

and Thomas Mathiesen. The prison continues to attempt to reinvent itself, though it experiences uneven progress. Ideas about rehabilitation and reform continue to be recycled while institutions co-opt reforms to fit with their mandate. However, new contours may be added, such as the focus on moral re-education and the production of a democratic citizen, both of which were identified by the authors as a focus for the New Deal. When comparing the New Deal to today's discussions of correctional reform, Clarkson and Munn highlight how Canadian penitentiaries continue to deal with criticisms about rehabilitation, overcrowding, prisoner classification, and segregation practices, yet ideologies about improvement are continually discussed by the administration and government. While their conclusions suggest that the prison continues to operate with for their true purpose—the maintenance the capitalist order—the books overall message is to disrupt singular narratives about prison reform and provide voice to the voiceless. While the concluding thoughts of the book begin to consider the role of the prison in (re)producing capitalism, it could be improved by continuing their critique of the broader power relations and forms of governance that continue to constitute the prison-industrial complex.

Clarkson and Munn provide a wonderful contribution to socio-legal studies, where they present a clear methodology for disrupting narratives about progressive penal reform in Canada. Their method emphasizes a “reconstitution and connection” (p. 6), expanding the boundaries of this history through references on prisoners' writing, reformers, politicians, journalists, and active community groups to re-tell the history of the New Deal. By going beyond the traditional reliance on government reports, they rely on wardens' conferences, internal records such as correspondence between colleagues and reports to superiors, petitions from social reform groups, wardens' meetings and meeting minutes, prisoner memoirs, letters from family and interested community members, newspaper clippings, handwritten notes from the margins of official documents, and prisoner's newsletters. This variety of sources helps create connections between the everyday experiences of prisoners and operations of penitentiaries, social structures and power relations that constitute the penitentiary system.

For socio-legal scholars, the book serves as a reminder to include and search for subjugated voices that challenge dominant narratives, as well as internal documents that expand our knowledge on the inner workings of government. While the book does an excellent job of bringing forward prisoner writing, there were some limitations, including limited inclusion of women and francophone prisoners (a limit that the authors identified). In addition, we should consider the limitations of the prison writing as well. The editorial decisions of the press are made by a small circle of prisoners while other prisoners may be excluded due to their literacy skills.

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*Wives not slaves: Patriarchy and modernity in the age of revolution.* By Kristen Sword. Chicago and London: University of Chicago Press, 2021. 408 pp. \$50.00 cloth

Reviewed by Lyndsay Campbell, Faculty of Law and Department of History, University of Calgary, Calgary, Canada

Kristen Sword's wonderful *Wives Not Slaves: Patriarchy and Modernity in the Age of Revolution* brings together the study of the transmission of law in the British Empire with the history of divorce and antislavery in the US. Old historical narratives about a quest for liberty driving the emergence of divorce in the postrevolutionary United States are laid to rest. What emerges instead is a history of the interpretation of the law pertaining to domestic relations running from the 1640s to the early nineteenth century, entwined with revolutions and other political tensions—British and American—but not determined by them. Sword argues that an uneven, under-the-radar legal pluralism

characterized approaches to marital breakdown in the early 17th century on both sides of the Atlantic, which became less satisfactory as law and legal rights became more broadly known and claimed with the spread of both newspapers and networks of credit between about 1640 and 1800. My only criticism is a vague feeling that the book should have been longer.

A highly political 1663 English case, *Manby v. Scott*, which was shaped by the politics and institutional rearrangements of the English Civil War and the Restoration, became the touchstone for arguments about husbands' unshakable ancient, "traditional" authority in marriage, even as the conclusions in the case were framed as concessions to the needs of wives. Thus was patriarchal power justified as an enlightened step to protect women against the hazily constructed bad old days. Through a meticulous analysis of a great range of sources, including case law, treatises, diaries, newspapers and most importantly newspaper advertisements regarding absconding wives and slaves, Sword reveals the pressure for uniformity in law across vast spaces in which the vulnerabilities created through networks of credit left disgruntled husbands and masters resenting the prospect of having to pay the debts of wives and slaves. At the same time, Sword reveals the lengths gone to by some powerful men—like George Washington—to suppress knowledge about domestic conflicts that had the potential to cast them in a poor light. A sentimental rhetoric emphasizing wives' vulnerabilities arose through the 18th century, and both husbands and wives drew on it in framing their arguments, but it was not a language of liberty: neither before nor after the American Revolution were lawyers, judges and legal writers concerned to shore up wives' or enslaved people's liberties.

The doctrine of coverture produced a conundrum: was it about ensuring that wives were squarely their husbands' vassals, a doctrine that aligned so very nicely with Restoration ideas about the authority of kings over subjects and masters over slaves; or was coverture instead a legal entitlement that required husbands to support their wives (and children) so that communities did not have to? The *Manby* majority espoused the first view, but law reports did not travel reliably until the nineteenth century, and communities disliked supporting abandoned wives, so both arguments lived on. As well, Sword explores the role of newspapers as practical modes for the transmission of jurisdiction. Newspapers, originating in Civil War politics, permitted aggrieved husbands and masters to confront unknown others far away with an asserted power to alter their legal obligations with respect to their subordinates: without showing any legal basis, a husband or master attempted through such notices to evade liabilities incurred by household subordinates and cast them off. Sword carefully analyzes the wording in these advertisements, correlating them with other surviving records to determine what they reveal about community attitudes to household responsibilities and patriarchal rights. Slaveholders' assumptions of their racially-based authority propagated to places without slave codes, particularly England. Lord Hardwicke's Act of 1753 attempted to foist Anglican marriage rites on the wider population. Out of a localized, pluralistic situation characterized by slow, uneven communications about authority, printed texts thus promoted an ideal of legal uniformity and racialized patriarchal power in an era of institutional change, when the common law and equity courts were consolidating power in Britain but equity was struggling in the colonies.

Running through *Wives Not Slaves* is a thread pertaining to the influence of Scottish theorists, Scottish booksellers, and tensions between England and Scotland (legal, political, ecclesiastical, and personal) that enriches the analysis of advocacy of both divorce and antislavery, but about which I would have been glad to have learned more. The reader is also treated to the influence of fictional texts like Samuel Richardson's *Pamela* in providing a sentimental normative framework for domestic relations that de-emphasized wives' rights while at the same time telling them how proper couples behaved and leaving them with little recourse besides appeals for sympathy. Sword has a sharp eye for the underlying financial issues—the debts and the creditors—and the local politics, including the particular position of Charles Steuart [*sic*], of *Somerset* fame, who was also an unpopular customs officer in Virginia tasked with enforcing the Stamp Act. She carefully describes how antislavery and pro-divorce arguments tugged against each other, as rights to permanent marriage could pose a counterweight to slaveholders' power to break up Black families. On the other hand, as gradual

emancipation rolled out in the North, freed men, masters and former masters all took legal steps to distance themselves from the debts of Black women.

Different readers will draw different insights from *Wives Not Slaves*, but for me, Sword's most important contribution is how she confronts us with the fundamental importance of marriage as a cornerstone or even archetype of authority and shows how a concern with naturalizing patriarchal and authoritarian power took hold, gripped the law through the "novel and contested" (p. 138) reformulations of Blackstone and others, and simultaneously vanished into the background, as the scandalous, tawdry, sometimes titillating and often highly contingent and politicized details of the cases were treated as beneath the notice of the wise, male legal reader. Doctrines of legal authority (and the common law itself) were perpetuated; insights into the contingencies, greed, and petty meannesses that lay behind them were concealed. The law concerning marriage was constructed counter-factually not as a constantly evolving mess of localized and institutional variability but as an ancient framework that increasingly protected women and their vulnerabilities. On both sides of the Atlantic, through the vicissitudes of revolution, the urge to shore up white male power remained a constant.

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*Unsound empire: Civilization and madness in Late-Victorian England.* By Catherine Evans.  
New Haven: Yale University Press. 304 pp. \$65.00 hardcover

Reviewed by Binyamin Blum, Professor of Law, University of California, Hastings College of the Law, San Francisco, California, USA

The nineteenth century, especially its latter part, was a period of considerable advances in psychology, anthropology, and law. Catherine Evans's *Unsound Empire* ties together all three, to uncover the tensions between them as manifested in the realm of criminal responsibility. The book explores the "nineteenth century debates over who was mentally fit enough—in legal language responsible—to be convicted in British criminal courts." (p. 2) Through these contests over responsibility, the book exposes the paradoxes inherent in colonial governance, and criminal responsibility more generally.

Colonial governance was premised on Britain's civilizing mission, which assumed the superiority of Europeans over colonized races. Bolstered by legal anthropology and the works of criminologists such as Cesare Lombroso, such theories assumed criminal propensities among the colonized. Such tendencies were considered by most to be innate, largely a result of nature rather than nurture. Meanwhile, nineteenth century mentalists increasingly argued that criminality stemmed from mental and moral defects, rather than from weakness of the will. Criminals were born, not made. Yet carrying these racial and psychological theories to their natural conclusion—namely that individuals were not truly free to choose criminality but were instead destined to offend—risked undermining the premise upon which criminal justice rested. Whether punishment was justified through retribution or rehabilitation, the criminal legal system presumed—and had to presume—an actor's free will. Otherwise, their punishment would be both unjust and futile.

Building on this literature, Evans explores these paradoxes through the archives of England, Canada, Australia and India. The choice stems, Evans explains, from these jurisdictions' legal sophistication and their political and economic importance, as manifested by the depths of their archives. Though criminal law differed from metropole to colony and between the colonies themselves, Evans finds striking commonalities and coherence in the underlying logic of criminal responsibility. Though distinct, she argues, the colonies were "not entirely different." (p. 15).