LAW AND COURTS

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

Spring 1996

In this Issue

From the Section Chair

Samuel Krislov,
University of Minnesota

Mission Accomplished

I am pleased to report that we met and slightly over-subscribed the amount needed to endow the Corwin Award and raise the prize to the $500 minimum all APSA Association level awards must reach. Our section was commended for initiative in spreading the word and raising the funds. Members contributing were Dean Alfange, Jr. Gordon Baker, William Beaney, Gregory A. Caldeira, William A. Carroll, Lief H. Carter, Beverly B. Cook, Lee Epstein, Malcolm Feeley, J. Woodford Howard, Jr., Samuel Krislov, Ted Morton, Walter F. Murphy, Jack W. Peltason, Roberta S. Sigel, Grier Stephenson, Jr., Harry P. Stumpf, Susette M. Talarico, and Otto F. Unsinn.

Nominating Committee

Malcolm Feeley has agreed to serve as chair of the nominating committee for 1996-97. Other members have been asked to serve but had not agreed at press time, so their names will appear in the next newsletter. Nominations and suggestions should be sent to Malcolm Feeley, School of Law, University of California, Berkeley, CA 94720.

Rules on Awards

Phil Cooper, who is chairing the Pritchett Award committee, has called my attention to a number of gaps in our rules for awards. The APSA staff reports this is true for most section-level awards and that we have been better than most. In any event, Cooper has suggested a number of modifications, some of which we could legitimately implement this year, most of which we will present at the business meeting. I invite all present and past members of those committees as well as observers or disgruntled or gruntled members of the section to send in wise or any other suggestions, so we can have a comprehensive reform package printed in the next issue and presented for membership consideration in San Francisco.

West Gets Sold to People up North: Observations and Lessons

We at Minnesota are not surprised when Canadian colonialist investors buy a chunk of our prized assets. West is of course a jewel and a giant among law publishers. Its comprehensive court reports--federal and state--are now available on Westlaw. Its session law series for each state is of great importance and its law school casebook series is a predominant one. It also owns what is probably its major competition: Foundation Press. A recent entrant into the college textbook business, it has captured a surprisingly high dollar volume of that market though its rate of profit is not impressive and the quality of the texts has been uneven.

West is being purchased by a Canadian publication firm that has emerged from a chain of small-town newspapers. Those are still being operated at a profit but the firm has been evolving into more expansive and profitable aspects of publishing. The sale is still contingent on government approval on anti-trust issues.

What seems obvious is that both seller and purchaser regard West's heritage of legal material on-line as an asset currently extremely valuable but at some future date accessible at much lower cost with improvement of retrieval methods. But the current assets can be deployed with modern and constantly developing methods, to enhance profitability. Fresh capital was needed and beyond the capacity of a firm sold for over two billion dollars.

Our section is at the low end of this same communication revolution, but we have to go with the flow. Our Book Review service is already on-line. We are playing with several proposals to establish a WWW Page and our Newsletter editor will stay alert to possibilities of electronic distribution, hopefully drastically cutting the section's largest expense. We, like West, won't be left in the lurch. Unlike West, no one wants to buy us at a profit.

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:

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Articles, Notes, and Commentary

The editor will be glad to consider brief articles and notes concerning matters of interest to the field. We encourage authors to share research findings, teaching innovations, or commentary on developments in the field.

Footnote and reference style should follow that of the *American Political Science Review.* Please submit two copies of the manuscript .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 books should inform **Law and Courts** of their manuscript's publication.

Data and Analysis Information

We would like to publish announcements of datasets concerning their availability as well as their use. Please send suggestions or information to the editor.

Symposium: The State of the Field of Public Law and Judicial Politics, 1996

The following essays are abbreviated versions of papers contained in, "Roundtable: Author Meets Critics--Martin Shapiro and the Study of Public Law and Judicial Politics," held at the APSA meeting in Chicago, August 31-September 3, 1995. They are responses to Martin Shapiro's essay on the state of the field, published in Ada Finifter's *The State of the Discipline, II* (1993, 365-381) and are best viewed as extensions of a dialogue going back at least to the "behavioral revolution" beginning in the 1950s. Intellectual developments concerning the role of law and courts in society that attended the birth of political science as a discipline around the turn of the century might also be viewed as the genesis of this debate (Murphy and Tanenhaus, 1972, Ch 1). In any case, since the 1950s it has become something of a tradition to periodically produce a reassessment of the health and direction of the field, usually surveying the best, or at least the most representative literature of the era under discussion. The following essays, together with Shapiro's analysis, represent the latest chapter in the continuing and ever-expanding dialogue. The more lengthy APSA roundtable papers may be obtained separately from the individual authors.

Harry P. Stumpf
University of New Mexico

Comment

Leslie Friedman Goldstein
University of Delaware

Martin Shapiro's essay on the state of our discipline propounds a thesis that I find non-controversial, *viz*., that the subfield of public law or judicial politics has been marginalized within the broader political science discipline because, first, it became viewed as a small part of the American politics subfield and, second, within that subfield it became perceived as dealing only with the constitution-based overruling of legislation or executive actions— phenomena that occur so irregularly that systematic study of them took on formats that were grossly incongruent with other parts of the discipline, which perforce study "everyday, routine politics" (p.366). Of course, this marginalization thesis raises the question: If Law and Courts is such a marginal subfield, why does it have the second largest number of members of the various APSA subfield organizations, and why is it also true that, as Shapiro proclaims, "The public-law-judicial-politics subfield today is flourishing along a larger set of dimensions than it ever has in the past" (pp.376-77)?

Shapiro's answer to this conundrum proceeds along the following lines: (1) As the "marginalization of the subfield" (operationally measurable in the decline of staffing senior public law positions in the leading graduate training centers like Harvard, Yale, Stanford, Chicago, and Michigan, p.365) was fueled by the behavioral persuasion in political science and public administration and by the *realpolitik* persuasion in international relations, so the end of the behavioral revolution and the decline of the cold war brought renewed interest in the policy-shaping role of the courts, in the import of constitutional and other legal texts for influencing political actors, in the policy impact of institutional histories (including the evolution of the judiciary), in the political significance of international treaties and their implementation by transnational courts, and in the comparative study of political institutions including judiciaries (367-75). Thus, as a research field, public-law-judicial-politics went from small, isolated, and arcane (during the mercifully brief dominance of behaviorism) to flourishing across many dimensions of political science. Meanwhile, the numbers in terms of professional membership were always there, because departmental hiring policies were shaped by the perception that student demand would always be there for a constitutional law course, and indeed it WAS, because of students' misperception that everyone planning on law school should take constitutional law. The purpose of the Shapiro essay appears to be not so much to stimulate the hiring of Law and Courts scholars — for such hiring has always gone on at least in the sense of staffing undergraduate Con Law courses (although too often by the part-time hiring of a lawyer or judge) — but rather to raise the status of the subfield by underlining the centrality of law and courts in politics and public policy and delineating the place of scholarship on law and courts within current scholarly trends among political and social science.

It is hard to react as anything other than a cheerleader to a project that aims at enhancing one's own subfield's status within the broader discipline, and indeed I cannot refrain from saying in the cadence of the 1960s, "Right on, Martin." I found his account a balanced one and wish to underline two of his most salient points.

First, although it is true that renewed scholarly interest in normative political theory, state institutions, the phenomenology of interpretation, and the constitutive role of discourse (including Constitutional/legal discourse) has re-elevated constitutional law study to a prominent place in the Law and Courts subfield, Shapiro's point on the need to include *statutory interpretation* in what we study is an important one. Major generative moments in the history of the U.S. Supreme Court would be missed if one utterly excluded attention to this phenomenon. The typical con law course includes mention of the formative *U.S. v. E.C.Knigh*t decision by explaining that even though it

was on the surface a statutory interpretation case, in some deeper, less evident sense it was really a "con law" case. The truth is that it was both, and that the two often intertwine, but the bigger truth is that the Supreme Court's significance within the political system (not to mention that of lower federal courts) derives from its role as supreme appellate court for all federal law, not just the Constitution. Just as it is a rare con law course that would not mention *E.C.Knight*, so it would be rare to find a civil liberties class that mentioned neither the Bakke decision nor the two sexual harassment decisions of the Supreme Court. Yet the results in all three of these was grounded in the Court's reading of a statute— the 1964 Civil Rights Act. In short, even if one's sole pedagogic agenda is to instruct students about the ways in which the Supreme Court shapes American politics, to focus solely on its Constitution-based decisions is to miss a big part of the story.

Shapiro's second point worth emphasis was his identification of the practical dilemma of the funneling-of-attention problem that is built into the current pattern of Con Law hiring. As long as departments perceive law and courts as a subfield of American politics, then hiring is likely to continue to place a premium on familiarity with American Constitutional Law and the American Supreme Court, and to give less attention to the role of courts as state and local policy implementers and policy-makers, and to the massive policy impact currently wielded by administrative courts in the U.S. Even less likely is it that international law and the comparative study of judiciaries will get the increased attention that they deserve in light of their increased political salience on the international scene.

These are all valid points. Still, I teach a course called "American Constitutional Law" every year and often a second segment of more or less the same sort of material in a course called "American Civil Liberties," much as do many of the people here. In the concluding section of Martin's chapter, he calls political science departments to task for offering such courses in lieu of ones on the whole of "law and politics of the U.S." or on "comparative law and courts." Has he persuaded me to change what I teach? No. I confess that our department does also have a course on the Judicial Process and also one that looks at law and politics with respect to the specific policy topic of sex and gender, a topic on which courts have been unusually active. (I confess further that when I teach our graduate course on public law I feel obliged to structure it not as a con law class but as a course that analyzes a variety of aspects of the question, What is the role of the judiciary in the American political system?) Nonetheless, I do think there is value in teaching the old undergrad case law courses that basically take a more-or-less law school approach and march students through the elements of the legal arguments, trying to help them pick up a feel for legal reasoning, as part of what the Supreme Court has been wallowing in for the last 200 years. The reason I say a "more-or-less" law school approach is that I am confident that all of us political science Ph.D.'s let students in on the open secret that the Supreme Court operates within a political context and that the Court often takes highly politically charged cases with serious political consequences. The typical first con law case taught, *Marbury v. Madison*, can hardly be taught without attentiveness to this reality. It may be that law school professors by this time, let their students in on this important piece of the picture, but there is no guarantee that they will nor that all con law students will go on to law school. As political scientists we are better able to impart to students a clear sense of the degree to which, and the sense in which, the courts and especially the U.S. Supreme Court, function as a MIX of a legal and a political institution. That is an important lesson for undergraduates to learn about American politics, and one that I offer no apologies for attempting to impart.

Urban Trial Courts--A Different Vision

Herbert Jacob
Northwestern University

I have difficulty finding fault with Shapiro's description of the "public Law and Judicial Politics" field. It is the buzzing swirl of unconnected research that he describes. However, I have a somewhat different critique of trial court research: by employing the theoretical perspectives and methodological tools of the discipline rather than developing its own, it has failed to capture the essential characterisitics of trial courts.

The discipline's dominant paradigm, pluralism, explains politics in terms of the competition by groups for office and for policy outcomes. This does not carry us far in the analysis of trial courts. While groups can sometimes be sighted on the periphery of the trial court activities, they do not play a prominent role. The reasons are clear. Groups have few resources to offer trial courts and do not have the power to threaten them. Groups ordinarily cannot gain access to trial courts--as they do to executive agencies and legislatures--by providing them data because most information routinely comes to the courts in the course of litigation. The assistance that groups can offer administrative agencies in implementing their decisions and the campaign contributions they offer legislators are both unimportant to trial courts because courts are not much concerned with implementation and because judges rarely face competitive elections which require large contributions. Finally and most tellingly, trial courts usually deal with disputes at retail rather than social conflict at wholesale; trial courts deal withdisputes between individuals who only occasionally aggregate themselves into groups. Thus the underlying premise of the pluralist paradigm--that group activity is at the core of politics--does not hold for trial courts.

The individualist behavioral paradigm whether it be grounded in psychological attributes, sociological background, or the more recently fashionable rational choice behavior of actors has equally little explanatory power in explaining trial court activities. The reason is that while individual actors such as the judge, the prosecutor (or plaintiff's attorney), the defense attorney, the defendant (and/or plaintiff) are prominent in trial courts, they operate in complex and shifting organizational

contexts which cannot be understood simply in terms of the characteristics or predilections of the individual participants. We understand that best in the context of criminal court proceedings where a long series of studies has demonstrated that all of these participants interact with one another (Blumberg, 1969; Carter, 1974; Eisenstein and Jacob, 1977; Heumann, 1978; Mather, 1979; Eisenstein, Nardulli, and Flemming, 1987; Flemming, Nardulli, and Eisenstein, 1992) . Decisions emerge from an array of joint efforts and many of the players (with their particular mixed bag of motivations) come and go in a seemingly random fashion. A trial court's decisions is not the result of one or another participant's traits but the product of a very complex and sometimes explosive brew of social interactions.

Thus, neither of the central paradigms of political science is particularly helpful in the task of understanding trial courts. We can not treat trial courts as if they were simply another political institution fundamentally like executive agencies or legislatures. We need to conceptualize trial courts in a manner that captures three special characteristics: their permeability, autonomy, and immersion in the legal culture.

We might begin by recognizing that courts are organizations with highly permeable boundaries. Trial courts are organizations -- not individuals -- composed of many participants who share a common technology, utilize a division of labor, and are subject to a variable degree to hierarchy. There is now a considerable body of literature which demonstrates the utility of such an organizational perspective (Eisenstein and Jacob, 1977; Eisenstein, Nardulli, and Flemming, 1987; Flemming, Nardulli, and Eisenstein, 1992. In addition, courts are permeable. People who are not part of the courts' organizational table play crucial roles in their activities. Two outsiders in particular must be accounted for: lawyers and litigants.

Lawyers illustrate the permeable boundaries of courts superbly; they are "officers of the court" but not part of the court organization at all. They are the gatekeepers to the courts for it is difficult to bring disputes to court without them. They also link courts and local elites because lawyers play a key role in the commercial, political, and social life of their communities. Thus, one task in understanding how trial courts work is to know how the bar is structured. From the research by sociologists, we know that the bar is highly segmented, that lawyers with quite different kinds of resources who work in distinctive organizational settings service different kinds of clients (Heinz and Laumann, 1982; Landon, 1990). Those who gatekeep personal injury cases are quite different that those who control commercial litigation. Those who litigate are quite different from those who advise corporations.

Two characteristics makes litigators important for understanding trial courts. First, such attorneys exercise great influence over the agenda of trial courts. They do so, however, in an uncoordinated way. The courts' agenda emerges as the consequence of decisions made by individual attorneys who are responding to their private opportunities and motives. A second significant characteristic of litigators is that they constitute the pool from which judges are drawn. All trial judges are lawyers and almost all of them serve an apprenticeship in litigation before ascending the bench. Thus attorneys move in many different ways between insider and outsider roles in trial courts.

The second set of outsiders moving in and out of the courts' permeable boundaries are ordinary citizens who are recruited in several ways. One set is conscripted for jury service. A second set are the litigants. As Zemans has suggested, they mobilize the law for often private objectives although they may also seek public goals (Zemans, 1983). A myriad of private disputing forums compete with the courts for these disputes, and only a small proportion reach the courts. The decision to go to court clearly brings litigants into a public arena, subjects them to the authority of government officials, and threatens them with state sanctions. It is from such private citizen's disputes as mediated by attorneys that court agendas develop.

Attorneys, litigants (and sometimes jurors) are essential participants in trial proceedings. They constitute a large body of floaters who move in and out of the courts bestowing a high degree of indeterminacy to the judicial process. Unlike the permanent staff, they are only partly socialized to the courts' norms; they share a varying degree of familiarity with the permanent staff; they do not necessarily "read from the same page" in terms of information or expectations.

The permeability of trial courts has very substantial consequences for understanding their operation. Unlike most other government agencies, courts exert little control over their agendas, have little say about their staffing, and exercise only marginal control over the principals involved in decision making.

Ask any trial judge what her biggest problem is and you are likely to hear about the difficulties of controlling the pace of litigation because it depends so heavily on the work habits of lawyers and the idiosyncrasies of clients. The substance of court decisions also depends on these outsiders: the line of argument that they pursue, the evidence they present, and the remedies they seek are all beyond the grasp of the court. Moreover, a trial court changes its identity dozens of times a day as new sets of attorneys and clients rise to answer the docket call. While permeability is scarcely a concern to students of the executive branch or of Congress, it must become a central concern to investigators of the judicial process.

Secondly, the judiciary flaunts its independence; we may put it in slightly different terms and speak of its relative autonomy. While the legislative and executive branches of government are linked through elections and political parties, and while interest groups clamor to make them responsive to their constituents, the judiciary stands apart -- not quite independent (because it must respond to statutory and constitutional change and because judges often come on the bench with considerable experience with the "political branches") -- but enjoying considerable autonomy. The courts' autonomy makes them so distinctive that their decision making processes cannot be readily captured by the techniques political scientists

apply to other segments of the state or by the models developed for other portions of the political arena. Thus, although investigators have tried to link partisan identification with decisional tendencies of judges, the attempts have never produced convincing evidence that trial judges who are Democrats rulevery differently than those who are Republicans. Shifts in public opinion cannot be linked to trial court decisions because the public has little awareness of the day-to-day work of trial courts, and judges, lawyers, and litigants deny the legitimacy of public opinion's influence on their decisions. Trial courts do not dance to the same electoral or budgetary rhythms as other branches of government; they barely hear the tunes sung by party platforms. In addition, trial courts are more loosely tied to feedback loops than are other institutions. Their job (as they understand it) is to dispense justice without regard to second-order effects.

This is not to deny the conventional wisdom of political scientists that courts are part of the political system. Trial courts, like their appellate cousins, have a myriad of transactions with other political actors. The statutes they apply and interpret are the products of ordinary politics; their resource flow depends on legislatures and executives; they rely on others to enforce their decisions; the judges who staff them are elevated to the bench through a political process and often bring political experience to the bench; some of the litigants are motivated by political considerations to bring cases to the courts. In addition, much of what trial courts do affects other agencies of government. Yet while we may safely conclude that courts are closely related to politics, that conclusion does not justify treating trial courts as if they were fundamentally legislatures, executive agencies, political parties, or interest groups. Their permeability and their autonomy make them different and require judicial scholars to apply somewhat different paradigms to their study.

A third difference between courts and the other two branches of government is implied in Shapiro's caustic comments about legislative scholars' neglect of the content of the statutory output of legislatures or the failure of most administrative scholars to examine the content of the regulations which agencies produce (Shapiro, 1993 :369). Traditional scholars of the judiciary always paid close attention to the words of judicial opinions and in doing so they captured something that their behavioral successors neglected; the distinctive role of law in the making of judicial decisions. I have no doubt that traditional scholars missed the boat in concentrating almost entirely on doctrine, yet doctrine and statutory (as well as constitutional) language are important for understanding court actions. Lawyers are not engaged in an elaborate ruse when they refer to the law as they write their briefs and make their arguments and judges are not engaged in deceit when they frame their decisions in the law as it appears to them. While the law rarely entirely dictates the result of a suit, in most cases it is the most important determinant of the trial outcome. The impact of law is so obvious that many of us overlook it. Thus we have studied the impact of extra-legal variables such as race, gender, and the economic status of claimants or defendants on trial court outcomes without at the same time noting that these operate on the margins of the legal variables. The fact that disputes are always framed in legal terms itself tells us the importance of law to trial court proceedings.

Thus my diagnosis of what ails the study of trial courts and what might bring it to full flower is somewhat different than Shapiro's analysis. I do not disagree that more familiarity with cross-national comparisons would be instructive, but their absence is not the fundamental problem Instead, we need to take into account the special characteristics of trial courts in order to understand their role in the political arena. Recognizing their distinctiveness will permit us to place them more securely on the political stage and to identify the consequences of their dialogue with the other actors in that drama.

It's Only Law and Courts, But I Like It...*

Michael W. McCann
University of Washington

* This is a radically abridged version of the paper delivered at the original APSA panel. The extensive bibliography and all notes from the original have been removed to fit the format and space here. The author acknowledges the very valuable commentary provided on the original draft by William Haltom, Howard Gillman, and Helena Silverstein.

Professor Shapiro once again has performed a most valuable service by sketching a coherent and compelling map of the law and courts subfield. The map has three primary components. It proffers, first, a detailed topographical depiction of the increasingly varied intellectual terrain occupied by contemporary law and courts scholarship. Second, the map includes a useful topological accounting of how this complex landscape has developed — some regions long remaining unchanged, some eroded, and many others formed and reformed in response to various environmental forces — over the last half century. And, third, Shapiro's map provides a general scheme of economic measures assessing the relative worth of the different terrains in which we labor. In this regard, he identifies several conceptual plots long devalued by scholarly overpopulation, while pointing us to other fertile spaces where analytical labors are now, or should be, flourishing.

Like many others among us, I have read various versions of this map before; indeed, it has become part of my own common sense understanding of the subfield. But, like all maps, Shapiro's sketch offers only one interpretation of the phenomena it surveys, one which reduces the complex welter of things to make them comprehensible and meaningful. And, like all human constructions, this interpretation is inherently incomplete, partial, and contestable. My effort in this essay is less to challenge Shapiro's map than to append, elaborate, and revise it in various regards.

Reassessing the Ironic Legacy of Legal Realism. I begin with perhaps the most controversial element of Shapiro's map.I

refer here to his appraisal that the historical dominance of scholarship focusing on U.S. constitutional law and the Supreme Court has unduly confined the subfield's research investments and continued to undercut the value of our labors in the larger discipline. His primary critical variable in this regard concerns mostly matters of where (which institutions & polities) we focus our studies of law. I find much merit in this position, and join him in touting the many recent movements "outward and downward" in law and courts scholarship.

But Shapiro's appraisal strikes me as less clear, complete, and compelling in its attention to critical questions of how we social scientists conceptualize and analyze legal terrain. On the one hand, he suggests in this and earlier essays that studies which focus on "normative" issues — traditional case law analysis, a "jurisprudence of values," "law and language" studies, and, most recently, "interpretive" and post-modern analyses of law — fall short in providing social scientists a distinctive role and identity in the community of legal scholars. On the other hand, Shapiro's argument about what is right in the subfield, usually amassed under the label of "political jurisprudence," tends to privilege work in the tradition of realist-behavioral empirical study. My immediate concern is with the problematic promise of this latter orientation to legal analysis.

We are all familiar with the complex legacy and multiple faces of legal realism in the academy. But what matters most here is that realism has been the animating conceptual framework underlying the drive toward a more rationalistic, rigorous, "scientific" empirical public law scholarship over the last half century. Indeed, leading scholars — including Shapiro — long have argued that it is only by embracing this more sophisticated mode of research that law and courts scholarship will develop a distinctive, respectable identity as a field of social science inquiry. There is much to be said for this legacy at the conceptual level and for the important research it has generated over recent decades. In fact, legal realism has significantly informed the conceptual maps of virtually all legal scholars today. But I believe that this legacy has had far more ambiguous implications for the fate of our subfield than Shapiro's accounting recognizes. Whatever the advances it has brought, this tradition has, somewhat ironically, vanquished from the map the very subject of what we public law scholars claim to be studying (law), and hence undercut our potential claims to be saying something important. The basic premise of the realist/behavioral faith, after all, is that law is what legal actors (whether judges, other officials, or citizens) do, and that what legal actors do is a product of primarily extra-legal factors. Because legal texts (rules, precedents, etc.) are indeterminate and open to multiple interpretations, what law "is" varies with different personal and contextual factors. Since there is no "there in law, realist scholars focus on measurable causal determinants such as psychological dynamics, personal attitudes and preferences, interest group pressures, institutional constraints, and the like to explain "law in action" and "the legal process." In social science terms, law is primarily a discrete dependent variabletobe explained, rather than an independent force with great significance of its own.

Some of us find these assumptions conceptually problematic in themselves. But my interest for the moment concerns only their sociological implications for our subfield's academic identity. Two basic trends emerged from the realist/behavioral turn in public law scholarship. First, judges and other officials have been viewed not only as discretionary legal actors, but as moved largely by the very same types of motives and environmental determinants as are other political actors. As legal texts and conventions have been deprived of any "real" causal significance, legal activity generally and judicial action specifically thus have been denuded of any unique characteristics. Law in action is "just politics" as usual, with few distinctive or consequential attributes. Second, this means that courts and other legal institutions could be studied according to the very same assumptions and methods developed by analysts of political behavior in legislatures, executive bureaucracies, parties, and the like. As a result, public law scholarship rushed to "import" methods and modes of analysis — and the more quantitative the better — that already had developed in other subfields, especially in American politics.

Yet there is the rub. The realist quest for scientific respectability pillaged the subfield of any distinctive subject matter, of any unique analytical perspective, and of any original methodological contributions. Public law scholars imported much, but exported little, amassing a huge intellectual trade deficit in the world of political science scholarship. For those in other areas in the discipline, our subfield did a pretty good job of catching up with mainstream methodological trends, but it offered little leadership in novel directions from which others could learn. The cutting edge of the scientific turn thus may have increased the respectability of law and courts scholarship, but it generated only limited respect and a marginal role for the subfield in the profession.

Mapping New Developments in Post-Realist Research. My second point follows from and builds on the first set of points. In short, I want to recognize that there have been important new developments in alternative epistemological, methodological, and conceptual approaches to legal analysis advanced by many members of our subfield during recent years. Some of these ventures in "post-realist" or interpretive inquiry are briefly noted by Shapiro (as "beyond the major movements"), but their scope, ambitions, and significance seem greater to many of us today than granted by his now dated map (as he himself acknowledges).

The genealogy and present diversity of works that I label "post-realist" are too complex to cover in this short space. Nevertheless, it is worth noting that most recent post-realist forms of scholarship share some common commitments. At the heart of these concerns is a self-conscious challenge to traditional social scientific efforts to separate empirical and normative concerns, facts and values, and institutional processes and outcomes. The most basic implication of this challenge by post-

realist inquiry involves how we conceptualize "law." In short, post-realist scholarship recognizes that legal norms andconventions comprise an important part of our culturally conditioned ways of understanding and making sense of the world. Whether defined variously in terms of values, knowledge, norms, discourses, or ideologies, legal conventions from this perspective are viewed as significant constitutive elements of social interaction. This is to say that legal conventions routinely shape how citizens and officials frame events, name relations, assign blame for outcomes, claim various entitlements, and choose courses of action in their relationships with others. In short, law is not just a product of extra-legal politics; law is manifest in a wide array of distinctive cultural conventions that shape political activity and deserve serious analytical atten tion.

This highlights a second closely related point — that law is understood to be an important medium of relational or discursive power. Legal conventions work as both facilitative resources and constraints in social interaction. Like all cultural forms, legal conventions privilege certain types of relations and practices, specific ways of seeing and acting, while obscuring or discouraging others. Indeed, law's power as a knowledge or convention is perhaps greatest when its presence is least recognized in our actions, and most taken for granted as a "natural" part of our imagined lives. And it is this emphasis on law's power that distinguishes most new analyses of legal conventions in practical political activity from both older formalist approaches, which tend to eschew concerns with power, and legal realism, which addresses power in narrowly instrumental ways.

Another aspect of the challenge framed by many post-realist scholars, especially those who embrace "interpretivist" modes of inquiry, concerns the relation of researchers to their subjects. Post-realist interpretive scholars reject as untenable the positivist claim to represent accurately and objectively the "real" world of "brute facts." The challenge here is not that there is no consequential world out there to study, but that all efforts to understand it are only partial, biased, imperfect social constructions. Analysis necessarily is shaped by premises and values; there is no value-free mode of empirical research activity. This understanding has had several different implications. For one thing, it has impelled many legal scholars to specify more clearly the values, assumptions, and biases that shape their interpretive work. Moreover, these insights have been invoked to support methodological eclecticism generally, the use of qualitative methods specifically, and reliance on interdisciplinary analytical frames. While most post-realist legal research is highly empirical, we thus might say that it tends to be post-empiricist in its working assumptions.

Finally, it is relevant to note that much post-realist scholarship has provided considerable impetus for expanding the places we look to find law in practice — including the movement in legal scholarship "outward and downward" from appellate courts, which Shapiro rightly celebrates. Interpretive,post-realist approaches have framed a variety of studies by political scientists regarding many conventional legal arenas beyond appellate courts. Moreover, some recent interpretive socio-legal analyses go well beyond the boundaries of what Shapiro recognizes to find important workings of law. Indeed, post-realist scholars have led the way in decentering not only courts but state institutions altogether, and in analyzing law within a wide variety of institutional sites, relations, and practices throughout society. The rallying cry for much of this legal scholarship has been the turn to law in society — i.e., in workplaces, families, neighborhoods, churches, welfare offices, schools, and the like. This orientation does not leave legal elites and institutions behind so much as redefine their workings in less mechanical terms and examine more dynamically their relationship to extra-judicial institutional sites and practices. In particular, traditional emphases on matters of unidirectional "impact" and "compliance" have given way to a variety of more complex perspectives regarding how law shapes, expresses, and in turn is reshaped in the practical activity of "ordinary" citizens.

Beyond the Rodney Dangerfield Complex. My accounting above is not intended to celebrate recent trends in post-realist scholarship as a panacea that overcomes the contradictions of realist/formalist traditions, and hence will lift law and courts scholarship to new heights of achievement and respect. The new scholarship hardly adds up to a coherent or unified whole, and in any case the rest of the profession will remain as skeptical as realist/positivist legal scholars. The best that the new scholarship might do is add new dimensions of diversity, debate, and experimentation to our collective explorations of legal practice.

But this leads me to my final point: Isn't the latter achievement enough? In this regard, I do not fully understand or identify with what I call the Rodney Dangerfield complex that pervades Shapiro's account and most members' view of our subfield. In short, we seem to be thoroughly obsessed with the conviction that "we get no respect." I do not claim here to be entirely immune from these apprehensions and frustrations. And I am glad that we are self critical about the quality of our work, even about our image. After all, there are some important things at stake — like future jobs, promotions, salary raises, article and book publications, personal respect, etc. for ourselves, our colleagues, and our graduate students.

But I am not sure that the passion for trying to keep up with and impress our academic neighbors serves us well. This anxious preoccupation can be counterproductive in that it only confirms the low regard already extended us by some others, reinforces the inclination to mimic trends pioneered in other fields, belittles the firm vocational foothold we still do hold in most teaching and research departments, and obscures our considerable strengths of intellectual diversity, vitality, and debate. On this last point, it seems relevant that many of us were first attracted to the law and courts subfield precisely because it was something of a refuge from the epistemological, method-

ological, and conceptual stuffiness of our kin in other sectors of the discipline. That law and courts scholars tolerate (even encourage) diversity in analytical approaches, recognize the merit of directly addressing the role of ideas in politics, and feel free to integrate insights from many other intellectual traditions always has struck me as a virtue rather than a liability.

In conclusion, I find that the most significant contribution of Shapiro's map is in its recognition and celebration of the increasingly rich diversity in our subfield. My argument encourages that we celebrate further the diversity in **how** as well as **where** we examine law, and especially welcome those approaches recognizing that, for better or worse, legal conventions matter a great deal in modern society. Moreover, I urge that we balance our defensiveness about our labors with the type of good humor that Rodney Dangerfield expresses in his constant lamentations about getting no respect. Or better, I urge that we adopt the ironic posture of mixed humility and audacity so well expressed in Mick Jagger's assessment of his own often maligned profession, rock 'n roll music. May we collectively whistle and warble while we work: "It's Only Lawand Courts, But I Like It..."

Political Science and Legal Studies: The Case for Dualism

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Martin Shapiro's synoptic statement of the art of the law and politics field begins and ends on a depressing note. The discipline of political science in America used to take law seriously; now it doesn't. Political science used to have law and politics scholars in many subfields of the discipline; now they are largely confined to a corner of American politics. Political Science departments all over the US refuse to hire the best and the brightest in some of the most exciting parts of our speciality by generally disqualifying candidates who work in comparative politics, international relations, public policy and (to a lesser extent) political theory when those candidates have as their primary specialty the legal angle on those subfields. Most law and politics scholarship is outside the field of vision of mainstream Political Science. And our political colleagues think those of us who study law and courts are marginal in the discipline. This is, I think, Shapiro's depressing bottom line.

Generally, I think Shapiro is right in his diagnosis. American political science is remarkably blind to the potential value of an understanding of law in the study of politics on almost every front — from legal doctrine to the structure of the court system to the role that court decisions play in shaping the field of action on which the rest of politics (and the rest of life, for that matter) get played out. How can a discipline so concerned about the rules of political life omit the study of the very rules that the political system claims to be (and surprisingly often is) following? How can an empirical discipline so devoted to the analysis of evidence fail to notice the great quantitiers of evidence (in both legal and social scientific senses) that courts produce for analysis? How can a discipline so concerned about the spread of democracy fail to take seriously the obviously connected idea of an independent judiciary? All of this is very baffling, and I think makes American political science less perceptive as a discipline.

All of that said, however, Shapiro gives, perhaps inadvertently, many reasons for hope for the field of law and politics. There is a great deal of exciting and innovative work in the study of law and politics as Shapiro makes clear in his valuable article. No one who has read even a fraction of the materials cited in his bibliography would conclude that this is a dead or dying field. (And anyone who reads his article will see what a broad and nondenominational reader he is, which is one reason why he has such a constructive view of the matter.) The law and politics field — or at least the set of people studying law whose official appointments are in political science departments — is very alive intellectually. They run the whole gamut of theoretical approaches in political science, and represent some theoretical orientations which have not yet generally reached the rest of the discipline. They do comparative work, normative work, formal work, interpretive work, abstract-theoretical work, historical work, policy work and a great deal of other intensely empirical work of qualitative, quantitative and mixed varieties. And the range and originality are very impressive.

So, the great mystery posed by Shapiro's article is: how can such a wealth of scholarship be sustained with such a poverty of support in political science? And here, Shapiro gives us all the ingredients of an answer, though he doesn't explicitly put them together. Let me try. I think that the resolution of this paradox lies in the fact that many of us are not getting our primary sustenance from political science anymore, even if political science is where we have our titles and our careers. Law and politics is an exciting speciality to be in these days intellectually, but it is no longer primarily a speciality of political science at all any more — or at least it's only a speciality in political science at the discipline's margins. "Law and politics" has merged with "law and . . ." other things, and is becoming its own discipline instead. That discipline might be called legal studies. And it is that discipline that motivates many of us to go on.

Perhaps the best indicator that many of us are becoming "dedisciplinized" from our official academic departments is that a large number of us are far more likely to read the work of someone writing about law in a discipline which is not our official home than we are to read the work of someone not writing about law in our official disciplinary field. And when we make up the reading lists for our courses, we probably find that the authors on those lists who share our field of official disciplinariness are outnumbered by those who don't (unless we're preparing our graduate students for their prelims in political science). It's true, as Shapiro points out, that our colleagues outside the law and politics field may be ignoring us, but it is in part because we are ignoring them. We are finding our intellectual support elsewhere.

"Law and . . ." scholarship is increasing rapidly in a whole series of well-established disciplines, and the Law and Society Association, once a narrower specialists' conference attended by at most a few hundred people ten years ago, has grown to a major international and multidisciplinary event. "Law and . . ." scholarship has its own journals, its own conferences, its own systems of cross-references, its own growing canon. Perhaps we should conclude that what we are witnessing is not the decline and fall of law and politics as a field of political science, but instead the growth and consolidation of legal studies as a proper academic discipline of its own. If we look to see this activity reflected in university structures, however, we won't see very much of it yet. That's in part because, at the beginning, a discipline is not a set of departments, but instead a set of habits. And those disciplinary habits in the legal studies field are already there. The Jurisprudence and Social Policy Program at Berkeley, as well as the new PhD program in legal studies at New York University are only the most specialized institutional forms of a progression which has been going on under disciplinary cover for several decades now.

This "dedisciplinization" is happening to law-related research in disciplines besides political science as well. For example, it's happening in sociology too. My PhD is in sociology though my tenure is in political science, and I have remained active in the professional associations of both disciplines as well as in the Law and Society Association for many years. Recently, feeling underappreciated by our colleagues in the discipline of sociology, just as Shapiro accurately describes for the law and politics folks within political science, some fellow sociologists and I started a sociology of law section in the American Sociological Association. The very same discussions that go on in political science about the marginalization of those who write about law go on also in sociology, and to much the same effect. The characters are a little different but the general plot is the same. We bemoan the loss of centrality which we perceive our field as once having had (Weber, Durkheim and Marx were all trained in law and, in Weber and Durkheim's major works, law had pride of place). We also gripe about how our home discipline has relegated us to the margins and narrowed the official conception of what the field is — requiring that all sociologists of law be able to teach primarily criminology, just as political scientists complain that we have to teach primarily constitutional law. What used to be required knowledge for everyone in the discipline is now an arcane speciality at the margins — popular with undergraduates, but not a serious subject for grownups.

And herein lies the rub. What I take to be Shapiro's biggest worry is not the intellectual agenda of the field of law and politics — which seems to be thriving — but the material one — which is not. In an era of university cutbacks where hard choices are being made about how to reduce faculty while maintaining coverage in the crucial areas of the discipline, it is alarming to be marginal. If comparative politics can only hire one person to cover all of Africa, for example, does it make any sense for that person to be a specialist in postcolonial legal systems? If international relations can hire only one person to replace six retiring famous senior faculty, should that person be a specialist in the GATT? Or, as I recall one skeptical interviewer asking me during a sociology job interview: Who are Ronald Dworkin or Richard Posner anyway, and why should sociologists care about them? (I finally answered that question in Scheppele, 1994.)

Those of us who train graduate students see the larger problem immediately. Given the lack of communication between legal scholars and conventional political science, law and politics is like an empty marriage that stays together for the sake of the children — our common graduate students. Where will our students go for employment if legal scholars divorce political science? This is the real danger of a divorce of law and politics scholarship from political science (or a parallel divorce of criminology from sociology — though the number of existing criminology departments makes such a divorce safer for the kids). If we divorce, our outstanding students will be all dressed up intellectually with nowhere to go. There are not yet enough jobs in legal studies departments to go around for all these talented students.

So we train them to go out into the world as dualists. They have to sound like political scientists or sociologists to get jobs in those disciplines, and that generally means that they have to be able to teach the courses that have been out there limiting what everyone outside the field thinks the field is. For those who stay in the conventional disciplines, this means that they must get training in what counts as the mainstream in addition to the training they must get in the new field of legal studies. Our students have to cover more topics, read more books, learn more different theories and be conversant with more methodologies than comparable graduate students in more centrally placed fields of the discipline.

At Michigan, for example, where we have more than two dozen students in our PhD speciality of law and politics within political science, students have to take major "law and politics" preliminary exams that demonstrate they have competence in four different areas of work: 1) legal theory/jurisprudence, 2) doctrinal analysis (usually constitutional law, but some students have done administrative law, contracts or environmental law), 3) empirical studies of law and courts from both judicial behavior and law-and-society traditions and 4) either comparative or historical perspectives on law and legal systems. The range of work they have to master to get through the prelim is by far the broadest our department requires of any major prelim field. And then our students have to go on to take two other prelims in other fields within political science. A number of them are also getting (or have already gotten) law degrees as well. It's not that more education is a bad thing. But our

students have to work harder to do the research they want to do and also to be hired in a political science department than comparable students in more mainstream fields.

So far, I have spoken as if it were only a matter of time before such legal studies departments gave us all comfortable and supportive homes, and as if the legal studies disciplinary alternative were better than staying part of our home disciplines. But I'm not at all sure that either part of that statement is true. If I had thought the existing disciplines were not good places for such legal studies scholarship to go on, I would not have worked so hard to create organizations within in the national associations of both political science (the Conference Group on Jurisprudence and Public Law) and sociology (the Sociology of Law Section) to bring our work to the attention of the rest of the discipline. First, in an era of scarce and shrinking resources for universities, this is not a very auspicious moment to launch new departments, so it is an unlikely time to successfully create an institutionalized discipline. Second, it's not clear to me that a separate legal studies department would be automatically a better intellectual space than our various disciplinary homes. The danger of the separate legal studies route, apart from the danger to the graduate students who would bear the very real costs of the uncertainty of transition, is also an intellectual one.

Law and politics are substantively very closely connected, and losing our connections with the discipline of political science may make it easier for us to forget that important fact. Independent judiciaries, partly autonomous fields of legal doctrine and specialized methodologies of legal interpretation are ways of separating law from politics in the real world, but ultimately political questions arise in law, and the law is not better informed for ignoring politics. Nor are those of us who study law better off being unaware of the political machinations and institutions that surround the legal ones. A similar case can be made in sociology where understanding the fields of action out of which cases and disputes arise can only help us to understand such conflicts better. And the theories in our disciplines also force us to think beyond the boundaries of law to the contexts within which law operates, which makes it harder for us to believe that (to borrow from Derrida) there is no world beyond the text (of the laws). In many ways, we are intellectually what we read, and as long as we keep reading (at least a bit) within our disciplines, we have the possibilities of bringing new connections and insights to our specialty of law.

Shapiro urges us to move out from the focus on constitutional law and America and down from the focus on high courts, and I agree with his advice. But as we think about intellectual movement, we might also think about a move in the direction of disciplinary dualism, connecting what we do not only to our home disciplines, but also to what may someday (when universities may thrive again) be the young and exciting discipline of legal studies. But perhaps we should not contemplate a complete move. Perhaps two homes are better than one, after all.

Different Strokes For Different Folks: A Reply To Professor Shapiro's Assessment Of The Subfield*

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*I thank Lee Epstein for her incisive critique of the original draft of this paper.

I bifurcate this essay between a critique of Shapiro's assessment of the subfield and my estimation of where it is heading. In both segments I shall attempt to mimic the irreverent acerbicism that characterizes Martin's essay.

I

An assessment of the state of any subfield — particularly one as dynamic as judicial politics — is daunting for a number of reasons, not the least of which is that — like a constitutional law casebook — publication dates it. Why then undertake the task? Three reasons suggest themselves: the evaluator is an *uomo universale*; he loves to wander aprosexia where angels fear to tread; or he is didactically doctrinaire.

Few qualify for the initial label. Larry Baum, the author of the original assessment, comes to mind. But if the works the present edition cites (Shapiro 1993, pp. 377-381) are an indicator, the tag does not fit. Not because it cites law reviews almost as frequently as political science journals, but rather because of the peculiar imbalance within each of these groupings. On the face of Shapiro's essay, the *Political Research Quarterly* (nee the *Western Political Quarterly*), appears to be our leading journal, with seven citations. By contrast, the *American Political Science Review* and the *American Journal of Political Science* merit only five apiece. More odd is the equality of reference which the *Review of Politics* and the *Journal of Politics* receive, three each. Among law journals — student-edited and non-refereed — UCLA and Northwestern lead the pack with three, Harvard and Yale trail with one.

The second possibility — lack of circumspection — pertains to motivation. And we all know the Byzantine labyrinth that awaits those who attempt to plumb intent — original or otherwise. But be this as it may, Martin's words suggest that the third answer is the correct one: a pointed effort to redirect the acediasts among us back onto the path of orthodoxy.

Thus, we find rational choice characterized as a virulent virus (p. 370)[1] and behavioralism depicted as "reductionism" (p. 375) and its practitioners as a "set of Kreminologists" (p. 366) sitting in a corner. A preteristic longing for the good old days permeates the essay, when the study of law and courts was the apoggee of political science and revealed truth--constitutional law--was the shrine at which all virtuous phereters worshiped. Public law, Martin tells us, has fallen on hard times because we have strayed from the path blazed by our founding fathers: Edward S. Corwin and Robert Cushman (p. 371). Instead, we have been seduced by the siren of science. The result: "A highly problematic status as a subfield," which, though large in numbers, has "become one of the more minor

fields in terms of status within the discipline" (p. 365).

I agree with Martin's words, but not his explanation, which is the same old nescient nonsense, appropriate only for misologistic meshugeyim.

We are perceived as inferior precisely because so many of us have refused to function as scientists, preferring instead the airy reveries of luftmenschen. What, for example, are scientists -- political or otherwise — to think when Shapiro bemoans the demise of the study of international law as distinct from its development as a meaningful restraint on the behavior of nations (p. 367)? What are the "stories" we as political scientists are urged to tell (p. 369)? Journalism masquerading as scholarship? We are informed that "one of the most important books of the 1980s" (p. 369) was a case study. Is narration the preferred methodology, with quietistic lucubration the apparent goal?

And why, we are indignantly asked, have we not returned to "taking constitutional language seriously" (p. 375)? The answer seems patently obvious to anyone even remotely connected to reality: because the justices themselves do not, anymore than their brethren on lower courts — state and federal. The most telling evidence postdates our Martin's assessment: Larry Solan's *The Language of Judges* (1993). Given Shapiro's call for interdisciplinary studies of law and whatever, one might have expected a linkage of law and linguistics to be grist for the orthodox mill. Not so, apparently. Linguistics, after all, does postdate the emergence of the common law, Blackstone, and the legal thought of Jeremy Bentham. Moreover, it purports to be the **scientific** study of language. How much better to accept at face value the famous bavardage of Justice Roberts in *United States v. Butler* (1936). Or the latest doctrinal utterances on the (in)utility of judicial review. I note parenthetically that linguistic analysis readily admits of comparative focus (an orientation to which Martin gives his blessing). Solan's work admirably exemplifies it.

One forgives mystagogues for their lack of prescience, but one might have expected Shapiro to be less nesciently aware of the past. Those who lead a counter-reformation commonly wrap their prescriptions in an historical mantle to justify their condemnation of progress. But meticulous analysis (Walker 1994) shows that since mid-century 7.5 percent of the independent entries in our three leading journals (*APSR*, *AJPS*, *JOP*) dealt with law and courts. All in all, a rather good record for a subfield so sorely afflicted. Most generous was the *Journal of Politics*, which our author cites less frequently than either of the others or the *Political Research Quarterly*.

But of course one might maintain that intellectual corruption was endemic by 1950 and that the fulminations of Wallace Mendelson (1964), egged on by sympathetic tsitsers, were but an ergotistic rearguard action against the benighted forces of evil.

Actually, not until 1964 did scientific studies outnumber legal and historical ones. Indeed, in 1950, the latter exceeded the former by a ratio of 9:1. Since 1964, scientific studies failed to predominate only in 1976. And since 1990, the midcentury ratio has been reversed (Walker 1994).

II

On the other hand, the concentration on decision making has lessened, perhaps in part because the attitudinal modelers captured the explanatory basilica long occupied by the quaintly antiquated spokescreatures of the legal model. Beginning to supplement, if not displace, the emphasis on decision making is research into coalition formation, judicial leadership, the impact of small group processes — including interest groups — on appellate decisions, the acquisition and change of judicial attitudes, and the interaction of courts with other actors in a separated system of powers.

Along these lines, theories grounded in assumptions of rationality may light our path. For example, because many aspects of judicial politics involve interdependent decisions, game theoretic models bode well to reveal the operation of a vast array of court-based decisions. Arguably, strategic decision making presumptively characterizes the entirety of the judicial process: when, where, and whom to sue; pretrial and trial tactics; whether to settle or plea bargain; whether or not to appeal. So also judicial decisions: cert and other procedural votes, opinion assignment, the legal choices confronting the opinion assignee, along with the merits and report votes. Although joinder between rational choice and the attitudinal model has not transpired, if only because of the latter's focus on unconstrained choice, some blending has occurred (Segal, Boucher, and Cameron 1995).

Although game theory invites application to the study of opinion coalition formation, I am markedly less sanguine about its applicability to separation of powers (SOP). SOP games, as developed by positive political theorists, operate under typical game theoretic assumptions: goal directed justices; policy as the goal — i.e., deriving satisfaction from having the law reflect one's policy preferences; with attainment of goals dependent on the preferences of other actors — e.g., kakistocrats of one sort or another, typically congresscreatures — and an assessment of what actions these other actors may take. As a result, SOP games assume sophisticated judicial behavior to avoid congressional or executive override. Typically, these games also contain a rigorous sequence of moves — Court first, Congress last — with legal and constitutional rules governing the play.

Although I do not demur from Cameron's assertion (1994, pp. 54-57) that these models are ready for testing, I am appreciably less sanguine than he that significant findings will result. First, as noted elsewhere (Segal and Spaeth 1994, p. 11), the modelers force the Court into a statutory mode, one, moreover, which gives Congress the last move. The latter condition does not comport with empirical reality. Congress rarely makes the last move (Henschen 1983). Members typically formicate and fulminate before the media, but their behavior amounts to little more than witless ululation. Not uncommonly, Congress passes the legislative buck to the Court, while at other times the Court invites Congress to alter its interpretation of the statute (Segal and Spaeth 1993, pp. 327-329). Hence, the positivists' position,

that the Court must take congressional preferences into account or risk being overruled, may accord with the pride of position congressional scholars attach to their institution, but its connection with reality is tenuous.

Much more fruitful, it seems to me, is a game theoretic offshoot: principal-agent problems in which the comparative focus is intra- rather than inter-institutional; i.e., within the judicial system itself. Specifically, the dynamics of the interactions between the Supreme Court and other federal courts. Principal-agent theory investigates the extent to which agents act congruently with their principals versus the extent to which they act incongruently ("shirk"), as well as the extent to which control mechanisms insure the compatibility of agent action with that of the principal (Songer, Segal, and Cameron 1994, p. 673).

Another fruitful area of analysis is coalition formation. I suspect this virtually virginal domain will thrive in the next few years because of the wedding of the Palmer (1990) and Spaeth databases and the extension of conference vote data to the Warren as well as the Vinson Courts. Already the National Science Foundation has seen fit to support a multi-year collaborative research effort (Epstein et al 1993). For two decades this field has lain fallow, at least in part because of the costs that data collection would entail. Building on the justices' policy motivations and the institutional constraints to which they are subject, analyses of coalition formation will move from the analysis of report votes to an investigation of the processes that produce the doctrine and policy that the Court enunciates. An adequate understanding of coalition formation will require analysis and explanation of their size, composition, and maintenance along with the mechanisms that produce the final coalitional outcomes.

Because coalition formation requires collaboration among actors it ineluctably entails strategic behavior, unlike the mere act of voting. Although strategy does attend votes to grant or deny cert, it is otherwise absent from the attitudinal paradigm. Movement beyond the attitudinal model, however, does not force one to wear a formal jacket. The richness of judicial data sources should enable us to understand not only the bargaining and negotiating games that the justices play, but also the nuanced behavior that produces finely tuned variations in their outcomes. Moreover, not all justices will play the same game and/or abide by the same set of rules. Each member of the majority opinion coalition, for example, may individually define the tradeoff between policy and consensus. This tradeoff will undoubtedly vary from one issue to another, between one Court and another, and even between one justice and another — not the least of whom is likely to be the opinion writer. Thus, a given justice may have unyielding preferences toward one issue, but be flexible and amenable to compromise in another.

But whatever the specific focus of future research, before work based on strategic choice becomes anything more than so many sets of plausible assumptions two conditions must be met: data and systematic empirical testing. These, of course, are not sufficient conditions, but most assuredly they are necessary ones.

[1]Shapiro (1995) seems to have changed his tune, but he does not tell us whether sincerely or strategically.

Response

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No doubt I have already said too much and will now be brief. I was so struck by Herb Jacob's point, seconded by McCann, that we ought to pay more attention to law in the study of courts that I have written a new piece "Courts of Politics, Courts of Law" that will appear shortly in a festschrift for Jack Peltason edited by Austin Ranney.

I fully accept McCann's supplement to my earlier piece. The new movement he describes was noted in that paper but perhaps should have been given more space and a heading of its own. I continue to experience two difficulties with this new movement. Most of the new work is about groups interacting with the legal process and emphasizes both that the groups shape the law and the law shapes the groups. But many law and courts political scientists have always written about both directions on this two-way street and much of the new work, such as McCann's own, seems to harken back to much older "litigation as interest group lobbying" work of Vose, Krislov, and ultimately Truman. How new is this work except in feeling free to proclaim who are the good guys and who are the bad guys in the group struggle?

My second difficulty is precisely over good and bad. The new movement does not seem to have so radically destroyed the distinction between objectivity and subjectivity as to claim that it is now writing didactic fiction. It does reject positivism as a kind of screen for the bad guys--power, hegemony and such like. I think ultimately it remains committed to describing facts and events as accurately as possible but, by dissolving law into whatever anybody says or feels about law, it seeks to justify various leftist programs and policies. How much the leftist ideology ultimately will interfere with useful empirical work remains to be seen, but so far the empirical work seems to be fine, and you can either take or leave the authors; social philosophies.

Harold Spaeth builds his piece around one of the oldest debates in science-can we really only know that which we can count and measure? He says yes. I, and most of the writers I surveyed, say no. I don't think Harold and I will resolve this issue.

I confess to Leslie Goldstein that for nearly 20 years I too have continued sporadically to teach a standard undegrad constitutional law course at U.S. San Diego. My position continues to be that it is a great liberal arts course but a disaster if it is the sole or first course on courts for political science majors.

I take a far less sanguine view than Kim Scheppele. In the biological sciences it is true that genuine new interdisciplinary fields have been institutionalized in the structure of departments and in hiring: biochemistry, psychobiology, ecology, etc. It is also true that some "public law" job advertisements now say "law and society" specialists will be considered or

even preferred. But more and more jobs are listed as "American politics, specialists in Congress, parties etc. or judicial politics are preferred." In most of the scattering of Law and Society programs that exist, the program does not have independent hiring authority and is staffed by people hired by and seconded from traditional academic departments. The gap between the shape of scholarship and the shape of the job market is not, in my view, significantly closing. I think that at best what is happening is that "public law" political science PhD.s now receive much more interdisciplinary training, but that in order to get a job and tenure they must still demonstrate that they are really political scientists--and that usually means constitutional law as a branch of American politics or political theory.

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Whither the Web?

Lee Epstein, *Washington University* and Jerry Goldman, *Northwestern University*

Note: Sue Davis asked us to write this column because, we suspect, we're hooked on the World Wide Web and technology for law and courts. Goldman has been developing a digital archive of oral arguments from the Supreme Court. Epstein has been working on web-based projects for CQ Press. We thought to merge our efforts in this column. In subsequent issues, we hope to encourage your web navigation and spur you to create web resources for your students and for us!

Surf's up. Time to ride the curl —LE and JG

The World Wide Web is unavoidable. Web addresses (e.g., http:// ...) are ubiquitous. Jerry saw one the other day plastered on the back of a bus. Television and radio stations alert viewers and listeners to their world wide web sites. Today, you can hear a recap of the news or listen to Nina Totenberg's latest piece at your convenience, thanks to the fast-changing world of the web. Audio feeds from the national nominating conventions or the World Series may soon be available on your desktop, playing in the background while you hammer out the next draft of an article or prepare another lecture.

If you're not yet convinced that the WWW is worth your time, let us offer a single over-arching reason. The WWW will change virtually everything we do. It will change how we teach and the resources we use for instruction. It will also change how we gather information by placing more content on the web for us to access from our desktops. The web will also bring new media into the research and teaching enterprise. Today, it is audio to the desktop. In the future, video will be streaming there or to your classroom. And the web will change the nature of our research. Scholars will come to rely on the WWW for data collection and publication of findings. (For a convincing argument on the inevitability of electronic publishing, see Micheal Giles, "Presidential Address," forthcoming in the *Journal of Politics*).

If you have not yet taken your turn at web exploration, here are a couple of simple tips.

First. You will need a connection. Many institutions offer some form of electronic access, though some places may be limited in their ability to provide sufficient "bandwidth" to permit more than the display of text on your computer screen. The networking of college campuses provides relatively fast transmission of information to the WWW. Others may rely on dial-up modem use. A modem is a device to link computers through telephone connections. Modem speed affects your ability to take full advantage of the WWW. The "modal" modem today transmits information at 14400 (14.4K) bits per second. The fastest conventional modems provide double the speed (28.8 kbps). The higher the speed of your modem, the faster you will be able to view images on your screen. Also faster speed improves the quality of audio transmissions on the WWW.

Second. You will need a piece of software commonly called a browser. The most popular browser is Netscape Navigator. It is now in release 2.0 and comes in flavors for almost all computer platforms. Netscape is free and you can obtain it from lots of places, e.g., browsers come bundled with many books on the Internet.

Once you have installed your browser, the next step is to go somewhere, or "surf." This requires knowing an WWW address and typing it in the "Open Location" window which you will find under Netscape's file menu. A full web address looks like this:

http://www.myorganization.mydomain

Where "myorganization" may be "nwu" (for Northwestern University) or "wustl" (for "Washington University St. Louis").

And "mydomain" may be "edu" (for educational institutions) or "com" (for commercial institutions) or "org" (for the nonprofit sector).

The latest version of Netscape does not require the standard front-end stuff (http://). Instead, you need only type the remainder of the "address." We've appended some addresses we think may prove valuable to you as you take the plunge and see (and hear) what the web has to offer.

Navigating the web requires the courage to follow your curiosity. When you travel to a web site, you are likely to find links to other sites. As you click on these links (differentiated by color and perhaps underlining), Netscape will track where you have been. If you wish to retrace your steps, the "forward" and "back" buttons on the Netscape screen will accomplish this movement for you.

Perhaps you will find a location that offers some valuable information. You can "bookmark" the location, which means that Netscape will remember this location and store your marks for subsequent use.

Netscape is an all-in-one resource. It can read, store, and transmit email message. It can connect you to newsgroups where you can post and read the comments of others. Netscape also supports "plug-ins." These software add-ons provide additional functionality to Netscape. Plug-ins are often released before full de-bugging. But they do offer some fascinating glimpses at the future of the WWW. Jerry viewed one such plug-in recently that offered a "virtual reality" rotation of an object. In this case, the object was planet Earth. You could select different metaphors to navigate around the planet. If you chose to use the "walk" metaphor, you would get the sense of traveling close to the ground at a relatively slow pace. If you chose to "fly," you would get a different perspective above the surface and you would get the sensation of flying over the earth's surface.

Of course, you may ask quite reasonably what does all this have to do with courts and law. In one sense, it has nothing to do with it. Yet in another sense, it has everything to do with it. Let us explain.

The WWW is a fast-growing network of computers sharing information and providing links to places of interest. It is not aimed at courts or law in any special sense. And its power to deliver nontext information runs against the grain of scholars, lawyers, judges, and court administrators. So the power of the web does not impact significantly on the individuals we're interested in and the work they do.....now.

But the WWW is the future. It is the place to go now to find this morning's Supreme Court opinion. Or the opinions of the U.S. Courts of Appeals and state courts of last resort. It is also the place to go to hear oral argument in the great constitutional controversies of the last forty years. It may be the place to go to see and hear current arguments while they happen, though we're not yet certain that the Court will embrace this technology before the millennium (which millennium we're not certain). The web will also become the place where the curious will go to visit a "virtual" court house, tour its public spaces, observe its trials, attend its hearings, navigate to its library, review its resources, and read its briefs and opinions. But this is the future.

We promise to keep you close to the latest web activities but we're mindful that the future will be here before you know it.

In future columns, we plan to provide you with detailed descriptions of the more interesting law and courts' sites.

We list only a few on the following page to get you started.

A (Very Small) Sample of Web Sites Relating to Law and Courts

Site	Address	Contents
CourtTV Law Center	http://www.courttv.com/index.html#Top	Links to Current Information on the Legal System and "Hot" Court Cases
Justice Information Center, National Criminal Justice Reference Service	http://www.ncjrs.org/	Links to Information and Data Pertaining to the Criminal Justice System, including Corrections, Juvenile Justice, and Law Enforcement
Legal Information Institute, Cornell Law School	http://www.law.cornell.edu/supct/	Decisions of the U.S. Supreme Court, 1990-present
Legal Information Institute, Cornell Law School	http://www.law.cornell.edu/focus/statistics.html	Statistics on Federal District Court Cases, 1978-1994
Legal Information Institute, Cornell Law School	http://www.law.cornell.edu/supct/directory/overview.html	Links to Information and Data on State and Federal Supreme Courts, including Composition and Decisions
Legal Sites on the Web	http://www.geocities.com/CapitolHill/1814/legal.htm	Comprehensive List of Links to Good Legal Sites on the Web, updated regularly
National Center for State Courts Home Page	http://www.ncsc.dni.us/	Links to Information and Data on State Courts, including Case Loads and Juries
U.S. Supreme Court Oral Argument Archive	http://oyez.at.nwu.edu/oyez.html	Unedited, Digitized Oral arguments in Landmark Supreme Court Cases
U.S. Federal Courts Finder, Emory University School of Law	http://www.law.emory.edu/FEDCTS/	Links to the Decisions of U.S. Courts of Appeals, (typically) 1995-present
U.S. Federal Courts Home Page, Administrative Office of the U.S. Courts	http://www.uscourts.gov/	Links to Information on the Federal Courts, including *Understanding the Federal Courts*

Books: Briefly Noted

A new addition to **Law and Courts**, "Books: New and Notable," will appear in the next several issues of the Newsletter. Consisting of a brief consideration of books that have been published recently or that are simply noteworthy for any reason, this column might serve as a supplement but most definitely should not be viewed as a substitute for Herb Jacob's *Law and Courts Book Review* (see instructions for accessing all the previous book reviews on the internet in "Section News"). If you have read or written a book that you would like to see included here please contact the editor.

Stare Indecisis: The Alteration of Precedent on the Supreme Court, 1946-1992
Saul Brenner and Harold J. Spaeth
(Cambridge University Press, 1995)

Brenner and Spaeth systematically examine the formal alteration of precedent in the United States Supreme Court, in order to assess the extent to which adherence to precedent, a fundamental cornerstone of the legal model, is a significant force in the politics of judicial choice. Using a highly innovative research design, Brenner and Spaeth examine cases that formally alter precedent (115 overruling decisions) and the precedents that were altered (154 precedents overruled) from 1946 through 1992.

In addition to providing a wealth of descriptive information about this important body of cases, including certiorari voting, Brenner and Spaeth examine pairs of votes cast by individual justices for evidence of behavior consistent with either the attitudinal model, the legal model, or both. Based on the cumulative evidence derived from a series of tests, they conclude that individual voting in these cases is more consistent with the attitudinal model than with the legal model. However, because of the overlap of the attitudinal and legal models and the difficulty of disentangling their effects, and also because the study examines only one aspect of the legal model (the formal alteration of precedent), Brenner and Spaeth do not dismiss the legal model's relevance to Supreme Court decision making. Rather, they call for more refined tests to assess the influence of legal forces on judicial choice. As the authors so aptly observe: "Perhaps it is time to stop asserting that legal variables are obviously important in the Court's decisionmaking. Perhaps it is time to start testing whether these variables are, in fact, important" (page 111).

This book does exactly what the authors claim, and does it well.

The book is an outstanding example of how to conduct theoretically driven, empirical research. The study is highly replicable; every choice regarding the design is explained carefully and criticized thoroughly by the authors themselves.

Much more important, this book presents important evidence about the determinants of judicial choice and suggests important avenues for future research. This book should be required reading for anyone interested in judicial behavior and United States Supreme Court politics.

Melinda Gann Hall
University of Wisconsin - Milwaukee

Environmental Change: Federal Courts and the EPA
Rosemary O'Leary
(Temple University Press, 1993)

Utilizing a case study approach, O'Leary provides rich descriptive detail of the relationship between federal courts and the Environmental Protection Agency. In so doing, she also documents the influence of public interest groups, private industry and to a lesser extent, Congress, on judicial-bureaucratic interactions. She analyzes these interactions in the specific areas of water pollution, hazardous waste, toxics, pesticides and air pollution. Her discussion offers few novel insights on judicial behavior and decision-making (in her conclusion, she notes that which would seem obvious to judicial politics scholars--e.g. that policy preferences matter in individual judicial decisions and that Reagan appointees are more likely than Carter appointees to reduce the burden of compliance with the Clean Air Act and Clean Water Act on industries).

Still, it is a worthwhile volume because of the meticulous manner in which incremental policy-making is documented. Her case studies highlight the roles that courts, regulatory agencies, interest groups and Congress have in the formulation of public policy relative to one another, reminding us of the degree to which all these actors are reactive and demonstrating the remarkably piecemeal nature of policy-making. The case studies, then, situate courts into the national government, accentuating the relevance of institutions and structures in understanding judicial behavior and politics. For that reason, the volume is a nice complement to existing literature and worth perusing by law and courts scholars. And for those interested in environmental law, the thoroughness and the depth of coverage makes this an invaluable contribution to the literature.

Lauren Bowen
John Carroll University

The United States Supreme Court: From the Inside Out
Phillip Cooper and Howard Ball
(Prentice-Hall,1996)

Cooper and Ball's handsome volume on the Supreme Court will engage scholars, students, and lay readers with even a modicum of interest in our government's most invisible branch. Relying heavily on primary source materials (including the recently available Marshall and Brennan papers, as well as interviews with several justices) the authors offer a portrait of the Supreme Court's processes and personalities which goes well beyond other scholarly work in giving the reader an "insiders" perspective on the institution and its work. The volume opens with the "swearing in" of the reader as a Justice of the Supreme Court and begins each substantive chapter by placing the reader/Justice directly into the fray of the subject matter. Somehow it all works! Cooper and Ball are concerned both with explicating Supreme Court processes as well as exploring normative issues surrounding the Court's policy-making role. Interesting and effective case studies are weaved into each chapter (such as the Bork appointment battle and the NAACP's litigation strategies) and the book is unusually rich with visuals including Court documents and numerous photographs. The unusual "inside out" perspective leads the authors to focus on generally underexplored topics such as socialization to the Court's work, off the bench activity by justices, relationships among the brethren, and the vexing issues surrounding decisions to leave the Court. All too easy to dismiss as a "mere textbook," Cooper and Ball offer a refreshing and novel approach to understanding the Supreme Court. It is a "must read" that will be instructive to all members of the APSA's Law and Courts section.

Elliot E. Slotnick
The Ohio State University

Al-Mughtaribun: American Law and the Transformation of Muslim Life in the United States
Kathleen M. Moore

Kathleen M. Moore takes her title from the Arabic word for emigrants or ones who are "far from their homeland." This is a study in impact that gives new meaning to an old public law concept that first led us out of the imperial palaces of the high courts and into law's empire in society. Professor Moore, from the University of Connecticut, places her studies of Muslims as "other Asians" in the immigration statutes, Muslims in prison, and the siting of Mosques into the context of contemporary Law and Society scholarship. The evolution of her thesis is from the politics of discrimination to the legal construction of identity. The brilliant cover of a minaret draped in red, white, and blue reflects the startling analysis.

John Brigham
University of Massachusetts-Amherst

And Books to Watch For

In *Our Lives Before the Law* (forthcoming from Princeton University Press), **Judith A. Baer** attempts to reground and redirect feminist jurisprudence. Part I of the book is a critique of several influential feminist works. The author argues that most feminist scholars have made certain characteristic errors which stem from their incomplete understanding of the conventional, male-biased theory they reject. Part II applies this critique and the author's analysis to several current legal issues involving women. The book ends with a call for a "feminist post-liberalism" which can develop a viable theory and bring feminist scholarship into the ongoing debate among liberal, conservative, and communitarian viewpoints.

Throughout the book, Baer asserts that male supremacy manifests itself in women's greater vulnerability and responsibility, but less freedom, relative to men. She argues that law has reinforced, rather than mitigated, this maldistribution of burdens and benefits, and that most feminist theory has failed to perceive it.

Professor Baer was awarded a Woodrow Wilson Fellowship for the 1995-96 academic year to work on this book.

Lawrence Baum is currently writing *The Puzzle of Judicial Behavior* (forthcoming, University of Michigan Press). In order to assess the state of knowledge about judicial behavior in the United States, Baum uses a framework that focuses on judges' goals and the links between goals and behavior. In successive chapters he examines three related issues: the relative weight of judges' concern with the content of legal policy (whether as law or as policy) and other goals such as limiting workload and securing promotion to higher courts; the relative weight of judges' concern with making good law and with making good policy; and the extent to which judges behave strategically to advance their policy goals. In each instance he considers the theoretical issues involved and examines the relevant empirical evidence.

In the final chapter Baum concludes that we are far from resolving any of these issues and that this lack of resolution results primarily from inherent difficulties in explaining behavior. He uses his examination of different approaches to the study of judicial behavior to argue that future progress will be greatest if research is diverse in subject matter (moving beyond those courts and topics on which scholars have focused most of their work), in methodology, and in theoretical perspectives.

Section News and Announcements

Law and Politics Book Review

More than 300 Book Reviews at Your Fingertips!

You can access more than 300 reviews of books on law and politics published since March, 1991 by the Law and Politics Book Review on a new web site. The address is: http://www.polisci.nwu.edu:8001. The site will be updated monthly.

You will be able to search for reviews, and print them out on your own desk top.

To receive current reviews as they are published, remain subscribed to the LPBR-L listserv. If you wish to begin receiving the reviews in your e-mail box, simply send the message: SUBSCRIBE LPBR-L <your name> to: LISTSERV@LISTERV.ACNS.NWU.EDU There is no charge for subscriptions; you will generally receive one or two book reviews a week by e-mail.

New Data Base Almost Ready

Donald R. Songer (University of South Carolina) has almost completed his United States Courts of Appeals Data Base.

When it is complete it will be archived at the ICPSR. The data will be archived in three phases. The first will be the random sample of cases from each circuit each year for 1925-1988. The second phase, which should be ready about six month later will consist of all the decisions from 1950-1988 that were reviewed by the Supreme Court--we expect to merge these with Harold Spaeth's Supreme Court Data Base. For "Phase 3" Songer will be submitting a grant proposal to NSF to bring the data set up to the present.

There will be a Roundtable about the Data Base at the Midwest Political Science Association Meeting in Chicago, April 18-20.

Look for more information about Songer's Data Base in the next issue of Law and Courts.

New Series on Law and Politics

Peter Lang Publishing has recently created two new editorial series on law and politics and it invites submission of manuscripts. The first series is entitled Studies in Law and Politics, and it seeks to publish scholarly materials that explore the multidimensional and multidisciplinary topic of law and politics. The second series is entitled Teaching Texts in Law and Politics, and it seeks to publish textbooks that explore the multidimensional and multidisciplinary topic of law and politics.

For both series, the subject matters to be addressed include, but will not be limited to: constitutional law; civil rights and liberties issues, including race, gender, and gender orientation studies; law and ethics; women and the law; judicial behavior and decision-making; legal theory; comparative legal systems; criminal justice; courts and the political process; and any other topics addressing the intersection of the law and the legal process that would be of interest to scholars or students.

Inquiries or manuscripts may be sent to : Peter Lang Publishing, Inc. c/o Owen Lancer, 275 7th Avenue, 28th Floor, New York, NY 1001-6708; Phone: 212/647-7700; Fax: 212/647-7707; or to the editor of the two series: David Schultz, 1120 Clair Avenue, Saint Paul, Minnesota 55105; e-mail: schul064@maroon.tc.umn.edu.

Correction

The title of Luke Bierman's dissertation (SUNY-Albany), which was reported incorrectly in the winter issue of **Law and Courts** is: "Institutional Identity and the Limits of Institutional Reform: The New York Court of Appeals in the Judicial Process."

Conference Schedule, 1996

Midwest Political Science Association	Chicago, IL	April 18-20, 1996
IPSA, Comparative Judicial Studies	Jerusalem	July 2-4, 1996
Law and Society Accociation	Glasgow, Scotland	July 10-13, 1996
American Political Science Association	San Francisco, CA	August 28-September 1, 1996
Southern Political Science Association	Atlanta, GA	November 7-9, 1996
Scientific Study of Judicial Politics	St. Louis, MI	November 14-16
Northeastern Political Science Association	Boston, MA	November 14-16, 1996

Conference in New York City

The Culture of Choice in Law and Social Policy

Institute for Law and Society at New York University

April 26, 1996

Sociolegal scholars, contemporary political theorists, and policymakers concerned with the new culture of choice and its implications for social policy, will explore the role of law in representing and framing culture; how and why particular meanings of choice are central to current legal and social policy debates; what is taken-for-granted and what is debated about "choice" in different policy fields; what commonalities and differences exist across areas; and finally, what are the politics, past, present and future of the culture of choice.

Speakers include: Derrick Bell, Jennifer Hochschild, Lawrence Friedman, Barbara Yngvesson, and Lewis Kornhauser

To register please contact: The Institute for Law and Society, New York University 212/998-8536; Fax: 212/995-4034; LawSoc@turing.law.nyu.edu

Special Issue of *Studies in Law, Politics & Society* on Law and Popular Culture

Volume 17 of *Studies in Law, Politics & Society* will be devoted to the exploration of the complex connections of law and popular culture to the ways legal forms map and maintain forms of representation that are available in culture more generally, to an examination of the way images circulate in and between legal and cultural settings, as well as to the description of the meaning and significance of globalization for cultural representations of law. Articles might address themselves to historical examples of law in popular culture, to readings of particular representations of law in film, on television, or in other popular media, to assessments of changes in the form and content of law as a reaction to its popularization, and/or to the creation of legal consciousness associated with that phenomenon.

For this special issue the journal is seeking broad representation of disciplines, theories, and methods. Papers should be submitted for review by July 1, 1996 to Professor Austin Sarat/Susan Silbey, Editors, Studies in Law, Politics & Society, c/o Department of Law Jurisprudence & Social Thought, Box 2259, Amherst College, Amherst, MA 01002.

International Law Update

International Law Update is a new monthly publication designed to assist U.S. practitioners and scholars of public and private international law to stay current in these fields.

To this goal, *International Law Update* reports, for example, on recent international opinions of the Federal Courts, on applications of the Hague Evidence and Service Conventions, on major intergovernmental commercial agreements, on cases dealing with sovereign immunity and enforcement of judgments, and on significant changes in domestic and international law affecting American interests at home and abroad.

A one-year subscription is $250 and may be ordered from *International Law Update*, P.O. Box 33068, Washington, D.C. 20033-0068; phone/Fax: (202) 467-5458; e-mail: lawmike@ix.netcom.edu.

Just Published

Bruce E. Altschuler and Celia A. Sgroi, *Understanding Law in a Changing Society*, 2nd edition (Prentice-Hall, 1996).

Mathhew H. Kramer, *Critical Legal Theory and the Challenge of Feminism* (Rowman & Littlefield, 1995).

NEH Fellowships

NEH Fellowships provide support for six to twelve month of full-time work on projects that will make a significant contribution to thought and knowledge in the humanities. These fellowships are awarded through two programs, **Fellowships for University Teachers** and **Fellowships for College Teachers and Independent Scholars**, and the program to which a person applies depends on the individuals institutional affiliation or circumstances.

Application Deadline: May 1, 1996

Tenure: Tenure must cover an uninterrupted period of from six to twelve months. The earliest that Fellows may begin tenure is January 1 1997.

Maximum Stipend: $30,000

Inquiries: 202/606-8466 (University Teachers)
fellowsuniv@neh.fed.us202/606-8467 (College Teachers and Independent Scholars)
fellowscollind@neh.fed.us

NEH Summer Stipends

NEH Summer Stipends support two months of full-time work on projects that will make a significant contribution to the humanities.

In most cases, faculty members of colleges and universities in the United States must be nominated by their institutions for the Summer Stipends competition, and each of these institutions may nominate two applicants. Prospective applicants who will require nomination should acquaint themselves with their institutions' nomination procedures well before the October 1 application deadline. Individuals employed in nonteaching capacities in colleges and universities and individuals not affiliated with colleges and universities do not require nomination and may apply directly to the program.

Application Deadline: October 1, 1996

Tenure: Tenure must cover two full and uninterrupted months and will normally be held between May 1, 1997, and September 30, 1997

Stipend: $4,000

Inquiries: 202/606-8551
stipends@neh.fed.us

General Eligibility

Applicants need not have advanced degrees, but neither candidates for degrees nor persons seeking support for work toward a degree are eligible to apply for Fellowships and Summer Stipends.

Selection Procedures

Reviewers consider the significance of the proposed project to the humanities, the quality of the applicant's work, the conception and description of the project, and the likelihood that the work will be accomplished.

Inquiries

For further information and application materials, persons interested in these programs can use the telephone numbers and e-mail addresses provided above, or they can write to

Address: NEH Fellowships and Summer Stipends Room
318 National Endowment for the Humanities
1100 Pennsylvania Avenue, N.W.
Washington, D.C. 20506

Information on these programs is also available at http://www.neh.fed.us

The Law and Social Science Program of the National Science Foundation wishes to remind interested social, behavioral, and economic scientists of its regular and special grant competitions.

Types of Proposals

In addition to standard research proposals, the Law and Social Science program regular and Global Perspectives on Sociolegal Studies competitions welcome planning grant proposals, requests for conferences and other activities to lay the foundation for research, and proposals for improving doctoral dissertation research.

Regular Competition

The regular grant competition supports social scientific studies of law and law-like systems of rules. These can include, but are not limited to, research designed to enhance the scientific understanding of the impact of law; human behavior and interactions as these relate to law; the dynamics of legal decision making; and the nature, sources, and consequences of variations and changes in legal institutions. The primary consideration is that the research shows promise of advancing a scientific understanding of law and legal process. Within this framework, the Program has an "open window" for diverse theoretical perspectives, methods, and contexts for study. For example, research on social control, crime causation, violence, victimization, legal, social and political change, patterns of discretion, procedural justice, compliance and deterrence, and regulatory enforcement are among the many areas that have recently received program support.

The target date for the submission of proposals in the regular competition is August 15 for proposals to be funded in or after January, 1997.

Global Perspectives Competition

The Program is also continuing its special competition for research dealing with global perspectives on sociolegal studies. The aim of this initiative is to support research on law and law-related processes and behaviors in light of the growing interdependence and interconnectedness of the world. The competition seeks to encourage examination of both global dimensions of sociolegal phenomena (e.g., disputing, law and social change, legal pluralism, legal system development, social control, crime causation) and sociolegal dimensions of global phenomena (e.g., democratization, economic and commercial transactions, immigration and population shifts, social and ethnic conflict, regulation of the environment, public and private governance). Proposals are welcome that advance fundamental knowledge about legal interactions, processes, relations, and diffusions that extend beyond any single nation as well as about how local and national legal institutions, systems, and cultures affect or are affected by transnational or international phenomena. Thus, proposals may locate the research within a single nation or between or across legal systems or regimes as long as they illuminate or are informed by global perspectives.

Proposals with a global perspectives theme are welcome for the August 15 competition.

Special Competitions

In addition to the two Law and Social Science Program competitions, researchers should be aware of special competitions that cross the boundaries of NSF's programs. Within the Division of Social, Behavioral and Economic Research (SBER), the Law and Social Science Program's parent division, there may be special funding competitions for proposals addressing the concerns of the (1) the Human Capital Initiative, (2) Democratization, and (3) Human Dimensions of Global Change research opportunities, and for (4) Social Science Instrumentation. For further information, contact the Law and Social Science program.

Application Procedures

There may be specially designated application point and review procedures for the instrumentation competition. For all the other competitions discussed here, sociolegal proposals may be submitted to the Law and Social Science Program. Proposals should be prepared in strict accordance with the guidelines in NSF's Grant Proposal Guide (NSF 95-27). Proposals that do not conform to these guidelines may not be considered.

The review process for the Law and Social Science Program requires approximately six months. It includes appraisal of proposals by ad hoc reviewers selected for their expertise from throughout the social scientific community and by an advisory panel that meets two to three months after the target/closing date for the competition.

For further information, e-mail, call, or write : C. Neal Tate, Program Officer, Law and Social Science Program - Room 995, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. e-mail: CTATE@NSF.GOV; Phone: (703) 306-1762; Fax: (703) 306-0485.

Law and Courts is the newsletter of the Law and Courts Section of the American Political Science Association.

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: July 1, 1996.

Law and Courts

Sue Davis, Editor
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