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Rational-legal Authority

Boaventura de Sousa Santos, Eugen Ehrlich

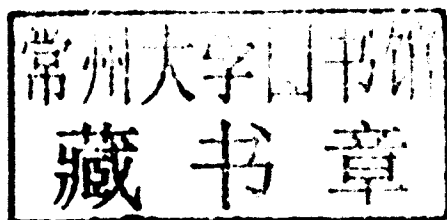
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Rational-legal authority

Rational-legal authority (also known as **rational authority**, **legal authority**, **rational domination**, **legal domination**, or **bureaucratic authority**) is a form of leadership in which the authority of an organization or a ruling regime is largely tied to legal rationality, legal legitimacy and bureaucracy. The majority of the modern state of the twentieth century are rational-legal authorities, according to those who use this form of classification.

Rational-legal authority

In sociology, the concept of rational-legal domination comes from Max Weber's tripartite classification of authority (one of several classifications of government used by sociologists); the other two forms being traditional authority and charismatic authority. All of those three domination types represent an example of his ideal type concept. Weber noted that in history those ideal types of domination are always found in combinations.

In traditional authority, the legitimacy of the authority comes from tradition. Charismatic authority is legitimized by the personality and leadership qualities of the ruling individual. Finally, rational-legal authority derives its powers from the system of bureaucracy and legality.

Legal rationality and legitimacy

Under rational-legal authority, legitimacy is seen as coming from a legal order and the laws that have been enacted in it (see also natural law and legal positivism).

Weber defined legal order as a system where the rules are enacted and obeyed as legitimate because they are in line with other laws on how they can be enacted and how they should be obeyed. Further, they are enforced by a government that monopolizes their enactment and the legitimate use of physical force.

Emergence of the modern state

Weber wrote that the modern state based on rational-legal authority emerged from the patrimonial and feudal struggle for power (see traditional authority) uniquely in the Occidental civilization. The prerequisites for the modern Western state are:

- monopolization by central authority of the means of administration and control based on a centralized and stable system of taxation and use of physical force
- monopolization of legislative
- organisation of an officialdom, dependent upon the central authority

Weber argued that some of those attributes have existed in various time or places, but together they existed only in Occidental civilization. The conditions that favoured this were

- emergence of rational-legal rationality (various status groups in the Occident promoted that emergence)
- emergence of modern officialdom (bureaucracy), which required
 - development of the money economy, where officials are compensated in money instead of kind (usually land grants)
 - quantitative and qualitative expansion of administrative tasks
 - centralisation and increased efficiency of administration.

Weber's belief that rational-legal authority did not exist in Imperial China has been heavily criticized, and does not have many supporters in the early 21st century.

Modern state

According to Max Weber, a modern state exists where a political community has:

- an administrative and legal order that has been created and can be changed by legislation that also determines its role
- binding authority over citizens and actions in its jurisdiction
- the right to legitimately use the physical force in its jurisdiction

An important attribute of Weber's definition of a modern state was that it is a bureaucracy.

The vast majority of the modern states from the 20th century onward fall under the rational-legal authority category.

Rational-legal leaders

The majority of modern bureaucratic officials and political leaders represent this type of authority.

Officials:

- are personally free.
- serve a higher authority.
- are appointed on the basis of conduct and their technical qualifications.
- are responsible for the impartial execution of assigned tasks.
- Their work is a full-time occupation.
- Their work is rewarded by a salary and prospects of career advancement.

Politicians:

- are solely responsible for independent action.
 - must recognize that public actions that conflict with their basic policy must be rejected.
 - should have charismatic appeal to win elections under conditions of universal suffrage.
-

Boaventura de Sousa Santos

Boaventura de Sousa Santos (Coimbra, 15 November 1940) is a Professor of Sociology at the School of Economics, University of Coimbra. De Sousa Santos has taught in various universities including Yale, Wisconsin-Madison Law School and University of Warwick. He is active in World Social Forum at Brasil.^[1]

His writings are spread on areas of human rights, sociology of law, and democracy.



Boaventura de Sousa Santos.

References

- [1] "Q&A: 'WSF Is As Much a Cultural Struggle As a Political One'" (<http://www.ipsnews.net/news.asp?idnews=40866>). Inter Press Service. 2008-01-21. . Retrieved 2009-03-07.

External links

- Personal website (<http://www.boaventuradesousasantos.pt/pages/en/homepage.php>)
- Boaventura de Sousa Santos on Bolivia Climate Summit (http://www.democracynow.org/2010/4/21/the_world_is_changing_in_a) - video report by *Democracy Now!*

Eugen Ehrlich

Eugen Ehrlich (born September 14, 1862, Czernowitz, Austrian Empire [now Chernovtsy, Ukraine] — died May 2, 1922, Vienna, Austria) was an Austrian legal scholar and sociologist of law.

He was born in Czernowitz (now Chernivtsi in Ukraine), which was at that time part of the Bukovina, a province of the Austro-Hungarian empire. Ehrlich studied law in Vienna, where he taught and practised as a lawyer before returning to Czernowitz to teach at the University there, a bastion of Germanic culture at the eastern edge of the Austro-Hungarian Empire. He remained at the University for the rest of his teaching career and was Rector in 1906-7. During the turmoil of World War I, when Czernowitz was occupied several times by Russian forces, he moved to Switzerland. After the break-up of the Austro-Hungarian Empire and the ceding of the Bukovina to Romania, Ehrlich planned to return to Czernowitz, where he would have been required to teach in Romanian, but he died of diabetes in Vienna in 1922.

The location and circumstances of his career were significant, as his experience of the Bukovina's legal culture, where Austrian law and sharply contrasting local custom seemed to co-exist, caused him to question the hierarchical notions of law propounded by such theorists as Hans Kelsen. Ehrlich is considered as one of the founders of the modern sociology of law. He noted that earlier legal theories that recognize law as a sum of statutes and judgments gave an inadequate view of the legal reality of a community. He drew a distinction between norms of decision and social norms or norms of conduct^[1]. The latter actually govern the life in a society and can be regarded in popular consciousness, if not necessarily by lawyers, as law. For example, commercial usage and custom may develop and be recognized and respected by courts of law. The point Ehrlich sought to make was that the "living law" which regulates social life may be quite different from the norms for decision applied by courts. Norms for decision regulate only those disputes that are brought before a judicial or other tribunal. Living law is a framework for the routine structuring of social relationships. Its source is in the many different kinds of social associations in which people co-exist. Its essence is not dispute and litigation, but peace and co-operation. What counts as law depends on what kind of authority exists to give it legal significance among those it is supposed to regulate. Ehrlich's teaching is

that the sources of law's authority are plural and insofar as some of those sources are political and others cultural they may conflict. Not all the norms of social associations should be thought of as 'law', in Ehrlich's view. Legal norms are distinguished from merely moral or customary ones by the powerful feelings of revulsion which typically attach to breach of them. They are, thus, regarded as socially fundamental. In addition, legal norms concern certain kinds of relationships, transactions and circumstances which he described as 'facts of the law' - specially important topics or considerations for social regulation.

Further reading

- Rehbinder, Manfred (1986). *Die Begründung der Rechtssoziologie durch Eugen Ehrlich*, 2nd edn.. Berlin: Duncker & Humblot.
- Hertogh, Marc, ed (2009). *Living Law: Reconsidering Eugen Ehrlich*. Oxford: Hart. ISBN 978-1-84113-897-8.
- Cotterrell, Roger (1992). *The Sociology of Law : An Introduction*. 2nd edn.. Oxford: Oxford University Press. ISBN 978-0-406-51770-8.

References

- [1] Ehrlich, E. ([1913] 2001). *Fundamental Principles of the Sociology of Law*. Transaction Publishers, New Brunswick.

International Institute for the Sociology of Law

The **International Institute for the Sociology of Law (IISL)** in Oñati is the only international establishment which is entirely devoted to teaching and promoting the sociology of law, socio-legal studies, and law and society research.

The IISL is a joint venture of the Research Committee on Sociology of Law ^[1] (also known as RC12 of the International Sociological Association) and the government of the Basque autonomous region in Spain. It is situated (since 1989) in the Antigua Universidad del País Vasco (Old University of the Basque Country) in Oñati. The founding director of the IISL, André-Jean Arnaud, had bronze plaques put on the walls of the renaissance building with the names of some of the forefathers of modern sociology of law: Montesquieu, Henry James Sumner Maine, Francisco Giner de los Ríos, Henri Lévy-Bruhl, Achille Loria, Leon Petrażycki, Émile Durkheim, Max Weber, Eugen Ehrlich, Karl Renner, Karl N. Llewellyn, Theodor Geiger, Georges Gurvitch, Nicholas S. Timasheff.

The IISL has four "official languages": English, French, Spanish and Basque. It houses a famous library/documentation covering socio-legal literature in all big and many small languages. The Institute organises socio-legal workshops and an international Master's Program in the Sociology of Law. Publications from the workshops are regularly produced in both an English- and Spanish language series.

It recruits students from across the world for its Masters programme. The Masters programme is designed with a 6-month course work and 6 months of tesina. During the six months of course work students get exposed to wide variety of areas of discussion. The official website provides you more details on the information of how the courses in the past had been designed. During the tesina period (thesis) you are expected to write small thesis of students choice. The degree currently has recognition of the state. Two students are awarded with scholarships every year.

Literature

- Pierre Guibentif (ed.) Oñati IISL-IISJ. 1989-2000: Introduction to the Institute and Report about its Activities. Oñati: IISL 2000.
- Oñati International Series in the sociology of Law (Richard Hart Publishers, Oxford)
- Colección Oñati: Derecho y Sociedad (Dykinson: Madrid)

Internal Links

Sociology of Law

Research Committee on Sociology of Law

External links

- <http://www.iisj.net>

References

[1] <http://resl.iscte.pt/>

Judicial activism

Judicial activism describes judicial ruling suspected of being based on personal or political considerations rather than on existing law. It is sometimes used as an antonym of judicial restraint.^{[1]:1} The definition of judicial activism, and which specific decisions are activist, is a controversial political issue, particularly in the United States. The question of judicial activism is closely related to constitutional interpretation, statutory construction, and separation of powers.

Origins of the term

Arthur Schlesinger Jr. introduced the term "judicial activism" in a January 1947 *Fortune* magazine article titled "The Supreme Court: 1947."^[2]

^[3] Schlesinger's article profiled all nine Supreme Court justices on the Court at that time and explained the alliances and divisions among them. The article characterized Justices Black, Douglas, Murphy, and Rutledge as the "Judicial Activists" and Justices Frankfurter, Jackson, and Burton as the "Champions of Self Restraint." Justice Reed and Chief Justice Vinson comprised a middle group. — Keenan D. Kmiec^[3]

From the very beginning, the phrase was controversial. An article by Craig Green, *An Intellectual History of Judicial Activism*, is highly critical of Schlesinger's use of the term. "Schlesinger's original introduction of judicial activism was doubly blurred: not only did he fail to explain what counts as activism, he also declined to say whether activism is good or bad."^[4]

Definitions

Black's Law Dictionary defines judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions."^[5]

Political science professor Bradley Canon has posited six dimensions along which judge courts may be perceived as activist:^[6] majoritarianism, interpretive stability, interpretive fidelity, substance/democratic process, specificity of policy, and availability of an alternate policymaker. David Strauss has argued that judicial activism can be narrowly defined as one or more of three possible actions: overturning laws as unconstitutional, overturning judicial precedent, and ruling against a preferred interpretation of the constitution.^[7]

Others have been less confident of the term's meaning, finding it instead to be little more than a rhetorical shorthand. Kermit Roosevelt III stated that "in practice 'activist' turns out to be little more than a rhetorically charged shorthand for decision the speaker disagrees with";^[8] likewise, former Solicitor General under George W. Bush, Theodore Olson stated in an interview on *Fox News Sunday*, in regards to a case for same-sex marriage he had successfully litigated for, that "most people use the term 'judicial activism' to explain decisions that they don't like."^[9] Others such as current Supreme Court Justice Anthony Kennedy have scolded this approach as unhelpful because it relies on subjective judgments.^{[10] [11]}

Debate

Detractors of judicial activism charge that it usurps the power of the elected branches of government or appointed agencies, damaging the rule of law and democracy.^[12] Defenders of judicial activism say that in many cases it is a legitimate form of judicial review, and that the interpretation of the law must change with changing times.

A third view is that so-called "objective" interpretation of the law does not exist. According to law professor Brian Z. Tamanaha, "Throughout the so-called formalist age, it turns out, many prominent judges and jurists acknowledged that there were gaps and uncertainties in the law and that judges must sometimes make choices."^[13]

Some proponents of a stronger judiciary argue that the judiciary helps provide checks and balances and should grant itself an expanded role to counterbalance the effects of transient majoritarianism, i.e. there should be an increase in the powers of a branch of government which is not directly subject to the electorate, so that the majority cannot dominate or oppress any particular minority through its elective powers.^[14] Moreover, they argue that the judiciary strikes down both elected and unelected official action, that in some instances acts of legislative bodies reflect the view the transient majority may have had at the moment of passage and not necessarily the view the same legislative body may have at the time the legislation is struck down, that the judges that are appointed are usually appointed by previously elected executive officials so that their philosophy should reflect that of those who nominated them, that an independent judiciary is a great asset to civil society since special interests are unable to dictate their version of constitutional interpretation with threat of stopping political donations.

Examples

The following have been cited as examples of judicial activism:

- *Brown v. Board of Education* - 1954 Supreme Court ruling ordering the desegregation of public schools^[15]
- *Roe v. Wade* - 1973 Supreme Court ruling decriminalizing abortion^[16]
- *Bush v. Gore* - The landmark United States Supreme Court case between the major-party candidates in the 2000 presidential election, George W. Bush and Al Gore. The judges voted along ideological lines, 5-4, to halt the recount of ballots in Florida and, in effect, elect Bush President.^[17]
- *Citizens United v. Federal Election Commission* - 2010 Supreme Court decision overturning Congressionally enacted limitations on corporate political spending^[18]
- *Perry v. Schwarzenegger* - 2010 decision by federal judge Vaughn R. Walker overturning California's constitutional amendment to ban same-sex marriage^[19]

Geographical differences

While the term was first coined and is often used in the United States, it has also been applied in other countries, particularly common law jurisdictions.

Notes

- [1] Christopher Wolfe, *Judicial activism*, Rowman & Littlefield, ISBN 0847685314.
- [2] Keenan Kmiec in a 2004 California Law Review article
- [3] Keenan D. Kmiec, The Origin and Current Meanings of "Judicial Activism," (http://www.constitution.org/lev/kmiec/judicial_activism.htm) 92 Cal. L. Rev. 1441, 1447 (2004).]
- [4] http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=roger_craig_green p. 4
- [5] As quoted in "Takings Clause Jurisprudence: Muddled, Perhaps; Judicial Activism, No" DF O'Scannlain, Geo. J.L. & Pub. Pol'y, 2002
- [6] Bradley C. Canon - "Defining the Dimensions of Judicial Activism", *Judicature*, 66.6, 1983
- [7] (http://www.wbez.org/audio_library/od_rasep05.asp#13)
- [8] Kermit Roosevelt, III, *The Myth of Judicial Activism: Making Sense of Supreme Court Decisions*, Yale University Press, 2008, ISBN 0300126913, 9780300126914.
- [9] Wallace, Chris; Olson, Theodore (August 8, 2010). "Ted Olson on Debate Over Judicial Activism and Same-Sex Marriage" (<http://www.foxnews.com/on-air/fox-news-sunday/transcript/ted-olson-debate-over-judicial-activism-and-same-sex-marriage>). *Fox News Sunday* (Fox News Channel). .
- [10] Frederick P. Lewis, *The context of judicial activism: the endurance of the Warren Court legacy in a conservative age*. Rowman & Littlefield: 1999, ISBN 0847689921
- [11] Matt Sedensky, " Justice questions way court nominees are grilled (http://www.google.com/hostednews/ap/article/ALeqM5iWhwP-GmupNw-uw8t8Z_ib1YV2QD9FMQKRG0)", Associated Press, May 14, 2010, accessed May 14, 2010.
- [12] Justice Antonin Scalia's dissent in *Romer v. Evans* (<http://www.law.cornell.edu/supct/html/94-1039.ZD.html>)
- [13] Brian Z. Tamanaha, *Beyond the Formalist-Realist Divide: The Role of Politics in Judging*, Princeton University Press, 2010
- [14] John Hart Ely, *Democracy and Distrust*. Cambridge: Harvard University Press, 1980, chapters 4-6.
- [15] Vincent Martin Bonventre, "Judicial activism, judges' speech, and merit selection: conventional wisdom and nonsense", *Albany Law Review*, Summer 2005, (http://findarticles.com/p/articles/mi_hb3243/is_3_68/ai_n29195145/)
- [16] <http://www.committeeforjustice.org/blog/2009/01/roe-v-wade-and-judicial-activism.html>
- [17] <http://www.timesherald.com/articles/2009/06/02/opinion/doc4a235c6518fba759201011.txt>
- [18] Mann, Thomas E. (January 26, 2010). "Commentary: Citizens United vs. FEC is an egregious exercise of judicial activism" (<http://www.mcclatchydc.com/2010/01/26/82982/commentary-citizens-united-is.html>). McClatchy News Service. . Retrieved 2010-04-29.
- [19] "California Officials React To Proposition 8 Ruling" (<http://www.krcrtv.com/news/24515963/detail.html>). KRCR-TV. 2010-08-04. . Retrieved 2010-08-05. Congressman Wally Herger issued a statement, "This is simply another example of judicial activism and legislating from the bench..."
- *Graves, Bill (2010-08-04). "California court ruling lifts hopes for Oregon gay marriage supporters" (http://www.oregonlive.com/politics/index.ssf/2010/08/california_court_ruling_lifts.html). *The Oregonian*. . Retrieved 2010-08-05. Tim Nashif, political director of the Oregon Family Council, "We think it is judicial activism at its worst."
- *Donovan, Charles A (2010-08-04). "Prop. 8 ruling an act of extreme judicial activism" (<http://www.ocregister.com/opinion/marriage-260724-state-judge.html>). *Orange County Register*. . Retrieved 2010-08-05. Charles A. Donovan of the Heritage Foundation, "Today's decision by a federal district judge in San Francisco striking down state constitutional protections for marriage and inventing a spurious federal constitutional right to same-sex marriage is an example of extreme judicial activism."

References

- *Merriam-Webster's Dictionary of Law* (1996), Merriam-Webster. ISBN 0-87779-604-1
- Bryan A. Garner (1999). *Black's Law Dictionary, 8th Edition*. West Group. ISBN 0-314-15199-0.

Further reading

Legal books

- Paul O. Carrese, 2003. *The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism* (Chicago: University of Chicago Press).
- Duncan Kennedy, 1998. *A Critique of Adjudication* (Cambridge, MA: Harvard University Press).
- Carol D. Kilgore, 1977. *Judicial Tyranny: An Inquiry into the Integrity of the Federal Judiciary* (Thomas Nelson). ISBN 978-0840740601
- 105th Cong., 1st Sess. I, 1997. *Judicial Activism: Defining the Problem and its Impact: Testimony before the Subcommittee on the Constitution, Federalism & Property Rights* (U.S. G.P.O., Supt. of Docs., Congressional Sales Office Publishers (<http://www.amazon.com/dp/0160559170/>)), 205pp. ISBN 0-16-055917-0
- Sterling Harwood, 1996. *Judicial Activism: A Restrained Defense* (London: Austin & Winfield Publishers), 167pp. ISBN 1-880921-68-5.
- Christopher Wolfe, 1997. *Judicial Activism*, 2nd ed. (Totowa, NJ: Rowman & Littlefield Publishers, Inc.).
- Kenneth M. Holland, editor, 1991. *Judicial Activism in Comparative Perspective* (Palgrave Macmillan).
- Ronald Dworkin, 1988. *Law's Empire* (Cambridge, MA: Harvard University Press).
- Alexander M. Bickel, 1986. *The Least Dangerous Branch* 2nd ed. (New Haven, CT: Yale University Press).
- Arthur Selwyn Miller, 1982. *Toward Increased Judicial Activism* (Greenwood Press).
- Ronald Dworkin, 1977. *Taking Rights Seriously* (Cambridge, MA: Harvard University Press).
- Lino A. Graglia, 1976. *Disaster by Decree* (Ithaca, NY: Cornell University Press).
- Michael Rebell and Arthur R. Block, 1982. *Educational Policy Making and the Courts: An Empirical Study of Judicial Activism* (Chicago: University of Chicago Press).
- H.L.A. Hart, 1961. *The Concept of Law* (Oxford: Oxford University Press).

Popular books

- Kermit Roosevelt, October 15, 2006. *The Myth of Judicial Activism: Making Sense of Supreme Court Decisions* (Yale University Press Publishers), 272pp. ISBN 0-300-11468-0
- James B. Kelly, July 30, 2006. *Governing With the Charter: Legislative And Judicial Activism And Framers's Intent (Law and Society Series)* (UBC Press Publishers), 336pp. ISBN 0-7748-1212-5
- Rory Leishman, May 2006. *Against Judicial Activism: The Decline of Freedom And Democracy in Canada* (McGill-Queen's University Press Publishers), 310pp. ISBN 0-7735-3054-1
- Mark Sutherland, 2005. *Judicial Tyranny: The New Kings of America?* ISBN 0-9753455-6-7
- Mark R. Levin, 2005. *Men In Black: How the Supreme Court Is Destroying America* ISBN 0-89526-050-6
- S.Hrg. 108-717, 2004. *Judicial Activism vs. Democracy: What are the National Implications of the Massachusetts Goodridge Decision and the Judicial Invalidation of Traditional Marriage Laws?* (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_senate_hearings&docid=f:96924.wais) (U.S. G.P.O., Supt. of Docs., Congressional Sales Office Publishers), 263pp. Serial No. J-108-59. GPO Stock No. 552-070-32572-7 (<http://a257.g.akamaitech.net/7/257/2422/22mar20051400/www.access.gpo.gov/congress/senate/pdf/108hr96924.pdf>), ISBN 0-16-074535-7
- Phyllis Schlafly, 2004. *The Supremacists: The Tyranny Of Judges And How To Stop It* ISBN 1-890626-55-4
- S. P. Sathe, December 2003. *Judicial Activism in India* (Oxford University Press Publishers), 406pp. ISBN 0-19-566823-5

- David Barton, 2003. *Restraining Judicial Activism* (Wallbuilder Press). ISBN 1932225145
- Robert Bork, 2003. *Coercing Virtue: The Worldwide Rule of Judges* (AEI Press) ISBN 0844741620
- Stephen P. Powers and Stanley Rothman, 2002. *The Least Dangerous Branch? Consequences of Judicial Activism* (Praeger Paperbacks). ISBN 0275975363
- Herman Schwartz, editor, 2002. *The Rehnquist Court: Judicial Activism on the Right* ISBN 0-8090-8073-7.
- David Gwynn Morgan, 2001. *A Judgment Too Far? Judicial Activism and the Constitution* (Cork University Press). ISBN 1859182291
- Bradley C. Canon and Charles A. Johnson, 1998. *Judicial Policies: Implementation and Impact* 2nd ed. (Congressional Quarterly Books).
- William P. Murchison, 1982. *Judicial Politics Gone Wild: A Case Study of Judicial Activism in Texas* (Washington Legal Foundation), 11pp

External links

- Ronald Dworkin, The Jurisprudence of Richard Nixon (<http://www.nybooks.com/articles/10204>), 1972.
- Matthew J. Franck, Depends What the Meaning of "Judicial Activism" Is (<http://article.nationalreview.com/?q=NGRiYjk4Yzk5ZjA2YWVmNjgzZTAwMWZkZWMOZzY0MzU=>), 2006.
- Jonah Goldberg, Justice Kennedy's Mind: Where the Constitution resides (<http://www.nationalreview.com/goldberg/goldberg200503090749.asp>), 2005.
- Keenan Kmiec, The origin and current meanings of "judicial activism" (http://www.constitution.org/lrev/kmiec/judicial_activism.htm), California Law Review, 2004.
- Charles Krauthammer, The Constitution is whatever Sandra Day O'Connor says it is (http://www.townhall.com/columnists/CharlesKrauthammer/2003/07/04/the_constitution_is_whatever_sandra_day_oconnor_says_it_is), 2003.
- Larry Solum, "Jargon" (http://lsolum.blogspot.com/2004_03_01_lsolum_archive.html#107878762811448028) (blog entry), 2004.
- Joseph Tussman, Judicial Activism and the Rule of Law - Toward a Theory of Selective Intervention (<http://josephussman.wordpress.com/2008/01/21/judicial-activism-and-the-rule-of-law-toward-a-theory-of-selective-intervention/>), 1991
- Thomas Sowell, Judicial activism reconsidered (<http://www.amatecon.com/etext/jar/jar.html>), 1989.
- Judicial Activism in America: Information Resources and Proposed Solutions (<http://www.popularsovereignty.org>)
- Defining Judicial Activism in the Context of the Culture Wars (http://www.judicialwatch.org/printer_activism_panel_quotes.shtml)
- Every Judge Is an "Activist Judge" (http://www.huffingtonpost.com/allison-kilkenny/every-judge-is-an-activist_b_230696.html) by Allison Kilkenny, *The Huffington Post*, July 13, 2009
- Movement for Rule of Law Pakistan (<http://www.movementforruleoflaw.com>)

Judicial activism in the European Union

The European Court of Justice has historically been an important driver of integration in the EU by performing judicial activism.^[1]

Cases

In the *Cassis de Dijon* Case the European Court of Justice ruled the German laws prohibiting sales of liquors with alcohol percentages between 15% and 25% conflicted with EU laws. This ruling confirmed that EU law has primacy over Member-State law.^[2] When the treaties are unclear it leaves room for the Court to interpret it in different ways. When EU treaties are negotiated it is difficult to get all governments to agree on a clear set of laws. In order to compromise governments agree to leave a decision on an issue to the Court.^[3] The Court can only practice judicial activism to the extent the EU Governments leave room for interpretation in the treaties.^[4] The Court makes important rulings that set the agenda for further EU integration, but it cannot happen without the consensual support of the Member-States.^[5] The most recent case of judicial activism of the European Court of Justice is the *Metock* case which determined that the strict Danish and Irish immigration laws conflict with EU laws. Article:^[6]

Lisbon Treaty

In the Irish referendum on the Lisbon Treaty many issues not directly related to the treaty, such as Abortion were included in the debate, because of worries that the Lisbon Treaty will enable the European Court of Justice to make activist rulings in these areas. After the rejection of the Lisbon Treaty in Ireland, the Irish Government received concessions from the rest of the EU countries to make written guarantees that the EU will under no circumstances interfere with Irish abortion, taxation or military neutrality.^[7] Ireland voted on the Lisbon Treaty a second time in 2009 with a 67.13% majority voting Yes to the treaty.

References

- [1] Bache, Ian and Stephen George (2006). *Politics in the European Union*, 2nd ed., Oxford: Oxford University Press
- [2] EUabc – *Cassis de Dijon* case: <http://en.euabc.com/word/140>
- [3] Bache, Ian and Stephen George (2006). *Politics in the European Union*, 2nd ed., Oxford: Oxford University Press
- [4] Moravcsik, A. (2002) 'In defense of the democratic deficit: reassessing legitimacy in the European Union' *Journal of Common Market Studies*. Vol 40, Issue 4
- [5] Moravcsik, A. (2002) 'In defense of the democratic deficit: reassessing legitimacy in the European Union' *Journal of Common Market Studies*. Vol 40, Issue 4
- [6] *Metock* case brings down Danish immigration laws <http://www.brusselsjournal.com/node/3457>
- [7] Irish secure concessions on Lisbon Treaty: <http://www.europeavoice.com/article/2008/12/irish-secure-concessions-on-lisbon-treaty/63409.aspx>

Jury research

Jury research is an umbrella term for various methods of research associated with jury trials. It could include (but is not limited to) prospective jurors demographic research, mock trials, jury selection, shadow jury or post-trial jury interviews. Generally jury research is a part of a trial strategy in high stakes cases in civil or criminal litigation.

History

There have been plenty of attempts to use science—particularly psychology or sociology—to get an edge in jury trials. Jury research was successfully used during the IBM antitrust trial in 1969 and O. J. Simpson murder case. Today, there are many companies and individuals providing services as jury consultants or trial strategists.

Research for jury trials comprises a small proportion of jury research. Academic research on juries produces hundreds of articles per year from scholars in psychology, communication, sociology, and criminal justice. This research is conducted to understand how juries operate rather than to give one side or the other an edge in a specific trial. Jury consultants and trial strategists represent just a few of the people who research jury trials.

Methods and myths

Jury consultants can not guarantee victory in a case, nor can they pick a jury that will rule in their client's favor. Their job is rather to shape trial team strategy so it tells the most persuasive story accommodating a particular venue's jurors preexisting beliefs and experiences.

Regular market research techniques are usually used—phone surveys, focus groups, feedback sessions and so on. Surrogate jurors are selected to represent a jury pool in a venue. They are presented with general demographic questions and some facts relevant to the case. Facts could be presented in different combinations to groups in order to test different strategies. Visual exhibits, witnesses, metaphors and examples of a case, timeline of events—all could be subjected to multiple jurors perspectives.

Pre-trial research techniques are also sometimes used to prepare for settlement negotiations. Post-trial juror interviews sometimes allow for better understanding of mistakes or good arguments made in a trial, and that knowledge could be used for future trials or for an appeal.

Further reading

- Erlanger, Howard S. (1970). "Jury Research in America: Its Past and Future"^[1]. *Law & Society Review* 4 (3): 345–370. doi:10.2307/3053091.

External links

- Jury Research articles from AP-LS^[2]

References

[1] <http://jstor.org/stable/3053091>

[2] <http://www.ap-ls.org/links/publishing/Jury.html>

Pat Lauderdale

Pat Lee Lauderdale (born Washita, Oklahoma, U.S.A. October 19, 1954) received his doctorate in the sociology of law from Stanford University and was a professor in the School of Justice and Social Inquiry at Arizona State University. In 2008, he was appointed a visiting scholar at the Center for Comparative Studies in Race and Ethnicity at Stanford University. His teaching and research interests include indigenous jurisprudence, racialization, diversity, global indigenous struggles, law and the social science, and international terrorism. In the 1980s he helped create the Herbert Blumer Institute in Costa Rica with the goal of discovering and describing alternatives to violence and criminal law. He also is known internationally for his research on the relationship between social deviance, law and diversity, and is a former editor of the *International Studies Quarterly*.^{[1] [2] [3]}

His seminal book "Law and Society" (with James Inverarity and Barry Feld) has been translated into Japanese. His related research has been published in Spanish, German, and Italian (including the Calabrian dialect).

He is the former Director of the University-wide Ph.D./J.D. program in Justice Studies, Law, and the Social Sciences. Before coming to ASU in 1981, Dr. Lauderdale was an Associate Professor of Sociology and Law at the University of Minnesota. He previously was a Visiting Scholar at the University of California, Santa Cruz. He has received Fulbright Research Fellowships to Costa Rica and Austria. He also has been a Visiting Scholar and Professor at the University of Lecci, Italy, the University of Austria, and Stanford University. In 2007, he received an invitation to be a Fulbright Senior Specialist for a research project on "Indigenous peoples, minorities and globalization," Department of Sociology and UNISA Press, University of South Africa. He was a National President of Phi Theta Kappa Honorary Society and a Woodrow Wilson Scholar.

Works

Oliverio, Annamarie and Pat Lauderdale, editors 2006. *Terrorism: A New Testament*. London: Sage UK and de Sitter

Inverarity, James and Pat Lauderdale Forthcoming. *Law, Justice and Society* (revised version of *Law and Society*). New York: General Hall.

Zegeye, Abebe, Richard Harris and Pat Lauderdale, editors 2005. *Globalization and Post-Apartheid South Africa*. Willowdale, Canada: de Sitter Publications.

Lauderdale, Pat, editor 2003. *A Political Analysis of Deviance*, New Edition. Toronto, Canada: de Sitter Publications.

Toggia, Pietro, Pat Lauderdale and Abebe Zegeye, editors 2000. *Terror and Crisis in the Horn of Africa: Autopsy of Democracy, Human Rights, and Freedom*. London: Ashgate.

Lauderdale, Pat and Randall Amster, Special Issue Editors 1997. *Lives in the Balance: Perspectives on Global Injustice and Inequality*. Leiden, the Netherlands: E. J. Brill.

Lauderdale, Pat and Michael Cruik 1993. *The Struggle for Control: A Study of Law, Disputes and Deviance*. New York: SUNY Press.

Altheide, David et al. 1990. *School of Justice Studies*, Lauderdale, Pat, co-editor *New Directions in the Study of Justice, Law and Social Control*. New York: Plenum.

Inverarity, James, Pat Lauderdale and Barry Feld 1983. *Law and Society*. Boston, Mass.: Little, Brown and Company. 1994-95. Japanese translated version (*Law & Society* by Setsuo Miyazawa), Rokko, Kobe, Japan.

Lauderdale, Pat, editor 1980. *A Political Analysis of Deviance*. Minneapolis: University of Minnesota Press.