

**Black and Blue: African Americans, the Labor Movement and the Decline of the Democratic Party.**

By Paul Frymer. Princeton: Princeton University Press, 2007. 224p.

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— Janice Fine, *Rutgers University*

Paul Frymer has written a book that deserves to take its place as one of the canonical texts for students and scholars interested in exploring the troubled intersection of race and class in American political development (APD). The fundamental argument of *Black and Blue* is that Democratic Party politics in the 1930s, which were characterized by powerful southern Democrats in the Congress who controlled top positions in both chambers and many committee chairmanships working with the national leadership of the American Federation of Labor (AFL), set the nation on a course of long-term institutional bifurcation of labor and Civil Rights laws that “assigned race and class problems to different spheres of government” (p. 2).

The book begins by recounting the story of how, despite ample evidence of union discrimination and strong advocacy on the part of the NAACP and the Urban League, the AFL and powerful congressional allies successfully resisted any attempts to include antidiscrimination measures in the Wagner Act. Racial discrimination and the “duty of fair representation” on the part of unions were excluded from the Act, a position reinforced in subsequent National Labor Relations Board (NLRB) decisions that consistently certified all-white unions and refused to declare that separate black and white unions were a violation of fair representation (p. 30). Frymer’s punch line is that labor’s initial success in preventing the establishment of a unified regulatory agency that would have adjudicated both labor and Civil Rights complaints was a pyrrhic victory. That is because when courts, rather than the NLRB, became the principal agents of reform, their successes in forcing unions to desegregate were accompanied by little empathy for the financial strain their decisions placed on unions—and, in fact, little empathy for unions in general. The author argues that many of the court decisions that promoted Civil Rights at the same time weakened the bargaining strength of unions.

Frymer argues that it was this exclusion of any antidiscrimination measures from labor’s so-called Magna Carta that sowed the seeds of the Wagner Act’s ultimate failure, because as the NLRB continually upheld the narrow scope of the law, Civil Rights groups were forced to look elsewhere. As he explains: “In the process, the government created new agencies with new constituencies outside the province of NLRB law and with distinctive powers and diverse missions. Some of these powers and missions were at odds with those of the NLRB and the Act it was attempting to enforce. As a result, these competing areas of federal labor law ended up usurping powers from the Wagner Act

and the NLRB. They did not merely remain in parallel universes but actively narrowed the province of labor autonomy” (p. 24). By contrasting the courts’ limited sympathy and understanding of unions to that of the NLRB—which thoroughly grasped the challenges of collective action, the dynamics of union organizing drives, and the constructive functions of unions in American political economy—Frymer helps readers develop a deep appreciation of what labor lost when workers’ civil rights came to be adjudicated by people who had so much less sympathy for unions.

This book makes important contributions to the larger theoretical debate over the legacy of the New Deal. Frymer utilizes the labor/Civil Rights bifurcation story to take issue with common scholarly interpretations of the New Deal as a triumph of legislative majoritarianism and the administrative state over the judicial state, which for decades prior to upholding the Wagner Act had repeatedly invoked the Fifth and the Fourteenth Amendments to reject government reforms targeting exploitative working conditions, wealth inequality, and unsafe products. On the contrary, Frymer shows that the Supreme Court’s leave of absence from economic policy was relatively short-lived. Only seven years after the *Laughlin Steel* decision upholding the constitutionality of the Wagner Act, the Court “began to work questions of equal protection and fundamental rights protected by the Constitution back into labor law, and in doing so, sharply scaled back the triumph of the legislature over the courts” (p. 26). Frymer argues that race, through the push for Civil Rights in unions and the workplace, became the foundation of the Supreme Court’s reentry into legislative affairs and that ironically, it has been the courts—arguably the least democratic of government institutions—rather than the legislatures that have proven to be the most instrumental in democratizing and universalizing the New Deal state.

Frymer’s account of the Civil Rights movement’s effective use of the courts challenges traditional APD treatments of the judiciary, demonstrating the need to go beyond functionalist understandings and to view courts instead as independent actors in the political process. The author further offers a view of the courts that extends far beyond the Supreme Court, encompassing what he calls “the legal state,” including “the judges, lawyers, administrators and the rules and procedures that define and influence their actions” that have played over the course of American political development (p. 75). He also explores how the delegation of power by elected officials to judges and lawyers (done in large measure to reduce their own electoral vulnerability) made litigation an attractive political strategy for Civil Rights groups and resulted in greatly expanded legal institutions. On the one hand, Congress repeatedly refused to strengthen the Civil Rights Act by granting the Equal Employment Opportunity Commission (EEOC) official enforcement powers, while on the

other hand, “lawyers were consistently able to get Congress to strengthen the court’s role in promoting civil rights reforms” (p. 84). In turn, the reform of the rules of federal civil procedure resulted in important gains for Civil Rights organizations, including increased opportunities for Civil Rights groups to gain standing and access to a judge; expanded entry points through reforms to venue and jurisdiction; greater ability of Civil Rights plaintiffs to “discover” damaging evidence of discrimination; and more power for judges to create “special masters” to oversee and implement court orders and determine remedies, particularly financial, to use against repeat offenders (p. 76).

Drawing upon Mancur Olson and James Q. Wilson’s foundational ideas about selective incentives, Frymer argues that lawyers and courts became the chief enforcers of labor and Civil Rights in part because lawyers figured out how these cases could be lucrative, “providing them with the incentive to enforce the Act through private litigation and for professional profit” (pp. 78–79). Also central to the Civil Rights litigation story are the procedural rules changes initiated through the Rules Enabling Act of 1938, which allowed lawyers to establish a robust private enforcement regime that launched hundreds of lawsuits against unions, tying them up in expensive litigation and forcing them to enter into long-term consent agreements overseen by special masters, eventually leading to significant changes in union behavior.

*Black and Blue* is an ambitious and well-executed project that enhances our understanding of its subject. But I do have some quibbles with the book. In contrast to the more nuanced treatment he provides elsewhere in the book, in the chapter on labor law and institutional racism Frymer unfairly sets up a generic category of “labor scholars” as straw men and women to bolster his argument that scholars have too often subsumed race under class. While this was certainly the case during the heyday of doctrinaire Marxism into the 1960s and 1970s, since then many labor historians, political scientists, sociologists, and geographers have rejected such class reductionism. Frymer’s critique of two leading but quite distinctive race scholars, David Roediger and Rogers Smith, is that they both rely too much on psychology “as the glue for understanding why racism manifests itself as an important political force,” thereby placing too much agency in the hands of individuals (p. 102). Instead, Frymer insists, “racist manifestations by individuals” should be seen as the result of “a complex set of factors, and latent psychology is less helpful for understanding it than are the maneuverings and behavior of strategic actors following rules and incentives provided by institutions” (p. 104). This seems fair enough. But in countering an emphasis on individual agents, the author seems to go too far in the opposite direction. The more fruitful question would seem to be: How much room do agents have to act within institutional constraints?

One final criticism: While the book’s chapter on racism in the labor movement is extremely nuanced, in other places Frymer paints the movement with a broad brush, not always taking care to distinguish between internationals and local unions, or between state and local labor councils. His efforts to demonstrate knowledge of the contemporary labor scene in particular come across as fly-by-night, and he sometimes gets leaders’ affiliations and even the spellings of their names wrong. But these limitations are overshadowed by the larger and more significant strengths of the book. It does a masterful job of showing how the Wagner Act of 1935 and the Civil Rights Act of 1964 enshrined into law an enduring separation between the regime that would protect the labor rights of white workers and the regime that would protect the labor rights of black workers. In the process, it captures the disastrous consequences this cleavage would have for the U.S. labor movement up to the present day.

**The Partisan Sort: How Liberals Became Democrats and Conservatives Became Republicans.** By Matthew

Levendusky. Chicago: University of Chicago Press, 2009. 200p. \$57.00 cloth, \$19.00 paper.

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— Cindy D. Kam, *Vanderbilt University*

In this book, Matthew Levendusky addresses fundamental questions of relevance to scholars of political behavior and political institutions. Given the broad consensus that political elites have become more polarized in the past half century, he focuses on the implications of elite polarization on belief systems in the mass public. He argues that elite polarization leads to *partisan sorting* among ordinary citizens, but not necessarily *mass polarization*. For Levendusky’s purposes, *sorting* means that the party affiliation and ideology/issue positions of ordinary citizens have become aligned. In contrast, *mass polarization* refers to extremity in the distribution of preferences. Elite polarization leads citizens to become *sorted* into different camps, but not necessarily to become more *polarized* in their views.

Levendusky provides three key contributions. First, he articulates a theoretical argument regarding how sorting occurs and why. Second, he leverages experimental data to isolate the causal mechanism by which sorting occurs. Third, he elucidates the implications of sorting for both the mass public and political elites.

The author’s theory is based on elite-driven cue taking. As elites become polarized, the connections between partisanship and ideology become clearer, citizens become aware of these clearer connections, and they align their partisanship with their ideology. The theory harkens back to central concepts articulated by Phillip Converse (“The Nature of Belief Systems in Mass Publics,” 1964): As elites send more messages regarding “what goes with what” (Converse 1964, p. 212), citizens receive and internalize such