

University at Buffalo School of Law

## Digital Commons @ University at Buffalo School of Law

---

Book Reviews

Faculty Scholarship

---

Summer 2007

### Douglas Hay and Paul Craven's *Masters, Servants, and Magistrates in Britain and The Empire, 1562–1955*

Robert J. Steinfeld

University at Buffalo School of Law, steinfel@buffalo.edu

Follow this and additional works at: [https://digitalcommons.law.buffalo.edu/book\\_reviews](https://digitalcommons.law.buffalo.edu/book_reviews)



Part of the [Labor and Employment Law Commons](#), and the [Legal History Commons](#)

---

#### Recommended Citation

Robert J. Steinfeld, *Douglas Hay and Paul Craven's Masters, Servants, and Magistrates in Britain and The Empire, 1562–1955*, 25 *Law & Hist. Rev.* 412 (2007).

Available at: [https://digitalcommons.law.buffalo.edu/book\\_reviews/50](https://digitalcommons.law.buffalo.edu/book_reviews/50)

This article has been published in a revised form in *Law and History Review* <http://dx.doi.org/10.1017/S07382480000300X>. This version is free to view and download for private research and study only. Not for re-distribution, re-sale or use in derivative works. © 2007 Board of Trustees of the University of Illinois.



This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Book Reviews by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

*Republic of Debtors: Bankruptcy in the Age of American Independence.* By Bruce H. Mann. Cambridge, MA and London: Harvard University Press, 2002. Pp. viii, 344. \$29.95.

*Republic of Debtors* is a book about changing attitudes toward and legal treatment of debtors in America from the beginning of the eighteenth century to the beginning of the nineteenth. The book concludes with the congressional passage in 1800 of the first United States Bankruptcy Act and its subsequent repeal only three years later. It was not until 1841 that Congress again enacted, if only temporarily, a second Bankruptcy Act, and not until 1898 that it finally made bankruptcy a permanent feature of the law of the United States.

The thrust of Mann's argument is that "[e]arlier in the [eighteenth] century, bankruptcy relief was not so much controversial as unthinkable. By 1800 debtors and creditors alike desired it" (p. 2). Bankruptcy relief offered debtors a discharge from their debts once they had produced what property they still owned for distribution to their creditors. Mann argues that at the beginning of the eighteenth century attitudes towards debt and debtors were still largely based on a religious morality that viewed both as morally suspect. The idea that debtors should ever be forgiven their debts was completely anathema. Mann is of the historical school that views the early-eighteenth-century American economy as a species of moral economy, one in which economic activity has not yet been liberated from the constraints of traditional morality and religion. Debtors who were not able to meet their obligations could be imprisoned by their creditors and in some cases held indefinitely. In a number of colonies debtors who failed to repay debts could be indentured to their creditors and compelled to work off their debts. Above all, unlike England, there was no general bankruptcy law under which debtors might, under certain circumstances, be released entirely from their obligations to repay debts.

For Mann the moral economy of debt and the legal treatment of debtors that was an expression of it were part and parcel of a traditional society and economy in which production for the market and economic specialization were still quite limited and in which most internal trade was highly localized, limited to neighbors in the same or nearby towns. The driving force for change in eighteenth-century America came from the growing role that commerce began to play in American life. More products were exchanged over longer distances, increasingly now between strangers brought together by faceless markets that were governed less and less by traditional morality. Mann views the economic boom followed by the economic bust brought on by the Seven Years' War as a crucial turning point in American attitudes towards and legal treatment of debtors. "War made everyone familiar with risk, economic risk included" (p. 55). Despite their best intentions and best efforts, numerous people found themselves in economic difficulty. It became increasingly apparent that economic failure was often the result of market forces rather than a consequence of moral improvidence.

"The legal landscape changed dramatically after about 1755, coincident with the Seven Years' War" (p. 53). A number of colonies, New York, Rhode Island, and Massachusetts among them, enacted true bankruptcy legislation that allowed debtors to escape their debts entirely under specified conditions. These legal developments reflected fundamental

changes in attitudes. In the 1750s, Mann shows, Americans first began to produce a pamphlet literature that both criticized the practice of imprisonment for debt and advocated bankruptcy relief. Throughout the period from the 1750s to the Revolution, however, debt relief by the individual colonies remained a patchwork of provisions often enacted temporarily, frequently amended, and almost as often subsequently repealed.

After the Revolution the story of debt relief became entwined with the story of the adoption of the Constitution and the establishment of a Federal Government. During the difficult times of the 1780s, a number of state legislatures took steps to try to limit the economic impact on their ordinary citizens by adopting paper currency, and passing a variety of debtor relief measures such as stay laws (which delayed collection of debts) and legal tender laws (which compelled creditors to accept repayment of debts in often depreciated paper currency). A group of Revolutionary leaders came to believe that in creating a stronger central government, the power of the states to interfere with creditor rights had to be restricted. Not only did the new Constitution authorize the Federal Government to regulate commerce, it also prohibited the states from “mak[ing] any thing but gold and silver Coin a Tender in Payment of Debts; . . . [or] pass[ing] any . . . Law impairing the Obligation of Contracts . . . .” (U.S. Const., Art. I, Sec. 10). The clause that gave the Federal Government authority to pass uniform bankruptcy laws was added to the Constitution with little controversy or discussion, according to Mann.

Although he does not say so, the easy adoption of the bankruptcy clause poses a problem. Why was the grant of power to the Federal Government to discharge debtors entirely from their contractual obligations not more controversial? Mann says that the bankruptcy clause was seen merely as an adjunct to the power to regulate commerce and this is undoubtedly true. But it is only part of the answer. The rest of the answer is to be found in the debates that took place throughout the 1790s as bankruptcy bill after bankruptcy bill was introduced and failed to be enacted by Congress. Finally in 1800 the Federalists, still in control of Congress and the Presidency, managed to pass the first Federal Bankruptcy Law. Like the English bankruptcy acts, the American law limited bankruptcy relief to commercial traders who owed very large sums of money. Farmers and other small debtors did not qualify. Although they had shown great solicitude for creditor rights so far as popularly elected state legislatures were concerned, proponents of the new federal government had also shown great solicitude for commerce and the moneyed interest. In commerce where creditors were also, and frequently simultaneously, debtors, the system might operate more smoothly and efficiently under a law that discharged debts so long as it was enacted by a responsible political body such as the Federal Congress and discharged only the right kind of debtor.

This is a beautifully written book about an important subject, but it suffers from a serious weakness. The larger explanatory framework (from moral economy to market society) does not always account well for many of the details of the story. Put another way, many of the details raise questions for which the larger explanatory framework simply does not offer answers. If discharge of debts was unthinkable early in the eighteenth century, how could Massachusetts and New Hampshire ever have passed bankruptcy acts (even temporary ones) in 1714 and 1715? (pp. 52–53). Decades before the 1750s a number of colonies showed surprising solicitude for debtors by enacting insolvency legislation. Although this legislation did not formally discharge debts it did discharge some debtors from imprisonment for those debts, making ultimate repayment of the debts seemingly much less likely. How does this apparent solicitude for some debtors square with the morally suspect character of debt and debtors in the early eighteenth century? Moreover, a number of these insolvency acts provided for the release of the wrong kind of debtor, it would seem, poor debtors and debtors who only owed relatively small sums of money. Larger debtors often did not qualify for release under these insolvency acts. Just the opposite held true of the Bank-

ruptcy Act of 1800. What are we to make of these differences? And what are we to make, for example, of a legal tender law enacted in Massachusetts as early as 1712 and titled “An Act To Prevent the Oppression of Debtors”? (*The Acts and Resolves Public and Private of the Province of Massachusetts Bay*. Boston: Wright & Potter, 1869: Vol. 1, pp. 700–01). Might an older political and economic conflict between farmers and other small debtors on the one hand and commercial interests on the other running all the way back through the eighteenth century help to explain some of this evidence? Although Mann’s book has brought together a great deal of material and fashioned it into a large narrative, one comes away with a sense that a good deal more of the political and economic context of debt in the eighteenth century remains to be explored.

ROBERT J. STEINFELD, *State University of New York at Buffalo*