AMERICAN CONSTITUTIONAL INTERPRETATION. By Walter F. Murphy,[1] James E. Fleming,[2] and William F. Harris, II.[3] Mineola, N.Y.: The Foundation Press. 1986. Pp. xxvi, 1262.

Fred L. Morrison[4]

Law is one of the major unifying themes of our contemporary culture. A leading university which recently inventoried its "cross-disciplinary" courses discovered that the most frequent offerings were in law. It was "business law" in the business school, "law and medicine" in several divisions of the health sciences, "law for engineers" in the engineering school, etc.

One of the most venerable of these cross-disciplinary subjects is constitutional law. There are really three distinct courses in most universities which masquerade under that common name. In law schools, Constitutional Law is designed to teach the mechanics of the allocation and limitation of power (and of challenges to it), primarily to students who, as lawyers, will help to operate the system. Even in law schools, the course may further the broad goals of a liberal education; but it is also true that only in law schools do the students focus on the technical details of pleading and practice. Accordingly, law teachers generally skip over historical topics, emphasizing the present and future tenses.

In history departments, study of the Constitution naturally has a different purpose, emphasizing the past tense. The Constitution makes superb history: perhaps nowhere else is there as continuous and articulate a representation of the ideas and issues which have driven our society, from nation-building in the early years, through the dispute over slavery and states' rights in the nineteenth century, the emergence of economic liberalism and commercial growth, the acceptance of the government as a provider of social services, the demand for (and definition of) equality, and the protection of the poor and oppressed. The reports of the Court are of particular use in this context because of the separate opinions, which frequently join issue on the key philosophical questions of the day. (The absence of separate opinions may be even more revelatory of the intellectual climate.)

Political scientists have stood at the crossroads of the legal and

1. McCormick Professor of Jurisprudence, Princeton University.
2. Member, New York bar.
3. Assistant Professor of Political Science, University of Pennsylvania.
4. Professor of Law, University of Minnesota.

historical traditions—and of others, such as sociology—and have tried to make a niche for themselves in the study of the Constitution. Some have tried to turn the Constitutional Law course into a haven for pre-law students, seeking to replicate the customs of legal education, including both breadth of coverage (touching the entire range of constitutional issues) and format of instruction (a Langdellian case-method). Others have tried to emulate the historical approach, chronicling the history of a particular era of the Court or attempting a comprehensive analysis. Still others have sought refuge in the hard sciences of mathematics and statistics, using multiple regressions to obtain correlations which may or may not be explicable to the average reader.

American Constitutional Interpretation exemplifies neither the purely legal nor the purely historical approach. It is a text and case book for undergraduate political science students which emphasizes the role of the Supreme Court as an institution in the governmental structure of the United States, especially through its authoritative interpretation of the Constitution.

Although it contains cases, it is not a law text. It does not purport to provide materials for a comprehensive course on Constitutional Law in the law school sense. It is also not a history text. It does not provide a complete and chronological history of constitutional interpretation, but rather selects from basic historical periods for its principal purpose, an examination of the role of constitutional interpretation in American government.

In addition to the usual selection of case materials, there is, for each major section, an introductory essay by the authors, mentioning the salient questions, and a selection of articles by other authors, presenting a balanced perspective on the issues. In the section on *Problems of Continuity and Change*, for example, there are paired pieces by Justice Rehnquist (as he then was) and Professor Dworkin. Other extra-judicial material, from the *Federalist* papers to Presidential messages, adds to this useful mix.

Three basic issues emerge: What is the Constitution? Who should interpret it? How should it be interpreted? The first explores the questions of incorporation of the Bill of Rights, penumbras of rights, and evolutionary vs. fixed interpretation. The second examines both separation of powers issues and federalism. The third, and most extensive, deals with the interpretation of broad principles in the Constitution, the protection of civil liberties (especially first amendment issues) and equal protection. The book enables students to learn how the Supreme Court can evolve a complex and detailed set of constitutional mandates from a few simple words,

"Congress shall make no law . . ." or "nor shall any state . . . deny to any person . . . the equal protection of the laws." In focusing on the question of interpretation, the authors emphasize the ability of our constitutional system to deduce from broad general principles a resolution of issues appropriate to the time and circumstances.

A final segment deals with constitutional law in times of military or foreign crisis, illustrating both the power and the limits of constitutional interpretation. This section emphasizes the constitutional issues of the Civil War and of World War II. One might have wished for a discussion of other, more contemporary crises, in which constitutional interpretation helped to resolve serious political problems—for example, Watergate.

The Constitution will soon be guiding us into a third century of national government. The method of interpretation which has ensured such durability, when constitutions around the world have changed and changed again during that period, is certainly worthy of study. This book centers on that process of interpretation, rather than on particular interpretations present or past, and thus should contribute measurably to the student's knowledge of our governmental system. It is neither a manual for lawyers nor a reference work for historians, but rather an excellent text for students of the art of government.

JUDICIAL CONFLICT AND CONSENSUS—BEHAVIORAL STUDIES OF AMERICAN APPELLATE COURTS. Edited by Sheldon Goldman[1] and Charles M. Lamb.[2] Lexington, Ky.: The University Press of Kentucky. 1986. Pp. 294. $30.00.

Thomas P. Lewis[3]

The political scientists who wrote the twelve essays in this book are justifiably described in the overleaf as "major scholars of judicial behavior." Their contributions, though published here for the first time, do not form a tightly cohesive whole; the thread that holds them together is their common focus on dissenting opinions in cases decided at the appellate level of the federal and state court systems. The editors explain that the book is aimed at a diverse audience of students and scholars in political science, social psy-

1. Professor of Political Science, University of Massachusetts.
2. Associate Professor of Political Science, State University of New York at Buffalo.
3. Professor of Law, University of Kentucky.