Sabbatical Report

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THE U.S.SUPREME COURT AND JUDICIAL REVIEW OF CONGRESSIONAL STATUTES
In Summer 2002 the college awarded me a study grant in 2002 to begin a research project that examines the U.S. Supreme Court’s judicial review of Congress. Through the college’s grant I was able to identify all cases of judicial review of congressional statutes for the Court’s entire history. I was also able to gather my initial set of data, including all case factors/variables, voting data, and most court factors. Through my sabbatical leave in the Fall 2004 I was able to gather, as proposed, the remaining data for the project which include variables for the individual justices: 1) appointing president, 2) party affiliation, 3) political experience, 4) judicial and prosecutorial experience; and 5) political experience. I was also able to gather data related to the statute under review by the Court in each case: 1) party control (and margin of control) of Senate/House at the time of the Court decision, 2) party of the president at the time of the decision and at the time of the vote, 3) party control of the House and Senate (and margin of control) that passed the statute; and 4) the roll-call vote.

In addition to the new data gathering project, I expanded the analysis of the data gathered with the study grant money and continued to write manuscripts of the research. In the sabbatical proposal I had indicated that I would seek to publish the research either in the form of a single book or multiple journal or law review articles. I have chosen to publish the research in journals at this point for two primary reasons. First, I learned that the college would own exclusive intellectual property rights of the sabbatical research, which took away any incentive in putting in the additional work and stress of pursuing a book publication. Second, I felt that the research was important enough to be published in the major referred journals in my discipline. While the standards for getting publications accepted in the referred journal are higher, the process of publishing the research in a series of articles would allow me to more incrementally adapt the research to reviewers’ demands.

I had submitted an initial manuscript to *Judicature* at the time of the sabbatical proposal. I was given the opportunity to submit a revision for consideration by the journal. The sabbatical enabled me to gather some additional data to satisfy the reviewers and to engage in additional analysis and revision of the text. I resubmitted this manuscript at the end of my sabbatical and was notified this week that I has been accepted with a couple of remaining revisions to be made.

During the sabbatical I also continued to produce the additional proposed analysis:

Trends of support and nullification along ideological lines, trends by Chief Justice court, trends by decade and an examination the role of the solicitor general. (I have completed the statistical analysis for this section and have begun writing the manuscript).

Examination of the individual justices’ voting behavior for 1) the justices’ pattern of support for Congress, 2) the justices’ voting patterns by constitutional provision, 3) the justices’ voting patterns along ideological dimensions, and the justices’ dissent patterns.

Examination of judicial review as a check against tyranny of the majority to determine the extent to which this power is used to protect or curb constitutional rights of the minority.
Development of integrated explanatory models that will examine the Court’s and the individual justices’ behavior in statistical models that test competing behavioral theories such as the attitudinal model, the legal model, the neoinstitutional model and the rational choice/strategic model.

I have been notified that two papers have been accepted at the national political science conference. I will present them in Washington, D.C. this fall.

As I reported in my proposal, the question under study relates to both sections of our core courses GOVT 2301 and 2302. In GOVT 2301 we examine key concepts and issues of constitutionalism and we examine competing theories of democracy. Judicial review is a key constitutional concept and is a major component of substantive model of democracy. In GOVT 2302 we study the Supreme Court as a major political institution, we study its relation to the other branches and levels of government, and we examine the policies it imposes through common law (usually with much emphasis on civil rights and civil liberties through the power of judicial review). I have already been able to share this research with students, as they questions and topics. Judicial review is perceived to be an important component of liberal constitutionalism and substantive democracy. It was assumed by Madison and Hamilton to be an important check against tyranny of majority and continues to be perceived as check against human rights abuses. Political science has never tested systematically the question of whether in fact judicial review has been used to support the principles of substantive democracy--by supporting civil rights and civil liberties against incursions by the majority-elected branches of government. In class, when we cover these issues and debate this key constitutional question, I have to tell students that I do not know the answer. We do not know whether the Court has used this power to protect individual rights or if possibly the power has been used against political minorities’ rights. have arisen