

# Making Law and Courts Research Relevant

The Normative Implications of  
Impirical Research

*Edited by*

**Brandon L. Bartels** and  
**Chris W. Bonneau**



Law, Courts and Politics

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of Empirical Research

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# MAKING LAW AND COURTS RESEARCH RELEVANT

One of the more enduring topics of concern for empirically oriented scholars of law and courts—and political scientists more generally—is how research can be more directly relevant to broader audiences outside of academia. This concern stems from the seeming disconnect between empirical and normative scholars of law and courts that has increased in recent years.

Brandon Bartels and Chris Bonneau argue that being attuned to the normative implications of one's work not only enhances the quality of empirical work, but also makes it substantially more interesting to both academics and non academic practitioners. Their book's mission is to examine how the normative implications of empirical work in law and courts can be more visible and relevant to audiences beyond academia. Written by scholars of political science, law, and sociology, the chapters in the volume offer ideas on a methodology for communicating normative implications in a balanced, nuanced, and modest manner. The contributors argue that, if empirical work is strongly suggestive of certain policy or institutional changes, scholars should make those implications known so that information can be diffused. The volume consists of four sections that respectively address the general enterprise of developing normative implications of empirical research, law and decision making, judicial selection, and courts in the broader political and societal context.

This volume represents the start of a conversation on the topic of how the normative implications of empirical research in law and courts can be made more visible. This book will primarily interest scholars of law and courts, as well as students of judicial politics. Those in other subfields of political science who are engaging in empirical research will also find the suggestions made in the book relevant.

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## **Law, Courts and Politics**

Edited by Robert M. Howard, Georgia State University

In *Democracy in America*, Alexis de Tocqueville famously noted that “scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.” The importance of courts in settling political questions in areas ranging from health care to immigration shows the continuing astuteness of de Tocqueville’s observation. To understand how courts resolve these important questions, empirical analyses of law, courts and judges, and the politics and policy influence of law and courts have never been more salient or more essential.

*Law, Courts and Politics* was developed to analyze these critically important questions. This series presents empirically driven manuscripts in the broad field of judicial politics and public law by scholars in law and social science. It uses the most up-to-date scholarship and seeks an audience of students, academics, upper division undergraduate and graduate courses in law, political science, and sociology as well as anyone interested in learning more about law, courts, and politics.

### **1 The Dual System of Privacy Rights in the United States**

*Mary McThomas*

### **2 Making Law and Courts Research Relevant**

*Brandon L. Bartels and Chris W. Bonneau*

### **3 Europeanization of Judicial Review**

*Nicola Corkin*

### **4 The Media, the Court, and the Misrepresentation**

*The New Myth of the Court*

*Rorie Spill Solberg and Eric N. Waltenburg*

*Brandon L. Bartels*

*To Nicole, Addison, and Bentley—the best parts of my day,  
each and every day!*

*Chris W. Bonneau*

*To Robinson Jeter Rice-Bonneau . . . normatively and empirically,  
the biggest joy of my life.*

# PREFACE

This project reflects our general concern that the excellent research being done by empirical researchers studying law and courts is not having enough of an impact beyond academic audiences. Our normative stand on this particular topic is that *it should*. We believe that empiricists are very well positioned to elaborate on the normative implications and policy prescriptions that emanate from their empirical findings and that exciting opportunities exist for pursuing this task. This volume is an effort to encourage researchers to explicate these normative implications to a much greater extent and work toward disseminating them to audiences outside academia in order to be part of the policy discussions engaged in by policy makers, policy advocates, and journalists. The chapters in this volume offer numerous examples and glimpses of how these general goals can be achieved in the short and long term. We do not pretend these goals will be easily achieved, but we hope this volume will convince empirical researchers that the overall benefits of working to achieve them are numerous.

The roots of this project go back to June 2010, when Bartels—as a guest blogger for the legal blog, *Concurring Opinions*—interviewed Bonneau and his co-author Melinda Gann Hall regarding their book, *In Defense of Judicial Elections*.<sup>1</sup> As some of the chapters in this volume make clear, the topic of judicial elections is controversial and involves a compelling nexus between empirical and normative questions and implications. In the interview, Bartels asked Bonneau and Hall to explain the extent to which they delved into the normative implications of their empirical findings. They claimed that, in many ways, *explicating the normative implications of their empirical findings was perhaps the most important part of their book* because these implications and prescriptions were grounded in scientific method and empirical evidence and not based on political stands and the missions of

advocacy groups. Whether one agrees or disagrees with the findings and normative implications from this particular book, the endeavor that Bonneau and Hall engage in begs the question of why all empirical research is not engaging in the analysis and explication of such normative implications.

Our thoughts about emphasizing the normative implications of empirical research on law and courts were further developed as a result of a panel we put together at the 2011 Annual Meeting of the Midwest Political Science Association on the “Normative Implications of Empirical Research on Judicial Selection.” This lively conversation, which included some of the contributors to this volume (Lawrence Baum, Melinda Gann Hall, Nancy Scherer, Jeffrey A. Segal, and both of us), got us thinking that we needed to devote more intellectual energy to the topic for law and courts research writ large. At first, we discussed writing a thought piece on the issue, ending with a call for empirical scholars to seriously consider the normative implications of their work. Further conversations led to the idea of a workshop, where we would bring together scholars from multiple disciplines (political science, law, and sociology) at various stages of their careers (from endowed chairs to graduate students) for a conversation on how scholars of law and courts could do a better job of addressing the normative implications of their research.

We secured funding for the workshop through the Law and Social Sciences Division of the National Science Foundation (NSF). Our overarching vision for the workshop, and for the research agenda more generally, was to urge empirical scholars to think more systematically about the normative implications of their work and how their work might inform public discourse on a host of subjects. We left the term “normative implications” a bit underspecified to allow our participants to think creatively about what it meant to them. As the chapters in this volume illustrate, four broad types of normative implications emerged that suggested the following: (1) certain types of policy prescriptions and institutional reforms, (2) how aspects of judicial process could be made more effective and efficient, (3) how certain ingrained theories and conventional wisdoms should be revisited, and (4) the extent to which certain core democratic and/or constitutional principles and theories should be revisited or questioned.

Although there are a variety of topics that could be covered, in the interest of time we limited the discussion at the workshop to five: (1) judicial selection; (2) judicial decision making; (3) rule of law; (4) institutional legitimacy; and (5) race, gender, and judging. We then cast a wide net to identify and invite scholars with expertise on these topics to participate. We wanted a variety of perspectives represented and sought to be diverse in terms of rank, type of institution, discipline, and approach. We asked all participants to draft a brief essay (about five pages) about the broader implications of empirical research. Based on the workshop conversation and how particular essays hung together, we invited some participants to revise and extend their essays; those are what appear in this volume.<sup>2</sup>



We were overwhelmed with the amount of interest in the workshop. While we invited the faculty participants, we had numerous others contact us and ask if they could participate in some manner. Sadly, due to the need to keep the workshop a manageable size because of funding constraints, we had to leave out a lot of thoughtful people. For our graduate student participants, we asked them to send us a brief description of the type of essay they would write. We had 40 (!) graduate students send us proposals, from which we could only select and fund 6. We did not anticipate this level of interest from both faculty and graduate students; this seems to us to be good evidence that a workshop (and volume) on this topic is long overdue.

While our overarching goal of the volume (elaborated further in Chapter 1) is to encourage empirical scholars to emphasize the normative implications of their work, it is important to note at the outset what our goals are *not*. We do not presume that our work will ultimately change existing policies or institutions. Indeed, Melinda Gann Hall's chapter discusses the numerous obstacles in the way of this endeavor. We address these issues further in Chapters 1 and 18. We are also not suggesting that empirical scholars change the nature of the questions they ask or the studies they conduct. Rather, our goal is much more modest (though no less important): our mission is to make the normative implications of our work more visible and relevant to an audience beyond academics. We need to do better at explicitly developing the normative implications of our work. What others do with this is beyond our control. We are often aware of the normative foundations that motivate our work, and we can certainly be more mindful and vocal about the normative implications that result from our work.

Finally, we would be remiss if we did not note the political context in which our workshop (and this volume) occurred. Prior to our receiving funding, the National Science Foundation's Political Science Program was subject to attack from a few members of Congress. These lawmakers (specifically, Jeff Flake and Tom Coburn) argued that political science was not relevant and the money spent on this research could be better spent elsewhere. These amendments to de-fund political science had always failed—until March 20, 2013. An amendment to the Continuing Resolution (which funds the government) barring the expenditure of federal funds for political science research unless it is deemed essential to national security or the economic interests of the U.S. was adopted in a voice vote by the Senate. These restrictions have since expired and, as of this date, the situation remains fluid, with additional efforts at redirecting money to other divisions brewing in Congress.

The reasons political science was singled out are certainly many. Some have argued it is because political science studies speak truth to power. Some have argued that the anemic and ineffective lobbying of the American Political Science Association had something to do with it (see Epstein, Knight, and Martin in this volume). Undoubtedly, both of these are true to some extent. We would argue

that the failure of political scientists to discuss the broader normative and policy implications of their research and make their research accessible to policymakers and the public also undoubtedly played a role.

Our take is that we can and must do better. And “doing better” is easier than it seems. In most cases, it simply requires us to think of the normative implications and make them explicit in our work. In other cases, it may involve writing multiple versions of a study: one for an academic audience and one for an audience of interested non-academics. We do not need to create normative implications of our work; as these chapters demonstrate, they already exist. We do need to prioritize making them clear.

We hope this volume represents the start of a conversation on the topic. All of the chapters here focus on law and courts (since that is our area of expertise), but one can easily envision other subfields of political science engaging in a similar enterprise. Indeed, if we hope to continue receiving funding for our various important (and costly) studies, this is something scholars need to do.

## Notes

- 1 Bartels, Brandon. “BRIGHT IDEAS: Political Scientists Chris W. Bonneau and Melinda Gann Hall on the Judicial Elections Controversy.” *Concurring Opinions*, June 17, 2010.
- 2 A full list of workshop participants can be found in Appendix A.

# ACKNOWLEDGMENTS

Edited volumes can be both very rewarding and also quite a chore. There are several people who made this far more of the former than the latter. First, we want to thank the contributors in the volume who not only wrote high-quality chapters but also did so within the deadlines that were set. They made our job much easier. We also want to thank the Law and Social Sciences Division of the National Science Foundation and its co-director at the time, Susan Sterett, for funding the workshop (SES 1228306) that gave rise to this volume. While NSF made this collection possible, they are in no way responsible for any of the views expressed therein.

We would also like to thank the Department of Political Science at George Washington University (and its chair, Paul Wahlbeck) for his support of this endeavour. Our graduate research assistant, Alyx Mark (GWU), did an exemplary job coordinating all aspects of the conference including dealing with dinners, transportation for the participants, processing reimbursements, etc. The conference would not have gone nearly as smoothly as it did without Alyx's outstanding work and effort.

Bob Howard (series editor) was enthusiastic about this project from our initial proposal. Natalja Mortensen at Routledge was a real pleasure to work with, and ensured the entire publication process (from proposal to publication) was efficient and transparent.

Bartels thanks his GW colleagues John Sides, Sarah Binder, Henry Farrell, and Danny Hayes for serving as inspirations and role models in making political science research more relevant to audiences beyond academia through their compelling blog posts at *The Monkey Cage*, which was acquired by the *Washington Post* in September 2013. *The Monkey Cage*—founded in 2007 by Sides and former GW

colleagues David Park and the late great Lee Sigelman—represents an exciting and compelling avenue for both publicizing political science research to policymakers, policy advocates, and journalists and making the normative implications of empirical work, including policy prescriptions and ideas for institutional reforms, known to political elites. As we discuss in this volume, academic blogging represents an ideal vehicle for expanding on and drawing out normative implications. Our hope is that additional blogs will emerge that will rival the popularity and reach of *The Monkey Cage*.

Finally, we would like to thank our families for their patience throughout the project. Every minute we spent on this grant proposal, workshop, and edited volume was time we could have spent with them. We are both fortunate to have families who supported our endeavors even though it was sometimes at their expense. Bartels is grateful for the love and support from his wife and best friend, Nicole, and his two wonderful kids, Addison and Bentley, who always make him smile and laugh. Bartels also thanks his parents, Jim and Kathy Bartels, for imparting in him the values of hard work, motivation, and persistence, which have served as his foundations for pursuing and maintaining an academic career. Bonneau is, as always, thankful to his family for their patience and indulgence. Heather Rice was nine months pregnant at the time the workshop occurred; this says all you need to know about her support and good humor. His son, Robinson J., transitioned from in utero to ex utero over the course of this project, and facilitated the timely completion of this volume by having a loving and happy disposition, unlike his father.

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