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Lawyers, Politics, and the "Lawyers' Interest": An Historical Inquiry

James W. Gordon
Western New England University School of Law, jgordon@law.wne.edu

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By James W. Gordon*

I. Introduction

Lawyers have been associated more routinely with politics in the United States than has any other occupational group.[1] It has become a truism that the bar has wielded an unequaled influence on the character of our political institutions and upon our public policies. The nature of this influence and the purposes to which it has been put deserve more attention from legal historians than they have to date received.

Critics of the profession have often expressed their opinion that, in the lexicon of Eighteenth century politics, lawyers form an "interest" whose members' course in public life reflects a demonstrable identity and allegiance. In the view of such commentators, the bar's political influence has been self-serving and pernicious. Such was the opinion of the author of a letter which appeared in a prominent Democratic newspaper in Kentucky in 1849. The correspondent, who signed his letter "Jefferson," cited a venomous contemporary indictment of lawyers which he referred to as *The Political Guide*,[2] in support of his views. Lawyers, he wrote, were the worst possible choice for political leaders:

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* Associate Professor of Law, Western New England College School of Law. B.A. 1971, University of Louisville; J.D. 1974, Ph.D. 1981, University of Kentucky. The author would like to express his appreciation to Howard I. Kalodner, Dean of Western New England College School of Law, for supporting this and other projects with grants of summer research funds.

1. *See, e.g.*, J. HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 352-56 (1950); Shepherd, *Lawyers Look at Themselves: Professional Consciousness and the Virginia Bar, 1770-1850*, 25 AM. J. LEGAL HIST. 1 (1981); Bromall, *Lawyers in Politics: An Exploratory Study of the Wisconsin Bar*, 1968 WIS. L. REV. 751 (1968); E. BROWN, LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE 17 (1948); Metcalf, *The Profession in the Political History of the United States*, 16 YALE L.J. 183 (1907); Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1 (1934); McBride, *The Position and Influence of the Lawyer in American History*, 57 AM. L. REV. 462 (1923); H. EULAU & J. SPRAGUE, LAWYERS IN POLITICS, A STUDY OF PROFESSIONAL CONVERGENCE (1964).

2. Kentucky Yeoman (Frankfort), May 24, 1849, at 1, col. 1. The *Yeoman* was one of the two most important Democratic newspapers in the State at mid-century, and a mouthpiece for the leadership of that Party. It has proved impossible to obtain a copy of *The Political Guide*. The only information given by "Jefferson" about it,

> [They] . . . are interested in keeping the people ignorant, vicious, contentious, criminal and embarrassed. For the embarrassments, ignorance, vices and crimes of the people, have a tendency to produce litigation, and litigation is the favorite element of the lawyer; it is the very heaven in which he delights to dwell.[3]

For "Jefferson" it was clear that lawyers used their public positions to promote their individual and group interests to the detriment of society at large—lawyer politicians furthered the "lawyers' interest."

These statements alone would warrant empirical investigation but other writers have added additional features to the portrait of the bar which also deserve evaluation. The profile of "interest" is completed by the assertion that lawyers have been so closely identified with particular substantive policies or have had such an affinity for particular groups, that one can point out in advance the lawyers' side on many important questions of public policy. Alexis de Tocqueville, in describing the impact of lawyers on America in his masterpiece *Democracy in America*,[4] ascribed to the bar "aristocratic propensities" and characterized it as among the anti-democratic elements of American society. In addition, he associated it with the commercial interest.[5] Others have also suggested that lawyers were commercial-minded or associated with specific elites.[6]

The assumption that the occupational identification "lawyer" is the salient feature in evaluating political motivation is itself interesting, if questionable. Does occupational identity overwhelm other identities? Are politically active lawyers really a homogeneous group? Are they less affected by competing identities associated with wealth, geography, familial and constituency concerns, political ideology, party considerations, or any of the myriad other sources of public and private motivation of behavior? Surely the hypothesis that politically active lawyers behave differently from nonlawyers is worth investigating.

This paper offers some preliminary responses to the questions posed

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other than his version of the title, is that it was published "but recently." He also gives page references which suggest that the *Guide* was of book length.

3. *Id.*

4. 4th ed. (Henry Reeve trans. 1841).

5. *See* Newmyer, *Daniel Webster as Tocqueville's Lawyer: The Dartmouth College Case Again*, 11 AM. J. LEGAL HIST. 127 (1967). For one interesting response to Tocqueville *see* Minor, *The Legal Profession*, 13 S. & W. LITERARY MESSENGER & REVIEW 356, 358 (June 1847).

6. *See, e.g.*, M. HOROWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780-1860 at 140-59 (1977).

above. These responses are grounded in empirical research. They are tentative because my research is continuing on a broader data base.

The completed first stage of the project, with which this article is concerned, entailed the intensive examination of the behavior of lawyers in a self-contained legislative body. One was sought in which major public issues would be debated in full public view and with sufficient notoriety to assure the preservation of complete records. It was also important that it be a body which appeared representative of other such bodies, and one populated by a reasonably representative group of lawyers—that is, a body which would not necessarily attract only the most prominent and political members of the profession. It also seemed best to look at a time and place which had not been explored often before and which was away from the commercial centers of the East coast. The state constitutional convention held in Kentucky in 1849 fulfilled all of these requirements.

As a research universe this convention was attractive because it was sufficiently public, sufficiently important—yet not too important—sufficiently documented, and sufficiently representative, to be worth studying.[7] Of equal importance, it met close enough in time to the compilation of the 1850 federal census to permit the use of census data in reconstructing the contemporary state bar. In this way, meaningful comparisons between lawyers inside the convention and those in the state at large would be possible. Having found a suitable forum, all that was necessary was to set about the task of testing the charge that political lawyers routinely traded principle for interest.

Did the lawyer delegates work together, act together, vote together? Did they exhibit any of the cohesiveness ascribed to them by critics? Did they display a common attachment to any identifiable views which differentiated them from nonlawyers called upon to make the same decisions on matters of major public concern?

Evidence drawn from the published debates of the convention—most importantly the roll call votes reported there—when filtered through personal data on the delegates, suggests that the answers to these questions was no. The hypothesis that a "lawyers' interest" existed and that members of the profession tailored their public positions on

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7. *See* HURST, *supra* note 1, at 204-46. *See also* F. GREEN, CONSTITUTIONAL DEVELOPMENT IN THE SOUTH ATLANTIC STATES, 1776-1860: A STUDY IN THE EVOLUTION OF DEMOCRACY (1930, reprint 1966) (constitutional developments in Maryland, Virginia, North Carolina, South Carolina, and Georgia are fully treated and reveal many parallels to Kentucky).

substantive questions to it, is not supported by a careful examination of the Kentucky case.[8]

II. Some Words on Methodology

The two best indicators of political behavior available to historians are what people did and what they and their contemporaries said or wrote about what they did. Until the 1960's historians tended to emphasize what people said about their intentions rather than what they did. This was more a result of the nature of the available sources and methods of analysis than of conscious choice. It was only with the technological advances which produced microfilm recordation, (which made census schedules, tax records, and similar sources widely available), and the computer (which made manipulation of such material possible), that historians became aware of the richness of materials previously left largely unexplored. A revolution in the analytical methodology of History's sister disciplines of Sociology, Psychology, and Political Science, emphasizing the use of statistics—which paralleled the revolution in the availability of broad based, descriptive historical data—has resulted in the rise of quantitative history. Although I am not prepared to argue that quantitative methods give a "truer" view of history than more conventional methodologies, I would suggest that

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8. There are some obvious dangers inherent in generalizing on the basis of research limited to one community of political lawyers. As seems often the case, an investigator must choose between breadth and depth of coverage. In the present case, I elected depth in order to use regression analysis, a powerful interpretive tool; others, in hoped-for future investigations, may make a different choice. If there is one overarching reality about nineteenth century America which researchers can ignore only at their peril, it is that we are not examining one community, but many. If the Kentucky environment is not representative of all of them, there is reason to believe it representative of some of them. Kentucky politics and the Kentucky bar of the period seem to have had much in common with other states of the upper South and the slave state "border." *See* R. WOOSTER, POLITICS, PLANTERS AND PLAIN FOLK: COURTHOUSE AND STATEHOUSE IN THE UPPER SOUTH, 1850-1860 (1975).

A further valid concern is that lawyer behavior in the public glare of a constitutional convention may have been somewhat different from that in other political contexts. I am not sure that the convention was more visible than the other major state forum, the legislature, but even if it was it might be observed that the stakes in the convention were much higher too. The expected effects of constitution-making were long-term and fundamental. Consequently, the pressure to display their professional loyalty would have been correspondingly greater. I might also add that I am presently expanding the scope of my research to the Kentucky legislature of the period in order to deal with this concern.

they give a "different" view; that is, that they provide another useful tool for making sense of the past. This paper offers conclusions based largely upon quantitative analysis of roll call behavior in an attempt to address the questions raised in the introduction.

There are unfortunately few private expressions of the motives underlying and explaining the behavior of the men, either lawyers or laymen, who met in Frankfort, Kentucky, from October through December, 1849, to write a new state constitution. The paucity of traditional manuscript sources touching on the work of the convention is probably the result of the intensity of the delegates' work (sometimes consuming eighteen hours a day), and of the relative obscurity of most of the men who served in the body. Few of them have had their papers preserved; those like James Guthrie, Charles Wickliffe, Ben Hardin, and a few others who have left manuscripts said little about their roles in a state constitutional convention which had little or no apparent significance beyond the confines of the State. We do have, however, the official *Debates of the Convention*,[9] its *Journal*, and a good collection of the State's various partisan newspapers of the period. Taken together these sources provide a reasonable basis for the reconstruction of the dynamics of the body.

Undoubtedly, the most reliable evidence for the behavior of the delegates is the roll call votes cast in the convention. Therefore, the centerpiece of this paper is a multiple regression analysis of the one hundred fifty-four roll call votes taken in that body. Examination of the *Debates* and newspaper discussion of the questions to be determined by the convention, from the early agitation for creating such a body in 1845-46 through the popular ratification debates of 1850, gave content to these polls. The use of a computer allowed examination of over one hundred thousand discrete bits of information for patterns in the votes which might distinguish lawyer delegates from nonlawyer delegates.

The use of multiple regression allows evaluation of "predictors," chosen for their likely contribution in explaining the vote of each delegate on each roll call. The regression equation reveals the degree of correlation between a "yes" or a "no" vote on a specific question and each of the predictor variables used. These figures are based upon the amount of scatter or "variance" of the points plotted on an X—Y axis from a regression line which is drawn so as to minimize the variance

9. *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Kentucky, 1849* (1849) [hereinafter cited as *Debates*].

from it. The possible range of results is between 1.0 and -1.0. A 1.0 represents a perfect positive correlation and a -1.0 a perfect negative (inverse) one. The larger the result for the predictor, whether positive or negative, the better the fit along the regression line, and the higher the correlation between the predictor and the vote (criterion) cast.[10] An RSQ change of .14901 means that the predictor correlated with the vote under consideration 14.901 percent. Since 1.0 (100.0 percent) would mean that the predictor and vote correlated perfectly, and since 0.0 would mean there was no correlation at all, .14901 (14.9%) shows a very small correlation between them.

Interpretation of the regression output is more an art than a science when it comes to concluding that a predictor was not a contributing element in a particular vote. This is so because the amount of variance left unaccounted for by the chosen predictors hovers troublesomely off stage. This means that results which suggest that a given predictor—for example, occupation—has a very low correlation with the vote pattern may still, in absolute terms, offer a better key to the votes cast than any other single factor.

There is no set convention as to how much correlation one need find before concluding that the predictor was an important contributor to explaining the vote, however, some statisticians have suggested that a correlation of less than .20 is so slight as to be almost negligible.[11] However, the regression equation not only offers a picture of the correlation between each predictor and each vote. It also allows comparison between predictors by describing each predictor both in absolute terms and relative to all others. The regression also screens the predictors which are put into it late from the "noise" produced by the earlier predictors. In effect, each predictor screens those which follow. An example will best illustrate this effect.

Suppose that on vote X one wishes to know whether being a lawyer correlated with voting yes. Let us also suppose that lawyers were wealthier and more often members of the Whig Party than were nonlawyers.[12] If one asks only were lawyers more likely to vote yes

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10. *See* R. McCall, Fundamental Statistics for Psychology 89-140 (2d ed. 1975). I am gratefully indebted to Dr. Charles F. Schanie, social psychologist and close friend, who offered methodological advice and programming expertise throughout this project.

11. J. Guilford, Fundamental Statistics in Psychology and Education 145 (2d ed. 1956) *cited in* F. Williams, Reasoning With Statistics: Simplified Examples in Communications Research 134 (1968).

12. Although there is some evidence which supports making these assumptions

on question X than nonlawyers, we cannot conclude that there was anything inherent exclusively in being a lawyer which would explain the result. The association of lawyers with a yes vote might equally be explained by their wealth or their political party affiliation. Did the yes vote correlate with being a lawyer, being wealthy, being a Whig, some combination of these attributes, or some other unidentified variable? By putting wealth and political party affiliation into the regression equation before occupation, one screens out that portion of the correlation with the yes vote which results from these previous predictors. The RSQ change which is associated with occupation, a subsequent predictor, is that portion of the variance associated with being a lawyer after the amount of variance accounted for by the preceding predictors is removed.

The predictors used in the regression analysis were chosen after a careful reading of the *Debates*, and analysis of collective biographical data on lawyers in the State in 1850 and on the lawyer and nonlawyer delegates to the convention.[13] The intention was that they account for as much of the total variance in the votes as a whole as was possible in the abstract. They also were intended to represent, in a broader way, some of the factors which are generally presumed to influence the behavior of political figures. The seven predictors, and the order of their entry into the regression equation were as follows:

1) The total wealth of the delegate as it appeared in state tax records for 1849;[14]

2) The value of slaves owned by the delegate as it appeared in the 1849 state tax records;

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in mid-nineteenth century Kentucky, there is as much the other way. Thus, they should not be assumed except for purposes of this illustration.

13. The biographical information was accumulated from the United States Census schedules for 1850 [*Seventh Census of the United States: 1850 Population Schedules* (Washington: National Archives Microfilm, 1963)]; state tax records [*Kentucky Tax Records*, 1840-1852 (Frankfort: Kentucky State Historical Society Microfilm, 1958)]; and from numerous collective biographies, including BIOGRAPHICAL CYCLOPEDIA OF THE COMMONWEALTH OF KENTUCKY (J. Gresham ed. 1896), THE LAWYERS AND LAWMAKERS OF KENTUCKY (H. LEVIN ed. 1897), and DICTIONARY OF AMERICAN BIOGRAPHY (M. Johnson & Malone eds. 1927-1936). There are also scores of county histories which are of variable usefulness and reliability.

14. The tax records are indexed by county and year, and are (generally) in alphabetical order under the first letter of the individual's last name. In a few counties the tax records for 1849 have not survived. In these cases, figures for the nearest two years straddling 1849 were used, an equal rate of increase or decrease for the intervening years was assumed, and a figure was projected for 1849.

3) The population density in 1850 in the district represented by the delegate in the convention;[15]

4) The percentage of the 1840 population in the district in 1850 (rate of population growth or decline);[16]

5) The political party affiliation of the delegate in 1849;[17]

6) Whether the delegate was a serious politician;[18] and,

7) Whether the delegate was a lawyer or not.[19]

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15. The population densities by district were derived by comparing reported population in the 1850 census by county with county areas reported in the BUREAU OF THE CENSUS, COUNTY & CITY DATA BOOK: A STATISTICAL ABSTRACT SUPPLEMENT (WASH. 1977). Where counties have changed shape or been created since 1850, their areas were derived by the use of a planimeter.

16. The calculation of change in population density is based on a comparison of the county population figures in the *Sixth Census of the United States: 1840* (1841) with those in the *Seventh Census*.

17. The party affiliation of the delegates was set out in the contemporary newspapers in their reports of the 1849 election returns. *E.g.*, Louisville Journal, September 13, 1849, at 3, col. 4. The *Lousiville Journal*, the most prominent Whig paper in the State, was closely aligned with that party's leadership.

18. Any standard of "seriousness" as a politician is of necessity arbitrary. The definition used for purposes of this paper was based on officeholding. If a delegate served at least five years in important offices between 1810 and 1890, he was designated a serious politician. The included offices were: governor, lieutenant governor, state secretary of state, state treasurer, state senator, state representative, state circuit judge, state appellate judge, U.S. senator, U.S. representative, and member of the U.S. cabinet. Service as circuit or appellate judge was included because these offices were clearly political in mid-nineteenth century Kentucky. Five years was chosen because the longest term of elective office in Kentucky before 1850 was four years. The United States senate, of course, was a six year term, but only a handful of men served there and then only after active political careers which brought them into the serious politician category in any case.

The judges posed a more difficult problem. Before 1850 they had life tenure, and after, they were elected for six-year terms. Under both systems the office clearly went to political men and so could not reasonably be omitted. In a randomly drawn sample of one hundred members of the Kentucky bar of 1850, twelve men served as circuit judges between 1792 and 1890. Eleven of these men had also served in the state legislature. *See also* WOOSTER, *supra* note 8, at 92-94.

The sources for officeholding were the Kentucky House and Senate Journals for the period 1792-1890 (the senate journals are especially useful since commissions for most important state offices could issue only after senate confirmation); REPORTS OF THE KENTUCKY AUDITOR 1844-1890 (these annual reports listed all persons who received salaries or fees from the State during the period they covered); THE BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS, 1775-1949; BIOGRAPHICAL DIRECTORY OF THE UNITED STATES EXECUTIVE BRANCH, 1774-1971 (R. Sobel ed. 1971); G. CLIFT, GOVERNORS OF KENTUCKY, 1792-1942 (1942).

19. *See supra* note 13.

Multiple regression was used for two purposes. First, to show how much variance each of the seven predictors accounted for in absolute terms so that their relative importance could be ascertained. Second, to reveal how much of the total variance in each roll call was associated with being a lawyer after the other six predictors had been screened out. These two aspects of regression analysis offered an answer in quantitative terms to the question whether being a lawyer correlated significantly with positions taken in the convention, and permitted a more sophisticated evaluation of voting behavior than the simple and often misleading comparison of the votes cast by lawyers and nonlawyers on each question.

Before embarking upon an interpretation of the numbers generated by the regression equation, there is an important caveat due the reader. The regression analysis reveals *correlation, not causation*. The numbers which will follow in this paper do not prove that wealth, party affiliation, occupation, or any of the other predictors *caused* the delegates to vote as they did. Neither do they conclusively prove that these attributes did *not cause* the delegates to vote as they did. What they *do* demonstrate is that there was almost uniformly a very low, arguably negligible, correlation between being a lawyer or not being a lawyer and the pattern of roll call votes cast in the convention.

One further warning is due the reader. Much of the work of the convention, as with most legislative bodies, was done by consensus. This fact was reflected both in the high percentage of delegate agreement on a number of the roll calls and in the number of important clauses which were approved for inclusion in the Constitution without a reported roll call. There can be little doubt that the lawyer members of the convention were influential, at least in part, in formulating that consensus both before the delegates assembled and during the legislative process itself. The question remains, did the high degree of agreement between the lawyer and nonlawyer delegates in the convention reflect the fact that the lawyers' views were compatible with those of the general community (as represented by the nonlawyer delegates), or was the view of the community fashioned by the lawyers?

There is no question that the 1849 Constitution embodied a high regard for the expertise of lawyers.[20] Did it do so because the general

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20. Forty-seven lawyers persuaded their neighbors to send them to the convention. Once there, they clearly dominated the body. Of the ten men nominated for its Presidency, eight were lawyers. The man elected, James Guthrie of Louisville, was one of them. Lawyers chaired nine of the eleven standing committees, and a "super" committee on the courts. Of the two clearly important select committees formed in

population acknowledged the need for this expertise or because the instrument was produced by a convention that was dominated by forty-seven lawyers? The truth probably lies between these alternatives. However, a number of factors suggest that the lawyers were perceived as attuned to a broad social consensus. Indeed, other identifications seem to have predominated even in the minds of the lawyers themselves.[21] There was an early, overwhelming consensus for reform in the State. There was a relative absence of anti-lawyer sentiment in Kentucky in the late 1840's and a widespread acceptance of lawyers as politicians and as delegates elected by the people There was a a voiced public recognition of the need for their expertise and, most importantly, there was a broad rejection of extreme measures touching law and lawyers when such ideas were offered before the convention assembled, as well as in that body. All of these elements suggest that there was no great gulf between the bar and the people.

III. The Votes

One approach to examining the cohesiveness of the lawyers in the convention is to look at the division of votes on each roll call between lawyers and nonlawyers. Although this is a superficial and undependable guide for answering the question whether the lawyers voted differently than nonlawyers because they were lawyers, it does offer a picture of cohesiveness, or the lack thereof, among lawyers. This may be a more important clue to the way their behavior in the convention was viewed by the people of the State than the regression analysis which will follow. Such perceptions are important to the historian because it could well be argued that what contemporaries believed to be true was at least as significant an historical fact as what now seems objectively true. Evidence of a discontinuity here would be especially interesting in political matters where the people could make their perceptions felt directly through their ballots. Even this superficial approach

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the convention, that on rules, though chaired by a nonlawyer, was otherwise made up almost entirely of lawyers (there were five on a seven man committee). The other important select committee was formed in response to resolutions proposing reforms in the courts and pleading. Richard Gholson, a nonlawyer and the mover of the resolutions, was appointed chairman. He was joined by four lawyers. The lawyers also clearly dominated the debates. Of the twenty-one delegates who spoke fifty times or more on the floor, seventeen were lawyers.

21. The most apparent of these disclosed by the *Debates* was that of political party affiliation, although regional loyalties also pervaded the comments of the delegates.

demonstrates that lawyers did not display close coordination of their votes on most issues. See Appendix I.

The lawyer delegates divided nearly evenly on forty-nine of the one hundred and fifty-four roll calls taken in the convention (32%). On these votes they split so that approximately half of their votes were cast on each side of the question.[22] The lawyers showed a high degree of cohesiveness, that is, cast at least eighty percent (80%) of their votes together, on thirty-six votes (23%). However, this latter figure is misleading since on twenty-one of these thirty-six votes the nonlawyers also cast at least eighty percent (80%) on the same side as the majority of the lawyers. Lawyers showed an eighty percent (80%) or greater cohesiveness on only fifteen votes (10%) upon which nonlawyers did not match their percentage. On only four of these did the nonlawyers cast a majority of their votes in opposition to the lawyer majority. These four votes concerned whether candidates for judge of the Court of Appeals (72)[23] and the circuit court (75) had to be lawyers of eight years experience in the practice and whether candidates for clerk of the county and circuit courts (45) and the Court of Appeals (73) should be required to receive a certificate of fitness from a circuit or appellate judge before seeking election. The nonlawyers showed an eighty percent (80%) rate of cohesiveness on twenty-nine votes (19%). If the twenty-one votes upon which they joined the lawyers in casting eighty percent of their votes on one side are subtracted, the eight votes which remain represent only five percent (5%) of the roll calls. On all eight of these votes lawyers cast at least sixty percent (60%) of their votes in agreement with their nonlawyer colleagues. These figures would not have been used to argue that the nonlawyers were acting together and the similarity of the figures for the lawyers probably would not have given much support to those who were looking for concerted, interest group voting by the bar.

On thirty-nine votes (25%) lawyers and nonlawyers gave opposing majorities. However, on seventeen of these, fewer than sixty percent (60%) of the lawyers voted together. This means that the lawyers were almost evenly divided on these questions. This leaves only twenty-

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22. On none of these roll calls did the voting lawyers cast more than sixty percent (60%) of their votes on one side or the other.

23. The number designations of this and all following votes corresponds to the computer card column in which the data on the vote was reported. Appendix II reports the regression results in the same fashion. The data on the recorded roll calls was collected from the convention *Debates, supra* note 9.

two roll calls, fourteen percent (14%) of all polls taken, where sixty percent (60%) or more of the lawyers voted one way and a majority of the nonlawyers the other. In addition, it is clear from reading the *Debates* that lawyers almost always divided in debate. Usually, the leading speakers—both in terms of numbers of lines attributed to them and in the cogency of their contribution—were lawyers, but they spoke on opposite sides. In fact, some of the leading speakers seem almost to have been paired. When one spoke in favor the other responded with arguments against, and vice versa.[24]

Even from this simple analysis it appears that lawyers did not vote together in pursuit of interests which were in opposite to the will of most nonlawyers, with the possible exception of the four questions noted above. The regression analysis offers even better evidence for this proposition.

If the regressions are examined with the intention of ascertaining the importance of being a lawyer relative to the other predictors in explaining voting behavior, "lawyerness" was the most important predictor on only thirteen questions (8.4%). Political party affiliation was the highest predictor on sixty-three (40.9%), total wealth on thirty-one (20.1%), the change in population density in the district on nineteen (12.3%), population density in the district on twelve (7.8%), value of slaves owned on eight (5.2%), and "serious" politician on six (3.9%). These results suggest that being a lawyer was not very important, compared to the other factors, in explaining the distribution of the delegates' votes.

The thirteen questions for which the cohort (occupation) was the highest predictor dealt with various topics. Three were votes on whether the Court of Appeals should consist of three or four judges (43, 71, and 88). Three dealt with whether the Commonwealth should have peremptory challenges and defendants the right to appeal in criminal cases (84, 85, and 86). Two concerned whether Justices of the Peace or associate judges should join the County Judge as members of the county courts (91 and 92). One each concerned whether the City of Louisville and Jefferson County should have separate local governments (52), whether candidates for circuit judge should be required to have been practicing lawyers for eight years (75), whether a special

24. The best example of this phenomenon was the duet of Ben Hardin, a leading lawyer Whig, and Charles Wickliffe, a leading lawyer Democrat. If one spoke, the other responded, and they remained at odds throughout most of the convention. These two men, who were life-long competitors, were cousins.

election for governor should be held if the governor died during the first two years of his term (100), whether the state capital could be moved by a majority vote of the legislature (118), and whether the power of the convention was plenary or not (125).

The most striking thing revealed by the multiple regressions about the one hundred and fifty-four roll calls was the fact that on not one question did the cohort ("lawyerness") account for as much as fifteen percent (15%) of the total variance in the vote. See Appendix II. On only four votes did it account for ten percent (10%) or more of the variance in the votes. On the remaining votes it rarely accounted for as much as five percent (5%). The largest accounted for variance associated with the cohort was 14.9 percent on vote 84 which added a proviso allowing appeals in criminal cases to a clause which gave the Commonwealth the right to peremptory challenges. It accounted for 10.0 percent on vote 43, which concerned whether to create three or four appellate judgeships, 11.0 percent on roll call 48 which concerned whether a sheriff should be permitted to serve two terms in three, and 14.5 percent on vote 75 which concerned the eight years law practice requirement of candidates for circuit judge. One seems impelled by these results to conclude that "lawyerness" was a very weak predictor of voting behavior. Indeed, it rises to a level worthy of notice—on votes 75 and 84—only when matters of the most obvious interest to lawyers are concerned.

Although the correlation between being a lawyer and voting behavior is uniformly weak, it may be useful to identify and discuss a few of the questions which would probably have been of the greatest interest to the bar. Among these were questions concerning the judiciary, jury reform, and the reform of pleading.

A number of roll calls concerned the three layers of courts in Kentucky: the Court of Appeals, the circuit courts (general trial jurisdiction), and the county courts. One important point of discussion was whether candidates for the appellate and circuit benches should be required by the constitution to have practiced law for eight years previous to their election.[25] As was usual in the convention lawyers disagreed. Each faction had its own lawyer spokesmen. Those who opposed the idea of qualification argued that the people should be untrammeled in their electoral choice.[26] The proponents of the restric-

25. There were also age and residency requirements in the proposed clauses but these drew almost no comment.

26. *Debates, supra* note 9, at 144-46.

tion argued that only those who could demonstrate command of the legal skills demanded by these offices should be eligible. It seems likely that this question was actually a test of the relative importance to the delegates of the freedom of the people to choose for all offices whomever they like, and the professionalism of the bench. Since it had been settled that judges must be elected,[27] those who entertained reservations about this mode of selection seem to have hoped to prevent the worst possible case, the election of a lay judge, by means of this restriction. This inference is supported not only by the comments of the two sides, but also by a statement made by John H. McHenry, a lawyer, who suggested a compromise. He argued that those who wanted no restrictions should accept the ones demanded since "the opposite side required but those qualifications, on the part of the candidates, which all of them agreed the people themselves [would] require, whether it was in the constitution or not."[28]

The votes on whether to strike these restrictions were as close to a vote on an elective judiciary as was to be had in the convention. When the vote was taken on whether to strike the requirement with regard to the Court of Appeals (72) 83.9 percent of the lawyers and 46.2 percent of the nonlawyers voted to retain the qualifications.[29] Although this division looks significant, the regression on the vote shows that of the 55.7 percent of the variance accounted for by the seven predictors, only 3.7 percent was associated with the cohort. By far the highest predictor on the vote was party affiliation which alone accounted for 40.7 percent of the total variance, with Whigs voting to retain the restriction.

A similar vote on striking the restriction from the section on circuit judges (75) resulted in a higher correlation between being a lawyer and a "no" vote. Accounting for 14.5 percent of the variance in the vote, the cohort on this vote was the second highest of all the roll calls. This result is noteworthy because it suggests that at least on some

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27. It is clear from public discussions on the question of an elective judiciary during the delegate canvasses, that this was not a matter of discretion for the delegates. The people seemed determined to elect their judges. *See, e.g.*, Louisville Journal, October 4, 1849, at 2, col. 1 (included in an editorial concerning the reforms to be addressed by the convention was the statement that since the question of electing judges had been settled by the people, "the true policy of the conservatives in the convention is to yield the point of electing them, and endeavor to carry such provisions as are calculated to secure the election of good judges.").

28. *Debates, supra* note 9, at 299.

29. *Id.* at 651.

occasions, when questions involving the professionalism of the trial bench and protection of the bar's monopoly on judicial office were both at stake, lawyers were at least somewhat responsive to their professional interests. What is of still greater interest is the fact that even on such a clear-cut professional issue, the correlation between "lawyerness" and a "no" vote was so weak. 80.6 percent of the lawyers voted not to strike while only 34.2 percent of the nonlawyers joined them.[30] It is also interesting to note that the laymen in the convention seem to have seen more reason for appellate judges to be lawyers of long experience than for the same credentials to be demanded of trial judges.[31]

A direct assault upon the independence of the judiciary was inherent in an attempt to make the judges of the Court of Appeals removable by a majority of the legislature (41). There seems to have been general agreement by the delegates that the clause of the 1799 Constitution, inserted there by the Jeffersonians, which provided that judges could be addressed out of office for "any reasonable cause" insufficient to support an impeachment, should be preserved. Its two-thirds requirement had proved insurmountable even during the "Old Court—New Court" controversy of the 1820's,[32] and so ratifying that provision would preserve the remedy in theory for those who cherished it, while offering no serious danger to the judges of politically inspired removals. The attempt to substitute a majority for two-thirds of the legislature upset this balance. The change was clearly viewed as an attempt to bring the judges to heel, threatening their independence and the separation of powers between the judicial and legislative branches, and raising the spectre of the control of judges by a "reckless and temporary" political majority.[33] This then offers another question upon which lawyers might have been expected to discover and display their special point of view. When the vote was taken on substituting a majority for two-thirds, 84.1 percent of the lawyers and 69.4 percent of the

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30. *Id.* at 663.

31. The difference in the weight of the cohort on votes 72 and 75 may merely reflect an awareness by the lawyer delegates of this sentiment. The prospect of the election of nonlawyers to the appellate bench was so remote that the lawyers' professional interests were not as directly touched by the vote on appellate credentials as by that on the trial courts.

32. For a discussion of this remarkable episode in Kentucky legal history when there were two sitting Courts of Appeals, one "real" Court and one "anti-Court" *See* A. STICKLES, THE CRITICAL COURT STRUGGLE IN KENTUCKY, 1819-1829 (1929).

33. *See Debates, supra* note 9, at 149-55.

nonlawyers voted against the substitute. However, the cohort accounted for only 3.6 percent of the total variance in the vote. Being a lawyer had very little effect on the voting pattern.

The size of the Court of Appeals was another area where the "peculiar interest" of the lawyers can be sought. This is especially true since the charge that lawyers wanted four judges rather than three, so as to have more "lawyer's offices" to fill, was leveled in the convention against the lawyer delegates.[34] In the end, the convention was seriously divided over whether there should be three judges or four. Proponents of the fourth judge said he would expedite the work of the Court, or that fixing the size of the Court at four members would advance the cause of its branching and districting thereby bringing it closer to the people. Perhaps the best evidence that enlarging the Court of Appeals was not a "lawyers' project" is the fact that Richard Gholson, a nonlawyer and by any measure the most anti-lawyer delegate in the convention, favored it.[35]

The depth of the division between the delegates on this question was emphasized by the fact that three separate roll calls were taken upon it. The first came on a motion to strike the committee recommendation of four judges and substitute three (43). 54.5 percent of the lawyers voted against striking but were overridden by 70.2 percent of the nonlawyers who succeeded in passing the motion.[36] The cohort accounted for ten percent (10%) of the total variance, was the highest of the seven predictors, and made this vote one of only four on which occupation accounted for as much as ten percent (10%) of the total variance. Again however, the most interesting feature of this vote is not that it drew some response from the lawyers, but that on a matter of such clear importance to the bar, the correlation should be so weak. It is also worth noting that only 17.5 percent of the total variance was accounted for by all the predictors together.

After further discussion, a motion to reconsider was made (44). 60.5 percent of the lawyers favored reconsideration as did 46.9 percent of the nonlawyers.[37] Occupation accounted for four percent (4%) of the total variance. The motion passed and the size of the Court was fixed at four judges as recommended in the original committee version.

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34. *Id.* at 641 (speech of A.K. Marshall).
35. *Id.* at 642-43.
36. *Id.* at 331.
37. *Id.* at 355.

The last attempt to strike the fourth judge came several days later on a motion to reconsider the adoption of the section mandating four judges (88). This time 66.7 percent of the lawyers voted against reconsidering and forty-two percent (42%) of the nonlawyers joined them to preserve the section intact.[38] The cohort accounted for 7.4 percent of the total variance and was the highest of the seven predictors, but all seven together accounted for only 18.6 percent of the variance in the vote.

The conclusion implicit in these figures, that lawyers did not even join together to establish more "lawyers only" offices, is further strengthened by the action taken by the convention as to the number of circuit judges. The delegates reduced the number of circuits from nineteen to twelve. This action not only eliminated seven circuit judgeships, but also swept away seven Commonwealth's attorneys (prosecutors) positions. The only roll call taken on the number of circuits (74) came on an attempt to increase them from twelve (the committee's recommendation) to fourteen. 87.5 percent of the lawyers and 92.3 percent of the nonlawyers said no. The cohort accounted for one percent (1%) of the total variance while all seven predictors combined accounted for only 9.3 percent. Lawyers did not vote to increase the important "lawyers only" offices.

The need for reform of the county courts was an issue upon which nearly everyone could agree;[39] however, debate over the shape the new courts should assume gave rise to charges of "lawyers' interest." The argument eventually reduced itself to whether the courts should consist of an elected county judge and two elected associate judges, a county judge and elected justices of the peace, or just elected J.P.'s. The judges did not have to be lawyers[40] but some delegates seem to have assumed that lawyers would be elected if the three judge approach were adopted, and opposed it on this ground.[41] The debate degenerated into charges

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38. *Id.* at 699.

39. For a discussion of these courts in the period before the convention *see* R. IRELAND, THE COUNTY COURTS IN ANTEBELLUM KENTUCKY (1972). The need for reform of these courts was one of the issues often raised in the public discussion which preceded the calling of the convention. *See, e.g.*, The Convention (Frankfort), January 16, 1847, at 2, col. 1; April 3, 1847, at 1, col. 2. The *Convention* was a weekly newspaper published in 1847 and 1848. Its avowed purpose was to agitate for reform of the state constitution. It seems to have been connected with the *Kentucky Yeoman* through its publisher.

40. *Debates, supra* note 9, at 697-98.

41. *Id.* at 704.

that the "one judge system" was a "lawyers' project."[42] The proponents of the three judge plan denied that it was for the benefit of the bar, but argued that the community would scarcely be injured if legal expertise appeared there as in the other courts of the State.[43]

In the end, a number of votes were taken. Three stand out. The first was taken on an attempt to amend the three judge variant which had come from the committee, to one judge and the J.P.'s of the county (89). The change was approved with 48.8 percent of the lawyers and 71.4 percent of the nonlawyers voting yes.[44] The second was a motion to reconsider striking the two associate judges (92) and it passed with 72.5 percent of the lawyers and 47.7 percent of the nonlawyers supporting it.[45] In the end, the three judge alternative was chosen with the proviso that the legislature could abolish the offices of associate judges and add the J.P.'s to the court if it chose to do so (93). 83.3 percent of the lawyers and 64.3 percent of the nonlawyers supported this compromise with their votes.[46] Although the convention apparently did not intend for the county judge and his associates to be lawyers, the move to restructure the court and reduce the power of the J.P.'s suggests that a desire existed to regularize and rationalize the county courts.

The regressions on votes 89, 92, and 93 revealed only a small association between the cohort and the vote distribution. On vote 89 it accounted for 5.1 percent, and on 93, .01 percent. Again, though the breakdown of the vote into percentages of lawyers and nonlawyers who voted on either side of these questions suggests that occupation may have made a difference in the votes, the regressions indicate that occupation contributes surprisingly little in explaining the voting pattern.

Another area of special interest to the bar was the convention's concern with the problems of the criminal justice system. Kentuckians seem to have had a genius for homicide in the nineteenth century and this, in part, seems to have enhanced popular interest in reform of the prosecutorial system.[47] There was vocal concern about the

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42. *Id.* at 706.
43. *Id.* at 708-10.
44. *Id.* at 706.
45. *Id.* at 715.
46. *Id.* at 716.
47. *See id.* at 680, 688, 794. One of *The Convention's* correspondents, "Philodemos," stated that problem clearly:

> [W]here, short of a state of down-right, barbarism and savage ferocity, are deeds of daring villany [sic] done with greater impunity than with us

breakdown of "law and order" and an apparent widespread contempt for punishments which were not exacted. Although other aspects of the criminal justice system were discussed, critics turned most of their attention to the jury.[48]

The essential problem seems to have been jury packing by defendants. Their friends or retainers would "stand at and around the court house door" so that when the regularly called jury panel had been exhausted by excuse and defense challenges, and the sheriff was ordered to summon bystanders to fill it up, the defendant's partisans would be empaneled.[49] The problem was especially severe when men of influence and wealth were charged with crime.[50] The solution offered for this problem was to allow the Commonwealth a fixed number of peremptory challenges, which until that time, only the defendant had possessed. This would allow the prosecutor to strike the friends of the defendant from the panel. Opponents of the change argued that it would tip the balance too heavily in favor of the state.[51] Proponents said that with the presumption of innocence and the requirement that criminal juries be unanimous in rendering a guilty verdict, the advantages on the side of the defendant would still be great even if the clause

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> in Kentucky? . . . [Though] our Criminal Code is as rigid and severe as might be, . . .those laws . . . are altogether insufficient to arrest the hand of murderous violence and daily outrate among us. . . .[U]nprovoked and unpunished murders . . . are green in the recollection of all.

The Convention, January 9, 1847, at 1, col. 2-3. *See also* Ireland, *Law and Disorder in Nineteenth Century Kentucky*, 32 VAND. L. REV. 281 (1979); and C. EATON, THE GROWTH OF SOUTHERN CIVILIZATION, 1790-1860 at 277-78 (1961) (where it is stated that this problem was a pervasive one in the ante-bellum South).

48. *See, e.g.*, The Convention, January 9, 1847, at 1, col. 1; January 30, 1847 at 2, col. 2. The use of jurors in civil cases also drew fire, and much of the criticism leveled at their weaknesses in that context could be applied to jurors sitting in criminal cases as well. *See* Louisville Journal, September 15, 1849, at 2, col. 2 and September 18, 1849, at 3, col. 1. For the convention's treatment of these questions, *see Debates, supra* note 9, at 676-83.

49. *Debates, supra* note 9, at 676 (speech of Richard L. Mayes).

50. EATON, *supra* note 47, at 278. Eaton, a highly respected historian of the ante-bellum South, used two infamous Kentucky murder cases—one which occurred in 1846 and the other in 1854—to illustrate the ineffectiveness of the criminal justice system when influential men were charged with the crime of a murder. The earlier case was the trial of Lafayette Shelby, the grandson of a former governor. The illustrious Henry Clay represented the defendant and the trial received wide play in the press. Shelby's acquittal set off a furious public debate. The convention delegates were undoubtedly familiar with the case and the public uproar it engendered. Indeed, some of them specifically referred to the case on the floor.

51. *Debates, supra* note 9, at 679.

were included. Supporters of the change finally charged that lawyers would oppose it because their true interest lay with defendants who paid their fees.

Three roll calls dealt with the grant of peremptory challenges to the state. The first (82) *required* the legislature to provide such challenges. 56.1 percent of the lawyers voted against the section but it was passed over their opposition by the vote of 61.7 percent of the nonlawyers.[52] A subsequent vote was taken on whether to make the provision permissive rather than mandatory. 52.3 percent of the lawyers voted in favor of changing the wording of the provision from *shall* to *may*. The amendment carried with the help of 70.8 percent of the nonlawyers.[53] The regression shows that on the first vote (82) 14.5 percent of the total variance was accounted for by the seven predictors. The cohort accounted for only 1.5 percent. The second vote (83) shows that the cohort was again a weak predictor, accounting for only 1.7 percent of the total variance in the vote. Party affiliation was the highest predictor on both of these votes.

After it was decided that the state should be allowed peremptory challenges, a third vote was taken relating to the question. This vote (86) was on whether to add a section which would provide that the Commonwealth should never have more than one-fifth the number of challenges available to defendants, thus denying the Commonwealth the ability to pack juries. 59.5 percent of the lawyers and 69.8 percent of the nonlawyers voted against the restriction.[54] The occupation predictor accounted for only 1.4 percent of the total variance in the vote.

Another criminal justice issue which should have been of great interest to the bar was a proposal to provide for the right of appeal in criminal cases. Such a right had never been granted under the previous constitutions. For this reason some of the delegates doubted the legislature could allow for such appeals in the absence of a constitutional enabling clause.

The members of the convention thoroughly discussed the advisability of allowing criminal appeals. Among the key arguments offered was the irrationality of allowing appeals in civil cases where as little as fifty dollars was involved, while denying appeals in criminal cases where life and liberty were at stake.[55] Supporters of the right to criminal

52. *Id.* at 683.
53. *Id.* at 692.
54. *Id.* at 694.
55. *Id.* at 674, 677.

appeals also suggested that because of the conditions of trials which required immediate rulings from the bench, the trial judge was all too prone to error.[56]

The most telling argument in support of criminal appeals was the need for statewide uniformity in interpretation and application of criminal law and procedure. Both of these concerns were articulated first by lawyers and seem to exhibit a perspective on public issues gained by practicing law. With reference to the need for uniformity of decision, several lawyer delegates referred to two recent cases in which defendants were tried in separate circuits for identical crimes committed under similar circumstances. In both cases the defendants were convicted. Motions for benefit of clergy were made in both courts, but in one it was entertained by the judge and in the other it was not. The result, it was charged, of these different rulings was that one defendant was hanged and the other released.[57] If lawyers were to make their influence felt, surely it would be on precisely such an issue. Here their own professional experience set them apart from their lay colleagues. Their concern for regularity and predictability would certainly surface, and, at least arguably, their economic interest lay clearly on one side. Yet, here too the lawyers divided.

Those who opposed allowing appeals argued that the delays incident to them would defeat justice. Ben Hardin, a veritable institution at the bar and in politics, opposed the proposition on this ground and also on the ground that, "I never saw an innocent man convicted, while I have seen a thousand guilty escape."[58] Nearly all of the lawyers who participated in the discussion drew upon their personal experience with criminal trials, but as on nearly every other question, they took opposing sides. Lawyers disagreed among themselves on the question of appeals, just as they had disagreed concerning peremptory challenges and seemingly, everything else touching the criminal justice system. The only exception to this statement was their general concurrence that too many criminals escaped punishment, a concern clearly shared by the communities which had elected them.

After preliminary maneuvering, the convention voted to add to the provision on peremptory challenges language giving the legislature

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56. *Id.* at 674.

57. *Id.* at 678, 685. I have been unable to identify the cases to which these remarks refer, but the noted statements were not challenged from the floor or in the press.

58. *Id.* at 686.

the express power to pass a law regulating criminal appeals.[59] The section as finally approved read: "The General Assembly may pass laws authorizing writs of error in criminal or penal cases and regulating the right of challenge of jurors therein."[60] The vote on adding the appeals to the section (84) found 79.5 percent of the lawyers and 100 percent of the nonlawyers supporting the change.[61] In this permissive form, the section was approved (85) by 86.4 percent of the lawyers and 97.9 percent of the nonlawyers.[62]

On vote 84 the cohort accounted for 14.9 of the variance. This was the greatest amount of variance accounted for by the cohort on any of the roll calls. Since occupation did not account for much of the variance in the vote allowing the legislature to give peremptory challenges to the state, or on the question of permitting a similar discretion with regard to appeals, the increase in variance accounted for by the cohort when these clauses were combined seems an anomaly. Perhaps it manifests, among members of the bar, a more widespread concern about the power of the state in criminal cases. Such feelings, or others, led some lawyers to argue that if the state was to be allowed peremptory challenges, then the defendant's right to an appeal must be guaranteed. The discussion in the *Debates* is consistent with this hypothesis and suggests that the lawyers' opposition was attributable to the fact that they wanted the right to appeal expressly set out in the constitution.[63]

Perhaps the matters raised in the convention concerning which critics of the legal profession most expected concerted opposition from the bar were embodied in a catchall set of resolutions offered by Richard Gholson.[64] In them he proposed that special pleading be abolished, that all cases be tried by a jury "on their merits," that chancery courts be abolished, that land titles be quieted, and that the concurrence of a majority of the Court of Appeals be made necessary to the reversal

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59. *Id.* at 692.
60. *Id.* at 686.
61. *Id.* at 692.
62. *Id.*
63. What correlation existed was with a "no" vote by the lawyers.
64. In the convention, Gholson frequently expressed his disgust with the legal profession. Indeed, if there was a spokesman for the anti-lawyer sentiment which did exist in the State, here was the man. There is also some circumstantial evidence that Gholson was the vituperative "Jefferson" from whom I quoted at the beginning of this paper. Whether he was "Jefferson" or not, he did make several attacks on the bar in the convention.

of the opinion of a lower court.[65] These resolutions were referred to a select committee appointed by the convention's lawyer-President, James Guthrie, which consisted of Gholson and four lawyers. A majority of the committee proposed that two commissions, made up of "persons learned in the law," be assigned the task of revising and simplifying the statute law of the State and of drafting a simplified code of civil and criminal procedure. Gholson felt obliged to make a minority report, one of the few in the convention, in which he endorsed the recommended commissions of "persons learned in the law," but wished to take the further step of providing, in the constitution, that, "[n]o civil suit shall be dismissed for lack of technical form . . . but every citizen shall have justice freely without sale, promptly, without denial or delay, and a trial upon the merits of his case." In order to accomplish this end Gholson proposed that the legislature be ordered to "provide one general form of action in which all civil suits shall be brought."[66] It is suggestive that no other member of the convention ever touched upon the resolutions offered by Gholson in his minority report.

There seems to have been sympathy for the idea of a general revision of the statute law and of procedure.[67] It is interesting that no one challenged the premise, indeed it was embraced even by Gholson, that these revisions should be carried out by lawyers. As for Gholson's more radical ideas, it is possible that the lawyers killed them behind the scenes, but it is difficult to believe that such a naked exercise of power could have passed without comment on the floor It seems more likely that there was no need for concerted action by the bar—even if such a thing had been possible—since Gholson's views were so extreme as to be unacceptable to a majority of nonlawyers as well.

In the end there were six roll calls which dealt with revision and simplification of the law and pleading. The first (146) was a vote on whether to order a revision of the statute law of the State, "so as to have but one law on any one subject, all of which shall be in plain english [sic]." Eighty percent (80%) of the lawyers and 90.9 percent of the nonlawyers voted yes.[68] The seven predictors only accounted for 11.7 percent of the total variance in the vote. Of the seven, the

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65. *Id.* at 36.

66. *Id.* at 128.

67. For a plea for simplification of the law accompanied by some abuse of the bar, *see* the letter from "Perserverando" published in The Convention, February 13, 1847, at 2, col. 2.

68. *Debates, supra* note 9, at 880.

serious politician predictor was the highest. "Lawyerness" accounted for less than one percent (1%) of the total variance. The second vote (147) would have directed the preparation of a code of civil and criminal practice with a view to shortening and simplifying the State's rules of procedure. 54.3 percent of the lawyers and 65.9 percent of the nonlawyers again voted yes.[69] This time the predictors accounted for 25.7 percent of the variance in the vote, but the cohort still accounted for less than one percent (1%).

By the following day several delegates entertained second thoughts about these two votes and the convention agreed to reconsider the second vote. This action followed a debate in which some members stressed the expense of such a commission, and Elijah Nuttall, a downstate lawyer with a tendency to wound the causes he supported, declared the task impossible. If Chitty could not lay down clear rules of pleading, he argued, it certainly could not be done by a Kentucky commission.[70] As usual, lawyers spoke on both sides.[71] When the vote was taken (148) 61.5 percent of the lawyers and 43.1 percent of the nonlawyers favored reconsideration.[72] The cohort accounted for less than one percent (1%) of the total variance. A fourth vote (149) was taken on whether to reconsider the first vote (146) concerning revision of the statutes. It too was passed with 68.4 percent of the lawyers and 38.5 percent of the nonlawyers voting in favor.[73] The cohort accounted for less than two percent (2%) of the variance. The fifth vote (150) was taken after discussion upon whether the words "In Plain English" should be stricken from the mandate of the first commission. The argument centered on whether elimination of arcane jargon, the meaning of which was well-settled, would simplify the law or lead to greater difficulties than its retention.[74] The motion to strike was adopted by a narrow margin with 72.2 percent of the lawyers and 36.5 percent of the nonlawyers voting in favor.[75]

At first blush, this vote appears to have been an example of cohesive behavior by the bar. However, the regression shows that the cohort accounted for only 3.7 percent of the total variance in the vote. Accordingly, one may conclude that "lawyerness" was an almost

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69. *Id.*
70. *Id.* at 903.
71. *See id.* at 901-07.
72. *Id.* at 907.
73. *Id.* at 909.
74. *Id.* at 908-09.
75. *Id.* at 909.

negligible factor in explaining the division. The sixth roll call (151) was taken on whether to readopt the statutory revision directive as amended—without "in plain English."[76] 62.2 percent of the lawyers voted no but the 66.7 percent of the nonlawyers who voted yes carried the section.[77] 23.1 percent of the total variance in the vote was accounted for by the predictors but the cohort only contributed 5.2 percent. Again, the raw division is deceptive. The regression shows that occupation did not explain the distribution of the votes.

All six of these important "lawyers' interest" votes point in the same direction. Occupation played an insignificant part in explaining the votes of the delegates. However, the apparent negative position taken by a majority of the lawyer delegates on these questions must have done little to discredit those critics who charged that the bar would die-in-the-last-ditch before it would accept the reform of pleading. Thus, after these issues had been settled, Gholson rose, and with passion opined that the bar had indeed proven recalcitrant on this question.[78]

Two other matters deserve inclusion in the selected examples of the behavior of lawyers in the convention. They both reflect on the presence or absence of commercial-mindedness in the bar. One concerned the availability of state financial support for internal improvements, and the other the availability of limited liability to shareholders of business corporations. Both of these issues had been the subject of occasionally heated public discussion in Kentucky as elsewhere before the convention took them up.

A section was proposed which provided that the legislature be permitted to contract debts only "to meet casual deficits or failures in the revenue, or for expenses not provided for . . . " and such borrowing could not exceed 500,000 dollars. The only exceptions were in case of the need for money "to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense."[79] From the discussion of this section it is clear that the proponents intended for this clause to put an end to state involvement in internal improvements.[80]

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76. The clause concerning the revision of pleading had already passed without a roll call.

77. *Id.* at 910.

78. The new state code of pleading, eventually produced by three prominent lawyers in the early 1850's, was one of the most important changes implemented by the constitutional reform movement of mid-century.

79. *Debates, supra* note 9, at 781.

80. *See id.* at 753-77. It is clear that there was public opposition to inclusion

The first roll call (109) was taken on a motion to strike the language "or for expenses not provided for" from the section. Some delegates apparently feared that this language would allow the legislature a *carte blanche* to use the credit of the State to the extent of 500,000 dollars for whatever purpose it thought proper. The purpose of the motion was to remove this discretion.[81] Again, the lawyers divided in debate and in their votes. 45.5 percent of the lawyers and 63.3 percent of the nonlawyers voted to strike and succeeded in passing the motion.[82] The seven predictors accounted for 28.8 percent of the variance in the vote with total wealth being the highest at 14.2 percent of the total variance, that is, 49.4 percent of the accounted for variance. The greater his wealth, the more likely a delegate was to vote against striking. The cohort accounted for slightly less than one percent (1%) of the total variance, or, 3.2 percent of the accounted for variance. The second vote (110) was upon enacting the section as amended. When the vote was taken, 65.9 percent of the lawyers and sixty-six percent (66%) of the nonlawyers voted in favor of the section.[83] The predictors accounted for 38.3 percent of the variance with total wealth again the highest predictor, accounting for 18.1 percent of the variance, or 47.2 percent of the accounted for variance. The greater the wealth the more likely was a "no" vote. The cohort was again associated with less than one percent (1%) of the total variance, or 1.4 percent of that accounted for.

The other roll call which touched upon the presence or absence of commercial sympathies among the lawyer was a proposition that no charter be granted in the future which conferred banking or trading powers on a corporation unless it also provided that the stockholders' private property be liable for the debts of the corporation. If the legislature determined that an exemption should be granted, this could be done only by submitting the proposed charter to the people at a general election for the voters' approval or rejection.[84] A substitute which would have expressly limited the liability of shareholders in future corporations to the amount of their stock was rejected without a roll call. When the original provision came to a vote it was defeated by

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of such a clause (especially among Whigs), but it also is clear that such opposition spoke for a minority of the population. *See, e.g.*, Louisville Journal, October 12, 1849, at 3, col. 2.

81. *See* the comments of C.A. Wickliffe and William Preston in this regard. *Debates, supra* note 9, at 783.

82. *Debates, supra* note 9, at 784.

83. *Id.*

84. *Id.* at 836.

the "no" votes of 75.7 percent of the lawyers and 57.4 percent of the nonlawyers.[85] The predictors accounted for 30.2 percent of the variance in the vote. Political party affiliation was by far the highest predictor, accounting for 22.5 percent of the total variance, or 74.6 percent of the accounted for variance, with Whigs voting against the provision. The cohort accounted for one percent (1%) of the total variance, or 3.6 percent of the accounted for variance. Lawyers seem to have been no more commercial-minded than their lay colleagues.

IV. Conclusion

The inferences to be drawn from analysis of the debates, the roll call divisions, and their examination by means of multiple regression analysis, seem clear. Lawyers did not act together in the Kentucky constitutional convention of 1849. That evidence which, at first, seems to support the cohesiveness thesis—the small number of questions where most lawyers appeared on one side in a vote—proves weak when evaluated in context. The lawyers' individuality in the debates, and the more sophisticated roll call analysis made possible by application of multiple regression, persuasively argue against it.

Even with regard to matters which should have been of special interest to the bar, the mere fact that a delegate was a lawyer offered almost no help in explaining the scattering of delegate votes. Indeed, such factors as political party affiliation, wealth, and rate of population growth in the delegate's district, were much better relative predictors of roll call behavior than was occupation. By far the best predictor was party affiliation. It was the highest predictor on forty-one percent (41%) of the votes, being associated with fifty percent (50%) or more of the accounted for variance on thirty-four of them. Even on those votes where being a lawyer was the best predictor of voting behavior, occupation never accounted for enough variance to be considered more than a "slightly" correlated predictor. With an appropriate qualification, this may even be said of the four noted votes where the cohort accounted for ten percent (10%) or more of the variance.

Whether political lawyers acted together, capturing and shaping the substantive public policy of mid-nineteenth century Kentucky, may seem a small matter. However, the broad question concerning the impact of the legal profession on our institutions and society, addressed here in the Kentucky setting, is not. Given the ubiquity of lawyers in

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85. *Id.*

American life and politics, the question surely deserves more serious attention from legal historians than it has hitherto received.

A definitive answer to the question whether a "lawyer's interest" has existed—or perhaps still exists—and has seriously influenced our public life in support of particular groups or for its own benefit, must await further research. However, armed with the new tools of the social sciences we are today better able than ever before to undertake the empirical research which is necessary in order to offer a response. Indeed, such research may be the only way one can respond to charges like those made by our Kentucky "Jefferson" with any hope of persuasion.[86]

86. By suggesting that the role of the political bar has not been to shape society's ends to its own, I do not mean to argue that the persistent, pervasive participation of lawyers in politics has had no impact on our politics. There is rather, an intriguing "next hypothesis" worth considering. It emphasizes the characteristic which almost all lawyers do share, no matter how different from one another they may be in other respects. Lawyers put a higher value on "process" than do laymen. Because of this attribute, I would suggest, the presence of lawyers in public life *has* affected our politics. Political lawyers have shaped our public *means* rather than our *ends*, and in so doing, have acted as conservators of our political legitimacy. To the extent that any simple bifurcation of these two aspects of human behavior is appropriate—and I am aware of the danger inherent in its simplicity—lawyers are urged by training and experience to make it. If this hypothesis is correct, the profession has still made a fundamental contribution to what is arguably unique in our public life. Its members have instilled, or at least reinforced, our society's dedication to legitimate means—the value many would conclude is the genius of our institutions.

APPENDIX I
ROLL CALL DIVISIONS BETWEEN LAWYER AND NON-LAWYER DELEGATES

	Absolute				Percentage			
	Lawyer		Non-Lawyer		Lawyer		Non-Lawyer	
Vote	Yes	No	Yes	No	Yes	No	Yes	No
039	29	18	26	23	61.7	38.3	53.1	46.9
040	20	25	30	18	44.4	55.6	62.5	37.5
041	7	37	15	34	15.9	84.1	30.6	69.4
042	9	34	25	22	20.9	79.1	53.2	46.8
043	20	24	33	14	45.5	54.5	70.2	29.8
044	26	17	23	26	60.5	39.5	46.9	53.1
045	8	32	25	20	20.0	80.0	55.6	44.4
046	12	26	31	15	31.6	68.4	67.4	32.6
047	23	15	14	32	60.5	39.5	30.4	69.6
048	29	8	16	30	78.4	21.6	34.8	65.2
049	13	21	8	37	38.2	61.8	17.8	82.2
050	30	7	26	19	81.1	18.9	57.8	42.2
051	5	36	19	25	12.2	87.8	43.2	56.8
052	6	31	15	24	16.2	83.8	38.5	61.5
053	29	12	15	29	70.7	29.3	34.1	65.9
054	19	24	19	26	44.2	55.8	42.2	57.8
055	17	28	14	32	37.8	62.2	30.4	69.6
056	20	25	20	26	44.4	55.6	43.5	56.5
057	21	23	35	11	47.7	52.3	76.1	23.9
058	30	14	39	9	68.2	31.8	81.3	18.8
059	27	17	35	12	61.4	38.6	74.5	25.5
060	16	28	24	25	36.4	63.6	49.0	51.0
061	16	27	20	28	37.2	62.8	41.7	58.3
062	29	14	32	16	67.4	32.6	66.7	33.3
063	21	21	29	17	50.0	50.0	63.0	37.0
064	11	31	23	23	26.2	73.8	50.0	50.0
065	16	27	14	33	37.2	62.8	29.8	70.2
066	32	11	34	13	74.4	25.6	72.3	27.7
067	13	29	9	37	31.0	69.0	19.6	80.4
070**	20	21	19	27	48.8	51.2	41.3	58.7
071	13	19	22	17	40.6	59.4	56.4	43.6
072	5	26	21	18	16.1	83.9	53.8	46.2
073	6	25	23	17	19.4	80.6	57.5	42.5
074	4	28	3	36	12.5	87.5	7.7	92.3
075	6	25	25	13	19.4	80.6	65.8	34.2
076	3	39	6	41	7.1	92.9	12.8	87.2
077	12	30	12	36	28.6	71.4	25.0	75.0
078	23	17	14	35	57.5	42.5	28.6	71.4
079	26	14	24	24	65.0	35.0	50.0	50.0
080	28	12	26	19	70.0	30.0	57.8	42.2
081	17	24	24	23	41.5	58.5	51.1	48.9
082	23	18	18	29	56.1	43.9	38.3	61.7

	Absolute				Percentage			
	Lawyer		Non-Lawyer		Lawyer		Non-Lawyer	
Vote	Yes	No	Yes	No	Yes	No	Yes	No
083	23	21	34	14	52.3	47.7	70.8	29.2
084	35	9	48	0	79.5	20.5	100.0	0.0
085	38	6	47	1	86.4	18.6	97.9	2.1
086	17	25	13	30	40.5	59.5	30.2	69.8
087	28	7	32	16	80.0	20.0	66.7	33.3
088	14	28	29	21	33.3	66.7	58.0	42.0
089	21	22	35	14	48.8	51.2	71.4	28.6
090	14	24	12	27	36.8	63.2	30.8	69.2
091	4	35	14	28	10.3	89.7	33.3	66.7
092	29	11	21	23	72.5	27.5	47.7	52.3
093	35	7	27	15	83.3	16.7	64.3	35.7
094	11	30	14	26	26.8	73.2	35.0	65.0
095	9	31	24	18	22.5	77.5	57.1	42.9
096	22	18	19	21	55.0	45.0	47.5	52.5
097	11	28	15	25	28.2	71.8	37.5	62.5
098	4	36	4	37	10.0	90.0	9.8	90.1
099	27	14	26	15	65.9	34.1	63.4	36.6
100	26	13	14	28	66.7	33.3	33.3	66.7
101	14	23	23	17	37.8	62.2	57.5	42.5
102	19	19	26	15	50.0	50.0	63.4	36.6
103	14	23	24	17	37.8	62.2	58.5	41.5
104	26	9	30	11	74.3	25.7	73.2	26.8
105	7	33	11	39	17.5	82.5	22.0	78.0
106	20	20	35	14	50.0	50.0	71.4	28.6
107	22	21	31	19	51.2	48.8	62.0	38.0
108	19	24	15	33	44.2	55.8	31.3	68.8
109	20	24	31	18	45.5	54.5	63.3	36.7
110	29	15	33	17	65.9	34.1	66.0	34.0
111	32	9	18	22	78.0	22.0	45.0	55.0
112	34	9	38	6	79.1	20.9	86.4	13.6
113	29	11	21	27	72.5	27.5	43.8	56.3
114	8	33	10	36	19.5	80.5	21.7	78.3
115	12	31	10	37	27.9	72.1	2.13	78.7
116	5	38	4	45	11.6	88.4	8.2	91.8
117	23	20	25	25	53.5	46.5	50.0	50.0
118	7	36	16	34	16.3	83.7	32.0	68.0
119	3	41	7	43	6.8	93.2	14.0	86.0
120	13	29	16	32	31.0	69.0	33.3	66.7
121	13	30	18	29	30.2	69.8	38.3	61.7
122	15	25	28	19	37.5	62.5	59.6	40.4
123	25	16	25	23	61.0	39.0	52.1	47.9
124	39	2	43	5	95.1	4.9	89.6	10.4
125	1	40	0	46	2.4	97.6	0.0	100.0
126	25	16	30	18	61.0	39.0	62.5	37.5
127	26	14	31	16	65.0	35.0	66.0	34.0
128	17	24	15	33	41.5	58.5	31.3	68.7

	Absolute				Percentage			
	Lawyer		Non-Lawyer		Lawyer		Non-Lawyer	
Vote	Yes	No	Yes	No	Yes	No	Yes	No
129	27	15	35	13	64.3	35.7	72.9	27.1
130	23	19	27	22	54.8	45.2	55.1	44.9
131	25	18	32	17	58.1	41.9	65.3	34.7
132	26	18	30	20	59.1	40.9	60.0	40.0
133	4	34	10	41	10.5	89.5	19.6	80.4
134	18	21	35	17	46.2	53.8	67.3	32.7
135	4	35	8	42	10.3	89.7	16.0	84.0
136	9	28	20	27	24.3	75.7	42.6	57.4
137	21	17	28	19	55.3	44.7	59.6	40.4
138	38	4	37	12	90.5	9.5	75.5	24.5
139	20	19	33	16	51.3	48.7	67.3	32.7
140	14	25	24	25	35.9	64.1	49.0	51.0
143	30	11	35	12	73.2	26.8	74.5	25.5
144	36	5	41	5	87.8	12.2	89.1	10.9
145	1	32	1	43	3.0	97.0	2.3	97.7
146	28	7	40	4	80.0	20.0	90.9	9.1
147	19	16	29	15	54.3	45.7	65.9	34.1
148	24	15	22	29	61.5	38.5	43.1	56.9
149	26	12	20	32	68.4	31.6	38.5	61.5
150	26	10	19	33	72.2	27.8	36.5	63.5
151	14	23	34	17	37.8	62.2	66.7	33.3
152	34	4	40	10	89.5	10.5	80.0	20.0
153	28	14	28	23	66.7	33.3	54.9	45.1
154	23	18	35	14	56.1	43.9	71.4	28.6
155	22	19	35	14	53.7	46.3	71.4	28.6
156	18	23	16	33	43.9	56.1	32.7	67.3
157	30	5	43	4	85.7	14.3	91.5	8.5
158	11	26	21	25	29.7	70.3	45.7	54.3
159	11	29	21	26	27.5	72.5	44.7	55.3
160	9	34	1	50	20.9	79.1	2.0	98.0
161	16	28	31	20	36.4	63.6	60.8	39.2
162	28	16	20	31	63.6	36.4	39.2	60.8
163	16	24	13	36	40.0	60.0	26.5	73.5
164	22	17	25	23	56.5	43.6	52.1	47.9
165	22	18	24	23	55.0	45.0	51.1	48.9
166	27	15	24	23	64.3	35.7	51.1	48.9
167	31	11	31	17	73.8	26.2	64.6	35.4
168	6	35	5	42	14.6	85.4	10.6	89.4
169	22	21	30	19	51.2	48.8	61.2	38.8
170	28	14	32	15	66.7	33.3	68.1	31.9
171	5	34	4	43	12.8	87.2	8.5	91.5
172	4	35	1	46	10.3	89.7	2.1	97.9
173	23	17	31	19	57.5	42.5	62.0	38.0
174	5	36	8	39	12.2	87.8	17.0	83.0
175	22	20	25	27	47.6	52.4	48.1	51.9
176	20	22	25	27	47.6	52.4	48.1	51.9

	Absolute				Percentage			
	Lawyer		Non-Lawyer		Lawyer		Non-Lawyer	
Vote	Yes	No	Yes	No	Yes	No	Yes	No
177	11	29	8	42	27.5	72.5	16.0	84.0
178	12	30	21	30	28.6	71.4	41.2	58.8
179	19	22	24	26	46.3	53.7	48.0	52.0
180	11	29	12	38	27.5	72.5	24.0	76.0
181	24	17	32	17	58.5	41.5	65.3	34.7
182	13	26	18	31	33.3	66.7	36.7	63.3
183	21	18	21	28	53.8	46.2	42.9	57.1
184	17	23	17	34	42.5	57.5	33.3	66.7
185	8	28	14	36	22.2	77.8	28.0	72.0
186	21	17	33	18	55.3	44.7	64.7	35.3
187	23	16	37	12	59.0	41.0	75.5	24.5
188	2	29	4	39	6.5	93.5	9.3	90.7
189	25	8	22	21	75.8	24.2	51.2	48.8
190	10	30	19	28	25.0	75.0	40.4	59.6
191	15	28	12	38	34.9	65.1	24.0	76.0
192	21	24	35	17	46.7	53.3	67.3	32.7
193	16	24	9	40	40.0	60.0	81.4	81.6
194	19	21	12	38	47.5	52.5	24.0	76.0
195	21	18	29	21	53.8	46.2	58.0	42.0
196	46	1	49	0	97.9	2.1	100.0	0.0

APPENDIX II
ACCOUNTED FOR VARIANCE ON ROLL CALL VOTES: THE TOTAL, THE HIGHEST PREDICTOR, AND THE COHORT

	Acounted For Variance		Highest Predictor			Cohort Code (Lawyerness)	
Vote	RSQ	% Of Total Variance	Var.	RSQ Change	% Of Accounted For Variance	RSQ Change	% Of Accounted For Variance
039	.31891	31.89%	034*	.28988	90.90%	.00554	1.74%
040	.92624	92.62%	034	.85236	92.02%	.00094	.10%
041	.12943	12.94%	029	.04730	36.54%	.03591	27.74%
042	.35229	35.23%	029	.11356	32.23%	.07686	21.82%
043	.17452	17.45%	221	.09952	57.02%	.09952	57.02%
044	.11978	11.98%	034	.04597	38.38%	.04158	34.71%
045	.20197	20.20%	034	.08122	40.21%	.04925	24.38%
046	.33284	33.28%	034	.13649	41.01%	.07125	21.41%
047	.21591	21.59%	003	.09104	42.17%	.03056	14.15%
048	.43308	43.31%	034	.16554	38.22%	.10979	25.35%
049	.25970	25.97%	034	.13406	51.62%	.04529	17.44%
050	.20006	20.01%	034	.16165	80.80%	.01369	6.84%
051	.41913	41.91%	034	.19727	47.04%	.07935	18.93%
052	.17231	17.23%	221	.14459	25.88%	.04459	25.88%
053	.33788	33.79%	034	.14906	44.12%	.06124	18.12%
054	.16135	16.14%	028	.08740	54.17%	.00038	.24%
055	.20532	20.53%	034	.11317	55.12%	.00138	.67%

*The variable labels were: 003 = Total Wealth; 007 = Value of Slaves Owned; 028 = Population Density in 1850; 029 = Percentage Change in Population from 1840 to 1850; 034 = Political Party Affiliation; 227 = Serious Politician; and 221 = Occupation (Cohort).

	Acounted For Variance		Highest Predictor			Cohort Code (Lawyerness)	
Vote	RSQ	% Of Total Variance	Var.	RSQ Change	% Of Accounted For Variance	RSQ Change	% Of Accounted For Variance
056	.18943	18.94%	028	.07604	40.14%	.00016	.08%
057	.43015	43.02%	034	.31022	72.12%	.00573	1.33%
058	.24712	24.71%	028	.12742	51.56%	.01080	4.37%
059	.41689	41.69%	034	.36849	88.39%	.00267	.64%
060	.17930	17.93%	034	.05796	32.33%	.01144	6.38%
061	.20147	20.15%	034	.10619	52.71%	.00905	4.49%
062	.29323	29.32%	034	.18546	63.25%	.01507	5.14%
063	.51617	51.62%	034	.45493	88.14%	.00294	.57%
064	.29762	29.76%	034	.19852	66.70%	.02278	7.65%
065	.22552	22.55%	227	.10172	45.10%	.00004	.02%
066	.12512	12.51%	029	.04314	34.48%	.00082	.66%
067	.21113	21.11%	029	.11006	52.13%	.01294	6.13%
070**	.28310	28.31%	003	.12299	43.44%	.00000	.00%
071	.16981	16.98%	221	.04678	27.55%	.04678	27.55%
072	.55717	55.72%	034	.40689	73.03%	.03719	6.67%
073	.33440	33.44%	034	.18696	55.91%	.06547	19.58%
074	.09317	9.32%	028	.04804	51.56%	.01355	14.54%
075	.39557	39.56%	221	.14484	36.62%	.14484	36.62%
076	.19740	19.74%	007	.11056	56.01%	.01713	8.68%
077	.22015	22.02%	003	.13744	62.43%	.00353	1.60%
078	.20281	20.28%	034	.07876	38.83%	.03300	16.27%
079	.15115	15.12%	028	.12029	79.58%	.00159	1.05%
080	.10666	10.67%	227	.02644	24.79%	.00710	6.66%
081	.05942	5.94%	034	.02790	46.95%	.00031	.52%
082	.14516	14.52%	034	.07060	48.64%	.01503	10.35%
083	.06806	6.81%	034	.04058	59.62%	.01743	25.61%
084	.17165	17.17%	221	.14899	86.80%	.14899	86.80%
085	.16921	16.92%	221	.05382	31.81%	.05382	31.81%

086	.04661	4.66%	221	.01421	30.49%	.01421	30.49%
087	.15110	15.11%	003	.06854	45.36%	.00707	4.68%
088	.18624	18.62%	221	.07385	39.65%	.07385	39.65%
089	.16728	16.73%	029	.07691	45.98%	.05144	30.75%
090	.18459	18.46%	034	.06322	34.25%	.00006	.03%
091	.09530	9.53%	221	.04554	47.79%	.04554	47.79%
092	.15600	15.60%	221	.05703	36.56%	.05703	36.56%
093	.22160	22.16%	034	.12085	54.54%	.00538	2.43%
094	.09958	9.96%	034	.06030	60.55%	.00569	5.71%
095	.25771	25.77%	034	.09977	38.71%	.07525	29.20%
096	.12115	12.12%	007	.05125	42.30%	.00156	1.29%
097	.12862	12.86%	003	.05092	39.59%	.00301	2.34%
098	.09485	9.49%	034	.06651	70.12%	.00557	5.87%
099	.10605	10.61%	227	.03518	33.17%	.00537	5.06%
100	.19931	19.93%	221	.04619	23.17%	.04719	23.17%
101	.29739	29.74%	034	.21021	70.68%	.00205	.69%
102	.19560	19.56%	003	.08592	43.92%	.00670	3.43%
103	.18276	18.28%	003	.08470	46.34%	.00538	2.94%
104	.21217	21.22%	003	.14919	70.32%	.01512	7.13%
105	.05593	5.59%	028	.02694	48.17%	.00709	12.68%
106	.35613	35.61%	003	.19022	53.41%	.02736	7.68%
107	.21123	21.12%	003	.05810	27.51%	.00360	1.70%
108	.10088	10.09%	003	.04944	49.01%	.01141	11.31%
109	.28776	28.78%	003	.14213	49.39%	.00927	3.22%
110	.38285	38.29%	003	.18081	47.23%	.00528	1.38%
111	.35668	35.67%	034	.27333	76.63%	.01716	4.81%
112	.24023	24.02%	003	.07713	32.11%	.00201	.84%
113	.28041	28.04%	034	.15878	56.62%	.02620	9.34%
114	.11855	11.86%	034	.04132	34.85%	.00046	.39%
115	.09634	9.63%	003	.05724	59.41%	.00113	1.17%

**"Votes" 68, 69, 141, and 142 are missing because these columns of the computer were used for identification. Vote 145 is not reported because there was not enough variance for the regression to analyze.

Vote	Acounted For Variance RSQ	% Of Total Variance	Var.	Highest Predictor RSQ Change	% Of Accounted For Variance	Cohort Code (Lawyerness) RSQ Change	% Of Accounted For Variance
116	.30325	30.33%	003	.13848	45.67%	.00024	.08%
117	.10084	10.08%	034	.03702	36.71%	.00227	2.25%
118	.14771	14.77%	221	.06387	43.24%	.06387	43.24%
119	.05934	5.93%	029	.01873	31.56%	.00519	8.75%
120	.12937	12.94%	003	.06604	51.05%	.01238	9.57%
121	.21055	21.06%	028	.07540	35.81%	.04583	21.77%
122	.12964	12.96%	003	.07908	61.00%	.01134	8.75%
123	.12002	12.00%	034	.06185	51.53%	.00005	.04%
124	.05558	5.56%	034	.03461	62.27%	.01076	19.36%
125	.11461	11.46%	221	.04417	38.54%	.04417	38.54%
126	.08562	8.56%	003	.05873	68.59%	.00058	.68%
127	.14768	14.77%	003	.06468	43.80%	.00023	.16%
128	.05754	5.75%	028	.02524	43.87%	.00300	5.21%
129	.10012	10.01%	028	.05500	54.93%	.01296	12.94%
130	.03479	3.48%	007	.01233	35.44%	.00001	.03%
131	.03652	3.65%	029	.01881	51.51%	.00709	19.41%
132	.06127	6.13%	028	.02959	48.29%	.00000	.00%
133	.08196	8.20%	227	.03713	45.30%	.01020	12.45%
134	.18708	18.71%	007	.05415	28.94%	.02893	15.46%
135	.04189	4.19%	028	.01424	33.99%	.00117	2.79%
136	.3057	30.16%	034	.22497	74.60%	.01095	3.63%
137	.17141	17.14%	034	.09223	53.81%	.00029	.17%
138	.09931	99.30%	070	.67876	83.40%	.0846	8.52%
139	.14734	14.73%	028	.06872	46.64%	.01212	8.23%
140	.23042	23.04%	007	.08309	36.06%	.00809	3.51%
143	.09214	9.21%	003	.04283	46.48%	.00111	1.20%
144	.25193	25.19%	029	.12757	50.64%	.00189	.75%

145	Not enough variance to analyze						
146	.11687	11.69%	227	.04148	35.49%	.00657	5.62%
147	.25742	25.74%	028	.14845	57.67%	.00413	1.60%
148	.15215	15.22%	034	.07107	46.71%	.00165	1.08%
149	.19873	19.87%	034	.07075	35.60%	.01725	8.68%
150	.24946	24.95%	034	.14604	58.54%	.03666	14.70%
151	.23080	23.08%	034	.06843	29.65%	.05185	22.47%
152	.09731	9.73%	034	.03604	37.04%	.00196	2.01%
153	.10683	10.68%	034	.04929	46.14%	.00004	.04%
154	.15609	15.61%	003	.00972	63.89%	.02205	14.13%
155	.15294	15.29%	003	.08701	56.89%	.03477	22.73%
156	.14143	14.14%	007	.05050	35.71%	.01801	12.73%
157	.11984	11.98%	034	.06194	51.69%	.00031	.26%
158	.23312	23.31%	034	.08798	37.74%	.00952	4.08%
159	.24095	24.10%	034	.08278	34.36%	.00793	3.29%
160	.52905	52.91%	028	.25208	47.65%	.04221	7.98%
161	.26804	26.80%	028	.10204	38.07%	.00573	2.14%
162	.26804	26.80%	028	.10204	38.07%	.00573	2.14%
163	.29739	29.74%	034	.14066	47.30%	.00431	1.45%
164	.27783	27.78%	029	.10307	37.10%	.01451	5.22%
165	.36198	36.20%	034	.17584	48.58%	.01888	5.22%
166	.17481	17.48%	003	.07787	44.55%	.00538	3.08%
167	.16473	16.47%	034	.05150	31.26%	.01403	8.52%
168	.32943	32.94%	003	.12871	39.07%	.01034	3.14%
169	.42691	42.69%	034	.19543	45.78%	.00452	1.06%
170	.05243	5.24%	028	.02622	50.00%	.00011	2.1%
171	.20667	20.67%	029	.11345	54.89%	.00003	.01%
172	.12455	12.46%	029	.04043	32.46%	.01666	13.38%
173	.09601	9.60%	003	.05382	56.06%	.00131	1.36%
174	.05369	5.37%	028	.03196	59.53%	.00495	9.22%
175	.27741	27.74%	007	.09020	32.52%	.00365	1.32%
176	.27260	27.26%	003	.10738	39.39%	.00511	1.87%
177	.28063	28.06%	034	.19587	69.80%	.00000	.00%

	Acounted For Variance		Highest Predictor			Cohort Code (Lawyerness)	
Vote	RSQ	% Of Total Variance	Var.	RSQ Change	% Of Accounted For Variance	RSQ Change	% Of Accounted For Variance
178	.20550	20.55%	028	.12736	61.98%	.02247	10.93%
179	.09452	9.45%	007	.04261	45.08%	.00186	1.97%
180	.20116	20.12%	003	.07226	35.92%	.00163	.81%
181	.24475	24.48%	003	.09884	40.38%	.00125	.51%
182	.28101	28.10%	034	.13640	48.54%	.00070	.25%
183	.40361	40.36%	034	.37912	93.93%	.00048	.12%
184	.22423	22.42%	034	.19507	87.00%	.00045	.20%
185	.18726	18.73%	034	.10402	55.55%	.01260	6.73%
186	.21099	21.10%	034	.12942	61.34%	.00308	1.46%
187	.31451	31.45%	003	.16246	51.65%	.00000	.00%
188	.16481	16.48%	029	.08784	53.30%	.00476	2.89%
189	.16259	16.26%	034	.07032	43.25%	.02319	14.26%
190	.19212	19.21%	034	.11598	60.37%	.00269	1.40%
191	.09463	9.46%	034	.03944	41.68%	.01176	12.43%
192	.29043	29.04%	034	.17085	58.83%	.01741	5.99%
193	.08106	8.11%	033	.04691	57.87%	.02076	25.61%
194	.28053	28.05%	034	.14067	50.14%	.03010	10.73%
195	.07745	7.75%	034	.03378	43.62%	.00001	.01%
196	.04704	4.70%	227	.02006	42.64%	.00384	8.16%