Review of *Underwriting: The Poetics of Insurance in America, 1722-1872*, by E. Wertheimer

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Kahn and Kersh target political science and legal policy studies that explain Supreme Court decisionmaking as the reflection of the judge’s behavioral attitudes or party identification. The essays thus go beyond behavioralist and policy interpretations, explaining and evaluating judicial decision making within a careful and insightful construction of changing historical contexts. Kahn and Kersh’s introduction outlines the central debate over the separation between law and politics. The editors distinguish legalists, who contend that law and judicial decisions reflect an autonomous process immune to external interest-group pressures, from behavioralists and policy experts, who contend that judges act merely in accord with preexisting attitudes and policy preferences rooted in personal background and/or party identification. During the 1960s scholars of comparative politics such as Theda Skocpol challenged the behavioralists’ policy assumptions, arguing that attention to historical contingency was essential in order to understand how institutions operated. The focus of American political development “is decidedly less presentist and more historical... it is less interested in decisions made by individuals (at least as they are said to reflect the individual’s autonomous preferences) than on how the institutions structure their choices” (p. 8) over time.

Mark Tushnet considers interactions between the Court and the political parties dominating Congress and the president in the 1930s, and respectively, the Warren Court and Rehnquist Court eras. Howard Gillman studies closely the influence of Kennedy-Johnson administrations on the Warren Court’s liberal judicial activism during the 1960s. The other case studies examine more directly the changing treatment of constitutional rights claims from the mid-nineteenth century to the millennium era. Mark A. Graber finds legal autonomy, strategic policy concerns, and personal attitudes interacting to influence the Supreme Court’s Jacksonian Democrat and Republican appointees’ conflicting decisions in state and federal legal tender cases (1863, 1870–1871), and regarding congressional withdrawal of jurisdiction on behalf of radical Reconstruction in *Ex Parte McCordile* (1868).

A similar interaction among institutional autonomy, policy expectations, and attitudes is at work in Wayne D. Moore’s examination of the interest-group and ideological factors shaping the battle over the Fourteenth Amendment’s passage compared to the Court’s controversial decision in the *Slaughter-House Cases* (1873); Pamela Brandwein’s recovery of the forgotten “state neglect” doctrine in cases requiring racially equal access to property and physical security but not “public accommodations” such as theaters, in the Court’s invalidation of the Civil Rights Act of 1875 in the *Civil Rights Cases* (1883); Julie Novkov’s penetrating analysis of the southern antimiscegenation laws affirmed in *Pace v. Alabama* (1883); Carol Nackenoff’s excellent study of reform groups’ contrary motivations and outcomes in struggles over Native Americans’ citizenship and tribal rights between the 1880s and the Progressive era and the 1920s-1930s; Kersh’s revisionist argument that the Court’s switch from opposing to supporting the rights of organized labor resulted in a return to *Lochner* jurisprudence in order to uphold blacks’ civil rights; Thomas M. Keck’s study of the Court’s partial rejection of conservative activists’ attack on affirmative action; and Kahn’s study of the constitutionalization of gay rights in *Romer v. Evans* (1996) and *Lawrence v. Texas* (2003) compared to women’s right to privacy in abortion cases.

Historians undoubtedly can benefit from reading these essays. Nevertheless, this reviewer was left wondering why the authors did not engage the relevant historical literature to a greater extent. The University Press of Kansas deserves commendation for making this book affordable as a paperback.

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Eric Wertheimer explores how capitalism, via understandings of insurance, was written into American literature in the period from 1722 through 1872. Grounded in literary theory, his book challenges readers to rethink the relation between art and commerce in America before the Civil War.

Wertheimer begins with a provocative question: can the world be underwritten? To get at this question, Wertheimer does not explore the history of the insurance industry or business practice. Rather, he examines how several major writers of the period—Benjamin Franklin, Phillis Wheatley, Noah Webster, Herman Melville, and Ralph Waldo Emerson—wrote insurance and commerce into their literature. Focusing on each writer in succession, Wertheimer connects each to insurance, risk, and loss, with the book becoming a series of intellectual meditations that are roughly chronological and place-based.

Wertheimer argues that insurance is a “writing business” that “colonized” economic life. He further asserts that the insurance business “may be viewed as essential to a material, ideological, and aesthetic reckoning with the emergence of American literature” (pp. xii-xiii). Connecting these forms of writing, Wertheimer seeks to reconcile property, text, and cultural discourse. Inventive, as well as sometimes insightful and tendentious, Wertheimer reveals both the importance of insurance to capitalism (and insurance is certainly understudied) and the ways that the language of loss and risk were embedded in the literature and writing of eighteenth and nineteenth-century America.

In his chapter on Franklin, Wertheimer argues that Franklin’s disciplined *Autobiography* and *Poor Richard’s Almanack* have embedded in them tropes of loss and uncertainty that help us to understand both his scientific experimentation and economic activities. Likewise, in founding a mutual insurance company, the Phil-
rief sketches out the subsequent application of the "doctrine of discovery," the Lewis and Clark expedition, and U.S. claims to the Pacific Northwest. After a short introduction that defines the doctrine of discovery, he develops his argument in three stages. First, he outlines the history of discovery as articulated in medieval and early modern Europe and in colonial America and the early national United States. Next, he focuses on Thomas Jefferson, marshalling voluminous documentary evidence to detail Jefferson's views of U.S. government authority over Indians and Indian territory; he discusses the contradiction between Jefferson's idealistic vision of Indians and his actions, which promoted aggressive acquisition of Indian lands and removal or outright extermination of Indians. Finally, the author analyzes the Lewis and Clark expedition as a manifestation of discovery and systematically describes how discovery was applied to the Oregon country between 1803 and 1855. At the end of the book, Miller briefly sketches out the subsequent application of the discovery doctrine in U.S. Indian law through 2005 and explains the ramifications of the book's findings.

Miller concludes that Jefferson was an aggressive expansionist who used the doctrine of discovery to justify westward expansion and the seizure of Indian territory. He argues that the doctrine prompted Jefferson to dispatch Meriwether Lewis and William Clark to solidify U.S. ownership of the Northwest, that the explorers' journey played an important role in U.S. expansion through application of the principle of discovery, and that the expedition demonstrates how Jefferson was responsible for putting the idea of Manifest Destiny into motion. The author further asserts that Manifest Destiny emerged naturally out of the concept of discovery. More broadly, Miller says that his book proves "the pervasive presence of Discovery in the past 400 years of...