
RECENT PUBLICATIONS

THE SYMPATHETIC STATE: DISASTER RELIEF AND THE ORIGINS OF THE AMERICAN WELFARE STATE. By Michele Landis Dauber. Chicago, Ill.: The University of Chicago Press. 2013. Pp. xvi, 353. \$25.00. Conventional wisdom conceptualizes the New Deal as a turning point in American history that significantly expanded federal spending authority in service of the general welfare. In this meticulously researched new book, Professor Michele Landis Dauber challenges the conventional narrative, uncovering a long history of federal disaster relief preceding the New Deal. Dauber tells a story of how the New Deal's architects, including President Franklin Roosevelt himself, ingeniously framed the Depression as a national disaster and the New Deal as relief to Depression victims. The United States' complicated history of welfare spending does not reflect a push-and-pull between small-government conservatives and liberal proponents of a welfare state — Dauber's research in fact reveals a steady national commitment to providing for those in need. Instead, American welfare spending is grounded in changing conceptions of what constitutes a disaster and who qualifies as its victims. *The Sympathetic State* resonates well beyond its pages, suggesting that the perceived moral culpability of claimants largely determines the viability of claims to government resources. Dauber's narrative and the central insight it contains should be of special interest to policymakers and legal thinkers alike.

ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES. James E. Fleming and Linda C. McClain. Cambridge, Mass.: Harvard University Press. 2013. Pp. 371. \$49.95. Critics of liberalism — including communitarians, civic republicans, and progressives — charge that the American constitutional order, and the liberal theories of rights on which it is based, idolize individual rights while marginalizing personal responsibility, civic virtue, and the welfare of the community. In this new work, Professors James Fleming and Linda McClain respond to these critics by developing a liberal account of rights in which responsibility and virtue also play a role. Government may properly encourage citizens to make socially responsible decisions, to participate in democratic self-government, and to live virtuously — but it may not compel citizens to sacrifice the core of their personal autonomy. Fleming and McClain illustrate the interplay of rights, responsibilities, and virtues by exploring such timely issues as same-sex marriage, abortion, education, assisted suicide, religious institutions' discriminatory practices, and hate speech. They consider, in particular, cases in which the Supreme Court and lower federal courts have determined the extent of government power in these fields, and they discuss how judges committed to ordered liberty might approach the

same questions. *Ordered Liberty* thus offers readers a lively and readable synthesis of political theory, legal philosophy, and constitutional interpretation.

LAW'S HISTORY: AMERICAN LEGAL THOUGHT AND THE TRANS-ATLANTIC TURN TO HISTORY. By David M. Rabban. New York, N.Y.: Cambridge University Press. 2013. Pp. xvi, 564. \$85.00. Throughout the twentieth century, jurists and academics portrayed nineteenth-century legal scholars as legal formalists primarily interested in applying deductive reasoning to discover objective truths, and derided these formalists both for their conservative view of the law and their supposed lack of understanding of legal history. In *Law's History*, Professor David Rabban seeks to correct this apparent misperception by deeply engaging with the work of nineteenth-century American legal scholars, revealing that many of them were sophisticated legal historians whose scholarship played an important role in the transatlantic development of the field. Rabban proceeds in three Parts to examine the scholars' approaches to legal history and their impact on its development. Part I details the foundational work of European legal historians, particularly the Germans Frederich Carl von Savigny and Rudolph von Jhering and the Englishman Sir Henry Maine. Part II surveys the scholarship produced by eleven key American contributors, demonstrating their understanding of and interaction with the work of Continental legal historians. Part III shows how American legal historians subsequently influenced Frederic Maitland, perhaps the greatest English legal historian. The Part then discusses the shift from historical to sociological jurisprudence pioneered by Dean Roscoe Pound and built upon by his contemporaries and successors. *Law's History* is a comprehensive and illuminating study of early American legal scholarship.

CORRECTIVE JUSTICE. By Ernest J. Weinrib. Oxford, U.K.: Oxford University Press. 2012. Pp. x, 352. \$45.00. Private law is ubiquitous in structuring day-to-day interactions, and a rich debate has emerged about its conceptual underpinnings. In his 1995 book *The Idea of Private Law*, Professor Ernest J. Weinrib made a seminal contribution to this field, arguing that the morality of corrective justice underlies private law. His important new book expands on this contribution. He lucidly explains that corrective justice focuses on the relationship between plaintiff and defendant. That relationship encompasses *correlativity* (the two parties as mirror images, sufferer and doer of the same injustice) and *personality* (the capacity of both parties to act with a purpose, whatever that purpose may be). Weinrib argues that these two concepts underlie rights, duties, and liability, creating a fair and coherent system. After laying this foundation, he shows the wide rele-

vance of corrective justice, detailing how correlativity and personality structure the laws of torts, property, contracts, unjust enrichment, and remedies. Weinrib also describes the applicability of corrective justice in Jewish law and distributive systems, demonstrating that the theory's relevance extends beyond common law doctrine. Throughout, he explains how corrective justice is superior to other conceptions of private law, for example those that emphasize economic efficiency. Weinrib's clear argument and engagement with the debate further the conversation and raise important questions about the structure of private law.

HOW SEX BECAME A CIVIL LIBERTY. By Leigh Ann Wheeler. New York, N.Y.: Oxford University Press. 2013. Pp. xiv, 327. \$34.95. Sex, and our conceptions about it, permeate political discourse — from the civil libertarian's invocation of the right to privacy to the morally charged debates over government's role in regulating contraceptives and abortion. *How Sex Became a Civil Liberty* explores the social forces and moments that forged the connection between sex and civil liberty, and the disjointed regime that has arisen as a result. Professor Leigh Ann Wheeler focuses on the historical and legal role of the American Civil Liberties Union (ACLU), tracing its development from the first sexual revolution of the 1910s and 1920s, to the movements of the 1960s and 1970s, and up through the 1990s. Wheeler credits the ACLU for turning sexual behavior, freedom, and expression from constitutional irrelevancies into cornerstones of modern civil liberty. To that end, Wheeler examines how the ACLU's primary focus on protection of sexual liberty from government encroachment has, both theoretically and practically, crowded out protection from invasions of one's sexual liberty by private (individual or corporate) sources. Wheeler's work does not systematically trace either the history of the ACLU or the legal battles that colored its history. Rather, Wheeler focuses equally on the social and nonlegal developments that have spurred change, and the unique personalities and experiences of the actors, both within the ACLU and without, who channeled that change toward their particular goals. In an era where decades-old cultural battles continue to rage in shifting arenas, *How Sex Became a Civil Liberty* is an insightful and timely look into the people and forces that turned sex from an issue outside the political discourse into a fundamental component of liberty.