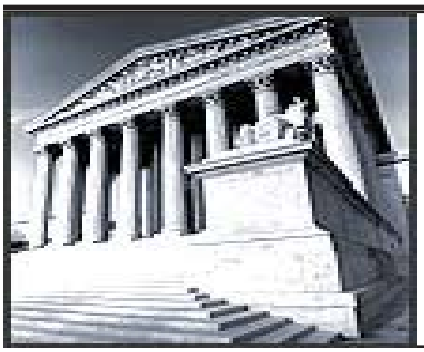

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FROM THE SECTION CHAIR:

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Past. Present, and Future with the "Comparative Advantage": Part II, 1990-2002 Interlogue

One of the certain consequences of undertaking a survey of the literature in a field is that one will, inevitably and unjustly, omit that which should not have been omitted. Part I of this article should have noted the importance of two Law and Courts Lifetime Achievement Award winners, Henry Abraham and Walter Murphy. Abraham was one of a small group (along with Becker, Schubert, Gadbois and others) who in the late 1950s took part in a meeting in Dallas in which judicial scholars noted the absence of comparative works and "resolved to try to alter that" (Abraham 2002). This resolve led to the publication of Abraham's comparative textbook, *The Judicial Process* (1961, 1998). Murphy and Tanenhaus took pains to use data about courts and judges in other countries in their excellent monograph *The Study of Public Law* (Murphy and Tanenhaus 1972).[2]

If I have ignored the relevant work of others, I hope they will let me know – for my own edification, if for no other purpose.

Moving into the 1990s

Despite the developments surveyed in Part I of this essay, by and large the gospel of comparative judicial behavior had little influence through the 1970s and into the 1980s. It did not lessen the tendency of American students of the judiciary to focus exclusively on the courts and judges of the United States, especially on the U.S. Supreme Court and its justices. With a few exceptions, scholars who studied politics in countries other than the United States continued to consider the courts and judges to be matters outside their concern, matters that could be safely left to the lawyers and philosophers. Worse, some political scientists who has been leaders in the development of comparative judicial politics as an empirical subdiscipline abandoned it: Fred Morrison took up law teaching; Donald Kommers (1989) turned his considerable talents completely to comparative constitutional law; Glendon Schubert largely abandoned his research in the field to assault the peaks of biology and politics; many of the analysts who contributed to *Comparative Judicial*

continued on page 3

Instructions to Contributors

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We will be glad to consider brief 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 two copies of the manuscript; enclose a diskette containing the contents of the submission; provide a description of the disk's format (for example, DOS, MAC) and of the word processing package used (for example, WORD, Wordperfect). For manuscripts submitted via electronic mail, please use ASCII or Rich Text Format (RTF).

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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.

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Behavior did not continue in the work; the burgeoning empirical study of Canadian judicial politics and behavior fizzled. A once enthusiastic neophyte, the author of this article, got distracted for a while by developing interests in quantitative methods and computer applications, a post-tenure productivity slump, and involvement in departmental and university governance.

Discrete Journal Articles, 1990-2002

The 1990s began as earlier decades had, with relatively few comparative judicial – especially empirical non-U.S. or multination comparative – studies appearing in the discipline's core journals. The pace of such publications appeared to increase markedly as the decade of the 1990s came to a close, however. The new millennium appeared to herald a significant expansion in major journals of comparative articles on courts and judges. Encouragingly, these articles were beginning to be authored by scholars whose backgrounds reflected training in both public law/ judicial politics and comparative politics.

Among the earliest and most influential of the comparative judicial politics articles of the 1990s were works resulting from Burton Atkins' NSF-funded research on the English Court of Appeal. "Interventions and Power in Judicial Hierarchies" (Atkins 1990) appeared in *Law & Society Review*: "Party Capability Theory as an Explanation for Intervention Behavior in the English Court of Appeal" appeared in the American Journal of Political Science in 1991. His methodological note on the effects of nonpublication on data collection in judicial research graced the *Western Political Quarterly* in 1992; "Alternative Models of Appeal Mobilization in Judicial Hierarchies" appeared in the American Journal of Political Science in 1993.

Atkins found that those with presumed greater resources, such as businesses and the government, had a greater likelihood of success. His addressing of what has come to be known as "party capability theory," which purports to explain "Why the 'Haves' Come Out Ahead" (Galanter 1974), stimulated a significant stream of comparative judicial research. McCormick (1993) confirmed the party capability hypothesis for the Supreme Court of Canada. Haynie (1994, 1995), however, found the opposite to be true for the Philippines and its regions: those presumed to have fewer resources actually fared better, particularly for certain types of cases. Additional investigations of party capability theory appeared after the turn of the new century. Brace and Hall (2001) analyzed the thesis in a comparative study of the U.S. state supreme courts. Smyth (2000) addressed whether the haves or have nots fare well in the Australian High Court. Dotan (2001) and Dotan and Hofnung (2001) did the same for the Israeli High Court of Justice.

Others relevant journal articles that appeared in the 1990s touched on a wide variety of topics. For Europe, a special issue of *Law and Society Review* reported several comparative analyses of civil litigation rates (see Clark 1990; van Loon and Langerwerf 1990, Wollschläger 1990), van Koppen and ten Kate (1990) analyzed appointment and decision making in the Dutch supreme court and parliament, Stone Sweet and Brunnel (1998) offered a statistical analysis of the European Court and its national courts, Cassel (2001) investigated the influence of courts on privatization in Germany, Della Porta (2001) treated political corruption and the judiciary in Italy, Magalhaes (1999) assessed judicial reform in Eastern Europe, and Smithey-Ishiyama and Ishiyama discussed designing courts in Post-Communist polities. On the Commonwealth front, Tate (1992b) reported a causal model of British judicial recruitment, Chalmers analyzed the role of European Union judicial politics within the United Kingdom, and Smyth (2001) published a judicial behavioral analysis of judicial interaction in the Australian High Court.

On the Canadian front, the judicial behavior research trend that had been born in the 1960s and died in the 1970s reemerged in a variety of outlets.[3] In addition to McCormick's (1993) party capability analysis, early on Manfredi (1990) analyzed the use of U.S. precedents and Heard (1991b) investigated "The Importance of Which Judges Hear an Appeal" in the Canadian Supreme Court. Toward the end of the decade, Ostberg, Wetstein, and Ducat published a number of behavioral analyses of decision making in that same court. Their work replicated and expanded Manfredi's on citation of foreign precedents (Ostberg, Wetstein, and Ducat 2001), and investigated attitudinal explanations for the Court's decision making in search and seizure cases (Wetstein and Ostberg 1999) and during the Lamer Court of 1991-1995 (Ostberg, Wetstein, and Ducat 2002). Epp (1996) asked "Do Bills of Rights Matter?" in considering the Canadian Charter of Rights and Freedoms. Morton and Allen (2001) address measuring success for feminists in the Canadian courts. Flemming and Krutz (2002) initiated a new line of Canadian inquiry dealing with selecting appeals for judicial review.

Tate and Haynie took a different track in several articles reporting on the behavior of courts in authoritarian regimes. Tate offered a comparative analysis of "Courts and Crisis Regimes" (1993), and a simple analysis (1997a) of the Philippine Supreme Court's role during the breakdown and recreation of democracy. Tate and Haynie (1993, 1994b) produced macro and micro-level analyses of the effect of Marcos' authoritarianism on the decision-making of the Philippine Supreme Court, and Haynie (1998) analyzed the politicization of that court in the post-Marcos era. In a related vein, Haynie and Devore (1996) studied judgment in the

South African Appellate Division under apartheid, Larkin (1998) examined the judiciary's role under delegative democracy in Argentina, Von Mühlenbrock (1996) reported on corruption in the Chilean judiciary under military rule, Dotan (1999) analyzed the Israeli Supreme Court under the *Intifada*, and Mutua (2001) dealt with judicial subservience in Kenya. Helmke (2002) produced an innovative formal analysis of "Court-Executive Relations in Argentina under Dictatorship and Democracy."

Reflecting work that had appeared earlier in symposia (see below), Beirich (1999), Handberg (1999), and Stone Sweet (1999) initiated what would become a new line of inquiry with analyses of various aspects of the judicialization of politics: Eleftheriadis (2001), Fournier (2000), Herschl (2000, 2001), Kelemen (2001), and Rothmayr (2001) addressed judicialization and the related subject of judicial activism (Healey 2001) from various perspectives.

Another concept that had been debated and discussed for decades, judicial independence, began to get more rigorous investigation and analysis during this period as Domingo (2000) assessed judicial independence in Mexico, Keith (2002) analyzed its relationship to human rights abuse around the world, Krikorian (2000) reported on its historical development in Canada, and Lo discussed concern for independence in the debate over the Court of Final Appeal in Hong Kong.

One analysis of judicial independence – that of Vanberg (2000) on West Germany – is especially important because it epitomizes the new trend to formal institutional analyses of comparative judicial politics topics. Vanberg, in fact, has been a major contributor to this line of research with his articles on "Abstract Judicial Review, Legislative Bargaining, and Policy Compromise" (1998) and his game theoretic approach (2001) to legislative-judicial relations. Other noteworthy contributions include Epstein, Knight and Shvetsova (2001), Helmke (2002), Ramseyer and Rasmussen (2000, 2001), and Schiemann (2001).

Several other articles based on case study and other material also appeared in the 1990s. These included Brunello and Lerhman's (1991) assessment of comparative judicial politics in West Germany and India, Barzilai's (1999) work on the Israeli Supreme Court, and Burley and Mattli's (1993) "Europe before the Court." In fact, the rapidly expanding and controversial role of the European supranational courts began to generate journal articles in relative profusion. Examples include Mattli and Slaughter's (1993) "Revisiting the European Court of Justice," Wincott's (1995, 2000) works on law and politics in the ECJ, Alter and Meunier-Aitshalia (1994) "Judicial Politics in the European Community," Alter's analysis of the European court's political power (1996) and "Who are the "Masters of the Treaty?"(1998), Golub's (1996) analysis of the interaction between national courts and the ECJ, Starr-Deleen and Deleen's (1997) study of the ECJ as a federator, Cichowski's work on "the European Court and the Construction of Supranational Policy," Garrett and Schulz's (1998) "The European Court of Justice, National Governments, and Legal Integration in the European Union," and, with a slightly different focus, Kenney's (2000) empirical work on the role of law clerks in the ECJ.

A very important line of comparative judicial research that emerged in the 1990s dealt with citizen assessments of courts and of their legitimacy. Key to this research was the multinational survey work commissioned by and reported on in a series of articles by James L. Gibson and Gregory Caldeira and Gibson's student Vanessa Baird. In this unprecedentedly broad and solidly data-based work, the authors analyzed legitimacy, institutional support, and compliance with respect to the European Court of Justice, and subsequently in national high courts in two articles published in the American Political Science Review (Caldeira and Gibson 1995, Gibson, Caldeira, and Baird 1998), and other articles that appeared in the *American Journal of Political Science* (Gibson and Caldeira 1995), and the *British Journal of Political Science* (Gibson and Caldeira 1998).

Finally, on the methodological front, Brace and Hall (1995) used the example of the American states using a comparative strategy and Epstein (1999) argued for the "The Comparative Advantage."

Symposia and Anthologies

Despite the impressive number of discrete journal articles published in the 1990s, perhaps the most striking thing about the decade was the sudden burgeoning of articles and chapters published in symposia and anthologies, both in special issues of journals, and in book form. We have already noted that this trend got its start in the late 1980s in works edited by Provine and Seron (1988), Schmidhauser (1987), and Waltman and Holland (1988). It virtually exploded in the 1990s.

The first of the 1990s symposia to appear was the "Symposium on Judicial Review and Public Policy in Comparative Perspective" edited by Jackson and Tate (1990) in the *Policy Studies Journal*. This work contained something of a potpourri of articles dealing with judicial review and its history and practice in a diverse set of countries, Canada and the United States (Russell 1990), India (Baar 1990), Italy (Volcansek 1990), Japan (Danelski 1990), the United States and Sweden (Sternquist 1990), and the Soviet Union (Kitchin 1990), as well as a useful conceptual framework (Jackson 1990). This symposium was expanded into book form as *Comparative Judicial Review and Public*

Policy (Jackson and Tate 1992). The book included expanded versions of some of the journal articles and added new chapters on the Philippines (Tate 1992c), Israel (Edelman 1992), the United Kingdom (Sunkin 1992), and abstract constitutional review in Western Europe (Stone 1992a), as well as a new conceptual introduction by Tate (1992a) and a significant bibliography compiled by Jackson (1992).

Between the appearance of the journal and the book forms of Jackson and Tate's symposium, Kenneth Holland and Jerald Waltman published another book of original essays on the judiciary in a variety of countries. This time their timely theme was *Judicial Activism in Comparative Perspective* (Holland and Waltman 1991). *Judicial Activism's* chapters probed their topic in 13 varied countries.

As *Comparative Judicial Review and Public Policy* appeared in 1992, so did a special comparative judicial issue of *West European Politics* edited by Mary Volcansek. This symposium, "Judges, Courts and Policy-Making in Western Europe" included survey articles on the European Court of Justice (Brzdera 1992, Volcansek 1992d), the Italian Constitutional Court (de Francisis and Zannini 1992), Britain (Drewry 1992), Germany (Landfried 1992), the European Court of Human Rights (Stack 1992), the French Constitutional Council (Stone 1992c), the Netherlands (van Koppen 1992), and Belgium (Verougstraete 1992). The journal symposium was published in book form as *Judicial Politics and Policy-Making in Western Europe* (Volcansek 1992b).

A final journal symposium published in 1992 was a small one edited by John R. Schmidhauser for the *International Political Science Review* under the title "Comparative Judicial Elites."

Encouragingly, a fascinating, if very uneven, anthology that appeared in 1993 was Stotsky's *Transition to Democracy in Latin America: The Role of the Judiciary.* Many of the chapters in this volume are too naively legalistic or narrowly historical or journalistic to be of great value, the fact that the anthology dealt with a topic of vital theoretical and policy significance and that it concerned Latin America make this collection well worth the attention of students of comparative judicial politics.

The next year another relevant journal symposium was published, this time in *Comparative Political Studies* under the editorship of Martin Shapiro and Alec Stone and the title "The New Constitutional Politics of Europe." Its articles treated "Judicial Politics in the European Community" through analysis of an important court case (Alter and Aitshalia 1994), the German Federal Constitutional Court (Kommers 1994), Britain (Sterett 1994), "Coordinate Construction in France and Germany" (Stone 1994), "Political power and judicial review in Italy" (Volcansek), and the European Court of Justice (Weiler 1994).

A comparative judicial politics symposium and an anthology published in mid-1990s dealt with the important and timely theme "The Judicialization of Politics." Vallinder usefully conceptualized the topic and brought a number of case studies to scholarly attention in a special issue of *International Political Science Review* (1994). Tate and Vallinder then offered a vastly expanded treatment of the subject in *The Global Expansion of Judicial Power* (1995). Certainly the largest comparative judicial politics anthology to date, *Global Expansion* contained 26 chapters, including substantial historical and theoretical contributions by the editors and country studies ranging from Canada to Russia, from Malta to the Philippines, from the United Kingdom to Namibia. Even so, it completely lacked any material on Latin American and all of Africa *except* Namibia.

The list of relevant anthologies rolls on with the *International Social Science Journal* symposium on "Democracy and Law," for which Tate (1997b) served as editorial adviser. Although the focus of this special issue was broader than comparative judicial politics (narrowly construed), it redressed some of the omissions in *Global Expansion* by publishing studies of the role and behaviors of judiciaries in Brazil (Castro 1997) and India (Sudarshan 1997).

A hybrid human rights-judicial politics anthology exploring an important topic *Judicial Protection of Human Rights: Myth or Reality?* was published in 1999 by Gibney and Frankowski. Chapters in this work explore aspects of its topic in Rumania, Russia, Israel, India, Latin America, the Philippines, China, Australia, and the United States.

Comparative judicial politics anthologies continued to appear as the new millennium dawned. *Judicial Power and Canadian Democracy* appeared in 2001 (Howe and Russell 2001). This work begins by commenting on the judiciary's role in Canada and Britain (Vaughan 2001; Malleson 2001) and explores the persisting debate on the question "are judges too powerful?" by presenting a series of short comments by judges and scholars, and concludes with analyses of a mélange of issues relating to judicial authority. Another recent anthology contains essays comparing the U.S. Supreme Court and the German Constitutional Court (Rogowski and Gawron 2002).

Several very recent anthologies concern themselves with judicial independence. A broad and, at first glance, very useful new anthology is *Judicial Independence at the Crossroads* (Burbank and Friedman 2002). Its sections concentrate on important aspects of judicial independence,

including its theoretical dimensions, evidence for its existence, and the comparative dimension. A more eclectic, but clearly comparative, work on the same topic is *Judicial Independence in the Age of Democracy* (Russell and O'Brien 2001). A country specific anthology is *Judicial Independence and the Rule of Law in Hong Kong* (Tsang 2001).

Research Books and Monographs

Research symposia and anthologies are very useful in establishing a foundation for a field, especially one that has received too little attention in the scholarly journal and monographic literature. But the full establishment of a scientific field depends upon the creation and growth of the latter. Fortunately, just as there has been an explosion in the publication of relevant comparative judicial journal articles, so, too, has there been a very rapid development of book/monographic length studies of non-United States Courts since the end of the 1980s. Here is a list of some 30 books of the 1990s and 2000s (to date) that usefully expand our knowledge of comparative judicial politics.

The list comes with at least three *caveat emptor* statements. First, it does not include works that were, in my view, principally concerned with legal history or law as doctrine, even constitutional law. It includes only books that focused extensively, if not exclusively, on courts and judges, their behaviors, and their relations to politics and government. This led to the exclusion of several volumes published in conjunction with Canada's constitutional crises of the 1990s (Strayer 1990; Swinton 1990; Beatty 1991; Heard 1991a), and of O'Brien and Ohkoshi (1996), for example. Second, the list does not, for the most part, include works that focus on sociolegal topics where those sociolegal topics do not have to do with the behavior of courts and judges and their relations with government. This led to the exclusion of a number of interesting and innovative volumes such as Abel (1995), Haley (1991), Kenney (1992), Hendley (1996), and Sterett (1997), and Ramseyer and Nakazato (1999). Finally, to those who were astounded by how well-read the author is, he must confess that his knowledge of the content of many of the books on this list, as well as of those excluded from the list, is certainly very tentative; hence so must be the list. For more information about most of these works we suggest consulting the reviews published in the *Law and Politics Book Review* (editor Richard Brisbin, URL http://www.polsci.wvu.edu/lpbr/).

1. McCormick and Green 1990. *Judges and Judging: Inside the Canadian Judiciary*
2. Galanter 1992. *Competing Equalities: Law and the Backward Classes in India.*
3. Stone 1992. *The Birth of Judicial Politics in France*
4. Rock 1993. *The Social World of an English Crown Court: Witness and Professionals in the Crown Court Center at Wood Green.*
5. Edelman, Martin 1994. *Courts, Politics, and Culture in Israel*
6. Guarnieri 1993. *Magistratura E Politica In Italia: Pesi Senza Contrappesi.*
7. Manfredi 1993. *Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism.*
8. Newberg 1994. *Judging the State: Courts and Constitutional Politics in Pakistan.*
9. Volcansek, de Francisis, and LaFon 1994. *Judicial Misconduct: A Cross-National Comparison.*
10. Lobban 1995. *White Man's Justice: Political Trials in South Africa, 1970-1980.*
11. Jacob, Blankenburg, Kritzer, and Sanders 1996. *Courts, Law and Politics in Comparative Perspective.*
12. Sunkin 1996. *Judicial Review In Perspective.*
13. Brown, Nathan J., 1997, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf.*
14. Jackson 1997. *The United Kingdom Confronts the European Convention on Human Rights.*
15. Delhousse 1998. *The European Court of Justice: The Politics of Judicial Integration.*
16. Dyzenhaus 1998. *Judging the Judges, Judging Ourselves. Truth, Reconciliation and the Apartheid Legal Order.*
17. Epp 1998. *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective.*
18. Greene et al 1998. *Final Appeal: Decision-Making in Canadian Courts of Appeal.*
19. Robertson 1998. *Judicial Discretion in the House of Lords.*
20. Malleson 1999. *The New Judiciary: The Effects of Expansion and Activism.*
21. Mendea, O'Donnell, and Pinheiro 1999. *The (Un)Rule of Law and the Underprivileged in Latin America.*
22. Prillaman 2000. *The Judiciary and Democratic Decay in Latin America.*
23. Sólyom and Brunner 2000. *Constitutional Judiciary in a New Democracy: The Hungarian Constitutional Court.*
24. Stone Sweet 2000. *Governing with Judges: Constitutional Politics in Europe.*
25. Volcansek 2000 *Constitutional Politics in Italy: The Constitutional Court.*
26. McAdams 2001. *Judging the Past in Unified Germany.*
27. Solomon and Fogelsong 2001. *Courts and Transition in Russia: The Challenge to Judicial Reform.*
28. Tsang 2001. *Judicial Independence and the Rule of Law in Hong Kong.*
29. Widner 2001. *Building the Rule of Law: Francis Nyalali and the Road to Judicial Independence in Africa.*

30. Guarnieri and Pederzoli. 2002. *The Power of Judges: A Comparative Study of Courts and Democracy*. (English version of *La Puissance De Juger*.)

Conclusion

The previous pages chronicle a selective but reasonably comprehensive history of comparative judicial politics research. This history is neither as broad nor as complete as it might have been. It does not seek to present a history or bibliography of comparative law. On the other hand, the desire to recognize and celebrate the growth of the literature of comparative judicial *politics* has broadened it beyond its original design, which focused narrowly on data-based studies of comparative judicial *behavior*, the kinds of comparative studies flowered so promisingly in the later 1960s and early 1970. Three years into the 2000s it seems clear that judicial politics scholars have finally grasped the limitations of their focus on U.S. courts while comparative politics scholars have finally recognized the political nature of courts.

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Notes

1 This article is adapted and expanded considerably from C. Neal Tate and Stacia L. Haynie, "Comparative Judicial Politics: Intellectual History and Bibliography," prepared for the Law and Courts Short Course on Comparative Judicial Systems and Politics presented at the Annual Meeting of the American Political Science Association, San Francisco, August 29, 2001.

2 This article does not try to include work in comparative law, including comparative constitutional law. Nevertheless, it is worth noting that Murphy and Tanenhaus's *Comparative Constitutional Law* (Murphy and Tanenhaus 1977) included discussions of the judiciary and how it fit into the political system in each included country (Murphy 2002).

3 This discussion thus omits references to studies that are principally doctrinal in their focus.

PUTTING THE "COMPARATIVE ADVANTAGE" INTO PRACTICE: LAW & COURTS SCHOLARS AND JUDICIAL TRAINING PROGRAMS ABROAD

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As our current and past section chairs remind us, judicial specialists are beginning to (re)grasp the "comparative advantage" in our research on law and courts. (Tate 2002; Epstein 1999) In his column in the Spring 2002 issue of this newsletter, C. Neal Tate observed that the 1990's marked "a remarkable flowering of anthologies on non-U.S. courts and legal systems that appeared in journal symposia and edited books," constituting a "rejuvenation of comparative judicial politics." (Tate Spring 2002: 6) Such "rejuvenated" comparative scholarship broadens the field's understanding of the judicial process at substantive and theoretical levels, and is a research direction that benefits all of us who call ourselves "*judicial* specialists." This comparative dimension in the literature on law and courts also equips us, as judicial specialists, to put some of our study of court institutions, court decision making, and court reform into practice. In other words, another aspect of the "comparative advantage" in our field is the participation of law and courts scholars in judicial training programs occurring in non-U.S. court systems.

Recently, I had the opportunity of participating in such a judicial training symposium, "Developing Judicial Opinion Writing Skills," a two-day conference held in April 2002 for Estonian judges at the Estonian Law Center in Tartu. My participation in the symposium stemmed from the time I had spent and the work I had done at Tartu University in Tartu, Estonia, as a Fulbright lecturer in Spring 2001. My experience of "putting the 'comparative advantage' into practice" is just one of many such experiences by colleagues in judicial studies, and may not be terribly representative. In the interest of sharing with and learning from others in the field, this account is intended to detail how law and courts specialists may contribute to judicial training projects, what aspects of our field's scholarship seem useful to draw upon, and what challenges we face in furthering this participatory aspect of comparative judicial politics.

Background: A Program for a Judicial Training Initiative

Estonia, the smallest of the three Baltic states, asserted its independence from the former Soviet Union in 1990, held a popular referendum for independence and declared its full sovereignty in 1991. Almost immediately, the Baltic republic set about ratifying a new parliamentary constitution (passed by referendum in 1992) and securing the post-socialist democratic transition. (Lieven 1994) The "hangover" from the Soviet era was also immediately apparent: in addition to needed economic and electoral reforms was the question of how to fashion the new judicial system. Judges under the old Soviet system were Communist Party functionaries who practiced a form of "telephone justice:" rendering decisions in line with what the Party official for the area directed (presumably in a telephone communication) as politically appropriate. (Howard 2001) Judicial training, and even legal training, was subservient to party ideology; a concept of judicial independence was unknown.

In creating a new judicial structure of courts of first instance, courts of appeal, and a multi-chambered Supreme Court, the Estonian Constitution of 1992 and subsequent legislation by the Riigikogu (parliament) drew on Estonia's brief inter-war republican heritage. (Pettai 2000) Initially, the budget for the courts and for judicial training was located within the Ministry of Justice; beginning in 1995, the Estonian Law Center was created to offer judicial training for the new courts' personnel. (Estonian Ministry of Justice/court system/training, www.just.ee/new_index; Riigikohus/ training, www.nc.ee/english) Yet curriculum reform at Estonia's primary law school at the University of Tartu lagged, and judicial candidates of less than optimal expertise were recruited to staff the new judiciary. The new judges were burdened by a heavy workload and the reality of having to learn on the job, even as many of the attorneys arguing before them were learning brief-writing and case presentation on the job. This situation continued as other, more pressing democratic reforms were pursued in parliament, and as wrangling over the budget for a judicial training program occurred between the Ministry of Justice and the Estonian Supreme Court, stalling the development of a judicial training strategy. By 2001, and with the likely passage of a new draft law developing an assured budgetary framework to allow long-term planning for judicial training, the Estonian Law Center, with the support and cooperation

of the Estonian Supreme Court, set about fulfilling this task. In addition to working towards the creation of a judicial competence center and developing performance guidelines for judges, personnel at the Center proceeded to design a judicial opinion writing pilot course, for April 29-30, 2002.

The decision to focus the pilot course on opinion writing was based on several factors: expressed judicial needs, experience with curricular innovations in legal education, previous judicial training efforts, availability of suitable experts. The draft agenda for the judicial training symposium addressed several related considerations: judicial reasoning skills, opinion writing techniques, and the goals of judicial opinion writing. The program for the two-day course included a mixture of expert presentations and hands-on writing exercises using case hypotheticals. Over fifty judges enrolled in the symposium, mostly judges from county courts of the first instance but also some judges serving on intermediate appellate courts. The Chief Justice of the Estonian Supreme Court, Onu Lohmus, delivered opening remarks on the goal of the conference. Participants included legal experts from the Tartu University Law Faculty, Concordia International School of Law in Tallinn, Estonia, Riga School of Law in Riga, Latvia, and the President of the Supreme Court of Finland. Simultaneous Estonian-English translation was provided for all symposium presenters and attendees. No miracles were expected from any single event; the symposium planners and participants were prepared instead to use the pilot course "to learn how to handle the work of judicial training in a reasonable way in order to produce a reasonable long-term result." (Michael Gallagher, Advisor, Estonian Law Center, June 2002 correspondence with the author)

Contributions: Law and Courts Scholarship in a Judicial Training Program

Although I had a limited role in discussions about the agenda for the conference program, my participation in the symposium centered on an opening presentation, "Setting the Overall Goals of Judicial Opinion Writing: an Introduction to Theory and Practice." After reviewing judicial training manuals prepared by the Federal Judicial Center for orientation seminars for U.S. Federal Judges and reading selections from *Keeton on Judging in the American Legal System* (1999), I began to doubt I had anything useful to say to judges about judging. I was, in short, overwhelmed by the prospect of my task. I had been informed by my Estonian contacts at the Law Center that one of the problems inherent in judicial training in the Estonian context was getting the judges to see that "the law," by itself or standing alone, does not provide a technique for generating "right answers." This formalistic, somewhat mechanistic view of law has been, to some degree, a backlash against the innately political form of judging practiced in the Soviet era. For judges to hear that legal reasoning, the judicial tool of persuasion, is ultimately political—or that "right answers," or persuasive choices or decisions, are so because they are politically or socially acceptable and accepted in the context of the judging—seemed a counterproductive line to take. Still, I decided to link the social context of cases and the controversies they represented with a discussion of judicial impact and the concomitant considerations of opinion craftsmanship. The judge's job, I proposed, in using legal reasoning as his/her tool of persuasion is to connect his/her ruling to what is going on in the context of society, or in the context of politics in the society. This softened version of the legal realism of political science structured my remarks on the goals of opinion writing and the related topics I discussed.[1]

My remarks drew from several works by scholars in the law and courts field—most notably, Lief Carter and Thomas Burke's *Reason in Law* (2002), T.R. van Geel's *Understanding Supreme Court Opinions* (2002), Charles Johnson and Bradley Canon's *Judicial Policies: Implementation and Impact* (1984), and David O'Brien's edited collection *Judges on Judging: Views from the Bench* (1997). In an effort to unite theory and practice, I stated the goals of opinion writing in this way:

- To understand the social and political contexts in which judging occurs, so that we may
- Assess the judicial role, and the challenges thus facing judges. How judges address these challenges affects
- The impact and implementation of judicial decisions in society.
- Finally, the way judges influence the impact and implementation of their decisions is through the choices they make in crafting the judicial opinion.

I then went on to talk about each item, borrowing liberally from relevant law and courts literature. For the first topic, judging in social and political context, I discussed the idea of the social background facts of cases and the reality in which judges sometimes have to "make law." (By this I meant taking account of more than just the text of a law in making a reasoned, persuasive, and contextually-relevant decision.) For the second topic, the judicial role in context, I linked the obligation of reasoned decision-making (and explicitly-stated, clear and understandable reasons for decisions, to paraphrase Justice Robert Jackson) with the institutional legitimacy of judges. (Though not a prevalent phenomenon in Estonia, many judges in post-Communist consolidating democracies find their decisions and their institution subject to periodic and vehement attacks and challenges.) For the third topic, judicial impact and the implementation of judicial decisions, I

employed the heuristic model of Johnson and Canon (1984) to discuss the interpreting, implementing and consumer populations of judicial decisions. My emphasis here was on what and to whom judicial opinions must communicate, and communicate persuasively. Finally, for the last topic, connecting impact and implementation to opinion craftsmanship, I reviewed some of the techniques judicial decisions utilize to persuade: evoking the sources for reasoned decisions, employing deductive versus balancing-oriented strategies of justification, and constructing legal tests. My hope was to provide a basis for transition to subsequent presenters, who would speak about judicial reasoning skills and textual interpretation methods and the mechanics of constructing a judicial opinion: presentation of controlling facts, statement of the legal issue, *etc*.

In my effort to be non-U.S.-centric in my remarks about judging and judicial opinion writing, I know now one way that I erred: speaking at too high a level of abstraction. Some of the judges with whom we spoke later were intrigued by the consideration of social background facts of cases and the social reality of which any case is but a small slice, but they wanted to hear more about specific instances: what might this social context consist of and how does it constrain or empower the judge? Fortunately, another conference participant, who spoke about German case law, was able to supply a "for instance" example of social context and social facts as framing a case controversy over real property law. I can say that the Estonian judges reacted best to my discussion of the populations involved in the implementation and impact of judicial decisions, and wanted more consideration of this as relevant to their own experience in crafting their rulings.

Reactions and Challenges: the Comparative Advantage in Practice

Opinion writing is merely one of the skills to be addressed in a judicial training curriculum. The opinion writing pilot course offered for Estonian judges through the Estonian Law Center suggested that basic skills, and the basic mechanics of constructing a judicial opinion, cannot be presumed and should not be neglected. This was one general reaction to the symposium by its judicial participants. Sessions that focused on developments in European Union law and debates in European jurisprudential practice also seem premature for judges still struggling to understand the norms of their own constitution, not to mention those from the European Convention. Such difficulties point to the problems which still exist with legal education in post-socialist states like Estonia. Finally, I noted a general perception among the Estonian judges (and some law students that I encountered at Tartu) that American courts are very political, and very much involved in policy-making from their perspective. They hesitated to condemn this and sought rather to define such behavior as not part of their tradition. (Even while some admitted that their own Constitutional Review Chamber occasionally behaves this way.) Thus, arguments about the social or political context of judging, or the relationship between judicial impact and exertions of legal policy, or the way that political factors influence judicial decision making, that are drawn from study of the U.S. judicial experience must be presented carefully, using locally-specific circumstances and referents. Without such a framework, the insights of U.S. judicial scholars risk being dismissed as "American," and not useful or relevant to non-U.S. courts and their judges.

In a way, the above is the challenge we also face in applying our U.S.-derived models of the judicial process to an understanding of the judicial process from a comparative politics perspective.[2] With this in mind and based on my limited experience, I would submit the following assessment as to how judicial specialists may contribute to future judicial training efforts. Our field's "rejuvenated" study of comparative judicial politics makes us more aware of what aspects of the American experience are relevant to judicial practice in the non-U.S. context. The "comparative advantage" here is to broaden our conception of "the judicial process:" what it consists in and what it *need not* consist in to function effectively as part of political society. Moreover, comparative court study makes us more sensitive to what aspects of our theories about judicial decision making and its impact have practical application for judges still constructing their institutional role and norms. Political scientists we are, and political scientists we remain when asked to contribute our insights into the judicial function. Yet in a period when the discipline is again critically self-examining its connection to politics in the "real world," judicial specialists who understand courts as situated in institutionally-defined, policy-making space*s* have the potential to contribute to the comparative turn to a "realistic jurisprudence"[3]—at the levels of theory and practice.

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Endnotes

1 I am happy to supply copies of the full conference agenda and the PowerPoint version of my April 2002 presentation to the judicial training symposium to interested colleagues.

2 See Kim Lane Scheppele's "Comment," part of "'Comparative Advantage:' Responses from the Field," in the Spring 2000 issue of this newsletter. She cautions against the "hit-and-run scholarship" that is "unfortunately frequent among born-again comparativists."

3 This term comes from Karl Llewellyn's 1930 article from the *Columbia Law Review*, " Realistic Jurisprudence—the Next Step." The proto-behavioralist stance of Llewellyn's legal realism is well-known among law and courts scholars. His urging that law be thought of in terms of "real rules" that are the "practices of courts," wherein law is "an engine having purposes, not values in itself," is what he terms "realistic jurisprudence." American legal realism, once accused of "subvert[ing] the commonweal" much as is current attitudinally-based judicial research (see Segal and Spaeth 1996: 1080), may seem a rather controversial theory to imply exporting to judicial systems in consolidating democracies. I am not suggesting that judicial specialists *should* export it, either in their scholarship or their more participatory activities with respect to non-U.S. courts—only that a realistic, socially- and contextually-informed view of law and judging forms part of our perspective as U.S. political scientists of law and courts. Interestingly, from a comparativist point of view, certain affinities exist between the ideas of American legal realism and, for example, German legal doctrine. See Eberle (2002): 257-8.

BOOKS TO WATCH FOR

HELENA SILVERSTEIN
LAFAYETTE COLLEGE

How do lawyers think about and make the important decisions that constitute the day-to-day practice of law? *Divorce Lawyers at Work: Varieties of Professionalism in Practice* (Oxford University Press) explores that question through an extensive empirical study of lawyers practicing divorce law in New England. Written by **Lynn Mather** (Dartmouth College), **Craig A. McEwen** (Bowdoin College), and **Richard J. Maiman** (University of Southern Maine), the book emphasizes the importance of "collegial control" in shaping lawyers' decisions and identifies a variety of "communities of practice" that serve as key agents of that control. *Divorce Lawyers at Work* is this year's recipient of the APSA's C. Herman Pritchett Award for the best book published in the Law and Courts field.

Forthcoming in August 2002, from New York University Press is **Paul A. Passavant's** (Hobart and William Smith Colleges) *No Escape: Freedom of Speech and the Paradox of Rights*. Through a series of richly empirical historical case studies, this book challenges the conventional view of liberal legal rights as universal legal "trumps" for the abstract individual against forms of social group oppression such as nationalism. By examining controversies over freedom of speech in the United States—including the political scientist John Burgess's criticisms of Woodrow Wilson's World War I censorship, the Rushdie affair, hate speech codes on university campuses, and recent regulations on nude dancing—Passavant finds that liberal rights are not necessarily antithetical to nationalism. Instead, he finds that liberal government can actually function to reproduce national forms of power.

In *Popular Justice: Presidential Prestige and Executive Success in the Supreme Court*, **Jeff Yates** (University of Georgia) explores the interaction between the presidency and the United States Supreme Court in the modern era. The book assesses the fortunes of chief executives before the Court and makes the argument that success is impacted by the degree of public prestige a president experiences while in office. Three discrete situations are quantitatively examined: cases involving the president's formal constitutional and statutory powers, those involving federal administrative agencies, and those that decide substantive policy issues. Yates concludes that, while other factors do exert their own influence, presidential power with the Court does depend, to a surprising degree, on the executive's current political popularity. *Popular Justice* is forthcoming from SUNY Press.

The Japanese Adversary System in Context: Controversies and Comparisons, edited by **Malcolm M. Feeley** (UC Berkeley) and **Setsuo Miyazawa** (Waseda University) will soon be published in London by Palgrave [Macmillan] Press, as part of its series, *Advances in Political Science: An International Series*. The book contains theoretical essays on the adversary process, adversarial legalism, as well as historical and empirical studies on selected issues, including: cooperation between defense and prosecution, the role of defense lawyers, legal aid lawyers, the right to silence, confessions, plea bargaining, juvenile justice, judicial independence, and adversarial and evidentiary styles. Most (though not all) of the articles focus on Japan and use the American and Continental systems for purposes of juxtaposition and contrast, and some are sustained comparative analyses. Contributors include Malcolm Feeley, Setsuo Miyazawa, Robert Kagan, Daniel Foote, Masayuyki Murayama, Roger Hanson, Brian Ostron, Ann Jones, Satoru Shinomiya, Takashi Takano, David Johnson, Masahito Inouye, Toshikuni Murai, Richard Leo, Nobuyoshi Araki, and Gordon Van Kessel.

Scheduled for release by University of Michigan Press in October 2002 is *From Noose to Needle: Capital Punishment and the Late Liberal State*, by **Timothy V. Kaufman-Osborn** (Whitman College). This volume contributes a new perspective on the controversial topic of capital punishment by asking how the conduct of state killing reveals and recapitulates broader contradictions in the contemporary liberal state, especially but not exclusively in the United States. Moving beyond more familiar legal and sociological approaches to this question, Kaufman-Osborn asks why executions no longer take the form of public spectacles; why certain methods of execution (e.g., the noose and electrocution) have now come to be considered barbaric; why the liberal state must strictly segregate the imposition of a death sentence, whether by judge or jury, from its actual infliction, whether by a state official or an ordinary citizen; why women are so infrequently sentenced to death and executed; how the state seeks to hide the suffering inflicted by capital punishment through its endorsement of a bio-

medical conception of pain; how the nearly-universal shift to lethal injection poses problems for the late liberal state by confusing its punitive and welfare responsibilities; etc. Drawing on a wide range of theoretical sources, Kaufman-Osborn examines specific recent executions, including that of Westley Allan Dodd and Charles Campbell in Washington, Karla Faye Tucker in Texas, and Allen Lee Davis in Florida.

Due out this summer is the third edition of *Judicial Process and Judicial Policymaking* by **G. Alan Tarr** (Rutgers University, Camden). Updated to include recent legal developments and scholarship, the book includes a new section covering drug courts. Published by Wadsworth, the volume serves as a basic text for courses dealing with the judicial process, courts in the political process, and the politics of justice.

Real Choices: Feminism, Freedom, and the Limits of Law, by **Beth Kiyoko Jamieson** (Princeton University), is now available from Penn State Press. Grounded in the history of political thought, and illuminated by legal studies and feminist theory, this book offers a new approach to thinking about liberty in the wake of decades of criticism of liberalism from feminists, communitarians, and conservatives alike. Fundamental to this approach is the author's argument that liberty and equality are not inconsistent values and that political theory would do well to abandon the dichotomy between "negative" and "positive" liberty. The principles of liberty Jamieson proposes—identity, privacy, and agency—are not meant to be rigid or universal but rather contextualist and contingent. To demonstrate these principles, she offers a series of three case studies of legal conflicts: for identity, heightened constitutional protection for homosexuals; for privacy, regulation of assisted reproduction such as surrogacy and sperm donation; and for agency, the rights and responsibilities of battered women.

Forthcoming in August 2002 from Carolina Academic Press is *Money, Politics, and Campaign Finance Reform Law in the States*. Written by **David Schultz** (Hamline University), the book examines the impact campaign finance reform laws have in addressing the role money plays in politics and governance. This examination is based on in-depth cases studies of 12 states and several local governments.

It is not always clear what actually constitutes "sexual harassment" or how it differs from other types of discrimination based on gender. Often, what is thought of as sexual harassment by one person might be considered simply rude or immature behavior by another. While sexual harassment is a major issue in American workplaces and schools, there is no bona fide consensus as to what sexual harassment really is. *Sexual Harassment: Cases, Case Studies, and Commentary,* by **Paul I. Weizer** (Fitchburg State College), is designed to bring together material on an issue that is currently troubling most workplaces and schools in the United States: the problem of how to deal with a distressing increase in sexual harassment claims in all areas of American life. The book does not attempt to answer all of the questions of how best to prevent sexual harassment while preserving the rights of the accused; rather, it is designed to provide readers with a variety of material to discover these answers for themselves. *Sexual Harassment* is now available from Peter Lang.

Due out this summer through the SUNY Series in American Constitutionalism is *Friends of the Court: The Privileging of Interest Group Litigants in Canada*, by **Ian Brodie** (University of Western Ontario). In the first book-length study of interest group litigation in Canada, *Friends of the Court* traces the Canadian Supreme Court's ever-changing relationship with interest groups since the 1970s. After explaining how the Court was pressured to welcome more interest groups in the late 1980s, Brodie introduces a new theory of political status describing how the Court privileges certain groups over others. By uncovering the role of the state in encouraging and facilitating litigation, this book challenges the idea that interest group litigation in Canada is a grassroots phenomenon.

In *Who Qualifies for Rights? Homelessness, Mental Illness, and Civil Commitment*, **Judith Lynn Failer** (Indiana University, Bloomington) explores the theoretical, legal, and practical justifications for limiting the rights of people who are involuntarily hospitalized. By looking at the reasons why law and theory say that some people diagnosed with mental illnesses no longer qualify for the full complement of constitutional rights, the author pieces together basic assumptions about who does, and who should, qualify for rights. Failer concludes that there is insufficient guidance for deciding who qualifies for regular rights and full citizenship. The author calls for the use of flexible standards to determine who should and who does qualify for rights. *Who Qualifies for Rights?* will be available this summer from Cornell University Press.

Alternative Dispute Resolution in Civil Justice Systems, by **Roger E. Hartley** (University of Arizona) is slated for publication this September by LFB Scholarly Press. Studying a single court system in Georgia, Hartley examines the introduction of alternative dispute resolution and the effects of mediation in civil trial courts. Attorneys supported the introduction of mediation to consolidate control of the legal process and to add it to their practices, and mediation gave judges flexibility to weed out minor cases and process others

more quickly. However, Hartley finds that these changes were not so great as to put a dent in settlement or trial rates. The author concludes that while changes in court procedures have effects, researchers need to examine the behavior of actors in depth in order to discover these effects.

In *Neglected Policies: Constitutional Law and Legal Commentary as Civic Education*, **Ira L. Strauber** (Grinnell College) challenges scholars and critics of constitutional jurisprudence to think differently about the Constitution and its interpretation. He argues that important aspects of law, policies, and politics are neglected because legal formalisms, philosophical theories, the reasoning of litigators and judges, and even the role of the courts are too often taken for granted. Strauber advocates an alternative approach he calls "agnostic skepticism," which interrogates all received jurisprudential notions, abandoning the search for "right answers" to legal questions. Through studies of cases involving pornography, adoption custody battles, flag burning, federalism, and environmental politics, the book argues that attention be paid to the context-specific, circumstantial social facts relevant to given controversies. Strauber contends that training in skeptical critique will enable a new kind of civic education and culture—one in which citizens are increasingly tolerant of the ambiguities and contradictions inherent in the law and politics of a pluralistic society. *Neglected Policies* is due to be published this September from Duke University Press.

Now available in the U.S. for the first time is **Roscoe Pound's**, *The Ideal Element in Law* (Liberty Fund). This volume presents a series of lectures delivered at the University of Calcutta in 1948 by Pound, former dean of Harvard Law School. In these lectures, Pound criticized virtually every modern mode of interpreting the law because he believed the administration of justice had lost its grounding and recourse to enduring ideals. Pound argued that the theme of justice grounded in enduring ideals is critical for America. He viewed American courts as relying on sociological theories, political ends, or other objectives, and criticized the courts for divorcing the practice of law from the rule of law and the rule of law from the enduring ideal of law itself.

Through much of the 1990s, a newly hatched snake wreaked political havoc in the South. When North Carolina gained a seat in Congress following the 1990 census, it sought to rectify a long-standing failure to represent African American voters by creating two "majority-minority" voting districts. One of these snaked along Interstate 85 for nearly two hundred miles, and was ridiculed by many as one of the least compact legislative districts ever proposed. From 1993 to 2001, three intertwined cases went before the Supreme Court that decided how far a state could go in establishing voting districts along racial lines. In *Race and Redistricting: The Shaw-Cromartie Cases*, Supreme Court biographer **Tinsley E. Yarbrough** (East Carolina University) examines these closely linked landmark cases to show how the Court addressed the constitutionality of redistricting within the volatile contexts of civil rights and partisan politics. Drawing heavily on court records and on interviews with attorneys on both sides of the litigation, Yarbrough shows the significant impact these cases have had on election law and the fascinating interplay of law, politics, and human conflict that the dispute generated. *Race and Redistricting* will be published in October by The University Press of Kansas.

Send Information About Your Forthcoming Work to Helena Silverstein at: silversh@lafayette.edu

Section News and Awards

APSA Annual Business Meeting

The Annual Business Meeting of the American Political Science Association Law and Courts Section will be held from 5:30-6:30, in the Sheraton Boston Hotel (room announced in APSA Program).

The Law and Courts Reception will be held immediately after the Business Meeting, from 6:30-8:00 p.m, Friday, August 30, 2002 in the Independence East Room of the Sheraton Boston. Please come and honor your new section officers and the 2002 award winners!

Nominees for Officers of the Law and Courts Organized Section for 2002-2003

Succeeding as Chair - Paul J. Wahlbeck, George Washington University
Chair-Elect Nominee - Sue Davis, University of Delaware
Secretary Treasurer Nominee: Christine Harrington, New York University

Executive Committee Members
Nominees:
Malcolm Feeley, University of California - Berkeley
Elliott Slotnick, Ohio State University

Continuing Members:
Mark Graber (2001-2003), University of Maryland
Susan Sterett (2001-2003), University of Denver
Don Songer (2001-2003), University of South Carolina

The C. Herman Pritchett Award

The C. Herman Pritchett award is given annually for the best book on law and courts written by a political scientist and published the previous year. **Lynn Mather**, **Craig A. McEwen**, and **Richard J. Maiman** were awarded the Pritchett for their co-authored work: Divorce Lawyers At Work: Varieties of Professionalism at Practice, published by Oxford University Press, 2001.
(for a review see "Books to Watch For" column, page 18)

Wadsworth Publishing Award

Jeffrey Segal of SUNY Stony Brook is the winner of this year's Wadsworth Publishing Award. The Wadsworth Publishing Award is given annually for a book or journal article, 10 years or older, that has made a lasting impression on the field of law and courts. Segalwon the award for his 1984 piece, "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981." *American Political Science Review* 78: 891-900.

Teaching and Mentoring Award

The Teaching and Mentoring Award recognizes innovation in instruction in law and courts. The award is supported by a grant from the Division on Public Education of the American Bar Association. Professor **Elliott Slotnick**, Ohio State University, is the recipient of this year's award.

Corwin Award for Dissertation of the Year

The winner of the APSA's 2002 Edward S. Corwin award for the best doctoral dissertation in the field of public law is **Nancy Scherer** for: *"Making a Point: The Politicization of Lower Federal Court Appointments in the Modern Political Era."* Her dissertation advisor was Gerald N. Rosenberg of the University of Chicago. The nominating committee consisted of: Lee Epstein, Washington University, chair; Malcolm Feeley, University of California, Berkeley; and Keith Whittington, Princeton University.

American Judicature Society Award

The American Judicature Society Award goes to **Timothy Johnson** (University of Minnesota), **James Spriggs II** (University of California, Davis), and **Paul Wahlbeck** (George Washington University) 2001 for their paper, "Passing and Sophisticated Voting on the U.S. Supreme Court," which was presented at the Annual Meeting of the American Political Science Association, San Francisco. The American Judicature Society Award is given annually for the best paper on law and courts presented at the previous year's annual meetings of the American, Midwest, Northeastern, Southern, Southwestern, or Western Political Science Associations.

Lifetime Achievement Award

The 2002 Lifetime Achievement Award has been presented to **Walter Berns**, currently with the American Enterprise Institute. The Lifetime Achievement Award honors a distinguished career of scholarly achievement and service to the Law and Courts field.

McGraw Hill Award

The McGraw Hill Award recognizes the best journal article on law and courts written by a political scientist and published during the calendar year 2001. This year **Melinda Gann Hall** received the award for her article, "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *Ameican Political Science Review* 95 (June) 315-330.

Announcements and Calls for Papers

Law and Politcs Book Review Editor Named

Pending section approval at APSA, the new Law and Politics Book Review editor will be:

Professor Wayne McIntosh
Department of Government & Politics
University of Maryland
College Park, MD 20742
phone: 301.405.4156 or 4134
fax: 301.314.9690
email: wmcintosh@gvpt.umd.edu

Program for Law and Judicial Politics Website Updated

Since we have been experiencing difficulties with the old server, the Program for Law and Judicial Politics at Michigan State University has moved its website to a new server. Those interested in downloading the Supreme Court databases, the Appeals Court dataset or accessing other areas of the website should visit the new location at:

www.polisci.msu.edu/pljp

Please update your links and address books accordingly

For Those Among Us Who Do Pre-Law Advising

Are you current in the information that you are providing to students? A lot has happened in law school admissions over the past year: applications are up an average of 18% percent nationwide, June LSAT takers are also up about 18% from last year, there's little movement off waitlists this summer, overenrollment at some schools, and more. The upcoming year is expected to be equally if not more challenging for undergraduates, who find themselves competing in a very large pool of older and more experienced applicants.

If any of this is news to you, consider updating your information and skills at the APSA's short course, The Political Scientist as Pre-Law Advisor, which will be held prior to the annual meeting on Wednesday, August 28th. It is a full day course that will be hosted by two local law schools, Northeastern and Suffolk. It is an excellent introduction for new advisors, and an equally useful refresher for more seasoned ones.

The cost is $35 for faculty and $10 for graduate students, lunch included. Please send registration to Dr. Frank Homer, University of Scranton, Scranton, PA, 18510. If you want more information, please feel free to contact either Professor Homer or Kathy Uradnik at St. Cloud State University.

Short Course on Comparative Constitutional Development

The Short Course is inspired by my wearing two hats this year, President of the Politics and History Section, and organizer of the panels on Constitutional Law and Jurisprudence. The first role reinforced my sense that "American political development" people and "courts" scholars do not overlap as much as they should, but that interesting efforts to put courts more fully into APD studies are afoot. The second reinforced my sense that questions of whether, how and why constitutional courts are being created or gaining new power in many countries are central to current public law scholarship.

Neal Tate's Short Course explored many aspects of the latter issues very well last year. But that work made it seem all the more timely to bring into discussion scholars who are integrating judicial studies with work in American political development, and scholars who are doing related, more historical-institutional work on constitutional courts in comparative perspective.

We'll discuss those two topics on two consecutive panels, the first more American-centered, the second more virulently un-American. The panelists now are:

Panel 1: Putting Courts into American Political Development
Keith Whittington, Princeton University
Mark Graber, University of Maryland
Rogers Smith, University of Pennsylvania
Sally Kenney, University of Minnesota

Panel 2: Courts and Comparative Constitutional Development
Don Kommers, University of Notre Dame
Kim Lane Scheppele, University of Pennsylvania Law
Lisa Hilbank, Woodrow Wilson School
Ran Hirschl, University of Toronto

The short course will be held Wednesday, Sept. 28, 1 pm, at whatever location the APSA gives us. To make enrollment attractive, especially to graduate students, we're charging faculty $10, graduate students $1. You can pay in advance or at the door. Enrollments and payments should go to the Politics and History Section Secretary, Dave Roberstson. His e-mail is daverobertson@umsl.edu. His address is:

Professor Dave Robertson
Department of Political Science
University of Missouri, St. Louis
8001 Natural Bridge Rd
St. Louis MO 63121-4499

For any substantive questions/comments/suggestions, please contact Rogers Smith at rogerss@sas.upenn.edu

Washington University Summer Institute
on the Empirical Implications of Theoretical Models

A Program for Advanced Graduate Students and Junior Faculty on the Methodological Challenges Posed by Theoretical Models

Washington University in St. Louis will hold its first summer institute on the Empirical Implications of Theoretical Models (EITM) in June 2003. The institute focuses on the methodological challenges posed by theoretical models. The institute is designed for advanced graduate students and junior faculty. Summer institutes will be held in June of 2003, 2004, 2005, and 2006.

Participants will join four one-week seminars—a basic seminar and three advanced seminars. The Summer Institute program includes:

(1) a theoretical and methodological foundations seminar;
(2) seminars on the application of game theory, spatial models, quantal response models, and behavioral models;
(3) applied seminars on coalition theories, theories of judicial decision making, and theories of legislative politics; and
(4) seminars on quantitative, experimental, and field methods.

The seminars are conducted by nationally recognized faculty who from universities throughout the country. Up to 25 advanced graduate students and junior faculty will be provided with travel and lodging subsidies each summer.

Application materials will be available online in the near future. The application deadline for the June 2003 summer institute will be in January 2003.

More information about the Washington University EITM Summer Institutes will be available at **http://wc.wustl.edu/eitm.htm**.

To be added to the email list for notices about the program, email **eitm@wc.wustl.edu**.

The summer institutes are sponsored by Washington University's Weidenbaum Center on the Economy, Government, and Public Policy and the Department of Political Science; they are funded by the National Science Foundation.

Conferences and Events

Upcoming Conferences

Conference	Date	Location	Chair
APSA	Aug 29-Sept 1	Boston, MA	Law & Courts Susan Haire cmshaire@arches.uga.edu Con Law & Jurisprudence Rogers M. Smith roserss@sas.upenn.edu
Pacific Northwest PSA	Oct 17-19	Bellevue WA	Julie Novkov novkov@oregon.uoregon.edu
Southern PSA	Nov 6-9	Savannah GA	Rorie Spill spill@csbc.uni.edu
Northeastern PSA	Nov 7-9	Providence RI	Mark Wrighton mark.wrighton@unh.edu
Southwestern PSA	Mar 16-19	San Antonio TX	Laura Langer llanger@u.arizona.edu
Western PSA	Mar 27-29	Denver Co	Keith Whittington kewhitt@princeton.edu
Midwest PSA	April 3-6	Chicago, IL	Isaac Unah University of No Carolina
Justice Studies Association	May 29-31	Albany, NY	Dan Okada bquist@mvcc.edu

2003 World Congress of the International Political Science Association

The 2003 IPSA World Congress will be held in Durban, South Africa, from June 29 to July 4, 2003. Full details on how to participate in the conference are available on the IPSA web site: **www.ipsa.ca** . A summary of the "Theme" for the congress follows. Please plan to join us in Durban for IPSA's first congress on the African continent.
Conveners: Paula D. McClain, Duke University & James L. Gibson, Washington University in St. Louis

Democracy, Tolerance, Justice:challenges for political change

As the dust was settling over the ruins of the Berlin Wall people everywhere shared a moment of wild optimism toward the prospects of a more just and democratic world. In little more than a decade, it has become apparent that democracy may not be all it is reputed to be and, to some, justice seems to recede even as it is pursued. Democratic transitions are not easily consolidated, and past legacies of injustice continue to stand in the way of the best efforts to achieve a future as conducive to justice as to democracy. The theme of the 2003 World Congress asks how peoples can acknowledge, confront the past or, in some instances, put aside the past in order to enjoy a future in which justice, tolerance, & democracy can flourish.

In many parts of the world, the consolidation of democratic change**s** has required addressing the past, in one form or another. This has meant holding former leaders accountable for their actions, prosecuting war crimes committed by both governments and individual citizens, managing the group conflict that many believe has been unleashed by democratization, redistributing land, and paying reparations for past injustices. The process of nation-building is also frequently arrested by the political mobilization of ancient hatreds and collective memory of past calamities. Even stable democracies are facing stronger political and social demands that are predicated on a more robust sense of justice, especially from indigenous peoples and cultural minorities previously subjected to repression. Indeed, the very process of democratization may have contributed to unleashing such demands, as democracy has tended to give voice to previously disempowered groups, while at the same time legitimizing popular demands for justice. A specter is haunting the post-Cold War world – the specter of history.

This process of redressing the past is described as one of reconciliation. Though it has many meanings, the "minimalist" definition of reconciliation involves tolerance; a "maximalist" definition requires some sort of forgiveness as well. Yet, achieving some form of justice is surely necessary before one can move to the stage of forgiveness. Moreover, in many instances, the ultimate goal is justice – even retributive justice – that sometimes makes any prospect for reconciliation precarious. How political systems accommodate demands for justice and reconciliation without sacrificing tolerance and democracy itself is an important challenge for both established and developing democracies.

A wide variety of scholarship fits within this broad umbrella, ranging from micro-level inquiries into whether truth actually contributes to reconciliation to macro-level and historical analyses of intergroup and inter-state relations. Studies of individuals, of groups, of institutions, of polities, and of cultures are welcome, and methodological eclecticism is encouraged, not just tolerated. The 21st Century offers many challenges to established and emerging democracies, and the work of political scientists is central to identifying problems and providing guidance for resolution. The sub-themes under this thematic rubric are:

1. *Reconstructing the Past: The Politics of Remembrance*
2. *Political Tolerance*:
3. *Globalization: Then and Now*
4. *Justice: Contextual, Universal, and Individual*
5. *Race, Ethnicity, and Gender: Concepts, Structure, Institutions, and Attitudes*
6. *New Democracies: Colonial Past and Cultural Values*
7. *Cosmopolitanism, Patriotism, and Citizenship*
8. *Politics of Property, Territory, and the Environment*
9. *Making and Implementing Public Policy*
10. *Terrorism, Conflict, and Human Rights*
11. *Parliaments, Parties, and Elections*
12. Courts and the Justice System

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