

laws) can make change possible even when the public's support is weak. The importance of institutional actors suggests two strategies for gay rights advocates. When public opinion and institutional actors are both supportive, a "liberal pluralist" strategy that relies heavily on the legislative process is recommended. When public opinion is unfavorable but key institutional stakeholders are friendly to policy change, then advocates should pursue a "liberal elitist" strategy, where the issue is kept purposefully at a low level of salience and the focus is on decision makers (such as judges), who are relatively insulated from constituency opinion.

The provocative implication of this explanation is that the support of institutional stakeholders—rather than favorable public opinion—is necessary and sufficient for advocates' success. Without the support of stakeholders, popular policies do not get enacted. But unpopular policies can become law when key stakeholders agree. By this reading, public opinion should be a poor predictor of whether gay rights advocates win or lose. But this assertion runs contrary to the fact that state-level public opinion on gay rights is a good predictor of whether gay advocates win victories at the state level. Thus, it may be that public opinion plays a role farther back in the chain of causality, as it may itself shape the constellation of stakeholders involved.

The role of public opinion may also help to explain the trajectory of public policy regarding one important issue that Mucciaroni purposefully (since it is not specifically about gay rights) omits from his book: the AIDS epidemic. He rightly notes that the federal government's initial response to the epidemic was slow. But the passage of the Ryan White CARE Act in 1990 and the coverage of those with HIV/AIDS by the Americans with Disabilities Act of 1991 must be counted as major victories for the gay rights movement that were unforeseen just years beforehand. Both occurred as the public became more sympathetic to those living with the disease, largely because of an evolving sense that the epidemic was affecting those beyond the gay community.

The book might have done better to consider more fully the role of party coalitions in the fight for gay rights in the United States. Gay rights victories rarely occur at any level of government unless the Democratic Party controls both the legislative and the executive branches. The fact that the national government was under unified Democratic control for only two years between 1981 and 2008 may explain a related piece of the puzzle: why gay advocates have been more successful in the states than on Capitol Hill.

The gay movement is arguably the most significant civil rights movement in contemporary American politics. With *Same Sex, Different Politics*, political science has finally taken a major step in documenting, synthesizing, and understanding advocates' efforts to win equality and full inclusion for lesbian and gay people.

Safeguarding Federalism: How States Protect Their Interests in National Policymaking. By John D. Nugent.

Norman: University of Oklahoma Press, 2009. 344p. \$45.00.

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— Robert A. Schapiro, *Emory University School of Law*

In recent years, federalism has been the focus of significant legal and policy debates. Freed from the taint of their role in oppressive racial practices, the states have emerged as vigorous and valued loci of political participation and influence. Both conservatives and progressives have championed state interests and decried federal overreaching, though the force of the pleas has tended to vary with the political valence of the national government.

Scholars and judges long have disputed the appropriate role of the courts in promoting a federal system. In an influential article, Herbert Wechsler argued that the structure of the national political institutions afforded states protection from federal incursions ("The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government," *Columbia Law Review* 54 [April 1954]: 543–60). Wechsler emphasized the election of senators and representatives from the states, as well as the states' control over legislative districts and the selection of electors to the Electoral College. Jesse Choper endorsed Wechsler's argument in *Judicial Review and the National Political Process* (1980), and in the *Garcia* case in 1985, a narrow majority of the United States Supreme Court embraced the Wechsler/Choper approach and generally disclaimed judicial efforts to restrain the federal government in the name of safeguarding state interests.

Doubters, however, remained numerous both on the bench and in the academy. Many scholars attacked the descriptive accuracy of the political safeguards argument. The direct popular election of senators and the extensive federal supervision of the state districting process through the Voting Rights Act of 1965 and the Equal Protection Clause of the Constitution seemed to undermine the states' capacity for self-defense. Rather than guarding state prerogatives, members of Congress seemed more concerned with serving national interest groups. Though the Supreme Court never explicitly repudiated *Garcia*, in a series of decisions in the 1990s the Court backed away from the political safeguards approach and began to strike down exercises of congressional power as transgressing principles of federalism.

In *Safeguarding Federalism*, John Nugent seeks to move the debate about the political safeguards of federalism beyond the bounds of a narrow consideration of the formal, constitutional mechanisms of power. In the tradition of Wechsler and Choper, Nugent agrees that the political system in the United States protects states in many ways. However, he argues that the most important safeguards of federalism lie in "informal and extraconstitutional" (p. 9)

mechanisms, rather than in particular provisions in the text of the Constitution. Through a series of case studies, the book offers a compelling account of what might be termed the bureaucratic safeguards of federalism. The author describes the practical ways through which state interests are vindicated in the development and implementation of public policy.

Nugent begins with an illuminating taxonomy of state interests. One of the book's great contributions is to analyze the different kinds of interests that states might have. Building on the literature of institutional analysis, he recognizes that states have interests that cannot be reduced simply to the personal motives of state officials. He focuses on states' "legalistic" interests in maintaining policy autonomy, free from preemptive federal rules; "fiscal" interests in increasing the flow of federal money into state coffers and limiting the accompanying federal conditions, including avoiding the dreaded unfunded mandate; and "administrative" interests in retaining flexibility in carrying out federal programs. Nugent further notes that the relevant interests may be "universal," held by all the states; "categorical," shared by states with similar demographic, geographical, or other characteristics; or "particularistic," unique to a single state.

The book analyzes these interests through case studies of various state efforts to protect their interests by influencing federal policy. The studies focus on different phases of policy development and different modalities of state intervention. In his discussion of the Uniform State Lawmaking process, Nugent explains how states can head off preemptive federal legislation through coordinated lawmaking, most notably in the Uniform Commercial Code. With a revealing and well-documented study of state lobbying in Washington, he demonstrates states' ability to participate in federal policymaking, in areas ranging from environmental law to welfare reform. Finally, he explores states' ability to protect their interests through the enforcement, or underenforcement, of federal directives, as in the implementation of the No Child Left Behind Act.

Nugent bases these studies on several sources, including his own interviews and content analyses. He interviewed several dozen state lobbyists and other officials involved in federal-state relations in Washington, and he conducted content analyses of policy positions of the National Governors' Association and the National Conference of State Legislatures, as well as governors' state-of-the-state addresses. The extensive interviews afford an especially rich account of the institutional structure of state lobbying efforts in Washington. Members of Congress may not systematically represent state interests in the manner described by Wechsler and Choper, but Nugent shows how states have compensated by hiring their own representatives.

This book fills a significant gap in the understanding of the operation of federalism. The proponents of the political safeguards theory are surely right that states have main-

tained significant autonomy, even as the power of the national government has expanded. At the same time, the formal structures of the national government seem to offer the states little protection against federal intrusions. What, then, are the mechanisms by which state interests are protected? Other scholars, such as Larry Kramer, ("Putting the Politics Back into the Political Safeguards of Federalism," *Columbia Law Review* 100 [January 2000]: 215–93), have sought to connect the political safeguards argument with a more sophisticated understanding of contemporary politics. Nugent substantially advances this project with his deep and nuanced account of the manifold opportunities that the political system offers for states to help themselves.

While the book offers a cogent analysis of political safeguards, some might question whether it is really federalism that is being protected. Critics of the Wechsler/Choper approach, including some current members of the U.S. Supreme Court, insist that federalism requires a clear distinction between state and national functions so as to advance political accountability and to promote local self-governance. Nugent acknowledges that his understanding of federalism, in which "most federal-state relationships are continually open for renegotiation and contestation" (p. 228), will not satisfy all proponents of federalism. The federalism values that courts promote may differ from the values that flow from political contestation. If one shares the late Chief Justice William Rehnquist's belief that the Constitution requires a distinction between the "truly national" and the "truly local" (*United States v. Lopez* [1995]), then political safeguards may not suffice.

Nugent, though, is not primarily interested in an argument about the meaning of the Constitution. Rather, the book makes a major contribution to the understanding of how federalism operates in practice today. The Supreme Court may identify a few outlier cases in which federal authority transgresses constitutional boundaries, but the great bulk of federalism consists in the daily interactions and negotiations of state and federal officials. Nugent offers an illuminating account of those relationships, highlighting the many ways in which states protect their own interests. He demonstrates that the political process does indeed safeguard federalism, not the formal constitutional federalism hypothesized by judges, but the actual federalism that is practiced by countless officials and that influences the lives of millions of Americans.

The Politics of Identity: Solidarity Building Among America's Working Poor. By Erin E. O'Brien. Albany: State University Press of New York, 2008. 282p. \$80.00 cloth, \$28.95 paper. doi:10.1017/S1537592709991186

— Joseph M. Schwartz, *Temple University*

Erin O'Brien's monograph uses the interdisciplinary methods of ethnography and in-depth interviewing to challenge