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Book Reviews

Electing Justice: Fixing the Supreme Court Nomination Process by Richard Davis. New York, Oxford University Press, 2005. 224 pp. \$28.00.

The death of Chief Justice William Rehnquist in 2005 and the retirement of Justice Sandra Day O'Connor have occasioned the first Supreme Court confirmation proceedings in eleven years. Publication of *Electing Justice*, therefore, could hardly be more timely.

In Richard Davis's view, judicial selection, for most of American history, has been marked by insularity. Rarely has acceptance or rejection of nominees been affected by anyone outside the executive branch, the Senate, and the legal community. That cozy arrangement has passed. Beginning no more than forty years ago, a new process began to emerge that involved not only the traditional players, but external ones—the news media, interest groups, and public opinion. The few controversies, over nominees such as Stanley Matthews (1881), Louis Brandeis (1916), and John Parker (1930), in which many players participated, have become routine. The Senate Judiciary Committee's public hearings in 1962 on Byron White lasted all of one hour and thirty-five minutes, and the published record filled but twenty-six pages. Those for Rehnquist, in 1986, consumed four long days and 1,165 pages, a statistic soon surpassed by marathon committee sessions and multi-volume sets for Robert Bork (1987) and Clarence Thomas (1991). Moreover, the time between nomination and confirmation has lengthened substantially. For Warren Burger in 1969, barely 19 days elapsed between the two events; for "constituency" candidate (p. 62) Thomas it was 107. Even for "consensual" candidate (p. 63) Stephen Breyer (1994), the gap was 77.

Reasons for this altered state of affairs abound. Technology has revolutionized the news business. The range of issues that today occupies the Court's time is unprecedented. The docket reads like a policy agenda for the nation. That reality coexists alongside intense partisan divisions in Congress that are fed by each party's reliance on, and loyalty to, its base. The democratization of other aspects of the political process, such as nomination and election of presidents, has transformed the selection of justices into "an election without voters" (p. 9). Indeed, the puzzle is "not why the process has become more

open but really why a system dominated by a small set of elites lasted so long” (p. 178).

What is needed, Davis believes, is a restructuring of selection to “mesh constitutional structure with reality and preserve the trend of democratization” (p. 13) by taking into account the permanent role of external players. This goal can be achieved through modified behavior of participants and by statutes and constitutional amendment. Included in the first category is a new approach to confirmation hearings that steers clear of the inquisition and current charade, in which senators “pretend to ask questions the nominee will actually answer, while nominees pretend to answer the questions the senators actually ask” (p. 160). Moreover, when nominees have established views on issues, they should state them. Yet in suggesting that nominees also “should never imply that they would vote a certain way on future cases” (p. 168), the author expects senators and the public to grasp a difficult subtlety and therefore may be asking forthcoming nominees to walk the political plank. The second category includes popular nonpartisan election of justices for eighteen-year terms, following nomination of several candidates by the president and vetting by the Senate (p. 171). For Davis, this step would openly acknowledge the Court’s political role. Selection by the electorate would promote accountability and, by divorcing the Court from any particular group or institution, shore up its independence. One suspects, however, that the forces of transformation that the author describes so well would doom the changes he deems necessary for a confirmation process worthy of both Court and people.

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Making Sense of Suicide Missions by *Diego Gambetta, ed.* New York, Oxford University Press, 2005. 378 pp. \$45.00.

The attacks of 11 September 2001 have filled entire library shelves with books on terrorism and Islam, and have sparked a jump in the number of works on “suicide terrorism.” Wisely, Oxford University professor Diego Gambetta has shunned the label “suicide terrorism” in this edited volume to focus instead on “suicide missions”—a term that allows the contributors to examine suicide attacks used not only by terrorist organizations, but also by insurgent groups (e.g., the Liberation Tigers of Tamil Eelam [LTTE]) and by conventional armies (Japan’s *kamikaze*). The product of this enterprise is a very readable, insightful, and methodologically rigorous volume that, despite raising more questions than it answers, stands as the most sophisticated book-length treatment of this burgeoning topic to date.

In his well-researched introductory chapter on the *kamikaze*, Peter Hill convincingly argues that rather than the “glory of dying for [the emperor]”