The Prevalence of Articles on U.S. Judicial Behavior in Five Law & Courts Journals

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Reid et al (2020), a wide-ranging article published in the Spring 2020 issue of this newsletter, laments what its authors see as an over-representation of articles about U.S. judicial behavior in *Journal of Law and Courts* (*JLC*). As the official journal of Law and Courts Section, *JLC* is certainly worthy of special attention. Nonetheless, to give a fuller description of publications in the subfield and to give some context to the topics covered by *JLC*, it may be worth examining the subjects of articles in other subfield journals. In particular, the extent to which other subfield journals publish work on U.S. judicial behavior may well affect the set of manuscripts submitted to *JLC* and thus ultimately the content of that outlet. And of course, analyzing journals in addition to *JLC* gives a more complete picture of U.S. judicial behavior's representation in the subfield.

Therefore, I present here a content analysis of five journals that have traditionally published law and courts research: *Journal of Empirical Legal Studies* (*JELS*), *The Journal of Law, Economics, and Organization* (*JLEO*), *Justice System Journal* (*JSJ*), *Law & Social Inquiry* (*LSI*), and *Law & Society Review* (*LSR*). For each article published in those journals in calendar year 2019, I determine whether the topic is judicial behavior, and if so, whether the article analyzes U.S. judges, as well as whether the author(s) are political scientists.

In short, these five outlets are publishing little work in U.S. judicial behavior. Of 148 articles published in the five journals in 2019, only 10 (7%) analyze U.S. judicial behavior and are written by political scientists. And most of the 10 appear in *JSJ*: considering just *JELS*, *JLEO*, *LSI*, and *LSR*, only 3 out of their 129 articles (2%) involve research on U.S. judicial behavior by political scientists.

Of course, just because a journal does not publish on some topic does not mean that the editors disfavor that topic. The set of manuscripts submitted to a journal influences what gets published, as do reviewer assessments of the manuscripts that are submitted. Without data on submissions and reviews, it is not possible to make causal claims that ascribe responsibility for under- or over-representation of topics. Thus, the empirical analysis here should be understood as descriptive. Still, these results suggest that editors or reviewers at these journals favor work on topics other than U.S. judicial behavior *and/or* that political scientists whose research involves U.S. judicial behavior do not submit to these subfield journals at high rates.

Sample

The sample consists of every article published in print during the year 2019, in *JELS*, *JLEO*, *JSJ*, *LSI*, and *LSR*; this is the same timeframe considered in Reid et al (2020). Within the definition of "article" I include research notes, other short articles, and symposia, but exclude book reviews. This gives 148 articles: 28 in *JELS*, 19 in *JLEO*, 19 in *JSJ*, 43 in *LSI*, and 39 in *LSR*. (I

include one article that was ultimately retracted—see Pickett (2020) for discussion.) I viewed or downloaded the full text of each article for analysis.

Definitions

To operationalize requisite variables, I define "judicial behavior," "U.S. judicial behavior," and "written by political scientists" as follows. "Judicial behavior" is as an original quantitative or formal-theoretic analysis of a court's or a judge's decision-making. I apply this definition loosely (i.e., inclusively): the quantitative analysis can be as simple as a crosstab (see e.g., Milewski 2019), and it does not necessarily have to be central to the article (see e.g., Baldus et al 2019). I conceptualize "decision-making" broadly too, to include for example justices' language choices in opinions (e.g., Krewson 2019), justice interruptions at oral argument (Feldman and Gill 2019) and state of the judiciary addresses by chief justices (Wilhelm et al 2019).[1]

I conceptualize "U.S. judicial behavior" as judicial behavior (as just defined) of U.S. judges. An article that considers the behavior of judges in multiple countries qualifies if one of the countries is the U.S.

I classify an article as "written by political scientists" if at least 50% of its authors are political scientists. A "political scientist" is an author who is affiliated with a department of political science (politics, government etc.). Scholars in interdisciplinary departments are classified based on the discipline in which they received their Ph.D. If author affiliation is given in the article, I use that information; otherwise, I use author affiliations located via Google.

Results

I present results in Table 1, which shows article and page counts by topic—U.S. judicial behavior written by political scientists; U.S. judicial behavior by all authors; all judicial behavior—and journal. Of the 148 articles in the sample, only 10 are written by political scientists and analyze U.S. judicial behavior. These articles account for 7% of published articles and 6% of published pages in the five journals. Excluding *JSJ*, only 2% of published articles and the same percentage of published pages are articles covering U.S. judicial behavior written by political scientists.

If we include also articles written by scholars in other disciplines and articles analyzing exclusively non-U.S. judicial behavior, the article and page counts increase, but not dramatically. For example, across the five journals, only 18 % of articles analyze judicial behavior of any sort. Considering only *JELS*, *JLEO*, *LSI*, and *LSR* this number drops to 14 %.

The conclusion that, excepting *JSJ*, these journals publish little judicial behavior, and even less U.S. judicial behavior written by political scientists, is inescapable. As noted above, this, by itself, does not prove that editors or reviewers disfavor manuscripts on judicial behavior. Still,

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[1] The only "close call" I excluded from judicial behavior was the decision by state associate justices to run for chief justice (Vining, Wilhelm, and Wanless 2019).

these results give a more complete picture of topic representation in the law and courts subfield and may help explain why U.S. judicial behavior is well-represented in *JLC*.

Journal:	JELS	JLEO	JSJ	LSI	LSR	All
Article Count						
USJB, PS authors	1	1	7	0	1	10
USJB	2	3	7	2	1	15
JB	6	3	9	3	6	27
All articles	28	19	19	43	39	148
Page Count						
USJB, PS authors	30	31	143	0	27	231
USJB	67	115	143	56	27	408
JB	180	115	172	85	193	745
All articles	884	674	307	1035	1259	4159

Table 1. Article and page counts by topic and journal. USJB = U.S. Judicial Behavior; PS authors = written by political scientists; JB=Judicial Behavior. USJB, PS authors is a subset of USJB, which is a subset of JB, which is a subset of All articles.

Data Availability

Data and code (for Stata) are available on my website, sites.google.com/site/dalempert/research . Variables include article title, author names and affiliations (i.e., political science or not), issue and page numbers, as well as whether an article is classified as judicial behavior, and if so, whether it is U.S. or non-U.S.

Disclosure

I have published in *JLC* and have submitted manuscripts to some of the journals in the sample. I served as reviewer for one of the articles in the sample.

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