

## American Politics

**A Caring Jurisprudence: Listening to Patients at the Supreme Court.** By Susan M. Behuniak. Lanham, MD: Rowman & Littlefield, 1999. 224p. \$55.00 cloth, \$17.95 paper.

Donna R. Kemp, *California State University, Chico*

This is a work of advocacy; the author is concerned with constructing and encouraging the use of a model for a caring jurisprudence. Behuniak uses her model to revisit the Supreme Court's decisions on abortion and assisted suicide. She develops her view by extending arguments of feminist justice and care.

*A Caring Jurisprudence* is an exceptional study of how the medical, legal, and personal versions of cases are heard in the courts, and it demonstrates the predominance of medical and legal views over the personal views of patients in the judicial process. The author fulfills her goal of exploring "how patients' knowledge and medical knowledge interact within the legal culture, and how this interaction affects legal decision making" (p. 2).

Behuniak begins by discussing these three types of knowledge—legal, medical, and patient—and the limitations of each. She points out that law and medicine share a common epistemology that develops knowledge through impartial and reasoned processes, and justices see such knowledge as expert and reliable and a justifiable basis for their decisions. Patient knowledge is considered emotional, involved, and particular, and legal norms tend to assume that justice requires less attention to be paid to such knowledge or that it be discarded. Behuniak argues that the exclusion of patients' knowledge handicaps the Court's deliberations and decision making.

Two detailed chapters use abortion and physician-assisted suicide cases to show how the Court frames the issues as predominantly medical matters and excludes most patients' knowledge. Behuniak demonstrates how these cases become primarily about physicians rather than patients. She then shows how feminist scholarship led her to develop a model of judicial decision making that integrates the ethics of care and the ethics of justice. Finally, Behuniak revisits the abortion and physician-assisted suicide cases, applies a caring jurisprudence, and reveals how it can broaden the knowledge considered. She brings forward extensive patient knowledge and uses this to reach prochoice and prophysician-assisted resolutions of the cases. Because her model is not result oriented, however, she stresses that the Court might not reach the same conclusions with the same knowledge.

Behuniak builds on the work of feminist scholars to explain why patients' knowledge receives so little weight before the Supreme Court. Using Carol Gilligan's (*In a Different Voice: Psychological Theory and Women's Development*, 1982) "different voice," which reintroduced the theory that women's moral reasoning is different from men's, Behuniak draws on Gilligan's comparison of the ethics of justice and care to construct a theory as to why the legal system does not usually accept subjective, involved, and particular knowledge. Justices use an ethic of justice with a "masculine" voice, that is, reasoned, impartial, and universal. The author also uses Gilligan's theory to suggest that because patients' knowledge is the "feminine" form of knowledge derived from the ethic of care, the court devalues it. This distinction between the two ethics is also supported by other feminist scholars (e.g., Marilyn Friedman, "Beyond Caring: The De-Moralization of Gender," in Virginia Held, ed., *Justice and Care: Essential*

*Readings in Feminist Ethics*, 1995; Alison M. Jaggar, *Feminist Politics and Human Nature*, 1983; Joan Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care*, 1993).

Building on two distinctive elements of feminist jurisprudence—law is not neutral, and theoretical challenges to mainstream law will eventually lead to practical change—Behuniak applies and develops feminist methods to frame a model for a caring jurisprudence. It has four principles: "(1) Begin with personal experiences and use these to question abstract knowledge; (2) challenge the validity of dichotomies; (3) analyze the politics that support an ethic of justice over an ethic of care, i.e., who and what is served by the law's focus on competing rights, universal rules, impartiality, and reasoning; and (4) explore the possibilities for change by shifting the axis of law away from justice and toward care in order to integrate them" (p. 119).

Behuniak does not argue for the superiority of either ethic. She supports an integrationist approach, whereby both ethics are applied by justices. She demonstrates that this model is practical by showing that the concurring opinions of Justice Stevens in *Washington v. Glucksberg* (1997) and *Vacco v. Quill* (1997) used patients' knowledge as well as legal and medical knowledge, even though he did not vote in the patients' favor.

This book not only is methodologically sound but also is well written and has a practical application. Behuniak's model is adaptable to many other types of cases involving patients and medicine, and it is as applicable to cases that involve mental health issues as it is to those that involve physical health issues. *A Caring Jurisprudence* should be read not only by academics but also by practitioners, including judges and justices of the Court.

**Elections to Open Seats in the U.S. House: Where the Action Is.** By Ronald Keith Gaddie and Charles S. Bullock III. Lanham, MD: Rowman & Littlefield, 2000. 256p. \$65.00 cloth, \$26.95 paper.

Stephen M. Nichols, *California State University, San Marcos*

Compared to the voluminous literature on the electoral advantages of congressional incumbents, little attention has been paid to races for open seats. These contests lack the monolith of incumbency and thus may differ substantially from those in which an incumbent's shadow looms large. In this valuable book, Gaddie and Bullock make a compelling case for the importance of a topic that has been largely overlooked. Given the high reelection rate of incumbents, the most promising avenue for a candidate seeking election to the House—and, more important, the greatest opportunity for affecting meaningful partisan and policy change in the institution as a whole—is through open seats.

This district-level study of open seat races between 1982 and 1998 sheds new light on important dimensions of these contests. It amends the conventional wisdom that such races are much more competitive than incumbent-dominated elections. Although open seat contests are generally closer than incumbent-challenger races, only about one-third of all open seat contests since 1982 were marginal victories (won with less than 55% of the vote). Gaddie and Bullock also note that many of the factors that constitute a strong challenge to an incumbent—prior political experience and ample campaign finances, in particular—likewise predict success in open seat contests. In addition, the absence of an incumbent allows for

greater effects of district and national partisan tides in such elections.

The analysis of the pivotal 1994 House elections is particularly good. In a departure from the past, Republican candidates for open seats ran substantially ahead of the normal GOP vote in most districts, especially in the South. This was so even when GOP candidates faced better funded and more experienced Democratic rivals. Gaddie and Bullock argue convincingly that the GOP's performance in open seat contests was a crucial component of the party's majority in Congress, helped make possible the Republican realignment in the South, and in turn produced the profound policy reverberations still felt today.

Gaddie and Bullock also explore patterns in financing campaigns for open seats. It is relatively easy for donors to determine recipients in incumbent races, but the choice is murkier without that cue. The authors find, interestingly, that past political experience has little bearing on the size of the campaign war chest, but the amount of money raised by an opponent is a significant predictor of one's own campaign resources. A very intriguing finding in this regard is the authors' inability to explain open seat funding in 1994: For other years, the goodness-of-fit of their models is quite respectable, but the model for 1994 accounts for almost no funding variation whatsoever. They attribute this to substantive changes in variables that had been strong predictors of fundraising levels for open-seat candidates in past years. For example, party spending on open seats increased in 1994 and was more evenly distributed across candidates for open seats. By not supporting specific races more heavily, the parties sent weaker signals to other donors as to whom to support; as a result, the level of party funding was not a significant determinant of fundraising by candidates for open seats that year.

Those who hope for greater gender balance in Congress can take heart from this analysis. Gaddie and Bullock note that the imbalance will most likely change through the same means as the partisan balance shifted, via open seats. Furthermore, they find that women with sufficient political experience and campaign financing fare just as well in open seat elections as comparably experienced and funded males. This is a noteworthy addition to the growing literature that documents the decline of barriers confronting women who seek high elective office.

The analysis is methodologically sound and, in places, highly sophisticated, yet the conclusions are not beyond the grasp of an educated lay person. The discussion of the PRE interpretation of the logit analyses, for example, is especially clear. Overall (see below for one caveat), the models seem well specified; as noted, in most instances the hypothesized relationships are statistically significant, and the models account for an impressive proportion of variation in the dependent variables.

The strength of the statistical models is best demonstrated in the final chapter, wherein Gaddie and Bullock venture beyond the safe ground of explaining past events and predict future outcomes. Writing in 1999, they estimated the vote in open seat races in the 2000 elections. They deserve credit for their bravery and their accuracy. In Table 7.6 (p. 182), the authors predict the GOP vote percentage in 25 expected open seat House contests. In checking how well they fared, I eliminated three contests—one in which the incumbent did not retire as anticipated, and two with circumstances (a three-way race in Missouri, a four-way battle in Rhode Island) the authors could not have foreseen. For the remaining 22 contests, their model of the GOP vote share performs

remarkably well: The average error is only about three percentage points. Gaddie and Bullock's predictions about the partisan outcome in these races are presented alongside those of political commentators Rowland Evans and Robert Novak. Gaddie-Bullock and Evans-Novak agreed on the outcome of thirteen of the contests; among the nine in which their predictions differed, Gaddie and Bullock were right about five, Evans and Novak about four. Score one for the political scientists over the pundits.

The book is not flawless. The authors point out that open seats are the means through which partisan change in Congress can be effected. But the House is only half the institution, and no consideration is given to whether the findings can be generalized to the U.S. Senate. Understandably, such difficulties as amassing a sufficient number of cases and treating states as homogeneous political jurisdictions would make extending the model to Senate contests tricky. Nonetheless, some speculation as to whether the authors' conclusions might hold in the other chamber seems warranted.

Also, a factor that some scholars have identified as an important determinant of open seat contests—media treatment of the candidates—is missing here. Paul Herrnson's (*Congressional Elections*, 1998) analysis of open House seats in 1992 found that candidates who received more favorable media coverage than their opponents accrued an advantage of nearly four percentage points. The Gaddie and Bullock models include factors that may lead to such an advantage in media treatment (a candidate's past experience, campaign war chest, and so on), but the authors might have addressed this difference between their models and those used in prior work.

*Of less substantive importance are the errors not normally found in a work from a reputable publisher (and responsibility for which lies more with the editors than with the authors).* For example, the maps depicting gerrymandering in Indiana in 1982 (pp. 26–7) are fuzzy, such that considerable effort is required to discern the substantive point discussed in the text. In the section on future predictions, the authors state: "At the time of this writing (winter 2000), not all open seats are known" (p. 178). By winter 2000, of course, not only were the seats known, but also the outcomes had been decided; surely, Gaddie and Bullock were writing in winter 1999. Finally, the presentation of both *R*-squared and adjusted *R*-squared in many (but not all) regression tables is curious. In most instances, the figures reported differ very little, and when they do, the text interpretation invariably relies on the more conservative adjusted goodness-of-fit measure. One wonders why the *R*-squared is presented at all.

Overall, this work is a genuine contribution to the literature on congressional elections. The book makes a powerful case for studying open seat races and lays the groundwork for future exploration in the field. It deserves a spot in the library of all students of Congress and elections.

**Urban Exodus: Why the Jews Left Boston and the Catholics Stayed.** By Gerald Gamm. Cambridge, MA: Harvard University Press, 1999. 384p. \$39.95 cloth, \$19.95 paper.

Robert Huckfeldt, *Indiana University*

Gerald Gamm seeks to explain the different rates at which Jews and Catholics left the Roxbury and Dorchester areas of Boston for nearby suburbs during the middle decades of the twentieth century. As Sam Bass Warner shows (*Streetcar*