

Moreover, McGirr's uncomplicated portrait of the state before 1920 establishes a tidy baseline against which to paint Prohibition as a major moment of change, but it conceals much about the state, including how pre-1920 inheritances may have shaped the war on alcohol. Further attention, for example, to the early twentieth-century expansion of policing at the state and local levels might show Prohibition as an important part of a multifaceted effort to create a modern penal state. Indeed, it might have brought McGirr to soften her position that it was Prohibition—as opposed to a constellation of state-building initiatives before 1933—that facilitated the rise of the American state.

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Reuel Schiller, *Forging Rivals: Race, Class, Law, and the Collapse of Postwar Liberalism*. New York: Cambridge University Press, 2015. Pp. xv, 343. \$88.00 Hardcover (ISBN 978-1-107-01226-4); \$30.99 paper (ISBN) 978-1-107-62833-5).

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The Obama Administration has solidified the Democratic Party's identity as the party of civil rights. Whereas in the mid-twentieth century, the Democrats' electoral constituency was firmly rooted in the working class, and its political ideology in the promotion of economic equality, today the Party speaks most vociferously for a coalition of minority interests, extending from African Americans, to women, to immigrants, to the LGBT community. Reuel Schiller's *Forging Rivals* tells the history behind this transition, examining how the New Deal coalition foundered in a clash between the regimes of labor and civil rights law. The "legal architecture of postwar liberalism" (253) was torn between conflicting norms of individual rights and industrial democracy, and between related institutions of judicial and administrative adjudication. The civil rights laws contradicted and ultimately undermined the older labor law regime.

Schiller fleshes out this grand narrative with a fine-grained and engaging account of civil rights law and politics in San Francisco between the 1940s and the 1970s. Working from a wealth of archival material, Schiller shows how civil rights and labor interests moved from an uneasy alliance into intense conflict as African Americans won greater protections against discrimination, which threatened the collective bargaining rights of unions. He begins by tracing African Americans' efforts in the 1940s to gain entry into a local of the International Brotherhood of Boilermakers. This struggle culminated in the

California Supreme Court's 1944 decision, *James v. Marinship*, which barred racial discrimination by labor unions that had signed closed shop agreements. Here, the conflict was not merely a "black-and-white" struggle between African Americans and labor unions; rather the Congress of Industrial Organizations (CIO) allied with African American workers against the "Jim Crow unionism" (73) of their rivals, the American Federation of Labor (AFL). Schiller then describes the subsequent emergence of a "progressive alliance of civil rights groups and labor unions" (82) in the early 1950s, institutionalized by the San Francisco Commission on Equal Employment Opportunity. At this point, the alliance continued to weigh labor rights far more heavily than civil rights, as the Commission had no real power to enforce nondiscrimination principles against unions or employers.

This lopsided coalition between labor and black civil rights began to show serious signs of strain by the late 1950s. California's employers unsuccessfully sought to win the support of African American workers for a failed 1958 right-to-work proposition that would have undermined unionization in the state. In 1964, rank-and-file union voters broke with their leadership and supported a successful proposition that protected property owners' right to discriminate against buyers and renters on the basis of race.

Civil rights groups and organized labor came into direct conflict in 1966, as black hotel workers claiming discrimination circumvented the union's arbitration provisions to win an affirmative action agreement from their employer. By 1973, the AFL-CIO was submitting an amicus brief on behalf of an *employer* in a National Labor Relations Act case at the United States Supreme Court, brought by black workers who had been dismissed for protesting discrimination outside of their union's grievance procedures. The employer's victory in that case was largely chimerical: the employees brought a Title VII claim under the Civil Rights Act that resulted in a settlement. As employment discrimination law solidified into a staple of the federal docket, industrial democracy withered under the pressure of judicial review of labor union practices.

One of Schiller's great contributions in *Forging Rivals* is to situate his intimate portrait of local- and state-level conflicts between labor and civil rights law amidst key developments in intellectual, as well as institutional, history. Particularly illuminating is his discussion of the shift in political science and legal scholarship from interest-group pluralism to a court-centric emphasis on the protection of individual rights, which colored the ideological repertoire and constrained the institutional choices available to the civil rights movement.

Despite these strengths, the normative framework under which Schiller analyzes the historical developments somewhat obscures the complexity of civil rights law. Drawing on Paul Frymer's scholarship, Schiller argues that "labor law and fair employment practices law were built on antithetical legal rights;" namely, "democratic majoritarianism" versus the "rights of minorities and individuals" (5). The problem with this framing is twofold.

First, the Civil Rights Act of 1964 was enacted by a Congressional majority in the wake of movement mobilization, intensive national debate, and legislative deliberation. To call Title VII “anti-majoritarian” (8) discounts these democratic credentials, even though Schiller has convincingly shown that civil rights law undermined a certain kind of (racially exclusionary) workplace democracy.

Second, some Title VII rights that were particularly detrimental to union autonomy were not individual, but rather *systemic* in nature. For example, “pattern or practice” liability, canonically interpreted by the Supreme Court in *Teamsters v. United States*, 431 U.S. 324 (1977), struck not primarily at the violation of the rights of individual minority workers, but rather at broader practices of minority exclusion and segregation. Although such Title VII claims were not substantively majoritarian, nor do they sound in “individual rights” (252). Perhaps it is in this effort to analyze and regulate the labor market as a social system, rather than as a set of “free” individual choices, that civil rights and labor law might in the future find common purpose.

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Charles W. Romney, *Rights Delayed: The American State and the Defeat of Progressive Unions, 1935–1950*, New York: Oxford University Press, 2016. Pp. 288. \$74.00 Hardcover (ISBN 978-0190250294).  
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Charles Romney’s *Rights Delayed* examines the role of law in labor relations. Elements of Romney’s story are notably contemporary: workers fired illegally, governmental response so slow as to make the illegality of those firings immaterial, and, as a result, the denial to employees of their rights to organize and to associate over workplace concerns. *Rights Delayed* consists largely of a detailed analysis of the role of labor law in the West Coast canning industry from 1935 to 1950, and the competition among unions seeking to organize such workers. The study has larger ramifications, however, making clear that the problems in labor law that deny workers justice are quite old, and are a result of flaws woven into the New Deal system of labor law, rather than of later developments.

Romney returns repeatedly to the legal proceduralism of the National Labor Relations Board (NLRB). As the book explains, the NLRB adopted legal procedures designed to shelter the agency from courts and from congressional attacks. The resulting legal system cost so much time and money that it