The Study of Law and Politics

Keith E. Whittington , R. Daniel Kelemen , and Gregory A. Caldeira

The Oxford Handbook of Law and Politics
Edited by Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington

Print Publication Date: Aug 2008 Subject: Political Science, Law and Politics
Online Publication Date: Sep 2009 DOI: 10.1093/oxfordhb/9780199208425.003.0001

Abstract and Keywords

This book deals with the interdisciplinary connections of the study of law and politics. It discusses jurisprudence and the philosophy of law, constitutional law, politics and theory, judicial politics, and law and society. The book reviews three prominent traditions in the empirical analysis of law and politics and, indeed, politics more broadly: judicial behavior, strategic action, and historical institutionalism. It also focuses on questions of law and courts in a global context and on how law constitutes and orders political and social relationships. Moreover, the book: examines how courts, politics, and society have intersected in the United States; reviews several recent interdisciplinary movements in the study of law and politics and how they intersect with and are of interest to political science; and offers personal perspectives on how the study of law and politics has developed over the past generation, and where it might be headed in the next.

Keywords: United States, politics, law, jurisprudence, judicial politics, constitutional law, judicial behavior, courts, society, political science

LAW is one of the central products of politics and the prize over which many political struggles are waged. The early American jurist James Wilson observed that law is the “great sinew of government” (Wilson 1896, 1: 314). It is the principal instrument by which the government exerts its will on society, and as such it might be thought to lie (at least indirectly) close to the heart of the study of politics. But law is also the means by which the government organizes itself. It is law in this second mode, sometimes called public law, that has attracted independent attention. Here law is not only the product of politics but also constitutive of politics.

The study of law and politics is a varied and multidisciplinary enterprise. From its starting point in political science of studying constitutional and administrative law, the field soon added courts, lawyers, and related legal actors to its purview. And the substantive scope of the field is broader now than it has ever been. Although the U.S. Supreme Court has always been the center of gravity within the field in American political science, the politics of law and courts in the international arena and in other countries is receiving growing attention and thriving communities of scholars continue to explore other aspects

of law and courts beyond constitutional courts and peak appellate tribunals. The interdisciplinary connections of the study of law (p. 4) and politics have varied over time, but, like the discipline of political science, the field of law and courts has readily borrowed concepts and methods from other disciplines. Active scholarly communities concerned with various aspects of law and politics in various disciplines make this a particularly good time for cross-disciplinary conversations among those in political science, and those in the humanities, the other social sciences, and the law schools.

This *Oxford Handbook of Law and Politics* is designed to reflect the diversity in the field today. With increasing diversity comes specialization, and there is always the danger that specialist scholars who are broadly concerned with law and politics will nonetheless find themselves sitting at Gabriel Almond's (1990) “separate tables,” having separate conversations and missing some of the productive cross-fertilization that can take place across the field as a whole. Although we have not forced the individual authors in this volume to launch those new conversations, we hope readers will benefit from the breadth of the offerings.

Our starting point, however, is with the study of law *and* politics, or the political analysis of law and courts. Law, as an autonomous field of study as taught in schools of law, is centrally concerned with the substance of law and the practices of legal professionals. For the professional craft of law, the politics of law can often be bracketed. For scholars concerned with law and politics, it is the professional craft of law that is bracketed. We need not deny that legal reasoning and skill are real and matter in the determination and application of the law and in the actions of legal institutions. But the starting point for the study of law and politics is that politics matters and that considerable analytical and empirical leverage over our understanding of law and legal institutions can be gained by placing politics in the foreground.

1 The Development of the Study of Law and Politics

The study of law and politics held a prominent place within the discipline of political science as academic disciplines and departments developed in the late nineteenth century. It was the narrow professionalism of the law school that spurred Columbia University in 1880 to create a separate School of Political Science, the progenitor of the discipline, under John Burgess, to develop and teach a “science of jurisprudence” that would provide better preparation for the new federal civil service. Within the school, a distinct Department of Public Law and Jurisprudence quickly emerged and was only decades later renamed the Department of Political Science. The first dissertations in political science, (p. 5) reflecting the strength of its faculty and the fact that most of its students had first passed through the law school, were dominated by constitutional and legal history (Hoxie et al. 1955; Somit and Tanenhaus 1967).

As the discipline developed internally, the study of law and politics, although prominent, became a distinct specialty within political science. The 1915 report of an American Political Science Association (APSA) committee on college instruction was chaired by Charles Grove Haines (1915, 356–357), one of the leading constitutional scholars of the period, and five of its twelve recommended core courses were on legal subjects (with a sixth dedicated to judicial administration and organization). Despite this endorsement, recommended courses such as commercial law and Roman law did not survive long in political science departments; and international law was soon crowded out by international relations, just as administrative law already had been by public administration. Constitutional law and jurisprudence became the core of the study of law and politics in political science, with legislation, administrative reports, and other legal materials the raw material of political science generally and other substantive areas of law being either absorbed into broader fields within the discipline or left entirely to the law schools.

The leading public law scholars prior to World War II were primarily constitutional scholars, often with an emphasis on history. With law schools by and large continuing to leave constitutional law in relative neglect, Edward Corwin, Charles Grove Haines, Thomas Reed Powell, and Robert E. Cushman were the leading constitutional scholars of their day, as well as leaders within the discipline (each served as president of the APSA). From 1917 to 1961, the association's flagship journal, the *American Political Science Review* (*APSR*), published an annual overview of the constitutional decisions of the U.S. Supreme Court, written by Cushman during much of that period, often supplemented with a separate review of state constitutional law decisions.

Their constitutional scholarship and teaching was simultaneously realist and normative in its sensibilities. As Corwin (1929, 592) understood it, the purpose of political science was to cultivate an understanding of “the true ends of the state and how best they may be achieved.” A 1922 *APSR* article on constitutional law teaching reported that law school classes in constitutional law were generally regarded as too technical and too focused on litigation to be suitable to the training of graduate students, who required a better grasp of the “historical, philosophical, and comparative aspects of the subject” and how “fundamental principles” of American constitutionalism evolved over time. The undergraduate classes in constitutional law brought political action and behavior to the political science curriculum. The formal and descriptive character of courses in American and comparative government might be the starting point for understanding American politics, but constitutional law was the class in which students could see how principles, beliefs, actors, and social conditions interacted and developed; and a “problem method” of instruction could teach students the valuable skill of how to draft legislation that could address a given social problem while adhering to constitutional limitations (Hall 1922).

(p. 6)

Constitutional scholarship of this sort continued in political science after World War II, but under increasing competitive pressure. A new generation of constitutional lawyers in the law schools was more prominent and more sophisticated than their predecessors. Po-

litical scientists such as Carl Swisher, Alpheus Mason, David Fellman, and John Roche continued this humanistic tradition of constitutional studies well into the 1960s, but their successors were fewer and increasingly marginal to the discipline.[1] Others such as Martin Diamond, Herbert Storing, Walter Berns, and again Alpheus Mason drifted further into political theory and American political thought. It is telling that in a 1958 volume on the state of the discipline, two prominent constitutional scholars, Robert McCloskey (1958) and Carl Friedrich (1958), were invited to discuss "political theory" rather than public law.

Within the discipline, the study of law and politics was generally shifting away from constitutional law and thought and toward judicial politics. Although there were some tentative earlier efforts to pursue quantitative studies of judicial behavior and to consider the political and social influences on judicial decision-making, C. Herman Pritchett (1948, 1954) pushed the field in a significant new direction with his statistical studies of voting behavior on the Supreme Court in the 1930s and 1940s (Murphy and Tanenhaus 1972, 17–20). With a different methodological and conceptual approach, Jack Peltason (1955, 1961) likewise sought to open the field up by looking beyond constitutional decisions and the Supreme Court and focusing more broadly on the judicial process as it related the courts as policy-makers and administrators to one another, the broader political system, and the relevant political environment. These emerging works in judicial politics had in common a single-minded focus on the political behavior of judges and those with whom they interacted, analyzed as other political actors might be analyzed and largely stripped of substantive legal content, historical development, or philosophical implication.

Works on the political behavior of judges and associated actors proliferated in the 1960s and soon dominated the field (Pritchett 1968; Schubert 1966). Among others, Pritchett and Walter Murphy gave close study to the rising hostility in Congress to the federal judiciary and its decisions. David Danelski, Sheldon Goldman, and Joel Grossman unpacked the judicial recruitment and selection process. Martin Shapiro resuscitated administrative law and the policy-making role of the courts outside of constitutional law. Walter Murphy, Alpheus Mason, and J. Woodward Howard uncovered the internal operations of the courts. Clement Vose focused attention on litigants and the relevance of interest groups to the judiciary. In-depth studies of the implementation of and compliance with judicial decisions were undertaken. Glendon Schubert, Harold Spaeth, Sidney Ulmer, and a host of others followed directly on Pritchett and built sophisticated statistical analyses of judicial voting behavior. Several scholars made tentative efforts at (p. 7) public opinion research and comparative analysis. Although the use of statistical techniques received the most attention and was most controversial, the methodologies employed were varied and included archival research, judicial biographies, field studies, game theory, and more.

Subsequent movements have deepened and broadened these developments in the study of law and politics in political science. The interdisciplinary law-and-society movement reinforced the behavioralist turn in political science but added a greater interest in the operation of law and courts closest to the ground—criminal justice, the operation of the trial courts, juries, dispute resolution, the behavior of lawyers, the informal penetration of law

into the social, economic, and cultural spheres—and fostered new conversations about law and politics across the social sciences. The empirical study of tribunals and law in the international arena and outside the United States has grown rapidly in recent years, fostering connections between the study of law and courts and the study of comparative politics and international relations. Historical institutionalist studies have recovered an interest in constitutional ideas and historical development and wedded it to the post-behavioralist concern with political action and the broader political system. Game theoretic accounts of political strategy have come forth and provided new perspectives on judicial behavior and new approaches to linking courts with other political institutions.

2 The Structure of the Field

There is no single best way to divide up the field of law and politics. Literatures overlap, and it is possible to view those literatures at different levels of aggregation or with different points of emphasis so as to highlight commonalities or differences. Indeed, the prior discussion suggests a basic bifurcation in the field, between constitutional law and jurisprudence on the one side and judicial process and politics on the other. But this basic bifurcation better reflects the historical evolution of the field than it does the current structure of the study of law and politics. We offer below one map of the field.

2.1 Jurisprudence and the Philosophy of Law

Jurisprudence and the philosophy of the law is the oldest aspect of the study of law and politics and stands conceptually at its foundation. Jurisprudence is concerned with the basic nature of law. It has sought to identify the essential elements of law, (p. 8) distinguishing the realm of law from other aspects of the social order and other forms of social control. In an older tradition, jurisprudence hoped to systematize legal knowledge, extracting and refining the central principles of the law and the logical coherence of the legal system as a whole. In this mode, jurisprudence was to be an essential tool of the legal teacher, scholar, and practitioner and the starting point of a legal science. When wedded to normative commitments and theories, jurisprudence was also a tool of legal reform, identifying where the law needed to be worked pure and how best to do so.

A primary task of jurisprudence is to answer the question: What is law? It seeks to identify the common features of a legal system and clarify the logical structure of law. To do so requires distinguishing law from other normative systems of social ordering, such as custom and religion. Basic to this inquiry has been the effort to identify the conditions that would render a norm legally valid. Two well-established schools of thought have developed around these questions, with natural lawyers contending that the legal validity of a rule depends in part on its substantive morality and legal positivists arguing that legal validity is potentially independent of morality and solely a function of social convention. Related to this issue are such concerns as clarifying the nature of legal concepts such as rights and duties, identifying the kinds of reasons by which legal authority is established and legal obligations are created, and explicating the process of legal reasoning. Supple-

menting analytical approaches to these issues are distinctively normative jurisprudential theories, which are concerned with which legal rights and obligations are most justified, how best to reason about the law, and the like.

These predominant branches of jurisprudence have been periodically challenged by self-consciously realist theories of law that attempt to ground the basic features of law in social conditions. From Roscoe Pound's sociological jurisprudence onward, realist theorists have questioned whether law can be profitably analyzed in the abstract, apart from its relationship with external conditions, whether economic relations, human behavior, or something else. The linkage of legal theory with such empirical concerns has supported both critical theories aimed at subverting dominant jurisprudential models and more positive theories concerned with developing their own understandings of the law.

2.2 Constitutional Law, Politics and Theory

Constitutional law is often paired with jurisprudence. The subfields share interests in the substance of law and ideas surrounding law. They also share an interest in normative aspects of law. But where jurisprudence is concerned with the conceptual underpinnings of law writ large, constitutional law is concerned with the legal and theoretical foundations of a particular, and a particular kind of, political order.

(p. 9)

The subfield has long been concerned with constitutional law itself. In this vein, political scientists have, along with legal scholars, explored the doctrinal developments in particular areas of law. In addition, however, political scientists have been somewhat more likely to examine the intellectual history of constitutional concepts and modes of thought, the normative underpinnings of constitutional principles, the constitutional philosophies of individual justices or historical eras, and the relationship between constitutional law and broader political and social currents. Political scientists have been attracted to constitutional law as intellectual historians, normative political theorists, and social theorists, as well as legal doctrinalists.

In recent years, the study of constitutional law per se has been submerged within the broader subject of constitutional politics. Although there have been notable exceptions, constitutional law has traditionally been the particular subject area within which political scientists have explored the origin, development, and application of legal principles and the interaction of courts and judges with other institutions and actors on the political stage. Whether taking the form of individual case histories or broader analyses, the making of constitutional law can be studied like the making of other forms of public policy. Constitutional politics highlights the ways in which the creation of constitutional law is situated within a broader political, institutional, and intellectual context and the significance of actors other than judges in contributing to constitutional policy-making.

2.3 Judicial Politics

The field within political science that studies law and politics was once widely known as "public law." For many, it is now known as "judicial politics." The behavioral revolution of the 1960s shifted the disciplinary center of gravity from the study of constitutional law and doctrine to the study of courts, judges, and company. The political process by which courts are constituted and legal decisions are made and implemented is central to empirical research in the field.

Originally, the study of the voting behavior of individual judges, in particular the justices on the Supreme Court, formed the core of the study of judicial politics: Why do judges vote as they do, as opposed to the how and the why of the reasons they give in opinions? What do the patterns of votes within the Court and other collegial courts tell us about these institutions as political actors? Now, judicial voting is but a part, albeit an important part, of the study of judicial politics. Scholars increasingly are taking a broader view, and are attempting to study the behavior of judges and courts in the political process, as just one more group or political actor among many others, including other courts and judges, executives, legislatures, interest groups, lawyers, and ordinary citizens.

(p. 10) 2.4 Law and Society

Law and society is not a subfield within political science, but rather an interdisciplinary enterprise that has long invited political scientists to explore a broader range of legal phenomena and to employ a broader range of methodologies. Law and society scholarship explores the reciprocal impact of law on society and of society on law—with some scholars focusing on the role of law as an instrument of social change or social control and others focusing on how social mobilization, culture, and legal consciousness determine the actual impact of law. With its roots in the legal realism scholarship of the 1950s, law and society scholarship proliferated in the 1960s with the founding of the Law and Society Association in the United States. Today the field of law and society includes a vibrant mix of scholars from political science, sociology, anthropology, history, and law who draw on a variety of methods and epistemological premises.

Law and society scholarship has served as an important antidote to the tendency of most political scientists interested in law and courts to focus almost exclusively on the upper echelons of the judicial hierarchy and the storied battles between high courts and other branches of government. The law and society perspective has encouraged many political scientists to turn their gaze to the local level, to explore how law is mobilized, how it is experienced, and what impact it has across society in fields as diverse as criminal law, civil rights, and business regulation. Such contributions are perhaps most obvious in studies of legal mobilization and the impact of law, where law and society scholarship has shed light on the conditions under which social movements mobilize law in pursuit of their aims. Law and society has also encouraged a comparative perspective, with the field shifting from its roots in studies of the American legal system to embrace an increasingly wide range of scholarship on comparative and transnational socio-legal issues. Some

scholars (Provine, 2007) suggest a growing rift between much of political science and the field of law and society, as the latter shifts away from an interest in formal institutions of law and government and from positivist social science. Given the fruitful engagement of political science and law and society over the past half-century, the growth of any such rift would be unfortunate.

2.5 Comparative and International Law and Courts

Until recently, the subfield of comparative politics largely ignored law and politics, while the subfield of law and politics largely ignored law and courts outside the US. Today change is coming from both directions. Comparativists are taking greater interest in the politics of law and courts, and scholars in the law and politics subfield are increasingly doing comparative work. Current scholarship builds on the work of such pioneers as Murphy and Tanenhaus (1972), Schubert and Danelski (1969), Shapiro (1981), Kommers (1989), Stone (1992), and Volcansek (1992), who set out a research agenda, calling on others to examine and compare the influence of courts on politics and the influence of politics on courts across democracies. Although most of the early work focused exclusively on the politics of constitutional courts in established democracies, more recent work has expanded in two directions. First, the transitions to democracy in the 1980s and 1990s gave birth to a host of new constitutional courts in Latin America, Eastern Europe, and Asia which have spawned a new wave of scholarly research (see for instance Ginsburg and Chavez, this volume). Second, in studying the widespread "judicialization" of politics, comparativists have moved beyond an exclusive focus on constitutional courts to examine the role of the full range of administrative and civil courts in policy-making and implementation.

In the study of international law, the growing dialogue between legal scholars and political scientists has generated a rich literature. The institutionalist turn in international relations theory and the proliferation of international courts and law-based regimes have drawn more and more political scientists to the study of international law and legal institutions. Meanwhile, recognizing the limits of a strictly legal analysis, legal scholars have turned to international relations theory to help explain the design, operation, and impact of international rules and legal institutions. Finally, research on themes such as the globalization of law (see Garth, this volume) and European legal integration (see Alter, this volume) tie together comparative and international approaches, examining how international institutions and networks may spread legal norms and practices across jurisdictions.

3 The Organization of the Volume

The organization of *The Oxford Handbook of Law and Politics* is related to but does not strictly follow the basic structure of the field. Parts of the field, primarily as it exists outside the discipline of political science, have been adequately covered or covered in more detail elsewhere (Coleman and Shapiro 2002; Cane and Tushnet 2003; Sarat 2004), and

we have not sought to replicate those efforts here. Additionally, it is useful to provide perspective on some issues that cut across the field as a whole and not only burrow into its various components.

We should also explicitly note that the organization of the volume does not simply mirror the existing distribution of research on law and politics within the discipline. There is little question that the empirical study of various aspects of the U.S. Supreme Court, and more broadly the federal appellate courts in the United States, has occupied more scholarly attention in recent decades than has any other (p. 12) single aspect of law and courts. We have consciously downsized the Supreme Court in order to reflect the conceptual diversity of the field and the emergence in recent years of new areas of study that are of broad interest.

Approaches reviews three prominent traditions of empirical analysis of law and politics and, indeed, politics more broadly: judicial behavior, strategic action, and historical institutionalism. These traditions have provided some basic conceptual approaches to identifying and examining problems in law and politics, though in practice they are not mutually exclusive or obvious rivals. They do, however, offer different perspectives on what about law and courts is of interest and importance and which aspects of politics are likely to be relevant and useful to understanding the development of law and the behavior of courts and associated actors.

Comparative Judicial Politics focuses on questions of law and courts in a global context. In some instances, the tools and questions that have been used to study American courts have simply been exported for use in studying courts elsewhere. Significantly, however, the global context raises distinctive issues for consideration and offers new opportunities for theoretical and methodological development. Issues that have been given some historical consideration but that have less immediate salience in the American context, such as the role of courts and the rule of law in economic development and democratization, are of immediate importance in many parts of the world. In the wake of recent waves of democratization and economic liberalization, these topics are now receiving greater scholarly attention within political science and cognate fields. Other issues of contemporary relevance in the United States, such as the foundations of judicial independence, have in the past nonetheless received only limited attention in the American context. The global context has both increased interest in such issues and provided new leverage for analyzing them and sometimes alerted us to the importance of these issues in the United States. This section raises issues of law and politics common to many countries.

International and Supranational Law gives attention to several issues involving international law and tribunals. The study of international law was present at the origins of the discipline, but was quickly pushed to its margins. Recent developments in the international arena have drawn political scientists back into the study of international law. The sovereignty and political autonomy of nation states have been challenged and modified in various ways by new international institutions, changing norms and political pressures, and the transformation of global economic relationships. These changes clearly implicate

law and courts, which have been both the instruments and sometimes the cause of the shifting international order.

Forms of Legal Order focuses on some aspects of how law constitutes and orders political and social relationships. Traditionally the study of law and courts in political science has not attended to the myriad ways in which law is used to structure and shape society. The policy consequences of different regimes of tort law, criminal law, (p. 13) business organization, tax law, and the like have largely been left to others, with the partial exception of how such legal regimes might themselves have political consequences, as with the growing interest in felon disenfranchisement. How law structures politics and how law is used to govern the government itself are of traditional concern, though they have often been in eclipse. Recent years have seen a resurgence of scholarly activity in this area, often operating at the disciplinary boundaries between political scientists and lawyers, and the future promises further advances with political scientists as both producers and consumers.

Sources of Law and Theories of Jurisprudence incorporates the philosophy of law into the *Handbook*. American political science has often been a somewhat languid consumer of jurisprudence. Both scholarship and teaching in this area have gradually migrated out of political science departments and into philosophy departments and law schools. Outside the United States, however, jurisprudence remains a thriving field for politics faculty, and important pockets of activity remain within the United States, with public law and political theory remaining a natural pairing for many. Indeed, jurisprudence is a natural point of connection between philosophical and empirical pursuits and addresses fundamental conceptual and normative features of politics and the state. As such, it is a subfield to which political science as a discipline should have much to contribute and from which it should be able to learn.

The American Judicial Context embraces aspects of both judicial politics and law and society, where much of the empirical work in law and politics has been done. It focuses on various features of the immediate institutional environment of the courts and the participants in the judicial process, including the recruitment of judges to the federal and state benches, several of the central questions in the study of the Supreme Court, empirical and theoretical perspectives on the vertical and horizontal relations among appellate courts, how and why lawyers and litigants do and often do not use the law to achieve their purposes, and the roles of lawyers and the legal profession in the politics of law.

The Political and Policy Environment of Courts in the United States examines further aspects of how courts, politics, and society have intersected in the United States. Whereas the prior section focused on particular institutions and actors that engage the courts, this section examines the broader environment within which courts operate and situates the actions of the courts within policy and ideological contexts. These two sections consider some of the central issues and concerns in the contemporary empirical literature on law and politics in the United States.

Interdisciplinary Approaches to Law and Politics reviews several recent interdisciplinary movements in the study of law and politics and how they intersect with and are of interest to political science. Each of these movements has spawned organized scholarly societies and journals of its own and linked the law schools to other disciplines and departments within the universities. Although political scientists have been the most prominent participants in the law-and-society movement, each offers bridges to aspects of political science as well as to other disciplines.

(p. 14)

Old and New offers more personal perspectives on how the study of law and politics has developed over the past generation and where it might be headed in the next. Stuart Scheingold, Martin Shapiro, and Harold Spaeth have long operated on different frontiers of the field, helping to make and consolidate the behavioral revolution in law and politics and to realize its promise over the past decades. To conclude the volume, they bring to bear that experience in assessing how the field has developed.

References

ALMOND, G. A. 1990. *A Discipline Divided: Schools and Sects in Political Science*. Newbury Park, Calif.: Sage.

CANE, P., and **TUSHNET**, M. 2003. *The Oxford Handbook of Legal Studies*. New York: Oxford University Press.

COLEMAN, J., and **SHAPIRO**, S. 2002. *The Oxford Handbook of Jurisprudence and Philosophy of Law*. New York: Oxford University Press.

CORWIN, E. S. 1929. The democratic dogma and the future of political science. *American Political Science Review*, 23: 569–92.

FRIEDRICH, C. J. 1958. Political philosophy and the science of politics. In *Approaches to the Study of Politics*, ed. R. Young. Evanston, Ill.: Northwestern University Press.

HAINES, C. G. 1915. Report of the committee of seven on instruction in colleges and universities. *American Political Science Review*, 9: 353–74.

HALL, A. B. 1922. The teaching of constitutional law. *American Political Science Review* 16: 486–96.

HOXIE, R. G. et al. 1955. *A History of the Faculty of Political Science, Columbia University*. New York: Columbia University Press.

KOMMERS, D. 1989. *The Constitutional Jurisprudence of the Federal Republic of Germany*. Durham, NC: Duke University Press.

MC CLOSKEY, R. G. 1958. American political thought and the study of politics. In *Approaches to the Study of Politics*, ed. R. Young. Evanston, Ill.: Northwestern University Press.

MURPHY, W. F., and **TANENHAUS**, J. 1972. *The Study of Public Law*. New York: Random House.

PELTASON, J. W. 1955. *Federal Courts in the Political Process*. New York: Random House.

—— 1961. *Fifty-Eight Lonely Men*. New York: Harcourt, Brace and World

PRITCHETT, C. H. 1948. *The Roosevelt Court*. New York: Macmillan.

—— 1954. *Civil Liberties and the Vinson Court*. Chicago: University of Chicago Press.

—— 1968. Public law and judicial behavior. *Journal of Politics*, 30: 480–509.

PROVINE, D. M. 2007. Law & society symposium: on separate paths. *Law and Courts, Newsletter of the Law and Courts Section of the American Political Science Association*, 17: 6–8.

SARAT, A. 2004. *The Blackwell Companion to Law and Society*. Malden, Mass.: Blackwell.

SCHUBERT, G. A. 1966. The future of public law. *George Washington Law Review*, 34: 593–614.

(p. 15) —— and **DANELSKI**, D. J., eds. 1969. *Comparative Judicial Behavior: Cross-Cultural Studies of Political Decision Making in East and West*. New York: Oxford University Press.

SHAPIRO, M. 1981. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press.

SOMIT, A., and **TANENHAUS**, J. 1967. *The Development of Political Science: From Burgess to Behavioralism*. Boston: Allyn and Bacon.

STONE, A. 1992. *The Birth of Judicial Politics in France*. New York: Oxford University Press.

VOLCANSEK, M. 1992. *Judicial Politics and Policy-Making in Western Europe*. London: Cass.

WILSON, J. 1896. *The Works of James Wilson*, ed. J. DeWitt Andrews, 2 vols. Chicago: Callaghan. (p. 16)

Notes:

The editors thank Rob Hunter for his able assistance his preparing the manuscript for publication.

(1) Carl Swisher in 1960, Charles Hyneman in 1962, and Carl Friedrich in 1963 were the last constitutionalists to be honored with the APSA presidency. The last law and politics scholar to serve as APSA president was C. Herman Pritchett in 1964.

Keith E. Whittington

Keith E. Whittington is William Nelson Cromwell Professor of Politics in the Department of Politics at Princeton University.

R. Daniel Kelemen

R. Daniel Kelemen, Associate Professor of Political Science, Jean Monnet Chair and Director of the Center for European Studies, Rutgers University, New Brunswick, New Jersey, United States.

Gregory A. Caldeira

Gregory A. Caldeira is Distinguished University Professor and Ann and Darrell Dreher Chair in Political Communications and Policy Thinking at the Ohio State University.