story, it is a familiar one, and not the more creative narrative that I hoped to encounter in this book.

This is perhaps my disappointment, then, and it stems from the fact that I was quite intrigued by the author's promise of using mystery (complete with crimes, detectives, and sensational and noir-ish revelations) as a means of getting a different purchase on a serious issue such as plagiarism. I was hoping that using a different form would allow the author to tell a different story or to alter the content of what might be said about plagiarism. I was disappointed not to find more evidence of that in this book.

Reference

The Cortland Review (1998). "Interview," Neal Bowers, http://www.cortlandreview.com/issuefive/interview5.htm.

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Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda. By Vanessa A. Baird. Charlottesville and London: Univ. of Virginia Press, 2007. Pp. xii+225. $45.00 cloth.

Reviewed by Udi Sommer, University at Albany, SUNY

In *Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda*, Baird attempts to explain the relationship between justices and litigants early in the agenda-setting process. Baird implements a remarkable research design that yields a well-written volume. The primary theoretical contribution of this project is in the notion that in order to create social change, the Court depends on the support structure of extrajudicial players. Legal entrepreneurs pay heed to signals concerning justices' priorities and then sponsor cases in the appropriate issue areas. The cases sponsored present the type of legal questions and case facts that make them good vehicles for policy change. In other words, litigants have a pivotal role in translating shifts in the priorities of justices into actual changes in the agenda. The upshot of this symbiotic relationship is increased policymaking power to both justices and legal entrepreneurs.

Agenda-setting, according to Baird, begins earlier than anybody else has ever argued. To a significant degree, it starts with politically salient decisions handed down by the Court approximately four years before the decision to grant certiorari in the

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current case. The pattern of the Court's changing interests is clear—when Baird employs different measures for justices' priorities, the result is that four to five years after the Court signals its interest in a certain issue area, the number of cases in this area on the Court's agenda swells significantly.

Quantitative and qualitative analyses are sophisticatedly combined in this volume. Despite "black-boxing" some of the processes in her statistical analyses, Baird carefully outlines what happens in the box in the qualitative sections of the book. For instance, using various illustrative examples from Supreme Court cases, in Chapter 2 the author discusses the signals the Court sends to litigants. These include separate opinions registered by justices (e.g., the separate opinions in *Furman v. Georgia* [1972]) and unexpected actions (e.g., Justice Anthony Kennedy's decision to join the majority in *Lawrence v. Texas* [2003]). Baird also offers an in-depth analysis of how the Mexican American Legal Defense Fund (MALDEF) took advantage of legal cues in recent Supreme Court decisions to devise a legal strategy challenging the Personal Responsibility Act passed by Congress in 1996. In this case (*Latino Coalition for a Healthy California v. Belshe* [1997]), based on former Justice Sandra Day O'Connor's approach to federalism in *New York v. United States* (1992), the MALDEF chose federalism over equal protection as grounds for litigation.

In the quantitative portion of the book, Baird considers statistically the Court's attention to policy areas over time, which is operationalized as the number of cases across eleven policy areas from 1953 to 2000. The explanatory variable, the Court's priorities, is measured as an index comprising several indicators: the presence of the decision on the front page of *The New York Times*, the formal alteration of a precedent, and reversal. The resultant model demonstrates that consideration of an important case by the Court adds four additional cases to the Court's agenda after four years and then again after five years (i.e., a total of eight additional cases).

To elegantly refute the hypothesis that this lag is really a product of the justices' strategic concern for legitimacy, Baird demonstrates that although justices are apparently willing to take cases earlier, such cases are just not available. It actually takes several years for good vehicles to percolate. And, as we would expect given this model, the priorities of the Court influence the nondiscretionary docket of the courts of appeals a year before they influence the agenda of the Supreme Court itself.

The argument in this book has important implications that go beyond the role of extrajudicial players and pertain to the role of the Court within the American constitutional design. Legal reality, in Baird's depiction, resembles a pure market model more than previously thought. Policy areas, which are of interest for the Court, are often niches where supply fails to meet demand. Legal

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entrepreneurs who look for profit in policy terms are quick to react. Based on signals from the Court, they identify the potential for policy gains and sponsor appropriate litigation. This puts the Court in a more proactive position than traditionally thought. Moreover, within a matter of four years the Court has available to it the right vehicles. Even compared to other branches of government, a period of four years is not a lot. Terms in office of elected officials are on average that long. This is the time officials have to influence policy, and once their term is over there is the potential for a substantial policy change. Clearly, the Court is fundamentally different from other branches of government. However, when it comes to its ability to play a proactive role in policymaking, Baird's argument indicates that the Court is a rather potent player.

Cases Cited

Furman v. Georgia, 408 U. S. 238 (1972).
Latino Coalition for a Healthy California v. Belshe, 785153-7, Calif. Sup. Ct., December 19, 1997.
Lawrence v. Texas, 539 U. S. 558 (2003).
New York v. United States, 505 U. S. 144 (1992).

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Law as a Means to an End: Threat to the Rule of Law. By Brian Z. Tamanaha. New York: Cambridge Univ. Press, 2006. Pp. xii+254. $80.00 cloth; $31.99 paper.

Reviewed by Roger Cotterrell, Queen Mary College, University of London

Tamanaha's previous books have shown his ability to present vivid arguments on large themes of great contemporary interest. He engages provocatively with key debates; typically develops his arguments in clear, direct prose; and usually reaches strong conclusions that challenge the reader. His newest book shows all these characteristics and is also written with much passion, because its theme is nothing less than the health of, or—as he sees it—the sickness of the U.S. legal system as a whole.

He argues that a pernicious instrumentalism has taken over virtually all institutions of American law—especially the legislative and administrative processes, the Supreme Court, and much of lawyers' practice, legal education, jurisprudence, and sociolegal scholarship. If law was always seen instrumentally to some extent, what Tamanaha thinks is new (roughly since the beginning of the twentieth century) is

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