

Correspondence

Law, Economy, and Society in Early New England

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Claire Priest, *Currency Policies and Legal Development in Colonial New England*, 110 YALE L.J. 1303 (2001).

Claire Priest makes a valuable contribution to our understanding of the relationship between law and the economy in early New England in her recent article in these pages.¹ By drawing our attention to the obscure but nonetheless important subject of colonial currency policies and by demonstrating a correlation between currency instability and litigation volume, she adds a previously unexplored strand to the generally accepted explanation of how and why law changed in the eighteenth century—an explanation I first put forward fifteen years ago.² This by itself would be a worthy accomplishment. Priest, however, aspires to more. She argues that the prevailing interpretation of legal change in early New England is wrong and offers her account in its place. One can hardly deny the appeal of erecting a new edifice rather than adding to an existing one. Unfortunately, Priest misrepresents the scholarship she purports to overturn. More unfortunately still, as a stand-alone interpretation of legal change, her account drains the field of much of its nuance by removing society from the triad of law, economy, and society. In this brief reply, I demonstrate where Priest went wrong and suggest how she could have gotten it right had she not overreached.

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1. Claire Priest, *Currency Policies and Legal Development in Colonial New England*, 110 YALE L.J. 1303 (2001).

2. BRUCE H. MANN, *NEIGHBORS AND STRANGERS: LAW AND COMMUNITY IN EARLY CONNECTICUT* (1987).

The core of Priest's contribution is her analysis of debt litigation in Plymouth County, Massachusetts, from 1718 to 1751, in which she establishes a correlation between rises and falls in the volume of debt litigation and periods of decrease and increase in the supply and value of paper currency.³ As she recognizes, demonstration of an empirical fact, however interesting in itself, is but a first step toward explaining how and why it occurred and what its significance is. It is here that she goes astray. To Priest, the data prove that "the legal and economic changes of the first half of the eighteenth century in New England did not emerge endogenously out of individuals' obligations, shaped by local conditions and enforced by local courts," but rather from "the effort by colonial legislatures to expand their powers and to gain control over the economy by issuing the first paper currencies and by taxing in paper currency."⁴ She argues that previous legal historians have erred by focusing on "judicial decisionmaking" as "the best means of assessing the role of law in economic development" and that this focus has led them to the false conclusion that "judges actively promoted an agenda in harmony with local preferences"—that is, "optimally satisfying the legal needs of local communities."⁵ The errant legal historians fall into two camps, each wrong but for different reasons. The first is led by Morton Horwitz, who highlighted what he regarded as the dynamic instrumentalism of nineteenth-century judges by dismissing law in the colonial period as static and bound by the anticommercial values of an agrarian, communitarian society.⁶ The second camp is a group that Priest labels "modernization theorists"—primarily Cornelia Dayton and myself.⁷ According to Priest, Dayton and I argued that, whereas judges in the seventeenth century "tailored their decisions to individual litigants and to the relationship between the parties underlying the transaction," judges in the eighteenth century "began to apply more formal and predictable legal rules" in response to economic growth, thereby promoting "even further economic development."⁸ Our evidence for this, in Priest's characterization, is statistics that show an exponential rise in the volume of civil litigation, attributable primarily to an increase in debt litigation, which we claim "accompanied a process of legal formalization and was a function of economic advance and commercialization."⁹ This is the "modernization hypothesis—economic

3. See Priest, *supra* note 1, at 1387-93 figs.4-6.

4. *Id.* at 1310-11.

5. *Id.* at 1305.

6. See MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860* (1977).

7. See CORNELIA HUGHES DAYTON, *WOMEN BEFORE THE BAR: GENDER, LAW, AND SOCIETY IN CONNECTICUT, 1639-1789* (1995); MANN, *supra* note 2.

8. Priest, *supra* note 1, at 1307.

9. *Id.* at 1309.

growth leading to greater legal predictability and resulting in exponential increases in litigation”¹⁰—that Priest purports to disprove.¹¹ The problem is that this modernization hypothesis is a straw of Priest’s creation. It is neither mine nor Dayton’s, and it bears little relationship to how we used our data.

I wrote *Neighbors and Strangers* in part to rescue the legal history of the colonial period from the communal, preindustrial irrelevance to which it had been consigned by legal historians from Roscoe Pound to Willard Hurst to Horwitz, none of whom paid it much attention before dismissing it. I began with a statistical sample of over five thousand civil cases drawn from seven decades of litigation in early Connecticut, which I used to revise the then-standard periodization of legal change in American history by placing early in the eighteenth century many of the changes that Horwitz and William Nelson had attributed to the Revolution and its aftermath.¹² What my data showed was that civil litigation changed dramatically within a relatively short period during the first half of the eighteenth century. Debt litigation changed from a world in which most of the debts sued upon were contracted on book accounts to one in which most arose from formal written credit instruments, primarily promissory notes, and from a world in which most debtors contested their creditors’ claims when sued to one in which they did not. At the same time, fewer contested civil cases of all kinds, debt included, were decided by juries and more by judges, and the structure of pleadings changed such that fewer defendants staked their fates on pleas of fact and more on pleas of law.¹³

I argued that some of these changes—those involving debt—were closely tied to the growing commercialization of the economy and to the changing social context of economic relations, while others—pleading and procedure—owed less to shifts in economy or society and more to the tendency of a fledgling legal profession to treat law as an autonomous system rather than as a contingent social process.¹⁴ Taken together, I argued, these changes marked a transformation in the relationship between law and community as the formal legal system grew, in effect, less communal—that is, more formalistic and less accommodating to the vagaries and eccentricities of individual disputes.¹⁵

Priest reduces my argument to the claims that judges, acting instrumentally to promote economic growth, engineered the legal changes, and that economic growth in turn produced increasing legal modernization,

10. *Id.* at 1310.

11. *Id.* at 1306-10.

12. See HORWITZ, *supra* note 6; WILLIAM E. NELSON, *AMERICANIZATION OF THE COMMON LAW: THE IMPACT OF LEGAL CHANGE ON MASSACHUSETTS SOCIETY, 1760-1830* (1975).

13. MANN, *supra* note 2, at 11-46, 67-100.

14. *Id.*

15. *Id.* at 164-69.

primarily in the two decades from 1730 to 1750, as evidenced by a sharply rising volume of litigation.¹⁶ In truth, neither Dayton nor I imputed any such role to judges, who in fact barely appear in Dayton's book.¹⁷ I did not attribute legal change to economic growth, nor did I pay more than incidental attention to the volume of litigation, let alone regard it as evidence of legal change. And I identified the pivotal period of legal change as the years 1710 to 1720.¹⁸

Litigation volume is hardly a measure of legal change, which is why I gave it little consideration other than to note that debt litigation increased sharply in the 1730s and 1740s.¹⁹ None of the sixteen statistical tables in the appendix to *Neighbors and Strangers* tracks litigation volume as its primary purpose. All of them present percentage distributions—whether of forms of debt actions, rates of contest, differences between intratown and intertown actions and among types of towns, kinds of defendants' initial pleas, or modes of decision.²⁰ The actual number of cases in each table appears only as the statistical “*n*” to inform the reader of the size of the sample.²¹ Similarly, when Dayton offered data on the number of cases in each decade, she did so to track the percentage of cases involving women as litigants.²² I ignored litigation volume as an area of substantive inquiry in part because to discuss it accurately across time requires controlling for changes in population, for which too few reliable figures are available.²³ But my primary reason was that I was interested in legal change, not in how often people sued one another. I wanted to explain why, in a legal world in which all of the individual pieces—book accounts, bonds, bills, promissory notes, judges, juries, general denials, pleas in bar, pleas in abatement, and demurrers—were available throughout the period under study, people chose to contract their debts and litigate their disputes one way at the beginning of the period and a quite different way at the end.

That change had very little to do with judges. Judges did not determine whether debtors and creditors used book accounts or formal written credit instruments to memorialize their legal obligations. They did not determine

16. Priest, *supra* note 1, at 1307-09, 1315.

17. Tarring Dayton with this brush is particularly unfair. *Women Before the Bar* is a fine study of how and why women's roles in courts declined from the seventeenth century to the Revolution across a broad range of legal actions, including divorce, rape, illicit sex, slander, and debt. Legal change of the kind Priest wants to explain holds only incidental interest for Dayton.

18. MANN, *supra* note 2, at 171 tbl.1, 183-86 tbls.13-16.

19. *Id.* at 62-63. Dayton made the same observation. DAYTON, *supra* note 7, at 90-91.

20. MANN, *supra* note 2, at 171-86 tbls.1-16.

21. *Id.*

22. See DAYTON, *supra* note 7, at 84-85 tbls.1-2.

23. The lack of population figures did not deter Priest, who did not bother to control for changes in population, which were substantial. The population of Massachusetts increased from roughly 94,000 to 96,000 in 1718 to 245,000 by the 1765 census. See EVARTS B. GREENE & VIRGINIA D. HARRINGTON, *AMERICAN POPULATION BEFORE THE FEDERAL CENSUS OF 1790*, at 15, 21 (1932). Her litigation figures are thus not comparable across time.

whether debtors chose to defend themselves on factual grounds or legal ones. They did not determine whether debtors elected to put their cases to the bench or a jury for decision. And when they did decide cases, they did not articulate the reasons for their decisions. Thus, when Priest asserts that “the assumption that judges continually adapted the law to satisfy local preferences optimally is misguided,”²⁴ I agree, but the assumption is neither mine nor Dayton’s, despite her attribution.

In her determination to prove that colonial legislatures played a greater role in legal change through their currency policies than did courts, Priest confuses judges with the courts themselves. Courts in early America encompassed more than judges. They were fora for the resolution of disputes populated by litigants, witnesses, jurors, judges, lawyers, and spectators—all of whom had parts to play in the proceedings. Thus, when Dayton and I used court records to study legal change, we were not looking only or even primarily at judges. We were interested instead in the litigants, in the social and economic relations that underlay their disputes, and in the choices they had and made in pursuing their claims or defending themselves. Some of those choices expanded, and some narrowed, the participation of judges in the process. The role judges played in legal change was determined largely by others.

The crux of Priest’s dismissal of my explanation of legal change is her claim that I attributed the change to economic growth, which she says could not be true because the economy did not grow appreciably during the period in which the change occurred.²⁵ Although I did make one or two offhand references to economic growth,²⁶ throughout *Neighbors and Strangers* I made it clear that the key economic factor in the formal changes in how people contracted debts was the growing commercialization of the economy.²⁷ Priest treats economic growth and commercialization as

24. Priest, *supra* note 1, at 1316.

25. See *id.* at 1339-42. As Priest at least partly recognizes, the question of how to define and measure economic growth in the eighteenth century has long bedeviled historians and economists. Some have equated prosperity with economic growth and measured household wealth using taxable estates and probate inventories. Others have computed annual per capita exports from Great Britain to New England. Still others have attempted to construct comparative price indices. One can conclude, as the best recent scholarship does, that the New England economy largely stagnated or grew little by these measures in the first half of the eighteenth century, with occasional spurts of localized growth, without addressing such important economic questions as whether more people were participating in the economy, whether they were doing so across greater internal distances, and whether their economic activities were becoming more differentiated. Economics can change in many ways. The best general analysis of the colonial economies, JOHN J. MCCUSKER & RUSSELL R. MENARD, *THE ECONOMY OF BRITISH AMERICA, 1607-1789* (1985), is also the most aware of the complexity of the subject and of the work that remains to be done.

26. See MANN, *supra* note 2, at 31, 126.

27. *E.g.*, *id.* at 9 (“Some of the changes were closely tied to the growing commercialization of the economy and to the changing social context of economic relations.”); *id.* at 164 (“In the

synonymous. They are not. Commercialization refers to a set of practices and values that may accompany economic growth but are not dependent upon it.

Here is the change I described. It bears recounting because it illustrates how social change intersects with legal and economic change and because it offers a way to appreciate the contribution Priest does make. The most striking feature of civil litigation in the colonial period is the predominance of debt cases, which often comprised ninety percent or more of all civil actions.²⁸ This reflects a centrality of credit in colonial society that modern Americans would find familiar. On the evidence of court records, most of that credit was extended in the form of book-debt transactions until the beginning of the eighteenth century.²⁹ Book debts were, in effect, running accounts receivable, without the monthly billings. They had center stage in an economy that had little hard currency and where income was tied to the uncertainties of harvests and the sea. Given the chronic scarcity of cash, people used agricultural produce as money, referring to it as “commodity money.” Book accounts facilitated such transactions by allowing debtors to purchase goods or services on credit, with payment postponed until they could harvest their crops or otherwise acquire commodity money items.³⁰

Priest regards commodity money and book debt as forms of barter exchange and the economy in which they prevailed as a barter economy.³¹ They were not. Agricultural produce was a medium of exchange, not the object of the transaction. People figured their book accounts in pounds, shillings, and pence, not in bushels, pecks, and weights. Debtors and creditors thought in monetary terms and used as money the most valuable items at hand, agricultural produce. Priest knows this. In her initial discussion she differentiates between commodity money exchanges, which she refers to as “quasi-barter,” and true barter.³² But thereafter she repeatedly refers to the pre-paper-currency economy as a “barter economy,” to commodity money and book debt as part of a “barter regime,” and to any transaction made without paper money or specie as “barter.”³³ Such characterizations convey an entirely misleading image of people trading for beads and trinkets, which bears no relationship to the debtors who paid their book debts with commodity money. This was not, as

large area of debt litigation, the changes were closely tied to commercialization of the economy and to the changing social context of economic relations.”).

28. *Id.* at 12.

29. *Id.* at 171 tbl.1.

30. On book debt generally, see *id.* at 13-27.

31. Priest, *supra* note 1, at 1318-32.

32. *Id.* at 1312.

33. *E.g., id.* at 1312-14, 1329, 1334, 1353, 1355, 1374, 1376, 1390, 1395, 1397. I should note that I slipped once and referred to “barter transactions” myself. MANN, *supra* note 2, at 30.

Priest would have it, “an economy without money.”³⁴ It was an economy without paper money. It was an economy that was chronically short on specie. But it was not an economy without money. This is an important point to make because without it one cannot understand how economic actors before the spread of paper currency viewed their transactions or understand the extent to which they embraced commercial values and pursued profit.

In legal terms, the defining features of book debt were that it did not contain an explicit promise by the debtor to pay the amounts listed, and it did not stipulate a time for payment. Instead, it created an obligation for which the law implied a promise to pay. Priest recognizes the important role book accounts played in credit, but she mistakenly asserts that to “obtain a book account credit, a person had to offer to repay the debt in terms acceptable to the creditor.”³⁵ One can certainly assume that creditors would not extend credit on book if they did not believe that their debtors would eventually repay them, but the accounts themselves contained no such promise. Any discussion of the terms of payment came at the time of payment—that is, at the end of the credit relationship, not the beginning.

Relying as they did on a creditor’s willingness to extend credit to people who did not expressly bind themselves to repay the debt, book accounts implied a measure of trust between creditor and debtor. Although this may strike us as a rather vague and risky basis for credit relations, it functioned adequately when creditors and debtors knew one another and knew what to expect from one another. Not surprisingly, most book-debt actions linked residents of the same town or county.³⁶ Book accounts were in part a function of community, where neighbors readily knew enough about one another to decide if they would deal on book. They were also common in long-distance transactions between traders and merchants whose expectations of one another rested on a course of dealing or on trusted recommendations. Where those assurances did not exist, whether within communities or across greater distances, credit took the very different form of bonds, bills, or promissory notes.

Priest argues the contrary—that the “[r]elations of trust” and “community-oriented consciousness” reflected in book accounts were “a response to currency scarcity” and “represent[ed] efforts to overcome it in order to promote exchange,”³⁷ thereby implying that the sense of community described by historians among neighbors who worshiped together every Sunday, who knew one another’s affairs intimately, who supplied one another with goods and services, and whose children married

34. Priest, *supra* note 1, at 1312.

35. *Id.* at 1335.

36. *E.g.*, MANN, *supra* note 2, at 17 n.12.

37. Priest, *supra* note 1, at 1336.

one another would never have existed but for a shortage of coin or paper money. She also argues that book debt and commodity money exchanges “confined commercial transactions to relatively insular communities,”³⁸ as though mere currency would have overcome poor transportation networks, rocky soil, low population density, the high cost of labor relative to land, and every other impediment to the production of a commercial surplus, and propelled people into a wider economic world. The lack of specie or a stable paper currency undoubtedly had economic effects, but it constrained Atlantic trade much more than it did internal trade, which seems to have operated about as well in the seventeenth century as physical circumstances would permit. This is not to contend that a circulating medium of exchange is not important to an economy, only that it cannot bear the weight Priest places on it.

As the eighteenth century dawned, book debt embodied the credit that ran the local economy in Connecticut. Within a generation, however, it had fallen from favor and been replaced by formal written credit instruments—bills obligatory, bonds, and, ultimately, promissory notes. According to my data, the shift began in the second decade of the century and was largely complete by the fourth, when promissory notes predominated.³⁹ This is the legal change I associated with the growing commercialization of the economy. As I explained in *Neighbors and Strangers*, it coincided with the advent and spread of paper money, which I regarded as both a cause and a symptom of economic transformation.⁴⁰ In this respect Priest and I agree, although she seems not to have noticed that I discussed the importance of the introduction of paper money to the legal changes I identified.⁴¹ I argued that the appearance of paper money signaled growing involvement in a commercial economy. Whether or not that economy grew in Priest’s terms, it did change. Internal trade expanded in response to rapid population growth and the supply requirements of periodic military expeditions to Canada and against the Indians. As the rate of population growth

38. *Id.* at 1335.

39. See MANN, *supra* note 2, at 171 tbl.1.

40. *Id.* at 30.

41. Priest notes that I placed the initial shift from book-debt actions to actions on written credit instruments, together with the other legal changes I identified, in the decade from 1710 to 1720, and asserts that I attributed the change to “an expanding economy,” by which she means economic growth. Priest, *supra* note 1, at 1396 n.353. (Actually, she states that I placed the shift between 1700 and 1720, but as the tables of mine to which she refers begin in 1710, I assume she means the decade from 1710 to 1720.) She then states that since the economy did not grow, and since that decade also witnessed “the widespread circulation of paper money,” a better explanation—hers—is that “the transformation to greater use of formal credit instruments is most plausibly a direct result of the widespread circulation of paper money,” which “allowed greater use of cash in exchanges.” *Id.* This is, in fact, a close variant of an argument I made in *Neighbors and Strangers*, MANN, *supra* note 2, at 30-33, which Priest nowhere acknowledges. I mention this not to claim pride of place, but because Priest offers it as a key rebuttal to the modernization hypothesis she has invented and attributed to me and others.

outstripped the availability of new land for settlement, the resulting pressure encouraged more specialized cultivation to adapt to the different types of land, which in turn led to commercial farming. With more products available for export, secondary ports and market towns grew to accommodate the demands for markets and transportation. In fact, the Connecticut economy did grow briefly during this period, although it subsequently stagnated, but growth was not the most important factor in legal change—commercialization was: people trading across greater distances, credit networks that began to snake through the countryside, the specialization of business enterprise, farmers and craftsmen trading on the side, artisans supporting themselves solely or primarily by their crafts. Paper money was an important part—but only a part—of this commercialization.⁴²

This was a shift of enormous consequence. In pure litigation terms, written credit instruments sharply limited the debtor's options. Whereas the procedure in book-debt actions was simple and flexible, with each party free to offer whatever evidence he or she thought relevant to the dispute, the debtor's liability on written obligations rested primarily on whether the instrument itself met the legal requirements of form. Debtors could not plead that there had been a mistake or that they were entitled to a set-off or that they had intended something other than what they had signed or that the creditor had promised forbearance. The greater certainty with which written credit instruments embodied debt obligations, and the consequent reduction in the procedural and evidentiary wiggle room left to debtors when sued, facilitated commercial transactions over longer distances and between people who did not know one another well. Written credit instruments offered an alternative to the quirky individuality of open-ended book accounts—a way of extending credit that admitted fewer questions about who owed what to whom and when. One mark of how well written credit instruments could provide this assurance was that, unlike book accounts, they were assignable—an essential feature in a proper credit system, which requires that debts be transferable. Notes, bills, and bonds were instruments of an increasingly commercialized economy.⁴³

Two quantifiable measures that helped persuade me that written credit instruments were part of the commercialization of the economy were their greater geographical reach and the fact that debtors did not contest most of the actions brought on them. When written instruments first appeared in

42. MANN, *supra* note 2, at 30-33.

43. *Id.* at 35-39. I am aware that this leaves me open to a charge that I committed the functionalist fallacy rightly criticized by Robert W. Gordon, *see* Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57 (1984), and Priest does make the charge, *see* Priest, *supra* note 1, at 1404, but I believe I presented my argument with enough qualifications and awareness of the complexities that the charge applies only to a caricature of it.

litigation in significant numbers in the second decade of the eighteenth century, nearly two-thirds linked debtors and creditors from different towns, whereas virtually all of the book-debt actions were intratown affairs.⁴⁴ This suggested to me that when debtors and creditors dealt with one another across greater distances, as they would in a commercializing economy, they found formal written credit instruments more suitable than book accounts for their transactions—not always, to be sure, but far more often than not.

The second measure—rates of contest—is a bit more elusive. My data showed that the rate at which debtors contested their creditors' claims in court declined throughout the first half of the eighteenth century, as debtors increasingly appeared in court only to confess judgment or did not appear at all and allowed judgment to go against them by default. The decline affected all debt actions, but it was particularly pronounced among actions on written credit instruments—so much so that by the 1730s debtors never contested more than ten percent of the actions on written instruments entered against them, and rarely more than six percent. By way of contrast, the rate of contest in book-debt actions never fell below twenty-four percent, and usually was much higher.⁴⁵ I interpreted this extraordinary apparent pusillanimity among note and bond debtors as a measure of how effectively formal written credit instruments embodied the debtor's obligation. Most actions on notes and bonds—all of the confessions of judgment and an indeterminate number of the defaults—were not disputes at all but rather fairly routine reductions of the debts to judgments.⁴⁶ This, I argued, reflected a world of relations between debtors and creditors that was rather different from the world of book debt.⁴⁷

Priest's correlation between litigation volume and currency instability suggests a more complete explanation for the sharp rise in the proportion of uncontested debt actions, although she does not address the question herself. Using her Plymouth County data, Priest argues that the volume of debt litigation increased as a result of currency depreciation, legal tender

44. See MANN, *supra* note 2, at 41 n.72, 172-75 tbls.2-5.

45. See *id.* at 172 tbl.2.

46. When I presented my data in *Neighbors and Strangers*, I saw no need to distinguish between confessions of judgment and defaults in appearance in uncontested actions, although I had recorded them separately when I gathered the data. Confessions of judgment clearly constitute an admission of liability. Defaults in appearance might simply represent a delaying tactic. To check this latter possibility, I recently disaggregated my data on uncontested debt actions on written credit instruments in the Hartford County Court for the 1730s and 1740s. In my sample from the 1730s, confessions of judgment comprised 77% of the uncontested debt actions on notes and bonds, and defaults in appearance 23%. In the next decade the proportions were 57% and 43%, respectively. None of the cases in which the debtor defaulted in appearance was continued, reviewed, or appealed to another court session, which means that all uncontested actions—whether confessions of judgment or defaults in appearance—were final admissions of liability by the debtors. I leave it to others to speculate on the reasons for the shift in the proportions.

47. See MANN, *supra* note 2, at 39-41.

laws, currency scarcity, and recession.⁴⁸ The first two gave debtors “an incentive . . . to default on payment agreements” and profit from the continued depreciation until their creditors sued and won judgments.⁴⁹ The latter two rendered debtors “unable to raise funds to pay their debts,” forcing their creditors to sue them.⁵⁰ All four combined to boost the volume of debt litigation. This is a plausible explanation, capturing as it does various elements of economic and monetary distress. To nail it down, Priest should adjust her litigation figures for population growth to measure the rates of change more accurately, and she should examine her debt actions more closely to determine whether the time that elapsed between when a note or bond was due and when the creditor filed suit to collect it lengthened or shortened, which would help her assess whether debtors were in fact realizing depreciation gains by deferring payment.

Priest also should acknowledge that, just as creditors had reasons to sue to collect unpaid debts, they also had ample reasons not to sue. As numerous letters between lawyers and their creditor-clients make clear, the expense and inconvenience of litigation, the power of debtors to delay judgment, the paucity of property against which to execute a judgment, and the frequent lack of a resale market for property that was seized all discouraged creditors from suing.⁵¹ A fuller explanation for changes in litigation volume may thus be a bit more complicated. Nonetheless, Priest’s argument is a promising start. It also suggests that not all of the uncontested debt actions were routine reductions of debts to judgments, in effect recording them for later collection. Many of them—and how many will depend on data that neither of us has gathered—represented the legitimate inability to pay of debtors who did not deny their liability. Both explanations support my original conclusions about the significance of the ability of formal written credit instruments to embody the debtor’s obligation more conclusively than book accounts.

Changes in debt litigation were just some of the legal changes I identified and attempted to explain in *Neighbors and Strangers*. The others included changes in pleading and procedure and in the role of juries, and the growing formalism of nonlegal forms of disputing—arbitration and church disciplinary proceedings.⁵² I wove them into an argument that law and community diverged in the eighteenth century in ways that allowed people from different communities to deal with one another within the common framework of an integrated legal system. It is not clear to me

48. See Priest, *supra* note 1, at 1395.

49. *Id.* at 1386.

50. *Id.* at 1387.

51. I discuss the interplay between debtors and creditors when debts fell due at length in chapter 1 of my forthcoming book, BRUCE H. MANN, *REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE* (forthcoming 2002).

52. See MANN, *supra* note 2, at 67-161.

whether Priest disputes this interpretation, as she devotes her energies to attacking arguments I did not make. Nonetheless, her analysis of currency policies and litigation volume adds a useful strand to my interpretation of legal change. Although I discussed the importance of paper money to commercialization and the legal changes that accompanied it, Priest examines currency issues in much greater detail than I did. Had she recognized currency policy as part of a larger explanation of legal change, rather than offering it as a single all-encompassing cause, her article would have been more modest, but it would have made a genuine contribution by adding texture and detail to our understanding of legal change in eighteenth-century New England. Instead, she adopts an economist's fixation on money supply and claims such complete explanatory authority for it that, with no apparent self-consciousness, she even speculates that slavery took the legal form it did because of "the scarcity of cash"⁵³ and that the theological concepts of just price and usury were actually products of "nonintegrated markets and market power."⁵⁴ Historians usually take a broader, more nuanced approach to causation than that.⁵⁵

The fit among law, economy, and society is imperfect at best. The relationship among them is dynamic and ongoing. Historical causation is difficult to determine with any precision. The best one can hope to attain is a variant on the pilot's definition of a helicopter—two thousand bolts flying in loose formation. The legal changes I described were merely trends. They did not unfold smoothly, steadily, or inexorably. They did not sweep aside or transform every legal, social, or economic relationship in their path. Given the obvious complexity of the subject, I did not intend *Neighbors and Strangers* to be the last word on legal change. I expected that others would take up the inquiry and refine and even replace my explanations. I welcome Priest's contributions, which I hope will be many, but before she can replace my interpretation, she first has to address it, rather than tilting at windmills of her own invention.

53. Priest, *supra* note 1, at 1312.

54. *Id.* at 1338.

55. It is ironic, given her criticism of me, that Priest's focus on money supply leads her into a simplistic economic determinism that she might have avoided had she taken account of Margaret Newell's insightful work on the causes, consequences, and context of economic development and commercialization in colonial New England. See MARGARET ELLEN NEWELL, FROM DEPENDENCY TO INDEPENDENCE: ECONOMIC REVOLUTION IN COLONIAL NEW ENGLAND (1998) [hereinafter NEWELL, FROM DEPENDENCY TO INDEPENDENCE]; Margaret E. Newell, *A Revolution in Economic Thought: Currency and Development in Eighteenth-Century Massachusetts*, in ENTREPRENEURS: THE BOSTON BUSINESS COMMUNITY, 1700-1850, at 1 (Conrad Edick Wright & Kathryn P. Viens eds., 1997). Paper money is a large part of Newell's story, but she never treats it as an independent variable. Indeed, she is at pains to recognize that capitalism is, in her words, "as much a cultural, political, and ideological system as it is an economic one," that the emergence of market-oriented behavior and institutions are "contingencies to be explained," and that any analysis of economic development must attend to "the relationship between culture and economy." NEWELL, FROM DEPENDENCY TO INDEPENDENCE, *supra*, at 5-6.