

**The Poor in Court: The Legal Services Program and Supreme Court  
Decision Making**



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or a mustering of majorities to block presidential initiatives), or lack of political will. Why does Congress legislate this way? Koh draws on the work of Morris Fiorina and David Mayhew, among others, to explain how political incentives work.

What is the remedy? Koh prescribes new "framework" legislation and the appointment of a congressional legal adviser specifically for foreign affairs. We also need, he writes, a "constitutional substitute for the legislative veto" (p. 176), more effective use of the appropriations power, stiffer criminal penalties for violation of national security statutes, and application of the impeachment power against executive officials other than the president.

Having shown that the "National Security Constitution" laid down by the framers was ignored by George Washington and by every determined president since; that Congress has routinely acquiesced in these evasions; and that the courts, too, have been tolerant, Koh concludes that Congress and the courts must now insist on reaffirming it. Essentially, he would restore the rule of law by writing new laws and by implanting another lawyer in the system.

These professors of law agree that constitutional reform is unattainable and not worth serious consideration. Against current practices, Henkin invokes the norm of constitutionalism, while Koh calls for new organic statutes. Yet Koh, in particular, convincingly explains why these approaches have not worked since World War II. What changes their prospects now? These works, written by lawyers and informed by the best work in political science, leave us profoundly uncertain about the question whether we can give the president enough power to conduct effective foreign policy and still keep him accountable.

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DONALD L. ROBINSON

**The Poor in Court: The Legal Services Program and Supreme Court Decision Making.** By Susan E. Lawrence. Princeton: Princeton University Press, 1990. 207p. \$29.95.

It is all too rare to find a scholarly book that increases our understanding of institutional behavior, imparts new and interesting substantive information, and invokes innovative and appropriate methodology. *The Poor in Court* not only accomplishes these formidable goals but is also well written and meticulously researched.

From the opening chapter, we know that a good read is to follow, because Lawrence sets up an interesting research challenge. She seeks to explore two somewhat competing and certainly complex theories of Supreme Court decision making: (1) a large body of literature indicates that certain litigants are highly adept players in the legal game, that is, they have developed strategies and tactics that enable them to access the Court to achieve policy ends; (2) there exists an even larger stack of studies asserting that the primary determinants of judicial outcomes are the values and attitudes of the individual members of the Court. If the latter holds true, can litigants (particularly those of a different ideological stripe from the majority of justices) actually influence the process? Addressing this question (more aptly, *solving this puzzle*) is a difficult conceptual and analytical

task, but one worth undertaking. Its solution is of obvious significance to those laboring in the field. More important, it would reveal much about the nature of Supreme Court decision making and the institution's role in the governmental process. Because Lawrence reaches a simple, yet credible solution—to which I shall return—this book expands and reconditions our understanding of the Court.

To begin puzzling together these approaches, Lawrence focuses on the litigation activities of the Legal Services Program (LSP). This was a good choice and, I think, an interesting one as well—good because the LSP did not possess the characteristics we often associate with successful litigating enterprises. Much scholarship on litigant behavior and influence has focused on interest groups, which often have clear-cut policy objectives and strategies for achieving those ends. For example, many are highly selective about the kinds of cases they enter. The LSP, though, was quite different. It had no grand litigation campaign in mind. It took clients "because they met the indigency requirements of the Program rather than because their cases fit into a litigation strategy" (p. 9). In a note, Lawrence reacts to criticism that she is biasing her study because others have indicated (as have statistical profiles) that the LSP was an influential player. I think she is correct. If a litigating operation, such as the LSP, can influence Court decisions, then we would have to reevaluate our existing knowledge. In short, the LSP was a good choice because it provided the ultimate test of the potential effect of litigants qua litigants. It also was an interesting choice. There are numerous examinations of the LSP—especially of its history and day-to-day activities—but not of its influence, assessed systematically. By exploring it through this lens, Lawrence imparts important information about the program and its ability to engage the poor in the civil litigation process.

The next task faced by Lawrence was to devise an appropriate research strategy to evaluate whether the LSP influenced Court decisions. Given the focus of her analysis, coupled with the many debates within the subfield of law, courts, and judicial process, this is a nontrivial issue, posing numerous challenges. First, she had to get a handle on the amorphous entity that is the LSP. Choices were called for, and she made reasonable ones. She limited the study to the LSP's litigation activities between the 1966 and 1974 terms (before it was officially replaced by the Legal Services Corporation) and then to those cases it appealed to the U.S. Supreme Court or in which it participated as an *amicus curiae*. Second, she needed to define *influence*. Though many of her predecessors operationalized that concept as gaining access to the Court or as convincing the justices to adopt arguments on the merits, she chose to look at both. Finally—and most critically—she had to devise a scheme for assessing influence, one that would satisfy all camps. Herein lies the volume's greatest strength: because she mixes quantitative and doctrinal approaches, she is able to speak authoritatively to the various constituencies and theoretical concerns of the subfield. Consider her *modus operandi* in studying the effect of the LSP on decisions on the merits. She initially presents compelling numerical evidence indicating that it was a far more influential player, across a diverse range of legal areas, than group or behavioral approaches would have predicted. She then presses the discussion to pursue the issue doctrinally, fully recognizing that wins and losses,

for example, are one thing, the ability to shape the development of the law quite another.

This comprehensive, integrated approach pays off. When Lawrence argues that the LSP was extraordinarily influential, we believe her; the case is that strong. When she seeks to translate her findings into a more generalizable, theoretical framework, we also believe her; the argument is that appealing.

And what does Lawrence teach us about the puzzle of Supreme Court decision making? Most important is this: neither behavioral approaches nor those centering on litigant prowess provide a particularly compelling explanation of the LSP's remarkable success before the Court or of decision making. Instead, according to Lawrence, we must consider them in conjunction with "the temper of the times;" that is, the existing political climate can create "a 'window of opportunity' for the joining of new litigant claims, available legal bases, and judicial attention and sympathy" (p. 150). In terms of the focus of her study, such allowed the "poor's participation in Supreme Court decision making to produce significant doctrinal change." This conclusion is substantial, but its importance extends beyond the case at hand. Not only does it provide a reasonable solution to a long-standing research puzzle, revealing how those enmeshed in competing schools of thought can bridge their differences, it also has significant implications for our understanding of the Court and its role within the larger governmental process.

In the end, then, this book makes a major contribution to our understanding of things legal and extralegal. It is my sincere hope that all scholars of the judicial process read it. Indeed, my greatest fear about the book is its title. *The Poor in Court* is, yes, about the mobilization of rights for indigents, but it is about much, much more.

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LEE EPSTEIN

**Privacy in America: Is Your Private Life in the Public Eye?** By David F. Linowes. Urbana: University of Illinois Press, 1989. 190p. \$19.95.

**Knowledge As Power: Political and Legal Control of Information.** By David Sadofsky. New York: Greenwood, 1990. 133p. \$38.95.

Sir Francis Bacon's aphorism that knowledge is power now has even greater relevance to the study of politics. First, there has been an extraordinary expansion in the creation and diffusion of knowledge, information, and data. Second, the widespread diffusion of the new information technologies, especially computers and telecommunications systems, has facilitated a major increase in the scale and sophistication with which humans can gather, manipulate, and transmit data.

For political scientists, it is particularly germane to consider whether this proliferation of information and information technologies has caused significant shifts in the distribution of power. We still do not have a well-developed theory of precisely how knowledge converts into political power. This area of inquiry includes many subtopics: Who controls contemporary information technologies and their products? Are data and information resources of power and influence similar to knowledge? Whose interests are served by the uses of these resources? Under what conditions are actors' rights violated by the uses of knowledge (information, data)?

David Linowes and David Sadofsky address some of these subtopics in their books. Each focuses primarily upon certain aspects of information use in the United States. Linowes is particularly concerned with issues of information privacy and considers whether the new information technologies have altered the relations between individual citizens and the large public and private sector actors who have access to information about those citizens. Sadofsky examines whether there are systematic differences in the information policies of different governmental institutions and whether the implementation of these policies affects inter-branch relations.

Linowes, who is a professor of political economy and public policy and served as chair of the U.S. Privacy Protection Commission in the late 1970s, mounts considerable evidence that widespread abuses of individual privacy are being perpetrated by institutional actors. In the journalistic tradition of David Burnham's *Rise of the Computer State* (1983), Linowes uses descriptive facts and numerous, detailed incidents to suggest a pattern of problems with the current collection and uses of personal information by government agencies and by such private organizations as insurance companies, banks, and credit-reporting firms.

"Vast amounts of personal information are being amassed without the subject's knowledge, and preserved indefinitely to be retrieved instantly. This information can be used in ways that have disturbing implications for an individual's personal freedom. The legal system," Linowes argues, "has lagged far behind new technological advances" (p. 9). He contends that many organizations gather or acquire information about individuals they should not possess and that in many instances they act upon inaccurate information. His examples suggest that neither individual action nor the system of statutory safeguards is sufficient to protect against widespread infringements on personal privacy.

Sadofsky, a joint public administration Ph.D. and J.D., grounds his analysis in contrasting views of the U.S. republic. He argues that a conception of strong executive governance, derived from the Hamiltonian perspective, has a corollary information policy that promotes the collection of vast amounts of information by the bureaucracy, the centralization of that information within the executive branch, and substantial constraints on public, and even legislative, access to that information. This conflicts with a Madisonian-Jeffersonian conception of participatory governance including concern for the protection of individual rights. According to Sadofsky, among these rights are the citizen's right to information about government decision and action and the protection of privacy, due process, and personal liberty by constraining bureaucratic uses of information. The Congress (delegated the task of informing the public) and, especially, the judiciary can act to limit the excessive information control attempted by the executive. But, Sadofsky argues, Congress has been too reticent in limiting the executive's information control and has failed to form its natural alliance with the judiciary in this policy domain.

Sadofsky's evidentiary base mixes consideration of the founding fathers' writings with both historical and contemporary court cases dealing with the government's right to limit information, the citizens' right to privacy, and the right of both to know. Sadofsky's own bias is clearly in favor of what he terms "robust openness of