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# Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture (book review)

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effected by state power. There are also references to the more recent work of Hussein Agrama (*Questioning Secularism*, 2012), but the insights developed in the latter's critical extension of Asad's thought—which could have helped to further develop some of Hussin's own lines of argument in this book—are, unfortunately, not substantially developed. In one case in which there is direct engagement with Agrama's work, it is actually conflated with that of Asad in Hussin's in-text misattribution of a large block quotation on pp. 197–98 (cf. 301, n.20). This is, unfortunately, just one example of issues with missing references/incomplete bibliographic citations and repetitions that should have been addressed during the editorial process. These quibbles should not, however, distract one from appreciating the important contributions that Hussin's work makes toward a more broadly contextualized historical analysis of the modern politics of Islamic law. I would recommend this book highly to legal historians, as well as historians of colonialism, and anyone interested in modern dynamics of Islam and Muslim politics.

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Susanna L. Blumenthal, *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture*, Cambridge, MA: Harvard University Press, 2016. Pp. 400. \$45.00 cloth (ISBN 978-0-674-04893-5) doi:10.1017/S0738248016000572

Susanna Blumenthal's *Law and the Modern Mind* is a probing and insightful study of the efforts of American judges, jurists, and medical specialists to develop guidelines for determining the proper scope of civil liability when litigants pleaded "insanity." Covering the period from the late eighteenth century to the end of the nineteenth, her book moves beyond scholarship focused on "insanity" in criminal cases and examines the strikingly wide range of ways in which litigants raised the issue in civil cases involving wills, contracts, and torts. Her work, she tells us, "enables us to see how remarkably common capacity challenges were in a country that placed so much stock in the ideal of the autonomous individual" (13).

That statement suggests the book's breadth and complexity because *Law and the Modern Mind* is not merely a study of legal doctrines and judicial decisions but a study of the law of "consciousness" and "responsibility" as it was embedded in American life and reshaped over time by changing cultural assumptions, social practices, and economic conditions. It traces the impact of changes in religious, philosophical, and scientific ideas, examining the

gradual shift from Calvinist and Scottish “common sense” assumptions to more liberal ideas about free will and the consequently unnerving nature of the “liberty” enabled and honored in the new republic. It explores the legal significance of implicit cultural assumptions about race and gender, noting the extent to which liberalizing and democratizing ideas nevertheless found ways to implicitly justify “new hierarchies” (7) that preserved the cultural dominance of white males. It suggests some of the elements that marked the darker side of the capitalist revolution of the nineteenth century, stressing the evidence of “the mental disturbances occasioned by the unpredictable vagaries of the market” (169) and the psychologically and emotionally “disorienting effects of capitalism” (170). It identifies ways in which courts and legal theorists reacted to economic change by attempting to preserve basic cultural boundaries between the “public” and the “domestic,” the world of affairs as opposed to the “intimate” realms of family life. Above all, it explores the fundamental democratic tension between, on the one hand, the paramount cultural assumption that all (white male) citizens were rational creatures fully capable of governing both themselves and the nation and, on the other hand, the undeniable fact that a surprisingly large number of those (white male) citizens engaged in actions that ranged from the eccentric and seemingly wrong to the utterly inexplicable and outright evil. Thus, Blumenthal’s book probes into the deepest recesses of American law, culture, political philosophy, and national psychology.

In terms of the formal law, Blumenthal shows that judges, jurists, and medical experts were unable to develop either reliable tests to identify when a person was actually “insane” or clear rules to prescribe the proper legal consequences of insanity in the innumerable kinds of cases they faced. She shows that the law of insanity in civil cases was changing, often uncertain, and widely varied by both jurisdiction and issue. The law of insanity not only varied from one common-law field to another but also varied on different issues within the same common-law field. A party’s mental state, for example, was “far more readily and fully taken into consideration when he appeared before the courts as a plaintiff alleged to be guilty of contributory rather than primary negligence” (246). Ultimately trying to learn from medical science but nonetheless growing increasingly skeptical about its potential helpfulness, courts did their best to evaluate extensive trial testimony and then to work out guidelines that seemed practically sensible and seemingly fair in individual cases. It was an imperfect process, but an understandable one given the inaccessibility of “mental” issues and the shaping power of dominant cultural assumptions and values.

*Law and the Modern Mind* suggests modifications in many conventional ideas about nineteenth century legal history. It suggests that James Willard Hurst’s optimistic view that the law released “creative individual energy” and drove economic expansion, for example, significantly missed the

psychological and emotional downside of individual freedom and economic change. Similarly, it suggests that the “freedom of contract” that triumphed in the nineteenth century had serious limits, as did both the “formalism” and “instrumentalism” that supposedly characterized late nineteenth-century courts and their jurisprudence. To a large extent, those courts and their judges remained both pragmatic in their decision making and ambivalent about many of the policies they came to enforce. Perhaps most striking, the book challenges the view that by the end of the century the law had moved from a “subjective” to an “objective” standard according to the famous thesis that Oliver Wendell Holmes, Jr. advanced in his classic book, *The Common Law*. The large number and wide range of capacity suits, Blumenthal argues, shows that “there was no straightforward path from subjective to objective principles of liability” (17). She points out that even Holmes himself subsequently recognized that the law could not eliminate the idea of “consciousness” or refuse to acknowledge the relevance of “mental” states.

These general comments hardly capture the depth and sophistication of Blumenthal’s work, and merely suggest some of the subjects she covers and some of the rich, insightful, and provocative arguments she develops. Those interested in almost any aspect of legal history will find it well worth reading.

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Umut Özsu, *Formalizing Displacement: International Law and Population Transfers*, Oxford: Oxford University Press, 2015. Pp. 169. \$110 cloth (ISBN 978-0-19-871743-0)  
doi:10.1017/S0738248016000614

The Lausanne Treaty of 1923 marks the formal recognition of the new Turkish Republic that had emerged out of the ruins of the Ottoman Empire. This meant, among other things, the universal recognition of the sovereignty of the Turkish state within the borders that were drawn in the aftermath of World War I. With minor adjustments, these borders have continued to define Turkey ever since. The new nation-state that was thus recognized had no semblance to the Ottoman Empire. Whereas the latter had been successful in absorbing and managing an ethnically and religiously complex and diverse society, the former strived to become an ethnationally homogenous entity. In this interesting book, Özsu studies the role played by international law in the homogenization of the people of Turkey. Specifically, he focuses on the exchange of almost all of the Greek Orthodox population of Anatolia with