

understand the visual salience of race; he has also provided a grounded and deep critique of the common sense American understanding that “colorblindness” will lead to justice. Reading Obasogie, one becomes increasingly certain that a commitment to racial justice means that we *all*—sighted or not—must endeavor to *see* race.

References

- López, Ian Haney (2003) *Racism on Trial: The Chicano Fight for Justice*. Cambridge, MA: Harvard University Press.
- Flagg, Barbara J. (1993) “Was Blind, But Now I See: White Race Consciousness and the Requirements of Discriminatory Intent,” 91 *Michigan Law Review*, 958.

* * *

Civil Rights and the Making of the Modern American State. By Megan Ming Francis. New York: Cambridge University Press, 2014. 197 pp., \$27.99 paper.

Reviewed by Jeb Barnes, Department of Political Science, University of Southern California

Megan Ming Francis’ new book, *Civil Rights and the Making of the Modern American State*, tells the story of how the early anti-lynching crusade of the National Association for the Advancement of Colored People (NAACP) shaped the modern civil rights movement. The book is crisply written, well-documented, and powerfully argued. It should be read by anyone interested in the history of civil rights in the United States as well as American Political Development (APD), institutional choice, and social movements. The book represents a key contribution to a growing trend that seeks to understand the micro-foundations of the evolution of the American state and federal policy, which offers a decentered account of institutional development in American politics and underscores the role of groups in creating opportunities for change from the bottom-up.

At its core, Francis’ book is a fascinating political history that seeks to fill a gap in our understanding of the civil rights movement in the United States. Whereas most accounts begin with the

story of school desegregation, Francis starts with the founding of the NAACP and its fight against lynching. By pushing the timeline back, Francis brings to light the importance of the NAACP's victory in *Moore v. Dempsey* (1923), the historic Supreme Court decision that marked the first federal intervention into state criminal court proceedings. Francis shows how this initial victory influenced subsequent NAACP campaigns, including its securing of funding that led to the establishment of the Legal Defense Fund, which fueled the fight to desegregate schools. In the process, Francis ties the struggle over civil rights to campaigns against political violence and a profoundly unjust criminal justice system—issues that are still at the core of the ongoing fight for racial equality.

It would be a mistake, however, to think of Francis' book as a gap-filling exercise. The heart of the analysis grapples with long-standing debates over the role of structure and agency in politics and social change. Francis argues that the existing literature tends to focus narrowly on the structural aspects of the story, describing the shifting opportunity structure of American politics in the shadow of Cold War imperatives. Francis directly challenges this view, arguing that “[t]he problem with these top-down accounts of political change is that they privilege institutions over citizen agency and thus understate the role of civil society and different forms of civic activity” (p. 15). The critical point is that, even if we accept the importance of institutions and the ever-shifting opportunity structure in American politics—and Francis is careful to acknowledge these factors—these opportunities are not self-executing, actors must seize these opportunities and decide how to exploit them. Francis takes us into that process, revealing its contingency and historical context. What emerges is a reclaiming of agency in the process of change, even in a case where the institutional opportunities for change were highly constrained.

Stepping further back, Francis' work is part of a broader movement in APD literature that seeks to explore the grassroots foundations of the development of the state and federal policy. Other works along these lines include Charles Epp's *Making Rights Real* (2009), which details the creation of coalitions between activists and professionals that gave rise to new modes of governance at the local level, and Douglas Reed's *The Building of the Federal Schoolhouse* (2014), which identifies the ways in which local groups and urban politics has shaped (and been shaped by) decades of federal school policy. Anyone interested in APD must heed the call of these works to explore how group and individual level activity and local politics influence the state and federal policy development.

Finally, Francis' work offers insight into the dynamics of institutional choice and path dependence. It is easy to look back on the "classical phase" of the civil rights movement and assume that the turn to the courts was inevitable and seamless. After all, African Americans were disenfranchised in the South and Dixiecrats had a choke hold over key veto points in Congress. Yet there was nothing predetermined about the turn to the courts or how this process unfolded. At its inception, as Francis documents, NAACP believed that the key to change was shifting public opinion not creating new rights, but it was flexible enough to adapt when circumstances dictated its participation in the *Moore* case. This finding dovetails nicely with scholarship that emphasizes how advocacy groups, even ones with limited resources, are not stuck in the "flypaper" of litigation (to use Gerald Rosenberg's vivid imagery (1991)); instead, groups fight on multiple fronts in the American system of separated institutions sharing powers and, even when they commit to litigation, see litigation as only one of many potential resources for pursuing their agendas (Barnes and Burke 2015; McCann 1994).

With respect to path dependence, Francis' analysis is equally intriguing. At the outset of the book (pp. 7–8), Francis briefly cites Paul Pierson's work on path dependence (2004), which argues path dependence stems from "increasing returns." Typically, we observe *diminishing* returns: the more we do something, the less it is expected marginal benefits. In politics, however, this dynamic is often reversed. Francis' history shows that litigation is prone to increasing returns not only because winning lawsuits can set useful precedents and provide practical experience that improve the likelihood of winning future cases (see also Barnes 2010), but also because success in court provides leverage in raising money from foundations for further litigation, which neatly demonstrates a direct link from judicial victories to the external funding of cause lawyering.

One might argue that the analysis is a single case study and has all the limits of that design. In particular, one is left wondering about how the insights from this history might apply to other groups and social movements. Of course, one could counter that Francis' rigorous history has all the *benefits* of case study research, including its ability to trace processes, plot the sequence of events, consider interactions among factors, and generate hypotheses. Indeed, the fact that the book raises such thought-provoking questions about APD, institutional choice, path dependence and social movements underscores the quality and richness of its analysis.

In the end, no simple review can do justice to such a finely wrought account. Suffice it to say that Francis' book should find a

place alongside other important works on the civil rights movement that explore the NAACP's activism beyond *Brown v. Board* and the post-World War II era, such as Richard Kluger's classic account of the early formation of the NAACP's litigation strategies (Kluger 1975), Paul Frymer's analysis of the role of the NAACP in fighting union racism (Frymer 2008), and Mark Tushnet's (1987) tracing of the NAACP's desegregation litigation to the funding of the Garland Fund in 1925. While it is a cliché to insist that a book is a "must-read" in a review, Francis' book is a must-read, at least for anyone seriously interested in the history of civil rights and thinking through the role of structure and agency in social movements and the development of the American state and federal policy. Fortunately, her elegant prose makes it a pleasurable read as well.

References

- Barnes, Jeb (2010). *Dust-Up: Asbestos Litigation and the Failure of Commonsense Policy Reform*. Washington, DC: Georgetown University Press.
- Barnes, Jeb and Thomas F. Burke (2015). *How Policy Shapes Politics: Rights, Courts, Litigation and the Struggle over Injury Compensation*. New York: Oxford University Press.
- Epp, Charles R (2009). *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*. Chicago: University of Chicago Press.
- Frymer, Paul (2008). *Black and Blue: African Americans, the Labor Movement, and the Decline of Democratic Party*. Princeton, NJ: Princeton University Press.
- Kluger, Richard (1975). *Simple Justice: The History of Brown v. Board of Education and Black's America's Struggle for Equality*. New York: Vintage Books.
- McCann, Michael (1994). *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- Pierson, Paul (2004). *Politics in Time: History, Institutions, and Social Analysis*. Princeton, NJ: Princeton University Press.
- Reed, Douglas S. (2014). *Building the Federal Schoolhouse: Localism and the American Educational State*. New York: Oxford University Press.
- Rosenberg, Gerald (1991). *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press.
- Tushnet, Mark (1987). *The NAACP's Legal Strategy against Segregated Education, 1925–1950*. Chapel Hill, NC: University of North Carolina Press.

Case Cited

Moore v. Dempsey, 261 U.S. 86 (1923).

* * *