



Review: [Untitled]

Reviewed Work(s):

State Supreme Courts: Policymakers in the Federal System by Mary Cornelia Porter; G. Alan Tarr

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The New Class War. By Frances Fox Piven and Richard A. Cloward. (New York: Pantheon Books, 1982. Pp. xi + 163. \$4.95, paper.)

This book's subtitle, "Reagan's Attack on the Welfare State and Its Consequences," goes a long way toward explaining its objective and part of its thesis. It is the authors' view that President Reagan and his wealthy allies are attempting to dismantle most social welfare programs (the term welfare being used very broadly) currently protecting the poor, disadvantaged, and elderly. This attack, one of several Reagan administration tactics designed to enlarge business profits, has been launched because welfare programs strengthen the bargaining position of workers vis-à-vis their employers. Several times in the past, political/economic elites have succeeded in stripping the lower classes of hard won social protections in a cycle of lower- and upper-class victories and defeats. But this time the cycle may be broken. Piven and Cloward predict that the Reagan attack will not succeed because existing welfare programs are supported by well-organized interest groups that are far more sophisticated than their counterparts in the past.

Surprisingly little space in this volume is devoted to Reagan and the present. Instead, a large portion concentrates on class wars going back to capitalism's formative years and before. The authors see the pivot of this history as the laissez-faire separation of politics and economics. National and local level politics in the U.S. and England are described almost entirely in terms of economic elites popularizing this politics-economics dichotomy and establishing governmental institutions and encouraging styles or political conflict that reinforce this separation while confining electoral politics to trivial matters and hiding important political/economic decisions—what C. Wright Mills called command decisions—in obscure executive branch agencies or "independent" commissions. The myth of a politics-economics dichotomy was a powerful tool of elite domination, but beginning shortly after the Civil War it began to collide with the realities of an industrial economy, and by now its importance has declined severely.

Many readers will know what to expect from this volume by the authors' other publications and their appearances on network television. This is not social science but a tract, gratifying or maddening depending on one's ideological predilection and whether one likes pamphleteering. The chief characteristic of the authors' thinking can be summarized by a quip that former Alabama Governor Big Jim Folsom, a determined populist who would like this book's thesis, is fond of using: "Nothing just happens. Everything is

arranged." Here nearly everything, even some of history's most complex occurrences, is completely understood and fully explained in terms of warfare between rich and poor and nothing else. The rise of the middle class and other complexities are ignored.

What standards should a reviewer apply in evaluating a work of this sort? To write that its treatment of the welfare state and capitalism is markedly inferior to Michael Harrington's complex and balanced analysis in *The Twilight of Capitalism* (Simon & Schuster, 1977) or that its coverage of the relationship between business and government does not come near Charles E. Lindblom's tough-minded approach in *Politics and Markets* (Basic Books, 1977) is accurate, but it may not be fair. One assumes that it was not the authors' intention to appeal to the audiences that Harrington and Lindblom were addressing. And comparing Piven's and Cloward's never-ending certainty to Harrington's and Lindblom's modest and carefully limited conclusions may also be unfair for the same reason. Nevertheless, it is irritating to see them sweep aside more than two centuries of thought concerning property and polyarchy with the phrase "tyranny of property" (p. 108). And the confidence with which they explain the origins of "stagflation" is annoying, given the inability of economists (liberal or conservative) to come to grips with this complex phenomenon.

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State Supreme Courts: Policymakers in the Federal System. Edited by Mary Cornelia Porter and G. Alan Tarr. (Westport, Conn.: Greenwood Press, 1982. Pp. xxvii + 221. \$29.95.)

"Before the 1970s scholarly interest in state supreme court policymaking was almost nonexistent" coeditor Tarr states at the conclusion of this heterogeneous yet useful volume (p. 201). He and Porter believe such interest is still regrettably low and clearly hope to stimulate increased research by the publication of this book's eight essays, only two of which have appeared previously.

Porter and Tarr contend that "the interactions between state supreme courts and the U.S. Supreme Court are considerably more complex and less hierarchical than an examination of their legal relationships might suggest" and submit that greater scholarly awareness of that fact will lead to expanded study of states' highest courts (p. xx). Most of the essays in this volume buttress that contention, and some—such as Lawrence Baum

and Bradley C. Canon's excellent chapter on state supreme court activism in the law of torts—indicate persuasively that state courts may be a more fruitful subject for sophisticated inquiries into judicial policymaking than the traditional focus on the U.S. Supreme Court.

The coeditors attempt to give coherence to the volume by outlining in their introduction a comprehensive typology of judicial policymaking, with six categories labeled innovative, agenda-setting, complementary, elaborative, restrictive, and institutional (pp. xvi-xvii). Unfortunately, their exposition of this framework is extremely brief, and the typology is not employed in any of the subsequent essays. Indeed, the final selection, Daniel C. Kramer and Robert Riga's commendable chapter on the New York Court of Appeals, puts forward a competing and more detailed typology whose precision and definitional clarity greatly exceeds the editors' framework. Kramer and Riga's explication of how state courts of last resort can defy, evade, limit, qualify, comply with, and expand U.S. Supreme Court precedents represents the sort of analytical exactness that ought to be employed in all future studies of lower court compliance and noncompliance with higher court decisions.

Many of the contributors indicate that the last two decades have witnessed higher levels of state supreme court doctrinal creativity and policy activism than ever before. This is particularly the case, Porter and Tarr note, with state courts unwilling to endorse some of the more conservative civil liberties rulings of the Burger Court, yet fully prepared to exploit the opportunities offered by the conservative Court's "new judicial federalism." Some top state courts, Porter says, "are 'legislating' rather well and, thanks to the Burger Court, are getting better at it all the time" (p. 18). Stanley H. Friedelbaum's cogent essay on the increased use of independent state grounds gives strong support to that perspective and concludes that many state supreme courts possess "a newfound resiliency and a penchant for experimentation" (p. 46).

Although more than one-half the chapters in the volume make solid and valuable scholarly contributions to an area of study where scholarly activism is likely to register an increase of its own, this collection suffers to a limited extent from the problems common to such works. Any aspirations to comprehensive coverage of the topic are marred by the absence of any detailed study of the state tribunal that most scholars would label the nation's most creative and activist, the California Supreme Court. Similarly, the analytical coherence is marred not only by the unpursued issues concerning a policymaking typology, but also by other unresolved conflicts. Friedelbaum

observes that "the earlier propensity of state courts to follow the Federal Supreme Court's leadership almost without exception has given way to a healthy skepticism and a growing sense of independence" (p. 46), but coeditor Tarr stakes out a different position by contending that "state supreme courts rather consistently follow the lead of the Supreme Court on even the most controversial issues" (p. 156). Such problems aside, Porter and Tarr have put together a volume that will be an essential reference point for all scholars interested in state judicial policymaking.

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Federal Narcotics Enforcement: Reorganization and Reform. By Patricia Rachal. (Boston: Auburn House Publishing, 1982. Pp. xiii + 170. \$19.95.)

This volume defines reorganization as one of the president's most important management and political tools, through which he seeks to gain economy and efficiency, policy effectiveness, tactical political advantage, and public approval for taking positive action to whip an otherwise unmanageable bureaucracy into shape. Rachal's theme is that however attractive this tool may be—and it is one every president eagerly grasps—its use is fraught with inevitable dilemmas. Typically, it is predestined to failure.

This book is at once an introduction to reorganization theory and a recounting of the path and consequences of a particular reorganization effort. It focuses upon Reorganization Plan #2 of 1973, designed to consolidate federal law enforcement activities into a single "lead agency," the Drug Enforcement Administration, the successful battle to avoid congressional veto, and the less-than-successful implementation of the reform designed to give teeth to Nixon's "war on heroin." Cast in the mold of Richard Neustadt's *Presidential Power* (Wiley, 1980), Rachal's study is written as though it were intended to serve as a guide for future presidential reorganization task forces as well as for reorganization-bent presidents. Thus, it contains decision rules for presidents to follow to help avoid congressional veto of reorganization proposals and a fine final discussion of the tragic tradeoffs that usually ensure the practical failure of reorganization initiatives that formally succeed. It ends with a tentative formula for successful reorganization.

This slender volume is lucidly and tightly written. The work does not, however, well integrate the theoretical discussion with the case study. Given the primitive state of reorganization theory,