



Debts and the Demands of Conscience: The Virtue of Bankruptcy

Heidi M. Hurd, Ralph Brubaker

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The 'fresh start' that is afforded individual debtors through the discharge doctrines of American bankruptcy law has, to date, defied justification by a single normative principle or theoretical paradigm. The justificatory accounts that have been advanced either fail to explain core doctrines that have long defined the right of discharge or invite theoretical challenges that suggest that their descriptive virtues are swamped by their normative or conceptual shortcomings.

This book presents a taxonomy of traditional justifications of bankruptcy and subjects them to critical evaluation. It then seeks to offer a new justification of bankruptcy's 'fresh start' doctrines—one that takes its inspiration from a quite different moral tradition than those that have informed past efforts to justify and explain our enduring societal willingness to release people from onerous financial obligations. The book argues that personal debt relief is fully vindicated not by a utilitarian theory, nor by a distributive justice theory, nor by a retributive theory, nor by any other rights- or duties-based theory that is preoccupied with moral claims that particular creditors or debtors might proffer. Rather, the long-standing institution of discharge in bankruptcy is best explained by an aretaic, or virtue-based, theory that concerns itself with the obligations that the rest of us have to be charitable towards those who are unable to repay their debts.

The fresh start that bankruptcy gives to those who have been shackled by overwhelming debt is justified not by its effects on creditors, debtors, or future market actors, but by its satisfaction of the demands of individual charity to which all citizens are subject. Bankruptcy's discharge of the debts of those who have become financially desperate is best thought to be an institution that aggregates others' demands of good character so as to permit citizens for whom debt-forgiveness is a personal virtue to live in a society that fulfils that virtue.

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