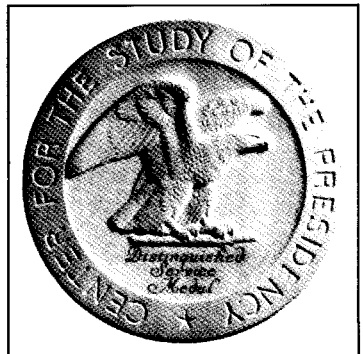


# Presidential Studies Quarterly

**Issue Themes:**

**Modern First Ladies**

**White House Organization**



able to exploit those experts whose theories and perspectives best fit their own objectives.

Finally, McKay finds that presidents have greater freedom over adaptation strategies than previously thought. Institutional reforms centralizing power in the White House, such as the 1978 Civil Service Act and the 1980 Paperwork Reduction Act which gave presidents new powers over civil service recruitment and mobility as well as over OMB rule-making powers have contributed to that freedom.

Both the bargaining model of presidential leadership, which implies that potent interest groups wield significant power, and the state-centered model which stresses institutional constraints are too pessimistic in McKay's view. Presidential leadership in terms of presidential abilities to shape domestic policies, even within the context of the crumbling New Deal regime, is alive and well. Future presidents have opportunities for shaping domestic policy they are duty-bound to exploit.

McKay's breadth is both considerable and commendable. His optimism surrounding presidential leadership skills stands in dramatic contrast to the more pessimistic models he critiques. While he may underestimate the institutional, political, and cultural constraints presidents confront, his viewpoint that strong presidential leadership does not have to be a phenomenon of the past, or even a temporary and transitory aspect of realignment is refreshing. While presidents who believe they have abilities to shape domestic policy may not do so, surely those lacking such a belief will not. The presidency, more than other institution within American government represents the highly personalized but comprehensive interests of the state.

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ALBERT P. MELONE AND GEORGE MACE. *Judicial Review and American Democracy*. (Ames, Iowa: Iowa State University Press, 1988), 289 pp. (ISBN 0-8138-0093-5). \$28.95 (cloth).

In the Preface of *Judicial Review and American Democracy*, the authors describe their primary concerns: "Whether judicial review is a usurpation of power and whether it is consistent with democratic thinking . . ." (p. xi). Upon reading this, I must admit that I was skeptical. As a student of law, courts, and judicial processes, I could not help but ask myself if the subfield could endure yet another book on judicial review and its place within a democracy.

Having now read the work in its entirety, I can report that my skepticism was replaced by interest and intrigue. Astonishingly, the authors have produced a valuable and fresh look at an old and endlessly-debated subject.

They accomplished this, in part, by using a deceptively simple format. Rather than bombard the reader with material supporting one side of the debate over the other, they present a highly balanced treatment. They intersperse commentary with

classic readings and writings on two of the most important dimensions of judicial review: whether it represents a usurpation of power and whether it is compatible with democratic values.

To address these questions, Melone and Mace divide the volume into three major parts. The first, *Judicial Review and American Government*, contains five introductory chapters, providing overviews of the Court, of its role within a democratic society, and of Marshall's opinion in *Marbury v. Madison* (which is reproduced).

On balance, the authors do a fine job in untangling what can be confusing and complex material. Moreover, while Melone and Mace include this section mainly to set the stage for what is to come (and, thus, they review past work and interpretations), they also integrate into their discussion some current debates. For example, they demonstrate that judicial activism/restraint do not necessarily go hand-in-hand with any particular ideologies. Though this is not a new observation, it is one that continues to require emphasis in light of present-day judicial politics.

Part II—The Usurpation Question—contains five chapters exploring the important question of whether judicial review, in fact, represents a "usurpation of power." Here, the authors reprint 1) Judge Gibson's dissent in *Eakin v. Raub*, "the" classic judicial response to Marshall's opinion; 2) James B. Thayer's statement that the Court ought exercise judicial review with "great restraint," 3) Justice Horace H. Lurton's defense of judicial review; 4) lawyer Louis Boudin's rebuttal of Lurton's article; and, 5) Charles A. Beard's classic examination of the intent of the framers on the subject of judicial review.

The arguments put forth in these pieces are sophisticated, but, of course, contradictory. Those new to the debate, though, can plunge right in thanks to the concise and lucid commentary of Melone and Mace. Not only do they include biographical sketches of the authors, but they also provide frameworks and questions from which the reader can approach competing claims and arguments. Even as one familiar with the authors' selections, I found their discussions informative and thought provoking.

The selections in the final part—The Compatibility Question—address the other important question raised by judicial review: "How may one reconcile judicial law-making with the doctrine of majority rule?" In other words, why should the courts, lacking any electoral connection, have the power to strike down the wishes of representative bodies?

To explore this question, they follow the same format used in Part II, bringing together diverse writings: 1) Robert Yates' ("Brutus") letters, comprising part of the "Antifederalists;" 2) Alexander Hamilton's classic explication of the role of the judiciary in *Federalist #78*; 3) Eugene Rostow's defense of judicial review; and 4) several pieces written by the authors in agreement or rebuttal to the other selections. Once again, Melone and Mace provide interesting commentary, helping the reader piece together the often ill-fitting parts of the puzzle of judicial review.

Overall, then, this book has something new to offer, perhaps the highest compliment one can pay to a volume on judicial review. It presents the debate in an informed, contemporary, and lucid manner. What I also appreciate is that the authors "recoil[ed] from reaching hard and firm conclusions" (p.x). At the onset, Melone and Mace stated

that some readers might be troubled because they refrained from attempting, generally speaking, to resolve the debates presented. On the contrary, I find their approach refreshing and one that would naturally lend itself to interesting classroom discussions. I wholeheartedly recommend it to all students of the political and judicial processes.

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