# THE REVIEW OF POLITICS

Special Issue on Public Law

**University of Notre Dame Summer, 1993** 

## THE REVIEW OF POLITICS

Editor

DONALD P. KOMMERS

Managing Editor

**DENNIS WM MORAN** 

Book Review Editor

WALTER NICGORSKI

Assistant Book Review Editor

V. BRADLEY LEWIS

Associate Editors

Philip Gleason E. A. Goerner

Alasdair MacIntyre Thomas Werge

Former Editors

Waldemar Gurian M. A. Fitzsimons

Thomas Stritch Frederick J. Crosson

**Editorial Advisory Board** 

Henry J. Abraham
University of Virginia
Charles W. Anderson
University of Wisconsin-Madison
Shlomo Avineri
Hebrew University of Jerusalem
Robert F. Byrnes
Indiana University
Ernest L. Fortin
Boston College
Gerald Garvey
Princeton University
Arend Lijphart
University of
California-SanDiego

Theodore J. Lowi
Cornell University
Harvey C. Mansfield
Harvard University
Mary Nichols
Fordham University
Arlene Saxonhouse
University of Michigan
Kenneth W. Thompson
University of Virginia
Glenn Tinder
University of MassachusettsBoston
Catherine Zuckert
Carleton College

Editorial Intern Amy L. Cavender

Production Manager: Martin A. Foos

THE REVIEW OF POLITICS, without neglecting the analysis of institutions and techniques, is primarily interested in the philosophical and historical approach to political realities.

The articles in THE REVIEW OF POLITICS are indexed in the International Index to

The articles in THE REVIEW OF POLITICS are indexed in the International Index to Periodicals and the Index of Catholic Periodicals and abstracted in the International Political Science Abstracts, and abstracted and indexed in ABC POL. SCI., HISTORICAL ABSTRACTS, SOCIAL SCIENCES INDEX, ACADEMIC ABSTRACTS, and SOCIAL SCIENCE SOURCE.

THE REVIEW OF POLITICS (ISSN 0034-6705) is published quarterly for \$25.00 per year in the United States (Individual \$20.00); foreign \$28.00 (Individual, \$23.00); single copies, \$10.00 (domestic) and \$11.00 (foreign) by The University of Notre Dame, P.O. BOX B, Notre Dame, IN 46556. Second-class postage paid at Notre Dame, IN and Nappanee, IN. POSTMASTER: Send address changes to THE REVIEW OF POLITICS, P.O. BOX B, Notre Dame, IN 46556.

# https://doi.org/10.1017/S0034670500017587 Published online by Cambridge University Press

### THE REVIEW OF POLITICS

Published Quarterly by the University of Notre Dame, Indiana

Vol. 55	Summer 1993	No. 3
Gary L.	McDowell Coke, Corwin, and the Constitution:	
	The "Higher Law Background" Reconsidered	393
James R	. Stoner, Jr.	
	Common Law and Constitutionalism in the Abortion Case	421
Benjami	in Gregg	
•	The Modernization of Contemporary Chinese Law	443
Mark C.	<ul> <li>Miller</li> <li>Courts, Agencies, and Congressional Commit</li> </ul>	tees:
	A Neo-Institutional Perspective	471
Laura S	. Jensen	
	Subsidies, Strings, and the Courts: Judicial Action and Conditional Federal Spending	491
Joseph A	A. Ignagni	
, ,	U.S. Supreme Court Decision-Making and the	ş.
	Free Exercise Clause	511
Reviews:		
	Louis Fisher: THREE-BRANCH CONSTITUTIONAL INTERPRETATION	
	Review of Susan R. Burgess's Contest for Constitutional Authority: The Abortion and War Powers Debates	531
	David G. Barnum: LOCHNER REVISITED AND REAPPI	RAISED
	Review of Howard Gillman's The Constitution Besieged. The Rise and Demise of Lochner Era Police Powers Jurispra	
	G. Alan Tarr: ORIGINALISM SCRUTINIZED	
	Review of Gregory Bassham's Original Intent and the Constitution: A Philosophical Study	535
	A. E. Keir Nash: DEFENDING JUDICIAL DISCRETION Review of Stephen J. Burton's Judging in Good Faith	
	The first of otephen j. Danton o junging in obou tuint	

### INSTRUCTIONS TO CONTRIBUTORS

All manuscripts should be submitted in QUADRUPLICATE to *The Review of Politics*, Box B, Notre Dame, IN 46556. If the return of the manuscript is desired, a stamped, self-addressed envelope should be enclosed. All typewritten material should be double-spaced, including notes and quotations; photocopies of a good quality are acceptable. *The Review* follows the *Chicago Manual of Style* for standards of citation, punctuation and other editorial considerations. 'The normal length of manuscripts published is 25-30 pages. Longer manuscripts will be evaluated in light of the limited printing space available. Since manuscripts are evaluated anonymously they should not bear the author's name or institutional affiliation. Submissions should be sent with an ABSTRACT of 100-150 words. All correspondence regarding book reviews should be sent to Dr. Walter Nicgorski at the above address.

### **Contributors to This Issue**

GARY L. MCDOWELL is Director of the Institute of United States Studies in the University of London. JAMES R. STONER, JR., is Assistant Professor of Political Science in Louisiana State University, Baton Rouge. BENJAMIN GREGG is Associate Professor of Politics in Princeton University. MARK C. MILLER is Assistant Professor of Government in Clark University. LAURA S. JENSEN is a doctoral candidate in the Department of Political Science in the University of Connecticut; she recently received a National Endowment for the Humanities Dissertation Award. JOSEPH A. IGNAGNI is Assistant Professor of Political Science in the University of Texas at Arlington.

LOUIS FISHER is Senior Specialist in Separation of Powers with the Congressional Research Service in the Library of Congress. DAVID G. BARNUM is a member of the political science faculty in DePaul University. G. ALAN TARR is Professor of Political Science in Rutgers University-Camden. A. E. KEIR NASH is Professor of Political Science in the University of California, Santa Barbara. JEFFREY K. TULIS is Acting Chair of the Department of Government in the University of Texas at Austin. H. MARK ROELOFS is Professor of Political Science in New York University. R. BRUCE DOUGLASS is Associate Professor of Government in Georgetown University. KENNETH AARON BETSALEL teaches political science in the University of North Carolina at Asheville. LIEF H. CARTER has taught at the University of Georgia for twenty years. TERESA GODWIN PHELPS is Professor of Law in the University of Notre Dame Law School. DONALD W. JACKSON is the Herman Brown Professor of Political Science in Texas Christian University. JOHN E. FINN is Associate Professor of Government in Wesleyan University.