

England and Australia. The next chapter shifts the analysis to India, presenting a sophisticated argument about the ways in which infanticide by Indian women tested the boundary between mental illness and cultural pathology (145). In its focus on the development of a specialist Indian medical jurisprudence, however, this chapter seems to drift away from criminal responsibility. Chapter 7, by contrast, is particularly good at linking the various themes of the book. It explains why the responsibility of Indigenous peoples could only be understood in relation to their purportedly primitive nature; cognitive ability was linked to race, culture, and civilization. The final chapter examines a group of cases tried in Canada in 1885, showing the connections between insanity and culture in imperial jurisprudence, the importance of amateur ethnology in trials of Indigenous defendants, and the role of colonial courts in disciplining and educating native peoples, all in the midst of the political turmoil of the North-West Rebellion. Its leader, Louis Riel, was executed despite a previous diagnosis of insanity.

In my view, the book would benefit from more signposting of the links between chapters, while the fact that there is no bibliography or list of figures represents a missed opportunity to showcase the extensive research that underpins this fascinating study. And it is not entirely clear how the various cases were identified and selected for inclusion. Such minor quibbles aside, however, this valuable work should be read by historians interested not just in the common law and criminal responsibility, but also in imperialism, forensic medicine, and comparative histories of crime. It will not disappoint.

Katherine D. Watson
Oxford Brookes University
kwatson@brookes.ac.uk

Christopher W. Schmidt, *Civil Rights in America: A History*. Cambridge: Cambridge University Press, 2020. Pp.250. \$114.95 hardcover (ISBN 9781108426251); \$39.95 paperback (ISBN 9781108444972).
doi:10.1017/S0738248022000256

Christopher Schmidt's *Civil Rights in America: A History* is intended for an interdisciplinary and generalist audience. Do not let the volume's slimness or accessibility fool you, however. This history of the term "civil rights" should be essential reading for legal historians of the late-nineteenth- and twentieth-century United States.

Schmidt identifies two ways that people have used the term “civil rights” in United States history: one he labels “constrained,” and the other he labels “expansive.” In the constrained tradition, racial justice advocates and their opponents argued that “civil rights” contained only a subset of those advocates’ aims. Supporters used this type of argument to assure the public that the “civil rights” they sought were moderate. Their opponents used constrained definitions to insist that certain claims fell outside the term’s borders and thus did not merit legal protection. In the expansive tradition, people claimed that “civil rights” included new or controversial rights. Advocates used such arguments to attach the hallowed “civil rights” label to their novel claims, while their opponents insisted that recognizing even a constrained set of “civil rights” posed slippery-slope risks. In Schmidt’s assessment, the constrained tradition has been most effective, generating compromise and building consensus for the legal protection of rights. The expansionist tradition, he warns, threatens this key benefit.

Schmidt documents his traditions playing out in three periods, each addressed in two chapters. Outside of those periods, he argues, the meaning of the term “civil rights” was too obscure to be historically meaningful. Schmidt’s first period is Reconstruction through 1900, which, he argues, was the first time that the term became “a focal point for national debate” (12). Moderate Republicans following the constrained tradition argued that civil rights included rights only to property, contract, physical security, and participation in the legal system. Radical Republicans and African American leaders countered with expansive definitions that included the right to vote as well as equal treatment in education and the commercial sphere. The resulting civil rights statutes, Reconstruction Amendments, and United States Supreme Court decisions ratified the constrained conception of civil rights.

Schmidt contends that the term next became a national focal point in the late 1940s. President Truman, through his Committee on Civil Rights and resulting policy positions, transformed “civil rights” to encompass African Americans’ access to everything from housing to employment. Racial justice activists seized Truman’s mantle and by the mid-1960s, Schmidt contends, the “civil rights *movement*” was born (84). A constrained conception of civil rights again helped secure the movement’s legal and legislative agenda against expansionist claims that it threatened *segregationists*’ civil rights.

According to Schmidt, the expansionist tradition, previously recessive, has dominated during his third period, which stretches from the 1970s to the present. Conservatives, he observes, have tried to extend “civil rights” to include everything from opposition to abortion to gun rights. While their broad definitions have not gained widespread acceptance, Schmidt argues that liberals have more successfully stretched the term to include non-race-based egalitarian movements, from disability to LGBTQ+ to women’s rights. In the process, Schmidt warns, these civil rights claimants have risked diluting the term’s potency.

Schmidt's history offers numerous valuable insights. There are fresh readings of Justice Harlan's dissents in *Plessy v. Ferguson* and *The Civil Rights Cases*, an illuminating discussion of the relationship between civil liberties and civil rights, and text-search results showing that "civil rights movement" did not become widely used until the mid-1960s. Schmidt's major contribution, however, is his critique of scholarship on the long civil rights movement. For Schmidt, the "left-leaning historians who frame . . . social justice activism" in the 1930s and 1940s as part of a "long civil rights movement" are the latest entrants in the post-1960s expansionist tradition (97). Their efforts to ascribe more than "legal reform targeting acts of racial discrimination" to civil rights, Schmidt contends, is ahistorical (116).

The persuasiveness of Schmidt's critique may turn on one's assessment of his methodological and historiographic choices, which place his book in the constrained tradition of civil rights. Methodologically, Schmidt blends a quantitative metric—identifying when people used the term "civil rights" often—with a substantive one—measuring when there was broad consensus about what the term encompassed. Historiographically, he asserts that histories of "civil rights" and the "civil rights movement" must be limited to the periods in which his quantitative and substantive metrics were satisfied. Because text searches produce few hits for "civil rights" from the 1930s to the 1940s and the term was used ecumenically—to mean labor rights, not only anti-lynching laws—Schmidt contends that this period was insignificant to the history of civil rights, let alone its namesake movement.

Widespread use and broad agreement may not be the only metrics by which to periodize the history of "civil rights" or of the movement that bears its name, however. Sources can be highly significant even if they are singular. For instance, Charles Hamilton Houston's archives contain notes for a course on "civil rights." How the former dean of Howard Law School and Special Counsel for the NAACP taught students circa 1940 to conceive of the term is surely consequential, despite references to it being numerically trivial.

Making broad consensus a litmus test for relevance can distort as well as illuminate. Doing so occludes the process through which that consensus was reached. The very point of much writing in the "long civil rights" tradition is that the narrowing of civil rights from its shaggier use in the 1930s and 1940s was a loss, after all. Events in the 1930s and 1940s may also merit inclusion in civil rights history because they were causally connected to the 1960s movement (through links, for example, between the mobilizations for a March on Washington in the early 1940s and in 1963). Requiring broad consensus also privileges legal definitions of the term since they are highly salient and produced by institutions that demand majority agreement. Knowing when the term "civil rights" was widely used and its meaning agreed upon is unquestionably important to the term's history, but civil rights history need not be delimited by those inquiries.

Schmidt's book is enormously instructive and will make scholars more careful about deploying the civil rights label as well. While Schmidt has not foreclosed further work on the long civil rights movement, he has given civil rights historiography a constrained tradition to match the expansionist scholarship of the past 20 years. Historians should welcome the debate.

Sophia Z. Lee
University of Pennsylvania
slee@law.upenn.edu
