Ross Cranston, *Making Commercial Law Through Practice, 1830-1970,* Cambridge, Cambridge University Press, 2021. xliv + 484pp., figures, tables, index. Cloth; ISBN: 978-1-107-19889-0, Cdn$126.95.

Historians and legal scholars have long argued about the relative importance of the law in facilitating the transition to, development of, and changes in capitalism. Ross Cranston's new book, *Making Commercial Law Through Practice, 1830-1970* is a particularly interesting insertion into this literature. While his book is focussed on British (English) commerce, both his integration of the empire and world trade and his underlying method and argument will make this book interesting to many who study business in Canada.

Cranston embeds his primary argument in his title: commercial law was made in the day-to-day practice of firms and individuals. Both common law and statute law in England facilitated commercial interests to "make their own rules and regulations and design their own institutions. The upshot was that in this broad sense commercial practice was the source of commercial law" (xvi). In addition, "for both commercial parties and their lawyers, law has generally been a framework and malleable resource to be used instrumentally to achieve commercial ends" (1). The author argues that studies of commercial law that focus on doctrinal developments inevitably miss what is going on. Doctrine not only followed practice, but often just reflected a small part of commercial regulation; much regulation was done through business organisations themselves or through the expectations and customs of businesses.

Making Commercial Law Through Practice is divided into five substantive chapters, drawing on four major areas: commodity markets, the use of agents, the sale of goods (manufactured and commodities), and bank financing. In each chapter, Cranston traces the development of key elements of the areas he studies. Each of his topics shows a somewhat different dynamic between law and commerce. For instance, the commodities markets were largely self regulated, with law being developed over time to provide a legal framework to support the existing practice. While the formal law of local markets (and thus the rules against forestalling, regrating, and engrossing) stretched back centuries, the development of international and specialised trades led to the creation of associations for particular commodities and then to clearing houses and other organizations of people and businesses involved in commodity trading. Cranston argues that the law, when it came in, largely followed the rules these private groups set for their members. By way of contrast, agents, third parties who facilitate business arrangements where the principal parties are separated, often over long distances, had a long history of legal regulation. So, for agents Cranston's story is one where lawmakers "consciously attempted to fashion a commercially sensible approach to many of the problems" that arose, but in the context of the already existing law, (143). Sales provided a different example: there the common law rules developed to reflect the needs of the parties, and these rules were subsequently codified in the Sale of Goods Act, 1893, which was itself expressly designed to facilitate commerce. Even so, the law of sales further developed through individual contracts where the parties expressly "altered, ignored or replaced" the rules set in the law when they did not accord to what the parties wanted, (201).

Cranston's specific findings and stories are a thorough development of ideas about law and business practice of some long-standing. In a short article from 1963, University of Wisconsin

law professor Stuart Macaulay reported that law and lawyers played a relatively limited role in contract relationships between manufacturers and other businesses. Rather, the customs and practices of the firms and trade were more important in shaping contracts and even in figuring out disputes, at least at first, (Macaulay, *American Sociological Review*,1963). Macaulay's 1963 and Cranston's 2021 findings of the centrality of business practice and law's limited independence may be unsurprising to business historians used to studying deal making and firm arrangements. But the legal history of commercial law has often emphasised the importance of the Law and the Courts and the Legislature in setting business law. Thus, for example, James Oldham, in his study of Lord Mansfield's jurisprudence, stresses Mansfield's desire "to support mercantile activity," (Oldham, *English Common Law in the Age of Mansfield*, 2004). Yet, relying on Mansfield's notebooks and the reported decisions, Oldham frames Mansfield's decisions and logic within the context of common law writs, Blackstone's contemporaneous *Commentaries on the Laws of England,* and other judicial decisions. In Canada, recent work by Virginia Torrie on the Companies, Creditors Arrangement Act or my own work on law in eighteenth century Nova Scotia has argued for the importance of business needs and practices in lawmaking, but we still build our analysis around statutes, judicial decisions, or trends in legal practice, and not in the day-to-day practice of the businesses and commercial people only intermittently engaged with the law. Cranston decisively reminds historians that the needs, expectations, customs, and traditions of businesses are central to business law. As such, historians have to be more alert to how lawmakers learn from and reflect business.

Business historians will find a great deal of interest and value in *Making Commercial Law Through Practice* even when they are not particularly interested in law. By concentrating on practice, Cranston lays out in some detail the developing commercial relationships within the United Kingdom and between it and other parts of the world (both within and outside the British Empire). He presents a wide ranging analysis of business practice from the beginning of the second industrial revolution through to the end of the post-war era. Cranston presents a compelling and clear picture of the work of business people in Britain or those engaged in trade with and throughout the British Isles.

Canada and Canadian commodities and firms appear for fleeting moments in the book, but the focus on English law means it is always at the periphery. Nevertheless, the book offers a nice English side to the trade discussed in André Magnan's *When Wheat Was King*, (2016), and similar Canadian studies of international business. There is some good work on the history of business and commercial law in Canada, but there is no work like this yet. The very nature of Cranston's thesis, that commercial law follows practice, is a warning against applying his findings too directly here. If his thesis holds for Canada, we can assume that Canadian practices were similar to, but probably distinct from, British ones. Nevertheless, *Making Commercial Law Through Practice* makes for a good starting point to consider questions about different elements of Canadian commercial law too, and the relationships between commercial practices, statutes, and the law in practice.

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