SOME NEW CONCERNS OF LEGAL PROCESS RESEARCH WITHIN POLITICAL SCIENCE

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I. GENERAL DEVELOPMENTS

Political science has generally been divided into the fields of political theory, comparative government, international relations, public administration, policy formation, state and local government, and public law. The public law or legal process field has also been called the law and politics field to emphasize that it is the study within political science of the judicial process, constitutional law, and related subjects. Law and politics research has changed greatly since 1955 in both methodology and substance. It is the purpose of the articles in this symposium to illustrate some of the more recent trends in law and politics research, particularly trends of interest to law professors, sociologists, and others in the broader area of law and society research.

The methodology of public law within political science as of 1955 consisted almost exclusively of the analysis and synthesis of Supreme Court opinions relating to cases in constitutional law (McCloskey, 1957). In the following eight or so years, many political scientists supplemented this legalistic method with an anecdotal method emphasizing stories of what happened behind the scenes with regard to events preceding (Vose, 1958, and Murphy, 1964) or following (Peltason, 1961) the Supreme Court opinions. This anecdotal analysis became the basis for new textbooks and courses in the *Judicial Process* (Murphy and Pritchett, 1961). Likewise, other political scientists supplemented the legalistic method by using the same Supreme Court opinions to quantitatively measure differences among the judges (Schubert, 1958 and 1965) or differences among the facts in the cases (Kort, 1957 and 1968). This measurement analysis became the basis for other new textbooks and courses in *Judicial Behavior* (Schubert, 1964).

Since approximately the early 1960's, there has been an attempt to go beyond legal synthesis, anecdotes, and mere meas-

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urement of variables and to apply systematic quantitative induction to determine (1) how social and psychological variables cause differences in legal policies and decisions and (2) how legal policies and decisions affect social and psychological variables (Becker, 1964, and Nagel, 1969). This inductive causal analysis is frequently referred to as the behavioral approach to public law, although the term is also used to include non-causal measurement of judicial voting differences.

In 1968 David Easton, in his inaugural address as President of the American Political Science Association, recognized the on-going development of the post-behavioral approach to political science. The essence of the post-behavioral approach involves applying the systematic inductive methods of behavioralism to important political policy problems (Easton, 1969). The public law field, like other fields of political science, has been showing increased scientific concern for being socially relevant, as the articles in this symposium illustrate. (All the articles were originally presented as papers at the 1970 annual meeting of the American Political Science Association on six different panels exemplifying six related trends in law and politics research.)

II. SPECIFIC CONCERNS

The main post-behavioral or policy-behavioral development within public law has been the increased concern for studying the impact of Supreme Court decisions. There is, however, already discernable an old and a new kind of impact analysis within public law, about which more will be said in the third section of this introductory essay. Martin Levin's article on "Policy Evaluation and Recidivism" particularly illustrates the new impact analysis. For other impact studies, see Wasby (1970) and Becker (1969). The impact analysis trend, if broadly defined, in effect leads to the other new concerns in legal process research.

A second trend is the increased concern for studying law in action at the grass-roots trial court level. An article by Mendelsohn, Klonoski, and DeAngelia, on "Lay Participation in the Courts: A Study of the Willingness of Witnesses and Jurors to Serve Again," not only deals with trial courts rather than the Supreme Court, but also with witnesses and jurors rather than judges. Unfortunately, due to unforeseeable complications, this particular article was not ready in time to be included in this symposium, but it is scheduled to appear in

a future issue of the *Law and Society Review*. For other grass-roots legal studies, see Klonoski and Mendelsohn (1970) and Dolbeare (1967).

Substantively public law political scientists have developed an increased concern for poverty problems. There is an increasing recognition that civil rights legislation under the equal protection clause can do little for the many blacks and others who are poor, as contrasted to direct anti-poverty legislation. Harry Stumpf's article on "The Legal Profession and Legal Services: Explorations in Local Bar Politics" brings a kind of Bentleyan pressure-group analysis to the field of poverty law. For other poverty law work by political scientists, see tenBroek (1966), Jacob (1969), and Hannon (1969).

The law and order problem has received considerable recent attention from public law political scientists who wish to study socially relevant policy problems. Herbert Jacob's article on "Black and White Perceptions of Justice in the City" was one of many papers dealing with an empirical approach to criminal justice which were submitted for presentation at the 1970 annual meeting of the American Political Science Association. For other criminal justice work by political scientists, see Summers and Barth (1970), Becker and Murray (1971), and Nagel (1972). Perhaps political scientists, like other social and natural scientists, will also soon turn some of their attention toward environmental law problems.

As part of the post-behavioral concern for policy problems, legal process research has also sought to study controversial legal issues simultaneously in a number of countries in order to perceive better the cause and effect relations. David Bayley's article, "The Police and Political Change in Comparative Perspective," draws upon the literature from many countries to explain how the political culture influences police development and vice versa. For other cross-cultural studies of judicial process and behavior, see Becker (1970) and Schubert and Danelski (1969).

Likewise, rather than just focusing on public law at one point in time or chronologically, increased attention is being given to the relation between law and social change. Michael Barkun's article dealing with the reciprocal relation of "Law and Social Revolution" is part of that new trend. For some other political science work on law and social change, see Grossman and Grossman (1971) and Nagel (1970). Law and

social change is the theme of the public law panels being coordinated by Herb Jacob for the 1971 annual meeting of the American Political Science Association. The way Barkun's article builds toward interdisciplinary theory seems a fitting finale to the Law and Politics Symposium.

Although each of the six articles in this symposium has been used to illustrate only one of the six above-mentioned trends, each article could have been used as an example of more than one of the trends. At least a few of them are simultaneously impact studies, grass-roots studies, relevant to poverty problems, relevant to criminal justice, involved with comparisons over space, or involved with comparisons over time.

III. OLD AND NEW IMPACT ANALYSIS

As previously mentioned, the main post-behavioral development within public law has been the increased concern for studying the impact of Supreme Court decisions. In spite of the recency of impact research, one can already discern an old and new impact analysis within public law. The new differs from the old on about six different dimensions.

First, one can classify impact studies in terms of whether the research proceeds from an effects perspective or an optimizing perspective. An effects perspective begins with one or more legal policies as independent variables (like Brown v. Board of Education or Miranda-Escobedo), and then one asks what effects these legal policies will have or have had. Usually only one legal policy is studied, and the only effect is compliance with the law. The effects perspective is present in most of the studies Steve Wasby (1970) cites in his review and synthesis of the older impact literature.

By contrast an optimizing perspective begins with one or more policy goals as dependent variables (like reducing criminal recidivism as in Martin Levin's article in this symposium), and then one asks what legal policies will most achieve these goals, such as probation versus incarceration. Both perspectives can yield causal propositions, but the optimizing perspective is more capable of generating policy ideas because it does not take policies as givens the way the effects perspective does.

A second important dimension for classifying old and new impact studies is in terms of whether they are concerned with impact on policy appliers or impact on the ultimate policy consumers. The older impact research almost always studied

impact on lower judges, legislators, school administrators, or on police rather than the impact of legal policies on the total society, segments of the general public, or on other non-governmental personnel. Again Wasby's book illustrates the older analysis, whereas Martin Levin's article is concerned with the impact of criminal law not on police or governmental behavior, but on the criminal segment of the general public.

A third important way of classifying impact studies is in terms of the type of law involved. Steve Wasby, in the preface to his book, recognizes that nearly all political science impact studies have been in the field of constitutional law or civil liberties rather than more grass-roots legal fields like contracts, torts, property, poverty, and criminal law. Some of the newer impact studies, like Martin Levin's, are breaking out of the civil liberties confines into the impact of diverse laws and law in general.

A fourth dimension, partly related to the type of law, is the source of law. The old impact analysis, as illustrated by the title of Wasby's book (1970), dealt only with the Supreme Court as a policy maker. The source of policy in Martin Levin's article, on the other hand, is the grass-roots criminal court judge or state legislature. For too long within political science, there has been an artificial division of labor such that public-law people study courts and policy-formation people study legislatures, rather than study both kinds of policy makers and policy impact as part of the same total legal process.

The fifth dimension is a methodological one. The old studies more frequently used a legalistic methodology that partly involved using *Shepard's Citator* to determine the effects of Supreme Court decisions on lower courts, or doing a content analysis of state statutes or other legal materials subsequent to the legal policy whose impact was being studied. When the research got out of the law library into the field, its methodology was likely to consist of anecdotal observation. Recently, however, impact studies have been making more use of quasi-experimental techniques like those advocated by Donald Campbell (Campbell, 1969; Campbell and Ross, 1968; and Ross, Campbell, and Glass, 1970). They have also involved the use of true experimental techniques as advocated by Richard Schwartz (1961 and 1967), where the experimenter determines randomly who will be subjected to the experimental stimulus. Martin Levin's random assignment of some convicted defend-

ants to probation and some to incarceration illustrates this relatively new kind of impact analysis. Either a quasi-experimental or a true experimental methodology will probably involve comparisons of entities in different places or over time.

A sixth and final classification dimension relates to the theoretical perspective used. The older studies tended to view impact in terms of a legalistic hierarchy of court structure or in terms of intervening pressure groups. Two of Wasby's three frames of reference explicitly take these legal and group approaches (Wasby, 1970: 57-99). The new studies, however, are emphasizing stimulus-response theory and individual learning and conditioning, as illustrated by William Muir's (1967) study of prayer in the public schools or the work of James Levine (1970a and 1970b).

Perhaps the future will see a continuation of the old impact analysis and also an increase in impact studies (1) that take a goal-optimizing perspective rather than just an effects or compliance perspective, (2) that deal with impact on ultimate policy consumers rather than just intermediate policy appliers, (3) that go beyond civil liberties law into private and other fields of law, (4) that likewise go beyond the Supreme Court into legislative and other sources of legal policy, (5) that use experimental or at least quasi-experimental techniques, and (6) that often supplement a legal and group perspective with an individual stimulus-response perspective.

The above comparison between the old and new impact analysis could also be made to some extent between the old and new analysis of trial courts, poverty law, criminal justice, comparative law, and legal history. The general shift is toward less legalistic and anecdotal methods and toward more systematic quantitative induction.

At the broader level of public law research in general (rather than just impact research), the new trends do indicate increased research in: (1) law as a causal variable, (2) law at the basic trial and pre-trial level, (3) law and poverty, (4) law and crime control, (5) law viewed cross-culturally, and (6) law in the context of social change. These new trends, combined with the older public law research, should help to stimulate a further revitalizing of legal process research within political science.

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