a faculty for "reason[ing] in recognizably game-theoretical terms" (p. 46).

Rakove attributes Madison's dramatic shift from a fervent nationalist in the 1780s to the leading advocate of strict constructionism in the House during the 1790s to a deeply empirical and pragmatic disposition that made him receptive to new evidence. The importance of history and lived experience for understanding the Founders (either collectively or as individuals) has been well recognized in scholarship for decades, but the suggestion that Madison was an early practitioner of game-theoretic reasoning is a surprising claim. Using Madison's reflections on the federal system to illustrate his point, Rakove argues that he examined the calculations that politicians made concerning the preferences and incentive structures facing interested parties to understand why it was so difficult to secure compliance with national laws aimed at the common good. Described in such broad and general terms, however, this label does little to set Madison apart from many other thinkers in the history of political thought (including Hobbes, Bernard Mandeville, and Hume) or even some of his contemporaries.

Far more compelling than Rakove's assertions about the originality of Madison's contributions to political thought (e.g., the claim that he discovered "the ease with which economic interests capture the legislative process" [p. 55]) is the way that he carefully charts shifts in Madison's views on various political and constitutional questions. The most significant shift concerns his assessment of the leading threat to liberty in the American system. Throughout the 1780s and during the first few years under the Constitution, Madison believed that the legislature's "impetuous vortex" constituted the most dangerous feature of a republican form of government. But after the fierce debate over Washington's power to issue a proclamation of neutrality in 1793, the perils of executive power began to loom larger in his mind.

Like many other recent books on Madison, *A Politician Thinking* presents this Founder as a deeply undemocratic thinker who was skeptical about the quality of public opinion, held a "bleakly conservative . . . view of the political intelligence of ordinary citizens" (p. 102), sought to limit popular participation in constitution making, and consistently favored the interests of his own privileged class against the aspirations of those below it. Indeed, in the years leading up to the Constitutional Convention, Madison had reached the sobering conclusion that the misbehavior of lawmakers on everything from the issuance of paper money to the pursuit of sectarian policies could be blamed on the vices of the people themselves. However, Rakove detects a significant shift in Madison's thinking about the role of public opinion after 1788. The constitutional ratification debates revealed that it was possible to shape—and thereby improve—public opinion. He also came around to Jefferson's way of thinking about the pedagogical benefits of a bill of rights as a result of their epistolary exchanges. As illustrated by his party press essays from the early 1790s, Madison ended up believing that (presumably under his tutelage) the people could be turned "into constitutional monitors" (p. 160).

Not all of Madison's views changed for the better. For example, his thinking about slavery—which receives very little attention in Rakove's book—reveals the limits of Madison's intellectual dexterity when his personal interests were directly implicated. Nevertheless, Rakove's discussion provides a much-needed reminder about the importance of a politician's mode of thinking. Despite their differences, both books suggest that what made Hamilton and Madison such effective politicians at particular points in their respective careers was their willingness to engage in evidence-based thinking free of the dogmatism that has become endemic to the party politics they helped create. In short, these books show that *how* a politician thinks matters just as much as *what* he or she thinks.

AMERICAN POLITICS

The Federal Judiciary: Strengths and Weaknesses. By Richard A. Posner. Cambridge, MA: Harvard University Press, 2017. 464p. $35.00 cloth.
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— Mariano-Florentino Cuéllar, *Stanford University*

Two important institutions converge in this thought-provoking tome. The first is the federal courts themselves—*The Federal Judiciary*'s subject and starring attraction, together comprising a storied institution that even Americans from enormously diverse backgrounds, and many people from around the world, at least vaguely recognize as important to rights and freedoms. The second is Richard Posner, a long-serving, recently retired federal judge and scholar so prolific that his collected works stacked on top of one another could almost certainly be seen from orbit with little or no aid. Few intellectually curious people interested in law and justice could easily resist the allure of a book like this one, promising to combine Judge Posner's eclectic intellect with his insider's perspective borne of 36 years on the federal appellate bench to deliver a richer—or at least a "Richard"—understanding of an institution as complex as the federal judiciary.

The result is often striking, replete with thought-provoking asides that evoke central design questions about the federal courts. These reflect the author's powerful but quirky intellect, and more than a few trenchant insights about an institution crucial to the American story. Like the federal courts themselves, his account serves a valuable purpose. Yet as is true of all too

many court decisions, the result—though admirable in its breadth and ethos of candor—sometimes raises at least as many questions as it resolves, and puts on the table more in the way of fact-specific observations and prescriptions than cross-cutting narratives or persuasive theoretical ideas about how institutions work in our world, and how the federal courts fit into that world.

Judge Posner's remarkable career is both valuable context for understanding this book, and—as he would likely admit—perhaps the major source of insights driving the book. The author is often described as a judicial pragmatist inclined to deploy versions of economics in legal analysis, and his intellectual interests and writings range from catastrophic risk to antitrust law, from government organization to legal philosophy, and from sexual behavior to judicial behavior. Known as much for clear and punchy reasoning as for prolific writing, his past work often (though not exclusively) reflects an "Occam's razor" approach to framing problems confronting judges and legal policymakers. He is understandably celebrated as a pioneer in the use of microeconomic concepts to understand legal problems, and over time has deployed and refined his economic approach to illuminate a scope of problems as broad as the subjects that must be addressed in federal court opinions. In doing so, he plays up the impact of scarcity and incentives. He deploys them to understanding not only civil but also criminal justice, and in earlier work easily generates provocative insights about international law simply by forcing the reader to consider some of the likely real-world drivers of officials' willingness to make and accept arguments about international law.

Given Posner's own illustrious career as precedent, it is no surprise that *The Federal Judiciary* offers the reader some fascinating insights about the federal courts. His mix of bluntness and intellectual range make for an often brisk and engaging text. They help him explain the limitations associated with certain jurisprudential ideals—such as the unreflective use of "originalism" in constitutional interpretation—sometimes espoused by federal judges or nominees. In short order, Posner rejects the idea that originalism is valuable because it is consistent with giving cases a common law "backdrop," that it implies any particularly consistent approach to actually resolving cases, that it is significantly different from a jurisprudential devotion to a "living Constitution," or that it enjoyed the support of the Framers (pp. 106–9).

As he has before, Posner laudably takes federal appellate courts to task for relying too much on legal jargon that can obscure the underlying issues. This is a problem that no doubt also bedevils some state courts and international tribunals—although he may overstate the case a bit when he claims that eloquence is "no longer a property of legal writing" (p. 224). He decries the veneration of old texts as intellectually shallow (p. 51), and is similarly unimpressed by the veneration of recent iconic justices like Antonin Scalia (because his work was beset, according to Posner, by "petulance" and "aggressive religiosity," and "lacked self-control," p. 97). These conclusions may provoke their share of spirited questions, of course, including basic ones about what is meant by phrases such as "a property of legal writing." Sometimes one is readily persuaded that there is enough common normative and analytical ground between the modal reader and the author to warrant leaving these questions aside. On other occasions, one can treat Posner's insights as those earned from decades of opinion writing and dealing with judicial colleagues, worthy of respect for that reason even if one can anticipate counterarguments or further nuances that make the situation less than fully clear-cut.

Yet these examples also highlight some of the broader issues that begin to emerge as one works through the book—questions worthy of its complex subject, but far from entirely resolved in this tome. Like architecture, for example, law often evolves to fit the anxieties of the time. While his perspective is occasionally recounted with some reference to changing social circumstances or some allusion to particular historical personages, by and large Posner has less to say than expected about how currents of time and public attitudes have shaped the federal courts. In general, the book does less than what one might have expected for someone of his intellectual ambition to advance our understanding of the federal courts' place in context—to the other federal branches, and to the state courts that preside over the vast majority of adjudication in the country. At times, the analysis tends to be somewhat self-referential to the author's previous work, without resolving some overarching questions about how cognitive constraints, institutional conflict, scarcity, and changing attitudes systematically affect one of the most iconic judicial systems in the world. Given his prolific facility with theory, one might expect more development in this regard—insights, for example, about the aspects of the political process contributing to confirmation gridlock that are more susceptible or less to change, and which limitations of the federal courts (such as, for him, the extent of reliance on law clerks) constitute the kind of trade-off we might tolerate or even celebrate, rather than a mere failure of discipline that keeps the work undertaken in judicial chambers quite far from the Pareto frontier.

If there is a concept that ties together most of these musings, it is probably an idealized—perhaps even romantic—aspiration for federal courts to be hubs of principled, pragmatic candor. Within them one ought to find, under this account, judges as learned as they are limber in their writing ability and capable of deploying their scarce resources of time and staff with keen insight. To be sure, Posner does understand that the judiciary depends on "institutions that buttress it," such as law schools, the president and Congress, and the bar (p. 45). And at one point he offers the reader ideas for how one might develop

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a somewhat stylized, bare-bones understanding of the relationship between the federal courts and the president. But the thrust of the book sounds more in the key of a specific statement of ideals than of a careful account of how public views, professional norms, and elite strategies affect federal courts. It is instead in the ideal of unusually broad-minded judicial polymaths working diligently—without distraction or constraint—that one might find justification for the author's interest in enhancing judges' administrative abilities, their willingness to discuss with candor the costs and consequences of their rulings, along with the ambiguities that force them to engage in acts of judgment (as in his discussion of statutory interpretation circa p. 243). It is faith in that ambitious ideal that presumably best explains Posner's (not obviously necessary or justified) acerbic disappointment at the perceived limitations of judicial colleagues (e.g., p. 401, n. 6), disdain for congressional interference in statutory interpretation (p. 243), and frustration at the lack of willingness of federal courts to experiment with live-streamed hearings.

Similarly, the extensive discussion of limitations in the work of immigration judges includes relatively meager coverage of the incentives that may create and sustain dysfunctional adjudication arrangements, and the not-so-easy second-order questions facing a principled judge trying to address such dysfunction. And critically, from Posner's romantic sense of a (nerdy yet) heroic federal judge, protected from outside pressure but not from external ideas, one can derive an understanding of why the book is far less concerned in any intellectually sustained way with all the institutional norms, hard-fought compromises, and delicate balances that sustain the judicial enterprise writ large: the balance between institutional interest and individual quirkiness that defines an insulated judiciary, and the delicate interplay of potentially countermajoritarian principle and public confidence that lies at the heart of much prudent judging. If commitment to that ideal is not entirely surprising in someone like the author—who mostly lives up to it—it yields a less than complete practical guide to the complexities of the federal courts and the values they are generally understood to serve.

Although Posner's contributions to our understanding of the federal courts has likely come more from his remarkable body of opinions and statements over the years than from anything in this tome, it makes an intriguing, opinionated guide to many dilemmas associated with the federal judiciary. Denizens of Silicon Valley with little knowledge of the federal courts or their procedures often extol the virtues of "design thinking," a practice made possible by eschewing the nit-picky concerns about which reforms are feasible, who might be for or against them, or (more generally) why seemingly inefficient outcomes might arise not just because of a lack of ideas or creativity but also because such outcomes are sometimes deeply rooted in social behavior and difficult to change. The book is engaging in part because its ethos is consistent with such design thinking, as reflected in (for example) his exaltation of judicial hearings as a corrective for administrative error.

Such intellectual moves are not without costs, however, and one is sometimes left wondering where the resulting insights sit relative to a coherent theory of how institutions behave or change, and how that theory applies to the federal judiciary. This alternative approach would tend to foreground such questions as how to take sufficient account of heterogeneous goals and constraints affecting judges and how those goals affect both their strategic choices and their habits of mind; the benefits and costs of having judges with the specific blend of "genuine cultural breadth" that Judge Posner seems to admire (p. 225) and how their presence might affect (for example) the length of their questions at oral argument; and the inevitable friction arising from interactions between federal courts, other institutions, and the public. That such questions are given only limited if any exploration in *The Federal Judiciary* leaves similar questions unresolved, making the book—at its best—more of an exercise in a kind of "design thinking" about a vital institution than an account of why that institution is given power and influence in the first place.

Congress and the Media: Beyond Institutional Power. By C. Danielle Vinson. New York: Oxford University Press, 2017. 256p. $105.00 cloth, $29.95 paper.
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— Ryan J. Vander Wielen, *Temple University*

Samuel Kernell's seminal book *Going Public* (1986) pushed scholars of American politics to think more seriously about how U.S. presidents utilize the media to further their legislative agendas. Although Congress has been subject to similar political tides and changes to the media environment over the past several decades, little scholarly attention has been given to examining how members of Congress similarly use the media to communicate with the public in the pursuit of their policy goals. C. Danielle Vinson does precisely that in her outstanding book, *Congress and the Media*. Drawing upon a wealth of data, Vinson argues that legislators use the media to gain leverage beyond their institutional powers.

The public strategy offers members of Congress a means of building public support for their legislative causes and public opposition to the legislation they wish to block. Vinson's core theoretical argument is that members turn to the media to overcome the institutional barriers that prevent them from having the influence they desire. She notes that both internal and external changes in Congress have set the stage for members to make more expansive use of the media in recent decades. A decline in the traditional communication apparatus, a corresponding