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).

* * *

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

https://doi.org/10.1111/j.1540-5893.2008.00347_4.x Published online by Cambridge University Press

that instrumental views have been established in a "specific historical contrast" (p. 35) with earlier noninstrumental views, now entirely displaced. Law tends now to be seen *only* as a mere technical means to achieve any chosen ends. Noninstrumentalism viewed law as having "an inviolable, built-in principled integrity" (p. 219); its special identity, making it more than just a tool, was "as a matter of principle, reason, immemorial customs of the community, a body of specialized knowledge and a science" (p. 58). On this noninstrumental view, law adjusts to social change but is not a tool of social engineering; judges should apply law "with no preconceived controlling end in view," and legislators must "seek to declare the immanent norms of the community or natural principles" (p. 7).

In Tamanaha's argument, instrumental views of law cannot now be displaced and would not be dangerous but for the deterioration of belief in what he variously calls the common good, the public good, general welfare, or public purpose. Without this, nothing holds legal instrumentalism in check. With "rampant instrumental manipulation of the law" (p. 250), lawyers have little concern beyond furthering their clients' interests (and so their own) by any means short of illegality; the selection of judges depends on whether their personal preferences will lead them to adjudicate consistently with the interests of those who decide their appointment; legislators tailor their votes on legislation to the demands of those who can influence their re-election; law students are taught that skill in arguing legally on either side of a case is more important than working out how it should be resolved. Tamanaha's discussion of professional legal practice (especially corporate and tax), and its often "brutish conditions" (p. 136)—relentless competition, the billable hours system, the high costs of entering the profession, and financial pressures on partners to bring in clients—is the angriest in the book, closely followed by his condemnations of legislative lobbying, judicial appointment methods, and the engineering of litigation through cause lawyering.

By the end of the book, a truly "barren vision" has been conjured up, of "a war of all against all within and through law" (p. 225). Ultimately Tamanaha is not sure whether things are quite this bad. Judges generally have not yet been reduced to deciding instrumentally, though he sees much evidence that the Supreme Court has, and its influence threatens to popularize the idea of judicial instrumentalism. Everything depends on whether some remnant of the common good idea survives, and Tamanaha is not sure about that, one way or the other.

This (non-American) reviewer cannot assess the book's accounts of such a vast range of American legal experience. An important issue, however, is whether the conceptual framework Tamanaha uses can hold together this diversity of description and critique. Ostensibly the dominant concept is legal instrumentalism, but since he accepts that

https://doi.org/10.1111/j.1540-5893.2008.00347_4.x Published online by Cambridge University Press

this, as such, does not indicate a new phenomenon, he makes two moves to sharpen the focus. The first is to see instrumentalism as newly significant as a *displacement* of noninstrumental views. But he recognizes that special interests were often served by the nineteenth-century decisions of courts proclaiming the language of noninstrumentalism, and that now, as then, arguments that the pursuit of private claims is the essence of law can easily be made or assumed. The issue seems to come down to how far invocations of noninstrumental ideas actually determine outcomes, but that remains unclear.

A second move is to claim that the sense of common good has declined, perhaps to the vanishing point, so it *must* have ceased to inform law. This deserves much discussion but seems ultimately beyond the scope of the book. Sociologists have told us much about social capital, "habits of the heart," and the nature of contemporary values and beliefs. Without a careful study of such matters, as reflected in legal ideas and practices and in citizen demands on law, the book remains a broad, many-sided general polemic about important areas of legal disorder and dissatisfaction—fascinating, empirically rich and strikingly presented, but unified perhaps only by the author's conviction that selfishness has at last overtaken law.

* * *

Injury: The Politics of Product Design and Safety Law in the United States. By Sarah S. Lochlann Jain. Princeton, NJ: Princeton Univ. Press, 2006. Pp. xii+214. $55.00 cloth; $19.95 paper.

Reviewed by Stephen Daniels, American Bar Foundation

Injury offers a challenging and provocative discussion of issues that are the subject of intense debate: tort law and product-caused injuries. Jain, a cultural anthropologist, challenges the reader to look at these familiar issues in a different way, "to step outside of the questions of frivolous cases and junk science" (p. 4). Instead, she encourages us to think more deeply about: the centrality and necessity of injury in the American economy; how injury and inequality are intertwined; and the promise, limits, and failures of law in dealing with injury in a way adequately recognizing the goal of human well-being. This goal, she says, "must have some rhetorical, if not material, purchase in any social economy that wants to pass as democratic" (p. 33).

Jain's introduction ("Injury in U.S. Risk Culture"), first chapter ("American Injury Culture"), and conclusion lay out the challenge in presenting her theoretical argument. At its heart is the idea of

https://doi.org/10.1111/j.1540-5893.2008.00347_4.x Published online by Cambridge University Press