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Review of: Constitutional Process: A Social Choice Analysis of Supreme Court Decision Making, by Maxwell L. Stearns.

Timothy M. Hagle
University of Iowa

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perspectives on the domestic, international, and economic policies of the administration. The contributors are all well-known scholars in presidential research and all have written significantly within their fields (i.e., domestic policy, international relations, electoral politics, etc.). Schier's choice of contributors is excellent and ensures substantial command of the subject matter within the chapters.

Schier approaches the Clinton presidency from the viewpoint of politics as he seeks to explain whether the Clinton presidency had an impact "on the future of American politics and public policy" (p. 15). Each of the essays in the volume offers a varying perspective, with no clear consensus reached. The volume is divided into four broad parts. The first part includes three essays on the institutional presidency and its impact on economic and foreign policy. Following the institutional presidency chapters are three essays on the mobilization of public opinion to support presidential positions. Three more chapters are devoted to electoral politics, and the final three chapters provide a rather broad look at "the culture war" in which Clinton engaged, as Schier calls it (p. 16).

The theme of politics is examined partly through the lens of Steven Skowronek's theme in *The Politics Presidents Make* (1993), in which the argument is made that presidents try to construct some "new political arrangements that can stand the test of legitimacy with other institutions" of government (pp. 20–21). Schier asks whether Clinton was able to construct new political relationships as a means to forge new institutional relationships. In other words, could Clinton construct new relationships with Congress, with state and local government, with the Democratic Party, and with other nations that were productive to his policy goals? The question is particularly relevant given the constraints of 12 years of Republican control of the White House (Reagan–Bush) in which smaller government, increased state programmatic control, and greater defense spending were the watchwords. Schier's answer is yes, Clinton was flexible and able to alter his governing style and his political relationships as the climate demanded. He was forced, in his first two years in office, to construct a political coalition that moved his domestic and economic programs forward, as defined by his 1992 campaign. During the remainder of his term, as the Republicans gained control of Congress, he was forced to develop completely new political alignments and new policy goals within the confines of such new alignments. Thus Schier neatly provides a broad array of substantive support for his central theme that Clinton was able to move policy forward in spite of a series of political roadblocks. These roadblocks were overcome as Clinton constructed variations on his policy positions to satisfy the shifting political coalitions he dealt with throughout his eight years in office.

I have two comments on the direction this book takes. First, not all of the 12 essays provide a clear and concise statement of Schier's theme. Some of the essays seem to be pulled from other venues and incorporated into the volume. It would be helpful if each essay established quite succinctly how Clinton's political relationships influenced the policies at hand. Second, the final section, on culture wars, seems somewhat out of character with the theme of the book. While racial issues and gender issues are an important part of the Clinton policy legacy, there is little within the three essays on these subjects in this volume to tie them to the other chapters. Perhaps they should have been incorporated into the domestic policy section—but even then there appears to be a lack of continuity within the thematic base.

In summary, I would commend this book for audiences on the presidency and American politics in general, with regard both to leadership and to institutional issues. Schier has provided a well-grounded analysis of this rare two-term presidency, concluding that Clinton regularly refocused his broad goals within a changing political climate. Schier also notes that Clinton never lost his core policy goals in spite of broad refocusing and thus meets Skowronek's test of a preemptive president. This volume should spark considerable discussion of Clinton's meeting the test of a preemptive president, as other volumes seek to agree or disagree with Schier's central theme.

Constitutional Process: A Social Choice Analysis of Supreme Court Decision Making. By Maxwell L. Stearns. Ann Arbor: The University of Michigan Press, 2000. 420p. $65.00.

Timothy M. Hagle, *University of Iowa*

A not uncommon complaint concerning social choice models is that they tend to assume away everything of interest, leaving a model with little relation to the real world. The usual response is that one must start with the basic elements of a problem before moving to more complex and inclusive models. Unfortunately, few social choice models applied to legal studies have achieved sufficient complexity to be of significant value. Maxwell Stearns recognizes this problem and, in *Constitutional Process*, systematically presents a comprehensive social choice model and applies it to a complex legal doctrine.

The process of introducing, explaining, and applying the model makes *Constitutional Process* an integrated book whose six main chapters form a definite progression that must be followed from beginning to end. The introductory chapter presents the problem: cases that are considered anomalies in terms of legal doctrine. After a detailed description of these cases, chapter 2 presents the basics of social choice theory. Stearns starts with fundamental notions of rationality, progresses to the voting paradox, Condorcet winners, and three fallacies of social choice, and ends with a presentation of Arrow's theorem. In Part II (chapters 3 and 4), Stearns first examines several individual cases in the context of social choice. The goal is to identify and examine the decisional rules used by the justices to cope with, for example, potential intransitivities and issue multidimensionality. He terms this "static constitutional process." Chapter 4 carries the analysis forward to the consideration of an entire legal doctrine, which he terms "dynamic constitutional process." Stearns uses the legal doctrine of standing to illustrate the social choice model he is developing. In Part III (chapters 5 and 6), he provides a fuller examination of standing and tests his social choice model using the standing cases of the Burger and Rehnquist Courts.

It is important to emphasize that Stearns does test his model. He approaches social choice from a scientific viewpoint. For social choice analysis to be of value to legal scholars as well as political scientists, it must explain more than current constitutional or political approaches to court decisions. By beginning with detailed descriptions of cases considered anomalies under prevailing constitutional doctrine, he lays the groundwork for the later test of his model. He then works to expand our overall understanding of the Supreme Court and its decision-making process by explaining these cases in a social choice context.

Even so, there are some difficulties with the analysis. Stearns first faces a dilemma in how much weight to give the opinions written by the justices. Legal scholars may give great weight to the opinions, while political scientists may be more likely to see them as rationalizations for the justices' votes. Stearns recognizes this problem and indicates that although the opinions should be taken seriously, they nevertheless cannot be taken at face value. Despite this recognition of

the potentially self-serving nature of opinions, an argument can be made that Stearns relies a bit too heavily on them. Moreover, some of the anomalous cases may be the result of a somewhat selective reading of the opinions.

For example, Stearns' analysis of *Kassel v. Consolidated Freightways*, 450 U.S. 662 (1981), suggests that an anomaly occurs when one considers the two issues in the case: whether to apply a rational basis or a balancing test and whether evidence not considered by the Iowa legislature when drafting the regulation can be admitted at trial. On an issue-by-issue basis, Stearns argues, the regulation should have been upheld. Five of the justices thought rational basis to be the appropriate test, and a different six that the additional evidence should be allowed. These are the two conditions required for the regulation to have been upheld, and separate majorities supported each, but the regulation was overturned because only three justices took the position satisfying both conditions. Arguably, the perceived anomaly was the result of Justice Brennan's opinion, which suggests that the rational basis test is appropriate, but new evidence should not be allowed. On closer examination, however, one might be inclined to discount this interpretation of Justice Brennan's opinion. Although Justice Brennan mentions rationality twice, each instance is in relation to the *purposes* of the legislature. At the same time, Justice Brennan twice mentions that the Court must balance the *burdens* imposed on commerce with local benefits. Thus, one could read Justice Brennan's opinion as applying the rational basis test at one stage and the balancing test at another. Moreover, Justice Brennan also indicates that a third question to be asked is whether the regulation at issue is protectionist. If so—and he finds that it is—then even a balance in favor of local safety will not save it. Thus, rather than a bidimensional analysis that produces an anomaly, perhaps there are three dimensions to the case.

Similar criticisms could be raised regarding the approach to the other cases selected as anomalies, but such concerns do not significantly detract from Stearns' overall argument. His systematic analysis argues that cycling in individual cases is avoided by outcome voting (as opposed to issue voting). Although this sometimes produces doctrinal anomalies, these are minimized through the use of stare decisis. Stare decisis, in turn, invites ideological litigant path manipulation, which is minimized through the use of doctrines such as standing. In applying a social choice model to Supreme Court decision making, Stearns provides an explanation of the doctrines adopted to cope with vote cycling and related problems at several stages in the process. Those who study judicial politics have long recognized that the justices act strategically. Stearns has taken this a step further by demonstrating that not only do the justices act strategically, but they do so in ways that both avoid vote cycling problems and preserve the legitimacy of the Supreme Court's decision making.

From the Puritans to the Projects: Public Housing and Public Neighbors. By Lawrence J. Vale. Cambridge, MA: Harvard University Press, 2000. 460p. $45.00.

R. Allen Hays, *University of Northern Lowa*

There is an unfortunate tendency for much public policy analysis to be ahistorical in its perspective. A program or policy is evaluated in terms of its success or failure in achieving its stated goals, and only the most immediate social, political, and economic factors are brought into the analysis to explain policy outcomes. In the case of public housing in the United States, an analysis of its failure to meet its stated goal of providing decent housing for the poor might lead us to blame (1) the federal government for poor design of the program, (2) local governments for poor implementation, or (3) the recipients themselves for engaging in antisocial behavior that undermined the intent of the program.

Lawrence Vale's brilliant analysis of the development of public housing in Boston clearly reveals how limited and inaccurate such conclusions would be. To be sure, all of these actors have contributed to the problems of public housing, but Vale's work shows how their roles were played out in a much broader and deeper historical context, the roots of which can be traced to the earliest European settlers in North America. He shows that the failure of public housing is rooted in cultural attitudes toward the poor that have made it extremely difficult to develop rational and humane programs to meet their needs.

The central dilemma in dealing with the poor is what sort of aid society is obligated to provide them and who among them is most deserving of such aid. The individualistic values that support capitalism tell us that each individual is responsible for his/her economic fate and that each of us should evaluate his or her personal worth in terms of economic success. However, Americans have been reluctant to leave the poor entirely to their own devices for three reasons. The first two are pragmatic: (1) It is obvious that many people become poor for reasons not in their control (i.e., sickness, layoffs) and (2) chronically deprived persons trying desperately to survive may threaten social stability. The third reason is a moral imperative to help the less fortunate that is rooted in the Judeo-Christian tradition.

Beginning with the Puritans who founded Boston, Vale traces the contradictions in public policy toward the poor that these conflicting values produced. Because he is dealing with housing, which necessarily involves the allocation of physical space, he focuses, in particular, on the spatial dimensions of the treatment of the poor. He argues that public housing, like the almshouses that preceded it, "encodes" society's conflicting attitudes in its distribution of physical space to the poor.

Vale tells us that in seventeenth- and eighteenth-century Boston, as elsewhere in America, the poor were divided into two groups. The "deserving" poor (for example widows) were considered legitimate members of the community and were given relief in their own homes ("outdoor relief," in the terminology of the times). The "undeserving" poor (for example, itinerant laborers or alcoholics) were isolated in an almshouse ("indoor relief"), where they would not contaminate the rest of society. As Boston expanded, the almshouse was pushed farther and farther toward the periphery of the community, since no residents wanted to compromise their own social status by living next to it. In the mid-nineteenth century, almshouses took on another responsibility, that of "reforming" the poor through work and discipline, in hopes of returning them to society as productive workers.

As another antecedent to public housing, Vale traces the development of environmental and architectural determinism in American values. From Thomas Jefferson's belief in the virtue of the yeoman farmer to the Homestead Act's creation of individual plots of land for settlers, Americans have tended to assume that *where* one lives shapes *how* one lives. This idea influenced the development of the residential rings that grew around American cities in the late nineteenth and early twentieth centuries. Single-family houses located on individual plots of land were viewed as encouraging positive family values. At the same time, however, living in such areas was also seen as a *reward* for families who already possessed the values these developments were said to encourage. People who deviated from these norms were considered unacceptable neighbors.

The private housing industry fought long and hard to keep the federal government out of the provision of housing, but