Book Reviews

R. Kent Newmyer, *The Treason Trial of Aaron Burr: Law, Politics, and the Character Wars of the New Nation,* New York: Cambridge University Press, 2012. Pp. xiv + 226. $90.00 cloth (ISBN 9781107022188); $28.99 paper (ISBN 9781107606616); eBook $23.00 (ISBN 9781139558501).
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In 1806, Aaron Burr did what he did best: he sparked a controversy, heading west with a small private army to take some kind of military action in Spanish territory. We still do not know precisely what Burr had in mind; about this, as about most things, he remained coy. Regardless of the details, his western wanderings, joined with some alleged contact with Spanish and British envoys and rumors that he planned to sever the Union, earned him a charge of treason. Burr's trial in Richmond in 1807, presided over by Chief Justice John Marshall—sitting as a trial judge on circuit—was a cause célèbre that packed the courtroom, filled the city with curious onlookers, and provided months of newspaper fodder. Add the involvement of President Thomas Jefferson, who was keen to convict his former Vice President, and you have a courtroom blockbuster. *The Treason Trial of Aaron Burr*, a volume in the *Cambridge Studies on the American Constitution* series, tells that story.

Newmyer is the perfect person to plunge into this legal tangle and emerge with deep meanings and broad implications. Two of his previous books—*Supreme Court Justice Joseph Story: Statesman of the Old Republic* (1985) and *John Marshall and the Heroic Age of the Supreme Court* (2001)—prove his expertise in early national law and legal culture. Newmyer is not the first scholar to tackle the so-called "Burr Controversy," but his approach is new; he uses a detailed recounting of the trial as a lens to provide insight into the making of law, the molding of governance, and the culture of lawyering in the new nation.

Tracking the trial chronologically, *Treason Trial* is divided into five chapters: the first offering background to the trial, the second introducing the major players and setting the scene, the third depicting the trial's "legal theater," the fourth discussing the trial's impact on treason law, and the fifth discussing the trial's impact on Marshall. An epilogue explores further implications that

developed in the wake of the trial, including a brief discussion of its relevance to *U.S. v. Nixon* (1974).

In a sense, this book does double duty. On one level, it is a narrative history of a nation-gripping trial with a stellar cast, and Newmyer serves this purpose well; he is a lively writer with a wry sense of humor who captures the trial's quirky cast of characters and sustains a sense of courtroom drama.

But the book is more than a simple narrative. With its detailed rendering of the trial's complex nuts and bolts—which Newmyer presents with admirable clarity—*Treason Trial* offers a deeply felt sense of the early national legal community struggling to construct legal precedents in a new and fragile nation. Specifically, he argues that the trial touched on the very foundations of republican law and governance, shaping prevailing understandings of the rights of criminal defendants, the legal definition of treason, and the constitutional separation of powers.

Newmyer proves his argument by immersing readers in the trial. The chapter on treason law is a good case in point. Newmyer aims to show the "pragmatic, non-ideological way" that counsel "matched old law, new law, and current politics to fit the needs of the new republic" (109). He achieves this goal by putting readers in the courtroom alongside the principal actors as they struggled and argued and invented and persuaded their way into concocting an American definition of treason. He succeeds admirably without surrendering the trial's sense of theater. Indeed, he incorporates that sense of theater into his argument, suggesting that it reflected American legal culture at a moment of transition, as an older generation of lawyers gave way to a new, more rambunctious generation who "set aside social pedigree to make their living and their reputations by fighting it out in the courtroom" (188).

The book also explores the period's melding of law and politics. In 1807, the United States was still defining basic terms: figuring out how a republican mode of politics would work. In the young and impressionable republic, legal decisions were political almost by default; they were virtually bound to have a powerful impact on the nation's nascent political infrastructure and character. Newmyer shows how this awareness by both Jefferson and Marshall guided their actions and made their efforts that much more heartfelt and urgent.

This sense of emotional engagement is at the core of Newmyer's assertions about character. Throughout the book, he asserts the importance of personal character, personal reputation, and personal grudges in the trial and its surrounding controversies. He seems to be reaching for the idea that personal factors could have profound legal and political implications, given the fluid state of affairs in the young nation. It is a valid point that deserves further study; however, the book only touches on it, never quite fulfilling the promise of its subtitle.

This weak link does not detract from *Treason Trial*'s many merits. It is a skilled and detailed recounting of Burr's trial, it reveals a host of legal and

political implications bound up in the trial and its outcome, and it is an entertainingly good read as well. Anyone seeking to understand the ground level churnings of early national courtroom law at a moment of transition, and the ways in which those churnings shaped the nation, will be well served by this book.

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Mark Hickford, *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire*, Oxford: Oxford University Press, 2012. Pp. 523. $140.00 (ISBN 978-0-19-956865-9).
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Native title materialized from the common law idea that occupants have interests in places they hold. Rival interests could not be settled at law, as they did not originate in a Crown patent but in *mere* occupancy. When the Crown recognized native title, it had to be cleared by formal process and compensation prior to issuing patents. For distinct local reasons, the Crown did not recognize native title in Australia and British Columbia. Whether or not administrators and jurists acknowledged native title, its existence as a principle has proven intrinsic to relations among colonizers, the Crown and its successors, and indigenous peoples. Questions follow. Who among indigenes had authority to cede interests in particular locales? Who comprised the Crown or sovereign state? Was property law well comprehended by all parties?

Native title acquired exceptional intricacy in New Zealand, partly on account of the Treaty of Waitangi (1840). That treaty recognized Māori interests in resources, but also declared that the Crown had pre-emptive authority to quiet native title. Underlying difficulties with sorting interests and the tensions created by a convolutedly balanced treaty were compounded on the ground by episodes of armed resistance from certain Māori *iwi*. At mid-century, rugged terrain, Māori numbers, and Māori proficiency at bush warfare meant that in much of Aotearoa they were "lords of the land." Imperial policy makers nevertheless presumed dominion; the colonial state attempted to reconcile Crown sovereignty and Māori effective control (25). Hickford writes astutely about the colonial state growing in concert with its assertions of dominion over Māori, aspiring to draw Māori into the colonial state, and struggling to manage settler appetite for land.

Applying the concept of native title produced kaleidoscopic debates in common law jurisdictions, but New Zealand's kaleidoscope (my metaphor;