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BOOZE, BETS, AND BROTHELS: THE MORAL ROOTS OF THE MODERN AMERICAN POLITY

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KYLE G. VOLK, MORAL MINORITIES AND THE MAKING OF AMERICAN DEMOCRACY (OXFORD UNIVERSITY PRESS 2014). PP. 312. HARDCOVER $38.95. PAPERBACK $26.95.

JOHN W. COMPTON, THE EVANGELICAL ORIGINS OF THE LIVING CONSTITUTION (HARVARD UNIVERSITY PRESS 2014). PP. 272. HARDCOVER $49.00.

JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI (HARVARD UNIVERSITY PRESS 2014). PP. 304. HARDCOVER $31.00.

INTRODUCTION

Before the Depression made the prospect of federal intervention in economic affairs feasible, moral reformers had spent decades making the idea of governmental—first local, later federal—intervention in personal affairs desirable. Before organizations like the American Federation of Labor sought governmental protection from the ills of capitalism, groups like the New York Society for the Suppression of Vice fought for governmental protection from the dangers of hedonism. Before Congress delivered the National Industrial Recovery Act or the Agricultural Adjustment Act, it passed the Federal Lottery Act and the White Slave Traffic Act. And before the Supreme Court sanctioned the use of the Commerce Clause to shape the market, it endorsed using it—along with the Postal and Taxation Clauses, too—to mold society. Before, that is to say, America had a regulatory state, it had a vice state—a national regime geared toward preventing, regulating, and punishing "immoral" behavior.

As Kyle G. Volk, John W. Compton, and Jessica R. Pliley deftly illustrate in their respective first books, the political, constitutional, and legal roots of this vice state, fully realized and entrenched in the decades prior to the New Deal, are deep, multifaceted, and interwoven. They span nearly a century, from the Age of Andrew Jackson to the heart of the Progressive Era. They encompass policy domains from alcohol to gambling to

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prostitution. They involve actors ranging from preachers to judges, legislators to law enforcement. Considered collectively, Volk, Compton, and Pliley's excavation of these roots offer a profoundly revisionist story of the modern American state as an entity that is set in motion well before Black Tuesday, concerned with a very different sort of governmental endeavor than price controls and labor standards, and legitimized less by the needs of the nation in the face of punctuated crisis than by an overarching vision of the good society against persistent threats to its moral fabric.

Of course, an argument for repositioning the forces of sin, vice, and iniquity as central in American life is hardly new—in history, in religion, or in political science.[1] What makes these books stand out—certainly in conjunction with one another, but to some degree in isolation as well—is the staggering diversity and intensity of moral politics they describe. Going beyond a mere shared conception that constructions of morality and immorality have been inextricably linked to claims about American political well-being or democratic survival, what Volk, Compton, and Pliley provide is a fascinating glimpse into the multiple avenues of *practicing*—both advocating and contesting—moral politics.

MORAL POLITICS AND DEMOCRATIC PARTICIPATION

The most sprawling of the three books is easily Kyle G. Volk's *Moral Minorities and the Making of American Democracy*. Temporally, the book is largely rooted in the immediate antebellum period—the 1840s and 1850s—but, topically, it ranges broadly from Sunday laws to liquor licensing to interracial marriage, showing in each case how, in an era of democratic expansion, minority rights became a fundamental part of participatory politics. In his telling of the counterintuitive turn to democracy to accomplish minority wishes, Volk presents a tale of moral politics through *the people* and delivers insight into the moral roots of modern political debates.

With the simultaneous moralism and populism of the Jacksonian era as his backdrop, Volk situates the birth of "minority-rights politics" as a response to democratic, Christian attempts to regulate lives in ways that distinctly accorded with majoritarian sentiment.[2] According to the dominant logic of the era, the Sabbath should be observed vigilantly, liquor licenses should be issued rarely (if at all), and cross-racial interaction should be as limited as possible. But Volk's concern is not so much with understanding the advocates of those propositions as with tracing the development of a resistance to them. That resistance, Volk recounts, was not merely against the content of the laws but against the idea, as ascendant then as ever before, that, in a democracy, it was the right of the majority to rule as it saw fit. In response, Volk's protagonists—Jews and Catholics, immigrants and liquor dealers, abolitionists and black Northerners—powerfully articulated the idea that protecting minority rights was a "critical obligation of democratic government."[3] In doing so, Volk maintains, they "pioneered a tradition of political participation and minority-rights advocacy that subsequent generations of activists would adopt."[4]

This newfound relevance of countermajoritarianism—this more "pluralistic

1. *See, e.g.*, JAMES A. MORONE, HELLFIRE NATION: THE POLITICS OF SIN IN AMERICAN HISTORY (2003).
2. KYLE G. VOLK, MORAL MINORITIES AND THE MAKING OF AMERICAN DEMOCRACY 2 (2014).
3. *Id.*
4. *Id.* at 5.

conception of democracy" with minority rights viewed as integral to "moral freedom, cultural diversity, and social equality"—was not born of a single moment or a common cause.[5] Rather, it was built across constituencies that did not necessarily see eye-to-eye with one another but at least shared a belief that those without power should not be subjected to an arbitrary or overzealous exercise of it. Whether Jews and Seventh Day Baptists objecting to the assumptions of a "Christian nation" implied by Sunday closing laws,[6] liquor dealers and working-class drinkers chafing at direct democracy measures that limited alcohol consumption as intrusion into private spheres,[7] or abolitionists criticizing racial separation (whether in marital vows, school classrooms, or in public transportation) as impeding the basic equality necessary to a flourishing democratic society,[8] minorities of various stripes targeted public opinion and sought to shape public policy by mobilizing at the mass level, forming advocacy groups, and offering—publicly and loudly—rival conceptions of what real democracy entailed, expected, and required. The resultant minority-rights project, then, was at once one of ideational formation and grassroots organization—that is to say, about both articulating ideas and developing the networks essential to spreading them. In both ways, then, it was, as Volk recounts, a profoundly *democratic* endeavor. While the opponents of moral reform used whatever tools might have been available to them, they did not abandon the democratic sphere but enmeshed themselves more fully in it. They argued and demonstrated, petitioned and published, networked and coordinated. Evincing a "steadfast commitment to democracy, even in the face of persistent democratic oppression," their efforts represented democratic action to texture democratic government.[9]

And, at the end of the day, they made a difference, bringing forth from the golden age of American democracy not so much more democracy as a richer and more nuanced democracy. Minority rights, of course, were not a novel idea, with James Madison in particular having been deeply concerned with majoritarian will steamrolling minority interests as he drafted the blueprint for American government. But what Volk's account shows is a transformation of those rights from ones narrowly protective of "propertied aristocrats, slaveholders, and intellectuals" to a "rallying cry of . . . socioeconomically diverse Americans."[10] Democracy, under that transformation, could be a system where the minority and majority alike could press their claims and fight for their rights. Even though majoritarian moral reformers—those opposed to alcohol, gambling, and prostitution—would, over the next few decades, win more often than they lost, the establishment of the minority rights tradition would offer a powerful legacy for opponents to draw upon in resisting them.

MORAL POLITICS AND CONSTITUTIONAL CHANGE

Where Volk opts for breadth of subject, John W. Compton offers a sharp challenge

5. *Id.* at 6–7.
6. *See id.* at 37–68.
7. VOLK, *supra* note 2, at 69–100, 167–205.
8. *See id.* at 101–66.
9. *Id.* at 218.
10. *Id.* at 205.

to conventional understandings in *The Evangelical Origins of the Living Constitution*. The prevailing consensus that Compton targets, even if he only wades partially into the debate until the end of the book, concerns the "constitutional revolution" of 1937, with a reading and sources that cast entirely new light on the origins of that momentous change in American constitutionalism. Working his way through not only judicial decisions but also the religious developments that surrounded them, Compton demonstrates the peculiar turn to courts to accomplish majority values. In so doing, his rendering of mid to late nineteenth and early twentieth century jurisprudence as one of moral politics through *judges* offers a novel perspective on the moral roots of the modern constitutional order.

At the heart of Compton's puzzle—and, in some sense, his explanation for both the constitutional revolution and the rise of "living constitutionalism"—is a clash between "rapidly evolving mores, on the one hand, and the generally rigid principles and institutional structures of the constitutional order, on the other."[11] After all, while the moral convictions and sensibilities of any society should naturally be expected to change, that society's formal constitution establishes an order and fixes its contours—not just for a period of time but, at least until it is replaced, for all time. Compton's entry into this timeless political dilemma between dynamism and ballast is the period following the Second Great Awakening, when religious reawakening resulted in a shift of social mores toward immorality. Far from merely wishing to control "national sins" such as alcohol and gambling, post-Great Revival citizens sought to eradicate them completely.[12] But in heeding a religious authority to rid the nation of vice, reformers encountered an obstacle in the form of the civic authority of a Constitution that was understood to subordinate "traditional moral and religious purposes to the worldly goals of protecting property and promoting economic development."[13] As a result, in order to pursue the America they imagined, reformers needed to redefine the constitutional commitments underpinning the America in which they lived.

Where this clash—between those advocating measures for moral betterment and a document interpreted to allow for economic betterment—ultimately occurred most consequentially was in courtrooms, with state and federal judges alike charged with the "task of negotiating" the disjunct between the drive to "purge 'national sins'" and "the ideals of the traditional order."[14] Surveying first the state and later the federal judicial landscape, Compton leads a jurisprudential tour of both geographic diversity and doctrinal instability. At first, as the mores of the Second Great Awakening made themselves manifest in law, judges were amenable only to the regulation of liquor and lotteries (the two primary subjects of Compton's analysis), casting a far more skeptical eye at reformer-pressed laws that sought to prohibit alcohol sales or gambling outright, which judges thought hostile to contractual and due process rights.[15] But within a few decades—during which the Jacksonian party system effectively collapsed, opening up a new Republican Party that eagerly welcomed evangelical voters and rewarded their loyalty with judges

11. JOHN W. COMPTON, THE EVANGELICAL ORIGINS OF THE LIVING CONSTITUTION 2 (2014).
12. *Id.* at 3.
13. *Id.* at 19.
14. *Id.* at 38, 51.
15. *See id.* at 52–72.

amenable to morals legislation[16]—both state appellate courts and the Supreme Court had given up resistance to moral reform.[17] A previously firm attachment to the Contracts Clause was replaced by an expansive conception of the police power. The requisites of due process were massaged to align with the concession that private rights should not limit public power. The limitations on power authorized by the Commerce Clause were complicated by an understanding that the boundaries of the federal system were fluid rather than fixed. By the dawn of the century, the very institution that had always been the staunchest defender of the economic constitutional order had essentially abandoned the core principles of that order.

Where exactly does the revisionist take on the constitutional revolution emerge in all this? Well, as it so happens (and as Compton describes in the last third of the book), when, following waves of intense opposition from (in sequence) Populists, Progressives, and labor in the first few decades of the twentieth century,[18] the Supreme Court ultimately gave way to the demands of New Deal reformers in 1937, the legacy of moral reformers—of vice regulation and the judicial approval given to it—was of critical importance.[19] Lawyers relied, as Compton details, on an idea that had been central to the liquor and lottery cases—namely, that "legal concepts and categories were inherently indeterminate and that traditional constitutional principles merely served to mask the judiciary's subjective preference for laissez-faire economic policies."[20] And, after resisting through 1936, the Court ultimately agreed, discarding its erstwhile attachment to economic rights, the system of dual federalism, and an assumption that the Constitution had fixed meaning regardless of the historical circumstances or the views of the public. Despite the fact that there has long been a robust debate about the reasons for and causal factors leading to the constitutional revolution, neither the original scholarship emphasizing external political forces[21] nor the revisionist scholarship emphasizing internal legal forces[22] has seen what Compton makes vivid here: the extent to which it was the Court's embrace of vice regulation that laid the intellectual groundwork for the remaking of the constitutional universe.

MORAL POLITICS AND LEGAL ENFORCEMENT

If Volk's book is characterized by its extensive scope and Compton's defined by its incisive revisionism, then Jessica R. Pliley's *Policing Sexuality: The Mann Act and the Making of the FBI* is marked by its eye-opening depth. Her focus on a single (albeit incredibly troubled and exceedingly fascinating) piece of legislation might initially seem unduly restrictive, but it is, in fact, precisely that focus that allows for an interrogation that is simultaneously granular in detail and kaleidoscopic in viewpoint, offering grounded and

16. COMPTON, *supra* note 11, at 73–90.

17. *See id.* at 91–132.

18. *See* WILLIAM G. ROSS, A MUTED FURY: POPULISTS, PROGRESSIVES, AND LABOR UNIONS CONFRONT THE COURT (1994).

19. *See* COMPTON, *supra* note 11, at 133–76.

20. *Id.* at 134.

21. *See, e.g.*, WILLIAM E. LEUCHTENBURG, THE SUPREME COURT REBORN: THE CONSTITUTIONAL REVOLUTION IN THE AGE OF ROOSEVELT (1995).

22. *See, e.g.*, BARRY CUSHMAN, RETHINKING THE NEW DEAL COURT (1998).

provocative claims about criminal justice, gender, and the intersection between them in the early to mid-twentieth century. With the help of rich primary sources (particularly Federal Bureau of Investigation ("FBI") case files), Pliley illustrates how the turn to law enforcement to accomplish elite aims wrought changes—in government and society —far beyond those realms the Mann Act was intended to regulate. Indeed, it is precisely in this brand of moral politics through *agents* that we find the moral roots of the modern legal apparatus.

Ostensibly a developmental history of the Mann Act, Pliley's book sits at the nexus of—or, maybe, more accurately, illustrates how the Mann Act unquestionably *produces* and structures the nexus of—the creation of the FBI and the sexual behavior of women during the first half of the twentieth century. Also known as the White Slave Traffic Act, the Mann Act made it a crime to transport women or girls across state lines "for immoral purposes."[23] Targeted most obviously at commercial prostitution, the statute is known for ensnaring men from heavyweight boxing champion Jack Johnson to silent screen film star Charlie Chaplin and, perhaps, for giving rise to a story that was thought to have (at least partially) inspired Vladimir Nabokov's *Lolita*.[24] In Pliley's hands, however, it becomes much more: a glimpse into how "the shadow of the law" can shape political institutions and social behavior alike.[25] Animated throughout by the leitmotif of "borders"—between states, between local and national authority, between public and private sexual behavior, between men and women, innocence and guilt, bodies and persons[26]—Pliley elucidates how a single piece of federal legislation created a "new governable sphere for sexuality" that allowed for and justified the expansion of an investigative law enforcement agency into a truly national and unquestionably powerful source of state capacity.[27]

Following the changing constructions of the Mann Act—and the varying visions of family life and female sexuality that both shaped and emerged from those constructions—across several decades, Pliley's account is too exhaustive and too replete with undulations to recap with any semblance of completeness. At various times, the proto-FBI—it was known simply as the Bureau of Investigation until 1935—was confused about the meaning of the Mann Act,[28] hesitant about enforcing it too broadly,[29] overzealous in expanding its mandate,[30] and dedicated to using it to eliminate specific kinds of sex crimes.[31] Over a

23. White Slave Traffic (Mann) Act, ch. 395, § 2, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2428 (2012)).

24. Nabokov even name-checks the statute in the book, with Humbert Humbert noting:

> Only the other day we read in the newspapers some bunkum about a middle-aged morals offender who pleaded guilty to the violation of the Mann Act and to transporting a nine-year-old girl across state lines for immoral purposes, whatever these are. Dolores darling! You are not nine but almost thirteen, and I would not advise you to consider yourself my cross-country slave, and I deplore the Mann Act as lending itself to a dreadful pun, the revenge that the Gods of Semantics take against tight-zippered Philistines.

VLADIMIR NABOKOV, LOLITA 150 (1955).

25. JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI 216 (2014).

26. *Id.* at 3–4.

27. *Id.* at 208.

28. *Id.* at 60–83.

29. *Id.* at 84–105.

30. PLILEY, *supra* note 25, at 106–58.

31. *See id.* at 159–206.

roughly three-decade span, women, by turn, were seen—by agents and prosecutors, newspapers and social movements—as innocent victims to be protected, wartime distractions to be managed, sexual deviants to be prosecuted, public health dangers to be quarantined, and marital threats to be surveilled. Revealing how the "double standard of sexuality"[32] that allowed male promiscuity but demanded female chastity and fidelity was not only an idea circulating in the populace but an output generated by law, Pliley shows how the formal propagation and codification of a gendered (to say nothing of racialized, classist, and ageist) sphere of intimacy was facilitated through bureaucratic priorities and coercive authority decidedly lacking in public transparency.

Throughout it all, the transformation of the FBI, hitherto a nascent entity operating mostly out of Washington and with only a limited presence beyond the Northeast, into a nationalized, free-wheeling, strategically-managed crime-fighting organization stands out as a remarkable development. Against the assumption that the Bureau's rise occurred largely through its work in "domestic political policing of ideological and racial minorities,"[33] Pliley sees the story of sexual policing of women as fundamental to the growth of institutional functions, individuals, and resources. The creation of the White Slave Division—and the establishment of "white slave officers," a veritable army of deputized civilian volunteers, within it—is a telling microcosm of the broader story.[34] Charged with the "overwhelming, if unclear, task of policing immorality" nationwide, the Bureau's augmented jurisdiction would ultimately lead to more agents to track down the purveyors of vice and, subsequently, to more money to aid them in ferreting out sin.[35] In the end, it was a group of "subnational bureaucratic actors" that spread "federal polic[e] power throughout much of the country," establishing both the structural architecture of and a "more aggressive model" for ensuring that the nation's laws were enforced, and majority's moral values imposed, upon the citizenry as a whole.[36]

BUILDING THE AMERICAN VICE STATE

Even though Volk, Compton, and Pliley clearly did not write their books to be in formal conversation with one another, they fit remarkably well together—not merely as different case studies of a common theme or different manifestations of a common dynamic, but as interlocking pieces of grand historical trajectory: the construction of the American vice state. With Volk, Compton, and Pliley's books as our guides, it is more possible than ever to sketch out the complex, multi-generational, multi-stage development of a regime that persists, albeit in modified and amended form, even to this day. Laying the books' insights on top of (rather than merely adjacent to) one another, I can identify at least five sequential processes at work.

First, *ideologically*, there was the public construction or framing of certain undesirable behaviors as "vice" in the first place. Occurring during periods when American values were decidedly in flux, with a clash between first a lingering Puritan

32. *Id.* at 5.
33. *Id.* at 8.
34. *Id.* at 88–98.
35. PLILEY, *supra* note 25, at 87.
36. *Id.* at 91, 104.

sensibility and later an emerging Victorian morality, on the one hand, and an incipient proto-libertarianism animating political culture, on the other hand, Volk, Compton, and Pliley highlight moments that proved ripe for reinterpreting and renegotiating the norms and values of the extant political order. The idea that moral weakness—the propensity to ingest harmful substances, to engage in financially profligate activity, to participate in sexually deviant behavior—was itself societally detrimental may have fit quite naturally within strands of political thinking that emphasized communal betterment, but it was hardly self-evident or universally accepted in a society usually characterized as uniformly liberal. Instead, the public costs of private sin needed to be articulated, dramatized, and inculcated. And, indeed, by framing vice as both a blight on individual capacity and a drain on social resources in newspapers, literature, and popular culture, reformers transformed what might otherwise simply have been considered personal problems of immorality into a civic problem with sufficient political and economic ramifications so as to render it an appropriate target of popular opprobrium and governmental supervision.

Second, *organizationally*, there were activist campaigns—directed at both national and sub-national policymakers—to leverage such attention in service of proposing concrete and tangible action. As Volk, Compton, and Pliley illustrate, many such campaigns came from familiar social reformers and the organizations they left behind, but at least some of the campaigns (especially in the Gilded Age) appear to have been funded by the very breed of wealthy capitalists that would—and did—abhor interventionist government when it turned its regulatory gaze toward business and industry. The combination of these forces provided a powerful one-two punch of activist mobilization and elite bankrolling that left campaigns for vice regulation well positioned not only to make noise but also to achieve results.

Third, *legislatively*, there were seemingly endless local, state, and eventually congressional battles to secure those results by drafting and enacting city ordinances, state constitutional amendments, and federal legislation that might simultaneously serve to satisfy the interests of reformers and further the aims of legislators alike. While the regulation of moral peccadilloes had long been subject to the sorts of state laws and especially local ordinances integral to Volk and Compton's analyses, it was only in the late nineteenth century that the trend jumped to the federal level. Indeed, influenced by an array of groups in favor of reform-minded policymaking and capitalizing on public panics about the societal victims of so-called "victimless crimes," lawmakers sought not so much to overcome as to bolster state policies and formulate a comprehensive approach to the moral—and, by extension, political, economic, and social—decay of Americans. The answer, as the central characters in both Compton and Pliley's stories saw it, lay in national standards with national enforcement; it lay, in other words, in a programmatic approach to extinguishing vice through nationwide regulation.

Fourth, *jurisprudentially*, there was the judicial—and, indeed, ultimately Supreme Court—sanctioning, or constitutionalizing, of that regulation as part of a vision that seemed to push, both creatively and expansively, the bounds of national regulatory authority. Central to this construction, as Compton details, was a constitutional universe that integrated established understandings of governmental power, federalism, and judicial authority into a powerful and theretofore unseen admixture. Combining these elements in

service of something roughly approximating an unenumerated federal police power to regulate for the health and morals of the citizenry, the Court effectively rendered claims that vice regulation lacked legal legitimacy moot and provided a constitutional imprimatur for the notion that national government could join state and local governments in seeking to rid the American citizenry of sin.

Fifth, *administratively*, there was the enforcement, by local and federal officials alike, of a broad and expansive conception of not only the targets of (judicially-approved) statutes regulating immoral behavior but also their mandates for action under them. As Pliley documents, this process both lent enormous leeway to and placed enormous pressure upon police forces, federal agents (as well as the civilians deputized by them), and attorneys to identify, trap, and punish those trafficking in vice. The need for investigative energy required an expansion of resources—both money and manpower; the demand for prosecutorial success necessitated a wide net, "flexible" tactics, and unified purpose dictated from the top. Together, they transformed national bureaucratic capacity on criminal justice matters so as to make vice not merely regulable in theory but actually punishable in practice.

From demand to mobilization, provision to legitimation to implementation, there is a fascinating, complex, and, until now, largely unappreciated story of political development unfolding here. Indeed, considered not as independent vectors but as overlapping, sequential stages in a macro-political transformation, these five processes—framing, proposing, enacting, constitutionalizing, enforcing—yield nothing less than an expansive, interventionist, regulatory government, one that both helps to contextualize the transformation of the political order that comes three decades later with the New Deal and establishes a legacy that remains visible in American politics to this day.

One broader lesson here—not one that Volk, Compton, or Pliley drive home directly but one that implicitly jumps out from the shared force of their work all the same—is that our standard narrative about the origins of "modern" American life overemphasizes the economic at the expense of the social. To be sure, questions of political economy were instrumental in the development of the contemporary American state, but the path to the New Deal economic order is not one fundamentally about economic regulation because the ideational, organizational, legislative, jurisprudential, and administrative roots of the New Deal economic order reside in the realm of social control. This story of deep concern with non-economic aspects of community life—what citizens are accepted as members of the community, the responsibilities citizens have to their communities, the privileges and benefits citizens receive from their communities in return—is largely forgotten once the New Deal's thoroughgoing transformation of the government's role in the national economy becomes *the* story of how modern American politics works. But, reading Volk, Compton, and Pliley, it is hard to escape the idea that the economic concerns about planning and regulation in a capitalist system are intimately linked to the social dimensions of how people behave and practice their everyday lives. The notion that there are social roots of economic structures—that the logic of social regulation suggests a logic for economic regulation later, that the campaigns for social regulation guide campaigns for economic regulation later, that the justification for social regulation establishes a justification for economic regulation later—is not necessarily how we conceptualize things

today. But, to the extent that New Deal economic interventionism can be traced to the social control initiatives—the morals regulation, the vice state—from the Age of Jackson to the Progressive Era, it was the directionality of the relationship during a wide swath of American history.

As central as social control has been to American political history, it should be little surprise that it remains an integral domain of contemporary American government. After all, the American vice state whose historical roots are under examination in these books has endured as, in many eyes, a profoundly illiberal policy regime for more than a century. Alcohol may have recovered from Prohibition to become an accepted feature of American life, but the other two sites of moral politics that undergird much of these books—gambling and prostitution—remain, to different degrees and in different ways, outside the mainstream. Gambling, though obviously somewhat destigmatized with the rise of state-sponsored lotteries in the mid-twentieth century and the prevalence of tribal gaming in the late twentieth century, remains illegal in most forms (casinos or sports betting, for example) in most states as well as federally, with recent flare-ups in a number of states over the classification of "daily fantasy sports." Prostitution, a condoned sexual practice in much of the developed world, remains contrary to the laws of the United States as well as every American state save Nevada. And for all the many nodes of debauchery and depravity that fill the pages of Volk, Compton, and Pliley's books, there is an important one that does not make an appearance: recreational drugs.[37] Perhaps the primary target of the contemporary vice state, drugs remain—recent electoral successes in legalizing marijuana in a number of states notwithstanding—legally prohibited, culturally decried, and harshly punished at both the state and federal level.

That the continued potency of such a regime persists as a source of controversy should not be the least bit surprising given the various strands of American liberalism it imperils. For some, the subjects regulated and the behavior proscribed not only reside within the bounds of what many Americans have long deemed private morality and what others would at least regard as "victimless" crimes but also present opportunities for exacerbating racial and socioeconomic inequities that already run rampant throughout the criminal justice system. For others, the very existence of a vice state is proof positive of how easily the federal government—purportedly one of enumerated powers only—can use its creative capacities to accomplish something it might not otherwise be constitutionally empowered to do. To politicians, pundits, and (presumably) much of the populace, those dueling concerns might suggest a dispute that is inescapably a product of our hyperpolarized era rather than one that has been raging on-and-off for nearly two centuries, shaping and constituting American political debate, constitutionalism, and institutions in the process. Yet, far from a creation of Ronald Reagan or the Christian Coalition, the American vice state has roots deep in our historical consciousness and influence far across the political agenda. Amidst morally-tinged questions about governmental obligations in healthcare and personal safety, and in light of morally-drenched debates about abortion

37. Indeed, if one were looking for something to add to the works under examination here, it would be a book detailing the historical political development of narcotics, which were similarly characterized by everything from impassioned campaigns to aggressive enforcement and are, as seen in the "War on Drugs," similarly durable as an aspect of the vice state.

and gay rights, we would be wise to recognize—and, subsequently, to learn from—the moral roots of the modern American polity.