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## Book Reviews

Elizabeth Heger Boyle, Editor

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*The European Court and Civil Society: Litigation, Mobilization and Governance.* By Rachel Cichowski. Cambridge, United Kingdom: Cambridge University Press, 2007. Pp. xv+294. \$85.00 cloth; \$32.99 paper; \$26.00 e-book.

Reviewed by Lisa Vanhala, University of Oxford

An exemplary addition to a growing interdisciplinary body of literature on the European Union (EU) legal system, *The European Court and Civil Society* explains “how an international treaty governing economic cooperation became a quasi-constitutional polity granting individual rights and public inclusion” (p. 1). Accounts of how this transformation came about have been previously proffered but none as nuanced as Cichowski’s empirically driven explanation. The study provides new and important insights into the role of civil society litigation and mobilization in spurring institutional change and supranational governance.

The first chapters lay out the theoretical, empirical, and normative debates with which the book engages and develops the theoretical approach applied in subsequent chapters. Cichowski’s theoretical contribution is powerful: existing scholarship on European legal integration has been dominated by the increasingly stagnant debate between intergovernmental approaches, which argue that national governments’ policy preferences systematically influence judicial decisions and neo-functional approaches, which focus on the role of supranational institutions and transnational society. The study, by exploring the “interactions between individual activists, law and courts and the impact of this dynamic on governance” (p. 244), transcends this debate and is able to draw conclusions about the causes, effects, and feedback effects of supranational governance, mobilization, and litigation. The heuristic device that the study develops is used to evaluate whether, how, and why integration has evolved in specific policy domains: questions that have not been satisfactorily answered by the existing theoretical approaches.

Part I explores the dynamic process of institutionalization through litigation by focusing on legal mobilization in the gender equality and environmental protection policy domains. The cases

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were strategically chosen to allow for a comparison of the effect of the legal basis—treaty-based rights (gender equality) versus rights enshrined only in secondary legislation (environmental protection)—on judicial rulemaking capacity and the ease with which member state governments can retaliate against adverse rulings. Part II switches focus and takes mobilization as the starting point of analysis. It argues that national executives are no longer alone in the European arena; public interests are equally present. Focusing on the same policy domains, Cichowski finds that litigation and legislation provide new political and legal opportunities, prompting individuals and groups to shift their mobilization to the emerging supranational space.

A formidable strength of the book is the robust methodology that combines quantitative analyses across 15 countries from 1970 to 2003 in the two policy domains with detailed, lively, and systematic case law analysis and a historical study of the mobilization dynamic at the European level. The data in *The European Court and Civil Society* are meticulously collected from a wide range of sources, including European Court of Justice (ECJ) data on Article 234 preliminary references, World Values Survey data, indexes of national legal resources, member state government, and European Commission written briefs and rules regarding *locus standi*, to name just a few. The quantitative and qualitative approaches are seamlessly woven together into a single comprehensive and convincing account. What could have become an overwhelming wealth of information is distilled into clear and concise key findings. In addition to the theoretical and empirical contributions, the study also has important implications for normative debates about the role of courts in democracies, and Cichowski does not shy away from this.

Some of the book's conclusions confirm earlier findings, while others challenge conventional explanations. Cichowski concludes that EU rulings can offer potential litigants new opportunities before national courts and finds that ECJ rulings can expand the precision, scope, and enforceability of EU law. The study also finds that the subsequent supranational and national policy impact of judicial decisions is linked to the legal basis of the ruling. The conclusion that the policy preferences of member state governments do not systematically shape ECJ decisionmaking is a nail in the coffin for intergovernmental understandings of European legal integration. Cichowski finds instead that a variety of actors, including supranational institutions and transnational activists, occupy EU policy spaces and that they increasingly influence policy change in both judicial and legislative arenas.

A limitation of the existing literature on legal mobilization in the EU is the tendency to focus only on those fields where litigation and civil society participation is happening. Cichowski's theoretical

framework takes a leap forward in remedying this problem with her policy-area-by-policy-area focus. Empirically, however, by focusing on the policy domains where activists have been most energetic in their use of litigation in the EU, the study suffers to a small extent from the same limitation. Further research employing the book's framework and complementing the findings in other policy domains, perhaps where litigation strategies are less common or there is a lack of significant positive judicial outcomes, would build on the vital foundation that *The European Court and Civil Society* has laid.

The book, while specific in its empirical focus, will be of interest to a wide audience for its theoretical insights and methodological sophistication. Those interested in international courts and constitutionalism; courts, legal mobilization, and social change; comparative and judicial politics; gender equality and environmental law; and normative theory focusing on the role of courts in democracies will find it to be fascinating, and necessary, reading.

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*Gay Marriage: For Better or for Worse? What We've Learned from the Evidence.* By William N. Eskridge Jr. and Darren R. Spedale. New York: Oxford University Press, 2006. Pp. ix+336. \$29.95 cloth; \$19.95 paper.

Reviewed by Daniel R. Pinello, John Jay College of Criminal Justice of the City University of New York

In May 1989, the Danish Parliament enacted the Registered Partnership Act and thereby made Denmark the first nation officially to recognize same-sex unions and to bestow on lesbian and gay couples most of the rights and duties associated with marriage. In 1993, Norway followed Denmark's lead, as did Sweden in 1995, Iceland in 1996, and Finland in 2002. The Nordic countries thus were trailblazers in granting same-sex pairs what are now termed civil unions or domestic partnerships in the United States.

Conservative U.S. commentators such as Stanley Kurtz and Robert Bork have made empirical allegations, based on the Scandinavian experience, that same-sex unions discourage different-sex couples from marrying and result in more children being raised outside of marriage. In 2004 and 2005, these assertions were the principal empirical grounds bolstering the Republican Party's "defense of marriage" argument in support of passage of the Federal Marriage Amendment, which would ban same-sex unions in the United States.