



Review: [Untitled]

Reviewed Work(s):

Nazis in Skokie: Freedom, Community, and the First Amendment by Donald A. Downs

Civil Liberties and Nazis: The Skokie Free-Speech Controversy by James L. Gibson; Richard D. Bingham

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counts for a large amount of the variance of the latter variable. (Table 6.4 gives only the R^2 figures.) But if Figure 6.7 is to be believed, "increments in party integration are generally associated with decrements in party-legislative relations" (p. 124). Thus, the stronger R^2 results from an inverse, not a positive relationship. It may be that the multivariate analysis of Table 6.4 reverses the findings of Figure 6.7, but no figures to support such a conclusion are given.

The authors nevertheless develop useful measures of party strength and document the continuing vitality of parties as they attempt to adapt to a changing political environment. The examination of the roles of parties at both the state and local levels and the effect of organizational strength on other party activities such as elections and linkage is enlightening and, as far as I know, unique. Among other things, the authors find that parties have increased the scope of their activities in the last 20 years, that public policy has not damaged and may actually have helped party organizations, and that the strength of state party organizations makes a difference in gubernatorial elections.

In the final chapter, the authors discuss the revisions of our theories of parties that their results may infer. This discussion is brief but provocative, asserting that parties may actually create a "counter-realigning" or a "counter-dealigning" effect. I might have preferred a more extensive discussion of these issues, but that is asking a great deal. As it now stands, this is an important book. No theory of American political parties or party decline can afford to ignore the evidence presented here. And I think the authors' findings will force us to reevaluate our views about the future role of parties in the American political universe.

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Nazis in Skokie: Freedom, Community, and the First Amendment. By Donald A. Downs. (Notre Dame, Ind.: University of Notre Dame Press, 1985. Pp. xii + 227. \$20.00.)

Civil Liberties and Nazis: The Skokie Free-Speech Controversy. By James L. Gibson and Richard D. Bingham. (New York: Praeger Publishers, 1985. Pp. xi + 227. \$34.95.)

These two volumes are fundamentally different both in scholarly focus and in political stance. The Gibson-Bingham book analyzes the reactions of American Civil Liberties Union (ACLU) members and Common Cause members to the controversy

generated by the ACLU's representation of National Socialist Party of America (NSPA) leader Frank Collin in his 1977 effort to picket the village hall of Skokie, Illinois, a Chicago suburb whose population included hundreds of Jewish survivors of the German Nazi Holocaust. While Gibson and Bingham openly endorse the ACLU's stance and argue that Skokie produced only minimal defections from the ACLU's ranks, Donald Downs asserts that the threatened Nazi demonstration created "substantial harms, such as emotional trauma, the breakdown of civility, and the threat of massive violence" (p. 120) in Skokie, injuries that more than justify the complete removal of First Amendment protection from "targeted racial vilification" (p. 138) as practiced by Nazis.

Gibson and Bingham are interested less in the Skokie story than in how reactions by members of the American "elite" to the First Amendment controversy allow for improved analysis of the concept of political tolerance in public opinion research. They note that "Americans demonstrate a strong tendency toward intolerance of political non-conformists" (p. 14), but that much research has shown elites to be more tolerant of dissent than the mass public, and posit that ACLU and Common Cause members come from America's elite. Hence it is with some chagrin that Gibson and Bingham report their sample survey results that show that a substantial minority of ACLU members (though not ACLU *leaders*), and at times a majority of Common Cause members, adopt intolerant, anti-free speech positions. Acknowledging that their results "are not very supportive of the presumption that elites are consensually and strongly supportive of the rights of political opposition" (p. 68), Gibson and Bingham go on to suggest that "the general elite consensus on democratic values is illusory" and perhaps irrelevant, if the judiciary, and some members of the legal elite are sufficiently committed to protecting minority rights (p. 191).

In a different context, Gibson and Bingham also argue that political tolerance is not unidimensional, as much past research has assumed, but "a *syndrome* of connected beliefs" which is multi-dimensional and constrained (pp. 133-134). Similarly, Gibson and Bingham also hope to correct what they regard as a basic error in previous research that has focused on the "slippage" between higher levels of tolerance in abstract situations and lower levels for specific examples drawn from the same general principles but involving political dissenters. "The 'abstract-concrete' problem . . . has been misconstrued as a matter of logical consistency," they contend; instead, "opinion formation represents a process of adjudicating conflict among conflicting general attitudes far more than it represents the deductive

application of principles to specific cases" (p. 184).

Describing their respondents, Gibson and Bingham note that "most of those supporting the Skokie position searched, sometimes quite creatively, for a constitutional theory compatible with their preferred outcome. Most individuals can identify, or suggest, a rational-legal basis for their intolerant positions" (pp. 80-81). That description also can apply to Donald Downs's solid but ultimately flawed constitutional analysis of the Skokie controversy. Downs wants to revive and expand the *Chaplinsky v. New Hampshire* (1942) doctrine that "fighting words" are not protected speech under the First Amendment; as Downs reminds us, *Chaplinsky* "is consequentialist in nature: the First Amendment protects speech which contributes to 'the exposition of ideas' and 'social values'" (p. 84), and only that. Downs unsuccessfully tries to deny that he is advocating simply a utilitarian weighing or balancing of interests as a First Amendment standard; in introducing his major chapter he flat-footedly indicates that his purpose is "to show why the harms of the NSPA speech threat outweighed the benefits" (p. 122).

To Downs the anti-speech interests were constitutionally weightier in Skokie because of the "emotional trauma" that the Nazis' rhetoric, regalia, and desire to picket inflicted upon the village's Holocaust survivors. "Targeted racial vilification," which Downs defines as "derogatory reference to race directed at a predetermined target for the purpose of intimidation" (pp. 131-132), ought to be constitutionally unprotected because it is "inherently traumatic and assaultive" (p. 138). Such a formulation makes determination of the protesters' purpose or intent central to the constitutionality test, and Downs believes such a judgment can and should be made. Expression whose "primary purpose" is communication ought to be protected, while that which intends "the infliction of harm" ought not to be: "There is a difference between a speech act that appeals to reason and the conscience and one which is primarily assaultive" (pp. 127-128).

The wide-ranging vagueness of Downs's approach is magnified even further by his explanations of when expression is "traumatic" or "assaultive" in impact and hence unprotected. In Skokie the Nazis' potential appearance was traumatic because it would "inflict a sense of insecurity and incivility," leaving the Holocaust survivors "terrorized" by the "triggering of painful memories" (pp. 91, 123, 93). Likewise, Downs holds that "expression is assaultive when it seriously injures the dignity or self-esteem of a person" (p. 155).

Under content-oriented standards such as

those, judges who share Downs's sympathies for hate-group targets could hold much unpopular speech to be constitutionally unprotected. Downs would further maximize that danger by two additional antiprotection innovations. First, "targeted expression may be harmful even when it is not explicit," or even *verbal*, he asserts, and hence "targeted symbolic expression [e.g., a swastika or Nazi uniforms] should be abridgeable even though it is not explicitly villifying" (p. 158). Second, Downs contends that "assaultive expression should be abridgeable despite the fact that it may be 'mixed' with worthy or even truthful speech" (p. 164).

Downs indicates that he was deeply touched emotionally by his personal interviews with Holocaust survivors in Skokie, and that personal sympathy has seriously distorted his analytical rigor. Describing Nazi leader Collin, Downs explains that "an extremist is somebody whose political values, goals, and strategies are a function of his emotional needs rather than a function of his reason," as impliedly is the case with nonextremists (p. 23). Downs quotes his Skokie interviewees as terming the ACLU's position as "beyond belief" (p. 52), and the ACLU attorney as "a rotten person and an opportunist . . . scum" (p. 106). Downs acknowledges those comments are "unrealistic and extreme" (p. 109) and seeks to defend their vehemence ("she was emotional, and at times 'prejudiced' . . . but always with intelligence and control," p. 41), but he fails to realize how such frank quotations embarrassingly contradict his dismissively simpleminded definition of extremism. Although Downs's headstrong sympathy for the survivors' feelings and preferences may be understandable and personally appealing, it has resulted in a provocative but badly flawed piece of constitutional analysis.

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Conservatives in Court. By Lee Epstein. (Knoxville: University of Tennessee Press, 1985. Pp. xii + 204. \$17.95.)

The use of the courts by interest groups to achieve political ends is not a new topic for political science. The literature on this topic has been limited, however, and has tended to concentrate primarily upon the tactics and strategies of liberal interests such as the NAACP and ACLU. *Conservatives in Court* is a systemic appraisal of the participation of conservative interest groups in the judicial arena. In this connection, Epstein's