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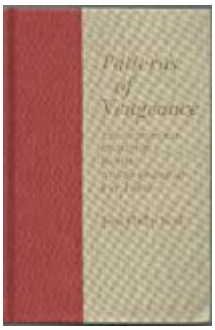

John Phillip Reid. *Patterns of Vengeance: Crosscultural Homicide in the North American Fur Trade.* Pasedena: Ninth Judicial Circuit Historical Society, 1999. 248 pp. $40.00 (cloth), ISBN 978-0-9635086-1-4.

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For these be the days of vengeance

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John Phillip Reid, the Russell Niles Professor of Law at New York University School of Law, is one of the most productive, intelligent, and imaginative legal historians at work. In this remarkable and important new book, he examines the relations between British and American fur traders and Indians.

Reid demonstrates two significant points. First, that Native Americans had autonomous legal systems, though they were not always recognized as such for not being written. Second, that the white Americans and British adapted to and occasionally adopted Indian legal understandings in their crosscultural relations. Both are ideas expressed in part by previous scholars, but never before to my knowledge with such clarity and precision.

Reid is a very careful historian who acknowledges the limitations of his evidence. Indian law was not written, so his is an interpretation of that law based on their recorded actions. As a consequence, "there are questions that cannot be answered because not enough of the domestic law of the nation being discussed is known." The historical record is occasionally silent; "the law of some nations is completely unknown" (p. 20). Reid works to fill these blank spaces by analogy, while admitting that such an approach has its flaws.

As many scholars have recently noted, none so ably as Laura Kalman, legal historians have been stuck for too long in "law-office history," the process, in Reid's words, of "rummaging through history and picking out bits and pieces to sustain an argument about current law" (p. 16). At the same time, western history is only now breaking out of an Anglo-centric view of frontier development that failed to appreciate fully the nature of Indian society. "At the very least," Reid writes, "one hopes that historians of the transboundary North American Indians will cease assuming that the Indian nations had no law" (pp. 21-22). "Indians had law–at least two kinds. One was international law, the law by which the nations regulated their conduct toward one another. The second was domestic law, the law of the Blackfoot, of the Flatheads, of the Crees and of all the Indian nations" (p. 40). "Not known, because not looked for," to use T. S. Eliot's wonderful line.

Reid looks, meticulously. "Murder," he reminds the

reader, is not the killing of another person, but "the unlawful killing of a human being" (p. 24). That distinction is vital, for when we read an account of a white trapper "murdered" by the Indians, the first question we should ask is whether that is the correct choice of words. Calling the killer a "murderer" rather than a "manslayer" is a judgment rather than a statement of fact. It seems almost too obvious, though far too often ignored, that the killing may have been justified in the eyes of the society on whose land the killing occurred. Once we accept that Indians had laws, we start to see evidence of that system of justice in most accounts from the West.

Clearly, the cultural values of the native people should be taken into consideration. James P. Ronda has noted that Europeans in the Pacific Northwest complained constantly of the Indian predilection for stealing, failing to make any effort to understand the Indian perspective. In reference to the theft of some axes by the Chinookans, Ronda writes, "the Chinookans believed those who had large numbers of axes or other valuable goods should be willing to share with those having only a few. What the furious partners saw as a theft, Indians viewed as a sensible redistribution of surplus goods."[1]

Reid offers the example of horse theft. For the white man whose horse is stolen, theft is theft. But, Reid asks in reference to a specific case, "What if Bannocks thought taking horses from aliens and adding them to the Bannock nation's stockpile was a national good?" (p. 25). If the "crime" occurred on Bannock land, and the Bannocks perceived the act as a positive one, can we as historians speak of a "crime"? When the U.S. Customs Service seizes goods, are they committing a crime? Are nations excused on the basis of bureaucracy? Reid asks obvious questions that have somehow avoided the comprehension of many previous historians of the American West. For instance, were not trappers who took game or migrants who took wood from Indian lands thieves?

Just when the reader starts to think that Reid is presenting a romantic vision of Indian life, he hits home with a notably unsentimental portrait of an Indian atrocity or act of real stupidity. He employs the same precision when addressing the cruelties of the whites. But he takes seriously the notion that these lands belonged to the Indians.

Whenever Indians and Europeans came into contact, their different conceptions of law came into conflict. The European legal structure generally demanded some sort of hearing and the punishment of the guilty person or persons. Indian responses to crime in the northwest demanded retribution. Indians viewed the individual who had committed a crime as part of a group, that group being responsible for the actions of each of its members. A common mistake among historians is viewing European law as normative. For the North American whites, there were excusable acts of murder that carried no punishment. Such a concept was alien to Indian perceptions of justice. On the other hand, white society in the early nineteenth century tended to punish murderers with death; Indians often accepted recompense in the place of retribution.

Sometimes whites adopted Indian notions of vengeance consciously in an effort to deal effectively with them; at other times they unreflectively took up the worst qualities of that vengeance. An example of the latter came in 1823 when Colonel Henry Leavenworth of the U.S. Army responded to an attack on some trappers by a few Arikara by stating to the Secretary of War, "bear in mind that it is not only an individual but the whole A'rickara nation that owes us blood" (p. 29). Often whites "applied no law except the drumhead law of the jungle," as when they hanged Indians without reference to the legal system of either nation (p. 41). And then these very whites would express shock that the nation of the victim would seek vengeance.

There was certainly a great deal of room for misunderstanding. Few people "coming from a European legal culture were able to comprehend the Indian doctrine that liability for homicide was fixed by one principle and one principle only–causation" (p. 44). Those who had caused the death, even if by unintentional accident, were responsible. "A person did not have to take specific action to incur liability. Passive causation triggered the same vengeance as active causation" (p. 82). Many Indians made the connection between the arrival of whites and the spread of contagious diseases, holding all whites equally liable for having caused so many deaths. Reid cites one instance when the Hudson's Bay Company was blamed for the death of a group of Indians who drowned on their way to trade with the Company. Since the Indians would not have been on that stretch of river but for the Company trading post, the Company bore responsibility.[2] "Facts, circumstances, and defenses that would in European law mitigate a homicide, such as that the killing was an accident, done in self-defense, committed without intent or malice aforethought, or not 'designedly,' were immaterial in any of the Indian laws that are known. Causation was the single probative factor" (p. 45). White contemporaries often failed to understand the Indians because they did not expect to. "People they ex-

pected to be 'savages' acted like savages, as should be expected, and to look for other motivations was a waste of time. Everything was superstition and blind vengeance" (p. 88).

The Indians had similar difficulty understanding the whites' notion that one should investigate the causes and circumstances of a killing. Reid offers several fascinating examples of this confusion of legal attitudes, as when one drunken Chippewa accidentally shot a white. "The Chippewa, knowing he was the cause of the fur trader's death, waited patiently to be executed," alcohol consumption or any other factors being irrelevant (p. 46). But instead of seeking vengeance, the fort commander determined that it was an accident and set the confused Chippewa free. On other occasions whites refused to accept the sacrifice of another member of a tribe from which a manslayer had originated, as when one British agent "demanded the application of individual guilt and would not accept collective liability, which … he made no attempt to comprehend." This official wrote, "I then informed him that it was not our Laws that the Innocent should suffer for the guilty … to which he replyed that by the Laws of their Nation one of the same Blood was equally satisfactory." As Reid adds, "The crosscultural misunderstanding was complete" (pp. 49-50). In this instance the killer's uncle committed suicide to atone for his nephew's act. The British realized that they had no choice but to accept this suicide as justice, though they could not begin to understand it.

Even when they could not completely understand them, British and Americans adopted Indian vengeance policies, though usually in a one-way fashion. When an Indian killed a white person, whites often accepted the payment of a blood debt, though they generally preferred that it was the person who committed the crime who paid with his life. On the other hand, when a white person killed an Indian, whites often would attempt to persuade the affected nation to take some other form of recompense. The Hudson's Bay Company became particularly adept at "adopting the principles of Indian international law. It judged success not by Christian or common-law standards of punishment, but by the precepts of Indian liability" (p. 135). The Company "wanted Indians to accept compensation when one of their people killed an Indian, but would themselves accept compensation only for injuries less serious than homicide" (p. 115). However, those whites making use of Indian concepts of justice refused to acknowledge that they were doing so, even when employing the language of the Indians in "covering the dead" and "filling the Callumet."

Reid makes a distinction between "payback vengeance" and "principled vengeance." The former is revenge, the second is based on a conception of maintaining social equilibrium. Whites and Indians practiced both, but the Indians did not approve of the former, as it could create a cycle of violence. The point of "principled vengeance" was to resolve a conflict; payback simply evened an imagined score and brought only individual satisfaction. Among southeastern Indians, killing a member of another tribe was essentially a declaration of war. "This was true even of a killing in retaliation for homicide–a payback killing–because in international law a retaliatory killing was never privileged" (p. 68). Not only does Reid grant Indians the respect they deserve for having international law, but he precisely defines its workings from white records that usually cannot begin to grasp what is going on among the Indians.

All parties in the West found advantage in the Indian notion of compensation. For the Indians, compensation restored "social harmony or international peace" (p. 108). Many of these "nations were so small and so closely connected by travel, commerce, and marriage that compensation for homicide was almost a national necessity. Otherwise there might have been constant warfare" (p. 109). Though they did not have to worry about the latter point, Americans and British found compensation useful for maintaining peaceful relations with the various native peoples. "Although negotiations could be protracted and bitterness could arise over excessive demands, compensation had the advantage of being a practice everyone could understand, whether or not everyone accepted its legitimacy. It could end a conflict and even erase bad feelings" (p. 108).

All documents are subject to suspicion, though in different ways. Massacres are constantly reported in letters, whose accounts are regularly discovered to have been untrue. (See, for instance, pp. 176-77.) Published memoirs often record acts of amazing heroism and bloodbaths that cannot be validated by contemporary sources. Some of these reported slaughters exceed the estimated population of the people in question. Even while using such sources, Reid notes their unreliability. For instance, he notes that James Pattie's narrative is unreal and "too bloody." Pattie "had an astonishing number of deadly encounters with Native Americans," killing 110 Papagoes in a single morning (p. 36). There are accounts of scores and even hundreds of Plains Indians killed in battle. Not only do these stories seem unlikely for the amazing ability of the whites to mow down their enemies with few losses themselves, but also because most estimates have placed

the number of warriors at such times in the tens rather than hundreds. Disease reduced these tribes to a shadow of their former size. For instance, by 1837 there may have been just one hundred Mandan left alive, which would translate into no more than thirty warriors.[3] More believable is a Hudson's Bay Company force of sixty-five men, one of the largest they ever gathered, which set out in 1829 to recover some property from the Clatsops and "ended by killing four Indians, burning an entire village, and scattering the Clatsops to such an extent there was no one with whom the British could deal" (p. 146).

Patterns of Vengeance is equally refreshing for its focus on Canadian history, demonstrating the many opportunities for research available to the north. Reid seeks to dispel a long-standing perception of the Canadian side of the border as relatively more peaceful than the United States–although, in the process of making that point, he provides some indication that there were some substantial differences. As with U.S. officials, the favorite mode of justice among Hudson's Bay Company officers was summary. The Company proved more efficient in extracting vengeance than their American counterparts because "Company employees obeyed orders long after Indians and most free trappers would have gone home" (p. 139). Americans worked mostly for themselves. To the north, trappers worked directly for the Company, a centralized monopoly with powerful government support, and understood that they could be cut loose if they did not adhere to instructions. The Indians understood that the Company's vengeance was more certain than that of the Americans, which limited Indian violence. If angry with a particular tribe, the Company closed forts, cut off trade, and was even known to pay "a neighboring nation to make war on Indians who resisted demands for satisfaction" (p. 148). In short, the Company put the Indians with whom they traded in a dependent relation.

The Company also exerted a restraining influence on its trappers, though, for they did not want vengeance to interfere with trade. Whereas it was important to teach the Indians occasional lessons through acts of violence, the Company still needed those Indians as suppliers and guides.[4] They sought peaceful solutions whenever possible, as when one agent reported that he feared some Indians "would shoot at us in desperation, and thus oblige us to fire upon them–a thing we ardently wished to avoid" (p. 162). The Company's agents liked to fire off their cannon as a demonstration of power that would not hurt anyone. Such displays usually worked, and Canada avoided the outrageously irrational slaughters of Indians that the U.S. Army inflicted at the Washita and Wounded Knee, for example. To this extent, the Canadian frontier may have been less violent than that of the United States, though more comparative work is clearly called for.

That is a minor qualification; for Reid's point is that violence is misrepresented on both sides of the border; understated to the north, exaggerated to the south. Reid quotes the American trapper Robert Newell "to remind us that fur traders and trappers went into the mountains neither to fight nor to make war." Newell wrote, "The trapper's first policy is to get furs, to trade and induce the Indians to work, trap, hunt, etc. and on as reasonable terms as possible" (p. 209).

Some may question whether Reid has, as he states, confused rationalization or racist blather with necessity when whites claimed to use vengeance in order to meet Indian expectations. Such doubts may be aroused by claims that "severity of vengeance constituted leniency measured by the bloodshed it prevented" (p. 191). But, as Reid argues, "Vengeance was the method. It was not the end. The purpose was to keep the fur trade open" (p. 191). The evidence seems overwhelming that it was not sensitivity which led the employees to the Bay Company to avoid bloodshed, but trade. As Peter Skene Ogden wrote, "I will not hesitate to say I would most willingly sacrifice a year and even two to exterminate the whole Snake tribe, women and children excepted, and in doing so I am of opinion I could fully justify myself before God and man" (p. 195). But he appreciated that the Company's interest precluded such a satisfying course. In this context, it may seem a pity that the United States did not grant a monopoly in its fur trade.

In his foreword, Martin Ridge correctly identifies the core value of this marvelous book: "In a way, Reid has opened a Pandora's box regarding the British and American responses to Native American homicide. In the end he asks his readers to ponder the following question: Whose world, the Native American's or the white's, was based on a morality of vengeance?" (p. 15). *Patterns of Vengeance* is a well-written, provocative, and highly significant work of original scholarship that will, I believe, become an appreciated classic in the field of legal history.

Notes

[1]. James P. Ronda, *Astoria and Empire* (Lincoln: University of Nebraska Press, 1990), 229, quoted in Reid, p. 26.

[2]. On this notion of causality in a different culture, see Bruce M. Knauft, *Good Company and Violence: Sor-*

cery and Social Action in a Lowland New Guinea Society (Berkeley: University of California Press, 1985).

[3]. Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (Norman: University of Oklahoma Press, 1987), 98.

[4]. Edith I. Burley, *Servants of the Honourable Company: Work, Discipline, and Conflict in the Hudson's Bay Company, 1770-1870* (Toronto: Oxford University Press, 1997).

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