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Lawrence Baum's *American Courts: Process and Policy* (book review)

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SPECIAL ISSUE, JUDICIAL PROCESS TEXTS

Michael W. McCann, Editor

AMERICAN COURTS: PROCESS AND POLICY (3rd ed.) by Lawrence Baum. Boston: Houghton Mifflin Company, 1994. 369 pp. Paper \$ 29.95.

Reviewed by Lynn Mather, Department of Government, Dartmouth College.

As recently as ten or fifteen years ago, faculty teaching judicial process courses were hard-pressed to find a text that would fit the bill. There were a few excellent readers with essay collections, but very few single books that focused exclusively on courts in the United States and that included state as well as federal courts. Baum's AMERICAN COURTS: PROCESS AND POLICY is one of a number of outstanding recent books which can serve as first-rate texts in a judicial process course. If this series of book reviews on judicial process texts shows nothing else, it demonstrates how dramatically the field has changed and how the rich scholarship on courts in American society has finally made its way into texts for undergraduates.

Lawrence Baum's AMERICAN COURTS: PROCESS AND POLICY, now in its third edition, is a solid, fact-filled text. Baum writes that the book's major goals are description and explanation of how and why courts work the way they do. A third -- but admittedly less important -- goal for the book is "to provide the necessary basis for judging reform proposals" (p. x). Overall, I think that the text succeeds in meeting these goals; descriptive and explanatory analysis do (as promised in the introduction) dominate the discussion, but some normative analysis is introduced. Like most judicial process texts, Baum's book concentrates exclusively on American courts. The instructor who seeks a more comparative view will have to introduce it through lectures and other readings.

The conceptual frame of the book is primarily behavioral. At the outset, Baum introduces three general perspectives for understanding court processes and outcomes: "the legal, the environmental, and the personal" (p. 11). After explaining the benefits and limits of each view, and noting that he will employ all of these perspectives in the book, Baum concludes that he "will give primary emphasis to the personal perspective, and especially to the motives that underlie choices made by people in the courts" (p. 17). I like the fact that the book introduces different theoretical approaches and then explicitly identifies the dominant approach of the text. In this way, faculty who wish to introduce competing perspectives can present alternative materials to supplement AMERICAN COURTS.

One consequence of the "personal" perspective is the relative attention that the book gives to various topics. The bulk of the book addresses legal actors and legal processes, with much less attention to policy issues. The book is organized in a fashion typical of most judicial process texts (and courses). Chapters 1 and 2 present "An Overview of the Courts" and "Court Organization." The next three chapters discuss "Lawyers," "Selection of Judges," and "Judges." Chapters 6-8 cover court processes, "Trial Courts: Criminal Cases," "Trial Courts: Civil Cases," and "Appellate Courts: The Process." A final chapter addresses "Appellate Courts as Policy Makers." The chapters on lawyers, judges, and court processes are rich and comprehensive, drawing extensively on the literature in the

Page 96 follows:

field and presenting clear description and synthetic analysis.

The book devotes much more attention to court process, however, than to court outcomes. Only the last chapter discusses court policies in any depth, with sections on "Appellate Court Decisions as Policies" (on appellate court agendas, ideological patterns, and judicial activism) and "The Impact of Appellate Court Decisions" (covering the literature on implementation and impact). The chapter on civil court processes also includes excellent sections on the "litigation explosion," and on Galanter's argument on "Why the Haves Come out Ahead," in which Baum evaluates civil court outcomes in areas of personal injury, debt collection, and divorce. But many of the normative concerns that are raised elsewhere in the book focus more on issues internal to the legal system, rather than on the political and social impact of courts on society. For example, in the section on criminal sentencing, Baum explains the sentencing process and evaluates the question of consistency among judges in sentencing, but does not discuss trends on incarceration or the use of probation. Other evaluative or critical sections focus on issues such as court unification, competence of lawyers and judges, and the effectiveness of trial decision-making.

A second consequence of the book's "personal" perspective is that the book is filled with data about people -- about lawyers and judges whose personal and political conflicts and interests show how courts work. For example, the chapter on court organization opens with an anecdote about a 1990 bill to split the Ninth Circuit Court of Appeals into two parts, California, Arizona and Nevada in one, and the Northwestern states in the other. Senator Gorton of Washington sponsored the bill so that states in the Northwest could escape what he called the domination "by California judges and by California attitudes" while California Senator Pete Wilson opposed it as "environmental gerrymandering" (p. 21). Baum explains that "splitting the circuit would prevent California judges from ruling on environmental cases in the Northwest, and judges who came from the Northwest themselves might be more sympathetic toward industries that were important to the region's economy" (pp. 21-22). In another example, the book uses the 1989 battle between Cincinnati Reds manager Pete Rose and baseball commissioner A. Bartlett Giamatti to illustrate forum-shopping in diversity jurisdiction. Rose sought to have his case heard in Ohio state court before an elected judge from Cincinnati, rather than before an unelected judge from Columbus in federal district court.

These stories of personal and political conflict make for fascinating reading. Thus, the text will appeal to undergraduates because of its lively, well-illustrated, and occasionally humorous presentation of court processes. These are real people making law, not abstract institutions or arcane rules. Moreover, the legal realist conception of law and courts will resonate with today's cynical and media-saturated students. For instance, when discussing lawyer competence, Baum cites Judge Bazelon's comment that many criminal defense lawyers are "walking violations of the Sixth Amendment" (p. 87). Or, in the section on entry into the legal profession, Baum tells the story of a man arrested for

Page 97 follows:

impersonating a criminal defense lawyer in court; the judge supposedly remarked, "I should have suspected he wasn't a lawyer. He was always so punctual and polite" (p. 59).

While descriptions of people and process abound in the book, Baum presents fewer discussions of law and legal principles. Judges are quoted for remarks such as these, or for their acid-tongued disagreements with each other, but not for their statements of law. Instructors who use this book may want to supplement it with court decisions and other reading which analyzes law in terms of legal reasoning, language, or ideology.

A real strength of Baum's book is its readability, clarity, and tone. My students found it very interesting and informative to read. One student explained to me that she sold all her other books at the end of the term but kept AMERICAN COURTS: PROCESS AND POLICY because "it was so basic. . . you never know when you'll need to know these things about courts." The text draws on political science and legal scholarship, as well as numerous newspaper articles. The wealth of data in the book is impressive especially for the specific cases, surveys, and research studies used to illustrate and support the analysis. Baum is also very even-handed when presenting controversial topics, underscoring the complexity of research and the ways in which values can influence the interpretation of results. This kind of caution encourages students to think carefully about how to use data to support their arguments and to be self-conscious about their own and others' biases.

One small weakness of the book in my mind is its slight tilt towards federal law and courts. Although the book has excellent chapters on trial court processes (including state courts), elsewhere the federal courts are presented as the more important courts. For example, Baum states that "only a small proportion of all court cases are tried in federal court because the great majority of cases fit under no category of federal jurisdiction and thus go to the state courts by default" (p. 24). Clearly the state courts are not just a residual category for leftover federal cases! Also, the discussion of the superiority of federal constitutional law over state constitutional law (p. 3) could mislead students in their understanding of judicial federalism in which state constitutional law has sometimes provided for greater individual rights than has federal constitutional law.

Finally, I have to say I think this book is somewhat overpriced. This weakness is no fault of Baum's but his publisher really needs to do some comparative price checking. AMERICAN COURTS: PROCESS AND POLICY is one of the more expensive judicial process texts on a per page basis of any of those listed in the current series under review. This paperback text would be more appropriately priced at \$22 or \$25 to put it line with other similarly-sized books (rather than the \$30 recommended price). It would be too bad if cost deters faculty from using what is otherwise an excellent judicial process text.

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