

TEACHING LAW AND POLITICS

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I want to thank the *Journal of Legislation and Public Policy* for organizing this symposium. Participating in this discussion allows me to learn more about the kinds of things that are happening in classes like “The Administrative and Regulatory State,” the new course at N.Y.U. that is now required for first-year students. During the lunch that preceded the symposium, I’ve learned about the various ways that my co-panelists approach such courses. We can learn much from students and from each other, and we hope in return to be able to offer some insights into teaching and taking legislation courses.

I will focus on three themes in my remarks today. First, I will discuss why it’s important for law schools to offer classes like N.Y.U.’s “Administrative and Regulatory State” in the first year. Second, I will consider how a course on law and the political process fits into a law school curriculum. As Bill indicated, the study of law and politics is my area of expertise, as well as my primary scholarly focus. Third, I want to examine why some professors are nervous about teaching courses like the ones we are focusing on today.

Including courses on the legislative, regulatory, and political processes in the first-year law school curriculum is vital. Many law schools offer such courses, but usually only for upper-level students. Indeed, with the exception of administrative law, such courses are often “boutique” courses that appeal to students with a special interest in legislatures and politics, but are not considered a necessary part of the course of study for most law students. Moreover, the traditional first-year curriculum has been court-centric, focusing on subjects like civil procedure (and by that law schools mean court procedure), criminal law, and torts. Similarly, the courses in the upper-level curriculum that students feel are “required” are very court-centric, including courses like federal courts and constitutional law. A first-year course that focuses on legislatures and administrative agencies combats this court-centrism, and also reduces federal-centrism because many such courses deal with legislative and regulatory issues at the state level.

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Having a broader perspective than is provided by the traditional first-year curriculum gives law students a fuller sense of the possibilities of legal practice. During the first year, students should learn what it means to be a lawyer, what careers are available to them, and what objectives they can pursue. Law schools have disserved students because the traditional first-year curriculum provides an incomplete picture of what a legal career can look like. It does not suggest how diverse the possibilities are.

Regulatory practice is one of these diverse possibilities; indeed, most lawyers must be familiar with regulatory practice because it is an integral part of legal practice. Practicing before state and federal administrative agencies isn't at all like practicing in front of state and federal courts. Even though agencies adjudicate disputes, their adjudicative processes are unlike the adjudicative processes students learn about in civil procedure and the traditional first-year courses. Moreover, most agencies establish policies and make other decisions through very different sorts of processes and interactions, most notably through notice-and-comment rulemaking and other informal and formal procedures.¹ Some of the rules shaping these procedures are established by the Administrative Procedures Act² and the organic statutes governing individual agencies, but others are the products of agency determinations and judicial decisions.³ Such a course is also crucial for students who intend to spend most of their time in the courtroom. Many judicial cases concern the products of the regulatory process: regulations, enforcement proceedings, and other guidance

1. For descriptions of agency procedures and decisionmaking processes, see CORNELIUS M. KERWIN, *RULEMAKING: HOW GOVERNMENT AGENCIES WRITE LAW AND MAKE POLICY* (2d ed. 1999); Peter L. Strauss, Comment, *The Rulemaking Continuum*, 41 DUKE L.J. 1463 (1992).

2. Ch. 324, 60 Stat. 237 (codified as amended in scattered sections of 5 U.S.C.).

3. See, e.g., *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519 (1978) (limiting ability of judiciary to add procedures to those required by Administrative Procedures Act and organic statutes governing agencies). However, judicial review, particularly "hard look" review, has affected the kinds of procedures that agencies use for notice-and-comment rulemaking. For discussions of the effect of judicial review on agencies, see William S. Jordan, III, *Ossification Revisited: Does Arbitrary and Capricious Review Significantly Interfere with Agency Ability to Achieve Regulatory Goals Through Informal Rulemaking?*, 94 NW. U. L. REV. 393 (2000); Mark Seidenfeld, *Demystifying Deossification: Rethinking Recent Proposals to Modify Judicial Review of Notice and Comment Rulemaking*, 75 TEX. L. REV. 483 (1997); Peter L. Strauss, *From Expertise to Politics: The Transformation of American Rulemaking*, Speech at Administrative Law Conference Sponsored by Fundación Estudios de Derecho Administrativo (Nov. 15, 1996), in 31 WAKE FOREST L. REV. 745 (1996).

promulgated by countless administrative agencies at the federal, state, and local levels.

In addition, some students may spend part of their careers working in legislatures, as I did. I worked in the United States Senate for three and a half years after my clerkships, serving first as tax and budget counsel and then as legislative director for Senator David L. Boren. Bill Eskridge may be right that political scientists are the experts with regard to the legislative process, but it is important to keep in mind that we lawyers are actually running the show. Because that is the case, law students must be aware of this career possibility and have a sense of what a legislative practice entails. Whether one works as a congressional aide as I did, pursues a more traditional practice that requires the ability to recognize when a client's problem demands a legislative fix, or spends time lobbying state or federal legislators or policymakers, a lawyer is likely to interact with the legislative process at some point during her career. In-house and corporate counsel may practice in front of courts, but they also spend a great deal of time on problems that intersect with the regulatory and legislative processes. Finally, litigators often must argue about statutes—how to interpret them, when they apply, and how they can be reconciled with each other. A sophisticated sense of the processes that produce statutes assists in such advocacy.

Finally—and here I'm entering the arena of Richard Briffault's expertise, as well as the scholarly focus of Clay Gillette here at N.Y.U.—many lawyers spend at least part of their time focusing on state and local issues. That kind of practice includes not only lawmaking by legislatures, but also, in many states and localities, lawmaking by citizens: direct democracy, initiatives, and referenda. Discussions of state and local government as well as direct democracy easily can be incorporated in a course in this area, counterbalancing national law schools' nearly exclusive focus on federal policy and institutions. As I said earlier, this federal-centrism characterizes not only the traditional first-year curriculum, but also most upper-level courses.

First-year classes that address state and local regulatory and legislative processes as well as federal processes allow students and professors to develop a comparative institutional perspective that enhances the other traditional first-year classes. I usually teach civil procedure to first-year students, in addition to upper-level courses in law and politics and in administrative law. I have also taught torts to first-years. As I talk with students in both first-year courses, I often wish that the students had some familiarity with the regulatory process or the legislative process. For example, when I teach the principles of

joinder in civil procedure, it would be interesting to ask whether the kinds of complex cases brought in courts through aggressive joinder rules would be better determined by an administrative agency: Does this controversy, an example of institutional litigation used to rearrange whole sectors of the economy or society, belong in court? In a torts class, it would be challenging to think seriously about a world where many questions traditionally left to the courts by tort doctrine were determined instead by administrative agencies and legislative prescriptions. Many torts teachers raise these issues by analyzing the move to workers' compensation schemes, or by comparing statutory no-fault regimes with the traditional negligence structure. However, these conversations are more productive and satisfying when a first-year curriculum includes a course like N.Y.U.'s "Administrative and Regulatory State," which focuses students intensely on comparative institutional analysis.

In sum, a course like N.Y.U.'s new first-year offering makes explicit what is implicit throughout the law school curriculum: We live in an age of statutes.⁴ When this symposium was in the planning stages, one topic identified as a possible area of discussion was the "fact" that most of the law school curriculum focuses on common law. I don't think that statement is entirely accurate, and it reflects the misunderstanding that can result from the way we teach first-year subjects. In fact, most of law school focuses on statutes and regulation, but because of the traditional first-year curriculum and the way we talk as lawyers, we think that what we're doing is primarily common law. That perception is simply wrong. A course in regulatory and legislative processes explicitly reveals the dominance of statutes and regulations over common law.

My second topic is the role that courses on law and the political process can serve in the law school curriculum. One advantage of a first-year course like the one here at N.Y.U. is that it paves the way for advanced courses dealing with the law of democratic institutions, legislative processes, state and local government law, the federal budget process, voting rights, election law, statutory interpretation, legislative drafting, and many more. Of course, any law school can offer these classes, but these courses are enhanced when upper-level students have the kind of background that the first-year course at N.Y.U. provides. Although there are many possibilities for such advanced

4. See ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* (1997) (describing modern administrative state as "age of legislation").

courses, as I have indicated, I will spend my time today talking specifically about courses in law and the political process.

I have taught such a course for many years at various law schools, including Chicago, Harvard, and Virginia, and I have usually called my course “The Legislative Process.” However, I’m renaming the course next year. When I offer it at the University of Southern California Law School, I plan to call it “Law and the Political Process” or “Law and Politics” because we discuss much more than the legislative process. We study the electoral process, political parties, term limits, the temporal reach of legislation and adjudication, campaign finance law, bribery and conflict of interest rules, and the Speech or Debate Clause.⁵ It’s the kind of course that Rick Pildes has offered called “The Law of Democracy,” which is also the title of his excellent casebook. That book is currently in its second edition and is coauthored by Sam Issacharoff and Pam Karlan.⁶

There are at least three reasons that such a course should be included in a comprehensive law school curriculum. First, the issues involved in the political process are extraordinarily compelling and important, though difficult. Understanding them is vital to becoming a better lawyer and an engaged citizen. My course necessarily focuses on challenging constitutional questions concerning the First Amendment, the Fourteenth Amendment, and structural issues such as separation of powers and the Speech or Debate Clause. It involves analysis of fascinating legal subjects such as voting rights, campaign finance reform, ballot access laws and other laws regulating political parties, and lobbying regulations.

Second, one needs a sense of the regulatory and political processes in order to understand theories of statutory interpretation and the practice of applying statutes to particular cases. It’s difficult to interpret the product of a process without understanding that process itself, yet in many statutory interpretation courses the process remains impenetrable. A recent symposium centered on one of the most important pieces of scholarship in our field—*Dynamic Statutory Inter-*

5. These topics are covered in the first six chapters of WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY, & ELIZABETH GARRETT, *CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY* (3d ed. 2001) [hereinafter *LEGISLATION CASEBOOK*], and the first five chapters of WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY, & ELIZABETH GARRETT, *LEGISLATION AND STATUTORY INTERPRETATION* (2000) [hereinafter *CONCEPTS BOOK*].

6. SAMUEL ISSACHAROFF, PAMELA S. KARLAN, & RICHARD H. PILDES, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (rev. 2d ed. 2002).

pretation by Bill Eskridge.⁷ Several of the articles from that symposium concluded that understanding the legislative process is important for those endeavoring to interpret statutes.⁸ Bill's article, which he expanded into a book of the same name,⁹ makes important points that continue to guide scholarship on statutory interpretation today. Bill identifies sophisticated institutional analysis as crucial to interpretive theory, counseling interpreters to be sensitive to the "present societal, political, and legal context" in which legislation is enacted,¹⁰ and he has used institutional analysis to provide a hierarchy to assist interpreters in using legislative history thoughtfully.¹¹ He posits that if judges understand the process and apply insights from positive political theory, public choice theory, and other theories of the legislative process,¹² courts are more likely to use legislative history appropriately and intelligently.

Thus, in a course on law and the political process, students learn about the legislative process so that they can apply that understanding to interpretive tasks such as arguing about meaning from legislative history. However, such a course must also stress that it is difficult, and perhaps impossible, to devise easy-to-apply rules and hierarchies because legislative processes are so varied.¹³ No one hierarchy is possible given the nearly infinite variation in the paths that laws may travel to enactment. To use political scientist Barbara Sinclair's term, major bills are more likely to result from "unorthodox lawmaking" rather than from the textbook legislative process.¹⁴ Thus, bills may be

7. William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. PA. L. REV. 1479 (1987).

8. Symposium, *Dynamic Statutory Interpretation*, ISSUES IN LEGAL SCHOLARSHIP (2002), at <http://www.bepress.com/ils/iss3> (on file with *The New York University Journal of Legislation and Public Policy*).

9. WILLIAM N. ESKRIDGE, JR., *DYNAMIC STATUTORY INTERPRETATION* (1994).

10. Eskridge, *supra* note 7, at 1479.

11. ESKRIDGE, *supra* note 9, at 218–25.

12. For work applying such principles, see DANIEL A. FARBER & PHILIP P. FRICKEY, *LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION* 101–02 (1991); JERRY L. MASHAW, GREED, CHAOS, AND GOVERNANCE: USING PUBLIC CHOICE TO IMPROVE PUBLIC LAW 97–101 (1997); McNollgast, *Legislative Intent: The Use of Positive Political Theory in Statutory Interpretation*, 57 LAW & CONTEMP. PROBS. 3 (1994).

13. For further discussion of these points, see Elizabeth Garrett, *Attention to Context in Statutory Interpretation: Applying the Lessons of Dynamic Statutory Interpretation to Omnibus Legislation*, ISSUES IN LEGAL SCHOLARSHIP (2002), at <http://www.bepress.com/ils/iss3/art1> (on file with *The New York University Journal of Legislation and Public Policy*).

14. See BARBARA SINCLAIR, *UNORTHODOX LAWMAKING: NEW LEGISLATIVE PROCESSES IN THE U.S. CONGRESS* (2d ed. 2000); JOHN B. GILMOUR, *RECONCILABLE DIFFERENCES? CONGRESS, THE BUDGET PROCESS, AND THE DEFICIT* (1990) (discussing

considered in omnibus form, they may not be considered by a committee, they may emerge from party task forces or leadership summits, or they may be considered by various committees under complicated referral procedures and then changed substantially on the floor through managers' amendments.

Judicial interpreters do not usually have expertise in the varied nature of the legislative process, so they must work to acquire this expertise indirectly. To use legislative materials intelligently, according to the principles that Bill and others have articulated, judges must understand the processes through which all laws—not just a subset of laws—are passed. It's not clear that judges and courts are competent to apply some interpretive theories, and the facts of institutional design must be considered when determining the best course for adjudicators.¹⁵ So in the end, new interpretive theories need to be developed and defended, and whatever these theories are, they must be informed by an understanding of the processes that produce legislation.

A sophisticated understanding of statutory interpretation includes an awareness that courts are not the only institutions that interpret statutes, further adding to the complexity of the interpretive enterprise. In fact, administrative agencies resolve many statutory questions, and are institutionally quite unlike courts.¹⁶ Agency officials may have the competence to perform sophisticated interpretive tasks because executive branch officials are usually part of the drafting process and are actively involved in the legislative process. Agencies' institutional designs and capacities may allow them to use different interpretive strategies than courts employ; for example, agencies may rely on legislative history more often or use canons of construction that are related to principles of regulation.¹⁷

In short, knowledge of the political process is important even in courses that focus primarily on statutory interpretation: You've got to

budget processes outside traditional committee structure employed by Congress since 1980).

15. For such an analysis, see Adrian Vermeule, *Interpretive Choice*, 75 N.Y.U. L. REV. 74 (2000).

16. See Edward Rubin, *Dynamic Statutory Interpretation in the Administrative State*, ISSUES IN LEGAL SCHOLARSHIP (2002), at <http://www.bepress.com/ils/iss3/art2> (on file with *The New York University Journal of Legislation and Public Policy*); Peter L. Strauss, *When the Judge is Not the Primary Official with Responsibility to Read: Agency Interpretation and the Problem of Legislative History*, 66 CHL.-KENT L. REV. 321 (1990).

17. See Jerry L. Mashaw, *Agency Statutory Interpretation*, ISSUES IN LEGAL SCHOLARSHIP (2002), at <http://www.bepress.com/ils/iss3/art9> (discussing different strategies of interpretation for courts and agencies) (on file with *The New York University Journal of Legislation and Public Policy*).

know how the sausage is made in order to understand the sausage itself. Perhaps that knowledge makes you a little dubious about the sausage, but such is the price of knowledge.

Third, a course in the political process should focus on the “due process of lawmaking.” I borrow that term from Hans Linde, who coined it in a seminal article;¹⁸ we have included an extended discussion of the concept in the fourth chapter of our casebook.¹⁹ Linde discussed the appropriate role of courts in a constitutional system and argued that the Due Process Clauses of the Constitution “instruct government itself to act by due process of law, not simply to legislate subject to later judicial second-guessing.”²⁰ Legislative process should be designed, he contended, to produce “rational lawmaking.”²¹ If procedural safeguards are intended to ensure participation of affected groups and transparent deliberation by lawmakers, judicial review could work to require that those procedures be followed. In short, if the rules of the game work and the legislature has followed them, then courts should assume that the product of that game is constitutional. Thus, a due process of lawmaking perspective focuses judicial attention on the rules that govern the legislative process.

Laurence Tribe, in a related piece, wrote about structural due process—that is, the “structures through which policies are both formed and applied.”²² Structural due process theories suggest that certain actions should be taken only by entities with particular institutional features that enhance their democratic legitimacy. This kind of institutional analysis is part of the due process of lawmaking inquiry that should be part of the law school curriculum, perhaps in a course on law and the political process or even in a structural constitutional law course. It can be discussed through analysis of several Supreme Court opinions, such as *Hampton v. Mow Sun Wong*²³ and *Kent v. Dulles*.²⁴

Due process of lawmaking should include two different perspectives—one that focuses on the application of such principles as part of judicial review, and another that considers the legislature’s role in

18. Hans A. Linde, *Due Process of Lawmaking*, 55 NEB. L. REV. 197 (1975–1976).

19. LEGISLATION CASEBOOK, *supra* note 5, at 381–498.

20. Linde, *supra* note 18, at 222.

21. *Id.* at 222–29.

22. Laurence H. Tribe, *Structural Due Process*, 10 HARV. C.R.-C.L. L. REV. 269, 269 (1975).

23. 426 U.S. 88, 101 (1976) (stating that “federal power over aliens is [not] so plenary that any agent of the National Government may arbitrarily subject all resident aliens to different substantive rules from those applied to citizens”).

24. 357 U.S. 116 (1958) (holding that Secretary of State could not deny passports on basis of present or past membership in Communist Party because Congress did not delegate that authority to Secretary in Immigration and Nationality Act).

adopting rules, procedures, and structures to further due process of lawmaking objectives. To assess the role of courts in this area, students should ask first whether courts should enforce certain rules, and second whether the judicial role changes if the rules are constitutionally imposed²⁵ or if the rules are internal rules adopted under the Rulemaking Clause.²⁶ These answers may be different with respect to state legislatures, in part because state constitutions impose on legislatures constraints that are significantly greater—such as single-subject requirements, rules against special legislation, and special procedures for bills that raise taxes. If certain rules are justified because they enhance deliberation or allow affected parties to participate, and if the legislature ignores those rules, is it appropriate for courts to become involved in policing the legislators? Or are there other players or processes that encourage legislators to play by the rules that they have established, or at least waive those rules in a transparent way that allows voters to hold them accountable? For example, the House of Representatives has an interest in enforcing the Origination Clause, and the Executive Branch has ample incentive to preserve the power of the presidency. What does judicial enforcement add to these structural protections already in place?

What if the legislature has not adopted sufficient rules to ensure due process of lawmaking? Should courts aim to encourage legislatures to legislate in particular ways and pursue that objective through strategies of judicial review? In *Board of Trustees of the University of Alabama v. Garrett*, the Court reviewed the legislative record of the Americans with Disabilities Act to determine whether the empirical basis for the statute supported a valid congressional abrogation of the state's immunity under the Eleventh Amendment.²⁷ The Court held Congress to an evidentiary standard more commonly applied to a court or to an administrative agency, discounting the varied mechanisms through which legislators gather facts, reach conclusions, and deliberate about important issues.²⁸ The majority did not factor into its analysis the democratic pedigree of Congress, nor did it discuss whether the fact that legislators are elected—unlike federal judges or

25. See, e.g., *United States v. Munoz-Flores*, 495 U.S. 385 (1990) (finding challenge under Origination Clause justiciable).

26. U.S. CONST. art. I, § 5 (“Each House may determine the Rules of its Proceedings . . .”).

27. 531 U.S. 356, 368–72 (2001). See also *United States v. Morrison*, 529 U.S. 598, 614 (2000) (employing legislative record to evaluate validity of congressional enactment of Violence Against Women Act).

28. See *Garrett*, 531 U.S. at 368–74.

agency administrators—should have some bearing on how judges assess the legislative process.²⁹

In addition, courses in law and the political process ought to include an assessment of due process of lawmaking from Congress's point of view. How can Congress improve its performance by adopting new rules and structures to improve deliberation and to reshape interest group activity? Such a due process of lawmaking focus requires a sustained analysis of congressional rules. Linde stressed "that the [legislative] process everywhere is governed by rules, that these rules are purposefully made and from time to time changed, and that most of them are sufficiently concrete so that participants and observers alike will recognize when a legislative body is following the due process of lawmaking and when it is not."³⁰ Although Linde primarily focused on constitutional rules,³¹ internal rules and procedures are much more extensive and salient to lawmakers.

To provide students with a sense of congressional rules and the ability to assess their benefits and disadvantages, our casebook contains a description of the congressional budget process.³² Since the 1970s, and particularly since the deficit emerged as a major political issue in the mid-1980s, this framework of rules has shaped the entire legislative process. The budget framework is ubiquitous; one commentator has argued that the congressional budget process has led to a "fiscalization" of federal policy because budget rules significantly affect the scope and shape of most legislative enactments.³³ Lawmakers cannot enact major legislation without understanding and taking account of the budget process, and yet the vast majority of law schools neither teach these rules nor discuss their importance.

29. For critiques of the approach to legislative record review exemplified by *Garrett*, see, for example, Philip P. Frickey & Steven S. Smith, *Judicial Review, the Congressional Process, and the Federalism Cases: An Interdisciplinary Critique*, 111 *YALE L.J.* 1707 (2002); William W. Buzbee & Robert A. Schapiro, *Legislative Record Review*, 54 *STAN. L. REV.* 87 (2001); Ruth Colker & James J. Brudney, *Dissing Congress*, 100 *MICH. L. REV.* 80 (2001).

30. Linde, *supra* note 18, at 242.

31. For a discussion of the constitutional rules affecting Congress, see Adrian Vermeule, *The Constitutional Law of Congressional Procedure* (Center for the Study of Law and Politics, Working Paper No. 9, 2003), http://lawweb.usc.edu/cslp/papers/congressional_procedure.pdf (on file with *The New York University Journal of Legislation and Public Policy*).

32. *LEGISLATION CASEBOOK*, *supra* note 5, at 417–83. For an overview of the congressional budget process, see ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS* (rev. ed. 2000). For an overview and proposal for reform, see Elizabeth Garrett, *Rethinking the Structures of Decisionmaking in the Federal Budget Process*, 35 *HARV. J. ON LEGIS.* 387 (1998).

33. BURDETT A. LOOMIS, *THE CONTEMPORARY CONGRESS* 46 (3d ed. 2000).

Perhaps we can't adequately teach the congressional budget process, although I resist that conclusion. Not only have I taught specialized seminars in the budget process, but I also spend several weeks on it and other congressional rules in my law and politics course. It is true that the budget rules are arcane, confusing, and subject to a great deal of formal and informal change over time. But lawyers at least ought to develop a sense of the importance of these internal rules in this new world of unorthodox lawmaking. Such rules are part of the due process of lawmaking that lawyers must be familiar with, whether they're going to work directly with legislatures or not.

Let me briefly raise one final topic relevant to teaching courses dealing with legislation, law and politics, and the regulatory state. These are very challenging courses to teach. During the last eight years, I've spoken with several academics who teach courses in statutory interpretation or courses that address the political process. There is a widespread sense that these courses are intimidating not only for students, but also for professors. They are intimidating for professors because of the nature of such courses in comparison to other advanced statutory courses. For example, in labor law or federal tax law, one focuses on a handful of statutes and a handful of cases. It is possible to become an expert in that substantive area of law and familiar with the process of policymaking in that area. Although these areas of the law may be extraordinarily complex, they are manageable in the sense that they focus on a discrete body of law.

By contrast, there is not a single substantive body of law that one teaches in a legislative process course or an administrative law course. Instead, on Monday, one is teaching an antitrust case or statute; on Tuesday, one is teaching labor law; and on Wednesday, one is teaching civil rights. No one can be an expert in all of the substantive areas of law that will provide a basis for discussion in these courses. And that's intimidating—it's intimidating for a professor who knows a great deal about the procedure but has only a superficial knowledge of the substantive areas from which the cases or regulations arise. For example, I know very little about antitrust, but I teach *Flood v. Kuhn*,³⁴ which is an antitrust case that demonstrates the power of *stare decisis* in the statutory interpretation context. I don't mind that I may have to refer a student who has probing questions about antitrust law to one of my colleagues who is an expert in that substantive area. I know enough about antitrust law to use it as a frame for teaching the

34. 407 U.S. 258 (1972).

concepts of legisprudence that the case exemplifies.³⁵ Nevertheless, it can be intimidating for a professor to teach in substantive areas where she is not an expert—and to do that daily. This keeps some academics from teaching such courses.

In addition, this field is characterized by interdisciplinary study. A scholar working in the arena of legislative process, political process, or administrative process must be familiar with principles and scholarship from a variety of disciplines—including at the least economics, political science, and law. One need not have an advanced degree in a field other than law, although many legal scholars who work in the area do, and advanced study in economics or political science can be helpful. Those without the opportunity for specialized study must nevertheless become comfortable drawing on the work of economists, political scientists, and others. One way for professors to develop the ability to use material from other disciplines in a sophisticated way in scholarship and in class is to become involved in interdisciplinary centers. For example, the University of Southern California Law School and the California Institute of Technology have jointly established the Center for the Study of Law and Politics. By publishing a working paper series and funding research, conferences, and publications, the Center brings together economists, political scientists, and lawyers to study and discuss these issues.³⁶ In addition to interdisciplinary centers, conferences, and collaborations, courses like “The Administrative and Regulatory State” will produce law students who are less intimidated by this sort of inquiry and who will constitute the next generation of legal scholars in these areas.

I appreciate the opportunity to discuss these issues with you today, and I look forward to learning more about what is happening here at N.Y.U.

35. For a discussion of these issues, see *CONCEPTS BOOK*, *supra* note 5, at 277–81.

36. The Center’s webpage is <http://lawweb.usc.edu/csllp/>.