Law & Courts

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Message from the Section Chair: APSA and Beyond

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June 21 was a wonderful day – the longest day of the year, the summer just getting started. But as I write to you in late July, the days are starting to get just a little shorter; the joy of commencement fading, the anticipation of a new academic year growing: All early signs that APSA is nearly upon us.

I want to encourage you to come to our annual business meeting, which will be held at 6:15 pm on Friday, August 29, in the aptly named Cardozo Room at the Washington Hilton (which will be followed by our annual reception). And while I encourage you to attend and participate in the business meeting, let me urge you to join in what promises to be a terrific panel in celebration of Lawrence Baum's work – past, present and future – in celebration of his selection as this year's recipient of the Law & Courts Lifetime Achievement Award. The Baum panel, which conveniently meets directly before the business meeting, will also be in the Cardozo room and will start at 4:15 pm on Friday, August 29.

Chaired by Mark Graber (University of Maryland, Carey School of Law), the Baum panel features Paul Collins (University of Massachusetts, Amherst), Joel Grossman (Johns Hopkins University), David Klein (University of Virginia), Wendy Martinek (Binghamton University, SUNY), and Lynn Mather (SUNY Buffalo Law School).

The Baum panel is, of course, just one highlight of

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General Information

Law and Courts publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** publishes three editions a year (Fall, Summer, and Spring). Deadlines for submission of materials are: February 1 (Spring), June 1 (Summer), and October 1 (Fall). Contributions to **Law and Courts** should be sent to the Editor:

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Articles, Notes, and Commentary

We will be glad to consider articles and notes concerning matters of interest to readers of **Law and Courts.** Research findings, teaching innovations, release of original data, or commentary on developments in the field are encouraged.

Footnote and reference style should follow that of the *American Political Science Review.* Please submit your manuscript electronically in MS Word (.doc) or compatible software. Graphics are best submitted as separate files. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

Symposia

Collections of related articles or notes are especially welcome. Please contact the Editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts.

Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when possible. Finally, authors should notify ***BOOKS TO WATCH FOR EDITOR***: *Drew Lanier,* of publication of manuscripts or works soon to be completed.

a really exciting lineup of panels and roundtables under the Law & Courts banner. These panels were very thoughtfully constructed by Virginia Hettinger (University of Connecticut) and Anna Law (CUNY Brooklyn College) and range across our shared interests in judicial behavior and jurisprudence, comparative constitutional law and state and local judicial elections. They examine immigration, public opinion, and the press. They explore methodological conundrums, the privacy and rights mobilization, as well as ways to think about Supreme Court confirmations.

You should attend these panels because they will stimulate your mind, and kick-start your own research; And you should attend these panels because they will give you a chance to put a face to the name, and then to quiz, challenge, or celebrate those names and faces; and you should attend these panels out of a distinct understanding of self-interest, properly understood.

As many of you no doubt are aware, the allocation of panels at APSA is built on a fairly simple algorithm – and two parts of that algorithm are very much things over which we can have direct and important influence: The number of members in each Section, and the attendance at the panels organized by the Section at the previous year's annual meeting.

Both of these are things we can powerfully influence. I sent out a gentle reminder about the need to be up to date on membership and dues last fall. It is, I hasten to remind you, never too late to get right with the Section! But today's harangue focuses on the other part of the algorithm over which we can exercise real influence – and that is attendance and participation at our Section panels.

Beyond your own edification (which should be incentive enough), I urge you to attend as many panels as you possibly can. This is in your self-interest, and in your self-interest properly understood. It is in your self-interest since you will no doubt have a magnificent paper or two to present next year, or you will be eager to engage with leading voices – new and established – as a cogent and insightful discussant. To do that, however, requires panels – and that takes us back to the APSA algorithm and the key insight offered by Woody Allen that 80 percent of success in life is just showing up.

But I would also suggest that you can do more than just showing up – panels are a chance to engage and participate, as well. And together attendance and participation are in your self-interest, properly understood. There are some really great papers being presented, and books being discussed, this year – and engaging with that work and its authors can be tremendously stimulating for your own research and teaching – which, in turn, can make a real contribution to our shared quest for greater understanding about the role of law and courts in politics and in social life in the United States and across the globe. The study of law and courts is and should be a central part of each of the classic subfields of Political Science – whether Comparative, International Relations, American government, methodology and of course in political theory and the history of political thought. More panels and more members will generate more opportunities to explore and extend that work.

Tech Notes

Helpful web pages, "app" software, or other form of technology that may be useful in teaching or research.

The Redistricting Game: (http://redistrictinggame.org/): For those that teach classes on elections, Congress, general American government courses or those that want supplemental activities when teaching about redistricting cases, this practical "game" is a great way to introduce the concepts involved, particularly the political aspects, of redrawing district lines. Students get the chance to gerrymander districts in order to add seats for their party of choice. The game is free, easy to use, and underscores many aspects of the redistricting process.

Greatest Neglected Hits of Judicial Politics:

Books we think our students should read but do not assign

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Mastery of a body of literature is one hallmark or trait of a scholar. As with any discipline, the study of public law is marked by a corpus of books, articles, and for our discipline, court cases that define the field and subject matter we study. Perhaps in some Kuhnian sense there are several core works that we have all read in graduate school which discuss topics such as judicial case selection, agenda setting, decision making, or the interaction among the three branches of the government. These works form the basis of what we are tested on in our doctoral exams, what we reference in the literature review of our dissertations, and they eventually form the background upon which we build research agendas and hopefully add another brick to in the wall of knowledge about the courts. This literature defines our intellectual world.

But there is something strange about this body of knowledge, especially the books. While they are the classics that define the research and field of public law, they are often books that we do not assign to our students. Be honest. How many times in your undergraduate class have you referred to a book and told students you should know about or read but the reality is that you did not assign it. Perhaps it is because the book is too lengthy, it does not fit into your lesson plan, it seems dated or has been supplanted by subsequent scholarship, or maybe you really did not read the book yourself in graduate school or in later research. Yes you have cited it in the literature reviews of articles, but have you really read it?

Having said one too many times in class, "This is a book that you should read," I decided for my fall 2014 senior seminar class to make it a course in the greatest hits of political science. The Hamline Political Science Senior Seminar class is required of all majors, and it is sort of a capstone class that asks students to produce a larger paper. The class has a theme which defines the readings for the class. Last year my theme was generational politics, but this year I wanted students to read a collection of greatest unread or unassigned books in political science that they should know before they graduate. Either these are books that every major should know, if they are going on to graduate school, or if not, this is the last chance for us to assign them before they move and therefore they should read these books as part of what it means to be a literate political science major. Among the list of assigned books, I wanted something on the judicial process– a recommendation for the single book that we think all of our undergraduates should read but which often is overlooked. Not sure of which book fit the bill, this past March I surveyed the law and politics listserv members to see what they would suggest. The results were exciting.

I received approximately 60 responses to my query. Some suggestions were for books in general that undergraduates should read but were not judicial process by any stretch of the field and were excluded. The final list included 34 books and five articles. The single most suggested text was Walter Murphy's *The Elements of Judicial Strategy*, closely followed by Martin Shapiro's *Courts* and Benjamin Cardozo's *The Nature of the Judicial Process*. These three texts seemed to be high on the list of essential classics for almost half the respondents. Alternatively, the single most cited author in terms of a collection of works (books and articles) was definitely Martin Shapiro, followed by Glendon Schubert and then Herbert Jacob. Some also submitted article references, the most cited being Robert Dahl's "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker."

The pattern of books reveals less a single identifi-

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able work and more a cluster of texts that scholars deem important or influential to the judicial process field. They cut across a range of topics that seem to emphasize the Supreme Court, policy making, decision making, and institutionalism, and no surprise, topics such as criminal justice and segregation also make the list. The books also feature a diversity of methods, from the most quantitative (Schubert and Segal and Spaeth to more literary or case study such as Bass and Peltason). Overall, the suggestions demonstrate how the judicial process field covers many topics and methodologies; something to consider when thinking about what the defines the method and object of inquiry of our field.

What book did I select for Senior Seminar? It is Walter Murphy's *The Elements of Judicial Strategy*. Here is the list of books and articles that were suggested.

Books

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Symposium: New Measures of Case Salience

With a renewed interest in examining case salience as an influencing factor in judicial behavior, we devote the next section of the newsletter to recent advancements in measurements of case salience. Many of these go beyond the standard media-based measures, citation rates, or number of amicus curie briefs that have been standards in the past. We highlight some of these recent measurements and encourage further discussion of case salience, its proper measurement, and its importance in future studies.

(Articles appear in alphabetical order by the author's last name)

Measuring Salience as a Latent Variable

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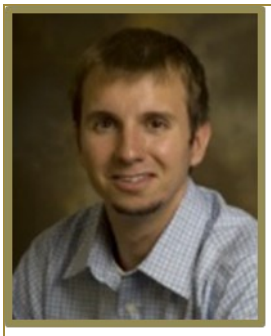

A Latent Variable Measure of Salience

While law and courts scholars frequently portray salience as of theoretical and empirical importance, the concept is never directly observed. Rather, generations of scholars have identified separate observable manifestations as capturing this elusive latent concept. Of these proposed manifestations, Epstein and Segal's [ES] (2000) measure of newspaper coverage of Court decisions - built upon and refined in work by Collins and Cooper (2011a,b) - has enjoyed greatest scholarly use. In ongoing work, we extend the logic of this and other research on salience by assuming newspaper coverage throughout the life of the case is a manifestation of latent salience, which can therefore be best captured by a latent variable measurement model. Such an approach incorporates numerous indicators of salience, and mitigates many of the causal inference concerns plaguing current measures. In particular, one might worry that a measure of something that only takes place after the Supreme Court's decision – especially media coverage – may be a proxy for features of the decisions themselves, rather than the underlying policy or legal question at hand in the case. For this reason, we seek to generate an estimate of salience that is primarily a function of manifestations of salience measured *before* the case is decided, using a method that is highly adaptable to various research questions by including or excluding inputs to the measure.

Our measure is generated as follows. We coded coverage from three newspapers (*New York Times, Los Angeles Times*, and *Washington Post*) across a long period in the life of the case. We acquired all newspaper articles containing the string "Supreme Court" and featured anywhere in the front section. We then wrote a computer program to automatically identify which Supreme Court cases, if any, were discussed in each of the articles. After associating cases with articles, each relevant article was classified into four periods of coverage: *early*, or any coverage prior to oral argument; *oral*, or any coverage within one week of oral argument; *pending*, or any coverage more than week after oral argument but before the decision; and *decision*, or any coverage after the decision. This yields counts for each case of newspaper articles for each newspaper for each coverage period.

We then estimate a Bayesian latent variable model across periods of coverage. Our model assumes that each case has a latent characteristic that predicts newspaper coverage at each of the four periods of coverage. While here we present results derived from all periods of coverage, it is important to note that scholars can choose to include in their estimates the periods of coverage that best fit their research problem. Most notably, scholars could (and probably should) drop the measure of decision coverage in order to completely avoid instances where post-treatment bias could be a concern (e.g., decision-making studies). In our paper and below in this article, in fact, we explicitly compare estimates of salience that include and omit coverage of decisions. This is an important advantage of our approach, and a point we return to shortly.

More complete results, as well as extensive robustness and validity checks, are included with our paper. Here, we provide a broad overview. In Figure 1, we have plotted the estimates of salience for each of the cases in our dataset. Note that, as we should

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expect, most cases are not considered salient according to the model. These are cases that generally receive little media attention. Once cases begin to receive coverage, however, note the differentiation in latent salience as estimated by the model. The long right tail of estimated salience provides evidence of the most salient cases. We highlight a few of these important cases in Figure 1 to provide evidence of face validity, but also to emphasize the importance of the selection of newspaper coverage periods.

Figure 1

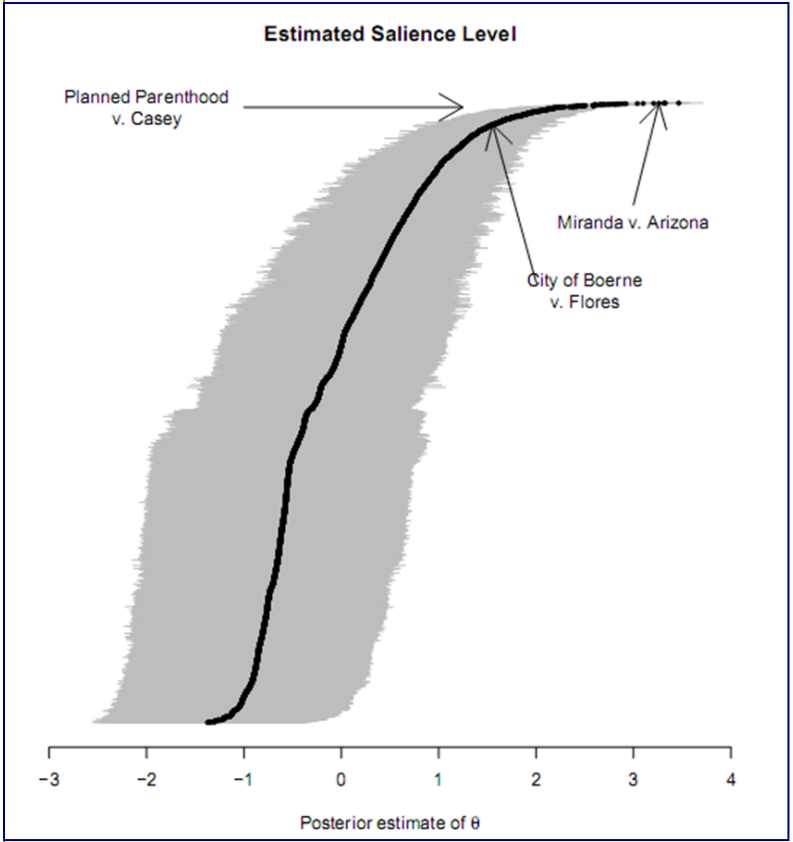

Figure 1: Posterior estimates of latent salience (all coverage periods). Plot shows the posterior means (black dots) and 95% credible intervals (grey bars) of a latent variable model of salience.

To wit, *Miranda v. Arizona* enjoyed widespread coverage of the decision, but less coverage prior. On the other hand, *Planned Parenthood vs. Casey* was covered by the media at virtually all stages. By considering all periods of coverage, we identify both. Eliminating decision coverage would decrease the rank of *Miranda*, but better separate the concepts of case salience and decision salience, avoiding issues of post-treatment bias. We further illustrate this dynamic in Figure 2, where for each case we have plotted latent variable estimates of case salience derived from all periods of coverage against estimates derived from only pre-decision coverage. The observations tailing away from the green diagonal in Figure 2 represent "surprise" cases, or those instances when the decision of the Court engendered considerable coverage of a case that had previously been largely ignored by the media.

Advantages of Latent Variable Modeling

Most obviously, the latent salience approach we propose addresses many of the criticisms identified by Collins and Cooper (2011a,b) and Black, Sorenson, and Johnson (2012) in their work proposing new measures. In the case of the former, our work similarly incorporates multiple newspapers and coverage beyond the front-page. In the case of Black, Sorenson, and Johnson, we also take care to address concerns over post-treatment bias and potential issues for causal inference. The result is a measurement approach to latent salience which leverages multiple indicators of the latent concept to generate a continuous estimate that is adaptable to the many research applications where researchers believe salience matters.

This flexibility, we believe, is a major advantage in considering the latent variable approach. Specifically, we plan to make available both the data and code following publication, allowing fellow researchers to modify the measure as they see fit. Scholars routinely conceive of salience differently across studies (see Brenner and Arrington, 2002), and by making our data and code available we hope to better enable scholars to tailor the measure to their specific research question. With the volume of data already available on the Supreme Court through the Supreme Court Database (Spaeth et al. 2012), there are a variety of directions for researchers to take the measure in pursuit of their particular studies. For studies concerned only with the overall importance of a case, and not with the implications of that salience on case-specific outcomes (e.g., Baird 2004), our measure based on all periods of coverage offers a more fine-grained picture of case

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salience as opposed to dichotomous measures based on case outcomes. But for scholars who believe that questions at oral argument could contribute a viable justice-specific signal of salience, such a measure could be added to the latent variable model. Such measurement strategies offer great opportunity for sophisticated subsequent studies, but also require researchers to pay careful attention to the potential of temporal issues, post-treatment biases, and other violations of standard research considerations.

Figure 2

Finally, our approach is portable to the many other contexts in which law and courts scholars may invoke salience, such as the state courts (Vining and Wilhelm 20011). With the increasing availability of digital texts, it is possible to generate similar measures across the life of the case, rather than solely of the decision, for state, lower federal, and foreign courts, areas of increasing concern to members of the law and courts community.

In all, the latent variable model measurement approach incorporates numerous indicators of salience, and has the flexibility to incorporate many more. In so doing, our approach offers researchers the opportunity to study dynamics throughout the judicial process, including analyses of amicus curiae participation (e.g., Collins 2008) and the choice of opinion writes (e.g., Lax and Cameron 2007).

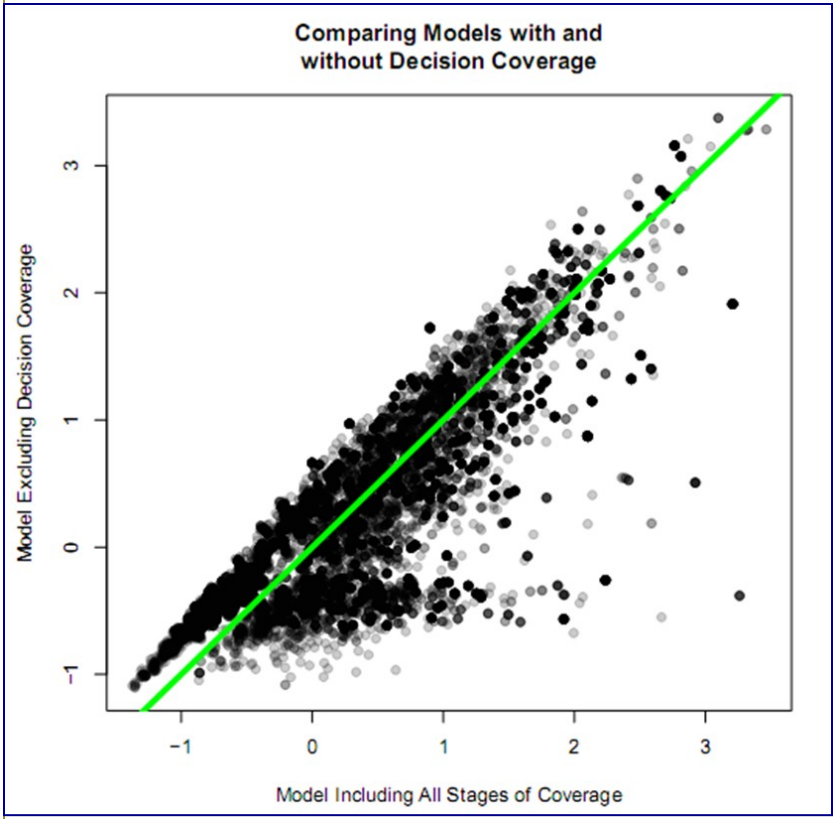

Figure 2: Comparison of posterior estimates of latent salience across all- and pre-decision coverage periods. Plot shows the posterior means (black dots) of a latent variable model of salience estimated across all periods of coverage (x-axis) compared to latent variable model of salience estimated across only pre-decision peri-

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The Case Salience Index: An Overview

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As the other articles in this symposium make clear, case salience has important influences on judicial decision-making. In addition, measures of case salience give us important tools to understand the relationship between the public and the courts. Fortunately for scholars of the judiciary, there are a host of currently available measures of case salience measures ranging from mentions in Constitutional law textbooks to cases highlighted on advance sheets of the Lawyer's Edition to media measures that operationalize salience as mentions in a major media sources. Although other measures have their place, we focus here on media measures as they are contemporaneous measures that are fairly easy to gather and measure. They are also, arguably, the family of measures that have received the most attention in the literature. The logic of these media measures holds that if the media covers a story, journalists, editors, and other gatekeepers are deeming it important. Theories of media agenda-setting suggest that the public will then consider these issues important as well.

By far, the most cited media measures are Epstein and Segal's (2000) seminal work which operationalizes salience as mentions on the front-page of the *New York Times*—cases that are mentioned are considered salient and cases that are not mentioned are defined as not salient. We are compelled by the logic of the *New York Times* measure, but offer a few modifications that we believe produce an improved media measure. As we accept so much of the Epstein and Segal measure, we believe our measure is best understood as extension of, rather than a challenge to, Epstein and Segal's work.

The key limitations to the Epstein and Segal measures, in our opinion, are its sole focus on front-page coverage, its inclusion of just one paper, and its dichotomous operationalization of the salience context. The front-page coverage problem can best be understood by thinking about the last major news day (at the time of this writing it is probably the Malaysian airliner that was apparently shot down over the Ukraine). If the Supreme Court offered an important decision the day following this horrible incident, the case would be unlikely to make the front page—regardless of the potential salience to the court and the public. Including one paper is potentially problematic for a similar reason—most newspapers favor local stories and including just one paper may create a bias towards local cases that may make some cases appear more salient than they are in the rest of the country and others less salient that they are outside of the one locale. In addition, a big news event in a local area may mean that a certain paper may not cover the Supreme Court decision, regardless of its importance. Finally, we believe that the theoretical basis of the salience concept suggests that salience is best understood as an additive, and ideally, continuous concept with cases at the low, middle, and high ends of salience.

To address these concerns and provide an improved measure of salience, we examined coverage of Supreme Court cases anywhere (whether front-page or not) in four regionally and ideologically balanced newspapers—the New York Times, Washington Post, Los Angeles Times, and Chicago Tribune. We then produce a simple additive scale that counts the number of papers that covered the paper on the front page, and the number that covered it elsewhere in the paper, giving slightly more weight to those that receive front-page coverage. Although the data collection was arduous, the computation of the Case Salience Index (CSI) is disarmingly simple: cases receive 2 points for each citation on the front page and 1 point for each citation elsewhere in the paper. This results in a scale that

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range from 0 to 8.

We have reported the results of this index in published (Collins and Cooper 2012), forthcoming (Collins and Cooper forthcoming) and working papers and have obtained measures of salience for more than 1500 cases spanning from 1953 to 2004. Fortunately, most readily available indicators of face validity suggest that our measure is capturing much of what we would like it to and that it includes an improvement over the Epstein and Segal measure. We offer this data for download to to any interested scholars: http://www.wcu.edu/about-wcu/centers-institutes-affiliates/public-policy-institute/case-salience.asp

The CSI is, of course, not a perfect measure. First and most obviously, while four papers is an improvement over 1, 8 would be an improvement over 4, 16 better than 8 and so on. Simply put, there is nothing "magic" about four papers (see Lewis and Rose 2014 for a measure that includes more papers). Second, our measure is focused around decision-day and ignores the wealth of information available by examining coverage surrounding oral argument (e.g. Black, Sorenson, and Johnson 2012). Third, while print media provide an easily justifiable longitudinal approach, scholars who are more interested in considering recent decisions may want to consider Internet-based measures, such as the one previewed by Bill Wilkerson in this special issue. Finally, while our ordinal scale is an improvement over dichotomous measures, scholars may want to consider other approaches that provide a more continuous measure (e.g. Clark, Lax and Rice reported in this symposium). Despite these limitations, we hope that the CSI will provide the broader judicial politics community with a useful tool that will ultimately help us better understand the judicial branch.

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Supreme Court Oral Arguments as a Measure of Personal Salience

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Case salience affects nearly every aspect of Supreme Court justices' behavior, yet a valid actor-based measure of salience has remained elusive. Unlike conventional measures of issue salience utilized by scholars of U.S. politics, we provide a measure that more closely approximates the salience of an issue for the individual justices as well as for the Court as a whole. To make this point, our general argument is that political actors take the time and effort to gather more information and display higher levels of engagement with a topic when it is salient to them than when it is not. In other words, we argue the more engaged political actors are in gathering information about issues they face or decide, the more important the issue is to them. As such, it is incumbent on researchers to find a measure based on how an actor, rather than an external source, views and reacts to an issue, case, law, or policy. As Brenner put it, "The Holy Grail in this field remains a

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measure [of salience] based on the justices' behavior" (191, 1998).

Our initial motivation for creating an individual measure of salience was to address a lacuna in the literature between theory and existing measures of salience. To wit, we count twenty-two articles employing the *New York Times* salience measure (specifically about the Supreme Court) that appeared in political science journals between 2000 and 2011. Fourteen of these articles examine internal, actor-based aspects, while only eight study phenomena external to the justices. The point is that, despite the notion that a justice's personal view of case salience has implications for how she acts during the decision-making process, extant approaches operationalize salience based on the behavior of actors other than justices. In addition, these measures generally focus on the salience of a case well *after* the actors involved have made their decisions (*but see e.g.*, Black, Schutte and Johnson 2013). To address this disconnect, we offer a theoretically motivated and empirically valid measure of salience that taps into the importance of cases decided by the Supreme Court – as viewed from the perspective of the justices themselves. In doing so, we posit that justices will be more engaged – and therefore speak more often – during the public oral arguments in cases more salient to them.

Description of Measure

To construct our measure of salience, we utilize the transcripts of Supreme Court oral arguments to determine the number of words spoken by the justices during these proceedings. We count words instead of speaking turns to ensure we capture the difference between lengthy utterances – i.e. involved and detailed hypotheticals from the likes of Justice Breyer – versus shorter utterances such as "yes" or "ok." Whereas the former provides strong evidence of a justice interested in probing the implications of an attorney's argument, the latter does not and so our approach accounts for this difference.

With data in hand we generate two separate measures. First, to gain an overall sense of how important a case is to the entire Court, we simply count the total number of words spoken by all justices during the argument. Second, to ascertain the salience of each case to a *particular* justice, we parse the transcripts and measure individual participation. We next perform a (one plus) natural logarithm transformation on these raw scores in order to account for skewness as well as the fact that going from 10 to 100 words spoken is more revealing than going from 500 to 590 words spoken. Keeping in mind that different justices vary in their level of loquaciousness, our final step is to create standardized z-scores that also account for natural Court membership as well as number of justices participating in each case.

This method of measuring and operationalizing salience offers scholars a tool with three qualities unique among measures of judicial salience. First, and most importantly, we measure salience via the justices' own behavior, thereby capturing what the actors of interest deem important rather than relying on external proxies such as newspaper coverage or interest group participation. Second, by using behavior during oral argument, our measure is contemporaneous to the decision-making process, which eliminates potential sources of bias such as slow news days and unanimous votes. Third, our use of z-scores is continuous, rather than dichotomous or ordinal, which offers researchers a more fine-grained measure. Indeed, by allowing salience to vary (between justices and across cases) we more accurately capture *how* salient a case is rather than just whether it *is* or *is not* salient.

Our resulting measure has a variety of potential uses and is most appropriate when scholars seek to analyze, "…how important the case [is] to a justice at the time the justice was making the decision" (Unah and Hancock 2006, 298). This definition of salience covers a range of behaviors from whether or not to invest the additional time and effort required to author a separate opinion to a justice's participation in bargaining during the opinion-writing phase. The results of our initial analysis (see Black et al. 2013b and Black et al. 2011) demonstrate significant and positive relationships for both behaviors, which means the more important a case is for a justice, the more likely he is to circulate bargaining memos and ultimately author a separate opinion.

While our use of a personal salience measure focuses on the U.S. Supreme Court, this need not foreclose the possibility of taking our approach to

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other U.S. institutions (state and federal) or to international institutions. In deploying our approach the key hurdle is a sound theoretical understanding of the inner mechanics of each institution of inquiry. Given this understanding, scholars need only ask how actors in an institution go about gathering information for the cases, bills, or agenda items they deem most important. While the identification and gathering of such data are almost certainly non-trivial tasks, they will ultimately produce variables that are far more meaningful in advancing scholars' understanding of issue salience for actors of interest.

To be clear, we do not advocate a wholesale abandonment of media-based or other external measures of salience and we readily admit such operationalizations are both relevant and actually more appropriate for some studies (such as where public reaction to a Court decision is concerned). There are a number of situations, however, where the concept of interest is and must be contemporary salience to a justice – or to the Court – as opposed to public sentiment or post-decision media coverage. Providing another measure to the possible choices scholars could make when seeking to determine how justices (or other political actors) respond to salience will enhance our understanding of this key concept.

Ultimately, our analysis demonstrates that, although media-based measures represent an advance beyond earlier measures of issue salience, they face significant drawbacks including the inability to be strictly contemporaneous and the tendency to introduce systematic bias into a variable's measurement. In lieu of media-based measures, we argue that information acquisition is a useful indicator of salience. The study of information acquisition has numerous advantages, not the least of which is its applicability to the study of political elites who, as Epstein and Segal (2000) note, are not likely to submit themselves to the types of surveys that scholars find useful when trying to understand and analyze behavior. In applying our approach to cases before the U.S. Supreme Court we demonstrate how such a method can yield a meaningful and, more importantly, a valid measure of issue salience.

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Endnotes

1 For a full derivation of our argument and its theoretical underpinnings in political psychology, see Black, Ryan C., Maron W. Sorenson, and Timothy R. Johnson. 2013. "Towards an Actor Based Measure of Supreme Court Salience: Information Seeking and Engagement During Oral Arguments." *Political Research Quarterly*. Vol. 66, #4 (December): 804-818; Black, Ryan C., Amanda Bryan, and Timothy R. Johnson. 2011. "Courts and Issue Salience: An International Perspective." In Kai Opperman and Henrik Viehrig (editors) *Issue Salience in International Politics*. New York: Routledge.

2 Because transcripts prior to the 2004 are not justice identified and simply indicate an utterance with the marker "QUESTION," our justice-specific measure is limited to the 2004-2011 terms. As of publication of this article, our data include all justice utterances in the 3026 oral arguments beginning with the 1979 term and ending with the 2011 term. By the end of 2014 we will have the data based on all oral arguments archived at the Court (with limited exceptions for missing cases). As such we will have aggregate an individual measures of salience back to 1953.

Developments in Media-Based Measures of Case Salience

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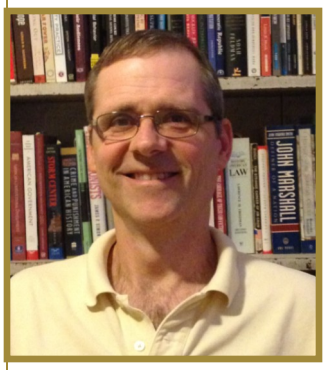

In light of a growing body of research, there can be little doubt that case salience exerts meaningful effects on U.S. Supreme Court decision making. [1] Moreover, it would be difficult to dispute that measures of case salience have improved over the past few years. Recent media-based measures of salience have built on the work of Epstein and Segal (2000), who proposed coding whether a case received front page coverage by the *New York Times*. Employed by several subsequent studies, this approach quickly emerged as the standard in the field.

As Epstein and Segal note (2000: 75), one drawback of their measure involves its binary nature: a case either is or is not salient. Salience, of course, is not akin to a light bulb that is either on or off. Some cases may be perceived as unimportant, others may be regarded as somewhat or very important, while a few may be off-the-charts, e.g. National Federation of Independent Business v. Sibelius (2012). In a recent article, my co-author Roger Rose and I sought to devise a more nuanced measure that would capture a range of salience across multiple cases.

We adopted a straightforward approach: simply counting the number of stories and editorials appearing in any section of seven newspapers on the day after oral argument. Our case salience variable ranged from 0 to 20, with a mean of just under one article per case (.95). We examined the effects of case salience on ordered and unanimous votes on the Rehnquist Court from 1994 to 2004. Ordered votes, which signal the influence of attitudes on the justices' decisions, are those in which the justices align themselves so that there are no ideological inconsistencies in their voting pattern. Unanimous votes, on the other hand, suggest that attitudes have had a more modest impact on the justices' decisions.

Our findings provide strong support for the proposition that the level of case salience influences voting on the Court: high levels of salience are positively associated with ordered votes, whereas low levels of salience are positively associated with unanimous votes. This leads to the intuitive conclusion that salient cases tend to trigger an ideological response from the justices; i.e. they will be more highly motivated to evaluate the legal material before them in a manner that supports their policy preferences and political values. In contrast, low levels of salience attenuate the effects of ideology.

Our measure of case salience is quite similar to the Case Salience Index (CSI) developed by Todd Collins and Christopher Cooper (2012). One potentially important difference is that Collins and Cooper derive their measure from newspaper coverage of the Court's decision, whereas my co-author and I examine coverage of the oral argument. What are some advantages and disadvantages of each approach?

We focused on coverage at the oral argument stage because journalists may be likely to devote more attention to closely divided cases, particularly those in which the justices break down along ideological lines, and less attention to unanimous cases. Should this occur, the directional arrow between our dependent and independent variables would be reversed: a 5-4 ordered vote, for example, would lead to an increase in case salience. Oral argument coverage, of course, avoids this potential pitfall because no vote has occurred – thus we can be assured that our measure is not systematically influenced by an endogenous factor unrelated to salience.

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Another possible advantage of using oral argument coverage is that it is more contemporaneous than decision day coverage (i.e., it is closer temporally to the justices' votes, which occur in conferences the same week as oral argument). It strikes me, however, that this advantage should not be overstated: it seems implausible that levels of case salience would rise or fall in a meaningful way during the opinion writing process. Although highly retrospective salience measures (e.g. cases printed in law textbooks) are plainly problematic, I see no reason to conclude that decision day coverage is insufficiently contemporaneous.

One drawback to our measure is that decision day coverage is more extensive than oral argument coverage, presumably because a decision – the Court's authoritative statement of legal policy – is considered more newsworthy than the give-and-take of argument before the bench. Indeed, in our dataset most cases received no coverage at all after the oral argument. More specifically, 66.1 percent of the cases received zero coverage at oral argument, compared to 42.8 percent of decision day coverage. Such a high percentage of zeros is less than ideal if our objective is to devise a measure that is sensitive to different levels of salience. [2] In other words, 23 percent of the cases that received no coverage at oral argument had at least one article written about them after the Court announced its decision – which suggests that a substantial number of cases in our dataset were coded as "zero" even though they were important enough to receive coverage when they were decided.

It should come as no surprise that each measure has its pros and cons, or that the two measures performed quite similarly in our study. Collins and Cooper kindly shared their data with us, and we ran our models using both measures. In each model the case salience variable remained significant ($p < .001$) for both ordered and unanimous votes. Although there is no perfect measure of case salience, judicial scholars will surely benefit from having alternative measures at their disposal to assess the robustness of their findings.

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Measurements of Salience in State Courts

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As this symposium makes clear, the measurement and impact of case salience are important issues for scholars of law and courts. Although several scholars have offered useful strategies to measure salience in the context of the federal judiciary, very limited attempts have been made to develop a similar metric for scholars of state courts. We recently introduced such a measure (Vining and Wilhelm 2011) and believe it is a promising step toward the analysis of salience effects in state courts.

The slight attention given to the role of case salience at state courts of last resort is, we believe, unfortunate. When salience is given attention it tends to be through the proxy of death penalty

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cases (Brace and Boyea 2008; Canes-Wrone, Clark, and Kelly 2014) or cases with amicus curiae filings (Graves and Teske 2002). Both of these approaches are rather limited. Contrary to popular belief, attention to capital cases varies substantially depending on the novelty and dramatic nature of the decision (Vining, Wilhelm, and Collens, 2014). This is problematic for other issue-based measures of salience as well. In terms of amicus curiae filings, the rules regarding their use vary between states and they are not normally present in a fashion analogous to the U.S. Supreme Court. In fact, Corbally, Bross, and Flango (2004) found that just 10 states account for the majority of the amicus curiae briefs filed across the nation, and that the subject matter attracting such briefs was heavily skewed toward (1) amicus participation issues, (2) torts, and (3) insurance or worker's compensation claims.

Given the problems with how scholars previously measured salience in the state courts of last resort, we developed our measure with a paramount intention. We wanted to provide a tool for scholars of state courts to facilitate the study of salience effects similar to the advances made possible after Epstein and Segal (2000) introduced their *New York Times* measure of salience. We followed their example by developing a media-based measure of contemporaneous political salience. Our methodology was to identify front-page coverage of state supreme court cases in the most circulated newspapers in all 50 states. We limited our inquiries to timely coverage on the day immediately following the decision. Our rationale for focusing on the most circulated newspaper in each state was that elite news outlets have the largest audiences within their states and a meaningful agenda-setting power (McCombs 2004). We therefore expect that the content of these newspapers influences elite political discourse, public opinion, and the content of their competitors with lower circulation figures. Our time frame, 1995-1998, was chosen for compatibility with the State Supreme Court Data Archive (SSCDA) developed by Paul Brace and Melinda Gann Hall. We examined 39 newspapers from web-based search engines (Lexis Nexis, WestLaw) and the remaining 11 from microfilm obtained via interlibrary loan.

Our salience measure indicates that only about 2% of state supreme court cases received front-page coverage on the day after they were decided. This is a low level of coverage, but hardly surprising given the lower visibility of state high courts vis-à-vis the U.S. Supreme Court. Several anonymous reviewers and conference participants inquired whether we might see more coverage of state high courts in newspapers based in capital cities. As a result, we compared the rates of coverage in these two types of newspapers in 24 states from 2003 to 2008. The results of this query (Vining et al. 2010) indicate that most circulated newspapers provide significantly more coverage of state high court rulings than capital city newspapers. Specifically, most circulated newspapers cover nearly twice as many decisions as capital city papers.

Our measure of salience has been used to analyze the behavior of both judges and journalists. Cann and Wilhelm (2011) evaluated the strength of the judicial "electoral connection" using our measure as a proxy for case visibility. Their findings indicate that, in salient cases, elected judges are more responsive to public opinion than their appointed or merit-chosen counterparts. Vining and Wilhelm (2010) examined high-profile coverage of judicial decisions in the context of legal characteristics of the decisions as well as the courts that produce them. That study determined that judicial behavior within a court was significantly related to the likelihood of high-profile media attention for a case, including declarations of unconstitutionality as well as dissent. The aforementioned (Vining et al. 2010) comparison of high-profile coverage in most circulated and capital city newspapers employed our measurement strategy but focused on the time period from 2003 to 2008 rather than the time period matching the State Supreme Court Data Archive. In more recent research we examine placement of state supreme court news about capital cases both on the front-page and elsewhere within newspapers (Vining, Wilhelm, Collens 2014). While just 2.5 percent of capital cases received front-page coverage from 1995 to 1998, 40 percent received coverage somewhere in the newspaper. This broader conception of salience may be appropriate for some research questions, though we believe that interior coverage is less indicative of broad political salience than news on the front page.

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Although we believe our measure of salience at the state level is a needed step forward, it is limited in several ways. The first is that (we believe) our measure, like other media-based measures of salience, is more appropriate to capture political salience than legal salience. The press is quick to identify novel or sensational cases likely to interest potential audience members, but has fewer incentives to identify cases that are likely to have a meaningful impact on the law or its application. Also, our measurement strategy fails to identify coverage of a case prior to the decision or the interest of states' justices in the cases they decide. We leave these questions for future research.

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Measuring Supreme Court Case Salience through Web Searches

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Law and courts scholars have made clear that case salience is important in understanding the behavior of justices in deciding Supreme Court cases. Recent articles by (Collins and Cooper 2012) and (Vining and Wilhelm 2011) provide excellent reviews of the literature on salience measures, why they matter, and controversies surrounding them. While the salience measures using newspaper coverage developed by Epstein and Segal (2000) and Collins and Cooper (2012) have real strengths, so too does Google Trends which provides both a contemporaneous and broad-based public measure of case salience that will be discussed in this essay.

Google Trends, formerly known as Google Insights, is a measure of Google search activity. It provides weekly or monthly measures of searches using a single term or up to five terms at one time. Results are an index of any search term that rises above a threshold that is set by Google, and is not made public. If search activity is present, the top time period of the most searched term is measured as 100 and all other time periods, and other search terms, are measured relative to the top search term and period. So an index of 40 means that the term was measured at 40 percent of the maximum search volume for the term(s) used. Google Trends has

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been famously used to predict disease outbreaks (Ginsburg et al. 2009), while more recently the limits of this tool have been highlighted (Hodson 2014). Google Trends has been used by political scientists studying presidential agenda setting (Olds, 2013), support for the Sotomayor nomination (Manzano and Ura, 2013), and proposed for broader use as a measure of issue salience (Mellon 2013).

The measure. At its simplest Google Trends can be used much as the *New York Times*, and other similar salience measures, is used: measurable search activity exists or it does not. A salient case is one that has measurable search activity of Google using IP addresses attributed to the United States in the month of the decision or the month after the decision was handed down.[1]

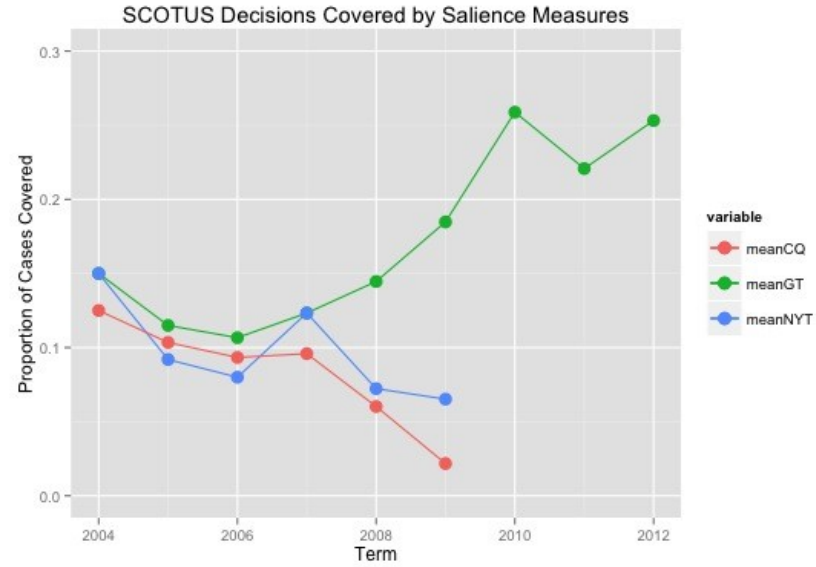
A conservative approach was chosen in developing a search methodology. Beginning with a list of each case decided by the US Supreme Court since the 2004 term a student researcher and I searched variations of each case. We eventually settled on searching for the general pattern of "short name v short name" for each case as most people refer to them. This approach insures that searchers are most likely looking for the case at hand.

Findings. Listed below are some preliminary findings on Google Trends as a measure of case salience. As others have done, this measure has been combined with the Supreme Court Database (Spaeth et al. 2013). Comparisons are made to Epstein and Segal's (2000) *New York Times* and the *Congressional Quarterly* (2010) measures as appropriate. There is no overlap between the Google Trends data and the broader newspaper index developed by Collins and Cooper (2012).

- From the 2004 term through the 2012 term 127 cases, 17.4% of orally argued cases are defined as salient using Google Trends.

- For comparison purposes, Figure 1 presents Google Trends with the *New York Times* and *Congressional Quarterly* data for the 2004 through 2009 terms, the most recent terms for which the *Times* and *CQ* data is available. For these terms there are 68 (13.9%) salient cases according to the Google Trends measure and 47 (9.6%) for the *Times* and 40 (8.2%) for *CQ*. The three measures track each other closely through 2007, but the *Times* and *CQ* measures show fewer salient cases in the 2008 and 2009 terms, Google Trends moves upward for a higher percentage of cases. Without more recent data for the other measures it is hard to know what this means, but there is broader Internet access and more broad-based use of search tools during the period that may indicate a potential change in the measure. This issue is worth investigating further.

Figure 1



- Forty-seven percent of cases during the 2004–2012 term period were decided conservatively while 56.2% of cases overall were decided in a conservative direction. For the shorter 2004–2009 comparison period, 52.2% of Google Trends salient cases were conservative decisions. This is compared to 54.9% of the total, 38.3% of Times and 54.4% of *CQ* salient cases. Of the three measures only the *Times* showed a statistically significant difference using Pearson's chi-squared (6.55, d.f.=2, p=.04).

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Table 1a — Cases on Salience Lists by Issue Area, 2004-2012 Terms

Issue	Salient in Google Trends	Nonsalient in Google Trends	Totals for 2004-2012 Terms
Civil Liberties	92	328	420
	72.4%	54.4%	57.5%
Economic	12	149	161
	9.4%	24.7%	22.1%
Federalism	11	36	47
	8.7%	6.0%	6.4%
Judicial Power	1	89	100
	8.7%	14.8%	13.7%
Misc.	0	1	1
	0.0%	0.2%	0.1%
Private Action	1	0	1
	0.8%	0.0%	0.1%
Total	127	603	730
	17.4%	82.6%	

- Table 1 shows that for the entire period and the comparable period, Google Trends salience is less centered on civil liberties cases than the *Times* or *CQ* measures. The difference is 6 to 10 percentage points. Other areas that include more cases using Google Trends include federalism and judicial power.

- Google Trends salient cases are less likely to be Chief Justice self-assigned than cases noted as salient using the *Times* and *CQ*. In cases where the Chief Justice self-assigns the opinion of the Court, we see that for Google Trends salient cases fall far short of the other measures and for the shorter comparison period salient cases are less likely to be self-assigned by the Chief Justice than cases overall.

- Other comparisons—whether precedent was altered, whether a law was declared unconstitutional, whether the authority of the decision was based on the Constitution or not, and voting majorities—were also examined. These results in addition to compete tables for the topics discussed above are available on the Web at http://aristotle.oneonta.edu/wordpress/gtrendssalience.

Discussion. This research on Google Trends as a measure of case salience is still in its early stages. I have just recently completed gathering the raw data and I am still putting together a complete dataset, but I do have some preliminary observations. I would very much appreciate feedback on the potential uses of this measure.

Looking at the criteria established by Epstein and Segal (2000) and later discussed by Brenner and Arrington (2002) and Collins and Cooper (2012) Google Trends does well in several areas. It provides excellent validity: the measure is contemporaneous. In terms of content bias, Google Trends is less biased than other indices. Google Trends captures a broader range of cases and is less centered on civil liberties decisions. The measurement strategy is also transportable. Google Trends clearly can be used to study a variety of issues of interest to political scientists and beyond.

On the other hand, the last few years of data show concern about recency bias. A full assessment will require updated measurement of other indicators, but the upswing in the percentage of cases that

Table 1b — Cases on Salience Lists by Issue Area, 2004-2009 Terms

Issue	Salient in Google Trends	Salient in NY Times	Salient in CQ	Totals for 2004-2009 Terms
Civil Liberties	52	39	33	279
	76.5%	83.0%	82.5%	57.1%
Economic	5	5	3	106
	7.4%	8.5%	7.5%	21.7%
Federalism	7	3	2	27
	10.3%	6.4%	5.0%	5.5%
Judicial Power	4	1	2	76
	5.9%	2.1%	5.0%	15.5%
Misc.	0	0	0	1
	0.0%	0.0%	0.0%	0.2%
Private Action	0	0	0	0
	0.0%	0.0%	0.0%	0.0%
Total	68	47	40	589

Google Trends measures as salient is something that must be examined. Surveys, such as those done by the Pew Research Internet Project (2014), for example, show consistently broadening access to the Internet during the period and broader use of search tools like Google. Furthermore, the lack of a clear definition of the criteria used to define Google Trends will hamper efforts to decide this question

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with certainty. Google Trends also shows time dependency. Internet search is a new phenomenon and Google Trends data only goes back to January 2004.

Table 2a—Opinion Assignment Made by Chief Justice in Salient and Non-Salient Cases, 2004-2012 Terms

	Salient in Google Trends	Nonsalient in Google Trends	Totals for 2004-2012 Terms
Chief Justice Self Assigned	112	550	662
	88.2%	91.1%	90.6%
Non-Chief Justice Self Assigned	15	54	69
	11.8%	8.9%	9.4%
Total	127	604	731
	17.4%	82.6%	

Table 2b—Opinion Assignment Made by Chief Justice in Salient and Non-Salient Cases, 2004-2009 Terms

	Salient in Google Trends	Salient in NY Times	Salient in CQ	Totals for 2004-2009 Terms
Chief Justice Self Assigned	8	9	9	46
	8.8%	19.1%	22.5%	9.4%
Non-Chief Justice Self Assigned	62	38	31	444
	91.2%	80.9%	77.5%	90.6%
Total	68	47	40	490

Google Trends is tapping into something at least slightly different than other measures of case salience. As noted by Gibson and Caldiera (2009), we have remarkably little data on what Americans think about the Supreme Court as an institution, and especially on individual case decisions. No long term measures of individual case salience or attitudes exist. Google Trends certainly cannot measure attitudes it does provide insight into broad-based salience. Search activity into US Supreme Court decisions does not compare with searches of pop icons and sports stars, or even presidents of the United States and the most recent international political crisis, but it is broader than the editorial offices of major newspapers. Google searching provides a lens on what Supreme Court decisions a broader public views as relevant.

Because Google Trends is a continual measure of salience it is possible to track interest over time for cases that come before the Court. Measurable search activity is short lived for most cases, it both peaks and fades quickly, sometimes in a single month. Other cases, in contrast, show sustained activity, and in a few cases search activity begins before the decision is handed down. Because searching is easy, gathering this data for individual cases is not difficult. This feature makes Google Trends of interest for uses beyond other salience measures.

While searches, such as Google Trends, and social media—Twitter, Facebook, and others that are emerging or may emerge—may not replace current efforts to measure the salience of Supreme Court decisions, they potentially serve as an important compliment to existing measures derived from elite sources. During the period when cases are being debated, argued, and decided, Google Trends provides an opportunity to look at what cases the American public see as salient. While major news outlets, like the *New York Times*, are still helping to define what the public at large sees as relevant, as sources of news have diffused in various ways over the last decade or more, measures that move beyond traditional news sources seem especially appropriate and worth of continued exploration.

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Endnotes

1 The month after was included to allow for cases decided at the end of a month. In practice this impacted only a few cases.

2 A few examples are provided at http://aristotle.oneonta.edu/wordpress/gtrendssalience.

BOOKS TO WATCH FOR

Drew Lanier, Editor
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Elizabeth Beaumont (University of Minnesota) has published *The Civic Constitution: Civic Visions and Struggles in the Path toward Constitutional Democracy* (Oxford University Press, ISBN 978-0-199-94006-6). "How have generations of Americans debated and shaped the constitutional meanings of liberty, equality, justice, and 'We, the people'? What roles have engaged citizens, civic groups, and social movements played in effecting transformative constitutional change? These questions are at the heart of this compelling study. Spanning the 18th, 19th, and early 20th centuries, we see the constitutional visions and struggles of the broad swath of revolutionaries who motivated the Declaration of Independence and the first state constitutions; the streams of critics and antifederalists who influenced the national Constitution and Bill of Rights; the abolitionists who paved the way for the Reconstruction Amendments; and the suffragists whose battles provoked the Nineteenth Amendment."

Jennifer Barnes Bowie (University of Richmond), **Donald R. Songer** (University of South Carolina), and **John Szmer** (University of North Carolina at Charlotte) have co-authored The *View from the Bench and Chambers: Examining Judicial Process and Decision Making on the U.S. Courts of Appeals* (University of Virginia Press, ISBN 978-0- 813-93599-7). "For most of their history, the U.S. Courts of Appeals have toiled in obscurity, well out of the limelight of political controversy. But as the number of appeals has increased dramatically, while the number of cases heard by the Supreme Court has remained the same, the Courts of Appeals have become the court of last resort for the vast majority of litigants. This enhanced status has been recognized by important political actors, and as a result, appointments to the courts of appeals have become more and more contentious since the 1990s. This combination of increasing political salience and increasing political controversy has led to the rise of serious empirical studies of the role of the courts of appeals in our legal and political system. At once building on and contributing to this wave of scholarship, the work melds a series of quantitative analyses of judicial decisions with the perspec-

tives gained from in-depth interviews with the judges and their law clerks. This multifaceted approach yields a level of insight beyond that provided by any previous work on the appellate courts in the United States, making the book the most comprehensive and rich account of the operation of these courts to date.

Cary Coglianese (University of Pennsylvania), **Adam M. Finkel** (University of Pennsylvania) and **Christopher Carrigan** (George Washington University) have co- edited a new book, *Does Regulation Kill Jobs?* (University of Pennsylvania Press 2013, ISBN 978-0-8122-4576-9). "As millions of Americans struggle to find work in the wake of the Great Recession, politicians from both parties look to regulation in search of an economic cure. Some claim that burdensome regulations undermine private sector competitiveness and job growth, while others argue that tough new regulations actually create jobs at the same time that they provide other benefits. The work reveals the complex reality of regulation that supports neither partisan view. Leading legal scholars, economists, political scientists, and policy analysts show that individual regulations can at times induce employment shifts across firms, sectors, and regions—but regulation overall is neither a prime job killer nor a key job creator. Drawing on their analyses, contributors recommend methods for obtaining better estimates of job impacts when evaluating regulatory costs and benefits. They also assess possible ways of reforming regulatory institutions and processes to take better account of employment effects in policy decision-making."

Dion Farganis (Elon University) and **Justin Wedeking** (University of Kentucky) have co-authored *Supreme Court Confirmation Hearings in the U.S. Senate: Reconsidering the Charade* (University of Michigan Press, ISBN 978-0-472 11933-2). "Critics claim that Supreme Court nominees have become more evasive in recent decades and that Senate confirmation hearings lack real substance. Conducting a line-by-line analysis of the confirmation hearing of every nominee since 1955—an original dataset of nearly 11,000 questions and answers from testimony before the Senate Judiciary Committee—the authors discover that nominees are far more forthcoming than generally assumed. Applying an original scoring system to assess each nominee's testimony based on the same criteria, they show that some of the earliest nominees were actually less willing to answer questions than their contemporary counterparts. Factors such as changes in the political culture of Congress and the 1981 introduction of televised coverage of the hearings have created the impression that nominee candor is in decline. Further, senators' votes are driven more by party and ideology than by a nominee's responsiveness to their questions. Moreover, changes in the confirmation process intersect with increasing levels of party polarization as well as constituents' more informed awareness and opinions of recent Supreme Court nominees."

Rebecca Hamlin (Grinnell College) has written *Let Me Be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia* (Oxford University Press, ISBN 978-0-199-37331-4). "International law provides states with a common definition of a "refugee," as well as guidelines outlining how asylum claims should be decided. Yet even across nations with many commonalities, the processes of determining refugee status look strikingly different. This book compares the refugee status determination (RSD) regimes of three popular asylum seeker destinations: the United States, Canada, and Australia. Although they exhibit similarly high levels of political resistance to accepting asylum seekers, refugees access three very different systems-none of which are totally restrictive or expansive-once across their borders. These differences are significant both in terms of asylum seekers' experience of the process and in terms of their likelihood of being designated as refugees. Based on a multi-method analysis of all three countries, including a year of fieldwork with in-depth interviews of policy-makers and asylum-seeker advocates, observations of refugee status determination hearings, and a large-scale case analysis, Hamlin finds that cross- national differences have less to do with political debates over admission and border control policy than with how insulated administrative decision-making is from either political interference or judicial review. Administrative justice is conceptualized and organized differently in every state, and so states vary in how they draw the line between refugee and non-refugee."

Thomas M. Keck (Syracuse University) has published Judicial Politics in Polarized Times (University of Chicago Press, ISBN 978-0-226-18238-4). "Drawing on a sweeping survey of litigation on abortion, affirmative action, gay rights, and gun rights across the Clinton, Bush, and Obama eras, Keck argues that, while each of these stories captures part of the significance of judicial politics in polarized times, each is also misleading. Despite judges' claims, actual legal decisions are not the politically-neutral products of disembodied legal texts. But neither are judges "tyrants in robes," undermining de-

mocratic values by imposing their own preferences. Just as often, judges and the public seem to be pushing in the same direction. As for the argument that the courts are powerless institutions, Keck shows that their decisions have profound political effects. And, while advocates on both the left and right engage constantly in litigation to achieve their ends, neither side has consistently won. Ultimately, the author argues, judges respond not simply as umpires, activists, or political actors, but in light of distinctive judicial values and practices."

Mark Fathi Massoud (University of California, Santa Cruz) has written Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan (Cambridge University Press, ISBN 978-1-107-44005 0). "How do a legal order and the rule of law develop in a war-torn state? Using his field research in Sudan, Massoud uncovers how colonial administrators, postcolonial governments and international aid agencies have used legal tools and resources to promote stability and their own visions of the rule of law amid political violence and war in Sudan. Tracing the dramatic development of three forms of legal politics—colonial, authoritarian and humanitarian—this book contributes to a growing body of scholarship on law in authoritarian regimes and on human rights and legal empowerment programs in the Global South. Refuting the conventional wisdom of a legal vacuum in failed states, this book reveals how law matters deeply even in the most extreme cases of states still fighting for political stability."

Banks Miller, Linda Camp Keith, and Jennifer S. Holmes (all of the University of Texas at Dallas) have co-authored Immigration Judges and U.S. Asylum Policy (University of Pennsylvania Press, ISBN 978-0-812-24660-5). "The work investigates hundreds of thousands of U.S. asylum cases, finding that immigration judges tend to assess legally relevant facts objectively while their decisions may be subjectively influenced by extralegal facts. The authors also examine how local economic and political conditions as well as congressional reforms have affected outcomes in asylum cases, concluding with a series of policy recommendations aimed at improving the quality of immigration law decision making rather than trying to reduce disparities between decision makers." Stephen A. Simon (University of Richmond) has published Universal Rights and the Constitution (SUNY Press, ISBN 978-1-438-45185-5). "Are constitutional rights based exclusively in uniquely American considerations, or are they based at least in part on principles that transcend the boundaries of any particular country, such as the requirements of freedom or dignity? By viewing constitutional law through the prism of this fundamental question, the work exposes an overlooked difficulty with opinions rendered by the Supreme Court, namely, an inherent ambiguity about the kinds of arguments that count in constitutional interpretation, which weakens the foundations of our most cherished rights."

Vineeta Yadav and Bumba Mukherjee (both of Penn State University) have co-authored *Democracy, Electoral Systems, and Judicial Empowerment in Developing Countries* (University of Michigan Press, ISBN 978-0-472 -11908-0). "The power granted to the courts, both in a nation's constitution and in practice, reveals much about the willingness of the legislative and executive branches to accept restraints on their own powers. For this reason, an independent judiciary is considered an indication of a nation's level of democracy. Yadav and Mukherjee use a data set covering 159 developing countries, along with comparative case studies of Brazil and Indonesia, to identify the political conditions under which de jure independence is established. They find that the willingness of political elites to grant the courts authority to review the actions of the other branches of government depends on the capacity of the legislature and expectations regarding the judiciary's assertiveness. Moving next to de facto independence, the authors bring together data from 103 democracies in the developing world, complemented by case studies of Brazil, India, and Indonesia. Honing in on the effects of electoral institutions, the authors find that, when faced with short time horizons, governments that operate in personal vote electoral systems are likely to increase de facto judicial independence whereas governments in party-centered systems are likely to reduce it."

Mariah Zeisberg (University of Michigan) has published *War Powers: the Politics of Constitution Authority* (Princeton University Press, ISBN 978-0-0691-15722-1). "Armed interventions in Libya, Haiti, Iraq, Vietnam, and Korea challenged the U.S. president and Congress with a core question of constitutional interpretation: does the president, or Congress, have constitutional authority to take the country to war? *War Powers* argues that the Constitution does not offer a single legal answer to that question. But its structure and values indicate a vision of a well-functioning constitutional politics, one that enable the branches of government themselves to generate good answers to this question. Zeisburg shows that what matters is not that the branches enact the same

constitutional settlement for all conditions, but instead how will they bring distinctive governing capacities to bear on their interpretative work in context. The author argues for a set of distinctive constitutional standards for evaluating the branches and demonstrates how observers and officials can use those standards to evaluate the branches' constitutional politics. The work reinterprets central controversies of war powers scholarship and advances a new way of evaluating the constitutional behavior of officials outside the judiciary."

ANNOUNCEMENTS

Call for Papers & Upcoming Conferences

- American Political Science Association (Aug 28-31— Washington, DC)
  Law and Courts business meeting: August 29 (6:15)
- American Society of International Law (Nov. 6-8) (Chicago)
- Northeast Political Science Association: (November 13-15)
- Southern Political Science Conference (Jan 15-17, 2015 — New Orleans)
- Western Political Science Association (April 2-4 2015 - Las Vegas)
  Submission Deadline: Sept. 15
- Southwestern Political Science Association (April 8-11, 2015—Denver)

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