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# The Peace: The Meaning and Production of Law in the Post-Revolutionary United States

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# The Peace: The Meaning and Production of Law in the Post-Revolutionary United States

Laura F. Edwards\*

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## I. INTRODUCTION

It is difficult to ignore the term “the peace” in post-Revolutionary legal records, particularly the records of public matters in local courts. In fact, the term is so ubiquitous that it is tempting to ignore it as yet another piece of formulaic phrasing that dominates such materials. The peace, however, was unlike other pieces of legal boilerplate of the time. It appeared so often because it actually *was* meaningful. The peace, which had deep roots in Anglo-American law and expressed the ideal order of the metaphorical public body, was the central governing concept in public matters in the decades following the Revolution.

In theory, the peace distinguished between law and society. But in practice, the two were so thoroughly intertwined that it is difficult to sort out where one began and the other ended. The point of this legal concept was to maintain the social order, as it was defined in particular places. The results moved the legal process into social relations, so that law both guided and emerged from the dynamics of people’s lives. Legal principles were subordinate to the social results, defined as a just outcome that restored the particular social order as it actually existed in daily life. Just as the peace encompassed both law and society, it also merged other dynamics that legal historians now tend to separate into different, if not oppositional categories. The peace acknowledged and accepted conflict, even

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\* The author would like to thank Chris Tomlins for the invitation to present at the “Law As . . . ? Theory and Method in Legal History” conference and for his thoughts in revising that presentation into this Article. She would also like to thank the members of that conference for their stimulating discussions of the meaning of law.

as it sought to restore consensus; it incorporated dissent and change, even as it sought to maintain the status quo; it responded to individual, highly personal complaints, even as it ignored individual rights; and it included a wide range of people in its workings, even as it sought to uphold the rigid hierarchies of the post-Revolutionary social order.

The peace is directly related to the idea of “Law As . . .,” which explores the utility of the rubric that separates “law” from “society.” This separation marks the intellectual movement known as “law and society.”<sup>1</sup> But it also structures the basic analytical frameworks in the field of legal history. Legal historians study “the law” as a distinct topic. If law is not distinct from society, what is legal history?

The operation of the peace in the post-Revolutionary United States, which did not follow this kind of conceptual separation, raises important questions about what the law is, where it is made, and how to follow its history.<sup>2</sup> Those questions have both historical and conceptual implications. In historical terms, the peace localizes our perspective on law. In one sense, localization is about the institutional geography of the legal system because the peace shifts our attention to the local legal venues where this concept dominated and away from courts and legislative bodies at the federal and state level which have been the traditional focus of legal history. Localization, however, is not just about institutional geography. The peace literally located the law in actual social relations, which gave people a very different position in the law’s formulation and application. That logic applied beyond particular geographic areas to define the era’s legal culture more generally, a situation so historically specific that there is no direct analogy between the post-Revolutionary period and today.<sup>3</sup>

The logic of the peace *then* fundamentally challenges the conceptual frameworks that structure legal history *now*. In other words, the logic of the peace reveals the distinct limits of the way we *now* define the law in *opposition* to those things associated with society.

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1. The work on the relationship between law and society is vast, capacious, and interdisciplinary. It is associated with the pioneering work of James Willard Hurst, rooted in the development of the social sciences in the first half of the twentieth century, and institutionalized in the form of the Law and Society Association and various journals, including *Law & Social Inquiry*. The influence of Hurst and his particular vision of law and society are brilliantly and thoroughly discussed in a special commemorative issue of 18 *LAW & HIST. REV.* 1 (2000). In this Article, I am talking more specifically about the relationship between law and society in the field of history, although many of the issues extend to other disciplines as well.

2. I am building, here, on the work of other legal historians, who have been influenced by Critical Legal Studies (CLS) and who have posited the presence of multiple versions of law and, by extension, opened up the possibility for multiple narratives within legal history. For a brilliant discussion of the implications of CLS for legal history, see Robert W. Gordon, *Critical Legal Histories*, 36 *STAN. L. REV.* 57 (1984).

3. For the importance of popular culture in legal discourse in this period, see STEVEN WILF, *LAW’S IMAGINED REPUBLIC* (2010). For the importance of localism, see WILLIAM J. NOVAK, *THE PEOPLE’S WELFARE* (1996).

Society is a powerful concept in our historical frameworks. Among other things, it provides a binary point of reference that offers an explanation for every complication which does not fit our definition of the law, both clarifying what the law is and negating the need for further analysis of it. The logic of the peace, however, integrated law and society without erasing the distinction between the two, which suggests that this conceptual binary is anything but normative. More than that, the peace suggests that this binary comes at a cost, narrowing and isolating the field of legal history.<sup>4</sup>

This Article explores the implications of the peace for our conceptions of legal history by drawing and expanding on my recent book, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South*. While drawing on this book, I am amplifying one of its main arguments by emphasizing the conceptual nature of localism, rather than its geographic location in local legal institutions.<sup>5</sup> This element of the peace meant that law was literally constituted *through* social relationships. That situation represents a different relationship between law and society than the one most historians now assume. It also poses broader questions about the conceptual location and production of law by extending the field into the lives of ordinary people, the workings of local communities, and the new regions of the country. This wider perspective then suggests new conceptual frames for making generalizations about legal change.

## II. LEGAL HISTORY AND “THE PEACE”?

Legal historians usually enter their research assuming the presence of the law as a readily identifiable, unified body of rules, enforced uniformly by a centralized

4. There is a strong body of legal history that integrates formal law with various aspects of social, economic, cultural, and political currents and that emphasizes the relationship between formal law and cultural dynamics at different points in U.S. history. *See, e.g.*, CORNELIA HUGHES DAYTON, *WOMEN BEFORE THE BAR 1639–1789* (1995); SARAH BARRINGER GORDON, *THE MORMON QUESTION* (2002); MICHAEL GROSSBERG, *A JUDGMENT FOR SOLOMON* (1996); HENDRIK HARTOG, *MAN AND WIFE IN AMERICA* (2002) [hereinafter HARTOG, *MAN AND WIFE*]; BRUCE MANN, *NEIGHBORS AND STRANGERS* (1987); CHRISTOPHER L. TOMLINS, *FREEDOM BOUND 1580–1865* (2010) [hereinafter TOMLINS, *FREEDOM BOUND*]; Hendrik Hartog, *Lawyering, Husbands’ Rights, and “the Unwritten Law” in Nineteenth-Century America*, 84 J. AM. HIST. 67 (1997). Ariela Gross’s work on the historical construction of race also makes the conceptual point that legal rules on this issue were often constructed in a way that required context to understand their meaning and application. *See generally* ARIELA GROSS, *DOUBLE CHARACTER* (2000) [hereinafter GROSS, *DOUBLE CHARACTER*]; ARIELA GROSS, *WHAT BLOOD WON’T TELL* (2008); Ariela Gross, *Beyond Black and White: Cultural Approaches to Race and Slavery*, 101 COLUM. L. REV. 640 (2001) [hereinafter Gross, *Beyond Black and White*]. I am making different, historical claims in this article. First, I am arguing that legal institutions and legal culture in the post-Revolutionary period was such that people did not make the sharp separation between formal law and social relations that was assumed in later periods of history. Second, I am arguing that even the most sophisticated renderings of the relationship between law and society still rely on relatively recent notions of that separation which does not describe the situation in the post-Revolutionary decades.

5. *See generally* LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE* (2009).

institutional structure. It is an assumption fraught with difficulties because this kind of legal system did not exist, for the most part, in the post-Revolutionary United States. While acknowledging that historical context, legal historians usually deal with it by leaving the assumptions about law in place and then focusing on the development of what we want, but so often fail to find. We focus on evidence that affirms the growth of unified bodies of law and centralized institutional structures. There is nothing inherently wrong with studying law in these terms. Such a legal system did, in fact, emerge in the United States, so it makes sense to chart its evolution.<sup>6</sup> This approach, however, becomes problematic when it ignores the accompanying conceptual baggage, which is packed with assumptions about the nature of law and its production, not all of which are useful. The bags are so full that there is not much room for anything else, particularly contradictory or even complicating evidence. In fact, legal historians tend to explain away such evidence in terms of “fit.” We label these circumstances as undeveloped, backward, dysfunctional, or utterly different—the unfortunate results of social forces that delayed or distorted the law’s development. Those conclusions are satisfying only insofar as they do not force a reconsideration of the conceptual framework that led us to them in the first place. The results have circumscribed the field, excluding entire time periods and areas of the country from the narrative outlines of the legal history, including the first half-century or more of U.S. history; the South; areas in the Midwest and West during the formative periods of settlement; states that retained French or Spanish legal traditions; all local jurisdictions; and almost everyone without legal training or not involved in litigation. The exclusions then generate hierarchies. Case law and legislation at the state and national levels constitute law in a way that local legal matters do not. The Northeast and Midwest, to some extent, can represent the trajectory of legal change in the United States as a whole, but the South and West cannot.<sup>7</sup>

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6. The broad pattern of change has been of primary importance for legal historians. The classic statements subsumed questions of institutional change within analysis of the law’s relationship to capitalistic development. See generally MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780–1860* (1977); JAMES WILLARD HURST, *LAW AND THE CONDITIONS OF FREEDOM* (1956). Also see the exchange in 115 *AM. HIST. REV.* 766 (2010), with writings by Julia Adams, Gary Gerstle, and John Witt in response to William J. Novak, *The Myth of the “Weak” American State*, 113 *AM. HIST. REV.* 752 (2008). Recent historical scholarship has focused more particularly on the process of legal centralization, the displacement of localized practices, and the timing of those changes, emphasizing the importance of the earlier period in its own right, rather than as a moment of transition, important primarily for what it says about what will come later. See generally LARRY D. KRAMER, *THE PEOPLE THEMSELVES* (2004); MANN, *supra* note 4; NOVAK, *supra* note 3; CHRISTOPHER L. TOMLINS, *LAW, LABOR, AND IDEOLOGY IN THE EARLY AMERICAN REPUBLIC* (1993); TOMLINS, *FREEDOM BOUND*, *supra* note 4; Hendrik Hartog, *The Public Law of a County Court: Judicial Government in Eighteenth-Century Massachusetts*, 20 *AM. J. LEGAL HIST.* 282 (1976).

7. James Vernon’s work on English political history has relevance for the issue in U.S. legal history. He argues that English political history has not only followed the development of the centralized, liberal state, but also made its ascension seem so inevitable that this one story has become the only one. See JAMES VERNON, *POLITICS AND THE PEOPLE, C. 1815–1867* (1993); JAMES

These exclusions and hierarchies rely, to some degree, on the conceptual separation of law from society. That framework has been the source of both analytical inspiration and heated debate among legal historians. It is resilient because it structures the basic concepts that define legal history as a field. The backdrop of society provides the means for identifying the law and charting its complicated development. The scholarship that places law and society in a dynamic relationship has reshaped the terrain of the field by joining the two sides. But society also provides a convenient conceptual place to put all the challenging issues which we would rather avoid. The resulting tensions structure key debates in the field, such as the growth of the state and the reach of state authority, to name just two. Even legal historians who question the binary still tend to reproduce it because the terms are so difficult to escape. We depend on it to explain what we study.<sup>8</sup> Legal historians write about the law. We need an identifiable topic—the law—in order to be legal historians. But there also needs to be closer examination of how we define what the law is. In particular, framing the law as a unified concept, defined in opposition to society, comes at a cost, one that narrows the terms of our scholarship by locating the law in some places and not in others.

The logic of the peace, as practiced in local jurisdictions in the post-Revolutionary South, provides a different, more comprehensive framework in which to explore the history of the law. What was the peace? The peace was embedded within the highly localized legal order that emerged as a result of the Revolution. After breaking with England, lawmakers in most states decentralized the most important functions of government, drawing on Revolutionary ideology, established elements of Anglo-American law, and undercurrents of local political unrest. These changes dramatically altered the existing structures of imperial rule by placing a great deal of government business in local venues that we identify with the legal system. The most visible of these venues were the circuit courts, which met on a regular schedule in county seats or court towns, held jury trials,

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VERNON, RE-READING THE CONSTITUTION (1996). The critique is applicable to U.S. legal history, where there is a concentration of work on the Northeast, because that area most closely fits the model of centralization and systematization associated with liberal states. It is not coincidental that most of the work in note 4 focuses on the Northeast, with only a few, brief forays South; the exception is Christopher Tomlins' *Freedom Bound*, which explicitly folds questions of slavery into a broader analysis of freedom in American culture. TOMLINS, FREEDOM BOUND, *supra* note 4. By contrast, legal histories of other regions tend to focus on specific regional issues: race and slavery in the South; immigration restrictions, ethnicity, railroads, and environmental issues in the West.

8. The difficulties are most apparent in historians' attempts to reconcile the unexpected outcomes of particular cases, often at the local level, and with legal rules defined at the state or national level. Instead of allowing for contradictions within the workings of the law, the explanation is often some form of the argument that social forces overwhelmed the law, which posits a uniform conception of the law and attributes complications to society, even while reaching for more complicated understandings of both law and society.

and dealt with a great deal of government business. But circuit courts were only the most conspicuous part of a system dominated by even more localized legal proceedings, including magistrates' hearings and trials, inquests, and other ad hoc legal forums. Magistrates not only screened cases and tried minor offenses, but also kept tabs on a range of matters involving markets and morals. In most legal matters, the interested parties collected evidence, gathered witnesses, and represented themselves. Cases were decided by common law in its traditional sense as a flexible collection of principles rooted in local custom, but that also included an array of texts and principles as potential sources for authoritative legal principles. Each jurisdiction produced inconsistent rulings, aimed at restoring the peace in particular matters, rather than producing a uniform, comprehensive body of law.<sup>9</sup>

In practice, the peace tended to root the law and legal practice in particular localities because that was where the social relationships necessary to its workings were embodied. But it was those social relationships, as much as geography, that defined the boundaries of local jurisdictions. The locality could be a handful of close neighbors who gathered at a magistrate's hearing; hundreds of people connected loosely through knowledge of a case being tried at the district court; or the dozen or so members of a tight-knit family scattered over hundreds of miles, but united in their determination to influence a particular legal matter. The point was to sort through the conflict, whatever it might be, and restore the social order.<sup>10</sup>

The social order of the peace was profoundly patriarchal. The concept was based in a long-standing, highly gendered construction of government authority, which subordinated everyone to a sovereign body, just as all individual dependents were subordinated to specific male heads of household. That metaphorical body was represented first through the King and then, after the Revolution, through "the people," via the agency of the state—although the state's form was still an open question in the post-Revolutionary decades, a situation that made it possible to locate so much governing authority at the local level. The sovereign body, though, was always a patriarch, whatever its location or physical embodiment. That remained the same whether sovereignty resided in local jurisdictions or centralized institutions or whether it took the form of a male king, a female queen, or a combination of men and women from different social ranks as "the people," as was the case after the Revolution.<sup>11</sup>

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9. See EDWARDS, *supra* note 5, especially at chapters 3–4.

10. *Id.* at ch. 2, 203–19.

11. EDWARDS, *supra* note 5. See also JOAN B. LANDES, *WOMEN AND PUBLIC SPHERE IN THE AGE OF THE FRENCH REVOLUTION* (1988); CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988); Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS: J. WOMEN CULTURE & SOC'Y 309, 309–36 (1994). For historical analyses that explore the particulars of these changes, see SUSAN DWYER AMUSSEN, *AN ORDERED SOCIETY: GENDER AND CLASS IN EARLY MODERN ENGLAND* (1988); KATHLEEN M. BROWN, *GOOD WIVES, NASTY*

Even after the Revolution, the peace remained coercively inclusive, enclosing everyone in its patriarchal embrace and raising its collective interests over those of any given subject. It was a form of inclusion that did not have anything to do with democracy. Keeping the peace meant keeping everyone—from the lowest to the highest—in their appropriate places, as defined in specific local contexts. Those contexts, while different in their own ways, were defined by stark, entrenched inequalities. This patriarchal system neither protected the interests nor recognized the rights of free women or slaves. Yet it still incorporated subordinates into its basic workings because they were part of the social order that the legal process was charged with maintaining. The peace kept them in their places. Its workings also depended on the information they provided about the social order. To the extent that individuals figured in the logic of the peace, it was through hierarchical family and community relationships that connected them to the social order and made them part of the peace.<sup>12</sup>

Not all areas of law and government were governed by the peace. Property law, as developed in equity and common law, had been claimed by lawyers even before the Revolution. In colonial economies that looked outward to the Atlantic world, knowledge of property law was crucial to economic success. By the time of the Revolution, links to international markets resulted in the development of relatively sophisticated financial structures to assist in property exchange, capital formation, and the management of credit and debt. That was true even in the backcountry, which lagged behind coastal areas economically. The influence of professionalized law was pervasive enough that even ordinary economic transactions, such as the purchase of land, required the interposition of lawyers. Lawyers solidified their hold on property and commerce in the decades following the Revolution, given the unsettled state of the economy, the scarcity of cash and credit, and the uncertainty of land titles in the post-Revolutionary years. The trend continued into the nineteenth century, largely because of the widespread use of notes, mortgages, and other instruments of debt as the primary means of economic exchange and capital formation. Over time, property law became even more professionalized, with standardized rules used by lawyers throughout the state. As such, it was more easily organized into a coherent body of law and centralized at the state level because the legal practice had already moved in that direction. Indeed, the preponderance of property cases—civil cases—in circuit courts and at the appellate level registered the relative inaccessibility of this area of

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WENCHES, AND ANXIOUS PATRIARCHS (1996); CAROL KARLSEN, *THE DEVIL IN THE SHAPE OF A WOMAN* (1987); LINDA K. KERBER, *WOMEN OF THE REPUBLIC* (1980).

12. See Laura Edwards, *Status Without Rights: African-Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South*, *AM. HIST. REV.* (Apr. 29, 2011), <http://www.historycooperative.org/journals/ahr/112.2/edwards.html>; see also Laura Edwards, *Enslaved Women and the Law: The Paradoxes of Subordination in the Post-Revolutionary Carolinas*, 26 *SLAVERY & ABOLITION* 305 (2005). See generally EDWARDS, *supra* note 5, at ch. 3–4.



law.<sup>13</sup>

The peace held sway over everything else—a broad, ambiguous area of public law, which included all crimes as well as a range of ill-defined offenses that disrupted the patriarchal order of the peace. Although definitive in the abstract, the peace was purposefully illusive in practice because it both governed and was constituted by specific personal relationships and accepted practices that varied widely from locality to locality. In fact, the peace meant nothing in the absence of the actual social relationships, a situation that placed people at the center of legal practice in a very literal sense. Even the process itself depended on people's active participation. To mobilize the peace, someone had to identify instances of disorder and bring them to the attention of legal authorities. Individuals might complain of issues that affected their interests, but they were just as likely to provide information about wrongs done to others. As such, the peace only acquired meaning through people's efforts to define it.<sup>14</sup>

Complaints only gained traction if it was clear that the incident involved a threat to the public order. That standard was more accommodating than we might expect because the peace folded everyone into its jurisdiction. Even those without rights—wives, children, servants, and slaves, all of whom were legally subordinated to their household heads, as well as free blacks, unmarried free women, and poor whites, whose race, class, and gender marked them as subordinates—had direct access to this arena of law. They also had some influence over it, but only through the relationships that subordinated them within

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13. See EDWARDS, *supra* note 5, at 79–80.

14. The summary draws on Edwards, *supra* note 5, chs. 3–4. The analysis also draws on legal dynamics that scholars often associate with the early modern period in England and the colonial era in British North America. See CORNELIA HUGHES DAYTON, *WOMEN BEFORE THE BAR* (1995); LAURA GOWING, *DOMESTIC DANGERS: WOMEN, WORDS, AND SEX IN EARLY MODERN LONDON* (1996); CYNTHIA B. HERRUP, *THE COMMON PEACE: PARTICIPATION AND THE CRIMINAL LAW IN SEVENTEENTH-CENTURY ENGLAND* (1987); TIM STRETTON, *WOMEN WAGING LAW IN ELIZABETHAN ENGLAND* (1998); LINDA L. STURTZ, *WITHIN HER POWER: PROPERTIED WOMEN IN COLONIAL VIRGINIA* (2002); Cornelia Hughes Dayton, *Turning Points and the Relevance of Colonial Legal History*, 50 WM. & MARY Q. 7–17 (1993); Hendrik Hartog, *The Public Law of a County Court*, 20 AM. J. LEGAL HIST. 282, 282–329 (1976); MANN, *supra* note 4. In the context of colonial North America and the United States, much of the work focuses on very specific areas or on property law, the area of law that was professionalized first. The result is to underestimate the power and persistence of such practices. In legal history, Novak, *supra* note 3, argues that legal professionals defended localism; by implication, the legal practices associated with localism persisted into the nineteenth century. TOMLINS, *FREEDOM BOUND*, *supra* note 4, makes a stronger argument for localism in relation to labor law, arguing that labor—like other economic matters—were assumed to be police matters, dealt with democratically, if not locally, rather than matters determined by judges and courts. Nineteenth-century historians also have noted the presence of such dynamics. See SHARON BLOCK, *RAPE AND SEXUAL POWER IN EARLY AMERICA* (2006); ALLEN STEINBERG, *THE TRANSFORMATION OF CRIMINAL JUSTICE: PHILADELPHIA, 1800–1880* (1989); Michael P. Johnson, *Denmark Vesey and His Co-Conspirators*, 58 WM. & MARY Q. 915 (2001); James D. Rice, *The Criminal Trial Before and After the Lawyers: Authority, Law, and Culture in Maryland Jury Trials, 1681–1837*, 40 AM. J. LEGAL HIST. 455, 455–75 (1996).

families and communities, not through recognition of their individual rights. Similarly, white patriarchs exercised domestic authority at the behest of the peace, not in their own right. When their actions disturbed the peace, whether through inadequate or excessive use of authority, they experienced censure. Keeping the peace meant keeping everyone—from the lowest to the highest—in their appropriate places, as defined in specific local contexts.<sup>15</sup>

The resolution of conflicts and resulting statements about the law also involved people. Judgments rested on the situated knowledge of observers and depended on an individual's "credit" (also known as character or reputation), which was established through family and neighborly ties and continually assessed through gossip networks. Local officials and juries judged the reliability of testimony based on an individual's credit as well as on impersonal, prescriptive markers of status such as gender, race, age, or class. In this system, the words of subordinates could assume considerable legal authority, just as the words of some white men might have no standing at all. It depended on what people knew about the person.<sup>16</sup>

The peace dealt with situations that might not have had legal standing in other areas of the system because the goal was to preserve accepted practice in particular relationships and places. Magistrates recognized that wives and slaves controlled property, even though they could not own it in other areas of law. The point was to keep the property where it belonged, not to uphold property rights. Magistrates prosecuted husbands, fathers, and even masters for violence against their wives, children, and slaves because the authority granted to heads of household was not absolute, but contingent on the maintenance of the social order. The point was to keep flagrant abuses of power in check so that households did not fall apart, not to attend to the individual rights of either household heads or dependents. Cases moved forward on information supplied by people unable to prosecute cases, because they were part of the social order and had knowledge of it, even if they did not have the legal standing to prosecute cases themselves. The point was to make sure that the proper information reached the legal system, so that officials could act on it, not to ignore obvious social problems because of

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15. See EDWARDS, *supra* note 5, at ch. 3–4.

16. This analysis owes to recent scholarship in U.S. legal history that has explored the ways that people who did not have formally recognized individual rights nonetheless influenced legal proceedings and the content of law. GROSS, DOUBLE CHARACTER, *supra* note 4; HARTOG, MAN AND WIFE IN AMERICA, *supra* note 4; DYLAN C. PENNIGROTH, THE CLAIMS OF KINFOLK (2002); Gross, *Beyond Black & White*, *supra* note 4. The analysis also builds on literature that explores the political agency of African Americans, even when they did not have civil and political rights. See STEPHANIE M.H. CAMP, ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH (2004); STEVEN HAHN, A NATION UNDER OUR FEET (2003); WALTER JOHNSON, SOUL BY SOUL (1999); WILLIAM A. LINK, ROOTS OF SECESSION (2003); HEATHER ANDREA WILLIAMS, SELF TAUGHT (2005); Elsa Barkley Brown, *Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom*, 7 PUB. CULTURE 107 (1994); Walter Johnson, *On Agency*, 37 J. SOC. HIST. 113 (2003).

legal technicalities.<sup>17</sup>

The effects of legal decisions remained with the particular people involved, because the system was so personalized. One person's experience did not transfer to another person of similar status (defined by such characteristics as gender, race, or class) or predict any other case's outcome. These disparate outcomes coexisted as options and alternatives, rather than contradictions requiring rationalization. The result was a legal system composed of inconsistent local rulings which rather than providing precedent, offered options from which to choose; there was no uniform "law" to which to appeal. The law existed only in the lived context of people's lives—what we call society today and distinguish from the law.<sup>18</sup> Ordinary people—men and women, rich and poor, free and enslaved, young and old, even those without rights—influenced localized law in a basic, structural sense. We usually do not think of ordinary people as central in the production of law, particularly in this period, when so many of them did not have the individual rights that we assume necessary to provide the standing required to pursue legal matters. But these people, the contours of their lives, and the body of knowledge upon which they drew, actually *constituted* law.<sup>19</sup>

### III. THE PEACE AND PEOPLE'S RELATIONSHIP TO LAW

Within the logic of the peace, people had a direct relationship to the law. Both the legal process and the law's content depended on their presence. That relationship widens legal history's analytical frame, decentering the traditional emphasis on statutes, appellate cases, and the development of legal abstractions and opening up new questions about legal history, particularly the legal status of the nation's people. The traditional concerns of legal historians are closely tied to the field's focus on the development of law at the state and national jurisdictions. In these institutional arenas, the law is created through statutes and appellate decisions. Its point is the identification, preservation, and application of legal principles, many of which frame individual interests and public concerns in terms of the abstraction of individual rights. Individual rights, however, did not figure centrally in the workings of the peace. Even when people pursued their own interests, the peace did not treat their claims as expressions of rights. Nor did it treat the claimants as legally recognized, autonomous individuals who exercised agency on their own behalf through the possession of rights. In the logic of the peace, the people existed as embodied individuals, not as abstractions with rights. Yet much of the historiography traces the people's relationship to the law in terms of the abstraction of rights, rather than their access to the system and their place in the practice of law. To view changes in the legal system's history in terms of the

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17. See generally EDWARDS, *supra* note 5, at ch. 4.

18. *Id.* at ch. 1.

19. See *id.* at ch. 3–6.

abstraction of individual rights is not only to misconstrue its most basic dynamics, but also to miss its most fundamental changes. The better question is how and when rights became so central in configuring people's relationship to the law. From this perspective, legal change looks less like the progressive extension of rights to previously excluded groups of the population and more like the imposition of a new framework that exacerbated existing inequalities through the rhetoric of equality. A system based in individual rights made subordinate people without rights even more vulnerable than they already were by cutting off all access to the legal system.<sup>20</sup>

The meanings attached to the term "local" are critical in maintaining the analytical framework of individual rights within the field of legal history. The peace was tied to a localized system. Within legal history and among academic historians more generally, it is difficult to acknowledge that anything local could be of historical significance, because historiographical conventions consign local history to antiquarians, based on the assumption that provincial places were historically marginal in the past and therefore are inconsequential for understanding historical change. In legal history, the pejorative connotations so often applied to all things local reach back even further, to post-Revolutionary leaders bent on creating strong state and national governing institutions and uniform bodies of law. These men, most of whom were professionally trained lawyers, were part of a national network that applied revolutionary ideals to create rationalized bodies of law and institutions of governance. For many, one of the most pressing concerns in the post-Revolutionary decades was the solidification of the state's legal authority. State institutions, as they envisioned the situation, would produce and maintain a uniform body of law based on the protection of individual rights. To realize that goal, reformers faced two obstacles: the logic of the peace and the authority of local jurisdictions, obstructions so entwined that they appeared as a single problem, namely localized law.<sup>21</sup>

History proved crucial to the task. As reformers worked to create uniform bodies of law, first in property issues and then in public matters, they also compiled documentary sources and constructed narratives that obscured the fact that local jurisdictions actually had authority over a broad range of public matters. In these materials, they cast localized law as an archaic throwback, which inevitably gave way to progressive change as laws were standardized and rights were uniformly defined and applied. In the process, reformers generated a set of expectations about where the law resided and how it moved through the system. Not only did reformers separate "the state" from "the local," but they also associated the state with other kinds of legal practices and insisted on their superiority. Reformers had such confidence in this vision of the legal system that

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20. *Id.* at ch. 7.

21. *Id.* at ch. 2.

they described it in normative terms: since there was no other option, the system evolved naturally—if somewhat haltingly and fitfully—in this direction. Their rhetoric, so powerfully articulated in the archival sources, has embedded their vision within the historiography.<sup>22</sup>

The localized system of the peace, however, was not local in the way that state reformers or later historians portrayed it. The term referred to a conceptual approach to the law as much as its institutional or geographic location. It was not so much backward and doomed as it was popular and powerful. In the post-Revolutionary system governed by the peace, law was everywhere and nowhere. The legal system dealt with a wide variety of issues in this period, including poor relief, public health, and economic regulation. While these matters were attended to locally, there was no single location for law. Those towns where circuit courts met were likely to have courthouses. But, since legislators kept breaking up existing districts and adding new ones to accommodate the growth of the population and its westward movement, circuit courts met in whatever buildings were large enough until courthouses were built. These early courthouses tended to be unremarkable in style. Although distinguished by their size, they blended in with the other buildings in town. Many were multipurpose public buildings used for other meetings and events when court was not in session; they lacked offices, document storerooms, and other specialized spaces that became standard in later courthouse designs. Particularly in the first few decades following the Revolution, people did not associate the legal system with courthouses or other specifically designated public structures; most legal proceedings were conducted elsewhere.<sup>23</sup>

In fact, the practice of law moved around promiscuously, following the officials who oversaw it and going to the people it served. When people had a complaint, they initiated the legal process by going to find a magistrate—the official who presided at the first, busiest level of the legal system. Magistrates heard complaints when and where they received them, in the fields where they had been working or even from the beds where they had been sleeping. Then they held hearings and trials in convenient spots that could accommodate a crowd—taverns, country stores, front porches, a room in the magistrate's house if large enough or, if not, under a canopy of trees outside.<sup>24</sup>

The law's proximity was conceptual as well as physical. People of all kinds approached law with an air of proprietary familiarity, assuming that they could use

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22. *Id.* at 8–13, 29–40.

23. *Id.* at 67–68, 205–19. The analysis draws on scholarship on the evolution of courthouses and the cultural implications of their architectural design. *See* CARL L. LOUNSBURY, *THE COURTHOUSES OF EARLY VIRGINIA* (2005); MARSHA J. MCNAMARA, *FROM TAVERN TO COURTHOUSE 1658–1860* (2004); *see also* VERNON, *supra* note 7 (noting similar trends in England, with the construction of town halls and other government buildings were linked to changes that formalized the political process).

24. EDWARDS, *supra* note 5, at ch. 3.

it. They gave law respect of a particular kind, derived from close and frequent contact with a system that was integral to local culture. Respect did not take the form of blind obedience or unquestioning deference to legal authorities, whether in the form of written documents or of flesh-and-blood officials. To the contrary, they ignored or challenged those verdicts with which they did not agree precisely because they had enough confidence in the concept of law to believe that it could be engaged and changed. In this sense, acceptance of law represented faith in a concept that reached well beyond formal definitions or specific legal officials and institutions. Above all, ordinary people acted as if law was a system that should respond to their problems and could express their own conceptions of justice. Even people who had no reason to expect justice, such as free blacks, still had faith that the system *should* work this way. What people imagined law could do was as important as what law actually did for them. They involved themselves in the legal system because they believed that localized law could resolve their problems.<sup>25</sup>

Those expectations extended beyond the local level into other parts of the legal system. Individual requests for private acts took up most of the state legislatures' business; in the post-Revolutionary decades the volumes of public acts are slim by comparison. Private acts ranged as widely as complaints brought to magistrates, and included the incorporation of voluntary organizations, the chartering of businesses, grants of manumission, divorce, legitimization of children, and suspensions of existing laws in particular instances. Private acts expressed both the legislatures' sovereign authority to make or modify law and southerners' expectations that their legislatures would act on their behalf in personal matters in individualized ways. Divorce petitions, for instance, occasionally appeared on South Carolina's legislative agenda, even though the state's statutes did not allow it. Petitioners were not necessarily naive or ignorant of the law; they requested the legislature to use its power to make a new law specifically for them. As one man put it, "Your petitioner is well aware that your Honorable body by no means are in favor of dissolving the matrimonial tie," but he thought that his case deserved special consideration and its own private act.<sup>26</sup>

The demand for private acts added significantly to legislators' workloads, sometimes extending their sessions for weeks. Frustrated representatives, stuck in inhospitable state capitols for indefinite periods of time, watched their own farms and businesses languish, while their frustrated constituents watched the costs of state government grow. The situation prompted various reform efforts. It contributed to calls for cost cutting, which many antebellum political historians have explained in terms of a peculiarly southern hostility toward big government.

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25. *Id.* at 79–90.

26. *Id.* at 90–91; Petition for Divorce, Curtis Winget, *microformed on* General Assembly Records, S165015 (1830) (S.C. Dep't of Hist. & Archives).

It also led to measures to limit the length of legislative sessions. The rhetoric of reform, however, was stronger than the commitment to it. In the abstract, everyone could agree that legislative calendars were too long and expenses were too high. In practice, no one really wanted the legislature to ignore his or her requests or those of their constituents.<sup>27</sup>

The situation is captured in the ambiguity between “private acts” and “public acts.” In North Carolina, the *Raleigh Register*, which provided day-by-day reports on the General Assembly’s business, only started separating out “private acts” from “public acts” around 1809. Until then, it mixed them together, even when it listed the new laws published at the end of each legislative session. It is easy to see why the *Register* did not bother to make the distinction. In North Carolina, as elsewhere, many public acts were initiated in the same ways as private ones, through local initiative, usually by petitions and grand jury presentments.<sup>28</sup> The difference was that the sources of public law usually came through a request authored by a group, rather than an individual, which claimed to represent the interests of a particular area or constituency. Yet many public acts, like private ones, addressed specific, highly localized problems. Typical was the 1814 grand jury presentment from South Carolina regarding the “frequent violation of the sacredness of the divine institution of Marriage.” People were living together as if they were married, but without being legally married, and then separating through customary practices and taking up new spouses. “It is conceived,” wrote the grand jurors, “that the laws of the State, are not sufficient effectually to prevent such dangerous and growing evils.” Apparently the available legal weapons, such as charges of vagrancy, disorderly conduct, and adultery or fornication, were insufficient. Therefore, they concluded, the legislature should pass a new law. The grand jurors’ confidence in law as the best means to address this issue is remarkable. Even more striking is their assurance that the legislature would comply. They were not disappointed. The Judiciary Committee, to which the presentment was referred, reported “that a bill should be brought in to punish infractions of the same.” Based on a “problem” identified by twenty-four grand jurors in a sparsely settled region, the legislature moved to make a public law that could apply to everyone in the state.<sup>29</sup>

Many petitions recommended changes in statutes in order to address local problems. Neither petitioners nor legislators identified this as a contradiction, let alone a problem. Local people and legislators assumed that these problems lay within the legislature’s purview; and it should rally round, when called upon to do so. Moreover, people and their representatives thought it was appropriate for local issues to drive the framing of state law. “We your humble petitioners,” began a

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27. EDWARDS, *supra* note 5, at 90–98.

28. *Id.* at 91.

29. *Id.* at 91–92; Grand Jury Presentment, Pendleton District, *microformed on* General Assembly Records, S108093 (1814) (S.C. Dep’t of Hist. & Archives).

missive from Orangeburg District in South Carolina, “would esteem it as a fortunate circumstance if our domestic economy was under no necessity, of legislative intervention: but this is not the case.” After detailing local difficulties in regulating trade in the items that slaves produced themselves, the petitioners (not so humbly) deemed it “highly necessary” that “a law should be enacted this Session prohibiting negroes making cotton for themselves.”<sup>30</sup> In the next session, the South Carolina legislature raised the penalties for trading with slaves, and specifically listed cotton, rice, tobacco, and indigo as prohibited items. Hogs, cattle, and corn were the problem in Beaufort District, according to Richard Dawson and ninety-one others. More to the point, the problem was absentee owners, whose slaves “not being restrained are in the constant habit of Killing the stock of Cattle and Hogs of the Neighbors adjoining them, and also of the taking their corn from their fields before it could with safety be housed.” The petitioners requested an increase in penalties for absentee owners with thirty or more slaves. The South Carolina General Assembly, whose members had to absent themselves from their plantations to fulfill their legislative duties, declined to act in this instance.<sup>31</sup> The refusal of this or any other request did not signal any change in the system’s underlying dynamics. Petitions continued to arrive, penned by people who expected that their concerns would be taken up by the legislature, even if they did not lead to modifications in state laws.

It was against this backdrop that legal reformers struggled to create a uniform body of state law, focused on abstract individuals, rather than the messy particulars of actual individuals’ lives. State leaders’ accounts, which posit the slow but steady defeat of localism and the development of state law, are accurate in the sense that state law did become more elaborate, sophisticated, and influential between 1787 and 1840. In other respects, however, they were proscriptive rather than descriptive. Even as state law expanded and covered more ground, its relationship to localized law was never as clear-cut as state leaders would have liked. Localized law, with the governing logic of the peace, continued to have considerable influence throughout the antebellum period and long afterward, even at the state level, because it was embedded in the culture in ways that made it very difficult to eliminate. Neither the legal system nor reformers’ narrative of legal history worked as they portrayed it.<sup>32</sup>

To achieve their ends, legal reformers both extended the scope of state law and drew a clear hierarchy between “the state” and “the local.” The situation in

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30. EDWARDS, *supra* note 5, at 92–93; 1 THE SOUTHERN DEBATE OVER SLAVERY: PETITIONS TO SOUTHERN LEGISLATURES, 1778–1864, at 55, 56, 47–58 (Loren Schweninger ed., 2001). Schweninger’s collection of petitions, from all southern states, suggests that these expectations were common; this collection is particularly revealing because it indicates whether and what action was taken on petitions.

31. EDWARDS, *supra* note 5, at 92–93. THE SOUTHERN DEBATE, *supra* note 30, at 47–58.

32. EDWARDS, *supra* note 5, at ch. 1, conclusion.



North Carolina and South Carolina is suggestive. In the 1820s, legal reformers began extending the reach of state law into areas previously left to local jurisdictions. Before then, reformers had been preoccupied with issues involving property, such as inheritance, contracts, sales, and other transfers—often referred to as private matters on what is now the civil side of the system. The legal texts of the time, produced by reformers and now used as primary sources by legal scholars, testify to those concerns. In them, property predominates, crowding out other issues. Reformers structured this emerging body of law around the logic of individual rights, drawing on the legal framework that had governed property issues even before the Revolution. Then, in the 1820s, reform-minded appellate justices and legislators in both states extended their interests beyond property and began applying the rubric of rights to criminal matters and other public issues. These new bodies of state law represented a marked departure from the states' previous handling of public issues in key ways. Before the 1820s, legislatures and appellate courts had generated laws in this area sporadically and haphazardly, often in response to local concerns and not always with the expectation that state law would supersede local practice. In fact, state law recognized locally defined conceptions of the peace and incorporated localism into its approach to public matters. State law coexisted with localized law, although the two operated largely apart, with localized law occupying its own space within the legal system and operating according to its own logic. By the 1820s, however, reformers' efforts at consolidation and systematization had achieved results. Legislatures and appellate courts acted with the assumption that they should be creating a uniform body of law in public matters, applicable throughout the state and superior to local practices. Instead of conceding the importance of localism when it came to public matters, the logic of these new statutes and appellate decisions upheld abstract conceptions of individual rights created and protected at the state level. Localized law now had a competitor with aspirations to dominance.<sup>33</sup>

State leaders endeavored to legitimize the authority of state law by linking it to the rights of abstract individuals. In the late 1820s and 1830s, state leaders in both North Carolina and South Carolina mounted political campaigns that popularized the authority of the state and the rhetoric of rights—at least for adult white men. In South Carolina, the Nullification Movement consolidated state government more dramatically and more thoroughly than any previous reform effort. Leading Nullifiers came from the same ranks as legal reformers: they moved in state and national networks, considered government at those levels to be superior to local jurisdictions, supported state-building efforts, and advocated the creation of a coherent body of state law based in individual rights. Confronted with national policies that they considered detrimental to state interests, a core group of South Carolina's leaders rallied to the state's defense. In an amazingly

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33. EDWARDS, *supra* note 5, at 209–10; *see also id.* at 205–19, ch. 7, 8, conclusion.

well-orchestrated campaign, Nullifiers convinced the “freemen”—by which they meant white men—to identify with the state as the only entity that could preserve their liberty. The rhetoric of individual rights was deployed by both sides. While opposing Nullification, Unionists urged freemen to support their state and protect their rights by remaining loyal to the nation. The formulation, in both its Nullification and Unionist guises, placed free white men at the center of state politics and made them important in ways they never were within the political context of localism. They responded with such enthusiasm that their erstwhile leaders had difficulty controlling them.<sup>34</sup>

In North Carolina, the political campaigns of the 1830s were less explosive, but no less decisive. The new state constitution of 1835 popularized the rhetoric of rights and the notion that it was the state’s job to protect those rights. The constitution also solidified the state legislature’s authority, by elevating the public business of the state government over the private matters of local jurisdictions, which involved specific individuals and communities. North Carolina’s new state capitol embodied these changes in physical form. The style and location of the building set it apart as a distinct place where the most important public business was conducted. It housed all the authoritative bodies that made up the state, not just the two houses of the legislature and the appellate court, but also the texts that comprised state law. But the capitol was not public in the sense that anyone could wander in and present their concerns. The building had no place for localized law, which was banished to localities. Also banished were the myriad of people who constituted localized law. They were replaced by the racial, class, and gendered abstractions of state law: freemen and their individual rights. The new state capitol demonstrated physically that state law, though not yet dominant, was nonetheless separate from localized law and the common people.<sup>35</sup>

In 1835, North Carolina’s new constitution tried to institutionalize this new relationship between state law and localism by restricting the legislature’s handling of all “private legislation”—bills, including those providing divorces, that applied only to specific individuals, groups, or localities. While recognizing the authority of local jurisdictions, the amendments drew a sharp line between local issues and state issues, creating a distinct hierarchy between the two. The legislature now dealt exclusively with public issues of broad importance, which in theory affected everyone in the state. Local courts became subordinate legal bodies that specialized in the detritus of everyday life; they handled legal conflicts characterized as routine and private because they did not involve the interpretation of state law. The new state constitution shielded the state appellate court from legislative interference, ending locally minded legislators’ campaigns to undermine a centralized court system that upheld state law. Before 1835, localized

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34. *Id.* at 210–11; *see also id.* at ch. 8.

35. *Id.* at 211; *see also id.* at ch. 8.

law had space within the state's legal system: its rulings were part of the state's body of laws, and its practices were recognized and accommodated within the state's government. Although state leaders failed to eradicate localized law, they did manage to purge the logic and practices of localism from state law in theory. They rewrote the basic structures of North Carolina government in a way that not only clearly separated state law from localized law, but also established state law's superiority—at least in the institutional structures of state government.<sup>36</sup>

That separation, as imagined by state leaders and written into state government, did not mark the end of localized law because the culture of localism did not necessarily recognize the distinctiveness, let alone the superiority of laws generated at the state level. Localized law continued to operate in the districts and counties of the Carolinas as it always had, unless it was interrupted by officials who were intent on imposing the edicts of the state. It also wandered into the corridors of state government, despite efforts to keep it out. The peace as it operated at the local level had always accommodated multiple—even conflicting—legal traditions, so it was possible for people to embrace rights discourse, as developed at the state level, while still adhering to conflicting tenets of the local system. People might represent their interests in local courts in terms of rights, but the localized system continued to incorporate their claims just as it had always done with other claims on the peace.<sup>37</sup>

This dynamic relationship between law as practiced by states and localities suggests that localities actually provide productive places from which to develop larger generalizations about law and government, particularly in the immediate post-Revolutionary decades. It is not so much the places as the legal logic that is important. In the logic of the localized system, state laws did not necessarily control local practice, define the needs of the peace in local areas, or constitute a definitive body of law uniformly applicable throughout the state. They were just another set of legal principles generated in a different place. In fact, because the state was a different place, its laws often do not represent the practices of other places particularly well.

Localities also provide a better basis for generalizations that can account for differences among the nation's various regions and provide a truly national history. The focus of my research has been the South, a place often deemed either exceptional or backward and certainly not representative of the national experience. That is because of the frame of reference. Usually, state-level laws and institutions are compared to each other, a framework that is problematic because it assumes what did not yet exist: already-constituted states that would eventually form distinct regions. The historiographic power of southern exceptionalism complicates matters because it imposes dynamics from the Civil War era on an

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36. *Id.* at 215; *see also id.* at 205–09, ch. 8.

37. *Id.* at 211; *see also id.* at conclusion.

earlier period when “the South,” as a unified region, did not yet exist.<sup>38</sup> Changing the perspective and bringing local jurisdictions into focus widens the perspective so as to include the South—and other areas of the country—within narratives of legal history. That contrast, between localized law with its emphasis on the peace and legal developments at the state level with their emphasis on abstractions and uniformity, highlights striking similarities between the southern states and states in the rest of the nation. In the early nineteenth century, southern states developed centralized government institutions with rationalized bodies of law, just like states elsewhere in the United States. Reform-minded southern leaders drew on political principles usually associated with the liberal state in the North: private property, individual rights, and a limited but theoretically democratic government that protected those rights and encouraged individual initiative.<sup>39</sup>

The inclusion of a broader geographic area within the narrative of legal history also recasts the development of a system based on individual rights. The historiography usually associates such a legal system with the expansion of individual liberties and expansion of democracy. In the context of a slave society, however, those principles resulted in extreme legal inequalities and rigid political exclusions. As southern lawmakers extended the reach of state law, they imposed the rubric of individual rights on matters formerly governed by collective conceptions of the peace, as defined in local contexts. The logic behind the developing body of state law turned white men’s patriarchal authority and civic participation into individual rights, akin to their already established property rights. White men’s rights expanded at this level of the legal system, increasing their claims on the legal system and to state protection of their interests. In the political rhetoric of the 1830s, they became “freemen,” legally recognized individuals who were the paradigmatic citizens, at least within the realm of state law. White men were constituted as freemen through their rights *over* those without rights. At the same time, dependents’ legal status, particularly their lack of rights, became the rationale for their exclusion from law and government. State law defined them as altogether different categories of legal persons and subordinated them according to the abstract categories of race, class, and/or gender. White women, African Americans, and the poor found it difficult to make themselves heard and their

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38. *Id.* at 13–14. There is a vast literature that takes southern exceptionalism as a description of the South’s actual differences from the North. But there is also a body of scholarship that takes a more critical view, arguing that southern exceptionalism serves cultural and historiographical purposes, by isolating national problems, displacing them onto one region, and thus allowing for direct and critical explorations of them. C. VANN WOODWARD, *THE BURDEN OF SOUTHERN HISTORY* (3d ed. 1993) is the classic statement—actually meditation—on southern exceptionalism and the connections between the South and the United States. *See also* Larry J. Griffin, *Why Was the South a Problem to America?*, in *THE SOUTH AS AN AMERICAN PROBLEM* 1–32 (Larry J. Griffin & Don H. Doyle eds., 1995); *THE SOUTHERNER AS AMERICAN* (Charles Grier Sellers Jr. ed., 1960); Laura F. Edwards, *Southern History as U.S. History*, 75 *J. SOC. HIST.* 1 (2009).

39. EDWARDS, *supra* note 5, at 15. *See also* EDWARDS, *id.*, at ch. 1, 7, 8.

concerns visible within the body of state law, because they were excluded from the category of people with rights the state was designed to protect.<sup>40</sup>

In extending this legal framework, state leaders applied the precepts of liberal individualism to the patriarchal structure of localized law. They abstracted the authority white men already exercised in social contexts, through their obligations to the peace in localized law, and individualized both its privileges and restrictions. In practice, though, state leaders' vision of democracy did not include fundamental changes in the economic or social structure that would put all white men on equal footing. Legislators and jurists defined rights narrowly so as to affirm existing inequalities among white men and to protect the property interests of the wealthy, particularly their property in slaves. By the 1830s, freemen could look to the state to protect their rights, defined in the limited, abstract terms of law at that level of the system. But many of the white men included in this category could not count on those rights as a means to articulate, let alone promote their interests.<sup>41</sup>

While dynamics in the South are usually considered unrepresentative of national trends, they paralleled developments in the North, where recent historiography has emphasized growing inequality, expressed in categorical terms of race, class, and gender and linked to the spread of liberal individualism. When the analysis includes localities, made visible by recognition of the peace as a legal construct, southern legal history provides insights into the origins and reconstitution of inequality in the nation as a whole. As the history of the South indicates, the extension of rights to new portions of the population is only part of the story: the meanings given to individual rights were—and are—as important as their distribution. Although rights exist as abstractions in law, they are always applied in context. Without political backing and a strong commitment to democracy and equality, a government based in the protection of individual rights can lead in profoundly oppressive directions. In the South, the same principles that we usually associate with individual liberty, democracy, and equality were mobilized in defense of slavery, the nation's most potent symbol of tyranny and repression. We usually treat slavery as an exception that can be explained by its divergence from national principles, but the system of vesting some with rights in the labor and bodies of others was far more pervasive than many Americans like to recognize. The principles of equal rights were—and still are—extended in democratic directions only by political struggle.<sup>42</sup>

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40. *Id.* at 9; *see also id.* at ch. 7.

41. *Id.* at 9–10; *see also id.* at ch. 8.

42. *Id.* at 16; *see also id.* at ch. 8

## IV. CONCLUSION

The peace is conceptually useful because it reinforces approaches that already define the best legal history in the field. It forces us to confront the presence of multiple, even conflicting traditions *within* the law, instead of displacing them onto society or debating which is really the authoritative expression of the law. More than that, the peace forces us to deal with those complications *within* legal history, instead of relegating them outside the bounds of the field. The challenge is to think more critically about what the law is, at any given time, and what that means for the way we understand the law in our own historical moment. Who defines the law? Where it is located? What does it do? The framework of the peace suggests that those questions are more difficult than they seem. The answers, moreover, lead not to pluralism, with its easy affirmation of multiple legal traditions and the resulting obfuscation of power dynamics that elevate some of those traditions over others. Rather, they lead to different historical narratives, in which it is possible to tell a national legal history by looking locally and by emphasizing the place ordinary people have had in making law.

The results would also connect the field of legal history more directly and more productively to other historical subfields. In one sense, the field of legal history has become something of an outlier in the historical profession. Among historians outside legal history, the perception is that the scholarship in the field is insular and difficult to penetrate because the central issues in the field have developed in ways that appear disconnected from the debates in other fields. Books that are widely known in the field are not known outside it. Even the designation “legal history” can make it difficult for a book to find a wider audience. In another sense, however, legal history maintains a high profile in the historical profession. Historians of all varieties rely heavily on legal sources and incorporate analyses of the law into their scholarship. Often, however, these historians do such work without ever engaging with legal historians. That juxtaposition—between the marginalization of the field and the centrality of the topic—provides both a caution and challenge. We need new frameworks to widen the scope of the field, lest we lose control over it.