are one and the same. He contends that when the law is reasonably clear, judges will generally follow it. Social and political context come into play only when the law is more indeterminate. But of course constitutional cases involving race almost always involve some degree of legal indeterminance. Anyone interested in the role of courts on contested social and political issues will find much to admire in this book, but may also be troubled by overdrawn conclusions and sweeping generalizations.

Klarman's Court-as-societal-mirror thesis is neither startling nor original at this point. It has become a standard revisionist view in political science, history, and some strands of legal academia. This theory has whittled away at the notion that Supreme Court justices (and federal judges generally) are anti-democratic and yet heroic protectors of disempowered groups (449–54). To the contrary, Klarman claims that "when a minority group suffering oppression is most in need of judicial protection, it is least likely to receive it" (450). Instead of creating dramatic changes in race relations through ground-breaking decisions, the Supreme Court embodies changes that have already occurred as a result of a confluence of "political, economic, social, demographic, ideological, and international causes" (443). While the Supreme Court race cases of the Jim Crow and Civil Rights eras appeared contested, Klarman argues that most actually reflected a "national consensus on a handful of southern outliers" (453).

The book's contribution to the revisionist school then is not in its thesis, but in its scope and the methodological performance of its thesis. Within its pages, the reader finds nicely rendered accounts of the Supreme Court's race decisions surrounded by compelling depictions of the general political milieu during the *Plessy* era, the Progressive era, the interwar period, the World War II era, the post-war lead-up to *Brown, Brown* itself, and the Civil Rights Movement of the 1960s. Sprinkled throughout the historical surveys are individual stories designed to personalize the general accounts.

The historical surveys are superficial—as surveys necessarily are—and historians of the periods Klarman describes will undoubtedly find much to criticize. For example, in describing the Progressive Era, Klarman asserts that the tremendous popularity of D. W. Griffith's epic film *Birth of a Nation* "typified the national racial mood" (66). Most historians would likely agree generally with this statement, but might fault Klarman for failing to explain also that the film was controversial enough that some states and cities, including Iowa, Ohio, and St. Louis, Missouri, forbade it from its theatres, while others demanded modifications to remove the most inflammatory scenes. Klarman's chapter describing the interwar period acknowledges the NAACP's successful effort to convince some cities to ban the film, but this discussion does not correct the earlier overgeneralization.

While many readers will find Klarman's historical surveys useful for the substantive support (and thorough annotations) they provide for his claims, others will find his broad-brush approach to history frustrating. This use of history is not problematic merely for purists. Rather, Klarman's willingness to gloss over