ratios, oblivious to scholarship questioning such positivism. Certain elements of this narrative seem oddly out of date or out of touch with current scholarship. This excellent book could easily have been better.

Nonetheless, *Southern Horrors* offers useful insights into feminism and a provocative look at Rebecca Felton, the Madame Defarge of American lynching.

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The Fifth Freedom: Law, Politics and Civil Rights in the United States, 1941–1972. By Anthony S. Chen. Princeton, NJ, and Oxford: Princeton University Press, 2009. 395 pp. $65.00 cloth; $24.95 paper.

Reviewed by Robin Stryker, University of Arizona

The title of Anthony Chen's *The Fifth Freedom: Law, Politics and Civil Rights in the United States,* stems from President Franklin D. Roosevelt's framing of World War II as a defense of four freedoms: freedom of speech and religion, and freedom from want and fear. Presenting the civil rights movement as a quest for the "fifth freedom," Chen offers a novel take on the emergence of color-conscious affirmative action policies, including numerical goals and timetables. In doing so, Chen contributes substantially to law and society scholarship, as well as to sociology, political science, and history. He improves scholars' understanding of American civil rights politics, of how interests and institutions interact, and of how path dependencies exert profound influence on politics and legislative lawmaking. Chen's book is a must-read for civil rights scholars and for all those interested in the politics of legal change.

Prior scholarship traces affirmative action policies to a radicalized civil rights lobby, shifts in partisan politics and political culture, and decentralized, fragmented political institutions. Chen agrees that a complete causal story encompasses these factors, but he documents meticulously how and why they are insufficient.

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Instead, explaining how color-conscious affirmative action could emerge requires analyzing the post–World War II campaign for, and ultimate failure of, fair employment practice (FEP) legislation. Chen does so, using historical methods and primary and secondary materials to trace civil rights politics, 1941–1972, at interrelated state and national levels. He also analyzes quantitatively the correlates of public and legislative support for FEP.

An interracial, interfaith, and significantly bipartisan movement of northern liberals promoted state and federal FEP legislation in the 1940s–1950s. National FEP legislation would have created a strong Fair Employment Practices Commission (FEPC) to enforce prohibitions against race discrimination. Modeled on the National Labor Relations Board, a federal FEPC would have prosecuted discrimination claims and—subject to judicial review—would have been able to adjudicate claims and order violators to cease and desist. Northern liberals almost succeeded in getting such an FEPC, coming closest during Harry S. Truman's presidency. Northern Democrats were FEP's strongest supporters, but northern Republicans from competitive districts in or near urban areas also supported FEP. In 1945, New York became the first state to pass FEP, and other northeastern states soon followed. But then things stalled. Though liberals hoped early state-level legislation would set off a chain reaction culminating in a federal FEPC, their hopes went unrealized, and not exclusively because of obstructionist southerners.

According to Chen, the outer limits for legislation were established by conservative northern Republicans representing business and rural interests. For example, because ending Senate filibusters required supermajority vote, opposition—or even perceived opposition—from conservative Republicans could thwart creation of a federal FEPC. While organized business influence on civil rights sometimes is overlooked, Chen argues that no other single group's opposition did more to forestall a federal FEPC.

The political compromise leading to Title VII of the 1964 Civil Rights Act created an administratively weak agency lacking prosecuting and cease-and-desist powers. Into the breach came executive branch policies to promote "voluntary" affirmative action, with goals and timetables for minority employment, among government contractors. In the 1972 Equal Employment Opportunity Act, the EEOC did get prosecuting, but not cease-and-desist, powers. Meanwhile, the EEOC promoted color-conscious affirmative action broadly for private sector employers.

In sum, Chen presents a "but for" causal argument, hinging on the idea that color-conscious affirmative action was path-dependent on a potentially successful but ultimately failed national-level

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FEP campaign. He argues that (1) FEP was a historically plausible counterfactual, and (2) had FEP happened, group-oriented color-conscious affirmative action might never have emerged. If Congress had "provid[ed] for administrative enforcement . . . [t]here would have been a bona-fide regulatory agency on the scene, and policymakers might have focused on a different set of issues instead of becoming mired in bitter quarrels over racial quotas and group rights. Politics and partisanship would have surely remained part of the equation, but the disputes would have centered on questions of regulatory design" (p. 17). In thwarting FEP, conservatives ironically paved the way for policies that would appall later political and legal conservatives.

Chen's arguments about how and why national FEP legislation looked promising but ultimately failed are evidence-based, carefully crafted, and very persuasive. However, there are problems with assigning such causal prominence to this failure. For example, enacting FEP would not have forestalled controversy over how to establish legal liability for discrimination—a term left undefined in Title VII—or over appropriate remedies. Disparate impact—an aggressive, effects-oriented strategy for proving discrimination—occasioned substantial backlash, with conservative Republicans, the Reagan Administration Justice Department, and some courts claiming it forced employers to resort to quota hiring. Indeed, Chen shows that the quota-bill charge surfaced as early as the 1940s, long before the political controversies over either disparate impact or affirmative action. On the one hand, Chen presents disparate impact as part of the story of compensatory affirmative action, but the two are legally distinct. On the other hand, to the extent that both disparate impact and affirmative action were part of a broader politics of effective enforcement, and to the extent that affirmative action was attacked because—just like disparate impact—affirmative action *did* enhance the effectiveness of anti-discrimination enforcement, passage of FEP might *not* have forestalled controversy over "racial quotas and group rights."

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Affirmative Action for the Future. By James P. Sterba. Ithaca, NY, and London: Cornell University Press, 2009. 131 pp. $49.95 cloth; $17.95 paper.

Reviewed by Ellen C. Berrey, University at Buffalo-SUNY

Conservative and libertarian advocates have done an excellent job framing the affirmative action debate. Preferences for racial minorities, they claim, are unfair and discriminatory. This

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