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Peter Karsten. *Heart Versus Head: Judge-Made Law in Nineteenth-Century America.* Chapel Hill: University of North Carolina Press, 1997. xv + 490 pp. $55.00 (cloth), ISBN 978-0-8078-2340-8.

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Karsten attempts to rewrite the history of the common law in America in the nineteenth century, shifting it away from an economic-oriented perspective to one which focuses on the battle in American jurists' minds between the received traditional law of England (the "head") and their emotions and morality (the "heart"). He contends that the economic perspective, which posits that economic considerations drove the decisions reached by those judges–and is supported by Morton Horowitz, Lawrence Friedman, and Richard Posner, among many others–is grounded on too few cases culled from too few states. Karsten divides his book into two areas, the jurisprudence of the heart and that of the head, looking at each in turn within his announced focus on property, tort and contract law. He contends that most judges followed the law that they received from England, regardless of personal emotion and what businesses might desire; this assertion especially challenges the Horowitz thesis. (Horowitz's argument held that many innovations occurred in this period, all of which benefited business, but Karsten contends that relatively little change appeared, and what there was mostly aided the common person.)

In his second part, Karsten examines the relatively few areas where change occurred, including ancient lights, contingency fees, the attractive nuisance doctrine, and contributory negligence. These he sees as being driven by the Christianity of the judges, procedural reform, and distrust of corporations, along with the fact that more judges were elected in this period. Throughout and in conclusion, Karsten argues that the economic perspective needs to be abandoned on all levels.

This work has many features to recommend it. It is densely packed with cases and research, both in the text and in the one hundred and fifty pages of notes. It provides helpful tables and charts, as well as good illustrations, all of which enrich the narrative. Karsten has comprehensively studied many different states and regions, along with federal court decisions, and succinctly summarizes them in this volume. He also clearly points out how his discourse differs from that of the economic perspective and compares his evidence with that presented by Horowitz and others, attempting to convince the reader of his point, rather than merely stating his perspective.

A few small points about this work give one pause however. Karsten states that "every leading text and sourcebook" (p. 4) holds to the economic perspective, but he only cites three examples. The book also leaves many larger questions unanswered, including how this new perspective impacts our view of nineteenth century America as a whole. In addition, this work mostly disregards the issue of how this paradigm shift influences questions of race, class, and gender. Karsten though never claims to reveal all, but merely attempts to refute the economic perspective and to suggest a more humane one.

Karsten's effort is not for the beginner, but should be read by all interested in how law affected nineteenth century society, and in what influenced the judges in that period who created, found, and reformulated the common law.

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