and policymakers to ground their suggestions in rich and sophisticated evidence in the years to come.

* * *

The Judicial Power of the Purse: How Courts Fund National Defense in Times of Crisis. By Nancy Staudt. Chicago: University of Chicago Press, 2011. 199 pp. $25.00 paper.

Reviewed by Mark Tushnet, Harvard Law School

I find this a peculiar book. Its core finding is well-supported, clearly presented, and consistent with a related literature, and yet many of the details seem off-key. In part that seems the result of an overly elaborate theoretical account, whose own details require qualification to accommodate findings in tension with the theory. Readers can take away the central finding, rely on a simpler, less theorized explanation, and leave the specifics behind.

The core finding is this: The federal courts, and especially the Supreme Court, respond to their perception that the nation is facing a foreign policy crisis, particularly a crisis of national defense, by becoming more receptive to claims for revenue asserted by the national government in tax, public contract, and similar cases implicating the government's fiscal resources. The cases are not *about* foreign policy, or about revenue measures directly related to the crisis, but the courts appear to be concerned about ensuring that the government has the resources it needs to deal with the crisis. This finding parallels findings about judicial responses to rights-claims during war time (Epstein et al. 2005).

The theory behind the finding is that the courts receive signals from Congress and the executive—sometimes consistent with each other, sometimes less so—about the existence of a crisis, and infer from those signals the need for fiscal resources. The signals trigger judicial responses because the judges prefer safety over risk, and believe (or act as though they believe) that spending money will enhance safety. The book's first chapter establishes, to the extent that it needs to be established, that justices are aware of and sometimes refer to national fiscal needs in their deliberations and decisions. The book then offers statistical tests linking signals the courts receive to the voting behavior of individual justices and of the Court as a whole, with some analysis of the behavior of courts of appeals.

I think it unclear what the theoretical account adds to common sense, that judges live in the world and participate in the general

https://doi.org/10.1111/j.1540-5893.2012.00526.x Published online by Cambridge University Press

culture. And sometimes the need for theory produces odd results. So, for example, Staudt rejects as "obviously . . . flawed" (p. 67) the claim, developed in detail by Mary Dudziak (2012), that the United States has been in a condition of emergency for much of the twentieth century. The flaw? It "would compel the courts to offer constant and high levels of financial support to the government" (ibid.). Not really: The asserted compulsion comes from the theory, not from the world. The real reason for rejecting the claim is that it would deprive Staudt of the variation she needs to develop her statistical models.

Staudt is ambiguous about the relation between intention and knowledge, on the one hand, and behavior on the other. Language of intention and knowledge pervades her account, and yet sometimes leads to peculiar assertions. A case involving damages arising out of the Iran hostage crisis "emerged in the early to mid-1980s [it was decided in 1989] when defense spending began to surge during President Reagan's military build-up—exactly the time when the information theory forecasts that the Court will increasing [sic] favor the government" (p. 126). One might think that the law played a larger role here—and elsewhere in the story—than Staudt's theory suggests.

Further, a signaling theory like Staudt's should have a temporal element. Signals sent at one time might be received later, or at least might become relevant to decisions made later. Staudt refers to time-lags in an ad hoc manner. Such lags might explain why the courts of appeals are less sensitive than the Supreme Court to signals about fiscal requirements (pp. 99–101), though she also relies on time-lags to explain some aspects of the Supreme Court's behavior (p. 129). The theoretical account would have been more plausible with a temporal element.

Staudt includes a speculative extension of her theory to judicial action during economic emergencies. Here too the basic conclusion —that the courts are modest Keynesians—seems plausible, but again Staudt seems to push the theory too far, offering more finely grained analyses than either theory or common sense supports.

The Judicial Power of the Purse should become a standard citation for its finding that the courts favor the government in cases involving revenue when they—and many others in the nation—think that the government needs the money. Readers should be more cautious in relying on it for more nuanced assertions.

References

Dudziak, Mary (2012) *War Time: An Idea, Its History, Its Consequences*. New York: Oxford Univ. Press.

https://doi.org/10.1111/j.1540-5893.2012.00526.x Published online by Cambridge University Press

Epstein, Lee, et al. (2005) "The Supreme Court During Crisis: How War Affects Only Non-War Cases," 80 *New York Univ. Law Rev.* 1–116.

* * *

Native Acts: Law, Recognition, and Cultural Authenticity. By Joanne Barker. Durham: Duke University Press, 2011. 284 pp. $23.95 paper.

Reviewed by Beth H. Piatote, University of California, Berkeley

In *Native Acts*, Joanne Barker wades into the rough waters of intratribal politics, investigating how U.S. legal definitions of categories such as "tribe," "member," and "tradition" shape the discourses and distribution of rights within contemporary Native society. Barker argues that these legal terms extend from and uphold U.S. national interests, and that it is critical to understand how practices such as tribal management of membership rolls, while based in principles of sovereignty, have the potential to reproduce forms of oppression, including gender discrimination and unequal rights. Central to her argument is the assertion that notions of cultural authenticity, measured by blood degree and other calibrations defined under law, thoroughly infuse debates and decisions about Native political rights both externally and internally. Until Native polities challenge these categories of belonging, Barker warns, "the important projects for Native decolonization and self-determination" remain impossible (p. 7).

The book is divided into three thematic sections ("Recognition," "Membership," and "Tradition") that pair contextual chapters with case studies. In "Recognition," Barker sets up the history of the term "Indian tribe" by focusing on two main periods: the early Republic to the Marshall Rulings of the 1830s, and the "self-determination" era since the 1970s. It is curious, and somewhat disappointing, that many of the key pieces of Indian law and policy from the twentieth century—including the Indian Reorganization Act (1934), Termination (1950s), Relocation (1950s), and Restoration (1980s)—receive scant or no attention in this or subsequent chapters, particularly because Barker's case studies deal so intimately with tribal structure, membership, and competing authenticity claims. The first case study, paired with "Recognition," involves the conflict over federal recognition status between the Cherokees and the Delawares; the studies that follow address the 1978 Supreme Court ruling, *Santa Clara Pueblo v. Martinez*; disen-

https://doi.org/10.1111/j.1540-5893.2012.00526.x Published online by Cambridge University Press