

## Research Statement of Amy Semet

### Executive Summary

My research focuses broadly on the institutional development of the American administrative state and the study of law and courts. Thematically, I am interested in studying how political actors influence institutional structure and make policy decisions. Normatively, I also seek to better understand how administrative and judicial institutions could best be structured. In analyzing this range of questions, my work applies innovative quantitative social science techniques, such as network analysis and text analysis, in addition to qualitative and historical methods.

My research agenda is divided into three broad areas of inquiry. First, during my time as a Postdoctoral Research Associate at the Center for the Study of Democratic Politics at Princeton University, I am working on a book-length project exploring how administrative adjudication works in the labor law, innovation law, privacy law and environmental law contexts. Second, I am working on several articles detailing in a quantitative fashion how courts make decisions. Finally, a third set of papers extends the focus to studying other institutions such as Congress.

### I. Administrative Adjudication

My research on administrative adjudication concerns three main lines of inquiry. First, in my dissertation, I analyzed the decisions of the National Labor Relations Board (“NLRB”). One of the chapters of the dissertation was published in Spring 2016 in the *Berkeley Journal of Employment and Labor Law*. Second, I use the dataset I created as part of my dissertation to explore statutory methodologies used by both the NLRB and reviewing courts. Third, I extend the dissertation to cover other administrative agencies dealing with innovation, privacy and environmental issues in the hopes of devising a comprehensive theory concerning administrative adjudication and institutional development.

#### A. Administrative Decision-Making in NLRB Cases

My first series of projects stem from the work I did on my doctoral dissertation. My dissertation explored how decision-making occurs at the NLRB. Using historical material from the agency archives, I statistically analyzed the NLRB’s unfair labor practice decisions from the Clinton and Bush presidencies. I coded the outcome and legal issues involved (in addition to other case-specific information) of almost 3,000 agency decisions spanning sixteen years. I then explored the extent to which Board member ideology impacted whether the Board will rule for or against the employer. Applying theories used primarily in the study of the federal courts, I looked at how different partisan configurations of the panel hearing the case influenced how the Board ruled. I found that there are panel effects and that the random choice of a Democratic majority panel over a Republican one influences the propensity of the NLRB to rule in favor of labor. In a separate paper, I then extend the analysis to look at how reviewing federal courts analyze agency decisions to discern how partisan panel effects at the appellate level compare with those at the Board. I look at the issue using multiple techniques including regression and propensity score analysis. Moreover, the paper differs from other panel effects work by taking note of the procedural and substantive legal differences between case types. These two studies on both NLRB and appellate court decision-making contribute not only to further knowledge on how agencies make decisions, but they also merge legal scholarship and quantitative analysis to test empirically the extent to which partisanship motivates the decisions of so-called “independent” administrative agencies.

## **B. Administrative Agencies and Statutory Interpretation**

I am currently using the NLRB database I created as part of my dissertation to analyze how agencies engage in statutory interpretation. While there have been many theories floated about how agencies *should* interpret statutes, empirical work is scarce as to which methodologies and canons of constructions agencies actually use to interpret the statutes that form the heart of the regulatory regime they are tasked to administer. In my project, I code both NLRB and appellate court cases to see what statutory methodologies agencies and reviewing courts actually use. I find that partisanship does not dictate the primary statutory methodology — textualism or purposive — used by the Board. I also find that reviewing appellate courts often use a totally different statutory methodology than that used by the Board to overturn the Board’s interpretation of the statute. At Princeton this year, I am learning text analysis so I could better analyze how courts make legal decisions in how they interpret statutes. Using my hand coding of cases, I hope to employ text analysis to come up with a predictive model of how agencies and courts interpret statutes. In all, my research raises interesting questions about how agencies and courts should interpret statutes as well as what standard of review is most appropriate for reviewing courts to use in analyzing the policymaking functions of agencies.

## **C. Adjudication in Labor, Environmental, Innovation and Privacy Cases**

Moreover, in addition to studying adjudicatory issues at the NLRB, I am extending the analysis to other agencies that do work through adjudication in preparation for writing a book on administrative adjudication. In addition to labor policies, I analyze adjudicatory decisions of regulatory agencies dealing with innovation policy (United States Patent and Trademark Office, or “USPTO”), privacy law (Federal Trade Commission, or “FTC”) and environmental law (Environmental Protection Agency, or “EPA”). By studying a diverse series of subjects — labor, patent, privacy and environmental law — I hope to make some comparative statements on how politicization impacts agencies depending on the subject matter. For instance, how does institutional configuration impact the ability of the legislative, executive or judiciary to influence outcomes? Do agencies deciding cases on a regional basis offer more opportunity for legislators to impact outcomes than agencies that make decisions using a streamlined institutional configuration housed in Washington D.C.? Studying a diverse group of agencies can help us begin to understand the answers to these questions as well as assist us in proposing ways to reform the system if the results do not comport with what we desire in a separation of powers system.

## **II. Understanding How Courts Make Decisions**

A second line of inquiry concerns analyzing how courts make decisions. My work in this regard focuses on three projects: 1) a project with Princeton University’s Professor of Politics Brandice Canes-Wrone and Emory University Professor Tom Clark on how public opinion and campaign contributions impact state supreme court decisions; 2) a network analysis project exploring what citation counts in state supreme courts can tell us about how law diffuses across state borders; and a 3) a project analyzing the outcomes of a congressionally-mandated pilot project in the district courts.

## **A. The Influence of Public Opinion and Campaign Contributions on State Supreme Court Decisions**

Recent research has found that judicial elections affect hot-button high salience issues such as the death penalty and abortion. Yet little attention has been paid to low salience issues, which comprise the majority of judicial decision-making. Brandice, Tom and I address this problem by examining judicial responsiveness to public opinion on environmental and search and seizure cases. To do so, we constructed original datasets of all cases heard before state supreme courts on these issues since 1990. We then evaluate our hypotheses that institutional arrangements — namely the method of judicial selection — conditions judges' responsiveness to public opinion in deciding cases. We also examine the impact that campaign contributions have on outcomes. Understanding how, and the conditions under which, different institutional arrangements foster accountability of judges and the conditions under which they encourage judicial independence has deep implications for democratic theory, institutional design and contemporary policy debates about methods of judicial selection.

## **B. Using Network Analysis to Understand Case Law Diffusion Among States**

Network analysis has been used in the social sciences to better understand relationships among actors and it can be readily imported to understand the legal system as well. In this particular project, I use network analysis to explore how state supreme court courts use the law of a sister supreme court in devising doctrine. I code citation counts of state supreme court decisions for both issue content as well as for how the judges in the case actually use the sister state supreme court decision. For instance, are the judges simply citing another state supreme court case in passing as an example? Or are they using another state's law to bolster the precedent they seek to set in their own case? Network analysis is an ideal vehicle to help us understand these relationships not only between and among state supreme courts, but among federal actors as well.

## **C. Judicial Decision-Making in the Federal Courts**

In addition to studying topics in administrative law, I also am working on several projects dealing with judicial decision-making generally. Congress set up a ten-year pilot project to change the way patent cases are heard in the federal courts. In the new system, fifteen district courts act as specialized patent courts and decide more than their share of patent cases. The pilot project simply cements what had been occurring in practice with certain districts courts such as the Northern District of California or the Eastern District of Texas hearing a disproportionate number of patent cases. Now that the five-year mark passed, I seek to examine what impact the pilot project had in influencing patent law doctrine and court decision making generally. Did this change in structure impact how courts and the Board of Patent Appeals rule on patent law cases? Holding other factors constant, do judges from the pilot project districts decide cases differently from judges in districts hearing few patent cases? What is the proper relationship in how Congress should monitor how federal courts make decisions? The answers to such questions would lend insight into whether institutional reform of the district courts is necessary and whether such reform should be extended to other substantive areas.

## **III. Other Institutions/Legislative Politics**

I also have an interest in studying the institutional development of American institutions more generally, especially that of Congress as well as other law-oriented institutions. I plan to study the

institutional development of Congress by assessing quantitatively some of the factors that impact how Congress makes decisions. In one of my current projects, I examine the role that sectionalism played in influencing congressional roll call votes in the late nineteenth century by constructing an original dataset that maps the sections of the country that Congressmen come from. I then look at voting records for three separate congressional sessions during the late nineteenth century to test the role that region played in impacting vote choice. I find that the impact of sectionalism varies depending upon the subject matter of the roll call being voted upon. In the future, I hope to expand on this type of work by looking at congressional voting on other issues and in other time periods. For instance, one could examine the factors that impact congressional votes on all legislation related to health care.

In addition, I also hope to use the prism of legislative politics in some of my other projects so as to offer a more comprehensive view of American public policymaking. In prior work, I served as a quantitative research assistant for Professor of Law at Yale Law School Abbe Gluck and Associate Dean for Academic Affairs at Vanderbilt Law School Lisa Bressman in their study conducting a survey of how legislative counsel in Congress interpret statutes. I hope to build on this work in the future by examining the way that members of Congress influence and react to the statutory interpretation done by courts and administrative agencies.

#### **IV. Conclusion**

In all, the type of work I have done for my dissertation on agency institutional structure and decision-making can be applied to study a host of other legal institutional structures, in the administrative state and beyond. Moreover, the quantitative training I received as part of my doctoral studies provides me with a useful skill set that I can apply to study other legal issues empirically to better understand how administrative agencies, federal courts and state supreme courts make decisions.