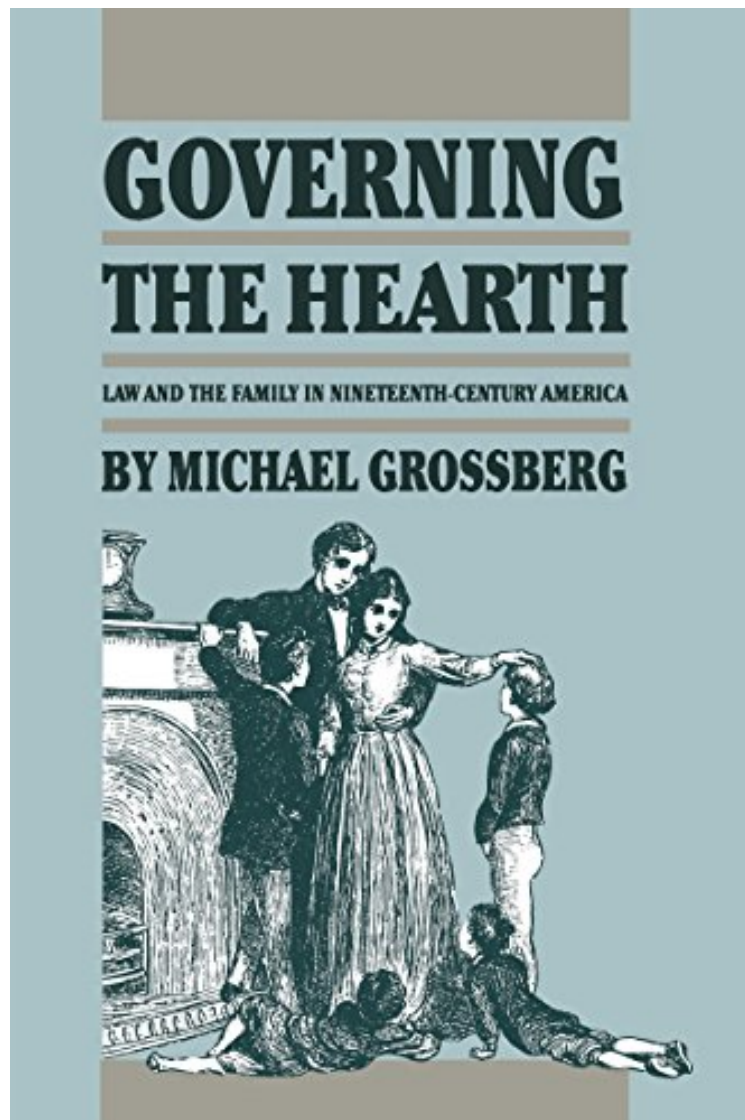


(Download free ebook) Governing the Hearth: Law and the Family in Nineteenth-Century America (Studies in Legal History)

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Michael Grossberg

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Michael Grossberg : Governing the Hearth: Law and the Family in Nineteenth-Century America (Studies in Legal History) before purchasing it in order to gauge whether or not it would be worth my time, and all praised Governing the Hearth: Law and the Family in Nineteenth-Century America (Studies in Legal History):

12 of 13 people found the following review helpful. Dry but the general argument holds up By Jeffrey Leach Any

attempt to assemble a detailed picture of society must take into consideration the legal structures that function within that culture. A court system works in two ways: judges influence society through its rulings as often as society at large influences the judicial system. Michael Grossberg's "Governing the Hearth: Law and the Family in Nineteenth-Century America" is a work that combines a comprehensive examination of early American law with aspects of social history in an attempt to arrive at an overarching theme of the development of family law--what would later become "domestic relations" law--and its influence on the larger society. Grossberg relies heavily on legal sources, including appellate court rulings and legal tracts, to construct a three-stage progression of American family law. According to the book, colonial family law was patriarchal in structure, tied closely to the state, and relegated women and children to the control of men. The American Revolution threw the colonial legal system, already under stress from a variety of factors including but not limited to the ability of settlers to leave for new lands, into chaos. What appeared in its place after a lengthy period of legal transformation involving an amalgamation of English legal principles and an emerging belief in American common law was a form Grossberg calls the republican family. The republican unit displaced the old patriarchal legal system in favor of laws that recognized individuals within the family. Too, this new form believed that state intervention in domestic matters was an evil best avoided. From the middle to the end of the nineteenth century, family laws across the board came under frequent assault from social reformers seeking to increase the role of the state in every aspect of the family. The end result was a hybrid of republican values and state intervention, of judicial discretion and legislative directives. The author examines courtship contracts, nuptials, the fitness of those seeking to marry, contraception and abortion, the legal rights of illegitimate offspring, and custody rights. Repeatedly, Grossberg contends that the courts took the initiative in constructing a body of laws and rulings that supported individual rights within the family. Nowhere is this support more apparent than in laws concerning the rights of women and children. Custody cases tossed out the old concepts of colonial patriarchy, in which fathers held the ultimate power over spouses and children, and replaced it with a new system that allowed mothers to keep their children in cases of family disintegration. As for children, judges began allowing illegitimate offspring to petition for shares of family estates, something that was never allowed under the male oriented English law. Moreover, magistrates considered the emotional and physical well being of children, arguing that the "best interests of the child" required a reassessment of the father's dominance in family life. In this way and many others, argues Grossberg, judges assumed a patriarchal function in the American family. "Governing the Hearth" is at its most fascinating describing the issues of birth control during the nineteenth century. The turmoil over this subject today tends to obscure how unimportant the issue was in the early part of the nineteenth century. American jurists subscribed to a belief stretching back into medieval times that claimed an abortion was not a sin or crime until the baby moved inside the womb. Called "quickening," this belief stood as accepted law until social reformers began agitating for new rulings against abortions performed at any stage of impregnation. Likewise, contraceptives came under attack from figures such as Andrew Comstock, who convinced Congress to pass laws banning the use of medicines and devices sent through the mail. One reason these chapters intrigue is because they show the relationship between the states and the federal government. During the early to mid nineteenth century, state's rights carried more weight than the powers of the federal government. The issues surrounding abortions are so controversial today that it staggers the imagination to realize there was a time when individual states decided the issue. Grossberg unfortunately never mentions how state versus federal rights played a part in family law. The chapters on birth control laws succeed as well because they constitute one of the few areas in which the author links social history with his legal research. It is in these sections that the reader encounters the people involved in both sides of the issues, the unfortunate souls caught up in the tumult the courts experienced as the social reformers won their battles. Far too often the issues and court cases covered in this book seem like they float beyond the reach of any social, political, or economic realities. In some cases there can be little question as to why the courts dealt with certain issues. Even a cursory knowledge of American history explains why issues arose over the polygamy question in what is present day Utah. The same goes for miscegenation and the incorporation of freed slaves into preexisting marriage laws. But other parts of the book raise questions about what inspired legal changes during a particular time. On several occasions, Grossberg resorts to vague references about Victorian era perceptions regarding female behavior, specifically in the chapter on breach of marriage contracts. This explanation seems overly simplistic. "Governing the Hearth" ultimately does make a compelling case for its central thesis, namely that the American legal system went through three distinct phases as outlined above. The book also convincingly argues that the fortunes of women and children improved greatly during the nineteenth century, and does so without overestimating their gains. For example, while women could retain custody of their children in the event of family disintegration they still had to fit societal standards of good conduct as defined by a patriarchal mentality. But the fact that women began to emerge as individuals with definite rights was family law's most significant contribution during the nineteenth century, laying the groundwork for greater gains in the next 100 years.

Presenting a new framework for understanding the complex but vital relationship between legal history and the family, Michael Grossberg analyzes the formation of legal policies on such issues as common law marriage, adoption, and rights for illegitimate children. He shows how legal changes diminished male authority, increased women's and

children's rights, and fixed more clearly the state's responsibilities in family affairs. Grossberg further illustrates why many basic principles of this distinctive and powerful new body of law--antiabortion and maternal biases in child custody--remained in effect well into the twentieth century.

From the Back Cover Presenting a new framework for understanding the complex but vital relationship between legal history and the family, Michael Grossberg analyzes the formation of legal policies on such issues as common law marriage, adoption and rights for illegitimate children. About the Author Michael Grossberg is associate professor of history and adjunct associate professor of law at Case Western Reserve University.