

*The Unwieldy American State: Administrative Politics Since the New Deal.* By Joanna L. Grisinger. New York: Cambridge University Press, 2012. 324 pp. \$88.00 cloth; \$31.99 paper.

Reviewed by Charles R. Epp, University of Kansas

The constitutional battles over creation of the New Deal gave way in the 1940s and 1950s, Joanna Grisinger argues in this evocative history, to increasingly narrow efforts at technical restructuring of the checks on the administrative state, and then to efforts to improve its efficiency. Put simply, opposition morphed into efforts at improvement.

Grisinger focuses on three major efforts at restructuring: the Administrative Procedure Act (APA) and the Legislative Reorganization Act (LRA), adopted within months of each other in 1946, and the Commission on Organization of the Executive Branch of Government (the Hoover Commission), begun the next year. The APA reformed procedures and increased judicial oversight; the LRA restructured congressional committee oversight; and the Hoover Commission tried to improve administrative efficiency and presidential control over agencies. Grisinger argues that these reforms mainly legitimated the growing administrative state: they gave the appearance of bringing it under the rule of law, congressional control, and executive direction. But they really accomplished little of these things.

The book is divided into five chapters, plus a brief introduction and conclusion. The first chapter shows how, by the late 1930s, opponents of the New Deal had given up their frontal assault on it and turned to complaints that its new agencies were acting unfairly. By this, they meant that agency procedures did not meet judicial standards of due process. The American Bar Association (ABA), for example, complained of agency hearings in which a single official would both hear (and decide) the case and represent the agency's position. Often, this official had managed the case from its inception, had consulted at length with other agency officials during the buildup to the hearing, and sometimes continued these consultations during the hearing. Conservative lawyers complained that this was hardly "due process." But the federal courts consistently accepted these sorts of procedures as constitutionally adequate. Justice Frankfurter declared that it would be inappropriate to turn administrative agencies into something like courts.

So the critics turned to Congress for relief, and the path of reform there is the subject of chapter two. Its focus is the APA of 1946. The ABA's preferred solution, the Walter-Logan Act,

would have thoroughly judicialized the administrative state. Roosevelt vetoed it and created a committee to draft an alternative. Out of this came the APA. The APA famously separated the functions of rulemaking, adjudication, and prosecution within agencies, thus addressing the ABA's sharpest complaints. But this was a simple one-size-fits-all structure for federal agencies, and it required only a relaxed form of administrative due process.

Chapter three focuses on the LRA, which restructured congressional committees so that they mirrored the big New Deal agencies and commissions, created the appropriations committees and increased professional staffing of all of these committees. The purpose of this shakeup was to improve congressional oversight, but the new committees carried out only scattershot hearings. Here, too, Grisinger argues, the upshot was a seemingly broad reform that left business as usual.

Chapter four describes how the Republicans, upon taking control of Congress in the 1946 elections, immediately established the Commission on Organization of the Executive Branch of Government, under the leadership of former President Hoover, to push conservative administrative reforms. By then the conservative critique had retreated from attack on the administrative state into something entirely different: a call for administrative efficiency and effectiveness. In 1948, the Democrats retook Congress, the Commission's mandate was revised, and it ultimately issued moderate reform recommendations. Out of this effort came the General Services Administration, the departments of Defense and Labor, and the reorganized State Department. This was not the conservative retrenchment that its advocates had hoped for.

In the 1950s, conservatives mounted one last assault on bureaucratic administration. This is the topic of chapter five. The Republican Congress, led by President Eisenhower, established a second Hoover Commission, and Hoover opened it by declaring that "this time we will not be deflected from our purpose." He was wrong. The Commission proposed some reforms of administrative procedure, including an attempt to revive the Walter–Logan Act's vision of court-like due process, but a majority of commissioners dissented from key proposals, federal agencies vehemently objected, and little came of it.

*The Unwieldy American State* is fascinating. It is richly based in original documents and brings a forgotten period to life. Grisinger compellingly argues that the measures adopted in the 1940s and 1950s consolidated and legitimated the New Deal state, and that this should be viewed as a key episode in state-building. If anything, I might have wanted to see more: more interpretation, more specu-

lation about the answers to the questions raised by the study. Why did frontal assault on the administrative state so quickly turn into efforts to check and oversee it? Why were efforts to check and oversee it so easily deflected toward symbolic but ineffective measures? Engagement with the growing political science literature on the state in American political development might have proved fruitful. Still, *The Unwieldy American State* is a major achievement and deserves to be widely read.

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*According to Our Hearts: Rhinelander v. Rhinelander and the Law of the Multiracial Family.* By Angela Onwuachi-Willig. New Haven: Yale University Press, 2013. 325 pp. \$38.00 cloth.

Reviewed by Bernie D. Jones, Suffolk University School of Law

Angela Onwuachi-Willig has written a compelling book about the significance that the *Rhinelander v. Rhinelander* annulment case has for modern day mixed-race families. It reads like two books in one, which if anything, allows it to bridge the stories of mixed-race families through time. Drawing upon evidence from the *Rhinelander* trial and other publicity regarding the case, she explains in part one, the pressures the parties were put through when they married across the color line. Decided almost 100 years ago, the case arose in a time when social boundaries between the black and white races were more fixed, and whites who married interracially faced far greater criticism and ostracism. Kip Rhineland, the son of a socially prominent and wealthy white New Rochelle family, claimed that his wife Alice, a working class mixed-race black woman, duped him into marrying her by identifying as white. He alleged that had he known her father was of black descent, he would have never married her. A tragedy all around, he lost the case; the jury did not believe he had no idea of his wife's race, and then he lost his marriage. Divorce was the only option available to them after the trial that tore them apart. Upon losing his marriage, he never married again, but lived as a recluse, cut off from his social class, only to die several years after the trial. Alice never married again, but she lived until 1989, only to use her married name on her tombstone: Alice J. Rhinelander.

The second part of the book assesses the issues raised in the *Rhineland* case, but asks them in the context of modern day mixed-