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What Political Science Can Contribute to the Study of Law*

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Despite an inherent kinship, the studies of political science and law spent many decades isolated from one another. In recent years the two fields have become more and more integrated, with an increasing number of political scientists collaborating with law professors and joining law school faculties. Political science is a rigorous discipline that can benefit both legal scholars and lawyers. Public Law—the subfield of political science that studies law and courts—has much to offer in understanding how judges make decisions and how larger political and institutional contexts affect the legal system. Furthermore, law students can only benefit from exposure to the methodological approaches that are standard in political science. Enhanced integration of political science and law will inherently expand the knowledge and reach of lawyers and legal scholars due to the important contributions discussed in this article.

1. INTRODUCTION

Prior to the 1990s, there was very little intellectual interaction between the legal academy and the discipline of political science (see Cross, 1997; Perry, 1991:2-7). This is surprising as one of the largest subfields in the discipline is called "Public Law" (also known as "Judicial Politics" or "Law and Courts") (APSA, 2011a, 2011b). Of course, law is inexorably tied to the larger political systems in which it rests.

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The traditional separation between the fields does not reflect an inherent fissure between them. Public Law has strong intellectual ties with most, if not all, of the other subfields within political science (Danelski, 1968:175). These ties are so strong that at times the study of political science has been "indistinguishable" from the study of Public Law (1968:175; see also Whittington et al., 2008b). In this introduction we offer a brief account of the development of political science and Public Law and then discuss the central thesis that further integration between political science and law would advance the work being performed in law schools.

1.1. POLITICAL SCIENCE AND THE STUDY OF LAW – A BRIEF HISTORY

The study of political science dates back to at least the time of Plato (Almond, 1998:53). The study of law was always part of the quest to understand politics (Danelski, 1968:175). But despite its long history, political science did not emerge as a discipline until the late 19th century (see Almond, 1998:61-64). Scholars primarily focused on formal political structures in these early days (see Farr, 1995:202). Public Law became a recognizable field within political science in the early 20th century (see Danelski, 1968). Political scientists adopted legal realism with great gusto and applied it to their work (see Cross, 1997:255-256; Danelski, 1968:175-180; Schlegel, 1995).[1] Whereas earlier scholars focused on formal aspects of law and interpretation, Public Law scholars applying legal realism began to consider how judges' personal preferences sometimes shaped their decisions (Danelski, 1968:176). They also considered the role of judges in forming public policy. These early studies were empirical and descriptive in nature and often took the form of taxonomies. Prominent Public Law scholars from this era include: Edward S. Corwin (see, e.g., Corwin, 1929), Robert E. Cushman (see, e.g., Cushman, 1924), Charles G. Haines (see, e.g., Haines, 1922), and Thomas R. Powell (see, e.g., Powell, 1918) (see Danelski, 1968; Whittington et al., 2008b).

Political science as a discipline participated in the "behavioral revolution" in the mid-20th century (Almond, 1998:68-75; Danelski, 1968:179-180). The behavioral revolution focused on empirical studies of political behavior rather than qualitative analysis regarding formal aspects of politics (Farr, 1995:202). This revolution sprang from the "pools of social science expertise" that the United States government formed to deal with societal issues caused by World War II and the post-war period (Farr, 1995:68). With this revolution came the launch of large-scale survey research to study voting behavior and public opinion (Niemi and Weisberg, 2001). The scholarship of the day also

[1] Though it should be noted that this adoption of legal realism by political scientists was not necessarily immediate (George and Epstein, 1992:324-425): "In essence, [C. Herman] Pritchett brought legal realism to political science" (325; see Pritchett, 1948).

examined the behavior of judges, administrators, legislators, and voters (see Danelski, 1968:179-180; Farr, 1995; Niemi and Weisberg, 2001).

The best example of the behavioral revolution within the study of Public Law is *The Roosevelt Court: A Study in Judicial Politics and Values* by C. Herman Pritchett at the University of Chicago (1948). In his seminal work, Pritchett offered a theory of judicial decisionmaking that included the justices' ideologies, backgrounds, and attitudes as important components. He explored how these factors influenced the justices' behavior via an analysis of voting blocs. His focus on the justices' personal attributes stood in sharp contrast to the approach of previous Public Law scholars, who focused on the strict discovery and application of law (Sturm, 1949). Pritchett's important contribution was followed by Glendon Schubert's methodologically pathbreaking work, which included the use of "bloc analysis, cumulative scaling, … factor analysis[,] … [and] game theory" (Danelski, 1968:179; see, e.g., Schubert, 1965). Harold Spaeth and Jeffery Segal subsequently advanced the field with their scholarship on the attitudinal model based on the theory that individual policy preferences play an important role in judicial decisionmaking (see, e.g., Segal and Spaeth, 2002).

1.2. Political Science and The Study of Law – Today

Public Law factors prominently within political science. Law and Courts is one of the largest sections of the American Political Science Association (APSA,2011a; see APSA, 2011b). Nearly every college and university in the country employs a Public Law scholar in its political science department to teach doctrinal courses and serve as a pre-law advisor. Additionally, Comparative Public Law has been enjoying a renaissance as scholars dedicate increasing attention to courts worldwide (see, e.g. Carrubba, 2003; Helmke, 2002; Whittington et al., 2008a).

The Public Law field has been very insular at times. As noted above, Public Law scholars traditionally had little interaction with scholars of law (see Cross, 1997; Perry, 1991:2-7). Perhaps more surprisingly, they were also often isolated from mainstream contemporary political science, including the discipline's development of rational choice theory, improvements in research design and statistical methods, etc. (see Gibson, 1986). Fortunately, the field has improved markedly in the last 20 years. It has become a vibrant and cutting-edge area of study. At the same time, not surprisingly, there have been more interdisciplinary discussions and appointments.

While changes in the Public Law field have altered the nature of the scholarship and its relationship with the study of law in law schools, a disconnect remains. Due to modern Public Law scholars' orientation towards empirical methods and rational choice theory, the bulk of Public Law scholarship today is not explicitly normative. This stands in contrast to a large

portion of legal scholarship that focuses on the normative implications of various aspects of the legal system (Cross, 1997:314-326; Friedman, 2006:262-265). These differences in approach have helped maintain the division between the disciplines. For example, one result of this divergence is that students in each field are rarely taught about the research tools of the other. This creates self-reinforcing barriers to entry.

This division is unnecessary. The two approaches necessarily complement each other. Analysis of normative issues should be well-informed and based on the best evidence available. Political science approaches can help the legal academy rigorously test the assumptions and implications of important normative debates. And, while normative concerns should not bias scientific results, they should inform scientists of important areas of research. This is one area in which law can contribute much to political science: law can help to guide the precise questions being asked to ensure that the resultant answers are substantively important (Friedman, 2006).

1.3. INTEGRATION AND THE PROMISE OF POLITICAL SCIENCE[2]

The separation between the study of law and of political science impoverishes both disciplines by creating a false dichotomy between explanations of legal phenomena (see Cross, 1997:309-311; Perry, 1991:2-7). Serious scholars of law and courts are increasingly very uncomfortable with models that lie on either extreme of the intellectual spectrum: scholars do not endorse a model of judicial decisionmaking that assumes some sterile, natural law is discovered by judges; nor do they believe that judges decide cases based solely on their ideologies (Cross, 2007; Friedman and Martin, 2011).[3] But the traditional divide between these two intellectual endeavors has helped prevent scholarship from developing to its full potential (see Perry, 1991:2-7). These two fields naturally complement, rather than challenge, one another.

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[2] The focus of these comments will be on what political science has to offer to the legal academy. Of course, the intellectual promise of the communion of the two academies is not a one-way street (see Cross, 1997:309-311; Perry, 1991:2-7). The legal academy has much to offer political science (see Friedman, 2006; Friedman and Martin, 2011; Rosenberg, 2000:n.2; see also Epstein and Knight, 1998). With additional interaction between the disciplines, inherently the study of law will influence the ways in which political scientists approach their work.

[3] In recent memory, there has been an unfortunate tendency in political science and legal scholarship to frame studies in terms of competition among the "attitudinal" and "legal" models (Friedman and Martin, 2011:147). There is also often reference to an amorphously-defined "strategic" model. Such approaches do little to advance our understanding of law and courts, and have come under increasing attack from legal scholars and political scientists alike (see, e.g., Epstein and Knight, 1998; Friedman and Martin, 2011; Lax, 2011; Perry, 1991).

Furthermore, this false dichotomy has prevented law students from being educated in a number of areas that would make them better lawyers (see Jackson et al., 2003; Perry, 1991). Legal training and practice provide invaluable knowledge regarding the theory and practice of law. The substance and tools that political science brings to the table, however, can also enrich and expand our understanding of law and the effective practice of it. The promise of political science to students of law, whether scholars or professionals, lies in the means and theory it has developed to study legal phenomena and the evidence such approaches have reaped. To be clear, political science is not the only discipline that can contribute to the study of law, but it is a clear candidate to be better integrated with the study of law.

Today, political scientists' knowledge and the tools that they use to answer questions allow for a better understanding of how the legal system works. The potential benefit of this body of work is not limited to the study of political science. Law schools should bring these insights and approaches into their curricula. This integration should not be in the form of a "Political Science For Lawyers" type of course, but in a comprehensive fashion. Just as Law and Economics has informed our understanding of a number of areas of law across the curriculum, the study of political science has much to offer. Specifically, law students would benefit from education regarding the ways in which political scientists conduct their research and the evidence they have gathered. Such an education should take several forms: first, law schools should oversee further integration of political science research into existing law school classes; secondly, the legal academy should begin offering non-traditional classes encompassing political science topics. In the remainder of this essay, we highlight some of these potential contributions, such as judicial behavior, institutional context, and quantitative methods.

2. JUDICIAL BEHAVIOR

If one wants to understand legal decisions, it is important to understand how judges make decisions (see Rosenberg, 2000). It is necessary to comprehend not just dispositions–which most political scientists study–but decisions of all types (see Maltzman et al., 2000:5-6, 151; Wahlbeck, 1997). There is a vast literature in political science about decisionmaking at all levels of the judiciary (see, e.g., Brace and Boyea, 2008 (state high courts); Maltzman et al., 2000 (United States Supreme Court); Rowland and Carp, 1980 (federal trial courts); Songer and Haire, 1992 (federal courts of appeal)). Unfortunately, traditional law school instruction and scholarship is lacking in an understanding of this work (Rosenberg, 2000:269). These studies find that extra-legal factors–such as political ideology (see, e.g., Segal and Spaeth, 2002) and the influence of collegial decisionmaking (see, e.g., Landa and Lax, 2009;

Maltzman et al., 2000)[4] –have a significant impact on the decisions that judges make and, thus, the law. Political scientists did not originate the idea that judges are influenced by factors other than the law; in fact, as noted above, they initially borrowed this idea from the legal academy (George and Epstein, 1992:324-325). Political scientists, however, have further advanced the positive theory of judicial decisionmaking and have subjected many of the theory's predictions to rigorous empirical scrutiny.

Lawyers like to think they have an inherent understanding of how judges make decisions. But across a variety of fields, statistical prediction trumps clinical prediction. For example, as chronicled in *Super Crunchers* (Ayres, 2007), consider the Supreme Court Forecasting Project (Ruger et al., 2004). As part of this project, for the 2002 term, the participants contrasted a statistical forecasting model (based on information derived from past Supreme Court decisions and certain characteristics of each pending case) with forecasts provided by legal experts (each of whom is an expert in some area of the Supreme Court's docket and many of whom clerked at the Court). The statistical forecasting model outperformed the experts and produced correct predictions for 75.0 percent of the Court's affirm/reverse results, while the experts predicted only 59.1 percent correctly (Ruger et al., 2004). While we are not asserting that lawyers should necessarily use regression analysis to make decisions in individual cases (though such analysis could be quite helpful depending on the nature of the case), the evidence from such analyses should be seriously considered when making important tactical decisions. Hunches regarding judicial behavior, even from experts, have been shown to be less powerful than more principled models. While lawyers understand that extra-legal factors impact judicial decisions, research on judicial decisionmaking can help them refine their knowledge regarding the relative importance of such factors. This knowledge should further lawyers' abilities to successfully predict outcomes and, thus, make better strategic decisions.

Familiarity with the literature on judicial decisionmaking can only enhance a law student's education. Zealous advocacy not only requires a fine knowledge of the law; it requires attorneys to make the best decisions possible for their clients in light of the circumstances. These circumstances include extra-legal factors that may influence the judge's decisions. Thus, education on these factors can potentially assist future practitioners. It will also help prepare

[4] Of course, there is significant overlap between work within the fields of Law and Economics and political science. Assessing the impact of collegial decisionmaking is one of these areas (see, e.g., Kornhauser and Sager, 1993).

students destined for academic positions by allowing them to engage with and participate in an important area of scholarship (Rosenberg, 2000).

3. POLITICAL INSTITUTIONS

Political science as a discipline contains subfields that look at various political institutions[5] other than courts (Rhodes et al., 2006). To understand law and public policy in these areas, it is important to know how these institutions work. As Danelski (1968:175) noted, "[g]iven the legal orientation of modern societies, there are few areas of government that do not have legal dimensions." The converse is also undoubtedly true: government touches upon all aspects of law (Whittington et al., 2008a). Political science offers rich literatures regarding a number of important institutions, including Congress, the Presidency, the bureaucracy, and the electoral system (Rhodes et al., 2006). These literatures could be further integrated into the curriculum regarding legislation, administrative agencies, and election law, to name only a few applicable areas. Furthermore, law schools should offer specific courses designed to give students a deeper understanding of the design and impact of governmental institutions.

3.1. LEGISLATION AND LEGISLATIVE POLITICS

Legislation is a central aspect of the study and practice of law. Lawyers are often called upon to interpret or defend interpretations of statutes (see Cross, 2009:*vii*). Legal academics often debate how to interpret the meaning of a statute (2009:24-133). To do so, it is important to know how the legislative sausage is made. Political science contains a number of rich literatures regarding various aspects of the legislative process: for example, there is work regarding the development and impact of procedural rules (see, e.g., Binder and Smith, 1997) and the committee system (see, e.g., Maltzman, 1998).

Furthermore, statutory interpretation and the role of legislative intent is a topic of serious scholarly debate within the legal academy (2009:58-84). Public Choice scholarship, forged by political scientists, economists, and legal scholars, speaks directly to how intent can be understood in light of collective decisionmaking (see Cross, 2009:31-36; see, e.g. Shepsle, 1992). This is an area in which integration of political science and law is apparent. Thus, a working knowledge of the scholarship within political science is essential in order to engage in such

[5] Institutions are not limited to formal governmental arrangements: "[a]n institution is a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances" (March and Olsen, 2006 (discussing March and Olsen 1989, 1995)).

important debates already taking place in law schools. Beyond academic debates, in practice, legislative intent and legislative history play a role in the decisions that many judges make about statutory interpretation. Understanding how laws are formed enables attorneys to effectively research legislative history and craft arguments regarding its use (Eskridge et al., 1995).

Furthermore, there is some evidence within political science that judicial outcomes are influenced by the composition of the relevant legislature at the time of the decision (see Harvey and Friedman, 2009; see also, e.g., Hanssen, 2000). Such influence should inform rational expectations as to outcomes in litigation. Again, a skilled lawyer brings an arsenal of knowledge to bear when advising and representing his or her client. An understanding of legislative politics helps further arm the attorney.

3.2. Bureaucracy and Administrative Law

The literature in political science regarding the executive branch offers detailed and sophisticated analysis of bureaucratic institutions, especially in terms of principal-agent models (see, e.g., Miller, 2005). Within this literature, there is well-developed research regarding agency rule-making and the influence of procedural rules and standards upon the creation of such rules (see, e.g., Balla, 1998; Epstein and O'Halloran, 1994; McCubbins et al., 1987). An understanding of these areas not only helps enrich one's knowledge of agencies and administrative law, but is also quite apropos when addressing the impact of procedures and legal standards in determining legal outcomes. Even legal scholars who disagree that such a principal-agent approach thoroughly explains the development of administrative law find merit in the work (see Mashaw, 1999; see also Cass et al., 2006:65).

3.3. Elections and Voting Behavior

To understand the policy effects of changes in election law, one must understand the nature of voting. The voting behavior subfield is one of the largest in political science (Niemi and Weisberg, 2001). There is a vast literature on the decision to vote (see, e.g., Wattenberg, 2002; Wolfinger and Rosenstone, 1980) and the extent to which such decisions are rational (Blais, 2000). Furthermore, political scientists have undertaken extensive research on the issue of vote choice (see Niemi and Weisberg, 2001). This research can help inform an understanding of why election laws take the form they do and the implications of various changes to these systems.

Varying designs of democratic institutions are currently taught in law schools (see Issacharoff et al., 2007). There is wide variation in methods used to select and retain judges throughout the state and federal systems. The extent to which such institutional arrangements affect electoral and judicial outcomes is also a subject of great interest in the legal academy, though generally not considered

in the context of empirical evidence (see Hall, 2001). Political scientists are attempting to bring increasing empirical evidence to bear on these questions (see, e.g., Brace and Boyea, 2008; Bonneau and Hall, 2009; Nelson, 2011). The evidence oftentimes flies in the face of conventional wisdom.

3.4. INSTITUTIONS AND LAW SCHOOLS

This is not to say that legal scholars have ignored political institutions. In fact, much of this literature is already in the legal academy. For example, Jerry Mashaw, a leading administrative law scholar, has written extensively regarding political science approaches to bureaucracy and administrative law and the advantages and disadvantages – in his estimation – of these approaches (see, e.g., Mashaw, 1999). And some political science literature has made its way into widely-used casebooks and class materials (see, e.g., Cass et al., 2006:65; Eskridge et al., 2006). Unfortunately, the artificial dichotomy between the study of law and political science has prevented complete integration between the disciplines. Specifically, these literatures have failed to fully absorb the theories and evidence offered by each other. This failure stems from the difficulties that legal scholars sometimes face in understanding political science research and vice versa. Further integration of political science and law can only advance this base of knowledge. Such integration is only possible if we teach our students how to read and understand the relative literatures.

4. POLITICAL CONTEXT

Law does not form in a vacuum: judges' actions affect the broader polity, and the broader polity affects judges' actions (see Friedman, 2009; Epstein and Martin, 2010). Consider *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010) (the decision that held that corporate funding of independent campaign activity cannot be regulated) and *Florida et al. v. United States Department of Health and Human Services,* 3:10-CV-91-RV/EMT (11th Cir. Aug. 12, 2011) (the recent decision in which the Eleventh Circuit held part of the health care act unconstitutional). These decisions' impacts on the broader political context are obvious. Few observers would assert that neither the specific ideologies of the decisionmakers nor the broader political context influenced these decisions and their implications.

Positive Political Theory, which includes game theory and social choice, tells us much about the institutional context of decisionmaking (see, e.g., Balla, 1998; Shipan, 2000). Likewise, the goal of empirical research about inter-institutional interdependencies is to determine the extent to which power-sharing arrangements among branches of government affect the behavior of the individual branches and ultimate political outcomes. Of course, the judicial branch

plays prominently in this literature (see, e.g., Clark, 2009; Harvey and Friedman, 2009; Martin, 2006; Owens, 2010). This literature is synergistic with the robust Law and Economics literature on similar issues (see, e.g., Fuchs and Herold, 2011; Nixon, 2004).

Furthermore, Public Law scholars investigate the extent to which the greater political climate influences the perceptions of the courts. Political science boasts a well-developed body of work, often empirical, on public opinion and judicial institutions, and the factors that enhance or detract from the legitimacy of courts (see, e.g., Carrubba, 2003; Gibson and Caldeira, 2009). One vein of this work includes analysis of the impact of substantive outcomes on public legitimacy (Mondak, 1991; Gibson and Caldeira, 1992). Another vein focuses on the impact of procedure on legitimacy (Benesh, 2008; Ramirez, 2008; Zink et al., 2009; see also Tyler, 2006). Scholars in this area look at many different types of courts (see, e.g., Carrubba, 2003; Gibson, 2008). In addition to a multitude of theoretical approaches, various types of empirical and analytical evidence are used to address the problem. Knowing the insights from these literatures can help make better lawyers by further educating them regarding factors that will impact their clients. For example, such insights can help lawyers, especially young lawyers, understand how the greater political context in which a court sits may influence the decisions that a judge will make in a specific case.

5. METHODOLOGY

Law schools are increasingly offering courses on methodologies that are outside their traditional purview. Such courses are often called something like *Analytical Methods for Lawyers*, and typically include instruction on applied statistics, decision theory, game theory, and accounting (see Jackson et al., 2003). The aim of these courses is to create well-rounded and sophisticated lawyers capable of dealing with important issues that they will undoubtedly confront (see 2003:*i-v*). Furthermore, these skills enhance lawyers in their role as businesspeople who must analyze and make data-based decisions regarding various aspects of their practice.

In addition, well-educated and sophisticated consumers of news must have a fundamental grasp on a variety of methods, including statistics. As Jackson et al. note, students without a background in these areas "will graduate from law school without a set of basic skills, the absence of which will hamper development in almost any of the careers that law graduates now pursue" (2003:*v*). Most of these approaches are central to the study of political science. The discipline of political science consists of a handful of subfields that contribute in these areas as well. Furthermore, scholars with backgrounds in political science are prime candidates to develop and teach such courses.

5.1. Political Methodology and Applied Statistics

The field of Political Methodology is a disciplinary field of applied statistics, such as econometrics, psychometrics, sociological methods, and educational statistics (see Jackson, 1998; King, 1991). It is large, robust, and advancing. As with other fields, applied statistics is occupying an ever-growing portion of political science work (see Box-Steffensmeier et al., 2008; APSA, 2011b). Some of the ongoing work in Political Methodology is directly relevant to the student of judicial behavior and judicial institutions (e.g., Martin and Quinn, 2002).

One particularly challenging area that is the focus of a great deal of methodological work involves the estimation of causal effects from observational data (Box-Steffensmeier et al., 2008; Ho et al., 2007; Imai, 2005). At one level this is the "grand challenge problem" that confronts much of the social sciences. Without the ability to experimentally manipulate possible explanatory factors, drawing inferences from observational data is complicated because of post-treatment bias, endogeneity, confounding factors, and other statistical ills. In terms of studies of law and courts, we are generally not able to conduct experiments on the effects of varying aspects of a legal system.[6] For example, it would be "politically, ethically, and legally [unacceptable]" to create an experiment in which some groups were informed that any murders they might commit in the future would be penalized with capital punishment while other groups did not receive this instruction and then observe the number of murders committed by members of each group (Kaye and Freedman, 2000:94).

The quest for knowledge generally centers on the examination of causation. As noted by Lawless et al. (2010:30), sometimes the goal of an enterprise is simply to describe the world as we find it. In such cases, descriptive statistics are sufficient. But in general, our interest in the state of the world is motivated by a desire to understand it and the factors that lead to specific outcomes (see Box-Steffensmeier et al., 2008; Lawless et al., 2010). This is a common goal in the legal realm. This is reflected in practice by the prominent role that determinations of causation play in tort litigation (see generally, Wright, 1985). Thus, we need means of determining causation. In economics, instrumental variable approaches are typically used. In political science, these approaches have also been used along with the potential outcomes framework (see Imai, 2005; Sekhon, 2008).

[6] It should be noted that experimental research is being done in behavioral economics and political science to better understand individual decisionmaking and the effect of institutions (see, e.g., Bottom et al., 2006). Furthermore, there has been some experimental work done regarding the legal system (see, e.g., Braman and Nelson, 2007). These are growing fields with great promise.

5.2. APPLIED STATISTICS IN LAW SCHOOLS

Of course, political science does not hold a monopoly on these tools; many of them are common across the social science disciplines (see Box-Steffensmeier et al., 2008; Jackson, 1998; King, 1991). This broad applicability heightens their importance. Quantitative methods have increasingly become the language of social science (Agresti and Finlay, 2008:1). These methods have become an essential part of political science research (see, e.g., Beck, 1999; McNabb, 2004). Furthermore, political methodologists contribute to the greater scientific endeavor: for example, articles by political scientists are published in statistical journals of general interest (see, e.g., Kyung et al., 2011; Reilly et al., 2001). Political science offers explanation and application of these tools in contexts that are directly applicable to the study of law. Thus, the inclusion of such research in law school curriculum would help students to learn such important methods applied at a sophisticated level to research with direct bearing on their field.

Because the legal academy is a body of knowledgeable legal scholars, it is vital that they are trained to effectively use quantitative methods and/or to collaborate with other scholars well-versed in these methods. Otherwise, their voices may be lost in some of the broader intellectual communities' larger debates, as these debates increasingly take an empirical form (see Lawless et al., 2010; Rosenberg, 2000). Legal and methodological approaches diverge in some fundamental ways, including differences in language, standards of acceptance for a method or evidence, and the nature of proceedings (Fienberg, 1989:140-146; Rosenberg, 2000). These differences can cause miscommunication and inefficient results in legal matters in which statistical evidence should be and/or is introduced. One clear means of reducing this tension is by introducing law students to these approaches and teaching how to reconcile them with the legal approach as part of their education (see Jackson et al., 2003; Rosenberg, 2000).

While many law students have undergraduate backgrounds in political science, others do not, and those who do rarely have much exposure to research design and applied statistics. This disjuncture of the undergraduate curriculum and the current state of research in the discipline is a significant problem for political science. As such, even those law students with a background in political science would benefit from instruction in political science research at the post-graduate level.

It is important for lawyers to have a basic understanding of research design, as well as descriptive and inferential statistics (see Jackson et al., 2003). The training will not be such as to allow the students to do these things at the level of an advanced researcher, but at the least to understand the vocabulary and

fundamental issues regarding data collection, presentation, and inference (Kaye and Freedman, 2000; see Rosenberg, 2000).[7]

Because statistical evidence appears in court regularly, the importance of such training cannot be overstated. As Kaye and Freedman (2000:85) note:

> Statistical assessments are prominent in many kinds of cases, ranging from antitrust to voting rights. Statistical reasoning can be crucial to the interpretation of psychological tests, toxicological and epidemiological studies, disparate treatment of employees, and DNA fingerprinting; this list could easily be extended.

Political scientists are sometimes called on to be experts in cases such as election law disputes (Engstrom and McDonald, 2011). The standards regarding expert testimony and scientific evidence make it even more imperative that lawyers understand the nature of statistical evidence in order to effectively represent their clients. A basic understanding of statistics eases communication with one's experts. It makes the selection of such experts easier. It also allows for more effective cross-examination of opposing experts. The importance of evidence, and proper evidence at that, is a concept that lawyers are naturally intimately familiar with; it is in their DNA. Training in statistical methods, like the rules of evidence, helps lawyers determine what types of statistical evidence are worthy of entertaining.

5.3. Decision Theory and Game Theory

Equally important as empirical methods to the study of political science are decision theory and game theory – also known collectively in the discipline as "Formal Theory" and "Positive Political Theory" (mentioned above). These modeling approaches are the same as those applied in economics, but are focused on different types of questions.

Making strategic decisions and advising clients regarding strategic decisions are at the heart of what lawyers do in all areas of practice. This is particularly true in terms of litigation and settlement strategies (Jackson et al., 2003:*vi*). Clients have varying levels of risk aversion and uncertainty abounds. Decision theory and game theory provide a very helpful framework in which to analyze and

[7] Also, law reviews and journals are increasingly publishing articles that include empirical evidence (Lawless et al., 2010). The majority of these publications are student-edited (Rosenberg, 2000). A basic knowledge of statistics would be very helpful in order to allow these students to make educated decisions regarding accepting and editing articles. At the very least, it helps inform students about when to seek advice from experts.

make such strategic decisions.[8] Exposure to more sophisticated modeling of decisions would help lawyers sharpen the less-defined models that they often informally employ in assessing settlement and litigation strategies.

Political scientists have also used decision and game theory to create sophisticated models of various aspects of law and courts (see, e.g., Bueno de Mesquita and Stephenson, 2003; Carrubba, 2009; Clark, 2009; Lax, 2011; Rasmusen, 1994). These methods are, of course, also used in other fields, such as economics (see Jackson et al., 2003). The applications of game theory seen in political science can broaden a student's conceptualization of law. Game theory that is directly relevant to legal thinking plays an important part of much ongoing research.

6. CONCLUSIONS

Many of the changes discussed in these comments are being implemented at law schools today. There is increasing scholarly cross-pollination. More and more political scientists are joining law faculties. Legal scholars and political scientists are collaborating progressively more on projects. Furthermore, ideas, theories, and approaches are being shared across the fields. This cross-pollination not only enhances legal scholarship and education, but also furthers the reach of legal scholarship in other fields. Political scientists' increased presence in law schools does not represent a diminished role for traditional legal studies and scholarship, which will remain the bedrock of studying the law and legal practice. It seems to us that further integration is the future: we will all know more, and we can do a better job training our students and preparing them to be sophisticated and successful professionals.

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[8] A related area of study is information theory (Jackson et al., 2003). Information theory is useful in a number of areas pertaining to legal practice, including the concept of moral hazard (*vi*). Information theory is also well represented within the study of political science (see, e.g., Krehbiel, 1991).

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