Caroline R. Sherman, *The Uses of the Dead: The Early Modern Development of Cy-Près Doctrine*, Washington, DC: The Catholic University of America Press, 2018. Pp. xvi + 461. $75.00 hardcover (ISBN 9780813229508).
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As with many aspects of property law, the doctrine of "cy-près"—which means "as near as possible" and, befittingly, permits courts to amend impossible or impractical charitable bequests in ways that approximate the donor's intent—seems to draw much of its legitimacy from its deep historical pedigree (and perhaps, the gravitas of French). The doctrine requires some justification. Courses on property are replete with examples where cy-près was invoked to reform bequests in ways that seem at best inconsistent with the donor's wishes and at worst flatly contrary to them.

Where does this awesome power to remake gifts come from? The justification for cy-près is often linked to a mystical origin story: at least since medieval times, salvation has required the fulfillment of the last charitable intentions of the dead, even if other legal principles must be suspended in service of that goal. In other words, it is justifiable to modify a failed gift because doing so might save the soul of the decedent.

In *The Uses of the Dead*, Caroline Sherman upends this conventional story, demonstrating that cy-près doctrine emerged in England around the seventeenth century from a confluence of secular and religious events. Sherman is an intellectual historian, and her method involves tracing how lawyers, judges, theologians, and scholars viewed salvation and property through their writings, correspondence, and cases, beginning in late Rome in the first chapter and ending in the nineteenth century in the Epilogue. Although she identifies how figures from Salvian to Justice Oliver Wendell Holmes Jr. navigated the law of bequests, most of the book centers on the fifteenth through seventeenth centuries. The book discusses perspectives on testamentary gifts over time, fitting these perspectives within larger legal frameworks, movements, and events during the Renaissance and Reformation.

Sherman's nuanced argument can be classified into two parts. First, she shows that cy-près fits uncomfortably with other aspects of canon and medieval law: contemporaries considered posthumous gifts inferior because they required limited sacrifice, clerics and lawyers discussed the importance of precise restitution before salvation might be achieved, and those tasked with administering gifts in earlier periods considered the donor's heirs and the consent of interested parties of ongoing importance, especially if seeking to alter the "use" or purpose of a gift. Second, Sherman illustrates the slow emergence over time of cy-près from much more modern forces, both in England and Continental Europe. Officials secularized church property during religious

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conflicts, reformers criticized superstitious practices to which property had been committed, and humanists emphasized the importance of communal good through advocacy for education and poor relief. Over centuries, these developments weakened the connections between heirs and bequests and elevated the intent of the dead alongside new legal and religious principles allowing that intent to be twisted in service of novel educational, redistributive, or otherwise charitable aims.

Cy-près appears as a compromise on multiple axes: between older conceptions of donation and newer philosophical and religious beliefs, and importantly, as a moderating principle permitting alterations for the common good while restraining secular officials who might otherwise plunder property for unrelated political ends. It turns out that Sherman's title has several meanings. Earlier in European history, the "use" that the decedent prescribed for the gift was inflexibly honored, or the bequest failed. Over time, however, the dead were themselves used: cleansed of the errors of their last instructions and given new, "implicit" intentions toward the aspirations of the living. Dead men lodge no objections.

Sherman's project is ambitious. It traverses centuries, sometimes focusing on figures, cases, or events, but other times moving rather quickly through larger historical trajectories. At moments she seems to overemphasize the absence of current conceptions of cy-près where others might see the coalescence of a set of evolving principles not yet named. Sometimes lawyers and judges appear in Sherman's account to be reactive to cultural and political changes, only artificially reaching for past continuities. But the law is accretive, developing new meanings for old terms and losing distinctions no longer persuasive. These figures may have been moving in new directions in response to new circumstances without fully realizing the disjuncture, which becomes clearer once scattered principles and cases harden into named doctrine. Sherman occasionally treats the law surrounding bequests as either a tool of political and legal elites or a mirror of contemporary sensibilities, where instead law may be a stabilizing force itself influencing ideas about gifting and charity rather than merely expressing them or bending to motivated whims.

Nonetheless, Sherman's book is a masterful example of how history can illuminate the context in which legal doctrine takes definite shape. Although Sherman is most interested in what cy-près illustrates about early modern legal thought, her findings have broader implications. Sherman colorfully describes cy-près itself as having been gently repurposed over time, bestowed with new justifications and merely presumptive consistencies with earlier practices. Subtle evolutions in law may yield applications totally at odds with the precedents from which they are supposedly derived. Sherman's work illustrates the value of interrogating legal origin stories and recovering forgotten distinctions and limitations, fruitful lines of inquiry not just for historians,

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but also for legal scholars seeking alternative possibilities and paths for undermining the justifications beneath doctrinal rules.

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Eric Lomazoff, *Reconstructing the National Bank Controversy: Politics & Law in the Early American Republic*, Chicago and London: The University of Chicago Press, 2018. Pp. 256. $90.00 hardcover (ISBN 9780226579313); $30.00 paper (ISBN 9780226579450); $10.00–$30.00 e-book (ISBN 9780226579597).
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In *Reconstructing the National Bank Controversy: Politics & Law in the Early American Republic*, Eric Lomazoff takes aim at an old myth of American constitutional scholarship: that the conflict over the Bank of the United States was a simple tug-of-war about whether the bank was "necessary and proper" according to Article I, Section 8 of the United States Constitution. It is true, Lomazoff acknowledges, that historical actors did frequently use this clause in their arguments, but they referred to other clauses of the Constitution as well, and more importantly, they deployed the Constitution in ways that cannot be understood without reference to the constant political and economic change of the Early Republic. The debate about the bank, he writes, was characterized by a "dynamism" that derived from "ordinary" (i.e., non-constitutional) politics and from the bank's own institutional development (3, 5).

Lomazoff makes a convincing case that "necessary and proper" meant different things to different people at different times. In the first debates about the bank, politicians used a two- or even a three-pronged standard for determining what was "necessary and proper." One prong was what Lomazoff calls the *functional* standard: did the federal government need the bank to fulfill its duties? A second prong was the *federal* standard: did the federal government have any "workable options" *other than* a national bank to fulfill its duties (23)? A third prong was the *frequency* standard: did other governments frequently use this means to achieve similar goals? The bank's enemies did not agree on which of these standards ought to be applied, and, in the end, the bank's supporters prevailed, wielding a "loose reading" of the functional standard (29).

As Lomazoff makes clear, however, historical change meant that politicians could never really have the same debate twice. Imposing the federal standard,

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