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Click Here to Navigate to Table of Contents on Page 2

A Letter from the Section Chair

Don't Be Like Mike (Or Lee, Howard, or Jeff): Succeeding in Public Law

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Senior faculty are often asked to participate in "How to Succeed" panels. Most provide younger scholars with two kinds of advice. The first kind includes the general clichés of the profession. Graduate students, assistant professors, post-docs, and adjuncts are told that they will succeed only if they do original research, publish that research, publish that research in respectable journals and presses, bring their publications to the attention of more senior scholars, and, if possible, obtain grant funding for their research. The second kind includes the specific initiation rites of particular academic sects. Junior scholars are told that they must work within the paradigm established by the advice giver, employ the same methods, publish in the same outlets, and cite the advice giver's friends profusely. The problem with the clichés is that public law novices who have not yet recognized these strategies for success need far more than a heavy dose of "How to Succeed" panels. The problems with the initiation rites are that they are usually self-serving, frequently wrong, and always damaging to the field.

There is no simple recipe for success in public law, political science, or the academy. The paths to prominence cannot possibly be few in a field in which Shep Melnick, Howard Gillman, Marie Provine, Leif Carter, Melinda Gann Hall, Christine Harrington, James Gibson, and Malcolm Feeley are among the many distinguished senior scholars. Successful students of public law work within different paradigms, they employ different methods, they adopt different publication strategies, and they cite different works. Public law, political science, and the academy are marked by a contentious pluralism. Purveyors of disparate paradigms constantly strive to enhance and maintain their visibility through various strategies that include telling younger scholars that membership in their coterie is the best or only path to success.

Junior scholars who take senior advice too seriously become disciples, incapable of producing the first and second generation work that marks a vibrant field. First generation scholarship provides fascinating insights into important political phenomenon. Ran Hirschl's assertion in *Towards Juristocracy* (2004) that constitutional courts throughout the world tend to promote neo-liberal agendas strikes me as a good recent example. Second generation scholarship refines first generation insights into well defined, distinctive

continued on page 4

Table of Contents

Point and Click to Navigate to Article

EDITOR'S NOTE: After six years and three successive editors, this issue marks the end of Elizabeth Mazzara's tenure as Assistant Editor of *Law & Courts*. Elizabeth was instrumental in working with then-Editor John Gates to transform the newsletter to an online publication. We thank her for her service and welcome the incoming Assitant Editor, Aaron J Ley. In addition, this issue introduces a new feature for *Law & Courts* titled, "Research Spotlight." This section is intended to spotlight research tools and aids of interest to the membership of the *Law & Courts* Section. We encourage future submissions for inclusion in the Research Spotlight portion of the newsletter.

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. 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 the editor:

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Articles, Notes, and Commentary

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

Footnote and reference style should follow that of the *American Political Science Review.* Please submit two copies of the manuscript electronically as either an MS Word document or as a PDF file. 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***:

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of publication of manuscripts or works soon to be completed.

(Chair's Column, continued from Page 1)

approaches to politics. Consider, for example, how Harold Spaeth and Jeffrey Segal transformed legal realist ideas promulgated during the 1930s and 1940s into a sophisticated model of judicial decision-making. Third generation scholarship neither challenges nor elaborates established paradigms. Writings in this mode typically claim to have discovered only what past giants in the field would have discovered had they the time to study this particular court, country, or time period.

Younger scholars eager to produce first and second generation scholarship must nevertheless be warned that virtue may be their only reward. Senior scholars bitterly dispute both the standards of sound scholarship and the criterion for original scholarship. Prominent judicial behaviorists charge humanistic scholars with relying on unscientific analysis and unrepresentative anecdotes. Many humanistic scholars accuse judicial behaviorists of making trivial adjustments to an attitudinal model of judicial decisionmaking that has long since lost its capacity to generate new insights. Paeans to diversity are meaningless. All academic work rises or falls on contestable notions about what constitutes scholarship and equally contestable notions about what constitutes originality.

One lesson to be drawn from these controversies is that younger scholars take risks no matter what they do. If they challenge existing paradigms, their challenge may be rejected on the merits as mistaken and unscientific. If they work within an existing paradigm, their work may be rejected as trivial and uninteresting. Which risk one takes depends on how one defines success. If successful political scientists change the way people think about important political phenomena, then the best strategy is to risk one's professional career in the attempt to produce first generation scholarship. If successful political scientists obtain and maintain faculty positions, then the best strategy is to sacrifice influence by producing third generation work. This strategy is quite frequently successful. The sad truth about political science, the law and courts field, and every nook and cranny within the field is that more senior scholars warrant as publishable, and sing the praises of, scholarship that does little more than celebrate their previously published work than scholarship that views the political world differently. Indeed, strings of insignificant publications often impress the new cohort of academic administrators whose skills for raising money is matched only by their disinterest.

These incentives for a certain kind of individual success in public law weaken the field. Vibrant academic disciplines foster first and second generation scholarship, but substantial forces in public law, political science and the academic world push younger scholars toward third generational work. Scholars who begin as disciples rarely morph into heretics. Worse, disciples are often more intolerant of heretics than the heretics who initiated them into their academic sect.

The responsibility for fostering first and second generation scholarship rests on the shoulders of senior scholars. Younger scholars in public law must be encouraged to more aggressively challenge received wisdom by senior scholars more willing to reward risk takers. Those of us who review manuscripts and run job searches must recognize that the extent to which scholarship changes the way we view the political world is more important than the extent to which a younger scholar has mastered an established paradigm. Plausible arguments that challenge accepted political paradigms are more worthy of our patronage, even if wrong, than certainties that are little more than footnotes to previous work. Senior scholars in all schools of public law must stop fostering those who claim to see what we would see if only we had bothered looking at a particular direction, and encourage those who look where we look, but see something else. A good first step might be reducing the number of panels in which senior scholars tell their success stories to junior scholars and increase the number of panels where junior scholars elaborate what their elders have done wrong and how they propose to remedy those failings.

Article

What Dataset?

The Qualitative Foundations of Law and Courts Scholarship

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> "When on board the H.M.S. 'Beagle,' as a naturalist, I was much struck with certain facts in the distribution of the organic beings inhabiting South America, and in the geological relations of the present to the past inhabitants of that continent. These facts . . . seemed to throw some light on the origin of the species—that mystery of mysteries, as it has been called by one of our greatest philosophers. On my return home, it occurred to me . . . that something might perhaps be made out of this question by patiently accumulating and reflecting on all sorts of facts which could possibly have any bearing on it. After five years' [sic] work I allowed myself to speculate on the subject . . ."
>
> —Charles Darwin, *Origin of the Species*

Like much of the discipline, many law and courts scholars accept that quantitative and qualitative research share a "unified logic of inference." Yet, all too often, this "unified logic of inference" has been taken from a quantitative template, thus giving qualitative researchers a tutorial in the underlying logic of statistical inference (King, Keohane, and Verba 1994, 4). Indeed, there has often been a sense that those engaged in large-N quantitative studies and those using rational-choice theories or formal modeling are engaged in the scientific study of law and courts, while those doing small-N historical studies, while perhaps engaged in valuable research, are not engaged in political *science*.[1] Look no further than the articles in this issue of Law and Courts to see this cast of mind. Not only is the emphasis on large-N studies and models, there is the presumption that "empirical methodology" and "quantitative methodology" are one and the same.

This has led to the conflation of "empirical" and "scientific" with those who "do math" of one sort or another. To wit: a number of elite graduate programs require statistics as *the methods* requirement, offering nothing at all in the way of research design or qualitative methods.[2] This view suggests that science *is* the testing of hypotheses based upon the logic of statistical inference (e.g. KKV)—hence all the advice below about intelligently using datasets. I do not mean to disparage such work. If science is the systematic gathering of knowledge, large-N quantitative tests of hypotheses may be an important part of this. But it is only one part. Before we can turn to testing hypotheses or running models against datasets, we must be clear about theories, concepts, and cases.

Constructing theories, concepts, and cases are vital aspects of the scientific process that are too often relegated to "prescientific" status (Gerring 2001; Collier and Brady 2004). In attending more carefully to these issues, we may get a more rounded view of the scientific enterprise itself, which is rooted in qualitative judgments and not the logic of statistical inference. If there is to be a unified logic within political science, it is found in approaches traditionally associated with qualitative methods.[3] Mainstream quantitative methods cannot provide "a foundation for research design and qualitative inquiry" (Collier and Brady 4). In fact, attempts to follow a quantitative template may well pull against interesting and provocative theory that law and courts scholars actually care about.

This essay focuses on recent scholarship in law and courts where the dialogue between theory and evidence is particularly important to the scientific undertaking. The goal is to illustrate how the construction of theory, concepts, and cases is central to good social science, while also being an essentially qualitative task. I am not suggesting that the works I discuss are methodologically perfect.[4] Nor am I suggesting that testing hypotheses based on the logic of statistical inference—as advocated or assumed by these other articles—has no place within law and courts scholarship. It is one of many tools that might be useful within a larger scientific framework, but it is not the whole of social science. Nor is it the truly scientific part, let alone the essentially empirical part. For reasons of space, I do not take up issues of causal complexity, which may

represent the most fundamental challenge to the mainstream quantitative template and dataset analysis. For those interested, I take this up elsewhere (Thomas 2005, 861-863). I focus on the works below because I think they bring to our attention aspects of the scientific enterprise that are neglected within the larger community of law and courts scholars but that are foundational to the scientific undertaking.

Theory and Evidence

It is a virtual mantra among social scientists that a "true" test of one's theory must be separate from any evidence that was used in generating the theory in the first place. To draw valid causal inferences from a theory, it must be tested against new evidence. If testing theories against empirical evidence is much of what political science is about, there is a great debate on how to evaluate such tests. What happens when confrontations between theory and evidence are not so straightforward?

According to David Collier and Henry Brady, this is the norm—and for quantitative approaches as well as qualitative approaches (Collier and Brady 2004, 236-240; see also Kritzer 1994, 697). Collier and Brady situate research design itself as part of an interactive process between theory and evidence, rather than treating "testing" as a single shot game (see also Gerring 2001). Thus Collier and Brady insist that there is unlikely to be any such thing as "determinate" research design, as a question will always be open to further investigation and dispute (236-238). So-called "indeterminate" research designs, then, may well be valuable in developing and furthering our theoretical understanding. The question should always be: what are we trying to learn? This leads Collier and Brady to call for *interpretive* research design, where claims can be plausibly defended, not definitively proven.

This recent methodological work suggests the distinction between "confirmatory" and "exploratory" research is not as stark as it has been made out to be; in fact, they are part of the overall scientific method (Gerring 2001, 23). "Exploratory" research is essential to the scientific process, as it provides the basis of building theories, concepts, cases and, from there, testing hypotheses (although it need not go in that order). In a perfect world, theories may be tested against "new" evidence that was not part of their construction.[5] In the real world, where we have to make choices between competing goals, this is a big if. Whether we can or should test a theory against new evidence depends not only on time and resources; it depends on the research question at hand.

Where we cut into the hermeneutical circle will depend on what our research task is. We must balance what we are doing, recognizing that not all methodological goals are equal. Those looking for scientific rigor by way of the "hypothetico-deductive model" often apply it in inappropriate circumstances, where concepts are not neatly defined, or existing theories are inadequate. Theories, after all, are not prefabricated things to be randomly picked up by the political scientist eager to test this or that hypothesis against a dataset. Oddly, though, as Timothy McKeown notes, "If the extent of one's knowledge about political science were the tables of contents of most research methods books, one would conclude that the fundamental intellectual problem facing the discipline must be a huge backlog of attractive, highly developed theories that stand in need of testing. That the opposite is more nearly the case in the study of international relations is brought home to me every time I am forced to read yet another attempt to 'test' realism against liberalism" (2004, 162). Law and courts scholars should be all too familiar with this problem. After all, how often are we confronted with attempts to "test" the attitudinal model against strategic decision-making, or to test either of these models against some form of the legal model?

Theory Building: Induction is not Intuition

The construction of theory has it origins in induction. Theories do not come to us ready made, nor do we theorize independently of the outside world. Rather, theories from which we derive propositions are constructed based on our interaction with the empirical world. Ken Kersch's *Constructing Civil Liberties: Discontinuities in the Development of American Constitutional Law* illustrates how induction may be used in theory building. Kersch begins with our current understanding of "civil liberties" and works backward, giving us a richly textured genealogy of current constitutional understandings. Kersch began his research by tracing out the actual history of early privacy cases against the theoretical understanding that there has been a progressive expansion of privacy rights in the twentieth century. Unearthing the particulars of the development of a "right to privacy," Kersch discovered a deeply conflicted process where progressives were in fact hostile to privacy rights, which were often extended robust protection by a putatively conservative Court. This was profoundly at odds with the conventional understanding. Kersch then turned to other cases studies—what he dubs "sites" of constitutional development—that were also at odds with the traditional narrative that "civil liberties" had

undergone a progressive expansion in the twentieth century. Based on these case studies, Kersch theorized that the conventional understanding of civil liberties "erased" the actual history whereby civil liberties were reconstructed to accord with the imperatives of building a New American State. This required reading some liberties out of our constitutional history. In this manner, Kersch illustrates how the conventional "Whiggish" narrative of civil liberties involves "erasures" that gloss over the agonistic and conflicted struggle between "liberties and liberties." Recovering these "erasures" Kersch jettisons the conventional theoretical understanding of modern civil liberties, opening vast areas for future research in how constitutional authority is constructed and reconstructed (see also Thomas 2004).

This exploratory research is analytically descriptive. As John Gerring and Collier and Brady argue, this is the true beginning of interesting scientific theory. And it is something that occurs in a hard science like biology all the time. Darwin's theory of evolution, recall, began with observing species on a trip around the southern hemisphere (Darwin 1962). Based on these observations Darwin spun out his theory of natural selection, which remains at the "hard core" of evolutionary biology. If the goal is building and developing theory, which is as important to social science as method, we should welcome research norms that help foster it (Collier and Brady 2004, 202). In fact, Collier and Brady suggest that the indiscriminate injunction against inductive procedures "[and] even worse, the misleading pretense that they are not utilized" in quantitative scholarship is a much larger problem in social science than the legitimate use of induction (Collier and Brady 2004, 240).

FOLK BAYESIANS: SELECTING CASES BASED UPON THEORY

Like the prohibition against induction, much of the confusion over valid research methods stems from the attempt to apply the logic of statistical inference as *the* scientific method. Law and courts scholars have all heard the injunction that if scholars cannot test the whole universe of cases to which a theory applies, then they should randomly sample cases to cover the full range of what they are trying to explain, enjoining us from *purposefully* selecting cases. The injunction against a purposeful selection of cases is good advice—if one is working from a quantitative template based upon mainstream regression analysis. But not all research is done within a mainstream regression template; indeed, quantitative scholars themselves disagree profoundly on the reach of this template. Mainstream regression analysis, for example, begins from a "frequentist" approach that assumes we know nothing about the world; it *assumes* ignorance of causal relations. A model is then elaborated, hypotheses specified, and tested against the data. The data are thus used to "construct the world." The result is that a "lack of context-specific knowledge means that the researcher cannot call on information from outside the sample being analyzed to supplement the information gleaned from a statistical analysis" (McKeown 2004, 148). In a Bayesian approach, however, prior knowledge about the world is assumed to be deeply important and the data is important only to the extent that it modifies our prior assumptions or theories. Thus cases (data) are weighed against prior understandings and not a blank slate (null hypothesis). Drawing on this logic, Collier and Brady illustrate how quantitative methods have begun incorporating such notions, thus complementing the logic of qualitative research (233-235). Qualitative researchers who purposefully select cases are usually situating their specific research within a larger research framework, or against prior theoretical understandings. In these instances, the purposeful selection of cases is a valuable research tool.

Mark Graber's path breaking "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary" illustrates this point. Graber hypothesized that "prominent elected officials consciously invite the judiciary to resolve those political controversies that they cannot or would rather not address" (Graber 1993, 36). Graber's aim was to illuminate those issues that divide a party or "governing coalition" and so do not fit the theoretical understandings that (1) when a Court overturns a law it is acting against a democratic majority or (2) that the Court is simply acting in line with the governing coalition. Graber refines Robert Dahl's thesis that the Court acts in line with the governing coalition and, in doing so, challenges the theoretical understanding that the judiciary acts in a "countermajoritarian" fashion. As Graber says, "'The countermajoritarian difficulty' does not provide an adequate starting point for thinking about an institution that typically makes policies only in response to legislative stalemates and invitations. Scholars might more profitably think about judicial review as presenting 'the nonmajoritarian difficulty' when the real controversy is between different members of the dominant national coalition, or 'the clashing majority difficulty' when the real controversy is between lawmaking majorities of different governing institutions" (Graber 1993, 37).

Graber's case studies are not randomly selected, but chosen specifically to illustrate his case. However, they are not meant to simply illustrate legislative deference to the judiciary. Rather, they seek to show how legislative deference "offers better insights into judicial behavior in significant constitutional cases than the model of judicial independence presupposed by the countermajoritarian difficulty" (Graber 1993, 45). Thus two of Graber's three cases are classic cases of the Court acting

in a countermajoritarian fashion—*Dred Scott* and *United States v. E. C. Knight*. Yet, wading into the specifics of these cases, Graber argues that they reveal the legislature *inviting* the Court to settle a controversial political issue and not the Court acting against the legislative will as is commonly assumed.

Situating his research against conventional theoretical understandings that treat the judiciary as a countermajoritarian institution, Graber illustrates how this understanding does not apply in many important cases (cases that were deemed quintessentially countermajoritarian). This also refines Dahl, as Graber illustrates how the political branches utilize the courts to maintain their governing coalition.[6] Graber's research has offered a fruitful new avenue for thinking about the Court's exercise of judicial review, which has been taken up by other scholars (Graber 2005). Keith Whittington's examination of how judicial supremacy is politically constructed begins by asking why the other branches may have an interest in supporting judicial power (Whittington 2005). More narrowly, Kevin McMahon has shown how FDR reconstructed the federal judiciary to further the entrenchment of executive power, while George Lovell, whose work I take up more extensively below, has refined and deepened Graber's concept of "legislative deferrals" (McMahon 2004 and Lovell 2003). Reversing this image, J. Mitchell Pickerill's *Constitutional Deliberation in Congress,* illuminates how the Court's exercise of judicial review, rather than being "supreme or obstructive" initiates "constitutional dialogues, negotiations, and bargains" with Congress (Pickerill 2004, 30; see also Thomas 2004).

Situated against the backdrop of prior theoretical understandings, the inductive refinement of theory is an essential part of research—in both quantitative and qualitative scholarship—which must be distinguished from "data mining" where a hypothesis is deductively posited and then data are gathered to support it. Weighing theory against empirical evidence is best seen as an "iterated" game rather than a "single shot" test. "Here, what guides research is not logic but craftsmanship, and the craft in question is implicitly far more substantively rich than that of 'social scientist without portfolio'" (McKeown 148). Referring to qualitative researchers as "folk Bayesians," McKeown draws attention to the fact that qualitative research is more often than not situated in this larger context.[7]

This is true of Lee Epstein and Jack Knight's *The Choices Justices Make.* Epstein and Knight situate their research against the predominant understanding that justices make decisions based upon their political attitudes—that they are "single minded seekers of legal policy" (10). Yet, if this account is wholly true, why do justices often join decisions that fall short of their preferred policy position? Here Epstein and Knight argue that in pursuing their political preferences justices act in a strategic manner.[8] In support of this contention, Epstein and Knight do not randomly sample from the universe of cases. Rather, they draw on (1) cases argued during the 1983 term and (2) landmark cases during the Burger Court years (1969-1985). In part, this is based on the evidence available, particularly newly available private papers of Justices, which should be a vivid reminder of the inherent tradeoffs in doing real world research. But selecting on available cases is important for two other reasons as well. First, Epstein and Knight are challenging the predominant theoretical understanding that justices make judicial decisions based on their political attitudes. Their evidence, then, points to the inadequacy of current theory and the *plausibility* of the "strategic" account. Their explanation is worth quoting at length, as it illuminates the centrality of exploratory research in fostering interesting theory and concepts.

> We attempt to demonstrate [the strategic accounts] plausibility and explore its explanatory power with data mined from the Court's public records and from the private papers of Justices William J. Brennan Jr., William O. Douglas, Thurgood Marshall, and Lewis F. Powell Jr. This is not to say that we assess our account against empirical evidence on the range of judicial decisions. Given that strategic rationality seeks to explain all the choices justices make—*from the initial decisions to grant review to the policy enunciated in the final opinion, not just the vote to affirm or reverse*—it would be virtually impossible for us to do so in one volume. But it is to say that we hope *Choices* makes a compelling case for the importance of injecting strategic analysis into future studies of the Supreme Court (xiv).

This account of developing theory and concepts illuminates the inadequacy of current theory, while opening up future research. But the second point is just as important. The strategic account of judicial decision-making emerged from a close investigation of the Justices' papers. That is, the evidence used to support their theorizing was also essential in constructing their theory. Not that there is anything wrong with that![9]

Indeed, while there may not be a formula for creative insight, research practices that focus on the creation of theory are more likely to lead to interesting law and courts scholarship. Such practices, however, are undervalued, if not disparaged,

by attempts to "discipline" political science, making it conform to the quantitative template (KKV, 7-11). This is true not just in developing interesting theory but also in constructing cases and concepts that are central to developing and testing theory.

Constructing Cases, Refining Concepts and Theory

Cases, like concepts and theories, are not prefabricated. They must be constructed and refined before theory can be tested: "in case oriented research, the bulk of the research effort is often directed toward constituting 'the cases' in the investigation and sharpening the concepts appropriate for the cases selected" (Ragin 2004, 127). Too often social science research "assumes a pre-existing population of relevant observations, embracing both positive and negative cases, and thus ignores a central practical concern of qualitative analysis—the constitution of cases" (Ragin 2004, 127). In this sense, the statistical view is parasitic upon qualitative research that constitutes cases, or it relies upon prefabricated data sets that had to be qualitatively constituted at some prior time (see Collier, Brady, and Seawright 2004, 252-264).[10] What constitutes a case may be refined in the course of the research. As we refine our cases, we refine our concepts and theories as well—not to "fit" the evidence, but to get a better understanding of cases and concepts, allowing us to construct better theory—all of which is essential to drawing valid causal inferences across cases (Ragin 2004, 127).

In *Legislative Deferrals: Statutory Ambiguity, Judicial Power, and American Democracy*, George Lovell (2003) examines cases where Congress deliberately deferred difficult political issues to the Supreme Court. Lovell's research builds on Graber's "nonmajoritarian difficulty" situating itself against the dominant theoretical understanding that the Court acts either in a countermajoritarian fashion when it strikes down or alters legislation enacted by Congress or that it goes along with Congress' policy preferences. Building on Graber's research, Lovell illustrates how Congress has often deliberately maintained and cultivated *ambiguous* statutory language, thus *inviting* the Court to settle the issue and calling into question whether Congress in fact had a coherent policy preference. Lovell's case studies carefully trace the connections between deliberate statutory ambiguity on the part of the legislature and "policy-making" on the part of the courts. The cases Lovell examines call for a serious reevaluation of the notion that legislatures and courts are competitors (the countermajoritarian notion). Perhaps far more importantly, the concept, cases, and theory that Lovell develops refine and deepen Dahl's notion that the courts follow the majority coalition. Turning to the legislative debates and history behind labor statutes that were later the subject of judicial decisions, Lovell illustrates how legislators "deliberately empowered judges" (41). That is, by deliberately leaving statutory legislation vague, members of Congress invited the courts to interpret the statute in ways that might cut against labor. In these cases, we cannot speak of judicial rulings "independently of, or in opposition to, the democratic process of legislatures" (45). But neither are courts simply following legislative will.

This is a very different claim than Dahl's, which essentially has the Court following the election returns. Yet Lovell's research could only come from a deep investigation of the cases—the legislative record in this instance. If we simply went with an ordinary dataset of cases, as Dahl and a number of judicial scholars have, we might conclude that in these instances the Court was (1) acting against the wishes of Congress or (2) that it was simply following the legislative majority. Lovell's deeper investigation, however, renders both understandings untenable, or radically incomplete. Lovell developed and refined the concept of "legislative deferrals" by wading into the details of his cases, which were used to refine and alter this typology, just as the concept was used to construct his cases. The result is theoretical breakthrough that has altered our understanding of congressional-court relations.

While law and courts scholars have long recognized the importance of case studies, traditional qualitative research is too often seen as something undertaken "because of the infeasibility of statistical methods" (McKeown 2004, 144). Thus qualitative researchers are implored to imitate the logic of statistics *if* they must utilize case studies (for example, KKV 1994 and Maltzman, Spriggs, and Wahlbeck, 2000, 25-27). A growing body of scholarship turns the tables on this statistical mindset, pointing to the importance of starting with cases (Pierson 2004, Jervis 2000, Ragin 2004). If, for example, we are interested in empirically investigating the notion of a "countermajoritarian dilemma," we must first construct this category. What does it entail? What are the empirical examples? As we saw with Lovell, this process of categorization helps organize our knowledge. Moreover, by thinking of cases as "types" we may get at the specific configurations within each case, allowing for fertile comparison among cases, which, in turn, should give us a deeper sense of our concepts and our theories (see, for example, Jacobsohn 2003 and Goldman 1997).[11]

Constructing Cases, Testing Theory

This work is central to getting at causal arguments—particularly for getting at causal complexity. Collier and Brady suggest that "thick" rather than "thin" analysis and causal process observations rather than dataset observations may be most fruitful in getting at causal mechanisms (248-249, 252-264). As with other qualitative tools—by following the sequence in a single case, or comparing among cases—this sort of "thick" analysis can get at causal mechanisms, compare causal pathways, and even permit causal inference on the basis of a few cases (Thomas 2005, 861-863).

Consider Howard Schweber's *The Creation of American Common Law, 1850-1880*. Schweber (2004) builds on essentially two cases to demonstrate how the technological development of the railroad in nineteenth century America led to the creation of a distinctly American common law. Schweber argues that the development of railroads led state courts in the non-slave North to adapt the common law to accommodate "the need for speed" (2). This transformation of common law rules resulted in dramatic change in the political philosophy of citizenship, rendering it more democratic in its universal application. But this also entailed a universal duty, "The Duty to Get Out of the Way" (2). Thus, while the construction of citizenship became more liberal insofar as its universal scope entailed a robust vision of equality against social hierarchy, at its core was the notion of public duty. The South, however, tenaciously clung to older common law doctrines and categories to maintain the political hierarchy of slavery.

To substantiate these claims, Schweber turns to an exceedingly well-crafted comparative study between North and South. The primary focus is on Illinois in the North and Virginia in the South to demonstrate this bifurcated legal development. Schweber selected these states based on a "least likely" or "hard" case analysis. A non-slave northern state, Illinois shared many of the characteristics of southern states, while the slave state Virginia shared many of the characteristics of a northern state. It is not that Illinois and Virginia shared much in common other than slavery. On the contrary, it is that Illinois leaned South and Virginia leaned North with the exception of slavery in each case. Thus these were likely candidates to cut a*gainst* Schweber's argument rather than support it. In detailed case studies, Schweber analyzes court cases involving the railroads, documenting how Illinois altered its understanding of the common law to accommodate the technological development of the railroads, which profoundly altered the conception of citizenship. Virginia resisted these developments, which were inimical to the political hierarchy of slave society. Schweber then rounds this comparison out by turning to state court decisions in three additional states from each North and South, capturing variation with each region, as well as between them. In analyzing these cases, Schweber meticulously documents a general and compelling pattern of dramatic change in the North and stasis in the South based on a small-N study.

This suggests two important points. First, increasing the number of cases (observations) is not nearly as important as carefully selecting cases. Even if the intent is to test a hypothesis against evidence, a small number of cases that maximize the researcher's analytical leverage may be far superior than increasing the number of cases (which itself can create problems of concept stretching and measurement validity). Second, and intimately related to the notion of case selection, substantive knowledge is essential in crafting small-N cases. Schweber, for example, was able to construct a powerful test of his theory based upon two "least likely" or "hard" cases given his detailed understanding of the cases. Such an understanding could not be had from a dataset.

Conclusions

This essay has sought to give law and courts scholars a more rounded understanding of science by paying more attention to the complex interplay between theory and evidence. Testing theory against empirical evidence—including large-N studies— is central to the study of law and courts and sure to remain so. It is not, though, the whole of the scientific enterprise. And while it is useful to have large datasets available and to be versed in utilizing them, in and of themselves these things do not further the scientific process. Research that utilizes such resources is not presumptively "scientific." Nor is research that does not utilize them presumptively "unscientific." How and whether a particular research project furthers the scientific undertaking depends on the particular research at hand and where in the process the researcher is.

In attending more carefully to the interplay between theory and evidence—particularly as seen in creating theories, concepts, and cases— law and courts scholars might rescue important aspects of political science that have too often been treated as "prescientific." And do so, moreover, in the name of science itself. However, these aspects of science rest upon qualitative judgments—upon "reflection and choice" if I may repair to the words of an earlier political scientist (Hamilton,

et. al, 1999, 1). Thus the quest for a common vocabulary and set of standards within law and courts scholarship is to be found, if it is to be found, in methods traditionally associated with qualitative research. Recognizing this should stop the tendency within the subfield to equate science with math of one form or another, giving us a more thorough, capacious and practical view of political science itself.

*I would like to thank Howard Gillman, Kevin McMahon, Mitch Pickerill, and Rogers Smith for helpful comments. This essay draws upon my December 2005 "Qualitative Foundations of Political Science Methodology," *Perspectives on Politics* 3(4).

Notes

[1] Unfortunately, many qualitatively minded scholars have gleefully agreed with this characterization.
[2] While a Qualitative Methods section has been established in APSA, it arrives years after *the* methods section, which was quantitative. For an interesting discussion of methodology in graduate programs, see the July 2003 symposium in *PS: Political Science and Politics* 36 (3).
[3] This would also resituate the likes of Aristotle, Machiavelli, Hamilton, Madison, and Tocqueville, to name a few, as *political scientists*. For a discussion of traditional political science, see Ceaser 1990.
[4] This, however, is true of much work that is deemed to be scientifically sound. I do not want to revisit the debates about the attitudinal model (Segal and Spaeth 1993), but for all of the insistence that it has been empirically demonstrated, there are major flaws in the research design—the most important being that it is not clear the independent variable (political attitudes) is truly independent of the dependent variable (judicial decision-making). That is, the newspaper editorials turned to by Segal and Spaeth to derive an "independent" measure of political attitudes might just as easily be used to derive a justice's jurisprudential views. Thus, from a methodological point of view, their research design is indeterminate. All of the empirical evidence used to demonstrate that justices (more often than not) make decisions based upon their political attitudes is consistent with competing explanations (including jurisprudential) of judicial decision-making. Let me be clear. I am not saying that justices do not make decisions based on their political attitudes—clearly they do in some cases. The more interesting question might be when they do. And, on this score, the attitudinal model has nothing to say, largely because it is operating from a statistical mindset based upon causal probabilities.
[5] And very often theories are tested and reformulated and tested against new evidence in the same work (see Smith 2004).
[6] Unlike much Bayesian scholarship, Graber is not attempting to draw causal inferences, but the larger point remains.
[7] It is perhaps more accurate to refer to Bayesians as "qualitative quantifiers" as qualitative scholars have been using such methods long before Bayesian approaches were introduced in statistical methods.
[8] It must be noted that Epstein and Knight's account of "strategic decision making" could be wholly consistent with the notion that judges often make their decisions based on some form of legal reasoning. *Choices*, however, is interesting for another reason. While it is a qualitative piece of scholarship that follows the same sort of logic as much qualitative law and courts scholarship, it is often deemed to be "scientific" because it employs a soft rational-choice model. Whereas other qualitative work, say, Mark Graber's "The Passive-Aggressive Virtues: *Cohens v. Virginia* and the Problematic Establishment of Judicial Power," is not thought of as scientific because it does not engage in quantitative analysis or employ a model. John Gerring has refereed to this bent of mind as "method-ism" in social science research (2001, 243). I have lost count of the number of times I have heard law and court scholars conflate "empirical" with "quantitative." Not only are these not that same thing, but quantitative approaches, or approaches that employ sophisticated modeling, are often not at all empirical, whereas much qualitative work is. That is the *history* in historical-institutionalism. Let me add, I have heard this said as often by qualitative scholars as by quantitative scholars. The fetish for "method-ism"—drawn largely from a quantitative template—conflates science with math and slights valuable methodological tools that are essential to good science.
[9] This is even more so of Walter Murphy's *Elements of Judicial Strategy* (1964), the path breaking intellectual godfather of the strategic model.
[10] Or it simply ignores the qualitative coding that must go into the construction of cases or datasets.
[11] Propositions classifying phenomena, for example, begin with the empirical world. Take Max Weber's division of authority into three essential types: traditional, legal-rational, and charismatic; it orders the world for us, beginning with what is out there, which forms the basis of our theorizing about it. Weber's approach is inductive and descriptive, but surely scientific (Gerring 2001).

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Research Spotlight

The Ulmer Project & The Spaeth Database

THE UNIVERSITY OF KENTUCKY'S ULMER PROJECT
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In the spring of 2004, the Department of Political Science at the University of Kentucky announced the establishment of the S. Sidney Ulmer Project for Research in Law and Judicial Politics.[1] Named after UK Professor Emeritus S. Sidney Ulmer, a recipient of the Law and Courts Lifetime Achievement Award in 2003, the Ulmer Project seeks to promote quality research in law and judicial politics. This article provides information pertaining to the Ulmer Project, including the impetus behind its creation, its current configuration and future plans, and the benefit it contributes to the community of judicial scholars.

CREATION OF THE ULMER PROJECT

In order to understand the motivation to establish the Ulmer Project, it is important to understand the individual for whom the project is named. Though most readers will be familiar with the scholarly achievements of Sidney Ulmer, allow me to present a brief description of the individual scholar.[2] S. Sidney Ulmer, a member of the American Political Science Association for over 50 years, retired from the University of Kentucky as an Alumni Professor in 1988. Ulmer earned his B.A. (*cum laude*) from Furman University in 1952 and was awarded an LL.D. from the same institution in 1979. After receiving his M.A. and Ph.D. degrees from Duke University, he taught at Michigan State University for seven years, serving as Department Chair in 1961-62. In 1963, he moved to the University of Kentucky as Department Chairman – a position he held for six years.

In a career spanning 32 years, Ulmer authored six books and over 75 articles or book chapters in the area of Constitutional Law and Judicial Behavior. He is a Past President of the Southern Political Science Association and has served on the editorial boards of the *Journal of Politics*, the *Midwest Journal of Political Science*, and the *American Journal of Political Science*. From 1963-1966 he was an Editorial Associate of the *American Political Science Review*. During that period his bibliographies of behaviorally oriented articles, from a broad spectrum of academic disciplines, appeared in each issue of the *APSR*.

In 1966, Ulmer was present at the founding of the Inter-University Consortium for Political and Social Research. He served on the Executive Council of the Consortium for two years and chaired the Council in 1967-68. In 1984, Ulmer, at the request of Harold Spaeth, was the initial Chairman of the Board of Overseers for the United States Supreme Court Database Project, a position he held for three years.

Based on these several accomplishments (and numerous others not listed), Nancy Maveety (2003) labeled Sidney Ulmer as a "Pioneer" of Judicial Behavior. Robert C. Bradley writes the following: "Because of the number of his publications and the extended time period over which they appeared, Ulmer continues to profoundly impact the judicial subfield. The breadth and quality of those publications - specifically those dealing with certiorari decisions, small-group theory, and microdecisional analysis - obviously enhance that impact. Ulmer's pioneering theoretical developments and methodological refinements still guide and stimulate others in their research efforts on the courts" (2003,112).

When I arrived at the University of Kentucky in 2003, straight out of graduate school from Michigan State University, I had the distinct pleasure to talk with Sidney Ulmer over a series of meetings. Consequently, when Harold Spaeth asked if I would be interested in electronically archiving his Supreme Court databases (a task with which I was familiar while in graduate school), I immediately asked Sid if he would be interested in lending his name to the creation of a new research endeavor focused on judicial politics. We discussed several possibilities and ultimately decided upon an alternative we believed would benefit the community of judicial politics scholars.

Current Configuration of the Ulmer Project

Currently, the Ulmer Project is divided into three general sections of research-related information. The first section provides an electronic archive of Working Papers on law and judicial politics. While the majority of papers are written by individuals at the University of Kentucky, I am always interested in posting research from any individual examining judicial behavior. One need simply send the paper as an email attachment (in either Word, Word Perfect or PDF format) and I will include it in the Working Papers section. The second section lists presentations made to the University of Kentucky by individuals in the judicial politics community (with links to their research).

The final section is arguably the most important aspect of the Ulmer Project: the electronic archive of judicial datasets. Currently, I maintain the distribution of eight National Science Foundation supported judicial databases.[3] For each of these datasets (which will be described in more detail later), I offer four possible formats: SPSS (formatted as a portable file), STATA (formatted for version 7.0 or higher), SAS (formatted as a transport file) and ASCII (formatted as a fixed file). These formats were chosen based on the most frequently used statistical software packages. All documentation for the databases is available in PDF format, as well as other information on how to use the data (such as Sara Benesh's "Becoming an Intelligent User of the Spaeth Databases"). As the data and/or documentation are updated by the principal investigators, I make the files accessible for public download as soon as possible. Thus, the judicial community is able to maintain access to the most recent data available. If individuals have questions pertaining to the datasets I am available to provide answers; having given advice to members from political science, the legal community, the media, and even to federal judges.

Of the NSF-sponsored datasets, the Supreme Court Databases (compiled by Harold J. Spaeth) are arguably the most frequently downloaded. Spaeth has six databases related to the Supreme Court archived at the Ulmer Project. The original dataset (nicknamed ALLCOURT) contains the final vote data from 1953 (the Warren Court) through the Burger and Rehnquist Courts, and will be updated regularly to include the most recent decisions rendered by the Roberts Court. The unit of analysis for this database is the case (docket number). Spaeth also has two databases which record conference vote data as well as the final vote data. The Vinson-Warren database (nicknamed VINWAR) contains cases from the 1946-1968 terms and was coded originally by Jan Palmer of Ohio University. Similarly, the Burger Court database (nicknamed BURGER) includes cases from the 1969-1985 terms and was coded under the direction of Lee Epstein of Washington University in St. Louis. The unit of analysis for these datasets is the case (docket number).

Additionally, the Ulmer Project archives three justice-centered datasets pertaining to the Supreme Court. These databases focus the unit of analysis on the individual justice, and include unique information not contained in ALLCOURT (one can refer to the documentation for specific details). The Justice-Centered Warren Court database (nicknamed WARFLPD) contains data from the 1953-1968 terms; the Justice-Centered Burger Court database (nicknamed BURGFLPD) contains cases from the 1969-1985 terms; and the Justice-Centered Rehnquist Court database (nicknamed REHNFLPD) contains data from the 1986-1998 terms. Each of these justice-centered datasets was transformed by Sara Benesh of the University of Wisconsin-Milwaukee. In addition to the Supreme Court datasets, the Ulmer Project also archives the U.S. Courts of Appeals Database (compiled by Donald R. Songer). This dataset includes a stratified random sample (stratified across circuits per year and random within each circuit year) of cases from 1925-1996. It is designed primarily for longitudinal analyses of significant trends in the appellate courts. For an example of the types of research questions applicable, or for a rich description of the federal appeals courts, see Songer, Sheehan and Haire (2000).

The final NSF-sponsored dataset archived at the Ulmer Project is the Attributes of U.S. Appeals Court Judges, 1801-1994 Database (compiled by Gary Zuk, Deborah J. Barrow, and Gerard S. Gryski). This project was undertaken to compile a definitive database on the personal, social, economic, career and political attributes of judges who served on the United States Courts of Appeals from 1801 to 1994. The database includes conventional social background variables such as appointing president, religion, and political party affiliation. In addition, unique items are provided such as the temporal sequence of prior career experiences, the timing of and reason for leaving the bench, and the position numbering analogous to the scheme used for the American Bar Association rating. For an example of the types of research questions applicable to these data see Barrow, Zuk and Gryski (1996).

The Ulmer Project also provides links to additional judicial datasets, archived in other locations. Examples include the Lower Court Confirmation Database (compiled by Wendy L. Martinek and archived at Binghamton University), the State Supreme Court Database (compiled by Paul Brace and Melinda Gann Hall and archived at Rice University) and the Merged

Phase I and Phase II Supreme Court Database (compiled by Vanessa A. Baird and archived at the University of Colorado). Individuals can access these datasets through the Ulmer Project by clicking on the appropriate web links.

Future Direction of the Ulmer Project and its Contribution to Law and Courts

It is my hope that the Ulmer Project contributes positively to the Law and Courts community. By archiving judicial datasets in a single location, and distributing the most recent information across multiple formats, I believe a valuable environment is established; one in which individuals can access updated versions of data and pose questions to individuals knowledgeable in judicial politics and empirical methodology. As more individuals either archive their data with the Ulmer Project directly, or allow links from the Ulmer Project to their locations, then this benefit will continue to expand. The datasets do not have to be large, NSF-sponsored files. Smaller databases are equally welcome and I will work with any and all individuals to make their data publicly available. Additionally, I welcome working papers from all individuals with research interests in law and judicial politics. Finally, suggestions from the Law and Courts community on future directions are always appreciated. Without input from the community of judicial scholars, it is difficult to determine how best to evolve and develop the Ulmer Project.

Notes

[1] The Ulmer Project is accessed at http://www.as.uky.edu/polisci/ulmerproject

[2] This biography was provided by Sidney Ulmer for inclusion on the website

[3] These data were archived initially at the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan, and later at the Michigan State University Program for Law and Judicial Politics.

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Becoming an Intelligent User of the Spaeth Supreme Court Databases

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Scarcely an article on Supreme Court behavior fails to avail itself of one of the Spaeth Supreme Court Databases. However, that they are widely used does not necessarily mean they are widely understood. Here, I attempt to highlight the contents of the various databases, provide instructions on how and where to obtain them, and give some insight on how to intelligently use them. Questions will, no doubt, remain. Please feel free to direct them to me via email (sbenesh@uwm.edu). Harold Spaeth himself will be happy to help as well (spaeth@msu.edu).

There are currently six (soon to be more) separate databases. One covers final voting behavior from the Vinson Court through the entirety of the Rehnquist Court. This is called "The Original Supreme Court Database" on the Ulmer Project Site (http://www.as.uky.edu/polisci/ulmerproject/). The second covers all stages of decision making (cert, merits, and final vote) for the Vinson and Warren Courts and is labeled "The Vinson-Warren Court Database." The third adds the Burger conference data to its final vote data and is named "The Burger Court Database." The last three change the unit of analysis from the case to the individual justice vote: "The Justice-Centered Rehnquist Court Database," "The Justice-Centered

Burger Court Database," and "The Justice-Centered Warren Court Database." There are a plethora of variables in all of these databases, providing an expansive array of information from which to draw. Spaeth puts these variables into several categories: background variables (including jurisdiction, administrative agency action, the source and origin of the case, the reason given for hearing the case, the parties to the case, and the disposition of the case in the court prior to the Supreme Court); chronological variables (including the date of oral argument, of reargument, if any, and the date of decision); substantive variables (including legal provision, authority for decision, issue and issue area, and the ideological direction of the decision); outcome variables (including the type of decision, the disposition of the case, the winning party, whether there was a formal alteration of precedent, and whether there was a declaration of unconstitutionality); and voting and opinion variables (including the vote in the case, and the votes, opinions, and interagreements of the justices) (Spaeth and Segal 2000). All of these are available for free downloading at the Ulmer Project's website (referenced above) along with all relevant documentation. However, this is an overwhelming and sometimes intimidating set of information. I hope to make it a bit more accessible here.

Obtaining the Data

First, to download the databases, navigate to http://www.as.uky.edu/polisci/ulmerproject/ and click on *Databases.* Several different databases appear on this page (including the Songer Courts of Appeals database, the Auburn Attributes of Courts of Appeals judges database, and the State Supreme Court Database, among others). Click on *United States Supreme Court*. The next page offers free software used for viewing and downloading information contained (PKZip, Stuff-It, and Acrobat Reader) and a listing of the various databases discussed above, each with several download options. The user can download the data as an SPSS file, a STATA file, a SAS file, or an ASCII file, and can download the documentation as a PDF file. For users familiar with SPSS, STATA, or SAS, it is easiest to download the data in those formats. If you use a different statistical software program, the ASCII file should allow for relatively painless conversions. Simply click on the relevant format and save the file to your hard drive. Then double click the file and, if you have an unzip program, the file will be unzipped. Then either double click the unzipped file (if your computer recognizes the extension and opens SPSS, STATA or SAS) or click "Extract" and choose a file location to save the database, then open it in the relevant program.

I advise anyone using the databases for the first time to also download the documentation at this time. To do so, click on *Documentation*. If Acrobat Reader is installed on your computer, the file should come up directly. You can either save or print this document. If you plan to use the databases extensively, I would advocate printing the documentation. If not, the user may wish to read the documentation on screen as it is a very long document (101 pages for the original databases). Either way, it is nearly impossible to use the databases without reading the documentation (although it is more feasible now with the addition of value labels), so I urge every user to do so.

Selecting a Unit of Analysis and Decision Type

If researchers were to open the database and start running models, they would suffer an unfortunate fate, for they will have included non-orally argued cases and per curiams without determining whether they should, given their research question. They will have double- and triple-counted certain cases because they will have included multiple dockets, multiple issues, and multiple legal provisions and probably counted each as a separate case. The first step in intelligently using the databases, therefore, is to make the primary case selection decisions about the relevant unit of analysis and decision type.

ANALU

As you may know, case citations may have several docket numbers as the Court oftentimes combines several cases under a single opinion. Spaeth deals with this by having an additional record for each docket number. In addition, many cases have more than one issue or more than one legal provision at bar. Because issue and legal provision are single variables, Spaeth deals with multiple issues and multiple legal provisions by duplicating the record for a given case with the new issue or legal provision noted. (All other entries in that new record will be the same as the first record for that case citation.) If there are multiple dockets and multiple issues, each docket/issue will receive a record. Finally, cases in which there was a split vote – e.g., a justice dissents on one issue and is in the majority on another, or five justices voted for one part of the opinion and a different five for another – also have two entries, one for the first part of the decision and one for the second. This oftentimes leads to some confusion for researchers.

The following are the options available to the researcher:

ANALU	UNIT OF ANALYSIS
0	Case Citation
1	Docket Number
2	Multiple Issue Case
3	Multiple Legal Provisions Case
4	Split Vote Case
5	Multiple Issues and Multiple Legal Provisions

In the Burger Court database, there is an additional unit of analysis: analu=6, which indicates a relisted case. For information on relisting, see Spaeth 2004.

What follows are some ideas of usages of the databases and the appropriate unit of analysis:

RESEARCH QUESTION	UNIT OF ANALYSIS
% Liberal Decisions Per Term	Case Citation
All Issues Addressed Each Term	Case Citation and Multiple Issue
All Legal Provisions Used Each Term	Case Citation and Multiple Legal Provision
Number of Opinions Written by Rehnquist	Case Citation and Split Vote
Assignments Made by Associate Justices	Case Citation and Split Vote
Number of Cases Declaring Laws Unconstitutional	Case Citation
Number of Cases Altering Precedent	Case Citation
Which Courts Supreme Court Reviews	Docket Number
Disposition of Cases at Supreme Court	Docket Number
Parties to Supreme Court Cases	Docket Number

In general, any time one wants to study decisions in the aggregate and wants to count each decision only once, one should use the case citation. That record is the first record for any case and contains the "most important" issue and legal provision dealt with by the Court (according to Spaeth). If one wants an idea of the range of issues or legal provisions dealt with in a single term, one may wish to use the multiple issue unit of analysis and then combine several issues into one case for any percentages computed. If one needs to know about the treatment of certain lower courts or the success of certain parties, one should use the docket as the unit as different dockets have different parties and points of origin. Do note that if one wanted a picture of all issues, one would need to choose both case citation and multiple issue case in order to obtain all issues in a given case. Finally, note also that certain variables locate only in a specific record in a given citation; e.g., uncon and alt_prec. Hence, the focus in such research should be on the specific variable and analu should, for the most part, be ignored.

So what do these choices mean in terms of outcome? Below are some examples of cases with multiple dockets, issues, legal provisions, and split votes and how they appear in the database. This again demonstrates the need to sometimes select more than one unit of analysis and certainly to always use the research question to guide which analu to select.

Case #1: One record, one docket, one law, one issue

us	docket	analu	rec	law	issue
519/0316	95-789	0	.	ERIS	911

Case #2: Three records, three dockets, one law, one issue

us	docket	analu	rec	law	issue
517/0343	95-7587	0	.	SCTR	385
517/0343	95-7588	1	2	SCTR	385
517/0343	95-7589	1	0	SCTR	385

Case #3: Five records, one docket, five laws, one issue

us	docket	analu	rec	law	issue
517/0748	94-1966	0	.	EO	362
517/0748	94-1966	3	4	11	362
517/0748	94-1966	3	0	1814	362
517/0748	94-1966	3	0	172	362
517/0748	94-1966	3	0	8A	362

Case #4: Six records, three dockets, two laws, one issue

us	docket	analu	rec	law	issue
517/0952	94-805	0	.	14A=	250
517/0952	94-805	3	1	321	250
517/0952	94-806	1	2	14A=	250
517/0952	94-806	3	1	321	250
517/0952	94-988	1	0	14A=	250
517/0952	94-988	3	1	321	250

Case #5: Ten records, three dockets, two laws, one issue

us	docket	analu	rec	law	issue
354/0298	6	0	.	SMIT	422
354/0298	7	1	2	SMIT	422
354/0298	8	1	0	SMIT	422
354/0298	7	3	1	STOP	422
354/0298	6	4	2	SMIT	422
354/0298	7	4	2	SMIT	422
354/0298	8	4	2	SMIT	422
354/0298	6	4	0	SMIT	422
354/0298	7	4	0	SMIT	422
354/0298	8	4	0	SMIT	422

Case #6: Two records, one docket, one law, two issues

us	docket	analu	rec	law	issue
355/0083	20	0	.	54S899	673
355/0083	20	2	1	54S899	721

Note that rec is basically a counting variable. When analu = 0, it is empty (either . or 0). When analu = 1, rec gives the number of additional docket numbers in the case. When analu = 2, rec gives the number of additional issues in the case. When analu = 3, rec gives the number of additional legal provisions. When analu = 4, rec gives the number of additional split vote records. When analu = 5, rec gives the number of additional legal provisions and issues. All of these entries for rec occur only in the first record of the new analu type.

DEC_TYPE

The second decision every researcher needs to make when approaching the database is the decision type s/he wishes to employ. There are seven different decision types coded by Spaeth in his databases. They are as follows:

DEC_TYPE	EXPLANATION
1	Formally decided, full opinion cases. Were granted oral argument and resulted in a signed opinion.
2	Cases decided with an opinion, but without oral argument; e.g., per curiam.
3	Memorandum cases (cert decisions, motions to file as amicus curiae, orders).
4	Decrees (decisions on cases arising under the Court's original jurisdiction).
5	Equally divided vote (due to nonparticipation of one or more justices) with the effect of upholding lower court's decision due to a tie.
6	Per curiam, orally argued cases (unsigned, but orally argued)
7	Judgments of the Court (majority attracts only a plurality of the justices)

Again, it is immediately evident that much violence would be done to one's analysis if one did not decide which of these seven decision types to include in one's analysis. The following research situations would be associated with the following decision types:

RESEARCH QUESTION	DECISION TYPE
Who writes the Court's majority opinions?	1 and possibly 7
Which states win more often in general?	1, 2, 3, 4, 5, 6, and 7
Is the Court more liberal than before?	1, 2, 4, 6, 7
How often does the Chief assign the majority opinion?	1, 7
What role do oral arguments have in decision making?	1, 5, 6, 7
What precedents has the Court set in libel?	1, 2, 6

Of course, people may disagree over whether to include per curiams or judgments in a given research project. The researcher should always report the decision he or she makes in this regard, however, so that others may evaluate the cases on which their analysis is based. Most cases in the database are of type 1, but results could be skewed, depending on the research question, if other types are erroneously included. Note also that for types 2 and 3, not all cases are included. Type 2 cases are only included if a summary is reported in the U.S. Reports or one of the justices issues a separate opinion. Type 3 cases are only included if one of the justices wrote a separate opinion, which does not often occur. In the Vinson-Warren Court Database, all type 3 cases are included except those deadlisted and those in which no justice supported granting the petition. All other types include the universe of cases decided.

Selecting cases intelligently requires that both analu and dec_type (as well as the variables to be analyzed) are carefully taken into account.

CHANGING THE UNIT OF ANALYSIS

As mentioned earlier, the Spaeth databases also include a set of databases with justice vote as the unit of analysis rather than case citation or docket. The Rehnquist, Burger, and Warren Courts are now available at the individual justice level. These databases will further facilitate research on the Supreme Court by allowing the researcher to focus on individual justice behavior. In so doing, one may ask questions like "How often do the justices disagree as to issue in the case? Legal provision? Whether or not to alter precedent? Whether or not to declare a federal or state statute unconstitutional?" This allows for a more nuanced understanding of the decision making proclivities of the justices.

In order to change the unit of analysis, one can employ the routine discussed by Paul Collins in this issue of *Law & Courts*, or the old routine detailed by Benesh and Zorn (1998). The basic idea is this: the database as now constructed has cases as the unit of analysis, as demonstrated above, such that the database looks like this (where the entries are votes in a given case):

TABLE 1

CASE	JUSTICE 1	JUSTICE 2	JUSTICE 3	JUSTICE 4	JUSTICE 5	JUSTICE 6	JUSTICE 7	JUSTICE 8	JUSTICE 9
1	1	1	1	2	1	2	1	1	2
2	2	1	1	1	2	2	1	1	1

In order to study the individual justices, the datafile needs to be changed to look like this:

TABLE 2

Case	Justice	Vote
1	1	1
1	2	1
1	3	1
1	4	2
1	5	1
1	6	2
1	7	1
1	8	1
1	9	2
2	1	2
2	2	1
2	3	1
2	4	1
2	5	2
2	6	2
2	7	1
2	8	1
2	9	1

Suffice it to say here, that the new databases are so transformed. However, the major work in this new database was not in the flipping but rather in the coding. Indeed, we have coded 4500 special opinions (dissents and concurrences) and the 11000 votes represented by these opinions. All variables in the original databases are included, some recoded for individual justice behavior, and others were added. I detail the contents of these databases below.

VARIABLES AT THE INDIVIDUAL LEVEL

In the flipped database, there are several variables aimed at measuring whether or not there were deviations of individual justices from the Court as to legal provision, issue or authority for decision. The first, law_dev measures the number of deviations as to law a given justice exhibited in that particular case. Note that this is measured as a case level (not docket level) variable so it appears only in the first record for the relevant justice. Therefore, the entry does not necessarily appear in the record in which the deviation occurs. In order that the user be able to know not only whether there was a deviation but how many, this entry reflects the number of legal provisions. This was coded as one deviation if they address a different law than the majority or address one less law than the majority or add one more law for consideration.

It is coded two if they add two laws, drop two laws, or changed one law and added or dropped another (A change is always counted as one deviation; e.g., the majority considered 14AD but this justice considered 5AD – we don't count a drop and an add here but rather one change). The same coding applies to the issue_dev variable. Auth_dev is largely the same as well, but because there is sometimes a secondary authority for decision this deserves additional comment. In general, when an authority is changed from say, 7 to 2, that is one deviation. If it is changed from 7 to 27, that is also one deviation. We do not count that as dropping 7 and then adding 2 and adding 7. Likewise, if they change authdec = 24 to just 7, that is only two deviations rather than three. Note also that sometimes a justice will not consider a given legal provision (law_dev=1) and in so doing will not address the issue associated with that legal provision. We deem this to be an issue_dev as well since, in ignoring the legal provision, they also ignore the issue. Surely they could address the issue even without the legal provision but do not and so we count this as a deviation as well. So do we count as deviant as to authority for decision a justice who does not address a given issue that is associated with a unique authdec for the majority? That justice is counted as having both an issue and an authdec deviation.

In addition to the mere numbers of deviation, we are also interested in identifying that deviation. Which issues are dropped? Which laws are added? In order to allow the user to explore the qualitative disagreements among the justices, we

code six additional variables. They are addiss1, addiss2, dropiss1, dropiss2, addauth1, addauth2, dropauth1, dropauth2, addlaw1, addlaw2, droplaw1, droplaw2 signifying the additional issues, the dropped issues, the additional authorities for decision, the ignored authorities for decision, the added legal provisions, and the legal provisions not considered, respectively. These variables map the disagreement of any given judge with the majority and therefore give a fuller description of the disagreement that exists on the Court. We could plausibly determine whether certain justices are more likely to add issues or more likely to drop issues; whether certain justices address specific legal provisions more often than others; and whether particular justices use a certain authority for their decisions disproportionately. Again, these entries are made only in the first record for each case and so are case level variables in order to determine valid frequencies of dissensus. Do note that a blank law field means that the justice used a law not coded for in the Spaeth dataset; 0 connotes that the justice did not use a legal provision in reaching his/her decision.

Finally, some of the variables in the existing database are recoded to correspond to individual justice vote. These include: legal provision, issue, and authority for decision (all discussed above), as well as disposition of case (reverse, affirm, remand, etc), directionality of vote (liberal or conservative), declaration of unconstitutionality, and formal alteration of precedent. This allows scholars to efficiently investigate such theoretically important matters as individual voting behavior, models predicting and explaining dissent or concurrence, and opinion assignment, answering some or all of the following questions (as posed in our grant proposal):

> What strategies do individual justices employ in relation to their colleagues? With what degree of individual success? Under what circumstances? Which case-specific variables affect the justices' behavior? Does coalition size affect behavior? Do freshmen justices dissent less often? How does their voting and opinion writing compare with that of the others? How has one individual justice behaved on all counts over the course of his or her tenure (for biographical purposes)?

Potential dependent variables from this database include:

> Justice's final vote
> Whether justice voted with minority or majority
> How justice disposed of the case
> Whether justice voted liberally or conservatively
> Justice(s) with whose opinion(s) the justice agreed
> Whether the justice wrote an opinion
> The legal provision(s) the justice addressed
> The issue(s) the justice addressed
> The basis for the justice's final vote
> Assigning Justice for majority opinion
> Assigned Justice for majority opinion

NSF SUPPORT

All of these databases have been generously supported by the National Science Foundation and both Spaeth and I thank them noting that none of these databases would have been possible without their support. The relevant grant numbers include SES-8313773 and SES-8812935 for the Original United States Supreme Court Database, SES-8313773 and SES-9211452 for the Vinson-Warren Court Database, SBR-9614000 and SBR-9614130 for the Burger Court Database, and SBR-9911054 and SES-9910535 for the Justice-Centered Databases. Another database, which includes information from the cases denied cert by the Burger Court and the treatment accepted cases received in the court whose decision the Supreme Court reviewed, is currently in process and was made possible by the NSF through grant SES 0339088. These data will be added to the Burger Court Database, which is available on the Ulmer Project's site.

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Transforming the Original U.S. Supreme Court Judicial Database: An Alternative Approach For Use With Stata

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Virtually all quantitative research on the U.S. Supreme Court utilizes one or more of the Spaeth Supreme Court judicial databases. To promote their intelligent use, Sara Benesh (2005) provides a superb treatment of the management of these datasets. Explicit in her discussion is the need for common standards in the selection of, for example, units of analyses to promote the comparability and reliability of Supreme Court research. The purpose of this article is to contribute to this discourse by providing an easily implemented code that allows users to reliably transform the unit of analysis in ALLCOURT, the Original U.S. Supreme Court Judicial Database, which runs from 1953 to the end of the Court's last completed term.[1]

The structure of ALLCOURT is set up such that the case is the unit of analysis, which makes certain types of research questions more easily broached than others. Seven years ago, Sara Benesh and Chris Zorn (1998) performed a great service to the law and courts community by publishing code that allows users of the database to alter its unit of analysis from the case to the justice-vote. Currently, three flipped datasets, based on the Benesh and Zorn code, are available on the Ulmer Project's website, containing information on the Warren (1953-1969), Burger (1969-1985), and Rehnquist (1986-1998) Courts, respectively.[2] While the availability of these datasets allows researchers to tackle new questions, analyzing judicial behavior based on these Justice-centered databases is limited in two regards. First, because the justice-centered databases are separate files, researchers are required to merge these datasets in order to correspond to roughly the time frame of ALLCOURT. Second, the Justice-Centered Rehnquist database is only current to the 1998 term and, as such, does not include information from the 1999-2004 terms. To alleviate these problems, I offer new code for Stata[3] that allows researchers to transform the unit of analysis in ALLCOURT from the case to the justice-vote. In addition to allowing researchers to transform all of ALLCOURT, this new code, based on updates made to Stata since 1998, substantially expedites and simplifies the data transformation process.

Graphically, the code transforms ALLCOURT from this format:

case	rehndir	stevdir	ocondir	scaldir	kendir	soutdir	thomdir	gindir	brydir
1	0	0	0	0	1	1	1	1	1
2	1	1	1	1	0	0	0	0	0

To this format:

case	justice	dir
1	rehn	0
1	stev	0
1	ocon	0
1	scal	0
1	ken	1
1	sout	1
1	thom	1
1	gin	1
1	bry	1
2	rehn	1
2	stev	1
2	ocon	1
2	scal	1
2	ken	0
2	sout	0
2	thom	0
2	gin	0
2	bry	0

The code presented below makes several improvements over the code published by Benesh and Zorn. First, in order to flip the entire ALLCOURT database, the new code requires researchers to create only a single new variable, compared to 204 in the Benesh and Zorn procedure (although the new code does require that 33 variables be renamed). Second, the new code allows researchers to flip the entire database in a single process. Benesh and Zorn's method is limited in the fact that only 10 variables can be flipped at a time, thus requiring that the data be flipped five times (as there are 44 variables in ALLCOURT that are not justice-specific) and merged back together to transform the entire database. Third, the new method does not require researchers to transform any variables in the database from string (i.e., alphabetic) to numeric. Finally, the new code can be implemented in substantially fewer commands, thus reducing the likelihood of user error. Transformation of ALLCOURT based on the new code can be completed in the following steps:

```
. set mem 65m
. use "allcourt_stata.dta", clear
```

The database that is about to be created will be substantially larger in size than ALLCOURT in its original form. Accordingly, users must allocate adequate memory. Using a variety of alternatives, I have discovered that at least 65m should be allocated (though allocating more memory will speed up the process). Memory must be allocated prior to opening ALLCOURT.

```
. rename har harb
. rename blc blcb
. rename doug dougb
…
. rename bry bryb
```

This series of commands renames the variables that describe the individual justice's voting behavior. It is necessary to rename these variables as the new code seeks out j suffixes in order to make the transformation (in the above example the j suffix is "b" for behavior).

```
. rename dir courtdirection
. rename lctdir lctdirection
. rename mult_mem multcase
. rename term termofcase
```

This series of commands renames variables that correspond to j suffixes. In particular, **dir** and **lctdir** are renamed as the code will identify the ideological direction of the individual justice's voting behavior based on the "dir" suffix attached to each justice's abbreviation. Similarly, **mult_mem** and **term** are renamed as the code will identify each justice's majority or minority voting based on the "m" suffix attached to each justice's abbreviation.

```
. gen caseid = _n
```

This creates a unique identification number for each case in the database.[4]

```
. reshape long @b @a1 @a2 @v @o @dir @m, i (caseid) j (justid) string
```

This is the command that reshapes the data from wide format (unit of analysis = case) to long format (unit of analysis = justice-vote). Using the @ character, Stata locates j suffixes and recognizes that those variables vary within cases. Note that there is no need to tell Stata which variables are constant within each case; Stata recognizes this and keeps those variables without a separate command. **i (caseid**) tells Stata that each individual case is uniquely identified by the **caseid** variable. **j (justid)** tells Stata to create a new variable, **justid**, that corresponds to each justice's abbreviation and **string** tells Stata that this variable is a string (alphabetic) variable.

```
. drop if b=="" & o==. & a1=="" & a2==""
```

The final step is to perform some data clean-up. The previous code transforms the data such that there are 29 justice-observations for each case, thus increasing the number of observations in the data (in its raw form) from 12,577 to 364,733.

This code purges the data of all missing observations resulting in a final data set of 111,971 observations.

In 1998, Sara Benesh and Chris Zorn graciously provided Stata code allowing researchers to transform the Spaeth data from using the case as the unit of analysis to using the justice-vote as the unit of analysis. Recent advances in technology now make this process even easier. Despite the fact that this code can be relatively easily implemented, I join in Benesh and Zorn's sentiment in encouraging others to develop and share new and creative ways to transform data, which still "offers the prospect of saving us all a few headaches now and then! (1998, 12)"

*I am grateful to Sara Benesh, Wendy Martinek, and Mitch Pickerill for helpful comments and encouragement and to Harold Spaeth for his continued work on the Supreme Court judicial databases.

Notes

[1] The Spaeth judicial databases, along with several other datasets, are available online at The S. Sidney Ulmer Project for Research in Law and Judicial Politics, which is generously maintained by Kirk Randazzo. (http://www.as.uky.edu/polisci/ulmerproject/databases.htm; accessed October 21, 2005).

[2] In addition to containing information from ALLCOURT, the Justice-Centered Warren and Burger Court databases also include conference vote data.

[3] This code works with both Stata 8.0 and Stata 9.0

[4] Prior to this step, users may wish to select a desired unit of analysis (e.g., case citation, docket number, etc.). However, the desired unit of analysis can be selected after the transformation is complete.

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Books To Watch For

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During the last two decades the judiciary has come to play an increasingly important political role in Latin America. **The Judicialization of Politics in Latin America** (Palgrave Macmillan), edited by **Alan Angell** (St. Antony's College, Oxford), **Line Schjolden** (University of Bergen), and **Rachel Sieder** (University of London), analyzes the diverse manifestations of the judicialization of politics in contemporary Latin America, assessing their positive and negative consequences for state-society relations, the rule of law, and democratic governance in the region. With individual chapters exploring Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Peru and Venezuela, the volume advances a comparative framework for thinking about the nature of the judicialization of politics within contemporary Latin American democracies.

In June of 1964, three civil rights workers, Michael Schwerner, Andrew Goodman, and James Chaney, were murdered in Mississippi. Forty-one years later, the planner of the murders was finally brought into a state court to face murder charges. **Howard Ball** (University of Vermont) documents and assesses the trial in his forthcoming book, **Justice in Mississippi: The Murder Trial of Edgar Ray Killen** (University Press of Kansas). This book marks the author's second work on the subject, the first being **Murder in Mississippi: *United States v. Price* and the Struggle for Civil Rights** (University Press of Kansas, 2004).

A Forgetful Nation: On Immigration and Cultural Identity in the United States (Duke University Press) by **Ali Behdad** (University of California, Los Angeles) takes on an idea central to American national mythology: that the United States is "a nation of immigrants," welcoming and generous to foreigners. The book highlights what is obscured by narratives celebrating the United States as an open-armed haven for everyone, showing how political, cultural, and legal texts have articulated American anxiety about immigration from the Federalist period to the present day.

In **Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context** (NYU Press), **Oscar G. Chase** (New York University School of Law) explores two core ideas: First, that the processes societies use for dispute resolution reflect the culture in which they are found. Second, that disputing procedures are an important medium through which these fundamental aspects of culture are communicated, preserved, and sometimes altered. Beginning with a study of the Azande of central Africa, the author argues that, like the Azande oracle, the "modern" concepts of law and evidence serve social and cultural functions. Subsequent chapters offer a cultural explanation for the peculiarities of American civil procedure, for the rise of discretion as an important feature of American law, and for the growth of ADR in the late twentieth century.

Jennifer Segal Diascro (American University) and **Gregg Ivers** (American University) have edited a new judicial process reader, **Inside the Judicial Process: A Contemporary Reader in Law, Politics, and Courts** (Houghton Mifflin). The reader is a combination of political science, law review, and other nonacademic articles, court cases, speeches, diary entries, and primary source materials designed to be engaging and accessible to undergraduates in a variety of law and courts courses. The volume features introductory essays for each chapter.

Peter Lang Publishing recently published a collection of essays in honor of Martin Shapiro: **Institutions and Public Law: Comparative Approaches**, edited by **Tom Ginsburg** (University of Illinois College of Law) and **Robert A. Kagan** (University of California, Berkeley). The essays explore various institutional approaches to public law in the United States, Europe and other contexts. Contributors include Howard Gillman, Paul Craig, Alec Stone Sweet, Bronwen Morgan, Shep Melnick and Javier Couso, as well as the editors and honoree.

The Institutions of Democracy: The Judiciary (Oxford University Press), edited by **Kermit L. Hall** (University at Albany, State University of New York) and **Kevin T. McGuire** (University of North Carolina), examines the role of courts in American democratic life. A wide range of political scientists and legal scholars offer historical, theoretical, and empirical assessments of the extent to which the judiciary promotes the involvement of citizens in the process of governing

in the United States. Contributors include, among others, Lawrence Baum, Gregory Caldeira, James Ely, Mark Graber, Donald Kommers, Lynn Mather, William Nelson, Gerald Rosenberg, Cass Sunstein, and Keith Whittington.

The Rehnquist Court: Justices, Rulings, Legacy (ABC-CLIO), by **Tom Hensley** (Kent State University) will be published next year. The book is part of a thirteen volume series on the Supreme Court organized by eras of various chief justices. Taking a detailed look at the Rehnquist Court's key figures, rulings, and major changes to U.S. constitutional law, **Hensley** focuses on the question of whether the Rehnquist Court engaged in a conservative constitutional counterrevolution and finds that the simple answer to this question is "no." The book features a combination of traditional doctrinal analysis and data from Harold J. Spaeth's U.S. Supreme Court Databases.

In **Judging on a Collegial Court: Influences on Federal Appellate Decision Making** (forthcoming, University of Virginia Press), **Virginia A. Hettinger** (University of Connecticut), **Stefanie A. Lindquist** (Vanderbilt University) **Wendy L. Martinek** (Binghamton University, State University of New York) examine the dynamics that give rise to dissensus in federal appeals courts and, in doing so, they reveal how the appellate process shapes the content and the consistency of the law. With an emphasis on explaining why judges on the appeals courts agree or disagree with one another regarding the outcomes of the cases before them, the authors examine "horizontal dissensus" in cases where there are dissenting or concurring opinions. The authors also examine "vertical dissensus" and consider why judges affirm or reverse lower court judges whose cases are decided on appeal. By analyzing the behavioral aspects of disagreement within federal courts and between the levels of the federal judicial hierarchy, the authors identify the impact of individual judicial preferences on court decision-making, and hence on political divisions in the broader society.

The Supreme Court and American Political Development (University Press of Kansas, Spring 2006), edited by **Ronald Kahn** (Oberlin College) and **Ken I. Kersch** (Princeton University), explores the evolution of constitutional doctrine as elaborated by the Supreme Court. Moving beyond the traditional "law versus politics" perspective, the authors draw extensively on recent studies in American Political Development to present a more complex view of the Court. The authors underscore the developmental nature of the Court, revealing how its decision-making and legal authority evolve in response to laws and legal precedents, social and political movements, election returns and regime changes, advocacy group litigation, and the interpretive community of scholars, journalists, and lawyers. The collected essays not only reexamine standard approaches to judicial decision-making and the relationship between the Court and the ambient political order, but also showcase a selection of historic case studies, demonstrating how the Court constructs its own authority as it defines individual rights and the powers of government. Contributors include Pam Brandwein, Howard Gillman, Mark Graber, Ronald Kahn, Tom Keck, Ken Kersch, Wayne Moore, Carol Nackenoff, Julie Novkov, and Mark Tushnet.

Confronting Sexual Harassment: The Law and Politics of Everyday Life (Dartmouth/Ashgate Publishing), **Anna-Maria Marshall** (University of Illinois Urbana-Champaign),examines the relationship between law and social change in the context of employees' everyday problems with sexual harassment. Focusing on the legal consciousness of injustice present in everyday acts of resistance, the book accounts for the way that social movements, counter-movements, and policy makers frame the debate surrounding social problems and shows how law supports both oppositional and dominant interpretations of experience. The book then examines the way that people use these frames to make sense of their own experiences.

The Limits of Law (Stanford University Press), edited by **Austin Sarat** (Amherst College), **Lawrence Douglas** (Amherst College), and **Martha Merrill Umphrey** (Amherst College), brings together scholars to examine the limits of law, a topic that has been of broad interest since the events of 9/11 and the responses of U.S. law and policy to those events. The limiting conditions explored in this volume include marking law's relationship to acts of terror, states of emergency, gestures of surrender, payments of reparations, offers of amnesty, and invocations of retroactivity. Contributors include Laura Dickinson, Lawrence Douglas, David Dyzenhaus, Bonnie Honig, Austin Sarat, Adam Sitze, John Torpey, Martha Merrill Umphrey, and Robin Wagner-Pacifici.

In **Scoring Points: Politicians, Activists and the Lower Federal Court Appointment Process** (Stanford University Press), **Nancy Scherer** (Ohio State University) explores how the lower federal court appointment process became politicized in the modern era. Noting that lower court appointments have always been used by politicians for electoral purposes, the author argues that two historic changes in the 1950s and 1960s — the breakdown of the old party system and the development of a federal judiciary receptive to expanding individuals' constitutional rights — led politicians to shift from an appointment

system dominated by patronage to a system dominated by new policy-oriented appointment strategies, thereby producing partisan warfare during the nomination and confirmation stages of the appointment process, and party-polarized voting in the lower federal courts. The author validates her "elite mobilization" theory with exclusive data of judicial decision-making from the New Deal era through the present.

Designed to fill the need for an accessible introduction to *Marbury v. Madison* and the topic of judicial review, **Arguing *Marbury v. Madison*** (Stanford University Press) edited by **Mark Tushnet** (Georgetown University Law Center) presents the unique transcript of a reenactment of the argument of *Marbury v. Madison*, argued by constitutional scholars before a bench of federal judges. Following the transcript are essays on the case and its significance today.

Do Supreme Court law clerks actually make decisions that they then impart to justices or are they merely research assistants? Drawing on Supreme Court archives, the personal papers of justices, and interviews and written surveys with 150 former clerks, the **Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court** (forthcoming NYU Press) by **Artemus Ward** (Northern Illinois University) and **David L. Weiden** (Illinois State University), examines the life of a law clerk, and how it has evolved since its nineteenth-century beginnings. The authors show that law clerks have not only written briefs, but also made significant decisions. Should clerks have this power? And what does their power indicate about the Supreme Court's accountability to and relationship with the American public? The authors take up these questions and suggest different ways of reforming Court practice.

Since the emergence in the mid-twentieth century of the modern welfare state, liberal philosophers have concentrated significant attention on the question "how much government is too much?" In **Liberalism and the Limits of Power** (Palgrave Macmillan), **Juliet Williams** (University of California, Santa Barbara) provides the first critical assessment of Anglo-American liberal theorizing about limited government. Following a comparative study of canonical liberal philosophers F.A. Hayek and John Rawls, the author articulates a new view of limited government in the twenty-first century, highlighting the central role that democratic politics — rather than philosophical principles — should play in determining the uses and limits of state power in a liberal regime. The author consequently argues for a shift in the way liberals approach the study of politics and advances her position with in-depth analyses of examples from contemporary political and popular culture.

Announcements

Call For Papers

RACE AND US POLITICAL DEVELOPMENT

As the subfield of American Political Development (APD) has matured, political scientists and other scholars have initiated critical interrogations of the role of racial politics in US political development. These interrogations raise important questions about how the nation has grappled with its historical legacy of racialized development. The framing and answering of these questions will shape the future trajectory of APD as a field of inquiry, but can also provide crucial insights into the persistence and meaning of race as a salient political category.

On May 11 and 12, 2006, the College of Arts and Sciences and the Political Science Department of the University of Oregon are co-hosting a national conference that will critically interrogate the role of racial politics in US political development. Top established and emerging scholars will gather in Eugene for a day and a half to present their work and discuss their thinking around these topics. The conference organizers, Joe Lowndes and Julie Novkov, are soliciting papers on this subject from legal, institutional, historical and cultural perspectives with the aim of collecting them in an edited volume. Topics include (but are not limited to) labor, migration, political orders, parties, social movements, region, political identity, class, gender and sexuality. We are particularly interested in exploring how studies of race can enrich understandings of political development in the United States and vice versa.

If you are interested in participating in the conference and the edited volume project, please submit a 1-2 page summary of your proposal for a potential chapter to Joe Lowndes and Julie Novkov. We prefer e-mail submissions (Joe at jlowndes@uoregon.edu and Julie at novkov@uoregon.edu) but will accept mailed submissions as well. Please direct hard copies to Julie Novkov, Department of Political Science, 1284 University of Oregon, Eugene, OR 97403-1284. Proposals should include your name, institution and position, address, telephone, and e-mail address in addition to the proposed title and summary of your proposal. We are still accepting proposals. A preliminary version of a website about the conference and edited volume may be found at http://uoregon.edu/~novkov/raceapd. We look forward to hearing from you, and welcome any questions you may have about the conference or the edited volume.

JSP Search Junior Level

UNIVERSITY OF CALIFORNIA AT BERKELEY (SCHOOL OF LAW)

One tenure-track position is currently open for a scholar with primary research and teaching interests in the empirical study of law and legal institutions utilizing quantitative methodologies. In making the appointment, the Jurisprudence and Social Policy Program seeks to complement and extend existing faculty strengths in the social, historical, and philosophical study of law. The candidate should possess evidence of outstanding promise in the empirical study of law and legal institutions utilizing quantitative methods, and the skills and interest to teach quantitative research methods courses on a regular basis.

The position is open to candidates who have completed all the requirements for their doctoral degree by July 1, 2006 in any social science discipline including, anthropology, economics, political science, psychology, sociology, and history. The appointment will be made at the junior-level. The appointee will be expected to teach graduate and undergraduate courses, and to supervise graduate student research. The position, effective from July 1, 2006, is in the Jurisprudence and Social Policy Program (JSP), a Ph.D. Program at the School of Law (Boalt Hall), University of California at Berekeley. For further details: http://www.law.berkeley.edu/academics/jsp/index.html

Applicants should send an expression of interest, a vita, a writing sample, and an e-mail contact address to Associate Dean Jonathan Simon, Jurisprudence and Social Policy Program, School of Law (Boalt Hall), University of California, Berkeley, CA 94720-7200. In addition, the applicant should arrange for three letters of reference to be sent directly to Associate Dean Simon. The committee begins reviewing applications after January 1, 2006, but the position will remain open until filled. The University of California is an Affirmative Action/Equal Opportunity Employer.

Awards

Lifetime Achievement Award

The Lifetime Achievement Award honors a distinguished career of scholarly achievement and service to the Law and Courts field. Nominees must be political scientists who are at least 65 years of age or who have been active in the field for at least 25 years. Nominations from previous competitions will be carried forward to the current year's competition. The committee will retain nominations for 3 years, but one may re-nominate an individual and renew the materials in the file. Nominations may be made by any member of the Section and should consist of a statement outlining the contributions of the nominee and, if possible, the nominee's vitae. Nomination materials should be sent to the Chair of the Committee who will forward them to other members. Committee members may not make nominations for this award. Previous winners of the award are Henry Abraham, Walter Murphy, Harold Spaeth, Sam Krislov, Glendon Schubert, Beverly Blair Cook, Martin Shapiro, Walter Berns, and Stuart Scheingold. Nominations should be received by February 6.

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Stephen L. Wasby, Member, State University of New York, Albany
Kevin T. McGuire, Member, University of North Carolina, Chapel Hill
Gayle Binion, Member, University of California, Santa Barbara
Eileen Braman, Member, Indiana University

The CQ Press Award

The CQ Press Award is given annually for the best paper on law and courts written by a graduate student. To be eligible the nominated paper must have been written by a full-time graduate student. Single- and co-authored papers are eligible. In the case of co-authored papers, each author must have been a full-time graduate student at the time the paper was written. Papers may have been written for any purpose (e.g., seminars, scholarly meetings, potential publication in scholarly journals). This is not a thesis or dissertation competition. Papers may be nominated by faculty members or by the students themselves. The papers must have been written during the twelve months previous to the nomination deadline. The award carries a cash prize of $200. To be considered for this year's competition, a copy of the nominated paper should be submitted to each member of the award committee by February 15, 2006 (e-mail attachments, in the form of .pdf files, are acceptable).

Christine B. Harrington, Chair
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The McGraw Hill Award

The McGraw Hill Award recognizes the best journal article on law and courts written by a political scientist and published during the previous calendar year. Articles published in all refereed journals and in law reviews are eligible, but book reviews, review essays, and chapters published in edited volumes are not eligible. Journal editors and members of the section may nominate articles. To be considered for this year's competition, a copy of the nominated paper should be submitted to each member of the award committee by February 15, 2006 (e-mail attachments, in the form of PDF files, are acceptable).

Malcolm M. Feeley, Chair
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The C. Herman Pritchett Award

The C. Herman Pritchett award is given annually for the best book on law and courts written by a political scientist and published the previous year. Case books and edited books are not eligible. Books may be nominated by publishers or by members of the Section. The award carries a cash prize of $250. To be considered for this year's competition, a copy of the nominated book must be submitted to each member of the award committee by February 15, 2006.

Lief H. Carter, Chair
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The Wadsworth Publishing Award

The Wadsworth Publishing Award is given annually for a book or journal article, 10 years or older, that has made a lasting impression on the field of law and courts. Only books and articles written by political scientists are eligible; single-authored works produced by winners of the Lifetime Achievement Award are not eligible. The award carries a cash prize of $250. Any member of the Section may submit a nomination. The nomination should include a statement outlining the nature of the contribution of the nominated work. To be considered for this year's competition, nomination statements should be submitted to each member of the award committee by February 15, 2006.

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The Wadsworth Publishing Award

The American Judicature Society Award is given annually for the best paper on law and courts presented at the previous year's annual meetings of the American, Midwest, Northeastern, Southern, Southwestern, or Western Political Science Associations. Single- and co-authored papers, written by political scientists, are eligible. Papers may be nominated by any member of the Section. The award carries a cash prize of $100. To be considered for this year's competition, a copy of the nominated paper should be submitted to each member of the award committee by February 15, 2006. (e-mail attachments, in the form of PDF files, are acceptable).

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The Teaching and Mentoring Award

The Committee selects the winner of the Teaching and Mentoring Award, which recognizes innovative teaching and instructional methods and materials in law and courts. The Teaching and Mentoring Award recognizes innovation in instruction in law and courts. Examples of innovations that might be recognized by this award include (but are not limited to) outstanding textbooks, web sites, classroom exercises, syllabi, or other devices designed to enhance the transmission of knowledge about law and courts to undergraduate or graduate students. The Teaching and Mentoring Award is supported by a contribution from the Division for Public Education of the American Bar Association. Any member of the section may make a nomination for the Teaching and Mentoring Award by submitting to each member of the award committee a statement identifying the nominee and outlining the nature of the nominee's innovation and the contribution it makes to achieving the purposes of the award by February 15, 2006 (e-mail attachments, in the form of PDF files, are acceptable). The Teaching and Mentoring Committee also advises the Organized Section on matters related to teaching and mentoring of students and colleagues). .

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Conferences & Events

Western Political Science Association
http://www.csus.edu/ORG/WPSA/mtgs.stm
March 16-18, 2006 Albuquerque, NM
Judicial Politics and Public Law: John C. Blakeman, *University of Wisconsin at Stevens Point*
John.Blakeman@uwsp.edu

Southwestern Political Science Association
http://sssaonline.org/meeting.htm
April 11-15, 2006 San Antonio, TX
Judicial Politics Proposals: Craig Emmert, *University of Texas-Permian Basin*
emmert_c@utpb.edu

Midwest Political Science Association
http://www.indiana.edu/~mpsa/conferences/conferences.htm
April 20-23 Chicago, IL
Judicial Politics: Tom Hansford, *University of South Carolina*
hansford@gwm.sc.edu
Public Law: George Lovell, *University of Washington*
glovell@u.washington.edu

New England Political Science Association
May 2-3, 2006 Providence, RI
http://www.nepsa.us/
Law and Courts Section Chair: Keith Bybee, *Syracuse University*
kjbybee@maxwell.syr.edu

Section News

Albert P. Melone

After thirty-six years of teaching, Albert P. Melone is now Professor Emeritus at Southern Illinois University, Carbondale. He remains engaged in scholarly pursuits while active in charitable and community affairs. He is teaching a block during late Fall 2005 at Colorado College on the First Amendment and American Politics.