legal history literature," specifically, the writings of John Phillip Reid, Barbara Black, and Thomas C. Grey, who, according to Greene, have established that custom in eighteenth century British constitutional thinking was good law and that, therefore, the customary arrangements in the American colonies, including legislative independence of the British Parliament, was as "correct" an understanding of the constitution as the "modern" doctrine of parliamentary sovereignty. To assume that theories such as sovereignty are correct because they are articulated by the center is, in Greene's view, a common historical fallacy.

In my opinion Greene (and Reid before him) overemphasizes the importance of custom, obscuring an important dimension in the legal climate of revolutionary America. In making the British constitution and custom the sources of American rights, Reid and Greene ignore natural law, to which Reid is intemperately hostile. The First Continental Congress (1774) and a host of revolutionary writers, including James Madison, considered natural law a principal source of American rights. To neglect natural law is to distort the constitutional and political history of their period.

Despite this shortcoming, the book is an excellent historigraphical essay on the recent literature on the conflicting interpretations of the constitution of the First British Empire and the consequences of these different views. As such, it is an extremely valuable synthesis that can be recommended to anyone who wishes to read a compact, judicious, comprehensive survey of the last twenty years' scholarship on a complex subject which has attracted a vigorous amount of scholarship, even in an era in which social history holds sway.

CONSTITUTIONAL CULTURES: THE MENTALITY AND CONSEQUENCES OF JUDICIAL REVIEW. By Robert F. Nagel.[1] Berkeley: University of California Press. 1989. Pp. xii, 232. Cloth, $29.95.

Maurice J. Holland[2]

> Of one thing I am perfectly clear: that it is not by deciding the suit, but by compromising the difference, that peace can be restored or kept. They who would put an end to such quarrels by declaring roundly in favor of the whole demands of either

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2. Dean and Professor of Law, University of Oregon School of Law.

party have mistaken, . . . the office of a mediator.[3]

In this volume of elegant and thematically related essays Professor Robert Nagel advances a critique of contemporary American judicial review that is one part Edmund Burke, one part Michael Oakeshott and one part James Bradley Thayer. These echoes of, respectively, the seminal figure of Anglo-American conservatism, the foremost modern critic of the spirit of overweening rationalism in politics, and the first of the great academic proponents of judicial restraint, ought not obscure the author's impressive originality and boldness in formulating a nearly unique stance from which to appraise the Supreme Court's performance over the past three or four decades.

Although written by an academic lawyer, this book is likely to puzzle many lawyer-readers. Nagel's analysis is quite unlike anything else written about American constitutionalism for a very long time. Professor Nagel is, to say the least, highly skeptical concerning the supposed benefits and contributions of judicial activism. In contrast to so many other constitutional law scholars, such as Michael Perry, Thomas Grey, John Hart Ely and Jesse Choper, he does not offer elaborate edifices of justification for judicial activism in constitutional cases. Yet Nagel is not a typical conservative jurisprudent of the school exemplified by Robert Bork, insistent that constitutional interpretation confine itself to modest elaborations of the ratifiers' intentions or understandings. Almost uniquely among modern constitutional jurisprudents, Nagel is not preoccupied with the lawfulness or "legitimacy" of one or another doctrinal expansion, contraction or methodology. It would not be unwarranted to describe Nagel's vantage point as being akin to that of the cultural anthropologist, as indeed this volume's title is perhaps meant to suggest, albeit one with an appealingly literary sensibility. His achievement of such an enlarged perspective constitutes a remarkable intellectual *tour de force* on the part of one whose scholarly vocation is to work in a specialty at once as sterile and as distracted as academic constitutional law has lately become. It is all the more estimable in that Nagel deploys the insights with which these essays are studded with such commendable grace and evocativeness of style, unmarred by any trace of the clanking laboriousness of the typical academic, legal, and interdisciplinary styles.

It is hardly surprising that relatively few of Nagel's colleagues in constitutional law appear, judging from the paucity of reviews, to

3. *Letters to the Sheriffs of Bristol*, in SELECTED WRITINGS OF EDMUND BURKE 212-13 (W. J. Bate ed. 1960).

have known just what to make of this work, or else seem to have been caught flat-footed by it.[4] Nagel's central, unifying thesis is stated in his opening paragraph:

> The meaning of the Constitution of the United States, of course, emerges from the adversarial argument and judicial opinions that make up the legal culture. It is less commonly appreciated that the Constitution is also expressed in the institutions, behaviors, and understandings that form the general political culture. . . . [I] urge that judicial interpretations should be viewed not only in the conventional way, as efforts to extract meaning from the document, but also as embodiments of the intellectual culture of lawyers and judges—embodiments, that is, of certain analytic and communicative styles. I urge, moreover, that for reasons that are intrinsic to adjudication, this legal constitution is inferior in important ways to the political constitution and that excessive reliance on judicial review is undermining both fidelity to constitutional principles and the general health of the political culture.

Elaborating in a variety of contexts upon that opening salvo, Nagel proceeds in the rest of the volume to flesh out his contention that, not only has judicial review often ill-served the constitutional values it is supposed to preserve and strengthen within its own proper sphere of operation, the decision of constitutional cases, but that it has exerted itself in ways he finds inimical to the continuing vitality of what might be called "consensual constitutionalism" as manifested in the political branches of government. This depiction could not, it hardly needs saying, be more dramatically at odds with the conventional wisdom on the subject, especially as eagerly propagated by those legal academics whom Bork refers to as the "clerisy of judicial power."[5] According to the prevalent myth, widely accepted in the academy, the media, and throughout the self-congratulatory legal profession itself, it is only by means of vigorous judicial activism that the political branches, and by extension the American people, have been prevented from sacrificing the nation's constitutional heritage on the altar of bigotry, expediency, and generalized doltishness. This is a conceit, needless to say, enormously pleasing to lawyers and judges. Nagel's purpose in these essays is to puncture it, as he bluntly states:

> This book suggests that one main enemy of the constitutional order, whether conceived of as a public morality or a political theory, is the routinization of judicial power. The judiciary's frequent intervention in ordinary political affairs works against both the preservation and the healthy growth of our constitutional traditions. Excessively concerned about tangible accomplishment, courts close them-

4. Thus, Professor Lupu indignantly rejects Nagel's lines of argument largely on the ground they would not have countenanced Roe v. Wade, 410 U.S. 113 (1973), and that in turn would have left the "fledgling women's movement" of the day vulnerable to exhaustion and backlash in waging the struggle for abortion rights through the political processes. Lupu, Book Review, 103 HARV. L. REV. 951, 961 (1990).

5. R. BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW 134 (1990).

> selves off from the wisdom available in the political constitution and undermine long-term support for basic principles. I maintain that this is so more than we like to admit even in those areas, such as freedom of speech, where judicial power is usually thought most appropriate. When controlling behavior is less important than shaping attitudes, preoccupation with social control can also lead to judicial abdication. This, too, can impoverish public understandings, and I use federalism to illustrate this possibility.

Nagel's understanding of what is entailed by constitutionalism clearly owes much of its inspiration to the manner in which the concept has been understood and practiced in Great Britain, and considerably less to the individual-rights orientation that has, on the model of *Marbury v. Madison*, largely predominated in this country. The British Constitution, of course, consists only in part, and that by no means the greater part, of judicially declared doctrines concerning individual rights. Rather, it is compounded of a vaguely delineated and only partially articulated inheritance of traditions, usages, understandings, customs and self-denying ordinances that have evolved over centuries of experience. Its ingredients and contours have been shaped more by political than by judicial actors; by the Crown, the Cabinet, Parliament, and even on occasion by the established church, the universities and authoritative commentators, both academic and journalistic. This being so, the imperatives and prohibitions somewhat indeterminately imposed by the British Constitution have never been remote from public opinion and consensus, whether elite as in the past or more popular as in recent times. Its vaunted success has been largely achieved by the famous Burkean disposition to compromise, to refrain from pushing questions to their limits, and by an instinct for avoiding precise, hard-and-fast articulations of rules and doctrines possessing the status of "the supreme Law of the Land . . . . "[6]

Another important facet of British constitutionalism, at least implicitly admired by Nagel, has been its disinclination to vest centralized and paramount authority in any single institution or body to ascertain and declare constitutional meaning in a fashion understood to be final and binding upon the entirety of British government and society. How vastly different, and how much worse in Nagel's view, is the condition of constitutionalism in the United States:

> The legal profession monopolizes the opportunity both to present arguments to courts and to render authoritative interpretations. Lawyers therefore affect not only what the Constitution is, as a practical matter, but also how it is thought about and understood. Our conception of the Constitution has been shaped by their instincts and intellectual habits.

6. U.S. CONST. art, VI, cl. 2.

Just what is it, then, that Nagel finds so deficient in the instincts and intellectual habits of American lawyers and judges that, in his view, renders their hegemonic role in our brand of constitutionalism so problematic? The answer he gives is that "[l]egal training emphasizes argumentative skills . . . [that] require acute sensitivity to the potential for intellectual uncertainty." This "builds upon and accentuates contemporary tendencies toward relativism and solipsism." He laments the consequence that "those most entrusted with the meaning of our fundamental document are by training, role, and instinct inclined to think that it is difficult to discover meaning."

Of course, American lawyers possess an instinct and exercise a professional role that go beyond asserting the vagueness and indeterminateness of the Constitution; otherwise their vocational mission would be to invest it with a characteristic of the British constitution that is generally regarded, and at least impliedly so regarded by Nagel, as one of its shining virtues, namely, its relative lack of precision and specificity. Their initial assertion of uncertainty is merely by way of preparing the ground for its resolution by judicial determination of meaning, which leads, according to Nagel, to "absorption in recondite interpretation." As Burke might phrase it, by their incessant involvement in the increasingly routinized process of "recondite interpretation," American lawyers and judges have "split and atomized the doctrine,"[7] not perhaps of free government, but of our Constitution. As a consequence of this tendency:

> A document that was originally grounded on the importance of personal industry and private property has been interpreted to emphasize self-expression and sexual freedom. A document carefully designed to constrain strong national power and to protect valued local authority now permits almost limitless national power and regards local authority with suspicion.

Despite its professional instincts, and what Nagel might call its worst efforts, the American judiciary has not yet succeeded in devouring the whole of the Constitution in the maw of its "recondite interpretation." Mercifully, according to him, there remain many important provisions of the document that have more or less escaped the jaundiced gaze of judicial scrutiny and calibration. These constitute what Nagel calls "the political constitution," a miscellany of by no means inconsequential provisions whose imprecision of meaning might be thought to cry out for judicial parsing, but

7. "There are people who have split and atomized the doctrine of free government, as though it were an abstract question concerning metaphysical liberty and necessity, and not a matter of moral prudence and natural feeling." *Letter to the Sheriffs of Bristol*, E. BURKE, *supra* note 3, at 210.

which have instead been left almost entirely to officials of the political branches to interpret and apply in commonsensical fashion. Among these are the guarantee of a "republican form of government" to each state, the procedures for amending the Constitution, provisions empowering Congress effectively to regulate the jurisdiction of the federal courts, and the requirement that treaties, but not executive agreements, be ratified by the Senate. These, along with many other constitutional provisions, comprise a "political constitution" more or less walled off from judicial intrusion by the so-called political question doctrine. But this doctrinal barrier has become ever more porous with decisions such as *Baker v. Carr* and *Powell v. McCormack*, and has for some time been under sustained attack by leading academic commentators. Nagel argues that, by and large, the political constitution has in important ways fared better than the "legal Constitution" so voraciously engrossed by the judiciary:

> [T]he understandings that emerge from practice are often not fixed or precise. But meaning need not be formalized to be real. It remains both true and important that effective agreement has consistently existed to the effect that presidents are not removed from office over policy differences, that state governments are organized around basic democratic principles, that Congress "assembles" every year, and so on. [I]t is true that uninterpreted meaning is usually basic meaning—unsurprising and unexceptional. But that the meaning that emerges from practice should seem obvious merely underlines the extent to which tacit agreement about such meaning is widely shared and firmly established. If constitutional meaning is to be durable, it must seem to be plain to those who are governed by it. Perhaps uninterpreted meaning is both obvious and relatively stable, not because of the special characteristics of certain provisions, but because of the special capacity of practice to sustain effective consensus.

What in Nagel's account has evolved respecting the dynamic balance in this country between the legal and political constitutions, and done so with accelerated momentum since *Brown v. Board of Education*, is a "confrontation model [that] ignores the costs of a routinely pugnacious judiciary." This routinized judicial pugnacity both assumes and reinforces the popular sense that the political branches "have no disposition to honor constitutional rights." Indeed [p]opular disagreement has sometimes become almost a sign of proper, even heroic, use of interpretive authority" by courts.

> I am recommending that the idea of judicial restraint be reexamined and reemphasized. The essence of restraint is the admission that the Constitution does not apply to many public issues or, at least . . . not in any determinative way. This acknowledgement conflicts with functions that are understandably difficult for judges to yield. It conflicts with the strongly felt duty to assure continuing fidelity to constitutional norms. However . . . an unchecked urge to enforce those norms through adjudication may in fact undermine the capacity for durable constitutional government.

Nagel's point here seems quite similar to a central thrust of James Bradley Thayer's classic, though by current standards rather quaint, argument for generalized judicial restraint. Thayer's contention was that judges should indulge a strong presumption that the political branches have taken their obligation to support the Constitution seriously.[8] Only the strongest showing to the contrary should lead to judicial intervention. Nagel obviously agrees with this stringent standard: "The judiciary's power to invalidate the decisions of other institutions should be reserved for those special occasions when some aberrant governmental action is emphatically inconsistent with constitutional theory, text *and* public understanding as expressed in prolonged practice." The at first blush surprising, truck-size opening afforded by Nagel's use of the phrase "constitutional theory" is narrowed considerably by the conjunctive addition of "text," and nearly slammed shut by the further addition of "public understanding" and "prolonged practice."

Nagel discerns at least two major kinds of harm arising from an aggressively confrontational judiciary determined to impose its "recondite interpretation" upon the political branches and hence the nation at large. The first is that it "weaken[s] the capacity of the political culture to develop moral understandings and to initiate wise change." By this he appears to mean that the incessant barrage of constitutional invalidations issuing from the judiciary, and the intense media attention focused upon much of it, convey an implied but unmistakable message to the American people and perhaps even to the political branches themselves that the latter are somehow seriously and chronically defective, unworthy, perpetually inclined toward waywardness, if not outright lawlessness. In other words, it imbues the American polity and political decisionmakers with a pervasive distrust in themselves and in democratically accountable forms of government. Like Thayer, Nagel believes that "lawyers' aggressive instinct for interpretation ought not be permitted to displace the generous understanding that the Constitution belongs to all of us," and that it can "be safer with us than is commonly believed."

Nagel's second line of major criticism has to do with the content of judicially declared constitutional doctrine itself. Much of it he finds to be factitious and arcane, intellectually and morally impoverished, and volatile, as well as inordinately focused upon trivial or marginal concerns. Even in the area of freedom of expression, where most people would probably regard vigilant judicial review as

8. *See generally*, Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 HARV. L. REV. 129 (1893).

most needed and most efficacious, Nagel gives the overall performance of the courts decidedly mixed reviews. He is reasonably confident, certainly more so than most academics, that neither the American people nor their elected representatives are generally inclined toward systemic or seriously damaging repression of dissenting views. He points out that when serious threats to free expression have actually occurred, as during McCarthy's campaign against supposed subversives, it has been the political branches and a finally aroused popular opinion that, far more than the courts, have supplied the corrective. Nagel naturally does not deny that the expressive rights of particular litigants have been vindicated and protected in the line of famous first amendment cases. But because he views many of these cases as having focused upon such marginal issues as the right to display the words "Fuck the Draft" in a courtroom or nude dancing as public entertainment, Nagel speculates that, while those decisions did protect the particular forms of expression engaged in by the particular defendants involved, they may have had a negative effect on the public's general attitude toward and tolerance of more delicate and important kinds of utterance. Echoing Learned Hand's famous address on "The Spirit of Liberty,"[9] Nagel believes that, over time and particularly during periods of societal stress or severe polarization, freedom of expression and the values it serves are far more importantly safeguarded by widespread, intuitive popular tolerance than by some number of judicial decisions lavishing undue attention and respect upon bizarre or trivial instances of marginally expressive conduct, like Cohen's "Fuck the Draft" jacket, worn in a courthouse. His critics, of course, would respond that the core of popular tolerance is in fact protected by decisions, such as *Cohen v. California*, at the outer battlements of freedom, where, as a practical matter, the impulse to suppress is most likely to begin its encroachments.

Although this brief summary may convey the impression that Nagel devalues individual rights or thinks that courts ought not to protect them, that is certainly not the case. The texture and structure of his argumentation are so delicate and nuanced that any effort to recapitulate it risks caricaturing Nagel and falsely depicting him as an unalloyed majoritarian, even authoritarian. In addition to his approval of *Brown*, he finds a good deal to commend in the judiciary's protections of individual rights and liberties, and leaves

9. "I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts . . . . Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it . . . . While it lies there it needs no constitution, no law, no court to save it." L. HAND, THE SPIRIT OF LIBERTY 189-90 (3rd ed. 1960).

no doubt that he regards this role as indispensable. His principal criticism is that our courts have been so preoccupied with adjudicating issues involving the rights of individuals that they have neglected, almost to the point of abdication, such structural values and principles of the Constitution as federalism and separation of powers:

> The harsh reaction to *Usery* [the 1976 decision that invalidated application of the federal Fair Labor Standards Act to employees of state governments, overruled by *Garcia v. San Antonio Metropolitan Transit Authority* just eight years later] is one aspect of a widespread pattern that inverts the priorities of the framers: an obsessive concern for using the Constitution to protect individuals' rights. This fascination with rights reinforces a form of instrumentalism that is too confining to be an adequate way to think about constitutional law.

By "instrumentalism," sometimes referred to as "naive" or "crude instrumentalist assumptions," Nagel has in mind "the implicit notion . . . that the purpose of constitutional doctrine is to shape the world in certain and measurable ways." There could hardly be a more perfect illustration of this proclivity than last term's decision declaring political patronage unconstitutional,[10] which, as Justice Scalia said in dissent, effectively imposed a civil service regime upon the nation. To Nagel's way of thinking, to associate judicial review so nearly exclusively with individual rights is "to trivialize the Constitution." (A facetious subtitle for this volume that has suggested itself to this reviewer is "Trivial Pursuits," understood as applying to the judicial performance it criticizes and not to the book itself.) Moreover, it denigrates the fact that "[t]he framers' political theory was immediately concerned with organizations, not individuals. . . . [and that] Their most important contributions had to do with power allocations—with the blending and separation of power among the branches of government and with the bold effort to create a strong national government while maintaining strong state governments." Because the values implicated in *Usery* were "merely" structural and symbolic, its doctrine was not apt for the instrumentalist purpose of shaping or reshaping American society, and thus the decision was curtly dismissed as lacking in precisely delimitable, cutting-edge substance by nearly all scholarly commentators and was shortly and unceremoniously jettisoned by the Supreme Court itself.

To observe that Nagel's collection of provocative essays swims against the prevailing tide in contemporary American constitutional law would be the grossest of understatements. The unreflective assumption that the Constitution is predominantly a cornucopia of

10. Rutan v. Republican Party of Illinois, 110 S. Ct. 2729 (1990).

individual rights and that the preeminent role of the judiciary is to protect them has become so profoundly entrenched and ingrained that it is doubtful whether so evocative and subtle a thesis as Nagel's can make much headway against it. As Jeremy Rabkin has recently argued in his equally heterodox *Judicial Compulsions*, even at the "subconstitutional" level of public policymaking by administrative agencies, an incessantly burgeoning rights orientation has increasingly judicialized and legalized that sphere of governmental activity with little or no apparent resistance from the political branches.

Nagel's theory of judicial conservatism is, as I have noted, Burkean, not Borkean. American conservatives have, for some time, been, to say the least, unhappy and dissatisfied with the manner in which judicial review has lately been conducted. Apart from a few libertarian proponents of judicial activism on behalf of property rights, conservatives' principal line of attack has formed around one or another variant of originalism or interpretivism as epitomized by Bork. The strength of that approach, such as it may be, is also, from the distinctive perspective of conservativism, a weakness. Its strength, and whatever political appeal it might possess, inhere in its anti-elitism, its antipathy toward rule by unelected judges, it majoritarianism; in short, its capacity for arousing essentially populist sensibilities and resentments.

The nagging flaw of originalism, again from a specifically conservative point of view, is that majoritarianism and populism ill consort with the foundational lineaments of historic conservatism. It is this discordance that should have made some conservatives, however strongly they supported him, just a bit uneasy about much of the thrust of Bork's testimony as Supreme Court nominee. After all, since when have conservatives, of all people, so lustily idealized and exalted the *vox populi*, or even electoral majorities "told by the head,"[11] as though they were the *summum bonum*, or the ultimate arbiters of the well-ordered commonwealth, the good society? Quite to the contrary, conservatism has more often supported the notion of a "mixed constitution," wherein majoritarianism would be checked, refracted and mediated, in part by individuals and institutions claiming special, even elite status deriving from a claim of possessing uncommon civic virtue, learning or freedom to espouse the longer view of the polity's needs and interests; in short, elite corps today most closely resembled by Supreme Court Justices. There is some irony in the fact that, as the controversy over the Bork nomination demonstrated three years ago, today it is largely

11. E. BURKE, "Notes on French Affairs," *supra* note 3, at 430.

the American left that is eager to elevate judges, at least those possessed of a "correct" judicial philosophy, to the exalted status of Platonic guardians, whereas it is the American right that would deny this to them in the name of affording the widest latitude to popular opinion. The irony is compounded by the additional fact that the American left's definition of correct judicial philosophy has appropriated major strains of a "natural law" tradition associated historically with conservatism, in particular the approval by that tradition of judges deriving rights from moral philosophy, in addition to such more conventional sources of judicial authority as text and historical intent.

Judicial conservatives in this country are thus faced with something of an intellectual dilemma. Bork's populist jurisprudence provides, despite the defeat of his nomination, a rhetorically effective means of criticizing prevailing liberal judicial activism in a manner that will often evoke genuine resonances in a politically significant number of Americans instinctively hostile to fundamental social changes that are being effectuated by judicial decrees. The difficulty with this approach, however, is that, apart from the jurisprudential shortcomings of any thoroughgoing originalist theory of constitutional interpretation (and originalism forfeits much of its intellectual rigor and coherence unless it is thoroughgoing), it does not really comport notably well with the grander and more venerable traditions of Western conservatism under the banner of which it has been deployed in this country.

Nagel might well account himself as much an originalist or interpretivist as Bork, although his admiration for *Usery* suggests that he would not bet all his chips on that methodology. Throughout these essays, in any event, he is not centrally concerned to debate competing theories of constitutional interpretation, and touches upon the subject only occasionally and rather peremptorally. Rather, his argument is that the United States suffers from a surfeit of constitutional interpretation threatening to overwhelm what he regards as the sounder and more durable constitutionalism practiced by the political branches. The various points he makes with such eloquence and subtlety do not, and are not intended, to provide a programmatic or monistic scheme for conservative activists to employ in combating what Nagel sees as excessive reliance upon legal interpretation in the preservation of our constitutional heritage.

Nagel's is more European, in particular British, than most of what has recently passed for conservatism in this country, at least as applied to judicial review. His is a species of conservatism more

profound, spiritual, even delicate, and considerably less "instrumental" than any that has flourished in twentieth-century America, except perhaps as expressed in such regional and ephemeral phenomena as Southern Agrarianism, a circumstance suggesting that European-style conservatism has latterly here been transformed from a viable political platform into a matter of primarily literary or aesthetic sensibility. Indeed, much of what really offends Nagel about contemporary judicial review is its ponderous sterility, its tendency to labor over trivial issues, its insistence on quibbling over distinctions not amounting to meaningful differences, the infrequency with which it achieves compelling moral vision, and its tone-deafness vis-a-vis so many authentic national values, including those of constitutional lineage.

In addition to the sense in which Nagel's Burkean conservatism is literary, it is also communitarian. This accounts for his skepticism about the pronounced focus of modern judicial review upon declaring and enforcing individual rights. He does not doubt that such rights constitute one precious element of the American constitutional tradition. But these are rights as against the community. Although in theory individual rights are enjoyed by all citizens in common, in practice many of them are of a such a marginal character as to be exercised, much less cherished, only by a few.

Another precious element of our constitutional tradition are rights, or more properly values, primarily structural and organizational, respecting the allocation of coercive power that Americans should value in common, as a community. Nagel's superb essays make a powerful case that these values have been seriously shortchanged by the courts, with the consequence that the nation has thereby been impoverished. Sadly, in a nation that has become so fractious and alienated from its own traditions and historical past as ours, it is at least questionable whether, wholly devoid of "crude instrumentalism" as they are, his insights will receive the sympathetic attention they richly deserve.