carnival. Feminist sensibilities are present with a particularly interesting chapter in the differential treatment of female criminality. But this method of sampling theory in order to loosely organize a body of local data does not ultimately yield an argument concerning the nature of the rule of law in the period. Indeed, nowhere is there much discussion of what the problem of the rule of law might be; and the historical data presented does not really disturb existing debates on this issue. If this book is read as proficient local history, with an overlay of secondary historiography and theory helping to point the material, then it achieves its aims extremely well. But a bold new explanatory thesis is nowhere provided. Perhaps we must now all miss the collapse of intellectual Marxism, as its friends and enemies at least had a strong framework for historical debate. In an age of postmodern eclecticism we must make do with lighter theoretical fare, at least on the evidence of this book.

Joshua Getzler
University of Oxford
and St Hugh's College, Oxford


The lives of the poor once held little interest for historians, but in the last fifty years, they became all the rage. Professional historians realized that ordinary people made contributions to societal and institutional development. The reading public, in turn, wanted to know more about people like their ancestors and less about the elite with whom few had anything in common. Although there has been a popular resurgence in what critics term “presidential history,” professional historians continue to recognize the need to know more about all levels of society. How much we need to know in order to learn something new is the question. Ruth Wallis Herndon has given us a set of biographies about “marginal” people in encyclopedic form based on legal documents, specifically the proceedings of the town councils in Rhode Island cities.

*Unwelcome Americans* is about some of the thousands of individuals “warned out” of Rhode Island towns by town councilors between 1750 and 1800. Warning out was the means by which towns protected themselves from assuming financial liability for people living on the edge, whether the individuals were chronically poor or temporarily ill and unable to work. In New England, the system of caring for the indigent required towns to support them out of the tax coffers. Thus, the definition of who was a legal inhabitant of the town became essential in managing the dole. People who moved from one town to the next were expected to carry letters of introduction in order to establish themselves as legal residents of a new place. Few people actually did this, and it was only when they became unable to care for themselves that most of these transients came before officials.

Legal historians will be interested in how Herndon culls information and meaning from the cryptic records and supplemental file papers of the town council
meetings. She uses documents that seem to yield little information and has mined them well. Rhode Island legal history especially has been sporadically researched by historians, because the majority of records have never been printed or microfilmed. One must go from town to town for probate records; the judicial records are in their original state in the judicial archives in Pawtucket. Using the records of the town council meetings required Herndon to read manuscripts in several different cities and towns in order to collect the original cases (682 in Providence alone) that she eventually distilled to forty for this book. Given the enormity of her task, she might be excused from neglecting the criminal and civil court records, the only shortcoming apparent in her comprehensive research method.

Herndon’s extensive legwork in fact produces a paucity of new insights, except that one can put names to the outcasts. Academic historians of New England have not ignored the warning out system, but neither has anyone made it the subject of a monograph. In 1963 Sumner Chilton Powell’s Puritan Village: The Formation of a New England Town mentioned the practice (184). Kenneth Lockridge discussed the late eighteenth-century phenomenon of an increasing class of poor people “on the town,” that is, needing economic relief from the taxpayers (A New England Town: The First Hundred Years [New York, 1970], 151). He also noted the difficulty of basing “generalizations on the peculiarities of individual lives” (63). The forty case studies in Herndon’s book, which include more than fifty individuals, are meant to illustrate patterns: the greater frequency of women without husbands needing poor relief; the devastation of disease upon families that otherwise had been making ends meet; the additional burden that being non-white placed upon individuals to earn a steady and respectable living. While it is important to prove assertions that have become truisms in the academy, Herndon could have gone further to demonstrate the relationship between law and society as a whole. She limits herself to using legal documents without attempting to explore the role of law itself in the lives of the poor, except as a coercive tool of those in power, and even that more by implication than argument.

Perhaps the reason that there is no overarching answer to the “so what?” question has to do with Herndon’s choice about how to write the book. She has divided the book into chapters based on themes: childhood, family life, work, and so on. Within each chapter she reconstructs the lives of several individuals and tells their stories. Before the vignettes she comments on what these lives represent. The commentary is often superficial. The substance of the stories is engaging, although their telling is not. Moreover, too little is known about each individual, with a few exceptions, to warrant turning them into representative types. We cannot determine whether, as Lockridge said, the peculiarities of an individual account for his bad luck, or whether trends are discernible. One wonders how the other hundreds of cases might have helped weave a fuller picture of the lives of the marginal in the late eighteenth century.

Yet despite the rather formulaic composition of the book, it is somehow compelling reading. What continues to amaze is that one can know anything at all about people who were not, by and large, either notorious or famous, but who nevertheless came to the notice of record keepers. Herndon reproduces some of the records at the end of her book, which makes it useful for others learning how to interpret
legal sources. The stories themselves are moving, and one is glad to have names for those who lived on the margins. To know even a little bit about how real people handled the chaos into which they were thrown when the law came calling makes a contribution to legal history.

Katherine Hermes
Central Connecticut State University


It is rare that practicing jurists initiate innovations implicating academic disciplines outside of legal history. One notable exception has been the field of state constitutionalism. Prompted by Hans Linde and Supreme Court Justice William Brennan, state court judges, advocates, and legal scholars for more than twenty years have been exploring the use of state constitutions as a source of rights and obligations, independent from the federal document. The backbone of this enterprise is located squarely in the disciplines of history and political science. In arguing that state constitutions are entitled to independent interpretation, judges and legal scholars contend that state constitutionalism predated the federal constitution and developed largely autonomously from it even after 1787. The best jurists use structural clues from the political arrangements contained in the document to ascertain the meaning of its provisions. Historians and political scientists have been slower to step to the plate. With a few notable exceptions, there is little academic work that illuminates this critical facet of our history and lives.

Political scientist Laura J. Scalia offers a welcome look at one aspect of state constitutionalism—the development of the concept of political sovereignty in state constitutions from 1820 to 1850. Her book defines the constitutional project in the United States as one of balancing the two primary concerns driving the political system—the granting of widespread sovereignty and the protection of certain inalienable rights. By juxtaposing Jefferson’s advocacy of frequent recurrence to fundamental principles with Madison’s more conservative desire to safeguard private property by protecting documental integrity, Scalia seeks to evaluate the consequences of the Jeffersonian experiment of constitutional revision carried on from 1820 to 1850. She has studied ten constitutional conventions in seven states during that period. In spite of the great diversity reflected by the states, her neo-Hartzian analysis identifies strands of a common liberal constitutional discourse, albeit one at times in tension with itself. She concludes that Madison probably exaggerated the ideological upheaval that would result from popular sovereignty. At the same time, frequent constitutional revisions did alter constitutional theory.

The strength of this book lies in Scalia’s nuanced findings about the mutations in political thinking over the three decades she studies. Studying expansion of the vote, apportionment, and popular control of elected officials, Scalia explores the views of reformers advocating greater popular participation in the political process and conservatives who promoted restrictions on such involvement. Both sides