

In their four books, the Blacks have taken us from understanding the minutia of the southern voter to a broad analysis of party control of American political institutions. When the books are read as a set, few scholars could compete with the breadth and depth of their analyses. *Divided America* is sure to withstand the tests of time in the same fashion as have *Politics and Society in the South* and *The Vital South*. Every student of electoral or institutional politics in the United States should read, study, and heed the analysis of Merle and Earl Black.

### **Decision Making in the U.S. Courts of Appeals.**

By Frank B. Cross. Stanford: Stanford University Press, 2007. 288p. \$22.95.

### **Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History.**

By Keith E. Whittington. Princeton: Princeton University Press, 2007. 320p. \$35.00.  
DOI: 10.1017/S1537592707072398

— Christine L. Nemacheck, *The College of William & Mary*

Much research aimed at explaining decision making on the courts has often been narrowly focused on either the law or judicial preferences as the primary or even sole factor in determining outcomes on our nation's courts. Frank Cross's and Keith Whittington's new analyses of the judiciary contribute to a growing body of literature that seeks to connect these two explanations, and to add an equally important third focus: the institutional arrangement of the separation of powers system. These efforts further illuminate our understanding of the judiciary and its decisions. Although the subject matter of these two books is quite different, essential to both is the authors' consideration of the courts as they shape and are shaped by the other institutions and institutional actors in our complex political system.

In his wonderfully written and insightful analysis of constitutional review and judicial supremacy in the United States, Keith Whittington takes the reader on a historical journey from the earliest years of the nation through the present day. Through his examination, Whittington provides ample evidence in support of his thesis that it is not so much the United States Supreme Court that has laid claim to judicial supremacy in constitutional interpretation as it is the elected branches of government and the executive, in particular, that have seen it in their own interest to assert that the Court is the ultimate authority on the Constitution. Throughout his analysis, Whittington explains how the Supreme Court's use of judicial review and the president's willingness to cede to the Supreme Court the power to have the final word on constitutional interpretation occur within the context of a particular "political time." Given the politics of that time, the president and/or the legislature might well benefit from an

assertion like Chief Justice John Marshall's that it is the Court's responsibility "to say what the law is."

Crucial to Whittington's analysis is his well-substantiated argument that the Court's role as the final arbiter of the Constitution was not inevitable. And though the Court has been understood to be the appropriate interpreter of the Constitution through much of our nation's history, judicial supremacy has not been constant over that time. In providing evidence to support his thesis, the author makes several important distinctions. The first is between judicial review and judicial supremacy. Although judicial review is an essential component of judicial supremacy, the mere exercise of judicial review does not necessarily imply a condition of judicial supremacy. Instead, the Court's opinion as to the Constitution's meaning might be accepted as one view on the document that could be weighed against the executive's interpretation, and perhaps that of the legislature as well. Given this understanding of judicial review as separate from judicial supremacy, Whittington utilizes Edward Corwin's juristic and departmentalist categorizations of judicial review. According to the juristic view, the special expertise of the courts is recognized as the authoritative voice on constitutional questions. However, departmentalists would not understand the courts to have any particular authority to interpret the Constitution and instead view the judiciary's interpretation as one of three possible perspectives on the question at hand. The degree to which the Court's interpretation is viewed as final is not, then, dependent only on the Court asserting its authority but also on the juristic or departmentalist leanings of the other branches.

After laying the conceptual foundations in the first two chapters, Whittington then sets about explaining why we might expect to see some presidents more or less reluctant to accept the judiciary's constitutional interpretation as authoritative. In doing so, he distinguishes between reconstructive executives who, upon taking office set out to remake the regime they have inherited and affiliated presidents who assume the basic goals and structure of their inherited framework. Although these two categories of executives have very different goals and we might reasonably expect reconstructive presidents to more often assert a departmentalist perspective, Whittington explains how under differing political circumstances it might behoove presidents from either category to defer to judicial authority. Affiliated presidents might assert the judiciary's supremacy in constitutional interpretation because it is in line with their own, as well as with the regime they inherited upon taking office. But the author explains that even reconstructive presidents might see a benefit in asserting judicial supremacy when they are faced with a legislature even more opposed to the new regime than is the judiciary. In the pages that round out *Political Foundations of Judicial Supremacy*, Whittington clearly conveys the theory from which these arguments are developed and supports them with convincing evidence.

In sum, Whittington's examination of judicial supremacy is excellent. The book provides a wonderfully written and informative account of the historical and political bases for the development of judicial review and is animated with examples and anecdotes that reinforce the arguments developed within each section and that enliven the prose. In addition to his comprehensive examination of the constitutional history leading to Chief Justice Marshall's assertion of judicial review, Whittington has also provided an excellent overview of the literature on the presidency and uses that literature to frame his discussion of presidential assertions of judicial supremacy for their own political benefit. In short, his analysis is a pleasure to read and an excellent contribution to our understanding of judicial supremacy within our separated political system.

Frank Cross takes us in a different direction in his interesting examination of *Decision Making in the U.S. Courts of Appeals*. Cross provides a comprehensive analysis of how appeals courts judges individually and as members of appellate panels make decisions in cases before them. He begins his analysis by discussing the different models of judicial decision making that have been developed in the judicial politics literature and in studying the United States Supreme Court in particular. Discussing the attributes of the legal and attitudinal models, Cross sets out the task of analyzing the degree to which appellate courts judges' decision making seems to be in line with either. Through his analysis, he finds evidence to support both models, but particularly stresses the importance of legal variables in decision making. Beyond the legal variables, he also finds individual judge ideology to be consistently important. And, not only did he find ideology to be prominent at the individual level but it also had important panel effects.

Cross's examination of appeals court decision making is expansive. Throughout the book he analyzes the roles of both law and ideology, and continues on to examine judicial background and litigant, panel, and procedural effects on decision making. His extensive discussion of the courts of appeals database and thorough explanations of his modeling decisions make the book particularly accessible to readers not familiar with the database or statistical modeling generally. Indeed, the primary weakness of the book is also its strength. Cross's somewhat basic modeling choices may limit our understanding of how particular variables interact with one another to affect appeals courts decisions in a more nuanced manner than is suggested in the text. However, the work does provide a wide-ranging and general assessment of decision making from which future research can develop.

By necessity, a book of such breadth cannot probe each topic to exhaustion and it is not Cross's goal to do so. As a result, the reader is left with perhaps as many questions as answers, but toward the author's stated goal of providing a jumping off point for future theoretical and empirical research, this is, of course, beneficial. And, as work on

Supreme Court decision making has illustrated (Lee Epstein and Jack Knight, *The Choices Justices Make*, 1998; Forrest Maltzman, James Spriggs, and Paul J. Wahlbeck, *Crafting Law on the Supreme Court: The Collegial Game*, 2000), as well as work examining dissensus on these same federal appeals courts (Virginia A. Hettinger, Stefanie A. Lindquist, and Wendy L. Martinek, *Judging on a Collegial Court: Influences on Federal Appellate Decision Making*, 2006), much could be gained in that future work by examining not only the final votes of these judges and/or panels but also the process through which the decisions emerge.

Central to the arguments in each of these fine books is that the courts operate within a separated political system. Both works advance our understanding of how that crucial institutional arrangement results in a conversation between the branches, whether in terms of a president's outright assertion that he is constrained to enforce the law as the Supreme Court defines it, or in terms of the potential for legislators' preferences to constrain decisions made on the courts of appeals. I highly recommend both books.

**The Impact of Women in Congress.** By Debra L. Dodson.

New York: Oxford University Press, 2006. 295p. \$95.00 cloth, \$29.95 paper.

DOI: 10.1017/S1537592707072404

— Jilda M. Aliotta, *University of Hartford*

This book provides an important contribution to the emerging literature on the impact of women legislators, particularly women in Congress. Following in the tradition of Sue Thomas (*How Women Legislate*, 1994), Cindy Simon Rosenthal (*Women Transforming Congress*, 2002), and Michelle Swers (*The Difference Women Make*, 2002), Debra Dodson explores the relationship between descriptive and substantive representation of women. Using a modified garbage can model (Michael Cohen, James G. March, and Johan P. Olson, "A Garbage Can Model of Organizational Choice," *Administrative Science Quarterly* 17 [1972]: 1–25) as her theoretical framework (p 32–33), Dodson argues that this relationship will be probabilistic rather than deterministic. Her study asks the question: What factors mediate the relationship between the presence of more women in Congress and enactment of policies supporting women's issues?

Dodson takes advantage of the "natural quasi-experiment" (p. 4) created by the transition from the 103d Congress following the election "year of the woman," 1992, to the 104th Congress following the election year of the "angry white man," 1994. As she points out, it is unusual to have two Congresses so radically different in leadership and ideological tenor in such close proximity. Thus, they constitute an ideal "laboratory" in which to investigate the impact of institutional and contextual factors on the relationship between descriptive and substantive representation (p. 85).