

on what the Justices said, or should have said, to one another. Kalven rarely ventures into the broader litigation process, let alone "social" analysis.<sup>6</sup>

To be fair, Kalven himself recognized that, by plunging into the Court's own first amendment opinions and waging his war of position, he ran the risk of missing other battles. One of his marginal notes concedes that his intensive effort to reconnoiter the field of Court opinions left him with a "*philosophic map*" of free speech that ignored at least "three facts: the sheer weight of broadcasting, the sheer weight of advertising, and the ownership of the means of communication." It is this larger project—to understand, and to confront in appropriate political ways the economic, social, and cultural dimensions of communication in the twentieth century—that Harry Kalven, Jr., has left to others.<sup>7</sup> If *A Worthy Tradition* lacks the comprehensive "map" that he himself had hoped to leave behind, this is still a text that should both provoke and inspire. Students of the first amendment owe a great debt to Professor Kalven—and to the two people, Jaime Kalven and Owen Fiss, who translated his manuscript into his book.

**ELITES AND THE IDEA OF EQUALITY.** By Sidney Verba,<sup>1</sup> Steven Kelman,<sup>2</sup> Gary R. Orren,<sup>3</sup> Ichiro Miyake, Joji Watanuki, Ikuo Kabashima and G. Donald Ferree, Jr.<sup>4</sup> Cambridge: Harvard University Press. 1987. \$30.00.

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*Elites and the Idea of Equality* reports the results of an inquiry into the views that "elites" in the United States, Sweden, and Japan hold about the various permutations of the idea of equality. The elites examined represent a variety of domains, including leaders in politics, business, labor, bureaucracy, media, and the intellectual world. The leaders of several insurgent groups consisting of feminist, minority, and youth organizations are also surveyed.

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6. See, e.g., Rabban, *The Emergence of Modern First Amendment Theory*, 50 U. CHI. L. REV. 1205 (1983); R. POLENBERG, *FIGHTING FAITHS* (1987).

7. See, e.g., Fiss, *Free Speech and Social Structure*, 71 IOWA L. REV. 1405 (1986).

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Some of the findings are interesting. We learn, for example, that virtually all the groups studied underrated—in comparison to the estimate of others—the degree of political influence they possessed, tending to view themselves as beleaguered by their rivals' assaults. Most of the findings, however, are quite predictable. For example: Americans' individualism allows them to accept greater amounts of economic inequality than the Swedes, while the sense of group solidarity displayed by the Japanese bestows special responsibility on private groups, such as the corporation and the family, for maintaining welfare functions assumed by the state in the West.

Their data, the authors argue at some length, reveals that conflicts over political equality are more intense and likely to be harder to resolve than those involving economic disparities. One reason for this, they claim, is that the measures of political standing are far less exact than those of relative income, so that conflicts over how to divide the pie are exacerbated further by disagreements over who already has a big piece. More important, economic differences have come to be more or less accepted as inevitable consequences of the need to maintain productivity incentives. Political equality, in contrast, is almost universally regarded as a matter of absolute right, serving as a validation of personal dignity and full citizenship.

Most of the book's discussion of political equality centers on voting and access to centers of government power. Though some questions pertaining to "gender" equality are addressed as well, issues of legal equality and protection from public and private discrimination—what in the United States have come to be known as the realm of "civil rights"—are largely ignored. Yet as far as the United States is concerned, it is here that the authors' insight about the especially delicate quality of status conflicts is most pertinent. And this is particularly true with respect to the politics of constitutional interpretation.

One of the most significant developments in the evolution of American political culture has been the transformation of the concept of private property from something enshrined within the edifice of natural rights theory to something defined and limited by positive law and considerations of social utility. Two hundred years ago, and for a long time thereafter, attempts to interfere with the use of private property or the right to contract were often regarded not only as wrongheaded disruptions of natural economic forces but also as violations of the rights of man. Consequently, the courts were less hesitant to overrule economic regulations. Today, of course, such matters are considered to be the virtually unchallenged monopoly of politicians, an allocation of power that has obvious

substantive overtones. On the other hand, questions of political and civil equality are increasingly pulled into the orbit of the judiciary.

If Verba and his colleagues err, it is in thinking that the preference given to political rights over those conventionally thought of as purely economic reflects some sort of eternal truth. American history reveals that this primacy is rather recent and the result of social changes of types that a time-bound study of this nature is unlikely to detect. Moreover, within the American political system this shift of attitudes is of the utmost significance: so long as property questions are seen as matters more profane than sacred, we can confidently expect that, for better or worse, many constitutional scholars will continue to favor narrow interpretations of the property clauses of the Constitution.

**CONSTITUTIONAL FAITH.** By Sanford Levinson.<sup>1</sup> Princeton: Princeton University Press. 1988. Pp. xii, 243. \$19.95.

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This well written, intelligent volume takes up a subject that is too big for its two hundred forty-three pages, but takes it up well nonetheless. Professor Sanford Levinson seeks to discover the religious content of the Constitution. Not the religion clauses of the first amendment, but the civil religion of the Constitution as a whole. In what ways is belief in the Constitution like religious belief? Specifically, in what ways are the various doctrines of constitutional interpretation like the doctrines of religious, or scriptural, interpretation? How is the constitutional oath like the pledge of service that the religious believer might offer to his religious organization or his god? When does dissent or unlawful behavior amount to an admission that one is not "committed" to the Constitution, or to American constitutional government? Does the law school teacher of the Constitution have true academic freedom, liberally defined? Or do we have some overriding obligation of basic fidelity to the constitutional enterprise? These are big questions, and Professor Levinson provides some perspectives, though not an answer, for each of them.

Levinson notes that, ever since the Constitution was written, its supporters have used religious language and imagery to defend it

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