

Jeffrey D. Hockett. *A Storm Over This Court: Law, Politics, and Supreme Court Decision Making in Brown v. Board of Education*. Charlottesville: University of Virginia Press, 2013. x, 267 pp. (\$39.50 cloth, \$39.50 Ebook).

This book is an ambitious and intense case study of the arguments, legal rationale, and scholarly explanations surrounding *Brown v. Board of Education*. Specifically, it focuses on several different models of decision making developed by political scientists to see whether the models offer a satisfactory and complete explanation as to why the nine justices voted to declare racial segregation in schools as unconstitutional. Ultimately, the book's goal is to provide an intellectual counterargument to the purportedly widespread explanation that the Court decided *Brown* based on the justices' own liberal policy preferences for egalitarianism, and that *Brown* led to a new era of decision making where judges abandoned originalist interpretations of the Constitution. Hockett admits that all of the justices "engaged in non-originalist decision making, and some of them [even] based their votes on a policy preference for desegregation," but to understand why the justices voted the way that they did, he argues, "it is necessary to consult the insights of institutional – primarily *noninstrumental* - approaches...in order to explain the behavior of *most* of the justices in *Brown*" (p. 6, emphasis in original). In the end, Hockett argues that "the most convincing account of the *Brown* decision is one that employs the insights of numerous approaches to Supreme Court decision making" (p. 178).

In the introductory chapter, Hockett sets up and details his argument for why there is a perception that the justices engaged in pure policymaking. In doing so, Hockett identifies a core criticism of the *Brown* decision that stems from conservative legal scholars such as Robert Bork and others. While Hockett provides an excellent summary of their main points, and offers several compelling critiques to the originalists' perspectives on *Brown*, what is odd is that in doing so Hockett also takes on proponents of the attitudinal (e.g., Segal and Spaeth 2002) and strategic models (e.g., Epstein and Knight 1998) because those models place the justices policy preferences at the heart of any explanation. The confusion stems from conflating the two camps (really three when one considers the fundamental differences between the attitudinal and strategic models) and their claims about the justices policy preferences, even though they have several crucial differences.

The book's framework is straightforward. After the introductory chapter, Chapter 1 reviews the legal arguments in *Brown* from the perspectives of the actors involved. The detail in this chapter is astounding. Following this, each subsequent chapter serves a distinct purpose in advancing Hockett's argument by focusing on a different theory of decision making. Chapter 2 invokes the attitudinal model and tries to discern whether any of the nine justices had a preference for desegregation that served as the basis for their decision. Hockett finds that very few of the justice's votes can be explained solely or even primarily by attitudinal considerations. Chapter 3 shifts to the strategic model and attempts to determine whether any of the justices' explanations are best explained with this approach. Here, again, Hockett finds little support for this explanation. Chapter 4 turns to new institutionalism - specifically, the constitutive model - where justices are socialized to consider cues for normatively appropriate behavior. Here, Hockett finds that the Court's mission is important in shaping many of the justices' decision making processes. Chapter 5 focuses on the regime politics model by bringing in the relevance of foreign affairs, and how the Cold War enhanced several justices' concerns about how race

relations in the US were going to hinder relations abroad. Chapter 6 also centers on the regime politics model, but closely examines domestic politics and relations with the executive branch. The book concludes by making the argument that one needs to examine *Brown* from numerous perspectives to gain a full understanding, and that reliance on one perspective, especially those that Hockett labels as “instrumental” (e.g., chapters 2 and 3) can be problematic.

Hockett makes an important contribution to our understanding of the complexity surrounding *Brown*, which is no easy task given the large amount and diversity of scholarly work that has already been written on *Brown* in the past 60 years. What makes Hockett’s study unique is his combination of painstaking attention to detail combined with an approach that searches for explanations from a variety of perspectives. While I could raise concerns with aspects of each chapter, one is impressed by the amount of information and complexity that Hockett attempts to sort through. In many ways, the book is magnificently researched. Hockett’s use of material and extensive quotes paints a good picture of the beliefs and arguments of each individual actor. Each chapter is filled with an enormous amount of detail, coming from a wide variety of sources, such as the justices’ private notes, memos, personal speeches and correspondence, as well as other biographical material.

To be sure, this is a case study of the decision making processes of nine justices in arguably the most important and salient Court decision. Given this, we cannot obviously “test” decision making theories on one case alone, especially a case that the justices clearly treated differently from the vast majority of other cases. In Hockett’s attempt to test the claim that the justices were acting solely on their policy preferences, his quest to find evidence that the justices had openly expressed desegregation preferences, perhaps, misses the bigger picture. To provide just one example, Hockett ultimately concludes that there is not sufficient evidence to support the claim that a desegregation preference explains Justice Minton’s decision (p. 146 contains a brief summary). That despite all of the evidence of Minton’s opposition to things closely related to segregation (e.g., Minton’s opposition to the KKK, Minton’s belief that African Americans were continually oppressed, Minton’s opposition to racial violence, and Minton’s belief that segregation is based on the principle of racial inferiority), Hockett concludes that Minton’s vote *cannot* be explained by his values because there is not sufficient evidence for Minton’s opposition to “the less controversial practice of segregation” (p. 146). In fact, Hockett argues that “it is difficult to believe that either [his liberalism or the petitioner’s arguments] contributed more to his desegregation vote than did the Cold War” (p. 147). Aside from the fact that it is unclear how Hockett weighs one explanation as being more convincing than another, Hockett’s rationale for discerning that Minton’s vote was not based on personal values can be likened to ordering a meat lovers pizza, devouring it, and then having an observer claim there is not enough evidence that one likes pepperoni because one did not order a pepperoni pizza. Given this reasoning, it would be difficult (and surprising) to find support for models that emphasize preference-based decision making. In addition, it is also frustrating that Hockett does not address the overlap between instrumental models and institutional models.

In terms of recommendations, the book is written at a high level and requires sustained thought within and across chapters. Thus, it is probably beyond the scope of most undergraduates. The book is (obviously) a must read for anyone interested in the *Brown* decision

and also civil rights, more generally. The book would also be useful for graduate students to get a case study introduction to noninstrumental models of decision making.

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References

Epstein, Lee., and Jack Knight. 1998. *The Choices Justices Make*. Washington D.C.: CQ Press.

Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.