

original theses, then for its richly detailed and thorough exploration of the historical, conceptual, theoretical, and institutional framework of multi-lateral health governance.

Sherri A. Brown, Simon Fraser University

DOI 10.1215/03616878-2007-023

**James A. Wooten. *The Employee Retirement Income Security Act of 1974: A Political History*.** Berkeley: University of California Press, 2004. 415 pp. \$65.00 cloth.

The U.S. Supreme Court views the Employee Retirement Income Security Act (ERISA) as “an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests” (*Mertens v. Hewitt Associates*, 508 U.S. 248, 262 [1993]). James Wooten, in *The Employee Retirement Income Security Act of 1974: A Political History*, does not take issue with ERISA’s complexity. He does, however, challenge the view that interest groups played a primary role in the statute’s development and enactment. One of Wooten’s central themes is that ERISA resulted from the noble instincts of politicians who sought to secure pension promises rather than from interest-group politics. Another theme is that ERISA’s enactment reflected a paradigm shift from using voluntary pension plans as a means of workforce management to using them as a tool to provide worker security.

Wooten provides readers with a detailed chronicle of pension-plan regulation beginning in the late 1800s and continuing through the conference-committee proceedings and congressional debates that occurred in the days leading up to ERISA’s enactment in 1974. The book traces the increased political interest in pension reform back to President John F. Kennedy’s creation of a Cabinet Committee on Corporate Pension Funds in 1962 and the infamous 1963 termination of Studebaker’s pension plan at its South Bend, Indiana, plant. During the more than ten years between those events and ERISA becoming law, individuals and groups in Congress and from various agencies produced numerous reports and legislative proposals, conducted hearings, and squabbled over responsibility. In addition to cataloging these various actions, the book recounts some entertaining stories such as the role played in the development of pension regulation by the friendship between Henry Ford II and President Lyndon B. Johnson. On a broader scale, Wooten describes the long battle over pen-

sion regulation as being fought on one side by business, labor, the pension industry, and government actors who regarded pensions as an inappropriate subject of regulation because corporations needed flexibility to utilize them as tools to manage their workforce. On the other side were those who viewed pension plans as a method for providing workers with economic security and believed that comprehensive regulation was needed to ensure that corporations kept their pension promises.

Wooten's argument that ERISA owes its genesis to altruistic policy makers is most compelling when discussing the period extending from the work of the cabinet committee through the transmittal of draft legislation to Congress in 1968. Business and labor both attacked the cabinet committee's provisional report, which recommended that legislation establish minimum standards for a broad range of pension plan factors such as participation, coverage, vesting, and funding. In spite of the attacks, presidential disinterest, and hostility from other agencies, the Department of Labor (DOL) continued its efforts for comprehensive regulation. Ultimately, the DOL's commitment to pension reform culminated in 1968 in draft legislation. President Johnson allowed the DOL to transmit its proposed bill to Congress but refused to endorse it. That bill served as the basis, numerous iterations later, for ERISA.

By now the reader interested in health politics, policy, and law is asking how welfare-benefit regulation fits into this discussion of pension reform. Perhaps because Congress devoted so little consideration to welfare-benefit reform, the book does not contain any significant discussion of the pre-ERISA employer and union sponsorship of health care and group life insurance plans. Nor does it give us any explanation of the inclusion of welfare-benefits provisions in the early legislative proposals. Even the summaries of the various bills, which appear throughout the book, never refer explicitly to welfare-benefit plans.

It is only when the narrative reaches the congressional debates about preemption that consideration of health insurance plans plays a significant role in ERISA's development. ERISA preemption, as ultimately enacted, may be the broadest preemption provision in federal law. Its convoluted wording exempts from state regulation, among many other things, all self-insured health care plans sponsored by nongovernmental employers. At the same time, ERISA's substantive regulation of health care plans only establishes disclosure and fiduciary obligations, and it has been interpreted to disallow most compensatory and punitive remedies. The result of these intersecting provisions is that ERISA provides only limited protections to employees who rely on self-insured health care plans, fails to provide

adequate remedies when those protections are violated, and prohibits the states from addressing the problems. Thus, the history of ERISA preemption should be of interest to anyone concerned with health policy.

According to Wooten, when the conference committee addressed differences between the House and Senate bills on preemption, it understood that prohibiting state regulation of self-insured health plans would leave those plans largely unregulated. Labor unions, employers, and banks that administered self-insured health plans all took strong positions in favor of a broad preemption provision. Insurance companies, the National Association of Insurance Companies, and groups of lawyers argued that states should have the right to regulate welfare plans, including health care plans and legal-services plans, so preemption should be narrow. After setting out these opposing positions, Wooten follows the preemption provision during two meetings of the conference committee in which the committee first reportedly adopted the provision in a broad form with a three-year sunset clause and then a few days later removed the sunset clause. About a week later, following demands by unions in the building trades for an even broader preemption provision, staffers responded by expanding the provision's language to preempt all state laws that "relate to [an] employee benefit plan" (265). Although Wooten quotes a prominent staffer as saying that the amendment constituted "sound policy" (265), the prominent roles played by interest groups in establishing the contours of ERISA preemption seem to undercut his thesis of the limited role interest-group politics played in ERISA's enactment.

In addition to the book's value as a detailed account of the various legislative and agency positions, reports, and bills on pension reform that preceded ERISA's enactment, Wooten provides his reader with insights on the power of congressional studies in shaping public and legislative opinion. During the late 1960s, business and labor so successfully opposed wide-ranging pension reform that policy makers such as Jacob Javits, who believed in the worker-security theory of pensions and the need for comprehensive regulation, decided to take their battle to the public and the press. Javits and Harrison Williams, chair of the Senate Labor Subcommittee, arranged for a study surveying problems in pension funding and forfeiture. Among its findings: only between 5 percent and 16 percent of plan participants actually received pension benefits. Although the study's methodology and specific findings were subject to serious criticism, its results enabled Javits and Williams to conduct a successful public relations battle on the importance of pension reform.

One of ERISA's unique facets is that its statutory provisions on partici-

pation, vesting, and funding are written into both the Internal Revenue Code and the Labor Code. The duplication results in a complex division of regulatory authority between the DOL and the Internal Revenue Service (IRS). Wooten's discussion of the turf battles among the labor and tax committees in both the House and the Senate gives context to the ultimate decision to, as he quotes Rep. John Erlenborn as putting it, "cut the baby in half" (237). Similarly, his reviews of the positions of the DOL and the IRS in the years when predecessor legislative proposals were being considered by Congress and the administration illustrate the different values that the agencies bring to the regulation of pension plans.

The book's epilogue summarizes the major legislative amendments to ERISA since 1974, the shift from sponsorship of defined-benefit to defined-contribution pension plans, the increasing importance of health care plans and their efforts at cost containment, and the future of pension and health care regulation. Any of those topics contains sufficient material for a separate book, but Wooten deftly draws together the threads on thirty years of regulatory changes and policy challenges. As a result, the epilogue provides context for Wooten's exhaustive study of ERISA's development and opens the door for scholars interested in studying ERISA's political history subsequent to 1974.

Dana M. Muir, University of Michigan

DOI 10.1215/03616878-2007-024

**Darin Weinberg. *Of Others Inside: Insanity, Addiction and Belonging in America*.** Philadelphia: Temple University Press, 2005. 226pp. \$64.50 cloth; \$22.95 paper.

Darin Weinberg tackles a very thorny problem related to the social sciences and mental illness; namely, how do we understand the relationship between the external and internal worlds of individuals living with severe mental illnesses and alcohol or drug addictions? The term "others inside" cleverly refers, on the one hand, to the problem of objectifying individuals, viewing them as nonagents who are socially constructed by medicalizing and pathologizing discourses, and on the other hand, to the problem of subjectivism, viewing individuals as intrinsically ill with no reference to social context. Weinberg utilizes the concept of others inside to remind us that the exclusionary social function of mental disability, as numerous scholars have argued, is not to be understood as one-way or as a denial of