

# LAW, COURTS, AND JUDICIAL PROCESS

## SECTION NEWSLETTER

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The *Newsletter* publishes articles, news items, announcements, commentaries, and features of interest to members of the Law, Courts, and Judicial Process Section. The *Newsletter* is published three times each year in Fall, Spring, and Summer issues. A fourth, Winter issue, is the Section Directory and is published in February. Deadlines for submission of materials for each issue are as follows: Fall (October 15), Spring, (February 15), and Summer (June, 15). Contributions to the *Newsletter* should be sent to the appropriate editor listed below.

### Articles and Commentary

Brief articles and notes describing matters of interest to the field will be published subject to review by *Newsletter* editors. Authors are encouraged to share research findings, teaching innovations, or commentary on developments in the field which would interest members of the section. Footnote and reference style should follow that of the American Political Science Review. Please send two copies of prospective articles and commentary dealing with *constitutional law and jurisprudence* to:

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### Data and Analysis Information

The *Newsletter* wishes to keep the Section informed regarding availability of data sets of interest to the field. This includes newly archived data sets held by the Consortium as well as non-archived ones which individual researchers would like to share with colleagues. Special analysis and data problems or queries of interest to the field will also be published. Suggestions and information should be sent to:

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### ANNOUNCEMENTS, CORRESPONDENCE, AND BIBLIOGRAPHIC INFORMATION

Announcements and section news will be included in the *Newsletter* as well as information regarding upcoming and past conferences. Organizers of panels focusing on law, courts, and professional meetings are encouraged to inform the *Newsletter* so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards also will be announced if there is sufficient time for submission of materials to the granting or awarding body. Finally, authors of judicial books should inform the *Newsletter* of their manuscript's publication. Announcements and correspondence dealing with these matters should be sent to:

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# REPORT OF COMMITTEE ON THE STATUS OF THE LAW, COURTS AND JUDICIAL PROCESS ORGANIZED SECTION\*

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## I. Introduction

We were charged by Stuart Scheingold, then Chair-elect of the Section on Courts, Law and the Judicial Process of the American Political Science Association, first to explore "divisions within the section," and to determine whether there is systematic exclusion, or underrepresentation, of some groups within the Section, because of their methodological or theoretical perspectives, in such things as participation on the main APSA program or service in Association or Section leadership positions. However, our concerns were not with "fair shares" but with insuring access. Thus, we were concerned only about conflicts resulting in the exclusion or underrepresentation of good scholarship.

The second part of our charge involved the question of whether political scientists who study law and/or courts are "marginalized in the discipline." With respect to the issue of our standing in the profession, Scheingold told us of his concern over "the tendency of political science departments, including some of the leading departments in the country, to turn 'our' courses over to lawyers and to not hire and/or promote from our ranks." We were asked to "make informal soundings of disciplinary leaders to determine . . . what they believe we have to offer and what they are looking for with respect to the study of law and politics." While there is something slightly ironic about the possibility that the largest organized section of the discipline is undervalued, Scheingold's concern echoed longstanding worries among political scientists who

study law and courts and described experiences that are both pronounced and, in some cases, painful.

We met as a committee on three occasions and, in addition, we convened in several conference calls. However, most of our effort went into data gathering. We turned to documentary sources and studied patterns of participation in APSA annual meetings [see Appendix A] as well as the substantive specialties of positions advertised under "Public Law" in the *APSA Personnel Newsletter* [see Appendix B].

In addition, we interviewed political scientists within and outside the Section. Our respondents included 16 former and current officers and leaders of the Section, 3 former program chairs for the APSA annual meetings, and 29 department chairs at a mix of large, small, public, private, research and teaching institutions [see Appendix C]. These telephone interviews were conducted during winter and spring of 1990. While this hardly constitutes a rigorously devised sample, we think it is a fair one.

The committee also hosted open forums to discuss our work and to solicit opinions at the Midwest and the Law and Society meetings. We benefited from numerous informal contacts and conversations and have drawn liberally on our own knowledge and experiences. Finally, we want to express our gratitude to all of those who took the time to answer our questions and share their views with us.

## II. Divisions Within the Section

Perhaps the most striking thing that was driven home to us as we did our work is that the study of law and courts within political science is much more internally diverse now than it has been in anyone's memory.

\*We gratefully acknowledge the help and encouragement of John Brigham and Stuart Scheingold.

We do not claim that we are more diverse than other fields within political science, but diversity is central to an understanding of the present and future of the Section. It is, for all of us, a challenge and an opportunity, a challenge requiring greater tolerance and realization of our own limits as scholars and an opportunity to recognize and nurture the rich and varied ways in which the members of the Section make their contributions. We worry that the Section may have not yet fully recognized and taken up this challenge and opportunity.

The study of law and courts has a long tradition within political science. It has been, as much as any other subfield, the place in the discipline that studied and taught the arts of citizenship in a constitutional democracy. While our tradition has always been a one of diversity and vigorous dialogue, the so-called "behavioral revolution" some three decades ago added a new dimension to the study of law and courts. Those working on doctrinal issues in constitutional law were joined by other scholars with a new orientation to judicial process and behavior. Thus we are the proud inheritors and students of Corwin, Mason, McCloskey and Mendelson as well as of Pritchett, Peltason and Schubert.

More recently, our field had begun to register the impact of the humanities and social theory. It has expanded to include law and society scholarship, jurisprudence, constitutional interpretation, law, and even international law. Moreover, judicial process and judicial behavior have become more distinct from each other, as have constitutional law and constitutional theory. What once was quite comfortably called "public law" now covers more and different areas of specialty, as well as more and different theoretical orientations and methodologies, than it used to.

With this pluralism has come increasing specialization of political scientists working on law and courts. It is no longer the case, if it ever was, that one person can adequately cover the field as it is currently constructed. The literatures to which we contribute and which sustain us are too large and too far-flung to enable anyone to keep up with all of what is written about law, courts and politics. Neither we nor most of those we talked to could claim expertise in more than a small fraction of the field as a whole.

As a result, individuals develop distinctive reading, citing and problem-generation patterns that become more and more insular and more uncomprehending of what else is going on in the field. Thus some scholars read only or primarily the law reviews; others read only or primarily the *Law and Society Review* or other interdisciplinary legal stud-

ies journals; others read only or primarily political science journals. Since different sorts of work appear in these different places, and the cross-citation of work is not very pronounced, substantial segments of the field are not visible to those who have had to narrow their reading to a manageable range.

This means that we may know less about each other and each other's work than was the case a generation ago. There is less chance to develop acquaintance and the sympathetic ties of a more homogenized community. There is more room for prejudice and stereotyping. And with greater diversity there is more room for hard-edged disagreement about what is good scholarship. Our field contains devout empiricists who eschew normative inquiry as "mere political philosophy" and devout philosophers for whom the empirical is the realm of "mere facts" as well as many for whom this debate seems old-fashioned or just unproductive. All this means that occasions for crossing the various divides of our field are more important now than they have ever been, and more attention must be paid to the problem of fostering communication within the courts and law field.

In spite of our diversity and our increasing anonymity, little fractiousness was reported by the people whom we interviewed. While we differ among ourselves as to the significance of this finding, it is clear that the people we contacted did not feel excluded from the Section's resources or activities. It may be, however, that those who feel dispossessed have opted out of the Section and hence failed to appear in our interviews.

Yet some people are clearly dissatisfied — primarily younger scholars working in constitutional theory, constitutional interpretation, law and society, comparative law and jurisprudence who feel that the field has not welcomed their work. They report episodes of unfair treatment by their colleagues, occasions when individuals felt slighted not because of the merit of their work but because of professional antagonism aimed at their approach or subject matter. Dissatisfaction is not limited entirely to practitioners of "new" approaches; some of the more established styles of research and one or another of the "reigning orthodoxies" also feel pinched and not properly appreciated.

Moreover, several senior members of the Section expressed concern about the quality of recent Ph.D.s, and an occasional junior member questioned the relevance of older scholarship to post-behavioral political science. This may be the classic "Old Guard/Young Turk" division where younger members see themselves as breaking new paths while

older members see them as simply hoeing well-worked fields. Still there is a legitimate concern about the numbers of Ph.D.s being produced in the law-related field, something we discuss later.

More established scholars, as well as scholars who work in the area of judicial process and behavior, tend to report that there are no major internal battles in the field of law and courts in political science. As one of our respondents put it when asked to describe any divisions or factions within the Section, "I don't know about that. I don't think people are really fighting . . . There are more people who have diverged off a common approach, (but) I'm not sure that people are hostile to others in the Section." Whether there are tensions and divisions within the Section depends very much on whom you ask.

It is important to note that only a small number of those we contacted sensed any effort to impose a methodological orthodoxy on the Section's membership. Respondents familiar with other organized sections viewed the politics of the *Law, Courts and Judicial Process Section* as far healthier than, say, those in *Political Theory* or *Legislative Studies*. Indeed, given the size of our section, there are some reassuring signs of a high level of accommodation and mutual respect among differing camps. Most respondents recognized that there are divisions within the Section, but many viewed them as enriching rather than as disturbing evidence of factionalism.

The current state of the field nonetheless has led to a couple of problems:

**II.1: Annual meeting program.** The established organizations of the discipline (the *Law, Courts and Judicial Process Section* and the main program at the APSA meetings) have been relatively slow to adapt to "new trends" in scholarship.

People with "new" specialties or new definitions of traditional fields of inquiry (e.g. constitutional theory, constitutional interpretation, law and policy, law and society, and jurisprudence) have found it the hardest to get onto the program. Some report that they were repeatedly rebuffed in efforts to find places on the APSA program and, as a result, have gone off to form their own unaffiliated groups, e.g., the *Conference Group on Jurisprudence & Public Law* and the *Conference Group on Policy Studies and Public Law*.

Moreover, some, especially those most active in the *Law and Society Association*, no longer regularly attend meetings of the APSA or the Section. In turn, some within the Section, especially those

working on judicial process and behavior, believe that the *Law and Society Association* is not hospitable to their work. They are not members of that Association, do not attend its annual meetings, and rarely read *Law and Society Review*.

All this further exacerbates the problem of increased specialization. Scholars with diverse views on law and courts have even less chance to interact and discover each other's work, even when they are all present at the same conference. So far, this slowness to adapt by the Section and the main APSA program has not posed an insurmountable barrier for new scholars because the APSA structure of unaffiliated groups has provided a place for those with diverse interests to go. It has, however, created an atmosphere in which some feel unwelcome and worry about an absence of hospitality in the Section. These feelings and worries have been blunted somewhat in recent years as the main APSA program added temporary sections to deal with the constitutional bicentennial, the Bill of Rights, and new developments in constitutional theory.

This response along with the growth of unaffiliated groups has increased greatly the number of panels devoted to law and courts as a whole over the last decade [see Appendix A]. But the total number of panels at the APSA meetings has fallen as a result of change in APSA policy in the last several years. It is now much harder to start and maintain a substantial unaffiliated group.

In addition, it is not clear that the recent expansion of main program sections to celebrate special events will continue now that all the relevant anniversaries are over. Thus we anticipate that new voices coming into the field in the future may find it much harder to be heard as the once flexible structure of the APSA gets more rigid. We do not believe there is a crisis in the representation of our diversity at the APSA meetings, but we worry there may be a crisis in the future.

Addition and multiplication of outlets pose further challenges. A "field" in which each scholarly tendency organizes itself would be one in which the problems of anonymity and communication would multiply. As specialization increases and as specialized organizations take their place within or at the margins of the APSA the task of integration will grow.

**II.2. Journal Publication.** Some of those we interviewed report that they have received negative reviews from journal referees who seemed to be ignorant of the writer's particular part of the field.

Journal editors who are not specialists in law and courts may not have kept up with the increasing diversity and specialization of the field and so tend to send articles on law and courts to reviewers who are only nominally in the same field. Rather than return them citing lack of expertise, invited referees may be reviewing manuscripts for which they do not have sufficient background or a grasp of the current literature.

In addition, people in the field report getting reviews from others who seem hostile to their general style of work rather than to the merits of their particular argument. Hostility to style makes itself felt not only in rejections, but in referring articles to other journals. For example, scholars who work on constitutional theory or doctrine report being told when they submit their articles to political science journals that they should send them to law reviews instead. But law reviews are not refereed, and they are not read by many political scientists, so publishing there does not help someone who is beginning or pursuing a career in political science.

Legal theory scholars sometimes are told their work is "too normative" for political science journals, and are directed to the law reviews. Law and society scholars say that they have been told that their work does not fit mainstream political science journals, and judicial behavior has apparently not been welcomed by the *Law and Society Review*. People who work on legal policy and reform are directed to publish in places like *Judicature* or the *Justice System Journal*. And criminal justice has its own set of journals to which articles on criminal subjects get referred from the main political science outlets.

Thus, different publishing patterns develop, and they are patterns that do not have the same prestige (for promotion and evaluation purposes inside departments) or the same readership (either among specialists in public law or in the discipline as a whole).

Although we found relatively little overt hostility within the Section, we believe that the increasing pluralism of law and courts scholarship has taxed tolerance in some areas and has placed a large demand on scarce resources. To respond to these problems **WE RECOMMEND:**

- A. That the APSA program committee, central office section and unaffiliated groups try, at a minimum, to maintain, and under ideal circumstances to increase, the number of panels devoted to law and courts.

This is best accomplished, we believe, with the present structure of main program, sec-

tion and unaffiliated group organizers working in coordination, so that there are multiple points of entry for new voices in the field. The *Law, Courts and Judicial Process Section* should make efforts to connect with unaffiliated groups who share its law-related interest in planning its panels and other activities. In addition, panel organizers should be alert to the diversity of scholarly perspectives and approaches in the section.

- B. That the Chair of the Section encourage the APSA to keep its unaffiliated-group policy flexible enough to allow for the formation of new groups representing new points of view in this area and to choose program chairs and organizers who will recognize the diversity of concerns within our area.

We believe that it would be wise to continue the practice used in organizing the 1990 APSA Program of having at least two section organizers covering law and courts (e.g. i. constitutional law and theory and ii. judicial process and behavior, or i. law and society and ii. courts, or i. legal institutions as a process and ii. issues in legal constitutional interpretation) on the main program committee. Those people should organize panels which include scholars representing different tendencies within the field.

- C. That the Section should design mechanisms, other than the current business meeting, to bring together scholars representing different theoretical approaches or substantive interests. These mechanisms, in particular the design of panels, should serve to increase communication among people working on those theories or pursuing those interests.
- D. That the Section survey the membership to compile a precise list of areas in which members feel competent to do reviews for journals and that the Chair of the Section send this list to editors of political science journals so that they might devise more appropriate and nuanced lists of referees for their journals.

We encourage law and courts scholars to assist in this process by declining to review articles that are not in their particular areas, and to recommend names of more appropriate reviewers of articles. We also encourage editors of political science journals to be more tolerant in the styles of work they are willing to consider and to keep abreast of changes in the

law and courts field by having several law and courts scholars on journals' boards of editors.

### III. Status Within the Discipline

The status of law-related studies within political science elicited the liveliest discussion in our interviews and open forums. It was the perception of many Section members and department chairs that those who study law and courts are marginalized and suffer because of it. As one person put it, "I'm constantly struck by the fact that people in political science don't know what public law is. They think it's the study of law as a professional activity for lawyers to do or they are really not sure what we do."

Like it or not, we live in the shadow of law schools which, in the last fifty years, have claimed the authority to control entry to the legal profession and to define what counts as scholarship about law and courts. This latter claim is, of course, contested each and every day by the work that we do. Nevertheless, many of the people with whom we spoke believe that we are undervalued and therefore under-rewarded in terms of our share of the discipline's print (journal space), cash (funding), and power (faculty and leadership positions).

The picture is not, however, totally bleak. A few of those we interviewed believe law and courts scholarship to be important and impressive. They praise us for the kinds of questions we ask, the rigor with which we ask them and our individual successes as scholars. Yet, in the end, these voices are in the clear minority, and we are left with a concern about the visibility and status of law and courts as a field within political science.

**III. 1. The Demographics of the Law and Court Field.** One indication of our status is the paucity of slots for law and courts scholars at leading research universities.

Although it is common to have several comparativists and international relation specialists in one department, most universities employ only one or two faculty to teach about law and courts. At a few of the major departments (e.g. Chicago, Columbia, Yale) one of those people is shared with the law school. Some departments have three people to cover the field, but hardly anyone has more than that. Though some departments are expanding their law and courts staff, this is *not* a general practice. Indeed, if there was a trend revealed in our interview data, it was a trend toward contraction/non-replacement; more departments reported that when a law and courts specialist retired or left,

they did not replace in the field at all, producing a net decrease in the number of public law positions available.

It may be that as the breadth and range of scholarship produced by this specialty is increasing, the number of dedicated law and courts positions in departments across the country is declining. One result of this contraction is that few graduate programs train students in all aspects of the field. As a further result, young people with law and courts specialties going on the job market increasingly are squeezed into slots where a specialty in one particular area of law and courts may be a disadvantage. When departments do hire law and courts specialists, they generally want someone broadly trained to cover the whole field, something many beginning teachers are not prepared to do.

A few departments that recently have searched to hire in the field report they would get for positions in other fields. Searches in other departments have been carried over for multiple years, sometimes without success in locating someone who fits the department's needs.

Moreover, the basic "demographics" of our field indicate there are few departments in which scholarship in law and courts is accorded the status of a separate field with staffing equivalent to other fields. That a department chair at a "top ten" research university would tell us, without embarrassment, that there was no senior person who did public law at his institution and that his department is not anxious about this indicates something important about our relative standing in the discipline.

**III. 2. Service Teaching and Professional Invisibility.** Law-related studies were widely parodied as an "old-fashioned" component of undergraduate programs, a useful generator of resources for departments but not at the cutting edge of scholarship.

Indeed enrollments in law-related undergraduate courses are increasing while overall enrollments in liberal arts seem to be in decline (John Paul Ryan, "Law, Liberal Education and the Undergraduate Curriculum *Legal Studies Forum*, 10: 29-51, at 39 [1986]). Despite, or perhaps because of, these contributions to the undergraduate program, several department chairs saw law-related studies as a relatively unimportant part of the graduate program.

Many departments have small or no graduate level programs in law and courts, offering only an occasional graduate course in the specialty. Nor is

"public law" or "law and politics" a popular preliminary field at most of the institutions we contacted. Relatively few graduate students are attracted to it though placement opportunities for Ph.D.s in law and courts are not particularly limited. A vicious circle may be at work here: the lack of strong programs at many of the best universities may diminish not only the status of our specialty but result in poorly trained Ph.D.s, further weakening the discipline's regard for our field.

Perhaps because of the demand for our services as teachers of law to undergraduates, the work of law and courts specialists was perceived by many to be either a species of an old institutionalism, too closely mimicking law schools, or as a component of the American field, itself increasingly isolated as the discipline becomes more explicitly transnational in its focus. One frequent complaint was that we entertain students by aping the Socratic form in constitutional law courses. Students may find that puzzling out judicial inconsistencies to be fun, but it makes constitutional law specialists and others who teach law-related courses appear to be "lawyers two places removed."

Law is perceived as an undergraduate "service" teaching field rather than as a graduate field of specialty. Courses on law and courts — from constitutional law to legal process to criminal justice to international law — fill up, spill over and still have great demand almost everywhere.

That means that most faculty in this area spend a great deal of their time in undergraduate teaching, keeping up the enrollments of the department in places where enrollments matter a great deal. They may also spend a disproportionate share of their time, compared with other political science faculty, in undergraduate advising. At many colleges and universities the pre-law majors are concentrated in political science with a political science faculty member serving as the college's prelaw advisor. Were it not for the large undergraduate enrollments in the field, many departments might consider dropping law altogether.

Regrettably, those faculty who teach lots of undergraduates and do it well are often stigmatized as "not being serious scholars" or "not being interested in training professional political scientists."

In addition, there is a "gender overlay" to all of this. Measured by participation in panels at the APSA annual meeting, the law and courts field has more women than any other specialty, apart from political theory, in political science (see Martin Gruberg, "Participation by Women in the 1989 APSA Meeting," *PS*, 904-905 [1989]). Some of the

relatively low status of law and courts as a subfield may be a result of this concentration of work in teaching and the concentration of women in the field and the not-so-incidental connection between the two.

Because many law and courts faculty face heavy undergraduate teaching demands, they may be somewhat less likely to keep up a high-visibility publishing career. Some law and courts scholars believe that, because so much of their time is spent in undergraduate teaching, assistant professors in our field may have a somewhat harder time getting tenure than assistant professors in other fields. If, in any department, several junior faculty in a row hit this barrier, it may lead to perceptions that our field has less than its share of high-powered, highly motivated scholars. This adds to the problems of prestige of the law and courts field.

Few of the nonspecialists interviewed could name more than a handful of law and courts scholars, and many could not name any "classic books" in the field. This may reflect a general balkanization of political science, but it also is probably a function of the publishing patterns in law where law and courts scholars publish in places not visible to political scientists who are nonspecialists. This lack of visibility may be due in part to the extra demands on the time of law and courts scholars as undergraduate teachers and a corresponding diminished productivity.

Our apparent lack of centrality to the discipline may be associated with other factors as well. Many of the intellectual leaders in our Section are not at the "best" (highly ranked) schools. This may hurt us within the APSA when major offices and positions in the discipline are filled. Moreover, law-related studies may not connect easily with what is going on in the rest of the profession. Several interviewees mentioned the lack of a strong comparative law focus in our field, denying linkage with the growing comparative politics field. Others mentioned that the normative and policy focus of much of our scholarship makes us appear too "soft" to others in the discipline and therefore irrelevant to their agendas.

One concern voiced by several Section members was the issue of JDs teaching public law classes. If we are doing "law," do others political scientists think it can be done better by the most expert lawdoers, the lawyers? Some departments have indeed relinquished their law-related courses either to adjunct professors from the law schools or to JDs. A 1985 report published in the *Law, Courts and Judicial Process Section Newsletter* (John Paul Ryan,

"Teaching About Law in the Undergraduate Curriculum: The Contribution of Political Science," Summer 1985, pages unknown) found that fifteen percent of the responding political scientists who teach law-related courses hold the JD. However, most also hold a Ph.D. or a MA. This is reflected in our interviews with department chairs. "Pure" JDs are a rarity; most of those who teach about law and courts are Ph.D.s, while most of the rest are Ph.D./JDs.

While there does not seem to be a general trend toward hiring local lawyers to fill law positions, some schools make it a practice to cover undergraduate courses on law and courts by hiring a political scientist for whom law and courts was a second or third field. The two most common fields of general training among such faculty are American politics and political theory. While almost all departments need to keep offering courses for the large undergraduate enrollments in law-related subjects, some departments do not believe that a specialist in the field is necessary to cover those courses.

Interestingly, others, especially Section members, fault our interdisciplinary character for the problems of visibility or prestige. Given the nature of interdisciplinary scholarship, some of our best work is not read by other political scientists. Symptomatic of this is the low visibility of the leading law-related journals. The *Law and Society Review* is the best known of these, but less than a third of the political scientists polled in a 1989 study were familiar with it (Michael W. Giles, Francie Mizell, and David Patterson, "Political Scientists' Journal Evaluations Revisited," *PS*, 22: 613-617, at 614 [September 1989]). The *Review* stood 26th in the ranking of the discipline's best journals, well below those servicing other political science fields such as *World Politics* (ranked number 1), *Comparative Politics* (10th), *Administrative Studies Quarterly* (12th), and *Political Theory* (16th). Only two other law-related journals were listed, with both *Law and Policy* (ranked 42nd) and *Judicature* (46th) recognized by less than 20% of our colleagues.

Whatever the causes, law-related studies are not perceived as a highly valued specialty in all but a handful of the top twenty research universities in our sample. However, interviews with department chairs at smaller liberal arts colleges and at "less prestigious" universities reveal that, in those places, our field is more highly valued. This may be because law-related teaching, with its ties to the larger American field and to political theory, is a

particular asset in a liberal arts setting. While our subject provides the multidisciplinary training valued by some, such breadth may be perceived as a liability by colleagues in more specialized, research-oriented settings.

**III.3. Graduate Training and the Next Generation.** Although not directly a prestige and status issue, the question of graduate training and the future of law and courts scholarship emerged repeatedly in the interviews we conducted.

We were told that at most schools ours is a very small field for primary graduate study, producing relatively few Ph.D.s per year compared with other fields. And, as mentioned above, most graduate programs are trying to cover an increasingly pluralistic field with a very small number of faculty. A wide range of people worry that the law and courts field is not reproducing itself. There simply are not enough students going into the field to maintain current levels of departmental staffing over the long haul.

We also heard mixed reports about the quality and training of graduate students in law and courts. Students who do go into this field are perceived by many departments to be as good if not better than graduate students in other specialties. But these students, when they go on the job market, are seen to be lacking the "right sort of training."

While what counts as the "right sort of training" varies, there is general agreement that students of law and courts need to know the scientific scholarship in the rest of the discipline so that they can apply those methods to the study of law. A basic understanding of quantitative methods (or at least rigorous qualitative empirical methods) seems important here, and several departments that have hired recently reported a lack of well-trained *political scientists* in the law field. (These are departments that do not want to hire law professors or straight political theorists in law positions; they are looking for something recognizable as political science, which they find in short supply among law and courts scholars.)

But knowledge of basic political science methods is not enough for students of law and courts. We are also supposed to know enough about doctrine to keep ourselves from saying embarrassing things in front of lawyers and to be able to teach the basic constitutional law courses. So doctrinal analysis is another method that must be mastered for the properly trained student.

In addition to quantitative, scientific and doctrinal methods, applicants on the job market are

being asked to demonstrate theoretical sophistication by placing their work in a broader perspective. Some think that law and courts students often do not know how to link their specific problems to a more general agenda in the study of politics and that they are narrow specialists. This results in a perception that we are unable to talk with other political scientists about common (i.e. mainstream political science) interests.

All of this suggests that a great deal is being asked of graduate students specializing in law and courts as they enter the job market. They are expected to have the full training of a political scientist, *plus* a good deal of training in legal analysis. In some places, they are also being asked to have a stronger background in political theory or jurisprudence as well. Yet, while all of this is being demanded, many graduate programs generally do not offer law and courts as a separate field of specialty. Most graduate departments offer public law as just one specialty in a general American politics prelim field, though there are some departments that offer public law as a separate preliminary examination field.

**III. B. A Brief Note on the Consequences of Internal Diversity.** It is, of course, quite difficult to separate the "domestic politics" of the Section of its members from its "foreign relations." Diversity and pluralism when they turn into divisiveness and factionalism weaken all law and courts scholars. To the extent that we criticize each other's work in stereotypical ways, we reinforce the perception, however limited or widespread it might be, that the study of law and courts is secondary or peripheral to the discipline as a whole. We weaken the claim to prominence that we should make, a claim grounded in our rich traditions and in the liveliness of our current scholarship.

What can be done about all of this? While we are probably not going to change enrollment patterns or get nonspecialists to read much law and courts scholarship, **WE RECOMMEND:**

A. That the Section engage in a campaign to encourage nonspecialist colleagues to recognize the diversity and vitality of law and courts as a field and to see how the field's activities and concerns differ from those of legal professionals. This can be done by:

- i. publishing an abbreviated version of this report in *PS*,
- ii. the Chair of the Section distributing a copy of this report to all members of the Section

and to all chairs of graduate departments,

- iii. encouraging law and courts specialists to write for and report their activities in *PS*, and working with journal editors to help them recognize and encourage publication of a diversity of scholarship styles.

B. That the Section seek ways to encourage more graduate students to go into law and courts as a specialty by:

- i. working through members of the Section to encourage more undergraduate students to consider a Ph.D. in public law within political science as an alternative to law school,
- ii. working with the programs in Political Science and Law and Social Science at the National Science Foundation, the American Bar Association's Undergraduate Education Program and other sources to support undergraduate and graduate students, including fellowships designated for graduate students specializing in law and courts in Ph.D. programs,
- iii. developing a program to encourage and support graduate students at the national meetings. This should include not only the current prize structure, but also specially organized teaching and research workshops like those currently run in conjunction with the Law and Society meetings.

C. We need to make an effort to insure representation on the governing councils and committees of the APSA. There is some perception that we do not have as large a share of the leadership positions in the APSA as would be expected given our membership size. All this may mean that the leadership of our Section must assume greater responsibility to communicate our concerns and strengths to the larger discipline. If the law and courts field deserves its status as an autonomous research specialty, it must earn it by making known its contributions to the political science community.

#### IV. Conclusion

Though the study of law, courts and the judicial process may not be as visible or valued within political science as one would like, it is, in our view,

unusually healthy and strong.

Our field is filled with exciting developments and important theoretical debates. We are illustrating the connections between law, courts and politics with increased confidence and sophistication; we are showing how law finds its way into policy debate, political movements and everyday life; we are locating courts and judicial processes in new theories of institutions and institutionalism; and we are connecting our concerns in rich and nuanced ways to important concerns in political and social theory.

In the world at large law and courts are increasingly important. Here in the United States, political battles are fought, if not actually in court, with lawyers and legal rhetoric on all sides. Developing democracies are most eager to borrow not American politics, but American constitutionalism. Law is a form of practical political theory where old ideologies and theories seem, at least for the moment, out of place. World events are increasingly making it evident that law is not just a part of American politics, but as Clifford Geertz puts it, "a distinctive way of imagining the real" in every culture. Interest in, and concern about, the rule of law is growing in some unexpected places, and, as that interest and concern grows, the politics of law needs to be better understood and the rule of law needs careful study, understanding and critique.

It would, of course, not be a good idea to leave these tasks to the law schools. Most law schools are not scholarly departments, and law professors usually are not trained as scholars. If there is to be a disciplinary home for the study of law and politics, it will be in the future, as it has been in the past, in political science departments as well as a few interdisciplinary programs. Toward that end, we might encourage departments to think about building up their offerings in law and courts. One or two people in this area may not be enough to cover the whole field of law as it relates to politics.

In addition, new methodologies and new theoretical approaches require that our students be broadly educated within the field of law and courts. Ours is a field as vibrant and important as any other, and it should be recognized as such. We need to recognize and welcome our diversity while finding new ways to engage with each other in the sharp dialogue and mutual support that marks a lively scholarly community. Yet we cannot be isolated from the rest of our discipline; to do so would only compound the problems of visibility and prestige as well as do a disservice to those who would be deprived of our collegiality. We should demand the best of two different worlds — recognition as a separate field and integration with important tra-

ditions in the study of politics as a whole.

How to articulate this vision is beyond the scope of this committee. Yet the time seems right for such an effort. Thus, in the grand committee tradition, some of us believe that the chair of the Section should establish a committee to study the future of law and courts scholarship within political science with a special emphasis on the problems and promises of graduate education.

This committee might pay special attention to 1) the desirability of making law and courts a separate field for purposes of graduate education, 2) the way scholarship and training in our field should be related to the study of American politics, comparative politics, political theory and international relations, 3) the development of several alternative models of graduate education and 4) the development of several suggested reading lists or alternative "canons" for the education of graduate students.

## **Appendix A**

### **Study of Law and Courts Panels at APSA Meetings**

There has been tremendous growth in the number of panels devoted to law and courts on both the regular program and in the unaffiliated part of the program. For example, when Stuart Scheingold organized the law and courts panels in 1980 — before the rise of unaffiliated groups or sections — he had only eight panels on which to place participants. In effect he could find a place for only about forty-eight persons. The next year, 1981, Philippa Strum had eleven panels at her disposal; and, in 1982, Beverly Cook had only nine. Especially in the early years of the decade, we found little in the way of public law in other parts of the program.

The explosion of panels began in the 1983 program. That year, Wally Miles had eleven panels for the APSA; but the Center for the Study of the Constitution — an unaffiliated group — had eleven panels. Charles Johnson, for the organized section, co-sponsored four panels with Wally Miles. The theme for the 1987 meeting was constitutionalism, and as a group we benefitted tremendously from this emphasis: some seventy-eight panels focused one way or another on topics of interest to people in our section. Even in 1989, which we would venture is more representative of the current situation, there were about thirty-nine panels touching on public law as a subject. So, over the decade, the number of opportunities for people in public law to participate in one way or another on the official and unofficial programs has increased by leaps and bounds.

To gain some sense of differences in the shape of the program over time, we coded the panels on the program into five separate categories: policy, constitutional law/doctrine, judicial process, law and society, and jurisprudence. Under the category of jurisprudence we classified papers on the philosophy of law, interpretive methods — the sorts of things that pop up in the Conference Group on Jurisprudence and Public Law and often in political theory. Under law and society we placed panels on disputes, police, criminal courts, civil justice, and the like. For judicial process, we included panels on voting, appellate courts and decision-making, and general empirical studies of process. Constitutional law doctrine, as the name suggests, included appeals focused on doctrine, whether constitutional or not.

Finally, under policy, we put panels in which the dominant theme was the role of courts and law in the policy process or the analysis of judicial policies. Many of the panels could well fall into two or more categories. We tried to make the best guess about the main theme of the panel.

The patterns of change over time suggest why several different parts of the law and courts community have become dissatisfied at one time or another. We will take up and comment upon the programs year by year.

In 1980, Stuart Scheingold fielded a program with a substantial emphasis on law and society — four of the eight panels touched on that set of concerns. (These panels included Legal Activity as Political Participation, Human Rights in Comparative Perspective, Politics of Criminal Process, and Policy Capabilities of Legal Institutions.) In only one of the panels did judicial process figure as the main theme. Many of the names you would expect to find were not on the program. There was nothing in the field of jurisprudence, although one panel was a close call.

In 1981, Philippa Strum put together the APSA Program; and, this time, constitutional law dominated the program. By our count, seven of the eleven panels dealt with some aspect of constitutional law or doctrine. It was an extremely traditional program, reminiscent of the 1950s and perhaps 1940s. Just as in 1980, jurisprudence did not figure at all on the program. Two of the panels dealt with the judicial process; one, law and society; and one, policy. For the first time, the program mentioned the organized section on law, courts, and judicial process. Stephen Wasby convened a business meeting of the section.

The emphasis shifted in 1982, as Beverly Cook

organized the panels. Unlike Stuart, she selected six panels on judicial process, and none on law and society. Policy and constitutional law people did not, by and large, figure in the program. Once again, the organized section on Law, Courts, and Judicial Process held a business meeting, convened by Paul Weber of the University of Louisville, but it put on no panels. There were six panels elsewhere on the program of interest to scholars of public law. The Center for the Study of Judicial Power held two panels.

Larry Baum chaired the APSA program in public law in 1983 and put on nine panels. In five of these panels judicial process constituted the dominant theme; in one each, policy and constitutional law; and in two law and society. None of the panels dealt with jurisprudence in any manner. Four panels elsewhere on the program focused on public law; and the Center for the Study of Judicial Power expanded to four panels. For the first time, the Center for the Study of the Constitution, also a conservative organization, sponsored panels — six in number. Many of the same people participated in the panels given by this pair of conservative operations, and it would be interesting to know why the two took separate paths. Karen O'Connor chaired a business meeting of the organized section on law, courts, and judicial process; but, again, it produced no panels.

E. Wally Mills of San Diego State ran eleven panels in public law for the APSA in 1984. For the first time, the organized section in Law, Courts, and Judicial Process co-sponsored four panels; it is impossible to determine whether the section had its own set of panels or whether it simply signed onto the existing set of panels. Of the panels Wally Miles put forth, two were on policy, two on constitutional law, four on judicial process, two on law and society, and one on jurisprudence. Charles Johnson co-sponsored two panels on policy, one on judicial process and one on law and society. The Center for the Study of the Constitution expanded from six to eleven panels. In other words, then, an unaffiliated group had as many panels as the entirety of law and courts people in the rest of the association.

In 1985, for the first time, the organized section sponsored its own set of panels. William Daniels of Union College had nine panels for the APSA — one on policy, three on constitutional law, four on judicial process, and one on law and society. Burt Atkins for the organized section put on four panels, all of them on judicial process. The Center for the Study of the Constitution expanded by one panel to a total of twelve. Four panels for interest to public

law people appeared elsewhere on the program.

The number of panels began to increase considerably in 1986. Harold Spaeth, who did the panels of APSA, sponsored ten panels, two of which were on constitutional law, two on judicial process, and one on law and society. The Center for the Study of the Constitution sponsored eight panels, down somewhat from the previous year. This is the first year of the Conference Group on Jurisprudence and Public Law; it put on nine panels, five of which it co-sponsored. These dealt with policy, constitutional law, and jurisprudence.

The convention of 1987 featured constitutionalism as its theme. Law in its various incarnations was all over the program. For example, in miscellaneous parts of the program, we found twenty-two panels of interest to public law people. The Center for the Study of the Constitution luxuriated in nineteen panels! Samuel Krislov, who ran the program for APSA, and Larry Baum, who did the panels for the organized section, co-sponsored a number of panels. Krislov sponsored or co-sponsored fourteen panels; Baum, nine panels. For the APSA, Krislov put on panels on policy (1), constitutional law (7), judicial process (2), and jurisprudence (4). Several of the panels on jurisprudence, were co-sponsored with the Conference Group on Jurisprudence and the Public Law. For the organized section, Baum sponsored or co-sponsored three on constitutional law, four on judicial process, and one on jurisprudence.

The Conference Group on Jurisprudence and Public Law had fourteen panels, three of which it co-sponsored with others. The official and unofficial programs of 1987 are striking in the extent to which they represent diverse interests within the association. Nevertheless, we saw only one panel we would classify under the rubric of law and society, and it fell within other parts of the program.

Shep Melnick organized the APSA panels in 1988; he had nine at his disposal. Of these, three focused on policy, three on constitutional law, and two on judicial process. Marie Provine ran the panels for the organized section (nine, only one of which was co-sponsored with the APSA): three on constitutional law, four on judicial process, one on law and society, and three on jurisprudence. The Center for the Study of the Constitution put on nine panels. The Conference Group on Jurisprudence and Public Law sponsored or co-sponsored nine panels. Once again, the concerns of law and society people did not receive much attention anywhere on the program.

Last year, 1989, was the year of the great experi-

ment in combining the organized section and the APSA panels. Karen O'Connor organized the panels — fourteen in number: three on policy, six on judicial process, two on law and society, and three on jurisprudence. The Bill of Rights figured in seven other panels — one on policy, four on constitutional law, and two on judicial process. The Conference Group on Jurisprudence and Public Law had seven panels; the Center for the Study of the Constitution, five. For the first time, we see the Conference Group on Policy Studies and Public Law; it sponsored three panels.

## Appendix B

### Survey of "Public Law" Jobs Advertised in APSA Personnel Newsletter

What follows is a count of jobs listed under "Public Law" in the APSA Personnel Newsletters for October 1985-1989. Jobs were classified by their "major emphasis."

	1985	1986	1987	1988	1989
Law and Society	1	0	0	0	1
Judicial Process	3	4	3	4	3
Jurisprudence/legal theory	1	0	0	1	1
Constitutional law/judicial process	3	3	3	1	2
Constitutional Law	0	4	4	2	2
Criminal Justice	0	4	3	2	1
Unspecified or all inclusive	4	3	4	5	3
<b>TOTAL</b>	<b>12</b>	<b>18</b>	<b>17</b>	<b>15</b>	<b>14</b>

## Appendix C

### List of Persons Interviewed

#### Department Chairs:

**Michael Aronoff**, Rutgers, Department of Political Science

**Theodore Arrington**, University of North Carolina - Charlotte, Department of Political Science

**Burton Atkins**, Florida State, Department of Political Science  
**Wallace Caldwell**, University of Pacific, Political Science Department  
**Bradley Canon**, University of Kentucky, Department of Political Science  
**William Connor**, Boston University, Department of Political Science  
**Peter Eisinger**, University Wisconsin - Madison, Department of Political Science  
**Margery Elfin**, Hood College, Department of History and Political Science  
**James Foster**, George Fox College, Social Science Department (holds a Ph.D. in Psychology)  
**J. David Gillespie**, Presbyterian College - South Carolina, Department of Political Science  
**Fred Greenstein**, Princeton University, Department of Political Science  
**William Hall**, Bradley University, Department of Political Science  
**Alan Hammock**, West Virginia University, Department of Political Science  
**Robert Keohane**, Harvard, Department of Government  
**Gerald Kerns**, University of Nebraska, Department of Political Science  
**Stuart Koch**, Trenton State College, Department of Political Science  
**Douglas Madsen**, University of Iowa, Department of Political Science  
**David Mayhew**, Yale University, Department of Political Science  
**John Mearsheimer**, University of Chicago, Department of Political Science  
**Robert Miewald**, University of Nebraska, Department of Political Science  
**Austin Ranney**, University of California, Berkeley, Political Science Department  
**Thomas Reilly**, Trinity College-Hartford, Department of Political Science  
**Cedric Robinson**, University of California - Santa Barbara, Department of Political Science  
**Joseph Rothschild**, Columbia University, Department of Political Science  
**Robert Salisbury**, Washington University at St. Louis, Political Science Department  
**Ira Strauber**, Grinnell College, Department of Political Science  
**Howard Tolley** (Acting Head), University of Cincinnati, Department of Political Science

**Oliver Williams**, University of Pennsylvania, Political Science Department  
**Frank Wilson**, Purdue, Department of Political Science

**Section Leaders** (all but one of these people served in some official capacity during the period 1983-1990):

**Burton Atkins**, Chair, 1984-1985, Florida State  
**Lawrence Baum**, Executive Committee, 1983-1985, Chair, 1986-1987, Ohio State  
**Beverly Blair Cook**, Executive Committee, 1983-1984, Wisconsin-Milwaukee  
**Bradley Canon**, Chair, 1985-1986, Kentucky  
**Lief Carter**, Executive Committee, 1984-1986, Georgia  
**Lee Epstein**, Southern Methodist University  
**Victor Eugene Flango**, Secretary-Treasurer, 1986-1990, National Center for State Courts  
**Sheldon Goldman**, Executive Committee, 1983-1985, University of Massachusetts  
**Joel Grossman**, Executive Committee, 1984-1986, University of Wisconsin-Madison  
**Christine Harrington**, Executive Committee, 1987-1989, New York University  
**Charles Johnson**, Section Chair, 1983-1984, Texas A&M University  
**Charles Lamb**, Executive Committee, 1984-1986, SUNY-Buffalo  
**Susan Olson**, Executive Committee, 1986-1987, Utah  
**D. Marie Provine**, Chair, 1987-1988, Syracuse  
**Susette Talarico**, Secretary-Treasurer, 1983-1986, University of Georgia  
**G. Alan Tarr**, Executive Committee, 1985-1987, Rutgers-Camden

**APSA Program Organizer for Law and Courts:**

**Shep Melnick**, Brandeis  
**Samuel Krislov**, Minnesota  
**Harold Spaeth**, Michigan State

**Editor's Note:** The importance of this Report to our Section is self-evident. Reactions and comments are strongly encouraged. If interest is strong enough, correspondence regarding the Report will be published in future issues of the *Newsletter*.

## SECTION NEWS

### LETTER FROM THE SECTION CHAIR

Greetings colleagues. Let me begin my term, and the first newsletter under Roy Flemming, on a note of thanks. That will be two notes, actually.

The first to Will McLauchlin of Purdue who edited the Newsletter for nearly half of the last decade. The work he put into the *Newsletter* was well hidden beneath the professional production that greeted us over those years. During his tenure, Will developed a system of co-editors. This arrangement contributed significantly to the variety and depth in the ideas that have become part of the Section's life. Though more diverse than ever we are still together in part because of his efforts at keeping us communicating.

The second expression of thanks goes to Stuart Scheingold who spent a good part of last year on the phone getting the Section engaged with fine work on the program, making us more solvent with his budgetary maneuvers, and more self-conscious by forming a committee to look us over. The committee appointed by Stuart and consisting of Austin Sarat, Greg Caldeira, Kim Scheppelle, and Timothy O'Neill did an exceptional job of surveying the field and sponsoring open discussions throughout the year. We are publishing their report in this issue of the *Newsletter*. In the spirit of Stuart's term, I hope to keep alive the issues he and the committee raised.

My time this year will be split between organizing the program, doing the other things the APSA looks to the Section for (like identifying pictures of colleagues for *PS*), and managing those considerable responsibilities that we have taken on ourselves. We were terrifically successful with the graduate student awards last year as Ron Kahn generated more interest in this activity than many of us thought possible. (And, I thought it was generous of us to welcome Bruce Ackerman to our meeting.) Ron will assist Larry Baum and Susan Lawrence in handling graduate student awards for 1991. Next year we will add the Pritchett Award for the best book by a political scientist working in the field of "Law, Courts, and Judicial Process" in the last two years. Professor Pritchett has agreed to give the first award and I am looking forward to this event.

For the *Newsletter*, let me wish you a productive year through a vehicle which has a distinguished tradition in Texas, having spent some of its formative years at A&M.

**John Brigham**  
Section Chair

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### AWARD FOR OUTSTANDING GRADUATE STUDENT RESEARCH PAPER

At its business meeting on August 31, in San Francisco, the Organized Section on Law, Courts, and Judicial Process of the American Political Science Association named **Andrew Koppelman**, Yale University, as the 1990 recipient of its Award for the Outstanding Graduate Student Research Paper, for "Forced Labor: A Thirteenth Amendment Defense of Abortion." The project was directed by Professor Bruce Ackerman, Yale University Department of Political Science.

Honorable Mention Certificate awardees included: Janet Blasecki, University of Delaware, for "In Search of Justice Powell: Moderate, Pivotal, or Conservative Justice on the Court?"; Jonathan Stein, Yale University, for "The Public-Private Distinction as Mobius Strip: An Historical Examination of

Shelley v. Kraemer Bearing on the Limits of Liberal Neutrality," and Bill Swinford, The Ohio State University, for "Similar Issues and Differing Outcomes in State Supreme Courts: The Case of School Financing." These projects were directed by Professors James Magee, University of Delaware, Rogers Smith, Yale University, and Lawrence Baum, The Ohio State University, respectively.

Professor Ronald Kahn, Oberlin College, Chair of the Selection Committee, presented the awards and noted the high level of originality and rigor in the papers it received this year, as well as the diversity in the forms of inquiry used to study law, courts, and judicial process. Kristin Bumiller, Amherst College, and Jeffrey Segal, SUNY-Stony Brook were members of the selection committee.

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## EDITOR'S NOTE

The Executive Committee at its business meeting named me as the new editor of the Section's *Newsletter*. I assumed the editorship with this issue.

As the Section's clearinghouse for information about the activities and views of its members, the *Newsletter* depends entirely on members to give it substance and life. I strongly encourage all members to view their *Newsletter* as a means for reaching out and communicating with others.

You can reach me in various ways, as shown below. I invite your comments and advice.

**Roy Flemming**

Department of Political Science

Texas A&M University

College Station, TX 77843-4348

FAX: (409) 847-8924; TEL: (409) 845-5623

Bitnet: E339RF TAMUM1

As the new editor, I extend my hearty thanks to Will McLauchlin for his yeoman service in putting together the *Newsletter* over the past few years. I am sorry to announce, however, that after several years of helping Will, Charles Lamb and Elliot Slotnick expressed their wish to be relieved of their editorial burdens. Their help and experience will be sorely missed. The Section owes Will, Charles, and Elliot a considerable debt for their conscientious labors.

At this juncture, I felt that in addition to new associate editors some changes in the *Newsletter's* editorial arrangements might prove useful. Professors Ronald Kahn and Albert Matheny volunteered to serve as new associate editors. Then, in order to reflect the Section's diversity and to encourage more involvement by its members, I revamped the editorial assignments. Ron will be responsible for articles and commentary about constitutional law and theory. Albert will handle empirical pieces focusing on judicial politics and law and society. Professor Wayne McIntosh continues on as associate editor for data and analysis information. Convention and bibliographic information, which previously was sent to Charles Lamb, should now be forwarded to me in addition to announcements and correspondence.

You will find further information about these changes and on how to reach the editors in the "Instruction to Contributors."

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## THE LAW AND POLITICS BOOK REVIEW

The Section is launching a new book review journal, *The Law and Politics Book Review*. The inauguration of the *Review* is prompted by the inability of the *American Political Science Review* to review more than a small fraction of books focusing on law and politics, its failure to publish critical reviews of substance, and the lengthy delay between the publication of a book and the appearance of a review (if any review at all is published).

By contrast, we have designed *The Law and Politics Book Review* to be as comprehensive as possible, to publish reviews ranging between 800 and 2,000 words, to permit occasional multiple reviews of a book from competing perspectives, and to publish a book's review within six months of our receipt of the book. All this will be possible because the medium of publication will be an electronic bulletin board. You will be able to download the reviews (or have your library do so) onto your own computers. There will be no connect charge. List-

ings of current reviews will be available both on-line and in the quarterly *Newsletter* of the Section. We expect the first reviews to be available in March or April 1991.

Publishers and authors will receive a hard copy off-print of the review of their book. Reviews will remain on-line for approximately one year; thereafter, they will be archived either in hard copy or in electronic form and available upon request.

Herbert Jacob will serve as initial editor. The editorial board consists of Gayle Binion, Lawrence Baum, James Eisenstein, Ronald C. Kahn, Donald Kommers, Karen O'Connor, and Kim Lane Scheppele.

More details will come in later issues of this *Newsletter*. If you are interested in writing reviews or have any suggestions about this project, please write the editor, **Herbert Jacob**, Department of Political Science, Northwestern University, Evanston, IL 60208.

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**SECTION OFFICERS  
LAW, COURTS, AND JUDICIAL PROCESS**

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***Spring:***

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Chico, CA 95927

**Secretary-Treasurer**

**JEFF SEGAL**  
Political Science  
SUNY-Stony Brook  
Stony Brook, NY 11794-4392

## MINUTES OF EXECUTIVE BUSINESS MEETING

The following are the minutes of the Executive Committee's Business Meeting of September 1, 1990 in San Francisco.

**Financial Business:** The Section's financial status was discussed. An attempt will be made to recover an additional \$1 in dues per member from the APSA. The Section currently has a balance of \$2,433.59.

**Name Change:** A proposal to change the name of the Section to simply "Law and Politics" was made. No decision was made.

**Election of Officers:** The executive committee accepted a proposal that officers shall be elected at the annual meeting. This does not include the President, who shall be elected as President-elect the preceding year. The Executive Committee also agreed that the Executive Committee shall serve for a term of two years and a day. A committee is to be appointed to formally propose the changes.

**Committee on the Status of the Section:** The following recommendations of the Committee on the Status of the Section were reviewed and the following actions taken:

The proposal to increase integration with unaffiliated groups was accepted.

The proposal to send a list of article-review areas to journal editors was accepted.

The proposal to establish graduate student workshops at the APSA was accepted.

The proposal to establish a committee to study the future of public law scholarship was accepted.

The proposal to develop bibliographic guides was accepted.

The proposal to establish the Pritchett award for best article and book in alternate years was largely accepted. The possibility of giving an award for best article and book in every year was discussed. The committee agreed to a \$100 prize and a suitable trophy, such as a scale of justice.

The Executive Committee asked the Committee on the Status of the Section to make up a list of data needed for the new committee on the field.

**Newsletter:** Roy Flemming was named editor of the Section newsletter.

**Electronic Book Review Journal:** Herb Jacob's proposal to create an electronic book review journal, sponsored by the organized section, was discussed and referred to the Editorial Committee which Stuart Sheingold will chair.

**Jeffrey A. Segal**  
**Secretary-Treasurer**

## ANNOUNCEMENTS

### *Call for Papers and Panelists*

Ninth Annual  
American Studies Fall Forum

#### **THE U.S. BILL OF RIGHTS IN A BICENTENNIAL PERSPECTIVE**

September 19-20, 1991

Louisiana State University in Shreveport

The interdisciplinary Conference Committee of the ninth annual American Studies Fall Forum welcomes papers and panelists on the general theme of the U.S. Bill of Rights in state, national and international perspectives. Special consideration will be given to papers and panelists dealing with the application of the Bill of Rights in the South. Papers on other topics will be considered.

#### ***Possible Panels:***

The Bicentennial of the Bill of Rights  
The Bill of Rights in State Constitutions  
The Bill of Rights in the South  
Louisiana and the Bill of Rights  
Standards in the Application of First Amendment Freedoms  
The Bill of Rights as an International Model

#### ***Deadlines:***

January 15, 1991	Proposal, Resume, and Airfare
June 15, 1991	Draft Paper
August 15, 1991	Completed Paper — two copies

Selected papers will be published; limited travel stipends are available.

For information contact:

**William D. Pederson, Director**  
American Studies  
Department of History and Political Science  
Louisiana State University  
One University Place  
Shreveport, LA 71115-2399

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**1991 ANNUAL MEETING  
AMERICAN POLITICAL SCIENCE ASSOCIATION**

*August 28-31, 1991*

**Washington, DC**

The 1991 Annual Meeting of the American Political Science Association will be held in Washington, D.C. Paper proposals and offers to appear as discussants or panel chairpersons must be submitted as early as possible. The deadline for receipt of submissions is **December 1, 1990**. Please contact the chairpersons listed below.

***Law, Courts, and Judicial Process***

**John Brigham**  
Political Science Department  
Maxwell Hall  
Syracuse University  
Syracuse, NY 13244-1090  
(315) 443-2416

***Constitutional Law and Jurisprudence***

**Leslie F. Goldstein**  
Department of Political Science  
University of Delaware  
Newark, DE 19716  
(302) 451-1931

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**INTERNATIONAL CONFERENCE ON LAW AND SOCIETY**

**1991 MEETINGS**

***LAW AND SOCIETY ASSOCIATION***

and the

***RESEARCH COMMITTEE ON SOCIOLOGY OF LAW  
OF THE INTERNATIONAL SOCIOLOGICAL ASSOCIATION***

June 26-29, 1991

***UNIVERSITY OF AMSTERDAM,  
AMSTERDAM, NETHERLANDS***

The theme of the conference is "Law and Society in the Global Village — Toward Collaborative and Comparative Research." The joint Program Committees solicit proposals to present papers or organize sessions on all aspects of sociolegal research and theory. Particularly encouraged are proposals that are comparative or present transnational perspectives and/or involve participants from more than one country. The committees wish to accommodate a variety of formats for participation. Deadline for proposals is **December 1, 1990**. For more specific information and proposal forms contact:

**Executive Offices**  
Law and Society Association,  
Hampshire House  
University of Massachusetts  
Amherst, MA 01003, USA  
**Phone (413) 545-4617**  
**FAX (413) 545-1640.**

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## THE U.S. SUPREME COURT AND THE GREAT JUSTICES

Louisiana State University held its eighth annual American Studies Fall Forum on November 15-16, 1990. More than two dozen papers were presented on the general theme of great U.S. Supreme Court Justices (historical and modern). Selected papers will be published in a volume on the theme of the conference. Some of the featured speakers and their topics included:

**Henry J. Abraham**, *University of Virginia*, "Hugo Black as a Great Justice"  
**Paul R. Baier**, *Paul M. Hebert Law Center*, "Hugo Black and His Books"  
**Warren M. Billings**, *University of New Orleans*, "Edward Douglas White"  
**Robert C. Bradley**, *Illinois State University*, "The Identification of Greatness"  
**Robert C. Corley**, *Northwest Missouri State University*, "How Liberal Was Hughes?"  
**Michael Dunne**, *University of Sussex*, "Taft, Hughes and the Court of International Justice"  
**James A. Duram**, *Wichita State University*, "William O. Douglas and the Wilderness Mind"  
**Kenneth M. Holland**, *University of Vermont*, "Roger B. Taney: A Great Justice?"  
**Harold M. Hyman**, *Rice University*, "Justice Salmon P. Chase"  
**Robert W. Langran**, *Villanova University*, "Harlan I as a Dissenting Prophet"  
**F Thornton Miller**, *Southwest Missouri State University*, "Justice Joseph Story"  
**Barbara A. Perry**, *Sweet Briar College*, "The Reagan Supreme Court Appointees"  
**Linda C. A. Przybyszewski**, *University of Cincinnati*, "The Evolution of Harlan I"  
**Donald M. Roper**, *SUNY-New Paltz*, "John Marshall at the Bar of History"  
**Henry B. Sirgo**, *McNeese State University*, "Chief Justice William Howard Taft"

For information regarding the American Studies Fall Forum, contact: **William D. Pederson**, Director, American Studies, Department of History and Political Science, Louisiana State University, One University Place, Shreveport, LA 71115-2399, Phone (318) 797-5349 or 797-5337.

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## HARRY KALVEN PRIZE

### NOMINATIONS SOUGHT

The Harry Kalven Prize is awarded biennially by the Law and Society Association for "empirical scholarship that has contributed most effectively to the advancement of research in law and society." It is not a book prize, but is given in recognition of a body of scholarly work. Neither is it a "career achievement" award, however, and at least some portion of the work for which the award is given should have been completed within the past few years.

The committee to select the 1991 recipient of the award consists of: Martha Fineman and Joel Grossman; University of Wisconsin-Madison; Michael Saks, University of Iowa; Susan Shapiro, American Bar Foundation; and Anne Witte, Wellesley College.

Nominations of candidates or suggestions for the committee's consideration should be forwarded to the chair:

**Joel B. Grossman**  
Kalven Prize Committee  
Department of Political Science  
University of Wisconsin-Madison  
Madison, WI 53706

Documentation concerning the significance and contributions of the research, including citations to publications, will assist the committee in its consideration of candidates. Nominations should be received by **December 1, 1990**. The award will be presented at the 1991 annual meeting of the Association in Amsterdam.

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## NEH SUMMER SEMINAR FOR COLLEGE TEACHERS

### *THE CONSTITUTION AS CIVIL RELIGION*

Lief Carter, University of Georgia, and Michael McCann, University of Washington, will offer a National Endowment for the Humanities Summer Seminar for College Teachers in the Summer of 1991 at the University of Washington campus.

From Abraham Lincoln's call in 1838 for the Constitution and the rule of law to become "the political religion of the nation onward," both popular rhetoric and significant mainstream scholarship have claimed that the rule of law is the "civil religion" that binds a nation.

Our seminar will assess whether this metaphor accurately describes our constitutional traditions and experiences. By examining a variety of theo-

retical, interpretive, and empirical works, we hope to sharpen our understanding of the operational role constitutionally endorsed values (equality of opportunity and religious tolerance, for example) actually play in American political and social life. The seminar's interdisciplinary approach should appeal to students of politics and public law, legal historians, sociologists of law and legal philosophers. For further information about dates, residential facilities and student stipend, write **NEH** or contact: **Lief Carter** Department of Political Science, University of Georgia, Athens, GA 30602, or **Michael McCann**, DO-30, University of Washington, Seattle, WA 98195.

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### AMERICAN LEGAL HISTORY: NEW VIEWS

Garland Publishing announces a new encyclopedia, **AMERICAN LEGAL HISTORY: NEW VIEWS**. The book will include scholarly reevaluations of important legal cases and jurists. Letters of inquiry or suggestion should be sent to the editor **Charles E. Quirk**, Department of History, University of Northern Iowa, Cedar Fall, IA 50614-0402.

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### DISTINGUISHED STUDIES IN AMERICAN CONSTITUTIONAL AND LEGAL HISTORY

Garland Publishing announces a new series of "Distinguished Studies in American Constitutional and Legal History." It will include a diverse roster of book-length, refereed scholarly evaluations of important law cases, academics, practitioners, doctrine, litigations, institutions, and pedagogy; and of central constitutional concepts, instruments, issues, and resolutions. In short, if a proposed study is likely to be listed in a supplement to K. Hall's "Bibliography," it may qualify for inclusion. For more information contact: **Professor Harold M. Hyman**, Series Editor, History Department, Rice University, Houston, TX 77251-1892.

### JUDICIAL PROCESS BIBLIOGRAPHY — PARTICIPATION INVITED

Professor O. Zeller Robertson, Jr. invites Section members to participate in a judicial process bibliography he has begun. Using the *File Maker* data base program, he has prepared a preliminary disk. He will send a copy of this disk to interested Section members. Professor Robertson proposes that he and the members then send corrections, additions, and other suggested changes to each other. Through this interactive process, he hopes to build a reliable, complete bibliography.

For further details contact: **Professor O Zeller Robertson, Jr.**, 14092 Browning Avenue, No. 2, Tustin, CA 92680.

## DATA COLUMN

**TO:** Wayne McIntosh, Associate Editor, Data and Analysis  
Law, Courts, and Judicial Process Section Newsletter

**FROM:** Lief Carter, University of Georgia

**RE:** John Brigham's "Science of Sings."

John Brigham's thoughts on data we don't (necessarily) count in this *Newsletter's* Summer 1990 issue contained this sentence: "The talk of aesthetics and music, language and myth, run [sic] away from those who believe you have to be able to count in order to prove a proposition." I write to explain, primarily to myself, why I instantly disagreed with this sentence, and with the general thrust of John's argument.

First, most analyses that focus on narrativity and discourse, and hence on aesthetics and language, depend directly on the data-driven observations that (a) neither texts, legal doctrines, nor interpretive rules appear to cause or explain major constitutional decisions, and (b) there exists a political demand or need for widely accepted criteria by which to distinguish better constitutional decisions from worse. "Talk of aesthetics and music," etc. in no way runs from modern science or pragmatism. Such talk fits squarely in contemporary pragmatism because in pragmatism aesthetics and ethics merge. So, our experience of raw legal data should propel our talk in this direction as the most accurate description of that data.

Second, this post-modern discourse talk need not run from those who believe you have to be able to count in order to prove a proposition, because anyone ignorant enough to believe that we ever prove propositions, rather than disprove them, deserves to be ignored. Discourse talk challenges conventional counters head-on to think more carefully about why they count what they count.

Third, John clearly imagines that political science can develop a "science of sings" (p. 10). (Of course this is a typo, but its conjunction with his disparagement of music is too good to pass up.) It is just these theory-free collections of data that discursive approaches seek to displace, not because they depend on counting but because they count mindlessly, or rather taxonomically, like amateur rock collectors, without regard to theory. John never explains why we ought to pay more attention to judges' golf games, or poker parties, or bedside reading. Therefore, I assume he thinks the reason for doing so is obvious. I think he believes that we will be able, by randomly collecting enough of this "stuff," to generate reasonably powerful predictive and explanatory theories. But the goal of prediction is probably beyond our reach. The legal environment is simply too complex and changeable. And raw description suffers from the old defect that it will only uncover what experienced legal practitioners already know.

So what can political science add to our legal knowledge, and what should it count to do so? My sense is that "discourse" analyses implicitly urge a definition of politics and political science that makes primary the interactions between courts and lawyers, on one hand, and the health or pathologies of politics on the other. Discourse analyses urge us to count the causes of decisions only insofar as they illuminate conditions in the polity that law seeks to shape and strengthen. What we ought to count is media descriptions of Judge Souter's biography and public reactions to his virtue, and we ought to count the conditions in his environment (and perhaps in Robert Bork's) that led him to champion an abstract and sterile legalism in a popular democracy that ought to value direct effective communication between ruler and ruled. Put another way, the "science of sings" needs to focus on the ways songs and audiences interact, not on how sinus cavities and breath control and diet shape the production of sound.

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## U.S. SUPREME COURT DATA BASE NOW AVAILABLE

The NSF-supported United States Supreme Court Judicial Data Base is now available from the Interuniversity Consortium for Political and Social Research as Study #9422. The data base begins with the onset of the Warren Court and, in its current version, extends through the third term of the Rehnquist Court (October 1988), a total of 33 terms.

Data for the most recent term will be added annually. Thus, the version that will include the October 1989 term should be available in January 1991 and will be identified as the "United States Supreme Court Judicial Data Base, 1953-1989 Terms," as distinct from the original version, "1953-1988 Terms." Users who want the most recent version should take pains to include in the title of their request the most recent term for which data are available.

I have divided the contents of the data base into six sets of variables: **identification** (e.g., case citations, docket number, and units of analysis), **background** (e.g., manner in which the Court took jurisdiction, administrative agency action, court in which the case originated, court whose decision the Supreme Court reviewed, dissent in the court below, reason for granting cert, parties, and disposition), **chronological** (e.g., dates of argument, reargument, and decision; term of Court; and natural court), **substantive** (e.g., legal provision that the Court considered, issue, issue areas, and direction of decision), **outcome** (e.g., type of decision, disposition of case, winning party, alteration of precedent, and declarations of unconstitutionality), and **voting and opinion variables** (e.g., the vote in the case; the votes, opinions, and interagreements of the individual justices; and the direction of the individual justices' votes).

The data base has a hierarchical structure that provides for a variable number of records per case. It is available either as an SPSS export or ASCII file, or both, and contains alpha and numeric fields. To insure user comprehension of the codes, the vast majority are not only alpha, but mnemonic as well.

The listable documentation consists of a detailed user's guide and traditional codebook, plus an appendix containing the SPSS commands which were used to create the fields in the data base that were computer generated. Throughout the user's guide, I provide SPSS commands that will enable users to access, manipulate, and tailor the data base to their individual research purposes.

Reliability is reported field-by-field. For non-categorical data, congruence between data base entries and the official Reports approximates 100 percent. For the other fields, reliability is measured by the extent to which coders agreed. Overall, this figure approximates 98.4 percent. The errors that precluded perfect agreement are specified, along with such other information as will enable users to judge for themselves the reliability of the variable in question.

Readers whose institutions are Consortium members should order the data base through your institution's official representative to the ICPSR.

I encourage users to provide me with any comments, corrections, or suggestions that they have at the following address: **Harold J. Spaeth**, Department of Political Science, Michigan State University, East Lansing, MI 48824. **Bitnet:** 03369HJS@MSU.

**Editor's Note:** Because of the significance of this data base to our Section's members, Professor Spaeth has agreed to prepare a longer piece describing the research opportunities the data base creates as well as a discussion about research underway using the data base. This piece will appear in the next *Newsletter*.

## **Bankruptcy Case Files an Underutilized Source for Legal Research**

(Edited and Revised from *The Court Historian* October 1990)

Bankruptcy case files may be the best-kept secret in the holdings of the twelve regions of the National Archives and Records Administration. Created by the thousands throughout the nation, bankruptcy case files provide a large pool of data for examining national trends or illuminating local studies. They are rich in detail, containing unique economic and social data about individual lifestyles, business operations, and commercial relationships.

Case files are customarily transferred to the National Archives when they are twenty-five years old. As open and public records, they are then maintained for researchers by the twelve regional archives as part of Record Group 21, the records of the federal district courts.

The 1898 Act has produced the richest store of research material. Responding to the Panic of '93, Congress structured a permanent method of addressing bankruptcy. The Act, amended heavily in the 1930s, continued in force until replaced in 1978 by the bankruptcy act that established separate bankruptcy courts. But for nearly half our national life, the 1898 Act provided a uniform law prescribing standard procedures and use of common forms.

The 1898 law not only provided each petitioner and creditor a method of settling debts; the records it engendered depict the methods by which each petitioner conducted business. They frequently hold detailed information on the occupation or business of the petitioner, names and locations of people with whom the petitioner conducted business, prices paid and demanded, routes of commerce, market boundaries and distribution, and the debtor's assets and expenses.

The list of assets presented by individual bankrupts may give information on the location of family homes and farmland, household goods, tools and equipment, contents of libraries, and value of livestock. The assets listed by businesses and corporations may include merchandise on hand, accounts receivable, notes and securities held, equipment, rolling stock, and raw materials.

Researchers will find a satisfactorily large population of case files from the 1898 Act, useful in developing quantitative studies based on time and/or place. Comparing national or local economic and fiscal policies and situations might provide useful insights about the impact of governmental actions on perceived needs. Because the records were created by specific courts, researchers also will find they can easily study conditions over the entire eighty-year period for localities from towns and counties to an entire state. Since the 1898 Act permitted some discretion by judges in encouraging residents of their districts to file for bankruptcy, these differences among the courts — as reflected in the records — can also be instructive to legal scholars.

One caveat: While the 1898 Bankruptcy Act cases may aid researchers interested in demographic studies, information about ethnic origin is not specifically listed in the files and will have to be confirmed by consulting other sources such as the Federal population censuses, all of which indicate race and country of birth. The census are available on microfilm at all of the regional archives.

For more information about bankruptcy case files in the regional archives, contact:

### **The Regional Archives System (NNA)**

National Archives  
Washington, DC 20408  
(202) 501-5340  
FTS 241-5340

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