



Judges and Legislators--Toward Institutional Comity

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The American Political Science Review, Vol. 83, No. 4 (Dec., 1989), 1387-1388.

Stable URL:

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Book Reviews: American Politics

of political parties, which had been historically strongest at the local and state levels. But while a great deal of scholarly attention has been devoted to each of these phenomena for at least a generation now, no other book has pulled together the disparate literature of these fields as well as Lurch's and then related these processes to their political consequences. Under the old scheme, all politics was "fundamentally limited, local, personal." But politics now is "essentially unlimited, national . . . impersonal, and informed by theory, if not ideology" (p. 277).

Lurch's book is not without flaws. Some of the observations are dated, suggesting that parts of the book were written long before the publication date and not brought up to date later. Not surprisingly, he is not equally conversant with all of the topics, necessitating a rather uncritical reliance on the existing literature in some areas. And Lurch is a scholar, not a journalist, so that his writing, while lucid and straightforward, lacks the fire of Karp's arguments. (For the scholarly reader, that may be to the good.)

On the whole, however, Lurch's book is first-rate scholarship and a very important contribution. For those of us educated in the 1950s, writing and lecturing now about a subject that seems to bear little resemblance to what we once observed, it probably does more than any other one book to tell us how and why a revolution in the nature of U.S. politics slipped up on us.

MURRAY CLARK HAVENS

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Judges and Legislators—Toward Institutional Comity. Edited by Robert A. Katzmann. Washington: Brookings Institution, 1988. 200p. \$28.95 cloth, \$10.95 paper.

In November 1986, prominent members of the judiciary and Congress, staffers, attorneys, and scholars met at the Brookings Institution to begin a dialogue over relations between the branches of government. Acting on the premise that judges and legislators "lack appreciation of each others' processes and problems" (p. 1), the participants explored three aspects of interbranch relations (p. 4), with the hope of moving toward greater institutional

comity: (1) "the prudential and constitutional reasons for the absence of communication between the branches," (2) "the institutional arrangements through which each branch presents its views and assesses the problems of the other," (3) "the kinds of practical steps that might be taken to improve judicial-legislative relations." Papers presented on these topics and ensuing discussions form the heart of this intriguing volume, *Judges and Legislators: Toward Institutional Comity*.

That serious problems of communication exist between the branches of government is a fact to which all the contributors submit. Moreover, they agree on the basic causes of the gap. On one hand, constitutional theory and practice dictate that the judiciary and Congress "interact" on a range of important matters, including "the entire spectrum of oversight, appropriations and the budget, investigation, program legislation, rules of procedure, the confirmation process, pay and perquisites, and impeachment, judicial discipline, and ethics" (p. 66). But on the other, the Constitution and its underlying features, such as separation of powers, are less than clear on the appropriate ways in which they might "communicate." As Judge Frank M. Coffin explains, "The Judiciary and Congress not only do not communicate on their most basic concerns; they do not know how they may properly do so. . . . The condition is that of a chronic, debilitating fever" (p. 7). This "fever" can have truly grave consequences, in the eyes of editor Robert A. Katzmann, because it can lead to poor public policy—laws that unwittingly increase the workload of judges and budget cuts that force the federal judiciary to "suspend" civil jury trials, to name a few (p. 8).

To begin a move toward greater institutional comity, the editor constructed this volume around the three core issues discussed at the Brookings colloquium. The first two chapters explore prudential and constitutional sources of the problem. Coffin begins the series with a clever piece entitled "*The Federalist* Number 86: On Relations between the Judiciary and Congress"—what he is "quite sure" Madison, Jay, and Hamilton would write on the subject if he "but had a better ability to hear them." In short, Coffin suggests inquiries into the possibility of "soften[ing] the edges where the judiciary and Congress rub" (p. 28) to allow for greater participation and communication

between the branches, while maintaining the integrity of the separation of powers.

Coffin's suggestions seem particularly apt, given the conclusions reached by historian Maeva Marcus and Emily Field Van Tassel. Their examination of the relationship between judges and legislators between 1789 and 1800 questions conventional wisdom that the gap between Congress and the courts had its origins in the founding period. Using a range of primary sources, they report that traditional assumptions are only partially accurate. The Supreme Court as an institution did remain separate from Congress, but individual justices felt free to involve themselves in a range of "political matters" (p. 44). This institutional-individual distinction, they suggest, not only was a logical response—it maintained institutional integrity while permitting Congress to benefit from the considerable skills of those on the federal bench—but also may provide insight for today's legislators and judges.

The middle section of the volume is aimed at increasing legislators' and judges' knowledge of each other's institutional arrangements, capacity, processes, and problems. Representative Robert W. Kastenmeier of Wisconsin and Michael J. Remington, chief counsel of a subcommittee of the House Committee on the Judiciary, present "Legislators' Lexicon to the Federal Judiciary"—what every "conscientious" legislator should understand about the judicial branch. Political scientist Roger H. Davidson's selection is the converse, "What Judges Ought to Know about Congress." Both are excellent guides to their spheres of study. Indeed, although they were meant to provide, as Davidson writes, "critical tourists" surveys, they also could be used as introductory material to a range of courses on the governmental process.

The final contributions deal with the volume's overriding objective: to offer a concrete set of steps by which to bridge the gap between Congress and the courts. The first two describe how courts and legislatures interact in the states and in the British system. The final pieces summarize participant discussions of the core issues and present a structured agenda for further inquiries. In the final analysis, this agenda reflects the primary themes presented in the papers and articulated in ensuing discussions: a set of ground rules delineating appropriate lines of interinstitutional communi-

cation, ways in which Congress and the courts "can better understand" each other, and potential "mechanisms that can be devised" to achieve those objectives.

Katzmann has put together an excellent volume. All the contributions are highly readable and interesting. None stray too far from their stated purposes. Moreover, the book meets its objectives, examining problems existing between Congress and the courts within historical and institutional frameworks and offering fodder for further thought and "pragmatic" suggestions. I highly recommend it to all serious students of the governmental processes.

LEE EPSTEIN

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Welfare Theory and Social Policy: Reform or Revolution? By Phil Lee and Colin Raban. Newbury Park: Sage, 1988. 232p. \$39.95 cloth, \$16.50 paper.

Democracy and the Welfare State. Edited by Amy Gutmann. Princeton: Princeton University Press, 1988. 290p. \$32.50 cloth, \$12.95 paper.

Justifying the Welfare State: The New Right versus the Old Left. By David Harris. New York: Basil Blackwell, 1987. 181p. \$39.95.

Though each follows a different path, the two books by David Harris and by Phil Lee and Colin Raban and the third edited by Amy Gutmann all arrive at quite similar conclusions. They argue, first, that an extensive and elaborate welfare state is necessary in a good society. Second, they agree that the present philosophical defenses for the welfare state contain both contradictions and oversights that work against the development of a broad popular consensus justifying the further extension and expansion of the welfare state.

David Harris's *Justifying the Welfare State* begins with an excellent review of the New Right critique of the welfare state, which he follows up with a thoughtful presentation of a variety of theoretical justifications from the concept of rationality, the concept of rights, and citizenship theory. Harris develops an impressive argument against societies that rely heavily on free markets. In place of free markets he offers a Rawlsian type of analysis