



Law & Courts

NEWSLETTER OF THE LAW & COURTS SECTION OF THE
AMERICAN POLITICAL SCIENCE ASSOCIATION

A Letter from the Section Chair

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The work of the awards committees is now nearly complete. All the work went well thanks to the enthusiasm and cooperative spirit of the committee chairs and all of the committee members.

I hope you all have a productive summer and I look forward to seeing everyone in Chicago.

The recipients of the awards for the Law and Courts Section are as follows:

Lifetime Achievement Award

The Lifetime Achievement Award honors a distinguished career of scholarly achievement and service to the Law and Courts field.

Stuart Scheingold, University of Washington

C. Herman Pritchett Award

The C. Herman Pritchett award is given annually for the best book on law and courts written by a political scientist and published the previous year.

Thomas Ginsburg, Associate Professor of Law and Political Science, and Director, Program in Asian Law, Politics and Society at the University of Illinois College of Law. *Judicial Review in New Democracies: Constitutional Courts In Asian Cases* (Cambridge University Press, 2003).

CQ Press Award

The CQ Press Award is given annually for the best paper on law and courts written by a graduate student.

The winner will be announced in July

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CROSSING OVER: CITATION OF PUBLIC LAW FACULTY IN LAW REVIEWS

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A frequent complaint among political scientists who study law and courts is that we and our work do not receive sufficient attention from our colleagues in the law schools. Undoubtedly we could all stand for more attention and recognition in general, but the lack of recognition of our scholarship by law professors often seems particularly grating. The reasons for this state of affairs are myriad. Academic networks facilitate the communication of information among those within them, but they can also obstruct the flow of information from those on the outside. Far too much scholarship is produced than can possibly be read by any given individual, and we often have difficulty enough making ourselves heard by other political scientists putatively studying the same subject let alone scholars who stand on the other side of a disciplinary divide. The peculiar position of law schools within the university community encourages further isolation. Not only are law schools often physically separated from the rest of campus, but they operate by different professional standards. The academic training of future professors is little different than the academic training of legal practitioners. Student-edited law reviews are the primary publishing outlet for scholarship produced in the law schools, and law professors and their research assistants seldom venture beyond the law library and the legal databases, even though JSTOR may be piped directly to their desktop computers.

The immediate professional consequences of the disciplinary divide are relatively small, but the intellectual consequences are somewhat larger. Professional advancement depends on one's reputation among one's peers, who are generally defined by disciplinary boundaries. Even so, it might be hoped that new scholarship would build effectively on the old. Intellectual advances necessitate taking account of what is already known and avoiding errors that could have been anticipated. Certainly our own work as political scientists would be better if it were informed by relevant scholarship produced in cognate disciplines, and one imagines the same would be true for scholarship produced in the law schools.

It might be useful for crossing that interdisciplinary divide to know who, or what, has already made the leap. Who are the political scientists who are being cited in the law reviews now, and what kind of political science crosses over and wins attention from law professors? Is it the case, for example, that political scientists who publish only in peer-reviewed political science journals are doomed to obscurity in the eyes of legal academia? Must political scientists publish in law reviews in order to be noticed? Is legal scholarship more likely to take account of work produced by political scientists that is most similar to that produced by law professors? Or, alternatively, does intellectual trade across the disciplines depend on the exploitation of comparative advantage.

To get at such questions, I turned to cite counts. Rankings and cite counts have become a cottage industry in law schools (for an overview, see Caron and Gely 2004). *U.S. News & World Report* provides the most well-known and influential ranking of law schools, but Brian Leiter of the University of Texas Law School produces a more respected *Educational Quality Rankings of US Law Schools*.² Various efforts have been made to measure law school and individual faculty quality on more specialized dimensions. One such measure is scholarly impact as captured in citations. This article follows what has become a fairly standard approach to measuring scholarly impact in law reviews (Eisenberg and Wells 1998; Leiter 2000). This measure counts all mentions of a given individual in works contained in the Westlaw Journals and Law Reviews database. The Westlaw database is the most comprehensive full-text collection of relatively recent law journals. Westlaw somewhat outpaces Lexis-Nexis and far outpaces the *Social Science Citation Index* in its coverage of law journals. In May

2004, I searched the full Westlaw Journal and Law Reviews database for all mentions of individual political scientists with expertise in law-related subjects.

To make such a search somewhat manageable, I drew a list of approximately 260 current faculty in political science departments in the United States that appeared in the top eighty Ph.D.-granting departments in a recent reputational ranking of public law programs, in the top twenty-five departments in a recent quantitative ranking of such programs (Whittington 1998; Kuersten 1998), in the *U.S. News & World Report* top twenty liberal arts colleges, or in the top eighty of a recent “global ranking” of political science departments (Hix 2004), as well as a handful of other individuals who seemed especially likely to have had such an impact. Any tenured or tenure-track faculty member who listed “law,” “courts,” “constitution,” “human rights,” or similar term as an area of interest on departmental websites was included. Emeritus faculty or faculty appointed in political science departments only by courtesy were excluded, when they could be identified. Of course, political scientists without an appointment in a political science department were not included (e.g., Martin Shapiro). This sample is obviously not comprehensive in ranking public law scholars, let alone political scientists, who might be cited in the law review literature, but it should be sufficient to give a sense of the type of scholars and scholarship who cross that disciplinary divide.

Following Leiter, I searched for individuals by first and last names appearing within two words of one another (e.g., “Keith w/2 Whittington”), unless another method was appropriate for a given individual. To exclude false positives, I then reviewed forty of the “hits” for each name and counted the proportion of correct hits and multiplied the whole by that proportion. Each hit counts one article that included at least one reference to the scholar being searched, whether the scholar in question was the author of the article, cited in the text or footnotes, or thanked in the acknowledgements. Thus, this method does not identify how many scholarly citations in the law reviews an author has actually received, but only the number of articles in which an author’s name appears. The results for all those with more than 200 such citations are in Table I, with citations rounded to the nearest ten.

Table I: Public Law Faculty Most Cited in Law Reviews (over 200 cites)

RANK	NAME	INSTITUTION	CITES
1	Sunstein, Cass	Chicago	7890
2	Ackerman, Bruce	Yale	4040
3	Levinson, Sanford	Texas	2300
4	Sarat, Austin	Amherst	1500
5	Sandel, Michael	Harvard	1070
6	Jackson, Thomas	Rochester	1010
7	Elster, Jon	Columbia	980
8	Slaughter, Anne-Marie	Princeton	840
9	George, Robert	Princeton	800
10	Rosenberg, Gerald	Chicago	770
11	O’Brien, David	Virginia	630
12	Weingast, Barry	Stanford	570
13	Ferejohn, John	Stanford	540
14	Irons, Peter	UCSD	520
15	Kritzer, Herbert	Wisconsin	510
16	Epstein, Lee	Washington U.	500
17	Smith, Rogers	Pennsylvania	410
18	McCubbins, Mathew	UCSD	400
19	Spaeth, Harold	Michigan State	390
19	Holmes, Stephen	NYU	390
21	Powe, Lucas	Texas	380
22	Horowitz, Donald	Duke	370
22	Macedo, Stephen	Princeton	370
22	Clinton, Robert	Southern Illinois	370
22	Segal, Jeffrey	SUNY-Stony Brook	370

26	Kagan, Robert	Berkeley	340
26	Kommers, Donald	Notre Dame	340
28	Graber, Mark	Maryland	320
28	Goldman, Sheldon	UMass-Amherst	320
28	Baum, Lawrence	Ohio State	320
31	Gillman, Howard	USC	290
31	Cohen, Joshua	MIT	290
31	Lofgren, Charles	Claremont	290
31	Lippman, Matthew	Illinois	290
35	Rabkin, Jeremy	Cornell	280
36	Lutz, Donald	Houston	260
36	Melnick, Shep	Boston College	260
38	Arkes, Hadley	Amherst	240
39	Walker, Thomas	Emory	230
40	Beres, Louis	Purdue	220
40	Grossman, Joel	Johns Hopkins	220
42	Barber, Sotirios	Notre Dame	210
42	Knight, Jack	Washington U.	210

There are obvious limitations to such an approach. I do not, for example, count retired or deceased scholars or those working in other fields (such as democratic theory or Congress) who may have had a substantial impact on scholarship published in law reviews. Although an adjustment to the cite count is made to address the fact that some names are fairly common, the final count is necessarily imprecise. For law professors, such studies have usually been concerned with measuring “academic quality” through cite counts, and there are familiar problems with such a measure, some of which Leiter (2000, 469) notes (e.g., the “classic mistake,” the “industrious drudge,” the “treatise writer,” the “academic surfer,” the “once-productive dinosaur”). Leiter also observes of his ranking of the impact of law professors that once we get below the highest levels of citations, the impact becomes somewhat more idiosyncratic and the obvious correlation between impact and scholarly quality becomes more contestable. As we will see, nearly all political scientists fall below these highest levels, and idiosyncrasies can have a dramatic impact on placement within this list. Law reviews also have a field bias, favoring fields such as constitutional law and critical theory over other fields such as comparative law and philosophy of law. Since law reviews are the primary scholarly vehicle for law professors and Westlaw is extremely inclusive, however, this measure does a reasonable job of capturing how widely discussed work by active public law scholars in political science might be among law professors.

One immediately striking lesson of Table I is that it helps to be a law professor. Eleven of the top twenty, and seventeen on the total list, currently have, or recently had, affiliations with law schools. For some, the law school affiliation is clearly relevant to explaining the influence in the law reviews. The top three, for example, are well-established law professors who have primarily made their careers in law schools, and two others in the top ten (Anne-Marie Slaughter and Thomas Jackson) spent the bulk of their careers in law schools before accepting administrative posts (and political science appointments) elsewhere. These scholars are not crossing a disciplinary divide at all when being cited in a law review. In some cases, the relationship between the affiliation and the volume of citations is less clear. For some, the law school affiliation may well come later, in recognition of the influence that the political scientist has had on legal scholarship. For others, however, being an integrated member of the law school community may well drive up citations in law reviews. Beyond its relationship to employment in a law school, whether a political scientist holds a formal degree in the law appears to make no difference to scholarly impact in the law reviews.

When contrasted to Leiter’s tabulations of most cited law professors, it is also obvious that political scientists have had only a limited influence on the law reviews. Leiter’s most recent ranking of law professors dates from the summer of 2002 and can be found at www.utexas.edu/law/faculty/bleiter/rankings02/most_cited.html. Leiter ranks 120 of the most cited law faculty. The least cited member of his list comes in at 1010 hits. The bottom ten law professors in his rankings average 190 more cites now than they did in 2002, however, so the new bottom may now be roughly 1200 hits. By that standard, only one of the “pure” political scientists would make the cut into Leiter’s ranking – Austin Sarat – who would probably appear in the bottom half of an updated law professor ranking.

We might imagine age affecting impact in the law reviews. More senior political scientists have had more time to produce a larger quantity of work that might get cited, and perhaps have the professional maturity (and security) to produce a different kind of work that is more likely to cross disciplinary boundaries. More senior faculty may also simply have more visibility and thus disproportionately attract the attention of a wider audience. This group of well-cited political scientists is relatively senior. In terms of years since they received their Ph.D. (or equivalent degree), they range from a low of fifteen years to a high of forty-eight years with an average of twenty-nine years. Within this group, however, there is no correlation between time since degree and ranking ($r = .09$). Leiter's ranked law professors are somewhat more senior than are this set of political scientists. The top 120 law professors ranged in age between forty-one and seventy-four years old, with an average age of fifty-seven (perhaps four to eight years older than the political scientists). Leiter's law professors also show no correlation between age and ranking ($r = .01$). On his website, Leiter also lists the top fifty most cited law faculty who had been teaching ten years or less (at the time of his ranking in 2002). Those fifty young scholars range in number of cites from a low of 230 to a high of 860. The top political scientists are more competitive with that group, though the political scientists have an average time from Ph.D. (a comparable measure of time in the scholarly community) of nearly thirty years. (The highest ranked political scientist within ten years of Ph.D. was forty-ninth, and there were only three such political scientists in the sample with over 100 citations.)

It is also notable that traditional "law and court" scholars do not dominate the top of the list. The top ten includes (in addition to five law professors) two political scientists who are not strongly associated with law and courts, though they obviously have some interest in legal subjects. Law-and-courts scholars are more heavily represented in the remainder of the list, but there is a sprinkling of others as well.

There is a perhaps surprising degree of substantive diversity in the scholars in the ranking. The "law and courts" community in political science is a highly fragmented one. Although one could reasonably argue that none of the pure political scientists on this list are merely playing what Martin Shapiro (1983, 543) once derisively called "little law professor," some political scientists come closer to competing in the same scholarly market as law professors while others are more clearly differentiated, producing informative but non-competing scholarly goods. Both strategies appear to be viable in gaining influence in the law reviews. This set of public law faculty includes specialists in constitutional and jurisprudential theory, constitutional history, judicial politics, law and society, and comparative and international law. The scholarship reflected here also embodies a wide range of theoretical and methodological approaches, though more qualitative and philosophical approaches are predominant on the list as a whole. Indeed, it seems likely that a wider array of political scientists have won some influence in the law reviews than have won influence in the political science journals.

Given that Leiter's study of individual law professors began as an effort to rank law schools, it is interesting to observe the distribution of these forty-three scholars across schools. Very few schools are represented by more than one faculty member. One department (Princeton) has three scholars in this set, six departments (Amherst, University of California-San Diego, Chicago, Stanford, Texas, and Washington University) have two, and the remaining twenty-eight have only one. It is interesting of those seven departments with multiple, ranked faculty members, four have the benefit of a law school and its joint appointments (though arguably only two benefit heavily from that affiliation). Amherst, notably, does not have a graduate program either. No doubt this lack of concentration of well-cited faculty reflects the relative paucity of public law scholars in any given department. Those departments that do have multiple individuals working in this area, moreover, often do not have multiple senior scholars. This diversity also suggests the difficulty of accumulating multiple law-and-courts scholars of high stature (at least relative to influence in the law reviews) in any single political science department.

While a variety of research strategies seem capable of reaching a law review audience, a somewhat smaller variety of publication strategies may be successful in reaching that audience given the research habits of law professors. Is it necessary to publish in law reviews in order to be noticed in the law reviews? In order to gain some leverage on that question, I sampled the particular works being cited in one hundred of the hits for each of individuals on the list (laying aside the five current or former law professors in the top ten). I distinguished between citations to authored books, to edited books or chapters in such books, articles in law reviews, articles in interdisciplinary peer-reviewed "law and" journals (e.g., *Law and Society Review*, *Jurisprudence*), articles in the journals of the three biggest political science associations (i.e., APSR, AJPS, JOP), and other forms of work.

Table II: Publications (by Public Law Faculty) Most Cited in Law Reviews

PUBLICATION TYPE	PERCENT OF CITES
Authored Book	51%
Edited Book or Chapter in Edited Book	13%
Law Review Article	19%
Interdisciplinary Legal Journal Article	6%
“Top” Political Science Journal Article	5%
Other	7%

The most common form of publication by one of these scholars to be cited in the law reviews is an authored book, which received roughly half of all the citations in the sample. A distant second at 19 percent was citation to law review articles written by these political scientists, and a close third at 13 percent was citation to edited books. Least cited were interdisciplinary journals and the prominent political science journals. Those numbers are little changed if the averages are taken by individual rather than by the pool of cites as a whole.

For this group of scholars as a whole, publishing in books and, to a lesser extent, law review articles are the primary paths to influence in the law review literature. It would appear that there is little added benefit in terms of law review visibility to publishing in legally oriented social science journals or high-prestige political science journals as compared to any other political science journal (though it seems likely that on a per-article basis, those journals do relatively well). Even so, individual results vary. For several of these individuals, a single big hit accounts for a disproportionate share of all their citations. Often that big hit is a book; political scientists appear to be less successful in producing the canonical article that single-handedly elevates them up the rankings. For several of these individuals, citations to books account for nearly all the citations to them in the sample. For five of these individuals, citations to authored books accounted for 90 percent or more over their citations in law reviews. By contrast, only two of these scholars had over 90 percent over their citations to law review articles, and only one of had over 80 percent of his citations to edited volumes. A handful of individuals did manage to achieve a more balanced approach, with no single type of publication accounting for more than 40 percent of their total citations.

While the law review literature is presumably not the primary audience for political science research on law and courts, it is clearly a relevant one. Law faculty and legal scholarship produced in law schools are increasingly interdisciplinary. In some areas, such as legal history, law schools have largely absorbed the scholarly field. In other areas, such as law and economics, there is a lively exchange between law schools and other areas of the university. Political science and legal academia have not reached those levels of interdisciplinary exchange, but at least some political scientists have had some influence in the law reviews (and increasingly individuals with political science Ph.D.'s are being hired onto law school faculties [Solum 2004]). While reaching the law reviews may not require radically altering the kind of research political scientists produce, it would be facilitated by attention to where that research is published and how it might be made more visible in the law schools.

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Footnotes

¹ I thank Kim Pearce for her research assistance.

² www.utexas.edu/law/faculty/bleiter/rankings