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The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government (book review)

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we knew. Goluboff pulls off the same impressive trick she did in her first book, *The Lost Promise of Civil Rights* (2007), locating patterns and significance where others saw only scattered details and digressions. In *Vagrant Nation*, she collects scraps of material that had largely been relegated to footnotes in the larger stories of the 1960s—the civil rights movement, the New Left, and anti-war movement, the Warren Court’s criminal procedure revolution—and finds in the challenge to vagrancy law a cross-cutting, diffuse, yet ultimately highly effective and consequential episode of constitutional change. She takes an issue that previously resided on the margins of most legal historical accounts of the 1960s and makes a powerful argument that it should be at their center. “Wherever the sixties happened, vagrancy law was there” (5).

Vagrancy law, Goluboff insists, should be understood not just as one of many possible arrows in the quiver of police power, but as a distinctive one. It had its own historical trajectory. It operated to control society in ways that differed from other forms of criminal regulation. Whereas most scholars have thought vagrancy law a detail, with the more relevant category of analysis police power or police discretion, Goluboff carves out a kind of categorical middle ground: a vagrancy law *regime*, a category narrower than police discretion yet broader than individual laws considered in isolation. Goluboff offers a remarkable account of the awakening of lawyers to the idea that vagrancy laws might be a particular category of legal problem. And in the process she makes this category newly relevant for the reader.

Seamlessly drawing together social history and doctrinal history, protest movements and legal institutions, extrajudicial and judicial actors, Goluboff shows us, once again, how constitutional history is done. *Vagrant Nation* deserves to be read, cited, and remembered.

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Jefferson Decker, *The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government* (New York: Oxford University Press, 2016). Pp. xi + 284. \$29.95 (paperback). ISBN: 978-0-19046-731-9.

Jefferson Decker’s lucid, engaging *The Other Rights Revolution* examines the origins of conservative public interest organizations in the mid- to late 1970s. Like others who have written about these groups, he begins by tracing their rise as a reaction to the “new liberal state.” Decker does not focus on the conservative reaction to the Warren Court’s constitutional criminal procedure rights revolution; instead, he develops conservative reaction to the increasing authority of the regulatory state and the rise of public litigation by liberal public interest law firms.

The reaction begins to coalesce after Lewis F. Powell, Jr., sent a 33-page memorandum to the Chamber of Commerce titled “The Attack on the Free Enterprise

System.” Powell claims business “tolerates, if not participates in, its own destruction.” Decker then turns to the 1973 creation of the California-based Pacific Legal Foundation, which used the Powell memorandum for fundraising, and the Mountain States Legal Foundation in Denver. Both intended to defend free enterprise, and to attack the “too-powerful regulatory state.” Chapter 5 discusses the late 1970s effort by conservative lawyers to use public interest law to vindicate their intellectual and ideological vision. Once Ronald Reagan was elected President, many conservative public interest lawyers joined the administration. Decker thoughtfully and fairly looks at the experiences of Secretary of the Interior James Watt, formerly of Mountain States, to discuss the difficulty of transitioning to “governing from the right.”

The last two chapters assess the shift of conservative public interest law firms to protecting private property rights from the regulatory state. Decker illustrates the divide between those who support business and those who support free enterprise in discussing the firing of Mountain States lawyers for challenging a contract between Denver and a cable company. The winning bidder received a monopoly, and was owned by a former Republican gubernatorial candidate and friend of influential Colorado businessmen, including Mountain States founder Joseph Coors. The challenge led Coors to resign from the Mountain States board. Consequently, “support from the business community dried up.” Decker then discusses the rise of Takings Clause challenges.

It is unclear whether Decker has proven the claim made in his subtitle. The Reagan administration did not end government as we know it; it didn’t abolish the Legal Services Corporation, much less any regulatory body detested by conservatives. And Decker notes that by 1985, the budget of the Environmental Protection Agency was restored, in real dollars, to its 1980 budget. The epilogue accurately concludes, “[i]t is impossible to tell where or when all this will end.” The work of all public interest firms continues. If such work is a “judicialization” of politics, then, like politics, the reader should realize that all victories are temporary.

Decker’s evaluation of the libertarian slice of conservatism fills a need in the literature. He writes well, and his story is well organized. He is fair-minded, and has a knack for choosing the right anecdote to enliven his study. Decker does not evaluate any of the social conservative public interest organizations (he offers a brief look at a religious free exercise case brought by one group). A study of the legal work of such organizations, and their relationship, if any, to the broader conservative legal movement, remains a need. *The Other Rights Revolution* joins Steven Teles’s *The Rise of the Conservative Legal Movement* (2008) and Ann Southworth’s *Lawyers of the Right* (2008) as valuable studies.

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