

Book Notes

PARTNERS, NOT RIVALS: PRIVATIZATION AND THE PUBLIC GOOD.
By Martha Minow. Boston, Mass.: Beacon Press, 2002. Pp. 174 + notes,
index. \$25.00 (cloth).

In *Partners, Not Rivals: Privatization and the Public Good*, Martha Minow offers a detailed, erudite study of the growing entanglement of public and private, religious and secular, and profit and nonprofit organizations in America, and the effects of this trend on public and private values.¹ From the privatization of public hospitals to the rise of school choice programs and faith-based welfare initiatives, the lines between public and private sectors have grown blurrier and more complex. Minow, professor of law at Harvard, argues that these emerging relationships between government and private entities call for new mechanisms of accountability, better information, and a renewed commitment to public values and pluralism.

The entanglement of the private and public sectors is not new; it has simply become more nuanced and harder to define. For example, many Catholic hospitals have for years received a large portion of their funding from Medicare and Medicaid.² More worrying is the recent widespread privatization of public entities, including hospitals, prisons, and schools, and the appearance of new contractual relationships that have made it difficult to gauge their success in meeting public commitments. America has a strong tradition of public-private partnerships and has even benefited from healthy competition between private and public entities. Concerns arising from the recent wave of privatization, however, according to Minow, are two-fold, and cut both ways. First, the public loses control and oversight over the use of public dollars. Second, private religious institutions lose autonomy in the face of government regulation.³

The first section of Minow's book assesses the current state of border-crossing between sectors and describes the pressures on government to outsource and on nonprofits to find corporate partners. First, cuts in federal spending on social services have increased pressure on public and nonprofit entities to operate more efficiently and locate new sources of capital.⁴ Second, intellectual trends have encouraged privatization. Just as "big government" is out of vogue and devolution is in fashion, the concepts of competition and consumer choice have captivated policymakers

¹ MARTHA MINOW, *PARTNERS, NOT RIVALS: PRIVATIZATION AND THE PUBLIC GOOD* (2002).

² *Id.* at 35.

³ *Id.* at 29, 47.

⁴ *Id.* at 22.

and the public.⁵ Third, government may be too bureaucratic to serve vulnerable populations effectively and to cultivate human dignity; thus, some commentators argue that religious institutions may be better equipped to help rehabilitate substance abusers and at-risk teens.⁶

These pressures have produced mutually beneficial partnerships in many cases. For example, a corporation can improve its public relations by funding the construction of new playgrounds, while an underfunded nonprofit with relevant expertise and experience can complete the project to the satisfaction of the neighborhood children.⁷ All parties are better off. Aside from facilitating beneficial relationships, proponents of privatization have introduced new measures of performance-based accountability in the nonprofit world, permitting nonprofits, their funders, and their beneficiaries to know how they are doing and where they might improve. More information is essential for monitoring a sector where often no one is watching.⁸

Nonetheless, an excessive focus on measurable outcomes may inhibit the nonprofit sector from doing what it is uniquely positioned to do: serve as well as empower. Moreover, a nonprofit that must meet quarterly “targets” may selectively serve those who need the least help, who will demand the fewest resources from the organization, and who are most likely to prove receptive to aid. Groups that perform services in which actual success is rare, such as drug rehabilitation, may appear “unsuccessful” on such a metric, especially compared to groups that perform an easier function, such as placing workers in temporary clerical jobs. Thus, when nonprofits mimic for-profits, they may achieve better outcomes for their beneficiaries, but they may lose their capacity to achieve long-term, intangible objectives that advance social change, such as enacting a shift in attitudes, or organizing a community to advocate for itself.

At stake in the debate over how to monitor nonprofits is the integrity of the nonprofit sector and, by extension, the health of the private sphere. Independent from both the market and the state, nonprofit organizations are uniquely positioned to facilitate spontaneous, uncoerced displays of civic virtues, such as generosity, volunteerism and mutual aid.⁹ Organizations such as neighborhood associations, labor unions, and faith-based

⁵ *Id.* at 23.

⁶ *Id.* at 24, 71 (discussing MARVIN N. OLASKY, *THE TRAGEDY OF AMERICAN COMPASSION* (1992)).

⁷ *Id.* at 8. Minow presents such a case in which Home Depot funded a project executed by the nonprofit, Kaboom!

⁸ Under the Internal Revenue Code, a § 501(c)(3) or “public charity” nonprofit can have neither shareholders nor members, denying them access to two sources of accountability. As a result, members of the public must rely on the board of directors and the state attorneys general to monitor nonprofits and “smoke out” fraud. These mechanisms have proven woefully inadequate, as evidenced by persistent reports of fraud and mismanagement.

⁹ MINOW, *supra* note 1, at 54.

groups can create strong community ties in a way a government bureaucracy never could. Nonprofit institutions not only cultivate solidarity, but they protect individual liberty by preserving freedom of association, speech and religious belief. By offering a space in society for individuals and groups to defy public norms and live as they see fit, the private sphere is where pluralism is born and where it thrives.

While private entities enhance pluralism, Minow doubts whether they can be trusted to abide by constitutional norms, such as anti-discrimination, due process, fairness and democracy, even when they perform “public” functions. A case involving the Boy Scouts illustrates this concern. Despite the Boy Scouts’ history as a “federally chartered preparation for citizenship,” they chose to describe themselves as a private association in order to flout state antidiscrimination laws and exclude a homosexual scout leader on the basis of his sexual orientation.¹⁰ As public and private, religious and secular become more intertwined, the basic question of which entities should follow public norms becomes more crucial but, at the same time, more complicated and uncertain. Minow takes a functionalist approach and contends that organizations that receive direct government grants have a responsibility to abide by public norms. “It should not be controversial to insist that public values follow public dollars.”¹¹ But there are more difficult cases, such as vouchers, where private choices mediate public dollars.

In the case of school vouchers, the tension between public and private values is particularly salient. On one extreme, the Establishment Clause prohibits the government from establishing a state religion or religious schools. On the other, the Free Exercise Clause prohibits the government from imposing an undue burden on religious practice. Between these two constitutional requirements is a massive gray area in which schools and social service providers must operate. Under the Cleveland vouchers program recently upheld by the Supreme Court,¹² parents may pay for religious schools using public dollars, but the city selects the list of eligible schools from which parents may choose. Even when public dollars are mediated by “true private choices,”¹³ however, Minow notes that the threat of coercion is real if children at religious schools on public vouchers are forbidden from opting out of prayer and religious activities.¹⁴

In addition to constitutional concerns, there is a growing interest in ensuring public accountability, or mechanisms for gauging a program’s efficacy in achieving public goals. With the rise of outsourcing and contractual arrangements that cloud roles and responsibilities, the wrong

¹⁰ See *id.* at 32 & 183 n.121 (citing *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000)).

¹¹ *Id.* at 142.

¹² See *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

¹³ *Id.* at 663 (O’Connor, J., concurring).

¹⁴ MINOW, *supra* note 1, at 93.

accountability mechanism can produce perverse incentives. Minow offers a harrowing example from the growing industry of for-profit prisons:

For-profit prisons are accountable to owners and shareholders and therefore may respond to demands not only for greater short-term profits but also for more business over time. Hence, the Wackenhut Corrections Corporation of America, according to some reports, lobbies to make more conduct criminal and thereby increase the demand for its services.¹⁵

The danger that shareholders may replace the public in the debate over important matters of social concern calls attention to the need for mechanisms of public oversight.

The major unanswered question in *Partners, Not Rivals* is what this public oversight or accountability might look like.¹⁶ This is a hard question, to which Minow offers no simple answers. She suggests that “public rules should create incentives or requirements to report information on government contractors and organizations receiving government vouchers.”¹⁷ At the same time, policies that lead to the proliferation of useless bureaucratic forms are no help.¹⁸ We need ways to evaluate what information is ultimately useful. We may want to look to public values for guidance, but even specifying the content of public values or goals is something that no one person can do alone—rather, it must be left to democratic deliberation. In part, precisely because the book is so true to the experimental, pragmatic, Deweyan legacy of its author, *Partners, Not Rivals* cannot offer complete answers. It does offer an intelligent assessment of the current state of the relationship between public and private entities and a hopeful analysis of how we might begin to think about preserving pluralism while meeting human needs.

—Shalini Bhargava

¹⁵ *Id.* at 152.

¹⁶ Minow suggests we start with the framework of exit, voice, and loyalty developed by Albert O. Hirschman. *Id.* at 153 (discussing ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970)).

¹⁷ *Id.*

¹⁸ *Id.*

LINCOLN'S CONSTITUTION. By Daniel Farber. Chicago, Ill.: University of Chicago Press, 2003. Pp. 256 + notes, index. \$27.50 (cloth).

The United States Constitution was tested and challenged in the years leading up to and during the Civil War as never before in the nation's history.¹ Daniel Farber's *Lincoln's Constitution* examines the constitutional issues that arose during those years of national turmoil, from both a legal and historical perspective. His analysis spans the breadth of American history, from the American Revolution to the events of September 11, tracing the thread of constitutional and legal debate to illuminate how the Civil War crisis arose and how the same fundamental constitutional concerns of Lincoln's era are still debated today.

In the first five chapters of *Lincoln's Constitution*, Farber analyzes the constitutional issues implicated in the debate over Southern secession, including federalism, states' rights, the contested location of sovereignty in the federal system, and the authority of the federal judiciary over state courts. In the remaining three chapters, Farber addresses Lincoln's actions during the war, dealing with issues surrounding the extent of executive authority, the limits of civil liberties, the authority of the military over civilians in times of national crisis, and the separation of powers within the federal branches of government. Most of the historical recounting of events is borrowed from the published papers, speeches, or correspondence of political figures and from secondary sources. The historical setting serves as a background to the author's legal analysis, which is based on contract law, the international law of war, American common law, and on early and modern interpretations of the Constitution by academics, politicians, and Supreme Court justices. Farber introduces modern constitutional interpretations into his analysis to demonstrate how Lincoln's presidency fits within the evolving American understanding of the limits of executive authority and how Lincoln's actions and those of the Southern states test modern constitutional theories.

Farber bases his discussion about the legality of secession on an analysis of three fundamentally different views of the nature of the Union. He contrasts the states' rights view, which posited that the Constitution created a loose confederation of states bound by a constitutional compact,² with Lincoln's more nationalist view, which claimed that the Constitution formalized a pre-existing Union that came into being as a result of the colonies' united opposition to British tyranny.³ The third view, a compromise between these two extremes, is that the Constitution transformed the individual sovereign states into a sovereign nation but

¹ DANIEL FARBER, *LINCOLN'S CONSTITUTION* 1 (2003).

² *Id.* at 31–32.

³ *Id.* at 31.

that the Union was not born before the Constitution.⁴ Farber acknowledges the difficulty of resolving this debate given the ambiguity of the language in the Constitution and the Framers' intentions. Subsequent interpretations of the Constitution and the Federalist Papers and early Supreme Court decisions more strongly favored the nationalist construction.⁵ However, the states' rights view still survives in modern day jurisprudence, notably in Justice Thomas's opinion in the *Term Limits* case of 1995.⁶

Farber considers two possible ways of justifying secession under the Constitution. One could either argue that the nation was formed by a compact among sovereign states or that individual states could choose to revoke their ratification of the Constitution and leave the Union.⁷ Farber rejects the compact argument because of a lack of evidentiary support for the position that the states are "the exclusive receptacles of sovereignty" such that each has total control over its participation in the Union, like sovereign nations bound by a treaty.⁸ Based on principles of contract law and the very nature of the Constitution as a binding legal instrument, Farber also rejects the idea that states can revoke ratification. He writes that "[t]he basic flaw in the secession argument is its failure to recognize a key aspiration of the Constitution: to replace a regime of multilateral negotiation with the democratic rule of law Instead of multilateral negotiation by sovereign states, the Constitution called for nationwide democratic institutions and authoritative dispute resolution by the federal courts."⁹

After disposing with the constitutional arguments for secession, Farber questions whether the South, like the American colonies, had a moral right to revolt as an exercise of its inherent right to self-determination and whether the North had a corresponding moral obligation not to coerce the South into remaining in the Union.¹⁰ Farber distinguishes the Southern situation from that of the American colonies, in that the principal Southern grievance was the threat to the slave system, not an oppressive, unrepresentative government.¹¹ Farber confronts this argument by considering not just the rights of the Southern people, but also those of the American people as a whole. The threat of secession undermines national majority rule and protects only those in discrete geographic areas.¹² Given the lack of moral and legal support for secession, the North had a

⁴ *Id.* at 30–31.

⁵ *See id.* at 44.

⁶ *Id.* at 27–28 (discussing *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995)).

⁷ *See id.*

⁸ *Id.* at 85.

⁹ *Id.* at 90–91.

¹⁰ *Id.* at 101.

¹¹ *Id.* at 105. Of course, antebellum southern states would have disagreed with this distinction. Some still do.

¹² *See id.* at 109.

right to coerce the seceding states to return to the Union, from which these states could not lawfully leave. Coercion was the only means available for the North to resolve disputes with the South, which was no longer functioning as part of the national government nor formally recognized as a foreign power after the illegal secession.¹³

Farber then conducts an analysis of Lincoln's actions during the Civil War—in relation to the North, South, Supreme Court and Congress—with the same legal scrutiny as in the earlier chapters on secession. These later chapters of the text bring into focus the Civil War conflicts between individual liberties and national security and the struggles for authority among the three branches of government. Following the surrender of Fort Sumter, Lincoln called out the militia, blockaded the Southern ports, expanded the regular army and called for more army volunteers, directed the Navy to purchase more ships, closed the mails to disloyal publications, appropriated funds from the Treasury to private individuals, and suspended the writ of habeas corpus in cities from Washington, D.C., to Philadelphia.¹⁴ During the war, Lincoln issued the Emancipation Proclamation, extended the suspension of habeas corpus, and ignored a directive from the Chief Justice of the Supreme Court.¹⁵ Civilians in the North and South were held under military arrest and tried by military tribunals for suspected wartime offenses and for speaking out against Union actions.¹⁶ The President's actions amounted to an extraordinary exercise of executive authority, particularly in comparison to the weak and ineffective policies of the Buchanan administration, which preceded Lincoln's presidency.¹⁷

Although some of Lincoln's actions violated the Constitution, including trying some Northern civilians in front of military tribunals and infringing upon the free speech rights of civilians and news organizations, the bulk of the President's actions were within either the limits of his war powers or Congress's authority, and Lincoln later received Congressional approval for them.¹⁸ Farber uses the international law of war to analyze military and governmental actions towards civilians in the Southern enemy occupied and recently conquered territories.¹⁹ Most of the civil liberties "violations" in the South were consistent with an appropriate wartime legal system. By the same reasoning, most of the military trials in the North were also justified because the actions for which the defen-

¹³ *See id.* at 99–100.

¹⁴ *Id.* at 116–18.

¹⁵ *Id.* at 156–58.

¹⁶ *Id.* at 146–47, 170.

¹⁷ *See id.* at 13.

¹⁸ *See id.* at 143, 170.

¹⁹ *Id.* at 163.

dants had been accused were sufficiently connected to the military campaign.²⁰

Interestingly, although one typically associates weak government with greater individual freedom and strong government with dictatorship, many of the civil liberties violations during the war occurred as a result of the “pathetic state” of the federal government and judiciary, not because of their overwhelming strength.²¹ As Lincoln was unable to supervise his subordinates effectively, he was forced to delegate substantial control over cases to them.²² Farber effectively refutes the claim that Lincoln acted as a dictator during the war. He emphasizes that Lincoln was aware throughout the war that he was not above the law and was ultimately accountable to the electorate for his decisions.²³ Indeed, Lincoln’s questionable acts were always subject to the judgment of the American people.

Farber derives at least two lessons from the Civil War crisis: the importance of the federal government and the “indispensable role of character in times of crisis.”²⁴ Farber praises Lincoln’s dual vision in recognizing the necessity of strong, decisive action as well as the potential cost of these actions to individual freedoms. Lincoln’s “ability to combine ruthless pragmatism and a deep fidelity to principle” allowed him to chart an even course through the murky legal waters of his era.²⁵ Farber warns that the conflicts between states’ rights advocates and proponents of centralized government, between those defending national security and those championing individual liberties, and among the federal branches of government persist. Neither has the struggle between different competing constitutional constructions that underlay the sectional split been resolved; it is perhaps incapable of resolution. *Lincoln’s Constitution* explores the roots of this ongoing debate. It also cautions the American people to take great care in selecting leaders during times of potential political crisis.²⁶

—Anne Fleming

²⁰ See *id.* at 164.

²¹ *Id.* at 145.

²² See *id.* at 146.

²³ *Id.* at 197.

²⁴ *Id.* at 198.

²⁵ *Id.* at 199.

²⁶ *Id.* at 200.

GAY RIGHTS AND AMERICAN LAW. By Daniel R. Pinello. Cambridge, U.K.: Cambridge University Press, 2003. Pp. 162 + appendices, index. \$23.00 (cloth).

In *Gay Rights and American Law*, Daniel R. Pinello demonstrates the value of quantitative analysis to legal scholarship.¹ The book provides important analysis of the recent legal history of the lesbian and gay rights movement. More generally, it supplies insight into, and valuable analysis of, the judicial decisionmaking process. It might also usefully be employed by other scholars or social scientists as a model for quantitative analyses of particular legal areas. Throughout this detailed and engaging work of empirical research, Pinello conveys his impatience with the current rate of progress towards consistent American judicial respect for gay and lesbian relationships and individuals.

A political scientist at the John Jay College of Criminal Justice of the City University of New York, Pinello explains that he decided to focus on lesbian and gay rights cases because they provide a relatively discrete issue area that traverses several traditional categories of legal doctrine. Courts continue to confront issues of first impression within the context of the evolving social movement seeking civil rights for gays and lesbians. Gay rights cases also evoke strongly held personal views, which often surface in judicial opinions, and thereby provide insight into the part a judge's personal perspective plays in her decisionmaking process.

Pinello dissects 468 appellate court decisions from the 1980s and 1990s. He divides the cases between those "essential" to gay rights and others consisting mainly of same-sex sexual harassment claims and defamation suits involving an allegation of homosexuality.² He subdivides the essential cases into those involving custody, visitation, adoption, foster care, or other family law issues, sexual orientation discrimination, gays in the military, sodomy law challenges, free speech/association, and miscellaneous issues. Also, he maintains separate statistics for courts of last resort and intermediate appellate courts. Each case yields an "outcome" of 0 (ruling against gay rights) or 1 (in favor), such that aggregate outcomes provide one measure of the probability of success for a litigant pursuing a gay rights claim.³

To enrich the book's technical nature, Pinello includes valuable and engaging anecdotes that supplement his statistical data. As part of the book's conclusion, Pinello presents interesting excerpts from a debate about judicial privacy that erupted on an Internet discussion group for law professors after Pinello posted questions about the religious affiliation of judges who had not made the information public. In another chapter,

¹ DANIEL R. PINELLO, *GAY RIGHTS AND AMERICAN LAW* (2003).

² *Id.* at 8.

³ *Id.* at 9.

Pinello humanizes his numbers with a series of narratives describing selected cases in the study. This not only clarifies the legal issues, but also powerfully demonstrates the cases' importance to peoples' lives. The narratives range from an administrative saga in which the Oregon Health Sciences University denied insurance coverage to domestic partners,⁴ to a sad tale of high school bullying victim named Jamie Nabozny,⁵ to a horrific account of homophobic actions by Kentucky police officers that led to a violent death.⁶ The Kentucky story, while highlighting the deeply felt human concerns buried within Pinello's statistics, also shows that institutions outside the judiciary must change if lesbian and gay Americans are truly to achieve equality.

Many of Pinello's findings about the effects of geography and a judge's personal background on her decisionmaking are hardly surprising. Scholars will profit, however, from meticulous documentation demonstrating these links. For instance, Pinello shows that judges in the Midwest and South are less inclined to rule in favor of gay rights claims than those in other regions. Judges who are young, female, Jewish, or members of racial minorities are most likely to uphold gay rights. As a consequence, Pinello exhorts progressive activists to continue advocating for greater diversity on the bench. He also analyzes the impact of institutional and environmental factors on court outcomes, such as the method of judicial selection and the prevailing local political ideology. Pinello determines that appointed judges, contrary to popular belief, are no more likely to support gay rights claims than their elected counterparts. On the other hand, judges who have previously held elective office are less likely to show support for gay rights. In addition, the chances of success for a gay rights claim generally increased over the twenty-year time frame of the study.

Perhaps more surprisingly, Pinello proves that lesbian and gay rights claims fared significantly better in state court than in federal court, with success rates of 57.2% and 25.6%, respectively.⁷ He considers various possible explanations for this discrepancy, including case subject matter, the favorability of the substantive law, and the demographic composition of the state and federal bench. Involvement of public interest law firms improved the odds by 32% in federal court, but had no significant impact in state court.⁸ Pinello attributes this to state judges' relative lack of interest in amicus briefs in family law cases. Other causal factors might include the nonprofits' relative inexperience with state litigation and tendency to devote more resources to higher-profile federal cases.

⁴ *Id.* at 38.

⁵ *Id.* at 49–53.

⁶ *Id.* at 42–48.

⁷ *See id.* at 111 tbl.4.1.

⁸ *Id.* at 115.

Finally, Pinello evaluates the role of *stare decisis*. Contrary to previous findings, he concludes that precedent—even non-binding precedent—continues to have a major impact on most judges' decisionmaking. He also establishes that adherence to precedent more often led a judge to uphold gay rights than to reject them. The existence of anti-gay statutes was also influential on outcomes. Pinello urges gay activists to “strive for further decriminalization of consensual sodomy,”⁹ because outcomes in all subject areas were more favorable to gay rights in jurisdictions without sodomy bans. The book does not address implications of the decision in *Lawrence v. Texas*,¹⁰ which was announced within weeks of publication.

Pinello briefly notes differences in outcome between cases involving gay male as opposed to lesbian litigants. He also acknowledges, first in reference to the gruesome Kentucky case and then in a section on defamation suits, that judges have traditionally been more receptive to the claims of individuals falsely accused of homosexuality than those of openly gay people. Pinello fails to address, however, whether litigants' personal characteristics, such as race, class, age, or gender presentation, affect their chances of success. Similarly, despite touching on the role of nonprofit legal groups, Pinello does not address the adequacy of representation by counsel as a factor in case outcome.

Despite the book's mostly technical content, Pinello carefully ensures that even readers without a background in statistics will be able to understand his work. Although the book consists largely of statistical data, Pinello coherently and engagingly annotates his findings. Numerous charts of logical regressions and other supplemental data follow the main text. In chapters with especially high concentrations of mathematical language, italicized topic sentences serve as accessible summaries of the research findings. Ultimately, Pinello's work will benefit gay rights advocates, as well as those exploring the roots of judicial decisionmaking more generally.

—Amanda C. Goad

⁹ *Id.* at 2.

¹⁰ 123 S. Ct. 2472 (2003).

TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR
NEW YORK CITY. By Martha Biondi. Cambridge, Mass.: Harvard University Press, 2003. Pp. 287 + notes, index. \$39.95 (cloth).

To Stand and Fight details the collective action and political strategizing that put civil rights on New York's agenda in the decade after World War II.¹ Martha Biondi, assistant professor of African American Studies and History at Northwestern University, provides rich descriptions of individual and organizational struggles in her successful quest to portray the development of the civil rights movement as a story of ongoing activism. Biondi identifies New York City, which in 1945 was home to the world's largest urban black population,² as the leader among northern cities, and thus in the nation, in civil rights organizing. The movement there played a key role in the larger civil rights struggle. As Biondi explains, "Black New Yorkers helped to change national politics and created solidarity networks that were crucial when southern African Americans rose up against Jim Crow and needed sustenance, attorneys, arms, and money."³

Each of twelve chapters addresses the history of a different subtopic, including economic advancement through fair employment; the politics behind civil rights mobilization; police brutality; and desegregation of public accommodations and housing. The book's final chapters focus on urban riots and racial violence; voting rights and African American politicians; resegregation in housing and education, in part as a result of civil rights gains; and racial conflicts in the city's labor unions. An epilogue situates these topics in relation to the civil rights movement of the late 1950s and 1960s, noting that the radicalism that is sometimes erroneously linked only to this later era had its seeds in the postwar movements.

Biondi continually questions the supposed distinction between *de jure* and *de facto* segregation, where the former was ostensibly southern and the latter northern. Biondi points to the role of the city, state, and federal governments in creating and maintaining racially disparate systems in the North.⁴ The government-sponsored practices of "redlining"

¹ MARTHA BIONDI, *TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR NEW YORK CITY* (2003).

² *Id.* at 1.

³ *Id.* at 287.

⁴ *E.g., id.* at 129 ("By denying the crucial role of the state, the [state court] decision helped to create the fiction that *de facto* housing segregation in the North originated outside the law and reflected market forces rather than purposeful, racially exclusionary acts of public policy."); *id.* at 241 ("Civil rights leaders exposed this governmental complicity in maintaining racially defined schools, calling into question the accuracy of the phrase *de facto* to describe racial segregation in New York City public schools."); *id.* at 285 ("The racial history of the post-*Plessy* United States calls into question the conventional notion that segregation and discrimination in the North was *de facto* . . .").

black neighborhoods to deny African Americans mortgages;⁵ enforcing housing,⁶ public accommodation,⁷ and employment laws unequally;⁸ and redrawing school-district boundaries to support segregation⁹ are only a few of the examples the book provides. African American leaders attempted to shame New York's white politicians into action by comparing discrimination and racist violence to that in the South. At the same time, they appealed to the white politicians' sense of regional honor by arguing that the better conditions of the North had to be kept that way.¹⁰ The city's black leaders also saw their struggle as an inspiration for the southern civil rights movement; as campaign fliers for New York's first African American state senator said, "This is Harlem's opportunity to show the Negroes of the disenfranchised South the value of their continued fight for the free exercise of the right to the ballot."¹¹ Participants in New York's civil rights movement saw themselves as part of a broader struggle for black liberation, extending not only throughout the nation, but also internationally, as indicated by the connections between city leaders and the Caribbean islands and African nations emerging from colonialism.¹²

Two especially interesting chapters at the heart of the book analyze the relationship between anti-communism and civil rights, where America's Cold War interests led to paradoxical effects.¹³ On the one hand, the country's attempts to distinguish American liberalism and democracy from communist totalitarianism required it at least superficially to champion an anti-racist ideal. On the other hand, anti-racist organizations and individuals were frequently branded communist and thereby silenced.¹⁴ While these chapters present Biondi with several opportunities to address the intersections between civil rights and civil liberties, she does not analyze the tensions as much as she could have. She implicitly gives cre-

⁵ See *id.* at 112–14.

⁶ See, e.g., *id.* at 117.

⁷ See, e.g., *id.* at 79–84.

⁸ See, e.g., *id.* at 98.

⁹ See, e.g., *id.* at 241.

¹⁰ See, e.g., *id.* at 246 (describing a civil rights leader's comparisons between racism in the South and in the North to prompt desegregation of New York City's public schools after *Brown v. Board of Education*).

¹¹ *Id.* at 213–14.

¹² See, e.g., *id.* at 14–15 (placing the postwar American civil rights movement in the context of the worldwide anti-colonial struggle); *id.* at 57–58 (describing attempts to leverage international focus on American civil rights issues through the United Nations); *id.* at 280 ("New York was fertile ground for the creation of a global Black political identity").

¹³ See *id.* ch. 7 ("Anticommunism and Civil Rights"), at 137, & ch. 8 ("The Paradoxical Effects of the Cold War"), at 164. These two chapters make *To Stand and Fight* an excellent companion book to MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000) (reviewed in Richard Delgado, *Explaining the Rise and Fall of African American Fortunes—Interest Convergence and Civil Rights Gains*, 37 HARV. C.R.-C.L. L. REV. 369 (2002)).

¹⁴ See BIONDI, *supra* note 1, chs. 7 & 8.

dence to the familiar argument that civil liberties are crucial for securing civil rights by showing how McCarthyism cut short civil rights leaders' careers¹⁵ and mitigated the success of specific civil rights platforms.¹⁶ Yet she also portrays some civil rights leaders as anxious to make the crack-down on civil liberties work for the movement. For example, Congressman Adam Clayton Powell argued that a federal sedition law used against communists be used against those who violated *Brown v. Board of Education*.¹⁷ Similarly, civil rights leaders protested the screening of the racist film *Birth of a Nation*¹⁸ and fought to purge the city's schools of racist teachers.¹⁹ Biondi fails to analyze the tension inherent in civil rights leaders' protesting the exercise of civil liberties. This gap exemplifies the book's main weakness: its rich focus on narrative detail occasionally occurs at the expense of analysis.

This weakness occurs elsewhere. So many of the leaders Biondi describes were first- or second-generation immigrants from the Caribbean,²⁰ yet nowhere does the book reflect upon this fact, whether to discount it as irrelevant or to explore its import. Further, while the book frequently presents examples of both cooperation and conflict between African American and Jewish leaders and individuals,²¹ there is no systematic examination of the shifting and multifaceted relationships between these communities.²² Biondi might usefully have situated her work within the literature addressing these issues.

Still, these weaknesses do not materially detract from the fascinating and carefully detailed history that Biondi presents. *To Stand and Fight*

¹⁵ See, e.g., *id.* at 179 ("The red scare destroyed the judicial career of one of the most respected African American judges and civil rights leaders in the nation," Hubert T. Delaney.).

¹⁶ See, e.g., *id.* at 184 ("The repressive aspects of the Cold War clearly damaged the New York civil rights movement.").

¹⁷ *Id.* at 138–39.

¹⁸ *Id.* at 95–97.

¹⁹ *Id.* at 244–46.

²⁰ See, e.g., *id.* at 8 (Caribbean-born civil rights leader Hugh Mulzac); *id.* at 28 (Ewart Guinier, born to Jamaican parents in the Panama Canal Zone); *id.* at 31 (union leaders Charles Collins, born in Grenada, raised in Panama, and Ferdinand Smith, born in Jamaica); *id.* at 215 (Manhattan borough president Hulan Jack, born in St. Lucia); *id.* at 276–77 (lawyer and activist Hope Stevens, born in the British Virgin Islands and raised in St. Kitts-Nevis).

²¹ See, e.g., *id.* at 15–16 (describing basis for collaboration and alliance between the American Jewish Congress and the NAACP); *id.* at 99 (explaining differences between race-blind strategies advocated by some Jewish organizations and race-conscious remedies advocated by some African American ones).

²² Biondi frequently mentions the existence of Jewish civil rights lawyers as well as Jewish white racists. See, e.g., *id.* at 85 (referring to the "left-wing law firm of Neuberger, Shapiro and Rabinowitz"); *id.* at 82 (referring to Irving Rosenthal, the white owner of an amusement park that refused to allow black patrons). Yet Biondi does not explore the effect that these individual examples of either alliance or enmity had on Black-Jewish relations in the city and the New York civil rights movement.

not only offers a powerful portrayal of the early struggle for civil rights in New York City, but also lays the foundation for future work.

—Eloise Pasachoff

A WAY OUT: AMERICA'S GHETTOS AND THE LEGACY OF RACISM.

By Owen Fiss et al. Edited by Joshua Cohen, Jefferson Decker, and Joel Rogers. Princeton, N.J.: Princeton University Press, 2003. Pp. 125 + index. \$19.95 (cloth).

School desegregation. Public housing projects. Affirmative action. Slavery reparations. School vouchers. Over the last fifty years, these and other ideas have been proposed to improve the plight of the socioeconomically disadvantaged. Such proposals often have been fashioned with an eye toward helping the black underclass, whether by direct or indirect means. These programs share two salient characteristics. First, despite varying degrees of success, the problems that these solutions aimed to eliminate persist in one form or another.¹ Second, the programs have generated tremendous controversy. In *A Way Out: America's Ghettos and the Legacy of Racism*,² Owen Fiss proposes a new social program that he believes can succeed. At the same time, he embraces controversy by presenting alternative viewpoints along with his own.

Fiss, professor of law at Yale, confronts one of America's most persistent problems: the continued existence of an economic and racial underclass in America's ghettos. Professor Fiss opens the book's first essay, *What Should Be Done for Those Who Have Been Left Behind?*,³ with a brief historical account of the discriminatory housing practices that helped to create the environment of joblessness, crime, and poverty characteristic of the urban ghetto today. Fiss argues that the government, by actively discriminating against blacks in some instances and allowing private landlords to do so in others, sentenced the ghetto's disproportionately black residents to a life without hope. Having thus helped to create the ghetto and its "structure of subordination," Professor Fiss reasons, the

¹ Many of these and similar programs no doubt have met with some measure of success. One such program is affirmative action in higher education, which has been characterized by colleges and universities as critical to maintaining meaningful minority representation. *See, e.g., Grutter v. Bollinger*, 123 S. Ct. 2325, 2334 (2003) (noting that, according to the University of Michigan Law School's expert witness, "underrepresented minority students would have comprised 4 percent of the entering class in 2000 instead of the actual figure of 14.5 percent" without the consideration of race). Other proposals, like school vouchers and reparations for slavery, either have not been in place long enough to evaluate fairly or remain hypothetical. However, even arguably successful programs have been unable to eradicate all of the symptoms they were intended to address. For example, although court-ordered desegregation initially achieved much success in integrating public schools, a trend toward resegregation has reemerged since the late 1980s. *See ERICA FRANKENBERG ET AL., A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM?* 30–31 (2003), available at <http://www.civilrightsproject.harvard.edu/research/resseg03/AreWeLosingtheDream.pdf> (last visited Sept. 15, 2003).

² OWEN M. FISS ET AL., *A WAY OUT: AMERICA'S GHETTOS AND THE LEGACY OF RACISM* (Joshua Cohen et al. eds., 2003) [hereinafter FISS ET AL., *A WAY OUT*].

³ Owen M. Fiss, *What Should Be Done for Those Who Have Been Left Behind?*, in FISS ET AL., *A WAY OUT*, *supra* note 2, at 3.

state is responsible for providing a remedy to the victims of its unjust actions and inactions.

With the goal of helping the black underclass, Fiss sketches a new social program designed to avoid the pitfalls of previous plans. Professor Fiss asserts that the only way for the government to save the residents of the ghetto, while avoiding the fate of other incomplete, temporary fixes, is to provide them with a realistic means to escape their oppressive environs. Fiss proposes that the state fund the relocation of ghetto dwellers to the suburbs and provide them with vouchers enabling them to pay the associated higher rents, all at an estimated cost of \$50 billion.

The inspiration for Fiss's idea, which he terms a "deconcentration" program, is a remedy ordered by a federal district court that was upheld by the United States Supreme Court in *Hills v. Gautreaux*.⁴ Fiss describes the Chicago Housing Authority's policy of giving local city council members the power to block public housing projects in their wards. With the knowledge that public housing residents would be predominantly black, council members from white neighborhoods used their vetoes to keep the projects out. This ongoing practice, Fiss notes, led to the construction of public housing projects exclusively in black neighborhoods and the resulting creation of black ghettos. The Supreme Court struck down the Housing Authority's practice and sustained the district court's remedial order requiring the Department of Housing and Urban Development to help fund the deconcentration of these public housing ghettos.

Although Professor Fiss believes that large-scale deconcentration can avoid the failure that other programs have faced, he sensibly recognizes the controversial nature of his proposal. Indeed, *A Way Out* captures much of the potential debate around Fiss's program in the form of ten response essays. The contributors, including law professors, scholars from other disciplines, a practicing lawyer, and a journalist, universally echo the principles of justice and fair compensation that Fiss champions. At the same time, they raise legitimate concerns. Some question the political feasibility of a \$50 billion deconcentration program and remind readers of the difficulties that refugees from the ghetto would face in the suburbs. Others challenge Fiss's assumption that other solutions—such as urban renewal projects and enterprise zones—are ultimately doomed to fail. Instead, they trumpet the underestimated strength and resolve of "those who have been left behind."

Perhaps the most intriguing of these responses is that of James Rosenbaum, professor of sociology, education, and social policy at Northwestern University.⁵ Professor Rosenbaum notes the benefits accrued by the families moved to white suburbs under Chicago's *Gautreaux* program,

⁴ 425 U.S. 284 (1976).

⁵ James E. Rosenbaum, *Relocation Works*, in FISS ET AL., *A WAY OUT*, *supra* note 2, at 79.

which he has studied for nearly two decades.⁶ For example, in a comparison between ghetto residents moved to other disproportionately black cities and those moved to predominantly white suburbs, children in the latter group were much more likely to graduate from high school, to attend college, and to be employed (in jobs with better pay and benefits, no less).

Even while extolling the potential benefits of “residential mobility,” Rosenbaum acknowledges the difficulties in expanding a small program like the *Gautreaux* remedy to the scale that Professor Fiss proposes. First, there is the danger that in the haste to move ghetto residents, the government will simply move them to neighborhoods similar to the ones they are attempting to escape. Second, the *Gautreaux* program instituted restrictions that would be incompatible with Fiss’s goal of giving every ghetto family the option of moving out: in an effort to make the new tenants more attractive to landlords, families with more than four children, large debts, or unacceptable housekeeping habits were excluded, thereby disqualifying nearly thirty percent of the pool. Yet the absence of such screening may, as Professor Rosenbaum notes, “doom many families to failure while stigmatizing the entire effort.”⁷

A Way Out is intended to introduce into the national debate a potential new solution to a staggering, seemingly intractable problem. In this respect, Professor Fiss unquestionably succeeds: the ideas he presents are intriguing and fresh.⁸ However, even while accepting that Fiss intends to present an overarching view rather than specific details, his failure to address concrete issues inevitably raised by his proposal ultimately makes his essays somewhat unsatisfying. At the same time, one is left with the hope that Professor Fiss will employ his capacity for creative solutions to engage more practical concerns, such as those identified by Professor Rosenbaum, in a future volume. After all, he is far from finished in his attempt “to tear down the walls of the ghetto.”⁹

—Won Shin

⁶ See generally LEONARD RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES* (2000); James E. Rosenbaum, *Black Pioneers—Do Their Moves to the Suburbs Increase Economic Opportunity for Mothers and Children?*, 2 HOUS. POL’Y DEBATE 1179 (1991); James E. Rosenbaum, *Changing the Geography of Opportunity by Expanding Residential Choice: Lessons from the Gautreaux Program*, 6 HOUS. POL’Y DEBATE 231 (1995); James E. Rosenbaum & Shazia Rafiullah Miller, *Certifications and Warranties: Keys to Effective Residential Mobility Programs*, 27 SETON HALL L. REV. 1426 (1997).

⁷ *Id.* at 83.

⁸ However, they have appeared in print before. Most of the essays in *A Way Out* were originally published several years ago in the *Boston Review*. Although Fiss has added to and refined his two essays, the core of his ideas remains the same. Furthermore, seven of the ten response essays in *A Way Out* are largely unchanged from their appearances in the *Boston Review* collection. See BOSTON REVIEW, Summer 2000, at 4–19.

⁹ Owen M. Fiss, *A Task Unfinished*, in FISS ET AL., *A WAY OUT*, *supra* note 2, 113, at 125.

A VOTING RIGHTS ODYSSEY: BLACK ENFRANCHISEMENT IN GEORGIA.
By Laughlin McDonald. Cambridge, U.K.: Cambridge University Press,
2003. Pp. 245 + index. \$20.00 (cloth).

From slavery to the late twentieth century, white Georgians and their elected representatives implemented an extraordinary array of tactics designed to prevent black political empowerment. These measures evolved in response to changing federal laws and at different times included official black disenfranchisement;¹ jailing, threatening, assaulting, and even murdering African American officeholders;² poll taxes, “character” exams, and “literacy” tests selectively enforced to exclude blacks;³ intimidation and violence against African Americans seeking to register to vote;⁴ the simple refusal by local officials to register eligible blacks;⁵ white-only primaries;⁶ and electoral structures such as at-large voting that allowed whites to monopolize government positions.⁷ Laughlin McDonald, a veteran voting rights litigator who has directed the Southern Regional Office of the American Civil Liberties Union for over thirty years, documents this tragic history in monographic detail in *A Voting Rights Odyssey: Black Enfranchisement in Georgia*.

McDonald’s detailed study also provides concrete evidence to support the Supreme Court’s view that voting is “preservative” of all other rights.⁸ His work links Georgia’s history of discriminating against blacks in voting to its history of discrimination against blacks in education, employment, housing and the provision of public services, public accommodation, and the criminal justice system. As McDonald explains: “Since blacks were neither voters in any appreciable numbers, nor office holders, whites controlled the ballot box and elective office and were therefore free to pass whatever laws they wished. Laws institutionalizing racial segregation and white supremacy were the inevitable consequence.”⁹

Even more important, McDonald’s analysis of how the Voting Rights Act, passed by Congress over bitter opposition in 1965, facilitated black political participation in Georgia provides a valuable lens for evaluating civil rights legislation in the United States more broadly. First, *A Voting Rights Odyssey* supports the proposition that strong and vigorously enforced federal laws can play a significant role in breaking down entrenched racial hierarchies. Between 1963 and 1968, the percentage of

¹ LAUGHLIN McDONALD, *A VOTING RIGHTS ODYSSEY: BLACK ENFRANCHISEMENT IN GEORGIA* 15–17 (2003).

² *E.g., id.* at 35.

³ *E.g., id.* at 41, 51.

⁴ *E.g., id.* at 26, 29, 47.

⁵ *E.g., id.* at 46–47, 54.

⁶ *Id.* at 48–49.

⁷ *E.g., id.* at 131–32.

⁸ *Id.* at 5 (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)).

⁹ *Id.* at 68–69.

eligible African American voters registered in Georgia climbed from 27% to 56% due to grassroots efforts sponsored by civil rights organizations and fostered by various provisions of the Voting Rights Act.¹⁰

Second, McDonald shows why effective civil rights legislation that relies on judicial enforcement must allow plaintiffs to bring lawsuits when government practices have unjustified disparate impacts on communities of color, regardless of the state of mind of government decision-makers who enacted the laws.¹¹ In 1980, a plurality of the Supreme Court ruled in *Mobile v. Bolden*¹² that challenges to voting practices that interfered with the opportunities for people of color to elect candidates of their choice required evidence of discriminatory intent. “The immediate impact of *Mobile v. Bolden* was dramatic . . . [L]itigation challenging discriminatory voting practices . . . dried up.”¹³ An intent requirement places an onerous burden on plaintiffs because legislators can usually offer non-discriminatory, after-the-fact rationalizations for laws that severely disadvantage people of color. Moreover, legislative intent is of little relevance in promoting the egalitarian values at the heart of the Fourteenth and Fifteenth Amendments, which, as Justice Sandra Day O’Connor has so eloquently explained, are designed to foster the transition to a “political system in which race no longer matters.”¹⁴ To attain this lofty goal, courts should examine whether laws operate to provide equal opportunities for people of color to participate in our economic, political, and social institutions—regardless of the legislature’s intended impact. Recognizing these truths, Congress amended the Voting Rights Act in 1982 to overturn *Mobile* and allow plaintiffs to bring suit when voting practices have the *effect* of depriving people of color a fair chance to participate in the political process and elect candidates of their choice.¹⁵

The 1982 amendments to the Voting Rights Act were as significant for integrating Georgia’s decision-making bodies as the original legislation was for integrating the registration rolls. In the years immediately following the 1982 amendments, litigants brought over sixty lawsuits challenging at-large election systems at the city, county, and school board

¹⁰ *Id.* at 129.

¹¹ This right must vest with private, as well as with public plaintiffs; government agencies simply lack the resources (and sometimes the political will) to bring lawsuits in more than a fraction of cases where civil rights statutes are violated. As McDonald notes, the Department of Justice brought three of the over eighty voting rights lawsuits filed in Georgia between 1974 and 1980. *Id.* at 196. This history is instructive in analyzing Title VI lawsuits as well, providing support for the proposition that Congress must implement legislation overturning the Supreme Court’s decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), which holds that there is no private cause of action to enforce Title VI regulations that forbid states and localities receiving federal funds from enacting policies or practices with an unjustified disparate impact based on race.

¹² 446 U.S. 55 (1980); see McDONALD, *supra* note 1, at 163.

¹³ McDONALD, *supra* note 1, at 164.

¹⁴ *Shaw v. Reno*, 509 U.S. 630, 657 (1993) (O’Connor, J.).

¹⁵ McDONALD, *supra* note 1, at 178–79.

level.¹⁶ Under at-large schemes, if whites constituted a majority and voted cohesively, they could ensure that substantial black minorities would not be able to elect a single representative to governing bodies. Through court orders or settlement agreements, virtually all of these challenged jurisdictions instituted new district-based electoral schemes that included majority-black districts where African American voters could elect candidates of choice. This shift from at-large to district elections revolutionized Georgia's political landscape;¹⁷ between 1980 and 1990, the number of black county commissioners rose from 20 to 97 and the number of African American municipal officeholders rose from 146 to 246. Almost all of these electoral successes came in jurisdictions that shifted to district elections.¹⁸

While the legacy of political discrimination in Georgia no doubt presents some unique circumstances, the power of McDonald's narrative is in understanding the history he presents as illustrative of the measures necessary to combat racial injustice more generally. Requiring plaintiffs to prove discriminatory intent in housing or education, for instance, is no less onerous than it is in voting; and vigorously enforced federal civil rights laws have been vital to combating structural racism in numerous other areas.

The Voting Rights Act has certainly not equalized political opportunities for black and white Georgians. Blacks remain underrepresented in legislative bodies in a state that is over one-quarter African American.¹⁹ Moreover, with *Shaw v. Reno*²⁰ and *Miller v. Johnson*,²¹ the Supreme Court has erected a new barrier to black political empowerment by applying strict scrutiny in Equal Protection claims by white plaintiffs against majority-minority districts drawn "predominately" on the basis of race.²²

¹⁶ *Id.* at 182–83.

¹⁷ This, at least, was the assessment of Linda Meggers, the director of the state's reapportionment office, who, "with some allowance for hyperbole," considered the advent of district voting "the most revolutionary change in Georgia since the Civil War. You're having a whole new distribution of power." *Id.* at 193. Moreover, those who urge Congress to reject re-authorizing § 5 of the Voting Rights Act—which requires Georgia and a number of other states to submit changes in electoral structures and policies for pre-clearance to either the Department of Justice or a three-judge federal panel in District Court for the District of Columbia to ensure that changes do not have a retrogressive impact on minority voting strength—should remember both the state's long history of flagrant disregard of § 5, *see, e.g., id.* at 134, 141, 148, and the fact that "[t]he redistribution of political power in Georgia, far from being voluntary, was the direct result of the enforcement of the Voting Rights Act." *Id.* at 195.

¹⁸ *Id.* at 193. Note, however, that the Voting Rights Act focuses its protections primarily on voters—rather than candidates—of color. *See* 42 U.S.C. § 1973 (2000).

¹⁹ *See* MCDONALD, *supra* note 1, at 193.

²⁰ 509 U.S. 630, 642 (1993) (holding that strict scrutiny applies to political districting that is "so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting").

²¹ 515 U.S. 900 (1995) (refining *Shaw* to hold that strict scrutiny applies whenever race is the predominant factor driving districting decisions).

²² *Id.* at 916.

McDonald effectively critiques these 5-4 decisions and their rhetoric of colorblindness, which ignores that: “Race is admittedly not a scientific fact or a genetic condition, but it is a social and political reality.”²³

As civil rights advocates ponder how to respond to lingering political inequalities and these new challenges, they will do well to remember that the passage of the Voting Rights Act and the dramatically expanded opportunities for Southern blacks over the last forty years did not emerge primarily due to the work of sympathetic lawmakers or large civil rights organizations. Rather, they resulted from the “indomitable spirit of local residents”²⁴ who organized their communities to overcome racial hatred, violence, and institutional, state-sponsored oppression. Given the increasingly conservative federal judiciary and Congress, the same grass-roots mobilization that effected the first steps toward equality in the 1960s may be the only way to fulfill the promise Lyndon Johnson made to the entire country in his speech presenting the Voting Rights Act before Congress. Referring to events in Selma, Alabama, where the protests of local blacks against political discrimination and the violent official response galvanized the entire nation, President Johnson said:

But even if we pass this bill, the battle will not be over. What happened in Selma is part of a far larger movement which reaches into every section and State of America. It is the effort of the American Negroes to secure for themselves the blessings of American life. Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.²⁵

A Voting Rights Odyssey is a compelling reminder that the country has not yet overcome the legacy of slavery and Jim Crow. But the work also identifies some crucial tools that can help us move toward a nation where the racial hierarchy established during a tragic period of human bondage no longer infects our democratic institutions.

—Sam Spital

²³ MCDONALD, *supra* note 1, at 228.

²⁴ *Id.* at 245.

²⁵ Lyndon B. Johnson, The American Promise, Address to Congress (Mar. 15, 1965), available at <http://usinfo.state.gov/usa/infousa/facts/democrac/40.htm> (last visited Nov. 5, 2003).