

The Disaster Relief Precedent

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Michele Landis Dauber, [The Sympathetic State: Disaster Relief and the Origins of the American Welfare State](#) (University of Chicago Press, 2012).

“The inner city deserves a disaster relief plan,” wrote Reverend Jesse Jackson, on the eve of Detroit’s bankruptcy filing and in the wake of Hurricane Sandy. The storm-ravaged coastal communities “all deserve[d] aid,” Jackson emphasized, but in cities around the country a “disaster” was unfolding that was “equally devastating, equally beyond anyone’s fault, and yet essentially ignored at the national level.”¹ Readers may disagree about the merits of the analogy or the wisdom of Jackson’s proposal, but the structure of the argument should surprise no one—at least not after reading Michele Landis Dauber’s important new book, *The Sympathetic State*.

Since the nation’s founding, Dauber shows, Americans have mobilized the concept of disaster to claim large federal appropriations for those in need, even in decades remembered for laissez-faire governance. Using a “disaster narrative” (P.7), Congress distributed funds to the victims of floods and fires, droughts and earthquakes, Indian depredations and grasshopper plagues. Scholars who write about the welfare state often see a distinction between treatment of the “able-bodied” and those who are unable to work; it is one’s ability and willingness to participate in the market, in other words, that dictates “deservingness.” That distinction is absent, Dauber notes, in the case of disaster relief: the underlying logic of these grants is that the recipients are in desperate need “through no fault of their own.” (P. 34.)

The interesting thing about disasters is that the concept is malleable, making this apparent loophole in the American welfare state deeply significant. Over time it has stretched, as precedents accumulated and as relief seekers reasoned by analogy. Dauber includes many examples of this phenomenon, but the big one is the Great Depression. Drawing on novels, photographs, political speeches, and other popular sources, she shows how Americans came to understand their personal and local misfortunes as a national disaster. She then demonstrates how New Deal policymakers and administrators used that shared understanding—which they did much to craft—to legitimize an ambitious slate of federal social and economic legislation. Reading this section of the book, one can’t help but admire Dauber’s own craft: she masterfully blends social, cultural, political, and legal history to tell a story that feels both fresh and fundamentally correct.

Legal scholars may find even more to admire, however, in the next section of the book, in which Dauber painstakingly reconstructs a lost world of New Deal lawyering. Building on the work of Peter Irons and others (and offering important corrections to that literature), Dauber documents where and with whom these lawyers trained, how they understood the Constitution, and how ideas and research circulated within their legal community. The pay-off is big. For example, Dauber thoroughly debunks the notion that the Constitution or the specter of a villainous Supreme Court prevented New Dealers from enacting a federally administered scheme of unemployment insurance. The program’s federal-state design resulted from political compromise, not doubts about the constitutional reach of federal power. Similarly, she shows that New Deal lawyers had every reason to feel confident about the constitutionality of the “straight national” old age insurance program (Social Security): disaster relief precedents assured them that the Court would take a generous view of Congress’s spending power under the General Welfare Clause. (P. 183.) For scholars of “constitutional revolutions,” and really, for anyone interested in the work of government lawyers, this is a must-read.

To sum up, there are many reasons to pick up this book, including Dauber’s accessible and engaging prose, her evocative descriptions of historical actors (lawyer and economist Barbara Nachtrieb Armstrong practically jumps off the

page), and her creative use of legal-historical sources. But here's the one that will stay with me: Scholars who write about the welfare state often emphasize the importance of policy "paths" and the durability of social programs once they become institutionalized. Old age insurance, with its powerful constituents, is the classic example. But what about the programs that benefit the most powerless members of society? When such programs are founded on a disaster narrative, Dauber argues in the book's clear-eyed postscript, they require that same narrative to retain legitimacy, and as the bulk of the book documents, narration is hard work. It is especially hard when the disaster is something like unemployment (rather than, say, a wildfire). Meanwhile, the longer the program survives, the harder it becomes to argue that program beneficiaries are the victims of circumstances beyond their control. A powerful and traditional counter-narrative emerges in which beneficiaries are lazy, improvident, and unworthy of government support.

Back in 2007, Naomi Klein popularized the phrase "disaster capitalism" to describe the historical coincidence of societal "shocks"—tsunamis, hurricanes, wars, and other disorienting events—and the implementation of sweeping neoliberal economic policies. The results, in Klein's view, have been, well, disastrous, not least for the poor.² A pessimistic reading of *The Sympathetic State* suggests that fresh disasters may also be the best hope for those whom capitalism leaves vulnerable, for this is the stuff out of which blamelessness is imagined. Policymakers may, of course, reject this well-worn path, and scholars may critique it, but we should thank Michele Landis Dauber for making it visible in the first place. This is legal history at its best.

1. Jesse Jackson, "[Inner Cities Need Disaster Relief, Too](#)," *Chicago-Sun Times*, June 17, 2013. [?]
2. Naomi Klein, [The Shock Doctrine: The Rise of Disaster Capitalism](#) (Picador, 2007). [?]

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