LAW AND COURTS

Newsletter of the Law and Courts Section of the American Political Science Association

Spring 1994
Volume 4, Number 1

In this Issue

From the Section Chair

Lynn Mather, *Dartmouth College*

The Law and Courts Organized Section is currently the 4th largest of the 32 organized sections of the American Political Science Association, with 753 members (Comparative Politics is largest with 1,106 members; Political Economy and Public Policy are 2nd and 3rd largest with 802 and 794 respectively.) One of our Section members, Lucius Barker, just completed his term as President of the APSA. His Presidential Address is reprinted in the March *American Political Science Review*. Another of our members, Beverly Blair Cook, narrates the history of women in our subfield in the current issue of *PS*.

To honor the strong scholarship in the law and courts field, the Executive Committee decided in 1992 to expand the number of awards given by the Section. We are grateful to the American Judicature Society and CQ Press for their sponsorship of two of these awards. The AJS Award is given to the author of the best paper (by a faculty member) at the last APSA meeting, and the CQ Press Award is given to the author of the best paper by a graduate student, in the field of law and courts. Information on this year's award committees and nomination procedures is found on page 19 of **Law and Courts.**

The Executive Committee also decided to increase the frequency of two other Section awards. The C. Herman Pritchett Award for the best law and courts book is now being given every year (rather than every other year), and the Lifetime Achievement Award will be given every two years, rather than every three years. Henry Abraham received the Lifetime Achievement Award in 1993, so the next award will be given in 1995.

The Law and Courts Organized Section and the *Review of Politics* are completing their third year of a cooperative publishing arrangement in which the *Review* publishes a Special Issue on Public Law each year. We are grateful to Donald Kommers, Editor of the *Review of Politics*, and Samuel Krislov and Doris Marie Provine, Editors of the Special Issue, for all of their efforts these past three years on the Special Issue. The publishing arrangement will be reviewed this summer, so I would appreciate receiving feedback from anyone on it.

Finally, a reminder about nomination of Law and Courts Section officers. Please send in your suggestions now for the next slate of officers—a new chair-elect, and three new members of the Executive Committee. Names should be sent to Nominations Committee Chair Roy Flemming by June 1 (see p. 19 of **Law and Courts** for complete details).

Lynn Mather is Professor of Government at Dartmouth College and Chair of the Law and Courts Section. Her address is Department of Government, Dartmouth College, Hanover, NH 03755. Phone (603) 646-2693; E-mail LYNN.MATHER @ DARTMOUTH.EDU

Instructions to Contributors

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 issues. Deadlines for submission of materials are: November 1 (Winter), March 1 (Spring), and July 1 (Summer). Contributions to **Law and Courts** should be sent to:

Lee Epstein, Editor
Law and Courts
Department of Political Science
Washington University
Campus Box 1063,One Brookings Drive
St. Louis, MO 63130
Phone: (314) 935-8580
FAX: 314/935-5856
E-Mail: epstein@wuecon.wustl.edu

Articles, Notes, and Commentary

Brief articles and notes describing matters of interest to the field will be published subject to review by the editor. Authors are encouraged to share research findings, teaching innovations, or commentary on developments in the field, which would interest members of the Section.

Footnote and reference style should follow that of the *American Political Science Review.* Please submit two copies of the manuscript. If possible, also enclose a diskette containing the contents of the submission. In a cover letter, provide a description of the disk's format (for example, DOS, MAC) and of the word processing package used (for example, WORD, Wordperfect).

Symposia

Collections of related articles or notes are encouraged. 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 if there is sufficient time for submission of materials to the granting or awarding body. Finally, authors of judicial books should inform **Law and Courts** of their manuscript's publication. will be announced if there is sufficient time for submission of materials to the granting or awarding body. Finally, authors of judicial books should inform **Law and Courts** of their manuscript's publication.

Data and Analysis Information

Law and Courts wishes to keep the Section informed about the availability of datasets of interest to the field. This includes newly-archived datasets held by the Consortium, as well as non-archived ones that individual researchers would like to share with their colleagues. Special analysis and data problems or queries of interest to the field will also be published. Send suggestions or information to the editor.

The Supreme Court and the attitudinal model

Editor's Note: At the 1994 meeting of the American Political Science Association Susan E. Lawrence chaired a roundtable, "Authors Meet Critics: The Supreme Court and the Attitudinal Model" (Cambridge University Press, 1993) *by Jeffrey A. Segal and Harold J. Spaeth. Susan edited a symposium for this issue of* **Law and Courts,** *containing revised versions of the remarks of the critics (Lawrence Baum, Jack Knight, Gerald N. Rosenberg, and Rogers M. Smith) and of the responses of the authors (Jeffrey A. Segal and Harold J. Spaeth).*

Introduction to the Symposium

Susan E. Lawrence, *Rutgers University*

In 1948, C. Herman Pritchett fundamentally changed the field of public law by moving us beyond a sterile brand of doctrinal analysis of Court opinions toward deeper and more systematic attempts to predict and explain how and why the Justices—a set of political actors operating under a unique set of institutional constraints—decide as they do. Segal and Spaeth's *The Supreme Court and the Attitudinal Model* is a mature fruit of this paradigm shift.

The validity and usefulness of attempts to explain judicial decision making through quantitative analysis of the relationship between judicial attitudes and judicial votes has been debated, redebated, and debated again for over 35 years now. On the one hand, this persistent debating of the attitudinal model seems foolish in that it obscures the extent to which the attitudinal model's systematic, empirical shattering of the myth of mechanical jurisprudence permeates virtually all of our work on judges and courts today. On the other hand, precisely because the truths revealed by the attitudinal model do permeate our work, serving as an underlying premise in almost all of our scholarship today, I believe that it is important for us to occasionally return to the model itself and examine it closely.

Segal and Spaeth's *The Supreme Court and the Attitudinal Model* is the first full-blown, thorough, up-to-date treatment of the attitudinal model of Supreme Court decision making that the field has seen in quite some time. As such, it provides an important resource service to the field and serves as a catalyst for a reexamination of the attitudinal model itself in light of contemporary scholarship across the field. Such a reexamination took place at the 1993 meetings of the American Political Science Association in the form of a roundtable on Segal and Spaeth's *The Supreme Court and the Attitudinal Model.* What follows are the panelists' edited and condensed versions of their remarks and Segal and Spaeth's reply.

The Critics

Lawrence Baum, *Ohio State University*

The Supreme Court and the Attitudinal Model is an important book, one that is essential for students of judicial behavior to read and to grapple with. The book raises a great many matters that merit discussion, but in these comments I will focus on one issue: what the evidence presented and cited by the book actually establishes about the determinants of Supreme Court behavior.

Jeffrey Segal and Harold Spaeth argue that the policy preferences of Supreme Court justices constitute close to a full explanation of the Court's decisions. Consistent with that position, they also argue that legal considerations—efforts to interpret the law accurately and well—play essentially no role in the Court's decisions. They present

(continued on the next page)

the logical premises on which this argument is based and then offer a variety of evidence to support it. Restricting my discussion to votes on the merits of cases, the heart of the book's concerns, I will consider the evidentiary basis for its argument—first, the evidence for the importance of policy preferences, and then, the evidence against the importance of other considerations in decisions.

Segal and Spaeth muster two types of evidence to show the primacy of policy preferences. One is a pattern in which votes within particular issue domains generally approximate a unidimensional structure, a structure they interpret as reflecting justices' policy preferences. The second is a set of strong statistical relationships between justices' votes and three kinds of independent variables: perceptions of the justices' views in newspaper editorials at the time of their selection, past votes of the same justices, and the facts of cases.

These bodies of evidence support the book's argument, but they are far from conclusive. Leaving aside case facts for the moment, neither editorial content nor past votes actually taps justices' personal policy preferences in pure form. Rather, their relationship with current votes demonstrates a high consistency of individual behavior over time, extending even to the period prior to a justice's career on the Court. In turn, both that consistency and the tendency of votes to take a unidimensional structure strongly suggest that justices vote on the basis of relatively fixed policy positions. But those policy positions could result from a variety of sources, not just policy preferences. And the book does not provide direct evidence for the importance of preferences in shaping individual policy positions.

For the most part, the evidence presented in the book relates to variation among justices in their responses to the same cases, not variation in a justice's responses to different cases in an issue area. The primary exception is the use of the facts of cases to help explain the Court's decisions. As Segal and Spaeth recognize, however, the impact of the case facts on decisions can be interpreted as reflecting either policy preferences or legal considerations.

Thus, the book's evidence for the impact of policy preferences leaves considerable room for other considerations, such as readings of the law and the Court's political environment, to influence decisions. This impact may come in any of three forms. First, these considerations might be important sources of the policy positions that produce mostly unidimensional voting patterns. Second, the deviations from unidimensional voting that occur might result from considerations other than policy preferences. Third, these considerations might be primarily responsible for differences in justices' votes from case to case within a policy domain. For this reason, the book's evidence *against* the significance of these potential determinants of votes—especially legal considerations—is especially important.

The systematic portion of this evidence relates primarily to the book's argument that justices do not act on the basis of what it characterizes as judicial restraint—for the most part, deference to other political actors. Voting patterns in selected sets of cases are used to support this argument. But judicial restraint in this sense is not the same as using legal considerations to reach decisions. Rather, this type of judicial restraint involves what might be called structural policy positions, positions relating to the distribution of power among political actors. These can be distinguished from positions relating to the substance of government policy. A showing that substantive positions generally override structural positions is not the same as a showing that policy preferences generally override a justice's reading of the law. (The book does analyze decisions in which the Court overturned its precedents, and this evidence relates to—and shows limitations in—the impact of legal considerations in decisions.)

Segal and Spaeth also offer a good deal of what they characterize as anecdotal evidence that forces other than preferences, especially legal considerations, exert little influence on justices' votes. The primary reason for the reliance on anecdotal evidence, as they point out, is the difficulty of developing systematic tests for the impact of such considerations as adherence to the law. Even the book's anecdotal evidence points to the limits of such considerations as explanations of justices' choices, but it does not rule out a significant role for them—especially as a source of variation across cases in justices' votes and Court decisions.

How, then, do Segal and Spaeth get from their limited evidence to their broad conclusions about Supreme Court decision making? They seem to make an intuitive leap, resting on the unstated premise that the structure they find in justices' votes could have no basis other than the attitudes of justices about public policy. It is a highly reasonable leap, one that other students of the Court have made, but it is not compelled by the evidence presented in the book.

That Segal and Spaeth have to make such a leap does not result from any failures on their part in gathering or analyzing relevant evidence. While empirical research on Supreme Court behavior can do better in probing the determinants of that behavior, it is not clear whether *any* research can produce definitive judgments about the relative strength of these determinants, or—to focus more narrowly—about the sources of justices' policy positions. Thus it is hardly a weakness of this book that it does not prove the dominance of the "attitudinal model" of

Supreme Court decision making.

This is a time of great advances in our knowledge of judicial behavior. Jeffrey Segal and Harold Spaeth are prominent among the scholars who are contributing to those advances. Their book documents how much our knowledge about Supreme Court decision making has grown,and it advances that knowledge considerably further. But the limits to our understanding of the Court remain enormous. The more that we face those limits directly, the better we can clarify what we actually know about the Supreme Court and identify the questions that require more investigation.

Jack Knight, *Washington University in St. Louis*

In *The Supreme Court and the Attitudinal Model* Jeffrey Segal and Harold Spaeth put forward a number of important arguments about law and the Supreme Court and about the ways in which social scientists should study the relationship between the two. One set of arguments is substantive in nature, emphasizing judicial decisionmaking as a political process and the Supreme Court as a policy-making body. A second set of arguments is methodological in nature, promoting an attitudinal approach to judicial voting and adamantly rejecting a causal role for law in that process. One can easily accept Segal and Spaeth's substantive claims about the political nature of legal decisionmaking and at the same time seriously question their methodological recommendations.

Segal and Spaeth forcefully recommend the attitudinal model as a complete and adequate explanations of judicial behavior. I admire the degree to which they make explicit the model and behavioral theory on which they propose to base their explanations. What I want to suggest here, however, is that they are unable to sustain an exclusive reliance on the attitudinal model in the construction of their explanations of Supreme Court decisionmaking. A close reading of Segal and Spaeth's book suggests that they often invoke other explanatory mechanisms to supplement their attitudinal models, mechanisms that they explicitly reject elsewhere in the course of their analysis.

In a longer version of this comment that I prepared for the APSA meetings I developed three examples of this explanatory strategy. In the limited space here I can merely cite these features of the Segal and Spaeth analysis and suggest that readers review these chapters to see how the authors use various explanatory mechanisms.

[1] In their discussion of the Supreme Court's control of its docket, Segal and Spaeth claim that there are many types of cases, such as "meritless" ones, which "no self-respecting judge would decide solely on the basis of his or her policy preferences" (70). Later, they suggest that "[t]he justices would not likely refuse to review a decision by a lower federal court that voided a major act of Congress, nor would it decline to consider a state court's decision that substantially redefined the scope of the First Amendment, absenting extenuating circumstances" (179). A close inspection of their analysis shows that they do not explain this form of behavior in terms of a strict attitudinal model. Rather they invoke other mechanisms to explain why the judges sometimes do not act according to their substantive attitude towards the merits of the case.

[2] When Segal and Spaeth turn to the explanation of the actual decisions of the Court, they introduce a model which attempts to explain votes of justices in terms of two main categories of variables: the facts of the case and the attitudes of the justices. They state that "behavior may be said to be a function of the interaction between an actor's attitude toward an 'object' (*i.e.*, persons, places, institutions and things) and the actor's attitude toward the situation in which the object is encountered" (215). They operationalize the facts component of the decision by a measure of the relevant facts as articulated in previous Supreme Court decisions. But they are unclear as to exactly how and why the facts of previous cases should affect the attitudinally-driven decisions of future judges. The best justification that I can produce for their claims seems to invoke previous Court decisions as precedent, thus allowing for an independent causal role for law.

[3] In Chapter 8, Segal and Spaeth deal directly with the question of "judicial restraint," an idea that they take to be a central challenge to their main substantive thesis about the Supreme Court as a political body. In attempting to justify the fact that their empirical tests involve exclusively those cases in which the Court overturns a statute or a precedent (thus, biasing the test in favor of a judicial activism conclusion), they argue that the "unconstrained attitude-model" judge always agreed substantively with the cases which were affirmed. Intuitively, this seems highly implausible but this is exactly what Segal and Spaeth conclude: "We have found some evidence of judicial support for the decisionmaking of the other branches and levels of government. But, overwhelmingly, such support results because these nonjudicial actions comport with the policy preferences of the justices themselves" (332). Note clearly that while this may be true, such a conclusion does not follow from any of the empirical tests

(continued on the next page)

offered in this chapter. A more likely source of explanation rests with the types of mechanisms they implicitly invoke in example [1].

My reading of Segal and Spaeth's suggests that the attitudinal model fails to produce a complete and adequate explanation in those instances in which the justices are confronted with a situation which requires *effective* decisionmaking. That is, the attitudinal model fails to account for factors which complicate the relationship between an individual justice's vote and the effectuation of a particular outcome (in this case, the Court's decision.) If the decisions of justices are to be explained mainly in terms of their desire to affect public policy (an explanation with which I am in general agreement), then such accounts should at a minimum incorporate those factors which influence what is in effect a strategic calculation. Such factors appear, on Segal and Spaeth's own account, to implicitly include: constraints which the democratic process places on the decisions of the Supreme Court; constraints which jurisdictional rules (constitutional and statutory) place on the agenda, and thus on the decisions, of the Supreme Court; constraints which precedent, statute and constitutional provisions place on decisionmaking; and constraints which the anticipated votes of their colleagues place on their own voting calculus. Segal and Spaeth may counter that they have explicitly rejected some of these constraints, but the most sympathetic reading that I can give of their argument is that these factors reappear in an ad hoc manner as a way of explaining either (1) how and why attitudes enter into the decisions of judges (the underlying explanatory mechanisms) or (2) gaps in the attitudinal model's presentation.

If scholars who employ the attitudinal model want to move beyond prediction to the systematic provision of answers to these how and why questions, the best evidence of such answers comes from two basic sources, sources which Segal and Spaeth appear to invoke in an unsystematic way. Both are capable, in different ways, of reintegrating the constraints of law into a justice's decisionmaking process. The first source is rational choice theory which treats legal rules as a prudential constraint on decisionmaking. This is the approach most consistent with the basic thrust of Segal and Spaeth's account of the strategic behavior of judges. Here the effects of legal rules enter a justice's strategic calculus on two explicit ways: as a direct effect on the incentives of the available choices and as an indirect effect in their effects on the strategic choices of the other justices. The second source is the non-quantitative empirical literature which investigates the importance of normative constraints on judicial decisionmaking. This literature is often presented in a way quite different from the micro-level orientation which I suggest here, but there is no a priori reason why these normative constraints cannot be incorporated into an intentional account of judicial policymaking. Such constraints might be conceived as normative constraints on the justices' feasible set as opposed to factors incorporated in an expected utility calculus. Or they might be combined with a strategic orientation in a more complex judicial decisionmaking framework. This is in fact one plausible way to read Segal and Spaeth's discussion at the beginning of chapter 8.

These two approaches take more systematic account of the effects of legal and normative constraints on judicial decisionmaking, but allow for the possibility that Supreme Court justices are mainly interested in promoting their own policy preferences. Thus, we are not left with an all or nothing choice: a deductive legal model or an attitudinal model which rejects any causal role for law. And, as I have tried to show, Segal and Spaeth do not consistently adopt the latter approach in their own explanations. Segal and Spaeth invoke features of these other approaches to make sense of their important analyses of the values of judges and their effects on judicial outcomes.

Of course there are problems in empirically assessing the different mechanisms. One test of their persuasiveness however might lie in self-reflection. What I would suggest all students of judicial politics do is to reflect on which mechanisms they actually invoke in their own work.

Gerald N. Rosenberg, *University of Chicago*

It is easier to debunk worn myths of judicial objectivity, however, than to replace them with realistic conceptions . . . that do not overstate the case. Recognizing that judges legislate is the beginning rather than the end of sophistication (Howard 1981, 15-16).

The Supreme Court and the Attitudinal Model is the best work to date on the Attitudinal Model. It brings together an impressive amount of data and makes a strong case for the importance of attitudes as predictors of judicial decisions. The book also should be a wonderful teaching tool. Segal and Spaeth's ability to shake up traditional legal thinking is nicely illustrated by a law student's comment on the Segal and Cover article that is part of chapter 4. She wrote, "Their conclusions undermine the integrity of the Supreme Court . . . [creating a] risk of crisis in American politics;" attitudinal studies are full of "danger" and should not be done. On the other hand, Segal and Spaeth's argument is weakened by straw-person arguments, over

statement, and disrespect for the work of others.

The object of Segal and Spaeth's critique, what they label the Legal Model, "postulates that the decisions of the Court are based on the facts of the case in light of the plain meaning of statutes and the Constitution, the intent of the framers, precedent, and a balancing of societal interests" (32). Under this conception, law is discovered, not made. It follows from this, for example, that "it should not matter whom the President nominates or whether the Senate confirms, given a basic modicum of legal training and intelligence" (125). Not surprisingly, Segal and Spaeth have a field day in chapter 2 showing that the key features of the Legal Model—plain meaning, intent, precedent, and balancing—can be used to support any outcome. Thus, Segal and Spaeth argue that the Legal Model "rest[s] on myth instead of data" (xv) and "serves only to rationalize the Court's decisions and to cloak the reality of the Court's decision-making process" (34).

There are several difficulties with this conception of the Legal Model that make it a straw person. First, practically no judge or scholar believes it. Rather, they tend to believe that the *"Legal Model Properly Understood"* draws a bright line distinction between an a priori commitment to policy preferences or outcomes, as the Attitudinal Model postulates, and an a priori commitment to a set of interpretive principles. Under the Attitudinal Model, judges examine the substantive issue of a case, select the result that most closely accords with their attitudinal (policy) preference, and write an opinion supporting it. In contrast, under the Legal Model Properly Understood, judges apply a set of interpretive canons, a set of principles that guide them in interpreting the Constitution, statutes, precedent, and derive an outcome. They are driven not by outcomes but by interpretive philosophy. And, in accord with the sort of scientific procedure that Segal and Spaeth apply, a group of "judges," if provided a set of facts and told to employ a given interpretive philosophy, should reach similar outcomes. It follows from the Legal Model Properly Understood, for example, that it matters a great deal who the President nominates to sit on the Court because different interpretive philosophies will produce different outcomes. Remove the straw person argument, re-characterize judicial motivations, and the Segal/Spaeth argument is both more powerful and less striking. Indeed, their data and analysis lend a great deal of support to the Legal Model Properly Understood.

Segal and Spaeth's Legal Model is also a straw person because, in contrast to the Legal Model Properly Understood, it requires that judges treat each and every constitutional clause or statutory provision similarly. But why, for example, must Article II, limiting presidential eligibility to those age 35 or older, be treated similarly to the 14th Amendment's requirement of equal protection? There may be good reasons to treat them differently, reasons that derive from a philosophically consistent position, not from a policy-driven preference. In addition, the book's analysis is based on the premise that all cases are equal. But cases differ as to subject area, constitutional or statutory provision, etc., differences that allow for or even demand different treatment. The "inconsistencies" that Segal and Spaeth find may have more to do with their treating dissimilar cases as similar than with attitudes as they conceive of them. Thus, what they call "subjective preferences" may be nothing more than honest attempts to apply consistent interpretive philosophy to the facts. While the choice of interpretive principles is certainly subjective, and in this sense the Attitudinal Model and the Legal Model Properly Understood are similar, the choice is not driven by the preferred policy outcome in any given case.

The Legal Model Properly Understood and the Attitudinal Model produce similar results. In virtually every area where Segal and Spaeth find support for the Attitudinal Model, the Legal Model Properly Understood is potentially supported as well. For example, in chapter 5, Segal and Spaeth analyze judicial access and conclude that the decisions of the justices are driven by their policy preferences. But merely to show that access is "subject to the justices' control" (206) is not the same as showing that it is determined by the "individual justices' personal policy preferences" (206). It could well be the result of a consistent philosophical position. Similarly, to show a correlation between attitudes and votes in the areas of the death penalty (224), civil liberties cases (228), and a number of other issues (Appendix 6.1, 255-60), is consistent with both the Attitudinal Model and the Legal Model Properly Understood.

I would be remiss if I did not address the book's tone. *The Supreme Court and the Attitudinal Model* is marred by numerous disrespectful ad hominem attacks. They are inappropriate, counterproductive, and not supported by the evidence. For example, the characterization of Justice Blackmun's positions on the death penalty and abortion as "pure hypocrisy" and "simply bunkum" (235-36) is distasteful and unsupported. They present no evidence of Blackmun's thinking. What they do present, correlations, are suggestive, not conclusory.

Segal and Spaeth's conclusions of judicial deceit throughout the book are based on the correlations they produce between their set of attitude measures and votes. They have no supporting evidence as to the motivation of judges while they do have opposing anecdotal evidence that the Attitudinal Model is seen as inappropriate to the judicial role. Their response, however, is not to acknowledge the limitations of their methodology. Rather, they launch a full-scale attack on the truthfulness of judges and scholars who do not believe that the Attitudinal Model explains everything. Indeed, they simply deny the possibility that commitment to principle can override policy preferences. As they put it, "rational people. . . along with judges, only

(continued on the next page)

defer to the course of action or to the policies of which they approve" (300). They assume a conspiracy so immense as to involve all judges and most legal commentators. Either most members of the legal profession (and scholars who study the law) completely lack insight or self-knowledge, or they all share this dirty little secret.Such arguments are not persuasive. While Segal and Spaeth may be right, and their correlations are impressive, they have only begun to make the case.

By relying on straw-person arguments and overstating their conclusions, Segal and Spaeth offer an initially more striking but ultimately less powerful argument. A more careful argument, one less dismissive in tone and more sensitive to the richness of alternative approaches, would pack a much greater punch. Judicial politics scholars, like others, can learn a great deal from their colleagues. *The Supreme Court and the Attitudinal Model* makes an important contribution to our knowledge, but it is not the final word.

Rogers M. Smith, *Yale University*

I. *The Value of the Book.* Let me first stress a fundamental agreement. If our task is predicting judicial votes, and the choice is between the "legal model" Segal and Spaeth describe and models of ideological attitudes, then I, along with virtually all other political scientists, am firmly on the side of Segal and Spaeth. As a doctrinally oriented political scientist, Robert McCloskey, argued long ago, "it is perfectly apparent to the detached observer that the Court's decisions do tend to fall into patterns that reflect current judicial views of what ought to be done; and that these views, though heavily influenced by the nature of the forum that issues them, are nonetheless policy determinations." McCloskey then contended that "since the constitutional questions that do successfully claim the attention of the Court are often those least answerable by rules of thumb, the predilections, the 'values ' of the judges, must play a part in supplying answers to them" (McCloskey 1960, 27). My own research and writing over 20 years have only made me more confident of those premises. Segal and Spaeth differ from them only in emphasis. True, they downplay the influence of the legal "forum" and stress the role of judicial values almost exclusively. But, they do so while acknowledging that there are legally "meritless cases that no self-respecting judge would decide solely on the basis of his or her policy preferences." They also contend that the Supreme Court generally refuses such cases and considers only those that "tender plausible legal arguments on both sides." Then judicial preferences become decisive. That is little more than a paraphrase of McCloskey's position (70).

The research on attitudinal models by Segal and Spaeth, and others, has, however, greatly strengthened this general political science view by operationalizing it and providing evidence for it over the last 30 years. Their book is the most thorough presentation of the attitudinal approach extant, and it is also an invaluable summary of a wide range of empirical work on the Court. Hence it is already a basic reference in our field.

II. *Main Concerns.* The book could nonetheless be stronger in several ways. First, it has a hectoring tone that makes it seem more defensive and less magisterially mature than it should. Even copy editors are praised only to the extent that they refrain from disagreeing with Segal and Spaeth (xviii)! This shrill style encourages unsympathetic readers to write the work off, mistakenly, as unduly extreme.

More importantly, the book attacks the wrong targets. Its official target, the "legal model" of "interpretivist jurisprudence," is a straw man as far as modern judicial scholarship is concerned. Segal and Spaeth cite some judges, such as the anti-New Deal Four Horsemen, who said deductive reasoning from authoritative legal texts determined their results. But Segal and Spaeth also note that some judges reject this claim, and they admit that even many "legalist" judges engage in "balancing," an approach that openly relies on subjective judicial assessments of social advantage (4-7, 52-53, 356). Most significantly, Segal and Spaeth do not cite a single scholar who now claims that courts actually behave largely in accordance with traditional "mechanical jurisprudence." They only invoke writers like Raoul Berger and Robert Bork, who think the Supreme Court SHOULD act that way, but bemoan the fact that the Court rarely does. Bork levels this critique against every Supreme Court since John Marshall's (55-57; Bork, 1990, 15-132).

Segal and Spaeth fail utterly to address what is really their most appropriate "legalist" target now: the sophisticated post-realist jurisprudence of legal scholars like Ronald Dworkin and Bruce Ackerman. These authors *reject* the old mechanical legal model and *acknowledge* the impact of judicial values on decisions. To preserve legal credibility, however, they still try to minimize the significance of judicial values in ways that may well be vulnerable to the Segal and Spaeth critique. But Segal and Spaeth fail to take on these potent current targets and instead tilt at

long abandoned windmills. At times they make modern versions of legalist jurisprudence look more balanced and credible than their own. They often write as if legal factors played not the *slightest* role in judicial decision making, a claim they disavow in their careful moments (e.g. 1-3, 34, 206, 360-361).

Ronald Dworkin argues that justices reach decisions that may have merely an "adequate fit" with authoritative legal texts and precedents. They decide among the many views that have such minimally "adequate" conformity to legal materials by relying on the political and moral values that seem *to them* parts of the most coherent and persuasive constitutional theory they can find or construct (Dworkin, 1978, 106-107, 127-128; 1986, 65-68, 87-88). This account suggests that in most serious constitutional cases black-letter law is a lesser factor. The ideological values of justices play the decisive role, just as Segal and Spaeth and other political scientists contend. But Dworkin tries to preserve an aura of legal objectivity by stressing that judges must use their values to give content to concepts they find in the law, even when their preferences might be against those concepts being there; and by stressing that there is "one right answer" each judge must reach, even though that answer may be different for different judges. Whether these reassuring claims are true, and whether in any case they make judicial decision making significantly more constrained than Segal and Spaeth believe, are the sorts of pertinent questions Segal and Spaeth fail to address.

Similarly, Ackerman claims Supreme Court decision making is now largely a matter of synthesizing the "texts" of previous distinct constitutional moments. That task leaves room for judicial discretion and creativity but again, only within bounds set by clearly defined legal problems (Ackerman, 1991, 86-99, 159-162). It is unclear if one can or cannot operationalize this model of "synthetic problem-solving" in contrast to the attitudinal model; but either way, Ackerman offers an influential current position that is vulnerable to a Segal and Spaeth-style critique. Yet he escapes unnoticed.

III. *An Unofficial Target?* Finally, at times Segal and Spaeth seem to have another, unofficial target. They are vexed by the abundant scholarship in political science which accepts that Supreme Court justices vote in terms of their ideologies, but analyzes those ideologies interpretively, not quantitatively. Since my own work falls under this head, I may be unduly sensitive here. But their first paragraph says "most" of what political scientists have written about the Court "has been historical, anecdotal, legalistic, tendentious, or doctrinal." They dismiss this "stuff" as suited at best only to other disciplines, because none of it is "science," though they do rely on such sources on occasion (xv; cf. xviii, 67, 356).

Segal and Spaeth seem to think that most if not all nonquantitative public law scholarship concedes too much to the "legal model." I believe they should instead recognize that interpretive studies of judicial ideologies can helpfully complement their own. They rightly say judicial "beliefs" or "attitudes" have "cognitive, affective, and behavioral components" and that they are concerned only with the "behavioral components," judicial votes (69). Their focus is fine, but a fully explanatory social science must also address the cognitive and affective dimensions of decision making. We should try to illuminate the modes of reasoning and logical tensions associated with certain sets of beliefs as well as the varying subjective attachments to those beliefs judges are likely to have. Such assessments can often only be reached via nuanced discursive interpretations that are not easily reduced to an attitudinal scale. Good interpretive accounts can then identify factors in decision making that more summary attitudinal models may neglect. They can, for example, highlight contradictions in a judge's ideological beliefs that may lead him to alter his voting pattern or even his structure of beliefs when faced with unusual cases that make those contradictions unavoidable. And an account of the affective power his conflicting beliefs have for him may predict which way he will then go.

To be sure, such interpretations should be well-specified and falsifiable, and too often they are not. It should always be possible for critics to show, for example, that a justice's opinions *rarely* exhibit the modes of reasoning and tensions an interpretive scholar identifies as characterizing his ideology. But, if well done, interpretive studies can shed light on the inner workings of the beliefs attitudinal models simply count, producing explanations that supplement the predictions those models achieve, and sometimes helping scholars to construct more powerful attitudinal models and to address further questions. In turn, interpretive work is likely to be much better done if the voting patterns discerned via attitudinal models are fully considered.

Hence I would urge Segal and Spaeth to view interpretive efforts as linked, not opposed, to their quantitative endeavors. And both belong in science. After all, as Segal and Spaeth note, it was a lawyer and judge, Oliver Wendell Holmes, who saw the law *simply* as predictions of what the courts would do (241 n. 128). Such predictions are often all that lawyers and their clients want to know. But scholars should not just be interested in predictions. We seek the most powerful explanations of human experience we can devise, including explanations of patterns of cognition and affection, and accounts of why people sometimes find their beliefs problematic and change them. The attitudinal model is not useless for those questions, but its strength lies in predicting votes. Let us applaud it for that and seek its elaboration and refinement. Let us not imply that it is the only aspect of public law research worthy of the name "political science."

(continued on the next page)

The Authors Respond

Jeffrey A. Segal, *SUNY-Stony Brook* and Harold J. Spaeth, *Michigan State University*

Our critics argue both that the legal model is a straw man and that the legal model is true. They say we are both too devoted to the attitudinal model and not devoted enough to it. We consider their arguments in turn.

First and foremost, the legal model is hardly a straw man. While none today could credibly argue that legal factors are all that influence judicial decisions, the argument that legal factors do influence court decisions is made by some of the brightest minds in law and political science. In addition to the luminaries noted by Smith, one might add scholars such as John Ferejohn and Barry Weingast (Ferejohn and Weingast 1992; McNollGast 1992). Indeed, all of our critics except Smith accept various tenets of the legal model, though some (*i.e.*, Rosenberg) do so more than others (*i.e.*, Baum). Smith's review of modern legalist thought is useful and we agree with his contention that the book could have benefited from a discussion of these scholars.

Smith is also correct in noting that the attitudinal model has a difficult time accounting for changes in attitudes. More accurately, it does not even attempt to. Instead, the model treats attitudes as exogenous. If attitudes are crucial to the justices's decisions, then the source of attitudes and attitude change becomes crucial as well. Quantitative methods have not been exceptionally useful in explaining justices's attitudes and have shed extraordinary little light on the causes of individual attitude change. To the extent that justices such as Blackmun do shift over time, our empirical model is limited in that we treat attitudes as stable across a justice's career. This is more a measurement problem than a theoretical problem, for while attitudes must be *relatively* stable, long-term drifts and occasional random shocks are not precluded. Such shifts, unfortunately, are extremely difficult to measure on an a priori basis. Regardless, the explanatory ability of our model suggests we do not do too much damage by modeling a justice's attitudes as constant.

We must dissent from Smith's argument that we disrespect qualitative research. We frequently and positively cite the works of Henry Abraham, Judith Baer, Leif Carter, Sue Davis, H.W. Perry, Gerald Rosenberg, and Charles Warren. No author receives more extensive citation than Robert McCloskey. (We nevertheless trace our intellectual roots not to McCloskey, as Smith suggests, but to the legal realists who wrote decades before McCloskey. See 65-66.) While we find much of merit in cited qualitative works, let us not be misunderstood: we still believe that evidence as to the factors that affect Supreme Court decisions must be systematically demonstrated.

Rosenberg's arguments about the Legal Model Properly Understood is a perfect example of why the legal model has, to date, failed as a scientific explanation of the Court's behavior. If justices can be textualists in some areas, intentionalists in others, and social engineers in still others, then there is no decision that would be *in*consistent with Legal Model Property Understood. *A model that is so broad that it can be used after the fact to explain everything necessarily explains nothing.* Alternatively, if we actually restrict justices to a consistent jurisprudential philosophy, then we have a falsifiable hypothesis that has already been falsified. We recommend to all who may have missed it the Phelps and Gates article (1991), which demonstrates that Justice Brennan, just like Justice Rehnquist, relies on intentionalist arguments when it suits his purposes, and Justice Rehnquist, just like Justice Brennan, relies on nonintentionalist arguments when it does the same.

We make no apology, by the way, for pointing out similar inconsistencies in the opinions of other justices and labeling them as such, *e.g.*, Blackmun's intentionalist approach in *Furman* as compared to his substantive due process approach in *Roe*. Blackmun's recent statement that the death penalty is unconstitutional demonstrates perfectly the problem we had with his initial statements in *Furman*. Since his 1972 opinion stating that the Constitution forced him to uphold the death penalty—despite his purported personal abhorrence of it—the text of the Constitution with regard to the death penalty has not changed, no significant new evidence about the intent of the framers has been found, and Court precedents on capital punishment have gotten substantially more conservative. The public supports capital punishment by even greater margins than it did in 1972 (Epstein et al., 1994, 591) and crime certainly has not become a less important national concern. What then could have caused Blackmun's change of heart? All court watchers agree that Blackmun has become substantially more liberal over the past two decades. It was his conservative ideology on criminal procedure issues that prohibited him from striking the death penalty in 1972, and his more liberal ideology that allows him to do so now. The Constitution never prevented him from declaring the death penalty unconstitutional in the first place, regardless of his protests in *Furman*.

Needless to say, we posit no Oliver Stone-like conspiracy in regards to the legal profession. Judges consistently recognize policy-based decision making in the votes of justices with whom they disagree. Rarely, if ever, though, does a judge acknowledge the same in his or her own legal opinions. This hardly requires an immense conspiracy. Legal socialization, to say nothing of self-preservation, keeps even self-aware judges from admitting

their attitudinal biases. It requires no conspiracy to note that members of Congress are influenced by PAC contributions, even though none would admit it about her or himself. Just as a member of Congress who admitted voting based on PAC contributions might well be defeated, a judge who admitted voting based on policy preferences might well be impeached. With regard to legal scholars the dominant mode of analysis is the legal model. In the law schools the job of pointing out the role of attitudes and values has essentially fallen to the critical legal theorists, albeit from their own ideological perspective.

Rosenberg's claim that we are too wedded to the attitudinal model is directly contracted by Jack Knight's claim that we are not wedded enough to it. In particular, much of our discussion about docket control and the certiorari process is not strictly attitudinal. Knight believes that this is inconsistent with our purported claim that the attitudinal model is "a complete and adequate explanation of judicial behavior." If we made such a claim we would be due for a great deal of criticism but this clearly misrepresents our view. While we argue that the attitudinal model is a complete and adequate *model of the Supreme Court's* decisions on the *merits*, this is a far cry from what Knight claims we say. We do believe that the attitudinal model has *implications* for cert votes, for opinion assignment, and for the behavior of lower court judges, but we would be closing our eyes to reality if we argued that that's all there is to those decisions. Nor are such conclusions *ad hoc*. The institutional rules and incentives that allow Supreme Court justices to engage in attitudinal decision making in votes on the merits simply do not apply in full to other courts or to other stages of the Supreme Court's processing of cases. Certainly justices engage in strategic behavior in certiorari voting, and just as certainly opinion assigners pay careful attention to ideological proclivities when handing out assignments. But nothing in the attitudinal model, which was developed explicitly to explain the decision on the merits, requires these factors to be sole explanations of the justices's behavior at other stages. Legalistic questions of jurisdiction and standing clearly have some importance in cert decisions. Nor could anyone credibly argue that the need to share workload has no importance in opinion assignment. Burger, after all, did assign some cases to Brennan and Marshall. In short, different types of decisions are not fungible with one another. Context matters. Justices overloaded with cases to hear use legalistic criteria to help weed them out. Chief justices wishing to maintain efficient working conditions assign some opinions to ideological opposites. We make no apologies for considering extra-attitudinal factors in these areas. Finally, with regards to the Supreme Court's decisions on the merits, we remind readers that it is a model we are expounding. We do not say that attitudes are all that matter in the vote of every justice in every case. We do present a model that says that attitudinal factors are all that systematically explain the votes of the justices (chapter 2). With the exception of the Solicitor General our empirical analyses find no other extra-attitudinal influences operating on a systematic level (chapters. 6 and 8). Neither Knight nor any of our other critics provide any evidence to the contrary.

We also note that case stimuli are consistent with both attitudinal and legal decision making, and thus cannot help us distinguish between the two. Those parts of the attitudinal model that are independent from the legal model have been supported; those parts of the legal model that are independent from the attitudinal model have not been.

Knight claims that our empirical tests of judicial restraint are biased in that they "involve exclusively those cases in which the Court overturns a statute or a precedent." Again, if that were true he would have a valid point. In addition to the cases he mentions, though, we examine each of the following in an attempt to find evidence of judicial restraint: all cases in which the Supreme Court reviewed NLRB decisions between 1953 and 1959, 1969 and 1977, and 1981 through 1989 (305-308); all cases in which the Court reviewed state economic regulation between 1981 and 1989 (308-310); all state and federal First Amendment, double jeopardy, search and seizure and poverty law decisions between 1969 and 1979 (310-311); all state and federal civil liberties decisions between 1981 and 1989 (311-312); all Solicitor General briefs between 1983 and 1988 (313); and *all* challenges to state and federal laws between 1986 and 1989 (320). We believe we have conducted the most exhaustive search for judicial restraint of any scholars to date.

Knight then argues that we could have retained a single unifying theory of judicial behavior had we adopted rational choice theory (aka positive political theory) as our paradigm. Rational choice theorists are split on the role of the Supreme Court in the American political system. One school of thought (e.g., McNollGast 1992) considers judges, at least in part, to be neutral arbiters of original intent and is thus consistent with the legal model. A second school considers judges to be purely policy-motivated actors who are nevertheless constrained by preferences of other political actors (Ferejohn and Shipan 1990; Marks 1988; Gely and Spiller 1990). Indeed it is easy to demonstrate using formal mathematical logic that a politically motivated Supreme Court *must* carefully consider the views of Congress in reaching its decisions. We warn readers though that such results are typically achieved by forcing the Court into a statutory interpretation mode and granting Congress the last move (Ibid).

There is enormous power to the formal logic of positive political theory. The policy-motivated school may someday emerge as the strongest competitor to the attitudinal model as an explanation of the Supreme Court's decisions. To date, however, empirical verification remains virtually nonexistent. As Lee Epstein so cogently put it,

(continued on the next page)

"the modus operandi of the theorem provers who have studied these questions will not suffice. The standards of social science simply require more than reading some cases (*e.g., Grove City* seems to be a favorite), developing a model, and then testing the model against the same cases used to develop it (again, *Grove City* comes to mind)" (1993, 4). With the single exception of Spiller and Gely's article on the Supreme Court's NLRB decisions (1992), the positive political theory of courts has no more systematic empirical evidence supporting it than does the legal model.

Knight's call for examination of normative constraints is no more persuasive. As we note in our book, role models have been successful in examining lower court behavior, but the unique status of the Supreme Court makes such behavior there unlikely. Again, we sound a familiar refrain: there exists no systematic evidence of their usefulness at the Supreme Court level.

Finally, Baum's analysis of our evidence raises some important points that need to be answered. First, he argues that our independent measures of the justices' ideology do not actually tap the justices' policy preferences in pure form. This is necessarily true since "policy preferences" or "attitudes" or "values" are constructs: they do not actually exist. As such, all measures of attitudes, including ours, are indirect. Relatively speaking, though, one could argue that our indirect measures are more indirect than others typically used in survey research, such as attitude questionnaires. Note though that the use of such questionnaires, even if the justices would agree to their use, would not necessarily give us better measures of their attitudes. Self-deception, social desirability effects, and flat-out lying, would mar any such analysis. Judicial nominees who can state under oath before the entire nation that they had never thought about *Roe v. Wade* can hardly be fruitful candidates for traditional survey measures.

Baum, while acknowledging that we find strong relationships between our attitudinal measures and the justices's voting, questions whether our attitudinal measures might be confounded by factors other than policy preferences that also would affect the justices' voting behavior. For instance, consistency is a necessary but not sufficient condition for attitudinal voting, as we point out in our book. Additionally, newspaper editorials might be influenced by the justice's legal attitudes as much as by their political attitudes, and it might be these legal values that influence the justices' votes. Again, as we point out in the book (228), such a hypothesis fails to explain why our measure works demonstrably better for justices without prior judicial experience (r= .94) than for justices with prior judicial experience (r= .69). These results suggest that any inferred legal values provide disinformation about both the true values of the justices and how they will vote once on the Court.

Baum is correct that we do not provide systematic evidence against the legal model. But then,*no one* to this point has been able to provide testable hypotheses about the legal model. As we noted above, it is a basic tenet of science, whether social, political or natural, that an untestable model has no explanatory power. The inability of our critics to cite any scholarly evidence demonstrating the validity of alternative approaches with regard to the Supreme Court's decisions on the merits buttresses our claims more than anything we could say in response. The leap of faith is not made by those who accept that which has been empirically verified, but by those who believe in alternatives despite the absence of supporting evidence.

References

Ackerman, Bruce A. 1991. *We the People.* Harvard University Press.

Bork, Robert H. 1990. *The Tempting of America.* New York: Free Press.

Dworkin, Ronald. 1978. *Taking Rights Seriously.* Harvard University Press.

Dworkin, Ronald. 1986. *Law's Empire.* Harvard University Press.

Epstein, Lee. 1993. "Remarks on 'New Avenues for Modeling Judicial Politics,' by Charles M. Cameron." Prepared for the Conference on the Political Economy of Public Law, University of Rochester, October 15-16, 1993.

Epstein, Lee, Jeffrey A. Segal, Harold J. Spaeth, and Thomas G. Walker. 1994. *The Supreme Court Compendium.* Washington, D.C.: Congressional Quarterly Press.

Ferejohn, John and Barry Weingast. 1992." A Positive Theory of Statutory Interpretation." *International Review of Law and Economics* 12:263.

Gely, Raphael and Pablo T. Spiller. 1990. "A Rational Choice Theory of Supreme Court Statutory Decisions with Applications to the *State Farm* and *Grove City* Cases." *Journal of Law, Economics, and Organization* 6:263.

Howard, J. Woodford. 1981. *Courts of Appeals in the Federal Judicial System.* Princeton University Press.

Phelps, Glenn A. and John B. Gates. 1991. "The Myth of Jurisprudence." *Santa Clara Law Review* 31: 567.

Marks, Brian. 1988. " A Model of Judicial Influence on Congressional Policymaking: *Grove City College v. Bell*." Working Paper P-88-7, The Hoover Institution, Stanford University.

McCloskey, Robert G. 1960. *The American Supreme Court.* University of Chicago Press.

McNollGast. 1992. "The Use of Positive Political Theory in Statutory Interpretation." Prepared for the Law and Contemporary Problems Conference on Regulating Regulation, Duke Law School, November 13-14, 1992.

Spiller, Pablo T. and Rafael Gely. 1992. "Congressional Control or Judicial Independence." *RAND Journal of Economics* 23:463.

Assessing Journal Prestige in the Field of Judicial Process

Jack E. Call, *Radford University*

While efforts have been made to evaluate journal prestige in political science (Garand 1990; Giles, Mizell, and Patterson 1989), public administration (Colson 1990), and criminal justice and criminology (Cohn and Farrington 1990), no such efforts have been made in the judicial process field. This article represents and effort to begin to fill that void.

Methodology

Two basic methods are typically used to evaluate journal prestige: subjective evaluations of journals by academicians (and sometimes practitioners) in the discipline and an analysis of the citation of journals in the field. This study includes both of these methods. Subjective evaluations of journals were obtained by means of a questionnaire sent to 292 members of the Law and Courts Section of the APSA who had returned a questionnaire to the section editor, indicating an interest in courts and judicial process. Usable questionnaires were returned by 86 respondents (29.5%).[1]

The second set of data gathered for this study was drawn from judicial process textbooks and recent judicial process articles published in two journals that emphasize judicial process. Ten textbooks were chosen because they had recent publication dates and because they took a court system approach to organization, rather than a legal system approach.[2] A data sheet was filled out for each journal article that was cited in each of the books. Information gathered included the author and title of the article, all the biliographical information about the article, and the pages on which the article was cited. Each journal was also classified as to type of journal (such as, political science, sociology, judicial process). This information was gathered for about 1,242 articles, which were cited a total of 1,670 times.

It also seemed desirable to examine citation patterns in at least a couple of journals publishing judicial process articles. Even before the information above was compiled from the 10 textbooks, it was anticipated that *Judicature* and *Law & Society Review* would be two of the leading judicial process journals. Consequently, data were gathered about citation patterns in 55 articles in volumes 25 and 26 of *Law & Society Review* and 87 articles in volumes 73, 74, and 75 of *Judicature*.

Subjective Evaluations

Respondents were given a list of 18 political science journals.[3] They were asked to select the journal from this list that they thought: 1) most frequently publishes articles dealing with judicial process, 2) annually publishes the greatest number of articles that are of substantial value in *teaching* judicial process, and 3) annually publishes the greatest number of articles that are of judicial process articles that add significantly to our *understanding* of judicial process. They were asked to select only one journal in each of the three categories and did not rank order the journals. The findings of the questionnaire are reported in Table 1. In all three categories, two journals were listed most frequently—*Judicature* and *Law & Society Review. Judicature* was most commonly cited as the journal that publishes judicial process articles most frequently, but *Law & Society Review* finished a close second in this category. *Judicature* received three times

Table 1

Leading Judicial Process Journals in Three Categories

	FP	*TV*	*LV*
American Political Science Review	—	2	4
Harvard Law Review	1	3	3
Journal of Criminal Law and Criminology	1	2	1
Journal of Politics	4	4	9
Judicature	34	45	14
Justice System Journal	5	3	3
Law & Social Inquiry	—	—	3
Law & Society Review	25	15	27
Western Political Quarterly	6	1	5

Note: The numbers represent the number of respondents who ranked the journal as the leader in that category. FP=Most frequently publishes articles dealing with judicial process; TV=Annually publishes the greatest number of judicial process articles that are of substantial value in teaching judicial process; LV=Annually publishes the greatest number of judicial process articles that add significantly to our understanding of judicial process.

Table 2

Citation Analysis

Journals Cited Most Frequently in 10 Leading Textbooks

	Articles Cited	*No of Citations*	*Citation/Article*
Judicature	184	253	1.375
Law & Society Review	141	234	1.660
American Political Science Review	62	104	1.677
Journal of Politics	57	91	1.596
Justice System Journal	48	68	1.417
Western Political Quarterly	42	55	1.310
American Journal of Political Science	40	68	1.700
Harvard Law Review	33	38	1.152
American Politics Quarterly	32	44	1.375
ABA Journal	30	32	1.060

***Number of Articles Cited from 5 Most Frequently Cited Journals in a Sample of Articles Published in* Judicature *and* Law & Society Review**

	Total Citations	*Citations-Judicature*	*Citations-LSR*
Law & Society Review	216	32	184
Judicature	144	133	11
Harvard Law Review	48	19	29
Journal of Politics	37	33	4
Law & Social Inquiry	37	8	29

as many votes as *Law & Society Review* as the journal that published the most articles of teaching value. When respondents picked the journal that adds most to our understanding of judicial process, the status of *Judicature and Law & Society Review* was reversed. Nearly twice as many respondents picked *Law& Society Review* over *Judicature.*

Citation Analysis

An analysis of the articles cited in the 10 textbooks selected for review, as well as recent articles published in *Judicature* and *Law& Society Review,* is consistent with the subjective evaluations of the respondents. *Judicature* and *Law & Society Review* were far and away the most frequently cited journals. As Table 2 indicates, they accounted for over a quarter of the articles cited in the textbooks and nearly 30% of all citations found there. They accounted for 37.3% of all the articles cited in the journal articles (bottom of Table 2).

Of course, one of the obvious reasons why these journals may account for such a large proportion of the citations is the fact that they are more specialized journals than the other journals that are "competing" with them for judicial process journal prestige. Table 3 lends support to this point. Journals are grouped by type in this table.

There are more political science journals than judicial process journals and considerably more law journals than judicial process journals. When citations of all the political science and law journals are grouped together, their citation contribution is comparable to that of the judicial process and sociology journals. One very surprising finding was the small number of articles that were frequently cited in the textbooks. It was anticipated that a substantial number of articles would be cited in over half of the textbooks. In fact, only 90 articles were cited in three of more of the textbooks, and only 25 articles were cited in four textbooks or more (a list is available from the author).

In short, very few articles were cited frequently. Thus, the variations in citations per article were not substantial in size. Nevertheless, by this measure a few journals stood out. *American Journal of Political Science, American Political Science Review, Law & Society Review,* and *Journal of Politics* had citation per articles rates of 1.6 or better, well above the average citation per article rate of 1.345 for the entire data set. The 1.375 citation per article rate for *Judicature* was only slightly above the average rate.

The citation patterns in articles published in articles in *Judicature* and *Law & Society Review* revealed some interesting differences in the nature of the articles they published. Articles in each journal tended to cite heavily

articles that had appeared previously in that journal. For example of the 144 citations to *Judicature* articles that appeared in the articles surveyed in both journals, 133 of those citations were in *Judicature* articles. Conversely, of the 216 citations to *Law & Society Review* articles, 184 of those were in *Law & Society Review* articles.

Law & Society Review demonstrated a strong sociological emphasis. Articles in that journal contained 87.5% of all the citations to sociological journals. All 23 of the citations to *American Sociological Review* articles were in *Law & Society Review* articles; none were in *Judicature* articles. *Judicature* demonstrated a strong political science emphasis. Articles in that journal contained 80.4% of all citations to political science and judicial process journals. However, when it came to the citation of law journal articles, both journals cited them frequently.

Conclusion

The survey and citation analysis in this study suggest that *Judicature* and *Law & Society Review* are the leading journals in the judicial process field. However, there are also shortcomings to the measures taken in this study that led to this conclusion. Only political scientists who are members of the APSA were surveyed. Undoubtedly, many academicians with an interest and expertise in judicial process were excluded from the survey. In addition, in the citation analysis, only ten textbooks were surveyed. There are certainly other important process texts that were not, but ideally would have been, surveyed.

Table 3
Citation by Type of Journal and Articles Cited

Number of Citations by Type of Journal in 10 Textbooks

Type of Journal	*N of Articles*	*Total Citations*	*Citation/ Article*
Political Science	310	461	1.487
Law	368	434	1.179
Sociology	173	281	1.624
Judicial Process	316	416	1.316
All others	75	78	1.040
Total	1242	1670	1.345

Number of Articles Cites in Types of Journals in a Sample of Articles Published in Judicature and Law & Society Review

Type of Journal	*Total Citations*	*Citations in Judicature*	*Citations in LSR*
Law	684	323	361
Sociology	353	44	309
Judicial Process	226	173	53
Political Science	167	143	24
Psychology	64	17	47
Other	317	51	266
Total	1811	751	1060

Nevertheless the research reported here provides important data that is relevant in determining the leading judicial process journals. The judgments of political scientists who report an interest in judicial process and the articles cited in leading texts in the field certainly are important indicators of journal quality and prestige.

Notes

1. The respondents represent a broad range of teaching experience. About half have been teaching at the college level less than 17 years, but nearly 30% have been teaching 25 or more years. Over 60% of the respondents teach at doctorate-granting universities. Another 30% teach at four-year colleges or universities.

2. The books were: Neubauer, *Judicial Process;* Carp and Stidham, *Judicial Process in America;* Glick, *Courts, Politics, and Justice*; Gates and Johnson, *The American Courts;* Baum, *The Supreme Court;* Wice, *Judges and Lawyers;* Stumpf and Culver, *The Politics of State Courts*; Jacob, *Law and Politics in the United States*; Holton and Lamar, *The Criminal Courts;* Myren, *Law and Justice.*

3. They were: *American Political Science Review, Polity, Journal of Politics, Social Science Quarterly, Western Political Quarterly, American Politics Quarterly, American Bar Association Journal, Journal of Criminal Law and Criminology, Harvard Law Review, Yale Law Journal, University of Chicago Law Review, Journal of Legal Studies, Law & Society Review, Law and Policy Quarterly, Judicature, Justice System Journal, American Bar Foundation Research Journal (*now *Law & Social Inquiry), Justice Quarterly.*

References

Colson, Harold. 1990. "Citation Rankings of Public Administration Journals." *Administration and Society* 21:452.

Cohn, Ellen G. and David P. Farrington. 1990. "Differences between British and American Criminology: An Analysis of Citations." *British Journal of Criminology* 30:467.

Garand, James C. 1990. "An Alternative Interpretation of Recent Political Science Journal Evaluations." *PS* 23:448.

Giles, Micheal, Francie Mizell, and David Patterson. 1989. "Political Scientists' Journal Evaluations Revisited." *PS* 22:613.

Jack E. Call is Professor of Criminal Justice at Radford University. For more information about the research reported in this article, contact him at: Department of Criminal Justice, Radford University, College of Arts and Sciences, Box 6934, Radford, VA. Phone (703) 831-6148.

Evaluating Political Science Departments

Paul Teske, *State University of New York, Stony Brook*

While academic departments are not NCAA football or basketball teams that require weekly national ratings, many actors in the academic community are interested in the quality and productivity of individual departments. Students want guidance on where to go to graduate school, faculty morale is important, state legislators want to know that tax money is being well spent on research, and promotions and internal university resources may partly depend on relative rankings of specific departments.

There are many ways to rank the quality of graduate departments (see, *e.g.*, Welch and Hibbing 1983; Blair et al. 1988). Some studies have used citation scores (see Klingemann 1986; Klingemann et al. 1989) to estimate the disciplinary impact of research by department members. Citation scores tend to weigh very heavily seminal articles by scholars who may no longer be active and are extremely "top heavy" in terms of dependence on particular individuals. Comparisons have also utilized reputational methodologies to get a "peer review" of how departments are doing. These have many advantages over citation scores; the latest effort involved input by department chairs and was performed by *U.S. News and World Report* in 1992 (as reported in Change in Higher Education). Still, reputations probably contain significant lags, as aggressive and newer departments may not receive credit for their efforts for many years, while sliding departments may hold onto a high reputation in others' minds, and relatively weak departments in excellent universities may do better than they deserve, based on university "brand name" (see Robey 1982). The market test of how departments place their graduate students would be an excellent one, but it is difficult to put together a coherent methodology and, in any case, rankings of where they receive jobs would still be required.

Here, I propose another way to evaluate department quality, or at least productivity, that has substantial merit and also correlates fairly well with reputational rankings. I examine the number of publications in the top three general political science journals (as established by Giles, Mizell, and Patterson 1989 and Garand 1990), the *American Political Science Review (APSR),* the *American Journal of Political Science (AJPS),* and the *Journal of Politics (JOP).* All political scientists have the opportunity to publish in these general journals, as opposed to specialist journals. These journals are the official publications of the three largest associations in the discipline, the American, the Midwest, and the Southern. I examine total journal publications by department over the past decade *(Editor's note: The author also examined specific journal publications by department. To obtain this information, write to him at the address below.)*

Obviously, this, or any other, methodology should not be the only way to evaluate departmental quality. It does not include the impact of books, which many departments consider the most important publications their faculty can produce. It does not include articles in specialized journals, and there are many high quality journals in international relations, judicial process/public law, political economy, political behavior, and other subfields that sometimes produce more important and cited articles than those in these three general journals. Also, not every article in these three journals is of equal importance; some will become classics, while others will rarely if ever be cited. Still, each article in these journals had to pass very rigorous peer review, with a relatively low average chance of succeeding, and each article is likely to be read or browsed by a large number of political scientists.

Methodology

I chose to examine departments over a decade as any shorter period is likely to reflect random strong and weak showings by departments. In developing a specific methodology, I use a simple point system, giving each article in these journals 1 point and apportioning that point to the departments of the authors. (I believe that this methodology is an expansion of an unpublished analysis prepared several years ago by David Lowery, but covering only the 1984-88 period.) All articles—including regular articles, research notes, and workshops—are scored 1 point. Controversies are considered one article total—thus both parties to a controversy receive 0.5 points. As they do not represent original research, book reviews and book review essays are not counted, nor are *APSR* "Communications" in 1983 (which are more like letters than controversies). Presidential address articles do count. The departments receive credit for articles based on the published affiliation of the authors; if the faculty member moves to another department, the credit stays with the published affiliation (any other system would be much more difficult to track). Multiple author articles are divided by the

number of authors; for example, each institution with a triple-authored article gets .33 point. Departments do not receive any extra benefit for having the first, rather than the second or third, author. I do include articles published by faculty in other departments or schools (such as, economics, business schools, sociology) at these institutions. To examine departmental publication activity per capita, I also divide these article totals by the FTE in the departments, from the 1992-94 Graduate Faculty in Political Science listing (including all names listed).[1] While movements from, say, #11 to #12 may be fairly sensitive to these methodological choices, the general position of departments is not highly sensitive to the methodology—departments at the top are publishing more than twice as many articles as those ranked 20 positions lower.

Results

Table 1 lists the results for the top fifty departments over the past decade, 1983-1992. The first column of numbers after the department names show the 3-journal totals, by which the departments are ranked. The next column is the FTE figure used. Column 3 shows per capita figures, which are simply the total divided by the FTE figure. For the sake of comparison, column 4 gives the recent *U.S. News* reputational ratings.

The correspondence between journal publication and reputation rank is high, but far from exact. The University of Michigan is ranked #1 under either methodology. Harvard and University of California-Berkeley, tied for first by reputation, here rank 10th and 23rd, respectively. Rochester and Stanford are in the top ten in both rankings. High ranking departments that increase the most compared with their reputation rankings include University of Georgia, University of Kentucky, State University of New York-Stony Brook, Michigan State University, Emory, and Washington University.[2]

On the other hand, departments with high reputations (#) that do not emphasize these journal publications and do not score highly here include Yale (5), University of Chicago (6), MIT (7), Princeton (7), Cornell (14), and Columbia (19), none of which make the top 30 in journal publications.

The per capita figures show that publications in these journals are "big hits." Only 8 departments produce more than 1 article per faculty member in any of these journals over this ten-year period. Ranked per capita, SUNY Stony Brook, Cal Tech, and Rochester are the most productive departments, by far, in these journals.

I should note that while some individual scholars have published many articles, these rankings are not highly sensitive to individuals; while I have not done a comprehensive analysis, I do not know of any individuals that have outpublished departments in the top 35.

Conclusion

I believe that this analysis contributes to a useful debate about departmental quality and productivity among political scientists. Journal publications provide an alternative ranking methodology that avoids some problems with other methods. Whether and how this publication activity translates into future reputations will prove interesting.

Notes

1. Several departments have told me that they have fewer, sometime far fewer, actual faculty than listed in this official publication. Since this seems common, and I can think of no fair and easy methodology to adjust, I use these figures.

2. In the interest of truth in advertising, a priori, I expected the State University of New York-Stony Brook to do well in these rankings, but I did not know exactly how well.

References

Blair, Jeffrey, William Thompson, Joseph Hickey, and Phillip Kelly. 1988. "Elitism Among Political Scientists: Subjectivity and the Ranking of Graduate Departments." *PS* 21:669.

Garand, James. 1990. "An Alternative Interpretation of Recent Political Science Journal Evaluations." *PS* 23:448.

Giles, Micheal, Francie Mizell, and David Patterson. 1989. "Political Scientists' Journal Evaluations Revisited." *PS* 22: 613.

Klingemann, Hans-Dieter. 1986. "Ranking the Graduate Departments in the 1980s: Toward Objective Indicators." *PS* 19:651.

Klingemann, Hans-Dieter, Bernard Grofman, and Janet Campagna. "The Political Science 400." *PS* 22:258.

Robey, John. 1982. "Reputation vs. Citation: Who are the Top Scholars in Political Science?" *PS* 15:199.

U.S. News and World Report. 1992. "The Complete Rankings of Doctoral Programs in Six Liberal Arts Disciplines." Published in *Change in Higher Education* Magazine.

Welch, Susan and John Hibbing. 1983. "What Do the New Ratings of Political Science Departments Measure?" *PS* 16: 532.

Paul Teske is Assistant Professor at State University of New York, Stony Brook. His address is: Department of Political Science, SUNY-Stony Brook, Stony Brook, NY 11794. Phone (516) 632-7633; E-mail Pteske@datalab2.sbs.sunysb.edu.

Table 1

Top Fifty Departments: 1983-1992 Totals in Three Journals, Per (FTE) Capita Faculty, and 1992 U.S. News Rank

		Total	*FTE (Total/FTE)*	*PC*	*U.S. News Rank*
1	U Michigan	46.29	52	.89	1
2	SUNY, Stony Brook	45.11	18	2.51	30
3	U Rochester	41.91	22	1.91	9
4	Texas A&M	41.49	52	.80	NR
5	Stanford (with Hoover)	41.41	35	1.18	4
6	Michigan State	35.58	31	1.15	25
7	U Iowa	32.69	28	1.17	16
8	Washington U (St. Louis)	32.31	21	1.53	21
9	Ohio State	29.90	34	.88	16
10	Harvard	27.93	58	.48	1
11	U North Carolina, Chapel Hill	27.78	39	.71	14
12	U Texas	27.07	51	.53	21
13	U Houston	26.42	28	.94	30
14	U Georgia	26.16	33	.79	44
15	U Kentucky	25.57	16	1.60	44
16	UCLA	23.33	48	.49	10
17	Carnegie-Mellon	23.33	56	.42	NR
18	U California, Irvine	21.99	25	.88	NR
19	Cal Tech	19.96	9	2.22	NR
20	Emory	18.95	23	.82	35
21	U California, San Diego	18.58	34	.55	19
22	U Minnesota	18.41	30	.61	10
23	U California, Berkeley	17.54	42	.42	1
24	Indiana	17.53	30	.58	16
25	U Maryland	17.16	47	.37	28
26	U Arizona	17.08	38	.45	41
27	Florida State	15.83	21	.75	30
28	U South Carolina	15.75	48	.33	48
29	U Colorado	15.48	35	.44	35
30	Duke	14.78	32	.46	13
31	U Nebraska	13.67	20	.68	55
32	Yale	13.00	36	.36	5
33	Wisconsin, Madison	12.82	42	.31	10
34	Marquette	12.50	19	.66	NR
35	Louisiana State	12.16	20	.61	69
36	U North Texas	12.08	26	.46	76
37	Arizona State	11.11	28	.40	48
38	Rice	10.83	13	.83	35
39	U Chicago	10.08	26	.39	6
40	U New Orleans	9.62	16	.60	NR
41	U California, Davis	9.57	28	.34	41
42	U Oregon	9.45	20	.47	NR
43	U Illinois, Chicago	8.33	24	.35	NR
44	U Virginia	8.16	36	.23	29
45	Northwestern	7.36	34	.22	21
46	U Florida	6.83	26	.26	NR
47	U Kansas	6.83	32	.21	55
48	U Washington, Seattle	6.50	41	.16	27
49	SUNY, Binghamton	5.33	25	.21	63
50	U Pittsburgh	5.14	31	.17	30

Note: NR=Not Rated.

Section News

Law and Courts Section Awards

The Law and Courts Section of the APSA seeks nominations for the **CQ Press Award for Best Paper** by a graduate student. Any paper in the field of law and courts written by a political science graduate student between July 1993 and June 1994 is eligible. The winner will be announced at the 1994 APSA meetings and will receive a $200 prize. The deadline for nominations is *July 1, 1994.* Faculty who wish to nominate papers should send one copy to each of the following members of the CQ Press Award Committee (3 copies total):

Michael Giles, Chair of CQ Committee
Department of Political Science
Emory University
Atlanta, GA 30322
Phone: (404) 727-6565
Fax: (404) 727-4586
E-Mail: polsmg@emuvm1.cc.emory.edu

Susan Sterett
Department of Political Science
University of Denver
E. Evans at S. University
Denver, CO 80208

Harry Hirsch
Department of Political Science
University of California, San Diego
9500 Gilman Dr.
La Jolla, CA 92093

The Law and Court Section will give two additional awards this year for distinguished scholarship in the field: the **C. Herman Pritchett Award for the Best Book** published in 1993, and the **American Judicature Society Award for the Best Faculty Paper** given at the 1993 APSA meetings. The Pritchett Award Committee includes Michael McCann (chair), Susan Lawrence, and C. Neal Tate. The AJS Award Committee includes Susan Gluck Mezey (chair), Kevin McGuire, and Richard Pacelle.

Nominations for Section Officers

Please send in your nominations now for next year's Law and Courts Section officers! There are four positions to be filled: Chair-Elect, and three members of the Executive Committee. According to our Section By-Laws, the Nominations Committee will select a slate of officers that

> (a) is taken from the names received, particularly those persons receiving several mentions, and (b) represents the diverse interests of the section. The slate shall be listed in the summer issue of the Section Newsletter...so that the nominees are known prior to the Annual Section Meeting.

Deadline for nominations is *June 1, 1994.* Please send all names to Roy Flemming, Chair of the Nominations Committee. Other Committee members are as follows.

Roy Flemming, Nominations Chair
Department of Political Science
Texas A&M University
College Station, TX 77843
Phone: (409) 845-5623
Fax: (409) 847-8924
E-Mail: e339rf@lewie.tamu.edu

Gayle Binion
University of California, Santa Barbara

Saul Brenner
University of North Carolina, Charlotte

Tom Hensley
Kent State University

Liane Kosaki
University of Wisconsin, Madison

Mary Volcansek
Florida International University

Conference Schedule, 1994

Law and Society Association	Phoenix, Arizona	June16-19, 1994
International Political Science Association	Berlin, Germany	August 21-25, 1994
American Political Science Association	New York City	September 1-4, 1994
Southern Political Science Association	Atlanta, Georgia	November 2-5, 1994

Papers Presented on Law and Courts Panels

Midwest Political Science Association Annual Meeting, 1994

Section Chair: Melinda Gann Hall, *University of Wisconsin, Milwaukee*

Politics and Change in the United States Supreme Court

"Changing Choices: U.S. Supreme Court Agenda Development in the 1971-1990 Terms." William P. McLauchlan, *Purdue University*

"Micro-Models of Organized Interests and Agenda-Building in the Supreme Court." John R. Wright, *George Washington University.*

"Legal Change in the Supreme Court and the U.S. Court of Appeals." Paul J. Wahlbeck, *George Washington University.*

"A Longitudinal Analysis of the Rise of Interest Group Litigation Before the U.S. Supreme Court in First Amendment Religion Cases." Andrew Koshner, *Washington University.*

Values in Supreme Court Decision Making

"Supreme Court Justices' Values, Votes, and Opinions." Susan B. Haire, *University of North Carolina, Greensboro.*

"Ideological Values and the Votes of the Justices Revisited." Jeffrey A. Segal, *SUNY, Stony Brook,* Lee Epstein, *Washington University,* Harold J. Spaeth, *Michigan State University.*

"Modelling Value Conflict in the Supreme Court." James P. Wenzel, *University of California, Riverside,*

"May It Please the Chief?: A Model of Opinion Assignment in the Rehnquist Court." Forrest Maltzman and Paul J. Wahlbeck, *George Washington University.*

The Selection of United States Supreme Court Justices

"U.S. Supreme Court Nominations, 1789-1993: Reevaluating 'Critical Nominations'." Steven R. Van Winkle, *Ohio State University.*

"Presidential Approval and the Public Response to Controversial Supreme Court Nominees." James G. Gimpel, *University of Maryland* and Robin M. Wolpert, *Georgetown University.*

"The Presidential Management Explanation of Failed Supreme Court Nominations: John Parker." Michael C. Gizzi, *SUNY, Albany.*

Issues in State Judicial Selection

"Career Paths to State Supreme Courts: A Gender Comparison." Dena Blank, *Ohio State University.*

"The Judicial Career: Tenure and Turnover on State High Courts." Robert L. Dudley, *George Mason University.*

"What Difference Does the Difference Make?: Assessing Election and Appointment Effects on Case Processing Efficiency in the Sun flower Laboratory." David A. Crynes, *University of Kansas.*

"The Constituency Factor in State Supreme Court Decision Making." John W. Winkle III and Robert D. Brown, *University of Mississippi.*

Judicial Behavior and Politics in State and Federal Courts

"Gender and Asset Settlements in Divorce Proceedings." Nancy Crowe, *University of Chicago.*

"Green Justice: The Spatial and Temporal Determinants of Federal District Court Decisions in EPA Civil Enforcement Actions." Craig F. Emmert, *Texas Tech University* and Even J. Ringquist, *Florida State University.*

A Cross-Court Model of Judicial Decision Making: Gender Discrimination Cases in State Supreme Courts and the United States Courts of Appeals." Kelly Crews-Meyer and Jenny Anderson, *University of South Carolina.*

"Support for the Attorney General among State Supreme Courts and Justices: A Comparative Analysis." James Brent, *Ohio State University.*

Courts, Politics and Law in a Comparative Perspective

"Resource Inequalities, Political Goods, and Litigation Outomes Before the Philippine Supreme Court." Stacia L. Haynie, *Louisiana State University.*

"A Comparative Investigation of Resource Inequalities and Litigation Outcomes." Stacia L. Haynie, *Louisiana State University,* Reginald S. Sheehan, *Michigan State University, and* Donald R. Songer, *University of South Carolina.*

"The Judicial Agenda of the British House of Lords." Charles R. Epp, *University of Wisconsin, Madison.*

"The Canadian Supreme Court and Right to Counsel: A Decade of Decisions Under the Charter of Rights and Freedoms." Cynthia L. Ostberg, *Northern Illinois University.*

Approaches to Constitutional Intepretation

"Is 'Living Constitution' an Oxymoron?" Dennis J. Goldford, *Drake University*

"Departmentalist Responses to Originalist Fears: Democracy and Meaning in Constitutional Interpretation." Susan Burgess and Alan Gibson, *University of Wisconsin, Milwaukee.*

"Judicial Entrepreneurship: The Role of the Judge in the Marketplace of Ideas." Wayne V. McIntosh, *University of Maryland* and Cynthia L. Cates, *Towson State University.*

"Now You See Them, Now You Don't: The Framers' Intent in the Constitutional Opinions of Brennan and Rehnquist." Glenn A. Phelps, *Northern Arizona University* and John Gates, *University of California, Davis.*

Organized Interests in the Judicial Process

"The *Amicus Curiae* Brief in State Courts from 1950 to 1964." Garry Jennings, *Louisiana State University.*

"Interest Groups and Legal Change: The Influence of *Amicus Curiae* on Appellate Legal Doctrine." Max Caproni, *Northwestern University.*

"Judicial Response to the Politically Disadvantaged: Native Americans in the Burger Court." John R. Hermann, *Emory University.*

"Secular Schisms in Establishment Clause Litigation: Discordant Voices in the Choir." Joseph F. Kobylka, *Southern Methodist University.*

Public Opinion and the Courts

"The Supreme Court and *Lamb's Chapel:* The Shepherding of Local Public Opinion" Valerie Hoekstra and Jeffrey A. Segal, *SUNY, Stony Brook.*

"Explaining Public Attitudes Toward State Courts." Susan M. Olson and David A. Huth, *University of Utah.*

"Law, Public Opinion, and Gender Rights." Thomas R. Marshall, *University of Texas, Arlington.*

"Support for the Courts." Stephen Meinhold, *University of New Orleans.*

Southwestern Social Science Association Annual Meeting, 1994

Underlying Principles of American Jurisprudence

"Reason, Natural Law, and American Constitutionalism." Mark Lynn, Johnson, *Louisiana State University*

"James Madison: The Basis of Rights." John Kearnes, *Armstrong State University*

"Philosophical Origins of the Sixth Amendment's Right to Counsel." Kenneth Manning, *University of Houston*

"The Supreme Court and Early American Foreign Policy." Randall W. Bland, *Southwest Texas State University*

"Christianity and Early American Law." Steven A. Samson, *Wilbur Foundation*

The Issue of Race and Constitutional Developments

"Affirmative Action, Privileges and Immunities, and Race Consciousness." John Janssen, *University of Texas, Austin*

"Legal Arguments and Legal Change: Policy Making in Employment Discrimination Cases." Max Caproni, *Northwestern University*

"The Many Faces of Racial Equality." Brett S. Sharp and Eric W. Spooner, *University of Oklahoma*

"*Shaw v. Reno*, and the Evolution of Voting Rights Jurisprudence ." Mark E. Rush, *Washington and Lee University*

Policies and Relevance of State Courts

"The Amicus Curiae Brief and Growing Convergence of Political and Legal Interests in State Courts from 1950 and 1964." Garry Jennings, *Louisiana State University*

"State Court Decisionmaking in the Area of Sexual Harassment." John C. Domino, *Sam Houston State University* and Priscilla H. Machado, *United States Naval Academy*

"The Effects of Structure on Juvenile Court Decision Making." James B. Johnson and Philip E. Secret, *University of Nebraska, Omaha*

"What's the Constitution between the Kingfish and His Friend?" Judith Haydel, *McNeese State University* and Thomas Ferrell, *University of Southwestern Louisiana*

Constitutional Legitimacy

"Unmaking the Creation: A Theory of Constitutional Failure." Mark E. Brandon, *University of Oklahoma*

"*Brown v. Board of Education:* Success or Failure?" Harvey Fireside, *Ithaca College*

"The Fairness Doctrine: Unnecessary, Counterproductive, and Possibly Dangerous." John C. Howell, *Louisiana State University*

"Pluralism and Constitutional Legitimacy." Judith Failer, *Indiana University*

Comparative Lessons in Judicial Politics

"Regime Change and Human Rights Discourse: Judicial Politics and the Common Law in England, Canada and Australia." Haig Patapan, *University of Toronto*

"Comparative Constitutionalism: School Prayer in Germany, Canada, and the United States." Rodney A. Grunes, *Centenary College*

"Resource Inequalities, Litigation Outcomes and the South African Supreme Court, 1950-1990." Stacia L. Haynie, *Louisiana State University*

"Urguayan Judges and Their Role Perceptions." Jason L. Pierce and Timothy J. O'Neill, *Southwestern University.*

"Professional/Partisan Factors Influencing the Selection of British Judges." Barbara Hazlewood, *Sul Ross State University*

Western Political Science Association Annual Meeting, 1994

Section Chair: Howard Gillman, University of Southern California

Lobbying and the Judiciary

"The Role of Interest Groups in the Fashioning of Government Consent Decrees." Robert Detlefson, *Hollins College*

"The Role of States as Amicus Curiae in the Supreme Court." Robert Lincoln, *Washington State University*

"Campaigning for the Supreme Court: Interest Group Participation in the Bork and Thomas Confirmation Processes." Jack E. Rossotti, *American University*

"Lobbying through the Courts by State Interest Groups: A Fifty State Comparison." Clive S. Thomas, *University of Alaska Southeast* and Ron Hrebenar, *University of Utah*

The Civil Justice System: Reforms and Alternatives

"Ultra Realism: The Ideology of Informalism." John Brigham, *University of Massachusetts, Amherst*

"Civil Justice Reform: Views for the Inside." Charles H. Sheldon, Nicholas P. Lovrich, and John L. Anderson, *Washington State University*

"Assessing the Impact of Tort Reform." L.A. Wilson II and Richard Hacker, *University of Alaska Southeast*

Law and Popular Culture

"Queer Theory and Legal Transgressions." Lisa C. Bower, *University of Minnesota*

"Welcome to Marlboro Country: The Mass Subject and its Embodied Others." Rosemary Coombe, *American University*

"'Who Am I?': Abjection Doggy-Dogg Style." Tom Dumm, *Amherst College*

"Crimes and Misdemeanors: Woody Allen's (A)Morality Play." Judith Grant, *University of Southern California*

Historical Perspectives on American Law and Judicial Politics

"Persuasion, Influence, and Friendship: The Interaction Between Justices Frankfurter and Reed." Bradley C. Canon, *University of Kentucky*

"The Supreme Court and the Gilded Age: Another Look at Decisions of the late 1800s" Alison Keleher, *University of California, Santa Barbara*

"The Development of a Quasi-Judicial Method of Decision Making in American Social Welfare Programs." Michael F. Ochoa, *University of California, Berkeley*

Reception of Supreme Court Decisions

"Reception of Supreme Court Scrutiny Doctrine by State Supreme Courts." John C. Kilwein and Richard A. Brisbin Jr., *West Virginia University*

"Politics or Law?" An Analysis of the Legacy of the Brown Decision." Francine Sanders, *University of California, Riverside*

"State Supreme Court Influence on Policy-Making by State Legislatures." Chuck Smith, *New Mexico State University*

Courts, Legal Ideology, and the Politics of Rights

"Native Claims and Comparative Law in the Circumpolar North: The Role of Courts." Fae L. Korsmo, *University of Alaska, Fairbanks*

"A 'ole Kanawai Ma Kei Wahi (In This Place There is No Law)." Christine Harrington, *New York University,* Barbara Yngvesson, *Hampshire College,* and Sally Merry, *Wellesley College*

"Civil Rights and Sovereignty: Conflict on the White Earth Reservation." Lillias C. Jones, *Colorado State University*

"Pro-Choice Legal Mobilization Against Clinic Blockades." Robert Van Dyk, *University of Washington*

Courts and Political Identity

"Judicial Recognition of Political Identity: The Case of Minority Recognition." Keith Bybee, *University of California, San Diego*

"'Model Minority' Jurisprudence in Antidiscrimination Law." Sumi Cho, *University of Oregon*

"Achieving Identity through Law." James R. Forcier, *Pacific Bell*

Legal Theory

"Shaping Judicial Discretion: Competing Theories of Constitutional Interpretation." Gary Bryner, *Brigham Young University*

"Law, Identity, and Surveillance," John Gilliom, *Ohio University*

"Privacy and Communitariansim." Jeffrey L. Johnson, *Eastern Oregon State*

"The Four Faces of Legal Realist Political Theory." Bruce Pencek, *Northern Arizona University*

Shaw versus Reno and the Voting Rights Conundrum

"Shaw versus Reno and the Evolution of Voting Rights Jurisprudence." Mark Rush, *Washington and Lee*

"Crazy Quilts Then and Now." Timothy O'Rourke, *Clemson University*

"The Despair of Equality in American Constitutionalism: The Conflict of Visions in Shaw versus Reno." Tony Peacock, *Claremont*

The First Amendment

"Why Blaze New Trails?" Frank Guliuzza, *Weber State University*

"Absent the First Amendment." Jerome O'Callaghan, *SUNY, Cortland*

"Judicial Approaches to the First Amendment." Nina Van Dyke, *University of California, Santa Barbara.*

An Invitation to Members of the Law and Courts Section to Join the APSA Civic Education Network

The APSA would like to assist curriculum supervisors and pre-college advisors who are developing content standards and curricula in civics and government. There are incentives in federal legislation for the states to prepare standards to guide teaching about government and politics. Since the principles of constitutional democracy and constitutional rights are a core topic, assistance from scholars in this field is especially important. The APSA is developing a network of faculty who are willing to consult about curricula content and resources and/or speak to teachers. If you are interested in being included in this network, please complete and return the form below.

Name:
Title:
Affiliation:
Phone:
Fax:
Special areas of substantive interest:
Check Activities of interest to you:
_____Participate in workshops for pre-college teachers
_____Review curriculum content standards
_____Identify reading and resource materials

Return to: Civic Education Network/APSA, 1527 New Hampshire Avenue, N.W., Washington, D.C. 20036.

Announcements

NSF Search: Law and Social Science Program Director

The Law and Social Science Program at the National Science Foundation is searching for a new Program Director. The position is for a visiting scientist who is challenged by the opportunity to advance the field of sociolegal studies. The term would start in the summer of 1994. The responsibilities include evaluating research proposals, representing this broad multi-disciplinary field with the NSF, and representing the NSF in the law and social science community and in other relevant settings. Broad knowledge of the field, a Ph.D. or the equivalent, at least four years of research experience, administrative skill, an interest in working with others, and the ability to communicate effectively are required. To apply, send a letter of interest, curriculum vitae, and names and addresses and phone numbers of two references to: Dr. Allan Kornberg, Director, Division of Social, Behavioral and Economic Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230

Call for Papers: *Journal of Legal Education*

The *Journal of Legal Education*, a peer-reviewed journal, invites authors to submit manuscripts on subjects of interest to legal educators. The editors are particularly interested in interdisciplinary studies affecting the law and legal education, empirical studies with a legal connection, and articles on legal theory. The *Journal* is published under the auspices of the Association of American Law Schools; it is the most widely distributed publication in the world devoted to legal education. Virtually every law professor in the United States and Canada receives a copy, and the subscription list also includes 300 overseas subscribers.

Manuscripts should be sent to Editors, *Journal of Legal Education*, Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, OH 44106-7148.

Franklin D. Roosevelt Conference: 50 Years After

Louisiana State University in Shreveport will hold its second conference in a series on great American presidents. *FDR After 50 years*, a three-day conference, is scheduled for Thursday-Saturday, 14-16 September 1995. Deadline for submitting proposals is 1 October 1994. All topics considered. Early submission is strongly recommended. The Selection Committee makes decisions on a rolling basis.

For those interested in presenting papers, chairing panels, serving as discussants or observing the conference, please contact: William D. Pederson, History and Social Science Department, Louisiana State University, One University Place, Shreveport, LA 71115-2301. Phone (318) 797-5337.

Law and Courts is the newsletter of the Law and Courts Section of the American Political Science Association. We gratefully acknowledge the support of Washington University in helping to defray the editorial and production costs of the newsletter.

Subscriptions of **Law and Courts** are free to members of the APSA's Law and Courts section. Please contact the APSA to join the Section.

Submissions to **Law and Courts** are welcome. The deadline for submissions for the next issue is July 1, 1994.

Law and Courts
Lee Epstein, Editor
Department of Political Science
Washington University
Campus Box 1063
One Brookings Drive
St. Louis, MO 63130

BULK RATE
U. S. POSTAGE
PAID
ST. LOUIS, MO
PERMIT NO. 2356