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**Lawyers, Structure and Power: A Tribute to John Heinz**

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# Lawyers, Structure and A Tribute

When a future historian of science reconstructs the emergence of rigorous scholarship of the legal profession in the United States in the later 20th century, John Heinz will stand as a foundational figure who inspired later generations of scholars. This volume recognizes Heinz's pivotal work, not least by publishing yet another increment to his own forty-year corpus of scholarship. This essay briefly sketches the broad contours of Heinz's personal scholarship and the lines of research and writing it has stimulated.

From the very beginning, Heinz's work has proceeded along two tracks—the social structure of the legal profession and the power and politics of lawyers. Occasionally, they have intersected in his own work, but notably each line of scholarship has produced highly generative work not only along tracks he himself has pursued but also along paths taken by his students, sometimes in directions that diverged quite sharply in theory and viewpoints from

his own. We demonstrate in turn his impact on studies of social structure and power.

## SOCIAL STRUCTURE

A significant strand of Heinz's scholarship concerned the relationship between social stratification and professional status within the legal profession. When the first Chicago Lawyers Survey was fielded in 1974–75, it was widely reported that

ethnic and religious segmentation in the bar was largely a thing of the past. *Chicago Lawyers* (Heinz and Laumann 1994; first published in 1982) documented the continuing significance of ethnicity and religion as channeling mechanisms to different fields of practice and, thus, the status hierarchy of the profession. Jews, Catholics, and Protestants were overrepresented in distinct fields of law, reflecting the mapping of

## Perhaps no other American Bar Foundation research professor has had as a long a tenure or involvement in socio-legal scholarship as John P. “Jack” Heinz.

Heinz served as professor of law for more than forty years at Northwestern Law School, and research professor at the Bar Foundation for nearly as long. Over that time he witnessed the birth of the law-and-society movement in legal scholarship and contributed greatly to its development. His seminal work on the social structure of the American legal profession has employed network analysis to understand power relationships between lawyers both within the profession and in the larger arena of American national politics and policy-making.

From 1982 to 1986 Heinz was Director of the American Bar Foundation. He has

also served for many years on the board of the Chicago Appleseed Fund for Justice, a research, education and advocacy non-profit that works for reform of the justice system, and he served as president of the John Howard Association, an organization advocating for prison reform. In addition to his academic and civic contributions, Heinz has written about boxing for *Sports Illustrated*, and about his other passion, jazz music, for *The Hudson Review*. An avid outdoorsman, Heinz spends summers with his wife Anne at their cottage in the Adirondack Mountains of upstate New York.

Heinz retired from his position as Owen L. Coon Professor of Law at Northwestern in

2007, and attained emeritus status at the Bar Foundation as well in 2009. To mark these occasions, the ABF hosted a seminar in honor of Heinz at the May 2010 meeting of the Law and Society Association, and commissioned a “Symposium in Honor of John P. Heinz” for the Fall 2011 issue of ABF's scholarly journal *Law & Social Inquiry*. The article that follows here, “Lawyers, Structure, and Power: A Tribute to John Heinz,” was written by Robert L. Nelson and Terence C. Halliday as the introduction to the symposium volume.

# Power: to John Heinz

Terence C. Halliday and Robert L. Nelson

social categories onto professional categories. Even more profound, Heinz and Laumann developed with rigorous empirical data a distinction between “two hemispheres” of the profession—one that served personal clients and one that served corporate clients. Heinz and Laumann established the ironic finding that the lower status personal-client hemisphere of the profession possessed more autonomy from clients than did the higher status lawyers representing corporate clients.

Heinz and Laumann recognized the significance of their results to the ideal of equal justice under the law. Their concluding words state:

*[I]f the reality is that large cities like Chicago have two legal professions, one recruited from more privileged social origins and the other from less prestigious backgrounds, while yet other social groups are almost entirely excluded, and if the first kind of lawyer serves corporate clients that are quite wealthy and powerful, and the other serves individuals and small businesses that are far less powerful, then the hierarchy of lawyers suggests a corresponding stratification of law into two systems of justice, separate and unequal. (Heinz and Laumann 1994, 175).*

The 1995 survey of Chicago lawyers, written by Heinz, Nelson, Sandefur, and Laumann as *Urban Lawyers* in 2005, demonstrated the dramatic changes in the social composition of the bar and in the market for

legal services in the twenty years since the mid-1970s study. The axes of stratification had shifted from ethnicity and religion to gender and minority status. In addition, the distance between the two segments of the bar had grown dramatically, with corporate law firms adding a significant new proportion of lawyers and an even greater share of the earnings of lawyers while lawyers in small firms, government, and public-interest practice constituted a declining proportion of the profession. Some of these latter experienced a loss in real income as they garnered a smaller proportion of total legal services revenues. Heinz and his colleagues had again, through systematic methods, measured a growing inequality in law that mirrored a growing inequality in society.

## **POLITICS AND POWER OF LAWYERS**

Arguably, politics was Heinz’s first love. His graduate training at Washington University and his longstanding friendship with political scientist, Robert Salisbury, showed a proclivity for politics in Heinz’s earlier publications, one that continues to the present. What is most intriguing, however, is the juxtaposition of his path taken with that not taken.

An early empirical study of criminal law in Illinois (Heinz, Gettleman, and Seeskin 1969) revealed two strands of lawyers’ politics, one followed by Heinz and the other not. He studied six substantive pieces of legislation that came before the Illinois Legislature in 1967. Following Truman’s theory of group politics, he focused on the role of key interest groups, not least the role of the Chicago and Illinois State Bar Associations in the passage of the Illinois Criminal Law Code, comprehensively revised and passed in 1961. Heinz showed the remarkable degree to which the state delegated its law-making authority to the CBA and ISBA. “In effect,” he said, “the procedure followed delegated substantive legislative power to the bar association committee. Though we doubt that anyone was quite so explicit about it, it was almost as if the legislature had said to the Joint Committee: ‘You settle it, and whatever you work out (within reasonably broad limits) we will approve’” (325).

However, the same article also reveals his early affinity for elite theory and hints at his later highly productive co-authorship with Edward Laumann. If the Criminal Code in particular was substantially written by a “group,” it

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We were supported in this effort by the Collaborative Research Network on the Legal Profession of the Law & Society Association, led by Michele de Stefano Beardslee and William Henderson, and by the editor of *LSI*, Laura Beth Nielsen, the special assistant on this effort, Aaron Smyth, and *LSI* editorial coordinator, Amy Schlueter. The Call for Papers for the 2010 Law & Society Association Meetings produced four panels and some 16 papers that explored key themes of Jack Heinz’s scholarship: Networks of Power; Stratification in the Legal Profession; the Autonomy of Law and Lawyers; and Organizations and Markets in Legal Services.

was a set of individuals, strategically placed, who shaped the contours of Illinois criminal law. Said Heinz, “The decision-process on criminal law legislation in Illinois was dominated by white, middle-class prosecution-oriented lawyers.” Here again he anticipates decades of later work to show how differences in the attributes

through delegation by the state, at least in respect to the criminal code. However, that is arguably his last engagement with the organized bar as a collective actor. Instead, he inspired his students to take his basic insight and explore its ramifications, initially with respect to particular bar associations, such as the Chicago

This line of work stands with one foot in the elite theories of American politics—from C.W. Mills to Useem, Higley, and others—and the other in sociological network theory. Here, he has produced one ground-breaking writing after another, from the extensively cited *Chicago Lawyers* and its successor articles and volume to his pioneering work on lawyers on the political right.

**Is there a politics *sui generis* of lawyers, a singular politics that is theirs alone and in which they have their own particular authority and distinctive pathway to power?**

of individual lawyers and their position in political networks might explain the power of lawyers.

Quite apart from the substantive thrust of this 1969 article, it displays the characteristic grace of Heinz’s writing. It is at once mildly self-deprecating, yet insightful. It is gentle and wise but theoretically generative. It humorously apologizes for the dullness of its extensive description but concedes that “after all, this is what readers have come to expect from law reviews.” (281). It reveals what would become a hallmark of his writing: No matter how complex or technical the statistics or representation of data, Heinz finds a way to make it approachable, even personal.

Heinz’s stylish Illinois criminal law article does not disguise an agenda-setting moment for what have become two major lines of work on the politics of lawyers. On the one hand, he pointed to the “group” mobilization of the bar and emphasized the impact of bar associations on law making

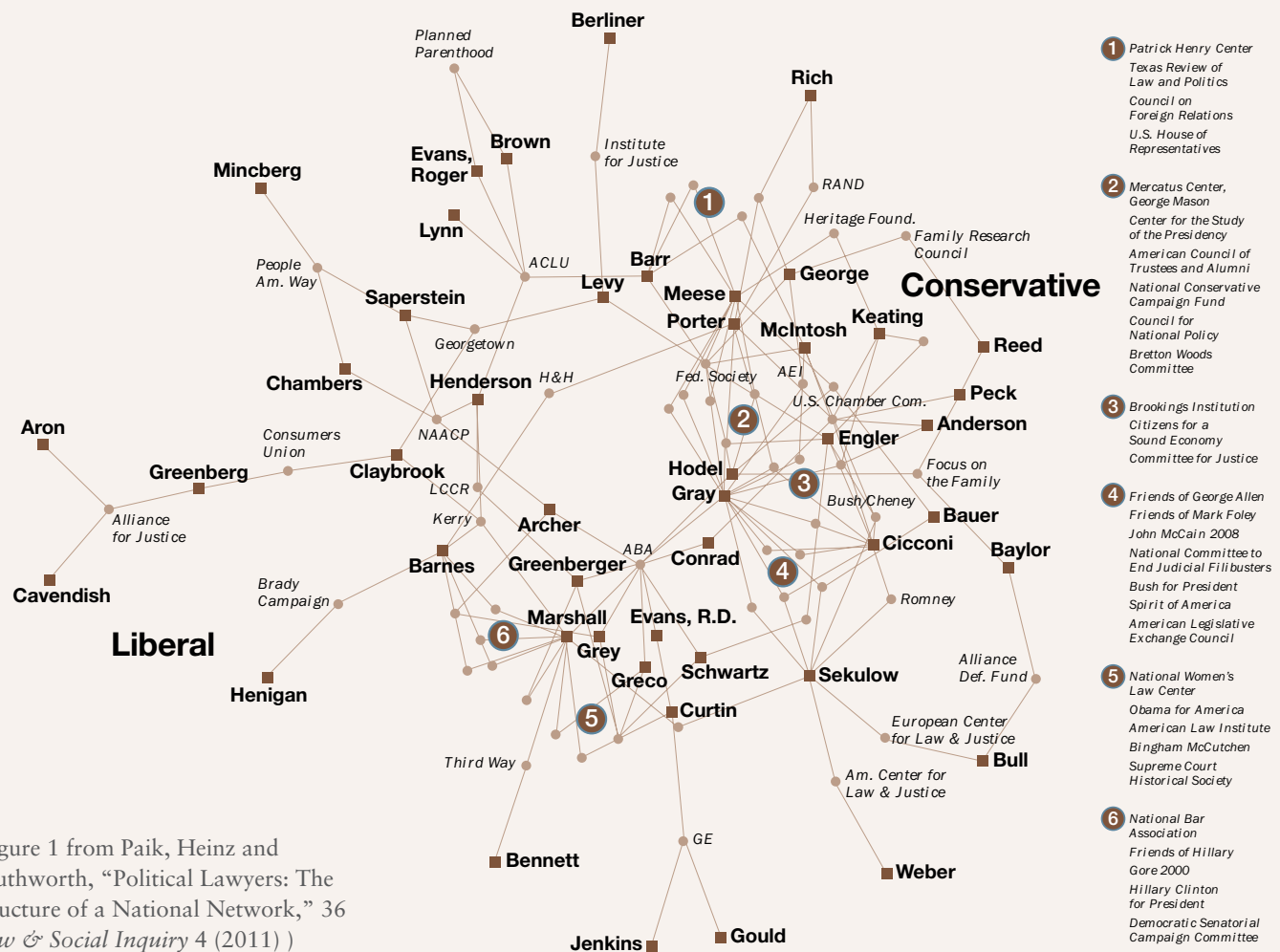
Bar Association (Halliday 1987) and the Association of the Bar of the City of New York (Powell 1988) and later through interdisciplinary studies worldwide addressing the collective action of the bar and the legal complex on political liberalism (Halliday, Karpik, and Feeley 2007, 2012). Ironically, to this day, he remains not fully convinced of this extension of his earliest findings on lawyers’ politics to bar associations, legal occupations, and issues. Nevertheless, in a real sense, the long trajectory of research on lawyers’ collective action on behalf of political liberalism has roots in Heinz’s earliest research on lawyers.

On the other hand, the line of scholarship that Heinz himself has pursued rigorously and relentlessly also emerged from a theoretical foundation laid in the Illinois research. Its emphasis has been on the intersection of the individual attributes of lawyers and their structuration in policy networks.

From the vantage point of politics, however, another irony extends from the beginning to the end of his corpus on networks of lawyers. Heinz, the academic lawyer and respected participant in prominent professional advisory groups in the Cook County criminal justice system, remains consistently skeptical of the power of lawyers *qua* lawyers. He takes as his foils Tocqueville’s early 19th century notion that lawyers might exercise a peculiar degree of power in the new Republic and C. Wright Mills’ assertion that the “inner core” of America’s power elite might include corporation lawyers as brokers (Heinz 2011).

In part, this critical orientation towards lawyers and their power accords with the critique of functionalism that gathered steam in the 1980s through the work of Magali Sarfatti Larson on professions in general and Richard Abel and Philip Lewis on lawyers in particular. In an early essay on the power of lawyers (1983), Heinz distinguishes among three ways lawyers might exercise power: through the representation of clients, through a possible distinctive role in electoral politics, and through collective action. The last he rejects on the grounds that the heterogeneity within the bar precludes professional collective action on anything important, a hypothesis that continues to be engaged to the

## TIES AMONG LAWYERS AND ORGANIZATIONS ACTIVE ON LEGAL AFFAIRS, 2004–5



present day (Harding and Whiting 2012). The first, he acknowledges but, in the brilliant inversion of *Chicago Lawyers*, argues it may go in exactly the opposite direction hitherto assumed, namely, that it is C. Wright Mills' corporate clients who shape the orientations of lawyers thereby denying the professional autonomy of corporate lawyers, a theme elaborated by Robert Nelson (1988) with respect to law firms. It is personal client lawyers, low in the prestige hierarchy of the bar, who might exert greater influence over their clients.

Heinz's second prospect for lawyers' power in everyday legislative politics, he has consistently doubted. *The*

*Hollow Core* (Heinz et al. 1993) presents a conclusion that will be found repeatedly in his studies of Washington policy making and seems to rebut Mills decisively. Not only are there no lawyers in the center of network space, but there is no one else either. While he readily acknowledges there may be a methodological artifact in this finding (Heinz 2011, 27–30), repeated studies cannot find the missing hub of strategically located lawyer-brokers, not in Washington, not in Chicago.

The exception can be found in another of Heinz's pioneering intellectual forays. For many years, one of the most successful collective enterprises

in socio-legal scholarship—the cause lawyering initiative—pursued causes celebrated by lawyers on the left. Many of us criticized this tendentiousness and wondered aloud whether the theory of cause lawyering could accommodate causes on the right as well as the left, as any good theory should be able to do. Heinz, Southworth, Paik and others did more than wonder and ruminate about the scope of cause-lawyering theory. They plunged into an extensive research enterprise to map the causes and networks of politics on the U.S. right. In so doing, they refreshed the agenda of research on the power of lawyers.

In contrast to policy studies that covered the entire breadth of the left-right spectrum in U.S. politics, Heinz and his collaborators focused on issues salient to “lawyers on the right” (2007). Again, they pose the question, in terms of a narrower ideological spectrum, of whether lawyers as part of a professional community can move beyond their sectionalism to forge a common cause, to serve an “integrative role.” Here again, they connect lawyer attributes and their positioning in the social structure of the bar to a variety of causes, and they find clear demarcations in the space between business conservatives and religious conservatives. Initially, they find that, in a network of all occupations, “lawyers are, perhaps, no more likely to forge consensus than are other interested parties” (Heinz, Southworth, and Paik 2003, 40). When they focus on lawyers alone, however, they discover that there is indeed a core set of actors who fill the “structural hole in the network that separate the business constituency from religious conservatives” (Paik, Southworth, and Heinz 2007, 883). In fact, Heinz comes very close here to reclaiming his earlier interest in group

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politics because he observes both that the core has an “extraordinarily high density,” even “a sense of ‘groupness,’” and that a particular organization, The Federalist Society, exerts outsized influence.

In a very important sense, Heinz has posed for himself and many others a fundamental question: Is there a politics *sui generis* of lawyers, a singular politics that is theirs alone and in which they have their own particular authority and distinctive pathway to power? Those who answer “yes” maintain there is a quintessentially lawyers’ politics on a narrow range of issues where lawyers speak with authority, most especially when they do so collectively and consensually. This is the politics of the Pakistani lawyers in 2007 and the

International Bar Association’s Human Rights Institute critical surveillance of basic rights’ abuses the world over. Those who answer “no” point to the inability of the organized bar to mobilize consensually on many issues and of lawyers individually to display any different sort of politics when they descend to the playing field of policy debates writ large.

The debate goes on. It is a fitting tribute to John Heinz that he fueled much of this debate at the outset and he infuses it with energy to the present. As singular as Heinz’s contribution has been to understanding the social structure of the legal profession, it has been no less consequential for its lasting imprint on studies of the politics of lawyers, a politics integral to the most intractable issues of our time.

### THIS SYMPOSIUM

This symposium serves as a living testament to the importance of Jack Heinz’s work, for the issues that Jack made central to law-and-society scholarship remain vital to our field. It is appropriate, therefore, that the lead article in this symposium is co-authored by Jack and his longtime collaborators Ann Southworth and Anthony Paik. They employ network analysis to examine the role of lawyers in national politics—a theoretical and methodological concern that is among the most significant contributions of Jack’s research. Jothie



The planning team for *Chicago Lawyers*. Left to right: Paul Schnorr, John P. Heinz, Edward O. Laumann, Robert L. Nelson

Rajah exemplifies the continuing salience of Jack's contributions to studies of lawyers and politics as she confronts the autonomy of law and the independence of the Singapore Law Society in a nation in which a discourse of legality is deployed to limit democratic politics and keep a tight rein on dissent. Two articles examine stratification in the legal profession. Zaloznaya and Nielsen use qualitative interviews to document the modern face of professional marginality among urban public interest lawyers, and Dinovitzer examines longitudinal data on lawyers' careers to demonstrate the continuing salience of elite social attributes in the careers of a large national sample of young attorneys. Finally, John Coates, Michele DeStefano Beardslee, David Wilkins, and Ashish Nanda report findings from a survey of and in-depth interviews with the chief legal officers of S&P 500 companies about how they select outside counsel. Their results reveal the continuing significance of relationships between corporate clients and outside counsel, despite the growth and transformation in the market for corporate legal services we have observed in recent decades.

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## CONCLUSION

There is much more we could say about the contributions that Jack Heinz has made to the field of law and society through his leadership in one of the first law and social science programs funded by the Russell Sage Foundation, through his mentorship of many young scholars (including the two of us once upon a time), through his directorship of the American Bar Foundation at a critical period in the 1980s, through his almost fifty years of teaching and research at Northwestern University and the American Bar Foundation. But perhaps the greatest testament to any scholar is that his or her work continues to inspire and inform other research. This symposium leaves no doubt that the great themes isolated by Jack at the beginning of his career—and continued by Jack and his progenitors throughout his career—will long continue to be amplified and qualified, confirmed and rebutted. In the meantime, Jack continues to write and undoubtedly will do so until the lure of the Adirondacks and his long-postponed journalist proclivities at last gain the primacy they deserve.

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## Symposium in Honor of John P. Heinz

### Lawyers, Structure and Power:

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Terence C. Halliday and Robert L. Nelson

### Political Lawyers: The Structure of a National Network

Anthony Paik, John P. Heinz, and Ann Southworth

### Mechanisms and Consequences of Professional Marginality: The Case of Poverty Lawyers Revisited

Marina Zaloznaya and Laura Beth Neilsen

### Punishing Bodies, Securing the Nation: How Rule of Law Can Legitimate the Urbane Authoritarian State

Jothie Rajah

### The Financial Rewards of Elite Status in the Legal Profession

Ronit Dinovitzer

### Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships In the Corporate Legal Market

John C. Coates, Michele M. DeStefano, Ashish Nanda, and David B. Wilkins

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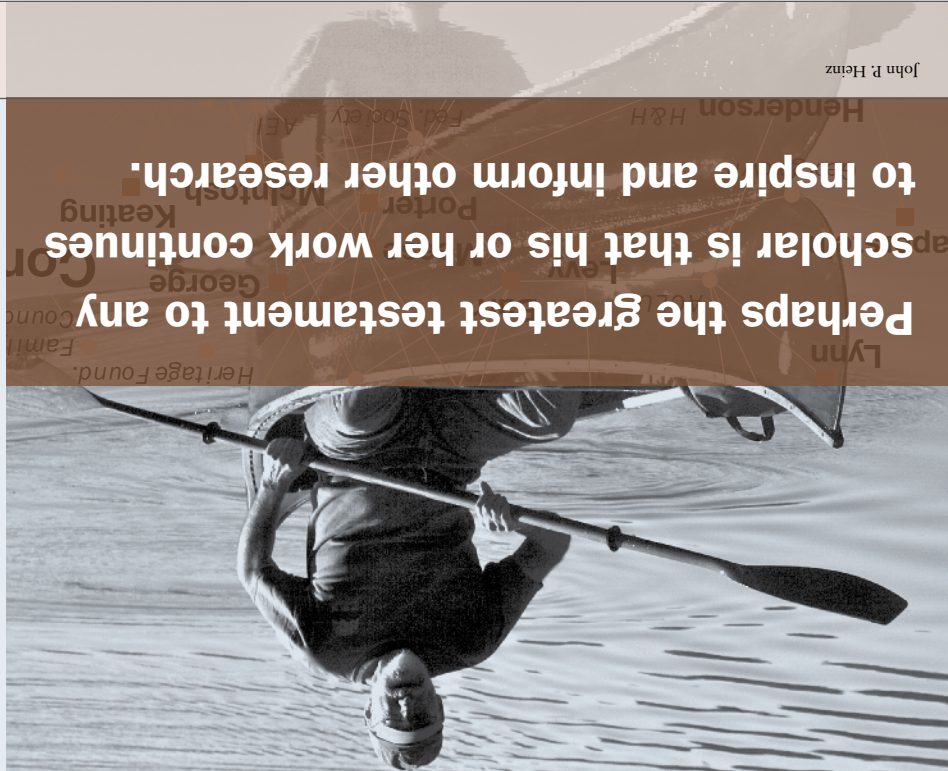
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Perhaps the greatest testament to any scholar is that his or her work continues to inspire and inform other research.

John R. Heinz

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