A Letter from the Section Chair

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Greetings from the Law and Courts Section. I write this message as the outgoing chair of the Section, with a hearty welcome to Christine Harrington as our new Chair.

In this issue several members of our section address a question of significant interest to section members: is the Section suffering from an identity crisis? We owe thanks to Eileen Braman for organizing the Midwest panel that discussed this issue, and to the thoughtful commentators who offer varying and insightful perspectives on the current state and future prospects of research by Section membership.

Given the focus and reflections in these essays, it seems a perfect time for me to address another issue of continuing interest to the membership: the possibility of a section journal. At this year’s executive committee meeting, we heard from Larry Baum about the deliberations of a committee appointed last fall to consider the feasibility and wisdom of such an undertaking. As those of you who attended the business meeting know, Larry’s committee offered no specific recommendation regarding whether the section should initiate a journal, but rather reported on the (largely positive) findings from a survey of section membership as well as on information gleaned from interviews with other section journal editors and potential publishers. After careful deliberation over the pros and cons of a journal—including how important it is that such a journal adopt a broad and inclusive approach to research by Section members—the executive committee voted unanimously to move ahead with the idea by authorizing Christine to appoint a committee to search for candidates to edit a new journal and for Wayne McIntosh’s replacement as editor of the Law and Politics Book Review. We also approved a motion to authorize the executive committee to craft an amendment to the Section constitution allowing the creation of a Section journal.

Of course, much work remains to be done. But it is my hope that a section journal will serve as a focal point that unifies the section and showcases our diverse and excellent work to other disciplines. Other APSA sections have had great success with new journals, and

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Articles, Notes, and Commentary

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

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

Symposia

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

Announcements

Announcements and section news will be included in Law and Courts, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when possible. Finally, authors should notify BOOKS TO WATCH FOR EDITOR: Bruce Peabody, bgpeabody@msn.com of publication of manuscripts or works soon to be completed.
given the size and commitment of our group, we have reason to be excited and optimistic about the prospect. For this undertaking to be successful, however, we will need our membership to bring the full weight of their expertise, energy, and good will to bear on the project. If we choose to pursue the journal idea vigorously, I have no doubt that the diversity within our Section will only enhance the excellence of the final product.

Symposium: **Identity Crisis?**

**Does Law & Courts Suffer from an Identity Crisis? Depends Who You Ask**

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Perhaps because we study politics, law and courts scholars charged with the role of organizing conference panels periodically feel obliged to schedule a session evaluating the "State of the Subfield." Acting as the head of the Midwest Political Science Association’s Judicial Politics Section last year, I fell victim to this compulsion. In thinking about developments, trends, and challenges related to the study of judicial politics, I thought it might be useful to discuss the evolving relationship between legal academia and political science. Specifically, I wanted to create a roundtable exploring some compelling arguments that have been raised recently suggesting that not all of the consequences of increased interaction between the disciples have been beneficial for our subfield.

Titling the session "Is Judicial Politics Suffering from an Identity Crisis," I sent an email to several prominent political scientists who had experience teaching at law schools and/or publishing with legal academics asking them to participate with the following pointed questions in mind: 60 years after the publication of the Roosevelt Court where is judicial politics as a subfield? How is it distinct from Law and Society and/or Empirical Legal Studies movement? Do we have a separate distinct identity? Do we need one? What do we think about recent developments like prominent political scientists being recruited to teach and do research in law schools, the influence of SSRN, internet blogs and the increasing number of people publishing in law journals rather than peer reviewed outlets? Should we care about how our data, methods and findings are cited, emulated and received by scholars in disciplines other than political science? If so, should we package our research for broader mass consumption? Why or why not?

What follows are comments from several of the Roundtable participants including Harold Spaeth who agreed to act as Chair/Mediator. Other participants included Sara Benesh (University of Wisconsin – Milwaukee), Lee Epstein (Northwestern Law School), Andrew Martin (Washington University) and Christopher Zorn (Pennsylvania State University). The formal discussion gave rise to a lively discussion among attendees at the session. The roundtable was digitally recorded and should be available to members on the MPSA site in the near future. Generally, as the comments demonstrate, most participants characterized the state of the subfield as "strong," and better for the increased interaction with legal scholars.

Professors Martin, Spaeth and Zorn each note the increased prominence of law and courts scholarship in political science compared to previous eras. Professor Zorn engages in a particularly thoughtful quantitative analysis looking at the prevalence, diversity of subject matter and methodologies of judicial politics articles in political science. Taking a somewhat broader view, Professors Martin and Spaeth argue we have much to be proud of in light of the increased attention legal scholars are paying to our work. They also suggest we have much to gain from interdisciplinary interaction.
Professor Benesh is decidedly more cautious. She raises the issue of “brain drain” resulting from prominent political scientists choosing to teach in law schools and questions whether political scientists benefit as much as legal researchers from our exchange.

Clearly, these are issues that raise a multitude of considerations about the future direction of our subfield. The comments below are for the benefit of those interested who could not attend the session last April.

The New Oxford American Dictionary defines an identity crisis as: “a period of uncertainty and confusion in which a person's sense of identity becomes insecure, typically due to a change in their expected aims or role in society.” Does this characterize the field of judicial politics in political science? Absolutely not. Quite the contrary, the field of judicial politics is not only playing a more important role in political science, but the work of political scientists is becoming increasingly important to other disciplines, especially law. Both of these are important developments to be encouraged.

Until the 1990s the field of judicial politics sat somewhat at the periphery of political science. Indeed, a few exceptions aside, there was little judicial politics published in disciplinary journals, especially when compared to other fields, such as legislative politics. Things changed dramatically in the 1990s, for three reasons, I believe. First, the field began to engage with the rational choice models that fundamentally changed other parts of political science, including legislative politics and international relations (see, for example, Epstein and Knight 1997). Second, scholars of judicial politics began to recognize that variation in institutions allow us to answer fundamental questions about institutional design and effectiveness. The field of comparative judicial politics—as well as the study of state courts—has put the field of judicial politics at the center of the important disciplinary discussions of institutions. Finally, scholars of judicial politics are not only using but contributing to the significant advances in quantitative methods (for example, Martin and Quinn 2002). This, too, contributes to the centrality of the study of courts to political science. These developments over the last twenty years have solidified the importance of judicial politics to political science. This surely is not indicative of an identity crisis.

Today there is an increasing engagement amongst political scientists with those in the legal academy. Many political scientists with different methodologies, with-or-without law degrees, and with different areas of specialization are being appointed to law faculties. This is not indicative of an identity crisis. Just the opposite; it highlights the important, independent identity those in the field of judicial politics have cultivated, and is indicative of the value political scientists bring to the study of law. This is true not only of empirically oriented data analysts like myself, but also doctrinally-oriented scholars of public law. The methodology and rigor of political science is valuable, and that value is being recognized by law schools throughout the county. At base, political scientists studying judicial politics and members of law faculty studying law and legal institutions are interested in the same questions. Collaboration across political science and law will only make scholarship in both disciplines better (see Friedman 2006).

If engaging with the legal academy is of interest, and there are many, many reasons why it should be, there are some things those working in the field of judicial politics should re-think. First and foremost, we must move beyond just studying outcomes (which are, of course, politically interesting and easy to quantify). Law is more than just who wins and loses in a particular dispute. Figuring out how to measure and then model legal rules and reasoning should be our goal. Indeed, being able to do so would allow us to answer bigger questions, while simultaneously understanding the politics of who wins and who loses.
Second, the term *legal model* should be purged from our literature. Simply put, there is no positive legal model of outcomes of disputes, nor should there be. The “legal model” in political science finds its roots in late-19th and early-20th century formalism. It was first mentioned by Beverly Cook in the *American Journal of Political Science* in 1977: “[i]n the traditional legal model, judges use as their guidelines the standards set in constitution, statute, precedent, or court rule. Inputs are carefully screened to avoid the personal and subjective in favor of the neutral and objective” (Cook 1977, p. 571). Cook looked at the behavior of federal district court judges; the “model” was then adopted in Jeff Segal’s (1984) path-breaking study of search and seizure cases, which quantified how case characteristics are related in outcomes in this particular area of law (it is a legal explanation, but not *the* “legal model.”) This caricature of a long-dismissed explanation of jurisprudence should not be the basis for any explanation in political science. But as conceived, we could be doing much better at modeling law; one step in that direction would be to end the reference to the “legal model.”

Finally, we should continue to broaden the domain of courts that we study. The field has made some notable strides in this fashion, moving beyond study of the United States Supreme Court to the federal Courts of Appeals, state courts of last resort, and constitutional courts in other countries. Trial courts remain under-studied—yet enormously legally and politically important—institutions. We also should move away from the near exclusive study of public law into areas of private law.

This is an exciting time to be working in the field of judicial politics. Just as the law evolves over time, so, too, does the field of judicial politics. Not only is the field more central to political science than it has been for many decades, it also piques the interest of others in the academy. This does not sound to me to be a field with an identity crisis.

References


I suppose it can be said that we have a sort of identity crisis. Though the subfield operates professionally under the rubric of law and courts, or some variant thereof, we do have a split in convention panels between “quants” and “trads.” But these labels merely bespeak a difference in approach to a common subject matter – to a common area of study. As far as identity is concerned, they have no more reputational impact on our discipline than the distinction between organic and inorganic has on the field of chemistry.

Perhaps such reputational cleavage should lead to greater segmentation; that those of us who perceive ourselves in the
avant garde should exclude legal scholars and “squishes” from our midst. But what would that solve? We who proceed
down the primrose path are by no means united. Rational choice scholarship, for example, is divided between those who
view the Supreme Court as a largely self-contained entity and those who emphasize Court-Congress relationships
(separation of powers models). Or more broadly, should non-modelers of whatever stripe be cast into the outer darkness,
beyond the proverbial pale? Then there are those who would recognize only those scholars who publish in our “leading”
journals, thus excluding the peons who patronize the conferences and journals of Law and Society and Empirical Legal
Studies.

It is much more important, I believe, to cast aside such internecine trivialities and view our position relative to the disci-
pline writ large. Not so long ago – barely 25 years – judicial scholarship was ranked as the least significant work of po-
tical scientists (Somit and Tanenhaus 1982, 55-6). Abstraction and abstruseness were perceived to dominate substance
(Dixon 1971). The worm, however, has clearly and emphatically turned. Let me count a count a few ways.

We have rather triumphantly invaded the heretofore sanctified (and sanctimonious) precincts of the law schools. Indeed,
many of our intruders have ensconced themselves therein without even a law school course to their name – much less a
law degree! What a far cry from the days when political scientists – even those with J.D.’s from prestigious institutions
– were superciliously rejected from academic consideration other than that of law student.

Nor is it solely a matter of infestation. We have significantly altered the public’s comprehension of the law itself and the
role of judges in the legal system. The myth of objective, dispassionate, and impartial decision making is openly recog-
nized as such even by judges themselves, and been replaced by the reality of personal policy preferences. The percep-
tion of law as something that judges “find” is no longer any more credible than the discovery of a unicorn or a dodo bird.

It is commonplace for reports of legal matters to include quotations from judicially oriented political scientists. Not so
in the not so long ago. Only purely “legal” authorities were so honored.

In sum, concern about an identity crisis strikes me as evidence that judicial politics has come of age; that our scholarship
has taken the offense and made an interdisciplinary mark that the academic aspect of the other social sciences can only
hope to emulate.

References

19-26.


Who am I? Why am I here?

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When asked about whether or not the subfield was experiencing some sort of identity crisis for a roundtable at the
MPSA, I started thinking about the increasingly significant role political scientists are playing in the legal academy.
While I have no idea if that’s what the impetus for the roundtable was, it was what I thought about, and hence, what I
talked about (and what I’m now writing about). It is most certainly the case that, for a long time, we lamented the fact
that legal academics wrote their law review articles as if none of us had ever existed and as if we had never written any-
thing of substance in the last half century. That has certainly changed as more and more legal academics are becoming
interested in empirical studies and as they are more likely to read and cite the work of political scientists. So too there are many more references in our work to law review treatments on point and many more political scientists list law review articles on their vitae. In addition, political scientists are joining law faculties at some of the most prestigious law schools and more and more programs touting joint PhD/JDs are cropping up. But what does this mean for the subfield, and is it a total win for political science? I would argue (and did at the MPSA) that this is, at least in some respects, a one-way relationship, with the legal academy gaining far more from the participation of political scientists than political scientists gain from it. I also argue that these developments have effectuated a form of “brain-drain” that I see as ultimately hurting the subfield. Obviously, this is not an uncontroversial view.

In what ways is this a “brain-drain?” First, it drains the time of those scholars engaging with the legal academy. While it is surely not a zero-sum game, it is certainly the case that time spent on attending law school conferences and writing articles for law reviews and symposia takes away from time spent writing articles for political science journals and time spent at political science conferences, hence potentially lessening the visibility of the law and courts subfield in the discipline of political science. Now, I certainly do not have empirical data to support these claims, but I think it obvious that the more attention we pay to publishing in law reviews, the less attention we can pay to publishing in political science journals. Of course, there are some advantages to law review publication. For one, the whole process is more fun (especially if you’re well known in the field) as one submits to a bunch of reviews and then negotiates a placement for the article. It’s also faster, as the time consumed by the peer review process is alleviated. And, one can wax far more eloquent in a law review article than in a social science journal article. But those advantages, it seems to me, are also the disadvantages. The length and tedious footnoting in law review articles makes people less likely to really read the work. The process of publication makes it difficult for those without a “name” in the field to get a strong placement. And, of course, one has to work with 2Ls during publication.

Most importantly, though, the lack of peer review greatly troubles me. I see this lack as meaning both that the work is unreliable and, given the large number of law reviews and the process by which they make publication decisions, the “importance” of a work is far less easily ascertained. Of course it is the case that peer review is not universally useful. It is, however, a bar to the publication of the least significant/most problematic work that does not exist for law reviews. And, those reviewing for political science journals are far more qualified to do so and to make publication decisions, especially when the research is empirical, than those on law review, who, only two years prior were, after all, our students in Constitutional Law.

A second way that this amounts to a brain-drain is in graduate education. While one can certainly keep a foot in political science while in residence at a law school, I worry about the implications of the fact that some of our best and brightest are leaving political science departments and, with them, graduate students and potential graduate students in undergraduate majors as well. And, given my experience teaching at a lower-tier law school, it is not worth it to the political scientist either; unless he or she is teaching at one of the very best law schools, the experience I had (corroborated by Rosenberg’s (2000) report) is that the law school is a very poor substitute for the graduate classroom. Intellectual curiosity is an unevenly valued commodity there.

Finally, and relatedly, the brain-drain leaves junior scholars without the mentorship they might get were their senior colleagues in residence. Indeed, they will see senior scholars publishing widely in law reviews, wondering why that’s the best option for their mentors while it is a forbidden option to them (or at least one that is a waste of their precious tenure clock). Why do we tell them we won’t “count” these publications and go out and publish work there ourselves? In other words, the essence of the law review makes it something we are not willing to reward with tenure. Why is it a place we are willing to then publish our work?

What of my claim that this relationship is one-way? It is interesting to me that it is exceedingly unlikely that we would hire a JD for a tenure-track position in a political science department. We are also very unlikely to give course credit to an incoming graduate student for classes he or she took as a law student. The way they study issues related to law is just too different for that. But we have more to offer them, and that may be justly celebrated, as some in this symposium note. We have methodological rigor and can offer training in using and interpreting statistics while also understanding at a fairly high level the institutions we study and their outputs. It makes perfect sense to me, then, that law schools are clamoring to count social scientists among their faculty. Studying law empirically is the “new thing” and the top law
schools want in on the action. We facilitate that, in some ways, at our peril.

For a long time, the so-called “public law” subfield struggled to be taken seriously by the discipline, which sometimes equated it with legal scholarship, more likely to discuss and debate cases and conduct doctrinal analyses than to contribute to the scientific study of politics. Indeed, in the beginning, studying courts from a political science perspective seemed, to some, nonsensical at best, blasphemous at worst. Are we on track to come right back to that? If we want our work to be relevant to political science and the generation of knowledge, it has to be peer-reviewed and it has to be published in the discipline’s top journals. And, while it is absolutely the case that much can be learned through reading the law review literature on a given research question, copious citation of law review work will confirm the view that those studying courts are not really political scientists. To me, the answer to Vice Admiral Stockdale’s (in)famous set of questions posed as the title to this article is that we are political scientists, here to study courts in a scientific and rigorous way. We are political scientists, not law professors, and while the collaboration between the legal academy and the political science academy is certainly fruitful and has undoubtedly brought nuance to the way we study courts and judges and the way we think about the law, there are far more questions we seek to answer that are more like those asked by political scientists (nay psychologists, sociologists) than they are like those asked by legal academicians. Most of what fills the voluminous law review pages does not consider questions relevant to a political scientist. Most of what fills those pages has very little to do with what we do.

Reference


The term identity crisis is usually attributed to Harvard psychologist and psychoanalyst Erik Erikson, who is most widely-known for his theory positing eight stages of human psychosocial development (Erikson 1950). The notion of ego identity played a key role in the fifth of those stages - corresponding roughly to human adolescence - when individuals explore, synthesize, and eventually consolidate their own ideas about their role(s) in society. Importantly, identity is viewed as an explicitly social phenomenon; a key aspect of Erikson's perspective on identity is that the role(s) in question be meaningful to and accepted by the larger society in which the individual lives.

In Erikson's view, identity crises arise as a result of role confusion: circumstances where individuals are uncertain about “who they are,” and in particular about their place in the larger society and the world. In his 1970 paper “Reflections on the Dissent of Contemporary Youth,” Erikson associates role confusion with retrogression to previous stages of development, and notes that such retrogression almost always includes an explicit repudiation of adult society; individuals experiencing an identity crisis thus exhibit behavior that is at odds with their larger social milieu.

Erikson's theory provides one perspective from which to ask whether judicial politics is suffering from an identity crisis. The modern study of judicial politics can arguably be dated to the publication of Pritchett's The Roosevelt Court (Pritchett 1948); by this metric, the subfield recently celebrated its sixtieth birthday. While hardly an adolescent in human years, it is not unreasonable to think it so in relative terms: certainly other areas of study (e.g., Congress, public administration, political parties) have longer histories and might be viewed as more theoretically and empirically “mature.” In this light - and subject to a bit of friendly anthropomorphism - it is reasonable to ask whether our subfield has achieved its own ego identity within the larger discipline, or whether it is in fact in a state of crisis.
But what would such a crisis look like? While one might imagine a number of potential manifestations, here I focus on the subfield's degree of integration with the broader discipline. If, in fact, judicial politics is experiencing a crisis of identity, we would expect to observe a declining engagement between the subfield and political science as a whole. In addition, we might also see high variation in the nature of phenomena addressed by scholarship in judicial politics (as those in the subfield search for a lodestar by which to define what it is we study), as well as a disconnect between trends in the broader discipline and those in the subfield.

To assess these matters empirically, I focus on one indicator of the degree of integration with the broader disciplinary community: publication of scholarly work on judicial politics in major, general refereed journals in political science. While this is not a comprehensive indicator of our subfield's engagement with political science, it is undoubtedly the case that the appearance of scholarship on a particular topic in these venues to some degree reflects that topic's centrality to the discipline more generally. Moreover, to the extent that such work is often held up as exemplifying the best work being done in political science, its content can serve as a useful gauge both of the sorts of epistemological approaches taken by judicial politics scholars, and of the degree of fragmentation in the subfield.

Beginning with those appearing in 1958, and continuing through the end of 2008, I collected data on every article published on courts and judicial politics in the *American Political Science Review*, the *American Journal of Political Science*, and the *Journal of Politics*. In addition to its author(s) and date of publication, each such article was coded for two characteristics: Whether or not its focus was on the U.S. Supreme Court, and whether the methodological approach in the article was primarily qualitative, primarily quantitative, primarily formal and/or game theoretic, or some combination of the three.²

Figure 1: Courts/Judicial Politics Articles Published in APSR, AJPS, and JOP, 1958-2008

Figure 1 illustrates the most general trend: The combined number of articles on courts and judicial politics published annually in the three journals examined. While the series exhibits significant annual variation, the smoothed (lowess) line suggests that the overall trend is relatively flat, perhaps with a slight increase since the 1980s.³ We observe a similar pattern when publication numbers are disaggregated by journal, as in Figure 2. There, the (lowess-smoothed) trends also generally appear to be moving upward, albeit at a relatively slow pace.⁴
These figures suggest that, rather than exhibiting disengagement with political science, the study of courts and judicial politics has in fact become increasingly embedded in the discipline's intellectual fabric. That is, the data suggest that, at least in terms of raw numbers, scholarship on judicial institutions and behavior has and continues to have a substantial place at the table of political science.

Over and above the simple numbers of articles, however, is the question of their content. In the study of judicial politics, the U.S. Supreme Court has occupied a central place over the past six decades, a fact often noted (and occasionally lamented, e.g., Epstein 1999) by scholars in the field. On the one hand, the study of the Court can be viewed as a unifying theme for students of judicial politics, and one which has brought a measure of coherence to the subfield.
At the same time, the ability and willingness to expand beyond traditional topics of study - and, more important, the general acceptance of such innovations by the larger scholarly community - can (and probably should) also be considered a mark of maturity in the field.\(^5\)

Figure 3 shows the raw and smoothed proportions of articles published in the journals examined which focused exclusively on the U.S. Supreme Court. Those numbers were consistently highest in the late 1950s and 1960s, and (with something of an increase in the 1980s) have generally been on the decline. A cursory inspection of the data reveals that while the drop in the 1970s was due largely to a focus on lower federal and state courts, the more recent decline reflects an increased focus on courts and judicial politics outside the United States. More generally, one interpretation of the trend illustrated in Figure 3 is that the subfield has evolved from one primarily concerned with a single (albeit important) institution to one with a broader focus. This broader focus, in turn, serves to embed the subfield more broadly in the discipline, by providing both more numerous points of contact between judicial politics and other subfields (e.g., comparative politics, state and local politics, etc.) and greater theoretical integration between those other fields and law and courts.

Finally, there remains the question of how we do what we do. While some disciplines' development has led to greater methodological homogeneity (here, economics and cultural anthropology come readily to mind), political science has, if anything, become more methodologically diverse over time. The latter is especially true in the past three decades, as the rise of such disciplinary trends as formal theory, experimentalism, and historical institutionalism (and, less significantly, the efforts of self-styled “perestroikans”) has broadened the range of acceptable approaches to the study of politics.

Figure 4 displays the (lowess-smoothed) proportions of articles which used each of the four types of methods considered. Most striking is the rise, during the 1960s and 1970s, of quantitative methods to the study of judicial politics. This increase reached its peak around 1990, and tracks closely with the advent of the “behavioral revolution” in political science more generally (e.g., Somit and Tanenhaus 1964; Reiter 2006), suggesting that the subfield was a full participant in that particular epistemological turn. At the same time, the past two decades' decline in purely quantitative approaches has also been marked by an increase in both purely qualitative and formal- and game-theoretic studies, as well as a marked rise in “mixed-method” studies combining two or more of these approaches. The trends in Figure 4 thus suggest that methodological trends in the subfield broadly track those in the discipline as a whole.
Taken together, the data presented above paint a picture of a subfield that (a) plays a consistent (and, perhaps, growing) part in the intellectual development of the larger discipline, (b) addresses an increasingly diverse range of subject matters, while at the same time (c) mirroring the general trends apparent in political science in general. Little or nothing here suggests that the subfield has “retrogressed” in any way, or that it exhibits any ambivalence regarding its place in the discipline. While one might consider a range of alternative indicators of such integration (e.g., organized section membership, the presence of judicial politics in graduate and undergraduate curricula, training of Ph.D.s, faculty hiring and promotion, and so forth), my own sense is that such an examination would lead to similar conclusions. If there is a subfield of political science suffering from an identity crisis, the study of courts and judicial politics is decidedly not it.

References


Notes

1. He notes, for example, parallels between 1960s protestors’ “indiscriminate appellation of dirty names to authorities” and “such infantile patterns of protest as the deft deposition of feces in places to be desecrated and the use of excrement as ammunition” (1970, 168).

2. My thanks to Ben Bagozzi for his assistance in collecting these data, which are available (along with specific coding rules and protocols) from the author upon request.

3. Note, however, that these numbers do not correct for changes in the total number of articles published over time, making it impossible to say whether there has been any relative increase in the number of such articles published.

4. Fitting a linear time trend to the journal-specific data yields an increase of about one article every 25-30 years, on average. Also, note that the large drop for the APSR in the late 1950s and early 1960s is entirely a function of the 1958 and 1959 volumes, which contained five and four articles on courts and judicial politics, respectively.

5. The latter interpretation has an Eriksonian analogue; Erikson noted that an important part of the development of identity was the willingness to explore different social roles, and to integrate those roles into a coherent self-image, rather than blindly accepting a single role (a phenomenon Erikson refers to as fanaticism).
While the response to my article in the previous newsletter has been overwhelmingly positive, I would like to use this forum to respond to some critiques. There have been questions with respect to how certain measures for my study were constructed. In Table 2 and 4, I ranked universities based upon the number of publications and NSF grants that their Ph.D graduates have generated. As discussed on page 16 of the last newsletter, these tables only contain individuals who have received their Ph.Ds in the last fifteen years. Some questions have been raised concerning this operationalization; namely, that this measure misses a large number of the most productive scholars in public law, Lee Epstein, Jeff Segal, and Donald Songer just to mention a few. While this is true, there are three justifications for coding it in this way. First, the data for Tables 1 and 3 already contain all individuals at Ph.D granting institutions that have either published in the top four journals or have received an NSF grant. Second, the purpose of the article was to provide guidance to both advisors and would-be graduate students as to which departments have been most productive in the field of public law. By restricting the measure to individuals who have received their Ph.Ds in the last fifteen years, I was attempting to provide a snapshot of recent activity in these departments. Lastly, the coding rules of Kuersten (1998) were followed to allow for comparability across studies.

The data for which the article is based on is available at http://homepages.wmich.edu/~t6curry/Research.html. I invite the community to examine the data with regard to possible error corrections and oversights. The interested observer will notice that an attempt has been made to keep track of when individuals changed institutions. My hope is that this will provide another way to take into account the temporal aspect of these rankings. This information, however, has proved to be the most difficult to gather, and I would greatly appreciate help from the academy in this endeavor.
The Law and Society Association, in collaboration with the American Bar Foundation and the National Science Foundation, seeks applications for the Law and Social Science Dissertation Fellowship and Mentoring Program (LSS Fellowship).

Awards
Fellowships are held in residence at the American Bar Foundation in Chicago, IL, where Fellows are expected to participate in the intellectual life of the ABF, including participation in a weekly seminar series. LSS Fellows will receive a stipend of $27,000 per year beginning fall 2010 and are eligible for up to two years of support. Fellows will attend LSA annual meetings in both years of the fellowship and the Graduate Student Workshop in the first year of the fellowship. Fellows will receive up to $1,500 for research and travel expenses each year. Relocation expenses up to $2,500 may be reimbursed one time.

Eligibility
Third-, fourth-, and fifth-year graduate students who specialize in the field of law and social science and whose research interests include law and inequality are invited to apply. Fellowship applicants should be students in a Ph.D. program in a social science department or an interdisciplinary program. Humanities students pursuing empirically-based social science dissertations are welcome to apply. Only U.S. citizens and permanent residents are eligible to apply.

Application Materials Required
Applicants should submit: (1) a 1-2 page letter of application; (2) a 2-3 page description of a research project or interest that relates to law and inequality (broadly defined) with a statement of how the applicant became interested in the research topic; (3) a resume or curriculum vitae; (4) a writing sample (a paper written for a graduate-level course or dissertation prospectus); and (5) three letters of recommendation from faculty members (including one from the faculty member who will serve as the departmental liaison – typically the applicant’s advisor). If you are also applying for the American Bar Foundation Doctoral Fellowship, please indicate so in your cover letter.

Please send TWO complete sets of application materials by December 1, 2009. One set to Mary McClintock, Law and Society Association, University of Massachusetts, 40 Campus Center Way, Amherst, MA 01003-9244; and the other to Allison Lynch, Administrative Associate for Academic Affairs and Research Administration, American Bar Foundation, 750 N. Lake Shore Drive, 4th Floor, Chicago, IL 60611.

For more information, see www.lawandsociety.org or contact Mary McClintock at LSA, lsa@lawandsociety.org or Laura Beth Nielsen at lnielsen@abfn.org.
Purpose
The American Bar Foundation is committed to developing the next generation of scholars in the field of law and social science. The purpose of the fellowships is to encourage original and significant research on law, the legal profession, and legal institutions.

Eligibility
For the Doctoral/Post-Doctoral Fellowships, applications are invited from outstanding students who are candidates for Ph.D. degrees in the social sciences. Applicants must have completed all doctoral requirements except the dissertation by September 1, 2010. Applicants who will have completed the dissertation prior to September 1, 2010 are also welcome to apply. Doctoral and proposed research must be in the general area of sociolegal studies or in social scientific approaches to law, the legal profession, or legal institutions. The research must address significant issues in the field and show promise of a major contribution to social scientific understanding of law and legal process. Minority students are especially encouraged to apply.

Awards
Fellows receive a stipend of $27,000 for 12 months. Fellows also may request up to $1,500 to reimburse expenses associated with research, travel to meet with advisors, or travel to conferences at which papers are presented. Relocation expenses up to $2,500 may be reimbursed on application.

Tenure
Fellowships are awarded for 12 months, beginning, September 1, 2010.

Conditions
Fellowships are held in residence at the American Bar Foundation. Appointments to fellowships are full time. Fellows are expected to participate fully in the academic life of the ABF so that they may develop close collegial ties with other scholars in residence.

Application Process
Applications must include: (1) a dissertation abstract or proposal with an outline of the substance and methods of the research; (2) two letters of reference, one of which must be from a supervisor of the dissertation; and (3) a curriculum vitae. In addition, at the applicant’s option, a short sample of written work may be submitted.

Applications for this fellowship must be received no later than December 15, 2009.
For questions about the terms of the fellowship, contact Victoria Saker Woeste (Chair, Appointments Committee) at vswoeste@abfn.org.

Application materials should be directed to: Allison Lynch, Administrative Associate for Academic Affairs and Research Administration, American Bar Foundation, 750 N. Lake Shore Drive, 4th Floor, Chicago, Illinois 60611, (312)988-6548, alynch@abfn.org.
ABF Website: www.americanbarfoundation.org
In *The European Court's Political Power* (Oxford University Press) Karen Alter (Northwestern University) assembles over a dozen prior articles on the European Court of Justice (ECJ) in reviewing its development and current concerns. The chapters in this book consider the historical and political contours of the ECJ's influence on European politics, explaining how and why the same institution can have such a varying impact across time and issue area. Looking beyond the European experience, the book also includes four chapters that put the ECJ into a comparative perspective, examining the extent to which the Court experience is unique, or a harbinger of the future role international courts may play in international and comparative politics.

*The Constitution in 2020* (Oxford University Press) edited by Jack M. Balkin (Yale Law School) and Reva B. Siegel (Yale Law School) contains essays on the future of the Constitution and constitutional law from scholars and policymakers. The book covers a wide range of issues, including the challenge of new technologies, presidential power, international human rights, religious liberty, freedom of speech, voting, reproductive rights, and economic rights.

Many scholars have been occupied with the question of whether justices on the Supreme Court behave strategically. In *Strategy on the United States Supreme Court* (Cambridge University Press), Saul Brenner (University of North Carolina-Charlotte) and Joseph Whitmeyer (University of North Carolina-Charlotte) argue that justices are substantially less strategic than many believe. For example, the authors make the case that the justices often do not cast their certiorari votes in accord with an outcome prediction strategy. This book considers the (perhaps quite limited) role of strategic behavior on the decisions of the Supreme Court and, as a result, American politics and society.

The retirements of Justices O'Connor and Souter have tightened the spotlight on Justice Anthony Kennedy as the deciding vote in prominent Supreme Court cases. In *Justice Kennedy's Jurisprudence: The Full and Necessary Meaning of Liberty* (University Press of Kansas), Frank Colucci (Purdue University-Calumet) plumbs Kennedy’s record and identifies his distinctive “moral” reading of the Constitution. Drawing on Kennedy’s opinions as a justice as well as his prior Circuit Court decisions and his speeches off the bench, the author contends that Kennedy is neither philosophically capricious, nor reliably originalist. Instead, the book links Kennedy to interpretive approaches championed by Ronald Dworkin, Randy Barnett, and Justice William J. Brennan, and to promoting a jurisprudence in which liberty and human dignity trump democracy.

Statutes make up the bulk of the relevant law heard in federal courts and arguably represent the most important source of American law. As a result, scholars, judges, and other legal commentators have engaged in an extensive, ongoing debate about the proper means interpreting those statutes. In *The Theory and Practice of Statutory Interpretation* (Stanford University Press), Frank Cross (University of Texas at Austin) enters this conversation by reviewing existing disputes about the appropriate approach to statutory interpretations, and adding his own empirical findings and arguments. In particular, the author considers the use of textualism, plain meaning, interpretive canons, and pragmatism by the justices of the Rehnquist Court in trying to analyze the purposes and implications of contemporary statutory interpretation.

As more people cross borders and migrate, both voluntarily and under duress, different cultural communities interact, creating tensions between state laws and customary laws. In *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense* (Hart Publishing) the editors Marie-Claire Foblets (Universities of Leuven, Brussels and Antwerp) and Alison Dundes Renteln (University of Southern California) explore these cultural conflicts and the legal challenges they pose. Among other questions, the book considers the extent to which courts can and should
accommodate litigants’ requests by taking their cultural backgrounds into account, drawing on examples of this “cultural defense” from Western Europe, North America, and elsewhere. Other legal topics considered include homicide in the context of honor crimes, provocation based on “loss of face,” witchcraft killings, asylum jurisprudence, family law, and housing policy.

In *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People* (Princeton University Press), James L. Gibson (Washington University in St. Louis) and Gregory A. Caldeira (Ohio State University) examine the nomination of Samuel Alito to explore how and why people formed their opinions of this nominee and how the confirmation process shaped the legitimacy of the Supreme Court itself. Drawing on a national survey, the authors argue that Americans know far more about the Supreme Court than many realize, that the Supreme Court enjoys a great deal of legitimacy among the American people, that attitudes toward the Court as an institution generally don’t suffer from partisan or ideological polarization, and that public knowledge enhances the Court’s legitimacy. At the same time, the authors conclude that politicized confirmation battles and partisan and ideological infighting can undermine the considerable public support the Court currently enjoys.

Scott Graves (Georgia State University) and Robert M. Howard (Georgia State University) have published *Justice Takes a Recess: Judicial Recess Appointments from George Washington to George W. Bush* (Lexington Books). The book addresses how presidents have used recess appointments from 1789 to 2005, and whether the independence of judicial recess appointees has been compromised over this span. The authors argue that recess appointments can upset the separation of powers envisioned by the Constitution’s framers and threaten constitutional features of the judicial branch.

A *Good Quarrel: America’s Top Legal Reporters Share Stories from Inside the Supreme Court* (University of Michigan Press) recounts dramatic tales from inside the Supreme Court, told by reporters. Edited by Timothy R. Johnson (University of Minnesota) and Jerry Goldman (Northwestern University) the volume includes a dozen stories by journalists from national news outlets including National Public Radio, Newsweek, the Los Angeles Times, The Wall Street Journal, and Court TV. The cases discussed in these accounts range from *Bush v. Gore* to affirmative action to women’s rights. Throughout the text, the editors provide links to online recordings of the arguments and clips of the cases, allowing readers to hear for themselves the arguments and opinions behind some of our nation’s most important rulings.

Donald Kommers (Notre Dame University), John Finn (Wesleyan University), and Gary Jacobsohn (University of Texas-Austin) have issued a new edition of *American Constitutional Law: Essays, Cases, and Comparative Notes* (Rowman & Littlefield), a casebook that encourages citizens and students to think critically about the fundamental principles and policies of the American constitutional order. The book emphasizes both the social, political, and moral theory that provides meaning to constitutional law and interpretation, and a comparative perspective. The new edition offers updated and expanded treatment of a number of current topics, including gerrymandering and campaign finance, the death penalty, privacy, affirmative action, and school segregation.

Drawing upon a range of primary sources, Kurt T. Lash (Loyola Law School) explores *The Lost History of the Ninth Amendment* (Oxford University Press) by discussing how the amendment’s original understanding can be applied to protect people’s retained rights today. The author calls into question today’s assumptions about the meaning and application of the Ninth Amendment, in part by disputing the common assumption that the amendment lay dormant prior to the Supreme Court’s “discovery” of the clause in *Griswold v. Connecticut*.

John Nugent’s (Connecticut College) recent book *Safeguarding Federalism: How State Governments Protect Their Interests in National Policymaking* (University of Oklahoma Press) contributes to the debate about the “political safeguards of federalism” and whether and how state governments protect their interests and prerogatives vis-à-vis the federal government. The author offers a typology of the kinds of state governmental interests at stake in federalism contests and argues that state officials today have numerous means of protecting these concerns by affecting the development and implementation of federal policy and softening, slowing down, or even halting federal programs. The book uses detailed policy case studies (including the 1996 welfare reform law, the Clean Air Act, moratoriums on state taxation of Internet commerce, and the No Child Left Behind Act) to show what states fight for and how and when they succeed in protecting their interests.
Since 1989, there have been over 200 post-conviction DNA exonerations in the United States. **When Law Fails: Making Sense of Miscarriages of Justice** (New York University Press) views wrongful convictions not as random mistakes but as outcomes of a misshaped larger legal and social system that is rife with faulty eyewitness identifications, false confessions, biased juries, and racial discrimination. Charles J. Ogletree, Jr. (Harvard Law School) and Austin Sarat (Amherst College) are the editors of this collection of ten essays that question the law’s ability to deliver justice swiftly and fairly.

In the struggle to ensure that schools receive their fair share of financial and educational resources, reformers translate policy goals into legal claims in a number of different ways. Michael Paris’s (College of Staten Island, City University of New York) new book **Framing Equal Opportunity: Law and the Politics of School Finance Reform** (Stanford University Press) uncovers the options reformers have in framing legal challenges and how they affect politics and policy beyond the courtroom. Focusing on two of the most controversial and far-reaching court decisions in the nation in school finance and education reform, this book follows lawyers and activists in New Jersey and Kentucky as they negotiate the complicated political terrain of educational change. Among other findings, the book concludes that the kinds of arguments lawyers choose to make matter not only to their success in the courtroom, but also to the nature of the political fights they face in the community at large.

What should people expect from their legal officials? In **I Do Solemnly Swear: The Moral Obligations of Legal Officials** (Cambridge University Press), Steve Sheppard (University of Arkansas, School of Law) answers this question by arguing that a broad range of public officials are legally obligated to be moral while following the law. Based on individual accounts and cases from America’s founding to the present, this book examines, among other issues, what is good and right in law and why officials must care. In reviewing official duties, from oaths to maintaining the law itself, the author explains how morals and law work together to create freedom and justice, and he provides rules for readers to apply in arguing for the right answer in hard cases.

President Obama initially suspended the use of military trials for detainees at Guantanamo, but last spring the White House announced it would restart the tribunals under new rules. In **The National Security Court System** (Oxford University Press), Glenn Sulmasy (U.S. Coast Guard Academy) provides a history of America's long and complicated experience with military courts and argues for a distinctive approach to “security courts” that would reform the existing military trial system without shutting it down. The author advocates creating a separate standing judicial system, overseen by civilian judges, allowing for habeas corpus appeals and focusing exclusively on “war on terror cases.”

In **A Constitutions of Many Minds: Why the Founding Document Doesn't Mean What It Meant Before** (Princeton University Press), Cass Sunstein (Harvard Law School) argues that the meaning of the Constitution is reestablished in every generation as new social commitments and ideas compel us to reassess our basic beliefs. The book considers three basic approaches to constitutional analysis: traditionalism (which grounds the document's meaning in longstanding social practices, not necessarily in the views of the founding generation), populism (which insists that judges should respect contemporary public opinion), and cosmopolitanism (which looks to foreign law and suggests that the meaning of the Constitution turns on what other nations do). The author further contends that with all three approaches a “many minds” approach is in play, that is, better decisions result when many points of view are considered.

The bully pulpit is one of the modern president's most powerful tools—and one of the most elusive to measure. **Presidential Rhetoric and the Public Agenda** (Johns Hopkins University Press) uses the war on drugs as a case study for exploring whether and how a president's public statements affect the formation and carrying out of policy in the United States. Using qualitative and quantitative measurements, Andrew B. Whitford (University of Georgia's School of Public and International Affairs) and Jeff Yates (Binghamton University) examine presidential proclamations about battling illicit drug use and their effect on the enforcement of anti-drug laws at the national, state, and local levels. In their study of presidential leadership, the authors make the case that with careful consideration of issues and pronouncements, a president can effectively harness the bully pulpit to drive policy.
Upcoming Conferences

Conferences

Southern Political Science Association 81st Annual Conference
http://www.spsa.net/
**Dates:** January 7-9, 2010  
**Location:** Atlanta, GA  
**Submission deadline:** August 5, 2009

2010 APSA Teaching and Learning Conference
This year’s theme: "Advancing Excellence in Teaching Political Science"
http://www.apsanet.org/content_3755.cfm
**Dates:** February 5-7, 2010  
**Location:** Philadelphia, PA

North Carolina Political Science Association Annual Meeting
http://ncpsa.net/
**Date:** February 26, 2010  
**Location:** NC Central University in Durham, NC  
**Submission Deadline:** December 20, 2009

Western Political Science Association Annual Meeting
http://www.csus.edu/org/wpsa
**Dates:** April 1-3, 2010  
**Location:** Hyatt Regency in San Francisco, California  
**Submission deadline:** September 18, 2009

68th Midwest Political Science Association National Conference
http://www.mpsanet.org/
**Dates:** April 22-25, 2010  
**Location:** Palmer House Hilton, Chicago, IL  
**Submission deadline:** October 9, 2009

New England Political Science Association Annual Meeting
http://www.nepsa.us
**Dates:** April 23rd and 24th, 2010  
**Location:** Newport, Rhode Island  
**Submission Deadline:** December 12, 2009

APSA Annual Meeting and Exhibition
http://www.apsanet.org/content_4827.cfm
**Dates:** September 2-5, 2010  
**Location:** Washington, DC  
**Submission Deadline:** December 15, 2009