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## Book Review of Human Rights and Legal History: Essays in Honour of Brian Simpson

Michael Ashley Stein

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Katherine O'Donovan and Gerry R. Rubin, eds., *Human Rights and Legal History: Essays in Honour of Brian Simpson*, New York: Oxford University Press, 2000. Pp. viii + 321. \$70.00 (ISBN 0-19-826496-8).

This book contains an exceptional collection of essays on eclectic subjects in legal history and human rights law by some of the more prominent scholars in those fields. Two qualities unify the compilation. First, the pieces were contributed in honor of the extraordinary A. W. B. Simpson whose path breaking scholarship has enlightened both areas of study. Second, the contributors hold Simpson in deserv-

edly high regard and personal warmth. (Sentiments with which, being one of a legion of doctoral candidates to have been examined by him, this reviewer wholeheartedly concurs). Moreover, the tone of the essays and the personal asides, respectively, reflect Simpson's character: unequivocally learned in scholarship while also jovial in tone. The editors confess in the introduction that "we thought seriously of sub-titling this volume *Essays in Law, History, Philosophy, and Fun*" (6). The designation would not have been inappropriate.

Befitting a volume organized as accolade, three pieces directly praise Simpson's contributions. The editors' introduction offers an overview of his multifaceted career (1–12), an essay by Nuala Mole describes Simpson's contributions to human rights law (13–28), and R. H. Helmholz details his career in the United States (285–91). It is in this most recent and continuing period that Simpson developed the methodology of examining in—uniformly witty, sometimes disconcerting, but always revealing—detail the facts and people behind seminal common law cases, a technique now known as "doing a Simpson." Although only a few of the contributions to this volume will be noted, most are significant.

James Oldham reexamines "the historical test" for the Seventh Amendment right to jury trial in civil actions first fashioned by the Supreme Court in the 1812 case of *United States v. Wonson* (225–53). As developed by subsequent courts, the historical test accords a constitutional right of jury trial only to those actions decided by juries at common law in England circa 1791 (226). Yet, drawing upon Lord Mansfield's trial notes, he avers that "almost all cases in the common law courts were tried before juries" regardless of "how complicated and drawn out" (231, 252–53). As a result, historically based Seventh Amendment jurisprudence, including the Supreme Court's 1996 *Markman v. Westview* decision excluding patent claims from jury purview, is "strange indeed, almost upside down" (252).

W. R. Cornish's analysis of *Donaldson v. Becket*, the case central to the eighteenth-century "Battle of the Books" from which author-based copyright emerged victorious over a competing public interest in free access to knowledge, explicates the historical context and the future implications of the decision (254–70). He maintains that a better understanding of the genesis of British copyright, a system followed both in its colonies (including America) and the European continent (262), yields a broader perspective on contemporary events. For the same tensions that impelled the "Battle of the Books" are paralleled in the present-day contest between "commodity producers struggling frantically to secure returns on their promotions" and "[t]hose who proclaim a brave new world of free entwined communication" (268).

J. H. Baker reveals the precise origin of the sixteenth-century dispute between the innovative King's Bench and conservative Common Pleas over the use of *assumpsit* as an alternative to the established action of debt on a contract (271–84). The earliest judgments he has (so far) discovered are the four found in the King's Bench rolls for 1520 (274); by 1555 more than fifty *assumpsit* actions to recover money appear per annum (278). Concomitant with the ascendancy of *assumpsit* was the loss of the debtor's right to "wage his law," meaning the entitlement of defending (with efficacy) against a claimant by taking an oath supported by eleven compliant "compurgators" that he did not owe the money at issue. The dispute

over *assumpsit*, one of several between the two courts (274), is emblematic of the divergence that existed between these groups of judges, although “why Westminster Hall should have been divided north and south in this way remains something of a mystery” (272).

Concluding the book one might wonder, as does contributor and longtime friend Gareth Jones: “What will this extraordinary person do next?” (172), to which a partial answer is the comprehensive and illuminating A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (2001).

**Michael Ashley Stein**

College of William and Mary

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