Mistaken Identity: The Supreme Court and the Politics of Minority Representation by Keith J. Bybee
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uncertainty about the effect of groups in the policy process, and they point to the large-scale interest group surveys of the 1980s as promising examples.

Yet, this answer overlooks the fundamental problem in determining the role of groups in the policy process, namely, the failure to construct counterfactuals that can establish causal links between the actions of groups and the various outcomes in the policy process that groups strive to influence, such as agendas, issue interpretations, the content of policy options, the decisions of public officials, and the implementation and enforcement of official policy. Broadening the empirical scope of influence studies and paying greater attention to context are not necessarily going to lead to the construction of more successful counterfactuals. Indeed, they are likely to make the construction even more difficult by significantly increasing the amount of data that must be collected.

Producing convincing counterfactuals requires the collection of substantial information about the strategies, resources, and positions of all who are involved in the policy (or policies) under investigation, and some of this information is extremely difficult to gather. Indeed, the practice in recent decades of narrowing the scope of empirical investigations of group influence is a direct result of scholars trying to manage the data collection effort. Broadening the empirical scope of such studies may be necessary, but it will require a level of scholarly effort and financial support that is beyond anything attempted so far in the study of interest groups.

Despite the lack of attention to the counterfactuals, Basic Interests is still an excellent guide to where the literature has advanced and where it has not. It assumes, however, that the reader is familiar with much of the literature being reviewed and does not answer questions about particular theses or bodies of work. Therefore, it is not appropriate for introductory undergraduate courses, but it is an excellent reference for all faculty who teach courses in interest groups and American politics. It is also appropriate for advanced undergraduate and graduate courses with a strong emphasis on interest groups, as well as for undergraduate senior seminars and introductory scope and methods graduate courses with an emphasis on epistemological issues and the development of political science as a science.


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In a series of contentious, confusing, and contradictory opinions beginning with Shaw v. Reno (1993), the Supreme Court has outlawed some but not all congressional and state legislative districts that were designed to ensure that African-American and Latino voters had genuine opportunities to elect candidates of their choice. Citing only Supreme Court opinions and a small part of the huge secondary literature on voting rights and redistricting, Keith Bybee claims that, in voting rights cases, “conservatives” and “progressives” have fundamentally struggled over the definition of “who the people are” (p. 7), but his own analysis and prescriptions are not persuasive. He too readily dismisses or ignores empirical scholarship, disregards many Supreme and lower court opinions that do not fit his scheme, and provides no justification in logic or constitutional law for his key proposal.

Since 1993, Bybee maintains, the five-person majority of Chief Justice William Rehnquist and justices Anthony Kennedy, Sandra Day O’Connor, Antonin Scalia, and Clarence Thomas has consistently adopted an individualist notion of political identity, while the four-person dissenting minority of Stephen Breyer, Ruth Bader Ginsburg, David Souter, and John Paul Stevens (and Harry Blackmun and Byron White before their retirement) has consistently considered political identity to be group based. Instead, Bybee urges the Court to base its jurisprudence on the idea of “political deliberation,” a basis that he believes will tend to reunite the fractured public and strengthen the role of the Court itself. In less exalted terms, he opposes the actual or effective repeal of Section 2 of the Voting Rights Act, which under Thornburg v. Gingles (1986) protects large, geographically compact minorities against repeated defeats by white majorities in racially polarized elections. This would guarantee diversity in legislative membership (p. 169). To encourage deliberation, he would have the Court force redistricting to be bipartisan.

A political theorist, Bybee scorns those who believe debates may turn on “simple matters of fact,” who support their arguments with “an immense amount of historical detail,” or who reduce complexities to “a few bits of numerical data” (pp. 63, 43, 55). Empiricists such as Justice Byron White or political scientist Bernard Grofman, who employ qualitative or quantitative evidence to determine the intent or effect of electoral laws on minority representation, Bybee announces, have been guilty of “evasion of theoretical issues” or “evasion of conceptual issues” (pp. 60, 115). In contrast, Bybee neither analyzes data himself nor evaluates the conflicting empirical literature on disputed topics. Rather, he merely adopts convenient assumptions about reality: Political identity, he asserts, “develops during the process of debate and discussion, making it possible for decisions to be made in the common interest” (p. 171). Bipartisan redistricting “loosens incumbents’ grip on their constituencies and keeps the legislature responsive to the electorate as a whole. Through conflict and counterargument, policy is made in the common interests of all” (p. 169).

Bybee’s selective treatment of legal cases undermines his statements about the nature and consequences of Supreme Court opinions. His contention that Mobile v. Bolden (1980) showed “the search for discriminatory intent in the design of political institutions was likely to be fruitless” (p. 23), for example, is weakened by the fact that the plaintiffs successfully proved such an intent when the case was remanded to the district court. His description of the Supreme Court as a representative of “the people as a whole” (p. 37) ignores the body’s self-conscious role after the famous footnote 4 of United States v. Carolene Products (1938) as the special guardian of the rights of “discrete and insular minorities,” as well as its more common historical role as the guardian of majority persecution of those minorities in such cases as Dred Scott v. Sandford (1857) and Korematsu v. United States (1944). Bybee’s declaration that group and individual conceptions of rights form the central issue and dividing line in voting rights cases is undercut by the existence of other dividing lines (intent versus effect; symbolic versus real harm; descriptive representation versus influence; judicial activism versus deference to Congress, the Department of Justice, or state legislatures), none of which is discussed systematically, as well as by the inconsistency with which both sides have held to the group and individual conceptions.

In Shaw v. Reno, for example, Justice O’Connor, an individualist in Bybee’s scheme, poses three symbolic or “expressive” harms to “our society” that unany minority opportunity districts may produce: stereotyping, exacerbating
racially polarized voting, and cueing representatives to be attentive to only one group in a district. Because, as she notes, in districts that include people at all; it classifies tracts of land, or addresses," none of these three alleged harms, which are crucial to her opinion, is really based on an individualized notion of political identity. In Davis v. Bandemer (1986), the case in which the Court ruled partisan gerrymandering justiciable and which Bybee, surprisingly, does not discuss, O'Connor would have denied the Demo-
crats standing to sue because, unlike "racial minority groups," they "cannot claim that they are a discrete and insular group vulnerable to exclusion from the political process by some dominant group." Since at least the 1840s, during the first Boston school integration struggle, racial progressives have condemned irrational distinctions that harm individuals and the use of what Justice Thurgood Marshall later called "crude, inaccurate racial stereotypes" (Batson v. Kentucky (1986)).

Bybee derives his "political deliberation" theme from his speculative extension of Chief Justice Earl Warren's discussion in South Carolina v. Katzenbach (1966) of the care with which Congress considered the initial Voting Rights Act. Warren, Bybee says, "seemed to suggest" that jurisdictions which, redistricting "does not classify persons at all; it classi-

Even granting the possibility of "deliberation about the interests that all hold in common as well as the policies best suited to serve those interests" (p. 154), the logical connect-

As are other recent books on direct democracy, The Color

bind: California's Battle to End Affirmative

Action. By Lydia Chavez. Berkeley: University of Californi-

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