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ROBERT S. HUNT, HUMANIST IN THE LAW

James Willard Hurst*

I first came to know Bob Hunt in the middle 1950's when he pursued research and writing in United States legal history at the University of Wisconsin Law School under a Rockefeller Fellowship. The focus of his work was interactions between law and the economy in the 19th century. The program was a venture into unexplored territory. Scholars had almost always dealt with legal history in terms of the structure and procedures of the formal agencies of law or in terms of constitutional history in its conventional sense. There was little precedent for studying the functional—or dysfunctional—bearing of law on the structure and operation of the private market, of problems of mustering private capital, of government subsidies to private undertakings, of dealings with interest-group lobbies, of the distribution of gains and costs of using natural resources, of employing labor, and of responding to consumers. To move into such uncharted areas—to conceive of legal history as hyphenate history, as legal-economic, legal-social, legal-political history—demanded flexibility, imagination, and persistence from Professor Hunt, who met the challenge.

With scant foundations for work in legal-economic history, we built studies resting on the hard facts of public policy development in a particular place, time, and social setting, while we also sought to view those particulars in the broader context of the ways in which legal and economic processes might play on each other. Within this frame, Professor Hunt and I decided that he would examine the relations between Wisconsin law and the first generation of railroad construction and operations in the state from the mid-1850's to 1890. This was a period of color and combat. It included a notorious episode of corruption of state government by promoters seeking a subsidy of public land, a bitter controversy between railroad financiers and local farmers who had mortgaged their homesteads to support bond issues to build the roads, and the railroad's constitutional challenge to the state's first legislative attempt to create a procedure for public regulation of rates.

Professor Hunt developed these and other themes of the turbulent period with verve and skill in the monograph, *Law and Locomotives*.¹ A distinguished reviewer in the *University of Chicago Law Review* found it an

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1. R. HUNT, *LAW AND LOCOMOTIVES: THE IMPACT OF THE RAILROAD ON WISCONSIN LAW IN THE NINETEENTH CENTURY* (1958).

“absorbing account of the interactions of law and locomotive upon each other in the Wisconsin of the last century,” valuable in tapping the “rich veins to be quarried in American legal history” from the experience of particular localities. “Apart from its intrinsic worth as a factual re-creation of the events of a particular time and place,” the reviewer found the monograph “instructive for later generations of law-makers wrestling with the eternal problem of making the law responsive to changing events.”²

Law and Locomotives was a pioneer study in ways in which law helped, or hindered, provision of some working requisites of developing industry in an American state. This “functional” approach has been the target of criticism in the 1980’s as too narrowly focused, and especially as neglecting or downplaying the role of interest-group conflicts in shaping uses of law. But *Law and Locomotives* in fact gave prominence to the clash of selfish interests in its story—notably in exploring the extent to which railroad promoters shamelessly bought legislators’ votes—and did not claim that its “functional” analysis provided the one key to grasping legal-economic history. For all their shortcomings, legal processes do not typically proceed randomly or chaotically; “functional” analysis fits a substantial reality in the social history of law.

After his year in Madison, Bob Hunt wanted to experience the responsibilities and challenges of client care-taking, and entered a large Chicago law firm. It was a reaction as characteristic as his readiness to explore a new field of research in legal history. He is both a man of ideas, with a lively curiosity as to how law interacts with the life in which it is envired, and also a man intrigued by the problems of operating in arenas of day-by-day affairs. His work at the law office involved him in urban real estate transactions. Eventually he took a seat on the zoning board for the Chicago area. From contacts with him I was aware of how much Dickensian enjoyment he brought to the general flow of the law office business and to the sometimes Byzantine administrative complexities of resolving zoning issues in the context of the cultural and political mix of the Chicago setting. Some years in the practice brought him to the rank of partner, but at that point he returned to the campus, bringing to his students the distinctive blend of concern with broad policy and operational lore which would mark his classrooms.

2. McGowan, *Book Review*, 26 U. CHI. L. REV. 343, 344, 347 (1959).