

## APSA Legislative Studies Section Newsletter

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### Book Notes

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***Limits & Loopholes: The Quest for Money, Free Speech, and Fair Elections***, Victoria A. Farrar-Myers & Diana Dwyre, CQ Press, 2008, ISBN 9780872893290, \$26.95, paper, 190 pages.

Campaign finance reform has been one of the most highly contentious issues in American politics over the last few decades. Proponents of reforms argue that the current finance system encourages corruption and discourages potentially viable candidates who lack fundraising capabilities from participating in the campaign process. Opponents of reforms argue that regulation of campaign finance violates citizens' First Amendment rights to free speech in preventing individuals from supporting the candidates they please as vigorously as they choose. With such disagreement, can reforms of the current campaign finance system occur? If so, how is policy crafted and implemented in such a contentious and controversial issue area? In *Limits and Loopholes: The Quest for Money, Free Speech, and Fair Elections*, Victoria Farrar-Myers and Diana Dwyre provide answers to these questions through an interesting study of the Bipartisan Campaign Reform Act's (BCRA) journey through the "policy labyrinth" of congressional approval, Supreme Court challenges, and eventual implementation by the Federal Election Commission (FEC) en route to the law bringing about substantive policy changes for campaign finance.

The authors begin with a discussion of Madison's argument in Federalist 10 that core values that come in conflict with each other must be balanced against each other so that the negative attributes of each value can be minimized and the positive attributes maximized (1-8). In order to ensure that this balance would be achieved on most policy issues, the founders set up the U.S. governmental system to prevent majorities who support one value from totally drowning out the concerns of minorities supporting another value. The arguments made in Federalist 10 become very important in understanding the policy history of the most recent attempt to reform the U.S. campaign finance system, the BCRA. As the authors deftly discuss, despite being supported by majorities of legislators in both chambers of Congress, attempts to approve the BCRA were largely unsuccessful in the 105th Congress due to the minority faction's use of strategies like the filibuster and the fact that the leadership in Congress was sympathetic to the minority faction's viewpoints on the issue (chapter 2). In fact, the BCRA was only finally approved after the policy environment in subsequent Congresses became more advantageous for proponents of reform due to increased visibility of the issue as a result of the Enron scandal and the presidential campaign of reform proponent John McCain and increased sympathy on the part of congressional leadership toward reform efforts (chapter 3). Even then, the compromises that reform proponents were forced to make with opponents of reform so diluted the BCRA that the final product ended up being only an incremental change in campaign finance policy that addressed only a portion of the campaign finance issues that it was designed to address (92).

After passage of the BCRA, proponents of the bill still were forced to expend energy and resources to fight back efforts from opponents to diminish the impact of the law. First of all, although the constitutionality of the main provisions of the BCRA were upheld, campaign finance reform advocates were forced to expend resources in order to defeat the constitutional challenges of the BCRA in the Supreme Court by opponents of the law (chapter 4). Furthermore, opponents of the BCRA were also able to influence the FEC, the main agency responsible for implementing the BCRA, to interpret the law in ways that would diminish its impact (chapter 5). Thus, proponents of the BCRA were forced to put pressure on the FEC by engaging in acts such as testifying in congressional hearings in order to get the FEC to implement the law as pro-reform advocates had intended (23).

Farrar-Myers and Dwyre deliver a very intriguing account of the BCRA that really serves as a lesson for how policy is crafted in any issue area that is highly contentious like campaign finance reform has clearly proven to be. As the authors effectively demonstrate, creating substantive policy change in policy areas like campaign finance requires policy entrepreneurs not only to craft enough support within Congress for a bill, but also to defend the bill from being severely changed at later stages of the policy process including policy implementation. Even when policy entrepreneurs are successful in bringing about policy change, as was the case for the BCRA, policy change may only be incremental due to the compromises that are made as legislation makes its way through the "policy labyrinth." For better or worse, this is how policy is crafted in our governmental system and this book is successful in providing a concrete example of our policy system at work. Those unfamiliar with the policy process and the principles on which it was founded would be well advised to seek out this book and read it with care.

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***Nuclear Waste Stalemate: Political and Scientific Controversies***, Robert Vandenbosch and Susanne E. Vandenbosch, University of Utah Press, 2007, ISBN 9780874809039, \$25.00, paper, 313 pages.

As oil supplies have become scarcer and the threat of climate change has become more pronounced in the minds of citizens, the quest to phase out the use of fossil fuels and look to alternative energy sources has also become more vigorous around the world recently. Among the options discussed to meet the energy needs currently met by fossil fuel production is increased production of nuclear energy. Although nuclear energy is a proven energy source that emits no greenhouse gases, significant issues remain concerning where to store the waste byproducts of producing nuclear energy. In fact, although nuclear energy has been utilized around the world for around thirty years, no country has yet developed a permanent storage facility for spent nuclear waste (xii). In *Nuclear Waste Stalemate: Political and Scientific Controversies*, Robert and Susanne Vandenbosch discuss some of the political and technical issues related to the storage of nuclear waste, detail the history of the policy issue in the United States, and conclude with a discussion of the status of nuclear waste policy in countries outside the U.S.

After a quick overview of the nuclear waste policy issue (chapter 1), Vandenbosch and Vandenbosch begin with an interesting scientific discussion of the advantages and disadvantages of storing nuclear waste in monitored above ground storage facilities vs. storing the waste permanently deep in the earth vs. reprocessing the spent waste to create more nuclear energy (chapter 2). The authors also discuss some of the advantages and disadvantages of storing nuclear waste in areas with different geological characteristics (i.e. storing the waste in a geological area surrounded by salt vs. storing the waste in a geological area surrounded by clay) (10-15).

Although nuclear waste has not begun to be stored in the area yet, plans have been made to store nuclear waste at Yucca Mountain in Nevada. Vandenbosch and Vandenbosch expertly guide the reader through the policy decisions that led to Yucca Mountain being named and approved as the permanent storage site. These policy decisions include the Nuclear Waste Policy Act of 1982, which named Yucca Mountain as one of the nine possible sites for a waste repository (chapter 4); the Nuclear Waste Policy Amendments Act of 1987, which directed the Department of Energy to consider only Yucca Mountain as a possible site for storing nuclear waste (chapter 5); the Energy Policy Act of 1992, which set the radiation standards for Yucca Mountain (chapter 8); the 2002 presidential approval of Yucca Mountain as the permanent repository site for nuclear waste (chapter 9); the attempts by Nevada to veto the presidential approval of Yucca Mountain, and the subsequent congressional override of the Nevada veto that firmly approved Yucca Mountain as the official storage site for nuclear waste in the U.S. (chapter 9). The authors then discuss some of the scientific issues involved with storing waste in (chapter 7), and transporting waste to (chapter 11), Yucca Mountain. Vandenbosch and Vandenbosch finally conclude with a discussion of the nuclear waste policies in the countries of France, which interestingly still does not have a permanent nuclear waste repository set up despite the fact that a large percentage of its electricity is generated by nuclear energy, Germany, the United Kingdom, Sweden, Finland, Japan, Russia, India, and China (chapter 12).

Vandenbosch and Vandenbosch are largely successful in providing an evenhanded detailed description of the nuclear waste policy issue in the U.S., and to a lesser extent, in other countries. Their work is particularly novel in combining the expertise of two scholars in two very different fields (chemistry and political science) to get a full perspective on both the scientific and political issues that comprise nuclear waste policy, which is particularly important in a technical policy area like nuclear waste policy. Future nuclear waste policy scholars can surely use this work as a jumping off point to attempt to further explain how the United States and its policymaking institutions, particularly Congress, deal with risky policy areas such as nuclear waste policy.

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**See *Government Grow: Education Politics from Johnson to Reagan*, Gareth Davies, University of Kansas Press, 2007, ISBN 9780700615322, \$39.95, cloth, 352 pages.**

Historians generally characterize federal politics in the United States since the 1960s as a continued conservative reaction against Great Society liberalism. While an extensive list of evidence from electoral and governmental changes since the 1960s could easily be tallied to document the general rightward shift, Gareth Davies effectively argues and demonstrates this is not the case regarding the issue of public education. Utilizing an array of in-depth case studies, Davies argues that a path dependent liberalism in education policy steadily led to increasing federal spending and involvement in elementary and secondary education. In general, Davies finds that conservatives have come to champion a level of federal responsibility in public education, that even if set forth by liberals, would have been considered “daring” in 1965. By tracing the history and development of U.S. elementary and secondary education policy from the Elementary and Secondary Education Act (ESEA) of 1965 to the No Child Left Behind Act (NCLB) of 2002, the author shows how the path dependence of U.S. political institutions transformed conservative opponents into conservative champions of “big government” in education.

*See Government Grow* proceeds in three general sections. This first, composed of chapters 1 through 4, examines how the initially controversial standard of federal involvement in public schooling became accepted and established. Evidence primarily points to the institutional inertia created by federal funding established by the initial ESEA, and the relationship between funding and enforcement of Title VI of the Civil Rights Act.

Meanwhile, Part II (chapters 5 through 8), focuses on the changes in American government that resulted from inertia created by the landmark legislation mentioned above. Many institutional changes accompanying the civil rights revolution enabled and legitimized a once unthinkable expansion of federal authority in education politics. A primary change discussed is the expansion of unelected actors into the policy-making arena. A variety of institutional changes allowed for the continued liberalization of education policy that began under Johnson to expand through the Nixon-Ford era.

Finally, Part III (chapters 9 and 10) explores how the institutional inertia proceeded somewhat unintentionally through the presidencies of Carter and Reagan, continuing the expansion of federal involvement in education. Although Carter, a “post new deal” Democrat, and Reagan, leader of the “Reagan Revolution,” both sought to improve education but not necessarily by deepening federal intrusions into public education. Their ultimate impact, however, continued the increasing liberalization of education policy by catapulting educational achievement to the top of the national political agenda. This continued liberalization set the table for a unified Republican government, countering traditional ideology, to pass the NCLB in 2002, the most liberal reach of federal authority into education to date, occurring partly as a result of Gingrich Republicans scrambling to avoid being labeled “anti-education” politicians. Meanwhile, the conservative reaction against Johnson’s Great Society continued in other policy areas, yet the inertia created by the ESEA and the Civil Rights Act facilitated increasing liberal education policy over the last half-century.

*See Government Grow* provides a well developed history of the of national education policy in the United States. By providing a political science perspective focusing on the path dependence of institutions, Davies presents a unique take on post Great Society politics in the United States. Like many contemporary works on American politics and public policy, this book highlights a growing theme that American politics may be best explained via an issue by issue approach, as general governmental trends, such as the counter attack on the Great Society, may seem general, yet beneath the surface the opposite trend is uncovered by looking at specific issues in greater detail. As an accessible but exhaustive study, this book is a must read for those seeking to understand how U.S. education policy reached the high level of funding and regulation we see today, or those with a general interest in American political history and what happens when policy issues become interdependent to stimulate a variety of unintended consequences for decades to come.

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***The Power of Money in Congressional Campaigns, 1880-2006***, David C. W. Parker, University of Oklahoma Press, 2008, ISBN 9780806139036, \$45.00, cloth, 296 pages.

In *The Power of Money in Congressional Campaigns*, David Parker provides a well developed and much needed theory of congressional campaign behavior. Attacking the current delineation between the “party-centered” campaigns of the nineteenth century and the “candidate-centered” campaigns of the twentieth century, Parker shows that existing theories of congressional campaigns are at best incomplete, and, for the most part, unnecessarily static and misleading labels of individual time periods. Parker unifies these existing conceptions with his “resource theory” of congressional campaigns. Resource theory is dynamic, time variant, and takes into account the variation of institutionalized rules governing campaigns to provide the most complete theory of elite level behavior in congressional campaigns to date. It not only explains but also predicts variation across time and space. Resource theory provides much needed answers to the questions of when and why parties dominate and control some campaigns, while candidates independently run their own show in others, during any time period.

Parker argues that campaigns are “always resource-centered.” Defining resources in both monetary and reputational terms, rational candidates pursue the appropriate mix of candidate-centered or party-centered behavior that, under campaign rules, allows for the accumulation of resources to compete in an election. Beginning with the second chapter, Parker’s argument and theory are well drawn out, illuminating the inability of party, candidate, and service centered models to explain the dynamic variation in campaign tactics that resource theory more fully captures. Chapters 3 and 4 begin the test of resource theory, utilizing qualitative and some quantitative evidence to demonstrate how institutional rules influence the strategies of candidates and parties, and the relationship between “political players” over time. Here Parker finds that “candidate-centered” behavior has more to do with state level partisan institutionalization and the adaptation of electoral rules than the growth of communication technology.

Chapters 5 and 6 examine the role of the Federal Elections Campaign Act in federalizing the campaign process and altering the incentives of parties and interest groups assisting candidates in resource accumulation, transforming candidate behavior. Parker provides quantitative evidence that money indeed influences party unity on floor votes, as well as nationalizing campaigns where candidates utilize party developed issue agendas in advertising. Finally, chapter 6 completes the campaign circle by incorporating the voter, finding that parties can assist candidates financially, enabling them to design and alter their public image. Utilizing a vast array of evidence, Parker’s empirical chapters succinctly and convincingly support this timely theory of congressional campaigns, before concluding with a look toward the future in terms of how rule changes from the Bipartisan Campaign Reform Act of 2002 may influence the strategies of parties, candidates, and interest groups in elections to come.

Overall, Parker’s *The Power of Money in Congressional Campaigns* is brilliant. Incorporating candidates, parties, interest groups, voters, and, finally, *institutions*, the “resource-theory” of congressional campaigns is the most complete theory of congressional campaign behavior in the political science tool box. With a little something for everyone, Parker develops and tests resource theory with evidence from historical studies, member biographies, journalist accounts, as well as statistical analysis of roll-calls, campaign advertising, and voter surveys. The resource centered framework provides simple and direct expectations, as well as nuanced explanation. This book should become required reading for congressional and party scholars, as well as graduate seminars.

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***Congress at War: The Politics of Conflict Since 1789***, Charles A. Stevenson, Potomac Books Inc., 2007, ISBN 9781597971812, \$10.00, paper, 103 pages.

***The President Shall Nominate: How Congress Trumps Executive Power***, Michael A. Sollenberger, University Press of Kansas, 2008, ISBN 9780700615766, \$39.95, cloth, 312 pages.

These two books address disparate topics but are sufficiently connected by theme to warrant discussing them together. Stevenson sets his study of the war powers of the Congress and the presidency explicitly in the controversy between the 'presidentialist' school (which later metastasizes into unitary executive theory) and 'constitutionalists.' The former argue that the president has inherent authority to use military force to protect vital national interests (preemptively if necessary); the later argue that the initiation of armed hostilities requires prior congressional authorization except in case of an invasion or insurrection. These disputes must, Stevenson believes, be set against the backdrop of historical experience. Both sides, he notes, appeal to historical precedent to buttress their cases and both acknowledge that precedents matter. What are the precedents?

In eighty concise pages Stevenson arrays precedents under five heads: declaring war; raising and supporting armies/rules governing conflict; strategy; oversight; and termination. For each he provides tables and narratives summarizing incidents of executive/legislative interaction on war issues. He demonstrates that the historical patterns are quite variable. As opposed to the contentions of competing academic theories, history is replete with examples in which presidents asserted themselves against congressional preferences, and in which presidents choose to accept congressional direction or accede to congressional preference. Congress can and has asserted itself in a variety of ways but, as Stevenson puts it, it has "not always been a pretty sight" (79). His conclusion is that Congress and the presidency have engaged in a process of mutual adjustment and accommodation that defies simplistic constitutional interpretations or prescriptions.

Sollenberger, addressing a different aspect of presidential-congressional relations, comes to a similar conclusion. Like Stevenson, his aim is to provide a narrative description of historical experience, in this case the 'pre-nomination' interactions between presidential administrations and members of Congress. Here again, unitary executive theory argues that Congress's constitutional role is limited to a consideration of nominees that the president has presented to the Congress, and not in the administration's deliberations about them. Yet historical experience reveals an ongoing process of collaboration between presidents, members of Congress, and congressional committees.

Whereas Stevenson organizes his discussion analytically, Sollenberger proceeds chronologically, starting with Washington and ending with George W. Bush. While judicial nominations occupy a major focus of his study, he also addresses subaltern executive branch appointments especially in the context of civil service reform. He gives less attention to diplomatic nominations. The chronological approach gives rise naturally to an attempt to identify key eras and transitions. The spoils era, for example, offers a different framework for nominations than the reform era, in which civil service limited patronage. With respect to judicial nominations, the most recent partisan era sets a different context than earlier and more bipartisan periods. Sollenberger also discusses ongoing norms such as senatorial courtesy and institutional practices such as the Senate blue slips.

Sollenberger's sources include presidential papers, Senate records (including in particular those of the Judiciary Committee), memoirs, secondary sources, and private correspondence. His effort has been prodigious, and it takes nothing away from it to observe that, for all the ground he covers, more remains to be done. For example, both the public administration and congressional literatures address Congress's relationship with the bureaucracy, to include influence over executive branch appointments. Some executive agencies have appeared to be wholly-owned subsidiaries of congressional committees or subcommittees. To canvas these relationships would require additional research, perhaps drawing upon the papers of key congressmen.

Sollenberger reserves his theoretical discussion for the concluding chapter, in which he launches a rebuttal of unitary executive arguments. Central to his argument is the historical finding that presidential nominations almost always involve prior interaction and consultation. Even when presidents have declined to heed the advice of some members of Congress, they have listened to others. Political party affiliation has often played a decisive role. Sollenberger would certainly agree with Stevenson, that the historical relationship between Congress and the presidency has been marked by a process of mutual accommodation within the framework of a Constitution that permits, encourages, and demands it.

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