

questions and likely less informed than necessary to warrant considering their opinions in a constitutional conversation.

Regardless of my questions and my expressions of doubt, although, is the bottom line on this book: Collins and Ringhand challenge conventional wisdom on the purpose of confirmation hearings in a way that will force scholars of the process to think and to find additional ways to test their theory in future research, injecting new life into the study of confirmation politics. In other words and as noted earlier, the book does exactly what a scholarly book ought to do.

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How Policy Shapes Politics: Rights, Courts, Litigation and the Struggle over Injury Compensation. By Jeb Barnes and Thomas F. Burke. New York: Oxford University Press, 2015. 256 pp. \$39.95 cloth.

Reviewed by Anna-Maria Marshall, Department of Sociology, University of Illinois, Urbana-Champaign

Political scientists have had a longstanding project of assessing the significance of courts and litigation in the American political landscape (Haltom and McCann 2004; Kagan 2009; Silverstein 2009). Many of the studies addressing this question focus on legal campaigns brought by social movements, where new rights are part of a larger symbolic struggle in addition to narrower legal claims for recognition (McCann 1994; Rosenberg 2008). While most of this research has traditionally focused on courts, more recent studies by Sean Farhang (2010) and Charles Epp (2009) have de-centered the judiciary and concentrated on the relationship among courts and other state actors in the legislature and administrative agencies, emphasizing the mechanisms that shape judicial politics.

In their book, *How Policy Shapes Politics*, Barnes and Burke join this debate to address some of the pressing questions that remain open: Does litigation diminish activists' interest in pursuing other political strategies? Does litigation undermine political solidarity by reducing collective problems into individual disputes about personal injuries? Does judicial politics generate counter-productive backlash that ultimately undermines the parties' broader political goals? This debate is at something of an impasse, with competing case studies that have findings that answer these questions "Yes," "No," and "Sometimes." Barnes and Burke offer an elegant and original research design that addresses these questions in a theoretically

sophisticated way, offering solid insights into the mechanisms of judicial politics.

Barnes and Burke's study focuses on the issue area of injury compensation. This issue space does not generate much in the way of popular protest, but as the authors show, well-organized interests regularly engage in political contestation on these matters across all the branches of government. Barnes and Burke focus their analytical attention on formal political authority that depends on specific laws and rules. Their research design compares two modes of political decision-making that are organized in very different ways—adversarial legalism and bureaucratic legalism. In their rendering, adversarial legalism is characterized by the disputing parties' active participation in decision-making. When the parties control the presentation of evidence and experts, policy materializes from vague laws being applied to particular sets of circumstances. Barnes and Burke's example of adversarial legalism is asbestos injury compensation, which has largely emerged from thousands of lawsuits. Conversely, bureaucratic legalism follows a hierarchical model, where clear rules and precise standards, developed in a central hierarchy, are routinely applied to cases. Barnes and Burke rely on the example of Social Security Disability Insurance (SSDI). By comparing these two forms of policy making, Barnes and Burke can assess the impact of adverse legalism on the kinds of politics surrounding these different forms of injury compensation.

Their findings suggest that adversarial legalism is not dramatically different than other forms of policy making. For example, litigation does not necessarily inhibit the pursuit of other political strategies. In their case study of asbestos injury compensation, they show that litigation is a central component of the policy environment. Judicial decisions in these cases had a long-lasting impact on policy regarding the liability of insurers. In addition, bankruptcy courts designed Chapter 11 Trusts, taking funds from asbestos companies declaring bankruptcy and setting up administrative programs to process individual claims against particular companies. Referring to this system as "court based tort reform," Barnes and Burke argue that these trusts were chronically underfunded and never did a particularly good job of responding to claimants' needs. These judicial strategies, however, coincided with legislative politics that, at first, including efforts to reform state workers' compensation policies but later, after the litigation spread and grew more costly, included congressional action on asbestos reform that sought to displace litigation as the primary mechanism for compensation in exchange for a more bureaucratic system for processing claims. Barnes and Burke's page-turning account of the complex battles in Congress should lay to rest any doubts about litigation and legislative politics existing side by side.

But Barnes and Burke's findings also confirm that adversarial legalism individualizes political conflict, thus producing unpredictable and unstable outcomes from one case to another. Specifically, different courts may reach different verdicts on asbestos claims, even among similarly situated claimants. These differences – in blame assignment and allocation of damages—makes coalition-building more complicated among both claimants and potential defendants. Barnes and Burke observe: “The effect was a chaotic, fractious politics, in which social interests were divided from one another, although cross-stakeholder ‘strange bedfellows’ alliances in favor of reform were also enabled” (p. 196). Bureaucratic systems, conversely, spread costs out among many different parties. Although vigorously contested at its inception, SSDI made costs predictable and thus, in time, less controversial. Moreover, blameworthiness is rarely an issue in bureaucratic systems.

How Policy Shapes Politics offers a promising approach to analyzing the political significance of judicial action. Barnes and Burke's comparative research design allows them to control for the substantive policy area—injury compensation—while analyzing the specific consequences associated with litigation and other forms of politics. We do not have to compare school desegregation to abortion rights to comparable worth—with all the variation in interests and movements and opposition. Rather, this design allows us to compare similarly situated programs to discern the precise effects of adversarial legalism. And we can identify the mechanisms—unpredictability and arguments over blameworthiness—that produce a fractious politics. Their emphasis on these specific mechanisms provides a major contribution to our theoretical and empirical understanding of judicial politics.

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