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# The War-Making Powers of the President: Constitutional and International Law Aspects, by A.V. Thomas and A.J. Thomas

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relevant ideas. By emphasizing the environmental stimulus of the 1980 elections and the important role that legislators played in interpreting Reagan's "mandate" for policy changes, one can put the policy actions of 1981 in a broader framework.

Because of its insight into past policy actions and its applicability to contemporary policy developments, I recommend Sinclair's book to scholars interested in congressional policymaking, agenda-setting, and roll call analysis. The study is well-written and clearly organized, and it deserves careful attention.

DARRELL M. WEST

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**The Political Economy of Public Policy.** Edited by Alan Stone and Edward J. Harpham. (Beverly Hills, Calif.: Sage Publications, 1982. Pp. 272. $25.00, cloth; $12.50, paper.)

This volume consists of an editors' introduction, 10 essays on themes related to political economy (generously defined in several instances), with subject and name indexes. The essays are uniformly well-edited, and several have considerable substantive merit. Part 1, "Ideology and the Political Economy" with chapters by Robert D. Holsworth and Raymond M. Seidelman, is the only really regrettable lapse in the generally informative anthology. Holsworth excoriates liberals for their incorrigible tendency at pragmatic compromise with the forces of reaction. Seidelman soundly thrashes the "corporatists" (a curious amalgam of institutions and personalities including, among others, *Business Week,* Lester Thurow, Felix Rohatyn, and Walter Mondale) for their unprogressive propensities. Since neither author takes alternative views seriously, their essays are more in the nature of journalistic scoldings than useful delineations of contending ideologies bearing on political economy.

More intreresting is Charles Noble's discussion of what he takes to be the failure of OSHA to fulfill its promise given the alleged dependence of the state on the capitalist system. Unfortunately, a data analysis of health and accidents trends in industry, either in the U.S. over time or between capitalist and socialist systems, is not presented, perhaps for reasons of space, making it impossible to assess whatever degree of failure may be involved. In his subtle essay, Alfred A. Marcus updates the position of the "new class" in American politics. He makes a strong, if not entirely convincing, case that the putative power of this privileged but adversarial "class," whose existence has been given popular form by a number of prominent writers, has been greatly exaggerated and scattered and defeated by far more coherent and organized business forces in recent years. Elizabeth Sanders seeks to explain the development of the New Deal's social welfare and regulatory institutions. Although insights and leads are offered, the subject is far too complicated for such cursory, restricted treatment. It is useful, however, to note the discussion as a point of view worth further examination.

Kenneth J. Meier criticizes cost-benefit analysis for familiar deficiencies and makes the plea that politics is a superior form of policymaking. One can agree somewhat without rejecting altogether, as Meier appears to do, such technical aids to analysis. Markets, as an alternative to both politics and cost-benefit analysis, are not mentioned.

The book's most sophisticated essay on both empirical and analytic planes is Richard P. Barke's study of railroad abandonment decisions by the ICC. Barke avoids entirely the fallacy of confusing consequence with sequence that intrudes in several of the other essays and is common these days in much radical or critical scholarship. Genuinely new information is generated and a plausible political and administrative account is given for the decisions taken. Gerald Epstein advances an innovative if preliminary theory of Federal Reserve Board behavior that contrasts its formal role as an "independent" stabilizing agent with its alleged control by the banking industry. Kenneth Woodside writes on the corporation tax in Canada and Britain as symbolic politics. Gary Freeman and Paul Adams's essay is an excellent source for those interested in the growth, difficulties, and justifications of the Social Security system.

Most chapters are rich with references to related literature, a great help for those who would like to explore particular themes at greater length.

L. L. WADE

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**The War-Making Powers of the President: Constitutional and International Law Aspects.** By Ann Van Wynen Thomas and A. J. Thomas, Jr. (Dallas: SMU Press, 1982. Pp. v + 177. $15.00.)

In almost every administration, questions arise over who has the authority to commit U.S. forces to armed conflict (military action short of a declared war). In this relatively short work, the Thomases attempt to sort out the constitutional and international law aspects of the war powers.

In the first five chapters the authors present a good, but very sketchy (the first five chapters take only 33 pages), historical review of the war powers of the president as conceived by the Founders and as practiced through history. The brevity of these chapters makes them of only limited utility.

The book's substance is in chapter 6, "Constitutional and International Law Bases," in which the Thomases discuss the distinction between a formally declared war (war in the "legal sense"), a war in practice but undeclared (war in the "material sense"), and more limited hostilities. They conclude that "all theories permit some use of force by the President without congressional declaration. They differ on the degree of force which might permit the unilateral use or on the purpose of the force" (p. 49).

Given that there is no agreement on the amount of force a president may legally use in the absence of a declaration of war, what of the various components of the president's war powers? Here, there is some agreement. First, all parties agree that the congress has the power to "declare" war, and that once a war is declared, the president, as Commander-in-Chief, is responsible for conducting the war. Can Congress grant war-making power to the president without a declaration of war? Yes, "a formal congressional declaration of war is not necessary to express the consent of Congress to military action of a warlike nature" (p. 87).

What of "self-defense?" Has the president the power to repel sudden attacks? Again, the answer is yes (on practical if not Constitutional grounds). Can the president use the military to "suppress insurrection?" Yes, say the Thomases (p. 70). What of indirect threats to the nation's sovereignty? Here the problem becomes clouded.

Could, for example, the president use military force to protect the lives of U.S. citizens abroad? The Thomases say that in international law the answer is a clear yes, and in constitutional law the answer is a probable yes. What of the use of force to protect U.S. property abroad? Only, say the Thomases, if the "security of the state" were also endangered. Then, both international and constitutional law would permit the use of force by the president. Do American commitments based on mutual defense treaties with other countries allow the president to use military force? In international law, yes, but such a use of force might be unacceptable from a constitutional perspective. Treaties and executive agreements would seem to allow for the use of force in international law, but in constitutional law, it is not clear whether the president may use such force.

Does the president have independent war-making powers deriving from his role as Commander-in-Chief? The Thomases say that the president "may" (p. 71) have some powers here, but it is also unclear.

The final chapter, "Congressional Attempts to Curb Presidential Power," focuses on one of the most important parts of the war-making problem: conflict and/or cooperation between the president and Congress. Unfortunately, the authors devote almost all of their attention to the conflict in Southeast Asia, and, while they do an excellent job of describing president-curbing efforts by the Congress in this period, a more historical perspective or review is needed to get a fuller picture of this problem.

In chapter 7, the Thomases look at the impact of the "War Powers Resolution of 1973." Citing the fact that since its passage, presidents have complied with the Resolution while claiming to do so only as a courtesy, the authors contend that "future Presidents could presumably bypass the resolution by claiming they are acting under other constitutional grants than that to the Commander-in-Chief" (p. 133).

In looking at the constitutional and international law restraints on the president's war-making power, the authors beg certain questions. To what extent *are* presidents constrained by the Constitution or by international law? To what extent does the Constitution *really matter* when dealing with a resolute president determined to act?

Since there is no conclusion in the book, we are not given the benefit of a summation of just what power the president has in war making, but since the Thomases present no clear view on what the proper limits of presidential power might be, I think that we can assume that "the power of the President to commit forces abroad remains a dark continent of American jurisprudence" (p. 146).

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**The Fall of the First British Empire: Origins of the War of American Independence.** By Robert W. Tucker and David C. Hendrickson. (Baltimore: Johns Hopkins University Press, 1982. Pp. viii + 450. $24.00.)

*The Fall of the First British Empire* covers the period from the peace settlement of 1763 following the Seven Years' War to the outbreak of hostilities at Lexington and Concord in the spring of 1775. The central concern of the authors is to explain how the First British Empire, at its zenith in 1763 with victory over the French in North America, broke up just over a decade later with the American colonies in armed revolt. In the course of this investigation Tucker and Hendrick-