riography: she rejects the historian's penchant for periodization (182). For her, "the Sixties" extends to 1975 (347 n. 3). Similarly, it is "the Contemporary Supreme Court," no longer the Burger or Rehnquist or Roberts Court.

In other places, Kalman is more direct. For example, she explains the reasons for her conclusion that a contemporaneous memorandum from Cartha DeLoach (the deputy associate director of the FBI) accurately describes a conversation between DeLoach and Justice Fortas (79 fn.). In a longer segment, she explains how she came to her view of the appointment of Thurgood Marshall to the Court (97–98). The final chapter, her "epilogue," surveys the years since the end of "the Sixties," ruminating about how the changes detailed in the body of her book played themselves out in subsequent years.

For all its value, the book is not without flaws. Even with almost every paragraph supported by an endnote, there are at least ten *foot*notes that appear mysteriously. Unfortunate errors of fact occur. For example, William Hastie was not the first African American editor of the *Harvard Law Review* (46). Charles Hamilton Houston preceded Hastie by several years. David Paul O'Brien was not the "appellant" in the Supreme Court case arising from his burning of a draft card. O'Brien was the "respondent" in a case that reached the Court through a writ of certiorari (*United States v. O'Brien* [1968]).

In spite of errors, the book remains of value to anyone interested in the Supreme Court of "the Sixties." Kalman has given us a fine example of how to combine a diversity of archival material into a single story.

Walter F. Pratt Jr.,
Emeritus
University of South Carolina

Robert Daniel Rubin. *Judicial Review and American Conservatism: Christianity, Public Education, and the Federal Courts in the Reagan Era*. (Cambridge Historical Studies in American Law and Society.) New York: Cambridge University Press, 2017. Pp. ix, 347. $59.99.

In the mid-1980s, Judge W. Brevard Hand of the District Court for the Southern District of Alabama issued two startling decisions that raised difficult questions for a generation of scholars and activists. First, how can an activist judge oppose judicial activism? Second, can a nonreligion function as a state-established religion? And, finally, why should two district court cases warrant so much attention from historians, pundits, and armchair legal scholars when they were quickly overturned and even "ridiculed" (311)? In his sensitive and meticulous examination of Hand's school-religion decisions, Robert Daniel Rubin offers cogent answers to all three of these difficult questions.

The two cases—*Jaffree v. Board of School Commissioners of Mobile County* (1983) and *Smith v. Board of School Commissioners of Mobile County* (1987)—broke new legal ground on the question of prayer in public schools. In the first, secular activist Ishmael Jaffree sought to stop Mobile's public school teachers from leading students in prayer. In the second, evangelical activists hoped to prove that Mobile's public schools had unconstitutionally established secular humanism as their de facto religion. In both of his decisions, Hand disregarded Supreme Court precedent to make intentionally provocative legal and political points.

In his thoughtful treatment of these decisions and their impact, Rubin's *Judicial Review and American Conservatism: Christianity, Public Education, and the Federal Courts in the Reagan Era* moves into and beyond the local situation in Mobile, Alabama. First, Rubin describes the initial complaint of Ishmael Jaffree: Jaffree was shocked to discover that teachers were leading his children in Christian prayer. Unlike the vast majority of his Mobile community, Jaffree thought such prayers violated both constitutional precedent and the norms of good schooling.

With good reason, Jaffree was confident that a federal judge would agree. Like many observers, Jaffree was utterly flabbergasted by Hand's decision. In spite of Supreme Court precedent, Hand ruled in 1983 that Alabama had every right to make its own laws about school prayer, even if those laws contravened Supreme Court rulings. The national response was immediate. Hand's decision was reversed by the appellate court and the case wended its way to the U.S. Supreme Court. Was it possible, observers asked, to overturn established precedent that disallowed teacher-led prayer in public schools? Was it possible for conservative judges to strike down years of liberal court rulings? And could popular majorities reestablish their political dominance unfettered by judicial checks?

As Rubin carefully delineates, conservative politicians, intellectuals, and activists were by no means united in their answers or strategies. Senate stalwarts such as North Carolina's Jesse Helms pushed hard and unsuccessfully to strip courts of their ability to contravene popular majorities. President Ronald Reagan offered his own watered-down guarantee of students' right to pray in public schools. And Supreme Court justice William Rehnquist joined Hand as "a judicial activist seeking to curtail judicial activism" (211).

In the end, the U.S. Supreme Court threw out Hand's obstreperous ruling. Hand was not surprised. In his original decision, he included language that suggested his next step. If public schools could not lead Christian prayers, then by rights they should not teach any religion at all. And, leaning on an array of conservative thinkers and activists, in the case of *Smith v. Board of School Commissioners of Mobile County*, Hand entertained the notion that Mobile schools had indeed taught religion: inspired by the work of evangelical intellectuals such as Rousas John Rushdoony and Francis Schaeffer, the evangelical plaintiffs in the new case alleged that Mobile public schools had imposed the religion of secular humanism.

As Rubin relates, legally the attack against secular humanism died an "ignominious death" (313). Yet the case gave Hand the chance to stake out—even if very briefly—the legal high ground that conservative religious activists had sought for decades. By targeting the secular mindset of curriculum-makers, Hand and the evangelicals who supported him hoped to demonstrate that it was impossi-

Downloaded from https://academic.oup.com/ahr/article-abstract/123/1/265/4840340
by AHA Member Access user
on 18 March 2018

ble to remove religion from schooling. The ultimate goal, in Rubin's words, was that "backed against a wall, liberals would relent and permit theistic religion at least a role in the education process" (11).

To make his arguments in both *Jaffree* and *Smith*, Hand plunged into precisely the sort of judicial activism he had fought against. By ignoring relevant precedent, he sought to define a renewed vision of limited court powers. Much of the intellectual heavy lifting in Hand's argument was done by legal scholar James McClellan. As have many conservatives of his time and since, McClellan hoped to return to what he saw as the original intent of the founding fathers. Instead of interpreting the Constitution as a living document, McClellan, Hand, and other conservative judicial activists wanted to let "the law be the law" (100). Throughout the book, Rubin masterfully explores the profound tensions created by this conservative form of anti-activist activism.

Similarly, these two cases give Rubin the opportunity to explain the ways conservative religious activists—mostly from evangelical Protestant backgrounds—adopted the rhetoric and strategies of the rights revolution. By defining the supposedly secular goals of public schools as themselves religious, Hand and his allies sought to define conservative evangelical Christians as a beleaguered minority, due all the protections of any minority group.

Most difficult to address, however, is the ultimate influence of Hand's decisions. Rubin calls them a "crucial precedent . . . a beacon" (316) for later generations of conservative scholars and activists. Yet, as he wisely notes, there was no direct influence on later conservatives such as Justice Clarence Thomas. What Hand shouted as a lone dissenter, later scholars could discuss in new organizations such as the Federalist Society. It is impossible to prove the degree to which such later developments were influenced by Hand's activism, but, as Rubin argues, "Hand's legacy was not to cry in the wilderness, but to ring out through the ideas and actions of a young generation of conservative politicians and lawyers" (328).

In the end, Rubin's treatment of Hand's decisions in *Jaffree* and *Smith* provides a vital analysis that ranges far beyond questions of constitutional conservatism. Rubin demonstrates a keen sensitivity to the foibles and unstated assumptions of both sides; he deftly weaves together the local story and its national repercussions; and he relates the complex intellectual history of conservative judicial activism in a straightforward and engaging manner. As a result, *Judicial Review and American Conservatism* will be of interest to historians of religion and education just as much as to specialists in legal history and American conservatism.

Adam Laats
Binghamton University (State University of New York)

Christopher J. Fuller. *See It/Shoot It: The Secret History of the CIA's Lethal Drone Program*. New Haven, Conn.: Yale University Press, 2017. Pp. xiv, 352. $40.00.

With *See It/Shoot It: The Secret History of the CIA's Lethal Drone Program*, Christopher J. Fuller wants readers to understand that the commonly held belief that drone warfare was a product of the hunt for Osama bin Laden and the war on terror after 9/11 is a misunderstanding of the way things developed. Instead, he argues, while it is true that the use of drones peaked in the Obama administration, the history of drone warfare goes back to the Reagan years and the search for a post-Vietnam defense strategy that would respond to new challenges in what was once called the Third World. This richly detailed study of the evolution of drone warfare, heavily weighted with Pentagonese acronyms, will satisfy students seeking answers to specific questions about the past and likely future of this new weapon of choice in the "Third World."

During the Reagan administration a split developed at the top level of policymaking between Defense and State, led by Caspar Weinberger and George Shultz, respectively, each with strong ideas about the proper role of military force in the pursuit of national goals. Reversing what one might expect, it was Weinberger and his chief military advisor, General Colin Powell, who used Vietnam as a cautionary tale against allowing the military to be wrongfully employed ever again, while Shultz argued that diplomacy without the backbone of a standby force was destined to fail. In this reading, Reagan appears to Fuller much less the stalwart figure of the end years and final victory in the Cold War than an indecisive Hamlet.

Into the middle of the debate, Fuller recounts, stepped Duane Clarridge, a CIA veteran, who established the Counter Terrorism Center (CTC) under Reagan's intelligence chief, William J. Casey, whose own government service went back to the World War II years and the Office of Strategic Services (OSS), the predecessor to the Central Intelligence Agency. During World War II, the OSS did not draw a line in the sand, or anyplace else, against assassination as a proper tool for fighting the Axis powers. After the war, things were left more uncertain, even as the Truman administration created the Central Intelligence Agency, with a mandate in its charter to collect information but also "to undertake 'such other functions . . . [to protect] national security as the President or the Director of National Intelligence may direct'" (12).

Here was a double loophole. At once, the CIA could make a claim that operations like those conducted by the wartime OSS came under the rubric of "such other functions" embedded in the agency's charter, and the White House could have plausible deniability by giving only the director authority to carry out those "other functions." Clarridge was a perfect person to seize upon the loopholes or gaps to push through the drone program as a more efficient means of delivering "a bullet to the head," "a better way to send a message to outlaw nations" (101). In its early days, the CTC dubbed the drones the "Eagle Program." From its outset, however, and down through the Obama administration and up to the present, the CIA will neither confirm nor deny its role in the "bullet to the head" operations. There are several reasons for this reluctance to take credit for drone warfare against terrorists, beginning with the taint that still attaches to assassination and complications in the original mandate for the CIA that might not—indeed do not—fit comfortably under international rules of warfare.

Downloaded from https://academic.oup.com/ahr/article-abstract/123/1/265/4840340
by AHA Member Access user
on 18 March 2018