



Signals from the Hill: Congressional Oversight and the Challenge of Social Regulation by Christopher H. Foreman,

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ity that ordinarily should attach to the decisions of subordinate actors in the judicial system" (p. 5). The authors nowhere find it necessary to defend this presumption. The recommended criteria for case selection emphasize intercircuit, interbranch, intergovernmental, and interstate conflicts.

It would be unfair to describe this book as presenting the Douglas Brackman approach to the Supreme Court's function. But it is likely that were the Court to exercise its jurisdiction as these authors recommend, the rebarbative managing partner of *L.A. Law* would be more at home there than would anyone who sought what one unsuccessful nominee called "an intellectual feast." The authors have rejected such concepts of the Court's role as "teachers in a vital national seminar" (E. V. Rostow), expounders of "neutral principles" (Herbert Wechsler), protectors of minority rights (Hugo Black and Earl Warren) or "an intermediate body between the people and the legislature" (*Federalist* 78). Any vision so pedestrian as the authors' managerial model bears a heavy burden of justification. That burden is not met.

First, reformers must convince their audience that a problem exists. There is by no means universal agreement on this point. Several present and former justices have denied that the Court is overworked. In the case of petition screening, a frequent focus of reform proposals, some clerks have claimed that they learn in their first weeks on the job to perform this task fairly quickly. Even journalists who cover the Court have made similar claims. No student of the Court who was unconvinced of the need for change before reading this book will find compelling new evidence or argument here.

Still less consensus exists on the quality of the Court's output. Separating criticism of reasoning from criticism of result has always been difficult. This problem leads to the second task reformers face. They must convince their audience that their recommendations are free of political bias. It is not necessarily a coincidence that the proposals for reform have originated fairly consistently from the segment of the political spectrum that runs from the center to the extreme right. Even in the 1980s, as the Court moves to the right, the Left does not take up the cry for reform. The fact that the authors identify themselves as former

clerks for, respectively, Lewis Powell and Warren Burger hardly allays the reader's wariness.

The extent to which *Redefining the Supreme Court's Role* fails to meet this second burden is revealed by the authors' casual and gratuitous reference to "the bleeding plaintiff model" (p. 129). The cloaking of ideological positions behind an ostensibly neutral administrative stance has become all too familiar in recent years, and it has characterized the judicial reform movement from its inception. The persistent failure of these proposals may indicate both lack of commitment to the political positions associated with these recommendations and a preference for the conceptions of the judicial role that these authors reject. Perhaps we have not yet become a nation of ideologues masquerading as managers.

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Signals from the Hill: Congressional Oversight and the Challenge of Social Regulation. By Christopher H. Foreman, Jr. New Haven: Yale University Press, 1988. 214p. \$27.50.

Whatever new ideas or findings this book may contain, they are presented in a curiously autistic style. If it is anything, the book is a contribution to the lively, conspicuous, and wide-ranging current literature on congressional control of the bureaucracy. Although aware that he is not the only one to have discussed this topic, Foreman crudely rewrites some of the literature without mentioning much of it.

Political scientists and public law scholars had long contended that Congress had abdicated a great deal of its Article 1 power to the bureaucracy by dint of delegation and the neglect of oversight. A more recent literature, sometimes associated with the label *congressional dominance*, has taken the opposite line. Delegation is not abdication so long as delegates are properly disciplined agents. As the creatures and wards of Congress, executive agencies would find it hard to pursue policies at odds with congressional goals. Delegation to a large bureaucracy often enhances congressional opportunities to intervene in government activity. Changes in bureaucratic policy

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often track changes in relevant congressional preferences in predictable ways. By using decentralized fire alarm oversight more than centralized police patrol oversight, Congress has instituted an elaborate and sophisticated system of checks and balances that makes bureaucratic shirking easy to correct—sometimes by congressional intervention, more often by administrative and judicial procedure. The entire mechanism is driven by reelection incentives and is associated with an emphasis on particularistic benefits. This line of argument has been supported by a large variety of empirical and theoretical contributions, and a satisfactory summary would require a long review of the literature.

Enter Foreman. Although sometimes irritating, reinvention of the wheel is not necessarily bad. New wheels sometimes work better than old, and extra wheels can support heavier loads. But Foreman's book offers little more than a flat tire. Closer attention to the literature would have prevented some critical misunderstandings that seriously impair his findings.

Foreman has three central arguments. The first, which he shares with the congressional dominance literature, is that the "runaway bureaucracy" rhetoric is false and that the common perception of regulatory discretion is inflated. Foreman claims that congressional oversight "works largely by appearing to have failed" (p. 6), yet he offers no argument or evidence as to how the appearance of failure leads to oversight success. Further, though many other scholars have sought to substantiate this argument with evidence linking changes in congressional preferences to changes in agency decisions, Foreman relies on anecdotal evidence about signals from the Hill. That signals were often sent and that they had some effect, however, does not address the issues of runaway bureaucracy. Congress can only signal an agency when it has the information on which to base the signal and the desire, or consensus, to send one. Though Foreman recognizes these problems, he does not address them in his evidence or argument. Thus, the stories he relates are unlikely to impress those who do not already share his conclusions.

Foreman's second argument is given largely without any attempt at substantiation. His claim is that congressional oversight is "means-focused." He argues that this leads to a failure

to achieve the purposes of social regulation. A basic tenet of theories of institutional design and organization is that structure determines policy. The structure of the delegation (in this case the procedures that regulate decision making by executive agencies), to the extent that they are well specified, determine the outcomes. Thus, a basic result of the congressional dominance literature concludes that overseeing of the "means" of decision making in fact ensures that the goals of the regulation will be reasonably well met.

Third, he argues that political uncertainty, technical complexity, and political opposition make it difficult to implement social regulation. He recommends that reform of congressional oversight should be realistic, incremental, and sensitive to its effect on executive agencies and should not fall victim to the "runaway bureaucracy" rhetoric. Though his conclusions are well worn and his recommendations seem innocuous, Foreman never explains why we should follow the recommendations or why they would mitigate the problem of regulatory oversight (namely, "means-focusing") that he identifies. Nonincremental changes in oversight capabilities, as, for example, in the 1946 Administrative Procedures Act, have been very effective. Moreover, if the "runaway bureaucracy" rhetoric is electorally driven, it may be necessary for some political entrepreneur to whip such rhetoric up to stimulate the public, and therefore their representatives, to correct Congress's alleged failures.

In the final analysis, Foreman presents some nice anecdotes about congressional signalling, many of which are useful additions to congressional lore. What is right about his three central arguments, however, is not new; and what is new is not convincing.

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