

confirmation hearings in US history. Future “peaceful coexistence,” if it is to be had at all, demands far more political creativity than has yet been dreamt of in legal philosophy.

Administrative Burden: Policymaking by Other Means.

By Pamela Herd and Donald P. Moynihan. New York: Russell Sage Foundation, 2018. 360p. \$37.50 paper.
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Pamela Herd and Donald P. Moynihan have penned a landmark study explaining how administrative burdens affect outcomes associated with US policy making. This volume will influence a broad spectrum of students in the related fields of public administration and public policy. The authors convincingly show how governments, for several decades, have sought to make it more difficult for those eligible for government benefits or rights to enjoy them as intended. The accepted wisdom in the study of administrative burdens such as red tape rests on the notion of ineffective, albeit benign, public administrators or poor policy implementation design. Instead Herd and Moynihan offer both a more realistic and original alternative explanation centered on the observation that these adverse administrative burdens are often set in motion much earlier during the policy process. Specifically, they argue that administrative burdens are often the direct result of the explicit political choices and compromises made by elected officials required to enact public policies, and they translate into imposing barriers for citizens to receive government benefits; they also favor one group of citizens with considerable political power at the expense of others who do not have it, as laid out in chapter 1, “Understanding Administrative Burdens.”

Herd and Moynihan offer a compelling logic for understanding how public bureaucracies both make and implement administrative decisions that adversely affect those citizens who would benefit most from receiving government policy benefits and hinder their exercise of their constitutional and legal rights. The central argument is that administrative burdens impose multiple layers of costs on citizens that are difficult to overcome, especially for those with limited means. These multiple layers of costs effectively ensure that citizens cannot gain access to government benefits and exercise rights that they are entitled to receive. These administrative burdens are conceived by the authors as coming in three general forms (p. 23, table 1.1), which I summarize here:

1. **Learning Costs:** The costs of information and search to determine eligibility for government benefits (i.e., the costs the potential recipient incurs in the effort to learn about a program and evaluate its

eligibility requirements). These costs stem from language, cultural, or geographic barriers that make it difficult for citizens to ascertain their benefits and rights afforded to them by government law. They are crucially important because they can serve as a “barrier to entry,” discouraging individuals from seeking and attaining government benefits that they are entitled to under the law.

2. **Compliance Costs:** These costs pertain to the ability of citizens to do what is necessary to merit the receipt of government benefits (i.e., transaction costs). Compliance costs range from meeting the requirement of formal proof of eligibility to the pecuniary costs incurred by citizens to satisfy eligibility requirements of an extralegal or discretionary nature that are imposed on citizens by public administrators.
3. **Psychological Costs:** These costs, which are of a nonpecuniary nature, make it difficult for citizens to attain the requisite learning and compliance needed to enjoy government benefits that they are entitled to receive. These costs typically relate to “downstream” effects such as stigma associated with receiving government benefits, the loss of personal agency due to overbearing administrative oversight, and concerns whether the government benefits are truly worth the effort required to attain them.

The policy and historical breadth of *Administrative Burden* is most impressive. Herd and Moynihan marshal a plethora of qualitative evidence from an eclectic and compelling set of cases, ranging from the distribution of government benefits (Affordable Care Act of 2010 and the evolution of Social Security policies adopted during the mid-twentieth century) at the US federal government level to the protection of civil rights (voting and election administration) and civil liberties (women’s reproductive health and abortion policies) across the US states. The conclusions drawn from these case studies point to how administrative burdens provide an effective mechanism for elected officials to target policy benefits and rights to select constituencies, while making it extremely costly for the least powerful constituencies to be served by government. The useful, as well as practical, solutions offered by the authors in chapter 10, “Toward an Evidence-Based Approach to Administrative Burden,” are rooted in “evidence-based” prescriptions that address both the political and policy-related sources of administrative burdens. These proposals include enhancing administrative policy transparency, increasing the role of evidentiary-based judicial review, and having greater administrative autonomy and professionalism.

The lessons obtained from this book transcend the study of public administration and policy. Because administrative burdens are the direct result of political

choices made by democratic institutions, substantive representation of the interests of racial, ethnic, and gendered minorities duly suffers: the administrative state is constrained from using its discretion to make it easier for these citizens to fully benefit from policies intended to serve them. Government design of public policies that reinforce the existing power structure disproportionately serves the interests of entrenched dominant groups within society, rather than providing opportunity through social policies to empower historically disenfranchised groups. The policy implementation implications of political inequality generated from administrative burdens provide a much overdue complement to “upstream” research conducted earlier this decade on how political inequality shapes US government policy making; for example, Jacob Hacker and Paul Pierson’s *Winner Take All* (2010) and Nicholas Carnes’s *White Collar Government* (2013).

Herd and Moynihan provide an immensely useful (and long overdue) framework for systematically understanding both *how* and *why* citizens find it difficult to obtain government benefits and exercise rights because of administrative burdens. Yet, the framework that they offer falls short of providing a general theory of administrative burdens, because it does not consider the “counterfactual” instances when administrative burdens may serve beneficial purposes of both protecting and serving societal needs. Take one such example: administrative burdens imposed on producer groups (e.g., regulated firms) that restrict their behavior and choices and hence improve social welfare. Administrative burdens often restrict the exercise of private action/choice in a diverse array of important policy areas that favorably affect citizens, ranging from environmental regulation to consumer protection to workplace safety. In such instances, administrative burdens provide an additional layer of governmental protection that improves social welfare. Conversely, reducing administrative burdens in these situations—for example, achieved through deregulatory efforts in many industries since the mid-1970s—can decrease social welfare by making citizens, especially those whose policy interests are often underrepresented by government, worse off. Administrative burdens in regulatory areas constitute a rather complex issue that is influenced both by the nature and extent of regulatory capture by firms, industries, and other dominant interests (e.g., see Daniel Carpenter and David A. Moss, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*, 2013). Put simply, whether administrative burdens are normatively or positively desirable crucially depends on who is incurring the costs of administrative burdens, the nature of the policy activity in question, and whose interests are being served by government policies administered by unelected officials.

Although *Administrative Burdens* falls short of offering a general theory of administrative burdens, Herd and

Moynihan provide an invaluable touchstone on this topic that is poised to generate an expansive new research program at the nexus between public administration and public policy for an entire generation. *Administrative Burdens* will serve not only to guide scholarly understanding regarding how democratic values are channeled through the administration of government policies but will also inform practitioners’ knowledge of the evolving clientelistic relationship between citizens and their government.

Legacies of Losing in American Politics. By Jeffrey K. Tulis and Nicole Mellow. Chicago: University of Chicago Press, 2018. 224p. \$85.00 cloth, \$27.50 paper. doi:10.1017/S1537592719004547

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Winning. Whether it is a group of nine-year-olds playing a game of kickball at recess on an elementary school playground or the 106 adult men who play a football game every year in late January or early February that is watched by more than 100 million Americans, Americans can at times seem obsessed with winning. As General George S. Patton famously claimed, “America loves a winner,” and with apologies to the realms of warfare and sports, it often seems as if this laser-like focus on winning is nowhere more evident than it is in politics. Current president Donald Trump certainly seems to understand this: he constantly references his own “victories” (whether real or entirely fabricated) and announces to the world how much the United States is or will be winning because of his exploits, while at the same time ceaselessly denouncing his political opponents as losers (and, of course, far worse). Scholars of US politics too are often focused on winners, trying to explain episodes of political victory and analyzing such wins in an effort to understand important elements of US public life.

Jeffrey K. Tulis and Nicole Mellow take a totally different approach. In *Legacies of Losing in American Politics*, they argue that it is a mistake to ignore political losers. In fact, according to the authors, some of the biggest losers of all time in American politics have ended up having large and profound effects on the nation’s political development. In other words, short-term losing can eventually result in long-term winning. This is an interesting argument to say the least, and the reader is intrigued from the outset.

Chapter 1 lays out both the fundamental argument and structure of the book. It is a work in the subfield of American Political Development and, as such, is centrally concerned with the themes of change and continuity in US politics (p. 3). Tulis and Mellow choose three “moments” of transformational conflict and change in US politics and government: the ratification of the Constitution and the founding era, post–Civil War