In *E Pluribus Unum*, William E. Nelson charts how government, as influenced by the English common law tradition, developed and functioned in British North America from 1607 to 1776. He seeks to establish a cohesive sense of the “forest” in studies of colonial politics; he characterizes the current historiography of the development of legal culture in the North American colonies as too focused on the many trees. *E Pluribus Unum* is the summary version of Nelson's four-volume *The Common Law in Colonial America*, in which he demonstrates the dissimilarities in colonial legal practices, rejecting the historiographic tendency to look for uniform transmission and acceptance of English common law practices. He clearly and successfully sets up the work as an overview project, and the book displays the expected benefits and drawbacks of the survey format as Nelson demonstrates how common law helped unify the colonies through legal practices, and eventually enabled those in the legal profession to develop Revolutionary ideas of localism and liberty.

Nelson makes ample use of subdivision to structure his work. He divides the book into four primarily chronological parts, within which he finds an overarching theme for that time period. Parts 2 and 3 cover approximately the same date range, so they are distinguished primarily by theme (reception of common law in the colonies, and British efforts at anti-French coalition building, respectively). Parts are divided into thematic chapters, which are further broken down into geographic regions or significant moments. This subdivision enables Nelson to cover a significant swath of temporal and geographic ground without the local developments—the lifeblood of this work—getting lost or feeling disorganized. Since one of his goals is to demonstrate how the colonial legal systems developed differently, these local-level examples are critical to his main thesis. This structuring gives the book a segmented feel, but such tends to be the nature of overviews and condensed larger works; the search for difference rather than coherence means that the book does not flow the same way a book that tries to find order might, but recognizing and emphasizing variance makes Nelson’s thesis realistic and nuanced.

Nelson’s adroit end-of-chapter summaries also work to counteract a fragmentary feel, refocusing the reader from individual colonies or cases to broader conclusions. When drawing conclusions or explaining developments, he also makes explicit references to preceding chapters; these summaries succinctly cover an abundance of relevant information, creating connections between chapters (and therefore geographic or temporal...
spaces), bridging the gap between tree and forest, so to speak.

Part 1 addresses the settlement period from 1607 to 1660, when the differing priorities of various founding groups created substantial variation in the government and politics of early colonies. Colonies based on economic ventures (like Virginia) focused primarily on the regulatory aspect of the law, especially property law, taxation, and debt collection; colonies that provided sanctuary for religious groups saw church and state closely entwined, with law shaped by religious principles. A relationship between church and the law existed in each colony, though the intensity of the relationship (and the influence of religion on law) varied from colony to colony. There was not yet a unifying basis in common law across the colonies, so substantive law differed because law had developed on the distinct bases of the labor system or God’s word. The law of a locality was beholden to the demands of the people it governed, and this remained true beyond the colonial period.

Part 2 (1660-1750) begins with the restoration of the English monarchy and the subsequent enforcement and reception of common law across the thirteen colonies. Both King Charles II and James II sought to forge a uniform, absolutist state with power vested in the king; one of the ways they enforced this was by imposing the common law throughout the empire and governing the North American colonies through lawyers. This proved an economical way to rule: attorneys would inform colonists of the law and be paid by the colonists they represented rather than the Crown. By the mid-1700s, there were trained lawyers in every colony (except Georgia); the legal profession developed in conjunction with the acceptance of common law. As courts grew more sophisticated, so did their reliance on common law, though colonies adopted or ignored elements of common law based on their needs, making its use both a unifying factor across the colonies and a localized affair. Nelson identifies two important consequences of developing the legal profession: doing so solidified colonial reception of common law, and acted as a glue to hold the thirteen colonies together. Lawyers shared a conceptual apparatus and vocabulary, which enabled men of otherwise different viewpoints to work together. The centrality of lawyers in unifying the colonies and developing theories of liberty and independence plays out throughout the following parts and is one of Nelson’s most impactful theses.

Part 3 (1689-1750), while ostensibly about the changes King William made to British empiric practices in order to build an anti-French coalition, primarily focuses on the maturation of localist legal practices in the colonies. Accommodation and compromise rather than large-scale coercion proved the most successful means of maintaining the rule of law and British control in the colonies. British coercive power was most successful when it was local in nature, and disastrous when it was not. The primary manifestation of this localization in the legal system was who held the power to uphold the law. In New England, juries possessed this fact- and law-finding power; in Virginia, local judges held this power; and in the Deep South, courts struggled to extend their power beyond immediate localities. The rule of law was inconsistently applied between the colonies—for example, New England and Virginia saw functional judicial systems characterized by compromise between colonies and British officials, while North Carolina spiraled toward anarchy after its judicial system crumbled in 1720. This localization made it difficult for colonies to oppose British policy on a widespread scale, though it was not until the Revolution that this became a concern.

The period from 1750 to 1776 saw the colonies heading toward revolution, particularly with the passage of the Coercive and Intolerable Acts. Nelson asserts that lawyers were instrumental in this transition, in that they ceased acting as agents of the royal government and instead began to represent clients opposing Parliament and the Crown.
Nelson traces how lawyers developed this Revolutionary ideology by examining a series of cases, beginning with the Zenger case in New York—the first case Nelson identifies where a lawyer opposed Crown policy. While this task does border on unwieldy at times, Nelson proportionately conveys the significance of each case. As lawyers took these cases, they “developed arguments in support of the supremacy of local, common law and the duty of judges to maintain that supremacy. As representatives of what developed into the Revolutionary cause, lawyers also found themselves in positions of public leadership,” a role they maintained after the Revolution (p. 195). Lawyers grounded their arguments in the common law, the law-finding power of juries, and the power of colonies to determine their own law. As some among the first to articulate these ideals of liberty and independence, lawyers found themselves in a position of leadership—a position Nelson asserts was both the closest station to nobility in the colonies, and lawyers’ unique leadership position has holdovers to their societal role today.

_E Pluribus Unum_ is clearly designed as an overview book, and intended for a wider reading audience than would have consumed Nelson’s four-volume work. Though Nelson’s stated purpose is to demonstrate how colonial North America’s legal system(s) developed as influenced by English common law, he sometimes fails, primarily in the latter half of the book, to make explicit connections between particular legal developments (property law, for instance) and common law tradition. This might make the book less impactful for readers less familiar with common law doctrine or procedure, though this omission does not undermine his primary theses.

Nelson’s two notable conclusions do not directly connect to the role of common law either, but rather expand on the significance of the disparate development of colonial governments and their legal systems, which happened to be based on common law and common law procedure. First, local governments were the institutions that possessed the power to enforce law, and this was how the British preferred to rule. Up until 1775, the British Empire governed through informal accommodation and compromise with local governments. Two critical factors which pushed the colonies toward revolution were obviously the Intolerable Acts, but also the changing practices among lawyers, as they began to represent clients opposing British policy. Nelson’s second conclusion has further-reaching implications, as he asserts that the American legal system has, since its inception, possessed and exercised (economic) regulatory powers. The American legal system developed on complementary yet contradictory pillars of a shared legal basis (common law), and locally based law, of a shared and eventually centralized legal system with regulatory powers and an ideology of liberty defined as “immunity from centralized institutional control” (p. 134). Nelson, in offering a history of the colonial legal system, also offers an explanation of how and why these contradictions came to be, and by extension persist in American political culture.

Nelson’s historiographic goal, which he unquestionably succeeds at, is encouraging further research on how different structures of colonial government benefited different interests and social groups. Nelson offers up ample places for historians to delve deeper, focusing on specific geographic regions, temporal periods, or legal developments. There is clearly a great depth within this subject, and in that regard Nelson sets up other historians to do that work, while simultaneously drawing meaningful conclusions in a work committed to breadth.

URL: https://www.h-net.org/reviews/showrev.php?id=55796

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.