



# Law & Courts

NEWSLETTER OF THE LAW & COURTS SECTION OF  
THE AMERICAN POLITICAL SCIENCE ASSOCIATION

## A Letter from the Section Chair

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The summer is moving quickly towards the beginning of another academic year, which we celebrate annually at the meetings of the American Political Science Association (Washington, DC, September 2-6). Events, however, begin on Wednesday, September 1<sup>st</sup>, a day before the annual meetings, with the Short Course sponsored by the Law and Courts Section, “[Legal Challenges to Gender-Based Violence](#).” Note that you will need to preregister in order to participate.

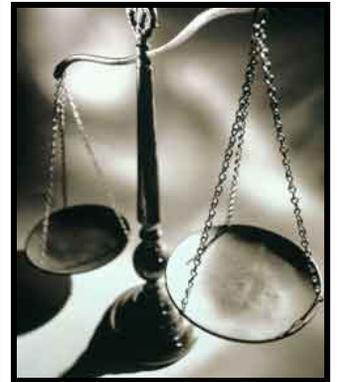
We all want to send out a big “thank you” to the 2010 Law and Courts Program Chair [Jeff Yates](#) (Binghamton University), and the 2010 Constitutional Law and Jurisprudence Program Chair [David Yalof](#) (University of Connecticut), who organized exceptionally interesting panels.

The Section’s **Business Meeting on Friday, September 3<sup>rd</sup>** has a full agenda. So come to the Marriott Wardman Park Hotel, Room Virginia C, beginning at **6:15 pm** ready to: Celebrate the 2010 award winners and create another Section award (Service to the Section Award); hear about the research and findings produced by the Section’s newest committee, the *Committee on the Status of the Public Law Profession*, chaired by [Mark Graber](#) (University of Maryland); catch up on the Section’s publishing projects including a report from the *Committee to Establish a Journal for the Law and Courts Section*, chaired by [Joel Grossman](#) (John’s Hopkins University), a discussion about the search for the next Editor of the *Law and Politics Book Review* (LPBR), and the search underway for the next Editor of the *Law and Courts Newsletter*.

In addition, we’ll discuss the recommendations made by the 2010 Nominations Committee: [Susan Sterett](#), chair, (University of Denver); [Jon Gould](#) (George Mason University); [Bert Kritzer](#) (University of Minnesota); [Doris Marie Provine](#) (Arizona State University); [Patrick Schmidt](#) (Macalester College).

The slate they have proposed is as follows:

*Spring 2010*  
**VOLUME 20 NO. 2**



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Christopher Zorn—plus  
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and “Upcoming  
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### General Information

**Law and Courts** publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** is published three times a year in Winter, Spring, and Summer. Deadlines for submission of materials are: November 1 (Winter), March 1 (Spring), and July 1 (Summer).

Contributions to **Law and Courts** should be sent to the editor:

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### Articles, Notes, and Commentary

We will be glad to consider articles and notes concerning matters of interest to readers of **Law and Courts**. Research findings, teaching innovations, or commentary on developments in the field are encouraged.

Footnote and reference style should follow that of the *American Political Science Review*. Please submit your manuscript electronically in MS Word (.doc) or Rich Text Format (.rtf). Contact the editor or assistant editor if you wish to submit in a different format. Graphics are best submitted as separate files. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

### Symposia

Collections of related articles or notes are especially welcome. Please contact the Editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts.

### Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when possible. Finally, authors should notify **BOOKS TO WATCH FOR EDITOR**: Bruce Peabody, bgpeabody@msn.com of publication of manuscripts or works soon to be completed.

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As per our [By-Laws](#): II. C(3) provides that “Five members of the Section may nominate candidates for any office (except chairperson) at the Annual Section Meeting, or by petition sent to the Chairperson prior to the meeting.”

Oh, it looks like the APSA will be featuring one of our core concerns – “The Politics of Rights” – as the theme for the 2011 meetings (San Francisco). To ensure that Law and Courts scholarship is ever present in the 2011 APSA Program, I am pleased to announce our 2011 Program Chairs:

*Law and Courts*: [Renee Cramer](#) (Drake University)

The theme of the APSA 2011 meetings in San Francisco is “The Politics of Rights.” Certainly, scholars within the Law and Courts section of the APSA have made creative and integral contributions to work within this vein. How has the study of rights within law and courts scholarship helped to define the field, direct our gaze, expand our understanding, and identify new and important questions?

We invite outstanding proposals on all Law and Courts topics, though we particularly encourage proposals that speak to the theme. In submitting proposals for papers, panels, and authors-meet-readers, participants may want to consider the following questions raised by the theme: How is globalization changing the nature of rights claims, mobilization for rights, and/or courts’ responses to them? How, and where, are rights defined and contested, contracted and expanded, articulated and ignored? How have rights claims shaped doctrinal law in relation to race, class, gender, and ability/disability? How do courts respond when rights conflict? Does customary law respond to rights claims differently than formal and conventional law? We seek proposals that engage the theme historically, critically, and generatively; we invite papers from a diverse range of substantive, methodological, epistemological, and theoretical approaches.

Constitutional Law and Jurisprudence: [Thomas Keck](#) (Syracuse University) and [Gordon Silverstein](#) (University of California-Berkeley)

We invite proposals for panels or individual papers on any topics related to constitutional law and jurisprudence, broadly defined, but we are particularly interested in proposals that speak to the Annual Meeting’s theme, “The Politics of Rights.” We anticipate that our section’s panels will advance lines of inquiry across a wide range of concerns central to those studying law and courts both within and outside of the United States, as well as to the broader discipline’s interest in the ways in which legal ideas, institutions and behavior both structure and respond to rights politics. We anticipate that some panels might be devoted to examining the distinctive character of rights-based political movements and organizations - on both the left and the right; how movements and individuals have sought to utilize legal ideas and institutions to advance their causes, and the conditions under which such efforts have been successful; and the development and formal recognition of new constitutional rights, and the atrophy of old ones. Of course, we are open to a wide range of original, provocative, and thoughtful proposals beyond these areas as well.

We welcome the submission of well-developed proposals for partial as well as full panels. In either case, we are

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looking for papers that are clearly and coherently connected to each other. Partial or full panels that foster a conversation across multiple disciplinary traditions and/or among scholars of varying rank are particularly welcome.

Finally, please plan on coming to the Section's Reception right after we take care of the business.

Safe travels,

[Christine Harrington](#)

2010 Chair, Law and Courts Section

## Symposium: *In Memoriam*

### The Passing of a Generation<sup>1</sup>

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The past year has been a difficult one for our field. An unusually large number of major figures—authors, mentors, teachers and colleagues who shaped so many of us—have died in a short space of time. This issue of *Law and Courts* testifies to their contributions and puts on the record the memories of those left behind. But when a field loses so much at once, as when many trees are knocked over in a single big storm, it is time to reflect on the landscape that suddenly appears ragged. The passing of a generation, public law's "greatest generation," changes the intellectual landscape immensely.

In this issue, we honor the lives and work of (from oldest to youngest) Philip Selznick (born 1919), Walter Murphy (born 1929), Stuart Scheingold (born 1932), Neil Tate (born 1943) and Steve Van Winkle (born 1959). They all died within months of each other, having followed very different trajectories through the study of law and courts. Each revealed in their work the mark of their generation's intellectual agendas—and each had a major role in shaping what that agenda was. If one reads this set of scholars in the order of their birth, one can see how the field was transformed over the last half-century. Selznick focused on the rise of the administrative state, the struggle between capitalism and socialism, and the normative underpinnings of both law and social science. Murphy and Scheingold focused our attention on the politics of law, comparative public law institutions, and the role of both social struggle and interpretation in the development of law. They were both deeply engaged in political fiction, as well. Tate's comparative science of legal behavior and Van Winkle's empirical analysis brought the behavioral and formal revolutions to the study of public law. Together, these styles of work construct the grand central arc of our discipline as the field moved from normatively saturated to politically engaged to interpretively sensitive to scientifically rigorous forms of scholarship. All of those whom we honor in this issue were profoundly interested in the way that law worked in politics and society, and they expressed those interests in very different ways depending on which events had forged their identities.

Others have memorialized the individuals in this issue; I want to think about where their work came from and what the loss of certain styles of work means for the field. Both Neal Tate and Steve Van Winkle died before their time, while their work was still part of what it means to be in the center of the field today. Their contributions were substantial and they influenced many. Neither of the traditions that they have contributed to so mightily to developing shows any sign of aging; judicial behavior and formal analyses of courts focus much of our field's current energy. While I didn't know Steve Van Winkle except in passing, I did have the good fortune to work with Neal Tate. Neal was a great

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believer in understanding not just the US but the world, and his support and encouragement for those of us who had moved late into the field of comparative legal studies made the transition from being an Americanist to being a comparativist much easier than it would have otherwise been. He gave voice to the “global expansion of judicial power” (the title of his coauthored anthology from 1995) and built institutions that have helped many people to thrive. Both Van Winkle and Tate left our field when they were still in the process of building it.

The deaths of those in the older generation should make us pause for a different sort of reflection, though, because we are losing public law’s “greatest generation”—the one forged in depression, repression and war. Born in the inter-war period, Selznick, Murphy and Scheingold come from generations that are getting smaller among us day by day. The sheer range of both their work and their imaginations is something few of us who are their juniors can equal. They weren’t the only ones in this greatest generation, but they have been important figures in it. The passing of these three great men (there were few women in this generation of intellectuals for all of the reasons we know so well) means that certain styles of work are disappearing. It’s this generational passing I want to reflect upon, because our field is not creating many more like them.

While Selznick, Murphy and Scheingold had all retired from active teaching at the times of their deaths, they remained active scholars. All three kept learning new things until they died. Selznick’s last book, *A Humanist Science*, was published in 2008. As recently as three weeks before his death, Selznick was still playing the cello, an instrument he had taken up for the first time in his 80s. Murphy’s magnum opus, *Constitutional Democracy*, was published in 2007. He was hard at work on a fourth novel at the time of his death, a counterfactual tale about the ratification of a slavery-entrenching amendment to the American Constitution and the subsequent secession of the North. Scheingold’s last book *The Political Novel* (2010), which he raced against the clock to finish, reached his hands in the hospital two days before his death. Apart from those of us who blurbed the book, hardly anyone else has yet seen what a tremendous masterwork this is. From it, as from the first section of Murphy’s *Constitutional Democracy* which is a fictional dialogue among constitutional founders, we learn that political fiction often tells us so much more than political science. All three men—Selznick, Murphy and Scheingold—were committed intellectuals. They were profoundly curious, worldly wise, methodologically catholic, disciplinary multi-dextrous, normatively committed, deeply engaged in the life of the mind and determined to head off the next catastrophes of the world. Retiring formally from teaching did not mean the end of their intellectual development. Retirement for each of them simply meant having more time to think and write—and learn.

Special as each of these men was, their intellectual ambition was also a generational trait. This is not meant to take anything away from any of them personally, but just to say that we all partake of the intellectual sustenance around us, and bad times often serve up important food for thought.

Selznick’s political identity was formed in the great political struggles of the 1930s, when communism was a vibrant alternative to rising fascism and when both gained ground as a result of the economic crises of the day. Born in Newark, NJ, Selznick’s intellectual outlook was formed at the City College of New York, a university which at the time had a student body that was brilliant, poor, and deeply political. It was there he met Nathan Glazer, Irving Kristol and Seymour Martin Lipset, to name only some of those who made both an intellectual and a political mark on the world later on. At City College, Selznick’s sense of social justice brought him, and many in his circle, to Trotskyism. Trotskyism was the thinking person’s communist alternative to Stalinism, an empirically grounded normatively passionate analysis of the existing crisis and what should be done. He was not alone; many of his generation’s leading intellectuals passed through the socialist and communist Left and were formed in reaction to it.

When World War II came, Selznick served in the Army as a research analyst in the Philippines during the war and in the occupation forces in Japan at the end of the war. The war and its aftermath interrupted his graduate work in sociology at Columbia where he finally finished his PhD in 1947, having studied primarily with Robert Merton. Selznick’s early focus was on the internal logic of organizations, no doubt spurred on by the rapid rise of the administrative state in the pre-war years and the battle for the soul of that state among conflicting ideologies before and after the war. His books *TVA and the Grassroots* (1949), *Organizational Weapon: A Study of Bolshevik Strategy and Tactics* (1952), and *Leadership in Administration* (1957), engaged both sociology and political science, focused as they were on the way in which the administration of states is affected by the political commitments of their leaders.

As the reality of post-war anti-communism and McCarthyism set in and as Trotskyism became less intellectually attractive, Selznick and others carried their normative commitments with them to other theoretical frames. Selznick was attracted to natural law. Most of his generation, which included not only those who had been raised in the US like Selznick but also waves of émigré scholars who had left fascist Europe, remained deeply aware of the importance of values in academic inquiry, the dangers of nationalist intolerance and the importance of democratic and legal institutions. Sel-

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znick's intellectual circles divided in the end between neo-conservatism and social democratic liberalism. Aspiring to reconstruct the sociology of law of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, when sociology of law was at the core of the discipline, Selznick's *Law, Society and Industrial Justice* (1969) and *Law and Society in Transition: Toward Responsive Law* (written with Philippe Nonet) (1978) attempted to bring the great moral visions of natural law thinking to the study of law in action.

The scientific revolutions of the 1960s and after, decreeing that normative engagement was to be strictly divorced from political research, always seemed to Selznick to misplace the point of intellectual life, something he wrote about up to and through his final book. *The Moral Commonwealth* (1992) was his most ambitious statement of the connection between morality and social inquiry, but *the Communitarian Persuasion* (2002) and *A Humanist Science* (2008) also take up those themes and elaborate them. Selznick was a founder of the Jurisprudence and Social Policy program at Berkeley, which was a model for Selznick of what the new legal, political and sociological scholarship should be: interdisciplinary, empirically rigorous, and normatively engaged.

Murphy was born a decade later than Selznick, but was just as shaped by mid-century history. Murphy came from a Catholic family in the South, and the elite institutions of the country at the time were largely hostile to those who had either Catholic or Southern pedigrees, let alone both. He found his way to Notre Dame, and from there to a tough stint in the Korean War, where his bravery won him multiple honors: the Distinguished Service Cross, the Purple Heart, a Presidential Unit Citation and three battle stars. He went through the University of Chicago's PhD program so fast that they hardly noticed; his appointment at Princeton brought him into the unfamiliar world of elite privilege. While those from the outside might have thought that Murphy embodied Princeton's public law tradition, within the institution he always felt like an outsider.

Murphy was deeply Catholic, the sort of Catholic who believed that the most honorable traditions of the Church came from deep debate rather than unthinking obedience. And he was deeply patriotic, something that was not much in fashion while he was active on the faculty. Much of his commitment to American constitutionalism, as a result, came from a merger of Catholic social justice and fierce devotion to country. But this too was part of his generation—and the slightly older generation of those who were forged by World War II as well. When one has seen the cruelties that ideology can wreak on the world and when one has experienced the smallness of bigotry of an otherwise great nation, principled commitments to fairness, equality and constitutional government become immensely important—and not primarily because they have explanatory value.

Much of Murphy's life experience was reworked into his scholarship and into his fiction. The sense of strategy that he developed in his classic book *Elements of Judicial Strategy* (1964) came not from game theory, but from his military training. His interest in comparative constitutional law, reflected in his early casebook with Joseph Tanenhaus on the subject (1977), came from his engagement with the constitutional law of Italy, learned on his frequent stays in Rome where he did research for his novel, *The Vicar of Christ* (1979). His work on constitutional interpretation took advantage of his knowledge of literature; by the time that his casebook *American Constitutional Interpretation* (1986) came out, Murphy had written three novels. *Constitutional Democracy* (2007) brings his flair for fiction writing, his deep comparative knowledge and his normative commitments together in one book. In the end, he found a way to integrate these different strands of his life.

Scheingold, born in Cleveland, Ohio, seems to have originally tried to take a technocratic route away from politics, which was another common strategy for coping with the devastation of the world in mid-century. He started his professional life as an accountant and did a stint in the Air Force. Rethinking, he went on to Berkeley for graduate school in political science, writing his first three books on the nascent European Union. He was steeped in analytical jurisprudence; the Hart/Fuller debates tracked the hot controversies over the moral meaning of law in the 1950s and framed his early thinking. His first book, *The Rule of Law in European Integration* (1965), discovered that the courts were being asked to perform tasks of political construction that the ordinary politicians could not seem to accomplish. He was prophetic not just about the EU but about the spread of legal power everywhere. Scheingold's early comparative work prepared him to see the legalization of politics and the politicization of law around the world.

Scheingold's most famous book, *The Politics of Rights* (1974) was written to mark what the 1960s had done to law. The book reflected his personal experience in many ways. A faculty member at the University of Wisconsin in the late 1960s, Scheingold was teaching US Supreme Court decisions on the First Amendment when the tear gas used to suppress the student demonstrations outside blew into his classroom. As he later told friends, he saw in that moment the difference between the myth of rights (in his classroom) and the politics of rights (outside). The shape of the law may have been an object of political struggle in the campus protests. But Scheingold, knowing from his European work that victories at law could be more cosmetic than real, pointed in his American work to the disengagement of legal victories

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from social ones. After the turmoil of the 1960s, people became disillusioned by the promise of law, and Scheingold's book showed why.

Nonetheless, Scheingold became fascinated with cause lawyers. He worked with Austin Sarat on a major cause lawyering project through the Law and Society Association collaborative research groups, coauthoring one book and editing four others on this topic over a decade. In the end, however, with *The Political Novel* (2010), Scheingold recovered what had mattered to him most about politics in the first place. While politics can be cruel, destructive and horrible, it can also be redemptive. Through analyzing fiction, Scheingold found the heart of politics.

Selznick, Murphy and Scheingold started their professional lives when the professions of political science and sociology looked very different than they do now. They came of age when the American Political Science Review used to publish descriptive analyses of new constitutions soon after they were written (for Germany: Friedrich, 1949a and 1949b; for France: Hoffman, 1959 and Wahl, 1959). At the time, books were widely read across different disciplines and being an intellectual was important for being a professor. Interdisciplinary work was commonplace in their intellectual worlds; (this, among other reasons, is why we should celebrate Selznick as a political scientist). Selznick started the JSP program in 1978. For years, Murphy taught regular interdisciplinary seminars at Princeton with sociologist Marvin Bressler (who just died also). Scheingold was active in the Law and Society Association and later contributed to the Comparative Law and Society Studies Program (CLASS) at the University of Washington when it was founded in 2000. Within political science, public law might have had a small coterie of experts at the time, but that was because it wasn't a specialty. Everyone was supposed to know something about the law of their substantive field—Americanists generally knew American constitutional law, comparativists generally understood their locales' public law, international relations and international law were far more intertwined then than now. Law was integral to the study of politics, not the hived-off small specialty it has become.

Despite the many differences among Selznick, Murphy and Scheingold, it is striking what they share. All three wrote genre-defying books. Selznick refused to separate empirical and normative inquiry. Murphy wrote literature and used literary foils in his non-fiction writing. Scheingold wrote about literature, too, in the end. All three cared deeply about politics because politics can do great damage. But they also believed that intellectual engagement with politics might prevent it from doing worse. In short, all three were passionately moved by the state of the world and their own sense of individual responsibility in it. They hoped to persuade the rest of us to care, to immerse ourselves in political life and to become generally engaged intellectuals.

All three were also ahead of their time. Later, generations of political scientists would be attracted to study strategic voting on the Supreme Court, something that Murphy first wrote about in 1964. These later generations would discover comparative public law, which Scheingold had written about in the 1960s and Murphy had elaborated in the 1970s. Normatively infused theory hit legal studies in a big way in the 1980s, though Selznick had been doing it for decades. Repeatedly, each of these three figures broke new ground and their agendas became the field's agendas—each more than once. Perhaps the way to be ahead of one's time is to be deeply *of* one's time.

The decades after those that formed these men were, relatively speaking, decades of political consolidation for Americans. Politics seemed to settle into regularized political alternation; the mainstream political spectrum became so narrow it was often hard to see what was at stake in political competition. Wars and violent conflict were safely off shore (though of course some Americans, not usually academics, fought there). Cold War hot spots occasionally flared up, but even the Soviet Union settled into Brezhnevian stagnation. The big fights *between* ideologies so characteristic of the political world that shaped Selznick, Murphy and Scheingold switched to being fights *within* the common ideology of liberalism, at least within the United States.

For the generations of scholars born after World War II, the political action lay with social movements, which progressively gained victories for those who had been omitted from public life. One marginalized group after another has eventually been brought into the center from the edges through political and (centrally) legal struggle. But in a time of relative peace and reasonable economic stability in the US, the political conflicts that shaped those generations came from normal politics instead of the crisis politics that engaged those who had been through the Depression, fascism, World War, post-war construction and the 60s.

I don't know when exactly it started, but my generation (between Neal Tate's and Steve Van Winkle's) spent a lot more time in graduate school studying mathematics than was true for the greatest generation. I took 14 courses in the math/statistics department at the University of Chicago while I was in graduate school in the late 1970s. I was certainly not alone. All of this technical training gave those of us who took this route a set of powerful tools, but only in a time of relatively quiescent politics could anyone have spent that much time in something so abstract. We became "so clever about means, so uninteresting about ends," as Selznick's intellectual portraitist Martin Krygier sums it up. The normal

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science of our field—where we document with more precision than ever before the way judges vote, the attitudes people have toward courts, the measures of increasing judicial power and the extent to which judicial decisions change the world (or not)—has contributed to an extraordinarily rich body of cumulative knowledge. But it is the knowledge of a relatively stable time in (mostly) one country. Had there been more crises in our daily lives as we were all being forged as scholars, I'm sure our research agendas would have looked different.

Of course, this is an exaggeration. Neal Tate knew as much about the Philippines as anyone in the world. Steve Van Winkle saw military service before becoming a political scientist. Many of us have had more complicated lives than that description lets on. And yet there are many more of us working a more narrow range of subjects more divorced from the rest of the discipline than was true when the greatest generation was in our shoes.

Do we really understand as much as that remarkable generation did? Admittedly, they were challenged differently than we have been. They saw catastrophe on a scale that most of the rest of us have never imagined. They came of age when political ideology ran a huge gamut, and when world-wide devastation was not only possible but real. They also lived their academic careers at a time when universities were expanding, disciplines were growing and knowledge was becoming more differentiated. They lived under fewer professional pressures to perform immediately in narrow specialties than young people do now. But nonetheless, they stretched their minds and their lives to learn new things all of the time. Many of us who came into this more structured and specialized academic space have simply dared fewer things, stretched less. Our audience has been each other, rather than the world.

Perhaps, though, our field is changing. Our students, children of 9/11, have suddenly realized that the world is full of dangers and that we live in a time of crisis, much as Selznick, Murphy and Scheingold did. I see my students full of enthusiasm for languages and history. They get interested in really new subjects that don't yet have literatures. They want to travel, and not just as tourists. Some have served in the military; others have spent time living in difficult places doing hard things. They feel that something important is at stake besides their own careers.

Academic scholarship, like art, music, design and other aspects of culture, has its fads and fashions. Classical sculpture, baroque music, and mid-century modern furniture aren't less valuable because they can be located in a particular time and place. Intellectual work is like this too—stamped by its time, marked by its place, enduring when it speaks both to and past both. Those who died this year were formed by the great events of the 20<sup>th</sup> century. Their approaches to scholarship carry the marks of their times as well as the reach of ages. We are losing the generations that knew first-hand these key landmarks of the 20<sup>th</sup> century—the upheavals of the 1930s, the World War of the 1940s, the post-war reconstruction and McCarthyism of the 1950s, the Korean War. We are even starting to lose those who recall first-hand the Cold War, the Civil Rights Movement, and the social turbulence of the 1960s. These were all major events not just in the biographies of those who lived through them, but also in the scholarship that tried to make sense of it all.

One doesn't want to wish a turbulent world history on the next generation just so that they write interesting things. But there is something to the idea that generations rise to challenges that mark them and shape their ideas. The greatest generation whose passing seemed so visible this year has left us a rich intellectual legacy that they had distilled from crisis. They turned the repeated catastrophes of the world into vibrant scholarship about law and politics. Let's not forget them – or why they did it.

## Notes

<sup>1</sup>I'd like to thank Malcolm Feeley, Leslie Gerwin, Martin Krygier, Sandy Levinson, Steve Macedo, Mike McCann, Gordon Silverstein, Karol Soltan and Art Ward for wise advice, important stories, reminders of omissions and other helpful comments.

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## **Philip Selznick: In Memoriam**

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With the death of Philip Selznick on June 12, social science lost one of its post-war giants. Selznick's scholarship and leadership helped found and shape two fields, organization theory, and the social study of law. After brief teaching stints at UCLA and Minnesota, Selznick joined the faculty of the Berkeley Sociology Department in 1952, and then Berkeley's School of Law faculty in 1977. He retired in 1984, but remained active as Professor Emeritus of Law and Sociology for many years following.

Selznick's defining experiences occurred as an undergraduate at the City College of New York. It was here that he was exposed to philosophy and social theory, John Dewey's pragmatism and European social theory which informed and inspired his lifetime's research. No less influential was his political activity in those years. At City College he joined and sometimes led a Trotskyite youth group, where he made friends (and later collaborators and adversaries) who included his first wife, Gertrude Jaeger, as well as Irving Kristol, Gertrude Himmelfarb, Daniel Bell, Nathan Glazer, and Seymour Martin Lipset. Many of the themes and issues to which he devoted himself over the next 70 years – the relationship between individual leadership and bureaucratic forms; the fate of values and ideals in the processes of organizations and politics; the social and cultural forms that best strengthen human community – received their first rehearsal in this heady setting of militant radicalism and anti-Stalinist socialism. Selznick's own perspectives on this "extraordinary experience" featured his interview contributions to the PBS documentary, produced and directed by Joseph Dorman, "Arguing the World."

After military service in Japan during World War II, Selznick completed his Ph.D. at Columbia University under the supervision of Robert K. Merton. Two years later he published his now-classic book, *TVA and the Grass Roots*,

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which launched his academic career and helped establish the field of organization theory. This book was followed by later volumes which elaborated his theory of organizations: *The Organizational Weapon* (1952) and *Leadership in Administration* (1957).

Selznick chaired the Berkeley Department of Sociology from 1963-67, an assignment made all the more challenging by the debates and fractures generated by the Free Speech Movement. Though he rejected later student aims and militancy on the Berkeley campus, in 1965 he voiced a forthright defense of student free speech and protest in a celebrated exchange with his colleague, Nathan Glazer, which appeared in *Commentary* magazine.

Selznick developed an approach and body of writing that ambitiously combined elements of traditional jurisprudence concerning the aims and nature of law with social science understandings of organizational dynamics and constraints. In so doing he helped set the basis for another important movement in the social sciences, institutionalism (and now neo-institutionalism) in sociology, political science, and economics. The results of this thinking are seen in such works as *Law, Society and Industrial Justice* (1969) and *Law and Society in Transition* (1978) (co-authored with Philippe Nonet).

His early work in this area moved him to a deeper appreciation for law, and paved the way for establishing the Center for the Study of Law and Society, an interdisciplinary research unit at Berkeley which brings together social scientists and legal scholars to examine law and legal institutions. Founded in 1961, the Center became a leading center and international scholarly destination for interdisciplinary research on law and legal practices. Now in its fiftieth year, the Center brings together scholars from across the Berkeley campus and has hosted hundreds of socio-legal scholars from around the world. In 1978, Selznick in collaboration with then law school dean, Sanford Kadish, became the Founding Director of Berkeley Law's doctoral program in Jurisprudence and Social Policy, the first and for many years sole Ph.D. program based in a major US law school. It too thrived under his leadership, and as of 2010 had awarded over one hundred PhDs. Its graduates—most of whom have a JD and PhD—hold positions in leading law schools, and political science, history, and sociology departments across the country and around the world.

Selznick flunked retirement. It freed him up to produce more important scholarship. In 1992, he published the work he considered his magnum opus, *The Moral Commonwealth: Social Theory and the Promise of Community*. This book drew lively commentary from leading moral philosophers, political theorists, and legal scholars from around the world. In 2008, at the age of 88, he published his last book, *A Humanist Science*, in which he offered a final statement of the moral and methodological ideals that guided his distinguished research.

Selznick's work is the subject of a growing body of scholarship in its own rights. A collection assessing its importance and impact was published in *Legality and Community: On the Intellectual Legacy of Philip Selznick* (eds. Robert A. Kagan, Martin Krygier, and Kenneth Winston) in 2002. The British legal scholar, Roger Cotterrell, and the Australian social theorist, Martin Krygier, separately conducted extensive interviews with Selznick which are archived in the Bancroft Library. Extracts of the Cotterrell interviews were published in the *Journal of Law and Society* in 2004. Krygier has completed a book-length study, *Philip Selznick: Ideals in the World*, which is forthcoming with Stanford University Press.

Selznick leaves two children, several grandchildren, and his beloved second wife Doris Fine.

# Philip Selznick's Humanist Science

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Philip Selznick, Professor Emeritus of Law and Sociology at UC Berkeley, died on 12 June 2010. He was born in 1919. Over 70 of the years in between were spent in fruitful engagement with large questions of social, political and moral significance, and a large part too in academic leadership, at once intellectual and institutional.

The first stage of Selznick's intellectual development began before the Second World War, with an intense period of activity and debate in that strangely fertile womb of academic (and literary) productivity, the New York Trotskyist movement, its parties, and party-lets, factions and fractions. From that engagement came several writings read by a small number of clever would-be, soon would-have-been, and then never-want-to-be revolutionaries. They included Daniel Bell, Lewis Coser, Martin Diamond, Herbert Garfinkel, Nathan Glazer, Gertrude Himmelfarb, Irving Kristol, Seymour Martin Lipset, Peter Rossi. Out of it, too, came Selznick's life-long concern with the fate of ideals in the world. In one way and another, this concern animated all his subsequent scholarly work.

In his early political essays and in his classic contribution to the sociological theory of organizations and institutions (*TVA and the Grass Roots* (1947)), he explored ways in which organizational realities tended to undermine even the finest ideals, unless deliberate attempts were taken to counter and master them. He then examined what successful attempts of this sort might require (*The Organizational Weapon* (1954), *Leadership in Administration* (1957)). The examination involved not merely empirical research and sociological explanation, but also led him to reflect upon large questions of normative social and political theory, to an extent uncommon in works of this kind at that time. He also wrote, with Leonard Broom, a major text of general sociology (*Sociology*, 7 editions). These works had a great influence, and probably remain the ones for which he is best known. That has less to do with the quality of later work than with the less populated areas that he chose to enter and the unfashionable character of his developing intellectual commitments.

In his second period, beginning in the mid-1950s, Selznick became one of the first, and one of very few, mainstream American sociologists to engage with the study of law. He became a founding and prominent member of the law and society movement, and published several important essays (particularly 'Sociology and Natural Law' (1961)), and books (*Law, Society and Industrial Justice* (1969); *Law and Society in Transition. Towards Responsive Law* (1978)). These works were notable and unusual for their explicit and pervasive interweaving of descriptive, analytic, normative, and policy-oriented concerns. In particular Selznick sought to identify the particular character and some of the basic ideals of legal ordering, sometimes manifest always at least latent; their range of variation; and the conditions that might allow them to be secured, and beyond that, to flourish. At the same time he was active institutionally, founding the Law and Society Center (1961), and later the unique Jurisprudence and Social Policy (JSP) Program in Boalt Hall Law School, at UC Berkeley.

His third period, from the 1980s, coincided with his formal retirement, and was more reflective than investigative, and more wide-ranging in scale and scope than much of his earlier work. Its centerpiece is his magisterial *The Moral Commonwealth: Social Theory and the Promise of Community* (1992), a work of social philosophy (or philosophical sociology) of extraordinary range, ambition, erudition and richness. The overarching concern of this complex work of intellectual architecture is with the challenges to and sources of 'moral well-being' – of persons, institutions, and communities - in modern times; on the way there is hardly a theme or a thinker not touched upon. This was followed by two short books: *The Communitarian Persuasion* (2002), which extended the (liberal-)communitarian directions charted in *The Moral Commonwealth*, and his last work, *A Humanist Science* (2008), which was an attempt to distil the methodological 'ecumenism' that had long underlain his writings.

These are all distinguished contributions to the understanding of particular problems and the development of a distinctive and expansive conception of the role, resources, and responsibilities of social science. But Selznick's work as a whole adds up to more than those specific elements, for together they exemplify a character and cast of mind of singular range, strength and depth. Among its distinctive elements are the following.

Selznick's underlying subject, no matter what particular phenomena he investigated, was one with which we are

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all at some time or other concerned, but by which ‘value-free’ social scientists are too often merely embarrassed. The question of questions for him, as he recollected in *The Moral Commonwealth*, was ‘the fate of ideals in the course of social practice... the conditions and processes that frustrate ideals or, instead, give them life and hope.’ This concern was central to all his projects.

The central distinguishing feature of his projects and writings is his deliberate interweaving of normative and analytical concerns. Whatever he wrote displayed a distinctive combination of empirical observation, explanation, philosophical awareness, and normative engagement. He ultimately came to call this ‘humanist science.’ Even before he had the phrase, he had the idea. The key to it was his long adhered-to conviction that appreciation of the role and play of values and ideals in the world is central to social understanding. What they are, what they do, what threatens them, what protects and sustains them, what enables them to flourish. That means acknowledging them as proper objects of study, rather than mere epiphenomena of whatever is thought really to matter. It also requires identification of the values at stake in particular social processes, practices, and institutions; clarification of the nature of these values; understanding what endangers them; exploration of the conditions in which they might thrive.

He was interested both in what would secure basic conditions for the existence and survival of values and ideals, and in what might count as, and what might be necessary for, their flourishing. His early writings exposed recurrent obstacles to the attainment of ideals, particularly institutional obstacles that could be counted on to recur, and what might be needed to overcome them. His later work explored conditions in which values, once secure, might flourish and be encouraged to flourish. His commitment to honor both realism and idealism was thoroughgoing. He was that rare but distinguished type: a Hobbesian idealist, at once alert, temperamentally and intellectually, both to threat and to promise.

Selznick brought to this engagement with the fate of values a remarkable range, variety and richness of intellectual resources, from the social sciences, the humanities, particularly philosophy and history and, on occasion from world religions. The labels didn’t matter much to him. He valued the disciplines, and the training, resources and focus they offered, but was skeptical about the point and worth of insisting on disciplinary apartheid, or purity, for their own sakes. In *A Humanist Science* he recalled that the sharp disciplinary distinctions that mean so much in the modern academy had no hold on its greatest ancestors, discussion of whom enriches that book, and more profoundly *The Moral Commonwealth*. Selznick favored going where the problem led, rather than where the discipline dictated.

Enriched by his erudition but not reducible to it, all his work was spurred by what he later identified as his ‘generalizing impulse.’ *TVA* was never just about the TVA, *The Organizational Weapon* not just about communists, *Leadership in Administration* not just about how to get ahead in business, *Law, Society and Industrial Justice* not – spectacularly not – just about industry and employment, and so on. There is always something more and larger going on. This lends depth, richness and complexity to each of his works, as it does to the whole. In his case especially, it is a mistake to take the title of any particular work as a summation of its significance or implications. There is always a lot more than one might expect inside.

Selznick’s writings manifest a way of thinking that is also a way of feeling and, indeed, of being: there are of course arguments and evidence but there is also a matter of sensibility. It pervades his work and lends it an identifiable tone and character. This appears in a kind of pervasive judiciousness and thoughtfulness; a determination to accommodate complexity and not pretend that realities and choices are simpler or starker than they need be; in particular, an ability to recognize the existence of tensions and dynamics in social processes without apocalyptic overdramatization of them.

He had indeed a kind of allergic response to rhetorical shrillness in every form. It was not his style. One common ideological manifestation of such shrillness is undifferentiating labelling of all social relations as manifestations of, say, ‘power’ or ‘domination’ or ‘exploitation’ or some other all-encompassing epithet. Another is the assumption that societies are riven with irreconcilable ‘contradictions,’ that threaten ‘crisis.’ The first tendency encourages blindness to complexity, variation, mixture, contexts. If all is domination, then the important questions simply get shoved aside: what *kind* of domination, with what sorts of consequences and what sorts of differences, are we are talking about? These distinctions matter as much to evaluation as they do to description and explanation.

The second tendency often leads to zero-sum characterizations of the many continuities, overlaps, interdependencies with which the social world is full, in dichotomous terms that suggest unavoidable and stark opposition, incompatibility, often crisis. Selznick shared with John Dewey, from whom he took the phrase (and much else), a suspicion of ‘pernicious dualisms’ that he believed tended to falsify such complex and interdependent realities as often as they seemed to make for a spurious analytical clarity.

His own work, by contrast, exhibited that ‘high tolerance for ambiguity’ that he knew was difficult to sustain but that he commended. Tensions, he would often recall, are normal aspects of social processes and, more generally, of life

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in the world. We often can and need to learn to live with them, while recognising that they may not be resolved or resolvable any time soon, or perhaps any time at all. We should not rush to brand them as inescapable contradictions, whether they be between self and other, public and private, civility and piety, universal and particular, liberalism and community. A person of Selznickian sensibility will be sensitive to empirical variation and crucial distinctions; alert to the significance of adjectives as much as nouns; be aware that very little that matters in social life is ‘nothing but ...’, or apt to be successfully resolved by a choice between all and nothing; avoid the pseudo-drama of so many ideological constructions and confrontations; be suspicious of a quick fix. She will avoid intellectual habits that blur one’s vision, even if they might quicken one’s pulse.

This scrupulous and nuanced sensibility is evident both in Selznick’s judgments of value and in his appraisal of facts. Virtues, we learn to recognise, are typically mixed with corrupting vices; vices often have (at least partially) redeeming virtues. It is rare that we can fly over life’s predicaments ‘as the crow flies,’ but that doesn’t mean we’re stranded; we should endeavour to navigate as best we can. If some aspects of modernity give us reason for ‘hopeful sadness,’ for example, both the adjective and the noun matter. There are sources of hope as well as of sadness; sometimes they are the same; sometimes one generates the other. Neither should be thought *a priori* to cancel the grounds of the other.

Of course this rich stream of reflection and what – were it an academic category – one might call wisdom, did not all happen at once. It is a long story. That being so, given the range of Selznick’s interests and projects, it is striking how much coherence there is among the themes that connect them. However, while that coherence is always important to recall, it should not be misconstrued. For if his preoccupations, immediate aims, subjects, and, indeed, sensibility, have impressive continuities they are also impressively various and subject to development. The coherence of his thought is complex, not that of someone with just one thing to say. After all, the thoughts of someone who keeps repeating himself might be called coherent. They are – it is! – certainly consistent, but that would not necessarily be praiseworthy – unless it was a very *big* thing being repeated. Nor is simple consistency always a virtue. Trivial consistencies are commonplace, and consistent folly is also not rare. Selznick’s coherence was not of those sorts. It combined a sustained range and focus with equally sustained – to use a concept that he had long used and theorized – integrity.

Integrity might well spur a change of mind or heart. It might indeed be a *mark* of integrity to be open to change, even of some of one’s deepest convictions. This, presumably, is what Keynes had in mind in his famous response to an accusation of inconsistency: ‘When the facts change, I change my mind. What do you do, sir?’

In this, Selznick was with Keynes. He kept returning to a number of related and large themes, to do with the fate of ideals in the world, particularly in the modern world, and particularly to do with the workings of large institutions, among them bureaucracies and law. But he also kept thinking and rethinking his views, refining them, elaborating them, exploring them in different contexts. The scope of his interests, the focus of his passions, his particular judgments and his public mood and posture, changed considerably over the years. For what was constant in his work was not a particular set of conclusions, but the integrity with which he approached a significant range of problems.

Integrity is a significant term of art in Selznick’s thought, applied to institutions, persons, and communities. It is also an aspect of his intellectual character. At one point in *The Moral Commonwealth*, he quotes a passage from Bernard Williams about personal integrity. Integrity on this understanding presumes that: the person in question has, as seriously as possible, tried to think about the standards or the fundamental projects which are sustaining him and her. If he has done that and if, in the light of the thought he has displayed there, he comes out and does say, this is what I do most fundamentally believe in, and this is what I am going to do, then that person is displaying integrity, even though you do not agree with whatever it is that is sustaining him.<sup>1</sup>

That gets it just about right.

## Notes

1 ‘The Uses of Philosophy: An Interview with Bernard Williams,’ (November 1983) *The Center Magazine*, 49, quoted in *The Moral Commonwealth*, 213.

# Walter Murphy and the Public Spirit

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Walter Murphy achieved much in many different areas of constitutional studies, from judicial behavior to the philosophic principles of liberal constitutionalism, with constitutional history, constitutional law, comparative constitutional systems, and theories of constitutional interpretation along the way. This range of achievements ensures that different people will remember Walter for different things, and that those called to eulogize him may use his name to promote their views on controversial matters, especially the old question of what constitutional studies in political science ought to be. Mindful of this problem and aware of the great effort it would take to transcend it, I'll limit myself to an observation that I'm confident Walter would approve.

At a time when his country and his discipline needed it, Walter spoke for a founder's view of constitutional institutions – the view that what matters most about a constitution is how its people actually live. From this view, for example, a color-blind or religiously-neutral government is a failure to the extent that its people are divided politically along racial and sectarian lines. This view is a public-spirited view, and it's a hard view to maintain where academic and judicial orthodoxy see constitutions as concerned with government, not society, and where they assume that human conduct is incorrigibly self-serving. Walter accepted the argument for the public-spirited view partly because of its merit and partly because of the kind of person he was.

Walter saw combat as a junior officer in the Marine Corps during the Korean War. Thrice decorated in that conflict, once for an injury for which his troops almost left him for dead, Walter considered himself a Marine for the rest of his life. This self-image expressed itself as an acute sense of duty in all areas of his life: personal, professional, and civic. So strong was Walter's sense of duty that what his friends saw as acts of duty he saw as acts of devotion—to his students and colleagues as well as to his family. Many of his students and colleagues will testify that he was generous with his time and his ideas. I never saw him treat an idea as a matter of his personal property. A son of his alma mater, Walter handed the ball to whoever could run with it. Walter was also proud of his association with public figures, like Justices Brennan and Alito. Though he was acrimoniously negative about some public figures, his initial disposition was otherwise. He saw parallels between what scholars and public figures purport to represent, and for this reason he wanted to believe in the possibility that public figures can be more interested in the right thing than in their own thing.

A student of both political behavior and political philosophy, Walter worked hard to collect about himself and maintain a group of scholars with different substantive interests and methodological commitments, practitioners of the so-called "Princeton approach" to constitutional studies. He led this group in an unobtrusive, nondogmatic, and nonsectarian way—with charisma without being charismatic, as Jeff Tulis put it. Because the group lacked obtrusive leadership, scripted concerns, and methodological exclusivity, one prominent observer saw it as constituted by little more than a past or present association with Princeton's Politics Department. Walter felt differently because he accepted a civic role for constitutional studies, as attested by his own service on committees advisory to the New Jersey Supreme Court and the U.S. Civil Rights Commission. As the citizen views political phenomena, reality has multiple dimensions, and these dimensions can't be reduced to each other or denied without distorting each and misrepresenting the whole. An academic discipline that reflects this reality will be methodologically and substantively diverse. Its agenda will vary with the polity's needs, not with the career interests of aspiring methodological hegemonoi.

The future of the Princeton approach now rests with scholars like Chris Eisgruber, Jim Fleming, Robby George, Will Harris, Steve Macedo, Kim Scheppele, Jeff Tulis, and Keith Whittington. Though one couldn't ask for a more talented group, Walter was the force that maintained these scholars as a group, and the question is whether they will remain engaged with each other now that Walter is gone. Expect a renaissance in constitutional studies if the answer is yes.

In any event, Walter's passing leaves a painful void.

## Walter F. Murphy: Hero, Scholar, and Friend

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When Walter F. Murphy died in Charleston, South Carolina, on April 20, 2010, at the age of 80, our nation lost a true hero, our discipline lost a fine scholar, and many of us lost a good friend.

Walter demonstrated his heroism during the Korean War in the spring of 1951, when, as a 21-year-old marine second lieutenant, he led his rifle platoon through machine gun fire and mortar attacks in taking a steep, strategically-significant hill from a battalion of North Koreans. The fierce battle ended in hand-to-hand combat with fixed bayonets. For his heroism, Walter received the Distinguished Service Cross. His presidential citation reads: “On June 10, 1951, Second Lieutenant Murphy was leading an attack on a strong fortified, enemy-held hill, when his unit came under vicious mortar and automatic weapons fire, inflicting numerous casualties. Despite a wound sustained in this initial burst of withering fire, Lieutenant Murphy, refusing evacuation, reorganized his platoon and led it in a series of tenacious assaults against enemy emplacements. Inspired by the unflinching courage of their valiant leader, his men charged forward through a hail of intense fire, over open and rugged terrain, determined to attain their objective. Though only Lieutenant Murphy and twelve of his resolute soldiers reached the enemy strongpoint, the stubborn foe was routed and a base established on the key terrain to provide covering fire for friendly units.” Modest about receiving the medal, Walter said he did not know why he got it. The marines he led knew why. One of them—a Pfc.—said, “We’d storm the gates of hell if Mr. Murph would lead us.” Walter said that remark meant more to him than the medal.

Walter demonstrated his sterling scholarship in three important works—his two prize-winning books, *Congress and the Court* and *Constitutional Democracy*, and his seminal book, *Elements of Judicial Strategy*, which established him as one of the pioneers in the study of judicial behavior. He also wrote three novels—*The Vicar of Christ*, *The Roman Enigma*, and *Upon This Rock*, the first of which was a bestseller—and he collaborated with others in producing some of the finest teaching materials in the fields of judicial politics and constitutional law—*Courts, Judges, and Politics*; *Comparative Constitutional Law*; and *American Constitutional Interpretation*.

I met Walter in 1956 when we were fellow graduate students at the University of Chicago. He had come to Chicago a year earlier to study political theory with Leo Strauss. At the time, he and his wife, Terry, had two small daughters and little money. To supplement stipends from a university fellowship and the Korean GI Bill, Walter worked as C. Herman Pritchett’s research assistant and Terry worked as a nurse in the evenings and on Saturdays. Because he had a master’s degree from George Washington University, Walter was able to complete all requirements for a Ph.D., except his dissertation, in one year. After taking all of Leo Strauss’s seminars, Walter met with him to discuss a dissertation topic, and Strauss told him that he should do an analysis of Marcilius of Padua’s *Defensor Pacis*. Feeling unchallenged by the topic, Walter decided to write his dissertation with Herman Pritchett on the legislative reactions to the School Segregation Cases. Impressed by the dissertation, Herman nominated it for the APSA’s Birkhead Award, which Walter received. Herman, who was Walter’s mentor and life-long friend, greatly influenced his career. He recommended him for a post-doctoral fellowship at the Brookings Institution, and he persuaded Alpheus Thomas Mason to support Walter for an assistant professorship at Princeton. Herman also collaborated with Walter on *Courts, Judges, and Politics*, and he taught him how get along with contentious fellow scholars.

Although Walter kept it to himself at the time, he felt that his appointment at Princeton in 1958 was poetic justice, for he had been turned down for admission to Princeton as an undergraduate in 1946. In his admissions interview, he had been told that since he was an Irish Catholic, he would be happier at Notre Dame. In fact, he went on to Notre Dame and graduated magna cum laude. Upon arriving on the Princeton campus in 1958, Walter learned that not much had changed since 1946. He recalled a few years ago that at the first departmental cocktail party he and Terry attended, they were introduced to the wife of the eminent scholar Edward S. Corwin, who had recently retired. As they went far-

ther down the reception line, they heard Mrs. Corwin say loudly: “Murphy? Murphy? You mean someone called Murphy is teaching Edward’s course? I remember the good old days when the Irish took in washing and tipped their hats to their betters when they met in the street.” Walter thought that things had improved at Princeton during Robert F. Goheen’s presidency when the university began admitting, in significant numbers, ethnics, people of color, and women, and he came to love the university. Though he had many opportunities to teach elsewhere, his entire career was at Princeton, where, among other things, he supervised the honors thesis of Samuel A. Alito, Jr., who is now on the U.S. Supreme Court. In 1968, Princeton appointed Walter the McCormick Professor of Jurisprudence, a chair previously held by Woodrow Wilson, Edward S. Corwin, and Alpheus Thomas Mason. That, too, was poetic justice.

Walter and I were friends for more than half a century. Among things that attracted me to him were his dry sense of humor, his gift for friendship, his generosity, and his love for those closest to him. Walter’s humor was deadpan but very funny. Once at a dinner party, after the publication of *The Vicar of Christ*, the wife of a junior colleague, said: “Walter, I enjoyed *The Vicar* but it had no sex. Why?” With a straight face, he answered, “I only write about what I know.” Walter treasured the friendships he had made at Notre Dame, the Marine Corps, Chicago, Princeton, and in the political science profession generally. He kept in touch with his friends. He often invited them to his home, where he was a wonderful host. He also visited them at their homes, and if they were academics, he often delivered guest lectures at their universities. I was the recipient of his generosity. He devoted many hours to reading my manuscripts and suggesting how I might improve them. No man loved his family more than Walter. It was touching to see how lovingly he cared for Terry after her debilitating stroke in 1979.

Walter struggled in his final years. Suffering from cardiovascular disease and believing that he would soon die, he did all he could to continue living so he could care for Terry until her death and complete his magnum opus, *Constitutional Democracy*. He accomplished both, but Terry’s death in 2006 devastated him. Eventually he recovered, and on a visit to Charleston, the city of his birth, he reconnected with Doris Maher, the first girl he had ever dated, and in the summer of 2009, they decided to marry. My wife, Jill, and I were to meet them at the APSA meeting in Toronto to celebrate the forthcoming event, but a few days before the meeting, Walter e-mailed me that he could not come because he had just learned that he had esophageal cancer and had to begin chemotherapy. He asked me not to disclose his condition to anyone. On January 9, 2010, Walter and Doris were married in Charleston. Although Walter was at the time weak and thin as a result of chemotherapy, he was happy. Jill and I attended the wedding. So did Walter’s friend and collaborator, Sotirios Barber, several of Walter’s Marine Corps friends, and a few friends from Princeton. In the months following the wedding, I received e-mails from Walter praising our mentor, Herman Pritchett, and encouraging me to finish my biography of William O. Douglas so he could read the manuscript. Men like Walter are rare in our society. I know I shall not see the like of him again.

## An Appreciation of Walter F. Murphy

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### I. Introduction

It is an honor to celebrate the life of Walter F. Murphy. I was a graduate student of Walter in the Department of Politics at Princeton University. He supervised my Ph.D. dissertation. I also was one of Walter’s co-authors of *American Constitutional Interpretation*, the book growing out of his famous undergraduate course, “Constitutional Interpretation” (our other co-authors have been Will Harris, Sot Barber, and Steve Macedo).

In this appreciation, I shall invoke Walter’s magnum opus, *Constitutional Democracy: Creating and Maintaining a Just Political Order*, in sketching his character and framing his legacy. In that book, Walter argues that the American constitutional order is a constitutional democracy – a hybrid of democracy (majority rule) and constitutionalism (limited government), two competing ideals that stand in tension with one another. Likewise, in his life, Walter combined competing virtues. I’ll mention five pairs of such virtues.

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## II. Walter's Character: Five Pairs of Competing Virtues

First, **ambition and humility**. Walter's scholarship was astonishingly ambitious. Yet in his own way he was remarkably humble. If you don't believe me, just listen to what Walter himself told us about his combination of ambition and humility in his acknowledgments in *Constitutional Democracy*: "Any book of this scope may have deeper roots in chutzpah than in wisdom." That's the ambition part. He continued: "Still, such a study...can also instill a great deal of humility, forcing the culprit to realize how much he or she owes to those who went before, such as Woodrow Wilson and Edward S. Corwin, as well as to those who are currently treading the same path." (xiv) More in a moment on Wilson, Corwin, and the Princeton tradition that Walter carried forward.

Second, **perfectionism and pragmatism**. Walter was a daunting perfectionist who set incredibly high standards for himself, his co-authors, and his students. But he was also strikingly pragmatic about getting things done. He liked to say to his graduate students that there were two kinds of dissertations: finished ones and unfinished ones. He also exhorted, in his inimitable way: "You must slay the beast!" We graduate students drew inspiration and hope from these sayings.

Third, **toughness and kindness**. Walter was a tough Marine, a decorated war hero who prided himself on giving the most demanding undergraduate course offered at Princeton. He singlehandedly waged a war against grade inflation in that course. And he rejected—or as he put it, "bounced"—no small number of Ph.D. dissertations. What is more, grown men and women flinched when he applied his fierce blue pencil to their manuscripts. Yet one could not ask for a kinder, more generous and supportive teacher and advisor. And his unfailing kindness toward his beloved first wife Terry was a wonder for all to behold.

Fourth, **passion and civility**. Walter was passionate in his commitments to justice, equality, and human dignity. And in his rejection of originalism. Nevertheless, he did not demonize his intellectual adversaries. In fact, he could speak with utmost civility to and about people with whom he vehemently disagreed and whom he thought deeply misguided, e.g., Justice Scalia. I guess you could say this was a form of justice tempered with Murphy.

Finally, **pluralism side by side with a grand, coherent normative perfectionist vision**. Walter exemplified an admirable pluralism in his approaches to constitutional scholarship over the course of his career. Here was a man who could be a rational choice theorist in the morning; a behaviorist at noon; alternate between an Americanist and a comparativist in the afternoon; and a grand normative theorist in the evening. He excelled in applying each of these approaches and did not see them as being antagonistic toward one another. Notwithstanding Walter's salutary practice of pluralism, he aspired to a grand, coherent normative perfectionist vision of the American Constitution and of how to interpret it.

In exemplifying each of these five pairs of competing virtues, Walter taught not only that one could embody both virtues at once but also that one could gracefully maintain the tension between them.

## III. Walter's Legacy: The Princeton School

I, along with two generations of Princeton graduate students, am deeply indebted to Walter for continuing and enriching Princeton's longstanding tradition of strength in constitutional theory and for fostering what has come to be known as the "Princeton school" of constitutional theory. What is the Princeton school? We held a couple of conferences here, in 1993 and 1995 (on the occasion of Walter's retirement), dedicated in part to considering that question. I want to illustrate the poles of a continuum of possible answers to it. On one hand, the Princeton school might simply be an eclectic group of scholars having at least one line on their resume with the word "Princeton" on it. (That was Sandy Levinson's proposed answer.) On the other hand, it might be a group of scholars having a coherent programmatic normative vision of constitutional theory. (I confess that my own answer was closer to that pole.) However one defines the Princeton school, Walter was unmistakably its rock.

Once again, I shall make recourse to Walter's magnum opus, *Constitutional Democracy*, for a framework. In that work, he focused on constitutional creation, maintenance, and change. I'll use these three categories in discussing Walter's legacy.

**Creation.** Walter did not create the Princeton school in the sense of constructing something where there had been nothing. He built upon and carried forward Princeton's proud tradition of constitutional scholarship, which had been "[b]egun by Woodrow Wilson and nurtured by W.F. Willoughby, Edward S. Corwin, and Alpheus Thomas Mason." (That's how he put it in the dedication of our book, *American Constitutional Interpretation*.)

**Maintenance.** But Walter did nurture and maintain Princeton as a home for normative constitutional scholarship during two generations when such scholarship was not in vogue in political science departments in the United States. (Indeed at a time when many departments marginalized or even eliminated the study of public law.) He provided a haven

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for a wide range of scholars in public law, political theory, American politics, and comparative politics who were interested—not just in the study of the Supreme Court as a political institution or of constitutional law as a body of legal doctrine—but also in the study of **what** the Constitution is, **who** may authoritatively interpret it, and **how** one ought to interpret it. And in the analysis of constitutional creation, maintenance, and change.

**Change.** By focusing on such questions, Walter changed the Princeton tradition. In fact, when I come back to Princeton, I see Walter’s reflection and legacy not primarily in things he created, but more importantly in things he nurtured, maintained, and changed. Consider, for example, the hundred flowers of public law and political and constitutional theory that bloom here now: the University Center for Human Values, the Program in Law and Public Affairs, and the James Madison Program in American Ideals and Institutions. Walter himself did not found any of these exemplary programs. But he maintained and changed the intellectual culture in the discipline and at Princeton in ways that made it hospitable to the creation of such institutions. Thus, Walter’s legacy is reflected in all of these programs. And in the work of the many fine people who make up these programs.

Walter left Princeton and the world better than he found them.

## Walter Murphy: *Semper Fi!*

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Like, I suspect, many others, I knew *of* Walter Murphy before I actually had the opportunity to meet and work with him as a colleague in the Princeton Politics Department between 1975-1979. He was, of course, already prominent by the 1960s, because of his wonderful book *Congress and the Court* and then his seminal *Elements of Judicial Strategy*, both of which were certainly important to my graduate education,

Perhaps because Harvard had not, in fact, prepared me to be an “up-to-the-date” late-1960’s political scientist, as I discovered when I accepted my first job at Ohio State in 1968, I went off to law school, thinking, altogether falsely, of course, that I was turning my back on the academy in general and political science in particular. That, happily, turned out not to be the case. I received the wonderful opportunity to teach at Princeton and, therefore, to work with Walter. This meant, among other things, that as a preceptor, I both in effect took his course and then, when I was in charge of Politics 305, prepared my own lectures for a class that included Walter. The precept system, of course, was—and I hope still is—one of Princeton’s crowning glories, and it promotes a kind of faculty interaction totally unlike any that I have seen elsewhere. I quickly learned of Walter’s remarkable talents for friendship. If he thought me badly educated, he never let on, and he never placed the slightest pressure on a young, inevitably vulnerable, assistant professor to do things his way. And, thanks, to Walter, I met my first Supreme Court justices, William Rehnquist and Lewis Powell, upon their visits to Princeton and to his courses, as part of Walter’s never-ending efforts to make the Court and its handiwork as “real” as possible to students.

I also learned how remarkably open to various approaches Walter was with regard to studying the judiciary or, more broadly, the Constitution of the United States. Looking back at his remarkable body of work, we know that he was like the talented musician who, on any given day, can play Mozart or Monk or, indeed, can blend them and make us see aspects of both that we might have ignored if we accepted too easily a thoughtless divide between “classical music” or “jazz.” And, of course, Walter also led the way toward comparative constitutionalism. No doubt he enjoyed his repeated visits to his beloved Rome and other Italian cities—I remember his giving me advice as to restaurants before my first visit to Florence in 1979—but he also realized the truth of Kipling’s adage “What do they know of England, who only England know.” In learning about other cultures and their practices, one inevitably learns more about one’s own, for good and for ill.

But these reflections speak mainly to Walter’s contributions as a political scientist, which others may be better equipped to elaborate than I am. As already suggested, he was also simply a marvelous human being, in every way.

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Perhaps there is something about studying the Constitution and the Court that brings out the best in people, given my own experiences with Walter and with my mentor at Harvard, Robert McCloskey. Far more likely, in both cases, of course, is that they brought their own remarkable character and personal generosity with them to whatever they did. Whether because Walter was a Marine, or, rather, because of an inherent disposition that led him to join the Marines, *Semper Fidelis* could have been his own personal motto.

Most impressive, for many of us, was his remarkable devotion to Terri following her stroke and other maladies. I don't know if Walter was truly a saint, but I certainly never heard him express the slightest word of complaint. He had promised his full commitment "in sickness and in health," and he carried it out. That he clearly seemed to love Terri no doubt helped, but it can't explain everything. I doubt that he loved all of us to whom he was unfailingly generous and loyal when we needed him.

I have three "Walter stories" to add to this collection of remembrances. The first involves the development, while I was at Princeton, of my description of the Constitution as a central aspect of American "civil religion," which I argued had its "protestant" and "catholic" dimensions. Needless to say, I was concerned, as someone who himself is obviously neither Protestant nor Catholic, that I was playing fair with the analogies I was developing. So who better to turn to than Walter for reassurance that my notion of "Catholic constitutionalism" did not draw on vulgar stereotypes or otherwise insult knowledgeable (and deeply serious) Catholics like himself? For me, Walter had, at least in some respects, quasi-Papal authority. Fortunately, he gave me the reassurance I needed.

The second story is less parochial (no pun intended), for it involved Walter's willingness to stand up against many of his friends in the Princeton Administration when they insisted on appealing to the United States Supreme Court a case in which I had become involved, while still a member of the Princeton faculty. It involved the prosecution for trespass of a non-member of the Princeton University community who had been passing out political leaflets that some found offensive. After losing before the Princeton traffic-court judge—who wrote a 22-page opinion in the case!—and the Superior Court to which it was initially appealed, the New Jersey Supreme Court unanimously ruled in the leafletter's behalf, based on the New Jersey State Constitution. The Trustees of Princeton, with the strong encouragement of former Attorney General Nicholas Katzenbach, chose to appeal to the United States Supreme Court, arguing that Princeton University possessed its own institutional academic freedom under the First Amendment, which was violated by its inability to exclude inappropriate ideas. To put it mildly, Walter was not taken by this argument, not least because it identified "the University" with the Board of Trustees and not at all with the faculty, most of whom were appalled by Princeton's appeal. He made his views known throughout the University. He was always a devoted civil libertarian, and it made no difference to him whether those suppressing freedom of speech carried the imprimatur of the state or, as in this case, one of the world's great private universities. Again, his support meant a great deal, not least because I knew it had absolutely nothing to do with any personal feelings about me and everything to do with his commitment to the underlying principles.

Inevitably, I saw less of Walter after I left Princeton in 1979, though I did attend several conferences with him, both on the occasion of his retirement and thereafter. It was always enjoyable to be together. When, almost four years ago, I published *Our Undemocratic Constitution*, I invited him to Texas, along with Kim Scheppele, to critique my book and then to discuss his own magnum opus *Constitutional Democracy*. Perhaps this is evidence for those who believe that Walter generated a distinctive "Princeton school" of constitutional studies. We had a vigorous discussion of "emergency powers" and the extent to which well-drafted constitutions should address the possibility of their own suspension. Indeed, "constitutional dictatorship" was the topic of the Walter Murphy lecture that I was highly honored to deliver in April 2009.

It is clear that Walter was a true "constitutional patriot." I suspect that he identified with Barbara Jordan's unforgettable speech in 1973, during the Nixon impeachment hearings, about her own "total" faith in the Constitution. Indeed, my last story involves a conference at Princeton probably about three years ago, after the publication of my own book; at one of the dinners, Walter offered what I took to be a rather pointed toast to "our Constitution." *Semper fi!*

## Remembering Stuart Scheingold

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Like the first draft of the first chapter of many dissertations, my central points were lost in a vast mess of digressions, confusion, and conceptual clutter. Fresh from a theory seminar celebrating the more opaque works of Habermas and Foucault, I let my writing escape in long sentences and evocative phrasings that probably meant nothing to anyone but me. I artfully teased the unsuspecting reader by hiding any sort of thesis statement until a dramatic revelation in the very last lines of the chapter. *Everything* was wrong. I was *so* proud.

Stu called me into his office to go over the work. He had just signed on as my dissertation advisor, but his recent absence from campus meant that we knew little about each other. Thinking back over the 25 years to those first meetings, my recollection is that amid the hip and casual scene that was Seattle in the mid-1980s, his signature navy blue blazer and carefully combed hair marked him as Dr. Straight. One wag among the TAs had even ventured that Stu was the only faculty member who could floss and do sit ups at the same time.

His office was down a small flight of stairs at the end of the ground floor corridor in the University of Washington's Gowen Hall. It was large enough for a desk, his book shelves, an eight person seminar table, and some generous floor space. I was on time for the meeting to discuss my first chapter and bounced down the stairs to receive his praise. I beamed with confidence. It must have been some of the hardest work he would do.

He was so kind. And he was SO uncomfortable. After the greeting, there was no direct eye contact. I recall a long stretch during which his mouth roamed all over his face searching for the right words to break what I began to understand would be something less than robust praise. Finally, the critique was launched: "John, this is not a mystery novel you're writing." Our eyes met, the gentle point was taken, and we began to work on how to reconstruct the chapter in a way that stated its points in a forthright manner and set the path for the dissertation and book to follow.

Near the end of my doctoral work, my wife Amy and I joined Stu and Lee at their home for dinner. Early on, a cultural faux pas startled the evening. When Stu put on one of his recordings of Dave Brubeck's *Blue Rondo à la Turk*, my response was something along the lines of "Oh cool. What's this?" He gasped and nearly stumbled at this revelation of my ignorance but, ever the graceful teacher, quickly recovered and began the multi-cut tutorial that would launch a new era in my musical life. Later, we were sitting on the couch when Stu disappeared around a corner. Soon we heard the tinkling of tiny sleigh bells. Around the corner came Stu, rolling a double-decker cart bearing a wondrous array of obscure single malt scotch. Dozens of bottles jingled merrily against each other as Stu, a somewhat bashful lopsided grin on his face, came in to lead our sampling. The evening progressed nicely. The secret life of Dr. Straight was looking pretty good.

A few years back, Stuart was once again called forth to share his counsel on the state of my writing. We were chatting during a break at a workshop in Buffalo. I had just been stung by the comments of a mutual friend who had read a draft of my then-current manuscript. I told Stu that the review boiled down to "I really liked it while I was reading, but three hours later I could see nothing but problems."

Stu put his arm around my shoulder, leaned in, and advised, "Listen kiddo, in this business, three hours is pretty good!"

## Stuart Scheingold: A Friend and Colleague

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Stuart A. Scheingold passed away on June 24, 2010, at the age of 78, following a long struggle with leukemia.

Stu received his Ph.D. from University of California at Berkeley in 1963 and, after taking teaching positions at University of California, Davis and the University of Wisconsin, assumed a faculty position at the University of Washington that lasted from 1969 until his retirement in 2000. He was a distinguished scholar, the author or editor of fifteen books, including: *The Politics of Rights: Lawyers, Public Policy, and Political Change* (1974, 2nd ed. 2004); *The Politics of Law and Order: Street Crime and Public Policy* (1984); *The Politics of Street Crime: Criminal Process and Cultural Obsession* (1991); and *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (2004). Stu was awarded both the Lifetime Achievement Award by the Law and Courts Section of the American Political Science Association (2004) and the Law and Society Association Harry Kalven Jr. award for outstanding contributions to empirical socio-legal scholarship (2001).

I knew Stu as a close friend and colleague for nearly 30 years. From the time of my arrival at UW as an Acting Assistant Professor in 1982, Stu welcomed me as an equal—not junior—colleague, despite our age difference of 20 years and Stu’s well established reputation. It was puzzling to me for many years how Stu could engage an unproven upstart as if I had thoughts worth serious respect by someone as experienced, wise, and successful as he. No doubt our common roots at U.C. Berkeley helped much, and he admired my education in political theory, but that hardly explains his level of engagement. I remember a period in the late 1980s and early 1990s, when Stu would routinely call me several times a week to talk about our common academic work, about students we were mentoring, or about politics, sports, music, and the like. It was not uncommon for the discussion to go 60 or 90 minutes. All of this, I came to realize later, reflected Stu’s unique mix of relentless intellectual curiosity, personal humility, and occasional sense of academic alienation.

Stu was one of the deepest and most innovative thinkers I have ever known. He published a lot, but even more important was the originality of his questions and boldness of his explorations into issues little investigated by other scholars. Malcolm Feeley got it right when he wrote to me recently that “I believe that his contributions are not as fully appreciated as they should be. This is because he was consistently ahead of the times. Some of his work was so pioneering that it had nearly passed from sight by the time others caught up to where he had been ten years earlier.” Everyone knows *The Politics of Rights*, but many do not know that earlier, in the mid-1960s, Stu published several volumes about the emerging European Union, focusing on how the European Court of Justice had in effect created a constitution for the new regional government. Some scholars actually consider these—*The Rule of Law in European Integration* (1965) and *Europe’s Would-Be Polity: Patterns of Change in the European Community* (1970)—his very best or most important books. How many of us have ever been so far out in front in recognizing such an important political or legal development?

Stu’s originality also meant that he was often laboring in various intellectual fields as a relatively lonely individual. He always seemed as surprised by the acclaim for *The Politics of Rights* as he was perplexed by the lack of initial response to his two books on “the politics of law and order.” Stu knew he was on to something very important in these books, and he was frustrated that what he thought was his most original inquiry into a major political phenomenon was not immediately or widely recognized. While privately disappointed for many years, though, he welcomed new scholarship on the topic years later, often graciously praising that which did not fully acknowledge his earlier pioneering efforts. He was always generous, kind, and graceful publicly, regardless of the situation.

Stu did not always labor in isolation, of course. His collaboration with Austin Sarat starting in the mid-1990s on the “cause lawyering” project, which produced four co-edited volumes and the co-authored master text *Something to Believe*

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*In*, went a long ways toward providing him the intellectual camaraderie for which he yearned. The research community that the project generated over a decade was extremely gratifying to Stu. Another source of welcome engagement and personal fulfillment was provided by the many graduate students whom Stu mentored, often jointly with me. The essays by two such former students accompanying this essay provide splendid accounts about the character and significance of those mentoring relationships.

As a close friend, I can acknowledge that Stu was one of the most skeptical and pessimistic people I ever met. Maybe that owed to growing up as a sports fan in Cleveland, whose recent experience with the departure of a home town superstar is part of an old tradition. The often hapless Seattle Mariners and American media politics were common objects of Stu's trademark disenchantment. In fact, we developed a routine of role playing in talking about sports, politics, professional activity, intellectual work, and just about anything. He always saw the glass half empty, I always saw it half full; I was inclined to see reasons for optimism and action, while he was more inclined to patiently endure. Or so he put it, and we thus learned to reenact our roles faithfully over time. One of the major reasons we delighted in talking about everything, though, is that we nearly always understood the contents of the glass in similar or complementary ways. And I always appreciated the fact that his skepticism was a direct expression of his unwavering intellectual integrity.

Many of us knew Stu as the ideal dinner companion. He and Lee were great chefs, they very much enjoyed a good restaurant, and they were fabulous guests in our and others' homes. In such contexts, often lubricated by good wine that Stu provided, his searing and playful intellect was often best displayed. And there was always his wonderful wit as well. Not only could Stu extemporize with the best jokesters, but he always came to dinner with a well prepared funny tale. Most of these stories displayed his self-deprecating humor; he, and especially his fastidious personality, was usually the butt of his most hilarious yarns. I remember tales about him nervously entering a hot tub at a resort where everyone else was naked, about misadventures on the ski slopes, about awkward moments while traveling abroad, and, just weeks before his death, about a tragicomedy involving trying to hit a golf ball over his aquatic nemesis. Dinner with Stu and his wonderful wife, Lee, were always events to anticipate eagerly and to remember fondly.

Stu was a very complicated person, but he appreciated simple things. A well turned phrase, an insightful observation, a beautiful piece of music, a magical moment in a sports event, something good that happened in politics, a tasty meal, a fine wine—these gave Stu palpable pleasure and ignited his infectiously warm smile. I will remember forever many of those moments when I was joyful in his company.

Stu exhibited all of these traits until his last moments. Stu had labored hard and anxiously pressed everyone involved to rush his final book into production. *The Political Novel* itself is quintessential Scheingold—a bold venture into a new genre of analyzing politics through novels, a jarringly pessimistic appraisal of how democratic and undemocratic politics alike can do great harm to ordinary people, all written with intensive focus and wide vision. The publisher knew that Stu's days were numbered and, when the end appeared imminent, the editor pushed harder and Stu hung on. Two days before he died, the first copy of the book showed up and his wife Lee rushed it to his hospital bedside. Stu fondled the book and whispered through a smile musings about whether a background image on the cover was effective. He departed a fastidious, profound, rebellious, graceful, decent, and chuckling intellectual to the very end. I was extremely blessed to be a close friend of Stu's; along with many others, I will miss him greatly.

*An event celebrating the life of Stuart Scheingold is planned at the University of Washington campus on October 14, 3-5pm. Anyone who is interested can contact me about the event.*

*Also, several months ago we created a three year professorship named for Stu Scheingold at the UW campus. Since then, we have begun working to build an endowment with the hopes of making this professorship permanent as the Stuart Scheingold Professor of Social Justice. We welcome donations; checks can be made out to the UW Foundation and sent to: Ann Buscherfeld, Department of Political Science, Box 353530, University of Washington, Seattle, WA, 98195. The easiest way to donate is via a secure on-line link, which can be found at the bottom of Stu's obituary on the UW Political Science Department website: <http://www.polisci.washington.edu/Scheingold.html>*

## Stuart Scheingold: With Gratitude and Affection

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I stumbled into Stu Scheingold's professional life after having moved to Seattle in 1990 on a whim. Contemplating graduate school, a friend had recommended that I speak with Michael McCann about the political science department. Little did I know that Michael's gracious suggestion that I sit in on a graduate seminar would lead me to audit Scheingold's seminar on the Supreme Court. The decision to do so sealed my professional life as a mentee of the Scheingold-McCann intellectual powerhouse at the University of Washington.

Most of my peers gravitated towards Stuart's Politics of Rights but I was always attracted to, as Stu called it, "the seamy side of the law." His course, Law and Social Control, which I naively took during my first year of graduate school, remains one of the most intellectually fierce experiences of my career. No doubt some of this was due to the large enrollment of extremely bright and highly motivated graduate students (itself a testimony to Stu's excellence), but Stu's deftness with the material and willingness to wait us out rather than fill the silence with answers to his own questions set a high standard. We read Hayek and Foucault, Dahrendorf and Durkheim, Robert Cover and Roberto Unger, to name just a few, and Stuart gave no quarter to those of us trying to impress him. I remember finally mustering up the courage to make a comment in class and as I struggled to come around to my point, Stu gave me what has become known simply as "the Stu look." Chin resting on his hand, elbow on the table, eyebrows furrowed with an expression that says, "I haven't the faintest idea what you're talking about." Of course, he was far too polite to ever utter such words but the message was clear: Say what you mean. My muddy-headed, meandering thinking was going to require some discipline.

This may sound as though Stu was arrogant but no word could less accurately describe him. He had a natural humility that was neither feigned nor overt but simply reflected his approach to his work. Stu had rigorous and exacting standards for his students but he expected the most of himself and always found a way to be gracious and accepting of a wide range of scholarship.

Under Stuart's tutelage, my interest in the politics of crime and punishment grew. As long ago as the early 1990s, Stu had the sense that crime and punishment were deeply politicized and linked to racial cleavages in ways that political scientists had not yet fully understood. While many in the profession left the topic to sociologists and criminologists, Stu brought the specific lens of politics – of power, inequality, violence and lethal force – to the discussion and laid the groundwork for what is now widely recognized as a crucial area of study for political scientists. His *Politics of Law and Order* remains essential reading for any scholar interested in these issues and it was followed by *The Politics of Street Crime*, in which Scheingold's subtle yet keen observations about the nature of American federalism and local legal contexts proved to be a key aspect of understanding crime and punishment in the United States. Indeed, many years after I first read those volumes, I drew upon what was, from Stuart's perspective, a rather minor observation about the distinction between national and local crime politics, and it became the foundation for my second book, undoubtedly my most significant professional contribution to date. I sometimes wonder how many other understated remarks and interpretations are embedded within Stuart's extensive body of work that future scholars will mine for insight into law and politics.

Those of us who work on the specifically political underpinnings of crime, violence and punishment in democratic systems have Stuart to thank for his prescient and path-breaking work on these topics. Several months ago, I exchanged emails with Stu about the resurgence of interest in this area amongst political scientists and he was delighted but ever modest about any contribution he may have made to the endeavor. I think his work on these issues, in conjunction with the larger body of work, reflect Stu's ability to move across subfields and even disciplinary boundaries with little effort. During my graduate years, and even early in my professional career, I don't think I realized just how unusual this is (and those of us that studied with both Scheingold and McCann had two role models for this, further reinforcing our notion

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that all academics had the intellectual fortitude to migrate across literatures and debates with such ease). But I believe Stu accomplished this because of a deep and abiding interest in questions of power and justice, questions which animated so much of his work from so many different angles. That he pursued these questions with passion but also with detachment provided his students with a model of scholarly excellence. I learned from Stuart to see the world as it actually is, not as I believed it to be or would like it to be. This involved quite a bit of wrangling between us because, like many students, I began my graduate career with very particular ideas about how the world worked and what was wrong with it. Stu would listen patiently to my observations and then ask pointedly how I intended to explore these issues empirically.

Being a student of Stuart's was not for the faint of heart. He was never rude or impolite but he was unfailingly honest and rarely let sloppy writing or vague claims go unchallenged. I remember seminar response papers riddled with the phrase "unpack this" and numerous arguments over specific paragraphs and even sentences in my dissertation chapters. Nor did Stu's students have a particularly close social relationship with him. He had drawn clear boundaries around his personal life and I don't ever remember feeling like he was particularly interested in sharing his or ours. But I never questioned his motivation, which always reflected the integrity and modesty with which he carried out his own research. And I should add that he offered hearty congratulations at various milestones in my personal life, including my marriage, my first child, and, finally, when I defended my dissertation. On that particular day, he asked me to follow him to his office where he reached into his desk drawer and handed me a bottle of champagne. His obvious delight at my accomplishments was readily apparent at that moment and I still treasure it.

In an email to his former students just weeks before he passed away, in characteristic fashion, Stu wrote, "I wish I could offer you a half-full cup but that neither suits my personality nor my situation." He went on to thank us, his students, for contributing to his fulfilling life and signed it, "with gratitude and affection."

It is we who are grateful to Stu, who was the pinnacle of academic excellence. He had integrity, passion, genuineness and wit and I am deeply grateful for the privilege of having worked with him.

## **The Passing of a Scholar, Teacher, and Friend: C. Neal Tate**

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C. Neal Tate, the Alexander Heard Distinguished Service Professor, Professor of Political Science, and Professor of Law, passed away on September 13, 2009. His passing has been a severe loss for many people in our discipline. Neal's contributions were many and while we will no longer have the benefit of his dedication, keen intellect, and generosity of spirit, we will continue to profit from his many legacies.

Neal built a prominent scholarly career, publishing visible and important research in two related areas: international human rights and the workings of judicial institutions around the world, including those in East Asia, Europe, Latin America, and Africa. These contributions have added greatly to our understanding of the law and how legal institutions advance the prospects for democracy and the freedoms associated with such a system.

When Neal embarked on his academic career, his ambitions were on a grand scale. Political science had developed a keen appreciation for the importance of the judiciary within the United States. But we knew little about how judicial systems worked comparatively, especially in less developed and less democratic nations. Yet a country's judicial institutions can shape in important ways the quality of life enjoyed by its citizens. Neal corrected this imbalance by collecting new data that would shed light on these vital processes. Neal, as a result, gave life to a new subfield known as "comparative courts."

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This area of scholarship proved to be his life's work and it continued to the day he died. Prior to his passing, Neal had just received additional funding from the National Science Foundation to study the judicial systems in Latin America. He was working on two books as well. And he had just published an article in one of our leading journals, *The Journal of Politics*

Neal's interest in advancing the quality of people's lives also led him to study directly the advancement of human rights. As someone who believed that context matters, he hypothesized that domestic disputes in a country would shape the prospects for human rights. His instincts proved sound, showing that repression, for instance, did indeed have serious effects on human rights for people around the globe. The finding itself may not surprise scholars outside the field, but the fact that Neal was able to estimate its effect is impressive and truly significant. Neal then started to explore whether international agreements affected human rights. Many thought that such agreements are not worth the paper on which they are written. But Neal thought otherwise. The new evidence he marshaled demonstrated yet again that his judgment was on target.

Neal's research career is a wonderful testimony to the tireless efforts of a scholar interested in unpacking the workings of fundamental legal processes that touch on the prospects for democratic government. His work will continue to be cited and his data will continue to be analyzed. His scholarly legacy, in short, will endure.

For those who knew Neal, he did far more than just secure grants, write articles, and publish books. He took, for example, the task of teaching very seriously, sharing his excitement about research with all his students. He had much success as a teacher. One need only consider his role as a mentor of graduate students as evidence of his dedication to teaching. He worked to make sure his students identified important problems and then developed skills to pursue these questions with the latest social science methodology. As a result, his students went on to great careers. A prime example is Dr. Stacia Haynie of Louisiana State University. Dr. Haynie not only now holds an endowed chair, but is Vice Provost for Academics and Planning at LSU. There are many other examples of former students holding esteemed scholarly positions not only in the United States, but around the world. Just within the last year, two of Neal's students found tenure track jobs at Wheaton College, Jenna Lukasik, and University of the South, Rae Manacsa. These successes in such a tough job market speak volumes about Neal's role as a teacher and the value of being a "Tate student."

Of course, Neal was more than a gifted scholar and wonderful teacher. Neal was also an exceptionally able administrator. The combination of his commitment to core scholarly values and his simple decency as a person led him to navigate with great success the often tricky political waters that confront the academic community. At University of North Texas, he was instrumental in building a fine Department—one that continues to thrive today. He also served as Graduate Dean at UNT, working his magic on improving graduate education across the entire campus. Neal served as head of National Science Foundation's Law and Social Science Program from 1994 to 1996, giving him yet another opportunity to advance the field he loved so much. Most recently, Neal transformed the Department of Political Science at Vanderbilt from a struggling and dispirited group of scholars to one that by many measures can be thought of as a "top 25" department. The faculty grew over 50% during his time as Chair and in the last three years alone they have published 15 major university press books, not to mention a spate of articles in prominent outlets.

It is clear that Neal was that rare scholar who excelled at all aspect of our job. That success extended to his family, having built a wonderful and enduring partnership with his wife Carol. His daughter Erin, who he was so proud of, is a highly successful veterinarian in Dallas. Neal held great affection for his entire family and his North Carolina roots. Neal was, in short, a winner in all aspects of life. He was a good guy, with a big heart, and deep love of life. The only thing that we can complain about is that he left us far too soon. But we can take comfort from the fact that C. Neal Tate will remain a visible and powerful force in our discipline for decades to come.

## In Remembrance: C. Neal Tate, 1943-2009

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In the spring of 1987 I enrolled in a graduate course at the University of North Texas called Public Law Seminar, and my life was changed forever because I met a man, a truly great man—C. Neal Tate. As a social scientist, Neal would demand that I produce empirical evidence that he was a great man, so I developed a logistic regression model to determine the likelihood that Neal was indeed a great man (coded 1). The model and all variables are statistically significant, and the pseudo R2 is .98 (see Table 1).

**Table 1. Logistic Regression Coefficients for C. Neal Tate (1943-2009)**

Variables	b	Z
Family	0.38	2.98**
Teaching	0.33	2.29**
Scholar	0.84	2.96**
Collegiality	0.72	3.21**
Mentor	0.66	2.45**
Control Variables	0.56	2.97**
Constant	5.48	1.96**

N = 66      Pseudo R<sup>2</sup> = 0.98  
c<sup>2</sup> = 1972.30\*\*      \*\*significant at the 0.01 level

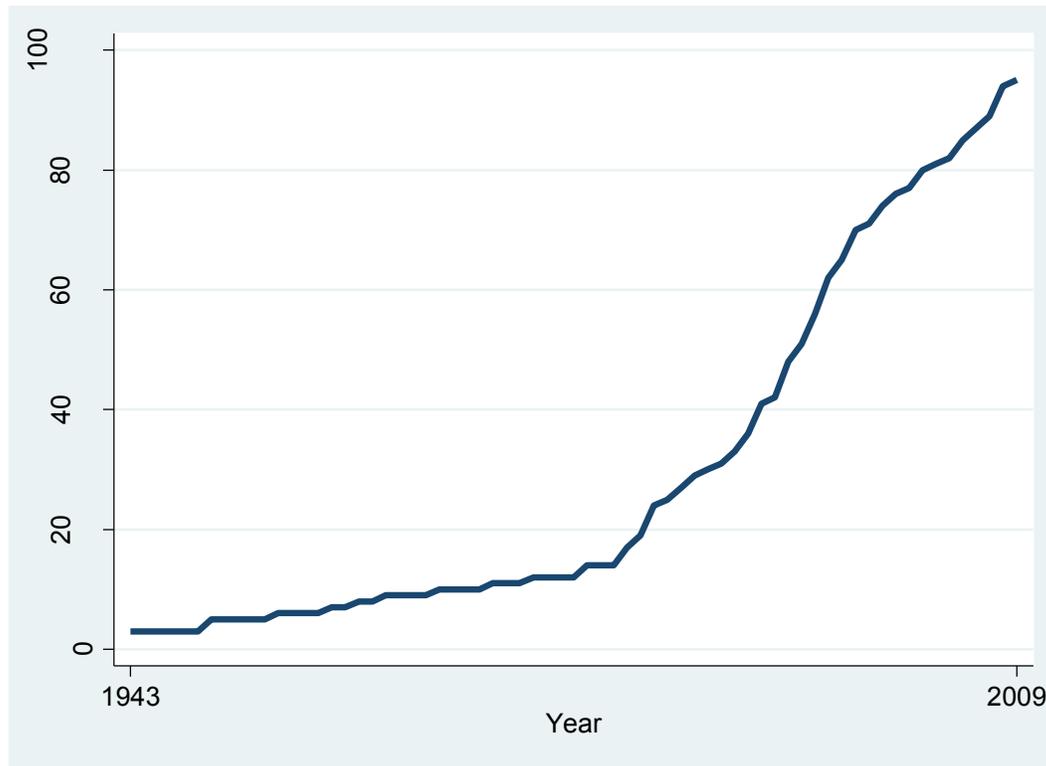
The first independent variable in the equation, Neal was a devoted father and husband. He partnered with Carol for 43 years and was so exceptionally proud of her and of his daughter Erin, often sharing stories of their triumphs. He was so proud of these two amazing women that his professional website has their pictures on it, and he notes on his vita—his record of his life’s accomplishments—that he is married to Carol, LMSW, and has one daughter Erin, DVM. And he laughed with them—often and loudly.

Second variable in the equation—he was a phenomenal teacher. Neal first taught as an instructor at Tulane in 1969 and then as an assistant professor in 1970 at the University of North Texas and most recently at Vanderbilt. If one estimates several courses annually over those years, Neal taught well over 10,000 students. He won awards for it too. Neal also advised 15 doctoral students who have been placed at universities from Iran to Thailand to Texas to Florida to Tennessee to Massachusetts and Louisiana. Assuming each of these individuals has taught several hundred students annually, Neal has touched some 50,000 students, and that is a conservative estimate. And now our students are teaching—and so on and so on. And he laughed with us—often and loudly.

The third explanatory variable, Neal was an amazing scholar. Neal edited or co-edited four books and published over 60 peer-reviewed articles, book chapters, and other professional monographs. He received substantive federal funding for his work, and he published in the very best journals in our discipline. His work on comparative judicial behavior ushered in a generation of scholars interested in studying courts beyond the boundaries of the United States. As Neal always said, “Why visit DC when you can travel to far more interesting places?” His work on the judicialization of politics is widely cited and an essential in the canon of every graduate student in judicial politics. His work on the effect of constitutionally delineated civil liberties protections is equally well regarded. His effect on our discipline is truly incalculable (see Figure 1). But even here, Neal found humor. In our very first publication together, one of the reviewers was particularly critical, and the reviewer insisted that he be allowed to write a response article to challenge our findings.

I was mortified, but Neal was thrilled. As he noted we would get two publications rather than one because we would be granted a rebuttal to the challenge. So Neal had seen this bumper sticker that he thought was hilarious, and he was intent on somehow using it in a publication—so he thought up a title for our article so he could use the bumper sticker. The title for our very scholarly rebuttal was “Building a Scientific Comparative Judicial Politics and Arousing the Dragons of Antiscientism,” and the article began with the bumper sticker : *Do not meddle in the affairs of dragons, for you are crunchy and good with catsup*. Even in his scholarship, he made us laugh—often and loudly.

Figure 1. Discipline Impact of C. Neal Tate (1943-2009)



The fourth variable in our equation that proves scientifically that Neal was a truly great man, he was an incredible colleague. He achieved that collegiality even while serving as a department chair for two different universities, a dean, an editor and a program officer for the National Science Foundation. I defy anyone to find an individual in our profession who has anything negative to say about Neal, and that’s almost bizarre in our profession. He saw the good in everyone. He maximized our strengths and minimized our weaknesses. He found time for everybody—indeed, he was generous to a fault. He loved academicians, and let’s face it, we can be a truly needy lot. And he made us laugh—often and loudly.

The fifth variable, which I must include or the model would be underspecified for me personally, Neal was a gifted mentor and not just to his students. Many graduate students and junior professors—indeed senior professors—turned to Neal because he was so supportive and because his advice was always spot on. But for those of us who were his students, we were blessed indeed. Neal taught me and many, many others how exciting it is to find that question that interests you and to spend your life studying it, and to do it in places like the Philippines, or India or South Africa. He took a small town girl and opened up a world of possibility. He believed I could succeed beyond the red clay of north Texas, and his faith gave me the courage to believe it too. Today because of this man, this truly great man, I and others whom he mentored, have a wonderful life. And throughout it all—he made me laugh—often and loudly.

As with any equation, there are a few control variables I have included to emphasize Neal’s broader appeal as a human being. Neal loved his roots in the textile mills of North Carolina; he loved a good novel; he loved the movies and a good football game; he loved the beach; he loved his pets; he loved good food and a good martini; he loved to travel; he loved his friends; and he loved to laugh – often and loudly.

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And so with no error term, with variables that explain so clearly the true measure of a man—that of family, of labor, and of friends, we celebrate the concrete, tangible, visceral evidence of the life that Neal lived, a life that touched so many of us in profound and positive ways. We celebrate today a truly great man whose influence will continue despite his passing. And when we remember him—we will laugh—often and loudly.

## Mentor, Colleague, and Friend: A Tribute to Steve Van Winkle

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When I was asked to write a tribute to Steve’s scholarly accomplishments and contributions, I did not hesitate to accept. Some of my earliest and fondest memories from graduate school at Ohio State include Steve. But as I thought about how to start, I realized that proper recognition of his mark on the discipline is not about his scholarship, per se. Rather, it is about how he interacted with others to publish, to advise, to commiserate, to encourage, and to provide much needed perspective and stability in the rather unsteady and vulnerable world of academe. As the many people whose professional and personal lives he touched will attest—and do in this tribute—Steve’s greatest and most meaningful contributions to political science are those as mentor, colleague, and friend.

Steve’s writings are relatively few but compelling and meaningful additions to the study of judicial politics, as the frequent citations to both his published and unpublished research demonstrates. I describe briefly the most prominent of them here. His dissertation, “Governing Justice: Rotating three-judge panels and strategic behavior on the United States Courts of Appeals,” (1996) reflects a fundamental curiosity about the behavior of judges on collegial courts. Despite going unpublished, his conference presentation of this research at the Conference on the Scientific Study of Judicial Politics (1996) contributed to the impact of his research. His pursuit of the intricate inner workings of appellate court decision making continued in “Dissent as a Signal: Evidence from the US Courts of Appeals,” which he presented at the APSA (1997) and has been widely read and referenced. Steve turned his attentions to federal judicial selection in his later work, with publications that explain the decisions to retire by Supreme Court justices (with Chris Zorn, in *Political Behavior*, 2000) and the treatment by the Senate of district and circuit court nominees (with Mark Kemper and Wendy Martinek, in the *Journal of Politics*, 2002). Additionally, as I write, a manuscript with Chris that investigates the impact of decisions made by the European Court of Human Rights by testing theories of compliance derived from international relations has received an R&R from the *Journal of Empirical Legal Studies*. This research is a fitting finale to Steve’s scholarship, representing the breadth of his interests and never-ending pursuit of knowledge.

As I think about his research, I find myself reflecting on why he didn’t publish more. I am sure there are many reasons, but I suspect that primary among them is that he was too busy learning. The first thing most people discovered upon meeting Steve was that he was smart. Really smart. And not just naturally intellectual—although he was—but curious, thoughtful, engaged, and dedicated to understanding as much about the world around him as possible. Steve was the most prolific reader I have ever known, and the depth of his knowledge about a vast array of topics and his constant quest for more was remarkable.

One of my earliest memories of grad school is Steve leaning over the partition between our cubicles in Derby Hall and saying something that I didn’t understand. Turned out that would be a regular occurrence—the leaning and the saying. To this day, I’m not sure if it was something profound about politics or philosophy (could have easily been physics, neuropsychology, or engineering), or something mundane but in Latin. Either way, I was 23 and there was no way I was going to appear dumb by asking this very old 30-something guy what he meant. I nodded and smiled as if I knew what he was talking about.

After a few days in class together, the smile was replaced by a rather haggard frown. I cannot recall if it was Larry

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Baum's or Greg Caldiera's judicial politics seminar, but I do remember very clearly that Steve seemed very familiar with the literature and could participate easily in class discussion. Larry remembers, "As a student, Steve had extraordinary skill in working through an analytic issue quickly, but even more than that I was impressed with how much he knew. No matter what the subject was, he had amassed an enormous body of information in his head, which he could supply whenever the need arose. He was the closest human equivalent to Google that I've ever seen."

My impression was a bit less charitable. I couldn't tell if he was just well prepared, or if he knew the material from a previous life. Perhaps he had read this stuff in his free time as a submarine nuclear power plant operations supervisor on the USS Von Steuben? It didn't much matter to me. I had two related thoughts as I felt my insecurities take hold of my gut: "I don't think I like him" and "I am doomed." Ok, so those are the G rated versions. The R versions were a source of much laughter between us over the years as I impressed him with my sailor's vocabulary. Thank goodness I could contribute something to the conversation.

In reflecting on our graduate school days, Bill Swinford (University of Kentucky) sums up Steve's intellectual character in a more mature way:

The lasting memory I have of Steve was, of course, the remarkable intellect. It's the nature of such environments, I suppose, for people to try to be the smartest kid in the class, room, bar, or whatever locale we found ourselves in. Steve much-more-often-than-not was that guy.

He exhibited his keenness so effortlessly that it made a lasting impression. I usually left conversations involving Steve both struck by the cleverness of his contributions and hoping my weak attempts to keep up were not exposed. Mostly, I left thinking "Damn, I wish I had seen the answer as clearly and quickly as he just did."

I've studied and worked in higher education non-stop for 26 years. And Steve remains among the 15 smartest people I've ever met.

Indeed. Yet, Steve was not a smarty-pants. It took me little time to realize that the depth of his intellect was matched—if not surpassed—by the depth of his empathy, compassion, and friendship. My initial impressions were quickly replaced by an appreciation of and gratitude for his mild-manner and understated contributions to our discussions, whether they were in class, at a conference, in a bar or at a party. And I simply cannot remember the number of times—over many years and many miles—that he propped me up and gave me much needed confidence, professionally and personally.

These were not my experiences alone. Steve was an exceptional mentor. Perhaps it was his years in the Navy, his former life as a nuclear engineer, his "advanced" age (about which I teased him mercilessly), but Steve saw the forest for the trees and had the maturity and confidence—and the perspective—to see well beyond his own interests to the needs of others. An excellent example is provided by Wendy Martinek (SUNY Binghamton), who recalls the profound impact that Steve had on her as she transitioned from graduate school into the profession:

When I was completing my dissertation on state court decision making, I foolishly began collecting data for an entirely unrelated project on federal judicial selection. My advisor, Harold Spaeth, saw a conference paper presentation by Steve Van Winkle and Mark Kemper on federal judicial selection. Harold, without my knowledge or consent, told Steve that they needed to work with a student of his (me) who had good ideas and good data on the same subject. I was mortified when Harold told me this. Nonetheless, Steve (and Mark) graciously and willingly contacted me and invited me to work with them. I was very, very anxious to prove myself given that Harold had essentially foisted me on them. As a result, I peppered them with analysis after analysis and draft after draft of our paper to the point of being more than a little annoying. But Steve was ever patient with me. Never treating me as anything other than a co-equal collaborator, always taking my ideas seriously (even the ones that surely did not deserve to be taken seriously), and going out of his way to mentor me in the fine art of journal submissions. This was my first

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such foray and my inexperience showed. Though the basic idea and general plan for analysis were Steve and Mark's, Steve was insistent that he should be last author. When first the R&R and then the accept at JOP came, I thought that obviously collaboration is a snap. Though I have been incredibly lucky in terms of all of my collaborations since then, I know now exactly how much Steve is the reason that our collaboration worked so well.

Kirk Randazzo (University of South Carolina) shares one, among many, interactions that he had with Steve that highlights the significant impact that Steve had on rising political scientists:

... probably the most poignant [of memories] involves the last Conference on the Scientific Study of Judicial Politics in 2000 at Ohio State. I was one of six graduate students invited to present at this conference, which I initially believed would be a wonderful experience. Unfortunately, all six of us got reamed after our presentations. Part of the criticisms were deserved, but a larger part involved us getting caught in the middle of various 'turf wars' between law professors, formal theorists, and behavioralists. I say this because the paper I presented later was accepted for publication in the JoP, so it couldn't have been complete crap (although it was under-developed at the time). Anyway, after our presentations all six of us were pretty angry and frustrated. Steve recognized this, came up to us and said "follow me, I know of a great bar around the corner." He then proceeded to buy the first round of drinks (some very good scotch) and talk to us about what had just happened. This was an incredible experience for me, because there was no reason why Steve should have felt obligated to mentor us at that moment, but he stepped up and provided very valuable advice. I think it demonstrated his commitment to the discipline – to make sure that young scholars recognized both the good and bad aspects of our profession.

Kirk's observation about Steve's ability to cut through the politics of academe and to see – and perhaps appreciate—the complexity of the discipline is reiterated by Sara Benesh (University of Wisconsin, Milwaukee):

The thing that stands out most in terms of my academic memories of Steve is him keeping people honest. I met him at the first conference I ever attended, the summer before my second year of graduate school. I remember being really overwhelmed and wondering how EVERYONE knew so much more than I did! He told me that perhaps some of them did, but that many were just really good at pretending. I never forgot that, and found it to be quite true over the years!!!

Wendy learned firsthand of Steve's ability and willingness to rise above the politics of the profession, particularly if it meant encouraging and enjoying the success of others. At the same time as they were working together on the JOP article,

... Steve and I had applied for the same position. Our collaboration was barely off the ground when that happened but Steve was nothing but professional about it. He was one of the very first people to congratulate me when I received the job offer. He was about as enthusiastic and congratulatory as anyone could be and his genuine joy at seeing my success, regardless of what that meant for him, reflected the warmth of spirit that Steve possessed. Several years later, when I mentioned how much all of that meant to me, he paused, gave me one of those infamous Steve smirks, and said, "Well, some of us are grown ups."

Ahhh, the smirk. Beware the smirk! And the rolling eyes, and various other demonstrations of exasperation. Sometimes they were aimed at someone or something he thought was so ludicrous that further consideration was a waste of time. Often, though, they came from the heart, aimed at someone for whom his friendship ran deep, expressions of affection and perspective. Sara shares the following memory:

[We were] at a Southern I think, when I was hanging with him and Chris Zorn ... Chris was telling me about some academic successes he had (shall we say!?) and Steve put his hands on either side of his head and started blowing, making his own head look larger and larger. Chris looked at him, laughed sheepishly, and said, "Oh, sorry!!" ;) It was awesome and was such an endearing moment for me to both of them. It was awesome how Steve, an obviously very close friend of Chris, could keep his very smart and

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successful friend in check, and how Chris totally copped to getting a big head and laughed at himself for it. That was a great day. We were outside at a bar in Atlanta I think. I miss Steve. He always helped me remember not to take myself too seriously.

Evidently, it made a lasting impression on Chris, who remembers it clearly and unabashedly. "That is totally true. Happened on the patio of Prince of Wales tavern on Piedmont Park in Midtown."

As the APSA meetings near, I feel Steve's loss particularly acutely. For those of us who knew him well, so much of Steve—as a man and a political scientist—is connected to the hours we spent at bars in Columbus, Chicago, Atlanta, Washington, and other home town and conference cities around the county. We drank, reflected, debated, drank, observed, judged, drank, laughed, enjoyed each other. Did I mention we drank? In DC this year, there will be a seat for Steve at the Marquee Bar and Lounge at the Omni and at the Lobby Bar at the Wardman, and at any other watering hole where we convene at the end of each day. He will be there, doing what he did best—bringing friends and colleagues together, and reminding us of what is truly important in life. Cheers!

## **In Memoriam: Steven R. Van Winkle (July 8, 1959 – January 13, 2010)**

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To his Navy buddies, he was "Rip;" to many in the political science community, he was "Pappy," a homage to the especially fine small-batch bourbon that shared his name. Our colleague and dear friend Steve Van Winkle passed away on January 13, 2010 in Laramie, WY after a brief illness. Possessed of a warm heart, a quick sense of humor, and a prodigious intellect, Steve was—as he himself might have said—"one of the good ones."

Steve was born in North Carolina, but raised in Okmulgee, Oklahoma. Between his sophomore and junior years at the University of Oklahoma, he enlisted in the Navy, serving as a nuclear engineer and power plant operator on the U.S.S. Von Steuben and later as a plant operations supervisor at the Knolls Atomic Power Laboratory in West Milton, NY. Upon completing his undergraduate studies, Steve began his graduate education in the political economy program at the Stanford Graduate School of Business before transferring to Ohio State in 1991.

At Ohio State, where Steve received his Ph.D. in 1996, he was an NSF Graduate Fellow. A student of American political institutions, his interests in judicial politics, quantitative methods, and game theory were shaped by his background as an undergraduate fellow at the Carl Albert Center and his brief time at Stanford. Steve's professional career began at the University of New Orleans, and included stints at SUNY—Stony Brook, Syracuse University, and most recently the University of Wyoming. He was a gifted teacher, and his personal passion for civil rights made him all the more effective in the classroom; he liked to remind his students that he lived through desegregation at Okmulgee High, to impress upon them just how real and recent those events were.

His work on the appellate courts remains widely read; the core paper from his Ph.D. thesis, "Dissent as a Signal: Evidence from the U.S. Courts of Appeals" is one of the most-cited works on the U.S. Courts of Appeals. His work also addressed questions of federal judicial careers, from appointment (Martinek, Kemper, and Van Winkle 2002) to departure (Zorn and Van Winkle 2000). But Steve was perhaps best known for his mentorship—both formal and informal—of students and junior colleagues. His scholarly breadth, thoughtfulness, and engaging wit made him the ideal discussant to liven up an otherwise pedestrian conference panel, and his unfailing generosity with his time and intellectual energy was felt and appreciated by innumerable members of our field.

In 1999, Steve met Carolyn Pepper, a psychology professor at Binghamton University; a year later, they were wed on the shores of Lake Seneca in upstate New York. Carolyn was the love of his life, and together they spent the last decade

traveling, cooking, and enjoying their life together. He and I spoke and e-mailed regularly; just a couple of weeks before his passing, he and I exchanged chili recipes and gossip about university politics. I will miss him.

## BOOKS TO WATCH FOR

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The legitimacy of our courts rests, in large measure, on their capacity to give broadly acceptable answers to controversial questions. Yet Americans are divided in their beliefs about whether our courts operate on the basis of unbiased legal principle or political interest. Comparing law to the practice of common courtesy, **Keith Bybee** (Syracuse University) explains how our courts not only survive under these suspicions of hypocrisy, but actually depend upon them. In **All Judges Are Political Except When They Are Not: Acceptable Hypocrisies and the Rule of Law** (Stanford University Press), the author argues that law, like courtesy, furnishes a means of getting along. It frames disputes in collectively acceptable ways, and it is a habitual practice, drummed into the minds of citizens by popular culture and formal institutions. Although pervasive public skepticism raises fears of judicial crisis and institutional collapse, such skepticism is also an expression of how our legal system ordinarily functions.

**Peter Cane** (Australian National University) and **Bert Kritzer** (University of Wisconsin) are the editors of **The Oxford Handbook on Empirical Legal Research** (Oxford University Press), which provides an overview of a central development in our modern legal scholarship, the rise and proliferation of empirical research. In its 43 chapters, an international group of scholars provide original discussions of the history, aims and methods of empirical research about law, as well as its achievements and potential. The first part of this work deals with the development and institutional context of empirical legal research. The second (and largest) part consists of critical accounts of empirical research relating to many aspects of the legal world including criminal law, civil law, public law, regulatory law, and international law, as well as lawyers, judicial institutions, legal procedures and evidence, and the public's understanding of law. The third part introduces readers to the methods of empirical research, and its place in the law school curriculum.

Of the 1.65 million lawsuits enforcing federal laws over the past decade, only 3 percent were prosecuted by the federal government, while 97 percent were litigated by private parties. When and why did private plaintiff-driven litigation become a dominant model for enforcing federal regulation? **The Litigation State: Public Regulation and Private Lawsuits in the United States** (Princeton University Press) by **Sean Farhang** (University of California, Berkeley) shows how government legislation created the nation's reliance upon private litigation, and investigates why Congress would choose to mobilize, through statutory design, private lawsuits to implement federal statutes. The author argues that Congress deliberately cultivates such private lawsuits partly as a means of enforcing its will over the resistance of opposing presidents. Using data from many policy areas spanning the twentieth century, and historical analysis focused on civil rights, this work investigates how American political institutions shape the strategic design of legislation to mobilize private lawsuits for policy implementation.

In **Congressional Ambivalence: The Political Burdens of Constitutional Authority** (University Press of Kentucky) **Jasmine Farrier** (University of Louisville) examines Congress's frequent delegation of power by analyzing primary source materials such as bills, committee reports, and the Congressional Record. The author argues that Congress is caught between abdication and ambition and that this ambivalence affects numerous facets of the legislative process. Explaining specific instances of post-delegation disorder, including Congress's use of new bills, obstruction, public criticism, and oversight to salvage its lost power, the author exposes the tensions surrounding Congress's roles in recent hot-button issues such as base-closing commissions, presidential trade promotion authority, and responses to the attacks of September 11. The book also examines shifting public rhetoric used by members of Congress as they emphasize, in in-

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stitutionally self-conscious terms, the difficulties of balancing their multiple roles.

Visual and multimedia digital technologies are transforming the practice of law: how lawyers construct and argue their cases, present evidence to juries, and communicate with each other. They are also changing how law is disseminated throughout and used by the general public. In **Law on Display: The Digital Transformation of Legal Persuasion and Judgment** (NYU Press) **Neal Feigenson** (Quinnipiac University School of Law) and **Christina Spiesel** (Yale Law School) explore the explosion of digital pictures and multimedia in law and what it means for everyone interested in the legal system: judges, lawyers, jurors, and the general public. The authors explain how, when, and why legal practice moved from a largely words-only environment to one more dependent on and driven by images, and how rapidly developing technologies have further accelerated this change.

In **Constitutional Theocracy** (Harvard University Press) **Ran Hirschl** (University of Toronto) argues that a new legal order has emerged at the intersection of two sweeping global trends—the rise of popular support for principles of theocratic governance and the spread of constitutionalism and judicial review. Constitutional theocracies enshrine religion and its interlocutors as “a” or “the” source of legislation, and at the same time adhere to core ideals and practices of modern constitutionalism. The book’s comparative analysis of religion-and-state jurisprudence draws on dozens of countries worldwide to explore the evolving role of constitutional law and courts in a non-secularist world. The author argues that the constitutional enshrinement of religion is a rational, prudent strategy allowing opponents of theocratic governance to talk the religious talk without walking most of what they regard as theocracy’s unappealing, costly walk.

**American Public Service: Constitutional and Ethical Foundations** (Jones & Bartlett Learning) by **Sheila Kennedy** (Indiana University Purdue University in Indianapolis) and **David Schultz** (Hamline University) examines public administration ethics as contextualized by constitutional, legal, and political values within the U.S. Through case studies, hypothetical examples, and a discussion format, the authors explore what these values mean for specific duties of government managers and for resolving many contemporary issues confronting public sector officials. The book identifies the values that anchor and define what government and public administrators should do, and discusses how these values fit into a framework for moral decision making in the public sector and how they apply to discussions of current controversies in public administration.

**Adriana Piatti-Crocker** (University of Illinois at Springfield), **Jason Pierceson** (University of Illinois at Springfield), and **Shawn Schulenberg** (University of California, Riverside) are the editors of **Same-Sex Marriage in the Americas: Policy Innovation for Same-Sex Relationships** (Lexington Books). This book explores same-sex marriage legislation, civil unions, and other new developments for same-sex couples throughout the Americas at both national and sub-national levels. In addition to several chapters on Argentina, Canada, and the United States, the book includes discussions of Brazil, Mexico, Uruguay, Colombia and the rest of Latin America and the Caribbean.

Who gets seated on the lower federal courts and why? Why are some nominees confirmed easily while others travel a long, hard road to confirmation? What role do senators and interest groups play in determining who becomes a federal judge? In **Battle Over the Bench: Senators, Interest Groups and Lower Court Confirmations** (University of Virginia Press), **Amy Steigerwalt** (Georgia State University) offers an analytic framework for understanding when nominations become contested, and shows when and how key actors can influence the fate of nominations and ultimately determine who will become a federal judge. The author reveals how many nominees are blocked for private political reasons that have nothing to do with ideology, while senators may use their support for or opposition to nominees as bargaining chips to garner votes for their positions on unrelated issues. This book showcases the complex and, at times, hidden motivations driving the staffing of the federal bench.

**The Oxford Handbook of Law and Politics** (Oxford University Press) edited by **Keith E. Whittington** (Princeton University), **R. Daniel Kelemen** (Rutgers University), and **Gregory A. Caldeira** (Ohio State University) will be available in a paper edition in September 2010. Electronic and cloth editions of this book were published previously. The Handbook provides a survey of our diverse field, ranging from such traditional subjects as theories of jurisprudence, constitutionalism, judicial politics, and law and society to such emerging subjects as comparative judicial politics, international law, and democratization. The book, featuring 50 scholars and 45 chapters, brings together an interdisciplinary

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cast of law and courts scholars who provide critical appraisals of the key issues shaping the discipline. The volume was the subject of a symposium in the Summer 2008 Law and Courts newsletter.

# Upcoming Conferences

## Conferences

### **APSA Annual Meeting and Exhibition**

[http://www.apsanet.org/content\\_4827.cfm](http://www.apsanet.org/content_4827.cfm)

**Dates:** September 2—5, 2010

**Location:** Washington, DC

**Submission Deadline:** December 15, 2009

### **Pacific Northwest Political Science Association Annual Meeting**

<http://legacy.lclark.edu/~pnwpsa/2010/index.html>

**Dates:** October 14—16, 2010

**Location:** Spokane, Washington

**Call for Proposals Deadline:** Sept. 1, 2010

### **Northeastern Political Science Association Annual Meeting**

<http://www.northeasternpas.com>

**Dates:** November 11—13, 2010

**Location:** Omni Parker House, Boston, Massachusetts

**Call for Proposals Deadline:** June 15, 2010

### **Southern Political Science Association 82nd Annual Meeting**

[http://www.spsa.net/index.php?option=com\\_content&task=category&sectionid=4&id=15&Itemid=31](http://www.spsa.net/index.php?option=com_content&task=category&sectionid=4&id=15&Itemid=31)

**Dates:** January 6—8, 2011

**Location:** Hotel InterContinental, New Orleans, Louisiana

**Call for proposals deadline:** August 9, 2010

### **Southwestern Political Science Association Annual Meeting**

<http://www.sssaonline.org/index.php/annual-meeting>

**Dates:** March 16—19, 2011

**Location:** Las Vegas, Nevada

**Call for Proposals Deadline:** Friday, October 15, 2010