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Inside this issue:

A Letter from the Section Chair

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This is my first letter to the section as its chair, and so I am pleased to start off with some excellent news. The *Journal of Law and Courts*, the official journal of the Law and Courts section of the APSA, is "live" and accepting submissions. In an announcement on the law and courts list, incoming editor David Klein laid out the *JLC*'s guiding principle far more eloquently than I could hope to; for that reason, I'll quote him here:

"The principle is that substance is to be valued far above either form or method. The most important criteria for publication in *JLC* will be that the core issues or questions addressed in a paper strike a wide swath of the law and courts community as interesting and important and that they be addressed in a highly professional and effective manner.

We will be equally open to theoretical and empirical papers. We do not see any one structure or length as ideal -- though we will insist on succinctness -- and we encourage contributors to adopt the presentational approach that best addresses their core issues or questions.

or empirical papers, we have no preference as to method, nor will we seek to impose a particular mix among published articles. In evaluating papers for publication, we will ask only how well suited a method is to the questions posed in the study, how clearly it is explained to readers, and how well the study is executed. Aside from that, nothing about a method -- whether it is qualitative or quantitative, its level of sophistication, its novelty -- will count either for or against a paper."

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General Information

Law and Courts publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** is published three times a year in Winter, Spring, and Summer. Deadlines for submission of materials are: February 1 (Winter), May 1 (Spring), and October 1 (Fall). Contributions to **Law and Courts** should be sent to the editor:

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Articles, Notes, and Commentary

We will be glad to consider articles and notes concerning matters of interest to readers of **Law and Courts.** Research findings, teaching innovations, or commentary on developments in the field are encouraged.

Footnote and reference style should follow that of the *American Political Science Review.* Please submit your manuscript electronically in MS Word (.doc) or Rich Text Format (.rtf). Contact the editor or assistant editor if you wish to submit in a different format. Graphics are best submitted as separate files. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

Symposia

Collections of related articles or notes are especially welcome. Please contact the Editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts.

Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when possible. Finally, authors should notify ***BOOKS TO WATCH FOR EDITOR***:

Drew Lanier, of publication of manuscripts or works soon to be completed.

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Submission to the *JLC* is electronic, through the journal's Editorial Manager link at http://jlcourts.edmgr.com. The *JLC*'s "About the Journal" page can be found at http://tiny.cc/JLC-About, and full submission instructions for authors are detailed at http://tiny.cc/JLC-Authors.

There are many, many individuals who deserve thanks for getting the *JLC* off the ground. My predecessors as section chair are foremost among them. Stefanie Lindquist appointed an initial committee to investigate the possibility of a section journal; that committee (comprised of Tim Johnson, Bert Kritzer, Laura Langer, Lynn Mather, and Art Ward, and chaired by Lawrence Baum) conducted a thorough review of the section's publishing activities, as well as a survey of section members on the desirability and feasibility of starting a section journal. Christine Harrington built upon those findings, appointing a second committee (Karen Alter, Lawrence Baum, and Rogers Smith, chaired by Joel Grossman) that investigated potential relationships with academic and commercial presses. Finally, Melinda Gann Hall installed a third committee (Joel Grossman, Lawrence Baum, Robert Howard, Valerie Hoekstra, Cornell Clayton, and Keith Whittington, chaired by me) that sought nominations for and appointed an editor, and solicited and negotiated a publication contract. All of these individuals are owed a debt of gratitude for their hard work.

Preemptive thanks should also go out to the new journal's editorial board: Brandon Bartels, Pamela Brandwein, Keith Bybee, Javier Couso, Charles Epp, Leslie Goldstein, Stacia Haynie, Ran Hirschl, Jeffrey Lax, Lynn Mather, Julie Novkov, Suzanna Sherry, and Georg Vanberg. And the *JLC*'s aforementioned inaugural editor, Professor David Klein of the University of Virginia, was particularly instrumental in the process, taking a lead role in everything from setting out a compelling vision for the journal to finalizing publication details with the press. (He even picked out the cover design!)

Thanks are also due to the good people at the University of Chicago Press. Kari Roane, the journal's acquisition manager, put together a terrific proposal for the journal, shepherded the proposal through the approval process, and was generally a joy to work with. Kevin Stacey, the *JLC*'s publicist at UC Press, has mounted (and continues to mount) an impressive PR campaign for the new journal in both traditional and new media outlets.

Finally, let me offer a plea for help. For the *JLC* to be the huge success you and I hope it will be, it will require many things from all of you reading this. Among these: Submit your best work to the *JLC*. When David asks you to review a manuscript, say "yes," and then do so in a timely and thoughtful manner. Encourage your institution to subscribe to the *JLC*, and prevail upon your colleagues to join the section in order to receive the journal if they do not already. Finally: Be sure to cite work appearing in the *JLC*, and to assign it in your classes, whenever it is appropriate to do so.

In closing, let me reiterate that I am delighted and proud to have been involved in the creation of the section's official journal for peer-reviewed scholarship, and look forward to a long, intellectually prosperous future for the *Journal of Law and Courts*.

Law in the Egyptian Revolt

Tamir Moustafa[1]
Simon Fraser University

Beginning on January 25, 2011, Egyptians went to the streets in the millions to claim their rights. After 18 days of popular mobilization, President Husni Mubarak's three decades in power were brought to an abrupt end. What was notable about this popular revolt was not simply the fact that the Egyptian public overcame the formidable defenses of a deeply entrenched regime, but also the character of this popular mobilization—namely, the extent to which law and legal institutions were, and still remain, on the front lines of political struggle. From day one of the protests, a new Constitution was front and center in political debates, not simply among political elites, but also among "everyday Egyptians." A new Constitution that would protect political rights and freedoms was one of the primary demands in the early days of the revolt, and it remains a central objective of political activists months after Mubarak's departure.

Rally at Tahrir Square on May 27, 2011. The sign held by the woman reads, "The People of Egypt want a New Constitution." Photo by Rowan El Shimi.

This focus on law and legal institutions was no doubt motivated by the myriad abuses that Egyptians had suffered. Widespread corruption, police brutality, and an unaccountable government were all highlighted by the "We are all Khaled Said" Facebook page that inspired the "day of rage" on January 25, 2011. But the focus on the Constitution was also in response to the specific mechanisms of social and political control that the Mubarak regime had skillfully wielded for three decades. Mubarak's was a "rule-by-law" regime.[2] It had maintained its power not simply through brute force, but through a complex array of laws and legal institutions that were deployed to dominate every aspect political and social life, from labor unions, to professional syndicates, to the press, to university campuses, to religious institutions, to political parties and civil society groups.

Egyptians have a sober understanding of the centrality of law and legal institutions to both dictatorship and democracy, which is why legal reform remains at the forefront of political struggle months after Mubarak's departure. At the time of writing in late June 2011, it is still too early to know the future trajectory of the Egyptian political system with any degree of confidence. But we have enough distance at this point to take stock of the early days of political transformation, the prominent role of law in the Egyptian revolt, and the legal conundrums that loom on the horizon.

[1] Associate Professor and Stephen Jarislowsky Chair, Simon Fraser University, Canada.

[2] Tom Ginsburg and Tamir Moustafa, *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press, 2008).

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Rule by Law in Mubarak's Egypt

The Constitution that was in force in the Mubarak years dates back to 1971, when the previous president, Anwar Sadat, moved to create a base of political legitimacy around the principal of *sayadat al-qanun* (the rule of law). The national referendum on the 1971 Constitution supposedly won the support of 99.98 percent of the Egyptian public, but the gulf between regime's rule-of-law rhetoric and the reality of electoral manipulation was not lost on Egyptians. Still, the 1971 Constitution contained a surprising number of liberal elements. These included protections on the freedom of speech (article 47), freedom of the press (article 48), freedom of assembly (article 54), and freedom of association (article 55), among others. The Constitution was also clear on the independence of the judiciary (articles 65 and 165), the independence of judges (article 166), and the division of powers between the executive and the legislative branches. The state was subject to the law (article 65), and citizens were guaranteed access to their rights in a court of law (article 68).

However, these liberal articles were hemmed in by illiberal provisions, including article 88 (which governed the supervision of elections), article 93 (which prevented the courts from invalidating membership to the People's Assembly as a result of election irregularities), and articles 112, 113, 136, 167, and 171 (which collectively weakened the People's Assembly and the judiciary vis-à-vis the Executive Authority). Additionally, an extensive web of illiberal legislation governing all aspects of political and social life effectively hollowed out the liberal provisions that were enshrined in the Constitution. Finally, the emergency law (in continuous force through Mubarak's rule), state security courts, and military courts further contained opposition. Although a variety of extralegal tactics were used from time to time, "rule by law" institutions were the principal means by which the Mubarak regime maintained its grip on power.

It is somewhat paradoxical that the law and legal institutions became the primary avenue through which opposition activists challenged the regime through the Mubarak years, but liberal aspects of the Constitution afforded openings to challenge the executive in Egypt's semi-autonomous courts. When all other avenues of political activism were closed, it was the courts to which human rights lawyers, opposition parties, leftists, liberals, Islamists, and everyday citizens flocked to challenge the state.[3] Citizens frequently prevailed, at least when the stakes were low. But even in politically charged cases, activists occasionally scored major victories against the state. Throughout the 1990s and into the first decade of the new millennium, human rights organizations, opposition parties, and political actors of all stripes engaged in litigation as the most viable avenue to challenge the executive. Rights activists even launched cases that they knew they could *not* win as a way of drawing attention to the yawning gap between Mubarak's reformist discourse and the realities of authoritarian rule. All the while, court cases provided copious fodder for opposition newspapers to focus public attention on the ways in which the law constrained political life.

While rights activists worked to exploit openings in the formal legal system, the regime constantly spun out fresh, illiberal legislation. The regime also undermined the independence of the Supreme Constitutional Court and pushed through controversial constitutional amendments that entrenched illiberal measures in to the Constitution itself, thus placing them beyond the scope of judicial review. Law and legal institutions were used to construct a façade of open political contestation, with little threat of any meaningful challenge to the regime.

[3] For more on why the regime allowed for the emergence of semi-autonomous courts, see Tamir Moustafa, *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt* (Cambridge: Cambridge University Press, 2007); and Tamir Moustafa, "Law versus the State: The Judicialization of Politics in Egypt," *Law and Social Inquiry* 28 (2003): 883-930.

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There was, of course, resistance to the regime outside of the courts. Street protest had returned to Egypt beginning in 2003. The opposition group *kifaya!* (enough!) played a critical role in breaking the veil of silence, but street protests never gathered more than a few thousand participants.[4]. Resistance broadened significantly, however, as the result of labor actions from 2004 to 2010. The 22,000-strong textile worker strikes in Mahalla al-Kubra in 2006 and 2007 were among the dozens that were closely watched by the nation. Strikes also showcased emerging links between workers and urban-based political activists in the 6th of April Youth Movement. Rights advocates who had worked for years in small circles had at last begun to forge organic links to mass publics. Wildcat strikes became high profile affairs and more often than not workers gained substantial concessions. In the process, they spurred others to assert their own rights claims. The time was ripe for political change in Egypt, but it was the breathtaking example of the 2011 Tunisian revolt that truly inspired people power.

Claiming Rights in the Egyptian Revolt

Within days of popular mobilization beginning on January 25th, momentum had shifted from the government to the protesters. For the first time in three decades, state security forces were on the defensive and the regime was fighting for political survival. A new, revolutionary political culture emerged virtually overnight. Workers went on strike across the country, including public transit employees, postal workers, state telecom employees, sanitation workers, employees of the electrical authority, textile and steel workers, and other industrial personnel. All called for higher wages, the immediate resignation of Mubarak, and – conspicuously – a new Constitution.

Faced with this unprecedented challenge, President Mubarak assured Egyptians that he would initiate constitutional reforms and not seek another term in office. His freshly appointed vice-president, Omar Suleiman, detailed the promised package of legal and constitutional changes on February 6. What was striking about the announcement was that 10 of the 14 concessions detailed by Suleiman related to the Constitution or other legal reforms. The centrality of law to the Egyptian revolt was clear, both among protesters who called for a new Constitution, and from the regime, which deployed law reform talk in a hollow effort to appease protester demands.

Mubarak attempted to give credibility to his stated concessions when he formed a committee to amend the Constitution on February 8. The committee included independent legal personalities and outspoken reformist judges but with momentum on their side protesters were in no mood for stick-and-carrot delay tactics. Faced with relentless popular pressure, Vice-President Suleiman announced Mubarak's resignation on February 11, and the Supreme Council of the Armed Forces (SCAF) assumed political control two days later. Pledging that they would stay in power for only six months, SCAF dissolved the People's Assembly and suspended the Constitution, ushering in the first period of direct military rule in decades.

Popular mobilization continued for months after Mubarak's resignation with pressure focused on all sites of political authority: former NDP officials and regime cronies faced prosecution as a result of public pressure; students at Cairo University rallied to eject administrators who were appointed by Mubarak; labor unions and professional syndicates struggled to cast off the heavy hand of the Egyptian corporatist state, and the state media similarly faced internal revolts against Mubarak appointees. A tremendous cultural shift was underway as Egyptians felt a real sense of empowerment for the first time in decades. What was particularly notable was not just that popular rage was finally being expressed, but that pressure was mobilized to force the legal reforms upon the illiberal institutions that had served the regime. As the most fundamental document outlining political institutions, the debate over the shape of a new Constitution immediately took centre stage.

Constitutional Conundrums and an Uncertain Future

Within days of assuming power, SCAF appointed a new committee to draft amendments to the Constitution, but many in the pro-democracy movement criticized its composition, scope, and timeline. The eight-member committee was headed by Tariq al-Bishri, a towering intellectual figure and prominent jurist known for his

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[4] *Kifaya!* is the moniker for *al-Haraka al-Masriyya min agl al-Taghyeer* (The Egyptian Movement for Change).

outspoken criticism of the regime. However, the rest of the committee was far less notable. Most significantly, the military excluded representation from the groups that organized the January 25th democracy movement—indeed almost all political parties and trends were excluded (save one member from the Muslim Brotherhood)—and not a single woman sat on the committee. Beyond the committee's composition, pro-democracy activists were concerned that piecemeal constitutional amendments would prove insufficient to engineer a fundamental reordering of the political system. Finally, the work of the committee was closed, with no transparency or public accountability, and its timeline was swift. SCAF instructed the committee to prepare its recommendations within 10 days followed by a national referendum within two months and presidential and People's Assembly elections within six months.

The constitutional reform committee unveiled its work after 10 days of deliberation. The proposed amendments addressed only the most egregious, illiberal aspects of the 1971 Constitution but provided the framework a Constituent Assembly to draft an entirely new constitution following presidential and parliamentary elections. Given that other illiberal articles in the Constitution were not addressed, and the fact that a tremendous volume of illiberal enabling legislation remained on the books governing elections, party formation, the press, et cetera, the proposed constitutional amendments did not, by themselves, constitute a definitive break from the past.[5]

As the public took stock of the proposed amendments, two opposing views emerged. Those supporting the proposed amendments argued that their adoption was the best way to ensure a smooth transition to democracy and a quick exit for the military from political life. The Muslim Brotherhood came to endorse this position, as did many Egyptians from all walks of life that were growing increasingly alarmed by the deterioration in public security. But others fiercely opposed the constitutional amendments on the ground that they did not provide a conclusive break from the past. Even with the amendments, they argued, the executive branch would wield significant powers. With political institutions largely unchanged, they worried that it would only be a matter of time before remnants of the old regime, or some other illiberal political force, would assert control. Opponents of the amendments also worried that the swift timeline would not afford nascent political groups sufficient time to organize and successfully contest presidential and parliamentary elections. A wide number of political actors urged a "no" vote in the referendum, including most civil society groups, formal opposition parties, youth groups, and prominent presidential hopefuls such as Mohamed el-Baradie and 'Amr Mousa. Perhaps more striking was the outspoken criticism that came from Tehani al-Gebali, a sitting justice on the Supreme Constitutional Court, the body that would adjudicate future constitutional challenges. Critics of the amendments urged a full-blown constitutional convention in advance of presidential and parliamentary elections. The heated debate over the constitutional amendments subsided briefly on the day of the referendum when all Egyptians celebrated the first vote of the post-Mubarak era, which by most accounts was the cleanest day at the ballot box in over half a century. On March 19, 2011, the referendum passed with 77 percent support.

Tahrir Square during the Ehyptian Revolt, February 8, 2011.

Photo by Jonathan Rashad.

On March 30, however, the Supreme Council of the Armed Forces issued its constitutional declaration, a document with 63 articles that serves as an interim Constitution until presidential and parliamentary elections are held and a complete redrafting of the Constitution can begin.[6] The introduction of the constitutional declaration was a confusing development for all parties involved. Not only did the interim document displace the just-completed constitutional referendum, but it also reopened questions and debates about the sequencing of elections and a new Constitution. April, May, and June of 2011 was a period of increasing confusion and anxiety. The renewed debate once again mapped onto political cleavages, with the Muslim Brotherhood and other Islamist groups wishing to stick with elections first, and leftists and liberals pushing hard for a new Constitution in advance

[5] Tamir Moustafa, "It's not a Revolution yet" *Foreign Policy*, 28 February 2011.

of elections. As of late June, 2011, a coalition of leftist and liberal forces initiated a "Constitution First" campaign, which aims to gather 15 million signatures urging SCAF to sequence the drafting of a new Constitution in advance of People's Assembly and presidential elections.

The increasingly bitter debate has at least three important implications for the prospects of democracy and the rule of law. The first and most obvious problem is that the sense of unity and common purpose among opposition forces has come under significant strain. There is no doubt that the revolt against Mubarak and the piecemeal legal concessions extracted from SCAF were won only as the result of collective action across the various opposition trends. If political forces are unable to overcome their emerging differences, it is unlikely that their many common objectives will materialize. Already, SCAF has shown dubious commitment to the rule of law. Since assuming power in what was essentially a coup d'état, SCAF has shown little regard for civil liberties and human rights, sentencing 5,600 civilians in military courts in their first ten weeks in power alone.[7] Without firm and unified pressure from social forces, a successful transition to democracy and the rule of law is far from guaranteed.

A second problem with the increasing rancor over the sequencing of elections and constitution drafting is that the question of timing is intimately wrapped up in one of the most vexing questions that Egypt faces: the place of religion in the Constitution. Much of the debate over sequencing relates to the fate of article 2 of the 1971 Constitution, which declares "Islamic jurisprudence is the principal source of legislation" (*mabadi' al-shari'a al-Islamiya al-masdar al-r'isi li al-tashri'*). This article, cynically adopted by Anwar Sadat to counter leftists, and later amended to co-opt an emergent Islamist movement, was meant to bolster the regime's religious credentials. Decades after its adoption, popular discussion of what this article should mean in practice, its compatibility with a civil state, and the implications for individual, minority and women's rights are at last open for debate. Islamists are suspicious that leftists and liberals want to do away with article 2. Most leftists and liberals, on the other hand, while not necessarily opposed to article 2 in the abstract, are apprehensive about its implications in practice—particularly if the Muslim Brotherhood forms a government. The question of the sequencing of elections and a new Constitution only magnifies the perceived stakes of this very polarizing issue.

A final problem with these debates is that they threaten to overshadow a much more significant issue for the bulk of Egyptians: how to generate economic growth and address the tremendous economic disparities in contemporary Egypt. Economic issues are core for most Egyptians. Moreover, they are intimately linked to the prospects for successful transition to democracy and the rule of law. Strikes played a critical role in elevating rights consciousness and shaping the political context in Egypt well in advance of the 2011 revolt. And, as in Tunisia, labor unions played an important role in helping topple the regime once protesters took to the streets. Moving to the future, the emergence of independent trade unions is vital to advance the rights claims of Egyptian workers, and also to resist authoritarian retrenchment. Just as law and legal institutions were used by the Mubarak regime as the principal mechanisms to maintain power, democracy and accountable government can only emerge through the reform of those rule-by-law institutions.

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[7] Human Rights Watch, "Egypt: Military Trials Usurp Justice System," 29 April 2011 and Human Rights Watch, "Egypt: Human Rights Reform an Urgent Priority," 7 June 2011.

A Note of Caution About the Meaning of "The Supreme Court can usually be trusted..."*

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**I would like to acknowledge the useful comments on Justin P. Wedeking on an earlier version of this paper.*

Most would likely agree that all conceptualizations of the concept "legitimacy" would involve some notion of trust. Legitimate institutions are those that are trusted to do what's right. Consequently, one of the items used to measure institutional support for the U.S. Supreme court states the following:

> The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

This item has been used in our research on public attitudes toward the Supreme Court for quite some time now (e.g., Gibson 2007), ranging back to a national survey we conducted in 1995.

As it turns out, most Americans assert that the Court can be trusted. Across eight national surveys conducted from 1995 until 2011, the average percentage of respondents agreeing with this statement is 64.8 %. The percentages range from 77.8 % in 2001 (in a survey fielded after the Court's decision in *Bush v. Gore* – see Gibson, Caldeira, and Spence 2003a) to 57.6 % in a survey concluded in July, 2011.

This item was designed to operationalize institutional support, a concept originating with Easton, and has been used along with additional indicators to create a multi-item index of the legitimacy of the U.S. Supreme Court. In the 2011 Freedom and Tolerance Survey, [1], the trust items and seven other indicators of support for the Court were employed. The statements and the responses are reported in Table 1.[2]

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[1] The Freedom and Tolerance Surveys are funded by the Weidenbaum Center at Washington University in St. Louis. I greatly appreciate the support provided for this research by Steven S. Smith, Director of the Center.

[2] In the 2011 survey, the Supreme Court legitimacy items were asked at different points in the interview. Near the beginning of the interview, a block of three questions was asked – the first three questions reported in Table 1. The order of presentation was randomly varied. For the first and third items, no effect of order was observed. For the second item, a significant difference in responses emerged ($p = .003$), although the order effect was weak ($\eta = .13$). When the jurisdiction question was asked last, the average response was 3.4; when asked first, the mean was 3.1. This indicates that when the respondents were asked to think about the Supreme Court first, they were less willing to support manipulating the institution's jurisdiction. Care must be taken with this finding, however, because the percentages of respondents agreeing with the item when it was asked first, second, or third are 33.1, 25.4, and 24.7, respectively, so the order effect is not great.

The next batch of five support items was asked together much later in the interview. They too were randomly presented to the respondents. None of the five tests of order effects produced statistically significant differences. Thus, of eight tests of order effects for these measures of institutional legitimacy, only a single difference is statistically significant. I therefore conclude that order effects with these measures can be safely ignored.

Table 1. Loyalty Toward the United States Supreme Court, 2011

		Level of Diffuse Support for the Supreme Court					
		Percentage					
Item		Not Supportive	Undecided	Supportive	Mean	Std. Dev.	N
Do away with the Court		15.1	14.6	70.3	3.8	1.1	747
Limit the Court's jurisdiction		27.0	28.2	44.9	3.3	1.1	747
Court can be trusted		24.6	17.8	57.6	3.4	1.1	747
Court gets too mixed up in politics		45.2	26.9	27.9	2.7	1.1	747
Remove judges who rule against majority		28.4	24.5	47.2	3.2	1.1	747
Makes Court less independent		50.0	20.4	29.6	2.7	1.2	747
Control the actions of the Supreme Court		41.7	27.0	31.4	2.9	1.1	747
Justices cannot be trusted		22.4	20.5	57.2	3.4	1.1	747

Note: The percentages are calculated on the basis of collapsing the five-point Likert response set (e.g., "agree strongly" and "agree" responses are combined). The mean and standard deviations are calculated on the uncollapsed distributions. Higher mean scores indicate more institutional loyalty.

Our typical approach to assessing the validity and reliability of a set of indicators of a concept is to first determine the reliability of the set. In the 2011 data, Cronbach's alpha is .80, with an average inter-item correlation of .34, which is moderately strong given categorical data that only approximate an interval-level scale, and given some degree of degenerate variance in some of the items.[3]

[3] Following Braumoeller (2008, 90), we adopt the following standards for evaluating alpha: "Cronbach's alpha is a worthwhile measure of intercoder reliability, with values below 0.60 considered clearly problematic, those in the 0.60–0.69 range borderline (acceptable by some scholars but not others), 0.70–0.79 acceptable, and 0.80 and above very strong." Similarly: "Nunnally (1978) suggests a value of .70 as a lower acceptable bound for alpha. It is not unusual to see published scales with lower alphas. Different methodologists and investigators begin to squirm at different levels of alpha. My personal comfort ranges for research scales are as follows: below .60, unacceptable; between .60 and .65, undesirable; between .65 and .70, minimally acceptable; between .70 and .80, respectable; between .80 and .90, very good; much above .90, one should consider shortening the scale" (DeVellis 2003, 95-96).

The propositions are:

Do away with the Court: If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether.

Limit the Court's jurisdiction: The right of the Supreme Court to decide certain types of controversial issues should be reduced.

Court can be trusted: The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

Court gets too mixed up in politics: The U.S. Supreme Court gets too mixed up in politics.

Remove judges who rule against majority: Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge.

Makes Court less independent: The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want.

Control the actions of the Supreme Court: It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court.

Justices cannot be trusted: Supreme Court justices are just like any other politicians; we cannot trust them to decide court cases in a way that is in the best interests of our country.

Eliminating the trust item from the set does not significantly increase alpha – it rises to only .81. The only empirical telltale raising suspicion about the meaning of the trust statement is its squared Multiple Correlation Coefficient with the rest of the indicators in the group. By far, the item with the weakest relationship to the rest of the indicators is the proposition stating that the Supreme Court can usually be trusted to make decisions that are right for the rest of the country.

After considering the reliability of a set of indicators, we typically investigate the dimensionality of the items and derive validity coefficients for each measure. Common Factor Analysis is well suited for this purpose. The hypothesis being tested is that the variance in the indicators is unidimensional in the sense that their inter-item correlations are a function of a single latent construct (legitimacy). The traditional criterion for assessing the strength of the second extracted factor is the size of its eigenvalue: eigenvalues less than 1.0 are considered trivial and are therefore discarded.

In the case of the 2011 data, Common Factor Analysis extracted a single dominant factor with an eigenvalue$_1$ = 3.43. The eigenvalue of the second extracted factor is 1.004, a figure sufficiently close to the cut point that most analysts would accept the hypothesis of unidimensionality and proceed with constructing factor scores and other indices. However, that a second significant factor tries to emerge – and that the loading of the trust item on the first unrotated factor is a weak .33 – again arouses suspicion that the trust item may be measuring something

other than (or in addition to) institutional support. [4]

This finding of a weak loading from the trust item is one we have observed before.[5] I have long suspected that the weakened correlation with the other measures of support is largely a function of response set bias (this is the only item that requires an "agree" response to indicate support for the Court), and have been willing to accept the weak loading of the item on the first unrotated factor. In the 2011 data, the correlation of a seven-item index with the full eight-item index (including the trust item) is .98.

However, with a second eigenvalue of 1.004, I felt obliged to investigate further the sources of the variance in the trust item. Given that the conventional measure of attitudes toward the Court – confidence in it – reflects specific support more than diffuse support (Gibson, Caldeira, and Spence 2003b), it seemed reasonable to hypothesize that the trust variance is more closely associated with performance evaluations (specific support) than with institutional support (diffuse support).

We typically measure specific support with two indicators: one asking how well the Court does it job and the other asking whether the Court's decisions are too liberal, too conservative, or about right. The latter item is recoded to create an "about right" versus "not about right" dichotomy. The correlation of these two indicators of specific support is .33.

I then regressed the trust item on a) the seven-item index of institutional support, b) the measure of performance approval, and c) satisfaction with the Court's decisions. The results are shown in Table 2.[6]

Table 2. The Sources of Variance in "The Court can usually be trusted . . ."

Predictor	r	b	s.e.	β
Institutional Support	.28	.23	.05	.16 ***
Job Performance	.44	.56	.06	.35 ***
Satisfaction with Decisions	.31	.34	.08	.15***
Equation				
Intercept		1.00	.19	
Standard Deviation – Dependent Variable		1.08		
Standard Error of Estimate		.94		
R^2				.24 ***
N			715	

Note: Significance of standardized regression coefficients (β): *** $p < .001$ ** $p < .01$ * $p < .05$

The dependent variable is responses to the statement that: "The Supreme Court can usually be trusted to make decisions that are right for the country as a whole."

[4] When the trust item is excluded from the pool of measures, a strongly unidimensional structure emerges. The eigenvalue of the second extracted factor is .81.

[5] Seven of these eight items were asked in each Freedom and Tolerance Survey conducted from 2007 to 2011. When the set of seven indicators is factor analyzed in the pooled surveys, the eigenvalue of the second common factor is .94. The trust item loads on the first unrotated factor at .35. When the six-item group (excluding trust) is similarly analyzed, the eigenvalue of the second factor is .77. The factor loadings range from .76 (stronger means of controlling the Court) to .51 (Court gets too mixed up in politics).

[6] Table A1 reports the distributions of the variables used in the regressions in this paper.

The coefficients in Table 2 support two important conclusions. First, the trust item is connected to both specific and diffuse support. Second, however, it is considerably more closely connected to specific support, especially to evaluations of how well the Supreme Court does its job. Indeed, once the two measures of specific support are added to the equation, the measure of institutional support only explains an additional 2.3 % of the variance in the item, which indicates that the unique shared variance with institutional support is quite small. [7] Conversely, when the two specific support indicators are added to an equation including only institutional support as a predictor, the explained variance increases by 16.4 %. Thus, there is nearly eight times as much unique variance in the responses to the trust item that is associated with specific support as compared to diffuse support. The substantive conclusion is that the variance in the item is drawn from two constructs – diffuse and specific support – but that the former is substantially less influential than the latter.

This measure of trust in the Supreme Court is related to the traditional query about confidence in the institution at only a moderate level: $r = .27$. Therefore, it is useful to revisit the issue of what confidence in the Supreme Court actually measures, using the 2011 data. The item stem began:

> I am going to name some institutions in this country. As far as the people running these institutions are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them?[8]

Table 3 reports the results of regressing the responses to this item on both specific and diffuse support.

(see next page for Table 3)

Once more, the coefficients indicate that confidence in the leaders of the institution better reflects specific than diffuse support. Indeed, the conclusions from this table are quite similar to those from the analysis of trust in the institution reported in Table 2.

Conclusions

Thus, the evidence that trust in the Supreme Court is primarily a measure of specific support seems strong. Furthermore, the caution Gibson, Caldeira, and Spence issued in 2003 about using confidence in the leaders of the Supreme Court as a measure of institutional support is reinforced by this new analysis. Using trust as a measure of institutional support within the context of a set of multiple indicators almost certainly does not bias findings (e.g., as in showing that institutional support is sensitive to rulings of the Supreme Court in the short term, which it is not), but it seems (at least) to be a waste of a survey item. Those who would measure the legitimacy of the Supreme Court should take these findings into consideration and re-think whether replies to this question should be treated as a valid measure of institutional support. Those who would attempt to develop more valid and reliable indicators of institutional support should avoid measures grounded in citizen trust in the institution.

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[7] The variance in an item uniquely related to the concept is indicated by the part coefficient, which is the change in R^2 when the variable of interest is added last to an equation. This part coefficient for institutional support is statistically significant ($p < .001$).

[8] Questions about three institutions were asked prior to a question about confidence in President Obama. The order of presentation for the three institutional questions was randomly varied. The data reveal some evidence of order effects. For the Supreme Court item, responses are significantly different according to the order of presentation ($p = .048$), although the effect is quite weak ($\eta = .09$). Confidence in the leaders of the Court is highest when the question is asked last; lowest when asked first (mean scores of 2.2 versus 2.1, respectively). This seems to indicate a slight tendency for confidence in the Court to be elevated when it is compared to the other two political institutions. No order effect is found with confidence in Congress ($p = .749$). With the Executive branch statement, a more significant and more substantial difference exists ($p < .001$; $\eta = .15$). When the confidence in the Executive branch of the federal government is asked last, confidence is weakest (mean scores for being asked first, second, and third are 2.0, 1.9, and 1.8, respectively), again suggesting that at least some respondents are making comparative rather than absolute judgments in answering these questions. These findings are yet another reason for worrying about the validity and reliability of the "confidence in the leaders of" questions.

Table 3. The Sources of Variance in Confidence in the Supreme Court				
Predictor	r	b	s.e.	β
Institutional Support	.31	.14	.02	.20 ***
Job Performance	.41	.25	.03	.32 ***
Satisfaction with Decisions	.27	.12	.04	.12***
Equation				
Intercept		.99	.09	
Standard Deviation – Dependent Variable		.53		
Standard Error of Estimate		.47		
R^2				.22 ***
N			707	

Note: Significance of standardized regression coefficients (β): *** $p < .001$ ** $p < .01$ * $p < .05$

The dependent variable is responses to the statement that: "I am going to name some institutions in this country. As far as the people running these institutions are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them? The United States Supreme Court?"

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Symposium: Future Directions for Research on the U.S. Courts of Appeals

Susan Haire

In the preface of his 1981 comprehensive analysis of the US Courts of Appeals, J.W. Howard commented that "beyond general impressions, .. knowledge of ...the circuit courts is largely intuitive and fragmentary." Building on Howard's work as well as research by Sheldon Goldman and others, a wave of political science research began in the 1980s and offered a fertile foundation for understanding these courts. With the establishment of the Multi-user database of USCA decisions (Don Songer, Principal Investigator), empirical research continued to flourish over the last two decades. Diverse theoretical perspectives, interesting puzzles, and sophisticated methods now characterize research on the US Courts of Appeals.

To provide a forum for discussing trends in recent scholarship and potential avenues for future research, the University of Georgia's Department of Political Science hosted a symposium on March 23, 2011. Faculty and graduate students from the Department, School of Public and International Affairs, and the law school gathered with scholars from universities in the region. Participants included:

Scott Ainsworth (UGA-Pol Sci), Peter Appel (UGA-Law), Rob Christensen (UGA-Public Administration and Policy),Todd Collins (Western Carolina University),Micheal Giles (Emory University), Martha Ginn (Augusta State University), Susan Haire (UGA-Pol Sci), John Maltese (UGA-Pol Sci), Kirk Randazzo (University of South Carolina), Greg Rathjen (Marketecture Research), Don Songer (University of South Carolina), Amy Steigerwalt (Georgia State University), Tara Stricko (Kennesaw State Univ.), John Szmer (University of North Carolina-Charlotte), Rich Vining (UGA-Pol Sci), Tom Walker (Emory University), Steve Wasby (University at Albany, emeritus), and Teena Wilhelm (UGA-Pol Sci). The essays below build on participants' discussions during three sessions that examined issues in data collection and analysis, research on group-level decision making, and trends in research on judicial selection.

Future Directions in Data Analysis and Collection*

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** The authors express their gratitude to Kirk Randazzo and Susan Haire for providing their notes on the proceedings.*

A number of obstacles have traditionally limited data-driven research on the U.S. Circuit Courts of Appeals (USCA). The high volume of cases, unpublished[1] dispositions, closed deliberations, uneven access to legal actors

[1] We use the label "unpublished" to refer to those cases which are not published in West's Federal Reporter. Prior to the 1990s, these cases were typically only available at official circuit libraries, or through slip opinions in regional federal depository libraries. However, starting in the 1990s, several of these opinions were made available through online services like Westlaw and Lexis. However, not all of the "unpublished" cases were made available, and the variation across circuits was dramatic. The publication nomenclature became a complete misnomer in 2001, when West began publishing the cases not included in the Federal Reporter in its Federal Appendix. In the end, this is more than just semantics, as it reflects yet another obstacle to collecting USCA data.

all make the task difficult. Nevertheless, technological changes have fueled electronic access to court proceedings to the point where "raw data" on court decisions are plentiful. The ease with which one can access opinions, briefs, and other documents may pose a new set of challenges. This problem has been identified in other domains as well with many urging that scholars become more informed on computations methods and statistical methods that will leverage these new data. Symposium participants discussed what we can or should be doing to take advantage of newly available data on the US Courts of Appeals. They also discussed possible data sources that have not yet been mined. In particular, participants focused on two areas: computational methods oriented toward textual analysis and data infrastructure.

Automated Analysis of Legal Texts

For decades, methods of content analysis have permitted scholars to develop quantifiable measures of concepts that can be used in statistical analyses that evaluate patterns in judicial decision making on the USCA. Recent advances in computational linguistics offer the promise of extending several lines of inquiry as suggested by several studies.[2] Some methods rely on social scientists to have developed, a priori, concepts to guide the coding scheme whereas others rely on a computer program to identify patterns without specific input from the social scientist. Additionally, some methods have a variety of possible alogorithms, allowing the user to tailor the coding scheme to some degree. Several participants were particularly enthusiastic about the possibility of using this combination of methods ("supervised" and "unsupervised") to yield continuous measures of opinion policy content along a liberal-conservative continuum, a development which has the potential to completely shift the empirical basis for research on the USCA. Participants agreed that we should try to partner more with computer science faculty, who have the technical wherewithal but rarely have their own theories to test with these methods. One limit to this, however, is the tendency for the creator of the program to patent it, making it difficult to replicate or update the results. Perhaps grants for multi-user data could include agreements to purchase rights to the software.

Other scholars also noted research that has employed existing software. For example, several studies have employed the word count operation in Microsoft Word to measure the size of statutes.[3] In recent studies, Pam Corley has used plagiarism detection software to identify whether the contents of Supreme Court opinions showed evidence of other legal actors' writing.[4] Corley et al. have used this software to quantify the linguistic similarity of appellate briefs and lower court opinions on opinions subsequently published by the U.S. Supreme Court.[5] Other political scientists have utilized automated text analysis programs to grade the clarity and complexity of Supreme Court opinions[6] and Congressional statutes.[7] Participants noted that one extension of Corley's work would

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[2] For an overview of automated text analysis with emphasis on court-related applications, see Michael Evans, Wayne McIntosh, Jimmy Lin, Cynthia Cates. 2007. "Recounting the Courts? Applying Automated Content Analysis to Enhance Empirical Legal Research." *Journal of Empirical Legal Studies* 4:1007-1039. Michael Laver and John Garry developed the "wordscores" method of measuring the policy positions of party publications through automated text analysis. See Michael Laver and John Garry, "Extracting Policy Positions from Political Texts Using Words as Data," *American Political Science Review* 97(2): 311-331. In 2008, *Political Analysis* devoted a special issue to the statistical analysis of political text.

[3] In several studies, starting with Kirk A, Randazzo, Richard W. Waterman, and Jeffrey A. Fine. 2006. "Checking the Federal Courts: The Impact of Congressional Statutes on Judicial Behavior." Journal of Politics 68(4); 1006-17, Randazzo and Waterman estimated statutory constraint using this method. See David S. Law and David T. Zaring. 2010. "Law Versus Ideology: The Supreme Court and the Use of Legislative History." William & Mary Law Review 51: 1653 for an example of a similar measure.

[4] See Pamela Corley. 2008. "The Supreme Court and Opinion Content: The Influence of Parties' Briefs," *Political Research Quarterly* 61: 468-478; Pamela Corley, Paul Collins, and Bryan Calvin, "Lower Court Influence on U.S. Supreme Court Opinion Content," *The Journal of Politics* 73(1): 31-44.

[5] Corley (2008) and Corley, Collins, and Calvin (2011) utilized the WCopyfind plagiarism software for their analysis. This free plagiarism detection software is available at http://plagiarism.phys.virginia.edu/ courtesy of Professor Lou Bloomfield from the University of Virginia. Corley (2008: 471-472) outlines a method of using this software for judicial research.

[6] See Ryan Owens, and Justin Wedeking. 2010. "Justices and Legal Clarity: Analyzing the Complexity of Supreme Court Opinions," Working Paper. Available on Internet: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1695775. These authors used the Linguistic Inquiry and Word Count program (LIWC), available at http://www.liwc.net, to scale various dimensions of Supreme Court opinions. The LIWC program compares text to a pre-defined dictionary of words associated with abstract things, complexity, and other dimensions of interest.

[7] Law and Zaring (2010) utilized the Flesch-Kincaid algorithm for estimating the grade levels of text. While they employed an open source, publicly available program called Flesh (available at http://flesh.sourceforge.net/), they note that most recent versions of Microsoft Word can be used to generate the Flesch-Kincaid grade levels.

compare the pre-Court writings of the clerks (they almost always author at least a note in a law review) to the justice's opinions to estimate the influence of clerks on opinion content.

Computational linguistics also may allow social scientists to efficiently code massive of amounts of data. This in turn could lead to many more multi-user datasets (see below). We could use these methods to facilitate updates to the existing U.S. Courts of Appeals datasets (though some data would still need to be collected manually), and create new datasets. For example, programs could be constructed to draw upon various websites containing court decisions.[8] These methods might also increase the reliability of the coding, at least for some variables.

While these innovative research methods have great promise for future circuit court research, several participants counseled against using them unwisely. For example, we should find the tool that best fits our research question, as opposed to finding questions that allow us to feature new tools in our research.

Data infrastructure

While lauding the efforts of the Judicial Research Initiative (JuRI),[9] a web site maintained by Kirk Randazzo at the University of South Carolina, we need to encourage more data availability, both through generating more multi-user datasets and encouraging scholars to make their replication data available on clearinghouse sites like JuRI. For example, scholars have developed various measures of discretion, case salience, and other key concepts. Since these are often not easy to locate, there is a substantial amount of duplication in effort. The Dataverse Network Project may be an alternative, but it is not yet widely used and one participant noted that they were still working out a few problems with converting the data. [10] Some also noted that the *Interuniversity Consortium for Political and Social Research* web site (ICPSR) could be more accessible and "user friendly" to enhance its utility as a data repository.[11]Participants agreed that the Law and Courts Section of APSA is well positioned to take a leadership role in addressing these issues concerning data infrastructure.

Participants noted that the multi-user database on the USCA, which is available on JuRI as well as ICPSR, has been instrumental in launching a substantial volume of research, but would benefit from systematic updates that would extend to current years. Additionally, an efficient formal mechanism should be instituted to allow for corrections to datasets placed on clearinghouse sites like JuRI. The discussion of infrastructure also included comments about data sources and lines of inquiry that have not been (over) mined. Using multiple data sources can focus our inquiries by triangulating the topic under investigation in several frames of reference. For example, Supreme Court studies often rely on qualitative information gathered from the publicly accessible papers of the justices to augment quantitative analyses. However, most USCA scholars do not rely on this type of information because they are often unaware of its availability. However, there are some publicly accessible personal papers and personal histories of lower court judges, though they are not archived (electronically) and often the questions asked in the personal histories are not the types of questions of interest to social scientists. Similarly, federal judges and their clerks are probably under-interviewed. In particular, we never interview court staff—despite the increased prominence of staff attorneys in all USCA's, we know very little about them. Of course, as one participant noted, confidentiality limits the availability of replication data drawn from interviews.

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[8] Scholars could also employ the related technique utilized by Cheng (2008) to generate some of the data necessary to update the USCA datasets. Cheng (2008) merged the Federal Judicial Center data (which contains case information but withholds judge information from the public) with information drawn from Westlaw. See Edward K. Cheng. 2008. "The Myth of the Generalist Judge: An Empirical Study of Opinion Specialization in the Federal Courts of Appeals." Stanford Law Review 61(3): 519-72.

[9] Available at http://www.cas.sc.edu/poli/juri.

[10] Available at http://thedata.org/home; for an introductory presentation to Dataverse by Professor Gary King of Harvard University, see "An Introduction to the Dataverse Network as an Infrastructure for Data Sharing," available at http://www.youtube.com/watch?v=fgn6dmfsZ_M.

[11] Available at http://www.icpsr.umich.edu.

Another relatively untapped data source is audio recordings of oral arguments before the USCA.[12] Some circuits are now making recordings of oral arguments available. Participants debated, however, the role of oral argument in decision making (editor's note: perhaps this means that it needs to be studied!). Some suggested that efforts to evaluate the influence of legal arguments would benefit from new sources and methods. Following the work of Corley and others, automated content analysis methods may offer insights on the influence of the contents of appellate briefs on judicial opinions. Studying personal papers of USCA judges would further flesh out the causal mechanism. Finally, systematic analyses of oral argument would offer scholars an opportunity to evaluate further the impact of appellate advocacy on decision making

Finally, we need systematic attempts to understand differences across circuits (besides median GHP scores and circuit fixed effects). For example, we should systematically code differences in formal court rules, and use interviews to systematically identify circuit court norms. And, participants commented that some circuit level data are publicly reported by the Administrative Office of the U.S. Courts;[13] these indicators should be gathered and made available in a social science-friendly format.

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[12] The Ninth Circuit Court of Appeals, for example, makes recent oral arguments available in downloadable audio files (and some as streaming videos), available at http://www.ca9.uscourts.gov/media; see also Third Circuit Oral Argument Archives, available at http://www.ca3.uscourts.gov/oralargument/OralArg.htm; Fourth Circuit Oral Argument Files, available at http://www.ca4.uscourts.gov/OAarchive/OAList.asp.

[13] Many of these statistics are accessible on the Office's web site, available at http://www.uscourts.gov.

Group Decision Making in the U.S. Courts of Appeals*

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** The author acknowledges the very helpful notes on the session's proceedings provided by Prof. Donald Songer.*

> "Group decision making (is) a major potential limit on the personal discretion of circuit judges…judging is a collective enterprise." (Howard 1981)[1]

In this session, participants discussed trends in recent research on factors that may influence individual behavior. Deference to the majority and low levels of dissent are well-documented in existing research.[2] While unanimity may be the norm, some variation does exist, allowing further examination based on voting behavior. Beyond the mere tallying of the votes, however, much is yet to be uncovered, particularly concerning influences on the breadth of the opinion and policy implications. Symposium participants discussed three primary topics that relate to the study of group-level dynamics and judicial behavior: 1) panel influences; 2) the deliberations process; and 3) circuit level influences.

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[1] J. Woodford Howard. 1981. Courts of Appeals in the Federal Judicial Systems; A Study of the Second, Fifth, and District of Columbia Circuits. Princeton: Princeton University Press.

[2] For an excellent analysis of separate opinion writing, see Virginia A. Hettinger, Stefanie A. Lindquist and Wendy L Martinek. 2006. Judging on a Collegial Court: Influences on Federal Appellate Decision Making. Charlottesville: University of Virginia Press. While the authors examine when separate opinion writing may occur, it is clear that this is a rare event, occurring in less than three percent of all cases. ,

Panel Factors

Participants discussed past research that suggests strong "panel effects" in these courts. Studies indicate that case outcomes are not simply predicted by aggregating the preferences of the majority. Arguing in favor of staffing panels to ensure a "mix" of judges appointed by Democrats and Republicans, Sunstein (2003) notes that panels made up of judges with similar ideological leanings tend to yield opinions that amplify individual tendencies, resulting in more extreme positions taken by the group. In contrast, panels that include judges with diverging ideological predispositions are associated with case outcomes that are more moderate than what one would predict by the position of the median judge. [3]

Noting that empirical findings supporting panel effects are robust, symposium participants discussed the various causal mechanisms advanced in scholarship. These include arguments drawn from strategic accounts of decision making where members of the panel anticipate the position of the circuit en banc, particularly if an outlying panel includes a "whistleblower."[4] Consistent with research by social psychologists, small group perspectives suggest that persuasion of a colleague's position and concerns for collegiality underlie "panel effects." Participants also discussed the substantial body of research on panel effects that focuses on ideological composition and gender, but also noted the promise of new lines of inquiry that suggest panel dynamics are shaped by the presence of "nonappeals court judges " (e.g. district court judges sitting by designation) and those with varying tenure.

Deliberations

One potential, though understudied, panel "effect" involves the role of deliberations in the decision-making process. While participants noted the importance of the deliberative process, this influential factor is difficult to measure and may not be detected by mere examination of the case votes. Participants' discussion highlighted how tests of competing theoretical perspectives will benefit from extending research to focus more on decision-making processes rather than outcomes. Several scholars have utilized interview data with judges for this purpose; however, additional systematic observations may be obtained from interviews of other court personnel on decision-making practices and procedures. For example, more specifics are needed about the use of screening devices. Judicial workload is often cited as an important influence that conditions the expression of policy preferences on the panel.[5] Yet, we know relatively little about the multiple dimensions surrounding workload and how screening devices may mask these effects.

Participants emphasized that data on conference deliberations are clearly needed to flesh out support for competing theoretical perspectives. Research utilizing judges' personal papers may yield important information on interactions during this stage and subsequent opinion drafting and circulation.[6] Process data may also highlight variation in decision-making practices by circuit that potentially mitigate a "whistleblower" effect. For example, some circuits use informal "en banc" procedures, including those that promote the circulation of opinions with off-panel colleagues prior to publication.[7] Identifying these processes may help to explain why some opinions are redrafted without rehearing.

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[3] Cass R. Sunstein 2003. Why Societies Need Dissent. Cambridge, Massachusetts: Harvard University Press.

[4] Frank B. Cross and Emerson H. Tiller. 1998. "Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals." Yale Law Journal 107:2155-2176.

[5] Burton M., Atkins and Justin J. Green. 1976. "Consensus on the United States Courts of Appeals: Illusion or Reality." American Journal of Political Science 20:735-748.

[6] See Ryan C. Black and Ryan J. Owens. 2009. "Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence." Journal of Politics 71:1062-1075. In this work, the authors use the papers of Justice Blackman in assessing certiorari votes in the agenda-setting context.

[7] For a summary of the various procedures used in the circuits, see Judith A. McKenna, Laura L. Hooper and Mary Clark. 2000. Case Management Procedures in the Federal Courts of Appeals. Report of the Federal Judicial Center.

Relatedly, participants recognized the need for more rigorous systematic research on opinion drafting. Although anecdotal evidence highlights the increasingly important role of staff attorneys in preparing draft opinions, we are not certain if their influence is limited to "routine" cases. Other participants also discussed factors associated with opinion assignment decisions that are not well-known. In most, but not all, circuits, the presiding judge assigns the opinion. One question for future research may include whether efficiency shapes these decisions, with the distribution of workload trumping other goals. One participant indicated that the chamber that had written the bench memo for the case was more likely to be assigned the opinion for efficiency reasons. Yet, others suggested that opinion-assigning decisions are more likely to highlight the goals and preferences of the presiding judge.

Building on a discussion from the first session on recent methodological advances in automated content analysis, participants emphasized that one substantial obstacle in this line of inquiry concerns the measurement of opinion content. For example, "moderation" in a decision is typically measured in a manner that is based on who won or lost the case. If the outcome for the parties was "mixed," then the decision is considered to be "moderate." Consequently, the policy direction of opinions is generally measured dichotomously as either liberal or conservative (with "mixed" outcomes falling in the middle). All participants agreed that measures of opinion liberalism that are continuous (e.g. distinguishing between very conservative and conservative) would significantly advance this line of inquiry. Although some studies have adopted the approach of assuming that continuous indicators of the opinion author's ideology measure the liberalism of the opinion, participants agreed that this is less than satisfactory. Ideology is a consistent, but not overwhelmingly strong, predictor of judicial voting. Moreover, this approach is premised on an assumption that other members of the majority on the panel do not shape the content of the opinion. And, measures of judicial ideology are determined by the policy positions of appointing presidents and home state senators, introducing another source of measurement error. Efforts to measure opinion content along other dimensions (e.g. issue complexity, precedential utility) offer promise, including network analysis of citations.

Circuit Factors

This session also directed attention to research on circuit-level dynamics. Occupying the middle tier of the judicial hierarchy, the US Courts of Appeals serve as both "principals" and "agents." Panels are expected to consider the dominant views of the circuit majority or risk en banc review and reversal. Moreover, appeals court judges may be expected to feel constrained by circuit precedent out of respect for stare decisis and a desire to promote uniformity in federal law. Participants noted how circuits are expected to shape the process of panel decision making and its outcomes.

This discussion focused on the need to develop theory-based explanations that go beyond the idiosyncratic perspective that justifies the use of "dummy" variables to account for circuit differences. Their comments highlighted how some theoretical perspectives may be helpful in understanding the relationship between the circuit's "character" and panel decision making. As one illustration, participants discussed how critical mass theory, developed for the study of organizations, offers insights on the relationship between the gender composition of the circuit and the process of decision making at the panel level. As another example, participants discussed how levels of information exchange will vary with circuit size and geographical dispersion of judges within the court. More frequent interaction within a geographically homogenous circuit would be expected to yield a decision-making environment that contrasts with a circuit that is large and geographically dispersed. One participant noted that geographically compact circuits may also have more social interactions outside of court, which could alter their professional interactions. Participants discussed how computational methods may be leveraged as a tool for identifying patterns of intra-circuit communication over time. Participants also highlighted how comparative analyses of US circuits and Canadian provinces (where in many provinces all of the appeals judges are in the same building) may provide additional insights.

Participants also discussed how examining patterns of influence and communication within and across circuits may be used to explain why some individual judges and circuits are viewed as intellectual leaders. Citation analyses are helpful in identifying sources and patterns of influence, but more theory-driven research needs to be conducted on policy leadership in these courts. And, the extension of existing research on administrative leadership in the USCA may provide additional insights on the interaction between these functions and decision making practices.

Although early research by Goldman (1975) examined judicial voting behavior en banc,[8] subsequent research has focused on the determinants of decisions to review en banc. With funding from NSF, Micheal Giles is currently conducting a large-scale research project on en banc decisions of the US Courts of Appeals. These data may help to provide a basis for evaluating the contention that judges' votes in these cases are more likely to be driven by ideology. The dataset will also allow for tests of factors that influence the formation of coalitions in en banc courts. Participants discussed how utilization of en banc review has varied by circuit and over time. These newly collected data will provide an empirical portrait of their use, including the degree to which en banc decisions are unanimous (suggesting an error correction function) and whether en banc decisions address intra-circuit conflict. Participants noted that some high profile cases are decided initially by the court en banc, rather than by a panel. Using the Fourth Circuit's approach to desegregation cases as an illustration, participants discussed how this process may be used by a circuit to reduce uncertainty and avoid the undesirable scenario where an outlying judge/panel writes an opinion.

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[8] Sheldon Goldman. 1975. "Voting Behavior on the United States Courts of Appeals Revisited." American Political Science Review 69:491-506.

Judicial Selection and Pre-confirmation Politics*

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The authors acknowledge the invaluable notes of the session's discussion provided by Prof. Thomas Walker.

In recent decades judicial scholars have greatly improved our understanding of the selection and confirmation of federal appellate judges. However, several aspects of this process are in need of further exploration and development. Symposium participants agreed that our knowledge about the confirmation of Courts of Appeals judges is substantial.[1] However, scholars know little about the earlier phases of the process including the recruitment and vetting of judicial nominees prior to nominations. Furthermore, our understanding of the process would benefit from additional investigation of judicial turnover.

Participants in the symposium discussed the status of the literature, possible new directions for scholarship, and the obstacles and opportunities inherent in the study of judicial selection. The three major topics addressed included (1) the recruitment of potential nominees, (2) the vetting of nominees, and (3) judicial departures.

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[1] For explorations of the increasing saliency in lower court nominations and the role of ideology in the timing of confirmations see Roger E. Hartley, and Lisa M. Holmes. 2002. "The Increasing Senate Scrutiny of Lower Federal Court Nominees." *Political Science Quarterly* 117 (2): 259-278; and Sarah A. Binder and Forrest Maltzman. 2002. "Senatorial Delay in Confirming Federal Judges, 1947-1998" *American Journal of Political Science* 46(1): 190-199.

The Recruitment of Potential Judicial Nominees

Although political scientists know much about confirmation politics, participants agreed that our understanding of the recruitment of judicial nominees is quite limited. What we know about the recruitment of potential judges is largely culled from anecdotal accounts rather than systematic data. For example, it is a mystery to what extent potential recruits promote themselves or respond to wooing by political elites. Symposium participants also discussed the dearth of information regarding the pool of candidates for circuit judgeships who are not district court judges.[2] We know the pool also includes governmental and private practice lawyers, legal academics, state judges, party officials, and political officeholders, but we do not know whether and to what extent the composition of these candidate pools has changed over time. In addition, we know relatively little about the role of individual motivations in seeking or declining to accept nominations. We also lack information about whether elites prepare in advance for vacancies or initiate recruitment only after a vacancy is imminent.

Participants agreed that data limitations are a major obstacle to answering these questions. Potential data sources to answer these questions include elite interviews, presidential archives, agency or Judiciary Committee records, and the papers of current or former senators. The increasing digitization of governmental and presidential records was discussed as an avenue towards further data collection. To illustrate the utility of these sources symposium participants discussed recent nominations research by Steigerwalt (2010), Rottinghaus and Nicholson (2010), and Rottinghaus and Bergan (2011).[3] Steigerwalt interviewed Senate staffers and interest group representatives and found them to be willing interview subjects. Rottinghaus and his co-authors exploited presidential archives to report whom members of Congress requested be given judicial nominations and examine their success.

Attendees noted that another gap in our knowledge concerns the source of recommendations for circuit judgeships. The possible sources of recommendations noted included senators, other political officeholders, state party leaders, interest groups, bar association officials, sitting judges, and retiring judges. Although Rottinghaus and his co-authors have made progress in this area, much remains unknown. Participants discussed the potential for progress on this question related to ongoing research on federal judicial nominating commissions. For example, the American Judicature Society now provides information about the presence and function of these commissions in the states.[4] It is likely that the members and records of these commissions can provide much-needed information about the pool of candidates for circuit judges and how individuals enter it.

Symposium participants agreed that scholars should examine closely the modern role of home-state senators in selection circuit judges and the persistence of state-level parochialism in terms of "owning" judgeships. While the dominance of senators in district court selection is well established, the deference given to senators by presidents in circuit judge selection is less clear. This is especially true when the president and senators do not share a party affiliation. Although scholars show that senatorial courtesy affects judicial selection, the changing dynamics of the Senate-president relationship remain unclear.[5] State ownership of seats on the circuit bench, long assumed to be a matter of course, has only recently received attention. Scott and Garrett (2011) discovered that seats on the circuit bench pass among states relatively often.[6] Participants agreed that this phenomenon warrants further consideration, especially given its challenge to conventional wisdom.

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[2] For an examination of district court judge promotion see Elisha Carol Savchak, Thomas G. Hansford, Donald R. Songer, Kenneth L. Manning, and Robert A. Carp. 2006. "Taking It to the Next Level: The Elevation of District Court Judges to the U.S. Courts of Appeals." *American Journal of Political Science* 50: 478-493.

[3] Amy L. Steigerwalt. 2010. *Battle Over the Bench: Senators, Interest Groups and Lower Court Confirmations.* University of Virginia Press; Brandon Rottinghaus and Chris Nicholson. 2010. "Counting Congress In: Patterns of Success in Judicial Nomination Requests by Members of Congress to the President." *American Politics Research* 38 (4): 691-717. ; Brandon Rottinghaus and Daniel E. Bergan. 2011. "The Politics of Requesting Appointments: Congressional Requests in the Appointment and Nomination Process." *Political Research Quarterly* 64 (1): 31-44.

[4] See the website of the American Judicature Society at http://www.judicialselection.us/federal_judicial_selection/federal_judicial_nominating_commissions.cfm?state=FD.

[5] For evidence of the effects of senatorial courtesy in circuit court appointments, see Micheal W., Giles Virginia Hettinger, and Todd C. Peppers. 2001. "Research Note: Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54 (3): 623-641.

[6] Kevin M., Scott and R. Sam Garrett. 2011. "Assessing Changes in State Representation on the U.S. Courts of Appeals." *Presidential Studies Quarterly* 41 (4): 777-792.

The Vetting of Judicial Nominees

With regard to the vetting of nominees prior to confirmation, attendees agreed that the American Bar Association's role in the confirmation process remains a topic of interest. Recent research by Smelcer, Steigerwalt, and Vining (forthcoming) found that Democratic circuit court nominees from 1977 to 2008 received higher qualification scores than Republican nominees even when using a dataset preprocessed to compare similar individuals.[7] However, those authors also found that professional qualifications have a large impact on nominees' ratings. These results demonstrate the need for further study of the ABA Standing Committee on the Federal Judiciary, its procedures, and its influence. Questions about the ABA's participation in judicial selection also led symposium attendees to discuss the involvement of other organized groups including the Federalist Society. Attendees noted that Scherer and Miller (2009) studied the voting behavior of judges affiliated with the Federalist Society, but stressed the need for a more comprehensive view of its influence.[8] Other research by Scherer, Bartels, and Steigerwalt (2008) concludes that interest group involvement in the confirmation process is widespread and forces senators to vet nominees more rigorously.[9]

Judicial Departures and the Creation of Vacancies

Participants in the symposium also discussed a related, but understudied question: Why do circuit judges leave the bench? Opportunities to select new judges follow either the creation of new judgeships (by statute) or the departure of a sitting jurist. However, the number of circuit judgeships has been stagnant since 1990.[10] In an era of increasing caseloads and contentious confirmation battles, it is important to understand when and why vacancies occur.

Participants remarked that efforts to test the reasons for departures from the circuit bench have had mixed results. Some studies conclude that judges step down strategically to facilitate the selection of like-minded successors or when an unfavorable political climate appears unlikely to change in the near future (Spriggs and Wahlbeck 1995). Others argue that circuit judges are more pragmatic than political (Vining 2009a, 2009b).[11] Symposium attendees noted that judges who take senior status, as most do, continue to work and facilitate the confirmation of new judges to their seats. This, in turn, helps ease the burdens of heavy caseloads. Participants noted that this literature would benefit from interviewing retired or former judges about their departures. [12]

New Directions for Research

Although existing scholarship has generated substantial knowledge on the confirmation process, we have only a limited understanding of the pre-confirmation stages of lower court federal judicial selection. In reviewing the state of knowledge on the entire confirmation process at the symposium, many questions were raised that need systematic study. Avenues for research exist at all junctures in the multi-stage confirmation process. Prior to

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[7] Susan Smelcer, Amy Steigerwalt, and Richard L. Vining, Jr. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly*, forthcoming.

[8] Nancy Scherer and Banks Miller. 2009. "The Federalist Society's Impact on the Federal Judiciary." *Political Research Quarterly* 62 (2): 366-378.

[9] Nancy Scherer, Brandon L. Bartels, and Amy Steigerwalt. 2008. "Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Confirmation Process." *The Journal of Politics* 70 (4): 1026–1039.

[10] See Pub. L. No. 101-650, December 1, 1990.

[11] James F. Spriggs, II and Paul J. Wahlbeck. 1995. "Calling It Quits: Strategic Retirement on the Federal Courts of Appeals, 1893-1991." *Political Research Quarterly* 48(3): 573-597. Richard L. Vining, Jr. 2009a. "Judicial Departures and the Introduction of Qualified Retirement, 1892-1953. " *Justice System Journal* 30 (2): 139-157.; Richard L. Vining, Jr. 2009b. "Politics, Pragmatism, and Departures from the U.S. Courts of Appeals, 1954-2004. " *Social Science Quarterly* 90 (4): 834-853.

[12] For the results of a survey of retired federal judges regarding their decisions to step down, see Albert Yoon. 2006. "Pensions, Politics, and Judicial Tenure: An Empirical Study of Federal Judges, 1869-2002." *American Law and Economics Review* 8(1): 143-180.

a vacancy, research opportunities include assessing why judges leave the bench and whether the executive branch continuously compiles a pool of candidates even if no vacancy exists. Once a vacancy occurs, questions remain regarding who suggests nominees to fill the seat and why individuals wish to be considered for the nomination. The interaction between the elites in this stage of the process is ripe for exploration with the existence of documents for content analysis. Elite interviewing of staffers may also help us understand this process. The complex process of vetting a nominee also begs for future exploration. It is clear from existing research that many actors are involved with the process including the executive branch, the Senate, and interest groups. Systematic, longitudinal research on each actor in this phase of the nomination process is needed to examine shifts in their roles over time. While we have studies on individual actors in this process, we need a more comprehensive approach including all actors rather than focusing on each individually.

Report of the Professionals Committee of the Law and Courts Section

Wendy Martinek

In the fall of 2009, Section Chair Christine Harrington and the Executive Board of the Law and Courts Section of the American Political Science Association created an ad hoc committee to gather information on the status of public law in the discipline of political science. The Committee on the Status of the Public Law Profession consisted of Chair Mark Graber (University of Maryland), Gregory A. Caldeira (Ohio State University), Malcolm M. Feeley (University of California-Berkeley), Roger E. Hartley (University of Arizona),[1] Lisa Hilbink (University of Minnesota), and Wendy L. Martinek (Binghamton University). The Committee was charged with identifying where members of the Section work and was asked to determine the nature and scope of their work. Professor Graber reported the findings of the Committee at the Business Meeting of the Law and Courts Section at the 2010 annual meeting of the American Political Science Association in Washington, D.C.

In the fall of 2010, Section Chair Melinda Gann Hall and the Executive Board voted to convert the ad hoc committee into a standing committee of the Section, renaming it the Professionals Committee, with two-year terms for each member. Professors Graber, Feeley, and Martinek were each asked to serve one additional year with Professors Brent Boyea (University of Texas-Arlington), Tom Clark (Emory University), and Paul Wahlbeck (George Washington University) each appointed to two-year terms. Professor Martinek assumed the chairmanship of the Committee for the 2010-11 year.[2]

The Committee was given broad discretion as to the information to be collected but was charged specifically with collecting and reporting systematic descriptive information about the members of the Section. As part of its data collection efforts, during the spring of 2011 the Committee developed a survey to be administered to the members of the Law and Courts Section. On May 12, 2011, the preliminary draft of the survey instrument was distributed to the members of the Executive Board for their advice and suggestions as to the content of the survey. The final survey instrument reflects the feedback provided by members of the Executive Board. The survey protocol and instrument were subsequently submitted to the Human Subjects Research Review Committee of Binghamton University. Human subjects approval was granted July 12, 2011. The approved survey was administered with the assistance of Jennifer Segal Diascro, Director of Institutional Programs of the American Political Science Association.

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[1] Professor Hartley has since moved to Western Carolina University to assume the directorship of its MPA program.

[2] On September 2, 2011, at the Business Meeting of the Law and Courts Section in Seattle, Washington, the motion to convert the ad hoc Committee on the Status of the Public Law Profession to the Professionals Committee with six members with staggered two-year terms was approved by the membership.

The original invitation to participate in the survey was sent via e-mail to current members of the Law and Courts Section on July 26, 2011. It was sent to a total of 750 members via e-mail, with nine e-mail invitations returned as undeliverable. The text of the invitation read as follows:

Dear Member of the Law & Courts Section,

As a member of the Law & Courts Section of the American Political Science Association, you are invited to participate in a survey being conducted on behalf of the Professionals Committee of the Law & Courts Section (previously the Committee on the Status of the Public Law Profession). The purpose of the survey is to gather information about the environments within which Section members meet their research, teaching, and service responsibilities and to gain insights into how the Section can best be of assistance to its members.

The survey consists of 17 questions and is anticipated to take no more than 10 minutes to complete. If you wish to participate in the survey, please click here.

Note that your participation in this survey is entirely voluntary and your decision as to whether or not to participate will not prejudice your future relations with the Law & Courts Section or the American Political Science Association. If you decide to participate, you are not obligated to answer all questions and may stop at any time. Your voluntary completion of the survey constitutes consent to participate.

Responses to this survey will be kept confidential, with results reported only in aggregate terms to prevent the identification of individual participants based on the responses they provide. If you have any questions about this survey, please contact Wendy L. Martinek, Professionals Committee Chair, at martinek@binghamton.edu or (607) 777-6748.

This survey (protocol #1745-11) has been approved by the Binghamton University Human Subjects Research Review Committee (HSRRC). Questions about your rights as a participant in this survey can be directed to the HSRRC at (607) 777-3818.

Thank you, in advance, for your assistance.

On August 3, 2011, a reminder message regarding the survey was posted to the Law and Courts Listserve. The text of that message read as follows:

Dear Colleagues -

Hello. Last week, all current members of the Law and Courts Section of the American Political Science Association should have received an e-mail inviting them to participate in a of the Law and Courts membership. The survey is short (17 questions) and should take only a few minutes to complete (10 minutes or less) but it will provide very valuable information about how the Section can best serve its members. The survey has been reviewed by the Binghamton University Human Subjects Research Review Committee and all responses will be kept confidential, with results reported only in aggregate terms to avoid the identification of individual respondents.

On behalf of the Law and Courts Professionals Committee (Brent Boyea, Tom Clark, Malcolm Feeley, Mark Graber, Wendy Martinek, and Paul Wahlbeck), I would like to encourage Section members to complete the survey and thank you in advance for your assistance.

On August 24, 2011, a final reminder message was posted to the Law and Courts Listserve. The text of that message read as follows:

Greetings, all.

If you are a current member of the Law and Courts Section of the American Political Science Association, you should have received an invitation to participate in a survey being administered on behalf of the Professionals Committee of the Law and Courts Section earlier this summer. If you have not as of yet completed the but wish to participate, please be sure to do so by *Friday August 26*. The responses received by that date will be used for a preliminary report to be delivered at the Business Meeting of the Law and Courts Section at the up-coming APSA meeting. A more detailed report will be available early this fall and will be distributed to the membership.

On behalf of the Professionals Committee (Brent Boyea, Tom Clark, Malcolm Feeley, Mark Graber, Wendy Martinek, and Paul Wahlbeck), thank you for your assistance.

As of Saturday August 27, 245 recipients completed the survey in full, with an additional 19 recipients completing the survey in part, for an overall response rate of 35.6% (33.1% if only fully completed surveys are counted). Information gathered from the survey instrument is reported below.

Demographic Information

1. What is your gender?

	Number of Respondents	Percentage of Respondents
Female	**88**	**34%**
Male	**173**	**66%**
Total	**261**	**100%**

2. What is your race/ethnicity?

	Number of Respondents	Percentage of Respondents
American Indian/Alaskan	0	0%
Asian	6	2%
Black/African American	4	2%
Hispanic/Latino	2	1%
Native Hawaiian or other	0	0%
White, non-Hispanic/Latino	237	93%
Other	7	3%
	256	100%

3. In what year did you complete or do you anticipate completing your Ph.D.?

	Number of Respondents	Percentage of Respondents
Before 1980	**38**	**15%**
1980-1989	**28**	**11%**
1990-1999	**52**	**20%**
2000-2009	**88**	**34%**
2010 or Later	**47**	**18%**
Other	**8**	**3%**
	261	**100%**

4. What is the name of your Ph.D.-granting institution?

[Various open-ended responses]

Appointment Information

5. Which of the following best describes your current situation?

	Number of Respondents	Percentage of Respondents
I am an undergraduate student	0	0%
I am a graduate student	33	13%
I am a non-tenure track assistant professor; e.g., visiting assistant professor	8	3%
I am a tenure-track assistant professor	54	21%
I am an associate professor	65	25%
I am a full professor	85	32%
I am emeritus/retired	9	3%
I am currently unemployed	2	1%
Other	7	3%
	263	100%

6. If you are a faculty member, in what department/school is your primary appointment?

	Number of Respondents	Percentage of Respondents
I am not a faculty member	22	9%
Anthropology	0	0%
Criminal Justice	1	0%
Economics	1	0%
History	2	1%
Law School	18	7%
Philosophy	1	0%
Political Science	185	75%
Psychology	0	0%
Sociology	1	0%
Other	17	7%
	248	100%

7. Which of the following best describes your primary department/school?

	Number of Respondents	Percentage of Respondents
My department does not have a graduate program and neither do any of the other academic units at my col-	15	6%
My department does not have a graduate program but my college/university has other academic units that do have graduate programs	49	19%
My department has an M.A. program	40	16%
My department has a Ph.D. program	121	47%
My department has a joint J.D.-Ph.D. Program	12	5%
Other	18	7%
	255	100%

8. If you are a faculty member, do you hold a joint appointment? If so, please indicate with which department/ school the secondary appointment is assigned/connected.

	Number of Respondents	Percentage of Respondents
I am not a faculty member	28	12%
I do not hold a joint appointment	164	68%
Anthropology	1	0%
Criminal Justice	4	2%
Economics	0	0%
History	0	0%
Law School	11	5%
Philosophy	0	0%
Political Science	10	4%
Psychology	0	0%
Sociology	2	1%
Other	20	8%
	240	100%

9. Which of the following best describes pre-law advising at your institution?

10. Do you serve as a faculty advisor/mentor for any of the following law-related groups on your campus? Please check all that apply.

	Number of Respondents	Percentage of Respondents
Pre-law honor society	9	12%
Pre-law club/association (other than a pre-law honor society	40	54%
Mock trial	18	24%
Other[3]	21	28%

11. What law-and-courts-related courses does your department offer at the undergraduate level?

[Various open-ended responses.]

12. What law-and-courts-related courses does your department offer at the graduate level?

[Various open-ended responses]

13. Does your department treat public law as a separate sub-field of political science in its graduate program; e.g., permit public law to be considered a major/minor field for graduate students? If so, can it be considered a major or minor field?

	Number of Respondents	Percentage of Respondents
Not applicable (i.e., my department does not have a graduate program)	69	29%
No	98	41%
Yes, major and minor field	37	16%
Yes, major field only	7	3%
Yes, minor field only	13	5%
Other	13	5%
	237	100%

Research and Scholarship

14. How would you characterize the primary publication outlet for your work?

	Number of Respondents	Percentage of Respondents
Books	59	25%
Academic journals in political science	102	44%
Academic journals in disciplines outside of political science	8	3%
Interdisciplinary academic journals	27	12%
Law reviews	19	8%
Other	18	8%
	233	100%

15. In your view, what are the top five academic journals for law-and-courts-related scholarship?

63 respondents ranked *American Political Science Review* first and an additional 7 ranked it second (i.e., 70 ranked it either first or second).

56 respondents ranked *Law & Society Review* first and an additional 13 ranked it second (i.e., 69 ranked it either first or second).

11 respondents ranked *American Journal of Political Science* first and an additional 41 ranked it second (i.e., 52 ranked it either first or second).

4 respondents ranked *Law & Social Inquiry* first and an additional 25 ranked it second (i.e., 29 ranked it either first or second).

5 respondents ranked *Journal of Politics* first and an additional 20 ranked it second (i.e., 25 ranked it first or second).

Member Resources

16. For each of the Section-sponsored resources listed below, please indicate how useful you have found it to be.

	Law & Courts Listserve	Law & Courts Newsletter	Law & Courts Website	Law & Politics Book Review
Very Useful	60 (26%)	67 (29%)	16 (7%)	120 (52%)
Somewhat Useful	92 (40%)	128 (56%)	72 (32%)	68 (29%)
Neutral	44 (19%)	29 (13%)	95 (42%)	36 (16%)
Not Useful	33 (14%)	6 (3%)	42 (19%)	8 (3%)

17. Each year, there is a set of short courses that take place immediately prior to the annual American Political Science Association meeting. The majority of these short courses are sponsored by one or more of the organized sections of the Association. Are there particular short courses that you would like to see the Law & Courts Section to sponsor at future annual meetings?

Various responses. Illustrative examples:

Advanced methods for studying courts
Varieties and uses of databases

Using archival sources

Qualitative methods for studying courts

Comparative law and politics

Teaching law with technology and new media

21st Century issues in constitutional theory

Talking to political scientists about public law

Cross-disciplinary publishing

Islamic law for non-specialists

How to get a job in public law

Interviewing judges

Global governance

Social scientists as expert witnesses

Transnational courts

Graphical presentation of results

Grantsmanship for Fulbright and overseas study

Pre-law advising

Automated content/text analysis for court opinions

Professionalization for graduate students

Professionalization for new faculty

Interbranch perspectives on the courts

BOOKS TO WATCH FOR

Drew Lanier, Editor
University of Central Florida

Pamela Brandwein (University of Michigan), *Rethinking the Judicial Settlement of Reconstruction* (Cambridge University Press, 978-0521887717). "American constitutional lawyers and legal historians routinely assert that the Settlement of Reconstruction demolishes the conventional wisdom - and puts a constructive alternative in its place. Brandwein unveils a lost jurisprudence of rights that provided expansive possibilities for protecting blacks' physical safety and electoral participation, even as it left public accommodation rights undefended. She shows that the Supreme Court supported a Republican coalition and left open ample room for executive and legislative action. Blacks were abandoned, but by the president and Congress, not the Court. Brandwein unites close legal reading of judicial opinions (some hitherto unknown), sustained historical work, the study of political institutions, and the sociology of knowledge. This book explodes tired old debates and will provoke new ones."

Charles Geyh (Indiana University) has published *What's Law Got To Do With It? What Judges Do, Why They Do It, and What's at Stake* (Stanford University Press, 978-0804775335). In the book, "the nation's top legal scholars and political scientists examine to what extent the law actually shapes how judges behave and make decisions, and what it means for society at large. Although there is a growing consensus among legal scholars and political scientists, significant points of divergence remain. Contributors to this book explore ways to reach greater accord on the complexity and nuance of judicial decision-making and judicial elections, while acknowledging that agreement on what judges do is not likely to occur any time soon." The chapters are written by a good mix of legal scholars and political scientists, including Jeffrey A. Segal, Stephen B. Burbank, Lawrence Baum, Frank B. Cross, Eileen Braman, J. Mitchell Pickerill, Barry Friedman, Andrew D. Martin, Stefanie A. Lindquist, Matthew J. Streb, Melinda Gann Hall, David Pozen, James L. Gibson, and Keith J. Bybee. The volume also features a set of short reaction essays written by sitting judges.

Tracy Lightcap's (LaGrange College) new book, *The Politics of Torture* (Palgrave Macmillan, 978-0-230-11377-0), examines why the United States began to torture detainees during the War on Terror. However, instead of an indictment, the book presents an explanation for how torture became informally legalized. The argument postulates that crises produce opportunities for leaders to overcome the domestic and foreign policy logjams become attached to political regimes. But if the projects used to address the crises and provide cover for new policies come under serious threat from clandestine opponent, then the restraints on interrogation can be overwhelmed, leading to informal institutions that allow the legalization of torture to begin. These ideas are tested using comparative historical narratives drawn from two cases where torture was adopted—the War on Terror and the Stalinist Terror—and one where it was not—the Mexican War. The book concludes with some thoughts about legal reforms that could help the United States avoid the establishment of torture in the future.

ANNOUNCEMENTS

Law and Society Post-Doctoral Fellowship at Wisconsin

By Howard Erlanger, University of Wisconsin Institute for Legal Studies

One-year fellowship for early-career scholars who work in the "law and society" tradition and who will be competing for university-level teaching jobs in the U.S. market. For 2012-13 academic year, apply by January 9, 2012. Complete information can be found at:
http://law.wisc.edu/ils/lawandsocietyfellowship.html

LSAC Research Grants

The Law School Admission Council (LSAC) Research Grant Program funds research on a wide variety of topics related to the mission of LSAC. Specifically included in the program's scope are projects investigating precursors to legal training, selection into law schools, legal education, and the legal profession. To be eligible for funding, a research project must inform either the process of selecting law students or legal education itself in a demonstrable way.

The program welcomes proposals for research proceeding from any of a variety of methodologies, a potentially broad range of topics, and varying time frames. Proposals will be judged on the importance of the questions . addressed, their relevance to the mission of LSAC, the quality of the research designs, and the capacity of the researchers to carry out the project.

Application deadlines are February 1 and September 1.

For more details, go to http://www.lsacnet.org/LSACResources/Grants/lsac-legal-education-grant-program.asp