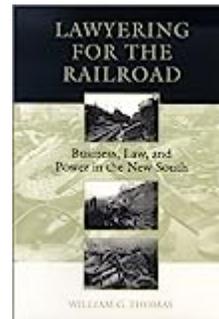


**William Thomas.** *Lawyering for the Railroad: Business, Law, and Power in the South.* Baton Rouge: Louisiana State University Press, 1999. xxii + 318 pp. \$47.50 (cloth), ISBN 978-0-8071-2367-6.



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## **A Flawed Attempt to Synthesize Business, Legal, and Regional History**

Focused on a topic which historians have not investigated in any depth – the role of lawyers in the evolution of the railways in the South – this is a book that scholars of business, the South, and the law should consult. But there are problems with the book: It is not well-conceived or written and too often it is not always clear in the footnotes what sources sustain the author's assertions. The major strength of the book lies in the sources that William G. Thomas uncovered, particularly records of over forty railway legal departments. He supplemented these organizational records with another twenty manuscript sources, mostly the papers of individuals, but also including the voluminous Baker & Botts History Collection, which chronicles the important history of the Houston, Texas, law firm. His short "Note on Manuscript Sources" furnishes a concise overview and helpful comments on the significance of some of the sources. Nonetheless, the manner in which Thomas conveys the results of his research is disappointing.

Perhaps the problem lies in Thomas's effort to meet too many purposes in writing the book. Thomas, who studied at the University of Virginia, where he is now

director of the Virginia Center for Digital History, is interested in lawyers (his family has many) and their work, in the South as a region, and in how "monopoly power worked" (xi). He attempted an "interactive" approach to the law and society in which "law and legal processes both shape and derive from social and economic change" (xiii n.1). He also tried to write a social history of Southern lawyers, as well as a business history of railroading from the perspective of the legal department. So, he wanted to synthesize business, legal, and social history in a regional setting, an endeavor that requires not only expertise in each field but also facility in composition. Had Thomas been more careful in writing introductions and conclusions to each chapter—helping the reader keep clear the many threads of his complicated tale—he might have accomplished many of these goals. Instead, anecdotes are not always clearly related to the larger themes; repetition of evidence appears without reason; and themes (such as federalism) are introduced and dropped without adequate development in the text or notes. And, as those of us who have worked in Southern history understand only too well, trying to generalize across the region holds numerous traps. While in many

ways southern, Texas, for example, does not always fit the general economic and political patterns found in the rest of the Old Confederacy; yet, much of Thomas's key evidence comes from Texas.

The book generally follows a chronological approach over nine chapters. When railroads first appeared, Thomas argues, they hired local lawyers to help in establishing rights-of-ways and to work with construction aspects of the business. Once the railways were up and running, the need for a permanent legal department emerged. In chapters 3, 4, and 5, he attempts to show how the growth of railways changed the nature of legal departments (they became more hierarchical and bureaucratic) and how litigation, particularly personal injury lawsuits, evolved. Growth also forced railway lawyers into the role of lobbyist in the state legislatures, and eventually in congress. Thomas spends a lot of time focusing on personal injury litigation (almost to the exclusion of the important work of regulation). He indicates that tensions emerged as corporate managers attempted to demand total loyalty from the hired hands; local lawyers had to weigh the balance between the steady assignments associated with the interstate railroad legal department and the negative impact that work would have on the rest of their local practices.

In chapter 6, "Progressive Reform and the Railroads," Thomas argues that the consolidation movement in railroading at the turn of the century prompted many Southerners to oppose the "monopoly" power of the railways. The 1890s and first decade of the twentieth century were busy times for railway lawyer-lobbyists as they attempted to undermine legislative controls before they were enacted and, if failing that, after they were enacted. Several anecdotes indicate that the lawyers and the corporate managers sometimes took a cost-benefit approach in deciding whether to fight legislation and complaints from customers; sometimes it made more economic sense to clean up a work yard in order to reduce the number of potential personal injury suits. Beyond the anecdotes, however, Thomas does not indicate to what extent lawyers became involved in the management decisions of the railways. Meanwhile, lawyers began to engage in their own profession-specific associational activities. They used this associational power to prepare for appeals in the Federal court system and to lobby against bills in Congress, but there remained tension among the members, for they often met one another as adversaries in

personal injury suits.

Chapters 7 and 8 continue the story of southern railway lawyers interacting in the national arena. Chapter 7 is notable for its confusing narrative on delaying tactics (see pp. 218-219 and the citations in 219 n.42, where Thomas confuses state and national delay tactics). In Chapter 8, Thomas discusses the liability issue as it relates to the Federal arena. Congressional legislation in 1906 and 1908 prompted railway legal departments to move liability cases to Federal courts in order to avoid more onerous state laws. The several pages at the end of this chapter on the conflicts between state and Federal regulation add nothing to what scholars already know on this subject. In fact, Thomas is not very sure footed on the evolution of the regulation of railways. To cite one example, he claims that *Munn v. Illinois* (1877) was reversed in 1890 (p. 170) and does not seem to understand that the U.S. Supreme Court waxed and waned on the issue of state versus Federal regulation of railways before and after *Munn* nor that *Munn* was more important for what it said about government regulation of business than it was for state-Federal jurisdiction. Chapter 9, "The Changed Law Business," repeats too much information from earlier chapters, yet fairly well summarizes the author's overall argument. Still, Thomas relies too heavily here on Texas (and on Baker & Botts) and Virginia to make the generalizations that he does about the entire region.

While Thomas ignores for the most part the role of lawyers in the development of regulation, he does include helpful insights on a few key topics, including: analysis of the free pass, which dominated much of the politics of railroading at the turn of the century (I learned a lot from this; see especially pp. 92-96, 178-181); a useful overview of the railways' attempts to sidestep Jim Crow laws (219-225); and, interesting anecdotes on particular train wreck cases (Chapters 3 and 4 especially). Thomas occasionally alludes to the lawyers' attempts to settle cases out of court, but, as with much else in the book, he does not elaborate on this important insight. In short, specialists interested in these topics should consult the book. Other readers might benefit from reading Chapter 9 and the Conclusion.

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