answer is equality of rights, equality under the law, and the formal distance that allows to each his or her independence and self-direction. Despite Tarnopolsky's concern with elements of this issue and her emphasis on democracy, however, she does not say enough about this liberal understanding. But on what other ground can we reasonably defend a community that both limits the effects of shame and allows us to be equally worthy of it? This and other questions notwithstanding, Tarnopolsky's admirably thoughtful, carefully argued, and energetically written book contains much on Plato, his *Gorgias,* and on shame that is well worth considering.

AMERICAN POLITICS

Law, Politics, and Perception: How Policy Preferences Influence Legal Reasoning. By Eileen Braman. Charlottesville: University of Virginia Press, 2009. 256p. $45.00.
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— Matthew E. K. Hall, *Saint Louis University*

For decades, lawyers and political scientists have been irreconcilably divided between "legal" models of judicial decision making, which take seriously the constraints of legal norms, principles, and precedents, and "attitudinal" models, which dismiss these concepts as rationalizations of ideological preferences. Eileen Braman's *Law, Politics, and Perception* attempts to bridge the gap between these literatures by employing a model of "motivated reasoning," in which decision makers "sincerely utilize and cite appropriate legal authority in reaching their decisions," and yet are unconsciously influenced by their policy preferences when choosing "determinative evidence, interpretations, and authority" (p. 30). Braman persuasively argues that this model enables "scholars to consider doctrinal accounts without having to take decision makers at their word *or* accuse them of being disingenuous" (p. 22). In this manner, policy preferences may influence decision making, but only within the constraints of legal authority (p. 31).

Braman suggests two mechanisms through which motivated reasoning might influence decision making: analogical perception and separable preferences. After demonstrating the plausibility and potential significance of these mechanisms in Supreme Court rulings, she tests her model in three experiments involving undergraduate and law students. This methodological choice is a critical component of her contribution to the field; in addition to her substantive thesis, she presents a convincing case for the use of laboratory experiments to advance the understanding of legal decision making.

The author's first experiment tests the role of analogical perception in motivated reasoning; specifically, she suggests that the "role of policy preferences should influence perceptions of similarity" in "a 'middle range' of cases where there is ambiguity in deciding whether to accept a precedent as authoritative" (p. 86). In other words, judges sincerely perceive precedent as more closely related to the case before them when doing so supports their policy preferences. To test this theory, she asked subjects to rate the similarity between a pending legal dispute and a prior judicial decision as described in a journalistic account. Subjects were randomly assigned to read accounts in which the facts in the prior case were designed to be objectively "close," "medium distance," or "far" from the facts in the legal dispute. Additionally, the outcome of the legal precedent was randomly assigned: half of the subjects were told that the plaintiff won the prior case, and half were told that the plaintiff lost the prior case. In a pure legal model, subjects would make similarity judgments based solely on the objective closeness of the prior decision; in a pure attitudinal model, subjects would make similarity judgments consistent with their policy preferences (as measured in a questionnaire before the experiment). Consistent with her expectations, Braman finds that the objective closeness tends to constrain decision making in the close and far cases, but policy preferences strongly influence similarity judgments in the medium distance cases (pp. 98–9).

In her second experiment, Braman conducts a similar test on both undergraduate and law students and finds similar results for law students. However, in the second experiment, the undergraduates' preferences influenced their decisions in far cases instead of medium distance cases (p. 109).

Braman's third experiment tests the mechanism of separable preferences, that is, "How decision makers view one legal issue may influence their reasoning with respect to another" (p. 113). Law students were asked to decide a standing issue that was part of a larger free-speech controversy. The participants were randomly assigned to read briefs in which the plaintiff was expressing pro-life or pro-choice views and the case occurred in a jurisdiction with or without direct controlling precedent (p. 118). She finds that participants tended to decide the standing issue consistently with their views on abortion (i.e., in favor of the pro-choice plaintiff if the participant was pro-choice, etc.), but only in the jurisdiction without direct controlling precedent (p. 127).

Law, Politics, and Perception advances important substantive and methodological arguments: Motivated reasoning presents a promising avenue for resolving the divide between the legal and attitudinal models, and laboratory experiments offer a uniquely advantageous route for exploring legal decision making. Unfortunately, many of

Braman's methodological choices sacrifice the advantages of the methodological approach, and those who wish to follow in her footsteps should be careful to avoid these pitfalls.

First, experiments should test clear hypotheses about the effects of randomly assigned treatments on subjects. Some of Braman's hypotheses test the effect of factors that are not randomly assigned to subjects; for example, the effect of free-speech preferences on the decision to grant standing in a free-speech case (p. 121) or the effect of deciding for the plaintiff on the type of facts and arguments cited to explain that decision (pp. 146–51). More strikingly, in her analysis of responses to open-ended questions in the third experiment, she abandons hypothesis testing altogether in favor of an "exploratory and inductive" approach. This technique might be valuable in a pilot study, but it does not solidly advance empirical claims, nor does it "demonstrate the utility of using experimental methods," as she claims. Later in the same section, she explains that a logit analysis is inappropriate to test the relationship between decisions and explanations for those decisions because it is unclear which way the causal arrow points: Do facts and legal arguments influence decisions, or do decisions influence the facts and legal arguments chosen as post hoc justifications? She is undoubtedly correct to forgo the logit analysis; however, this methodological problem only highlights the fact that she is not employing an experimental design because neither of these variables was randomly assigned.

Second, experimental studies should evaluate hypotheses on the basis of predetermined criteria. In her second experiment, Braman abandons her a priori predictions and alters her predetermined classification scheme because the law students' evaluations of "closeness" did not match her predictions, though the undergraduates' evaluations did. This type of midstream change raises serious concerns about the validity of experimental findings.

Finally, empirical conclusions in experimental studies should be based on the fit between the stated hypotheses and the data. Throughout the book, Braman engages in a distressing amount of post hoc theorizing. At various points, she suggests (though she never hypothesized) that supporters of gay rights may be more likely to see judicial decisions as a legitimate source of rights (p. 100), that undergraduates make finer distinctions between categories in cases with which they are more familiar (p. 110), that undergraduates and law students use a different "metric" of distance in evaluating case similarity (pp. 161–2), that pro-life participants resist controlling legal authority because of their perceived minority status in the legal community (pp. 139; 163), and that the effects of motivated perceptions are heightened among those with legal training (p. 162). This type of after-the-fact rationalization of unexpected findings may inform hypothesis building, but it does not offer the sound empirical conclusions usually expected from experimental designs.

Braman's substantive contribution to the study of judicial decision making is compelling: Motivated reasoning offers a realistic solution to the decades-old divide between legal and attitudinal models that is consistent with findings from both literatures. Her empirical argument is also persuasive: Experimental design provides a degree of methodological soundness unmatched by alternative methods. It is to be hoped that her study will inspire continued and careful pursuit of these approaches.

The Limits of Judicial Independence. By Tom S. Clark. New York: Cambridge University Press, 2010. 356p. $90.00 cloth, $29.99 paper.
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— Martin J. Sweet, *Northwestern University*

This work represents a tremendous accomplishment of careful and forceful political science. In it, Tom Clark manages to demonstrate 1) a significant limitation on the hegemonic attitudinal model of judicial decision making, 2) a theoretical and empirical connection between public opinion and Supreme Court rulings, and 3) that formal modeling, quantitative analysis, and historical new institutionalism can mutually reinforce and enhance the ability to answer research questions. This is an important book that will undoubtedly be widely read in graduate seminars on judicial process and by researchers studying the interaction between legislatures and courts.

The Limits of Judicial Independence falls within the areas of separation of powers and judicial independence. Most separation-of-powers models examine the strategic moves of political institutions in reaction to, and anticipation of, the actions of other actors and institutions. Judicial independence, which Clark defines as "a court's ability to make decisions unaffected by political pressure from outside the judiciary," is at sharp odds with this notion of strategic moves (p. 5). Yet there has been very little quantitative support for strategic behavior. The author identifies one of the missteps of the strategic model—which has enjoyed strong formal support—by correcting an assumption about judicial motivation: Rather than linking strategy solely to long-term policy outcomes, he suggests that the Court is also motivated by its own institutional integrity. The Court is not particularly focused on public approval of specific cases but instead on *diffuse support*—or judicial legitimacy. That is, it interprets congressional Court-curbing proposals (e.g., jurisdiction stripping, procedural hurdles, limitations on judicial review) as signaling the lack of public faith in the Court's legitimacy. Clark supports this thesis with an impressive data set, capturing the full range of Court-curbing proposals since Reconstruction.

As Clark points out, congressional Court-curbing proposals need not have a serious chance of enactment in