

# Oklahoma Politics



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## **THE RIPPLES OF *SIPUEL* AND *MCLAURIN*: THE STORY OF NANCY RANDOLPH DAVIS**

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Until the Supreme Court cases, *Sipuel v. Board of Regents* (1948) and *McLaurin v. Oklahoma State Regents for Higher Education* (1950), public postsecondary institutions regularly practiced segregation policies in Oklahoma by state decree. In 1949, Nancy Randolph Davis became the first African-American to attend at Oklahoma A&M (now Oklahoma State University), in an environment that was not conducive to her learning, and at times, unwelcoming. This paper not only examines the challenges that Ms. Davis experienced throughout her years as a graduate student and an African-American pioneer in the state, but contextualizes her story in a comprehensive chronicle of the fight against segregation within the state.

### **INTRODUCTION**

**Since statehood**, segregationist laws were written, rewritten, and reinforced by the state legislature in Oklahoma. Most of these laws restricted the rights of African-Americans and their access to postsec-

ondary education, denying their participation as full citizens of society. However, the Supreme Court cases, *Sipuel v. Board of Regents* (1948) and *McLaurin v. Oklahoma State Regents for Higher Education* (1950) respectively thawed the stranglehold that Jim Crow had on the state since its inception.

In between these two Supreme Court cases, Nancy Randolph Davis endured and broke many racial barriers on campus when she enrolled at the Oklahoma Agricultural and Mechanical College (Oklahoma A&M, now Oklahoma State University) in 1949. As the only African-American on campus at the time of her initial enrollment, she persisted and attained her Masters degree in 1952 at Oklahoma A&M, completing the degree in an unwelcoming learning environment. Her experience was not exclusive when compared to other students of color who attended Predominantly White Institutions (PWI) prior to, and even after, *Brown v. Board of Education* (1954). However, her story is strictly Oklahoman in origin. Born in Oklahoma, Davis was born where statehood-era segregation laws restricted the rights of African-Americans. She later sought admission at Oklahoma A&M at a time where one Supreme Court desegregation case with Oklahoman ties was decided while another was waiting on the docket. This paper contextualizes the plight of Davis as a microcosm of a larger struggle for educational equality in Oklahoma.

The paper is organized into three sections. The first segment labeled "legislature" explores and summarizes the segregation laws that the Oklahoma legislature passed during the initial decades of the state. The following section, "Oklahoma litigation," discusses the outcomes of two Supreme Court cases with Oklahoma origins: *Sipuel v. Board of Regents*, 1948 and *McLaurin v. Oklahoma State Regents*, 1950. The third section chronicles the life of Nancy Randolph Davis and her eventual entry into a then all-white institution. The authors interviewed Davis on January 16, 2005, about her recollections of her experiences leading up to her admission and graduation from Oklahoma A&M during a decade littered with Supreme Court litigation that sought to address issues of desegregation. The authors developed a list of questions to serve as a guideline in the interview to garner information from recollections of her efforts and experiences during the 1950s.

## LEGISLATURE

In July 16, 1907, the state constitutional convention met in Guthrie, Oklahoma, to adopt a legal document that would guide the newly-annexed state in its future. Property rights, taxation protocols, and the financial responsibilities of the state understandably dominated the convention. Despite the pressing needs, the legislature also allocated time to craft constitutional provisions aimed to suppress African-Americans in the state. These provisions, known as Jim Crow laws, assured that the "separate but equal" doctrine was fully applied to the 46<sup>th</sup> state in the union. Article III, § 2 of the Oklahoma Constitution of 1908 sought to indoctrinate this philosophy in the public school system, specifically calling for "separate schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained" (OKLA. GEN. STAT. 1908).

After the ratification of the state constitution, the legislative assembly of Oklahoma passed a series of Jim Crow laws that prohibited African-Americans from equal access to railroad transportation and public transportation. Although the Equal Protection clause of the 14<sup>th</sup> Amendment states that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws," it did not possess the same interpretation known today. The Supreme Court case, *Plessy v. Ferguson* (1896), confirmed this sentiment. In *Plessy*, the Court maintained that the Equal Protection clause was consistent with the "separate, but equal" doctrine. In other words, African-American and white railroad travelers could be constitutionally separated without running afoul of the 14<sup>th</sup> Amendment. With the backing of *Plessy*, the Oklahoma State Senate passed on December 18, 1907, one of its first bills, known as "Senate Bill One" or the "coach law," which required railroad companies to provide separate seating for both white and black patrons in railroad cars:

That every railway company, urban or suburban car company, street car or interurban car or railway company. . . shall provide separate coaches or compartments as hereinafter provided for the accommodation of the white and negro races, which separate coaches or cars shall be equal in all points of comfort and convenience (Okla. Sess. Law 1908, p. 201).

However, requiring separate accommodations for people of color and whites in railroad cars was only one aspect of the intended segregation by the state. In addition, the Oklahoma legislature also mandated railroad companies to provide separate waiting rooms or facilities for African-Americans as well:

Every railroad company . . . shall provide for and maintain separate waiting rooms at all their passenger depots for the accommodations of the white and negro races . . . . It shall be unlawful for any person to use, occupy or remain in any waiting room, toilet room, or at any water tank in any passenger depot in this State, set apart to a race to which he does not belong (Okla. Sess. Law 1908, p. 202).

In order to enforce these actions, the coach law also mandated penalties for those companies or commercial entities that failed to comply, listing fines up to \$1,000 for violations. The law also required \$25 fines for individuals who were found to be in noncompliance as well (Okla. Sess. Law, 1908). In addition to mandating separate accommodations on the basis of race, the Oklahoma legislature also passed initiatives that prohibited and hindered African-Americans from voting in local and state elections. Methods which blatantly disenfranchised people such as literacy tests, poll taxes, and grandfather clauses, etc. were commonly employed not only in Oklahoma but in most Southern states during this period. These laws and others were implemented to hold African-Americans and the people of color in a secondary status throughout the state and limit their influence in governmental and societal affairs.

With voting rights suspended and segregation in public accommodations represented as the norm, all levels of education were also segregated throughout the state, following the guidelines of the *Plessy* case and the segregation provisions in the state constitution. In 1921, the legislature tightened the language to impose fines on any teacher or administrator who is found to be facilitating learning in mixed racial classes "in any college, school or institution" (OKLA. COMP. STAT. § 10570-2). Failure to comply with this law would have resulted in a misdemeanor and/or a fine. The state law also imposed similar penalties barring white children from attending a class with students of color (OKLA. COMP. STAT. § 10573). In his 1981 book, *Professors*,

*Presidents, and Politicians: Civil Rights and the University of Oklahoma*, former OU President George Lynn Cross recalled penalties being imposed on university presidents, college instructors, and students alike if they invested any efforts to desegregate during the first years at the helm in Norman. As Cross stated,

The laws provided, in effect, that the president of an institution of higher learning in Oklahoma would be guilty of a misdemeanor if he admitted a black to the university. The punishment for violation of the law would be a fine of not less than \$100 and not more than \$500, each day of violation being a separate offense. The laws further stipulated that an instructor who taught a mixed class of blacks and whites would be subject to a fine of not less than \$10 or more than \$50, each day a separate offense. A white student who attended a mixed class would be subject to a fine of not less than \$4 or more than \$20, each day a separate offense (Cross 1981, 160).

In all, the state legislature not only intended to maintain a segregationist atmosphere, but also to create an environment where it policed itself. However, there was a cadre of African-Americans and civil rights seeking to usurp the racially stratified environment.

The work of the National Association for the Advancement of Colored People (NAACP) was gradual. Thurgood Marshall and Amos T. Hall served as legal counsel of the NAACP in many of the desegregation challenges (Willis 2004). Each legal victory would be an incremental stage in the eventual demise of Jim Crow, starting with the Supreme Court case, *Missouri ex rel. Gaines v. Canada* (1938), which ruled states could not constitutionally deny equivalent legal education to African-Americans afforded to white citizens within the state. Until then, African-Americans who sought a legal education had to seek admission in other states since Missouri institutions were not legally allowed to admit them under the law. Ten years later, the NAACP advocated another case, *Sipuel v. Board of Regents of University Oklahoma* (1948), which challenged an Oklahoma state law denying African-Americans equivalent educational access.

## OKLAHOMA LITIGATION

*SIPUEL V. BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA (1948)*

The *Sipuel* case was another legal case that created ripple effects preceding *Brown v. Board of Education* (1954) by six years. Both Marshall and Hall of the NAACP argued the case throughout the court system. The *Sipuel* case marked the first time that the NAACP directly confronted the notion of "separate but equal," an argument that would be later refined in *Brown* (Paul 2003). Whereas the overall effect of the *Sipuel* case was circumvented by state governments, it punctured the tapestry of Jim Crow laws, setting up the next legal challenges to racial segregation.

Ada Lois Sipuel Fisher was an aspiring attorney and educator who volunteered to be the test case for admission to the University of Oklahoma Law School, after graduating from Langston University in 1945. At the time, institutions existed within the state that provided separate undergraduate education for African-Americans, but there were not separate accommodations for graduate school opportunities (Ware 2001). All parties involved including the president of the University of Oklahoma at the time, Dr. Cross, conceded that Sipuel was "qualified to receive professional legal education offered by a State" but denied because of her color (*Sipuel v. Board of Regents* 1948; Willis 2004). The NAACP legal counsel found an unexpected ally in President Cross as he willingly assisted them with the procedural denial of Sipuel, expressively denying her admission on the basis of race (Hill 2003). When Sipuel officially received notice of her denial on the basis of race, she filed suit in state court asserting that she illegally had been denied admission into the only law school in the state. At the time, there was no separate facility for African-American students, leaving her with the option of attending out of state or forfeiting her desire to be an attorney. Having lost in the state courts, Marshall and Amos petitioned the Supreme Court on January 7, 1948, and the Court reversed the lower courts later that year:

The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although



during the same period many white applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group (*Sipuel*, 332 U.S. at 633).

Since the University of Oklahoma stood as the only law school in the state, the Supreme Court ordered that Sipuel be admitted, but could be segregated from the rest of the students. Moreover, as Oklahoma only had one public law school, and thus no separate law school for African-Americans, the Supreme Court ruled that the University of Oklahoma must accommodate Sipuel in her desire to attain a legal education. After receiving the order of the Supreme Court, the Oklahoma trial court barred OU from admitting any more applicants until a separate law school was created for African-Americans (Ware 2001). The state legislature quickly created a makeshift law school under the administration of Langston University in the state capitol building, a tactic that was used by other southern states to avoid integrating their schools (Hardin 1997; Willis 2001).

To remedy the problem, some state legislatures appropriated funds for the creation of separate law schools for black students . . . some law schools were successfully preventing African-Americans from enrolling without having to build separate facilities. This strategy included an array of tactics: from convincing applicants that no space was available at the law school, to getting local black leaders to persuade applicants to apply elsewhere (Willis 2004, 21).

Despite this last-ditch tactic to thwart integration, Sipuel rejected an offer to enroll in the make-shift law school for African-Americans (Chapman 2004) and was eventually admitted to the University of Oklahoma Law School in 1949. In the aftermath of the litigation, Sipuel ultimately graduated from OU and cultivated a career as an administrator and later a regent of Langston University (Chapman 2004). Although the *Sipuel* case marked a progressive turning point in postsecondary access for African-Americans, the Court decision provided little guidance on how the state could provide equivalent legal education to students of color. Oklahoma law still mandated the segregation of African-Americans on campus and in the classroom. The *McLaurin* case would actually convince the state legislature to abandon its segregation policies and

*MCLAURIN V. OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION* (1950)

begin integrating state colleges and universities, although the actual implementation of integration would differ from state to state.

After temporarily enjoying the success of the *Sipuel* case a year earlier, Hall and Marshall concentrated on another Oklahoma case where a black applicant who was qualified for admission in 1947 was denied solely because of his race. McLaurin, a former professor at Langston University with an impressive academic record, possessed a Masters degree and sought to attain a Ph.D. in education from the University of Oklahoma (Willis 2004). State law at the time made integration a criminal offense, and the university provided this as a justification for the admission rejection. With the support of the NAACP, McLaurin filed suit in district court in 1949, arguing that Oklahoma state law and the University of Oklahoma violated the Equal Protection Clause of the Fourteenth Amendment (*McLaurin v. Oklahoma State Regents* 1949). The district court agreed, but in very subtle language gave the state ample time to rewrite the law, allowing an African-American to be admitted to a white institution.

However, the university was not hospitable to McLaurin, and he brought suit in court again. At the university, he was separated from his white peers in the cafeteria and forced to sit in the chairs and desks particularly labeled for people of color. In the same year as Ms. Davis's admission at Oklahoma A&M, McLaurin filed for relief from the federal district court, contending that the separate accommodations at OU, like the previous admission denial, violated the Equal Protection Clause (*McLaurin v. Oklahoma State Regents* 1949). However, the district court found that McLaurin was not denied access to the same educational facilities; therefore there was no violation of federal law. At the end of Ms. Davis's first year on campus, the U.S. Supreme Court heard McLaurin's appeal in 1950. In its reversal, the Court opined,

the Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races (*McLaurin*, 339 U.S. at 642).

Therefore, the Court reversed the ruling of the district court, allowing McLaurin to sit with his classmates in the library, cafeteria, classroom and any other premise on the campus (*McLaurin v. Oklahoma State Regents* 1950).

In order to fully appreciate the *McLaurin* case, *Sweatt v. Painter* (1950) must also be discussed. The fact pattern in *Sweatt* greatly resembles *Sipuel* in several respects. Heman Sweatt applied to the only law school within the state at the University of Texas and was denied admission because of his race. Like *Sipuel*, the state of Texas quickly created a makeshift law school for African-Americans with apparent inferior quality (Paul, 2003). The Court ultimately ruled that the state of Texas treated African-Americans unequally and disproportionately compared to its white students, especially when examining the hastily developed separate facilities for Sweatt. As a result, the Court ruled that the University of Texas had to admit Sweatt to its law school.

During the lower court phase of the *McLaurin* and *Sweatt* cases, Davis had already been admitted to Oklahoma A&M, and by the Supreme Court hearings, she was completing her first year of the program. Despite this act of racial inclusion by Oklahoma A&M, the collegiate experience that Davis had was worse than McLaurin's when she first stepped foot on campus.

### NANCY RANDOLPH DAVIS

The story of Nancy Randolph Davis begins in 1860 when her father, Ed Napoleon Randolph, was born in Marlin, Texas. The son of a slave, Ed Randolph dropped out of school in the sixth grade and worked for the Frisco Railroad Company, a Tulsa-based company. Later, he would meet his wife, Ernestine Randolph, and they soon started a family. In the next few years, they had five children, three boys and two girls, and adopted another boy.

The youngest of the six children, Ms. Davis was born on April 14, 1926 in Sapulpa, Oklahoma (N.R. Davis, personal communication, January 16, 2006). She attended school at Booker T. Washington Elementary, an all black school throughout the eighth grade in Sapulpa, Oklahoma. Within the Sapulpa district, discrepancies existed in how

white and black teachers were treated and paid. On average, white teachers were paid \$110 per month while their black counterparts were compensated at a lower rate of only \$80-90 per month (N.R. Davis, personal communication, January 16, 2006).

In 1942, the railroad company fired Ed Randolph after he left a fire burning in a train engine, causing damage. His firing prompted a move by the Randolph family to another region in the state where he could find work. This not only was a financial setback to the family, but created a situation where Davis had to adjust unexpectedly to a new environment. Due to his philosophy of rejecting any "welfare" help from the government, Mr. Randolph refused to accept employment through the President Roosevelt's Works Project Administration program. Instead, he gained employment as a sharecropper in the outskirts of Sapulpa (N.R. Davis, personal communication, January 16, 2006).

During this time of adjustment, Ms. Davis lived with her godparents, Mr. and Mrs. Johnson, as her own parents were in transition. While away from her family, she attended the black school in Cushing, Booker T. Washington School, where her godfather, Mr. Johnson, was a principal (N.R. Davis, personal communication, January 16, 2006). However, after a year her father abruptly ended his career as a sharecropper when the Frisco Railroad Company rehired him back, enabling Ms. Davis to move back in with her family. She resumed her education, incidentally at another school also called Booker T. Washington School when her family moved back to Sapulpa in 1942. In 1944, she graduated from high school and mulled over her limited options. Langston University, the state's only Historically Black College/University (HBCU), was the sole option for a four-year institution, but her father encouraged her to attend Oklahoma A&M:

My father told me when I was in the 10<sup>th</sup> grade "Oklahoma A&M College, that school is growing and I have been reading in the newspaper about the new things the school is doing. It's going to be a great school and that's where I would like for you to go." I thought "you know that's not going to happen." My father said, "Oh yes, you will. Things are going to change" (N. R. Davis, personal communication, January 16, 2006).

However change did not come quickly. All attempts by African-Americans to enroll in Oklahoma A&M had been thwarted up to that

point. In 1944, she enrolled in Langston University, as a freshman majoring in home economics, and four years later, she graduated with her bachelor's degree and began looking for employment opportunities within the state. After applying to a few schools, she finally attained a job offer to teach at Dungee School in Spencer, Oklahoma. It would be here where fate would intercede through the courts and she would receive additional encouragement to attend Oklahoma A&M College (N.R. Davis, personal communication, January 16, 2006).

### OKLAHOMA A&M

After only a year, Ms. Davis grew restless as a teacher at Dungee School and started to contemplate attaining a post-graduate degree. During that year, the *Sipuel* case captured the full attention of the African-American community in Oklahoma and elsewhere, and Ms. Davis's curiosity was no different. Like her father, the principal of Dungee school spoke with the teaching faculty about the opportunities that the *Sipuel* case presented the African-American community, not only in Norman but throughout the state, and encouraged the teachers to take advantage of this new-found access to postsecondary education:

I was inspired to seek admission when Mr. Thompson, Principal at Dungee School, shared with the teachers that Ada Lois Sipuel is about to get into school as attorneys Thurgood Marshall and Amos T. Hall and activist Roscoe Dungee were advocating on her behalf and about to win this case. Mr. Thompson told the teachers we should try to get out of school during this summer of 1949 and go to school somewhere. Mr. Thompson inspired me. Many teachers traveled to Kansas, Colorado, and other places to get Master degrees (N. R. Davis, personal communication, January 16, 2006).

After the principal's encouraging speech, Davis went to the Stillwater campus and completed an application at the Registrar's Office at Oklahoma A&M. Her presence and application received a lukewarm and uncomfortable reception, a response that was not too surprising given the recent history of the institution. Four years earlier, two African-American students, Jane Ellison and Henry W. Floyd, futilely attempted

admission into Oklahoma A&M (Kopecky 1990). The Oklahoma A&M President at the time, Henry G. Bennett, denied their applications after conferring with the Oklahoma State Board of Regents in 1944, stating that the education that these two students sought could be provided by Langston University (Kopecky 1990). However, with the *Sipuel* case being argued before the Supreme Court at the time, the segregationist resolve of the administration was understandably weakened; this opened the door for Ms. Davis' hopes of attending Oklahoma A&M.

After completing her application, she visited the department head of the Home Economics department, and the conversation that ensued was less than hospitable. The department head asked her several questions about why, as an African-American woman, she sought admission to the department. In the eyes of Davis, the response and questions from the department head were less than encouraging:

She asked me, "Why do you want to come to school here?" "I told her this is where I live and always wanted to go." I thought that it was awful that she was asking me so many questions. She said "I think you Negroes are trying to go too fast and think you ought to go to school where you would feel better. You would feel better with your own people." I want to go to school there and I know things are changing at Oklahoma State University, Oklahoma A&M College. She told me "These whites will not want to sit beside you and you will just be awful by yourself" (N. R. Davis, personal communication, January 16, 2006).

Unfazed by the prospect of being the only African-American on campus, Davis continued to seek admission into Oklahoma A&M. "Everything was colored and black people were scared but I didn't care what people said about me attending Oklahoma A&M College" (N. R. Davis, personal communication, January 16, 2006). Incidentally, throughout her time on the Stillwater campus as one of the few African-Americans, white students said nothing negative toward her.

Davis attributed her admission to Oklahoma A&M to the institution's reluctance and apprehension of getting involved in the legal contest. During the *Sipuel* case, Oklahoma A&M witnessed the tribulations and the eventual outcome that the University of Oklahoma endured in its futile resistance to integration. She stated, "I believed that Oklahoma A&M College officials would not want to go through the courts and



they would do the right thing by admitting me” (N. R. Davis, personal communication, January 16, 2006). However, despite the victory of her admission, Davis knew that another set of challenges awaited her on the Stillwater campus. Without adjusting to her new environment and graduating from Oklahoma A&M, all of the progress in the integration experiment would amount to nothing.

### LIFE ON CAMPUS

When she enrolled in the fall of 1949, she registered for three classes: Clothing Education & Textiles, Demonstrations, and Philosophy of Home Economics (N.R. Davis, personal communication, January 16, 2006). Throughout all of these classes, the professors forced Davis to sit in the hallway of the classroom while the lecture was delivered. By comparison, the University of Oklahoma afforded more accommodation to McLaurin, allowing him to sit in the classroom in a separated section before the lawsuit. Despite the handicap of separation, Davis received the second highest grade in the class after the first exam, winning the support of her white classmates. After hearing this, her white classmates successfully lobbied the professor to allow her to stay in the classroom during lectures. Throughout her coursework, some instructors allowed her inside the classroom during the lecture, but when an administrator came by, Davis moved back to the hallway (Keeler-Battles, et al. 1989).

During her coursework at Oklahoma A&M, Davis resided in the colored section of Stillwater with the principal of the black elementary school, Mr. Lee A. Ward. She took classes during the summer months as well, and during the school year she resumed her work at Dungee School, teaching there during her free time (N.R. Davis, personal communication, January 16, 2006). She attended Oklahoma A&M for the next three years, taking courses regularly until July 25, 1952, when she received her Masters in Science in Home Economics. After graduating with her Masters, she opted to return to her teaching rotation at the Dungee School.

There were changes in her personal life as well when she married Fred C. Davis, a native of Chandler, Oklahoma, who was an English teacher at the school. Eleven years her senior, they dated for five years until they married. They had two children in the following years, a boy

and a girl: Calvin and Nancy Lynn. After graduating from Oklahoma A&M, Davis moved to Spencer, Oklahoma, where she taught at Dungee for 20 years and later at Star Spencer High School for an additional 23 years (N.R. Davis, personal communication, January 16, 2006).

Two years after Davis graduated with her Masters in Home Economics at OAMC, the Supreme Court ruled on *Brown v. Board of Education* (1954), the case that prohibited racial segregation in public schools. The incremental successes of the *Gaines*, *Sipuel* and *McLaurin* cases among others contributed to the eventual success of *Brown*. Each of these cases chipped and eroded the segregation practices reinforced by local and state laws. In Oklahoma, these instrumental cases respectively dismantled the basic tenets of Jim Crow manifested in Oklahoma state law at the turn of the century.

In 1965, seventeen years after Ms. Davis broke the color barrier at Oklahoma A&M, the Oklahoma legislature authorized a special election for a public referendum to repeal the state constitutional decree on racial segregation in public schools.

The Secretary of State shall refer to the people for their approval or rejection as and in the manner provided by law, . . . Section 3 of Article XIII of the Constitution of the State of Oklahoma requiring that the Legislature provide separate schools with like accommodation for white and colored children is hereby repealed (Okla. Sess. Law 1965, 1174).

On May 3, 1966, the voting public approved the repeal of the state constitutional provision. Although this may appear magnanimous, the state of Oklahoma may have had no choice but to adopt the repeal, considering congressional passage of the federal civil rights litigation. Despite the circumstances, the constitutional requirement calling for the segregation of the races in education was finally abolished after nearly six decades of exclusion under the authority of the state.

## DISCUSSION

The story of Nancy Randolph Davis stands not only as a story of persistence and courage, but as one of a state that struggled with educational equity and reversed the damaging philosophy of the Jim

Crow laws that were highly popular at the turn of the century. Although many lessons can be learned from these events, some are more pronounced than others. First, the state of Oklahoma began to remove its institutionalized racism and started the healing process of exclusion by relying on incremental steps, both externally and internally. External influences like the NAACP and the federal government forced the state to rethink the segregationist philosophy that had dominated Oklahoma since statehood. Internally, postsecondary institutions have made strides in diversifying their student populations and faculty populations since the era of the desegregation litigation.

The *Gaines*, *Sipuel*, *McLaurin* and *Sweatt* cases share two common threads. On the one hand, they incrementally contributed to this change during the 1940s and 1950s by modifying *Plessy* holdings that were accepted as gospel. *Sipuel* served as an endorsement of *Gaines* with refinement, and each of these cases chipped away at the institutionalized racism within the state. On the other hand, these test that would eventually lead to the *Brown* case and its success in 1954.

Second, these change agents also faced another formidable adversary outside of the institutionalized racism: Oklahoma and its public entities. The state government and legislature took extensive measures to keep the postsecondary institutions segregated, namely by hastily creating a makeshift law school to keep African-Americans out of their flagship institution. By the time that Davis applied to Oklahoma A&M, the institution recognized that defending its segregated policies would be futile after observing the outcome of the *Sipuel* case and the potential of the *McLaurin* case. In essence, Oklahoma saw the handwriting on the wall.

Third, the story of Davis also illustrates the disjointed path that African-Americans took into predominant white institutions. African-Americans within the state were very cognizant of the progress of the NAACP's legal challenges. The younger generation of African-Americans relied on encouragement from older African-Americans to break the system of segregation. During her time at the Dungee school, Davis received support and encouragement from her principal to enroll into institutions that were not previously accessible to African-Americans.

Lastly, despite the progress that has been achieved to the present day, this Oklahoma saga for equality retains its importance. As the civil

rights generation fades into the history books, the lessons of its struggle and its contribution to the present state of society should not be forgotten. Although the civil rights movement in 1950s and 1960s had concrete obstacles and opponents of educational access and equity, today's society is laden with more invisible stumbling blocks. Some present education policies that had benign intentions may produce outcomes that detrimentally affect students of color. Just recently, the Supreme Court by a 5-4 decision ruled this summer that the use of race in K-12 school assignments violated the Equal Protection Clause and therefore was unconstitutional (*Parents Involved in Community Education v. Seattle* 2007). However, some critics charge that the 2007 decision represents a potential return to re-segregation in public school (Paley & Schulte 2007). The lessons from the Davis story remind us that we must remain vigilant in our protection of educational access across socioeconomic status, first generation college students, and regional location. This not only affects African-Americans, but all citizens, regardless of color.

### CONCLUSION

From its annexation in 1907, the Oklahoma legislature made a concerted effort to institutionalize Jim Crow laws across the state by ratifying constitutional provisions enforcing segregation in educational facilities, regulating separate seating and waiting areas for railroad transportation, and increasing the penalties for those teachers and administrators who failed to enforce segregated learning environments. However, litigation advocated by the NAACP and others eventually started to chisel at this institutionalized segregation legislation. On the heels of the *Sipuel* case, teachers at the Dungee School in Sapulpa, Oklahoma, were encouraged to enroll into predominantly white institutions of postsecondary education to attain a degree. No longer fully restrained by *de jure* segregation in admissions, civil right pioneers such as Ms. Davis, a granddaughter of a slave, had to deal with institutional and *de facto* discrimination and desegregation within campus and within the classroom. As her generation of civil rights advocates and pioneers fades into the history books, the lessons of their struggles and their contributions to our present well-being should not be forgotten.

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## **THE 2004 PARTISAN TRANSITION IN THE OKLAHOMA HOUSE AND TERM LIMITS**

**RICK FARMER**

Oklahoma House of Representatives

The Oklahoma House of Representatives experienced two major transitions with the 2004 election—the removal of long-term incumbents through term limits and a shift in partisan control. Many changes occurred in the House as a result of these phenomena. This work is an attempt to disentangle the effects of these simultaneous events. The findings indicate that most of the effects documented here were caused by the partisan shift and were only indirectly related to term limits. Term limits did accelerate trends already in place. In addition, contrary to findings in other states, term limits may have ushered in a “new breed” of legislator in Oklahoma.

**Republicans took control** of the Oklahoma House of Representatives for the first time in 82 years with the 2004 election. This change in partisan control had been brewing since the early 1990s when Republicans began to make slow but steady electoral gains. In that same 2004 election, the first cohort of term limited Oklahoma legislators left office. As a result it is difficult to say whether the shift in partisan balance was the result of term limits or the continuation of an electoral trend. What is

obvious to all observers is that the change in party control, coupled with term limits, brought significant change to the Oklahoma House.

This work examines the effect of term limits on the transition that has occurred since the 2004 election in the Oklahoma House of Representatives. It concludes that much of the change is linked only indirectly to term limits. Term limits accelerated several trends already making their way into Oklahoma's political environment, including the rise of Republicans in the legislature. However, most of the changes in the legislative process are more directly linked to the shift in partisan majority.

### A BRIEF HISTORY OF TERM LIMITS

The citizens of Oklahoma were the first in the nation to impose limits on state legislative careers. Through the initiative process in 1990 they established twelve-year, lifetime term limits on state legislators, which were also cumulative. Later the attorney general ruled that the 1991-1992 legislative sessions did not count toward the twelve year limit (see Henry 1991). Thus, the first members were not forced from office until the 2004 election. As a result, 11 states have more experience with term limits than Oklahoma. Those states are identified in **Table 1**.

A major contributing factor to the popular rise of term limits in Oklahoma was voter cynicism (Farmer 1993; also see Karp 1995). This attitude may best be summed up in the 2006 movie *Man of the Year* when Robin Williams says "There are two things that you want change often, diapers and politicians, and for the same reasons." For the average citizen the ability to limit politicians is what Carmines and Stimson (1980) called an "easy issue," requiring little thought. As a result, seventeen years later various surveys around the country indicate the concept remains popular with voters (for an example see University of Akron 2007).

Term limits were not a new idea in 1990. Aristotle wrote about "rotation in office," many colonial constitutions included them, and the Founding Fathers grappled with the concept at the Constitutional Convention (Petracca 1992). Executive term limits grew in popularity following Franklin Roosevelt's presidency and are currently active in 37 states (see National Governors Association 2007). But, prior to 1990,

TABLE 1

## Term-limited States and Year of Impact

State	Year Enacted	House		Senate	
		Limit	Year of Impact	Limit	Year of Impact
Maine	1993	8	1996	8	1996
California	1990	6	1996	8	1998
Colorado	1990	8	1998	8	1998
Arkansas	1992	6	1998	8	2000
Michigan	1992	6	1998	8	2002
Arizona	1992	8	2000	8	2000
Florida	1992	8	2000	8	2000
Ohio	1992	8	2000	8	2000
Montana	1992	8	2000	8	2000
South Dakota	1992	8	2000	8	2000
Missouri	1992	8	2002	8	2002
Oklahoma	1990	12	2004	12	2004
Nebraska	2000	N/A	N/A	8	2006
Louisiana	1995	12	2007	12	2007
Nevada	1996	12	2010	12	2010

Source: National Conference of State Legislatures, current as of September 2007

state legislative term limits were absent from the national discussion for almost two centuries.

State legislative term limits are still relatively new and the full effects may not be known, even in the early states, for another decade. However, preliminary results from those states with term limits experience have been reported widely (Farmer, Mooney, Powell and Green 2007; Kurtz, Cain and Niemi 2007; Moen, Plamer and Powell 2005; Sarbaugh-Tompson, Thompson, Elder, Strate and Elling 2004; Farmer, Rausch and Green 2003; Carey, Niemi, and Powell 2000). Oklahoma's legislative leadership had the opportunity to observe what was happening in other termed<sup>1</sup> states and prepare for the effects. Scholars now have the opportunity to examine the transition in Oklahoma.

### ANTICIPATED EFFECTS OF TERM LIMITS

Immediately after the modern concept of state legislative term limits emerged, scholars were called upon to project the consequences of such limits. With little data, other than legislative traditions and knowledgeable observer interviews, scholars began to speculate about the likely effects (Malbin and Benjamin 1992; Moncrief and Thompson 1993; Moncrief, Thompson, and Cassie 1996; Grofman 1996). Of course it was difficult to foresee the future and impossible to predict the many different forms term limits would take in the various states. These pioneering works raise many hypotheses currently under examination.

The removal of career politicians was expected to lead to a "new breed" of legislator, one who was more independent, more diverse, and less career-oriented (Moncrief and Thompson 1993). The demographics of the legislature were predicted to change as a result. Incumbents are always difficult to defeat. Removing entrenched white male incumbents was thought to create opportunities for women and minorities (Petracca 1996). By creating open seats, candidates from these traditionally under-represented groups have a better chance of winning. However, these groups could take advantage of the opportunity only if experienced potential legislative candidates were well positioned in lower-level offices preparing to run (Powell 2000). To be successful they needed a farm team—a group of prospective candidates being groomed for legislative service.

It was anticipated that the increased number of open seats and termed incumbents seeking other offices would augment the overall level of electoral competition within a state (Petracca 1991). Alternatively, competition could be depressed by strategic politicians waiting for term limits to force an incumbent into retirement (Rausch 1998).

Scholars and legislators express particular concern about a potential shift in institutional power. The constitutional balance of power between the three branches of government is delicate. Weakening the legislative branch through term limits was likely to enhance the relative power of the governor (Rosenthal 1992; Beyle 1992). Removing experience and institutional memory from the legislature also potentially strengthened the hand of legislative staff, administrative agencies, and lobbyists who became the repository of institutional memory and experience (Rosenthal 1992; Capell 1993). Many observers feared that special interests would

take over the legislature (Malbin and Benjamin 1992). Additionally, with experienced leaders removed from the legislature, leadership and committee chairs likely would become less effective and power would shift to individual members or outside influences (Malbin and Benjamin 1992).

These anticipated effects suggest a focus on institutional changes, turnover, committees, and lobbyists. This work considers each of these in the context of term limits and the transition of partisan power in the Oklahoma House of Representatives.

## METHODOLOGY

Defining the consequences of legislative reform involves recognizing both internal and external influences on the legislative structure. A dynamic model of reform (Farmer 1998) suggests that the effects of term limits are determined by the political environment, competition, and other factors external to the legislature, as well as member demographics, staffing, etc., internal to the legislature. More importantly, these factors all exist in a dynamic relationship. Not only do they influence the consequences of reform, but the reform also affects them. Only after several iterations is the system likely to re-stabilize.

To identify the effects in the first iteration of term limits several sources of data are used. Members of the Oklahoma House of Representatives complete short demographic questionnaires at the beginning of each Legislature. Those data were part of this research. The *House Journal* and the *Senate Journal* provided data on committees and leadership. The Oklahoma Legislature has a bill tracking service commonly referred to as BTOOnline. This service is accessible to the public through the House website and offers various statistical summaries. Finally, public statements, public documents, interviews, and observations were used in this research.

## INSTITUTIONAL TRANSITION

### PREPARATIONS

Prior to term limits taking effect, leadership in both parties worked to prepare the House for the absence of senior members. Oklahoma House Speaker Larry Adair (2004) described some of his efforts in a speech to a national meeting of state legislative scholars at the University of Akron. These preparations included:

- Establishing a mentorship program among majority members to help prepare the newer members to take charge of the institution.
- Expanding the formal majority leadership to include a larger number of junior members and some freshmen as well as making it more demographically diverse.
- Placing freshmen on the Appropriations Committee.
- Expanding freshmen orientation to two full days.
- Moving all floor business to a single agenda.
- Amending House Rules to require bills to lie on the desk for 24 hours before being heard.
- Taking roll call votes in committee, although these votes were not recorded as official meeting minutes.
- Choosing committee chairmen on the basis of qualifications and not seniority.
- Selecting the formal majority leadership positions on the basis of qualifications and not seniority.

According to the former House Minority Leader, Larry Ferguson (2006), several steps were taken by the minority to prepare their members:

- A formal mentorship program was established.
- Shadow committee chairmen were appointed to develop expertise in specific policy areas, to create knowledgeable spokespersons for specific policies, and to train potential chairmen in the event of a partisan change in leadership.



- A committee was formed to consider changes to the House Rules.
- Legislative leaders from other term limited states were brought to Oklahoma to speak to the minority caucus.
- Emphasis was placed on campaigning for open seats.
- The minority sought to raise public awareness to its issues by challenging the majority—demanding that a book of House precedents be kept and filing a logrolling lawsuit.

One change commonly, but mistakenly, attributed to term limits was the naming of a Speaker Designate. In 1997 the minority party began naming a Speaker Designate well before the legislative elections. The Speaker Designate would take control of the House if the minority party gained majority status. This has obvious advantages for the transition between Speakerships. Since term limits will force those transitions to occur on a regular basis, many observers assumed the designation was made to prepare for term limits. In fact, the caucus debate on the issue was wholly political and term limits were never a part of the discussion (Farmer 1998). Both parties now name Speaker Designates prior to each election.

#### PARTISAN CHANGE

Term limits pushed established incumbents out of office, creating open seats that allowed the developing Republican trend to unfold more rapidly. In effect, term limits accelerated the partisan transitions already brewing in the Oklahoma Legislature, as seen in **Table 2**. In the 2004 election the minority party leaped from 48 to 57 of 101 seats. This brought new leadership, new rules, new committee chairmen, a new agenda and a new dynamic between the House Republicans, Senate Democrats, and the Democratic Governor. The 2006 election ended with a tied Senate and a power sharing agreement, further changing the legislative dynamics.

TABLE 2

**Partisan Divide in the Oklahoma House of Representatives Election**

Year	Republican Seats	Democratic Seats
1990	32	69
1992	33	68
1994	36	65
1996	36	65
1998	40	61
2000	48	53
2002	48	53
2004	57	44
2006	57	44

Source: Author's calculations from House Journals.

## RULE CHANGES

The new Republican leadership re-wrote the House Rules to force more openness in the institution. Some of the changes included:

- Requiring amendments to bills in committee to be filed in the chairman's office and posted on the House website prior to the committee meeting.
- Allowing any member of the House the ability to offer an amendment in any committee.
- Requiring all votes on final passage in committee to be recorded votes and posted as minutes of the meeting on the website.
- Requiring all amendments to bills on the floor of the House to be pre-filed in the Clerk's Office and posted on the website.
- Upgrading the House website ([www.okhouse.gov](http://www.okhouse.gov)) significantly to accommodate the new rules.
- No longer distributing copies of introduced bills to all members, because so much bill information was available on the new website. Committee members received copies of introduced

bills as they were placed on committee agendas. Other members received copies upon request or from the website.

- Declaring Masons Manual to be advisory but not authoritative under the new rules.

Changing the House Rules produced significant parliamentary wrangling. The former rules stated that they would remain in effect until amended. Amendment required a 2/3 vote of the members. However, the Oklahoma Constitution states that no Legislature can bind a future Legislature. So, the new majority declared that no rules existed to be amended and that new rules could be adopted with a majority vote. On January 4, 2005, the legislative organizational day, temporary rules were passed, because the permanent rules were not finalized, which could be amended by majority vote. On February 7, 2005, the first day of business, permanent rules were adopted. During a subsequent special session, when various deadlines in the rules were going to stall the process, the chair declared that House Rules did not address special sessions and therefore no rules applied. During that session the House was governed only by rulings of the chair.

The rule changes made in 2000 by the Democratic majority can be attributed directly to preparation for term limits. However, those changes made after term limits are directly linked to the shift in partisan leadership. It is unlikely that new Democratic leadership would have made further immediate changes to the rules. However, the 2000 changes coupled with the 2005 changes do suggest that term limits accelerated a trend in the rules toward openness in government.

## STAFF REORGANIZATION

During the first 18 months after the transition, the internal management structure and staff organization went through several phases of reorganization. The chief of staff and the chief clerk of the House emerged as the two most important staff managers. This follows closely the model used historically in the Oklahoma House. In many ways the current organization has come full circle so that it closely resembles the original structure.

In the past, legislation was managed by a small cadre of legislators. It was often described as the Speaker's "leadership team." These were not necessarily the same people who held formal leadership positions (see Farmer 2002). In 2005 the new Speaker hired a leadership staff to assist him with policy management. This was done in part because it was the way it had managed minority efforts to become the majority and in part because of the lack of experience among the new leadership. The Speaker's staff added a senior counselor, two leadership assistants, and a public information officer. In 2007 the Speaker's staff added another assistant. The chief of staff is also a senior policy advisor to the Speaker. This larger leadership staff led to a more staff-driven legislative process.

All members of the House staff are "at will" employees. In the transition, about 12 percent of the approximately 240 employees were dismissed. Some positions were eliminated in the reorganization and in some cases staff were released or asked to resign. As with any large scale bureaucracy, an influx of new staff creates additional inevitable turnover. Some of the new staff did not work out and some existing staff took other employment opportunities. Rebuilding a stable staff after the transition of power is a challenge facing the Oklahoma House.

A comptroller and human resources director were hired for the House. While these were new positions, they created significant gains in efficiency. The comptroller and human resources director were hired to tighten administrative controls within the House. The comptroller renegotiated several contracts and saved the taxpayers hundreds of thousands of dollars. The HR director significantly raised the quality expectations of new staff hires.

The duties of some staff divisions were reorganized. Previously, the committee chairmen's legislative assistants handled all committee reports. The Research Staff took over that responsibility, primarily to bring greater consistency to the work. Each research analyst may complete 30 committee reports per week. In the past, each legislative assistant may have done as many as 30 reports per year. The Research Staff became proficient at the task and produced more consistent results.

Additional functions related to committees were centralized. The new rules required committee amendments to be pre-filed, posted on the website, and distributed. These amendments were collected in the chairmen's offices, but they were posted and distributed by the Research

Staff and the Support Staff. The distribution of committee meeting notices was moved. In the past chairmen's legislative assistants distributed the notices during session and central staff distributed them during the interim. Again to provide greater consistency, central staff took over that activity.

The Information Technology (IT) division found itself with many more duties as the technology of the House began to grow. The House installed two wireless systems for Internet access—one secure and one open to the public. The new website increased the responsibilities of IT. Senior staff received Blackberries, requiring new servers and IT staff attention. A laptop program for members and some paperless functionality for floor activity were instituted in 2007, requiring an IT person be present on the floor of the House during session. All of this made the department grow.

Some logistical functions were consolidated under the Sergeant-At-Arms. Consolidating the mailroom and supply office under the Sergeants reduced the total number of full time employees required to perform those functions.

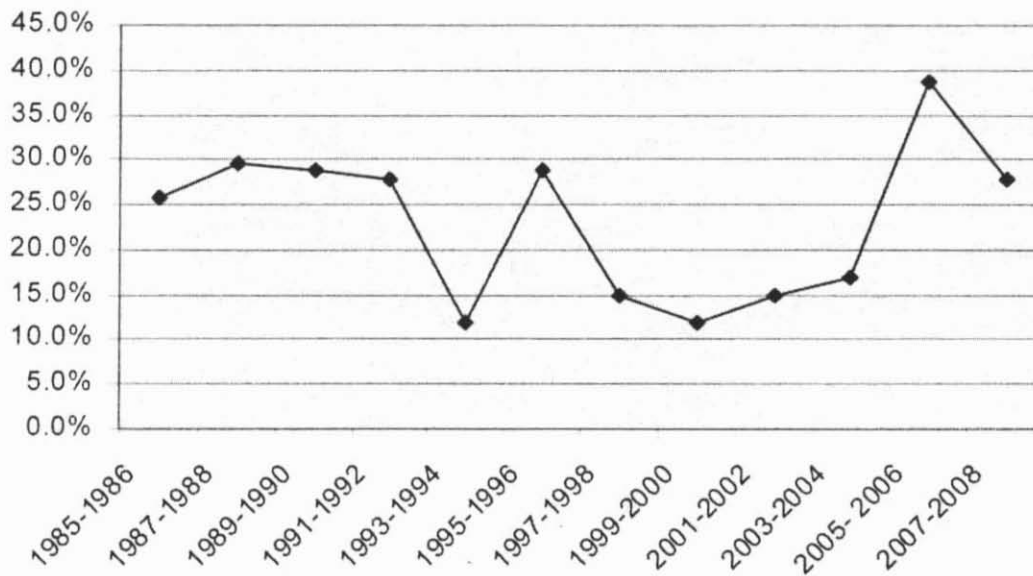
In general, these institutional changes are the result of the leadership change and are not directly related to the implementation of term limits. Some of the technological changes were inevitable. However, there is no reason to expect that the new Democratic leadership would have made significant immediate changes to the House structure. In the case of technology term limits likely accelerated a pre-existing trend. In other cases term limits facilitated a leadership change which resulted in institutional shifts.

## TURNOVER

### MEMBERSHIP TURNOVER

Twenty-six House members were barred from seeking reelection in 2004. Coupled with eleven retirements and two losses, this brought 39 new members to the House in 2004. **Figure 1** shows the spike in membership turnover for that year. The 2006 election produced 28 new members: fifteen members were term limited, ten retired, one lost a primary, and two lost the general election. One freshman served a partial

**FIGURE 1**  
**MEMBERSHIP TURNOVER IN THE**  
**OKLAHOMA HOUSE**



Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

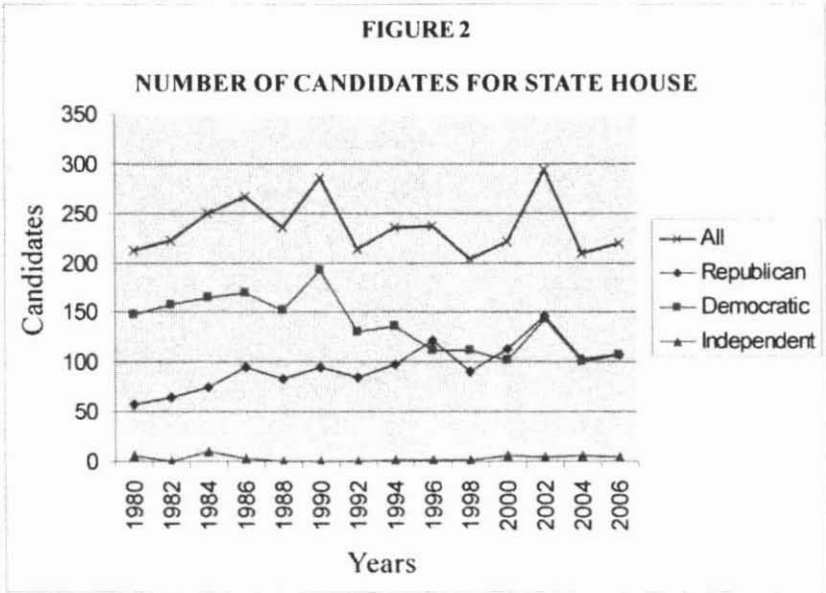
term prior to 2004. One lost reelection in 2006. Two newly elected members in 2006 had previous House experience. All total, 63 of 101 Representatives had two years of experience or less at the beginning of the 2007 session.

Forcing 100 percent of members to leave office over a twelve-year span will require a minimum average turnover rate of seventeen percent. When retirements and loss are added, Oklahoma can expect an average future turnover rate of about 25 percent. This rate is similar to the rate experienced prior to the 1990 term limits vote. While turnover was lower in the 1990s, from a broader historical perspective it is likely that term limits will not significantly affect the average membership turnover in the Oklahoma House. Of course the turnover rate will experience peaks and valleys but over time those should regress toward the mean. (For a perspective on how forced retirements of senior members may affect the Oklahoma Legislature see Farmer 1995 and Farmer 1998.)

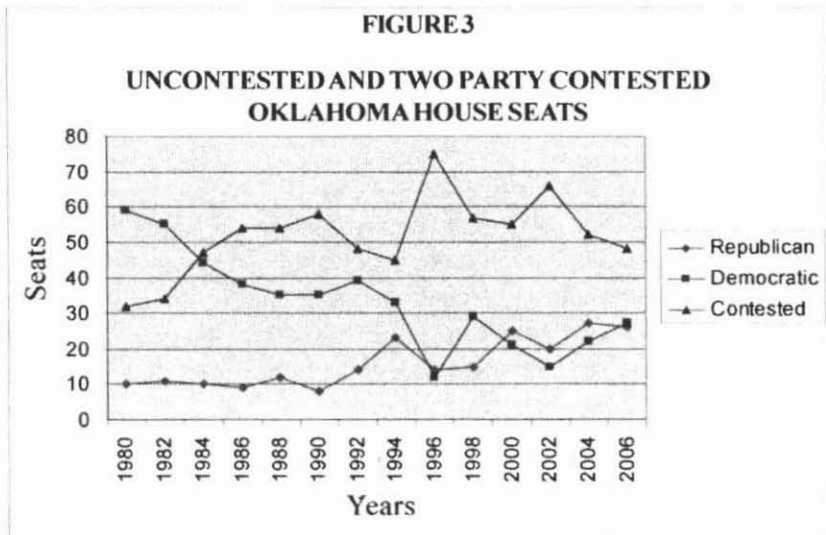
Open seats should invite an increased number of candidates and greater electoral competition. However, in Oklahoma this did not prove to be true. As seen in **Figure 2**, the total number of candidate filings peaked in 2002 and then returned to normal levels as term limits took effect in 2004 and 2006. Many observers believed the Republicans would take control of the House in 2002. The struggle for control of the House on both sides generated the large number of candidates. By 2004 most observers felt the Republican takeover was a foregone conclusion and candidate levels returned to normal. As part of this trend the number of Republican candidates was steadily increasing, while the number of Democratic candidates was decreasing.

Similarly, as seen in **Figure 3**, the number of two party contested races also peaked in 2002 and then returned to normal levels in 2004 and 2006. The number of uncontested Democratic seats declined and the number of uncontested Republican seats increased as the partisan shift was building. Term limits did not affect these measures of competition, but the growing Republican momentum and anticipated partisan shift had dramatic effects.

The membership turnover created opportunities for under represented groups like women to make gains in the House. As seen in **Figure 4**, the number of women in the House jumped to historic highs after term limits. In fact, the current number of women is the culmination

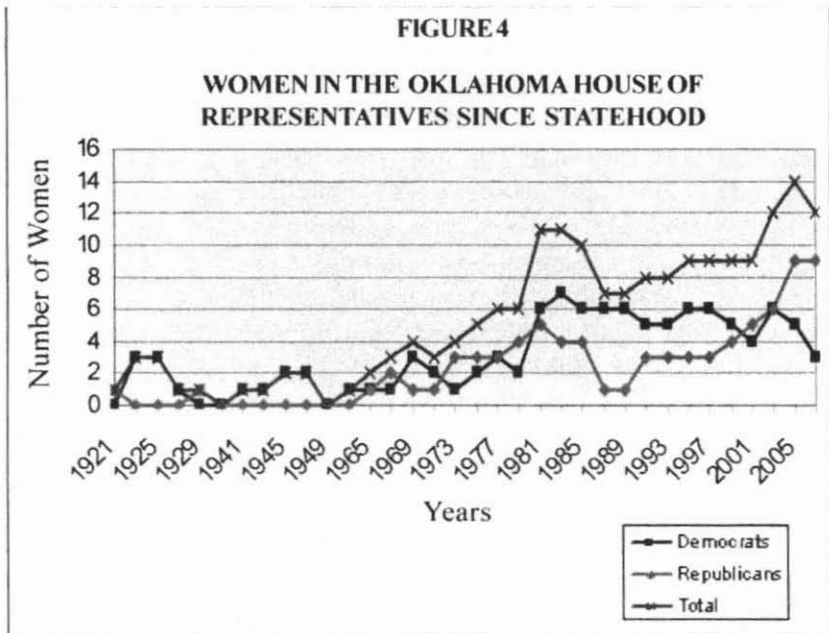


Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)



Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)





Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

of a gradual trend that has been growing since 1963. Term limits accelerated this trend by creating open seats. Women candidates were able to run and win without having to challenge an incumbent.

The open seats had the potential to allow a shift in members' vocations. This occurred in several significant ways. First, the number of members who claimed their vocation was "legislator" increased from two in 2003 to seven in 2005 and then to thirty-three in 2007. This trend is opposite of the effect proponents of term limits sought. Proponents hoped to eliminate professional politicians. Instead the Oklahoma House had an infusion of members who considered politics to be their primary job.

The number of House members claiming their vocation to be educator decreased from seventeen in 2001 to five in 2007.<sup>2</sup> The number calling their vocation business decreased from forty-seven in 1999 to twenty-two in 2007. In both of these cases the trend began as members anticipated the implementation of term limits and accelerated when they took effect in 2005.

Obviously, term limits accelerated the trend toward more Republicans in the House (see **Table 2**). The limits had no discernable effect on the competition for seats. On the three demographics examined here—gender, vocation, and party—it appears that term limits may have ushered in a new breed of legislator. This finding should be considered preliminary in that it considers a very limited number of self-reported variables and Oklahoma's experience with term limits is very short. More importantly, it stands in stark contrast to findings in other states. Generally, demographic studies debunk the notion that term limits produce a "new breed" (Baker 1996; Carey et al. 1998; Farmer 1998; Farmer, Rausch, and Green 2003).

#### LEADERSHIP TURNOVER

Term limits and partisan change left very inexperienced leaders in charge of the House. **Table 3** shows the number of members entering leadership compared to the total number of leadership positions for each Legislature. The number of members on the leadership list gradually

**TABLE 3**

**Oklahoma Legislature Leadership Turnover:  
Number of New Leaders to Number of Leadership Positions**

Year	House
1989-1990	12 of 21
1991-1992	12 of 20
1993-1994	9 of 21
1995-1996	12 of 23
1997-1998	13 of 24
1999-2000	13 of 27
2001-2002	14 of 26
2003-2004	15 of 26
2005-2006	18 of 28
2007-2008	29 of 40

Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

and steadily increased from twenty immediately following the 1990 term limits vote to twenty-eight immediately following the 2004 implementation of term limits, an increase of 40 percent. In that same time period, the number of new leaders in each session gradually increased from twelve to eighteen, a 50 percent increase. Following the 2006 election both party caucuses significantly increased their number of leadership positions. This doubled the number of leaders in the House between 1991 and 2007 and added many new leaders to the leadership ranks. The overall trend toward more leaders was described by Speaker Adair (2004) as preparation for term limits.

Since 1992 the tenure of Speakers has declined from about six years to about four years, as shown in **Table 4**. By tradition the expectation was that a Speaker would serve three terms in that capacity. Following the 1996 election the incoming Speaker, Loyd Benson, asked the Democratic Caucus to endorse a caucus rule limiting Speakers to four years. This rule was intended to give more members a chance to serve as Speaker in a term limited legislature.

The Republican Caucus imposed a four-year limit on the Speakership in 2005. The first post-term limits Speaker, Todd Hiatt, took the reigns in his eleventh year; thus he was limited to two years.

TABLE 4

## Oklahoma House Majority and Minority Leaders 1987-2008

Majority		Minority	
Jim Barker-D	1983-1989	Walter Hill-R	1987-1988
Steve Lewis-D	1989-1990	Joe Heaton-R	1989-1991
Glen Johnson-D	1991-1996	Larry Ferguson-R	1991-1998
Loyd Benson-D	1997-2000	Fred Morgan-R	1999-2002
Larry Adair-D	2001-2004	Todd Hiatt-R	2003-2004
Todd Hiatt-R	2005-2006	Jari Askins-D	2005-2006
Lance Cargill-R	2007-2008	Danny Morgan-D	2007-2008

Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

When Lance Cargill became Speaker in 2007 (assuming continuous reelection by his constituents) he had six more years to serve in the House. He is likely to serve as Speaker for four years. The combination of twelve-year legislative limits and four-year Speakership limits will reduce the average Speaker tenure in Oklahoma to less than four years.

The tenure of the Minority Leader's position has remained relatively stable in the House with most leaders serving three or four years. If the Republicans maintain control of the House, Danny Morgan is likely to serve at least four years as minority leader.

The number of leaders began climbing shortly after the term limits vote in 1990. It accelerated rapidly when term limits took effect in 2004. Term limits and caucus limits on the Speakership increased leadership turnover. The need for an experienced farm team in a termed legislature has greatly increased the number of members in the leadership roster. These are all direct effects of term limits.

### COMMITTEE WORK

The new leadership sought to improve the quality of committee work. In Oklahoma there was a long tradition of pushing shell bills to conference committee and allowing the substantive language to be written behind closed doors in the waning hours of the session (Farmer 2002). In an effort to create greater openness, the leadership worked with committee chairmen to make the following changes:

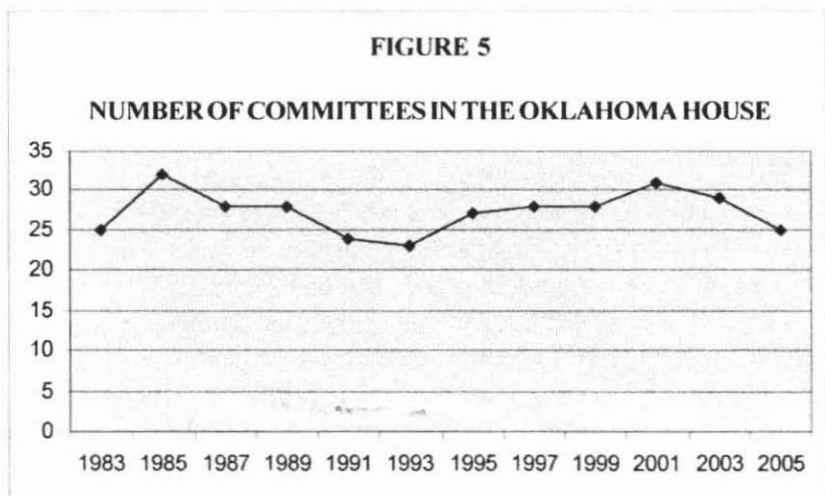
- Committees were given two additional weeks to do their work.
- Substantive legislation was expected to be finalized before it left committee.
- Bills that needed amending on the floor were re-referred to committee.

These expectations did not apply to budget bills. Some chairmen took the recommendations very seriously refusing to allow bills out of committee until they were in final form. Other chairmen advanced bills that needed considerably more work. As a result this new process worked better in some committees than others. Also, with some very complex legislation it was not possible to have final language by the fifth

week of session. Where it worked, it was a significant departure from past practices.

As seen in **Figure 5**, there were fewer committees in 2005 than at anytime in the past twelve years. However, the number was not unusually low when compared to the early 1990's. In 2007 a new committee structure was implemented that makes apples-to-apples comparisons almost impossible. Ten full committees were created. Eight had three subcommittees each, while the other two had only one subcommittee each. Much of the committee work went through the subcommittees. The 2007 committee structure could be seen as either thirty-six committees or as ten committees, but based on the work distribution it would make sense to consider it as thirty-six. Either way, the 2007 change in committee structure is a result of new leadership and not a direct result of term limits.

The number of bills recommitted to committee was in decline prior to term limits and the new leadership, as seen in **Table 5** and it declined even further after the change in leadership. These numbers suggest that the policy of developing finished legislation in committee was successful.



Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

TABLE 5

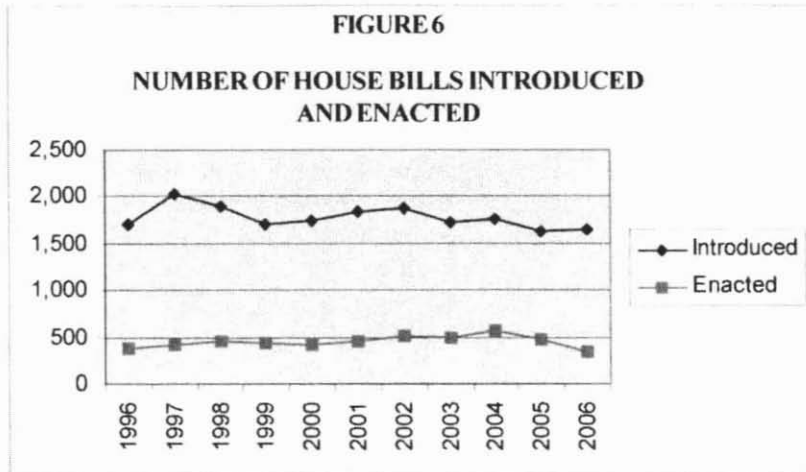
## Number of House Bills Recommended to Committee

Year	Bills Recommended
1999	29
2000	31
2001	11
2002	31
2003	20
2004	19
2005	12
2006	5

Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

**Figure 6** indicates that the total number of bills introduced into the House in 2005 and 2006 was the lowest in ten years. The number of bills enacted into law was also low in 2006. However, this was because of a budget dispute that carried into a special session. Most of the regular session budget bills expired without being enacted. Generally, these tables suggest that a smaller number of committees handled a smaller number of bills and handled them more efficiently. However, while these numbers were lower, they were not outside the normal range of committees or bills.

Term limits were predicted to weaken committees, by regularly removing experienced chairmen and replacing them with members who had never chaired a committee. In the Oklahoma House this replacement occurred suddenly because of a change in partisan leadership. The new leadership instituted several procedural changes and appointed new chairmen. The evidence suggests that committees continued to function reasonably well after these changes. There is no reason to assume that new Democratic leaders would have made these significant changes. As a result, changes in committee structure and effectiveness were much more likely the result of the leadership change and not a direct result of term limits. They can best be characterized as indirect effects of term limits.



Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

## LOBBYISTS

The Center for Public Integrity identified New Hampshire, Utah, and Oklahoma as having the highest percentage of lobbyists who are former legislators (Bogardus 2006). Almost 10 percent of Oklahoma's lobbyists were once legislators and the ranks have grown significantly since the 1998 election as seen in **Table 6**. Of the thirty-two active lobbyists in 2006 who are former House members, eighteen have left the House since 1998. Six of those eighteen were term limited in 2004. On average 21 percent of Representatives leaving the House became lobbyists in Oklahoma since 1998. This significantly exceeds the 9.3 percent found in two other term limited states, Maine and Ohio, for the same time period (Powell and Farmer, 2003). Term limits have clearly increased the number of former House members lobbying in Oklahoma. The trend started as term limits approached and has accelerated rapidly with the implementation.

TABLE 6

**Current Lobbyists (11/1/06) Who Previously Served  
in the Oklahoma House**

Year	Members Who Left	Number Lobbying
2004	39	7
2002	17	2
2000	15	5
1998	12	4
1996	15	1
1994	29	2
1992	12	2
1990	28	2
1988	29	2

Source: [www.okhouse.gov/research](http://www.okhouse.gov/research)

### CONCLUSIONS

It is very difficult to say what the long-term effects of term limits will be in Oklahoma. Although Oklahoma voters were the first to pass state legislative term limits, the 12 year limits did not take effect until 2004. As of this writing, the Oklahoma House has only experienced one full legislative cycle under term limits. Term limits took effect in California and Maine in 1996. It will be 8 years before Oklahoma will have term limits data comparable to the data these states have today. Nevertheless, some conclusions can be drawn about term limits in Oklahoma.

The first election with term limits brought 39 new members to the Oklahoma House. Over time this turnover should stabilize at about 25 percent per election. That will not be a significant departure from pre-term limits turnover rates. Term limits did not affect the number of candidates running for the House or the number of two-party contested seats.

The preliminary data presented here does indicate that a "new breed" of legislators is emerging. These members are less likely to claim education or business as their primary occupation. The role of women



is growing in the House, and most importantly, the number of members who identify their profession as legislator has increased significantly as a result of term limits.

The House leadership took several steps to prepare for term limits including: creating a formal mentorship program, expanding the formal leadership and including freshmen, expanding freshmen orientation, and a shift away from seniority based leadership and committee chair positions. The expansion of the leadership more than doubled the number of new leaders joining the ranks. Other changes in the House are much more related to the partisan shift than to term limits.

The most important effect of term limits on the Oklahoma House of Representatives was to accelerate trends that were already in effect. Republicans were gaining seats steadily throughout the 1990s. Term limits created the open seats to accelerate the trend. The number of leaders was growing. The House was moving toward a more open process. The new leadership, brought to power with term limits, accelerated these trends. Once many of these trends reach their apex they should stabilize. As new trends emerge, they will spread through the legislature much more rapidly than before term limits.

## NOTES

<sup>1</sup>Peery and Little (2003) suggest “termed” and “untermmed” as a standard way of describing the presents or absents of term limits.

<sup>2</sup>This self-reported measure of “primary occupation” does not accurately portray the number of Representatives with teaching experience, 36 in 2007.

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## **LIBERAL ACADEMIC BIAS EVALUATING A POLITICAL MOVEMENT**

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This essay attempts to describe and critically assess the validity of accusations that a liberal bias is undermining higher education. In descriptive terms, the liberal academic bias (LAB) argument has four interrelated components: a) liberals are over-represented among college faculty and academic administrators; b) liberals hire only other liberals; c) liberals consistently teach from a partisan perspective, denying conservative students access to conservative material; and d) liberals punish ideological dissent of both students and faculty. As an analytical matter, whether LAB is the result of conscious bias or is merely an example of "self-segregation" fairly common and unnoticed in other elite and politically sensitive professions is unclear based on the present literature. Academic response has ranged from cautious acceptance to mitigating concessions to outright rebuttals. A reliance on anecdotal evidence weakens many facets of the LAB argument, and much of the empirical evidence needs to be replicated and reconsidered in a more sophisticated manner. The political consequences of this movement for the discipline of political science, the social sciences generally, and for higher education are considerable, and cannot be over-stated. To some extent, this issue can be viewed as the point of spear aimed at academic freedom. Although significant challenges exist in the attitudinal study of elites, the potential of this issue area as a sustained field of research is very nearly limitless, given adequate support.

**Allegations of liberal bias** among college faculty have a long history. Particularly on topics where political or moral questions might arise,<sup>1</sup> complaints often surface alleging that professors have misused their authority either to indoctrinate gullible students or to intimidate those who dare to question a professor's viewpoints. Campaigns attributing bad faith to college faculty appear to come in relatively discrete waves, often driven by partisan polarization or political uncertainty. The attacks of 9/11/01 have created a wealth of both polarization and uncertainty, provoking the latest in a long line of campaigns criticizing higher education faculty as pedagogically unsound, ideologically biased, elitist, culturally insensitive, or some perfidious cocktail of analogous sins (Buckley 1951; Bloom 1987; Sykes 1988; D'Souza 1992; Bork 1996).<sup>2</sup>

The current academic bias movement has focused on the state level, with measures being introduced into seventeen legislatures advocating a "student bill of rights" intended to mandate a neutral environment in the classroom. Virtually all of the states where such legislation has been proposed had Republican-controlled legislatures in 2004-2007. Four states proximate to Oklahoma—Colorado, Kansas, Missouri, and Texas—have seen legislation proposed or entertained education policy changes that would bring college professors under closer scrutiny from state political officials.<sup>3</sup>

Oklahoma students and faculty members have offered anecdotal evidence of academic bias. In 2004, OU geology professor David Demming published an opinion article on the Internet magazine *FrontpageMagazine.com* detailing instances where university officials suppressed his right to free speech because of his conservative views. In 2007, OU journalism major Ray Martin published an editorial on the OU portal arguing that many college professors discriminated upon students on the basis of their embrace of evangelical Christianity. He further noted that an OU psychology professor proposed a course discussing both evolution and intelligent design, which was rejected by his fellow faculty members (Martin 2007).

Both the University of Oklahoma and Oklahoma State University have chapters registered with Students for Academic Freedom, a group sponsored by David Horowitz, who has been an organizing force in lobbying various Republican-controlled state legislatures, and has recently published several books criticizing higher education in general and liberal college professors in particular. Students at three Oklahoma universities



have posted complaints of academic bias at the Students for Academic Freedom website.<sup>4</sup>

Such claims leveled against the roughly one million university professors and instructors require careful scrutiny. To contend, on the one hand, that academics are uniformly liberal is to make an empirically testable claim. To argue, on the other hand, that academics are uniformly liberal *and* that they are systematically biased and unprofessional in their approach to the study and teaching of political subjects is to make a claim with considerable normative consequences. To fairly evaluate charges that may have sweeping policy implications requires careful analysis of the nature of the claims advanced.

### THE LAB ARGUMENT

The liberal academic bias (hereafter LAB) argument consists of four interrelated but separate claims. First, college faculties are disproportionately liberal in their ideological sympathies (LAB1). Second, this liberal dominance has its origin in unfair hiring practices (LAB2). Third, liberal professors are presumed to impose a uniformly liberal curriculum on students, even when topics are not explicitly political (LAB3). Fourth, liberal faculties intimidate and punish conservative students and faculty who challenge the liberal dominance over the academy (LAB4).

These claims are, to some extent, logically intertwined. Some LAB claims logically require the feasibility of other claims to be persuasive (e.g. in the absence of persuasive evidence of LAB1, LAB4 claims appear vacuous). Most of these accusations can be submitted to varying degrees of empirical analysis, some more easily than others, but may also produce ambiguous, misleading, or easily misinterpreted results, depending on the nature of the data generated as evidence, the methodology employed, or the quality of interpretation. And some charges, as the discussion will suggest, may be impossible to adjudicate empirically.

Another issue is how to weigh different LAB claims. A few arguments advancing LAB claims have surfaced in trade and discipline journals; however, much of the LAB discourse has taken place on the Internet, and a great deal of the material is overtly ideological and partisan in tone and intent. One solution is to confine the analysis to scholarly

journals and recognized interest groups. Unfortunately, that solution would purge much of the material and lose a great deal of the scope and intensity of the discourse. While a fair cross-section of the material both advocating and criticizing the LAB position has been included for the sake of fairness, care has been taken to indicate where material appears driven more by partisan than scholarly intentions.

### LAB1: LIBERAL OVERREPRESENTATION

The easiest dimension of the LAB argument to assess is the claim that liberals are overrepresented among college faculty. Numerous studies of varying quality have been conducted to support the claim that there are more liberals in academia than in the population at large. Faculty voter registration is for the most part a matter of public record and can be assessed relatively easily. Surveys can also be distributed to generate self-reported data on faculty members' political attitudes. The degree of overrepresentation, however, is a matter of considerable controversy: while data can be easily gathered, such evidence can also be misleading in the absence of careful sampling, can admit to multiple interpretations, and can often support much more benign conclusions than the ones preferred by many LAB advocates.

As an intuitive matter, the hypothesis that liberals are more likely to be attracted to the academic profession than conservatives has a long lineage. An early exemplar can be found in Joseph Schumpeter's *Capitalism, Socialism, and Democracy* (1942). Schumpeter contended that liberals and leftists are more likely to be imbued with a spirit of collectivism and/or utopianism, and consequently liberals and leftists are attracted to pedagogy as a means of overcoming intellectual opposition to their reformist plans.<sup>5</sup> While the cliché of liberals as elitists who are "thinkers rather than doers" and of conservatives as being too greedy and anti-intellectual to seek employment in poorly compensated fields like education appeals to the worst assumptions of liberals and conservatives alike, the possibility that liberals are disproportionately drawn to the academic profession forms a practicable hypothesis.

Studies conducted to test this hypothesis often focus on elite institutions, and tend to concentrate rather narrowly on social science and humanities departments. Beyond financial constraints and ease

of access to such institutions, the rationale for such foci is that elite schools produce a significant fraction of the total number of scholars that populate the American academy. The focus on social sciences and humanities is justified by anecdotal evidence that politically oriented disciplines are the most likely to address politically charged topics in a sustained manner.

Empirical evidence of LAB1 ranges from relatively nonpartisan to overtly partisan. Rothman, Lichter, and Nevitte (RLN) conducted a 2005 study of 1,643 faculty members from 183 four-year colleges and universities, using data from a 1999 North American Academic Study Survey.<sup>6</sup> The study indicated that 72 percent of respondents self-identified as liberal, while 15 percent self-identified as conservative. Voter registration indicated that 50 percent of faculty were registered Democrats, while 11 percent were registered Republicans. Similar studies by Santa Clara economic Daniel Klein revealed significant Democrat-to-Republican ratios (30:1) and humanities-related academics. A 2001 study by the UCLA Higher Education Research Institute concluded that while 47.7 percent of faculty surveyed self-identified as "far left" or as "liberal," only 18 percent self-identified as "far right" or "conservative." Likewise, a 2001 Pew Research Center for the People and Press survey indicated that 49 percent of faculty surveyed self-identified as Democrats while 15.1 percent self-reported as Republicans.<sup>7</sup> To date, no empirical study of LAB1 has seriously tested for alternative hypotheses, such as self-selection.

## LAB2: LIBERAL HIRING PRACTICES

Mere overrepresentation may have benign causes and effects. However, many LAB advocates advance substantive claims regarding both the causality of LAB and its normative consequences. LAB2 attributes a negative causality. At some point in the past, expansion of college faculties disproportionately favored liberals; from that point on, liberal faculties retained their advantage through the search-and-hiring process.

For a LAB2 critic with a historical bent, several periods stand out as origin causes for LAB2: the Progressive Era, which saw the creation of large numbers of land-grant colleges and universities; the post-World War II era, which witnessed a massive expansion of the

student population; and the 1960's, where large numbers of women and minorities began to enter the American academy.<sup>8</sup> Specifically within the social sciences, events of the 1960's and 1970's also led to the creation of numerous specific sub-disciplines such as gender studies, African-American studies, and area studies, that significantly expanded job opportunities for radical and liberal candidates to the academy (Wiarda 2000, 89).

An early variant of this argument was advanced by Roger Kimball's argument that "yesterday's student radical is today's tenured professor or academic dean" (Kimball 1990). Many conservatives who advance LAB2 claims, even those who decry the sense of isolation they experience as "lonely voices" on campus, suggest that the phenomenon is not necessarily an overt strategy, but is rather the result of secular trends. Others, however, embrace a conspiratorial interpretation of LAB2. David Horowitz,<sup>9</sup> for example, cites UCLA historian John P. Diggins, who at an annual meeting of the American Studies Association declared that when

my generation of liberals was in control of university faculties in the Sixties, we opened the doors to the hiring of radicals in the name of diversity. We thought you would do the same. But you didn't. You closed the doors behind you (Horowitz 2002).

Horowitz and other LAB2 advocates contend that the obstacles for prospective conservatives entering academia are much higher than their fellow liberal aspirants because hiring and tenure committees "are stacked with ideological and political adversaries" (2005b). He characterizes the entire process for educating faculty in gloomy terms. The entire process of training graduate students, qualifying Ph.D. recipients, hiring junior faculty and granting tenure is hierarchical, arbitrary, closed to public scrutiny and designed to produce intellectual conformity in the best of circumstances. Therefore special concern would be required to ensure that there are protections for students' academic freedom and intellectual diversity. Unfortunately, in the present institutional framework no such protections exist (Horowitz 2005b).

In short, while some contend that the explanation for LAB1 is only tangential to LAB2, others claim that LAB2 is an essential explanatory variable for LAB1.

### LAB3: LIBERALS TEACHING LIBERALISM

Proceeding from LAB2, LAB3 advocates claim that faculty members offer only those topics that reinforce their worldview, and concomitantly elide conservative views and issues. Horowitz is fond of opening his campus addresses with the slogan “You can’t get a good education if you’re only getting half the story” (Horowitz 2002). Horowitz’s CSPC has aggressively organized student campus groups to protest what they perceive as a narrowing of the curriculum.<sup>10</sup>

Emory English professor Mark Bauerlein has suggested two principal explanations for LAB3. First, some academic disciplines are predicated on progressive political assumptions:

Some fields’ very constitutions rest on progressive politics and make it clear from the start that conservative outlooks will not do. Schools of education, for instance, take constructivist theories of learning as definitive, excluding realists (in matters of knowledge) on principle, while the quasi-Marxist outlook of cultures studies rules out those who espouse capitalism. If you disapprove of affirmative action, forget pursuing a degree in African-American studies. If you think that the nuclear family proves the best unit of social well-being, stay away from women’s studies (Bauerlein 2004).

Second, some disciplines accept conservative ideas and scholars . . . *in theory*, but then “narrow the avenues of advancement:”

Mentors are disinclined to support your topic, conference announcements rarely appeal to your work, and few job descriptions match your profile. A fledgling literary scholar who studies anti-community writing and concludes that its worth surpasses that of counterculture discourse in terms of the cogency of its ideas and morality of its implications won’t go far in the application process (Bauerlein 2004).

Bauerlein suggests that, while the predominance of liberalism in most academic disciplines initially provides a valuable common framework that facilitates scientific inquiry, it often degenerates into a kind of groupthink, where “academics with too much confidence in their audience utter debatable propositions as received wisdom” (Bauerlein 2004). According to Bauerlein and other LAB3 advocates, such groupthink is dangerous, threatening to convert the academy into an elitist clique

lacking connection to the wider public, who increasingly view college professors and university scholars with suspicion.

Evidence supporting LAB3 predominately come in the form of anecdotal evidence, usually in the form of student complaints regarding faculty curriculum decisions or classroom comments that are perceived as efforts at indoctrination. Public controversies at Duke University, the University of North Carolina, and Ball State University have typically involved conservative student organizations (often organized by David Horowitz) publicizing complaints about assigned reading or films for freshman reading or orientation programs (Bettis 2005; Mock 2005; Roy 2005; Yee 2004). This alleged one-sidedness leads to a privileging of liberal perspectives. Horowitz associate Robert Locke employs a particularly vivid metaphor to illustrate the implications of LAB3:

academia is a petri dish for growing the most virulent strains of ideological anthrax . . . . By maintaining an artificial left-wing Disneyland in which leftist ideas are held to be normal and the rituals of leftism are acted out on a daily basis, they accustom even apolitical and right-of-center students to seeing such things as normal, even if not good (Horowitz 2002).

#### LAB4: LIBERAL RETRIBUTION

The logical culmination of other LAB claims is the notion that liberal dominance leads to systematically unfair and arbitrary treatment of non-liberal students and faculty members. Relatively few efforts have been made to date to establish non-anecdotal evidence of LAB4. The RLN study cited earlier employed a regression analysis to investigate whether conservative faculty “may be discriminated against in terms of hiring and promotion.”<sup>11</sup> The authors’ study found statistical evidence that Republicans, religious faculty (excluding Jews), and women found themselves “significantly worse than their colleagues at similar levels of achievement” (2005). While the authors concluded that achievement is a more powerful predictor of success than discrimination, and that other “unmeasurable” factors (e.g. good luck, personality, personal appearance, wealth, status, etc.) may weaken the power of discrimination as a causal factor, discrimination was nonetheless a statistically significant variable.<sup>12</sup>

An attempt to document discrimination against students was undertaken by the American Council of Trustees and Alumni, which posted on its website a variety of instances of faculty discrimination and evidence supporting the claim that liberal faculty have behaved in a punitive manner toward students.<sup>13</sup> For the ACTA, such seemingly isolated conduct constitutes a pattern of abuse. Many LAB4 advocates contend that faculty members' assertion of autonomy over the grading process, combined with faculty influence over the tenure and promotion processes, prevents the extent of LAB4 from being adequately publicized and documented.

Given the obstacles to establishing statistical evidence of liberal faculty penalizing conservative faculty and students, proponents of LAB4 have attempted to build a case by accretion, publishing individual instances on websites such as *CampusWatch*, *FrontPageMagazine.com*, the *Foundation for Individual Rights in Education*, *Students for Academic Freedom*, and *Accuracy in Academia*. These sites serve as a clearinghouse for LAB4 complaints, and a great deal of "cross-pollination" occurs in which conservative students share stories of liberal faculty actively intimidating or punishing students either because they express such heterodox views as patriotism, support for capitalism, opposition to social welfare or Social Security, or abortion rights, or challenge a faculty member's liberal assumptions. Surveying these sites archives reveals accounts with such revealing titles as "War Stories From Academia," "Defending a Patriotic Arab Student's Rights," "One Party State," "Academic Intimidation," and "Freshman Indoctrination At Ball State."

Quite often the accusation that liberal or leftist faculty members have used their departmental majorities to block the academic aspirations of conservative faculty members is deployed to make broader insinuations regarding academia as a whole, combining LAB2 and LAB4 complaints. For example, Stanley Kurtz, a researcher at Stanford University's Hoover Institute, has written extensively in conservative opinion journals contending that conservative Middle East scholars have been "blacklisted" from academic posts. Middle East studies, according to Kurtz, "is a field literally founded upon the principle of the blacklist," and has "virtually no scholars left" in the sub-discipline to challenge what he perceives as a group of radical scholars fanatically committed to viewpoints that are deeply hostile to U.S. national interests as they



relate to the Middle East. At the same time, Kurtz's columns on the subject – "Opening the Classroom Door," "Balancing the Academy," and "Anti-Americanism in the Classroom," among others – suggest a broader topic than departments of Middle East Studies, political science, or even the social sciences (Kurtz 2003).

### THE ACADEMIC REJOINDER

While some members of the academic community have taken at least some of these criticisms seriously, many scholars have responded critically to the entire corpus of LAB allegations, claiming that many of these accusations are driven by partisan motivations that are hostile to the academic profession. Academic responses to LAB allegations range from critical acceptance to angry dismissal. No surveys to date have included faculty reporting on whether they agree with any or all LAB claims, but a reasonable hypothesis is that a significant percentage of the academic community would contest most, if not all, LAB accusations.

Recently, the American Association of University Professors (AAUP) released a statement entitled "Freedom in the Classroom" as a tool to "help professors decide what they can and cannot safely say in the classroom." The reporter Robin Wilson observed that the statement

reads like a defense of the professoriate in the face of heavy criticism from people like David Horowitz, and the American Council of Trustees and Alumni Anne Neal criticized the statement for its 'bald unwillingness to acknowledge academic responsibility as well as academic rights' (Wilson 2007).

One general criticism of the corpus of LAB literature is the paucity of clear definition of some of the central concepts employed. Terms like "radical," "liberal," "moderate," and "conservative" are often deployed without explanation or specification of what the terms mean. Without commenting on whether or not this lacuna is deliberate, one consequence among readers of the literature may be to conflate liberal and radical ideological views, and elide the degree to which many liberals' embrace fairly widely shared and uncontroversial political attitudes (e.g. the belief in individual liberty and autonomy), and



often have much more in common with conservatives than with the radicals with whom they have purportedly allied themselves.<sup>14</sup>

## EVALUATING LAB1

Most academic evaluations of LAB1 focus either on perceived flaws in the methodologies of studies providing evidence of LAB1, or alternatively attempt to explain that liberal overrepresentation is a by-product of benign factors such as self-selection. These observations suggest that in the larger scheme of things, the fact that there are more liberals than conservatives among college faculty pales in comparison with conservative dominance on corporate boards, among the officer corps of the military and political institutions.

Several benign factors may explain LAB1. One justification may be that the universe of liberals attracted to faculty posts in higher education is larger than the universe of similarly motivated conservatives. While liberals may comprise a relatively small portion of the overall population, they may comprise a much larger proportion of that segment of the population that would be drawn into higher education, namely, those individuals with advanced degrees. A second factor may be that Republican campaign strategies and public statements may have alienated significant portions of the academic community that might otherwise self-identify as conservative. *New York Times* columnist Paul Krugman contends that conservative anti-intellectualism and rejection of science have appalled many in the academic community:

*Scientific American* may think that evolution is supported by mountains of evidence, but President Bush declares that “the jury is still out.” Senator James Inhofe dismisses the vast body of research supporting the scientific consensus on climate change as a “gigantic hoax.” Think of the message this sends: today’s Republican Party—increasingly dominated by people who believe truth should be determined by revelation, not research—doesn’t respect science or scholarship in general. It shouldn’t be surprising that scholars have returned the favor by losing respect for the Republican Party (Krugman 2005).

From this perspective, two factors might contribute to liberal overrepresentation in academia. First, the conservative universe of people attracted to the academy is smaller because it rejects working for the government or because they reject the community of scholarly consensus on the epistemological status of scientific knowledge on ideological or scientific grounds. Second, formerly conservative faculty members might have previously self-identified as conservative, but become so disaffected by the conservative assault on public education that they defected to an independent, libertarian, or contrarian position that might be mislabeled as "liberal" or "leftist." The very notion of what constitutes "conservative" among the population with advanced degrees is likely to be significantly distinct from the conservative population at large.

The methodologies employed in studies purported to support the LABI hypothesis have been subjected to considerable criticism. The representativeness of the samples of many studies has been challenged. For example, UCLA historian Jacoby has criticized the Klein and Stern study cited for its low response rate (Jacoby 2005). Likewise, the presumption that only a few disciplines or the top universities comprise a representative universe can be fairly questioned. While the faculties of elite colleges and universities might be disproportionately liberal, such a monolithic effect would be unlikely in a more representative sample of American colleges and universities.<sup>15</sup>

Likewise, the focus on social science and humanities departments probably exaggerates the ideological landscape of academia as a whole. One working hypothesis might be that while liberals are naturally drawn to the Enlightenment-inspired social sciences, conservative faculty members might be expected to dominate in other business or technologically oriented disciplines. For example, little sustained scholarly attention has been paid to the ideological beliefs of faculty members of medical schools, advertising, accounting, or business programs, and other college disciplines that may intuitively be expected to attract conservative students, and thus, conservative faculty. The faculty in other disciplines might aggressively socialize students into a professional culture hostile to high taxes and government regulation of their professions. Likewise, recent studies have tracked a distinctive conservative drift among members of the officer corps of the armed services (Feavor and Kohn 2001). Comparative

study among a cross-section of elite professions might yield fruitful insights explaining such “self-segregation” among elites.

Employing voter registration as an indicator of ideological preferences also poses numerous problems. First, the existence of liberal Republicans in the Northeast and conservative Democrats in the South creates a more complex ideological milieu than most LAB advocates care to admit or account for in their statistical models. Another possibility is that American professors are as indifferent to partisan orientation as are many Americans. Second, the kinds of universities and colleges targeted for such studies are more likely to be located in large urban areas and “college town” environments that are likely to attract liberal faculty—and liberal students, for that matter—than the myriad of community college and small college campuses strewn throughout rural areas and small towns in the United States. Such small towns and rural communities might present a more comfortable environment for conservative faculty members (who, it could be hypothesized, would be more family-oriented and less likely to pursue the traditional academic ambitions leading them from smaller schools to larger, more cosmopolitan universities in less family-friendly urban areas) and students alike (a factor that is contributory to the response to LAB2).<sup>16</sup>

## EVALUATING LAB2

The primary obstacle to providing documentary or statistical evidence to support LAB2 is that universities and departments are notoriously guarded in their hiring policies. This reticence is explained partly by the fear of litigation on the part of disgruntled candidates, but is also rooted in claims of university autonomy, and consequently such matters are jealously protected. Aside from the anecdotal nature of LAB2 claims, these instances of closed or arbitrary hiring practices can reasonably be challenged as poorly supported or unrepresentative of the entire academic profession.

For example, Roger Kimball’s claim that college faculties were “taken over by radicals” in the 1960’s, while intuitively appealing for conservatives, appears to have a rather thin empirical basis. That certain sub-fields and disciplines are populated with professors whose political views lie outside what Roger Kimball or some other conservative judges to

be acceptable or "mainstream" opinion is hardly evidence that hundreds of thousands of "radicals" succeeded in occupying the bulk of available faculty positions throughout the country as they came open over the course of ten to fifteen years. One additional problem, as noted above, is the conflation of "liberal" with "radical," but there is little evidence to suggest that liberals as a category of individuals have historically been more likely to support or tolerate radical ends that fundamentally undermine the profession to which they belong. Indeed, a person might intuitively hypothesize that many (if not most) liberal faculty members would be more likely to ally themselves with conservatives against radicals bent on destroying the academy. Moreover, some research into the profession indicates that many leftist faculty members become sufficiently acculturated and socialized into the academic profession to be appreciative and protective of its norms and values (Saha 1976).

The sorts of conflicts innate to LAB2 claims often degenerate into "He said/She said" interchanges that are inherently difficult to adjudicate fairly, but which are suggestive of the larger partisan antipathies that have characterized America's culture wars for the past twenty years. One unfortunate by-product of these conflicts is outside pressure on universities and colleges by politicians and interest groups determined to bend higher education to the service of their ideological ends. To illustrate, many experts in Middle East politics have voiced concerns about Israel's policies toward the West Bank and the Bush administration's occupation of Iraq. Many of these scholars are Muslims and embrace left-of-center ideological perspectives. Interest groups supportive of Israel have naturally responded to these criticisms with criticisms of their own, and in some instances have fomented efforts to have more vocal faculty members removed from their positions. Liberal interest groups have likewise demanded the resignations of controversial conservative faculty members.<sup>17</sup> On both sides of the partisan divide, distressingly numerous instances arise of groups demanding the resignation of faculty members whose principal sin appears to have been offering their expertise in the service of publicly supporting one side or the other on a controversial issue.

Student mobilizations increasingly appear to be aimed at liberal and radical faculty members as well as conservatives and reflect more the unsettled political environment in which we are presently embroiled than

a coherent movement to isolate conservative faculty (Jacobson 2004). Indeed, a working hypothesis might be that student organizations and interest groups are increasingly targeting those extremists on both the left and right that advertise their views through controversial public statements, and that such mobilizations might serve to significantly reduce the overall instances of college faculty's public engagement with controversial issues.

### EVALUATING LAB3

Essential to the LAB3 argument is the notion that liberals having been cozened into an unlikely alliance with radicals in the 1960's substituted their commitment to justice and fairness for a radical commitment to an "adversary culture." Again, the evidence to support this claim is not particularly impressive.

For example, Bauerlein's critique of liberal groupthink sounds damning but is logically otiose for the simple reason that *all forms of groupthink are anti-intellectual*. To the extent that liberals are guilty of self-congratulatory assumptions of consensus, they deserve to be called to account, as should conservatives, radicals, and everyone else. Are other ideological partisans within higher education without sin when it comes to uncritically accepting key tenets of their ideology? Do conservatives routinely subject their foundational assumptions regarding the innate equity of capitalism, the correctness of business-friendly environmental policies, or the wisdom of a universal ban on abortions to serious critical scrutiny? Are conservative economists who teach Friedman over Keynes or Schumpeter over Galbraith engaging in indoctrination, or are they attempting to teach what in their mind is most truthful in their discipline? Indoctrination is a complicated charge to substantiate, and Bauerlein's scold could fairly be applied in small doses to virtually every perspective across the ideological spectrum, and not simply to liberals in particular or to the left in general.

LAB3 allegations may often be driven in part by more fundamental conflicts between progressive and conservative models of education. Progressive education calls for challenging unexamined beliefs while a conservative education's purpose is to impart an existing community's wisdom and morality. Conflict between the two models is by no means

inevitable, but when they do occur, as they clearly are at present, they bring into question basic epistemological principles and ideals that normally lie dormant and challenge certain fundamental professional norms of the academy, especially the commitment to objectivity. Much of the LAB literature expresses a commitment to "diversity of opinion," which surely can be valuable, but is not inevitably so. Allowing white supremacists or Stalinists into the academy would surely contribute to "diversity of opinion," but not in a way that would improve the education of America's citizens (Cobb 2005b; Hebel 2004).

Some LAB3 advocates defend the veracity of student survey data, arguing that students "are directly affected" by liberal attempts at indoctrination, and that students "have no reason to misrepresent what is happening" on college campuses (Neal, French, and Siegal 2005). This sort of claim seems to fly in the face of mounting evidence that students are being aggressively mobilized and sensitized to pounce on any hint of classroom discrimination and/or intimidation in an "Astroturf" interest group operation.<sup>18</sup> The possibility that disgruntled students who received lower grades than they deemed fair may chalk up their poor performances to professors' biases would appear to further undermine such a claim. Most studies produced in response to claims of political bias in the classroom have yielded little empirical evidence of systematic discrimination (Murphy 2006).

A troubling but unstated implication of the student complaints compiled by these various websites is the rejection of the proposition that credentialed faculty members should control the curriculum. A corollary assumption appears to be that students are in a better position to decide what issues should be taught and how best to teach subjects with political content. Recent campus protests appear to offer evidence of the growing sense "that students throughout the US are trying to control what they are taught, immunizing themselves against ideas that might challenge or offend them" (Roy 2005). While this sort of challenge might be viewed as benign or even progressive in one light, it also strikes at the heart of the whole enterprise of public education.<sup>19</sup> These kinds of mobilizations also challenge the political autonomy of the faculty and of the university as a whole. As Robert O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression, suggests this challenge has no historical analogy: "Even the most contentious or disaffected of students of the 1960's or early 1970's never really pressed

this kind of issue" (Pope 2004). Anecdotal evidence is emerging that some faculty members have been intimidated from broaching contentious issue areas (Bahr 2005).

The organization of conservative groups has also stimulated the organization of groups in defense of faculty under the claim of protection of freedom of speech and the protection of the classroom. For example, "Free Exchange on Campus," a coalition of student, faculty, and civil-liberties groups, published a report critical of hearings the Pennsylvania state legislature held on the topic of political bias in the classroom. In addition to pointing out the chilling effect of proposals such as a student bill of rights advocated by David Horowitz's group, the report included statements by students arguing that their classmates are not "vacuous imbeciles" that are being brainwashed by liberal faculty. Rather, they are "intelligent individuals with the capability of thinking critically about even their professors' beliefs" (Lipka 2006). In a similar vein, a faculty member who had been accused of a pro-minority bias questioned, "How often do white students make . . . objections when a professor includes only white male authors on the syllabus?" (Gasman 2006) Whether students should be in a position, be they liberal or conservative, to dictate the course material to credentialed faculty would seem intuitively on pretty shaky ground.

Finally, the argument that conservative graduate students face significantly higher obstacles in earning degrees and employment seems overdrawn. Compartmentalization and overspecialization no doubt exists and is a problem, but the notion that liberal faculty routinely discourages conservative students from selecting topics of their choosing for study represents a serious accusation of unprofessional behavior, and would require much more careful documentation to substantiate. The idea that a liberal economist would actively discourage a student from the study of Hayek or Schumpeter, or that a liberal political scientist would actively steer a student away from the study of the philosophy of Edmund Burke, Leo Strauss, or Michael Oakeshott conflates scholarship with ideology in a way that appears deeply at odds with the professional commitments of credentialed scholars.



## EVALUATING LAB4

A syllogism of sorts often arises in LAB discourse: where LAB claims include assumptions of bad faith, conspiracy, or malevolence, the likelihood of passionate repudiation on the part of educators and administrators rises concomitantly. Ball State University President Jo Ann Gora, responding to allegations that a freshman orientation course was indoctrinating students, denounced the attacks as orchestrated by David Horowitz's CSPC, writing, "Ball State is merely one target in an unfair and outrageous smear campaign" (Gora 2004). Similarly, *New York Observer* columnist Daniel Lazare points to the power corporate America wields over universities as a counter-weight to the influence professors wield in the classroom as even more pernicious and coercive. Lazare concludes,

I have little doubt that, beneath the pious avowals by conservatives of Horowitz's ilk that they are concerned to preserve academic freedom for liberals and conservatives alike, lies the cynical intent to unleash the most ignorant forces of the right in hounding liberal academics to death (Lazare 2004).

Additionally, attempts to generate statistical evidence of discrimination have been challenged as theoretically and methodologically unsound. A group of University of Pittsburgh political scientists have criticized the RLN study, arguing that the measures treat placement and advancement as indistinguishable, which creates serious questions about the findings of discrimination. Additionally, the Pittsburgh group also contends that the survey items used to measure ideological beliefs fail to differentiate between moral traditionalism and attitudes toward social welfare policies, which further undermines the claim of discrimination. A final complaint is that the RLN study offers an inadequate measure of academic achievement. As Ames and others (2005) suggest,

In political science, one article in the *American Political Science Review* is normally worth multiple book chapters. But, as the RLN measures achievement, a scholar writing five book chapters and attending two international meetings will have a higher score than one publishing three *APSR* articles over the same five year span.



In short, critics have argued that the most evidence supporting LAB4 is statistically unreliable, and LAB critics often impute either cynical or malevolent manipulation of data to LAB4 advocates.

A LAB4 critic might grant that a certain amount of discrimination in faculty hiring and promotion exists, but nonetheless reject the idea that such discrimination is systematic. Some discrimination might almost certainly be attributed to interpersonal rather than ideological conflicts. Like most professions, higher education has norms and mores. Academic culture is one in which argumentation is ubiquitous, and where skepticism is counted a virtue. While criticism of the academy, within limits, is acceptable, systematic attacks on the profession (e.g. "All college professors are anti-American) are liable to be viewed by members of the profession as acts of betrayal. Many of the instances of alleged punitive behavior documented in the *Chronicle of Higher Education* include references from other faculty members to personal antagonisms and blanket criticisms that could have been perceived as perfidious by other faculty members (Jacobson 2004).

Relying on student reports as evidence of faculty discrimination also raises serious difficulties. Student feedback is notoriously unreliable in situations where the surveyor's motivations can be detected, and some of the statistical evidence supporting discrimination against students contains leading questions like "On my campus, some professors use the classroom to present their personal political views" (Jacoby 2005). Such questions (this one constructed for a survey by the American Council of Trustees and Alumni) present grave methodological problems. First, the question fails to determine whether radical, liberal, or conservative faculty members are seeking to impose their personal political views on students. Second, the question virtually begs for an affirmative response, given the vague and unqualified language ("Some professors . . .") and the leading nature of the question (Jacoby 2005).

Additionally, anecdotal claims of student discrimination must be weighed against equally anecdotal assertions of liberal faculty members that they take exceptional measures to be respectful and inclusive of their conservative students (Lazare 2005; Bérubé 2003). An objective observer weighing the universe of "Professor said . . . /Student said . . ." confrontations would be unlikely to draw generalizable conclusions, but would rather feel compelled to weigh each case on an *ad hoc* basis. In all likelihood both behaviors occur, but in what proportion to

the wider universe of class hours being taught? Likewise, not every student, conservative or otherwise, receiving a disappointing grade from a professor, liberal or otherwise, is a victim of discrimination. Significant portions of the current generation of college students may be increasingly becoming close-minded, resistant to new ideas, and prone to seek confrontation and litigation as alternatives to studying material they reject. That generational change occurs among students as well as faculty seems a reasonable and defensible hypothesis.

Finally, the trauma of 9/11 has also seen a rise of overt attacks on liberal and radical faculty who have criticized U.S. foreign policy. In numerous instances, Republican lawmakers have called for the dismissal of faculty members who have questioned the wisdom of Bush administration foreign policy decisions (Fogg 2006). Such incidents in the wake of the 9/11 attacks offer considerable anecdotal evidence that ideological partisans, from both the left and right, are increasingly subject to calls for dismissal for no other reason than the utterance of politically objectionable or controversial beliefs.

## CONCLUSION

An analysis of the literature claiming liberal academic bias suggests that more support exists for some LAB claims than for others. LAB1 allegations appear to have some supporting evidence, although the degree of overrepresentation is unclear, and a good deal of comparative analysis with other elite professions would be required to conclude that LAB1 presents a problem for higher education.

The other three claims appear to be much more weakly supported. While credible anecdotal evidence of LAB2, LAB3, and LAB4 exists, many claims are balanced by equally credible faculty denials and/or mitigating circumstances. Furthermore, anecdotal evidence exists to raise counter-charges that some conservatives have deliberately politicized their classrooms, intimidated students, and in general sought to impose their views in an arbitrary manner. In any event, without further research, considerable room for skepticism exists concerning the most inflammatory claims.

What does this analysis portend for the state of Oklahoma? One hypothesis is that as the state moves more and more firmly into Republi-

can control at the state level, the likelihood of lobbying activities seeking legislative remedies to perceived academic discrimination will increase. Such lobbying efforts would likely include a greater interest group presence on Oklahoma campuses and intensified attempts to gather evidence supporting claims of ideologically-motivated discrimination.

The potential for research on this issue is extensive. Among the issues that could be included in a LAB research agenda include:

- A clear ideological differentiation of college professors' attitudes based on up-to-date survey data, using a statistically valid sampling model that would capture the complexity of the profession;
- Conducting local, state, regional, and national studies of LAB attitudes among faculty;
- A study of the ideological differences between conservative elites and the broader universe of conservatives;
- A study of the state legislature's efforts to assert political control over tenure and hiring decisions in higher education;
- A comparative study of various professional elite political attitudes (e.g. academics compared against military officers);
- A study of the ideological composition of the current population of students seeking terminal degrees;
- Charting student movements, their origins, and instances of calls for faculty resignations emanating from student organizations;
- Identifying a scholarly approach to LAB2 claims of discrimination on the part of faculty search committees.

These questions could form the basis of a research agenda that could shed considerable light on the issue of liberal academic bias, and facilitate a much clearer understanding of the interplay between ideological and professional culture in the various disciplines of higher education.

## NOTES

<sup>1</sup>Explicitly political disciplines are by no means the only targets of complaint. Education critics frequently raise the objection that professors of explicitly non-political subjects (e.g. physics, algebra, biology, etc.) introduce political opinions into their classroom discussions (Horowitz 2005).

<sup>2</sup>Controversial statements by college faculty in the aftermath of the 9/11 attacks have further heightened calls among politicians for tighter controls over the tenure and hiring process. The Ward Churchill controversy is an especially well-publicized illustration of the mounting antagonism between elected officials and educators. For an overview of the controversy, see Churchill (2001). The *Rocky Mountain News* and *Denver Post* have archived articles detailing the controversy generated by Churchill's essay, "The Justice of Roosting Chickens," as well as the attack on Churchill's status as a tenured faculty member. Churchill was fired on July 24, 2007, by the University of Colorado for academic misconduct unrelated to his essay. The University's statement on Churchill's firing is archived at <http://www.colorado.edu/news/reports/churchill/distefano062606.html>.

<sup>3</sup>In 2004, the Colorado legislature considered legislation that included a student academic bill of rights. In 2006, the Kansas House of Representatives entertained similar proposals, and Missouri's legislature considered legislation that would have effectively ended tenure for college faculty. In Texas, the University Board of Regents circulated a memo cautioning faculty to avoid introducing into their classrooms "controversial matter(s) not related to his or her subject."

<sup>4</sup>The URL for *Students for Academic Freedom's* complaint center is <http://www.studentsforacademicfreedom.org/comp/default.asp>.

<sup>5</sup>I owe this insight to communications with Stanley Rothman of Smith College. See also Glazov (2005).

<sup>6</sup>The study included self-identification data and a six-item survey of political attitudes. The survey tested for attitudes concerning homosexuality, women's employment, government's commitment to reduce the income gap, and government's commitment to protect the environment.

<sup>7</sup>The Pew study suffers from a very small sample size. Russell Cobb cites a *Chronicle of Higher Education* survey of 50,000 college faculty in which 48% self-identified as “liberal to far left,” while the rest self-identified as either conservative or moderate. See Cobb (2005d).

<sup>8</sup>In email correspondence with the author and elsewhere, Prof. Stanley Rothman of Smith College has argued that college faculty of the 19th century were predominately conservative. See Glazov (2005).

<sup>9</sup>Horowitz is former radical leftist who has migrated to conservatism. He runs the David Horowitz Freedom Center, which is dedicated to advancing the rights of conservative students and faculty in education.

<sup>10</sup>In one notable instance, the Duke University Conservative Union (DCU) published an open letter to Duke University president Nannerl Keohane in the *Chronicle of Higher Education* alleging that a number of the university’s humanities departments had “become increasingly politicized over the past few decades.”

<sup>11</sup> Author’s email communication with Professor Stanley Rothman, May 10, 2005.

<sup>12</sup> Stanley Rothman reinforced that conclusion in a personal communication: “We never said that discrimination, if it exists, is universal. These are statistical findings, which mean that they suggest that discrimination takes place on *some* campuses *some* of the time.”

<sup>13</sup>Included on the website are student reports of feeling intimidated by professors and fellow students if they question politically correct ideas, self-reports that professors frequently inject political comments into their courses, widespread perceptions on the part of students that they must agree with their professors in order to earn a good grade, the adoption of speech codes or sensitivity requirements that threaten freedom of expression, and the removal and/or discipline of professors for violating the norms of political correctness. See [http://www.goacta.org/issues/academic\\_freedom.html](http://www.goacta.org/issues/academic_freedom.html).

<sup>14</sup>As a purely theoretical matter, most liberals are not committed to “perfectionist” principles, and most are far more devoted to procedural norms designed to produce fair and just outcomes, as opposed to utopian ends. See Rawls (1971, 325-332). For further reading on the relationship between liberalism and perfectionism, see Arneson (2000) and Wall (1998).

<sup>15</sup>A counter-sampling of conservative and religious institutions like Bob Jones University, Brigham Young, Baylor, Southern Methodist, Claremont, Oral Roberts, Pepperdine, Patrick Henry, and Liberty Baptist Universities would likely produce a mirror image of monolithic conservative dominance, and in all likelihood would be an inaccurate portrayal of the universe of college faculty as those studies conducted by the CSPC.

<sup>16</sup>These concerns have been echoed by Barry Ames, David C. Barker, Chris W. Bonneau, and Christopher J. Carman (2005).

<sup>17</sup>For example, University of California at Berkeley law professor John Yoo, who as a member of the Bush administration authored the memo authorizing the use of torture, has faced significant criticism from liberal campus groups, who have demanded his resignation. See Jacobson (2004).

<sup>18</sup>*CampusWatch*, *FIRE*, *Camera*, and *Students for Academic Freedom* all have links encouraging students to contact the managers of those websites if they feel that they have a claim of abuse against a professor. Likewise, David Horowitz visits an estimated 30 campuses annually in an effort to organize conservative student organizations.

<sup>19</sup>"Inmates running the asylum" is the phrase that might naturally enter an educator's mind. For an interesting discussion of this problem, see Jacoby (2005).

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## **E-GOVERNMENT: TRENDS AT THE GRASS ROOTS**

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Electronic-government, or e-government, offers all levels of government the ability to communicate information, deliver services, and provide additional avenues designed to interact with and participate in government. Based on a detailed content analysis of government websites in conjunction with descriptive and multiple regression approaches, this study assesses and explains the level of e-government sophistication at the local level of government in the state of Oklahoma. The study hypothesizes that the council-manager form of government and increasing levels of organizational resources and socioeconomic wealth enhance e-government sophistication at the local level of government. While the findings mostly support the hypothesis, local governments in Oklahoma, like many municipalities across the country, have not fully embraced the potentials of e-government.

## INTRODUCTION

**Over the past two decades** innovations in information communication technologies have contributed to new forms of interaction between governments and citizens in this and other industrialized countries. The adoption of these technologies at different levels of government has contributed to the emergence of electronic-government, or e-government, designed to communicate information, deliver services, and offer additional avenues designed to interact with and participate in government. An increasing body of research assesses and explains the breadth of e-government at the international and national levels, but a systematic analysis of e-government at the local level and across different population sizes remains scant. In an attempt to fill this gap this study focuses on e-government at the local level of government.

Based on a detailed content analysis of government websites in conjunction with descriptive and multiple regression approaches, this study assesses and explains the level of e-government sophistication at the local level of government in the state of Oklahoma. The study argues that the council-manager form of government as well as increasing levels of organizational resources and socioeconomic wealth enhance e-government sophistication at the local level of government. Following a brief review of the literature about current trends in e-government, this study operationalizes the relevant concepts and introduces the methodological framework. Using a series of benchmarks, the third part of the study analyzes the level of e-government sophistication across a sample of towns and cities in the state of Oklahoma.

## TRENDS IN E-GOVERNMENT

With the aim to encourage the use of the Internet as an interactive tool of information retrieval, communication, transaction, and public outreach, many industrialized countries have embraced e-government (Hernon 2006; Nilsen 2006; Chadwick 2006; Petroni and Tangliente 2005; Brown 2005; Sancho 2005; Maniatis 2005). The idea of e-government in the United States was born by the late 1960s with the imagination of "interactive multi-access computer communities." Decades later, the idea of e-government crystallized with the release of



the 1997 *Access America: Reengineering through Technology* (Seifert 2006). For some, e-government can increase government efficiency, effectiveness, and transparency while improving the interactions between citizens and their government. However, technical, organizational, and cultural barriers continue to undermine the development of e-government in this and other industrialized countries (Petroni and Tagliente 2005; von Haldenwang 2004; Wong and Welch 2004; Snellen 2005; Seifert 2006).

As illustrated by the Center for Digital Government (2004), Darrell West (2005, 2004a, 2004b), Ramona McNeal et al. (2003), and Anna Brannen (2001), all states have embraced the idea of e-government. Noting the e-government differences among the states, McNeal et al. (2003) argue that the extent of e-government innovation at the state level are functions of legislative professionalism and, to a lesser extent, state professional networks. Others, like West (2005), explain e-government performance in relation to the number and breadth of online services, website reliability, quality of privacy policy, and overall performance using a range of organizational, fiscal, and political factors. While these factors, measured by levels of interest group lobbying, education, legislative professionalism, fiscal health, party competition, and citizen demand, are important, West (2005) concludes: "money is most crucial in terms of overall performance. States with the financial means to fund digital government are the ones that have earned the highest scores and received the highest ranks" (81).

Optimistic forecasts in the 1980s predicted the emergence of an automated city hall to become a reality in the near future. Others took a more realistic point of view arguing that "new information technologies show about a 10-year lag period between introduction in local government and acceptance and routinization in a significant population of local government" (King 1982, 25). Nevertheless, the use of the new information technologies at the local level has jumped from an estimated nine percent in 1995 to about ninety percent by the early 21<sup>st</sup> century (Holden, Norris, and Fletcher 2002). Some of the major factors determining the adoption of local e-government include the size of the local government unit, the type of municipal government and location. Large government units, especially those with city or metro status based on the professionally-driven council-manager form of government, adopted e-government earlier and to a

greater extent than their counterparts (Holden, Norris, and Fletcher 2002; Moon 2002).

The online presence of local government is apparent, but the degree of e-government sophistication continues to evolve. From a traditional bureaucratic paradigm, local government websites are mostly informative and are limited to providing a range of basic one-way services rather than transactional services (Phillips and Chase 1998; ICMA/PTI 2000, 2001, 2002; Ho 2002; Holden, Norris, and Fletcher 2002; Norris and Moon 2005). Responding to the information needs of specific groups within the community, city e-government has evolved beyond this information-oriented stage. From both an e-government paradigm and a user-oriented portal design, local governments are in the process of centralizing their citizen-oriented e-communication channels and categorizing their web-based services "according to the needs of different user groups" (Ho 2002, 437). Residents can communicate with a centrally managed service request system, learn about community events and employment opportunities, and acquire the agendas and minutes of various city governing bodies. At the same time, separate business websites offer relevant information concerning the local economic and fiscal environment (Ho 2002; Center for Digital Government 2005).

In recent years a dramatic increase in the electronic networking of the relevant local agencies and departments has allowed residents to conduct online services and transactions. An increasing percentage of cities now offer web portals and online services, including the payment of utility bills, parking tickets, building permits, and taxes, as well as the submission of city job applications, the application for permits, license renewal, and property registration. Mostly governed by the council-manager form of government, a series of relatively large and small cities such as Corpus Christi, Texas, Madison, Wisconsin, Roanoke, Virginia, and Delray Beach, Florida, have attained the highest level of service and transaction digitalization (Moon 2002; Center for Digital Government 2005). Despite these accomplishments, much more growth is possible, but the lack of technology, web staff, financial resources, and expertise have hampered further growth (Moulder 2001; Holden, Norris, and Fletcher 2002).

Over the past few years it has become increasingly possible to retrieve information about the local government and to complete various governmental transactions online. On the surface these ongoing ef-

forts sound simple but, as claimed and illustrated by research, they can profoundly shape government-citizen relationships. The provision of government online services "will likely have a positive effect on levels of citizen trust and confidence in their governments" (Nugent 2001, 230). Research by Caroline Tolbert and Karen Mosenberger (2006) confirms this claim illustrating that the use of local government websites creates greater trust in local government. Given this positive influence, greater accomplishments through information and communication technologies are possible. E-government can nourish an interactive and participatory democracy or e-democracy. At this stage, government websites are much more than highways flanked by billboards and a series of service stops along the way. Such sites can "extend public space [promoting] consultation and dialogue between citizens and their governments" (Lenihan 2005, 274).

Opinions about the merits of e-democracy are mixed. Advocates generally stress e-democracy as an extension of governance, while others perceive the implementation of it as running counter to a liberal democracy (Clift 2004; Knowles 2005; Johnson 2006). The optimists argue that the Internet can be used to "enhance our democratic processes and provide increased opportunities for individuals and communities to interact with government and for the government to seek input from the community" (Clift cited in Riley and Riley 2003, 11). Similar to the argument made by Robert Putnam (2000) about the relationship between technology and the loss of social connectedness, critics claim that the impersonal dialogue encouraged by e-government and the cultural values associated with the Internet-based technologies undermine the participatory nature of a democratic political system (Johnson 2006). Nevertheless, research points to promising advances made by local governments in e-democracy. The City of St. Paul, Minnesota, offers an email notification and personalization option while the Village of Hastings, New York, provides an online input system (Clift 2004).

Other studies take a broader scope and concur with the overall assessment of e-democracy at the local level. Studying websites in the hundred largest U.S. metropolitan statistical areas, James Scott (2006) finds that most cities allow citizens to interact with elected officials and use a variety of online services. This research also shows that while some cities try, only a few successfully facilitate participatory democracy through online public dialogue and consultation (Scott 2006; Holzer, Hu,

and Song 2004). As with the delivery of sophisticated online services, several obstacles remain regarding e-democracy. They include the lack of information technology expertise to reduce errors and tampering with the system, the limited access of the poor to e-government, and the uneven telecommunication infrastructure across the country (Moynihan 2004; Toregas 2001; Cavanaugh 2000).

### RESEARCH DESIGN

A single definition of e-government does not exist in the research literature since its conceptual scope ranges from the narrow to the broad. As discussed by Ignace Snellen (2005), e-government at the informative level provides basic information about government operations and services. Beyond this basic level government can seek higher levels of e-government by allowing citizens to interact and communicate with government, conduct online transactions with government, and gain access to other aligned websites of public and even a private nature (Snellen 2005). E-government is defined as the "transformation process of the Public Administration as a whole and of its interaction with people; this process, through information and communication technologies (ICTs), aims at optimizing the provision of services, at increasing participation by citizens and enterprises . . . ." (Petroni and Tagliente 2005, 24).

Typically, the implementation and assessment of e-government has relied on a sequential approach (Giuliani 2005; Petroni and Tagliente 2005; Scott 2006; West 2005, 2004; Chadwick and May 2003; Moon 2002). Accordingly, this study relies on a three-level approach to assess local e-government sophistication. It concerns the ability of local government websites to communicate information, offer a range of online services, and facilitate interaction with the government and the community. The billboard level emphasizes the display of information used by city residents to evaluate the performance of government and the elected officials. The service-delivery level allows multiple constituents, including city residents, businesses, and visitors to gain tangible benefits from the use of online services. The interactive democracy level offers a range of interactive features that facilitate both interactive communication and involvement in both the government and community. **Table 1** operationalizes the dependent variables associated with three-level assessment of e-government.

To measure the influence of organizational factors at the local level in terms of government type and the resources available on the dependent variables, this study distinguishes among the major forms of local government (i.e. town, council-manager, and mayor-council) and considers the current number of full-time employees. As for the socioeconomic wealth of the community, the measure includes the median household income. The study hypothesizes that the council-manager form of government and increasing levels of organizational resources and socioeconomic wealth enhance e-government sophistication at the local level of government. The three regression models that will be estimated can thus be summarized in the following equations:

$$\begin{aligned} Y_{\text{bibo}} &= \hat{a}_0 + \hat{a}_1 \text{town} + \hat{a}_2 \text{coma} + \hat{a}_3 \text{fuem} + \hat{a}_4 \text{hoin} + c \\ Y_{\text{sede}} &= \hat{a}_0 + \hat{a}_1 \text{town} + \hat{a}_2 \text{coma} + \hat{a}_3 \text{fuem} + \hat{a}_4 \text{hoin} + c \\ Y_{\text{inde}} &= \hat{a}_0 + \hat{a}_1 \text{town} + \hat{a}_2 \text{coma} + \hat{a}_3 \text{fuem} + \hat{a}_4 \text{hoin} + c \end{aligned}$$

Where: coma = council-manager; fuem = full-time employees;  
hoin = household income

To test the hypothesis, this study conducted a detailed content analysis of municipal websites between November 1 and November 30, 2006. Descriptive and multiple regression approaches were used to analyze the data. Based on population categories, this study, by oversampling municipalities with a population between 100 and 20,000, drew a disproportionate stratified sample of 60 incorporated towns and cities in the state of Oklahoma. Under Oklahoma law, localities with more than a population of 1,000 can choose their form of government (i.e. council-manager and mayor-council). Cities with more than 2,000 may become charter cities using any of the aforementioned forms, while places with fewer than 1,000 are generally considered towns (Oklahoma Almanac 2005). The United States 2000 Census, the *Oklahoma Almanac* (2005) and the Oklahoma Municipal League and the Oklahoma Conference of Mayors (2006) served as the principal data sources to determine the municipalities' size, governing structure, organizational resources, and socioeconomic characteristics.

TABLE 1

**The Three-Level Assessment of Local E-Government Sophistication**

Level	Definition	Indicators
Billboards	To evaluate the performance of government and the elected officials, government websites provide a wide range of government-related information to the local resident.	News and Notices Council Meeting Agendas Council Meeting Minutes Board/Committee Agendas Board/Committee Minutes Regulations and Ordinances Finances and Budget Background of Elected Officials Email Address for Elected Officials
Interactive Democracy	To facilitate and encourage communication with and involvement in government and community organizations, government websites offer forums and opportunities for informed policy discussion and participation in government and the community	Email Notification E-Comment Forms Discussion Forums E-Polling Voter Registration Facilitate Voluntary Services
Service Delivery	To serve multiple constituents, government websites offer city residents, businesses, visitors and others tangible benefits through online services.	Employment Opportunities Payment of Taxes Payment of Utility Payment of License Fees Payment of Fines Request for Services Request for Records Permit Application/Renewal Property Registration

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Source: Author's calculations.

## ANALYSIS

Interesting patterns emerge regarding website presence at the local level relative to both population size and form of government. As expected the prevalence of municipal websites generally increases for those localities included within the larger population categories. Based on the sample, towns between 100 and 1,000 citizens have no website presence, while only 22 percent of those municipalities between 1,001-2,000 people offer and maintain a website. This trend of low website presence reverses for cities with a population larger than 2,001. From that point on, the Internet presence of local government tends to increase steadily and all cities with a population of more than 30,001 offer websites to residents and visitors alike (see **Table 2**).

In addition to the size of municipalities, the form of government matters and yields expected patterns. Only 9.1 percent of the towns but 50.0 percent of the mayor-council municipalities in Oklahoma have websites respectively. As illustrated in **Table 3**, the website presence

**TABLE 2**  
**Website Presence by City Population Category**

City Population Category	Website Presence		
	No	Yes	Total
100-1,000	15 (100.0%)	0 (0.0%)	15 (100%)
1,001-2,000	7 (78.0%)	2 (22.0%)	9 (100%)
2,001-6,000	2 (25.0%)	6 (75.0%)	8 (100%)
6,001-10,000	2 (33.0%)	4 (67.0%)	6 (100%)
10,001-20,000	1 (12.5%)	7 (87.5%)	8 (100%)
20,001-30,000	1 (20.0%)	4 (80.0%)	5 (100%)
30,001-50,000	0 (0.0%)	4 (100.0%)	4 (100%)
50,001-70,000	0 (0.0%)	2 (100.0%)	2 (100%)
More than 70,000	0 (0.0%)	3 (100.0%)	3 (100%)
Total	28 (47.0%)	32 (53.0%)	60 (100%)

Source: Author's calculations.

TABLE 3

## Website Presence by Form of Government

	Form of Government			Total
	Town	Mayor Council	Council Manager	
No Website	20 (90.9%)	5 (50.0%)	3 (10.7%)	28 (47.0%)
Website	2 (9.1%)	5 (50.0%)	25 (89.3%)	32 (53.0%)
Total	22 (100%)	10 (100%)	28 (100%)	60 (100%)

Source: Author's calculations.

increases to 89.3 percent for municipalities governed by the council-manager system. Moreover, the use of the Internet by local governments as a means to provide a variety of information, services, and opportunities to interact with government or get involved in the community reflects the leadership position of the council-manager form of government.

**Table 4** reveals that the billboards level is the most developed area at the local level compared to the more sophisticated service delivery and the interactive democracy levels. Accordingly, municipalities offer a variety of services, ranging from information about the history of the municipality and government structure to information about the missions and services provided by the municipal departments. The most prevalent information provided via the Internet include council agendas and minutes, news and notices, other board and committee agendas, regulations and ordinances, and elected officials' email contacts. Common among the council-manager cities with a mean billboard score of 11.0, these information services are rarely provided by the towns and mayor-council communities with mean scores of 0.4 and 3.4, respectively.

The service delivery and interactive democracy levels are the least developed relative to all forms of government. **Table 4** illustrates that none of the towns and only a small fraction of mayor-council municipalities offer specific online services and interactive democracy tools. In contrast, council-manager communities generally score higher



TABLE 4

**Billboards, Services, and Interactive Democracy by Form of Government**

	Form of Government		
	Town	Mayor Council	Council Manager
<b>Billboards</b>			
Council Agendas	1 (4.5%)	3 (30.0%)	22 (78.6%)
Council Minutes	1 (4.5%)	0 (0.0%)	11 (39.3%)
Board/Committee Agendas	1 (4.5%)	3 (30.0%)	20 (71.4%)
Board/Committee Minutes	1 (4.5%)	0 (0.0%)	10 (35.7%)
Finance and Budget	0 (0.0%)	1 (10.0%)	13 (46.4%)
News and Notices	0 (0.0%)	3 (30.0%)	21 (75.0%)
Regulations and Ordinances	0 (0.0%)	2 (20.0%)	18 (64.3%)
Background of Elected Officials	0 (0.0%)	1 (10.0%)	9 (32.1%)
Email Address for Mayor	0 (0.0%)	2 (20.0%)	16 (57.1%)
Email Address for Council Members	0 (0.0%)	2 (20.0%)	14 (50.0%)
Billboard Mean Score	0.4	3.4	11.0
<b>Service Delivery</b>			
Payment of Taxes	0 (0.0%)	0 (0.0%)	0 (0.0%)
Payment of Utilities	0 (0.0%)	0 (0.0%)	7 (25.0%)
Payment of License Fees	0 (0.0%)	0 (0.0%)	0 (0.0%)
Payment of Fines	0 (0.0%)	0 (0.0%)	3 (10.7%)
Employment Opportunities	0 (0.0%)	2 (20.0%)	22 (78.6%)
Request Services	0 (0.0%)	0 (0.0%)	1 (3.6%)
Request Records	0 (0.0%)	0 (0.0%)	0 (0.0%)
Permit Application	0 (0.0%)	0 (0.0%)	0 (0.0%)
Property Registration	0 (0.0%)	0 (0.0%)	0 (0.0%)
Voter Registration Search	0 (0.0%)	0 (0.0%)	0 (0.0%)
Service Delivery Mean Score	0.0	0.4	2.4
<b>Interactive Democracy</b>			
Enabled Links	0 (0.0%)	4 (40.0%)	20 (71.4%)
E-Comment Forms	0 (0.0%)	2 (20.0%)	7 (25.0%)
E-Notification	0 (0.0%)	0 (0.0%)	1 (3.6%)
Voter Registration	0 (0.0%)	0 (0.0%)	1 (3.6%)
Discussion Forums	0 (0.0%)	0 (0.0%)	0 (0.0%)
E-Polling	0 (0.0%)	0 (0.0%)	1 (3.6%)
Facilitate Voluntary Service	0 (0.0%)	1 (10.0%)	13 (46.4%)
Interactive Democracy Mean Score	0.0	1.4	3.0

Source: Author's calculations.

regarding service delivery and interactive democracy with mean scores of 2.4 or 3.0, respectively. Accordingly, a number of council-manager cities post employment opportunities and allow residents to pay both utility bills and fines. Council-manager communities are also in the early stages of nourishing interactive democracy by allowing residents to learn about and get involved in civic organizations like churches, youth organizations, historical societies, and other volunteer-based organizations in the community.

The multiple regression analysis presented in **Table 5** further supports some of the previous trends. Overall, the model estimating the influence of forms of government, organizational resources, and socioeconomic characteristics on the level of e-government sophistication in terms of billboards, service delivery, and interactive democracy yielded influential and statistically significant coefficients. The results shown in **Table 5** suggested that organizational resources measured by number of full-time employees and socioeconomic characteristics measured by the median household income accounted for some significant variation in the overall model estimations. The town government, while insignificant, had a consistent negative impact on e-government sophistication. Accordingly, the most important variable contributing to increasing e-government sophistication, especially with respect to the billboards and service delivery levels was the council-manager form of government. Except for the interactive democracy level, the council-manager variable explained most of the variations in the billboards and service delivery models and remained significant at the  $p < 0.01$  level across the three levels of e-government sophistication.

## CONCLUSION

This study represents one of the first extensive and systematic analyses of municipal government websites in the state of Oklahoma. Guided by the literature on e-government sophistication and based on a disproportionate stratified sample of 60 municipalities, this paper assesses the ability of local governments to provide information, services, and democracy-enhancing tools via the Internet. The study hypothesizes a positive relationship between the council-manager form of government, organizational resources, and socioeconomic characteristics on the one

Table 5

## The Determinants of Local E-Government Sophistication

	Billboards	Service Delivery	Interactive Democracy
Town	-.096 (1.701)	-.072 (.488)	-.171 (.573)
Council Manager	.460 (1.841)**	.451 (.528)**	.330 (.620)**
Full-time Employees	.266 (.004)*	.094 (.001)	.360 (.001)**
Median Household Income	.134 (.000)	.281 (.000)*	-.046 (.000)
Constant	-1.548 (2.509)	-1.439 (.720)*	1.008 (.845)
R Square	.640	.535	.536
Adjusted R Square	.613	.500	.501
F	23.553***	15.245***	15.293***
N	60	60	60

\* $p < 0.05$  \*\* $p < 0.01$  \*\*\* $p < 0.001$

Source: Author's calculations.

Note: The numbers are the standardized least squares regression coefficients, with the standard error in parentheses. The number of asterisks indicates the level of statistical significance. Tolerance statistics show that there is no multicollinearity in the model.

hand and local e-government sophistication on the other. The descriptive and multiple regression analyses mostly support the hypothesis but also find mixed results depending on the level of e-government sophistication.

As suggested by the literature, many government sites associated with larger municipalities, endowed with more organizational resources, and governed by the council-manager system attained relatively high levels of e-government sophistication. These municipalities, in contrast to their smaller counterparts and those governed by the town and mayor-council systems, did particularly well in terms of providing a wide array of information concerning the structure, function, and operation of government. Beyond this information-driven billboards level, local e-government performance regarding online service delivery and interactive democracy declined substantially. A relatively small proportion of municipalities provided online services or facilitated a meaningful involvement of residents in government and in the community, as defined by the service delivery and the interactive democracy levels. Nevertheless, across the levels of e-government sophistication the council-manager municipalities clearly outperformed the town and mayor-council communities.

As demonstrated by other scholars, the findings clearly suggest that local governments have adopted the Internet to inform their residents. With respect to providing online services and enhancing democratic engagement through the new information communication technologies, local governments in Oklahoma are in the early stages of implementation. As such, despite the advances made in information communication technologies in recent decades, local governments in Oklahoma, similar to many municipalities across the country, have not fully embraced and implemented the range of possibilities associated with e-government. This research encourages other scholars to discuss the delivery of online services and the meaning of e-democracy at the local level while at the same time comparing the level of local e-government sophistication across municipalities in the United States as well as other countries.

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## THE HISTORY AND USE OF DIRECT DEMOCRACY IN OKLAHOMA

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Oklahoma has a rich history of direct democracy. It was the first state to incorporate direct democracy into its constitution and it has been used frequently throughout the past century. This paper examines the origin of the initiative and referendum and how they were both used to implement major policy changes in the state.

**In describing the political character of Oklahoma**, some observers noted that one feature in particular deserves mentioning—populism (Morgan et al. 1991). They define populism as “a commitment to enlarging the economic and political power of ordinary people as opposed to the wealthy,” and claim that this idea runs deep in the political traditions of the Sooner State. This attitude permeated the Oklahoma and Indian territories near the end of the nineteenth century and was fueled in large part by a distrust of corporations, eastern banks, railroads, and other monopolies during tough economic times. Many settlers in Oklahoma

believed that ordinary people should have a voice and that government could play a positive role in looking out for the needs of the commoner. As Oklahomans celebrate the 100<sup>th</sup> anniversary of their state's constitution, it is interesting to look at the elements of populism embodied in the document. In addition to the restrictions it places on railroads and large corporations, Oklahoma's constitution provides a mechanism for average citizens to make their voices heard in the policy making process.

Oklahoma has a rich tradition of direct democracy. The ballot initiative and referendum have been tools used by citizens to pass laws in the state. Prior to Oklahoma's constitution, only four states allowed the initiative and referendum (Morgan et al. 1991). Today, twenty-seven states have some form of initiative or popular referendum (IRI 2006). Since 1908, Oklahomans have regularly gone to the polls to vote on various ballot measures. Morgan and others (1991) point out that Oklahomans can expect to face eight or ten of these measures every election year. Issues ranging from cockfighting to contracts for university presidents have appeared on the ballot over the years. This paper provides a brief history of the initiative and referendum process in Oklahoma and examines how these tools have been used.

### FOUNDATIONS OF DIRECT DEMOCRACY

As the populist movement began to gather momentum in the late 1800s, frustrated citizens throughout the United States sought ways to reform the political process. Inspired in large part by the Federal Constitution of Switzerland adopted in 1874, political observers in the United Kingdom and the United States began writing about the Swiss experiment that featured the referendum—a proposed law submitted by a governing body to citizens for approval, and the initiative—a proposed law submitted by citizens for a vote by the people. Perhaps the most influential writer was J.W. Sullivan. Sullivan was intrigued with the process in Switzerland and traveled there to observe it first hand. Upon his return he observed,

They have forestalled monopolies, improved and reduced taxation, avoided incurring heavy public debts, and made a better distribution of their land than any other European country. They

have practically given home rule in local affairs to every community (Piott 2003).

Sullivan made a case for direct democracy in the United States arguing that it could cure many of the nation's political ills. His underlying claim was that sovereignty and self government should rest with the people and direct democracy provided a mechanism for this to happen. Sullivan wrote extensively on the subject of direct democracy and the use of initiatives and referenda for newspapers and magazines such as the *New York Times*, *Twentieth Century*, and *Chautauquan Magazine*. He published *Direct Legislation by the Citizenship through the Initiative and Referendum* in 1892. This book was the first to make a case for direct democracy in the United States and sold nearly forty thousand copies within three years (Piott 2003). Direct legislation leagues began sprouting up in the states of New Jersey, South Dakota, Oregon, Kansas, Michigan, Nebraska, Washington, and Colorado. In 1896, direct Legislation had found a place in the Populist Party platform in a number of states. During their convention in St. Louis in July of that year, Populists organized a national Direct Legislation League.

Populism made its way into the Indian and Oklahoma Territories. Farmers and miners certainly felt the pinch of the depressed 1890s. As political demands seemed to fall on the deaf ears of the major political parties, many turned to the Populist Party to push for reforms. Oklahoman consumers associated inflated prices and a lack of concern for health or safety with corporate trusts and monopolies. For many Oklahomans, a number of reforms were needed to regain the confidence of an unresponsive government including new tax codes and strict corporate regulation. One particular reform that drew support from a number of factions was the initiative and referendum process. The idea that citizens could directly influence legislation was favored by many regardless of occupation. An early labor leader in the Twin Territories, Peter Hanraty, put it this way:

[W]hy should we vote for rulers when we ourselves can become the sovereign power through the initiative and referendum. It will simplify[sic] laws . . . simplify government[sic] . . . kill monopoly . . . purify the ballot . . . broaden manhood . . . make people think . . . abolish special privileges . . . wipe out plutocratic dictation

... reduce taxation . . . prevent the bribery of law makers . . .  
 establish home rule in all municipalities . . . [and] restore to the  
 people their natural rights (Hanraty 1905).

Nevertheless, the concept of the initiative and referendum was so new at the turn of the twentieth century that Oklahoma's territorial legislature did not quite know how to deal with it. At least one legislator had proposed the adoption of the initiative. State representative S.C. Whitman of Guthrie noted, however:

The country was new, and we had but a very few people who had ever heard of such a thing [initiative]. My bill never got out of committee and hence created little interest (Piott 2003, p. 66).

Changing tactics in order to make progress on his proposals, Whitman turned to the Ancient Order of Loyal Americans (AOLA) for help. The AOLA was organized in 1893 with its headquarters in Michigan. Those involved with the organization were seeking ways to expand membership and Oklahoma was an ideal territory. An "advisory referendum" was an important component of the organization's purpose. AOLA members would collect signatures for and against a particular measure and then be presented to the state or territorial legislative body for action. Whitman set out to organize branches all through Oklahoma, but his efforts never amounted to any notable action.

Theodore L. Sturgis of Perry, Oklahoma, founded the Direct Legislation League in 1899. The group promoted direct democracy by printing a statement of principles and distributing them throughout the territory. Advocates would have liked to see elements of direct legislation appear in any future Oklahoma state constitution, but the dominant Republican Party was not clamoring to adopt such a measure. Sturgis feeling that his efforts had fallen flat, noted:

The prospects in this Territory are that the Republican Party will force through a bill for Statehood and Constitution without any tincture of D.L. [direct legislation] in it – that being their particular abomination (Piott 2003, p. 67).

In 1895, one year before his first presidential campaign, William Jennings Bryan visited Oklahoma territory for the first time. Although he

had not reached the prominence and stature that he would in subsequent years, his appearances throughout the territory drew large audiences. Bryan's brand of Populism appealed to a number of the hearty settlers in the area. Increased participation in government along with tax reform, the expansion of currency, and regulation of utilities were all ideas that struck a chord with many. Despite political defeats in 1896 and 1900, Oklahomans enthusiastically supported Bryan. When it became clear that statehood was approaching, a movement began to induce Bryan to move to Oklahoma and become the state's first senator (Lewallen 1995).

Bryan was on his way to becoming one of the most influential politicians of his era. Kazin (2006) argues that only two presidents, Theodore Roosevelt and Woodrow Wilson, had a longer lasting impact in shaping the political climate during a period of reform that took place between the 1890s and the 1920s. He was elected to Congress in 1890 and his reputation soon spread across the country. Bryan was a gifted speaker who drew crowds wherever he traveled. He was deeply religious and many looked to him as one who could purify a government that had become corrupt as businesses gained greater influence in the halls of lawmaking institutions. He spoke out against banks and promoted free silver, a move that would have encouraged more of an inflationary condition making it easier for farmers to pay their debts. He attacked the railroads and other monopolizing interests and advocated trust-busting. His appeal ran deep with the commoner. Farmers and miners in Oklahoma who had been plagued with economic hardship found solace in Bryan's cause.

The enabling act outlining conditions for statehood was passed by Congress on June 16, 1906. Delegates to the Oklahoma's Constitutional Convention would be elected in November. Bryan showed a particular interest in Oklahoma's convention and visited the state several times leading up to it. Prior to the November 1906 elections, Bryan stumped throughout Oklahoma and Indian territories urging voters to select Democrats for the convention. Bryan's efforts paid off when voters elected Democrats to fill 99 of the 112 delegate seats.

The Oklahoma Constitutional Convention convened on November 20, 1906. Bryan and other populist and progressive leaders were invited to attend. While he declined the invitation, Bryan did send a thirty-page handwritten letter offering some guidance. Some of his proposals included an expanded bill of rights, election of lower court judges,

prohibitions on campaign contributions from corporations, regulation boards for municipal franchises, and regulations on work days, child labor, and industry. Perhaps the crown jewel of Bryan's proposals was the call for an initiative and referendum process where the people could have a direct impact on state statutes.

Oklahoma's new constitution included a number of Bryan's suggestions, but it did not sit well with President Theodore Roosevelt who thought that a number of items would be better written in a statute rather than in a constitution. He found the system of economic regulation to be more akin to socialism and he objected to the election of judges. Roosevelt's eventual successor and Secretary of War, William Howard Taft, was sent to Oklahoma to condemn the new constitution before its ratification. Speaking to a packed hall in Oklahoma City, Taft argued that it was a combination of "Bourbonism and despotism, flavored with socialism." He attacked Bryan's populist ideas and even labeled the provision for an initiative and referendum "a mockery" (Lewallen 1995).

For his part, Bryan defended the ideas embodied by Oklahoma's constitution. Using the somewhat derogatory term that the *New York Times* applied to convention delegates, Bryan gave his famous "Let the People Rule" speech to the People's Lobby in Newark, New Jersey on May 1, 1907:

I say to you that it is the best constitution in the United States today. I was interested to find how carefully those cornfield lawyers had putted up the holes that the trust-fed lawyers had been making in other constitutions. It was really interesting to see how these cornfield lawyers, looking at the question from the standpoint of the common people, had corrected the things that had been found weak in the constitutions of other states, and the best thing in that constitution is the provision for the initiative and referendum. No matter what mistakes you make in your constitution, if you give the people the power to correct the mistakes they will correct them (Bryan 1907).

William H. Murray, president of the Oklahoma Constitutional Convention and future governor of the state of Oklahoma, signed the proposed constitution on July 16, 1907, using a pen that belonged to William Jennings Bryan. Despite concerns and appeals voiced by the Roosevelt administration, voters in Oklahoma sided with Bryan and the



majority of the delegates and ratified the new governing document by a vote of 180,333 to 73,059 on September 17, 1907. Bryan was invited to be an honored guest when the new legislature met in December 1907 and Oklahoma became the first state in the Union to include the initiative and popular referendum in its original constitution.

### INITIATIVES AND REFERENDA

The terms initiative and referendum are so frequently used together that they may seem synonymous. Initiatives involve the collection of signatures on a petition to place a certain state question or statute on a ballot for voters to accept or reject. The referendum involves the acceptance or rejection of laws or amendments that have been proposed by the legislature. There are two categories of referenda:

- 1) popular referenda where the people collect enough signatures to refer legislation enacted by the legislature to the people for a vote, and
- 2) legislative referenda where state legislatures or other elected officials submit a measure to the people for acceptance or rejection.<sup>1</sup>

Oklahoma law specifies that all petitions for the initiative and referendum need to be filed with the Secretary of State. The number of required signatures varies depending on the type of ballot measure - initiative, referendum, and change in the state's constitution. It is also based on a percentage of the total votes cast at the election of the state office receiving the highest number of votes. These elections are the presidential election and the midterm election two years later. Since voter turnout is consistently lower during the midterm election, some strategists have taken advantage of the lower signature requirement by circulating petitions following midterm elections rather than presidential elections. To submit a popular referendum to the legislature for approval, petitioners must collect enough signatures to equal five percent of the total votes cast. For an initiative, the requirement is eight percent unless it is an initiative for a constitutional change in which case it is fifteen

percent. Finally, to get an initiative or referendum that had been rejected on the ballot, petitioners are required to garner twenty five percent.

### USING THE INITIATIVE AND REFERENDUM IN OKLAHOMA

Oklahoma's first successful initiative was voted on in June 1910. The issue was the construction of a state capitol building and where it should be located. Along with that decision, voters had the opportunity to vote for Guthrie, Oklahoma City, and Shawnee as the locations for the state capital and its building. Oklahoma City won by a sizable margin, but some legal issues took the action to the Oklahoma Supreme Court. Despite legal challenges, the voice of the people won out.

A number of ballot measures in Oklahoma have dealt with the regulation of liquor. Oklahoma has the distinction of being the only state in the Union where prohibition was written into its constitution. Oklahomans did not waste a lot of time to try and change things. The state's first ballot initiative in 1908 was State Question 1 with subsequent questions numbered sequentially. This initiative proposed the creation of state agency that would be able to dispense liquors to those who had a prescription. This measure failed garnering 46 percent of the vote. Two years later, an initiative to license liquor sales in the cities was placed on the ballot. This vote failed by an even wider margin. Despite statewide prohibition, alcohol still presented problems throughout the state. In 1914 an initiative was launched that made drunkenness an impeachable offense for public officials serving in state government. It passed at the polls with 78 percent of the vote.

Initiatives tackling the prohibition problem came up several times between 1908 and 1959. National prohibition ended in 1933 with the ratification of the 21<sup>st</sup> Amendment. Despite national trends, Oklahoma held on to prohibition. In 1933 a measure passed that defined non-intoxicating drinks with an alcohol content of not more than 3.2 percent. Attempts to repeal statewide prohibition were introduced by initiative in 1936, 1940, and 1949 and an option for a county repeal was on the ballot in 1957. All of these measures failed at the polls. Finally, in 1959 the wet proponents got what they had been seeking for years. Fifty-six percent of the voters ended statewide prohibition passing State Question

386. Oklahoma was among the last states to do so, being surpassed only by Missouri who ended prohibition in 1966.

Despite prohibition's repeal in Oklahoma, the dispensation of liquor was still strictly controlled. Subsequent measures were introduced on the ballot that would loosen up some of the state's tightly regulated liquor laws. In the 1970s, measures calling for a "liquor by the drink" law were twice defeated at the polls. Making a case for economic improvement, proponents were able to muster enough votes to pass such a measure in 1984. The 1959 constitutional amendment that repealed prohibition, also made it illegal for liquor stores to be open on Sundays, certain holidays, and on election days when the polls were open. Package store owners and operators gained enough support to get a measure on a 1990 ballot that would allow them to sell liquor on election days. The measure was handily defeated with nearly 70 percent of the vote. The issue resurfaced again in 2006 with State Question 733. A preliminary poll (Krehbiel 2006) indicated that the general public opposed the measure by a margin of almost 3 to 1. However, on Election Day SQ 733 passed with 53 percent of the vote. Perhaps part of the reason for switch in opinion rests in how the issue was presented to voters – as an archaic piece of legislation that was out of step with the times and needed to be changed. Even an editorial in *The Oklahoman* (2006) noted, "The days of trading booze for votes have long since passed, and we see no need to continue this restriction. Oklahomans should vote yes on this question."

Some of the more interesting measures to appear on the ballot in Oklahoma over the years have dealt with so-called moral issues. Haider-Markel and Meier (1996:333) note that a moral issue or policy typically follows a pattern in which "at least one advocacy coalition . . . portray[s] the issue as one of morality or sin and use[s] moral arguments in its policy advocacy." Using this definition, there have been a number of cases where religious communities have been involved in supporting or opposing various initiatives or referenda, thus making them moral issues. Religious organizations have campaigned against liquor as well as various forms of gambling.

Slot machines were all the rage in Oklahoma during the 1930s. State law provided for their use under certain conditions. They could not be in operation in open public areas. As the industry flourished, rumors spread that racketeers from Kansas City were going to set up operations in Oklahoma. Some operators pushed the limits of the law plac-

ing machines in open and easily accessible areas. Growing complaints prompted Governor Marland to order all state officers including the Tax Commission, the State Bureau of Investigation, and the Highway Patrol to report the use of such machines to county attorneys and provide the governor with the same report. In issuing the dictate Marland said;

It has been brought to my attention that gambling devices are in open operation in many of our counties . . . . Parents complain that these machines are placed in stores and other public places in the vicinity of schools, and that children use part of their lunch money to gamble (*The Oklahoman*, 1937).

Clergy from several churches began a petition drive that ultimately led to placing State Question 216 on the ballot in 1938. Despite a dispute over signatures, the courts and Secretary of State Frank Carter certified the petition. Oklahoma voters voted overwhelmingly to not repeal restrictions on the slot, pin, and marble machines. The restrictions remained in place but were modified by the passage of State Question 712 in 2004, which allowed for the use of electronic gaming machines in tribally-owned casinos and certain licensed racetracks.

The gambling issue largely faded from the public eye. Oklahoma laws did not permit it in any form and citizens for the most part seemed satisfied with the laws on the books, except for one industry. Pari-mutuel betting had been off limits for decades. Proponents of horse racing had long argued that the industry could be very profitable, bringing jobs and money to Oklahoma. A state question allowing for the establishment of race tracks first found its way onto the ballot in 1974. The Oklahoma Horsemen's Association, a group made up of several horse associations in the state, was instrumental in promoting the measure, but in the end it failed due to opposition forces casting the measure as one that would increase crime and social woes. An editorial in *The Oklahoman* summed up the opposition's argument.

Oklahoma does not need any more stimulants for crime. Race track betting has long been associated with various sorts of undesirable citizens, which should be enough to cause voters to turn down Question 498. But even worse is the obvious opportunity it would provide for expanding graft and corruption at top levels

of state government. We've had enough of that already. Too much is at stake for Oklahomans to risk a bet on State Question 498 (Chamberlain, 1974)!

State Question 498 was indeed voted down by voters in 1974 but resurfaced again in 1982. This time around proponents argued more forcefully for its passage, drawing attention to the potential economic benefits. Voters approved the measure and horse racing became legal in Oklahoma. Morgan et al. (1991, p.3) note that even the conservative *Daily Oklahoman* pointed out the economic benefits in its coverage of the opening of the state-of-the-art race track Remington Park in 1988.

A state sponsored lottery was another issue that had more than one life on the ballot. When it was introduced in 1994, religious organizations formed a coalition to oppose the lottery question. In addition to religious groups, proponents of horse racing put up strong opposition. They were successful in getting pari-mutuel betting passed and they now saw a lottery as a potential competitor and contributed to the campaign against it. The proposition was defeated in 74 of Oklahoma's 77 counties. Following the election, an opinion piece in the *Daily Oklahoman* noted:

The state's growing horse industry demonstrated it remains a potent political force both in raising money and attracting voters to the polls. Horsemen were the major force in legalizing pari-mutuel gambling a few years ago. They were equally effective in opposition to government sponsored lottery gambling (*Daily Oklahoman* 1994).

Ten years later, however, with those supporting horse racing pushing for the passage of gaming machines at racetracks, the lottery experienced a rebirth and was approved by a margin of nearly 65 percent of the votes cast.

Other issues that have been prominent over the years include the ban on cockfighting, passed by voters in 2002, and a 2001 right-to-work law giving workers the right to opt out of union membership. Oklahomans have also used direct democracy to assert more control over their elected officials. Two-thirds of Oklahoma's electorate voted to place term limits on members of the state's legislature in 1990. The same percentage of voters placed term limits on Oklahoma's congress-

sional delegation in 1994. This action was invalidated by the Supreme Court two years later. Oklahomans also voted for the direct election of the state's Labor Commissioner in 1988. Prior to that time the position had been appointed by the governor.

### DIRECT DEMOCRACY TODAY

Direct democracy is a reflection of the populist traditions from which Oklahoma became a state. Over the years, citizens of Oklahoma have used the initiative and referendum to put laws into effect and influence their system of government. William Jennings Bryan would no doubt be pleased with many of the measures that passed at the polls through the initiative or referendum process. This is not to say that the process is not without its flaws.

David Rausch (1997) points out two trends in the United States and Oklahoma that raise questions concerning the populist nature of the initiative and referendum. The first trend is the professionalization of direct democracy. In this case, petition management firms are paid big bucks to collect signatures and get measures on the ballot. He notes that it also opens the door for fraud when circulators are paid by the signature. Indeed the Oklahoma Supreme Court threw out a petition in 2006 finding that the circulators engaged in fraud by using false Oklahoma addresses (Clay 2007). States like Colorado have sought restrictions on petitioners to limit out-of-state influence.

The second trend is the enormous costs that interest groups pay to finance a campaign in order to get a ballot measure passed or defeated. State questions on the ballot in 2004 alone brought in nearly \$4 million in ad sales to the Oklahoma media. The group Oklahomans for Education and Jobs spent \$1.9 million in support of the tribal and race track gaming measure. The tobacco industry contributed nearly \$2 million to defeat State Question 713, a measure that in effect raised the sales tax on cigarettes (Price 2004). Rausch (1997) argues that the role of money in direct democracy causes some concern among observers who see Oklahoma's current form of direct democracy as a process far removed from its original intent. Rather than empowering citizens, it has often been used as a tool for special interests. William Howard Taft referred

to Oklahoma's constitutional provision for an initiative and referendum as a mockery. Observers today may still side with Taft, while others still see the provision as one of empowerment.

#### NOTES

<sup>1</sup>For a more detailed explanation, see the Initiative and Referendum Institute at the University of Southern California's website at <http://www.iandrinstute.org>.

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## REVISITING LOBBYING IN OKLAHOMA

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The authors surveyed 369 registered Oklahoma lobbyists by mail in 2006. One hundred sixty-three questionnaires (44 percent) were completed and returned. Lobbyist responses demonstrated there was no lawyer-lobbyist stereotype in Oklahoma. Lobbyists in Oklahoma were as experienced and educated as state lobbyists elsewhere but were paid less. Their average age (51) was typical of state lobbyists as was the percentage of males (72 percent). Lobbyists were found to be conservative or middle-of-the-road although somewhat more Democratic than Republican. Two measures of political influence indicated that petroleum was particularly powerful in both measures and gaming in one. Some of the most influential interests included petroleum, health care, education, business, transportation/communication, banking/finance, gaming, agriculture, realtors/insurance, and utilities. Groups found to be losing influence included labor and agriculture. Lobbyist reactions to changes in lobbying were much more often negative than positive. Nevertheless, lobbyists were favorably disposed toward a career in lobbying.

## INTRODUCTION

In 1963 political scientist Samuel Patterson published an article in the *Journal of Politics* entitled "The Role of the Lobbyist: The Case of Oklahoma." Patterson's sample of forty-three Oklahoma lobbyists was drawn in 1961 (Patterson 1963, 73). In 1993, Robert England and David Morgan provided another study of lobbying in Oklahoma entitled "Oklahoma: Group Power in Transition" (p. 263-284). Some forty-five years after Patterson's ground-breaking study, the present authors developed another questionnaire (Fowler 1995; Pattern 2001, 65-72; Rea and Parker 1997) to be administered to Oklahoma lobbyists. During the winter, spring and summer of 2006, four waves of questionnaires were mailed to the 369 lobbyists then registered with the Oklahoma Ethics Commission (2006). One-hundred sixty-three questionnaires, 44 percent, were completed and returned by the respondent-lobbyists.

The authors used four points of reference in predicting change or continuity in Oklahoma lobbying activities. The first was lobbying in Oklahoma during the early 1960s. The second point of reference was Oklahoma lobbying during the 1980s and 1990s. The third was the situation most often found today in state lobbying elsewhere. The fourth point of reference was the electorate and general public in Oklahoma over time. Whereas one or more of these reference points may not be available in a particular set of comparisons, at least two of the four should be.

It may be that what was true about Oklahoma lobbying in the 1960s or the 1980's and 90's is in general agreement with what is typical of lobbying in most states today. Given such agreement, what may be expected today in Oklahoma is predictable. But what if lobbying in Oklahoma yesterday differs significantly from lobbying in most states today? The question would then become which road is more likely, the road followed by most states today or the road less traveled—i.e., the "Oklahoma way" as evident in the latter third of the 20<sup>th</sup> century.

The authors predicted that lobbyists in Oklahoma would be more like their colleagues in other states today than their predecessors in Oklahoma. However, the "Oklahoma way" was expected under certain circumstances. If, for instance, continuing internal or external causes affected Oklahoma uniquely, the Oklahoma political way was predicted over what obtained broadly across American states. Thus the fact that Oklahoma has always had a large population of Native-Americans will

probably continue to make a positive difference in the influence of such interests as gaming on tribal lands.

If changes in external developments affected an Oklahoman interest of historic but variable influence (i.e. an oil shortage), continuity, in the sense of returning to a dominant position of influence, was expected. As proud as Oklahomans are about their heritage, their conservative political culture is not believed to cause political continuity so much as a unique history or demography or a particular natural resources does. For example, gaming goes against Oklahoma's traditionalistic and fundamentalist political culture. However, gaming is in accord with a demography that includes a large population of Native-Americans with extensive sovereignty over enterprise in their tribal lands. Thus demography would be controlling over political culture.

Oklahoma is situated in the middle of what has become the nation's conservative powerhouse, the American Sunbelt. As a result, it is one of the key states in the small-state lock on the electoral-college and plays a larger part in the making of presidents than might be expected from its population alone. Similarly, the Sunbelt is the seedbed of conservative leadership in Congress and indeed, throughout American federalism. Shifts in regional power that reinforce conservatism in states like Oklahoma probably accelerate shifts toward the national Republican Party.

Confirmation or refutation of the authors' expectations was provided by lobbyist responses in this study. Most lobbyists at the national as well as the state levels get into lobbying as a second career (Berry and Wilcox 2007, 102; Rosenthal 2001, 25-30; Davis, Metla, and Herlan 2006, 5). Nevertheless, once in lobbying they typically stay put for many years (Rosenthal 2001:33).

### **WHAT CAREER PATHS DO OKLAHOMA LOBBYISTS FOLLOW INTO LOBBYING?**

At the national level lobbyists are often lawyers (Berry & Wilcox 2007, 102-106; deKieffer 1981, 193-199; Hrebenar 1997, 82-83, 92-96; Mahood 1990, 56-57; Thomas and Hrebenar 1991, 65-74; Wright 2003, 93). At the state level, however, lower proportions are lawyers and higher proportions are from various other occupations (Rosenthal, 2001, 23, 30-33). While England and Morgan did not trace the career

paths of Oklahoma lobbyists, Patterson found that the stereotypical lawyer lobbyist did not materialize en masse in 1961. Of his forty-three respondent-lobbyists, only four were lawyers, 10.8 percent (Patterson 1963, 75-78). On the other hand, some 23.3 percent (N=10) of Patterson's respondent-lobbyists were professionals other than lawyers including teachers, pharmacists, policemen, firemen, ministers, and editors (Patterson 1963, 77).

In light of Oklahoma's political history and of patterns across the states today, it seems safe to predict that the lawyer lobbyist is still not stereotypical. As may be seen in **Table 1**, lawyers made up 11 percent (N=17) of the 2006 sample of 163 Oklahoma lobbyists. Nearly 21 percent (N=32) of the present sample came from professions other than law such as education, media, and medicine.

It should be noted that while there is not the proportion of lawyer lobbyists in the states that there is in Washington, there probably is a significant strata of former legislators, officials, or their assistants (Rosenthal 2001, 28; Thomas and Hrebener 1991, 65-66). This is especially true in states which have adopted term limits comparatively recently, such as Oklahoma (Francis-Smith, 2004). Thus, one would expect to find a large portion of ex-legislators or ex-officials or ex-assistants to officials to be among Oklahoma's lobbyists.

Was that true in 1961? Patterson drew the conclusion that ex-legislators were only infrequently lobbyists, or 11.6 percent, N=5 (1963, 76). However, he classifies another five lobbyists as "non-legislative" public office holders (Patterson 1963, 78). Together these legislative and non-legislative ex-officials amounted to ten lobbyists or 23.2 percent of the 1961 respondent-lobbyists. Similarly, 21 percent (N=33) of the 2006 Oklahoma respondent-lobbyists came to lobbying through "politics" or "government." Thus, by the designations used in these studies, there is not much difference in the proportion entering lobbying via public service in 1961 and 2006, roughly one in five.

Similarly, the initial impression from the Patterson sample alone was that there were few business backgrounds among lobbyists in the 1961 sample. Only three of Patterson's sample of forty-three lobbyists were businessmen, all three in the insurance business. These three lobbyists amounted to about 7 percent of Patterson's 1961 sample. However, this may be a function of this particularly small sample since business

lobbies and lobbyists were relatively numerous in 1961 (Patterson 1963). This was also true in the mid-1980s (England & Morgan 1993). In fact, since the 1970s, the government of Oklahoma has been increasingly involved in economic development (Hunter 1999; Morgan, England & Humphreys 1991) like many other state governments (Hunter 1999). Stressing economic development would result in more business people serving as lobbyists.

In a related vein, career paths through business were expected to be more frequent among Oklahoma's lobbyists to the extent that the state, in stressing economic development, also stressed the state's infrastructure. Various representatives of business interests such as construction, banking/finance, transportation, communication, utilities, realtors, insurance, etc. have reason to form enduring coalitions as a result (Hula 2007: 118-121, 128-129). That would increase the number of lobbyists with business backgrounds. Business backgrounds for lobbyists are also quite frequent at the national level. More Washington lobbyists represent either trade associations or individual corporations than any other sort of association (Berry & Wilcox 2007, 104). Thus, the prediction of the predominance of business is well grounded for Oklahoma in the early 21<sup>st</sup> century. A comparatively large proportion of the Oklahoma lobbyists were expected to have business backgrounds. In fact, the Oklahoma data proved that business was the most prevalent occupation route (35 percent, N=56) in the 2006 sample. As may be seen in **Table 1**, business was the career path for 36 percent of the 2006 sample.

#### HOW EXPERIENCED ARE OKLAHOMA LOBBYISTS?

Probably the best background for lobbying is experience with state government and politics. Thus, past lobbyists have included former state bureaucrats, former legislators, and staff members from public bureaucracies, legislative offices and private associations with legislative liaisons) (Hula, 2007: 58-59; Rosenthal 2001: 33-37; Thomas and Hrebenar 2004:113-116; Berry and Wilcox, 2007. 103). Nationally, state lobbyists average between eight and twelve years experience (Zigler and Baer 1969, 46-48; Rosenthal 2001, 33).

TABLE 1

**Oklahoma Lobbyists: Career Paths into Lobbying**

1. Business	36%	(56)
2. Politics, government	21%	(33)
3. Educational	13%	(20)
4. Law	11%	(17)
5. Media	6%	(10)
6. Medical	1%	(2)
7. Non Profit	3%	(4)
8. Other	9%	(14)
Total	100%	(156)

Source: Authors' calculations using data from questionnaire.

Forty-five years ago, a little less than half of the Oklahoma lobbyists registered with the Speaker of the House were registered for only one legislative session of two years (Patterson 1963, 78). Our prediction is that Oklahoma's interest representation system is closer in this regard to its current sister states than it is to the Oklahoma system of forty-five years ago.

In fact, the present sample averaged nearly eleven years of total lobbying experience, of which nearly ten years were in Oklahoma. This is very much in keeping with the eight to twelve years experience state lobbyists had elsewhere (Zigler and Baer 1969, 46-48; Rosenthal 2001, 33). Thus, Oklahoma lobbyists are typical of other state lobbyists with regard to years of experience. They are considerably more experienced than were their Oklahoma counterparts of the early 1960s.

They are probably busier as well. Forty-five years ago, a little less than one in five Oklahoma lobbyists (18.6 percent, N=8) worked full-time during a particular legislative session (Patterson 1963, 78). They would have been able to lobby as a side-line to their main employment and still pursue the latter until retirement. On the other hand, 90 percent of the lobbyists surveyed in Oklahoma recently observed "full time or career lobbying instead of part-time lobbying," "more often," or "very often these days" (Data from questionnaire). That strongly suggests that Oklahoma lobbyists are much busier than those who preceded them in



the 1960s. Perhaps this is one effect of the shortened legislative session in Oklahoma and thereby requiring more legislative activity in less time to achieve similar levels of output.

Besides an education in the "school of hard knocks," *how much formal education do Oklahoma lobbyists have?* The expectation was that Oklahoma lobbyists would resemble their colleagues in other states more than their predecessors in Oklahoma. This is because the positive relationship between affluence and education has generally been obtained in Oklahoma and across the United States since the 1960s. Most state lobbyists across the country are college graduates (American League of Lobbyists 2003; The Catholic University of America 2005). A little less than half of the present sample has a bachelor's degree (45 percent) and an equal percent (46 percent) has an advanced degree, such as a masters, doctorate or law degree. One may probably conclude from these patterns that the level of formal preparation for Oklahoma lobbyists is at least that of their peers across the states.

In Patterson's 1961 sample of Oklahoma lobbyists, just less than a quarter (23.2 percent) of the respondents had no more than a high school diploma. In fact, three or nearly 7 percent of the 1961 sample had no more than a grade school education. Only 2 percent (N=3) of this 2006 sample of Oklahoma lobbyists had only a high school education or less.

Five percent (N=8) of the respondent-lobbyists had an associate's degree or the equivalent of some college. In Patterson's 1961 sample,

**TABLE 2**

**Oklahoma Lobbyists: Formal Education**

High School	2 %	( 3)
Associate Degree	5 %	( 8)
Bachelors	45 %	(74)
Masters	31 %	(50)
Doctorate	5 %	( 8)
Law degree	10 %	(16)
No response	2 %	( 3)
	100 %	(162)

Source: Authors' calculations using data from questionnaire.

27.9 percent (N=12) had “some college.” In 2006, 45 percent (74) had a bachelor’s degree whereas only 27.9 percent (12) did in the 1961 sample. Finally, 46 percent of the 2006 respondent-lobbyists had a masters (31 percent, or N=50), doctorate (5 percent, or N= 8) or law degree (10 percent, or N=16). That is an advantage of better than 2:1 in graduate or legal educations when compared to the 20.9 percent (N=9) in the 1961 sample (Patterson 1963, 77). One would have to conclude that the differences in formal education are marked between Oklahoma lobbyists today and those in the early 1960s.

Given their experience and formal education, *how much money do Oklahoma lobbyists make?* Oklahoma incomes tend to be lower than incomes in most other states (Oklahoma Office of State Finance 2001, 1-2). It may follow that lobbyists in this state make less money than lobbyists in many other states. At the same time, lobbyist incomes have probably outrun inflation in this state over the forty-five years since the Patterson’s study. So Oklahoma lobbyists were expected to make more than their predecessors in Oklahoma but less than their colleagues in other states.

Two qualifications must be made about using these income figures. The first is that income ranges were self-reported in the 1961 sample as well as in the present 2006 sample. However, unless human nature has changed in Oklahoma, accuracy was probably served about as well in 1961 as it was in 2006.

The second qualification is that figures gained via agencies across several cities in each of fifty states are bound to raise some questions about equivalency. Hopefully, such problems occur randomly rather than systematically across the fifty states. Finally, problems are avoided that would result from comparing self-reported figures with figures gained through a common agency source. No such comparisons are made in this study.

In any case, the starting place for comparing lobbyists’ gross earnings is Oklahoma City. The figure given is \$116,403 (Salary.com’s Salary Wizard 2007). It would appear, at least to most Oklahomans, that Oklahoma lobbyists make a pretty good living. But did they in the 1960s? Samuel Patterson said they did (Patterson 1963, 76). But, again, that was forty-five years ago.

According to the Bureau of Labor Statistics from the U.S. Department of Labor, \$1.00 in 1961 would be worth \$6.74 in 2006 (U.S. Bureau

of Labor Statistics 2007). Patterson's ranges for Oklahoma lobbyists in 1961 are given as follows:

- less than \$4,000 (in 2006 less than \$26,969.90)
- \$4,000 to \$6,000 (in 2006 less than \$40,454.85)
- \$6,000 to \$8,000 (in 2006 less than \$53,939.80)
- \$8,000 to \$10,000 (in 2006 less than \$67,424.75)
- \$10,000 to \$20,000 (in 2006 less than \$134,849.50) and
- more than \$20,000 (in 2006 more than \$134,849.50)

Author's calculations are derived from figures from Patterson's work in 1963 and converted to 1961 figures using the Department of Labor's Bureau of Labor Statistics "Inflation Calculator" website service.

The income ranges for the 2006 Oklahoma lobbyists are given in **Table 3** along with what the maximum for each range would have been in the 1960s. What may be seen is that the maximum of \$134,849.50, or more, earned by 1961 lobbyists is less than half the maximum earned today in hard dollars (**Table 3**: \$300,000). In short, Oklahoma lobbyist salaries have grown about twice as fast as inflation and Oklahoma lobbyists in 2006 made about twice what they did in 1961.

How high are lobbyist salaries these days compared with their peers in Washington, D.C. and in other state capitals? The average gross income for a lobbyist in Washington, D.C. is \$136,919. In the states around Oklahoma the standard is lower. In Little Rock, Arkansas, the gross income for a lobbyist is \$115,176, in Denver, Colorado, \$133,643, in Topeka, Kansas, \$119,472, in the Jefferson City, Missouri, vicinity \$124,464, in Santa Fe, New Mexico, \$120,331 and in Austin, Texas, \$122,172 (salary.com's *Salary Wizard* 2007). The mean for these seven states is \$121,666. At \$116,403, lobbyists in Oklahoma City average a little less than they do in the surrounding states.

The average gross annual income for lobbyists in all state capitals is \$126,14 (author's calculations from Salary.com's *Salary Wizard* 2007). That is somewhat more than the regional average (\$121,666) and appreciably more than Oklahoma lobbyists (\$116,403). In fact, Oklahoma City lobbyists are tied with lobbyists in Helena, Montana, for 43<sup>rd</sup> in yearly income (Salary.com's *Salary Wizard* 2007). Thus, only six states have lobbyists working in their capital who earn less than those in Oklahoma City. Thus, the overall picture for the income of lobbyists in Oklahoma is, as predicted, somewhat less than their colleagues and considerably more than their predecessors.

**TABLE 3**  
**Oklahoma Lobbyists:**  
**Annual Income Ranges in 1961 and 2006 Dollars**

2006		Income Ranges in in 2006 Dollars	Range Maximums in 1961 Dollars
Income Ranges	% = (N=)		
28.6	(38)	Less Than (<) \$ 50,000	< \$ 7,418. 40
32.3	(43)	\$ 51,000 - \$100,000	\$ 14,836. 80
15.8	(21)	\$101,000 - \$150,000	\$ 22,255. 19
9.8	(13)	\$151,000 - \$200,000	\$ 29,673. 59
6.0	( 8)	\$201,000 - \$250,000	\$ 37,091. 99
2.2	( 3)	\$251,000 - \$300,000	\$ 44,510. 39
5.3	( 7)	More than (>) \$300,000	> \$ 44,510. 39
100.0	(133)		

Source: Authors' calculations using response data from questionnaire and data from Department of Labor's Bureau of Labor Statistics in "Inflation Calculator"

*Note.* The income ranges given in Table 3 include only those respondent lobbyists who receive more than expenses. If those who receive no more than their expenses were included they would number 14 and represent 21 percent of the entire sample of 163.

### WHAT ABOUT DEMOGRAPHICS SUCH AS AGE, GENDER AND RACE/ETHNICITY FOR OKLAHOMA LOBBYISTS?

One would expect to find Oklahoma lobbyists to be in their middle years because lobbying is usually a second career (Berry and Wilcox 2007, 102-104). They, like their colleagues at the state and national levels, are probably at the age at which people reach a peak or a plateau professionally, approximately their early fifties. For the same reason it was probably also true in Oklahoma during the 1960s.

In the 1960s the Oklahoma lobbyist was typically slightly less than forty-eight years of age (Patterson 1963, 77). Ages were not given in the 1993 study of lobbying in Oklahoma (England & Morgan 1993, 263-284). In the current sample of Oklahoma lobbyists, the average age

is just over fifty-one. The age norms across the interim forty-five years are therefore close.

How old are lobbyists in other states? It is difficult to establish an average age for lobbyists because it is difficult to find "typical" lobbyists (Mahood 1990, 53). However, one characteristic that is typical of lobbyists is that they are in their second career (Berry and Wilcox 2007, 102). Fifty-one years of age, the norm for Oklahoma lobbyists, is probably a reasonable norm for lobbyists elsewhere (Nownes 2001, 121). This is because by fifty-one an individual is old enough to have had one career and young enough to begin another (Mahood 1990, 53-55). Thus lobbyists have tended to be middle-aged across states and, in Oklahoma, across time as well.

Lobbying has been considered a "man's world" (Berry and Wilcox 2007, 106). There were no females among Samuel Patterson's 1961 sample of forty-three Oklahoma lobbyists (Patterson 1963, 75). In one early 1980s survey, only 22 percent of state lobbyists were female (Schlozman 1990). Similarly, in the early 1990s, between 20 and 25 percent of the lobbyists in northeastern or western states were women. Only about 12 to 15 percent of the lobbyists were female in the southern states (Thomas and Hrebenar 1991, 162). By 2001, the proportion of female lobbyists across states was still estimated to be about 20 percent (Thomas and Hrebenar 2004, 116; Rosenthal 2001, 26). If there is a range to be taken from these studies, it is that between 20 and 25 percent of state lobbyists are female. It is therefore hypothesized that Oklahoma now has more female lobbyists than it used to and is close to the current 20 to 25 percent estimate in other states.

Approximately 80 percent of the respondent-lobbyists in 2006 observed female or minority lobbyists "more often" or "very often" (Data from the 2006 questionnaire). The male to female ratio of lobbyists in Oklahoma was 72 percent (N=113) to 28 percent (N=44). As predicted, lobbying in Oklahoma is much less of a "man's world" than it was in the 1960s. Moreover, it compares well with what has been found or estimated to be true in recent studies about state lobbyists (Thomas and Hrebenar 2004, 116; Rosenthal 2001, 26).

Minorities are still underrepresented in lobbying across the states (Rosenthal 2001, 26). This was probably true of the 1960s in Oklahoma although the 1961 Patterson data does not give a percentage for minority lobbyists. Neither does the England and Morgan study of 1993.

It is expected that Oklahoma is no exception to the generalization of minority under representation in state lobbying. What was found in the 2006 data was that about 2 percent (N=3) of the lobbyist respondents were Native-American. However, Native-Americans comprise about 6 percent of the Oklahoma electorate according to some sources (O'Neil 2006, 17) and about 8 percent of Oklahoma's population (U.S. Census Bureau 2006). Similarly, only .006 percent of the respondent-lobbyists was African-American (N=1) whereas the African-American percentage is a little less than 6 percent of the Oklahoma electorate (O'Neil 2006, 17). African-Americans comprise nearly 8 percent of the population of Oklahoma (U.S. Census Bureau 2006). So the percentages of Native and African-American lobbyists are somewhat lower than their percentages in the state's electorate and lower still when compared with their percentages in the general population. It should be noted, however, that the small numbers of minority lobbyists in a sample of only 163 respondents reduces the reliability of these percentages. Just a few more minority lobbyists would change the picture considerably.

### **WHAT OF THE IDEOLOGY AND PARTISANSHIP OF OKLAHOMA LOBBYISTS?**

The following discussion of findings on ideology and partisanship among Oklahoma lobbyists is based to some extent on the results in a prior publication entitled "Profiles and Stereotypes of Lobbyists in Oklahoma" authored by two of the present authors (Davis and Metla) along with OSU undergraduate Josh Herlan. It was published in *Oklahoma Politics* in 2006.

There were no figures found on the ideological orientations of Oklahoma lobbyists in the 1960s or the 1980s and 1990s. There are also few, if any, studies of ideological predispositions of lobbyists in other states. Such studies that may be available would supply very few pieces of the puzzle. However, another reference point does exist. The ideological predispositions of the respondent-lobbyists may be compared with data about the electorate in Oklahoma.

By all indications, Oklahomans have not changed their conservative predispositions much over the years. The authors assert that the

rise in national political power of religious fundamentalism that began in the early 1980s served to reinforced Oklahoma's "traditionalistic political culture" (Elazar 1984) by increasing the emphasis on social conservatism. It is further asserted that participation in an increasingly powerful Sunbelt has also served to reinforce conservatism in Oklahoma. At the same time, that participation began to nudge Oklahomans away from their traditional Democratic preference toward a preference for an even more conservative Republicanism. This shift in party preference became increasingly evident during and since the Reagan years of the early and middle 1980s.

About 45 percent of the Oklahomans surveyed in a study in the middle 1980s saw themselves as conservative. Nearly 40 percent saw themselves as moderate or middle-of-the-road and only about 15 percent as liberal (Wright, Erikson and McIver 1985, 469-481). By 2004, 43 percent of a sample of Oklahomans described themselves as conservative, 44 percent as moderates, and 13 percent as liberal (CNN.com 2004).

OSU undergraduate Timothy O'Neil employed two measures of ideology in a survey of Oklahoma voters in 2006. One measure dealt with social issues and the other with economic issues. The results of both measures were quite similar and similar to results of other studies of Oklahoma as well. About 44 to 45 percent of the responses to both of O'Neil's measures were either "very conservative" or "somewhat conservative." Forty-six to 48 percent of the respondents identified themselves as in the middle or "slightly conservative," "middle-of-the-road" or "slightly liberal." Only 6 to 9 percent of the Oklahoma electorate in the O'Neil sample of 2004 saw themselves as "somewhat liberal" or "very liberal" (2006). If these several sources tell a story over the last several decades, it is that Oklahomans remain fairly evenly divided between political conservatism and moderation. If there is any movement at all over time among Oklahomans, it is the slight shift away from liberalism toward a "middle-of-the-road" or moderate position.

The authors expected Oklahoma lobbyists to reflect the ideological patterns of the Oklahoma electorate because pluralist and democratic processes occur in the same conservative to moderate political culture. As noted earlier, respondent-lobbyists report an average of nearly ten years of lobbying experience in Oklahoma. Consequently, the authors believed that Oklahoma lobbyists would reflect an Oklahoma electorate



of several years ago. Oklahomans have not changed much ideologically. Both self-identified conservatives and self-identified moderates have percentages in the low or mid-forties in the electorate. Only 9 to 15 percent considered themselves liberal (Wright, Erikson and McIver 1985, 469-481; CNN.com, 2004; O'Neil, 2006).

What did the data show? Some 38 percent of the respondent-lobbyists saw themselves as either "very conservative" or "somewhat conservative." That is somewhat less conservative than the electorate's 43 to 45 percent. Forty-six percent (N=74) of the lobbyists saw themselves in the middle politically, or as "slightly conservative," "middle-of-the-road," or "slightly liberal." Similarly, forty percent of the Oklahoma electorate in 1985, 44 percent in 2004, and 48 percent in 2006 identified themselves as "moderate" or in the middle (Davis, Metla, and Herlan 2006, 2-4). Thus, a similar proportion of lobbyists and voters saw themselves as moderate, especially among the most recent surveys.

Some 16 percent of the lobbyist respondents described themselves as "somewhat" or "very liberal." Only 6 or 9 percent of the O'Neil sample saw themselves as social or economic liberals (2006). The earliest sample of Oklahomans from the mid-1980s put the percentage of liberals at very nearly what it is for Oklahoma lobbyists today, about 15-16 percent (Davis, Metla & Herlan 2006, 2-4). However, self-identified liberals supply a shrinking percentage of voter samples taken since the turn of the 21<sup>st</sup> century.

Thus, Oklahoma lobbyists were expected to be less conservative and possibly more liberal than the Oklahoma electorate today. The proportions in the political middle are similar among voters and lobbyists. Why are lobbyists less conservative and more liberal than voters? Perhaps as advocates of diverse interests, lobbyists may be more likely than voters to take a liberal position on one issue and a conservative position on the next because they are less likely to be set in their political ways. Lobbyists in this sample do appear to be less inclined than voters to be predisposed toward a left or right attitude and, by the same token, more disposed toward either. On balance, the hypothesis of close ideological resemblance should be rejected.

While the Patterson 1961 study did not have self-designated ideological orientations, lobbyists did identify themselves as allegiant to either a major party or were Independents. According to Patterson's 1961 sample, 76.8 percent of the Oklahoma lobbyists considered themselves



Democrats. Only 9.3 percent thought of themselves as Republican and 6.9 percent were Independent (Patterson 1963, 78). Many conservative Democrats have become conservative Republicans in Oklahoma (Davis, Byrraju, and Metla 2004, 69).

Since Patterson's study in the early 1960s, the United States has moved toward a nearly universal two-party competition. Even the formerly one-party Democratic South has, since President Johnson's Great Society of the 1960s, moved toward two-party competition, albeit with a Republican advantage. For reasons that have more to do with religious fundamentalism, President Reagan and Sunbelt politics, Oklahoma has moved from a two-party state (Bibby and Holbrook 2004, 88) leaning toward the Democrats, to a two-party system (Hershey 2007, 2) leaning toward the Republicans.

In the mid-1980s, almost 50 percent of a sample of 915 Oklahomans identified themselves as Democrats. A little less than one-quarter were self-identified Independents and a little more than a quarter were Republican (Wright, Erikson, and McIver 1985, 469-481). Exit polls of 1,577 Oklahoma voters in the presidential elections of 2004 revealed significantly fewer Democrats, 40 percent, and Independents, 16 percent. However, there were significantly more Republicans, 43 percent, (CNN.com 2004) among Oklahoma voters. Symptomatic of these shifts in voting predispositions was the Republicans winning the Oklahoma House of Representatives in 2004, and many observers expect the Oklahoma Senate to follow shortly.

Given this latter day view of party history in Oklahoma, the authors expected the lobbyists surveyed to resemble the Oklahoma electorate of several years ago more than the electorate of today. At the same time, today's lobbyists were expected to prove much less Democratic than Oklahoma lobbyists in 1961. This relatively short lag behind the partisanship of the electorate was expected among Oklahoma lobbyists because, again, they average nearly ten years on the job.

The prediction in this case was that lobbyists would be more Democratic and less Republican than the Oklahoma voters today. At the same time, today's lobbyists in Oklahoma were expected to be less Democratic and more Republican than Oklahoma lobbyists were in the early 1960s.

The data did indicate that Oklahoma lobbyists today are still Democratic, but not nearly as Democratic as they were in the early 1960s. Some

45.6 percent of the respondent-lobbyists saw themselves as “strong” Democrats or “not-so-strong” Democrats whereas 31.4 percent regard themselves as “strong” or “not-so-strong” Republicans. Independents, including those with slight leanings toward either the Democratic or Republican parties, comprised 22.4 percent of this sample (Davis, Metla, and Herlan 2006, 2-4).

It may be worth noting that there are more strong Democrats than strong Republicans among today’s lobbyists. Strong partisanship among the Democratic lobbyists may indicate retrenchment within a political culture marked otherwise by a shift toward the Republican Party. It is probably true that the shift toward independency among Democratic lobbyists is more pronounced among the not-so-strong Democrats than among the strong Democratic identifiers. It may be that Republican House leaders would like to begin working with more lobbyists from their own party. In any case, Democratic partisanship is still prevalent among Oklahoma lobbyists although, as with the Oklahoma electorate, this is probably changing toward independency and Republicanism.

Having characterized Oklahoma lobbyists demographically and politically to some extent, it may prove helpful to consider several major questions about the interests they represent. State interest constellations are not nearly as complex as the enormous and shifting constellations of

TABLE 4

## OKLAHOMA LOBBYISTS: PARTISANSHIP

Strong Republican	20.5%	(32)	31.4%	(49)
Not-So-Strong Republican	10.9%	(17)		
Independent leaning Republican	9.6%	(15)	22.4%	(35)
Pure Independent (no partisanship)	7.1%	(11)		
Independent, leaning Democratic	5.8%	(9)		
Not-So-Strong Democrat	17.3%	(27)	45.6%	(71)
Strong Democrat	28.2%	(44)		
Other political party	0.6%	(1)	.6%	(1)
Total	100.0%	(156)	100.0%	(156)

Source: Authors’ calculations using response data from questionnaire.

interests in the nation's capital (Ainsworth 2002, Shaiko 2005, 99-118; 5-16; Berry and Wilcox 2007, 131-148). Given the sheer numbers and the resulting diversity of interests, a rough balance between competing organized groups is often asserted about group power in Washington D.C. This balance may be tipped temporarily in the direction of the Republican or Democratic Party if either has won a majority in both congressional houses and controls the presidency as well.

However, as noted, interests are neither that numerous nor that diverse within individual states. A balance of any sort is much less likely therefore. Instead, the tendency is for a set of the most influential interests to predominate at the state level. However, that does not preclude some shifts in the composition of the minority of interests that tends to dominate group politics over the decades.

The relevant literature suggests that shifting minorities of interests do, in fact, often dominate lobbying within states (Hrebenar and Thomas 1993). For instance, business, education, health care, banking/finance, utilities, insurance, professionals, local governments, and farm interests are often ranked among the top ten or so interests in most states (Thomas and Hrebenar 2004, 119).

The relative handful of interests that have changed their composition slightly over the years had been typical of Oklahoma historically. However, some jockeying for influence is inevitable among competing interests (England and Morgan 1993, 263-267). Political power did shift during the latter half of the 20<sup>th</sup> century in Oklahoma. Patterson (1963, 81) found in 1961 that the interests employing the most lobbyists were business, labor, agriculture, government, and professionals. Perhaps by other indicators, oil and gas would have been found to be particularly influential in Oklahoma during the 1960s. However, energy lobbyists were not among the most frequently found lobbyists in Patterson's 1961 sample.

England and Morgan note that in 1982 Oklahoma ranked 5<sup>th</sup> nationally in crude petroleum production and 3<sup>rd</sup> in natural gas production. It was ranked 5<sup>th</sup> nationally in the value of mineral fuels to the state (England and Morgan 1993, 264-265). One would therefore suppose that petroleum was among the most influential interests in Oklahoma during the 1980s. However, no study specifically puts petroleum there. Moreover, the England/Morgan theme was that Oklahoma's interest community was in transition during the 1980s. They found business,

realtors/insurance, banking/finance, petroleum/mining, and education to be among the best represented interests in Oklahoma at that time. Furthermore, they add that Oklahoma legislators felt the six most powerful interests were education, labor, professional groups, banking/finance, public employees, and oil (England and Morgan 1993, 270). England and Morgan wrote in 1993 that education, labor, professional groups, and banking/finance were among the most powerful groups in Oklahoma politics. Oil and gas, while still powerful, did not dominate interest group politics in Oklahoma during the 1980s and 1990s because the state's economy was becoming more manufacturing and service oriented like the rest of the nation (England and Morgan 1993, 282).

In other states (Thomas and Hrebenar 2004, 119) and at the national level (Birbaum, 1997; Timewarner *Newsroom* 1999) petroleum is powerful but not as powerful relative to other interests as it has traditionally been in Oklahoma. It may be that the continuing nationalization of Oklahoma's economy has left petroleum a player but not a dominant player as England and Morgan suggested during the 1990s. Nevertheless, international developments that shorten the supply of oil for the U.S. may, along with only intrastate regulation of oil prices in an oil-producing state, raise issues of gas prices, regulation, and tax burdens. That would increase oil's lobbying role perhaps to the point of being a dominant interest in Oklahoma again.

Besides petroleum, gaming was expected to be unusually powerful in Oklahoma. According to one study, gaming, like petroleum, is not quite in the top twenty most influential interests across American states (Thomas & Hrebenar, 2004, 119-120). But Oklahoma is different. Oklahoma has more gambling casinos than might be expected in a traditionalistic/fundamentalist state. In fact, it is fifth in the number of gambling casinos among the forty-six states that allow gambling (*World Casino Directory* 2007).

It is also second to California in the number of Native-American residents and third behind Alaska and New Mexico in the proportion of its population that is Native American (StateMaster.com 2006). The connection between gambling and Native-Americans is tribal sovereignty (Kussel 1996; whitehouse.gov 2004, 2). Most Native-American lands across the country are held in trust by the federal government. As a result, negotiations for types of gambling and other activities are between the tribes and the national government. Moreover, in Oklahoma, the degree

of tribal sovereignty is greater than for most tribes elsewhere. Tribal control under such legal and governmental circumstances is greater so activities such as gaming are more common (whitehouse.gov 2004, 2) in Oklahoma.

Gaming, like petroleum, is at the lower end of the influence spectrum in most states. However, it is expected to be much higher in Oklahoma because of the extra degree of tribal sovereignty that Native-Americans enjoy in this state and the latitude it provides in financial enterprise.

The authors expected to find minority rule in Oklahoma's group politics. They also expected to find that influential lobbies in other states were likely to be influential in Oklahoma as well—the two exceptions being oil and gaming. These would include such interests as business, health care, education, banking/finance, transportation/communication, utilities, realtors/insurance, local governments, and possibly, agriculture.

It might surprise some readers that the authors expected agriculture to be at the lower half of the top ten or so most influential interests in Oklahoma. Oklahoma is often seen as a major producer of food and fiber as well as energy. Although historically powerful, agriculture was expected to be less so today because of the growing resemblance of the Oklahoma economy to the national economy that England and Morgan wrote about in the 1990s. In addition, government subsidies to agriculture in Europe and elsewhere, together with a policy of cheap food in the United States, might serve to keep food and fiber prices low in Oklahoma. At the same time productivity per farmer has increased in Oklahoma as it has elsewhere. Inevitably, cheap food and fiber production along with increased productivity would reduce the number of farmers and, just as inevitably, the political clout of agricultural in Oklahoma.

Although labor was listed among the most influential interests in Oklahoma during the 1960s and 80s, the state passed a right-to-work-law in 2000 that went into effect in September of 2001. This law has had the effect of reducing the proportion of workers who are union members (Denholm 2007). Thus the power of labor has been reduced if anything more dramatically than that of farmers.

Group influence was indicated by two means in this study. The first indicator was the number of lobbyists who recalled lobbying for an interest. The second was a group's reputation for influence among lobbyists. **Table 5** provides the total of recalled instances of lobbying (N=281) for an interest. This includes recollections of lobbying by

**TABLE 5**  
**Oklahoma Lobbies: Clients Recalled by Lobbyists**

Interest	Rank	No. of Examples	Interest	Rank	No. of Examples
1. Health Care	1	38	16. City/Co Officials	16	5
2. Business	2	34	17. Gaming	17	4
3. Education	3	27	18. Churches	18	3
4. Petroleum/Mining	4	25	19. Human Services	18	3
5. Transportation/Communication	5	23	20. Senior Citizens	18	3
6. Banking/Finance	6	18	21. Political/Public	18	3
7. Realtors/Insurance	7	14	22. Waste Management	18	3
8. Agriculture	7	14	23. Aviation	23	2
9. Professions	9	10	24. Public Employees	23	2
10. Utilities	9	10	25. Consumers		0
11. Industrial	11	8	26. Hotel/Motel		0
12. Minorities	11	8	27. Press/Media		0
13. Construction	13	7	28. Restaurants		0
14. Environmental	13	7	29. Wildlife/Hunting		0
15. Labor	13	7	30. Women		0

Source: Authors' calculations based on using response data from questionnaire.

“company” or single client lobbyists (N=111) or by “hired guns” or multiple client lobbyists (N=170).

As expected, petroleum was among those interests that employed the most lobbyists in Oklahoma. In fact, it was listed fourth behind health care, business and education. However, gaming was not among the leading interests in political influence by this measure. Perhaps the second measure of group influence, the reputation for influence among lobbyists, will shed some light on the influence patterns found via the first measure.

All but two interests, gaming and churches, of the top ten “gainers” in **Table 6** are also among the top ten employers of lobbyists in **Table 5**. Clearly, the top employers of lobbyists are also likely to be among those interests considered by lobbyists to be gaining power and influence. The basic hypothesis about a minority of interests predominating politically clearly holds for Oklahoma. By a wide margin, lobbyists rank “petroleum/mining” first among interests gaining power and influence in Oklahoma.

Also, as originally predicted, gaming proved unusually influential in Oklahoma landing in second place in reputed influence. Gaming was followed closely by education. Health care and business tied for fourth. The interests rising in power in 2006 are oil and gas, education, health care, and business according to these data in **Table 5**.

But why was gaming nowhere near the peak among those interests employing the most lobbyists (**Table 5**)? Gaming is seen by lobbyists to be among the most influential interests in Oklahoma but it does not employ the most lobbyists. Perhaps gaming uses the resource of campaign contributions more than the resource of lobbying personnel. There is some evidence of this. While gaming is sometimes controlled by the federal government, state governments do have say over such aspects as the classes of gambling that may go on within their state. It therefore behooves gaming supporters to be active politically and, once again, their lobbying resource of choice is money or financial resources. Gaming interests on particular tribal lands are known to give generously to such things as research on diabetes in the state hospital complex in Oklahoma City (Robert England, personal communication, September 12, 2007). Such generosity builds good will, networks political alliances, and more indirect lobbying for gaming.

In the present study, five lobbyists recalled lobbying for gaming interests. While five is a small number, all five gave the same “very often” response to reliance on financial resources. The political

**TABLE 6**  
**Oklahoma Lobbies: Interests Lobbyists See Gaining Power**

Interest	Rank	No. of Examples	Interest	Rank	No. of Examples
1. Petroleum/mining	1	67	16. Aviation	15	5
2. Gaming	2	49	17. Construction	15	5
3. Education	3	47	18. City/Co. Officials	15	5
4. Health Care	4	39	19. Professions	18	4
5. Business	4	39	20. Political/Public	19	4
6. Transportation/Communication	6	19	21. Consumers	19	4
7. Churches	7	18	22. Human Service	21	3
8. Banking/Finance	8	14	23. Wildlife/Hunting	21	3
9. Utilities	8	14	24. Industrial	21	3
10. Agriculture	10	12	25. Press/Media	24	2
11. Senior Citizens	11	10	26. Restaurants	24	2
12. Realtors/Insurance	12	9	27. Hotel/Motel	24	2
13. Environmental	13	6	28. Labor		0
14. Minorities	13	6	29. Waste Management Management		0
15. Public Employees	15	5	30. Women		0

Source: Authors' calculations based on using response data from questionnaire.



resource of "money" was defined in the questionnaire as "political fundraising and contributions to campaigns and other political activities, etc." At sixty percent, a substantial part of the remaining sample did too but not to the same extent (calculations derived from data).

The same five were divided three ways regarding the lobbying resource of "leadership and access," such as the "number of contacts, political credibility, and skills in persuasion, organizing, motivating, framing issues, public relations, timing, strategizing, etc. At the same time, ninety-three percent of the entire sample believed that reliance on "leadership and access" was emphasized "more often" or "very often." Thus, the little evidence that exists suggests that advocates of gaming interests are indeed more inclined to rely on financial resources than on large numbers of lobbying personnel (calculations derived from data).

The obverse of who is gaining influence is who is losing influence. It was predicted that labor would be seen to be losing power in Oklahoma in light of the "right-to-work" law that went into effect September 25, 2001. Education is considered second among those interests losing power in **Table 8**. However, education was also fifth among those gaining power in **Table 7**. The same respondent-lobbyist wrote "*education (as a whole)*" was gaining influence. But "*education (OEA)*," the Oklahoma Education Association, was losing influence (completed questionnaires). Additionally, any lobbyist-respondent who wrote in "OEA" also put education among the interests losing power. Thus the contradiction between education gaining and losing power may be more apparent than real. It may well be that the loss in influence for education is applicable only to the union-like education organization such as the OEA, but not to the interest of education as a whole.

Agriculture is ranked ninth among interests gaining power and fourth among interests losing power. That agriculture is seen to be both gaining and losing power might be a consequence of agriculture declining from what once was a powerful position (England & Morgan 1993, 266, 269, 280-281). Additionally, it may be an artifact of most respondent-lobbyists representing, and thus considering, just a handful of interests.

**TABLE 7**  
**Oklahoma Lobbies: Interests Lobbyist See Losing Power**

Interest	Rank	No. of Responses	Interest	Rank	No. of Responses
1. Labor	1	79	15. City/Country officials	14	7
2. Education (OEA)	2	34	16. Wildlife and Hunting	16	6
3. Public Employees	3	30	17. Professions	16	6
4. Consumers	4	28	18. Industrial	18	5
5. Agriculture	5	26	19. Waste Management	18	5
6. Environmental	6	18	20. Realtors/Insurance	20	4
7. Minorities	6	18	21. Utilities	20	4
8. Senior Citizens	6	18	22. Banking/Finance	22	3
9. Human Services	9	15	23. Construction	22	3
10. Health Care	10	11	24. Gaming	24	2
11. Aviation	11	9	25. Business	25	1
12. Transportation/Communication	11	9	26. Petroleum/Mining		0
13. Churches	13	8	27. Hotel/Motel		0
14. Press/Media	14	7			

Source: Authors' calculations based on using response data from questionnaire.

### WHAT ABOUT LOBBYING ITSELF FROM THE LOBBYIST'S POINT OF VIEW?

The four reference points used to this point were not used in answering questions about lobbying itself. Perhaps some of these cues could have supplied some means for evaluating changes in how lobbying is practiced in Oklahoma but not nearly so well as Oklahoma lobbyists themselves. The coded results from lobbyists writing about the biggest changes in lobbying seemed to fall into three large categories of change. The authors called these three categories of change "Political Culture and Contextual Changes," "Changes in Players and Roles" and "Changes in How Lobbyists Lobby."

Oklahoma now limits legislators to a total of twelve years in the legislature. Term limits were by far the most often mentioned changes in the lobbying context (MSNBC 2006). Of the twenty-seven mentions of term limits, fifteen were negative, and another seven were mixed. Only three lobbyists thought term limits had a beneficial effect (**Table 8A**, row 1). Another fairly clear pattern emerges in **Table 8A**, row 3. Nine lobbyists felt the public's opinion of lobbying was worse. No one thought it had improved. Similarly, only five reactions were volunteered by lobbyists about motivation in lobbying these days but the reactions are unidirectional. All five were pessimistic in what they volunteered about self-service among lobbyists (**Table 8A**, row 7) in the more partisan context of lobbying these days.

Many of the other reactions volunteered by lobbyists produced ambivalent results. For instance, four lobbyists felt negatively about the effects of the greater emphasis on information, expertise, and technology in lobbying (**Table 8A**, row 2). Six felt positively because, as some noted, supplying prepared information in testimony or in hard copy to legislators is time-saving as opposed to "schmoozing," for instance. The remainder of the responses yielded either mixed positive and negative responses or did not evaluate the effects of more reliance on information and expertise.

Lobbyists felt professionalism and ethics had improved but by only six to four. To this close division must be added a mixture of pros and cons or unknown effects in the minds of other lobbyists. Thus, the overall picture of professionalism and ethics is not clear. However, even if they did produce mixed evaluations, thirteen respondent-lobbyists volunteered

Table 8A

## Oklahoma Lobbying: Political Culture and Contextual Changes

<i>(Please write on the reverse side of this page)</i> What do you think are the biggest changes in lobbying in Oklahoma over the past decade or so?		Negative Responses	Negative & Positive Responses	Positive Responses	Effects Unknown	N Row Totals
		-	- / +	+	?	=
1	<i>Term Limits</i> - How term limits influence lobbying	15	7	3	2	27
2	<i>Information/Expertise/Technology</i> - Influence lobbying culture how?	4	1	6	2	13
3	<i>Public attitude better/worse</i> - Changed how?	9	3		1	13
4	<i>Professionalism/Ethics</i> - How do they affect lobbying culture?	4	1	6	2	13
5	<i>Folkways/Good Ole Boys</i> - loss changed lobbying how?	2		6		8
6	<i>Fairness-fairness</i> of treatment of lobbyist by changes	2	1	3		6
7	<i>Self Service</i> - How lobbyists serve their own needs.	5				5
8A Totals	Totals Per Column =	41	13	24	7	85
Percents	Column Percentages =	48.2	15.3	28.2	8.2	99.9*

Source: Authors' calculations based on response data from questionnaire.

\*99.9% due to rounding error.

observations of some sort about professionalism. If these thirteen suggest any increase in professional consciousness, perhaps it is related to the demise of the "good ol' boy" culture that used to involve networks of long-term legislator/lobbyist friendships that relied on extra-informational inducements such as gifts, food, liquor, and even women on occasion (Thomas and Hrebenar 2004, 112; Rosenthal 2001, 38). The decline of the good ol' boy may be a consequence of the obvious, for example, more female lobbyists. It may also be due to the turnover in legislators required by term limits. In any case, only two lobbyists were disappointed with the passing of traditional folkways whereas six were pleased about it (Table 8A, row 5). The rest gave mixed evaluations or mentioned with no evaluation.

Some evaluations of specific changes were offered in numbers that were too small to produce reliable cell populations especially if the results were not unidirectional. For instance, only six lobbyists mentioned the fairness of the system (Table 8A, row 6). However, the summary patterns toward the biggest changes in the political culture or context are clearer than most individual row patterns. Forty-eight percent (N=41) of a total of 85 assessments of political culture or contextual changes were negative. Only twenty-four assessments, 28 percent, were positive while the remainder were mixed, 15 percent, or mentioned without evaluation (8 percent) (Table 8A, row 11, "Totals").

The next set of reactions to changes in lobbying were grouped under the heading *Changes in Players and Roles*. As may be seen in Table 8B, the most frequently mentioned change in actors and roles is the ex-legislator lobbyist (Table 8B, row 8). A little more than half of the lobbyist-respondents wrote negative assessments of this change in players. None spoke in positive terms. Two gave mixed assessments and three withheld judgment although they did mention this change in actors.

The effect of term limits has been to increase turnover in the legislature. What were the effects of losing the most experienced legislators and gaining the least experienced? Like the reactions to the ex-legislator lobbyists, the reactions to new legislators were negative on balance (Table 8B, row 9). Possibly there was a reaction against ex-legislator lobbyists by some respondent-lobbyists because of the competitive advantages ex-legislators would have in experience and personal networks. While the ex-legislator lobbyist brings know-how

TABLE 8B

## Oklahoma Lobbying: Changes in Actors and Roles in Lobbying

What do you think are the biggest changes in lobbying in Oklahoma over the past decade or so?		Negative Responses -	Negative & Positive Responses - / +	Positive Responses +	Effects Unknown ?	Row Totals N =
8	<i>Ex-legislator lobbyists - affects lobbying &amp; institutional memory?</i>	6	2		3	11
9	<i>New Legislators – Effect on lobbyist and lobbying?</i>	6	1	2		9
10	<i>Republican Majority - Affects lobbying how?</i>	3	1	2	1	7
11	<i>Parties/Partisanship Power - Influences lobbying how?</i>	5				5
12	<i>PACs - How Political Action Committees affect lobbying.</i>	4				4
13	<i>Oil &amp; Gas - Interest affects lobbying how?</i>	2		1		3
14	<i>Public Interest Groups- Affect lobbying how?</i>	1		2		3
8B Totals	Totals Per Column =	27	4	7	4	42
Percent	Column Percentage =	64.3	9.5	16.7	9.5	100

Source: Authors' calculations based on using response data from questionnaire.

and contacts to lobbying, the new legislator brings neither. The former may be seen as too influential while the latter is too subject to the influence of others. For whatever reasons, however, neither seems to suit the lobbyists.

The reaction to the relatively new Republican majority in the House also met with mixed reactions (**Table 8B**, row 10). However, reactions were uniformly against the power of parties and partisanship in lobbying (**Table 8B**, row 11). That may be a consequence of all lobbyists, whether Republican, Democrat or Independent, regretting the burdensome effects of party divisiveness on good-faith brokering. In both cases dealing with partisanship, the cell populations are small.

As may be seen in **Table 8B**, rows 12, 13 and 14, few lobbyists feel particularly concerned with the power of PACs (political action committees), oil and gas, or public interest groups, though all three were mentioned. As with **Table 8A**, the negative to positive ratios for column totals and percentages clearly demonstrate more negative than positive evaluations to changes in lobbying. Twenty-seven of forty-two reactions (64 percent) to changes in actors and roles were negative. Only seven (17 percent) were positive. The remaining reactions that were mixed plus those mentioned without evaluation were about 10 percent each. Thus, again, the summary of negative versus positive reactions clearly leaned negative.

**Table 8C**, row 15 of involves lobbyist reactions to changes in relationships (Rosenthal 2001, 108-111). With less time and greater partisanship, relationships may be strained more frequently and seen in a more negative light these days. In fact, that seems to be the case. Six lobbyists volunteered negative comments about personal and professional relations in lobbying. There were no positive comments. Similarly, there is a decided tendency to see competition and conflict with one's lobbyist colleagues more often these days (**Table 8C**, row 16).

The increase in the number of lobbyists in and of itself does not seem to be a source of complaint (**Table 8C**, row 17) (England and Morgan 1993, 267, 270). Moreover, the greater number of women and minority lobbyists seems to be welcomed (**Table 8C**, row 18). Higher salaries and more access to money gets mixed reactions from lobbyists (**Table 8C**, row 19). Perhaps this division is a consequence of which side of the money the respondent-lobbyist is on (Rosenthal 2001, 30).

TABLE 8C

## Oklahoma Lobbying: Changes in How Lobbyists Lobby

What do you think are the biggest changes in lobbying in Oklahoma over the past decade or so?		Negative Responses	Negative & Positive Responses	Positive Responses	Effects Unknown	Row Totals
		-	- / +	+	?	N =
15	<i>Relationships</i> – personal & professional relations affect lobbying how?	6	1		2	9
16	<i>Lobbyist Competition/ Conflicts</i> – Affect efficiency of lobbyists?	7	1		1	9
17	<i>Lobbyist Numbers</i> – How number of lobbyists affects the process	1	1	3	1	6
18	<i>Minority</i> – Effectiveness of women and minority lobbyists	1		4	1	6
19	<i>Money</i> – How has salary or access to money affected lobbyist's power	1	1	1	2	5
20	<i>Preparation &amp; Experience</i> - alter effectiveness of a lobbyists?	4		1		5
21	<i>Access . . .</i> of lobbyists to decision-makers	2		3		5
22	<i>Strategizing</i> – Hinder or promote effectiveness of lobbying?	1		3		4
8C Totals	Totals per Column =	23	4	15	7	49
Percent	Column Percentages =	47	8	31	14	100
8A+B+C	A + B + C					
Totals	Column Totals =	94	21	46	18	179
Percents	Column Percents =	52	12	26	10	100

Source: Authors' calculations using response data from questionnaire.



Somewhat surprisingly, the advantage lobbyists have over new legislators in preparation and experience is not favorably received (row 20). Perhaps that is a consequence of the extra effort now required to be convincing to inexperienced legislators. At the same time, the access to decision-makers gets mixed reviews (row 21) while opportunities for strategizing with legislators seem to be more favorably received than not (row 22).

What may be seen on the last row (8A + B + C) are the totals for all columns as well as the percentage of all comments that are negative, positive and negative, positive, and mentioned without evaluations. These summaries are neither ambiguous nor evenly divided nor unclear. Fifty-two percent of lobbyist reactions to changes in lobbying were negative. About half of that, or twenty-six percent, were positive. Twelve percent of all comments mixed pro and con reactions and ten percent mentioned changes without positive or negative evaluations. In sum, lobbyists in Oklahoma are most likely to feel negatively about changes in the political context, the players, and the techniques of lobbying.

In light of this negativity about changes in lobbying, how do Oklahoma lobbyists feel about a career in lobbying? Lobbyists were asked to rate lobbying as a career on a scale of zero to five where five was excellent. It should be noted that there are six possible rankings, 1 to 6, in the question that produced data for **Table 9**. The exact

**TABLE 9**

**Oklahoma Lobbying:  
Rating Lobbying as a Career**

Rating	Responses	Response %	
1	4	2.6	
2	4	2.6	
3	7	4.5	
4	42	27.1	
5	53	34.2	
6	45	29.0	
Totals	155	100.0	Mean = 3.75

Source: Authors' calculations using response data from questionnaire.

midpoint between 1 and 6 is 3.5. In fact, as may be seen, the mean score was 3.75. Thus, about three-fifths of Oklahoma lobbyists rank lobbying favorably despite the fact that over one-half disapprove of changes in lobbying on the whole.

### SUMMARY AND CONCLUSIONS

Career paths that lead to lobbying in Oklahoma most often pass through business (35 percent), political or governmental (20 percent), or educational (12 percent) institutions. Though the lawyer-lobbyist is a common stereotype, only about ten percent of the Oklahoma lobbyists in 2006 were lawyers. Oklahoma lobbyists had an average of nearly ten years of experience. They are just as well educated though not as well paid as lobbyists in most other states.

The average age for Oklahoma lobbyists is fifty-one which is typical of state lobbyists around the country. Seventy-two percent of the respondent-lobbyists were male and twenty-eight percent female. Oklahoma lobbyists tend to be conservative or moderate. Less than half of the lobbyists in 2006 were Democratic as compared to more than three-quarters in the early 1960s. However, this is probably changing with shifts in the electorate toward independency or Republicanism.

The handful of lobbies that dominate group power in Oklahoma includes petroleum, health care, education, business, transportation/communication, banking/finance, gaming, agriculture, realtors/insurance, and utilities. Labor, the Oklahoma Education Association, public employees, consumers, agriculture, environmentalists, and minorities are among those interests seen to be losing influence in Oklahoma.

The respondent-lobbyists wrote short essays on changes in Oklahoma lobbying. Once coded, the results tended to fall into three kinds of changes. These were termed *Political Culture and Contextual Changes*, *Changes in Players and Roles*, and *Changes in How Lobbyists Lobby*. Negative reactions to changes in lobbying were much more likely than positive changes in all three categories. Nevertheless, lobbyists tended to feel favorably overall about a career in lobbying in Oklahoma.

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## **THE CHANGING FACE OF TRIBAL IDENTITY: STATE RECOGNITION OF INDIAN TRIBES**

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State governments are beginning to provide formal recognition to non-federally recognized Indian tribes. This essay examines the actions of nine different states and asks why this recognition is extended to some groups while being denied to others. It also looks at why states are doing this in the first place. Moreover, the implications of this practice for the larger issue of American federalism are probed. Finally, the current state of this practice in the state of Oklahoma and its likely future are also examined.

### **INTRODUCTION**

**When one considers** the many federal agencies which exist in the United States government, few of these agencies with perhaps the notable exception of the Internal Revenue Service, generate the brand of vehement and visceral controversy which is endemic to the Bureau of Indian Affairs (BIA). It is an entity charged with carrying out vast and varied responsibilities. Moreover, it is often provided with conflicting

and contradictory missions and is then criticized for its inefficiency, sloth, and mismanagement.

As the Bureau stands at the beginning of a new millennium and nears its 200<sup>th</sup> anniversary, it faces a number of unique challenges regarding changes in federal Indian policy. The primary impetus for this change in federal Indian policy and subsequently Bureau policy is due to a fundamental shift in federalism in the United States. The current trend of devolution which began in earnest in the early years of the Reagan Administration has in some ways created an atmosphere more conducive to tribal sovereignty and self governance. The return of power to state and local governments and the subsequent debates concerning preemption has caused many in the federal government to apply the same stance toward tribal governments. A number of bold legislative initiatives reflect this trend. Perhaps one of the greatest of these is the Indian Gaming Regulatory Act of 1988 (IGRA). This Act provides a statutory mechanism by which states and tribes may enter into cooperative agreements concerning gaming operations for their mutual economic benefit.

### STATE-TRIBAL INTERACTIONS

This policy of permitting state governments a role in dealing directly with tribal governments represents a dramatic shift in traditional federal Indian policy. Until recently, interpretations by the federal judiciary of Article 1, Section 8 of the United States Constitution have repeatedly reinforced and reaffirmed the usual notion of the federal government in general and the Congress in particular as possessing plenary power concerning Indian affairs. In fact, the exclusiveness of the tribal-US Government arrangement is a relationship that some have described as being a "federalized one" in terms of its nature (Wilkins 1998, 77). With devolution, however, this idea has come under scrutiny and reconsideration.

Besides issues related to gaming and state-tribal sovereignty, other new issues in federal Indian policy are also emerging (McCulloch 1994, 112). One of the most interesting of these concerns the issue of official tribal recognition. The Bureau of Indian Affairs has the significant responsibility of providing formal recognition to various native groups,

bands, and tribes who wish to be eligible to receive funding as well as other benefits from the federal government. This function of the Bureau is facilitated through the BIA's branch of Acknowledgement and Recognition which reviews the applications of these groups seeking federal recognition. Again, traditionally the idea of recognition has been primarily considered to be an exclusive right of the federal government and generally accomplished via the Bureau of Indian Affairs. However, Congress has also seen fit to intervene and recognize tribal communities such as the Keetoowah Band of Cherokees of Tahlequah, Oklahoma, in 1950 (Leeds 1996, 1). Quite recently however, the idea of exactly who should grant recognition to tribal governments has come under renewed interest from outside of Washington, D.C.

More specifically, a number of states are beginning to become involved as participants in the process of the tribal-recognition process. Today, numerous state governments are finding it either useful or necessary to engage in the process of formal recognition with tribes within their state boundaries. However, this is not a completely new idea. In fact, the state of North Carolina provided legislative recognition to the Lumbee Tribe of Indians in 1953 (Wilkins 2007, 26).

This practice is beginning to gain acceptance and popularity in other states. According to the National Conference of State Legislatures, as of 2005, approximately 38 states had created state level agencies designed exclusively for dealing with tribal governments in their states. These Indian affairs commissions often times essentially perform some of the same tasks as the BIA at the federal level. In Oklahoma, the Oklahoma Indian Affairs Commission was created by the state legislature in 1967 for the purpose of acting as a liaison between the state's various tribal governments and the state of Oklahoma. More will be said regarding Oklahoma and its policy on state recognition of tribes later.

### STATE INDIAN AFFAIRS COMMISSIONS

One of the primary functions of many of these Indian affairs commissions or agencies is to establish a government-to-government relationship between various tribes and the state. Secondly, the commissions are often charged with providing recognition to various native communities within the state. Lastly, they often attempt to promote and

encourage economic development activities between the state and tribal communities. Taken as a whole these actions would simply mimic the current relationship which tribal governments possess with the federal government.

However, a new aspect of this unfolding relationship should also be mentioned here. Many of the tribes which the states are recognizing are tribes which do not already enjoy the status of federal recognition. In other words, they are non-recognized tribes. According to the National Conference of State Legislatures, there are approximately 50 non-federally recognized tribes across the United States. This number is problematic since the criteria for and definition of state recognition differs so widely from state to state. The major question is why are the states doing this? It seems rather easy to see why states seek relationships with federally recognized tribes. Issues such as gaming and revenue sharing can sometimes constitute strong motivations for seeking relationships with these tribes. But what about non-federally recognized tribes? What is the motivation for this?

Exploring the aforementioned questions will constitute the focus of this work. In order to accomplish this, two primary questions will be posed. The first question considers how the process of state recognition works across the nation. Also related to this, what are the criteria involved for state recognition and how do states decide which tribes are offered recognition and which are not?

The second question will explore the overall issue of why states extend formal state recognition to non-federally recognized tribes. What is the rationale for this recognition? What are the benefits of this recognition? Likewise, what are the limitations of this recognition? After these questions have been explored, a few comments will be made regarding Oklahoma and its policies in this regard.

## METHODOLOGY

In order to begin, the methodology employed in this study will be discussed. Thirty-eight surveys were mailed by parcel through the US postal system on Friday June 17, 2005. These particular 38 states were selected due to the fact that they possessed an Office of Indian Affairs or a Commission of Indian affairs of some type. The information

regarding which states had offices or commissions and which did not was gathered from a series of lists compiled by the National Conference of State Legislatures, the National Congress of American Indians and the Governors Interstate Indian Council. In addition, calls were made to each of the offices appearing on these lists to confirm and obtain the correct addresses and names of the offices and officials to be contacted. The study received a total of 30 completed surveys, or about 80 percent of the total surveys sent. These surveys were completed in two ways. The first involved the respondents filling the surveys out on their own time. The second involved a phone survey using the same questions. The states to which formal surveys were mailed are as follows:

Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming.

The fact that not all the surveys were returned is related to a number of factors. The most important of which concerns the fact that some of these commissions are not active full-time bodies. Some of the commissions such as the Idaho Council on Indian Affairs meet only once or twice a year. Others may convene at the request of the governor or some other official. As such, they do not have a full-time staff or other resources required to answer the survey posed by this research project. Therefore, it was necessary to augment the survey information.

In addition to these surveys, supplementary information was collected by conducting research inquires on the nature of the tribal-state relationship in each of the surveyed states. The official state web sites of the commissions as well as the web sites of various state-recognized tribes were used to accomplish this task. Also, the commissions themselves supplied complementary information in the form of official state reports and other government documents. Additional organizations such as the National Indian Gaming Commission provided a number of official reports and other material necessary to answer the questions posed by this research. Finally, a number of states which do not have an Indian Affairs Commission or Office of Indian Affairs were also contacted.

Officials in these states were sometimes interviewed or otherwise asked to give information relating to how the tribal-state relationship operates in their states.

It should be noted that the need to afford anonymity to the respondents of the surveys was of paramount importance. Regardless of the fact that the questions posed by the research are of an inquisitive nature, a number of those questioned sometimes revealed information which was confidential in nature. However, they intimated to me that they wished this information to be included in the results of this work. Therefore in order to retain the promise of confidentiality, the research which follows is designed to answer the original research questions in such a way as to not link the information with the respondents. At the same time, the research mentions the name of a state or official when it is proper and necessary to do so and when permission was given.

In addition, another important note regarding methodology should be mentioned here. This concerns the authority of the respondents to speak on the issue of tribal-state relations. The individuals comprising these bodies are in a strategic position to provide information in regard to the questions posed by this research project. This is attributable to the fact that many of them are members of both state and federally recognized tribes within the states which they represent. As such, they possess the unique advantage of holding both a state and tribal perspective on the issue of tribal-state relations. Therefore, it is assumed that these respondents do indeed speak with sufficient authority on this subject. In addition, the author of this work would like to express his gratitude toward those at these state agencies whose participation and assistance made this research possible.

Finally, it should be noted that the topic of this work is not stagnant. As with most political science research, the material contained within this work is somewhat time-bound. Administrators, statutes and policies may change from time to time. As a result, while its findings are helpful in understanding tribal-state relations, the data represent only a fraction of what should be studied in the future to gain a complete assessment of the situation.

## DATA ANALYSIS

The survey results concerning state recognition of tribes are as follows.

- The total number of states surveyed was 30.
- Number of states which practice state recognition of tribes - 9.
- Number of states which once practiced state recognition of tribes in past but no longer do - 1.
- Number of states currently working on and establishing criteria and processes for state recognition of tribes - 2.
- Number of states which do not practice state recognition of tribes - 18.

NOTE: Oklahoma does not engage in the practice of state recognition of non-federally recognized tribes at the present time.

### RESEARCH QUESTION 1: HOW DOES THE PROCESS OF STATE RECOGNITION WORK?

In terms of how state recognition is achieved, no single pattern or method emerges from the data collected. Of the nine states being considered, three states used either their state Commission or Office on Indian Affairs or some equivalent agency as the primary actor to "recognize" tribes in their state. For example, in North Carolina the primary responsibility for recognition lies with the North Carolina Commission on Indian Affairs. In Alabama, the primary authority who establishes recognition is the Alabama Commission on Indian Affairs. In Michigan, the determination of recognizing non-federally recognized tribes is the prerogative of the Michigan Department of Civil Rights. However, Michigan does not formally "recognize" these bands as in other states. Rather, the Michigan Department of Civil Rights seeks to determine possible funding for legitimate "tribal organizations." More will be said about this distinction in the following sections. In the two states of Georgia and Louisiana, the legislature is responsible for granting recognition. In the remaining three states of Vermont, South Carolina, and Virginia the process involves the combination of the state bureaucracy and or

at least one other institution. New York has two state recognized tribes but did not discuss the method regarding how recognition is achieved. Having considered how it is done, what are the various criteria for recognition? Overall, some basic criteria are utilized by most of the states surveyed. Of the nine states involved, most of them use the following standards and benchmarks or some similar variations thereof. A group seeking recognition:

1. Must have a membership list of at least 500 members.
2. Must have its origins in the state in which it is seeking recognition.
3. Must not have any members of a federally recognized tribe.
4. Must demonstrate that the group has remained as a distinct and separate society with its own legal and/or political system for at least the last 100 to 200 years.
5. Must have the genealogy of the membership list approved by a certified state approved genealogist.
6. Must compile a tribal history with its claims verified by an approved historian or anthropologist.

Thus, some commonality does exist concerning the recognition process. However, it is not uniform. According to the results of the survey, Georgia and Louisiana use perhaps the most streamlined process. In order to gain full state recognition, the process is much simpler than in the other seven states considered here. The power to grant full recognition lies exclusively with their respective state legislatures. For example, according to the Georgia State Code Section 44-12-300, "The General Assembly may recognize tribes, bands, groups or communities other than those stated in subsection (a) of this code section as the General Assembly deems appropriate." Thus, recognition is essentially accomplished by the will of the legislature.

#### RESEARCH QUESTION 2: WHAT IS THE RATIONALE FOR EXTENDING STATE RECOGNITION?

According to the data collected, the meaning of state recognition is not universal in nature. The value and importance of state recognition differs considerably from state to state. Overall, it is possible to say that



the benefits of state recognition fall into three general categories. The first of these concerns a general sense of legitimacy. Tribes who cannot receive federal recognition cannot really claim any status at all. The next best thing is state recognition. It can provide both the tribal leaders and their members with a sense of authenticity and at least a quasi-styled arrangement in a government-to-government relationship.

The second reason concerns the quest for federal recognition. Many of the tribes which can be classified as state recognized will most likely never gain federal recognition. This is due to a number of reasons. For instance, many are not able to verify their genealogy claims. Some cannot prove their continued existence as a separate political entity. Nonetheless, many state recognized tribes hope that they will one day be granted federal recognition. In their efforts to do so, they often hope that the legitimacy which state recognition provides them may in some ways assist them in their bid to obtain federal recognition. In some cases this strategy has worked. An example of this potential is the Jena Band of Choctaw. In the 1970's and 1980's, the state of Louisiana extended state recognition to this tribe. Using this status and other claims of legitimacy finally paid off. Eventually in 1995, the tribe gained federal recognition. In other cases, such efforts have not been as successful. However, the possibility of such success is sufficient to encourage many non-recognized tribes and bands to seek state recognition.

The third reason why some tribes and bands seek state recognition concerns the issue of tangible benefits. In general, however, most states do not provide many if any tangible or material benefits for state recognized tribes. Of the nine states which were involved in the survey who reported extending state recognition of tribes, only two provide any real material benefits for this recognition. The state of Michigan has created a process where it reserves the right to recognize "tribal organizations" which if they meet specific criteria can be made eligible for certain state funding and services. Federally recognized tribes are automatically eligible for these benefits. Non-federally recognized tribes can also be approved. North Carolina's approach to providing benefits to its state recognized tribes closely mirrors the federal-state relationship in some ways. North Carolina extends a number of benefits to its state recognized tribes. One of the most important of these is its so called SONS program. This acronym stands for Support Our Native Students. The goal of the SONS program "is to provide an educational opportunity for American

Indians whose educational and socioeconomic backgrounds might otherwise prevent them from successfully attending and succeeding in college” (Annual Report of North Carolina Commission On Indian Affairs 2004, 5). In order to be eligible for this assistance, students must complete an application, meet an income threshold, maintain a minimum GPA and “be an enrolled member of a North Carolina [state] recognized tribe” (Annual Report of North Carolina Commission On Indian Affairs 2004, 5).

Another benefit afforded to state recognized tribes concerns housing issues. The North Carolina Commission on Indian Affairs is responsible for managing funds appropriated by both the federal and state governments. These funds are used by the state of North Carolina to administer a tribal-state housing fund whereby members of North Carolina State recognized tribes can participate and receive housing assistance. It is a very unique program in that it is essentially a federally funded housing program which is administered by the state for the benefit of both federally and state recognized tribes. In many ways, it is indicative of how versatile and flexible the tribal-state relationship can be if innovation guides state policy. This policy innovation and willingness to work with its native communities relates to another example of a benefit for state recognized tribes. Recently, the North Carolina General Assembly has considered legislation which would permit members of state recognized tribes to fish on state recognized lands without state licenses. Having discussed the benefits of state recognition, what are the limitations of state recognition?

The major powers and prerogatives of federally recognized tribes are not afforded to their state recognized counterparts. Essentially, there is no pretense of sovereignty in any significant fashion for state recognized tribes. In general, states extending state recognition reserve the right to regulate these entities in a variety of ways. For example, state recognized tribes are subject to state criminal and civil jurisdiction. This is largely because state recognized tribes do not have judicial powers or police powers. For example, Section 139-104 (A) of the South Carolina State Code says that tribes recognized by the state

are subject to the civil, criminal and regulatory jurisdiction and the laws of the State of South Carolina, its agencies, and political subdivisions and the civil and criminal jurisdiction of the courts

of the State of South Carolina, to the same extent as any other person or citizen or land in South Carolina.

In addition, these tribes are explicitly forbidden from engaging in activities associated with federally recognized tribes such as gaming. Perhaps more importantly, one of the most significant powers which state-recognized tribes cannot exercise concerns tax related issues. Generally speaking, tax exempt status does not apply to state recognized tribes. However, a caveat should be issued here. Not all state recognized tribes are or should be categorized in such a universal fashion. There are some notable exceptions to this generalization. One of the most obvious of these exceptions involves the Lumbee Nation of North Carolina. The Lumbee Tribe is not federally recognized *per se*. However, most observers agree that it is indeed a legitimate Indian Tribal community which should receive the legal and political status which it is due. To begin with, it has a long history of recognition from the state of North Carolina. As was stated earlier, in 1953 the state provided this recognition. Even before that time however, the Lumbee had been governing themselves in ways in which most state-recognized tribes can only dream. The contemporary Lumbee Nation has a modern government which provides a vast array of services to its members. As such, both its long history with a state government and the scope and power of its government is not representative of the experiences of most state-recognized tribes.

Another point which should be made concerning state recognition of tribes involves the reason as to why states extend this form of recognition in the first place. Virtually all of the states surveyed stated that the primary reason is to provide some form of acknowledgement for those American Indian communities who for whatever reason are unable to meet the criteria for federal recognition. In some cases, it may be that recognition is offered because of constituent pressure. One particular respondent intimated that state recognition of tribes in some cases amounted to "doing favors for voters." In this regard, it seems rather trivial. Others stated that it is designed to truly "provide some sense of legitimacy" toward a group of its citizens who deserve distinction as a separate group of individuals. However, regardless of the motivations involved, the implications for federalism are significant. The obvious and most central point is that by extending any form of political recognition to tribes, states are now involved in a jurisdictional area typically

thought to be exclusively under the plenary power of Congress and the federal government.

### **OBSERVATIONS ON THE ISSUE OF STATE RECOGNITION**

Overall, there are those who support and disagree with the policy of state recognition. What are the possible pros and cons of this policy for Indian Country and state governments in general? Those who support the idea of state recognition contend that such a policy holds a number of potentially positive aspects for tribal communities. First, many tribes such as the Lumbee are institutionally prevented from ever obtaining formal federal recognition due to a number of previous agreements and conditions imposed by the federal government. Thus, state recognition is for the time being the only hope tribes such as the Lumbee have of ever enjoying a recognized status. Secondly, state recognition of tribes can possibly help bridge the gap which may exist in the level of trust between states and Indian Country. The mutual distrust of these two sovereigns might be ameliorated and mitigated by the act of formally recognizing tribes as equal partners and sharing a government-to-government relationship with them.

A third argument involves the changing nature of American federalism. As has already been discussed at length, the effects of devolution have tended to empower state and tribal governments and to provide them with the desire to avoid the traditionally heavy-handed, top-down mandates of Congress. As such, states and tribes are seeking new and innovative ways to express their new-found freedom. The policy of state recognition may be one of these new innovative policies. If states and tribes are truly free and enjoy self determination, then they should be able to decide for themselves when, how, and with whom they choose to have formal political relationships and for what purposes.

The practice of state recognition is not without its critics, however. Many charge that a number of negative implications may arise out of such an arrangement. For example, they claim that the very notion of state recognition erodes away at the sovereign status of federally recognized tribes. This erosion occurs by allowing the states to interdict themselves between Indian Country and the federal government. This

concern is significant in that it constitutes one of the primary problems and paradoxes of traditional federal Indian policy. This paradox involves the twin problems of sovereignty and paternalism. On the one hand, the federal government is supposed to ensure the protection of Indian tribes. By virtue of treaties, judicial decisions and custom, the federal plenary power is to ensure that the politically weak tribes are protected from the dominant society which has in the past and may in the future seek to injure Indian Country. This protection is also accompanied by paternalism. This paternalism is of course a natural consequence of the power which the federal government exercises as the guardian of the tribes. At the same time, however, the federal government officially has endorsed the policy of self determination for tribes for the last four decades. Thus, the federal government should permit the tribes to make their own decisions. Of course, the two concerns of sovereignty and paternalism often conflict with each other.

The primary issue which the opponents of state recognition highlight concerns the undermining of the federal government's responsibility to defend tribes and provide services to them. They argue that state involvement in Indian Country undermines the essential and fundamental elements which Indian Country requires to survive in a society which they view as being both competitive and hostile to the tribes.

A second objection which some raise against state recognition concerns the notion of tribal unity and cultural unity within their tribes. For example, there is currently one official Osage nation. This tribe is headquartered in Pawhuska, Oklahoma. This tribe is federally recognized and is served by the Bureau of Indian Affairs. Thus, one band of Osage Indians considers itself to be the one, true and only legitimate representative of the Osage people wherever they may be disbursed around the globe. The Osage Nation of Oklahoma would have a major problem if another group of people claiming Osage descent and who could provide legitimate proof of their claim, which are not recognized as tribal citizens of the Osage Nation attempted to form their own tribal group under the banner of being state recognized. This would, in the minds of many federally recognized Osage constitute a serious threat to the integrity of the Osage government in Pawhuska. Put another way, just as Beijing and Taipei claim to be the one, true, legitimate representative of the Chinese people, they cannot both be the single representative of

the Chinese people. Thus when assessing which one really represents the Chinese people, one must decide which one is more legitimate. The same analogy applies here.

Related to this dilemma are the difficulties in defining who is a legitimate member of a particular tribal community, since the tribes themselves determine who is eligible for tribal membership (Utter 2001, 36). Consequently, no single federal definition exists regarding who is an Indian and who is not. As a result, the states have no template as to how to proceed concerning setting these guidelines themselves. This fact is further complicated by the issue of the so-called terminated tribes and their members who by governmental decree and past policies may no longer be regarded as Indians following the logic that "there can be no Indian without a Tribe" (Canby 1998, 9). Thus, the notion of state recognition of tribal communities seems to confuse an already complicated issue as to just exactly who or what constitutes an "Indian."

This confusion appears to be manifesting itself already in some states. For example, in Missouri there is a complex and confusing situation with a number of tribes and their exact status of being either recognized or non recognized. One of these cases involves the Northern Cherokee Nation of the Old Louisiana Territory. Also known as NC-NOLT, this organization claims status as a state recognized American Indian tribe in Missouri. It bases this claim upon a number of factors. The most important of these claims is predicated upon a number of documents in which the state government does indeed seem to confer this status upon them.

For example, in 1984, the Missouri House of Representatives issued a resolution (**Appendix 1**) in which the NCNOLT claims the state formally recognized the group as an Indian tribe. The NCNOLT base this claim upon the wording of the resolution. While a number of examples could be cited, I will restrict it to two primary justifications. In the first instance, the resolution says that the state acknowledges the existence of the tribe by writing that

these proud people have preserved a form of tribal government for the past 140 years and have further written a constitution and bylaws creating a new and working tribal government, incorporated into the State of Missouri in 1982 (**Appendix 1**).

This passage is significant in that it not only acknowledges the existence of the tribe but also that it recognizes the tribe as having a working government, both historically and in modern times.

The second important fact from these documents concerns the issue of continued recognition from multiple government agencies and officials. As was just stated, in 1984, the Missouri House of Representatives seemed to be granting recognition to the tribes. But, others have also seemed to do the same. For example, in 1983, one year before the House of Representatives resolution was passed, Governor Christopher Bond issued a similar proclamation. Many might be inclined to say that such proclamations do not constitute significant political importance. Rather, they tend to be of a ceremonial or aesthetic nature. However, the wording of this document might call this assumption into question. In the proclamation (**Appendix 2**), Governor Bond states that "Now, therefore, I, Christopher Bond, Governor of the State of Missouri, Do hereby acknowledge the existence of the Northern Cherokee Tribe as an American Indian Tribe within the boundaries of the State of Missouri, and do hereby proclaim June 24, 1983 as Northern Cherokee Recognition Day" (**Appendix 2**).

In this passage, the Governor clearly recognizes the tribe as being a modern day entity with whom the state has contact and at least some sort of relationship. Related to this, the Governor reiterates the words of the House of Representatives by saying that "They have continued a form of tribal government for the past 140 years" (**Appendix 2**). As such, the Governor also acknowledges that the tribe is a separate entity and has functioned as such for quite some time.

Subsequent governors and other officials have also given similar recognition since. For example, in 1996 Governor Mel Carnahan issued another proclamation (**Appendix 3**). In this document, the governor does a number of things. First, he states that the tribe has "continued a form of tribal government for at least the last 221 years" (**Appendix 3**). Secondly, he names the principal chief of the tribe and mentions that she gained her office by popular election within the tribe. Thirdly, he decides to "acknowledge the existence of the Northern Cherokee Tribe of the Old Louisiana Territory as an enduring American Indian tribe within the boundaries of the State of Missouri" (**Appendix 3**).

A final document from which the tribe claims state recognition involves that of the Cape Girardeau Proclamation of 1997 (**Appendix**



4). In this proclamation the Mayor of Cape Girardeau, Missouri also grants recognition to the tribe. This proclamation does not in and of itself constitute great significance. This is due to the fact that a city official such as a mayor does not possess the right to extend state recognition to an Indian tribe. However, the wording of the document is important in that the recognition which he extends is based upon the idea that others, namely the Governor and the Legislature, had already done so in the past.

Complicating the situation of the NCNOLT is the idea of a state-recognized tribe existing in more than one state at the same time. According to its official history, the NCNOLT once occupied lands in both Missouri and northern Arkansas. Subsequently, the tribe began to enroll members from Arkansas into its previously exclusive Missouri based tribe. As a result of this, tribal members and leaders began to seek official recognition from Arkansas state officials. In 1997, both the Governor of Arkansas and the Legislature had issued proclamations (**Appendix 5** and **Appendix 6** respectively) regarding the tribe. These Arkansas proclamations were almost entirely symbolic in nature. However, they do indeed demonstrate both the importance and significance of the NCNOLT in two different states.

What does all this mean? Does this confer a state recognized status upon the NCNOLT? The answer is vague at best. According to the facts, most impartial observers might argue yes. The NCNOLT does appear to have a series of government officials and agencies extending this recognition in writing. However, subsequent governors and legislators have claimed to have either rescinded or suspended this state recognition. They have argued that the prerogative of the legislature changes with elections. Likewise, governors may change their minds on this issue and the actions of one's predecessor do not dictate the agendas and policies of the succeeding governors. In addition, many in Jefferson City say that the issue of state recognition of Indian tribes is a matter which has not yet been fully decided upon. As such, they say that state recognition is not in and of itself a clear and substantive policy which the state should be undertaking at this time.

Another potential actor who could impact the future of the policy of state recognition of tribes concerns the sometimes capricious nature of the judiciary. For example, on February 17, 2007, a Virginia Circuit Court judge ruled that "an Indian tribe's reserved water rights cannot be



dependent upon a tribe's federal recognition status alone" (Whitehead, 2007). In this ruling, the state court seemed to be assuring state recognized tribes that they can assert certain rights under the federal "Winters Doctrine" which has traditionally served as a legal aid to tribes claiming water rights. Thus, it is possible that state recognition might inadvertently lead to state recognized tribes exercising powers that the architects of state recognition never envisioned or desired. If the federal courts rule in this fashion, who knows where it will lead?

### OKLAHOMA AND STATE RECOGNITION

This same ambiguity has occurred in Oklahoma as well. In 2003, Oklahoma was home to 38 federally recognized tribes. As such, it is a state which is no stranger to tribal governments. However, in the administration of former Governor Frank Keating an interesting development occurred in terms of the issue of state recognition. In a rare initiative, Governor Keating signed a state resolution dealing with the Delaware Tribe of Indians who had applied for federal recognition after briefly losing their status as citizens within the Cherokee Nation. Please note that the Delaware Tribe of Indians should not be confused with the Delaware Nation located in Anadarko, Oklahoma. The resolution signed by the Governor only stated that the Delaware Tribe of Indians was a tribe which existed within Oklahoma. Does this mean that the governor and thus the state recognized the Delaware Tribe? That depends upon whom you ask. Some might argue that it does. However, the state is clear that it does not. In fact, the Oklahoma Indian Affairs Commission officially recommends that the State of Oklahoma should not formally create guidelines for state recognition of tribes in the future (Phone interview with the OIAC 4/4/06). This opposition stems largely from tribal leaders who generally oppose the notion of state recognition for some of the purposes stated earlier.

### CONCLUSION

Having considered the aforementioned data, what conclusions may be reached? There are a number of possible lessons one may glean from

this study. The first of these concerns the state of American federalism. Nearly all observers note that the trend toward devolution is continuing in large measure. This study tends to support such a contention. In its attempts to "get out of the Indian Business" the federal government has sought to empower Indian tribes. Federally recognized tribes are consequently seeking greater power and autonomy to do more for themselves. Much of this can be seen in the economic power that Oklahoma tribes have begun to exercise via the use of enterprise trade zones such as the Choctaws in the Durant area.

In addition, the states are beginning to interact with them and to partner with them over a host of new and innovative policies which can be beneficial to both parties. But beyond this, a number of states are also deciding to engage in the policy of state recognition of non-federally recognized tribes. This is sometimes done to the chagrin of both federally recognized tribes as well as elements of the federal bureaucracy. However, this new policy represents in some ways the degree to which some states are seeing their role in a devolved federal system which permits them the right to decide new and controversial policies which most of them would not have even considered 20 years ago. As such, the policy of state recognition represents the acute nature of current devolutionary policy and the rising power of state governments.

A second important and related aspect revealed by this research, concerns what the author tends to call the "unintended consequences of state recognition." As is commonly known, many governmental actions can exert unintended consequences. Often times while even hoping to achieve a greater public good, government initiatives can have far reaching and unforeseen results. These results may be of both a positive and or a negative nature. For example, consider the passage of the Indian Gaming Regulatory Act of 1988. This Act provided for the statutory mechanism by which states and tribes would enter into cooperative gaming agreements. Inspired by this, states and tribes now engage in a host of other non-gaming related activities.

It would appear that the issue of state-tribal recognition efforts constitutes no particular exception to this rule. One of the ways in which this has been manifested concerns the issue of legitimacy. Can a state recognized tribe speak for the people of a particular tribe when a federally recognized tribe exists? Conversely, should the legitimacy of a state tribe always be considered inferior to that of a federally recognized tribe?

While the architects of state recognition probably did not intend for such dilemmas to evolve, nonetheless they have. As a result, while it was largely designed to help assist the legitimacy of non-federally recognized tribal communities in particular, in some ways it has contributed to a questioning of the legitimacy of tribal communities in general.

Finally, the issue of state recognition represents simply one more link in a long chain of diverse, conflicting and sometimes contradictory policies with which Indian tribes have been forced to contend. It represents a dramatic reversal from the strict adherence to an exclusively federal-tribal relationship to one which now permits the intervention and influence of state governments. Most observers say the jury is still out regarding the nature of state recognition and how it will ultimately impact Indian Country in general. This is largely because the issue of state recognition is a divisive one not only in terms of its meaning and significance, but also because of its implications in that it potentially stands to negatively affect the economic and political status of both Indian and non-Indian elites. Consequently, it is controversial as a policy and as such is not likely to be sanctioned in the state of Oklahoma anytime soon. Regardless of what perspective one assumes, the debate concerning state recognition will most likely continue to be hotly debated from all sides.

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Appendix I

Missouri House of Representatives



Resolution

WHEREAS, the members of the Missouri House of Representatives are deeply honored to recognize the Northern Cherokee Indian people who have played a vital role in the rich tradition and history of this state; and

WHEREAS the Northern Cherokee are descendants of the great Cherokee nation, where survival against all odds has served as an example of pride and determination for all mankind to hold in awe; and

WHEREAS, the Northern Cherokee chose Missouri as their new home during the Trail of Tears, rather than settling in Indian territory which was reserved for them; and

WHEREAS, throughout this state's history, these noble citizens have represented our state in the armed services through several wars; and

WHEREAS, these proud people have preserved a form of tribal government for the past 140 years and have further written a constitution and bylaws creating a new and working tribal government, incorporated into the State of Missouri in 1962; and

WHEREAS, the existence of the Northern Cherokee Tribe has been fully acknowledged by the Governor of the State of Missouri as an American Indian Tribe within the boundaries of this state; and

WHEREAS, this tribe will undoubtedly play a major role in the future advancements and accomplishments of this great state; and

WHEREAS, it is entirely fitting and proper that this legislative body should pause to honor and recognize this great tribe, which has endured and will continue to do so in the face of many obstacles, as a example to all people;

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Missouri House of Representatives, Eighty-second General Assembly, express our most sincere respect and admiration for the Northern Cherokee Indian people and further wish them much happiness and prosperity for the future; and

BE IT FURTHER RESOLVED that the Chief Clerk of the Missouri House of Representatives be instructed to prepare a properly inscribed copy of this resolution for the Northern Cherokee Tribe.

Offered by Representative Chris Kelly

I, Bob F. Griffin, Speaker of the House of Representatives, Eighty-second General Assembly, Second Regular Session, do certify that the above is a true and correct copy of House Resolution No. 279, adopted March 8, 1984.

Bob F. Griffin, Speaker



APPENDIX 2

**Proclamation:**  
**Office of the Governor**  
**State of Missouri**

WHEREAS, the Northern Cherokee Indian people are descendants of the Cherokee nation; and

WHEREAS, the Northern Cherokee settled in Missouri rather than in Indian territory; and

WHEREAS, the Northern Cherokee citizens of Missouri have represented our state in the armed services through several wars; and

WHEREAS, they are very much a part of the state's history and its future; and

WHEREAS, they have continued a form of tribal government for the past 140 years, and in 1979, wrote a constitution and by-laws creating a new and working tribal government which was incorporated as a not-for-profit tribal organization into the State of Missouri in 1982:

NOW, THEREFORE, I, CHRISTOPHER S. BOND, GOVERNOR OF THE STATE OF MISSOURI, do hereby acknowledge the existence of the Northern Cherokee Tribe as an American Indian Tribe within the boundaries of the State of Missouri, and do hereby proclaim June 24, 1983, as

NORTHERN CHEROKEE RECOGNITION DAY

In Missouri to recognize the tribe, its people and the contributions they have made to their home state, and we urge all Missourians to share in the celebration of this recognition,

IN TESTIMONY WHEREOF, I have hereunto set my hand and ceased to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, this 22nd day of June, 1983.



GOVERNOR

ATTEST:

SECRETARY OF STATE

APPENDIX 3



Office of the Governor  
State of Missouri  
**Proclamation**

WHEREAS, the Northern Cherokee Indian people are descendants of the Cherokee Nation West who first immigrated to Missouri Territory from the Old Cherokee Nation of the Southeast in the 18th century; and

WHEREAS, in the 19th century, the Northern Cherokee remained in Missouri rather than be removed to Indian Territory; and

WHEREAS, the Northern Cherokee citizens of Missouri have always represented our state in the armed services throughout every war; and

WHEREAS, they have played a vital role in the rich tradition and history of this state and shall be very much a part of the future; and

WHEREAS, they have continued a form of tribal government for at least the past 221 years, and in 1979, wrote a constitution and bylaws creating a new and working tribal government which was incorporated as a not-for-profit tribal organization into the state of Missouri in 1982; and

WHEREAS, they were recognized as an historic Missouri Indian Tribe by a Governor's Proclamation of 1983; and a Missouri House of Representatives Resolution of 1984; and

WHEREAS, the nation has flourished under their Principal Chief, Beverly Baker-Northup, who was first elected in 1984, and continues as Chief of the Northern Cherokee Tribe (Nation) today:

NOW, THEREFORE, I, MEL CARNAHAN, GOVERNOR OF THE STATE OF MISSOURI, do hereby acknowledge the existence of the Northern Cherokee Tribe (Nation) of the Old Louisiana Territory as an enduring American Indian Tribe within the boundaries of the State of Missouri, and do hereby proclaim June 22, 1996, as

**NORTHERN CHEROKEE RECOGNITION DAY**

in Missouri to officially recognize the tribe, its people, and the contributions they have made to their home state, and urge all Missourians to share in the celebration of this recognition.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the city of Jefferson, this 20th day of June, 1996



## Cape Girardeau Proclamation

### PROCLAMATION

*Whereas* the Northern Cherokee Indian people are descendants of the Cherokee Nation West who first immigrated to Missouri Territory from the Old Cherokee Nation of the Southeast in the 18th century; and

*Whereas* in the 19th century, the Northern Cherokee remained in Missouri rather than be removed to Indian Territory; and

*Whereas* the Northern Cherokee citizens of Missouri have always represented our state in the armed services throughout every war; and

*Whereas* they have played a vital role in the rich tradition and history of this state, and shall be very much a part of the future; and

*Whereas* they have continued a form of tribal government for at least the past 221 years, and in 1979, wrote a constitution and bylaws creating a new and working tribal government which was incorporated as a not-for-profit tribal organization into the State of Missouri in 1982; and

*Whereas* they were recognized as an historic Missouri Indian Tribe by a Governor's Proclamation of 1983; and a Missouri House of Representatives Resolution of 1984.

*Now, Therefore*, I, Albert M. Spradling, III, Mayor of the City of Cape Girardeau, Missouri, do hereby acknowledge the existence of the Northern Cherokee Tribe (Nation) of the Old Louisiana Territory as an enduring American Indian Tribe, and do hereby proclaim June 22, 1997, as

### Northern Cherokee Recognition Day

in Cape Girardeau, Missouri, to officially recognize the tribe, its people, and the contributions they have made to their home state, and I urge all citizens to share in the celebration of this recognition.



*In Witness Whereof* I have hereunto set my hand and caused to be affixed the Seal of the City of Cape Girardeau, Missouri, this 17 day of June A.D., 1997.

*Al M. Spradling III*  
A.M. Spradling III, Mayor



APPENDIX 5

**STATE OF ARKANSAS**  
**HOCEGANEH, DEHAGGONITTEH**

**PROCLAMATION**

TO ALL TO WHOM THESE PRESENTS COME -- GREETINGS:

WHEREAS, the Northern Cherokee Indian people are descendants of the Old Settler Cherokees and the Cherokee Nation West who first immigrated to Arkansas Territory from the Old Cherokee Nation of the Southeast in the Eighteenth Century; and

WHEREAS, in the Nineteenth Century, the Northern Cherokee remained in Arkansas rather than be removed to Indian Territory; and

WHEREAS, the Northern Cherokee citizens of Arkansas have always represented our state in the armed services throughout every war; and

WHEREAS, they have played a vital role in the rich tradition and history of this state, and shall be very much a part of its future; and

WHEREAS, the nation has flourished under their Principal Chief, Beverly Baker Northup, who was first elected in 1984, and continues as Chief of the Northern Cherokee Tribe (Nation) today;

NOW, THEREFORE, I, Mike Huckabee, acting under the authority vested in me as Governor of the State of Arkansas, do hereby proclaim April 8, 1997 as

**NORTHERN CHEROKEE DAY**

in the State of Arkansas and urge all Arkansans to share in the calculations of our diverse Arkansas history.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this \_\_\_ day of March, in the year of our Lord 1907.

*Mike Huckabee*  
MIKE HUCKABEE, GOVERNOR

*Sharon Priest*  
SHARON PRIEST, SECRETARY OF STATE



APPENDIX 6

State of Arkansas  
81st General Assembly  
Regular Session 1987

H.C.R. 1003

By: Representatives Cook, Ammons, Curran, Hall, Diane Hudson, Allison, Broadway, Purdora, Davis, McJunkin, George, Terry Smith, Puqua, Hausam, McGehee, Dawson, Johnson, Milum, Baker, Whorton, and Hora

HOUSE CONCURRENT RESOLUTION

RECOGNIZING ARKANSAS' NORTHERN CHEROKEE DESCENDANTS OF THE NORTHERN CHEROKEE NATION OF THE OLD LOUISIANA TERRITORY FOR THEIR CONTRIBUTIONS TO THE STATE OF ARKANSAS.

WHEREAS, the Northern Cherokee of Arkansas are descendents of the Northern Cherokee Nation of the old Louisiana Territory; and

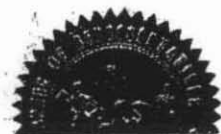
WHEREAS, John Ross, who later became Chief of the old Cherokee Nation in the southeast, wrote President James Monroe on November 2, 1819, referring to the Cherokee West of the Mississippi as "the Cherokee on the St. Francis River" because they lived in what is now southeast Missouri and northeast Arkansas; and

WHEREAS, since ancient times, the Cherokee have referred to themselves as "Ani Yunwiya" which means "the principal people"; and

WHEREAS, the Northern Cherokee of Arkansas have represented this State in the United States armed services through several wars,

NOW, THEREFORE,  
BE IT RESOLVED AT THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-FIRST GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, THE SENATE CONCURRING THEREIN:

That Arkansas' Northern Cherokee descendants of the Northern Cherokee Nation of the old Louisiana Territory are hereby recognized for their contributions to and on behalf of this State and the United States of America.



*M. Olive Cook*

**BOOK REVIEW SECTION**



Davis D. Joyce, Editor. *Alternative Oklahoma: Contrarian Views of the Sooner State*. (University of Oklahoma Press, 2007), pp. 249. \$19.95 ISBN 13:978-0-8061-3819-0

**The 14-edited chapters** of *Alternative Oklahoma* chronicle the state's history from the "standpoint of others." Such a point of view is modeled from historian Howard Zinn's *A People's History of the United States*, but for Oklahoma. In Davis' own words he states:

I prefer to try to tell the story of Oklahoma's prehistory from the point of view of the Spiro Mound people; of Indian removal from the view of the Cherokees; of the Civil War from the standpoint of the Seminole slaves; of the Run of '89 as seen by the Indians already there . . . (p xiv).

Davis, who also wrote a biography on Zinn, cobbles together progressive voices who tell stories of the state's overlooked and often marginalized past. The edited volume is introduced by Fred Harris, a former Oklahoma U.S. senator and presidential candidate who now teaches political science at the University of New Mexico. Harris writes in the introduction that although history is too often written by the winners and the elites, that "if we're really going to understand who we are as Oklahomans and how far we've come, we need to learn, and teach, history as it was lived by the loser, too—and those who had to fight hard to keep from losing" (p. xi). Although Davis reveals a glimpse of Oklahoma's "progressive streak," he admits that this edited volume is:

Not 'everything' your Oklahoma history text book got wrong is included herein; and some of what is included is essential material considered unworthy of inclusion in the textbooks—or too controversial (xvii).

While not even Zinn's thick 750+ pages can include a definitive American progressive history, this 249-page volume does not pretend to cover Oklahoma's either. Davis' edited volume is slanted slightly toward history as six of the fourteen contributors, including Davis himself, are historians, however, the rest of the authors are from a diverse range of disciplines: library science, sociology, English, journalism, religious studies, political science and even a community activist.

The 14 chapters cover a range of topics from Oklahoma's marginalized voices, such as pioneer women who were social historians, African- and Native-Americans, Vietnam Vets for Peace, Homosexuals, Radicals, and those who are religiously to the left. Each chapter's style is also diverse. On the one hand is Linda Reese's "'Petticoat' Historians," which is an academic exploration of women, such as well-known Angie Debo and Oklahoma Higher Education Hall of Famer Anna Lewis, both of whom pioneered Oklahoma history research. On the other hand is Roxanne Dunbar-Ortiz's "Growing up Okie—and Radical," which is an adaptation from her book *Red Dirt: Growing Up Okie*. Ortiz's chapter is a poignant memoir of growing up poor and white in Oklahoma before World War II.

Davis' edited volume can easily inspire undergraduate or graduate students to look at history and even contemporary politics in Oklahoma with more open minds and a wider lens.

John Wood  
Rose State University

Thomas, Elmer. *Forty Years a Legislator*. Richard Lowitt and Carolyn G. Hanneman, ed. (Norman, OK: University of Oklahoma Press, 2007), pp. 178. \$24.95 ISBN 978-0-8061-3809-1

**As a United States Senator** during wartime, Elmer Thomas became one of the very few American leaders trusted with the greatest secret of the twentieth century—the development of the atomic bomb. This relatively unsung hero in Oklahoma's political history is given voice anew by the remarkable efforts of Richard Lowitt and Carolyn Hanneman. Together, these two researchers combed the Senator's memoir held in safekeeping under the auspices of the Carl Albert Center at the University of Oklahoma. Thomas's original memoir is described as "a sprawling, unrevised and uncorrected 433-page typed document" covering "his life up to his retirement in 1951" (p. xv). The editors have performed a miraculous job distilling this extensive work down to its essentials.

Thomas began his lifelong association with the Oklahoma territory in unremarkable fashion. Basically, he didn't have enough funds to travel back to his home state of Indiana. So here he opened up a law practice and engaged in a series of highly profitable real estate ventures. Particularly notable was his strategic foresight in leveraging properties with the potential to channel water to the growing population and industries of a thirsty southwestern Oklahoma. These early lucrative efforts here foreshadowed his subsequent and equally successful initiative to provide irrigation in Oklahoma through the mechanisms of the national government. Borrowing from the precedent of the Tennessee

Valley Authority, Thomas would later shepherd legislation to provide flood control and water reservoirs throughout the state.

The early part of the book is an enlightening recount of the numerous efforts to successfully launch a new state against numerous hardships and obstacles. Lack of financial resources was always problematic. With more humor than he probably intended, Thomas observed the irony, "Had we known at that time that there was a vast pool of oil under the land secured [for the capitol], our financial problem would have been solved"(p.19). Various other budgetary measures and the ultimate discovery of the oil reserves under the capitol grounds helped the state with its early fiscal responsibilities.

Throughout, Thomas remains unabashedly proud of his work promoting the interests of the Indian tribes in Oklahoma. He admits that "Indians, for good reasons, are skeptical of the white man"(p. 13). His profound empathy for Indians was not necessarily aimed at preservation of their culture. This dichotomy can be seen in his statement, "Knowing of their history and the treatment accorded them by our government, I was always sympathetic to their efforts to provide educational opportunities for their children to the end that they might better protect themselves in dealing with the white man, and eventually to see their children able to take their place as full citizens of our country"(p. 15). In other words, full assimilation appears to have been Thomas's ultimate goal. Whatever his motivations, his efforts to redirect resources to Oklahoma's tribes is admirable. In one vignette, Thomas describes legislation to direct the royalties from "the Red River oil lands to the Kiowa, Comanche, and Apache Tribes of Indians"(p. 33).

As a former human resources manager, I was surprised to find out that the standard 40-hour workweek was initially intended to apply only to those in service at the American Navy Yards. Thomas notes, "That little provision of law, adopted to the 1934 bill, has become the cornerstone of the entire working movement in the United States, although at that time it was intended, as I thought, to apply only to the Navy"(p. 47). The principle of five eight-hour days gradually extended to the rest of the nation's workforce.

Thomas nonchalantly offers several comments about his political world that contemporary readers may find a bit curious. In this era of term limits at the state level and the diminishing importance of seniority at the national level, Thomas's recurring defense of the virtues of long



service in the legislature seems quaint. Also puzzling to the modern political observer is the method Thomas often uses as evidence of his legislative prowess. At various points he boasts about his verbosity in covering "30 pages of the House hearings"(p.53) or similarly, "My testimony in support of the bill covered some 30 pages of the Congressional Record"(p.34). Now at first blush it might appear that Thomas has an upper limit in his quantity of speech approximating thirty pages in written form. However, he soon reminds us that he firmly established his senatorial reputation by staging a well publicized (if not immediately successful) filibuster. Such was life before the era of sound bite. A final point of curiosity betrays the leftward leanings of Thomas. He is keenly suspicious that information not processed by an official government agency is somehow not "authentic"(pp. 66-67). Therefore, he proceeds on a long legislative quest to create an institutional basis within government to scrutinize the oil industry in order to yield information for policy analysis.

The general dryness of Thomas's memoir is prominently demonstrated when his writing is contrasted with others describing the same events. At those points in *Forty Years a Legislator* where Thomas quotes at length from others, the reader is left to conclude that the best parts of this book were written by journalists and other politicians. In fact, the last three pages of this book is one long quote from Senator Robert S. Kerr.

Notwithstanding the dry tone, the book livens up considerably in its last half. Here, Thomas describes the numerous attempts to get the Hoover administration to deal effectively with the economics of the Great Depression. As war later looms on the horizon, Thomas discovers to his dismay how inadequately prepared the military is to meet the coming challenge. In what is perhaps the single humorous line in the whole book, Thomas observes, "At El Paso, Texas, we inspected one of our cavalry camps, consisting of some five thousand men and five thousand horses, all well trained for parade purposes"(p.113). In the early summer of 1941, with the attack on Pearl Harbor less than a half year away, Thomas finds "one aircraft gun at Los Angeles" with "no one present" who "knew how to use the weapon," Coast Guard guns at San Francisco that no one could ever remember having been fired, and equipment to detect the sound of approaching hostile aircraft in Panama that no one knew how to use (p.113).

The best contribution of *Forty Years a Legislator* is the section on the "Legislative History of the Atomic Bomb." In the modern era after Vietnam and during a time when our government is still apologizing for the lack of weapons of mass destruction in Iraq, the trust placed by the legislative branch to the executive branch during the prosecution of World War II is extraordinary. Speaking about the Manhattan project, Thomas explains, "The passage by the Congress without any public comment whatever of appropriations so vast for a project, whose success no man could surely promise, was a striking demonstration of the courage and daring of the legislative branch of government . . . and in its final triumph the judgment of the Congress was vindicated" (p. 123). General Leslie Groves would subsequently remark, "I would like to put on the record a statement of my personal appreciation for the support that I got from the Congress, and particularly from this subcommittee on Appropriations, in permitting this work we were engaged to go ahead, taking the chances that each member of this committee took with his future political career on the very scanty information that we had to give you at that time" (p. 135). Thomas describes in great detail how the funds allocated to the Manhattan Project were surreptitiously embedded in legislative appropriations. Even so, Thomas is extremely proud of the legislative oversight that occurred in other areas during the war years. When defending against so-called junkets, Thomas points to several successes including a single item that "saved the government over \$1 million" (p. 138). Thomas closes his discussion of the war years by describing his visit to Germany during the final phases of the Nuremberg trials.

*Forty Years a Legislator* is a welcome contribution to the political history of Oklahoma. Like most memoirs, Thomas delivers a bit of self-serving prose (oh, and poetry too—see pp. 71-72). But this book does offer a lot in terms of political analysis. Especially worth reading in that context is the numerous legislative strategies that Thomas employs over the years. Hopefully, more of these types of volumes can be produced by this state's researchers using the treasury of information stored within the Carl Albert Center.

Brett S. Sharp  
University of Central Oklahoma

Felix S. Cohen, *On the Drafting of Tribal Constitutions*. David E. Wilkins ed., Norman, Oklahoma: University of Oklahoma Press, 2007 (unpublished memoranda 1934), pp.190. \$34.95  
ISBN 978-0-8061-3806-0

**It was November 1934**, and yet another chapter in federal Indian policy had just drawn to a close. From George Washington's Revolutionary War-era policy of accommodating Indian tribes through treaties (he needed their help), to the Supreme Court's early nineteenth-century tribal-sovereignty-protective policies, to Andrew Jackson's policies of removing eastern tribes to the West (often, Oklahoma), to the confinement-on-the-reservation policies that made famous the name of George Armstrong Custer, to the assimilationist "gentleman farmer" policies of breaking up and "allotting" the reservations, to the early-twentieth century policies of aggressive land-base encroachments and not-so benign neglect, federal Indian policy had oscillated wildly before. By 1928, the famous Merriam Report had recognized that the breakup of tribal land bases effectuated by late nineteenth-century "allotment" policies (and subsequent Hobbesian non-Indian predation) had proved disastrous to most tribal members.

But in 1933, Franklin Roosevelt appointed John Collier Commissioner of Indian Affairs, and Collier had a new vision. Convinced that both allotment (the breakup of communally-held reservations into discrete parcels more-or-less "owned" by tribal members and others *really* owned by non-Indians) and federal dominance over tribal-management matters had been counter productive, Collier was determined to end

them, and he enlisted the help of Felix S. Cohen in so doing. Cohen, who had just earned graduate degrees in philosophy (Harvard M.A. 1927, Ph.D. 1928), and law (Columbia LL.B.1931), joined the Department of Interior as an Assistant Solicitor in 1933. His task was to help draft the legislation that Collier hoped would ring in the new era.

Cohen was well-suited to the mission. A political idealist sympathetic to the plight of the underprivileged, and (as so frequently coincides with such views) a "legal realist" suspicious of legal formalism, Cohen was anything but averse to social engineering. To Cohen, Indian policy seemed a promising arena since its status quo had been generated not only by naked avarice but by *other* (sometimes well-intentioned) social engineering, the effects of which Cohen might undo. The Collier/Cohen plan would be reflected in the Indian Reorganization Act ["IRA"] that Franklin Roosevelt signed into law on June 18, 1934.

Except with respect to Oklahoma's Indian tribes (which were added to the new regime in 1936), the IRA was a sea change in federal policy. Recognizing that both the quantity and quality of lands beneficially owned by tribes and tribal members had been rather spectacularly diminished since allotment had begun in the 1880s, the IRA ended allotment and extended the federal trusteeship over lands previously allotted to tribal members; those lands were thus protected against improvident and/or exploitative sale. But equally importantly, the IRA's new policies would re-empower tribal members *governmentally* by explicitly authorizing tribes to organize and, upon majority vote and approval by the Department of the Interior, adopt tribal constitutions. Collier, Cohen, and Congress reasoned that such legislation would facilitate tribal *self-government*, lift the heavy hand of federal bureaucracy, empower tribal entrepreneurship, and make "tribal sovereignty" something more than a slogan once again.

Even before the IRA's enactment, sixty tribes had filed constitutions or documents in the nature of constitutions with the Department of Interior; the unwritten Iroquois constitution traced back to the fifteenth century, and the Cherokee, Choctaw, Chickasaw, and Osage constitutions were reduced to writing during the nineteenth. It would turn out that under their inherent sovereignty, tribes already possessed such governmental and organizational powers as the IRA sought to "give" them as a matter of federal law; the Navajos and other tribes who rejected the IRA's offer of structure (that part of the IRA was strictly voluntary)

would generate their own constitutions and/or regenerate their own governmental structures independent of the IRA's framework. But the federal-court case law clearly establishing those propositions would come later, and the issue was unsettled as of early 1934.

So to help those tribes who adopted the IRA framework and who sought federal assistance in reorganizing, the Department of the Interior prepared to lend a hand, and again came Felix Cohen to the fore. His *Basic Memorandum on the Drafting of Tribal Constitutions* was promulgated as an informal Bureau of Indian Affairs (then, "Indian Service") document on November 19, 1934. An addendum on the drafting of tribal bylaws—which remain an arcane remnant of Cohen's approach in some tribal (re-)constitutive documents to this day—followed on November 28.

Cohen's *Basic Memorandum* remained solely an internal Indian Service document, and it was never adopted as formal federal policy. The reasons behind its lack of its formal adoption remain unclear, but it may well be that Cohen's potentially-embarrassing editorializations contributed to that result. Passages such as "The whole history of the Indian Office has been one of continued encroachment upon the affairs of the tribe" (p. 55), and "It is important that the Indians give their best thought to devising ways of eliminating the spirit of selfishness and narrow partisanship which has disgraced some Indian tribal councils" (p. 96) convey some of Cohen's frank and unvarnished tone. It may also be that the sheer quantity of issues spoken to by Cohen's *Basic Memorandum*—and the diversity of the tribes it would potentially affect—counseled both Cohen and the Indian Service against promulgating a potentially exhaustive official document that might ultimately prove *too* influential among tribes, and/or too limiting of the Service's flexibility.

But serve as a guideline to the Indian Service's criteria for approving IRA tribal constitutions it did. Cohen's *Basic Memorandum* was a comprehensive one (along with his accompanying *Bylaws* memorandum, running to 171 pages as printed in the book now being reviewed). The topics it discusses—and many of the issues it sought to effectively address—are often strikingly relevant to present times, running the gamut from suggestions regarding the selection of a tribal name and statement of tribal purposes to membership qualifications, tribal governmental structure, officials' titles, the incorporation of still respected traditional forms of tribal government (not all were, or are), elections, criminal law,

tribal welfare, and individual rights.

Cohen was not a deity; while virtually all of the *issues* Cohen addressed still vex modern tribal governments in varying degrees, some of his *suggestions* would prove prescient, others not. Among the former are his suggestion for the inclusion of a "saving clause" in tribal constitutions (p. 75) so as not to constitutionally foreclose tribal exercises of power not recognized by federal law as of 1934 but that might be recognized in the future. Among the latter were Cohen's expressed preference (perhaps influenced by the New Deal's early experiences with the Supreme Court?) for one-branch tribal government (and resistance to separation-of-powers) on efficiency grounds (pp. 28-32). As experience has shown, one-branch governments are as potentially susceptible to gridlock as multibranch ones, and may be more susceptible to venality and corruption where the temptations to venality and corruption are strong.

Cohen sought mightily (if imperfectly) to be appropriately deferential to the fact that it was the *tribes'* sovereignty—not his—that he was helping to structure. Though both his work on the Indian Reorganization Act and his tribal-constitution-drafting project, he was attempting no less than to facilitate the (re)building of new worlds. While none of the resulting tribal governments proved remotely utopian (many, indeed, became dysfunctional and were replaced), Cohen's IRA and constitutional-drafting projects left Indian country better than what had gone immediately before. As John Collier would note in 1963, the post-1934 period of tribal-constitution drafting, which was accompanied by some urgency, probably reflected "the greatest number [of constitutions] ever written in an equivalent length of time in the history of the world" (p. xxiv), and while it is not always the case, sometimes, as Louis Brandeis reminded us, it is more important that a matter be settled than that it be settled right. Cohen's work helped to settle many things, and he often (if not always) helped to settle them right.

The University of Minnesota's David Wilkins rediscovered the unpublished manuscript of Cohen's *Basic Memorandum* at Yale's Beinecke Library (which holds most of Cohen's papers), and along with the (lightly edited) *Basic Memorandum* Professor Wilkins has included a helpful and well-referenced contextualizing introduction to Cohen's work. The volume being reviewed also contains (as appendices) the controversial "Model Constitution," "Model Corporate Charter," and a proposed tribal-constitutional outline, all of which were distributed

by the Indian Service to at least some tribes during 1934 and 1935. Those documents, along with Cohen's *Basic Memorandum*, will be of vast interest to all scholars in the field, and as published are sufficiently readable (sometimes, self explanatory) to be of great value to serious students of tribes and tribal governments at all levels. The University of Oklahoma Press—which has since 1932 published the enormously influential “Civilization of the American Indian” series—has with this volume begun a new series, the “American Indian Law and Policy” series, to parallel its venerable *Civilization* series. Under the insightful and energetic leadership of Professor Lindsay Robertson of the University of Oklahoma's College of Law, the new *Law and Policy* series has the promise to make an enormous contribution to the Indian-law field, and the publication of Cohen's *Basic Memorandum* as its inaugural volume only reinforces that potential.

The 550 or so Indian tribes in the United States have taken things quite far since 1934, the IRA, and Cohen's *Memorandum*. A careful reading of this book will reward the reader with historical perspectives and will spark creative thoughts about the future. I recommend it to all readers of this review.

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Bruce A. Newman. *Against that Powerful Engine of Despotism*. (Lanham, MD: University Press of America, 2007), pp. 128. \$23.95 ISBN 0761836551

**Rare is the book** capable of lending the much needed clarity of argument against the contemporary revisionist understanding of our Constitution. Even more exceptional is the book focused upon our Bill of Rights, specifically the Fourth amendment. Bruce Newman, professor of Political Science at Western Oklahoma State College, has written such a book and none too soon.

In the wake of expanding state and federal bureaucracies, ever-divisive political ideologies promoted in classrooms, and judicial activism, a revival of public discourse on our Fourth Amendment rights is as prescient as it is timely. Lesser known than the First and Second Amendments (the Third Amendment prohibits the quartering of military personnel without the owner's consent during peacetime), the Fourth Amendment deals primarily with government searches of property and property owners. But a sentence, it reads as follows:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Private property is the hallmark of the Fourth Amendment because as The Founders understood too well, private property is the hallmark of a free society. For them, as for us, the protection of private property was crucial and in fact tantamount to our freedom. Private property means just that: a personal possession that, by virtue of private ownership, shields the citizen against the ambitions of government overreach. Newman writes:

A system of private property helps check government by limiting its scope. There is a sphere of life that government must stay out of.

If the Fourth Amendment establishes a boundary between public and private, contemporary court rulings, specifically those that deal with government searches of property, have encroached upon individual liberty. Newman writes that today,

The government has weakened protections against searches of property, especially commercial property, while expanding protections against searches in public areas.

The emergence of the “administrative warrant” is an example of government encroachment. In recent decades court rulings have been supported by the philosophy that government must expand its regulation of business for the public good. This allows government officials to obtain a search warrant without probable cause and is in stark opposition to the original understanding of the Fourth Amendment which required warrants for searches of property, even commercial property. One would even be in line with the Founders’ thinking to say that the Fourth Amendment was created to prevent warrants of the “administrative” variety.

Throughout the book, Newman provides example after example and thus gives the reader the needed philosophical contrast of argument between the original intent of The Founders and their colonial experience with the contemporary revisionist argument. His conclusion, supported by laudable scholarship is most convincing: “Justice would be better served by a return to the original understanding of the Fourth Amendment.”

Accessible to scholars and a general audience, my only concern

with this excellent book is that, at 128 pages, it leaves the reader wanting more.

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University of St. Francis



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The editors appreciate the careful reading and helpful comments of the following reviewers for this issue of *OKLAHOMA POLITICS*.

Jeff Birdsong

Keith Eakins

Loren Gatch

Patricia Loughlin

Shad Satterwaite

Brett Sharp

Markus Smith

Ann Marie Syzmanski

John Wood







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