

# LAW & COURTS NEWSLETTER

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## Note from Section Chair

RICH PACELLE, TENNESSEE

I sincerely hope everyone is doing well and having a relaxing and productive summer. I hope you are able to get away, travel, and see family and friends. I optimistically anticipate seeing many of you in Montreal in September. For the last few weeks, we have been releasing the names of the recipients of the section's awards. I look forward to announcing those names in person and congratulating the winners in Montreal.

I thank all of our colleagues who served on the committees that made the difficult choices. I also want to thank Susan Johnson, Nikol Alexander, and Lisa Holmes for all of their assistance. I have a number of other people to thank in person and look forward to that opportunity.

Enjoy the next two months and see you North of the Border.

## Note from Editor and Symposium Introduction

DANIEL LEMPERT, SUNY POTSDAM

I am happy to present Volume 32, Issue 1 of *Law & Courts Newsletter*. This issue features Part I of a symposium on "Text Analysis Tips and Tricks," which brings together pieces giving practical advice for analyzing legal texts with automated tools. I discuss the symposium in more detail below. This issue also includes an essay from Malcolm Feeley (this year's Section Lifetime Achievement Award winner) on the very large law and courts contingent at the University of Texas at Austin; Feeley gives an overview of the department and reflects on how it came to be. Perhaps the essay holds lessons for departments where the size of the law and courts faculty has shrunk in recent times. Additionally, Ryan Black interviews Bailey Fairbanks and James Gibson.

Although it is not an official Section publication, a few words about the cessation of *Justice System Journal* may be in order. As I wrote in the Fall 2020 issue of the *Newsletter*, *JSJ* (along with *Journal of Law & Courts*) was publishing a substantial proportion of the recent research on judicial behavior—especially U.S. judicial behavior. It was exceptional in that respect, when compared to other journals historically associated with the law and courts field. Thus, its demise is particularly troubling for those researching in that area, and I hope that members of the Section will consider the possibility of working together to establish a replacement. In the meantime, please consider the *Newsletter* as an outlet for scholarly pieces that fit within its scope; within those limits, we hope to do what we can to pick up the slack. The Call for Submissions is printed on page 40.

I would like to thank the *Newsletter* editorial board for their counsel and assistance; I'm particularly grateful to those who reviewed submissions in the

last two issues: Onur Bakiner, Cyril Ghosh, Logan Strother, and Claire Wofford. Thanks also to student editorial assistants Collin Carey and Megan Sigismonti, who helped with proofreading for this issue.

### Introduction to Symposium

This issue starts with Part I of the Symposium on Text Analysis Tips and Tricks (Part II will follow in a subsequent issue). Automated analysis of legal texts (including opinions, briefs, and oral argument transcripts) is an active and growing area of research in law and courts. This development in our field parallels an increased interest in text analysis (and, more generally, in “big data”) across the social sciences. While law and courts scholars can draw on tools from other disciplines and political science subfields, analysis of *legal* texts can present unusual challenges. Thus, this symposium seeks to introduce tools that are particularly useful for the analysis of texts likely relevant to Section members’ research. Much of the material in the contributions below will be of practical use to those just starting out with text analysis; yet, each piece also contains information that will be of interest even to researchers who are relatively experienced in this area.

Shane Gleason and Joe Smith begin the symposium with a contribution that focuses on steps required before analysis begins in earnest. Many researchers in our field assemble their own set of documents, or corpus, to analyze. Gleason and Smith suggest considerations relevant to determining which documents to include in a corpus, and give advice about the practicalities of gathering texts in a format suitable for analysis. They also discuss some important aspects of text pre-processing (i.e., preparing and formatting text so it is amenable to analysis). Code that implements some of their suggestions is available at the *Newsletter*’s new [Dataverse](#).

Next, Rachael Hinkle presents a beginners’ guide to Python for text analysis. Python, an open source general purpose programming language, is the favored tool of law and courts scholars engaged in text analysis, and Hinkle offers a clear and detailed set of instructions, including code, that allows anyone to quickly begin to use it for basic text analysis. She also illustrates with a simple, but (as it turns out) not entirely straightforward task: extracting legal citations from a court opinion.

The third contribution, by EmiLee Smart, discusses part-of-speech tagging: an automated means of associating each word in a text with a grammatical part of speech. This is a fundamental task in automated text analysis in general, but not one that has yet gained wide application in law and courts research. Smart illustrates the utility of part-of-speech tagging by showing how it can help determine the author of a text of unknown provenance.

Finally, Morgan Hazelton considers measures that assess how similar two texts are to each other. For example, we might ask: which of two parties’ briefs is more similar to the majority opinion that results? Hazelton notes that early applications in text analysis used relatively blunt measures of textual overlap, and instead advocates for the cosine similarity score, a more

sophisticated measure of similarity that takes into account how common or unusual each overlapping word is. Cosine similarity, therefore, gives a measure of textual similarity that is more meaningful in many contexts of interest to law and courts scholars. Hazelton also offers Python code for calculating cosine similarity scores.

Automated analysis of legal texts has been part of many notable papers in recent years; yet, many open questions remain. (Especially, I believe, in analysis of non-U.S. and non-English language legal texts.) I hope this symposium will inspire readers new to this area to incorporate automated text analysis into their research, while helping more experienced researchers limit the number of wheels they have to reinvent in their own projects.

# The Foundation of Text Analysis: Corpus Planning & Construction

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JOSEPH L. SMITH, UNIVERSITY OF ALABAMA

## Introduction

Court decisions are often reduced to binary outcomes: one side wins and another loses. However, scholars have long noted that nuance present in language sheds light on decision-making processes and decisions' implications. By treating words as data, scholars can capture a richer number of predictors (Spriggs and Wahlbeck 1997; Corley and Wedeking 2014) and more finely measure outcomes (Corley 2008). Historically, text analysis relied on teams of research assistants and inter-coder reliability checks. The inherent cost of this approach limits the number of cases that can be analyzed and makes text analysis difficult for scholars with smaller research budgets. However, recent advances in automated text analysis (ATA) allow scholars to reliably analyze thousands of documents in a matter of seconds. Despite its speed of execution, ATA still requires scholars to carefully consider their projects both theoretically and methodologically.

A substantial amount of planning and processing goes into ATA. Scholars need to carefully plan their research projects and develop data collection strategies. Subsequently, scholars inevitably spend considerable time developing the software scripts that collect and analyze their data. Even the best-planned project requires extensive fine-tuning.

Using ATA, researchers can identify, count, and record attributes, or “features,” of individual texts into datasets that are then used to analyze patterns. Virtually any attribute or characteristic of a text can be measured. Possible features include the extent to which a document is plagiarized (Corley 2008); underlying linguistic features such as word counts, word frequencies, word stems, or phrases; cognitive features such as complexity or clarity (Wedeking 2010); where words or phrases are located relative to other features in the text; and topics in the text (Rice 2019). Indeed, not even the unit of analysis is set; scholars can make these measurements at any level in the document, such as sentences, paragraphs, turns in conversation, or the whole text. We now turn to a discussion of the planning and collecting of documents for ATA. We close with a reproducible example of ATA in action.

## From a Concept to a Corpus

Every project, from the most “basic” analysis to the most cutting-edge methods, begins with a preliminary theoretical framework. ATA projects are

no different. Only at this point can a scholar move on to creating a corpus. A corpus is simply a collection of texts and is the core building block of ATA. A corpus, like any data, should be organized around the research question and be carefully thought out. Law and courts research uniquely lends itself to building corpora. Much (but not all!) of our work revolves around explaining how judges and justices write and produce opinions. Yet, corpora are not limited to just opinions; they can be anything from transcripts of oral arguments (Patton and Smith 2017; Gleason 2020) to briefs (Black et al 2016), or confirmation hearing transcripts (Boyd et al 2018). If it can be transcribed or involves text, it can be in the corpus.

While the cost of constructing a corpus is relatively low (text files aren't that big, and hard drives can hold a lot of them), scholars should still give careful thought to the construction of their corpora. All the conventional lessons of research design and building a dataset apply, but we think two key principles are particularly relevant for ATA projects: boundary specification and how to obtain documents.

### Boundary Specification

First, in terms of boundary specification, it is easy (though time-consuming) to collect thousands of documents for a corpus. Researchers should have a clear rule explaining why some texts are included while others are excluded from the corpus. For instance, are scholars interested in just cases from one issue area or from only one circuit? Scholars should think carefully about this; at the very least, attention to boundary specification can prevent scholars from getting bogged down in data collection.<sup>1</sup> The choice of the boundary specification may also be shaped by the practical considerations about the features of the documents themselves. For example, many ATA of oral arguments do not start until 1979. This is because Lexis does not have reliable transcripts before then. Further, oral argument transcripts from the 1980s have more typographical errors than those from the 2010s. If theory does not call for analyzing transcripts from the 1980s, it might be best to exclude those transcripts to avoid tedious data cleaning.<sup>2</sup>

Barring any difficulties in obtaining documents, it is more efficient to collect a wider range of texts at the beginning and possibly remove some texts from the collection than to cast too narrow a net at the beginning and have to go back to collect more data. The texts collected should be representative and not skewed. This is easy at the Supreme Court; with fewer than 100 cases orally argued annually, scholars can simply download documents from all cases in a given term. But in other contexts there may be too many

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<sup>1</sup>Where the number of texts or amount of text is too large or too costly to gather, a corpus could consist of a well-designed sample of the overall population of texts.

<sup>2</sup>This problem can be mitigated by testing computer scripts on relatively small subsets of the corpus. Once the script functions as it should on one subset, change or expand the subset and test it again. In this way, you can gradually find all the variations in the formatting of the text that will trip up the computer script.

documents to analyze all of them, and so questions emerge about how a sample is constructed. For instance, the question of published and unpublished opinions becomes critically important. Additionally, if the study focuses on state supreme court campaigns, it may be wise to consider whether candidate speeches can be meaningfully compared with written campaign statements or transcripts of campaign commercials.<sup>3</sup> Ultimately, this decision is driven by theory; this underscores the importance of research design in deploying ATA.

The concern about sample construction is amplified when considering that a very large corpus can be less tractable for computer processing because it may include more variation in formatting, making it more challenging and time-consuming to write the processing code. For example, it is a good idea to consider the availability and formatting of texts as you refine your research question. Don't get too attached to a specific question until you know usable texts are available. The time and effort required to obtain and process texts is another practical concern. The greater the cost of acquiring each additional text, the greater the justification for a limited corpus.

### Locating Documents for Your Corpus

Thus far, we have suggested that scholars must construct their data from scratch. While this is sometimes necessary, we encourage scholars to build on existing corpora. While one may not find a zip file with all Supreme Court oral arguments over several terms available for download, in our experience, scholars are typically happy to share their corpora if asked. Assuming, though, that scholars need to collect their data themselves, there are many sources of text. Indeed, it is impossible to list or describe all of the sources for law and courts ATA here; but we highlight a few we find particularly useful. Legal documents, such as oral argument transcripts, opinion text, and written briefs can often be obtained via Nexis Uni and Westlaw.<sup>4</sup> There are also public data sources, such as [Courtlistener.com](http://Courtlistener.com), [Oyez.org](http://Oyez.org), and the [Court's website](http://Court's website).<sup>5</sup> Collecting documents can be decidedly low-tech: copying and pasting documents into a text file, which is then saved based on some identifiable naming convention. However, there are a number of ways to streamline the data collection process.

Often, websites include an application program interface (API). APIs allow scholars to quickly extract large amounts of data and write them out as either

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<sup>3</sup>Different categories of texts can be analyzed separately, or their different categories controlled for in the data analysis. This is perhaps best illustrated by Collins et al (2015). While Collins and his coauthors are primarily concerned with the extent to which amicus briefs shape the content of the Court's opinion, there are four distinct corpora in their project: Court opinions, party briefs, amicus briefs, and lower court opinions. Each is included because theoretically their inclusion makes sense.

<sup>4</sup>These databases are not free. Unfortunately, not every university library has access.

<sup>5</sup>It is important to note that virtually no source is exhaustive. We have often come across a transcript that is on Westlaw, but not in Nexis Uni databases. Thus, scholars may need to augment their corpora with outside sources.

csv or text files. A good example is Oyez.org.<sup>6</sup> Indeed, Gleason (2020) uses an R script to access Oyez’s API to download attorney names and roles for several terms of oral argument. The API accomplishes in three minutes what would take several days by hand. The Caselaw Access Project at Harvard Law School has a great [introduction to APIs](#). It is, however, important to note that APIs are not a silver bullet; the data they produce can have errors.<sup>7</sup>

Another way to efficiently collect documents is via batch downloads. While not every source allows for this, Courtlistener allows bulk downloads of documents. Depending on the source, this may be accomplished through the site’s interface or it may require some scripting. Either way, scholars can use APIs to reduce data collection time considerably.

Researchers should also think carefully about how to name their documents. The reason is that file names can be read into Python as variables and used to match or merge with other data. In judicial politics, studies of the U.S. Supreme Court often make use of data from the [Supreme Court Database](#) (SCDB). For analyses of opinion language, it may work well to name the text files so that they match a relevant variable in the SCDB, such as the `sctCite` variable.

When naming your documents, it is helpful to include delimiting characters in the name. Underscore characters work well for this, so naming a file “`opiniontext_467_US_873`” will make it easy to extract the volume and page number from the file name to match it with the `usCite` variable in the SCDB via some work in Stata, R, or Python. This naming process can be automated by extracting the US Reporter citation from the text of the opinion. Note, however, that US Reporter citations are not assigned for months or years after a decision is issued, so you may want to choose a different citation series, such as the Supreme Court Citation.

### Working With the Corpus

Once documents have been obtained for a corpus, they are not necessarily in a format that is analysis ready. Some pre-processing is almost always required. Some of this is simple cleaning. For instance, document headers typically need to be removed. The extent and type of pre-processing depends on the research question. Suppose a scholar is interested in the tone attorneys strike in their oral argument (e.g. Gleason 2020). In that case, the processing needs only to isolate each attorney’s words from the words of other attorneys and the justices. But, suppose another researcher is interested in the dynamics of interruptions between attorneys and justices (e.g. Patton and Smith 2017).

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<sup>6</sup>Not all APIs are created the same. The Oyez API does not have much documentation. To see the data contained in the API, take any Oyez URL and [insert “api.” in front of an oyez.org URL](#) that points to a case. Other APIs are better documented. We recommend the [extensive documentation for the Library of Congress’ API](#).

<sup>7</sup>With Oyez’s API, we find this is particularly true before the late 1980s. So, while we encourage scholars to use APIs to save time, we caution that it is important to check the resultant data.

In that case, the researcher likely needs to further isolate the utterances of each justice as well, while distinguishing conversational turn-taking from interruptions. This could be done by hand, but a full term of the Court may take days. Once a script is written, it can be done via ATA in a matter of seconds or minutes.

In order to prepare a corpus for analysis, learning how to program is immensely valuable. While this can be done in R, we find Python to be the ideal programming language. The advantage of Python lies in its flexibility. Whereas R was developed as statistical analysis software, Python is a general programming language that is remarkably flexible. In Python, a simple base-script can be expanded to meet practically any project need, from processing text to generating, storing and analyzing quantitative data to generating graphics. To illustrate the utility of Python, we have prepared a sample corpus of five Supreme Court oral arguments and written a short script which cleans the transcripts, isolates attorney utterances, and collects some descriptive statistics about the attorneys. These may be downloaded from the *Newsletter* [Dataverse](#).

### Navigating the Python Script

In order to run the script, and also to get started with ATA in Python, you'll need to install Python. While your computer may already come with it, we think it is best to install Python as part of a broader software package which provides the user with an integrated development environment. We are particularly partial to [Spyder](#), which is included in the broader suite of [Anaconda Navigator](#) (but see Rachael Hinkle's explanation, in this issue, of how to download and use the Jupyter Notebook for Python). Importantly, both are free. There are many guides to Python programming available online. We find [this YouTube playlist](#) to be particularly valuable. With that being said, we encourage scholars interested in using Python to watch some of the videos in the YouTube playlist (not all are relevant for social scientists) and to examine our script.

This script is designed to take five oral argument transcripts and 1: clean and process them; 2: count the number of times each justice speaks during each attorney's argument; 3: count the number of words the attorney/justices utter; 4: create a document for each attorney containing only her utterances. To this end, we include a folder containing a transcript for each oral argument saved in .txt format. While it is tempting to save in .docx format, we encourage scholars to work with .txt files. .Txt files take up less space, are more flexible, and are less likely to introduce errors because of embedded features. Analyzing .doc or .docx files requires running them through a translator module before opening them in Python.

Throughout the script, there are a number of lines that begin with a pound sign. These are comments. The code won't actually run those lines. They exist to explain the logic of the code. We present two separate loops. To be clear,

they could be combined into one (and you must run the first before you can run the second). We keep them separate to better help readers understand the logic of loops. The script comes in a directory with two .csv files.<sup>8</sup> The first contains some background information on the transcripts we are working with. The other is an “empty” dataframe which we will use to write out the results of the script. There are also three subdirectories. The first is called “transcripts,” which contains the transcripts we will use in the example. The other two will populate over the course of running the code.

We encourage readers to access this script and step through the logic of the code. The script is heavily documented to help scholars step through our logic. Indeed, we also encourage scholars to document their own code; this helps scholars return to their code in the future. We emphasize that while scholars can run our script in less than a minute, it took far longer than that to write it. Scholars should be prepared to tinker with code in order to make it work for their own projects.

### Conclusion

While ATA can be applied to practically any area of law and courts research, we particularly encourage the use of ATA to examine questions such as: Are judicial opinions that align with the author’s policy preferences systematically different from opinions that conflict with the author’s preferences? How do the speeches and advertisements of candidates for judicial positions differ from those of candidates for legislative offices? Can we successfully categorize judicial decisions as liberal or conservative through automated analysis of the opinions issued? Are the legal arguments presented in parties’ merits briefs discussed in the opinions issued in those cases? How have judicial opinions changed over time? Using trial transcripts, how do lawyers’ and judges’ verbal interactions with witnesses vary across types of witnesses?

ATA is a versatile method that allows scholars to explore many questions in law and courts. While advances in computing make ATA relatively easy to deploy, scholars must navigate theoretical and practical considerations. Any ATA project should be firmly grounded in theory. Moreover, there are a number of practical considerations during data collection and merging. Often, it is worthwhile to draw upon a base-script. We provide one here that we hope future scholars will utilize to undertake future projects.

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<sup>8</sup>As with .txt files compared to .docx files, it is tempting to just use an .xlsx file. However, we encourage scholars to use .csv files as they are easier to import into Python. Of course, .csv files can be created in Excel. Simply specify a .csv ending when saving the file. Bear in mind that .csv files can’t have multiple “tabs” like an .xlsx file can.

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# How to Extract Legal Citations Using Python (For the Complete Beginner)

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Many approaches to computational text analysis examine a document in its entirety. However, there are also a wide variety of useful techniques that involve extracting certain elements from a text. One such informative element is citations. Legal reasoning in a common law system is based on comparison to previous rulings. This means that the legal sources cited in a judicial opinion or attorney's brief are critical elements of those texts. The purpose of this article is to explain how to use Python to extract citations from legal texts.

Why Python? Much work on citations relies on Shepard's Reports or West KeyCite reports. These sources, available in the subscription services Lexis and Westlaw, provide an exhaustive summary of every citation to a given court opinion. While these reports are incredibly useful, they have some drawbacks. First, not all researchers have access to Lexis or Westlaw. Second, these reports detail whether case B has cited case A, but they do not provide the precise number of times case B cited case A. If you use Python to extract all the citations in case B, you can see not just that case A was cited, but also if it was cited once or a dozen times. In the aggregate, you can compile both how many unique precedents a document cites as well as the overall number of citations. Third, detailed citation reports are not available for some documents, such as briefs. There are an increasingly massive number of raw legal texts freely available to scholars electronically, and many of them contain interesting citations to legal precedent we may want to extract.

With the tools described in this article, the legal citations available in virtually any document can be accessible. Preexisting Python skills are not necessary. I describe all the steps necessary for installing the required software and carefully document the provided Python code so that anyone can use this technique. As someone who had to learn Python from scratch on my own, I understand that it can seem intimidating. But I promise that it is an attainable goal. I have even taught my nieces and nephews (ages 9-12) how to use Python. You can do it too!

The first task is to get all of the required software installed. To make things easier (especially for future Python experts), we will be using a web application called Jupyter Notebook that allows us to run Python code a bit at a time and keep track of notes and comments in a useful way. The main Python library we will be using only works in a slightly older version of Python, Python 3.6. This will complicate our setup a bit. Even if you already use Jupyter Notebook, please follow along from step 2 below.

Steps to install requisite software:

1. Go to [www.anaconda.com](http://www.anaconda.com) and install Anaconda. (Click on “Products” and select “Individual Distribution”.) For more information or help on this step, see the file “HowToInstallAnaconda.docx” in the associated Dataverse files.
2. Open the Anaconda Navigator (from your Applications folder).
3. Click on “Environments” (in the left panel).
4. Click on “Create” (at the bottom of the middle panel).
5. Give your new environment a name. For the sake of simplicity, I suggest something like “Python3\_6”.<sup>1</sup>
6. Under “Packages”, check the box for “Python” and select “3.6”<sup>2</sup> from the drop-down menu, then click “Create”.
7. With that new environment selected, click on “Home” (in the left panel).
8. Find “Jupyter Notebook” and click the button below it labeled “Install”.

Congratulations! You are ready to run Python code. The previous steps only have to be run once on any given computer. Now you are ready to experiment using the code I have provided on Dataverse. The Dataverse files contain a file with an “.ipynb” suffix. This is a Jupyter Notebook file. You cannot open such files with the normal process of simply clicking on them. In order to open these files, use the following steps.<sup>3</sup>

Steps to run code after installing the software:

1. Download the files from [Dataverse](#) and save them in a location accessible for your username only, not for all users.<sup>4</sup>
2. Open the Anaconda Navigator (from your Applications folder).
3. Click on “Environments” (in the left panel).
4. Select the environment you named “Python3\_6” or similar.
5. Click on “Home” (in the left panel).

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<sup>1</sup>Please note that for some operating systems, you may not be allowed to use periods in the environment name.

<sup>2</sup>For some operating systems an additional period and number may appear after the “3.6”. For example, it may read “3.6.13”. The important thing is to identify the Python version that begins with “3.6.”

<sup>3</sup>To run most Jupyter Notebook files you simply have to open Anaconda Navigator and launch Jupyter Notebook. The extra steps here to change the environment are not typically necessary. There are only needed here to use the lexnlp library.

<sup>4</sup>The location of the files is important because Jupyter will show the file structure for files available to your username, not those available to all users on your computer.

6. Locate “Jupyter Notebook” and click on “Launch”. This will open a browser tab.
7. Navigate through the file structure to the folder where you have placed the Dataverse files (e.g., Downloads). Click on “Hinkle\_LexNLP\_Example\_Code.ipynb” to open the file.<sup>5</sup>

This Jupyter Notebook file contains a step-by-step explanation of the process of loading text into Python, using `lexnlp` to extract citations, and exporting citation counts to a `.csv` file. To execute the code in each cell, place the cursor in the cell and then click the “Run” button. For purposes of clearer explanation, the process is first executed for a single document and then extended to show how to iterate through several documents in a folder.

When using `lexnlp`, I ran into a minor, but important, wrinkle. The code did not pick up the short references “id.” or “ibid.” The example code includes the workaround I created to address this concern. Before using `lexnlp` to extract citations, I first find all “id.” and “ibid.” strings and replace them with the placeholder “999 U.S. 999”. There is no Supreme Court case with such a citation, but it is in a format that `lexnlp` recognizes as a citation and, therefore, extracts from the text. Since each reference to a citation is extracted in order, I simply convert each “999 U.S. 999” citation to be the legal precedent that immediately precedes it. There are other ways to extract legal citations in Python, and some of them address this issue of short references.<sup>6</sup> However, in my own work, I have found `lexnlp` to extract the most amount of useful information.<sup>7</sup> It parses citations to provide helpful items such as year and court. I hope this tool proves useful for you as well.

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<sup>5</sup>For ease of reference, the Dataverse also contains `.pdf` versions of the Jupyter Notebook file with both just the code and the code that has been executed in Python.

<sup>6</sup>One such example is the library `Eyecite`.

<sup>7</sup>For additional information on using the `lexnlp` library, see “LexNLP: Natural Language Processing and Information Extraction for Legal and Regulatory Texts” by Michael J. Bommarito II, Daniel Martin Katz, and Eric M. Detterman, available at: [arxiv.org/pdf/1806.03688.pdf](https://arxiv.org/pdf/1806.03688.pdf).

# Part-of-Speech Tagging: Basics and Application

EMILEE SMART, UNIVERSITY OF KENTUCKY

## Take a Crack at the Code

Are you able to identify the following phrase using the letters and dashes below without peeking at the answer in the next paragraph?

`_PP_DT_NNS_IN_DT_NP_NPS ,,_IN_NP_TO_VV_DT_RBR_JJ NN`

Contrary to what you may think, this phrase is known to almost all Americans! The line above represents the first phrase of the US Constitution: “We the People of the United States, in order to form a more perfect union (. . .).” While the coding of the line above may not be intuitive or helpful to your understanding, it can be very helpful to computational text analyses. The line above contains the part-of-speech tags associated with each word in the famous start to the Constitution. In part-of-speech tagging, each word in a specified corpus gets an attached label to identify the part-of-speech of the word (e.g., noun, verb, adjective etc.). So, for example, from the phrase above: “We” is coded as PP or personal pronoun part-of-speech, “the” is coded as DT or determiner, and “People” is coded as NNS or plural noun.<sup>1</sup>

To start almost any type of analysis of text, particularly in a natural language processing approach, part-of-speech tagging is an essential basic. Part-of-speech tagging makes it easier for programs and computers to identify lexical variation between words or phrases within your data.

In this article, I discuss the importance of part-of-speech tagging, and how you can easily tag whatever text you need to analyze. I finish by applying part-of-speech tags to differentiate between the writing styles of two Supreme Court justices.

## Why Part-of-Speech Tags are Important

Part-of-speech tagging can be very influential in examining legal documents for three reasons. First, tagging will make it easier to parse language that is formulaic, as is often the case for legal documents. Second, tagging makes parsing easier because it creates clause structures. So, instead of separating or parsing information such as case name from specific names such as John Doe vs. Jane Doe, you would be able to parse clause structures such as the structure “noun vs. noun,” irrespective of specific case names to parse your text.

Lastly, tagging is especially important for natural language processing. To move past the bag of word approaches in text analysis, scholars need to account

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<sup>1</sup>To decode the whole phrase (with all of your free time I’m sure you have) visit [https://www.laurenceanthony.net/software/tagant/resources/treetagger\\_tagset.pdf](https://www.laurenceanthony.net/software/tagant/resources/treetagger_tagset.pdf) for a tag key bank.

for the order words appear in the text. Tagging allows text analysis machines to code order based on basic grammatical structures built from parts of speech. For example, in English, prepositions are always used in a prepositional phrase. So, if I see the word “in” (a preposition), I am certain that an article and then a noun is going to follow, such as, “in (preposition) the (article) house (noun).”

### How Do I Tag?

For those who are just getting into text analysis or those more comfortable with the bag-of-words approach to analyzing text, tagging can seem a bit overwhelming. There are packages and code available in R to take care of part-of-speech tagging, but it can be difficult to work through the code or know which package to use between all the options, such as UDPipe, koRpus, openNLP, spacy, or nltk. More importantly, there is little guidance on how to choose specific tagging strategies with the correct grammatical rules and procedures for dealing with unknown words when you are first getting started. These factors can cause beginners to turn to part-of-speech tagging by hand.

You may think to yourself that it cannot be that difficult; besides, everybody learned about parts of speech in elementary school, right? I would agree that most of us did; however, linguistic scholars show that there can be problems with the reliability and robustness of hand coding (Lindquist 2018). Individuals will code differently based on the number of part-of-speech categories available, their understanding of the English language, as well as their impressions of context. For instance, one person might code the word “refuse” as a verb in all instances, but someone else may code the word “refuse” as a noun indicating garbage when certain context is given. A good tagger software would always be able to differentiate between the two meanings based on the certain context with greater accuracy (Banko and Moore 2004). While this is a simple example, it highlights the problems with hand coding without even addressing the hours that would be required to tag a normal-length legal document by hand.

Thanks to scholars who understand that not all of us are experts, there are user-friendly applications available to tag your data for you, thus avoiding any hand coding or difficult programming code. TagAnt is an example of beginner-friendly software that tags whatever corpora you may need tagged in English, Dutch, French, German, Italian, or Spanish (Anthony 2021). This software is built on TreeTagger (Schmid 1995). This TreeTagger software uses coding rules and procedures based on probabilistic tagging and decision trees, a very common and reliable tagging system. Below, I list the steps on how to use the program.

1. You can download the software for the program for free at <https://www.laurenceanthony.net/software/tagant/>
2. A simple, user-friendly interface opens where you may type in your chosen corpus or can choose to input a single file or whole directory from

your computer. To input the files, click the “files” dropdown and choose from your own files. The input must be in a UTF-8 encoded .txt format.<sup>2</sup>

3. Once you have loaded your input files, choose the language of your files from the six options listed above and hit the “start” button. Within a few seconds, your files will be tagged with their part-of-speech.
4. The output from the software is a .txt file containing the tagged corpus. It will look exactly like your original document, except each individual word will be labeled (e.g., in\_IN the\_DT house\_NN).<sup>3</sup> It will be stored in the same folder as your input text, with the file name being “input\_text\_tagged”. These .txt files can then be analyzed using whatever approach you have in mind, such as using a natural language processing approach.

### Tagging in Action

One potential application that has not been used frequently in legal research is to use natural language processing based on tagging to identify authors’ styles of writing and apply these styles to unsigned legal documents. Every individual has a specific way they use words and create phrases. Identifying parts of speech is essential to helping researchers pick out any individualized patterns in the word and phrase usage (Eder et al. 2016, Matthews and Merriam 1993). Part-of-speech tagging can help scholars make more accurate predictions on authorship. This would be applicable, for example, when Supreme Court justices decide to grant a stay or special order on the Shadow Docket. There is no requirement that the justices sign off on the opinions, which would make it very difficult for scholars to know who was responsible for any legal rationale given with the decision. However, by examining not only the words but the order they appear (known thanks to tagging), scholars may be able to identify which justice was responsible for the legal explanation given by the Court. Being able to identify the author responsible for the legal decisions when authorship is not readily given would allow scholars to disentangle the differences or similarities between the motivations behind the decision-making mandating claimed authorship and decision-making made anonymously. This analysis could be validated by examining opinions where authorship is denoted in personal papers. When personal accounts are not available, it would be possible to validate these analyses using direct quotes from past opinions that are used within the anonymous opinions. If the method can correctly identify the author of direct quotes from past opinions, then there is validity to the analysis (Eder 2016).

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<sup>2</sup>Document coding can be changed when you open your document and “save as” either “plain text” or “UTF-8”.

<sup>3</sup>Key for the TagAnt codes used in the example: IN is the code for preposition, DT is the code for determiner, NN is the code for noun, singular or mass.

To demonstrate how helpful part-of-speech tagging can be, I analyze the first 800 words of separate documents written by Justices Kennedy and Ginsburg in 1976, prior to their confirmations. I examine how many times each justice uses adverbs in an 800-word sample of text by simply searching in the .txt file. Then I compare what part of speech comes before and after the adverbs are used.

Part of Speech	Kennedy Total =29/800		Ginsburg Total =39/800	
	Before	After	Before	After
Verb Be, Pres, 3rd P. Sing	3	1	2	0
Verb, Base	0	1	4	3
Verb, Present, Non 3rd P.	3	0	1	1
Verb, Past Tense	2	1	4	3
Verb, Past Participle	0	4	0	1
Cardinal Number	0	1	0	0
Modal	1	1	4	0
Determiner	1	5	2	5
Adverb, Superlative	1	0	1	0
Adverb	4	4	4	4
Noun, Singular	7	0	7	2
Noun, Plural	0	0	1	0
Coordinating Conjunction	2	1	0	1
Preposition/Subordinating Conjunction	1	2	0	8
Adjective	2	1	0	4
Personal Pronoun	0	2	1	0
To	0	4	0	0
End of Sentence	3	0	2	1

**Table 1.** Comparison of how Justice Kennedy and Justice Ginsburg word phrases, looking at what parts of speech are used before and after each Justice's use of an adverb.

For the written documents, Justice Kennedy used 29 adverbs out of the 800 total words. Justice Ginsburg used more adverbs: 39 of the 800 words were adverbs. Other text analysis approaches would be able to get you this information such as a dictionary approach with ALL possible adverbs accounted for.<sup>4</sup> However, while Ginsburg does use more adverbs, the difference between the proportion of adverbs used by the justices is not statistically significant. Thus, if I were trying to determine differences just by who used more adverbs, this exercise would not be very helpful.

However, with the added information gained from part-of-speech tagging, I am better able to determine when Justice Kennedy uses adverbs and when Justice Ginsburg does. In Table 1, columns 2 and 4, I list what parts of speech

<sup>4</sup>Including ALL possible words for all parts of speech would be possible but this would all need to be decided and created by the researcher causing similar problems to hand coding.

each justice uses before they write an adverb. These types and their numbers of usage vary little by each justice. However, there are differences in what words the justices use *after* they wrote an adverb. In columns 3 and 5, I list the types and numbers of part-of-speech that occur after each adverb. Justice Kennedy is more likely to use determiners such as “the” after using an adverb. Justice Ginsburg, however, is significantly more likely to use a preposition or subordinating conjunction.

This may seem like minimal information, but to a machine trying to identify patterns of authorship, this information can be very crucial. Luckily, there are easy ways to get started tagging with programs such as TagAnt as you move forward with your research. Happy tagging!

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# Using tf-idf and Cosine Similarity to Compare Legal Texts

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Law and courts scholars enjoy an embarrassment of riches concerning texts. Unlike scholars who study policymakers in the legislative and executive branches, judges in the United States generally justify their decisions and votes in writings that are usually publicly accessible, even where not formally published. These texts play a central role in the American legal system based on its common law tradition and the norm of *stare decisis*.

As part of increasing attention to legal writings, researchers have compared texts to try to tease out the influences that shape the opinions. Pam Corley and others in our subfield pioneered one approach to doing so, the use of plagiarism software. That approach provides for the tracing of very similar language across documents. Other approaches that Rachael Hinkle and I have used in our research are leveraging term frequency-inverse document frequency (tf-idf)<sup>1</sup> and the related measure of cosine similarity<sup>2</sup> which allow us to probe more subtle forms of influence.<sup>3</sup>

For example, in our forthcoming book, *Persuading the Supreme Court*, we use cosine similarity scores to allow us to capture the extent to which individual briefs contributed to Supreme Court briefs with weighting for unique information as indicated by uncommon text. They provide objective and scalable measures that allow for the identification of more unusual language. The lesser weighting for more typical terms lets us consider how similar opinions are to briefs in a way that highlights unique contributions (something the Supreme Court explicitly seeks), as opposed to treating unusual information the same as common text across many documents in the corpus.

As Rachael Hinkle and I describe in the book:

Cosine similarity scores are the normalized sum of the term-frequency, inverse-document frequency (tf-idf) scores for each word within both documents. The tf-idf score utilizes the number of occurrences in the document (term frequency) weighted by the number

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<sup>1</sup>While we focus on the most basic and direct form of tf-idf, the structure allows for more nuanced uses, including analyzing *n*-gram words, altering the list of stop-words based on context, using logarithmic calculations of idf, etc.

<sup>2</sup>For this type of application, cosine similarity has advantages over Jaccard Similarity, which does not consider duplicated words, and Euclidean Distance measure, which can be skewed by documents of varying length (like briefs and opinions).

<sup>3</sup>Other methodological approaches, such as topic modeling using Latent Dirichlet Allocation (LDA), also allow for analyses across legal texts. Additionally, more advanced and refined methods are being developed and made accessible. The future is bright in this regard.

of documents in the corpus in which the word appears (inverse document frequency) (see Manning, Raghavan and Schütze, 2008). Thus, just like letter tiles in Scrabble, less common words (i.e., those that appear in fewer documents) are worth more. That is, unusual words shared across briefs contribute more to the cosine similarity score for that dyad than common words. Cosine similarity scores exist between 0 and 1, where higher values indicate more similar documents.

The mathematical representation of the relationship is:

**N**: Number of documents

**V**: Set of all words in a corpus

**tf<sub>t,d</sub>**: Number of times term *t* appears in document *d*

**df<sub>t</sub>**: Number of documents which contain term *t*

$$\mathbf{tfidf}_{t,d} = [1 + \log_{10}(tf_{t,d})] \times \log_{10} \left( \frac{N}{df_t} \right)$$

$$\mathbf{CosSim}(\mathbf{d1}, \mathbf{d2}) = \frac{\sum_{t=1}^{|\mathbf{V}|} (\mathbf{tfidf}_{t,d1})(\mathbf{tfidf}_{t,d2})}{\sqrt{\sum_{t=1}^{|\mathbf{V}|} (\mathbf{tfidf}_{t,d1})^2} \sqrt{\sum_{t=1}^{|\mathbf{V}|} (\mathbf{tfidf}_{t,d2})^2}}$$

To provide a simple example, imagine we have two sentences:

- Sentence 1: “The Amendment includes free exercise.”
- Sentence 2: “Free Exercise is protected.”

This can be represented in the following table as two vectors:

	the	amendment	includes	free	exercise	is	important
S1	1	1	1	1	1	0	0
S2	0	0	0	1	1	1	1

Using this information, we calculate:

$$\begin{aligned} \mathbf{CosSim}(\mathbf{S1}, \mathbf{S2}) &= \frac{(1 \times 0) + (1 \times 0) + (1 \times 0) + (1 \times 1) + (1 \times 1) + (0 \times 1) + (0 \times 1)}{\sqrt{1^2 + 1^2 + 1^2 + 1^2 + 1^2 + 0^2 + 0^2} \sqrt{0^2 + 0^2 + 0^2 + 1^2 + 1^2 + 1^2 + 1^2}} \\ &= \frac{2}{\sqrt{5} \times \sqrt{4}} \\ &= .4472 \end{aligned}$$

Of course, the specific research questions and theories dictate which tools are best suited for a project. Where one is focused on direct borrowing of

language from briefs (such as instances of justices lifting language from amicus briefs but not citing them (Canelo, 2022)) plagiarism software has the advantage of setting an objective threshold for how similar language must be that includes word order. On the other hand, where one is focused on broader issues regarding the influence of information and ideas, cosine similarity allows for flexibility in language while also being able to pick up on the use of relatively rare concepts. In one example, legal experts identified arguments from an amicus brief filed by constitutional scholars that appear in the Supreme Court’s opinion in *Romer v. Evans* (Simpson and Vasaly, 2015). Plagiarism software misses this relationship (there is only 1% of overlap and none of it is substantive in nature) but cosine similarity detects it (with a similarity score of .57) (Hazelton and Hinkle, Forthcoming). Additionally, while calculating cosine similarity among documents in a corpus can be somewhat costly in terms of time when dealing with a large corpus, we have found that the more challenging issue is obtaining the entirety of the relevant documents, which is an issue regardless of the method applied.

Example code and sample texts are available on the *Newsletter Dataverse*. Please see Rachael Hinkle’s instructions regarding the use of Jupyter Notebook and Python in this issue for excellent advice regarding setting up all you will need to run the code.

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# Reflections on a Rare Confluence: Public Law at the University of Texas at Austin

MALCOLM M. FEELEY, UNIVERSITY OF CALIFORNIA AT BERKELEY

A few months ago, I tried to reach Ran Hirschl to ask a favor of him. So, I contacted the Department of Political Science at the University of Toronto, where he taught for many years, only to learn that he had recently decamped (fall 2021) to the University of Texas, with a chair and a joint appointment in Government (political science) and Law. This was the second time within three years this had occurred. In 2019, I tried to contact Richard Albert in Boston, only to learn that he too had recently moved to Texas to accept a distinguished chair.

My curiosity was piqued. Long impressed with the number of law and politics, judicial process, comparative constitutional law, and constitutional theorists in Austin, I wondered just how many there were. I went to the UT websites for the Law School and Government Department to double-check my impressions. I quickly learned that my guess significantly under-estimated the size of the public law cohort at the University of Texas at Austin. The numbers and names are below.

The boundaries of disciplines, to say nothing of fields and sub-fields, is porous at best, and so it is with trepidation that I draw up a list of the number of political science (oops Government) faculty who work in the public law field, broadly conceived. By my count, there are 11. With apologies to those I have mislabeled and those I have overlooked entirely, let me go through this list of political scientists housed in the Department of Government, and then turn to the Law faculty. Note that if I began to list even the most significant publications of this group, this article would run on for pages. Thus, I provide only names and areas of research and teaching. Readers will recognize their names, and no doubt will have read works by most of them.

In alphabetical order: Jeffrey Abramson (constitutional law, civil liberties, the jury, and political theory); Daniel Brinks (comparative politics, Latin American politics, and public law); Zachary Elkins (democracy, institutional [constitutional] design, comparative constitutional analysis, and Latin America); Derek Epp (institutional capacity to absorb information and allocate resources, criminal justice policies and their effects on race); Rhonda Evans (policy agendas and judicial institutions in Australia, New Zealand, US, and Western Europe; human rights); Benjamin Gregg (social and political theory, human rights, law and generic engineering, and the law); Ran Hirschl (comparative constitutional politics, the social and political foundations of constitutions, institutional design); Gary J. Jacobsohn (American constitutional identity, comparative constitutional law, supreme courts in the political process, and constitutional revolutions); H.W. Perry (American constitutional law, the U.S. Supreme Court, comparative analysis of freedom of expressions); Jeffrey Tulis (political theory

and American politics, American political development, constitutional theory, and the American presidency); Hannah Walker (the criminal justice system and American democracy, immigration, and restorative justice).

But still more. A cohort of younger scholars trained in formal models, statistics, American politics, with auxiliary interests in dispute resolution and judicial behavior includes Terrence Chapman (international institutions, and conflict resolution), Stephen Jessee (political methodology, ideal point estimation, American politics), and JBrandon Duck-Mayr (American politics, judicial behavior, and formal theory).

Apart from the astounding numbers, three features of this group jump out. First, almost all devote some considerable focus to comparative analysis, suggesting a search for generic and generalizable findings across countries or jurisdictions. Second, many have historical perspectives, seeking to account for continuities and variations over time. Third, many work in the intersection of political theory and legal institutions, public law and American politics, and public law and comparative politics, each of which carries on a decades-long tradition in the Texas Department of Government. Some might be regarded as political theorists (including formal modeling), or American, or comparative specialists first, but still they knit legal institutions deeply into their concerns, and in so doing explore the functions of constitutions, constitutionalism, and legal structures into their work. For some historical analysis is their point of departure, for others political theory, and for still others methodological concerns.

Furthermore, four on this list have joint appointments in Law: Jeffrey Abramson, Ran Hirschl, Gary J. Jacobsohn, and H.W. Perry.

Perhaps it is just idealism easily inferred from a distance, but it appears to me that these disparate interests do not pull this cohort apart, so much as they integrate and complement the parts. The setting must be a graduate student's nirvana. Still, imagine the headache of trying to figure out which of so many courses to take, and which of so many faculty to serve on your dissertation committee. The fact that so many of those on this list have received awards for outstanding teaching would make the choice all the more difficult.

In thumbnail fashion, I've presented an awesome portrait of talent that must be appealing to just about any applicant to Public Law or Law and Courts graduate programs in the United States, and indeed the world. I cannot imagine any other program having half as many specialists in this field. I might stop here, but there is compelling reason to go on.

I want to turn to those scholars in the Law School, who have deep interests that overlap with those I have mentioned above, and whose scholarship is well known to public law scholars. Fields and sub-fields are even blurrier in law than in political science, so it is with trepidation that I create a short list of those likely to be most connected with the political science public law world. Advance apologies to those I have overlooked. My list: Richard Albert (comparative constitutional law, constitutional amendments, constitutional design); William (Willie) Forbath (constitutional politics, constitutional

history, American history); Sanford (Sandy) Levinson (constitutional law, constitutional history, constitutional design, federalism, state constitutions); Samy Ayoub (Islamic law, religion and politics; Islamic legal systems); Lucas Powe (the American Supreme Court as an institution, American constitutional history, free expression in the electronic age); Lawrence Sager (constitutional law, constitutional theory, legal philosophy, religious freedom in the United States). I can imagine any one of these scholars playing a major role in shaping a political scientist's graduate program and dissertation, and no doubt, they have.

There are still more law faculty whose work and teaching and research interests connect with public law scholars. I worry that I have missed some, but certainly, this list must include Philip Bobbitt, Robert M. Chesney, Steven T. Collis, Michele Deitch, Lino A. Graglia, Christopher S. Johns, Douglas Laycock, Richard Markovits, David M. Rabban, D. Theodore Rave, Elizabeth W. Sepper, Jordan M. Steiker, Stephen I. Vladeck, and Louise Weinberg.

Of those listed above, Levinson and Powe have joint appointments with Government, and Aboub with Middle Eastern Studies. Think about it. Seven—and probably several more—joint appointment between Government and Law. And, the range of faculty available for Ph.D. committees, the enrichment of shared research and teaching opportunities, and the interdisciplinary sparks that fly when graduate and law students share the same classroom. Furthermore, there are still other Law faculty whose work is important for political scientists who study the criminal process, substantive foreign law, and the modern administrative state. Of course, these folks do not sit in the same room, do not share the same wing of an office building, don't have lunch every day or even meet as a group. Still, any one of them when advising a student could easily direct that student to any of the others on this list. It is a group in Arthur Bentley's sense of the term, amorphous but real and significant.

For want of time and space, I dare not turn to examine the faculty roster of the LBJ School.

What else can I say about the cohort? Two—Jacobsohn and Levinson—have been honored with the Law & Courts Section Lifetime Achievement Award. A number have been elected to the American Academy of Arts and Sciences. All have received awards for such things as outstanding teaching, best article, best book, and so on. In the Law School, Richard Albert runs an active comparative constitutional law program that engages many Texas colleagues, and public law scholars and graduate students (political scientists and lawyers alike) from around the world. And, the inimitable Sandy Levinson runs a one-person book publishing enterprise and wins repeated awards as a top blogger for consistent insightful commentary, which provokes thoughtful and robust responses. Oh yes, Mark Graber, himself once a stalwart of the Texas Government Department, in a review of Justice Stephen Breyer's recent book on the Supreme Court, suggested that the Justice should enroll in the Public Law program at Texas to familiarize himself with the vast literature on judicial politics. Having read the book, I concur.

When I turned in the essay above to the *Newsletter*, I thought I was done.

But, Editor Daniel Lempert passed along a suggestion from Board member David Glick asking me to elaborate on an obvious issue that I had failed to consider: What accounts for this extraordinary concentration of public law scholars? So, I returned to some of my respondents. I received a lot of interesting information, and four factors stand out: First, Public Law has long been a stand-alone and strong field in the Department. This may in part account for the numbers and for the numbers who have strong interests in a second field, such as American politics, comparative politics, political theory, and international relations. Consider the interests of those named above. Second, the Department of Government is a huge department, even by big university standards: 51 FTEs. So, if there is not ample room for everyone, there is considerable room for some fields. Certainly, not Noah's Ark. Third, and related, several years ago, an external review of the Department urged it to build on its strengths, and the Department did just that, embarking on a successful plan to recruit still more senior public law and Latin American scholars to its ranks. Fourth is the Department's history of close and continuing relations with the School of Law, as the several joint appointments noted above attest. Once, this connection was anchored in American constitutional law and history, but now it includes comparative constitutional law. This relationship is more than split appointments; the connection has immense synergy: mixed law and graduate student classes, joint research projects, workshops, conferences, and symposia involving faculty and law and graduate students, and still other students and scholars from around the world.

But, I'm old enough and close enough (I grew up in Austin, San Antonio, and the Rio Grande Valley) to know that there is more to the story than this. All the public law scholars listed above were preceded by three (and no doubt more) strong-willed scholars who helped create and develop the Public Law field at Texas. Emmette Redford, a boyhood friend of President Johnson, graduated from UT in the 1920s, then studied comparative constitutional law at Harvard, and returned to Austin to develop courses around the well-known Harvard themes of political theory, American political thought, constitutional government, and regulation. Benjamin F. Wright, another UT Government graduate in the 1920s with interests in political theory, law, and public administration, also went on to receive his Ph.D. at Harvard. He remained there on the faculty for twenty-five years, putting his stamp on the Department and the public law field before moving on to serve as President of Smith College for a decade, and then returning to the Texas Government Department for the balance of his career. Finally, Wallace Mendelson, a Harvard LL.B. and Wisconsin Ph.D., joined the Texas Government faculty in the early 1950s, and taught there for decades. These prolific and strong-willed scholars helped shape the Department's culture and public law curriculum through their combination of interests in political theory, constitutional government, and the modern regulatory state, as well as through their teaching.

An example of Path Dependency in American Academic Development? Perhaps.

# Better Get to Know: James Gibson

INTERVIEWED BY: RYAN BLACK, MICHIGAN STATE

Jim Gibson is Sidney W. Souers Professor of Government in the Department of Political Science and Professor of African and African American Studies, both at Washington University in St. Louis ([Website](#)). He is also Professor Extraordinary in Political Science at Stellenbosch University. He earned his PhD in Political Science from the University of Iowa in 1975.

**Tell me a little about your background and how you got to where you are today.**

My undergraduate thesis (part of which appeared in the *JOP* in 1977) was about sentencing decisions, as was my dissertation (part of which appeared in the *APSR*), so I was pretty hard-core lower-court judicial in the beginning. Then along came Skokie, Illinois, and its assault on freedom of speech and assembly. Skokie taught me about law outside legal institutions; about the role of public opinion; and especially about the methodology of survey research. Unlike many political scientists, I respect ordinary people and have spent most of my career in trying to understand how and why they think and behave as they do (I used to think of myself as a “populist,” until the term acquired its new connotations). Although I think of myself first as a judicial type, I have, over time, learned a bit about political psychology, comparative politics, state politics, and even (long ago) political party organizations. Skokie was really the first project in which I evolved from being an institutionalist to a behavioralist, from a judicial behavior person to a political scientist.

**If you weren't a political scientist, what would you be instead?**

Dead.

No doubt, I would have become a lawyer and, like some I know, worked myself to death.

And/or unhappy.

Being an academic in the U.S. is the best job in the world. I know some true billionaires, but they refer to me as a “billionaire of time.” There are not a lot people in the world who can get up most mornings and ask themselves: “What is it I would like to work on today?” I am immensely grateful to the institutions that have supported my career and my lifestyle.

**What are you working on now?**

Approaching (he said gingerly) wrapping up a new book on whether Trump, the election, and the insurrection damaged American political institutions. It's a big book, with a ton of survey data, including panel over-samples of African Americans, with a focus on institutional legitimacy but with lots of additional bells and whistles (e.g., attitudes toward political violence). Short answer: impact was negligible. At least as of mid-2021, the sky has not fallen. (Doesn't mean it won't fall in the future.)

Also nearing completion of a South African project on popular support for

gender-based violence, patriarchal values, and especially why women support patriarchy more than might be expected, just as men oppose patriarchy more than might be expected.

**Best book on your office shelves people may be surprised by?**

For work, Kahenman's *Thinking, Fast and Slow* as well as Cigdem V. Sirin, Nicholas A. Valentino, and José D. Villalobos' *Seeing Us in Them: Social Divisions and the Politics of Group Empathy*. For pleasure, two novels I love dearly are Delia Owens' *Where the Crawdads Sing* and Lisa Scottoline's *Eternal*.

**What's some good work other than your own that you've read recently and would recommend?**

- Jost, John T. 2021. *Left and Right: The Psychological Significance of a Political Distinction*. Oxford University Press.
- Bartels, Brandon L., and Christopher D. Johnston. 2020. *Curbing the Court: Why the Public Constrains Judicial Independence*. Cambridge University Press.
- Kalmoe, Nathan P., and Lilliana Mason. 2022. *Radical American Partisanship: Mapping Violent Hostility, Its Causes, and the Consequences for Democracy*. University of Chicago Press.

**What's your workspace setup like?**

For better or for worse, I have always tended to work at home as much as possible (I am also very good at working on the road as well). Most important item in my (various) offices: a good supportive chair.

**What apps, software, or tools can't you live without?**

AB Commander. After 40 years in the business, finding and managing files is one of my biggest tasks. And (at the risk of considerable ridicule) WordStar 2000 (not WordStar). The best text editor for writing programs I have ever found. A DOS program, probably released in about 2001. Extremely efficient means of writing code.

**What do you listen to while you work?**

Monica, my wife.

And, as we say in South Africa, "with pleasure."

**How do you recharge? What do you do when you want to forget about work?**

I work hard and play hard. Before Covid, we traveled a lot for business and pleasure (about 77 countries so far). Just beginning to think about what's next. Every other year, I captain a large catamaran somewhere in the world (right now headed to for our 4th go in the British Virgin Islands). On the opposite years, we go on safari somewhere (usually) in Africa.

**What everyday thing are you better at than everyone else? What's your secret?**

Better than anyone else is a very high bar. But I am good at planning and organizing, both for work and play. Also pretty good at pursuing multiple things at once. Have become quite expert (before Covid) at round-the-world airfares, including getting bookings at the best hotels in the world (newest favorite: The Taj, in Mumbai).

I am also pretty good at being able to see the connections between social science theories and real-world events. Some call these “firehouse” studies. No better example can be found than the survey work we did in the Former Soviet Union for a decade (2nd western team in), and, of course, my “overcoming trilogy” in South Africa. (I note in passing that our predictions about the evolution of the Former Soviet Union were spot-on.)

**What's your biggest struggle in being a faculty member? How do you try to address it?**

Too many interesting projects to pursue and complete. Universities have become bureaucratized to an unbelievable extent in recent times. We used to be left alone to teach and do our work. Now, admin commands an enormous slice of time. Not sure if it will ever revert to the “good old days.” Self-governance is not always a good thing!

**What's the best advice you ever received?**

For a variety of reasons, I skipped some grades in high school and wound up taking only graduate level political science courses at Emory beginning my 3rd year as an undergraduate. I was set on staying at Emory for a Ph.D. One day Lew Bowman and Eleanor Main called me in and said I had been admitted to the Ph.D. program, but I had been denied aid. I was devastated. The next day, they called me in and said “Oh by the way, we have fellowship for you at the University of Iowa.” I was devastated (city boy). But without any doubt, that was the right decision and I took their “advice.” I have been forever grateful that they dispatched me to study with Jerry Loewenberg, Pat Paterson, John Wahlke, and others.

**What's the greatest idea you've had that you don't want to do yourself?**

“Greatest idea” is also a very high bar. But I have recently become interested in the U.S. Supreme Court's *McGirt* decisions, which is having enormous consequences for criminal justice in Oklahoma, and which may have even much broader and more important political consequences. I continue to be impressed about how little we know about the real world consequences of judicial rulings (abortion and few other issue areas aside).

I have also come to believe that “law matters.” That may seem surprising from one who has always emphasized the psychology of law, but experience has taught me that the nature and substance of the law has a lot to do with real behavior (e.g., opioids; class actions). There is, I believe, a great deal of opportunity here, but research must begin by acknowledging that judges

do not have infinite discretion. And that an enormous amount of important public policy is made by courts inferior to the U.S. Supreme Court.

**Is there anything else you'd like to add that might be interesting to readers?**

Having done some work on social networks, I have always loved John Donne's words on how we are interconnected.

No man is an island entire of itself; every man  
is a piece of the continent, a part of the main;  
if a clod be washed away by the sea, Europe  
is the less, as well as if a promontory were, as  
well as any manner of thy friends or of thine  
own were; any man's death diminishes me,  
because I am involved in mankind.  
And therefore never send to know for whom  
the bell tolls; it tolls for thee.

On intellectual concerns, nothing could be more true. If you write enough books—and you take book dedications seriously—you can learn a lot about the forces shaping a person's career, and that is certainly true of me.

Friends who have influenced me greatly (and whom I do not acknowledge nearly enough) and to whom I will always be indebted include Felice Levine, Neil Cotter, Sid Ulmer, Paula McClain, Jim Alt, Jim Sidanius, Larry Bobo, and the best editor in the world: Suzanne Nichols. It's incredible how much I have learned from these folks.

Finally, while I am obviously (to anyone who has seen me) not an African American, over time, I have come to define myself as an American African. My attraction to Africa is deep and profound and my love for the "Mother City" and my friends there is unbounded.

**Which junior and senior persons would you like to see answer these same questions?**

Damon Cann, Ryan Black, and Lee Epstein (Ed. note: donezo! See the Winter 2017 issue –RB).

# Better Get to Know: Bailey Fairbanks

INTERVIEWED BY: RYAN BLACK, MICHIGAN STATE

Bailey Fairbanks is Assistant Professor of Political Science at the University of Central Arkansas. She earned her PhD in Political Science from Georgia State University in 2021.

**Tell me a little about your background and how you got to where you are today.**

My mom and I were a bit of rolling stones when I was growing up (Fun Fact: I have lived in every state in the South at some point in my life), but I am originally from Georgia. I am a first-generation college student, and I originally started as a Pre-Med student. I transferred to Georgia State University my sophomore year of college after re-locating from Clemson for a job opportunity in the Atlanta. I happened upon an elective course in Civil Liberties and Rights with Mike Fix my first semester (coincidentally also his first semester at GSU), and I became a total Pre-Law convert. I am pretty sure I frustrated the h\*\*\* out of Mike with all my questions in my nascent quest to be a lawyer. Finally, one day he pulled me aside and said, “You ask the wrong questions about the law to want to go to law school.” Little did I know what path that one comment would send me down. I ended up bailing on my plans for law school (after all that time studying for the LSAT), and I started my PhD at GSU in 2013 working with Mike as my advisor. I get a lot of push back when I tell people I stayed in the same program for all my degrees, but I was so lucky to be at GSU already with Bob Howard, Amy Steigerwalt, Susanne Schorpp, and Mike [Fix] already, so why would I want to leave? I relocated to Arkansas in Fall 2020 to start my TT job at University of Central Arkansas (Go Bears!) right in the midst of the pandemic, and I am still here today!

**If you weren’t a political scientist, what would you be instead?**

I would probably be an event planner. I tend to be a bit over the top and detailed oriented (I blame my mom for taking me to a Franklin-Covey “how to use a planner” training when I was in middle school). Granted, some of those habits fell to the wayside during the pandemic, but I do still love my color-coded paper planner for keeping myself organized with meetings. If not that, then I would probably be a pastry chef ...see the question on de-stressing/recharging below.

**What are you working on now?**

I have several ongoing projects going right now stemming from my dissertation about diversity in the state supreme courts. Most of this work has to do with the impact race and gender have on opinion writing techniques. Longer term the goal is to look at broader diverse characteristics like educational background, career trajectories, and more. Thankfully, I have some pretty fantastic co-authors that I am collaborating on for the preliminary data collection efforts in those endeavors.

### **Best book on your office shelves people may be surprised by?**

I just finished teaching a senior seminar on “Diversity, Equity, and the Law” this Spring and three of my go-to books (that my students also absolutely adored) were:

1. *Diversity Matters: Judicial Policy Making in the Court of Appeals* by Susan Haire and Laura Moyer. University of Virginia Press.
2. *Abortion and the Law in America: Roe v. Wade to the Present* by Mary Ziegler. Cambridge University Press.
3. *A Century of Votes for Women: American Elections Since Suffrage* by Christina Wolbrecht and J. Kevin Corder. Cambridge University Press.

Some of my other work also dabbles in attitudes towards the criminal justice system and reform, so I have a special shelf of favorites including *Incarceration Nation: How the US Became the Most Punitive Democracy in the World* by Peter Enns and *The New Jim Crow* by Michelle Alexander.

For leisure reading, I tend to delve into Fantasy or Sci-Fi—so classic series like *The Wheel of Time* by Robert Jordan (Yes, I did read it and *Game of Thrones* long before they made them into TV shows) and anything by Anne Bishop or Sara Douglass.

### **What’s some good work other than your own that you’ve read recently and would recommend?**

Oph . . . this feels like a foul on the play kind of question since I am currently working on editing several chapters from my dissertation to go out for review, and I feel like all I am doing is reading cool new things . . . . But recently Shane Gleason’s piece “Beyond Mere Presence: Gender Norms in Oral Arguments at the U.S. Supreme Court” and “All Eyes Are on You”: Gender, Race, and Opinion Writing on the U.S. Court of Appeals” by Laura Moyer, John Szmer, Susan Haire, and Robert Christensen have been at the top of my list.

### **What’s your workspace setup like?**

Pre-Covid, I loved to work in different coffee shops, so I pretty much had a portable setup that I rolled around with everyday that I was not on campus teaching while I was wrapping up my dissertation. My favorite coffeeshop to work in when I was in Atlanta was called “Taproom”, which in reality was a coffee bar in the morning and an actual bar in the afternoon (or, in reality, whenever you needed a drink).

Now, I have two offices: on-campus and home. My home office has a triple monitor set-up (yes, it feels a little bit futuristic), a mechanical keyboard (something about the keys clicking makes me feels extremely productive), and a bunch of framed West Wing quotes on the wall. Although, the focal point of my wall of art is a framed print of RBG with the words “Be Notorious” on it. It was drawn by one of my closest friends for my 30th birthday present. My desk also has a special basket on the corner for my two cats (Bellatrix and Boo) to sleep in, otherwise they would lay right across my keyboard. The campus

office set up is pretty similar (alas, only two monitors and sans cats), but my kitschy quirk is my bookshelf full of presidential bobbleheads and Funko-Pop Hamilton figurines that draws my students in. Between those and the big bowl of candy always on my desk, my office is a student magnet!

### **What apps, software, or tools can't you live without?**

Dropbox, Stata, Readability Studio, Calendly, and . . . Dropbox (yes, it is that essential for me). At this juncture, my entire academic life is stored in Dropbox, so it is a must have not only for myself but also collaborative purposes. While Mike did manage to mostly convert me to using L<sup>A</sup>T<sub>E</sub>X, he did not quite get me to convert to R . . . so Stata is my fall back for statistical software.

Several of my current projects rely on readability and writing techniques, so Readability Studio has been pretty essential. Calendly for managing my own schedule, but also allowing students an easier interface to block off time to meet with me virtually or in-person.

### **What do you listen to while you work?**

I have always been a huge Broadway fan. (Yes, even before Hamilton . . . although I was lucky enough to see it on Broadway with the original cast.) So generally, I have Pandora on a Broadway music channel or some sort of channel with film scores. Because it is Pandora (a.k.a organized music chaos), it has introduced me to a lot of lesser known artists and acoustic covers.

### **Favorite research and teaching hacks?**

It is not necessarily a hack, but rather a habit that I picked up during the pandemic for accountability in my research. My work wife (one of my best friends from graduate school) and I have weekly work sessions via Skype. We usually start the meeting with daily goal check in and then have a productive session of work “together” for accountability. It definitely helped ease some of the feelings of isolation during lockdown, but also helped me to keep track of my goals.

For teaching the biggest lifesaver for me was starting a pool drive of resources with members of my cohort. As new teachers being able to build a shared drive of resources for courses that we all taught like intro to American politics or research methods, was an absolute lifesaver. It also has a ton of preps for classes that while I may not teach regularly, I can dive into if needed. It is not necessarily innovative since I know many advisors share their own teaching preps to their students but being able to have it all in one place has saved a ton of time. Over the years, we were able to get many contributors to the drive, so now I have access to 30-40 different courses or course preparations. Many of us that have left (and still teach) also still regularly update content so it is not a stagnant resource for activities, assignments, and discussions relevant to what is going on in political science today.

### **How do you recharge? What do you do when you want to forget about work?**

Short term—I love to bake, well cook in general. But something about bak-

ing/cooking just makes all the stress disappear. Since I moved during the pandemic, I have not really had the time to establish the network of friends that I had in Atlanta to dump all my baked goodies on, so the local fire station and police department near my house have been inundated with batches of goodies. When I could during the pandemic, I also tried to bring up stuff to the local hospital for all of the medical workers as a “thank you.”

Long term—Visiting my mom—She lives in NYC (remember that bit about Broadway from above). Getting to visit her just seems to just recharge the batteries. Although, I can not say we actually do much R&R . . . since we are usually constantly on the go.

**What everyday thing are you better at than everyone else? What’s your secret?**

It feels like the most inane thing in the entire world, but growing up, no one in my house could ever fold a fitted sheet. I tried teaching them, but nope (looking back I realize it was likely a conspiracy and they just never wanted to learn, but still). So, all that to say, I am really good at laundry?

Also, board games. Part of our big family get-togethers always involves some sort of board game/card game championship tournament, and I am currently undefeated (9 years running) to the chagrin of all my relatives.

**What’s your biggest struggle in being a faculty member? How do you try to address it?**

Saying “No.” I have always been the type of person that was best when busy, so taking on “extra” never really felt like extra. I always found a way to justify doing it or saying “yes.” But starting my job in the pandemic really showed me the value of taking time for myself and managing my commitments. I still say “yes” more often than not, but only after careful consideration.

**What’s the best advice you ever received?**

“Don’t respond when you are hot.” It does not matter if it is an email or in person, the best advice I ever got was to wait to reply in situation that frustrates you. Give yourself time to process and breathe. Walk away and when you have had a moment then it is okay to respond. As someone who tends to be pretty sarcastic, it has definitely saved me more times than I care to admit.

**What’s the greatest idea you’ve had that you don’t want to do yourself?**

I am still an early career scholar, so no idea is off-limits . . . I guess. I have lots of ideas and hopefully lots of time to do it. Maybe this interview will even enable me to pull in a few other interesting people to work with on them . . .

**Which junior and senior persons would you like to see answer these same questions?** Junior—Abby Matthews, Kirsten Widner, or Matthew Montgomery. Senior—Mike Fix (he will hate me for this), Todd Curry, or Rebecca Reid.

## Books to Watch For

Wayne Batchis. **Throwing the Party: How the Supreme Court Puts Political Party Organizations Ahead of Voters.** Cambridge University Press, 2022. ([website](#)).

The Supreme Court's jurisprudence on political parties is rooted in an incomplete story. Parties are, like voluntary clubs, associations of individuals that are represented by a singular organization. However, as political science has long understood, they are much more than this. Parties are also the voters who choose and support their candidates, the elected officials who govern, the activists and volunteers who contribute their time and energy, and the individual and organizational donors who open their wallets. Unfortunately, the Court's framework for understanding America's two-party system has largely ignored this broader conception of political parties. The result has been a distortion of the true nature of the two-party system, and a body of deeply inconsistent and contradictory constitutional case law. From primaries to campaign finance, partisan gerrymandering to ballot access, law and politics scholar Wayne Batchis interrogates, scrutinizes, and offers a proposed solution to this problematic jurisprudence.

Susan Burgess. **LGBT Inclusion in American Life: Pop Culture, Political Imagination, and Civil Rights.** NYU Press, February 2023. ([website](#)).

How did gay people go from being characterized as dangerous perverts to military heroes and respectable parents? How did the interests of the LGBT movement and the state converge to transform mainstream political and legal norms in these areas?

Using civil rights narratives, pop culture, and critical theory, *LGBT Inclusion in American Life* tells the story of how exclusion was transformed into inclusion in US politics and society, as pop culture changed mainstream Americans thinking about "non-gay" issues, namely privacy, sex and gender norms, and family. Susan Burgess explores films such as *Casablanca*, various James Bond movies, and *Julie and Julia*, and television shows such as *thirtysomething* and *The Americans*, as well as the Broadway sensation *Hamilton*, as sources of growing popular support for LGBT rights. By drawing on popular culture as a rich source of public understanding, Burgess explains how the greater public came to accept and even support the three central pillars of LGBT freedoms in the post-World War II era: to have consensual adult sex without fear of criminal penalty, to serve openly in the military, and to marry legally. *LGBT Inclusion in American Life* argues that pop culture can help us to imagine unknown futures that lead beyond what we currently desire from contemporary politics, and in return asks now that the mainstream public has come to accept LGBT freedoms, where might the popular imagination be headed in the future?

Anthony D. Cooling. **Still a Hollow Hope: State Power and the Second Amendment.** University of Michigan Press, Forthcoming 2022. ([website](#)).

The U.S. Supreme Court increasingly matters in American political life when those across the political spectrum look at the Court for relief from policies they oppose and as another venue for advancing their own policy agendas. However, the evidence is mounting, to include this book in a big way, that courts are more of a sideshow to the culture war. While court decisions, especially Supreme Court decisions, do have importance, the decisions emanating from the Court reflect social, cultural, and political change that occurred long prior their decision ever being made.

This book tests how much political and social change has been made primarily through Gerald Rosenberg's framework from his seminal work, *The Hollow Hope: Can Courts Bring about Social Change*, but it also utilizes Daniel Elazar's Political Culture Theory to explain state level variations in political and social change. The findings indicate that while courts are not powerless institutions, reformers will not have success unless supported by the public and the elected branches, and most specifically, that preexisting state culture is a determining factor in the amount of change courts make. In short, federalism still matters.

William Clune (ed.), with contributors Lawrence Friedman, Malcolm M. Feeley, Hendrick Hartog, and Michael S. Scott. **Legal Realism to Law in Action.** Quid Pro, 2021. ([website](#)) ([preface](#)).

This is a book of papers and interviews about innovative law school courses developed by faculty of the Wisconsin Law School from 1950 to 1970 which forged a path from legal realism to law and social science. The courses were contracts, criminal justice, policing, legal history, and legal process. Legal realism emphasized the limited relevance of abstract legal rules as taught in law schools and called for greater attention to practical remedies, the impact of law on ordinary citizens, how private actors take account of law in their decisions, the growth of legal policies over time (legal history), the gap between legal outcomes and social needs (progressivism), and the importance of empirical and interdisciplinary research. The four courses were building blocks of what became a lasting culture and tradition at the Wisconsin Law School.

Malcolm Feeley and Malcolm Langford (eds.), with contributors Ragnhildur Helgadóttir, Johan Karlsson Schaffer, Esa Konttinen, Hans Petter Graver, and Mikael Rask Madsen. **The Limits of the Legal Complex: Nordic Lawyers and Political Liberalism.** Oxford University Press, 2022. ([website](#)).

Spanning two centuries and five Nordic countries, this book questions the view that political lawyers are required for the development of a liberal political regime. It combines cross-disciplinary theory and careful empirical case studies by country experts whose regional insights are brought to bear on wider global contexts.

The theory of the legal complex posits that lawyers will not simply mobilize collectively for material self-interest; instead they will organize and struggle for the limited goal of political liberalism. Constituted by a moderate state, core civil rights, and civil society freedoms, political liberalism is presented as a discrete but professionally valued good to which all lawyers can lend their support. Leading scholars claim that when one finds struggles against political repression, politics of the Legal Complex are frequently part of that struggle. One glaring omission in this research program is the Nordic region.

This insightful volume provides a comprehensive account of the history and politics of lawyers of the last 200 years in the Nordic countries: Norway, Sweden, Denmark, Finland, and Iceland. Topping most global indexes of core civil rights, these states have been found to contain few to no visible legal complexes. Where previous studies have characterized lawyers as stewards and guardians of the law that seek to preserve its semi-autonomous nature, these legal complexes have emerged in a manner that challenges the standard narrative. This book offers rational choice and structuralist explanations for why and when lawyers mobilize collectively for political liberalism. In each country analysis, authors place lawyers in nineteenth century state transformation and emerging constitutionalism, followed by expanding democracy and the welfare state, the challenge of fascism and world war, the tensions of the Cold War, and the latter-day rights revolutions. These analyses are complemented by a comprehensive comparative introduction, and a concluding reflection on how the theory of the legal complex might be recast, making *The Limits of the Legal Complex* an invaluable resource for scholars and practitioners alike.

Morgan L.W. Hazelton and Rachael K. Hinkle. **Persuading the Supreme Court: The Significance of Briefs in Judicial Decision-Making.** University Press of Kansas, September 2022. ([website](#)).

Each year the public, media, and government wait in anticipation for the Supreme Court to announce major decisions. These opinions have shaped legal policy in areas as important as healthcare, marriage, abortion, and immigration. It is not surprising that parties and outside individuals and interest groups invest an estimated \$25 million to \$50 million a year to produce roughly one thousand amicus briefs to communicate information to the justices, seeking to impact these rulings. Despite the importance of the Court and the information it receives, many questions remain unanswered regarding the production of such information and its relationship to the Court's decisions. *Persuading the Supreme Court* leverages the very written arguments submitted to the Court to shed light on both their construction and impact.

Drawing on more than 25,000 party and amicus briefs filed between 1984 and 2015 and the text of the related court opinions, as well as interviews with former Supreme Court clerks and attorneys who have prepared and filed briefs before the Supreme Court, Morgan Hazelton and Rachael Hinkle have shed light on one of the more mysterious and consequential features of Supreme Court decision-making. Using those original interviews and quantitative anal-

yses of a rich original dataset of tens of thousands of briefs, with measures built using sophisticated natural language processing tools, Hazelton and Hinkle investigate the factors that influence what information litigants and their attorneys provide to the Supreme Court and what the justices and their clerks do with that information in deciding cases that set legal policy for the entire country. *Persuading the Supreme Court* offers new evidence that the resource advantage enjoyed by some parties likely stems from both the ability of their experienced attorneys to craft excellent briefs and their reputations with the justices. The analyses also reveal that information operates differently in terms of influencing who wins and what policy is announced.

H.N. Hirsch. **Shade**. Pisgah Press, 2022. ([website](#)).

An academic murder mystery. Assistant Professor Marcus George, a young, gay Harvard faculty member striving to find his footing in the Ivy League, is drawn into investigating the murder of one of his former students, the son of an elite Massachusetts family. Centered on the tense, competitive world of academic politics, the narrative vividly captures the publish-or-perish standards of academia and the strictures of life in exclusive enclaves in Boston and Kennebunkport. As he investigates the murder, Marcus stumbles across academic and financial corruption that could ruin several lives.

Ke Li. **Marriage Unbound: State Law, Power, and Inequality in Contemporary China**. Stanford University Press, 2022. ([website](#)).

China after Mao has undergone vast transformations, including massive rural-to-urban migration, rising divorce rates, and citizens' and particularly women's greater willingness to find and use state law. Today, divorce may appear as a private concern, when in fact it is a profoundly political matter—especially in a national context where marriage was and has continued to serve as a key vehicle for nation-state building. *Marriage Unbound* focuses on the politics of divorce litigation in contemporary China, following a group of women seeking judicial remedies for conjugal grievances and disputes.

Drawing on extensive archival and ethnographic data, paired with unprecedented access to rural Chinese courtrooms, this book presents not only a stirring portrayal of how these women navigate divorce litigation, but also a uniquely in-depth account of the modern Chinese legal system. With sensitive and fluid prose, *Marriage Unbound* reveals the struggles between the powerful and the powerless on the front line of dispute management; the complex interplay between culture and the state; and insidious statecraft that far too often sacrifices women's rights and interests. In this manner, the book shows how women's legal mobilization and rights contention can forge new ground for our understanding of law, politics, and inequality in an authoritarian context.

In producing this book, I hope to contribute to two scholarly communities. The first consists of political scientists, sociologists, and China scholars whose research centers on law, legal professions, and courts in authoritarian contexts—or what is known as authoritarian legality. With this audience in

mind, I argue that the time is ripe to reorient our inquiry, steering away from a functionalist, instrumentalist approach to legality and toward a historically charged, culturalist perspective. To hammer out the alternative perspective, I commit half of the book (especially chapters 3 and 4) to exploring the complex interplay of culture and the state—the first theoretical objective motivating my research.

The other audience on my mind pertains to sociolegal researchers who consider dispute resolution their key intellectual interest. To those colleagues, my argument is set against an individualistic, behavioristic view of disputation. By constructing a power-centered framework, we can more effectively unpack the linkage between legality and inequality in politically repressive settings and perhaps elsewhere, I suggest. Accordingly, I devote the latter half of the book (chapters 5, 6, and 7) to reconceiving the notion of dispute resolution—the second theoretical objective, which completes the arc of my analysis. Together, in advancing these two theoretical objectives, in promoting a view of legality sensitive to history, culture, and power, this book forges a new path in the studies of law, legal mobilization, and rights contention in an authoritarian state.

James B. Staab. **Limits of Constraint: The Originalist Jurisprudence of Hugo Black, Antonin Scalia, and Clarence Thomas.** University Press of Kansas, July 2022. ([website](#)).

Instead of engaging in theoretical debates over originalism, *Limits of Constraint* looks at it in practice by examining the jurisprudence of Hugo Black, Antonin Scalia, and Clarence Thomas. The basic argument of the book is that originalism promises more than it can deliver. The Constitution's broad language (cases and controversies; executive power; abridging the freedom of speech; respecting an establishment of religion; a well-regulated militia, being necessary to the security of a free state; unreasonable searches and seizures; a witness against himself; the assistance of counsel; cruel and unusual punishments; due process of law; equal protection of the laws, etc.) provide considerable discretion for justices to arrive at different conclusions, and the backgrounds and political philosophies of these three justices have had a tremendous impact on how the Constitution has been interpreted.

Lydia Brashear Tiede. **Judicial Vetoes: Decision-making on Mixed Selection Constitutional Courts.** Cambridge University Press, Series on Comparative Constitutional Law and Policy, Summer 2022. ([website](#)).

How does the selection of judges influence the work they do in important constitutional courts? Does mixed judicial selection, which allows more players to choose judges, result in a court that is more independent and one that can check powerful executives and legislators? *Judicial Vetoes* asserts that a focus on the mixed selection method of choosing judges provides a more complete understanding of judicial behavior on apex courts. While the book focuses on the Chilean and Colombian constitutional courts, two influential

mixed selection courts, it develops a theory for analyzing judicial behavior on courts with similar mixed selection methods, which exist in more than half the constitutional courts in the world to date.

*Judicial Vetoes* establishes that judges' votes are highly related to the institution which selects them. Under mixed selection, judges' propensities to strike down laws vary by their selecting institution, each which chooses judges whose approach to constitutional adjudication is most in line with the selecting institution's role in policy-making. Further, the composition of the entire court under mixed selection, which fluctuates by case due to judges' turnover and quorum rules, also influences judges' voting strategies. Besides the extensive empirical analysis of judges' votes and case outcomes, the work also draws on extensive archival research into the legislative histories of these countries' constitutional reforms and elite interviews. Further, the book provides a discussion of decisions involving contentious political issues which divide these two countries. Although the results of the study are confined to Chile and Colombia, the book provides a template for studying other mixed selection courts worldwide.

## Award Winners

Congratulations to the following winners of this year's Section awards—and thank you to the committee members for their service!

**Lifetime Achievement Award:** Malcolm Feeley, University of California, Berkeley. (Committee: Larry Baum, Kimberley Fletcher, Melinda Gann Hall, Marie Provine, and Isaac Unah (chair).)

**Lasting Contribution Award:** Thomas Ginsburg, *Judicial Review in New Democracies* (Cambridge UP, 2003) and Christina Boyd, Lee Epstein, and Andrew Martin, “Untangling the Causal Effects of Sex on Judging” (*AJPS*, 2010). (Committee: Justin Crowe, Brett Curry (chair), Charles Epp, Ellen Key, and Alyx Mark.)

**C. Herman Pritchett Best Book Award:** Maria C. Escobar-Lemmon, Valerie J. Hoekstra, Alice J. Kang, and Mikki Caul Kittilson, *Reimagining the Judiciary: Women's Representation on High Courts Worldwide* (Oxford UP). and James Gibson and Michael Nelson, *Judging Inequality: State Supreme Courts and the Inequality Crisis* (Russell Sage Foundation). (Committee: Michael Dichio, Beth Henschen, Abigail Matthews, Michael Salomone, Stephan Stohler, and Kathleen Tipler (chair).)

**Teaching and Mentoring Award:** Mark Fathi Massoud, University of California, Santa Cruz. (Committee: Scott Bodderly, Carol Nackenoff (chair), Jamie Rowen, Chris Tecklenburg, Kirsten Widner.)

**Best Journal Article Award:** Alex Badas and Elizabeth Simas, “The Supreme Court as an Electoral Issue: Evidence from Three Studies” (*Political Science Research & Methods*, 2021) and Anne Boustead, “Privacy Protections

and Law Enforcement Use of Prescription Drug Monitoring Databases” (*Law & Policy*, 2021). (Committee: Miles Armaly, Christina Boyd, Pamela Corley (chair), Maureen Stobb, and Whitney Taylor.)

**Best Graduate Student Paper Award:** Rachel Schoner, “Confronting a Repressive Regime: Individual Petitions in the Human Rights Committee.” (Committee: Sonu Bedi, Tom Keck, Banks Miller, Maya Sen (chair), and Alicia Uribe-McGuire.)

**Best Conference Paper Award:** Christine Bailey, Paul M. Collins, Jr., Jesse H. Rhodes, and Douglas Rice, “The Effect of Judicial Decisions on Issue Salience and Legal Consciousness in the LGBTQ+ Community.” (Committee: Gwendoline Alphonso, Amanda Driscoll, Rachael Hinkle (chair), Jessica Schoenherr, and Allyson Yankle.)

**Service Award:** Sivaram Cheruvu, University of Texas, Dallas. (Committee: Todd Curry, Christine Harrington (chair), Virginia Hettinger, David Klein, and Eric Lomazoff.)

Congratulations also to longtime Section member Bert Kritzer, who retired in May after 48 years of university-level teaching. He was named co-winner of the Law and Society Association’s 2022 Harry J. Kalven, Jr. Prize, which is awarded annually for a body of “empirical scholarship that has contributed most effectively to the advancement of research in law and society.” He previously received the Association’s Ronald Pipkin Service Award (2015) and the Association’s Legacy Award (2019).

## Call for Submissions

*Law and Courts Newsletter* publishes articles, research notes, features, commentaries, and announcements of interest to members of APSA’s Law and Courts Section. The various substantive topics falling under the umbrella of “law & courts” are welcome, as are methodological approaches from across the discipline of political science. I am particularly interested in receiving the following types of submissions:

**Descriptions of Datasets.** Creators of publicly-available datasets potentially useful for Section members’ research or teaching may submit descriptions of their datasets. Although the datasets should be relatively new, it is acceptable for the data to have been used and described in previously published research. Submissions should describe (and link to) the dataset, give practical advice about viewing and analyzing the data, and explain how the data might be used in Section members’ research or teaching (including for undergraduate student research). Submissions describing relevant software or other tools are also encouraged.

**Research Notes.** These submissions should be approximately 2,000 words in length (a target, not a limit), and may be theory-focused or empirics-focused.

The former should present theoretical arguments relevant to law & courts literature, but need not involve concurrent empirical testing. The latter should present empirical results—including adequately powered “null results”—with only the most necessary literature review and theoretical discussion included directly. Replications and extensions are also welcome. I hope that these notes will inspire research ideas for readers, spur collaboration among Section members on projects greater in scope, and prevent duplication of effort caused by the file drawer problem (i.e., the systematic non-publication of null results).

**Reviews of Recent Developments in the Literature.** These submissions should be literature reviews of approximately 4,000 words focused on recent developments in active areas of law & courts research. A review should summarize and analyze recent developments in a line of research, and suggest open questions and opportunities for further research. Authors should aim their reviews at readers who research and teach in law & courts, but are not necessarily specialists in the area of research discussed. I seek such submissions particularly from graduate students, whose prospectuses, dissertation chapters, etc., may form the basis for such reviews. I hope that these reviews will provide Section members with a convenient means of keeping up with the literature across the law & courts field.

In addition, the *Newsletter* solicits research articles (including research about the Section), commentaries about the profession, proposals for symposia, and announcements (including of newly-published books) that are of interest to Section members.

### Instructions for Authors

Submissions are accepted on a rolling basis. Scholarly submissions will typically be reviewed by the editor and one editorial board member. Submissions and questions about possible submissions should be emailed to [lcnapsa@gmail.com](mailto:lcnapsa@gmail.com). Initial submissions should be sent in PDF format and may be written in Word (LibreOffice, etc.) or TeX. Authors should follow *APSR* formatting, as described in the *APSA Style Manual*. Submissions need not be blinded. Please avoid footnotes and endnotes unless absolutely necessary, and aim for concision. Appendices are encouraged for information that is relevant but not of primary importance. Upon publication, I ask that authors consider posting replication data and code for articles involving statistical analysis.

–Daniel Lempert, Editor

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