

Through the lens of her equality critique, MacKinnon explores inequality in topics often not seen to present equality questions, such as abortion, pornography, prostitution, and the First Amendment's twentieth-century shift from protecting the speech of the powerless to protecting the speech of the powerful.

Yet, even after *Women's Lives, Men's Laws*, an important element of MacKinnon's feminism remains elusive. MacKinnon engages law in her investigation of the relationship between epistemology and power because it is both central to the inequality of the sexes and ripe with potential for social change. However, while MacKinnon's theory refuses to cede law to male power, it never squarely confronts how to identify and exploit the fissures that exist in the legal expression of what she has described as a "near perfect" system of male dominance.

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*From Elections to Democracy: Building Accountable Government in Hungary and Poland.* By Susan Rose-Ackerman. New York: Cambridge University Press, 2005. Pp. 272. \$50.00 cloth.

Reviewed by Linda M. Beale, University of Illinois

Rose-Ackerman's new book tackles a significant concern—how to sustain electoral democracies in Central European countries by ensuring that government policy decisions are accountable to the people. Challenging the notion that electoral systems with competitive political parties are sufficient, Rose-Ackerman asserts that democracy requires accountable policymaking "through transparent procedures that seek to incorporate public input" (p. 1). Focusing on Hungary and Poland, she considers five institutional processes that attempt to satisfy this goal.

First, international constraints provided by the EU and organizations such as the World Bank inherently create conflicts through external pressures that override democratic, grassroots developments. The resulting legitimacy deficit limits international organizations' ability to encourage public accountability.

Second, various new or expanded independent oversight institutions function relatively well to enhance performance accountability but do little to foster policymaking accountability. These include independent agencies, constitutional courts, presidents with monitoring functions, audit offices, and ombudsmen (p. 57, Table 5.1). One suspects that this discussion discounts the policymaking roles of two institutions more than merited. The constitu-

tional courts in Hungary and Poland play a larger role than those in the United States, since they are encouraged to address constitutional issues and provide widespread access; and the ombudsmen have not infrequently initiated policy debates in response to citizens' concerns (see, e.g., pp. 78–9 and 80–1).

Third, delegation to lower-level governments may allow some public participation. Regrettably, delegation also invites interference with national initiatives based on the personal goals of local politicians while allowing opportunistic firms to avoid national objectives by working through weaker local units that lack expertise or clear lines of authority. Public accountability is therefore weak, even though some substantive statutes *require* public participation before particular kinds of ordinances may be promulgated.

Finally, neocorporatism and civil dialogue similarly fail. Neocorporatism brings specific groups into policymaking, but it does so by substituting negotiation processes for ordinary policymaking. The effect is to shut out all but established insiders, such as tripartite commissions with labor, management, and government representatives. If civil dialogue functions in situations in which participating groups are weak, information is not available, consultation is too late, or policy discussions are inconclusive (as Rose-Ackerman suggests is often the case in Hungary and Poland), it does little to enhance policymaking accountability.

The failure of these four institutions leaves only one genuine possibility for policymaking accountability—reliance on open, public participation in government policymaking processes “that do not lock in a fixed set of participants and that are open to newly developing interests” (p. 137). Rose-Ackerman devotes the final chapters to a re-exploration of Poland's and Hungary's neocorporatist and civil dialogue processes. She compares them to the ideal of transparent, publicly accountable, and judicially reviewable issuance of administrative rules by U.S. agencies under the Administrative Procedures Act. This part of her book more thoroughly establishes the range of problems that continue to limit public participation rights in Central European countries, such as leftover suspicions of interest-group politics (p. 148), manipulative efforts of governments to prevent disclosure of draft documents (p. 151), and a patchwork of inconsistent practices that have developed in the absence of legal requirements for the dissemination of proposed rules (pp. 151–2). It sketches a realistic picture of the limited effectiveness of civil society groups that struggle with constrained financing, passive participation, and restricted access to the policymaking process.

In her final chapter, Rose-Ackerman urges two reforms for Central European countries: (1) the adoption of procedural rules to ensure public notice about draft rules, solicitation of comments,

and statements of reasons, and (2) fostering broader advocacy organizations through government subsidies. Although Rose-Ackerman summarizes some of the earlier studies of U.S. rulemaking and briefly acknowledges recurring problems, she remains perhaps overly optimistic that the publication of proposals and comments can force officials to be responsive to the broader public (pp. 230–2). Agency capture by regulated entities is a major continuing problem in the United States (see, e.g., Merrill 1997; Cross 1999). It would be an even more pervasive problem in Central Europe, where limited consultation with tripartite commissions has been widely accepted. Most current scholarship argues that the cure for agency capture is an even broader requirement for public participation coupled with appropriate judicial review (see, e.g., Fontana 2005). Rose-Ackerman's data on Central Europe suggest, however, that the weakness of civic organizations will present a significant hurdle. It is not clear that increased government funding will be sufficient: the creation of strong civic organizations is likely to require sustained outside funding from international foundations.

Rose-Ackerman's research is thorough, based on a wide range of documentary support as well as extensive 2002–2003 interviews in Hungary and Poland. The particularized research yields practical examples of abstract institutional processes. Although there is more historical detail than necessary, too much discussion of institutions that merely provide performance accountability, and some tedious repetition, the resulting work is a significant contribution to scholarship on Central European institutions.

#### References

- Cross, Frank B. (1999) "The Judiciary and Public Choice," 50 *Hastings Law J.* 355.  
Fontana, David (2005) "Reforming the Administrative Procedure Act: Democracy Index Rulemaking," 74 *Fordham Law Rev.* 81.  
Merrill, Thomas (1997) "Agency Capture Theory and the Courts 1967–1983," 72 *Chicago-Kent Law Rev.* 1039.

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*Scoring Points: Politicians, Activists, and the Lower Federal Court Appointment Process.* By Nancy Scherer. Stanford, CA: Stanford University Press, 2005. Pp. 272. \$65.00 cloth; \$24.95 paper.

Reviewed by Sally Kenney, University of Minnesota

Why have appointments to the lower federal courts become so politicized in the modern era? Scherer's answer is that senators who once dispensed judicial appointments as political patronage