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SYMPOSIUM FOREWORD: EDITORS' INTRODUCTION

Chelsea J. Beaulieu[*] & William W. Templin[†]

INTRODUCTION

On April 4, 2024, distinguished professors, practitioners, and jurists from across the country gathered at the University of Pittsburgh School of Law for "A Federal Courts Symposium in Honor of Professor Arthur Hellman" to celebrate Professor Hellman's career and to discuss the subject to which he has devoted much of his research and his writing—the architecture of the United States federal court system. The editors of the *University of Pittsburgh Law Review* were honored to host the symposium last year, and to now preserve the day's discussions in enduring form by publishing articles from some of the symposium's renowned participants—and even its namesake—Professor Hellman.

Reflecting on the symposium, a theme emerged: one of institutional arrangements, discussed at length by legal scholars and Professors William Eskridge and Philip Frickey.[1] They posited over thirty years ago that "law is an equilibrium, a

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[1] *See generally* William N. Eskridge, Jr. & Philip P. Frickey, *Foreword: Law as Equilibrium*, 108 HARV. L. REV. 26 (1994) [hereinafter Eskridge & Frickey, *Law as Equilibrium*]. Professors Eskridge and Frickey were influenced and inspired by Professors Henry Hart and Albert Sacks's scholarship on "the legal process." *See* HENRY M. HART, JR. & ALBERT K. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW, at xi–xiii (William N. Eskridge, Jr. & Philip P. Frickey eds., 1994);

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state of balance among competing forces or institutions," and that "law's equilibrium will be a dynamic one."[2] In the pages that follow, readers will observe and absorb discussions about this fluctuating equilibrium; of both the tension and the cooperation between the federal courts, the legislature, and the executive branch in an enduring effort to return to a stable equilibrium,[3] with a focus on processes of the federal courts and the regulation of judicial conduct.

Like the day's discussions, the articles published in this issue tackle some of the most pressing matters surrounding the United States federal court system. The articles' topics vary, but broadly fit into one of two categories: (1) discussions of the processes employed by the federal courts and (2) the regulation of judges' and Justices' conduct. While at first glance these categories may appear disparate, the articles implicitly invoke the theme expressed above, and a theme that can be found in many of Professor Hellman's writings: that institutional arrangements—impacted in the judicial branch by federal court processes and the values of those who wield the power of the bench—are vital to the relative push and pull of the three government branches in the law's equilibrium, on which our democracy relies.

We are privileged to begin this issue with a formal introduction authored by Chief Judge Mark R. Hornak,[4] Chief Judge for the Western District of Pennsylvania, and a *University of Pittsburgh Law Review* alumnus.

A brief summary of each Article in this issue follows.

I. PROCESSES EMPLOYED BY THE FEDERAL COURTS

As part of Eskridge and Frickey's "law as equilibrium" thesis, the scholars put forth the idea that the Supreme Court "act[s] strategically in some circumstances,"[5]

William N. Eskridge, Jr. & Philip P. Frickey, Commentary, *The Making of the Legal Process*, 107 HARV. L. REV. 2031 (1994). There is also significant overlap between Hart and Sacks's legal process scholarship and Hart and Wechsler's federal courts scholarship. *See* Richard H. Fallon, Jr., *Reflections of the Hart and Wechsler Paradigm*, 47 VAND. L. REV. 953 (1994).

[2] Eskridge & Frickey, *Law as Equilibrium*, *supra* note 1, at 28–29.

[3] *See id.* at 29 n.6. "[Law] is a stable equilibrium when no implementing institution is able to interpose a new view without being overridden by another institution." *Id.* at 32.

[4] Mark R. Hornak, *Introduction to a Symposium Honoring Arthur D. Hellman*, 86 U. PITT. L. REV. 313 (2025).

[5] Eskridge & Frickey, *Law as Equilibrium*, *supra* note 1, at 28–29. Analysis of the interactions the Supreme Court has with lower federal courts and state supreme courts, which are also discussed by some

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and while "[i]t may be difficult to demonstrate such behavior in any given case, . . . generating hypotheses and testing them against known information may reveal a basis for inferring the existence of such behavior."[6] The authors in this category of articles deftly analyzed large amounts of data and historical records, either of their own or gathered by respected sources, to advance ideas regarding federal courts' processes. They identified trends—and new ways of identifying trends—that will benefit federal courts scholars and practitioners in the years and decades to come.

Professor Arthur Hellman's Article, *A Neo-Federalist View of the Supreme Court's Docket: Analyzing Case Selection and Ideological Alignment*, begins this issue by drawing on the work of Professor Akhil Reed Amar regarding the role of federal courts envisioned by the country's Federalist forefathers.[7] However, Professor Hellman's Article not only expands on, but distinguishes itself from, Professor Amar's work by introducing a novel case classification system to examine how the United States Supreme Court creates its docket.[8] By taking into account the ideological direction of the Court and issue polarity, Professor Hellman provides a clearer look at how the Court chooses the cases it hears, enhancing the public's understanding of how the Court "carr[ies] out its role as 'proactive manager of the system of federal law.'"[9] His Article provides a new foundation for future developments in Supreme Court scholarship.

Professor Michael Solimine's Article, *Transforming Constitutional Doctrine Through Mandatory Appeals from Three-Judge District Courts: The Warren and Burger Courts and Their Contemporary Lessons*, examines the oft-forgotten mode by which cases that would infrequently reach the United States Supreme Court's docket were required to be adjudicated by the Court: mandatory appeals.[10] While

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of the authors in this issue, is critical to a comprehensive understanding of the institutional arrangements theme that emerged in this symposium.

[6] *Id.*

[7] Arthur D. Hellman, *A Neo-Federalist View of the Supreme Court's Docket: Analyzing Case Selection and Ideological Alignment*, 86 U. PITT. L. REV. 319 (2025); *see also* Akhil Reed Amar, *A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction*, 65 B.U. L. REV. 205 (1985).

[8] Hellman, *supra* note 7, at 324–25.

[9] *Id.* at 347 (quoting ROBERT C. POST, THE TAFT COURT: MAKING LAW FOR A DIVIDED NATION 596 (2024)).

[10] Michael E. Solimine, *Transforming Constitutional Doctrine Through Mandatory Appeals from Three-Judge District Courts: The Warren and Burger Courts and Their Contemporary Lessons*, 86 U. PITT. L. REV. 405 (2025).

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mandatory appeals are now a dinosaur to the federal courts,[11] Professor Solimine argues that their influence cannot be understated, particularly on the Fourteenth Amendment jurisprudence of the Warren and Burger Courts.[12] Although the Justices ultimately decided cases like *Roe v. Wade* and *Baker v. Carr*, mandatory appeals played an integral role in getting them to the Court's docket when they might otherwise have died on the steps of a trial court,[13] begging the question whether mandatory appeals should return from extinction.[14]

Dean Merritt McAlister's Article, *Sticky Procedure and Procedural Values in the Federal Appellate Courts*, concludes the section on how federal court procedures impact case outcomes by examining "sticky procedures."[15] In her Article, Dean McAlister defines "sticky procedures" as those that decreased judicial caseloads, like limited oral arguments and unpublished opinions, but have continued to be employed by federal courts of appeals despite judges' lessened workloads.[16] While all federal courts of appeals employ "sticky procedures," they do so to varying degrees, which Dean McAlister believes is evidence of value disuniformity between the federal courts of appeals.[17] Despite value disuniformity appearing innocuous on its face, Dean McAlister concludes that increasing value disuniformity might "influence case-specific adjudication" to an extent that is intolerable to litigants, requiring every federal appellate court to "unearth, analyze, and reconsider these disparities to ensure that their priorities align."[18]

Dean Stefanie Lindquist and Professor Kirk Randazzo's Article, *The Vanishing Appeal?*, shifts the focus from procedures that affect the substance of federal appeals courts' dockets to why those dockets have decreased in size.[19] Dean Lindquist and Professor Randazzo propose six hypotheses for the decline, including: (1) a decrease

[11] *Id.* at 417.

[12] *Id.* at 422.

[13] *Id.* at 449-50.

[14] *Id.* at 446–47.

[15] Merritt E. McAlister, *Sticky Procedure and Procedural Values in the Federal Appellate Courts*, 86 U. PITT. L. REV. 455 (2025).

[16] *Id.* at 458-59.

[17] *Id.* at 470.

[18] *Id.* at 471, 476.

[19] Stefanie A. Lindquist & Kirk Randazzo, *The Vanishing Appeal?*, 86 U. PITT. L. REV. 477 (2025).

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in the number of cases going to trial; (2) changes to law, precedent, and procedural rules; (3) case-level effects and (4) circuit-level changes regarding specific areas of law, like bankruptcy and immigration; (5) a decrease in the number of pro se litigants; and (6) increasing ideological uniformity amongst appellate judges.[20] Regardless of the true cause of declining appeals, Dean Lindquist and Professor Randazzo believe, in the spirit of this symposium, that the cause is due to larger systematic changes to the federal judiciary that will require further investigation.[21]

II. REGULATION OF CONDUCT ON THE FEDERAL JUDICIARY

While Eskridge and Frickey theorize about the Court as a whole and what role the highest level of the judiciary plays in establishing and maintaining law as equilibrium,[22] they do not reach the question of what happens to equilibrium when public regard for individual Justices comes into question. "Law as equilibrium . . . assumes the values of continuity, stability, and predictability . . . ."[23] When Justices are perceived as breaking with these values, should the other branches of government step in to push the Court back towards equilibrium? Or should the Court be expected to course-correct on its own? Professor Charles Geyh, Russell Wheeler, and Kedric Payne explore the contours of these questions in their articles.

In his Article, *The 1980 Judicial Conduct and Disability Act 45 Years on—a Retrospective*, Russell Wheeler provides a retrospective of the Act that created a system for handling complaints against federal judges.[24] Despite having been passed more than forty years ago, Wheeler believes that the Act leaves four issues unresolved.[25] First, and much to the chagrin of some, the Act does not apply to the conduct of the Supreme Court Justices.[26] Second, there has been a growing desire to move away from the decentralized circuit-level oversight that the Act mandates to a stronger centralized authority that oversees judicial misconduct. Third, Wheeler notes that greater transparency is needed when addressing claims of judicial

[20] *Id.* at 485.

[21] *Id.* at 502-03.

[22] *See* Eskridge & Frickey, *Law as Equilibrium*, *supra* note 1.

[23] *Id.* at 87.

[24] Russell Wheeler, *The 1980 Judicial Conduct and Disability Act 45 Years on—a Retrospective*, 86 U. PITT. L. REV. 505 (2025).

[25] *Id.* at 508-09.

[26] *Id.* at 517.

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misconduct under the Act.[27] As it stands, judicial complaints are largely handled behind closed doors.[28] Finally, Wheeler acknowledges that the Act's definition of misconduct is vague, leading to inconsistent rulings across the courts.[29] Despite the Act ultimately being flawed, Wheeler believes that the Act is still a net positive, boosting the public's confidence in the judiciary.[30]

Professor Charles Geyh contributes to this symposium issue with his Article, *Mending a Broken Ethics Culture: The Promise and Pitfalls of the Supreme Court's Code of Conduct*.[31] Informed by psychology and faith-based views of judges and codes of conduct, Professor Geyh determines that the United States Supreme Court's newly adopted code of conduct is insufficient to instill public confidence in the Court, given many of the Justices' recent ethical lapses.[32] Rather, the Justices, like priests, must "cultivat[e] the faith of their congregation" by "abid[ing] by their codes in letter and in spirit."[33] In other words, using more secular language, Professor Geyh states that the United States Supreme Court must rid itself of any superficial commitment to its code of conduct by truly buying into it.[34] To effectively internalize their code of conduct, Professor Geyh recommends that the Justices: (1) err on the side of caution when presented with a choice that could call their character into question; (2) establish an ethics advisory committee to guide the Justices on any ethical dilemmas; and (3) take corrective actions when any of the Justices act unethically.[35]

Kedric Payne offers a final perspective on how to regulate the conduct of federal judges effectively.[36] In his Article, *In Regulating Judicial Lobbyists to*

[27] *Id.* at 525.

[28] *Id.* at 534.

[29] *Id.* at 540.

[30] *Id.* at 545–46.

[31] Charles Gardner Geyh, *Mending a Broken Ethics Culture: The Promise and Pitfalls of the Supreme Court's Code of Conduct*, 86 U. PITT. L. REV. 547 (2025).

[32] *Id.* at 549–50.

[33] *Id.* at 571-72.

[34] *Id.* at 573-74.

[35] *Id.* at 588-89.

[36] Kedric L. Payne, *Regulating Judicial Lobbyists to Reform the Supreme Court*, 86 U. PITT. L. REV. 599 (2025).

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Reform Supreme Court Ethics, Payne argues that any attempt to improve judicial ethics in the United States Supreme Court must include efforts to regulate those who are paid to influence the Justices—federal judicial lobbyists.[37] As Payne discusses in his Article, recent federal judicial lobbying efforts in the United States Supreme Court have had a deleterious effect on the public's confidence in the Court, and yet, it continues.[38] Payne continues by recognizing the legislative and executive branches faced similar problems during the previous century and were only able to increase public confidence by passing legislation that restricted lobbyists' ability to influence their conduct.[39] This, Payne claims, could be the solution the United States Supreme Court is looking for to address its public confidence problem.[40] Payne's solution would be simple and effective: disclose who the federal judicial lobbyists are and make them disclose any contributions they make to the Justices.[41]

CONCLUSION

The institutional arrangements that make our nation tick are always in flux—always susceptible to being knocked off balance. The law is a dynamic equilibrium.[42] But in considering this equilibrium, it is important to remember the purpose of the law, and who the law is for. It seems apt to close here with the quote that Professor Hellman shared in his final remarks at the symposium event:

> [T]he judges who sit for the time being on the court have no authority to remake by fiat alone the fabric of principle by which future cases are to be decided. They are only the custodians of the law and not the owners of it. The law belongs to the people of the country, and to the hundreds of thousands of lawyers and judges who through the years have struggled, in their behalf, to make it coherent and intelligible and responsive to the people's sense of justice.[43]

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[37] *Id.* at 601-02.

[38] *Id.* at 602.

[39] *Id.* at 617-18.

[40] *Id.* at 622.

[41] *Id.* at 622-25.

[42] Eskridge & Frickey, *Law as Equilibrium*, *supra* note 1, at 28–29.

[43] Henry M. Hart, Jr., *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362, 1396 (1953).

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The authors in this symposium issue have proposed new ways of understanding our federal court system, have identified areas for its improvement in today's society, or have critiqued and reviewed the ways in which the courts and individual Justices interact with the other institutions in our system of democratic governance, which ultimately, is by and for the people, and the "people's sense of justice."[44]

Many thanks to all who organized, presented at, sponsored, and attended "A Federal Courts Symposium in Honor of Professor Arthur Hellman." And a special thank you to our top event sponsors: Jones Day, Kim Watterson, Laura Ellsworth, East End Trial Group, and Patrick Yingling. We hope you enjoy this issue of the *University of Pittsburgh Law Review*.

[44] *Id.*

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