eral appeals and district courts, a new legal philosophy (or jurisprudence) has taken hold. Called "public law litigation," it was inspired by the Warren Court's (1953–69) judicial activism. Notable advocates include Harvard's Abram Chayes and Oxford's Ronald Dworkin. "The new constitutional theorizing is not aimed at the explication of the theoretical foundations of the Constitution," writes McDowell, "it is typically aimed at creating new theories of constitutionalism that are . . . superimposed on the Constitution."

Traditionally, American judges distinguished between social evils and constitutional violations. "Laws may be unjust, may be unwise, may be dangerous, may be destructive and yet not be . . . unconstitutional," declared delegate James Wilson during the Federal Convention of 1787. Public law jurisprudence emphasizes that federal judges must concern themselves not just with constitutional rights, but also with constitutional *values*. The constitutional protection against "cruel and unusual punishment" is thus broadened to include conditions, such as poor sanitation in prisons, that offend human sensibilities.

Judges once confined themselves in most cases to ruling on the matter at hand. Now, writes McDowell, "the resolution of abstract legal or constitutional issues is very often the [court's] primary objective and the resolution of a particular dispute between individuals merely a by-product." The traditional view was that rights were "limitations against governmental power for the protection of the individual; the new jurisprudence understands rights to be entitlements that the individual is owed by the government."

Moreover, public law advocates favor "prospective" rather than "historical" judgments, that is, judicial rulings that do not merely rectify past wrongs, but also impose systemic reform to prevent a recurrence. Such decisions have in some cases made local public schools and state mental health care programs the wards of federal courts.

As Alexander Hamilton wrote, all the rights and privileges of the Constitution "would amount to nothing" without the protection of courts. McDowell adds, though, that the Constitution will one day amount to nothing if it is not protected from the courts.

Elegy for the Sagebrush Revolt

"Why the Sagebrush Revolt Burned Out" by Robert H. Nelson, in *Regulation* (May-June 1984), American Enterprise Institute, 1150 17th St. N.W., Washington, D.C. 20036-9964.

Remember the Sagebrush Rebellion? During the late 1970s, Western governors and legislators, backed by ranchers, miners, and farmers, demanded that Washington hand over large tracts of federally owned land to the states. Today, the Sagebrush country is so quiet you can hear the wind whistle across it.

Despite its reputation as a haven of rugged individualism, the modern American West is the region "most dependent on the federal government," observes Nelson, a U.S. Department of the Interior

economist. Uncle Sam owns half of the West's land, including 86 percent of Nevada and 47 percent of California. Federal largess built the dams, aqueducts, and superhighways that sustain the West. In return for Washington's dollars, the Western states tacitly consented to federal control over much of what went on within their borders.

But this arrangement began to fray during the late 1970s. The 1976 Federal Land Policy and Management Act and other new Washington legislation—backed by environmentalists and by Eastern and Midwestern industrialists and labor unions aggrieved over "disproportionate" subsidies to the West—angered Westerners by limiting grazing, logging, and mining on public lands and by restricting the availability of cheap water and electric power. Such restrictions threatened to snuff out a regional economic boom.

To many Westerners, Washington's subsidies seemed to bring more trouble than they were worth. In 1979, Nevada's state legislators kicked things off by passing the "Sagebrush Rebellion Act," which "flatly declared the public domain lands in Nevada to be the property of the state" (a claim that has no prospect of legal recognition). Within a year, Utah, Arizona, New Mexico, and Wyoming passed similar laws.

Almost before the ink was dry on these laws, the states began to have second thoughts. Maintaining federal lands could cost a state up to $25 million annually. Miners and ranchers realized that the states would not continue Washington's practice of leasing them land at below-market rates. Finally, the Reagan administration appeased the Sagebrushers. Some 360,000 acres of federally owned Western land have passed into state hands since 1981—a tiny fraction of all federal lands, but an important token.

But the chief explanation for the Sagebrush Rebellion's early demise, Nelson believes, is that it lacked an intellectual rationale that could explain why state ownership was worth the increased price and would "serve the broad national interest."

A Bureaucratic Identity Crisis

"From Analyst to Negotiator: The OMB's New Role" by Bruce E. Johnson, in *Journal of Policy Analysis and Management* (Summer 1984), Subscription Dept., John Wiley and Sons, 605 Third Ave., New York, N.Y. 10158.

Top flight, important, but dull. That was the reputation of the White House's Office of Management and Budget (OMB) before Bert Lance and David Stockman came along. Today, the agency has more glamour, but it also faces an identity crisis of sorts.

Traditionally, the OMB has ridden herd on the federal bureaucracy on the president's behalf, pruning and shaping agency budgets into the unified federal budget submitted by the White House to Congress every January. Staffed by career civil servants and led by only a few political appointees, the agency was noted for its "neutral competence," writes Johnson, an OMB staff member from 1977 to 1982. In recent years,