

essential to the strength of the executive—Hartford Federalists called for a single-term limit for the office. In the face of Andrew Jackson’s claim that the president, and not Congress, is the direct representative of the American people, Whig leaders denounced Jackson’s position as constitutional heresy. As Bailey observes, Henry Clay pronounced himself “surprised and alarmed at the new source of executive power,” and Daniel Webster insisted that “there can be no substantial responsibility” of the executive “but *to the law*” (p. 70, emphasis in original). When a former Whig, Abraham Lincoln, asserted extraordinary powers during the Civil War, he remained faithful to the stance of Clay and Webster, justifying his actions through the Constitution and not a popular mandate. Lincoln’s most vitriolic Copperhead critic, Clement Vallandigham, was also steeped in the traditional arguments of his political faith “and did not know how to reconcile his belief in the Jacksonian theory of representation with the use of executive power by Lincoln” (p. 77).

In examining the debate between opinion and law in the Progressive era and the early Cold War period, Bailey notes that the conventional “story of American political thought and development does not match up to the facts” (p. 9). Scholars paid so much attention to the famous claims of presidential representation by Herbert Croly, Theodore Roosevelt (TR), and Woodrow Wilson that they failed to notice how unconvincing their position was to many prominent political figures, at least in the Republican Party. William Howard Taft’s well-known rebuke of TR’s stewardship conception of the presidency receives extensive discussion here, but Taft was hardly alone: Bailey also delves into similar critiques of TR by Nicholas Murray Butler, Abbott Lawrence Lowell, Charles Nagel, and two of TR’s close friends: Henry Cabot Lodge and Elihu Root.

A chapter on “The National Security Constitution and Presidential Representation at Midcentury” (p. 126) also complicates the familiar story in which a bipartisan national security state, with expanded powers for the presidency, emerged in the years immediately following World War II. Although conservative Republican Robert Taft famously bucked the internationalist trend, Bailey is more interested in a band of Republican moderates, headed by Michigan senator Arthur H. Vandenberg, who joined with President Truman in support of the Truman Doctrine, the National Security Act, the Marshall Plan, and NATO. These Republican moderates distinguished their support for a national security state from their attitude toward executive power, voting for the Twenty-Second Amendment and defending the constitutional prerogatives of Congress. In Vandenberg’s case, Bailey writes, the senator “did not argue that the new facts of the Cold War required a new understanding of the presidency in the constitutional order. Nor did he embrace presidential claims to represent the people” (p. 148).

Bailey is on more familiar ground in discussing the plebiscitary McGovern-Fraser reforms on the Democratic side and the unitary executive theory on the Republican side. His treatment of how the unitary executive theory developed is subtle and perceptive. He links that theory to the long-standing Federalist-Whig-Republican orthodoxy on the Constitution versus public opinion. Particularly in the presidency of George W. Bush, “the party of Lincoln and Taft did not come to embrace the methods of the party of Jefferson and Jackson after all” (p. 189).

Despite his book’s subtitle, Bailey’s work is primarily about the intellectual rather than the political history of presidential representation. Additional insights into the idea at the heart of the book might be gained by looking at the fate of presidents who actually set out to be representatives of the whole people. Franklin D. Roosevelt and Lyndon B. Johnson each began their administrations with a bid to encompass as many and diverse interests as possible. FDR sought a concert of interests in the face of the Great Depression, most notably in the National Industrial Recovery Act. By the second year of his presidency, that concert was shattered by backlash from the Right and challenge from the Left, with Roosevelt shifting in response to the militant populism of 1935–36. Johnson sought a consensus of all major forces in an era of prosperity. He carried off this consensus stance with productive results during his first two years in office, only to see it wrecked by racial conflict and the Vietnam War. Historical cases such as these suggest that the idea of the president as champion of the public will is unsustainable in practice.

In the book’s final paragraph, Bailey sums up his central thesis:

The theory of presidential representation is marked not by simple development from a premodern to a modern presidency, or from a “constitutional” presidency to a “political” presidency, or from law to opinion. It is marked rather by enduring debate between law and opinion, between those who see the president as the wielder of *the* executive power and those who see the president as the embodiment of the public will. (p. 199)

With extensive analyses of both well-known and obscure texts, Bailey has made a strong case for the importance of this “enduring debate.” His account is likely to become one of the core texts on the history of the presidency.

Black and Blue: How African Americans Judge the U.S. Legal System. By James L. Gibson and Michael J. Nelson. New York: Oxford University Press, 2018. 220p. \$99.95 cloth, \$29.95 paper. doi:10.1017/S1537592719004754

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In *Black and Blue*, James L. Gibson and Michael J. Nelson address a critical gap in our understanding of judicial

legitimacy in the United States. Using accessible methodology and established measures, Gibson and Nelson find evidence that racial bias in policing shapes the way that Black Americans assess their legal institutions. Drawing on theories from the race and ethnic politics literature, the authors present a compelling story about the mechanisms at play. The book's key findings bring important nuance to our understanding of how legal institutions in the United States build and maintain reserves of goodwill. *Black and Blue* boldly confronts the limitations of our existing theories about law and justice, which have been built around samples and assumptions that are not reflective of the lived experiences of Black Americans.

The main goal of *Black and Blue* is to revisit positivity theory in light of this oversight. Positivity theory connects a person's knowledge of the legal system with the durable willingness to accept courts as legitimate institutions. The proposition that more knowledge of legal institutions leads to greater diffuse support of those institutions is well documented in previous work by the authors and their colleagues (e.g., James L. Gibson and Gregory A. Caldeira, *Citizens, Courts, and Confirmations*, 2009; James L. Gibson and Michael J. Nelson, "Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?" *American Journal of Political Science* 59[1], 2015). The authors concede in the preface that their own prior work on this topic was based on findings derived from largely white survey samples. As a result, our understanding of institutional legitimacy has been skewed toward the perspective of people who have, in general, enjoyed a privileged relationship with the legal system.

The authors report that the project was motivated by an unexplored finding from an earlier unpublished manuscript. In that study, Black college student respondents did not tend to ascribe the same positive valence to judicial symbols as white students did. In the first chapter of *Black and Blue*, Gibson and Nelson build on this finding, arguing that positivity theory might not operate in the same way for Black Americans as it does for their white counterparts. Here, they draw on a key insight from Mark Peffley and Jon Hurwitz's (2010) *Justice in America*, which is that racial inequities shape the underlying perception among Black people in the United States that the criminal justice system is unfair. Gibson and Nelson posit that these differences will be expressed in their key dependent variables, which are measures of the perceived institutional legitimacy of the US Supreme Court and of the legal system more broadly.

The authors identify a number of factors to help explain and contextualize the presence of this kind of systematic distrust of the legal system. They consider the effect of negative personal experiences with police, as well as the negative experiences of friends and family. They also hypothesize that a respondent's sense of group identity and linked fate may condition the impact of these

direct and vicarious negative experiences with law enforcement. In the chapters that follow, the authors address the various hypotheses that stem from this discussion. As a preliminary step, they establish in chapter 2 that, indeed, Black Americans demonstrate less support for the US Supreme Court than do white Americans. Chapter 3 sets up the argument that group identity and linked fate will condition the effects of negative experiences on legitimacy scores. There, they find that linked fate is a function of negative experiences with police, but both are uncorrelated with the strength of respondents' attachments to their racial group.

The remaining substantive chapters of the book focus on predicting the various measures of institutional legitimacy. In chapter 4, Gibson and Nelson model these concepts as a function of respondent experiences with police and their reported group identity and sense of linked fate. Here, the authors find that experiences with police and a sense of linked fate drive much of the intraracial differences in support for the legal system overall. They also report the "startling finding" (p. 89) that more knowledge of the Supreme Court leads to a decrease in diffuse support for the institution, which is the opposite of what positivity theory would predict.

Chapters 5 and 6 take up the possibility that legal symbols are negatively valenced for Black Americans and may act as a mechanism to explain the inapplicability of positivity theory to this group. They replicate a survey experiment from prior work (James Gibson, Milton Lodge, and Benjamin Woodson, "Losing, but Accepting," *Law & Society Review* 48[4], 2014) as a test of the role of legal symbols in boosting perceived institutional legitimacy in the face of disappointing judicial outcomes. The vignettes here are intended "not to prime racial considerations" (102 n14), which helps isolate the hypothesized causal mechanism. These chapters focus solely on diffuse support for the US Supreme Court.

The relationships uncovered in these chapters are complex, underscoring the authors' contention (which one hopes is self-evident) that "Black people vary" (p. 124). Group attachments condition the effect of negative experiences with police on perceptions of US Supreme Court legitimacy. Those with lower levels of group attachment are more likely to demonstrate a negative effect of exposure to legal symbols when they have had more negative experiences with police. For those who are particularly disappointed with the judicial decision presented in the vignette, exposure to judicial symbols leads to a larger decrease in their level of support for the Supreme Court.

Understandably, many of the authors' conclusions are tentative, particularly when it comes to the meaning of their empirical findings in terms of existing theories derived from the race and ethnic politics literature. The policy feedback literature may help contextualize the

critically important findings about the way symbols prime different reactions by respondent race. For example, Elizabeth Maltby (“The Political Origins of Racial Inequality,” *Political Research Quarterly*, 70[3], 2017) shows how racially skewed enforcement in a community affects members of that community differently based on race. Its effect seems to be particularly acute when the biased enforcement involves harassing behavior on the part of the police (see Amy E. Lerman and Velsa Weaver, “Staying out of Sight?” *Annals of the American Academy of Political and Social Science*, 651[1], 2014). Insights from these studies of community-level policy impacts may help untangle the conditional effects involving direct and vicarious negative experience with police.

In what is perhaps an attempt not to extrapolate beyond their analyses, the authors provide only a limited discussion of the implications of their findings for the Supreme Court’s future. I was left wanting more here, particularly as it relates to their stated interest in pursuing “strategies for reducing the gap” (p. 175) in assessments of the legal system. However, this book invites the rest of the field to continue this conversation. We should heed this call to interrogate our research for the prioritization of privileged perspectives, following the lead that Gibson and Nelson provide in this important and timely book.

Bending the Rules: Procedural Politicking in the Bureaucracy. By Rachel Augustine Potter. Chicago: University of Chicago Press, 2019. 256p. \$90.00 cloth, \$30.00 paper.

Rule Breaking and Political Imagination. By Kenneth A. Shepsle. Chicago: University of Chicago Press, 2017. 176p. \$67.50 cloth, \$22.50 paper.
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These books provide important insights into the role that institutions play in shaping policymaking and political life and, particularly, how savvy political actors bend and break the rules of the game in pursuit of their ends. Rather than taking institutions as ironclad restraints on behavior, these books urge us to think about how well-positioned actors can push the boundaries of institutions that seemingly constrain them to achieve their goals, and in doing so, potentially transform the meaning and operations of the institutions themselves.

In *Bending the Rules: Procedural Politicking in the Bureaucracy*, Rachel Potter shines new light on the rule-making process in the United States. The book demonstrates how bureaucrats navigate the technical and procedure-laden territory of promulgating regulations to advance their interests, and potentially subvert the interests of their political principals. Rather than adopting the view that procedural requirements serve as a means of political control that hem in the policy ambitions of

bureaucrats and ensure their responsiveness to elected officials, Potter argues that bureaucrats can use and shape these procedures to their own ends. By recognizing that the implementation of procedures is fundamentally at the discretion of the agents they are meant to control, Potter turns the standard logic of procedures and political control on its head. Rather than serving to enhance the accountability of the administrative state to elected officials, the fact that bureaucrats themselves implement procedures may undermine that goal, at least in some cases, by increasing the costs of political intervention.

Potter’s argument suggests a number of interesting hypotheses about how bureaucrats should structure the rulemaking process under conditions when they are concerned about political oversight. As is often the case when we think about the bureaucracy, the politics is in the details. Potter draws on an extensive and nuanced understanding of the rulemaking process to identify clear junctures at which agency officials can turn their discretion over procedures to their advantage. The theoretical framework suggests that bureaucrats will seek to manipulate the clarity and complexity of the language included in rules, the timing of comment periods, and the time at which rules are finalized to elude the influence of unfavorable political environments.

To assess these arguments, Potter turns to an impressive dataset of nearly 11,000 significant regulatory actions agencies worked on between 1995 and 2014. Over the course of four empirical chapters, Potter illuminates several aspects of the rulemaking process. Several notable findings emerge, which together paint a picture of the degree to which bureaucrats strategically deploy procedures. Together, the findings suggest that, at least at the margins, bureaucrats press their procedural advantages to avoid adverse oversight environments.

First, Potter demonstrates that agencies write significantly longer preambles to rules (i.e., the portions of the rules that lay out the agency’s reasoning and purpose in the regulation) in the face of opposition from Congress, the president, and the courts, when each of these is combined with the opposition of mobilized interest groups. The length of these preambles serves as a signal to potential regulatory opponents that the agency has addressed and considered possible objections. Notably, the same dynamics do not appear to drive the readability of the text, suggesting that bureaucrats are not also writing increasingly inscrutable preambles to confound political oversight. One wonders, however, if there may be ceiling effects in this case. The standard text readability scores adapted by Potter to this context may simply be unsuited to picking up the nuances in readability that present in the specialized texts agencies write.

Potter also demonstrates that agencies respond to unaligned presidents and congressional majorities by manipulating comment periods, albeit in different ways.