Book Reviews

Richard L. Engstrom, Editor

Andrew P. Hogue. *Stumping God: Reagan, Carter, and the Invention of a Political Faith.* Waco, TX: Baylor University Press, 2012. 333 pp. ($49.95 cloth)

Far too many observers of contemporary presidential politics assume that the current religious patterns of partisan alignment have always been part of the political landscape. Andrew Hogue's book, *Stumping God: Reagan, Carter, and the Invention of a Political Faith,* offers a useful corrective. Hogue analyzes the role of religious appeals in the pivotal elections of 1976 and 1980 and highlights an important turning point in the history of religion and American presidential elections.

Hogue begins his work by demonstrating that economic issues and foreign policy, not religion, animated the mid-twentieth century conservative movement. Even so, he argues, "bubbling underneath the surface prior to 1980 were some important religious elements that merit consideration" (p. 11). These religious themes began to emerge in the 1976 presidential campaign and developed more fully in the 1980 election, fundamentally altering the role of religion in contemporary presidential rhetoric.

In the first chapter, Hogue offers "a rhetorical history" of the conservative movement, analyzing key works from Friedrich Hayek, Richard Weaver, William F. Buckley, Whittaker Chambers, and Barry Goldwater and speeches and editorials by Ronald Reagan. The chapter generally succeeds in showing that post-World War II conservatism was not especially religious.

Hogue is less successful showing how the conservative movement created a framework for future religious appeals. He points to Reagan's 1977 address to the American Conservative Union, highlighting the use of words "creation," "new," and "heart," and phrases "lay to rest," and "the time has come," as "but a few examples of Reagan's use of biblical language" (p. 58). Such a description seems quite a reach. Biblical scholars describe three common categories of scriptural references—direct quotations, allusions (concepts and narratives intended to be recognized), and echoes (not intentional mentions, but ones that clearly reflect biblical language). The words and phrases Hogue identifies as "biblical" seem to be echoes at best; more likely, they are simply common words and idioms that any speechwriter might employ.

The next chapter traces religious engagement in American politics between 1942 and 1976. In large part Hogue's narrative succeeds in distinguishing important political and cultural trends that provided a foundation for Reagan's religious strategy. The chapter lacks sufficient nuance, however, in its description of the abortion issue as a galvanizing force for the nascent religious right. As George Marsden and others have documented, evangelicals were slow to join the pro-life movement, and their fervent identification with the anti-abortion cause only solidified in the early 1980s.

Chapter 3 provides a useful recap of the political complexities surrounding the 1976 presidential election and compares Ford and Carter's use of religious rhetoric and themes. Many readers will gain new insights into Ford's religious sensibilities, a topic too often overlooked. The chapter illustrates how religion explicitly and implicitly influenced both campaigns and laid the groundwork for even more overtly religious political strategies in 1980. Chapter 4 tells the story of the Carter disappointment, identifying some of the reasons evangelicals grew disillusioned with Carter and highlighting elite efforts to build a new political movement of religious conservatives.

Chapter 5, a comparison of the role of religion in the Reagan, Carter, and Anderson campaigns, is the heart of the book. Every modern presidential election has generated campaign narratives that look back on the contest, and most focus on a single candidate. Hogue breaks from this model in several important ways: he analyzes two elections, he compares all of the major competitors in each race, and he looks from a clarifying historical distance. The end result is a strong chapter that provides a useful comparison of three very different strategies for mixing religion and politics.

Hogue's analysis of the different ways Reagan and Carter spiritualized issues is especially strong. He shows how Reagan developed new strategies for courting religious voters, including taking minority positions on issues that were of little importance to most voters but mattered deeply to religious conservatives. The analysis also sheds light on ways that Carter framed his campaign with appeals to religious values, showing how he defined morality and pro-family to resonate distinctly with a more liberal segment of religious voters.

The book concludes with a discussion of the legacy of the 1980 election and reflections on the role of religion in American politics going forward. Hogue makes a persuasive case that the 1976 and 1980 elections ushered in a new era that fundamentally altered the way presidential contenders compete for votes even as he points to signs that a new shift in religion and politics may be underway. Perhaps a few decades from now another author will look back at the 2008 and 2012 elections and see them as a key turning point in presidential electioneering that ushers in a new set of enduring electoral alliances.

Hogue ends the book with a personal assessment of the influence of the religious right. Echoing themes explored in much more depth by James Davison Hunter and others; Hogue argues that activists should not expect to win culture wars in the political arena.

Stumping God makes a significant contribution to our understanding of the dynamics of religion in American politics. The analysis draws upon a wide range of materials—including personal interviews with political strategists and former candidate John Anderson. The book would benefit from a more explicit introduction to the author's methodology and selection of primary and secondary sources. The prose is at times too expansive, with an intrusive authorial voice that distracts from the argumentation, but most readers will find it worth the effort.

Religion has always played an important role in American politics, but the contours of religious debates and the nature of religious appeals have varied significantly over the course of American history. *Stumping God* highlights important and too-often overlooked themes from the 1976 and 1980 elections that help explain the role of religious rhetoric in contemporary presidential elections.

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Christina R. Rivers. *The Congressional Black Caucus, Minority Voting Rights, and the U.S. Supreme Court.* Ann Arbor: University of Michigan Press, 2012. xiv, 213 pp. ($75 cloth).

By the time this review is published, the Supreme Court will have ruled on an important voting rights case, *Shelby County v. Holder*. At stake is Section 5 of the Voting Rights Act which requires covered states and counties to get federal approval for any changes in voting practices. Christina Rivers' timely book helps provide an understanding of why the Supreme Court is likely to strike down part of this landmark legislation. Rivers explores the clash between the Congressional Black Caucus's race-conscious approach and the Supreme Court's color blind perspective on the role of race in redistricting, representation, and the law. She argues that the CBC has played a central role in protecting and extending the Voting Rights Act, but backlash from the Supreme Court since the 1993 decision *Shaw v. Reno* has challenged those gains.

Research on racial representation and the CBC has proceeded on three parallel tracks: normative theory, legal discourse, and empirical analysis. Unfortunately, I mean "parallel" in the geometric sense of lines on a plane

that never meet. There is very little cross-fertilization across these literatures, much to the impoverishment of each approach. Rivers helps bridge the divide in the first two areas by engaging African American political thought and legal analysis of relevant Supreme Court cases.

Rivers begins by summarizing the race conscious perspective of the CBC and the Court's color blind view. In one section entitled "The Shallow Roots of Color Blind Originalism" (p. 28-30), Rivers convincingly argues that a color blind interpretation of the 14th Amendment is difficult to sustain historically. The Republican authors of the 14th Amendment and the early interpretations of the Amendment by the Court, especially the *Slaughter-House Cases* (1873), endorse the race conscious perspective. The language ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" was clearly aimed at protecting the rights of the newly freed slaves. The 1866 Civil Rights Act, the Freedmen's Bureau and other Reconstruction-era legislation provide further evidence of the race-conscious perspective of the authors of the 14th Amendment.

I learned a great deal in the next chapter on how 19th century black political thought helped shape the CBC's approach to voting rights. The strength of this chapter is the focus on lesser-known African American political activists and writers. Frederick Douglass, Booker T. Washington, and W.E.B. Du Bois are known to most students of racial politics. However, not many would be familiar with the pro-black militancy of David Walker, Henry Highland Garnet, Henry McNeal Turner, and Martin Delany. Similarly, while Sojourner Truth's impact on 19th century racial politics is well known, most are unaware of the key role played by African American women such as Maria Stewart and Mary Ann Shadd Cary. Rivers explores the tension in the views of these thinkers and activists between embracing traditional American political values such as liberty, equality, and democracy and a strong radical component rooted in race consciousness, a focus on outcomes in addition to process in defining equality, and in some instances, a call for civil disobedience to resist or break discriminatory laws. However, Rivers reminds us that this revolutionary bent is not as radical as the Founders' views: as Martin Luther King, Jr. pointed out, the "black revolution has always been about getting into, as opposed to overthrowing, the American political system" (p. 63).

Chapter 3, "The Congressional Black Caucus: Pushing Legislative Boundaries" and Chapter 5, "The Supreme Court Pushes Back," cover well-tilled terrain. Books by Abigail Thernstrom, Chandler Davidson and Bernard Grofman, David Epstein and co-editors, J. Morgan Kousser have provided detailed accounts of the politics of the passage of the Voting Rights Act and its amendments, including the role of the Congressional Black Caucus (the topic of Chapter 3). Dozens of law review and journal articles and books by

scholars such as Bernard Grofman, Mark Rush and Richard Engstrom have examined the Court's rulings on racial redistricting (the topic of Chapter 5). There are no new insights here; however for readers who are unfamiliar with this extensive literature, these chapters provide a useful summary of the political and legal history of the Voting Rights Act and its amendments.

Chapter 4 makes a more original contribution by examining the CBC's amicus briefs filed in the central cases involving voting rights since 1982. While Rivers is not able to provide clear evidence that the CBC's briefs actually influenced the Court's decisions (indeed, in most cases the Court ruled against the CBC's views), the briefs provide an excellent window into understanding the political and legal arguments of the CBC on voting rights and representation.

Rivers concludes by returning to the issue of the race conscious understanding of the 14th Amendment (pp. 150-57) and by making an appeal for a "third reconstruction" that is "focused on the concept of representative democracy . . . in which fair political outcomes are as important as political opportunity" (p. 163). Rivers emphasizes that this project should not be viewed as a zero-sum process, but should pursue policies that benefit African Americans and the public as a whole.

My only critique is that Rivers could have spent more time engaging the third parallel track of research on race and representation: empirical analysis. From the extensive literature on the determinants and consequences of amicus briefs to the nature of racial representation provided by the CBC, the empirical literature could have greatly enhanced the theoretical and historical discussions. Also, I should note that the book is too specialized to be appropriate for undergraduate courses. However, graduate seminars on racial politics, election law, or African American political thought would benefit from this book. Scholars who study these topics, in addition to voting rights, redistricting, and the Congressional Black Caucus, should also read this compelling and well-written book.

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Desmond S. King and Rogers M. Smith. *Still a House Divided: Race and Politics in Obama's America.* Princeton, NJ: Princeton University Press, 2011. x, 381 pp. ($35.00 cloth).

The 2008 presidential electoral success of Barack Obama led many throughout the nation to broadly proclaim that the election of an African American president is the undeniable proof we have needed to demonstrate that the United States has finally become a postracial society. Those sub-

scribing to this viewpoint have been treated to a wide variety of arguments elucidating the glaring misconceptions associated with this sort of wishful thinking; however, few have managed to holistically and meticulously tear down this façade of postracialism until now. King and Smith's *Still a House Divided* provides a comprehensive and detailed examination of the ways in which race has been and continues to be inextricably linked to the American political system. This book connects the present with the past in a way that helps to illuminate precisely where America stands in terms of race and political institutions, how we arrived at this point, and what our prospects are for some degree of advancement toward fewer racial disparities in opportunity and outcome.

Still a House Divided presents a more accurate examination of the forces that have influenced and continue to influence the American political system by way of King and Smith's "racial alliances framework." The authors synthesize essential theoretical foundations in order to develop a well-articulated and well-reasoned framework. In political science, we are often prone to examining either political behavior or political institutions as though they are independent of one another. King and Smith work toward demonstrating the complicated link between sociopolitical institutions and behavior, and how it has transformed over time.

The racial alliances framework marks an important contribution to the field in that it reveals that the U.S. political arena has always been comprised of rival coalitions that are loosely structured on the basis of *racial policy,* though these policies have changed over time. The authors note, "though [coalition] members often have different motives and different ultimate agendas, these alliances are united by their agreement on how the central racial policy issues of their eras—slavery, segregation, race-conscious policymaking—should be resolved" (p. 17). This focus on policy serves as the central concept upon which this book stands, and it allows the authors to approach our political struggles over race from a unique perspective. This perspective provides the structure through which King and Smith demonstrate the centrality of divisions over racial policy throughout the history of our political institutions.

Importantly, they highlight the fact that in previous political eras, racial policy alliances were not solely distributed along party lines, and that there was a great deal of party crossover for these coalitions. Unfortunately, in our modern era since the 1970s, we have entered a period in which these alliances are largely tied to the partisan divide, which in turn makes broader bipartisan consensus on racial policy issues more difficult. The authors argue that, in this current era, the foremost racial policy debate revolves around whether we should adopt a color-blind or a race-conscious approach to our public policy, particularly in terms of the issue of ensuring equality. King

and Smith urge those in positions of political power to focus less on the philosophy concerning which approach is right and moral, and to focus more on developing the mixture of these approaches for programs that will lead to the best outcomes for all. They wish for the people and institutions that make up these racial policy alliances to concentrate on the *consequences* of policies rather than the *principles* that undergird them. On the whole, given the egregious lack of academic attention to these racial policy alliances in studies of American politics, this book serves as a call to arms for researchers to engage in empirically-based examinations of policy proposals on both sides of the debate in order to aid in finding a way to move beyond current competing racial policy arguments and toward useful solutions.

This book provides an excellent example of how to skillfully incorporate breadth and depth of historical knowledge and critical analysis into scholarship concerning an overwhelmingly dense topic. There are various areas in which a more nuanced examination of both alliances and their policy preferences would have been useful. Race is one of several major systems of hegemony in the United States, and an analysis of the intersections of these various systems is invaluable for this sort of analysis. The book does focus on some of the interplay between race and class, which strengthens the examination immensely; however, a greater focus on the interplay between race and gender would also lend itself to greater illumination of how and why these alliances have formed, and more particularly, how policy is currently more or less likely to develop in a manner that will lead to fewer racial disparities. While it would have been beneficial to see more incorporation of this sort of intersectionality within *Still a House Divided*, the lack of a greater incorporation does not hinder this work. It already serves as a highly detailed and well-reasoned survey of a broad topic, and it would be difficult to include even more information and nuance without greatly expanding the length and possibly weakening the structure of the work.

In addition to its theoretical and policy strengths, *Still a House Divided* is highly accessible for a wide variety of audiences. King and Smith immediately draw in and hold the reader's attention. The arguments and evidence are presented in such a clear, direct, and persuasive manner that the reader is compelled to continue reading in order to determine and contemplate the next piece of the puzzle. This book will be a great resource in terms of course material for undergraduate- and graduate-level courses on politics, race, and public policy, in that students will be exposed to a great deal of important historical information through a useful framework, and they can quickly and easily follow the arguments, evidence, and analysis found therein. I look forward to incorporating this work into my own courses, and I am even more excited by the prospect that many more researchers will follow

King and Smith's call to study these alliances and their policy proposals in new research regarding American politics.

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Daniel McCool, ed. *The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act.* Bloomington: Indiana University Press, 2012. 360 pp. ($85.00 cloth, $35.00 paper).

Each passing decade of redistricting ushers in a new episode in the ever unfolding drama of voting rights litigation. Interest groups, lawyers, and political parties quite reliably land in a novel controversy that beckons the courts to iron out some new doctrinal wrinkle in this area. As of late, Texas and North Carolina are currently vying for the record as the most frequently sued state in this regard.

So, too, do the changing times invite new thinking by the experts and scholars who work in this area. Thankfully, this regular cycle also includes the development and production of new research that provides scholars, policymakers, and litigants with a framework to approach some of the thorniest of issues. These contributions have led to concrete proposals that inform and advance the legal doctrine in some meaningful ways. More often than not, these works also enhance our view of the impact of voting rights policy and examine the primary legal issues that remain unconsidered.

The agenda-setting style of work in the scholarly literature is reflected in writings like *Controversies in Minority Voting* (Grofman and Davidson 1992) and *Quiet Revolution in the South* (Davidson and Grofman 1994). Both of these edited volumes provide a comprehensive framework for a scholarly conversation about the defining issues for the decade. These works brought a group of experts who turned their focus on explaining the work that the Voting Rights Act has accomplished and to developing their best insights about how the law might evolve to address new problems. The impact of their collective effort endures today, even as the U.S. Supreme Court is now addressing the very constitutionality of Section 5 of the VRA.

Entering into this body of foundational research is *The Most Fundamental Right,* which aims to set the standard for the voting rights discourse following the 2010 census. The publication could not arrive too soon. Already, this decade in voting rights has been marked by a deceptively narrow set of questions concerning the state of race relations, the role of states in modern governance, and the emerging complexities of diversity in politics. Texas now appears poised to retake the lead as the nation's pre-eminent

voting rights defendant with not less than three different actions pending in some part of the judicial system. And with the pending existential question about the continued viability of Section 5 of the Voting Rights Act, the need for a thoughtful, reasoned conversation that relies on ideas as opposed to ideology is most pressing.

In many respects, parts of *The Most Fundamental Right* handily meet this challenge. The book organizes its essays into three parts—(1) the context and history of the VRA, (2) the current debate about the policy, and (3) broader commentary. Particularly in the opening section, the writers lay some groundwork and then address problems that have regularly confused the Courts and policymakers.

For example, Peyton McCrary reviews the manner in which Section 5 (the heart of the Voting Rights Act) has been applied during the life of the statute. What is most noteworthy from this essay is how much this administrative system has transformed over time. Due to changing political circumstances and reinterpretations of standards by the Court and by Congress, states and local jurisdictions face the problem of complying with a law whose terms are often shifting. This point bears special meaning given the course of present litigation this decade, following congressional reauthorization of Section 5 in 2006. Inasmuch as *Shelby County v. Holder,* as of this writing currently pending in the Supreme Court, tests the viability of the preclearance provision, the essay offers a useful account from a historical perspective.

Richard Engstrom's entry on influence districts takes on vexing legal and conceptual question that Congress and the judiciary have done their part to render indecipherable to date—how voting rights law should treat election districts that are less than 50% non-white. Traditional remedies have relied upon majority non-white districts, reasoning that non-white voters could be assured a chance to elect a candidate they preferred in this setting. But since then, the landscape that is nicely described in *Quiet Revolution* and *Controversies* has changed such that some areas now have well-functioning election districts where no one group forms a majority and others where whites who are in a majority cooperate with non-whites regularly (sometimes electing a non-white candidate). Should either of these districts factor into the analyses of vote dilution (relevant to Section 2) or of retrogression (Section 5's concern)?

One slight criticism of the work overall relates to the "fit" of its different sections, particularly covering the debates. Judged by the book's apparent aspiration to have a national scope, the pair of views dueling about voting rights in South Dakota is not the most obvious case to study. The South Dakota essays certainly provide a fine analysis of the kinds of problems facing Native Americans in preclearance counties. But these very significant experiences are more specific to their location and are not neces-

sarily comparable to the ones affecting non-white voters in the rest of the country. More, or perhaps different, cases might have satisfied this concern. While its two predecessor volumes take a geographically broad sweep to draw generally applicable insights, *The Most Fundamental Right* narrows its focus. The competing viewpoints about language assistance in Section 203 of the Act provide some expansive elements to this section, but the South Dakota experience does not strike a reader as the neatest of fits.

Examining the road ahead, the final section of *The Most Fundamental Right* offers new ideas for scholars and policymakers for reform. Chief among them is an invitation to reconsider the role partisanship should play in redistricting decisions. What most students of voting rights understand, though what few can completely theorize, is how race and party relate to each other. Presently, the constitutional doctrine on gerrymandering heavily regulates how race can enter decisions like drawing districts. Yet it shows far less concern about constraining partisanship, including some cases where party loyalty can lead to dilutive effects on non-white communities. Again, had less space been assigned to the debates section, a more complete treatment might take up Justice Kennedy's invitation to construct a standard to address partisan gerrymandering. If there is a judicial role to play, one must articulate a standard to guide the inquiry.

Overall, *The Most Fundamental Right* is a very promising addition to the catalogue of work that explores the current voting rights landscape. Not only does it provide helpful updates to the known background on the Voting Rights Act, but it also outlines some very important issues that are sure to be the center of this decade's forthcoming legal and policy problems.

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References

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Marc Lendler. Gitlow v. New York*: Every Idea an Incitement.* Lawrence: University Press of Kansas, 2012. xiv, 173 pp. ($34.95 cloth, $17.95 paper).

Benjamin Gitlow was an interesting man who lived an interesting life. Born into the American Socialist movement, Gitlow became an outspoken

leader of the Communist movement in New York in the early part of the twentieth century. Marc Lendler's book details Gitlow's unlikely personal journey from communist agitator to anti-communist activist. This story serves as the backdrop for the main fare of the book, which is a discussion of the history and impact of the court case that made him famous: *Gitlow v. New York* (1925). The book's subtitle references "the most impassioned part of Holmes's dissent" in *Gitlow*; unfortunately, this is the one part of the tale that receives less of Lendler's attention than it deserves.

Lendler uses a combination of established sources and original research to present a clear and accessible take on both Gitlow the man and *Gitlow* the case. The book is divided into two main sections. The first half focuses on the "Left Wing Manifesto," which is the pamphlet at the center of the *Gitlow* case; the Supreme Court case and its aftermath is the focus of the second half of the book. Lendler spends a good deal of time discussing Gitlow's trial, and his coverage, though extensive, is engaging. He points out the interesting fact that the manifesto at issue in the case was not actually written by Gitlow. This fact might have made the job of defending Gitlow at trial a bit easier on Clarence Darrow had Gitlow not refused to distance himself from its inflammatory content. In fact, Gitlow insisted on making a proselytizing speech to the jury. Judge Bartow S. Weeks appeared to enjoy engaging in philosophical debates in his courtroom, and "seemed to egg [Gitlow] on" (p. 43). Gitlow was convicted in Weeks's courtroom, as were a large number of his fellow travelers.

The book uses the *Gitlow* case as a frame for exploring a number of important concepts in law and politics. This case raises interesting questions about how interest groups choose test cases, the internal decision making processes of the Supreme Court, and the way important precedents are sometimes only recognizable in retrospect. In some ways, *Gitlow* is a frustrating vehicle for this endeavor because so many of the key questions about the case still have no answers. In his discussion of why the ACLU chose Gitlow's case to appeal, Lendler admits that the reason "may have been no more profound than the fact that it was first" chronologically (p. 49). Once it reached the Supreme Court, the *Gitlow* case took an unusually long time to make it through to disposition. It was argued and reargued, and the final judgment was handed down more than two years after the original argument. Again, the record provides Lendler with few answers, but he does note that "it appears that the justices were debating *Gitlow* until less than a month before the decision was rendered" (p. 112).

One of Lendler's most interesting stories of the *Gitlow* case is the way it was subsequently treated by the Court. A curious statement in Justice Sanford's majority opinion essentially assumed away the argument that the First Amendment had not yet been incorporated to the states. As Lendler

points out, the "somewhat casual declaration, made with little fanfare, is generally regarded as the beginning of the incorporation of the Bill of Rights" (p. 113). This short aside, indeed, is why Gitlow's name is now familiar to every first year law student in America. Lendler, again, is unable to explain the motivation for Sanford's strange approach to the question of incorporation. He is able to show, however, that the Court accepted Sanford's premise without much reflection, in what almost seems like a dereliction of judicial duty.

Woven through the book is the story of the "bad tendency" test, which allowed government to hold speakers "responsible for the reasonable, probable outcome of their words, irrespective of how likely it is that those words will create an overt criminal act" (p. 1). Of particular interest is the trajectory of Justice Holmes on the issue. Lendler's anecdote about the chance meeting between Holmes and Judge Learned Hand helps to explain the former's somewhat conspicuous shift toward a much stronger protection of speech—even speech that could prove to be dangerous. This "clear and present danger" standard, although not fully formed at the time, was a centerpiece of the Holmes dissent in *Gitlow*.

Although Sanford's majority opinion in *Gitlow* is now cited as authority for the incorporation of free speech protections to the states via the Due Process Clause, the Court in the 1930s began citing the Holmes dissent "as though it were the received wisdom of the Court" (p. 134). Litigants, too, began treating the Holmes-Brandeis dissents of the 1920s as precedent. Lendler recognizes how unusual it is "not merely that the Court began to adopt the two dissenters' reasoning but also that it dispensed with any argument about whether the dissents rather than the actual rulings should be regarded as precedents" (p. 134). But, again, Lendler has a difficult time explaining exactly how this unusual situation came to pass. Certainly, the Court had undergone a change of heart on the topic of free speech, in part because of personnel changes. This does little to explain, though, why the Court pursued this unconventional treatment of precedent instead of simply ignoring or overturning the earlier cases.

Lendler spends a few paragraphs discussing the implications of the "clear and present danger" approach to free speech that is echoed in the book's subtitle. He picks through the Holmes dissent near the end of Chapter Six, but this discussion only hints at how radical this approach really is. In a few lines near the end of the book, Lendler finally digs down to the important assumptions that underlay the approach to free speech that Holmes eventually settles on: "that words have such important consequences that they should not be prohibited unless they are intended and likely to create illegal acts that are immediate and grave" (p. 143). While Lendler illustrates the prevalence and tenacity of the laxer "bad tendency" level of speech

protection, he may underemphasize the degree to which Holmes's approach turned that centuries-old Blackstonian understanding on its head.

Like the other books in the series, citations have been omitted in the text and reserved for a short bibliographical essay at the end of the book. This feature enhances readability for undergraduates and lay readers. The story is an interesting one, and Lendler's treatment of it is fair, engaging, and as comprehensive as possible given the format. The book offers a nice case study for an undergraduate course in free speech. It raises some interesting questions about the politics of the legal process, especially the judicial branch's sensitivity to sociopolitical context.

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Austin Sarat and Karl Shoemaker, eds. *Who Deserves to Die? Constructing the Executable Subject.* Amherst: University of Massachusetts Press, 2011. 328 pp. ($80.00 cloth, $28.95 paper).

Tremendous publicity surrounds high profile death sentences, such as the one imposed on Timothy McVeigh, convicted for the terrorist attack on the Alfred P. Murrah Federal Building in Oklahoma City in 1995 that left 168 dead and scores more injured. Notwithstanding, since the mid-1990s the death penalty in the United States has been in "historic decline" (Baumgartner et al. 2008, 7), in terms of both the number of death sentences and executions (Sarat and Shoemaker, p. 8). Despite these declines, the death penalty continues to be imposed in states where capital punishment remains on the books. The question for Austin Sarat and Karl Shoemaker is simple: who should be put to death at the hands of the State?

In *Who Deserves to Die? Constructing the Executable Subject*, Sarat and Shoemaker have produced an edited volume that probes this question from a number of angles. The question arises in large part because of bifurcated capital trials, at which the guilt and penalty phases are separated, that were approved by the Supreme Court in *Gregg v. Georgia* (1976). During the penalty phase juries decide whether a convicted defendant deserves to die. As Sarat and Shoemaker provide in their introduction, this volume is designed to "assessing the forms of legal subjectivity and legal community that are supposed and constructed by the doctrines and practices of punishment by death in the United States (p. 10).

The editors take the view that determining who deserves to die is more than a legal or policy issue, though those issues remain critical. Thus, they include ten essays by scholars from diverse backgrounds, including political science, law, and sociology, as well as political ethics, history, and English.

These essays are divided into three sections of the book, "the first of which asks what kind of self the executable subject is, the second of which examines rituals that surround state killing and how those rituals help construct the executable subject, and the third of which offers new perspectives on self-hood and the purposes of capital punishment" (p. 11).

Part One is entitled, "What Kind of Self is the Executable Subject?" and includes essays on the kinds of people who end up on death row. This section begins with an essay by Shoemaker (Professor of History and Law), "The Medieval Origins of the Supreme Court's Prohibition on Executing the Insane," which delves into the legal history of the death penalty, particularly with respect to the competence of the defendant. In particular, he puts the Supreme Court's recent *Panetti v. Quarterman* (2007) decision in legal and historical context, while pointing out inconsistencies in the Court's rationale to prevent the execution of someone who does not understand why s/he is being accordingly punished.

Robert Weisberg (Law) next writes about "The Unlucky Psychopath as Death Penalty Prototype." His perspective is psychological in nature as he explores the legal foundations of who can be executed. In her chapter "Waiving from Death Row," Susan Schmeiser (Law) discusses judicial reluctance to execute defendants who "desire to die" as this makes "at once something more and something less than an executable subject" (p. 75). In her chapter "No Remorse," Ravit Reichman (English) relies on the literature of fiction to show how the subject of remorse is ambiguous, since "how do we know that a person feels what he or she claims to feel?" (p. 113).

Part Two concerns "Constructing the Executable Subject: Sacrifice and the Rituals of State Killing." Here, each chapter discusses different aspects of the rituals and sacrifice of capital punishment. In "The Unsacrificeable Subject?" Mateo Taussig-Rubbo (Law) explores various contentions of sacrifice as it relates both pro and con positions on the death penalty. Next, Vanessa Barker (Sociology) writes about "Last Words: Structuring the State's Power to Punish." In her words, "The last statements of the condemned play an important structuring role in upholding the legal and moral requirements of retribution" (p. 170). However, if the last words of the condemned reveal that s/he is being victimized by the process, and perhaps innocent, then instead of justice "last words can subvert the state's power to punish" (p. 171). Linda Ross Meyer (Law) similarly looks to this subject in "The Meaning of Death: Last Words, Last Meals." Her view is that the rituals of last meals and words serve to humanize what is otherwise a system designed as the "ultimate triumph of dehumanization and institutional control" (p. 176).

The subject changes in Part III, "New Perspectives on Selfhood and the Purposes of Capital Punishment." In "*Panetti* and the Future of the Eighth Amendment," Dan Markel (Law) analyzes the Supreme Court's *Panetti*

decision and concludes that the "defendant-centered" perspective of that decision should lead ultimately to a convincing rationale for halting capital punishment under Eighth Amendment jurisprudence (p. 245). Ruth Miller (History) in "Therapeutic Death" uses *Panetti* and other decisions to argue that capital punishment can serve as therapy when the death row inmate is competent. And in the final essay, entitled "The Dead, the Human Animal, and the Executable Subject," Thomas Dumm (Political Ethics) hits the subject matter of this volume head on by using Adam Smith's thoughts on sympathy as he analyzes the effect of the death penalty not only on the defendant but also on the public.

These essays by a diverse group of scholars cause the reader to think deeply about capital punishment in the United States, and they do so from a perspective not often examined. Accordingly, *Who Deserves to Die* serves as a fascinating study which will be of great interest to those who study the death penalty, from whatever viewpoint.

Nevertheless, there are times when the theme of the book—constructing the executable subject—appears strained. This is particularly the case in Part II, where the essays seem far afield from the volume's subject matter. Ironically, I found these essays in Part II to be among the most interesting of the book. Perhaps, then, the strongest feature of this book also serves as its most profound weakness, as *Who Deserves to Die* reads very much like the workshop from which it sprung. Consequently, Sarat and Shoemaker have incorporated a series of thoughtful essays for readers with capital punishment within their wheelhouse of study.

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Stanley M. Caress and Todd T. Kunioka. *Term Limits and Their Consequences*. Albany: SUNY Press, 2012. xii, 193 pp. ($75 hardcover).

Nineteen years after the first American legislator was removed from office by term limits—California state senator David Roberti became the answer to this trivia question in 1994 through the quirk of a seat switch and redistricting—political science has much to say about impact of this reform

on the operation of state government. An academic consensus has emerged on what term limits have and have not changed. Stanley M. Caress and Todd T. Kunioka's *Term Limits and Their Consequences* provides a comprehensive review of this literature and presents important new empirical analyses of the impact of limits on women's and minority representation across the nation as well as on career and leadership patterns in California. Just as importantly, the authors thoughtfully relate these findings to the debate over term limits, and put that debate into the larger context of the uneasy relationship between voters and politicians in American democracy.

Up front, Caress and Kunioka are clear about their central aim. The "most important goal of a study of term limits is to discover their real impact on American government so that scholars and citizens in the future can render judgment on their effectiveness and desirability" (p. 2). Does this volume fulfill their goal? After moving through its clear prose and straightforward tables, the reader will emerge with firm sense of the impact of term limits on who serves in statehouses, how their careers unfold, and patterns in the tenure of leaders. In order to evaluate the effects of term limits fully, many readers will be left wanting to learn more about how term limited legislatures now operate and what policies they produce than what the authors glean from interviews with four California statehouse veterans. Some of the answers to those questions are contained in the literature on term limits published since 2005, much of which is curiously ignored by this book. Still more work in these areas remains to be done. Consequently, this book, while a very helpful compendium of the impact of term limits on legislative composition and careers, is not yet the final chapter on their full effects.

Term Limits and Their Consequences begins with the deepest, richest review of the literatures on the debate over term limits, on their predicted effects, and on their initial impact that I have read. It then moves into an impressive section that goes beyond simply retelling the story of the passage of term limit laws by drawing broader lesson from the movement to enact them, the institutions that organizers employed, and the set of distinct motivations that led voters to back them. Chapter 2 exhaustively documents how the term limits movement seized upon direct democracy as the tool to reform legislatures by bypassing elected officials. Chapter 3 focuses on voter support, arguing that term limits succeeded because of the characteristically American paradox that we respect the institutions of representative democracy in the abstract but often hold actual legislatures in low esteem. Perhaps most impressively, throughout this section the authors take the arguments behind the term limits movement seriously, exploring their intellectual roots and faithfully reporting their predictions before exposing them to empirical investigation.

In the second section, the authors conduct these tests, primarily in the areas of group representation and career patterns where Caress' prior work has made important contributions. Chapters 4 and 5 bring more data to bear than any existing work on the oft-debated question of whether term limits have bolstered women's and minority representation. By harnessing strong research designs, Caress and Kunioka can render clear judgments on these important questions without the use of econometric models. Table 5 (p. 58), which looks at the percentage of seats held by women in all of America's legislatures from 1990 through 2009, should end any debate on the impact of term limits on female representation. One column shows that women gained 5.4% of the seats in term limited houses over this period, a trend that has been used to argue that limits have helped break the glass ceiling under statehouse domes. Yet the next column shows that women gained 5.9% of seats in states *without* term limits, with the biggest leaps in both types of states coming after the 1992 "Year of the Woman" elections. The trend, then, appears to simply be a result of larger societal trends, a conclusion strengthened by the column showing that in Congress, which of course lacks term limits, women increased their share of seats by 10.6 percentage points. The same pattern appears in minority representation, where states that lacked term limits saw bigger rises in African-American and Latino legislators than the states that imposed them. Caress and Kunioka look deeply into state-by-state trends but find no "evidence of a persisting relationship between term limits and increased minority representation."

The book also explores trends in careers (where both Michigan and California lawmakers displayed "sustained ambition" by running for other offices) and in leadership (where the tenure of speakers in California dropped dramatically). While additional lessons could have been drawn by bringing in data from more states with term limits and by checking these trends against what went on in similar states without limits, a strength of this section is that Caress and Kunioka always put their empirical findings in the context of the academic literature, including Schlesinger and Ehrenhalt's classic studies of ambition, and on the public debate over limits.

They make their final contributions to these discussions by reporting the observations of a longtime California legislator, John Vasconcellos, veteran Sacramento staffers Clyde Macdonald and Peter Detwiler, and the late Tim Hodson, who combined the insights of an academic and a consummate insider, on the institutional impact of term limits. Preserving their candid and sophisticated testimony for posterity is itself a contribution. Yet readers looking to learn more about how term limits change the ways that legislatures are run, systematically shape the influence of lobbyists, staff, and governors, or change policy outcomes will have to turn to a more recent literature that is not cited in this volume. A 50-state survey of thousands of

legislators yields important lessons that are explored both in a 2006 *Legislative Studies Quarterly* article by John M. Carey et al. and in the wide-ranging 2007 edited volume, *Institutional Change in American Politics: The Case of Term Limits*. Research on policy outcomes by Ehrler (2007) shows that, surprisingly, the size of government grew faster in states with term limits than without them, and that term limits have led to lower bond ratings (Lewis 2010) and higher debt (Day and Boeckelman 2012). Still unanswered are questions about how term limits affect the passage of landmark legislature, whether they improve policy responsiveness, or how they impact state growth and income inequality.

No single study could tackle all of these questions. *Term Limits and Their Consequences* looks at the electoral forces that brought term limits to many states more than two decades ago and how they have changed—and, just as importantly, left unaltered—female and minority representation, political ambition, and legislative leaders. Caress and Kunioka's work will become a standard reference on these weighty matters.

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Holly J. McCammon. *The U.S. Women's Jury Movements and Strategic Adaptation: A More Just Verdict.* Cambridge: Cambridge University Press, 2012. 320 pp. ($99.00 cloth).

In all likelihood, this work will be heralded as seminal due to its detailed record of women's efforts to gain political equality via jury service. The struggle for women's full inclusion in jury service has hitherto received scant attention when compared to the many existing scholarly treatments of women's struggles for suffrage. McCammon's fearless approach to this relatively unknown phenomenon tackles the historical complexities and overlapping boundaries of what should really be considered multiple women's movements. The first women's movement may have centered on suffrage, but was not entirely circumscribed by this purpose. Activists operated in a number of venues and were characterized by a multitude of cross-cutting interests (e.g. women's health issues) and groups.

The book is both a contribution to the tomes of U.S. history and to the social sciences, especially to the disciplines of political science and sociology. Wielding a vast array of primary historical documents collected for purposes of this research, McCammon provides a comprehensive and detailed history of the women's jury movement(s). A meticulous overview of fifteen U.S. states describes what individual state movements did to be successful and a qualitative comparative analysis emphasizes and system-

atically evaluates the patterns found in these historical narratives, particularly what strategies were employed by movement activists.

The book serves a dual purpose in that a model of "strategic adaptation" is presented in addition to the historical account of jury movements in different states. McCammon offers a theoretical model as to why social movements are or are not successful. The reader will certainly be struck by the deftness in which the story of a past social movement is weaved into lessons and applications for understanding modern-day movements. Strategic adaptation, which consists of correctly identifying and responding to external cues, fills an important void in the social movement literature. Prior research exhibits a tendency to treat environmental circumstances as static, not recognizing the fluidity and range of action as significant in and of itself. The stated intention of the model is to underscore what social movement actors *do* (and how well they accomplished their objectives).

Chapter 2 provides the theoretical justification for the model of strategic adaptation. It is well-diagramed and the expectations are clear. The dependent variable, the passing of jury laws in U.S. states, is straightforward and follows the conventional political science literature in this respect. One of the larger unanswered questions in the social movement literature revolves around the definition of success, which McCammon does not address. Claiming to have interest only in the "stated and political goals" of social movement actors, the passing of laws, McCammon may be downplaying the accomplishments of the jury movements. Problems in identifying some of the more obscure contours and aspirations of social movements, like altering traditional schools of thought and challenging traditional gender roles, are thus avoided. Arguably, changing people's minds about social issues and upsetting the existing social order are among the principle aims of many social movements. Operationalizing success as McCammon did may aggrandize actions that were directly related to the legal passage of laws and fail to recognize the lasting contributions of actions unrelated to legislative changes.

Chapter 3 provides an overview of women's struggle for equality in jury service and what appears to be an exhaustive list of the various actors and groups that were involved. A better description of how social movements are to be defined, and how particular members are identified, would have been fruitful. Chapter 2, where this should have occurred, does not clearly outline how and why jury movement actors were identified for the study. This may be considered an oversight as the debate over definition continues in the social movement literature. Other than knowing how basic numbers in membership relate to success, a clearer categorization of actors would have been illuminating. Just as there are a multitude of indices of success, there are actors with varying levels of power. No doubt,

McCammon presents the most complete study to date on the composition of the jury movements, but does not do so in an entirely systematic manner.

Chapters 4 and 5 efficiently describe how the jury movements in the fifteen states responded to their environments. Though some of McCammon's conclusions seem a bit tautological in that legislative success indicates a correct response to external cues, a case for the usefulness of a model of strategic adaptation is made. Those familiar with McCammon's earlier work will not disappointed as Chapters 6 and 7 are dedicated to explaining how and why particular frames were employed. Though activists faced similar cultures, they responded in different ways. At times, they argued for women's special contributions to the jury process and at other times, they underscored the importance of equal and gender-neutral citizenship.

McCammon's decision to provide a qualitative comparative analysis in Chapter 8 is commendable and appropriate given the subject matter. Interestingly, while media coverage provides the analytical tool for the study, it is not explicitly included in the model as an instigator or roadblock to change. The variables chosen are broad, but are well-developed in the preceding chapters. The lack of inter-rater reliability scores is troubling as it appears as though the author was solely responsible for the interpretation and coding of the archival data.

In conclusion, McCammon's research suggests that tensions within movements, continuing activism and learning, a diverse membership, and favorable political circumstances predict success. State actors will achieve their goals if they correctly interpret signals from the environment or, conversely, fail because they were not trying hard enough or misinterpreting said signals. The simplicity of the strategic adaptation model renders it invaluable to scholars wishing to explain any number of social movements, past and present. The book is obviously well-researched and the ample historical evidence supplied indicates that McCammon is unequivocally an expert in this area.

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Ryan C. Black and Ryan J. Owens. *The Solicitor General and the United States Supreme Court: Executive Branch Influence and Judicial Decisions*. New York: Cambridge University Press, 2012. ix, 181 pp. ($99.00 hardcover).

Ryan C. Black and Ryan J. Owens present a compelling study showing that the Office of the Solicitor General (OSG) influences the U.S. Supreme

Court. Formidably, the authors situate their study of OSG influence within the major, extant theories of judicial behavior. This book is a great primer for those with little knowledge of judicial behavior. For advanced scholars, this study is a model for marrying judicial theories, methods, data, histories, and legal doctrine.

The goal of the book is to show whether the OSG *influences* the Court. This goal would be unnecessary if we accept that influencing the Court equates to succeeding in Court. OSG success is well documented. OSG is the most frequent litigant before the Court and rarely loses (pp. 23-27). For example, the Court grants 75-90 percent of OSG cert petitions, compared to 3-25 percent of non-OSG cert petitions (pp. 23-24). Depending on the term, OSG success rates at the merits stage is 60-100% (p. 26). Most scholars believe that the OSG influences the Court, but before the present study, no one has offered a rigorous test of this influence (p. 135). Using logistic regression models and coarsened exact matching (CEM), Black and Owens show that justices reach different conclusions in all stages of decision making (agenda setting, merit rulings, language selection in opinion writing, and treatment of precedent) when the OSG participates in the stage compared to when the OSG does not (pp. 135-136).

The authors conclude that high OSG success rates and influence are best explained by OSG's objectivity, professionalism, and independence (p. 136). As the title of chapter two suggests, OSG is "the finest law firm in the nation." OSG deputies and staff attorneys are "highly educated," "consummate professionals" with "remarkable qualifications," who frequently go on to become federal judges, including Supreme Court justices (p. 20). OSG professionalism is rooted in the office's structure, where the solicitor general and deputies are political appointees, but staff attorneys are insulated from such politics and able to perform (largely) independently and objectively.

Black and Owens spend considerable time unpacking observational equivalences across many OSG success theories. Chapter three is particularly helpful because the authors summarize and test major theories of judicial behavior. Predicting judicial behavior (i.e., who prevails at various levels of Court decisionmaking) depends on, inter alia, parties' statuses as repeat players, attorney quality, parties' ideological agreement with the Court, separation of powers and related strategic actions, and case selection criteria. While these theories may help explain OSG success in Court, they do not address whether the OSG influences decision making, nor do they provide empirical evidence that influence exists.

Four chapters do just this—show empirically the extent to which OSG involvement in decision making processes influences the Court to make decisions it would not make otherwise. Using logistic regression models, the authors show that OSG influences whether the Court grants or denies peti-

tions for writs of certiorari. The remaining empirical chapters show OSG influence in other decision making stages using CEM, a method that allows the authors to correct for data imbalances and, hence, to more validly infer causality. The authors attempt to "keep the discussion tolerable for those less interested in methods and models" (p. 73). Fortunately, the rudimentary premises of CEM are accessible. The authors balance data to create control and experimental groups. Both groups are matched for case characteristics (attorney experience, attorney resource advantages, case salience, ideological congruence with the Court, and so forth), so that differences in observed success rates between the two groups can be reasonably attributed to the only meaningful difference between the two groups—OSG influence. These conclusions are compelling.

The results of the study debunk a number of theories explaining why OSG is successful in Court (e.g., attorney experience, attorney quality, ideological agreement with the Court). The authors conclude, instead, that OSG success arises out of its relationship with the Court, most likely from the professionals the OSG employs, professionals the Court trusts because of their objectivity and overall neutrality.

The book is a refreshing example of modern social science because the authors polygamize theory, intuitive (accessible) methods, data, history, and legal doctrine—all illustrated with relevant case examples. Kudos. Notably absent, however, are tests and explanations for why OSG success is different from agency success generally. It is fairly well documented elsewhere that agency success before the Court is similarly high (60-75% depending on the term). A number of legal standards of review help explain agency success, since these standards prescribe certain levels of Court deference to agencies because of agency expertise, persuasiveness, or congressionally derived authority. Examples of well known legal standards include the Administrative Procedure Act's arbitrary-and-capricious test and substantial-evidence test as well as common law deference standards, such as *Skidmore*, *Chevron*, and *Mead*. Black and Owens' study would benefit by acknowledging OSG as an agency or a representative of agencies, acknowledging that agencies receive higher levels of Court deference not enjoyed by other litigants, and testing the effects of legal standards of deference. Fairly though, this criticism—omission of agency deference theory as an explanation for OSG success—may also be a strength of the study.

To be clear, Black and Owens' conclusions do not conflict with agency deference theory, but may reinforce it. Agency deference theory, at its heart, suggests that courts often recognize agencies' expert professionals acting objectively and credibly. The authors suggest that the credibility of the OSG, similar to the Federal Reserve and the National Labor Relations Board, has

increased because of its independence from the president and other partisan, political influences. Credibility (and concomitantly, influence), they argue, is bolstered when agencies such as the OSG are staffed with high quality professionals whose objectivity and expertise transcend presidential administrations and short-term political appetites (p. 137). In this regard, this study should cause agency deference scholars to pause, questioning whether agency success might better be explained not as agency deference but as OSG influence.

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G. Alan Tarr. *Without Fear or Favor: Judicial Independence and Judicial Accountability in the States*. Stanford, CA: Stanford University Press, 2012. 269 pp. ($85.00 cloth, $27.95 paper, 27.95 e-book).

Alan Tarr has written a meticulously researched book on judicial selection that, along with Chris Bonneau and Melinda Gann Hall's *In Defense of Judicial Elections* and James Gibson's *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*, makes a strong case refuting generally held attitudes against judicial elections. Whereas the other two rely on empirical evidence to make the case that judicial elections in the states may well be a superior method for selecting judges than merit selection and various appointment schemes, Tarr argues from historical evidence and careful analysis of the competing concepts of judicial accountability and judicial independence. Notably, Tarr lumps the virtues and the vices of all judicial election schemes—partisan, nonpartisan and retention—together. He approaches the questions surrounding how best to select judges from the perspective that "state judicial selection does not occur in a political vacuum; the same factors that have influenced American politics and law have also affected judicial selection" (p. 76). That might very well have been the thesis of this thoughtful book.

Many discussions of judicial selection have turned on how to reconcile judicial independence and judicial accountability, but Tarr views the twin goals as at the least in tension, but in reality in opposition to one another. He uses the device of pursuing the arguments from the positions of the "Bashers" and the "Defenders," where the Bashers are those whose concerns include the absence of checks on judges, the rise of judicial policy-making and the undemocratic nature of an unchecked judiciary, and the Defenders those whose concerns lie in protecting the judiciary from external threats, advocating judicial authority particularly for the protection of rights and

minorities, extolling the necessity of impartiality on the bench and supporting judicial policy-making. In short, the Bashers argue for judicial accountability, while the Defenders advocate judicial independence.

The first three chapters of the book focus on the historical evolution of judicial selection mechanisms and how shifting emphases in the larger political culture mirror attitudes and trends in naming judges. Tarr begins his analysis with colonial courts and the Declaration of Independence in 1776 that enumerated two charges relating to royal courts among the colonies' grievances: that the king refused to agree to laws for establishment of judicial power and made the judges dependent on the monarch. These three chapters, though not central to his argument, are worthwhile reading. His careful, at times almost tedious, attention to changes on a state by state basis washes away much conventional wisdom about how and why approaches to judicial selection in the states shifted and changed. For example, most texts tie the rise of judicial elections to Jacksonian democracy, but Tarr demonstrates that "only three states embraced judicial elections during the first four decades of the nineteenth century" (p. 42), the decades that coincided with a widespread democratic fervor. Instead, Tarr argues that judicial accountability became ascendant and elections, along with impeachment and address, were intended to keep judges accountable. He ties changing attitudes toward the judiciary to more fundamental shifts, such as the institutionalization of judicial review, reduction of jury power and a judicial monopoly on dispute resolution. These developments, sometimes working in tandem, led to an enhanced interest in judicial independence. By the last half of the nineteenth century and through the Progressive era, however, limited terms also entered that mix.

The emphasis shifted in the twentieth century to protections for judicial independence, with nonpartisan elections and merit retention systems introduced and hailed by the American Bar Association, the American Judicature Society and other prominent legal groups. However, during the last half of the twentieth century and into the twenty-first, the situation again changed. Thirty-seven states used some kind of elections (partisan, nonpartisan, or retention) to select or retain state supreme court judges. That persisted in spite of significant changes in the landscapes of judicial elections. The cost of judicial campaigns escalated dramatically, more incumbents were challenged and often successfully, and the purchase of television time for judicial campaigns became imperative for electoral success. At the same time, much of the country, but particularly the South, experienced partisan shifts, and interest groups became involved in judicial elections, often campaigning strenuously against the retention of judges. These changes, Tarr asserts, were in response to enhanced judicial activism that was fueled by state courts' use of the New Judicial Federalism to find or protect rights based on state

constitutions; courts took on the "hot button" issues. The case of *Republican Party of Minnesota v. White* in 2003 also influenced the character of judicial campaigns by freeing judicial candidates, under the guise of the First Amendment's freedom of speech, to discuss issues before the courts. Public opinion toward the courts also changed—what Tarr refers to as the triumph of legal realism—and poll after poll is cited to demonstrate that the American public perceives that judges rely on their own ideologies and personal policy preferences in making decisions. In short, judicial elections became more contested because of increasing judicial authority, the American parallel to Tate and Vallinder's 1995 volume entitled *The Global Expansion of Judicial Power.*

The crux of Tarr's argument lies in chapters 4 and 5, in which he undertakes a reasoned analysis of the values of judicial independence and judicial accountability. Although he even-handedly considers the positions espoused by both Bashers and Defenders, he ultimately comes down on the side of judicial accountability. In many ways Tarr recasts the two concepts by distilling them to two simple questions: from whom should judges be independent and to whom should they be accountable? His answer leads to democratic accountability and, hence, to judicial elections. Tarr reaches this conclusion by taking the standard arguments against judicial elections—lack of voter knowledge, lack of voter expertise, voter roll-off, etc.—and juxtaposing them to what we know about other political officeholders. Must we understand how legislation is passed to vote for legislators?

Finally, Tarr offers a potential solution, one that might indeed be viable in some contexts. He suggests that state supreme court judges should be elected, but limited, as are judges on many constitutional courts in Europe, to a single non-renewable term of somewhere between eight and twelve years. That might indeed blunt many of the alleged evils of judicial campaigns and elections. That proposal fails, however, to address the thousands of judges on trial and appellate courts; recruitment of qualified legal professionals, particularly to trial court judgeships, would likely be limited by such a change. For the overwhelming majority of litigants, who serves as judges on trial courts matters more than who serves on state supreme court benches. Putting aside that quibble, I know that I will not teach judicial selection the same way after having read this thoughtful and provocative book.

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Shayla C. Nunnally. *Trust in Black America: Race, Discrimination, and Politics*. New York: New York University Press. 2012. 288 pp. ($75.00 cloth, $26.00 paper).

In this incisive and very detailed study Shayla Nunnally examines the origins of African Americans' social and political distrust. Here Nunnally offers a theory of "racial (dis)trust" which explains the role that race and racial discrimination play in fostering the deep sense of distrust many African Americans have for American government and members of other racial groups in America.

Nunnally's explanation of racial distrust nicely details how structural and psychological factors relating to blacks' experiences with racial discrimination have interacted to create a deep sense of distrust among African Americans. Her theory, which she formally labels "discriminative racial-psychological processing," describes the process by which blacks both internalize beliefs about race and externalize these beliefs when they are activated under conditions of risk and uncertainty. She describes the internalization process as, among other things, the process of learning different norms and expectations associated with what it means to be black and the adoption of racial stereotypes about racial out-groups. She then explains how blacks externalize these beliefs in different contexts by trusting others differently based on race. Here, Nunnally contends that the expectations created by racial stereotypes and awareness of racial discrimination in certain settings (such as neighborhoods, shopping places, political places, etc.) condition the degree of skepticism and distrust that blacks bring to social interactions. In other words, blacks will be more skeptical of interactions with non-blacks when these interactions take place in a context known for racial discrimination or racial competition.

Nunnally tests her theory using data from the 2000 Social Capital Benchmark Survey (SCBS) and an original dataset called the 2007 National Politics and Socialization Survey (NPSS). Both these datasets contain a relatively large number of African American respondents and sufficient numbers of whites and Latinos for cross racial group comparisons. The 2000 SCBS is an impressive survey. It has a nationally representative sample of more than 3,000 respondents, 502 of whom are black, and a community sample covering of forty-one communities and 26,230 respondents. The 2007 NPSS, however, is a non-representative sample and this may raise concerns among some readers, particularly given the types of analyses conduced and the types of inferences drawn from these data. However, despite this apparent shortcoming, I think we can still learn a great deal from these data, particularly given the economic, gender and age diversity of the NPSS sample and the richness of the measures contained within the NPSS. The NPSS contains

measures that are not found in any other datasets, it has measures of the sources used in blacks' socialization, measures of the manner in which blacks use race in their trust evaluations, contextual influences on black racialized trust, and measures assessing the racial socialization processes of whites, Latinos and Asians. Overall, I would say that these data are nicely tailored to the question being answered and although the NPSS is somewhat limited the two datasets complement one another nicely.

In her analysis of these data, Nunnally generally finds support for her expectation that race and racial discrimination experiences normalize distrust among blacks. With regard to social trust she finds that those blacks who were socialized with a greater emphasis on messages about racial protectiveness reported that this experience negatively influenced their interactions with whites, Asians, and Latinos. Likewise, she finds that blacks generally distrust whites more than any other racial group. When it comes to political trust, the data show that not only do blacks generally seem to trust black Democrats more than white Democrats but that they also seem to trust black Republicans more than white Democrats. This later result is very interesting and perhaps the author could have explored this finding a little more, particularly given that blacks rarely seem to vote for black Republicans over white Democrats.

Lastly, Nunnally's analysis shows that blacks feel closer, politically, to Latinos than to other racial groups; however, age negatively conditions this relationship. Given that blacks seem to feel closer to Latinos, does this mean that there exists the potential for co-ethnic cooperation? Also, I would have liked the author to say a little more about how context matters in the political sphere. What specific behavioral expectations do blacks bring to the table during interracial political interactions? And what role if any did the election of Barack Obama play in shaping black political trust? These are just a few of the many interesting and important questions this work raises.

Overall this book is an impressive effort to explain a very complicated social process: the nature of black social and political distrust. Its theory is nuanced, the evidence presented is extensive, detailed and provides convincing support for the argument. This is no doubt a significant contribution to the study of black politics and should be of interest to anyone studying American and African American politics.

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