

law changed was by changes in the composition of the court.

Ohio voters shaped tort law through the electoral process, but the authors doubt that a substantial proportion of the voters cast their ballots in an effort to affect the direction of tort law. Examining Ohio supreme court elections since 1980, only the elections of 2000 and 2002 provided substantial information to voters about candidates' views on the direction of tort law in the state. When limited survey data was examined, respondents had low awareness of tort issues in these races. There was a fairly strong relationship between voters' party affiliations and their votes in supreme court races. There was some relationship between voters' ideology and education and their votes in supreme court races. As the authors point out: "To some extent, then, voters' general political attitudes and interests helped determine the outcomes of supreme court contests and thus the court's direction in tort policy. But that is not the same thing as intending to shape judicial policy on torts in particular ways (pp. 115–16).

The business community ultimately won the battle over tort law by mobilizing to reverse the pro-plaintiff trend that had developed. The business community used campaign spending favoring the pro-defendant candidates in tort law to create a pro-business majority on the court. Candidates supported by the business community generally had an advantage in spending over pro-plaintiff candidates. That spending advantage was especially true after 2002 when the pro-business majority on the court was established and strengthened.

Judicial reformers will likely conclude that this book offers powerful evidence that judicial elections fail to achieve their underlying goal of judicial accountability. After all, business groups mobilized to use the election of Ohio supreme court justices to achieve their tort reform goals—goals of which the electorate was mostly unaware. The authors, however, offer a more balanced perspective on their findings and are unwilling to stretch their analysis far enough to reach the reformers' conclusion. They recognize that supporters of judicial elections can use their findings to show that "[j]udges who contributed to major policy changes were not able to do so with impunity; they had to face voters in elections every six years, interest groups concerned about the court's direction were sometimes able to focus considerable attention on the court and individual judges, and occasionally incumbents lost their bids for reelection" (p. 130).

Of course, the debate over the value of judicial elections has existed for decades and will continue for decades to come. Whether one supports judicial elections or not is actually a normative rather than an empirical question. It is unreasonable to expect that *The Battle for the Court* will resolve the question of whether states should elect judges. What the book does do, in a carefully considered manner that is far different from the shrill

arguments made by numerous proponents and opponents of judicial elections, is to enhance our understanding of judicial elections, the parties involved in those elections, and how judicial elections have shaped tort law—the primary issue in the new era in judicial elections. In doing that, this book is an essential read for any student of state courts.

The Rights Turn in Conservative Christian Politics: How Abortion Transformed the Culture Wars. By Andrew R. Lewis. Cambridge: Cambridge University Press, 2017. 271p. \$99.99 cloth, \$29.99 paper.

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— Deborah R. McFarlane, *University of New Mexico*

This book addresses the role of rights in recent American politics, specifically the claims emanating from white, conservative Christians. Claiming that "the American rights culture has long been the domain of liberals" (p. 3), Andrew Lewis states that it is a "paradox that conservatives, particularly religious conservatives, have come to share the mantle of rights-based advocacy with liberals" (pp. 3–4). His major argument is that abortion politics catalyzed this shift by teaching evangelicals the value of rights-based arguments.

The Rights Turn in Conservative Christian Politics is organized into eight chapters. Chapter 1 introduces the argument, theoretical constructs, and methods. Chapter 2 details the history of evangelicals and pro-life politics since the 1970s. The next five chapters address substantive rights: free speech (Chap. 3), religious liberty (Chap. 4), national health care (Chap. 5), the death penalty (Chap. 6), and gay rights (Chap. 7). Chapter 8 concludes the book with an Epilogue.

Lewis employs multiple methods for the research in this book. Each of the substantive chapters includes a history of evangelical advocacy positions, with particular attention to whether the issue framing includes abortion. In order to explain the increasing importance of rights politics, the author presents both elite and mass evangelical public opinion over time (since the 1970s). The appendix contains cross-sectional statistical models of support for various rights positions and their relationship to abortion.

Several theoretical threads run throughout this book. Explaining that anti-abortion activists are a political minority and that "minority politics are often focused on rights and legal challenges" (p. 5), Lewis introduces a "learning, claiming, extension," or LCE, framework of rights politics. This process involves rights *learning* among evangelical advocacy leaders; rights *claiming* for pro-life and religious freedom positions; and rights *extension*, which "has yielded greater support for rights to others, even disfavored groups" (p. 6). The relationship between elite activism and mass public opinion is also central.

Additionally, the author makes a normative argument: The rights orientation among evangelicals should promote common ground in a pluralist democracy, “including deliberation and tolerance” (p. 9).

In Chapter 1, although Lewis asserts that American rights culture has been dominated by liberals, the terms *liberal* and *conservative* are not defined. The discussion of rights starts with the Civil Rights movement in the 1950s and 1960s, including voting rights and school desegregation. Other rights deemed “liberal” are equal pay for men and women, women’s access to birth control and abortion, “state-funded lawyers,” decriminalized gay sex, legalized gay marriage, and Muslims’ ability “to retain their beards in prison” (p. 3). The Epilogue states that “the religious freedom rights of organizations,” presumably conservative, were “bolstered” by the 2014 *Burwell v. Hobby Lobby* decision (p. 177). Given the rights focus, it is noteworthy that the conservative rights agenda that thwarted the organization of American labor for many decades is never mentioned (see James Morone, *The Democratic Wish*, 1998).

Abortion is the centerpiece here. The book’s observations about public opinion toward abortion, however, rely on outdated references and data. For example, the assertion, “While aggregate abortion attitudes have long fallen somewhere in the middle regarding abortion,” cites a 1992 book (reference #32, Chap. 1, p. 6). Similarly, the claim that “mass attitudes have become more polarized as of late,” uses a 2003 article with 2000 data, (reference #33, Chap. 1, p. 6). No reference is made to a 2014 survey indicating that 33% of evangelicals think that “abortion should be legal in all or most cases” (see Jeff Diamont and Becka A. Alper, “Though Still Conservative, Young Evangelicals Are More Liberal Than Their Elders on Some Issues,” FactTank, Pew Research Center, 2017). Lewis also confuses emergency contraception with medical (i.e., pharmacological) abortion (p. 8).

Also problematic or not sufficiently explained are the American demographics of religion. Chapter 1 argues that “rights have become more important as the non-religious increase” (p. 7). In fact, the demographics of religion are more nuanced than Lewis indicates. In terms of percentage of the American population, the nonreligious are slightly on the increase, relative to those who report being religious. Within those identified as religious, evangelicals have gained ground relative to mainline Protestants: “Evangelicals now constitute a clear majority of all Protestants in the U.S., with their share of the Protestant population having risen from 51% in 2007 to 55% in 2014” (see Gregory Smith, “The Changing Religious Composition of the U.S.,” in Alan Cooperman, ed., *America’s Changing Religious Landscape*, 2015, p. 25). Numerically, evangelicals have increased in recent years (p. 9), and so it may be misleading to simply argue their minority status.

Lewis demonstrates considerable skill as a narrator and storyteller, drawing from interviews, surveys, and primary church (e.g., Southern Baptist) sources. Many of the vignettes here are interesting and not well known. For example, Chapter 2 explains that when *Roe v. Wade* was decided, evangelicals were not uniformly anti-abortion. Evangelical clergy first joined with pro-life Catholic advocacy groups before rank-and-file adherents changed their positions (p. 21). Chapter 3 addresses free speech, beginning with an account of the 2015 *Charlie Hebdo* massacre and the puzzle of why most American evangelical leaders supported the paper’s right to print what they considered offensive content (p. 31). The commitment of anti-abortion evangelicals to free speech also translated to opposing an Ohio law that prohibits false campaign ads (p. 51).

The theoretical contribution of the book is less clear than the narrative, despite the numerous descriptive charts and graphs presented in the chapters, along with statistical models in the appendix (inconvenient for readers who want to see the analysis). The LCE framework provides an organizing device, but not theoretical drivers. Early in the book, the author claims that the politics of abortion is a classic example of the theory of issue evolution and conflict expansion (p. 22). However, he never explains this theory or hypothesizes about his expectations, nor does he discuss how substantive cases were selected.

There are also methodological shortcomings. It is unclear why pooled cross-sectional statistical models, grouping multiple years of observations, were used instead of time series analysis. Moreover, the interaction terms, central to the argument about the effect of abortion on other issues, are misinterpreted. Several of the chapters use correlation analysis, but no tests of significance are reported, and so meaningful differences are impossible to ascertain.

Overall, *The Rights Turn* explains how Christian evangelicals have used abortion as a wedge issue to develop successful political strategies toward other issues. This approach has been largely top-down, from the leadership to rank-and-file members. Certainly, the public opinion polls show that over time, a greater proportion of evangelicals have become more supportive of free speech and gay marriage, but one cannot ascertain how much of these shifts can be attributed to secular trends in American society. Given the aforementioned methodological problems, it is not possible to quantify the contribution of pro-life politics to these changes, although Lewis is convincing in arguing their ubiquity.

The book ends with “the big picture” (p. 173): “As evangelicals have come to consider, create, and claim their own rights, they have learned to value other people’s rights to a greater degree” (p. 174). At the same time, they will continue “to oppose sexual license and abortion” (p. 174).

Lewis concludes by stating that “the politics of abortion may be responsible for the future detente in the culture wars of yesteryear” (p. 175). This conclusion is not juxtaposed with the irony that given current age-specific abortion rates, one out of every four American women will have an abortion by the time she reaches menopause (Rachel Jones and Jenna Jerman, “Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014,” *American Journal of Public Health* 107(12), 2018).

Beyond Marriage: Continuing Battles for LGBT Rights.

By Susan Gluck Mezey. Lanham, MD: Rowman & Littlefield, 2017. 320p. \$80.00 cloth, \$35.00 paper.

America’s War on Same-Sex Couples and Their Families: And How the Courts Rescued Them.

By Daniel R. Pinello. New York: Cambridge University Press, 2017. 330p. \$99.99 cloth, \$32.99 paper.

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— Clyde Wilcox, *Georgetown University*

These two fine books tell different stories of the long and ongoing struggle for LGBT equality. Daniel Pinello focuses on the passage of state “Super DOMAs”—strong constitutional amendments banning not only same-sex marriage but also a variety of other legal arrangements for same-sex couples. Susan Gluck Mezey focuses on a series of separate struggles—for marriage equality, employment equality, and transgender rights, and against new religious freedom statutes that permit continued discrimination. Both books focus primarily, but not exclusively, on judicial politics.

I recently had a student ask me why states bothered to enact constitutional amendments such as Super DOMAs when they already had legislative bans in place barring same sex marriage. She then asked why the LGBT community and their allies had fought so hard against these amendments. Pinello answers these questions, and although the era of Super DOMAs was brief, his book makes clear why it was such a critical time for sexual minorities.

In *America’s War on Same-Sex Couples and Their Families*, Pinello proclaims that Congress declared war against LGBT couples with the passage in 1996 of the Defense of Marriage Act (DOMA), which required that the federal government only recognize marriages between one man and one woman, and permitted the states to refuse to recognize any same-sex marriage performed legally in another country or state. Some 30 states reinforced this declaration with amendments to their state constitutions barring same-sex marriage. In 20 of those states, the amendment went much further, barring civil unions, domestic partnerships, or other legal arrangements

that would provide same-sex couples all or some of the rights of married heterosexual couples.

Pinello weaves together three themes. First, he examines the development and enactment of different state Super DOMAs, including interviews with activists on both sides of the battles. This is a story of federalism and of state constitutional law, and it is complicated because the language of these amendments differed. Moreover, state governments (and especially state courts) interpreted these amendments differently, and this had a profound impact in some states on their practical effects. As Pinello shows, rulings by state courts reflected the composition and culture of those courts, as well as various legal precedents and legislative history. He walks us systematically through these different DOMAs in language and in implementation. His accounts of Ohio, Michigan, and Wisconsin show that the story of Super DOMAs is more complicated than it might initially seem.

Second, Pinello tells the story of same-sex couples who lived in states where Super-DOMAs were enacted. These are not merely a handful of quotations to provide color; rather, there are more than 100 pages of quotations that make individuals in each state come alive. He conducted more than 200 interviews, including 175 with same-sex couples with a standard interview protocol. Interviews were in the largest city in each of several states, and they provide a powerful mosaic of individual experiences after the adoption of DOMAs. Pinello does not pretend that these interviews are in any way a random sample of same sex-couples in each state, but the interviews reveal a variety of impacts and reactions that show that the story of how these super DOMAs affected individuals is not a simple one.

These interviews disclose the financial, legal, and emotional strain on couples living in states that voted to deny them marriage equality. Some of the most moving interviews deal with the emotional distress caused by the votes of citizens in their states, by children asking for explanations, and by couples who seek to end their relationships in states where they were not permitted to divorce and where one partner had no legally recognized rights. Pinello describes a woman who was gradually denied access to her daughter because she had no legal right to access, and another biological mother who was using her legal status in ways she thought protected her son, but was deeply troubled that the law permitted her to do this. Her ambivalence shows again the complicated effects of these amendments.

An entire chapter is devoted to decisions by couples concerning whether to remain in states that had adopted Super DOMAs or to move to states that permitted marriage. Pinello compares this decision to that of Jews in Germany in 1939, a comparison not all readers will appreciate. But this chapter shows the emotional turmoil for many couples, as well as the confusion that some