

Puritan Justice And The Indian: White Mans Law In Massachusetts, 1630-1763

Book Reviews

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Yasuhide Kawashima, *Puritan Justice and the Indian: White Man's Law in Massachusetts, 1630-1763*, Middletown, Conn.: Wesleyan University Press, 1986. Pp. xiv, 335. \$35.00 (ISBN: 0-8195-5068-X).

Reviewed by Francis Jennings

There has long been a need for a systematic study of the legal theory and practice by colonials in regard to the Indians. In *Law and Authority in Early Massachusetts* (1960), George Lee Haskins apologized for omitting Indians from an otherwise comprehensive work. Professor Kawashima has tried very hard to fill this void. His bibliography is exemplary in original source materials as well as secondary studies and he has personally consulted a wide range of experts. But his method is flawed, his reach exceeds his grasp, and he emerges from the book with the same fixed idea that he had upon beginning it: to wit, that despite prejudice and cultural obtuseness, the Puritan oligarchy were generally fair toward Indians and concerned for their welfare. The book is a sustained apology for Puritan conquest which is always mentioned by euphemism: e.g., the colonists 'created a whole new legal system, which functioned as an instrument of social change'. (p. 238) Such soft words turn away understanding more than wrath.

I must disclose my interest before proceeding further. Kawashima's view is opposed to mine, and he declares flatly several times that I am wrong. I do not feel discriminated against because I have good company: in this book, a number of the more recent students of colonial Massachusetts, including James P. Ronda and Neal Salisbury are also declared to be wrong.

The book begins with a prologue on 'The Clash of Legal Cultures'. This is based on respectable studies, but goes astray too often to be relied on, as when Kawashima states that sachemship passed from 'father to son'. (p. 4) Not true: it passed from the sachem to one of the sons of a sister, thus guaranteeing purity of the lineage. Sometimes, as Kawashima notes, a female was chosen. Without a source he declares that 'the Indian legal system was based upon personality—the principle that the law of the individual's country rules — instead of territoriality—the principle that the law of the place of action rules'. (p. 6) If there is an example, uncited here, of an Indian tried for crime in tribe (A) being tried by the customary law of tribe (B), it is news to me. Mohawks making trouble among the Massachusetts were not tried by Mohawk custom; they were disposed of rather summarily.

It is disturbing also that Kawashima interprets the clash of cultures in overtly racial terms. His Puritans are referred to repeatedly as 'white' men on almost every page. Yet this was not the language or conception of the Puritans themselves. Until 1675 they invariably referred to themselves as 'Christians' or 'Englishmen', and to the Indians as 'heathens'. Their commonwealth drew sanction from Holy Writ, not from Darwin. This distinction had legal implications unnoticed by Kawashima, because Massachusetts Bay, in the minds of its chiefs, conformed to divine law, and the positive laws of the commonwealth frequently included clauses by reference to Biblical passages. Racial terminology gradually came into use after the terrible carnage of the second Puritan conquest known as King Philip's War. Its use coincided, sorry to say, with the growing democratization of colonial government.

The book's substance deals with the laws enacted in Massachusetts to control Indians, and the legal process awarded to them in both criminal and civil suits. Analytically the book distinguishes carefully between Indians as members of free, independent tribes;

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