LAW AND COURTS

Newsletter of the Law and Courts Section of the American Political Science Association

Winter 1996-97

In this Issue

FROM THE SECTION CHAIR

THOMAS G. WALKER,
EMORY UNIVERSITY

Of the thirty-three APSA organized sections, Law and Courts continues to be the third largest. With 735 members, we trail only the Public Policy and Comparative Politics sections. Our ability to maintain a strong membership base is due to the intellectual strength of our field as well as to the services the Section is able to provide its members. In this issue of **Law and Courts** we are happy to announce three important developments. Each deals with expanding the information and services available to those who study law and courts.

At its meeting in San Francisco, the Section Executive Committee appointed a committee, chaired by Lee Epstein of Washington University, to explore the possibility of creating a Section site on the World Wide Web. Lee developed a plan for such a site, and the Executive Committee authorized her to implement the project. We are delighted that the Website is now operational. See pages 3 and 12-13 for details. It already contains some wonderful information, and promises to develop into a major Section resource.

Also at the San Francisco meeting, the Executive Council invited Neal Tate of the University of North Texas to assume the editorship of **The Law and Politics Book Review**. Neal accepted our offer. Several years ago Herbert Jacob initiated this on-line book review service as a way of providing information to the profession in a fast and easily accessible manner. We are very happy that the book review project that was so important to Herb and has become so significant to our field is now continuing under Neal's direction.

The third development was initiated by Howard Gillman of the University of Southern California. Howard presented the Executive Committee with a plan to create a law and courts listserve that would allow judicial scholars to engage in electronic discussion and information exchange on matters of professional interest. The Executive Committee endorsed the idea enthusiastically. The listserve is now up and running. Information about the project and how you can join appears on page 3.

A special note of thanks goes out to Lee, Neal, and Howard, and to the members of editorial boards that each has assembled to provide advice and set policy. It is through their efforts that the Law and Courts Section is becoming a leader in providing electronic information to its membership. Please take advantage of the material made available by these services.

Finally, a word about awards. Each year we honor our members by acknowledging the very best of their scholarly accomplishments. At the 1997 APSA meeting in Washington, we will issue four important awards: the Law and Courts Lifetime Achievement Award honoring a career of outstanding scholarship and service, the C. Herman Pritchett Award for the best book published in 1996, the American Judicature Society Award for the best paper presented by a faculty member at the 1996 annual meeting, and the CQ Press Award for the best paper written by a graduate student. Details about these awards and the committee members who will judge the various competitions

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Instructions to Contributors

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 issues. 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:

Sue Davis, Editor
Law and Courts
Department of Political Science
University of Delaware
Newark, DE 19716
Phone: (302) 831-1934
FAX: 302 831-4452
E-Mail: suedavis@strauss.udel.edu

Articles, Notes, and Commentary

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).

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 posible. Finally, authors should notify **Law and Courts** of publication of manuscripts.

New From the Section

The Law and Courts Website

http://www.artsci.wustl.edu/~polisci/lawcourt.html

Visit Today

For details see pages 12-13 of this issue of **Law and Courts**.

The Law and Courts Discussion List

LAWCOURTS-L

Designed to promote discussion and the exchange of information among scholars interested in the study of law and courts

To join the conversation send an e-mail to LISTPROC@USC.EDU.
In the body of the message write:

SUBSCRIBE LAWCOURTS-L <your name>

Join Today!

LAWCOURTS-L is moderated by Howard Gillman (gillman@rcf.usc.edu)

The Law and Politics Book Review

The World Wide Web site for the Law and Politics Book Review has been reestablished at the University of North Texas, the home of the new editor, Neal Tate:

http://www.psci.unt.edu/lpbr/

All reviews should be accessible on the site. For now the web site functions as it did before, as an alphabetized archive of published reviews. It will be upgraded to increase its usefulness over the coming months. Please send suggestions for improvements to C. Neal Tate (Neal_Tate@unt.edu)

REMEMBERING HERB JACOB

Herb Jacob died of cancer on August 29, 1996 at his home in Evanston, Illinois. He was 63. Many of us knew Herb through his books, which included *Justice in America* (1962), *Silent Revolution: The Transformation of Divorce Law in the United States* (1988), and most recently, *Courts, Law and Politics in Comparative Perspective* (1996). In 1991, Herb created **The Law and Politics Book Review**, the electronic journal that most of us read on a regular basis.

Professor of Political Science and Director of the Law and Social Science Program at the Center for Urban Affairs and Policy Research at Northwestern University, Herb was a founding member and one-time president of the Law and Society Association.

Herb left his position at the University of Wisconsin-Madison to join the faculty at Northwestern in 1969. He received his undergraduate degree from Harvard University in 1954 and his Ph.D. from Yale in 1960.

Colleagues and friends provided the following comments.

MARIE PROVINE

SYRACUSE UNIVERSITY

It is hard to lose Herb Jacob. He did much for all of us who populate the law and courts archipelago. "The Law and Courts Book Review" comes to mind first, probably because it kept arriving in the e-mail with such consistency and was so valuable as a resource. Clearly, Herb was also an intellectual leader in his own right. His perspective on the study of trial courts has shaped the literature and will continue to do so. But I expect what I will miss most is Herb as a loving, giving human being. It was pure pleasure to work with him recently on what we collaborators called the comparative courts book (published this year as *Courts, Law and Politics in Comparative Perspective* by Yale University Press). He pushed the project forward in the gentlest possible way and kept all four of us contributors (Erhard Blankenburg, Herbert Kritzer, Joe Sanders, and myself) engaged in developing the basic structure of the project as well as our own individual chapters. His administrative skill was impressive. Even more impressive was his generosity with us. He insisted on sharing everything equally, even though he did far more than the rest of us at every stage. He wrote the most, edited the most, did all of the negotiating, and even had us over to his house to work on the book.

Seeing the way Herb worked with us was an inspiration. I determined as I got to know him better that I would try to be more like him as a scholar and person.

And now he is gone. And in his leaving he was as modest and unassuming as he was when he was well. His death is a huge loss that we will feel for a long time. I am going to mourn this loss by celebrating what I loved about Herb, and by trying to keep his approach to life alive in my own work.

BERT KRITZER

UNIVERSITY OF WISCONSIN-MADISON

In 1972 when I first began looking at possible dissertation topics, it was quick and easy to cover much of the core literature on trial courts by political scientists: read Herb Jacob's work (*Debtors in Court* and the first edition of *Justice in America*). Herb's books and articles set an extremely high standard for anyone who wanted to contribute to the political science literature on trial courts. It was some years later that I got to know Herb, when I was introduced to him through a panel at the 1978 APSA meeting organized by Peter Nardulli.

If there was anything better than Herb's books, it was Herb himself. When Wisconsin was able to lure him back in the early 1980s, I was delighted, and then extremely disappointed when he decided after less than a year that for personal reasons, Madison would not work for him. During his brief tenure in Madison, I came to fully appreciate Herb's critical insights and his ability to support and encourage colleagues. I was in despair over how to proceed on work from a huge collaborative

project which had essentially disintegrated, leaving me with huge quantities of data, and no one with whom to work . Herb encouraged me to rethink the way I was approaching the materials, and the ultimate result was not one, but two books, published by major university presses. I doubt that I would have pursued this work to completion without Herb's encouragement.

After Herb left Madison, our friendship continued to grow, and my respect for him continued to grow. About four years ago, Herb called to ask if I would be interested in collaborating on a project to produce a book on comparative judicial politics. I agreed, and there followed my one collaboration with him (along with Marie Provine, Erhard Blankenberg, and Joe Sanders), resulting in a book published by Yale University Press. Working with Herb was a wonderful professional and intellectual experience. I had looked forward to future opportunities of working with him, and I regret that neither I nor others will have the chance to learn from this pioneer in our subfield.

STUART SCHEINGOLD
UNIVERSITY OF WASHINGTON

In his own unassuming and unpretentious way Herb Jacob was frequently well ahead of the rest of us. When he told me, as head of the organized section, about his plan for a cyberspace book review, I was skeptical—as were others with whom I spoke. To some extent against my "better judgment," I did what I could to have the organized section support **The Law and Politics Book Review**. Needless to say, I am no longer a skeptic. Is there a more useful source of information on books in our field? Indeed, is there a more useful service that the organized section provides for its members? Not for my money there isn't.

Herb was also a founding member and past president of the Law and Society Association—another immeasurably important contribution to those of us who study law and politics. After almost 30 years, it is difficult to recall, much less to fully appreciate, either the meager beginnings of the Law and Society Association or the energy, vision and determination required of Herb and a handful of others to make the Association a success.

In intellectual terms, as well, Herb Jacob was a leader—systematically pursuing the relationships between law and politics in meticulously conducted empirical research and in widely used texts. He continually stretched the boundaries of the field. I recall work he did on legal culture back in the 1960s. In subsequent years Herb proceeded to criminal justice, debtor and creditor litigation, and family law. In his last book, he moved beyond the U.S. to Europe— thus, in a sense, coming full circle to his published dissertation on German administrative law.

It is not possible in this brief note even to begin to do justice to Herb's intellectual contribution, but when one puts together the scope, the rigor, the clarity, and the ingenuity—not to mention—the sheer productivity of Herb's contribution to law and society research he is, in my judgment, without peer.

But none of these professional accomplishments go to the real measure of this wonderful man. I was always in awe of his uncanny ability to be self- confident and at peace with himself, yet never to exhibit a trace of arrogance. And Herb led an extremely full life. He was a loving and devoted husband and father. He had serious cultural interests and never, to my knowledge, missed an opportunity to search out culture in a convention city. Judaism was, I believe, an important source of strength and comfort to Herb, the son of a rabbi and a child of the Holocaust.

Somehow, he managed to keep all of these dimensions of his life in balance. Nor did it ever appear, at least from the outside looking in, to be a juggling act. But when all is said and done, the two traits that epitomized Herb for me were his absolute integrity and his unflagging generosity of spirit. If there is a better man than Herb, I have yet to meet him.

The New Institutionalism, Part I

More and Less Than Strategy: Some Advantages to Interpretive Institutionalism in the Analysis of Judicial Politics

Howard Gillman, *University of Southern California* *

For decades many behavioralists insisted that the best scientific procedures known to the social sciences convincingly and repeatedly demonstrated that judges are properly viewed as policymakers who were remarkably free to make decisions on the basis of their political ideologies or "attitudes" (Segal and Spaeth 1993). From this vantage point, the only thing we needed to know about a judge's institutional context was that it was apparently quite conducive to the unconstrained promotion of personal political agendas, and if this was believed, then it followed that scholars should focus their attention on individual variables (associated with the characteristics of judges) rather than institutional ones.

Of course, throughout the reign of the attitudinal model there were scholars who questioned the assumption that institutional arrangements and historical contexts played little role in shaping or constraining the presumptive desire of judges to indulge their personal preferences. Some emphasized the effects of legal discourse on judicial attitudes and behavior (Brigham 1978 and 1987; Harris 1982; Mendelson 1963 and 1964) while others attempted to situate Supreme Court decisionmaking in a larger structure of political or social power (Dahl 1957; McCloskey 1960; Miller 1968; Shapiro 1964). Now, thanks to a number of developments—including March and Olsen's (1984 and 1989) brief on behalf of "the new institutionalism," Smith's (1988) argument for why the new institutionalism should become "the future of public law," and the rising popularity of institutional analysis among students of American political development, comparative politics, and historical sociology (Orren and Skowronek 1994; Steinmo, Thelen, and Longstreth 1992; Ostrom 1995)—we are finding that many law-and-courts scholars have begun to shift their focus away from the longstanding question of how institutions are affected by the personal characteristics of judges and toward the question of how judges are affected by the institutional characteristics within which they are embedded. It may be too early to declare that we have arrived at a "post-attitudinal" moment in public-law scholarship, but despite some attempts to disparage the approach (Gates 1991; Gibson 1991) the accumulated evidence does suggest that there is an increasing consensus about the advantages of treating courts as institutions rather than as platforms for the display of individual attitudes.

Within this consensus, however, are some disagreements over the nature of institutional analysis. One commentator has identified at least three camps within the new institutionalism (Koelble 1995)—rational choice, sociological, and historical institutionalist—while others have configured the literature so that it is distributed among four categories constructed on the basis of whether researchers are using formal or informal methods and whether they are examining formal or informal institutions (Ethington and McDonagh 1995). Other permutations are also imaginable (see Heclo 1994), but for purposes of this brief discussion I would just like to draw attention to two approaches—rational choice institutionalism, a.k.a., "the strategic approach," and interpretive-historical institutionalism—and then say some nice things on behalf of the latter.

In singing the praises of interpretive institutional analysis I do not mean to recommend against the use of rational choice or positive political theory (PPT) in the study of institutions (also referred to as the Positive Theory of Institutions or PTI [Orren and Skowronek 1994]). It is obvious that there have been times when judges have made adjustments to their preferred course of action after anticipating how rivals might respond, and if one's approach to social inquiry is appropriately question-driven rather than method-driven then this sort of strategic behavior may be usefully illuminated by the assumptions and metaphors of game theory. Of course, one does not need the distinctive language of rational choice to explain how a person who prefers one course of action may find herself in a situation in which it appears rational to pursue a less-desirable course of action; adolescents understood the dynamics of "Chicken" before strategists started modeling it, and historians were describing strategic behavior by judges long before the advent of PTI. Still, when confronted with a strategic interaction there is certainly no harm in conveying it using the stylized conventions of rational choice. Moreover, given the current Supreme Court's rather heartless approach to prisoner's rights, there may even be something modestly heartwarming about viewing the justices as occasionally caught in their own Prisoner's Dilemma.

My case is not premised on an argument about inherent problems with PPT. Rather, I want to recommend that we conceptualize institutional politics as both more and less than mere strategic behavior. More specifically, reducing institutional approaches to an analysis of the rules that shape short-term strategic decisionmaking risks problems of under-inclusiveness and over-inclusiveness: it may be under-inclusive to the extent that it fails to account for important features of institutional politics—such as the possibility that institutional

norms may shape or constitute the preferences and interests of officeholders (thus making preference-formation endogenous to the analysis rather than exogenous) and that this may include instilling in them the motivation of duty and professional responsibility (which may combat or supplant the impulse to maximize personal preferences)—and it is over-inclusive in the sense that it tends to conflate any context of strategic decisionmaking with the presence of "institutional" constraints and opportunities.

The problem of over- and under-inclusiveness arises when rational choice theorists define institutions in a way that makes them essentially equivalent to any game-theoretical situation: institutions are viewed as a structure of formal or informal rules that shape the strategic calculations of actors who are self-consciously pursuing a set of presumably fixed, exogenously-determined, short-term preferences (Knight 1992); in other words, institutional settings establish bargaining situations, rules for decisionmaking, or "parameters of choice" (Ethington and McDonagh 1995:89), and thus require rational actors to settle for "the highest ranked element in the feasible set" (ibid., citing Elster 1986:4; see also Aldrich 1994; Riker 1986; Shepsle 1989). From this vantage point it may be assumed that federal judges want to promote their policy preferences but it is also recognized that they may have to mitigate those preferences after surveying an institutional terrain that includes (for example) the need to secure a majority, an expectation that they pay homage to precedent, and the possibility that competing policymakers may try to overturn their decisions or remove them from office (Epstein and Knight 1995 and 1996; Eskridge 1991a and 1991b; Maltzman and Wahlbeck 1996; Murphy 1964).

Now, as an intellectual exercise it is certainly possible to define institutions in purely strategic terms; after all, if Ayn Rand (1965) can redescribe all acts of love, charity, and altruism as species of selfishness then it should not be difficult to redescribe all institutional behavior as a species of strategic self-promotion. Advocates of economic analysis often take pride in how they are able to take features of social life that are not typically experienced as involving the rational pursuit of self-interest (e.g., marriage, criminal activity) and show how it is possible to characterize them as wholly strategic. Interpretivists would point out that what makes this exercise possible is that concepts like "rationality" and "interest" have literally no content apart from specified contexts; as empty vessels, once embedded in particular contexts, they can be filled with any choice a person makes, and through this process one might funnel the vast array of possible human motivations into a single motivational category. Still, it is probably fair to assume that most powerholders are in the habit of thinking strategically at least some of the time, and as a result these thought-experiments can be quite illuminating (or at least provocative) when applied to decisionmaking within political institutions.

If it is sometimes useful to adopt a rational-choice approach to institutional behavior, then one can only object to the PTI definition of "institution" on the grounds that it (a) represents an unnecessary duplication of definitions (by making the concept of "institution" identical to the idea of rational choice), (b) incorporates activities (such as the game of Chicken) that are only awkwardly characterized as institutional (hence the complaint of over-inclusiveness), and (c) can only be considered useful in those circumstances where it is reasonable to assume that institutional conduct is motivated by the rational pursuit of preference-maximization—and even then it does not help us understand whether institutional forces lead affiliated individuals to pursue some goals rather than others (the complaint of under-inclusiveness). However, to make these objections stick, we need to have in mind a conception of "institution" that better conforms to our conventional understanding and that is capable of capturing the various motivations that institutional actors might possess.

Interpretivists suggest that what makes something a recognizable "institution" is a mission—an identifiable purpose or a shared normative goal that, at a particular historical moment in a particular context, becomes routinized within an identifiable corporate form. All social activities (including a game of Chicken) are purposeful, but some have a more transient purpose and they might be better characterized as games or events. However, when an effort is made to organize a purposeful activity as an ongoing enterprise we tend to think of that activity as having been institutionalized. It may be possible to elaborate other features of generic institutions, but at bottom, what makes it possible to identify an institution like a "court," and what makes a court different than the Federal Reserve or a university, is not a unique strategic terrain but rather a distinctive mission and a sense of how the maintenance of this inevitably-evolving mission interacts with other elements in a given (dynamic) social setting.

For interpretivists, focusing on the institutional characteristics of a court means drawing attention to the structures of meaning that are embedded in that particular corporate form. For example, one might try to distinguish federal judges as political actors by seeing whether they are motivated by a belief that their job is to resolve actual legal disputes in accordance with their best understanding of the relevant law; alternatively, one might explore the extent to which the world view embedded in judicial institutions overlaps with those found in other political institutions, perhaps by suggesting that judges are also part of a class of state managers who are expected to exercise power in a way that is consistent with the goal of maintaining the broad interests of the political system (as well as the authority and legitimacy of their institution). When we examine the effects of these formative norms and assumptions on judicial behavior we are attempting to determine whether these structures of meaning provide these political actors with distinctively institutional world views—world views that are not "personal" in any interesting sense of the term. If so, then one might ask (among other things) whether this leads judges to behave differently than powerholders in other institutional settings.

I emphasize the language of mission so that it will be possible to incorporate certain features of institutional life that are frequently conveyed by people embedded in institutional arrangements (such as political scientists), including: (a) experiences of duty and professional obligation, (b) understandings of shared purpose, (c) concerns about the maintenance of corporate authority or legitimacy, and (d) participation in a routine—each of which suggest the presence of a kind of motivation is that something other than rational, self-interested, strategic, and calculating (Granovetter and Swedberg 1992; see also Powell and DiMaggio [1992] on "embeddedness"). At the same time, though, I do not mean to suggest that the concept of mission precludes the possibility that actors may use institutional settings to pursue private gain. Many institutions, such as stock exchanges or legislatures, are constructed with an understanding that such behavior may be consistent with the goals and purposes of the institution. But while interpretivists acknowledge that some institutions are constructed as strategic terrains, we also assume that many institutions are constructed in order to accomplish other purposes, and in the absence of evidence that institutional actors transform all non-strategic missions into strategic opportunities we think it is safer to adopt a conception of institutions that can accommodate a variety of normative goals (and thus avoid the problem of under-inclusiveness).

In conceptualizing institutions I would give priority to the concept of mission over the presence of rules for a number of reasons. First, some institutional practices are organized, not through the use of formal rules and procedures, by rather through the use of ceremonies, rituals, and other events that are designed to perpetuate an attachment to the mission, and the significance of these events for the maintenance of institutional purposes is not effectively captured by the image of being governed or constrained by a rule or procedure. Also, institutional rules and procedures are usually constructed and revised in service to a more fundamental sense of mission, and we may fail to understand the genesis, significance, and relative importance of these specifications if we focus on them without reference to the central organizing principle. Finally, some formal rules and procedures are designed to distract attention away from the actual mission that may be motivating institutional actors (as might be the case when the trappings of a court are appropriated by powerholders who are committed to advancing party interests), and thus to understand an institution one must begin with an inquiry into the state of mind of participants rather than the presence of discernible rules.

Still, while giving priority to mission as at the core of the identity of an institution, it is nevertheless important to keep in mind that an examination of institutional effects must incorporate what Orren (1995: 98) refers to as "the specifics of institutional contexts," the sometimes-intricate collection of structures, procedures, rules, and customs that characterize the experience of being associated with a particular corporate form. Not only is it important to understand (for example) the idea of a "supreme court" in a particular political system (an idea that will almost certainly be different from place to place as well as across time) but we should also know whether there are formal rules giving justices discretionary control over their docket and whether there are norms that are designed to discourage individual opinion-writing. This is just another way of saying that the articulation of an institutional mission is only the first step in the process of institutionalization.

These Weberian features of institutional life draw attention to some of the mechanisms by which organizations seek to exert influence over the behavior of members; thus, "without denying the importance of the socioeconomic context of courts or the policy motivations of individual judges, [this dimension of] the neo-institutional approach to judicial decision making stresses the independent role of standard operating rules, external decision rules, and organizational structures in defining the values, norms, and interests of the judicial institution" (Hall and Brace 1993: 920; see also Hall and Brace 1992). Nevertheless, what makes it possible to see these constituent elements as parts of a corporate identity is their relationship to a more general purpose. And more often than is imaginable within the confines of rational choice, people who are affiliated with institutions tend to experience rules and procedures, not in terms of how they impact on the pursuit of private interests, but rather in terms of how well they facilitate the achievement of an internalized mission. If this is true, then it would be misleading to view institutional rules and procedures as existing merely to control or channel the behavior of potentially-uncooperative preference-maximizers.

Skowronek (1995: 94) summarizes the interpretivist conception of institutions this way:

> Different institutions may give more or less play to individual interests, but the distinctive criteria of institutional action are official duty and legitimate authority. Called upon to account for their actions or to explain their decisions, incumbents have no recourse but to repair to their job descriptions. Thus, institutions do not simply constrain or channel the actions of self-interested individuals, they prescribe actions, construct motives, and assert legitimacy. That indeed is how institutions perpetuate the objectives or purposes instilled in them at their founding; that is what lies at the heart of their staying power.
>
> The implications of this are, first, that any a priori notion of individual interest will very quickly succumb to historically derived and institutionally embedded rationalities of action; and second, that the analysis of institutional action will itself be driven to a consideration of origins, toward an understanding of official behavior in terms of original purposes. If, as is often noted, institutional analysis is inherently historical, it is because a great deal of the work is simply to figure out the rationalities at play.

As Smith (1988: 95) put it, institutions "influence the self-

conception of those who occupy roles defined by them in ways that give those persons distinctively 'institutional' perspectives." Moreover, beyond providing rules for decisionmaking procedures they influence "the relative resources and the senses of purpose and principle that political actors possess," and this may mean that these purposes and principles are "better described as conceptions of duty or inherently meaningful action than as egoistic preferences." At the same time, while interpretivists find it unreasonable when some rational-choice scholars appear unwilling to acknowledge the institutional construction of professional obligation (and other interests that are only awkwardly characterized as preference-maximizing), we should also keep in mind that "there must be room for strategic choices and maneuvering in explanatory arguments" (Skocpol 1995: 106).

Interpretivists, then, are not adverse to examining circumstances in which institutional actors exhibit strategic behavior. In fact, interpretivists would argue that one cannot even discern an instance of strategic behavior unless one has first reconstructed the structures of meaning within which decisionmakers are embedded (see Kloppenberg 1995: 126). In Skowronek's words, "rationalities of action" are always "institutionally-embedded," and given the interpretivist conception of institution this means they are constructed within an essentially normative terrain that maps out what interests are cherished, what courses of action are considered rational, and what strategies are deemed appropriate. As Mark Graber pointed out to me, even "single-minded" pursuers of reelection avoid certain strategies, such as last-minute covert assassination of political opponents; and while Supreme Court justices undoubtedly act strategically (sometimes), it is always a kind of strategic behavior that is sanctioned by prevailing institutional norms (i.e., circulating comments on a draft opinion rather than leaking damaging information to the press). Moreover, Graber's (1995) wonderful analysis of the legal and political context surrounding John Marshall's statutory construction in *Cohens v. Virginia* makes it abundantly clear that we are not in a position to ascribe strategic motives to justices until we have examined the possibility that their decision was based on a sincere effort to provide an impartial interpretation of the law, and this conclusion can only be reached through an immersion in prevailing jurisprudential traditions. In general, then, PPT approaches to judicial politics are inevitably parasitic upon interpretive work. It is no surprise that some of the most exemplary work on strategic decisionmaking in the U.S. Supreme Court (Epstein and Knight 1995 and 1996) has focused on cases *(Marbury v. Madison* and *Ex parte McCardle*) that have been characterized as such by interpretive scholars for as long as we can remember.

The point is that law-and-courts scholars who are interested in strategic behavior need not adopt the tools of PTI. Interpretivists have had a lot to say about strategic behavior for a long time. While we are happy to facilitate PTI studies, we also consider it an advantage that we conceptualize institutions in a way that enables us to incorporate strategic motivation without feeling compelled to redescribe all institutionally-related behavior as a form of strategizing. This is not "meant to discourage the use of rational choice analyses in areas where they can be productively applied" (Smith 1992: 12). There is no question that, in some respects, these alternative approaches are complementary (Wildavsky 1994), and it is worth discussing what PTI scholars think their approach can contribute that cannot be understood using interpretive methods. However, as we think about this we may also want to consider which side "is doing the most work" (Smith 1995: 135) to make institutional analysis viable.

There are a number of other issues that have been raised elsewhere but that deserve more attention from scholars who are considering the relative advantages of rational choice versus interpretivism: Which tools are better able to cope with the possibility that the dynamics of institutional politics may lead to a transformation in the interests and preferences of actors (Smith 1992)? Is it possible to reconcile theoretically elegant explanatory models with careful interpretive accounts of the actual experiences and motivations of institutional actors (Smith 1992:26-27, discussing Ferejohn 1991)? Are there steps that interpretivists can take to prevent their "thick descriptions" from becoming "so hopelessly complex and foggy as to be impossible to bring into focus" (Smith 1988)?

Still, I will end with just two additional comments which reiterate points made by Smith (1988) and Burgess (1993). First, from the point of view of many interpretivists, the major weakness in conventional political-science accounts of judicial politics has been the assumption that judges engage in "instrumental politics"—the self-conscious manipulation of legal rules and rhetoric in order to promote preferred political outcomes. This neo-realist theoretical orientation has been prevalent in the literature associated with "political jurisprudence" and judicial behavioralism, and it is now a central feature of the PPT version of institutional analysis. Interpretivists understand that this sort of motivation may be a feature of judicial politics, but we also think it is prudent that scholars of judicial politics embrace theoretical frameworks that are capable of investigating alternative hypotheses, such as the possibility that the world view of judges is constituted by institutional norms, jurisprudential traditions, and related social structures of power—which would mean that judges view the law, not as a tool for the promotion of exogenous preferences but as reflective of their most deep-seated professional convictions. If law-and-courts scholars think these alternative hypotheses are worth investigating then interpretive-institutional analysis may be the most productive way to proceed. If not, then it may be worth discussing why "instrumentalism" has such a hypnotic hold on the imagination of our field.

Finally, and relatedly, interpretivists worry that the reified world view of rational choice makes it more difficult to link our research to important normative debates. Obviously PTI is capable of informing certain kinds of normative questions, particularly when a case can be made that a change in institutional

rules might channel strategic behavior in a way that produces more desirable social consequences. Still, more often than not, rational-choice institutionalism is preoccupied with questions relating to how judges jockey for position in a potentially-risky terrain, and while these questions can be very interesting to law-and-courts scholars (including myself) they are, relatively speaking, fairly inconsequential for the rest of society. Even if PTI scholars devise research agendas that break out of this "inside the beltway" mentality, it would still be the case that the central image of institutional behavior within the strategic approach is essentially Hobbesian, and unless one thinks that all institutions exist in order to facilitate or mitigate Hobbesian impulses (and what's the evidence for that?) this assumption precludes us from using institutional analysis to examine (a) the actual normative foundations of our institutional practices and (b) the constitutive effects of these foundations on social and political relations. How do judges (or lawyers) conceptualize their mission in this political system? In light of what we can determine about the relationship between this conception and their exercise of power, is this mission defensible? How does this mission interact with the visions of social life embodied in various political movements or with our understanding of the nature of constitutional democracy? Would other missions better contribute to the construction of a regime that more closely reflects our aspirations for our political system? Institutional arrangements may be important in the way that they channel self-interest, but they are also important because they give corporal form to our concerns about what we should value and how we should pursue those values. In embracing institutional analysis we should be careful not to limit ourselves to a conception of institutional politics that marginalizes these central questions.

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The Author

Howard Gillman and **Cornell W. Clayton** are currently co-editing a collection of original essays entitled Institutional Approaches to Supreme Court Decision Making (University of Chicago Press, forthcoming), which will bring together scholars from a number of different camps within the "new institutionalism."

* Thanks to Sue Davis for giving me a chance to write this piece and benefit from her own work on the new institutionalism. Thanks also to Mark Graber for helpful suggestions. In exchange, I am happy to relieve these fine folks of any responsibility for anything I say in this piece. I would also like to encourage discussion of some of the issues raised in this essay on The Law and Courts Discussion List, a.k.a, "LAWCOURTS-L." See page 3 of this issue of **Law and Courts** for more information.

Welcome to the Law and Courts Website: A Preview

Lee Epstein, *Washington University* and **Jerry Goldman**, *Northwestern University*

In our last column, we promised to provide step-by-step instructions on how to create your own web page. But with the creation of a web site for the Law and Court's section, we decided to save that discussion for the Spring Issue and focus instead on the new site.

The Site: An Overview

To access the Law and Court's web site, simply point your browser to http://www.artsci.wustl.edu/~polisci/lawcourt.html

This will take you to the Law and Court's Home Page, displayed in Figure 1 below. Note that all items prefaced with bullets are links. Clicking on "By-Laws," for example, will take you to a page containing the by-laws of the section. And so on.

Of course, we hope that you will explore the page with the browser of your choice. For now, we merely want to highlight two *potentially* useful services that the site provides: the syllabi and paper archives. We emphasize "potentially" because their value depends largely on your contributions.

The Syllabi Archive

Several years ago, the APSA undertook the Political Science Course Syllabi Project in which it selected "collections of exemplary syllabi for reference and adaption by departments, faculty, and graduate students in designing courses."

While the resulting Public Law collection is quite valuable, it suffers from the usual problems of printed material. The APSA, of course, charges a fee to obtain it ($10 for members). And updates are infrequent, if ever.

This is where the Syllabi Archive of our web site comes in. It houses syllabi in a range of public law courses, which navigators can obtain at no cost and to which they can add.

Retrieving syllabi is a snap—merely click on the course title. This action will either (1) take you directly to the syllabus as it appears on the instructor's web site or (2) prompt you to save the file to disk. If the latter occurs, provide a file name and your web browser the will save the file to a disk on your computer.

Of course, though, the success of the archive depends not only on retrievals but also on submissions. To this end, we ask all section members to take the following steps (described in more detail at: http://www.artsci.wustl.edu/~polisci/lawcourt.syllabi1.html):

(1) Convert your syllabus (syllabi) into a WordPerfect 5.1 document, a Microsoft Word 6.0 document, or in compressed postscript. (We can handle MAC word processing documents but we would MAC users to convert syllabi into one above formats.)

(2) Send the syllabus as an e-mail attachment to lawcourt@artsci.wustl.edu with subject line "SYLLABUS SUBMISSION 1." (If your e-mail server will not allow you to send file attachments, you can submit the syllabus BINHEX encoded, UU encoded, or MIME encoded. Programs to do such conversions are available on many freeware and shareware sites on the web. If you need such software, please visit http://www.shareware.com or talk with a computer consultant at your institution.)

(3) Send a second piece of e-mail to lawcourt@artsci.wustl.edu with the subject line "SYLLABUS SUBMISSION 2." In the email, include the instructor's name, institutional affiliation, date, and the name of the course.

(4) Wait for a response from the Law & Courts Webmaster. You will either receive an e-mail indicating that the syllabus is now in the archive, or that there were problems with submission and that additional steps should be taken.

Alternatively, simply send the URLs of syllabi already available on the web to lawcourt@artsci.wustl.edu

The Working Paper Archive

Wouldn't it be nice to receive comments on your work prior to submission for publication or to see your ideas quickly integrated into the literature and listed on syllabi?

If this is appealing to you, send in your pre-print conference papers, book chapters, or concept essays to our Paper Archive. Doing so is just as easy as submitting syllabi (for more detailed instructions, visit: http://www.artsci.wustl.edu/~polisci/lawcourt.paper1.html:

(1) Convert your paper into a WordPerfect 5.1 document, a Microsoft Word 6.0 document, or in compressed postscript.

(2) Send the paper as an e-mail attachment to lawcourt@artsci.wustl.edu with subject line "PAPER SUBMISSION 1."

(3) Send a second piece of e-mail to lawcourt@artsci.wustl.edu with the subject line "PAPER SUBMISSION 2." Include author's

name(s), institutional affiliation, paper title, date, and a copy of the abstract.

(4) Wait for a response from the Law and Courts Webmaster. You will either receive e-mail indicating that the paper is now in the archive, or that there were problems with submission and that additional steps should be taken.

We also provide links to papers already on the web. Email the URL to lawcourt@artsci.wustl.edu

What's to Come

Surely, with your help, the Syllabi and Paper Archives can become valuable resources for scholars of law and courts. But they are not the only services our web site can provide. Indeed, plans are already underway to create a page for graduate students, which will list dissertation titles and abstracts and even links to vitae— especially useful for students on the job market.

More to the point, the services that our site can provide are limited only by our imaginations. So, if you have suggestions for improvement or expansion, please send them along— preferably by emailing the webmaster at: lawcourt@artsci.wustl.edu

We look forward to hearing from you.

Law and Courts Section

of the American Political Science Association

This is the Home Page of the Law and Courts Section of the American Political Science Association. It is designed to provide a variety of services to section members and other navigators interested in law, courts, and judicial politics.

Information about the Section

- By-Laws
- Officers
- Membership Directory
- Awards
- Announcements (last updated on _____ 1996)

Section-Supported Publications

- The Law and Politics Book Review (LPBR)
- Law and Courts— The Newsletter of the Law and Courts Section
- Law and Courts Discussion List

Information about Conferences

- Call for Papers for the 1997 APSA meeting
- Other Conferences of Interest

Teaching Materials

- **The Syllabi Archive**
  Instructions for Submitting and Retrieving Syllabi
  Syllabi Archive
- **Text Book Reviews**
  Reviews of Constitutional Law Case Books (from the LPBR)
  Reviews of Judicial Process Texts (from the LPBR)

Working Paper Archive

- Instructions for Submitting and Retrieving Papers
- Working Paper Archive

Resources

- Law-Related Web Sites
- Scholarly Journals
- Other Organized Sections of the APSA

This site is maintained by Lee Epstein and Andrew Martin at the Department of Political Science,Washington University, St. Louis. Send comments to the Law and Courts Webmaster at lawcourt@artsci.wustl.edu.

STUDYING THE STUDIES:

An Assessment of Judicial Politics Research in Four Major Political Science Journals, 1960-1995

Thomas R. Hensley, *Kent State University* and **Ashlyn Kuersten**, *University of South Carolina*

INTRODUCTION

A 1989 study by Hensley and Rhoads entitled "Studying the Studies" presented a systematic, quantitative analysis of judicial politics research in four leading political science journals: *American Journal of Political Science*, *American Political Science Review*, *Journal of Politics*, and *Political Research Quarterly*. Hensley and Rhoads' study covered the period from 1960 through 1987, and thus it is now somewhat dated. We therefore have updated the earlier study by incorporating all judicial politics articles published in these four journals for the period from 1988 through 1995, thus expanding the study to include the years 1960 through 1995.

FREQUENCY OF JUDICIAL POLITICS ARTICLES IN THE JOURNALS

The initial inquiry involved an examination of the number of judicial politics articles that have been published. A total of 458 articles on judicial politics were published during this time, a figure which represents seven percent of the total number of articles published in the four journals. This is an impressive percentage in light of the numerous fields which exist within the discipline of political science. Trend analysis across the 36-year period provides an even stronger view of the vitality of judicial politics research. The percentage of judicial studies dropped slightly from 6.8 percent in the sixties to 6.5 percent in the seventies, but the percentage of judicial politics articles increased to 7.3 percent in the eighties and rose further to 7.9 percent in the nineties.

Substantial variation can be seen in the publication of judicial politics articles in the four journals. *Political Research Quarterly* has published the most articles with 165, the *Journal of Politics* has printed 144 articles, and the *American Political Science Review* and the *American Journal of Political Science* have published 75 and 74 studies, respectively.

AUTHORSHIP OF ARTICLES ON JUDICIAL POLITICS

What scholars have been the most prolific in publishing research on judicial politics during the period of 1960-1995? Donald Songer with 17 articles earns the distinction of being the most prolific scholar in publishing in the four major political science journals for the 36-year period. The other members of the "top ten" are S. Sidney Ulmer (16 articles), Jeffrey Segal and Harold Spaeth (15 articles each), Paul Bartholomew (14 articles), Saul Brenner (12 articles), Lawrence Baum (11 articles), Gregory Caldeira (10 articles), and Lee Epstein and Reginald Sheehan (9 articles each).

A second question in regard to authorship was whether significant increases have occurred in the multiple authorship of judicial politics articles during the past three and one-half decades. A trend analysis of the four major political science journals reveals that jointly-authored research has become the dominant pattern in the nineties. In the sixties, only eight percent of the original articles were jointly authored. Multiple authorship increased somewhat in the decade of the seventies, with the percentage of jointly-authored articles rising to 22 percent. By the eighties the numbers had increased dramatically to 41 percent. This pattern of increasing joint authorship has continued into the nineties, with a majority — 52 percent — of the articles being jointly authored.

METHODOLOGICAL ISSUES

The first question involving methodological issues focused on the extent to which articles on judicial politics have become increasingly quantitative during the past 36 years. Quantitative research has clearly been predominant; 67 percent of the original articles during the three and one-half decade period have been quantitatively oriented. Variation exists across the decades, however. Although only 44 percent of the studies were quantitative in the sixties, the percentage of quantitative studies grew dramatically to 73 percent of the articles in the seventies. Perhaps rather surprisingly, the same percentage of

studies were quantitative in the eighties as the seventies (73 percent), and the percentage of quantitative studies in the nineties has increased only slightly to 77 percent.

In regard to the data sources used in the quantitative studies, judges' decisions — votes, sentences, and opinions — were the most widely utilized source of quantitative data, employed in 78 percent of the quantitative studies. Furthermore, the utilization of judges' decisions has shown a steady growth in recent decades, increasing from 70 percent in the sixties and seventies to 79 percent in the eighties and then reaching 88 percent in the nineties.

A final methodological question involved the use of various statistical techniques. Our analysis showed a dramatic growth in the use of multivariate techniques of analysis and a distinctive decline in bloc voting and scalogram analysis. Only 27 percent of the quantitative studies in the sixties employed multivariate techniques; this percentage grew to 45 percent in the decade of the seventies; and by the eighties and nineties, a clear majority of the quantitative studies — 63 percent in the eighties and 70 percent in the nineties — were employing multivariate techniques. Bloc voting analysis fell from eighteen percent of the quantitative studies in the sixties to only three percent of the articles in the nineties. Scalogram analysis appeared in 27 percent of the quantitative publications in the sixties but in only five percent of the studies in the nineties.

SUBJECT MATTER STUDIED

The initial question in regard to subject matter studied asked to what extent have various courts had been studied by judicial politics scholars. Fifty-six percent of the articles (236 articles total) focused primarily on the Supreme Court, and this has not varied significantly across the 36-year period. The data revealed that every category of courts has been studied, but very few studies have focused on state intermediate appellate courts (three articles), international courts (four studies), and the comparative analysis of American and non-American courts (two articles).

We next used systems analysis categories, as well as a category for doctrinal analysis, to assess which aspects of the judicial process had been studied. The data indicated that judicial politics scholars have focused attention primarily upon the conversion process; 195 articles (43 percent) have studied judicial decision making. The second most common type of study was doctrinal analysis with 80 articles, representing 17 percent of the studies. Forty-one articles (nine percent) were classified as impact/feedback, 36 studies (eight percent) dealt with the general subject of authorities, and 41 publications (nine percent) focused upon inputs to the judicial system. The areas of regime rules and output each had only three percent of the articles. In regard to a trend analysis of the 36-year period, continuity was much more predominant than change except for the sharp decline in doctrinal studies, which fell from 35 percent of the studies in the sixties to only six percent of the articles in the nineties.

We then moved to a consideration of the extent to which judicial politics scholars have utilized empirical theoretical frameworks in their research. Twenty-nine percent of the original studies published during the 36-year period were coded as identifying an explicit theoretical framework. A definite change occurred in the utilization of empirical theories between the sixties and seventies, for the number of studies grew from only 13 percent in the sixties to 30 percent in the seventies. Interestingly, the data revealed a much more modest increase in the growth of theoretically-based studies in the eighties (35 percent) and the nineties (36 percent).

Our final concern dealt with the specific subject matter of the law which had been studied in judicial politics articles. Judicial politics scholars have overwhelmingly focused their attention upon American civil rights and liberties. Twenty-nine percent of the studies have examined just civil rights and liberties, and another 27 percent of the articles have examined civil rights and liberties along with one or more additional subject area. No other subject has been studied in as many as ten percent of the articles.

CONCLUSION

We hope that this analysis will help judicial politics scholars to gain a more empirically-based understanding of the literature, to find reference points for their research and teaching, and to determine new avenues of research.

REFERENCES

Hensley, Thomas R. and James Rhoads. 1989. "Studying the Studies: An Assessment of Judicial Politics Research in Four Major Political Science Journals, 1960-1987." *Law, Courts, and Judicial Process Section Newsletter* 6: 1-39.

Books to Watch For

Eileen McDonagh revolutionizes the abortion debate in ***Breaking The Abortion Deadlock: From Choice To Consent*** (Oxford University Press) by arguing that we must shift our approach from a woman's right to choose an abortion to a woman's right to consent to pregnancy. McDonagh draws upon medical and legal evidence to define pregnancy as a condition in a woman's body caused by a fertilized ovum. As she explains, the central issue then becomes what the fetus, as state-protected life, does to a woman's body during pregnancy, whether that pregnancy is wanted or not. McDonagh graphically describes the massive changes produced by the fetus when it takes over a woman's body. As such, pregnancy is best depicted not as a condition that women have a right to choose but rather as a condition to which they must have a right to consent. Abortion does not rest, therefore, on the intensely debated principle stated in Roe that women have a right to be free from state interference when choosing privately what to do with their own bodies. Rather, as McDonagh explains, abortion rights flow inevitably from women's more established right to consent to what another agent does to their body. Specifically, she shows why a woman who does not consent to be made pregnant by a fetus, not only has a right to terminate pregnancy, but why the state violates constitutional due process and equal protection guarantees when it fails to provide her with the same protections against nonconsensual intrusions by a fetus as it provides against nonconsensual intrusions by other parties. Hailed as "provocative" and "compelling" by constitutional law scholar Mary Becker and praised by NOW President Patricia Ireland as having the "potential to secure not only the right to abortion but also abortion funding," this book's fundamental rights approach to the Equal Protection Clause shows a new way to gain for women the much needed policy goal of abortion funding.

In ***American Constitutionalism: From Theory to Politics*** (Princeton: Princeton University Press, 1996) **Stephen M. Griffin** examines the problem of constitutional change, the Constitution and American political development, judicial review and democracy, behaviorist research on Supreme Court decisionmaking, theories of constitutional interpretation, and constitutional crisis and reform.

American Constitutionalism attempts to consider the perspectives of both law and political science in relation to constitutional theory. Constitutional theories produced by legal scholars do not usually discuss state-centered theories of American politics, the importance of institutions, behaviorist research on judicial decisionmaking, or questions of constitutional reform, but the book takes into account the political science literature on these and other topics. Other topics discussed in the book include the idea of American constitutionalism, popular sovereignty, the problem of constitutional change, the concept of the state, the relationship between the Constitution and American political development, judicial review and democracy, theories of constitutional interpretation, and issues posed by periods of constitutional crisis. While the book is an introduction, Griffin attempts to advance a distinctive argument about the nature of American constitutionalism, regarding it as an instance of the interpenetration of law and politics.

David M. O'Brien, and **Yasuo Ohkoshi**, have published a book on law in Japan, ***To Dream of Dreams: Religious Freedom and Constitutional Politics in Postwar Japan*** (University of Hawaii). Based on a series of case studies of (dis)establishment and free exercise of religion litigation, the book addresses larger issues of constitutional politics in Japan, ranging from the operation of the Japanese judiciary—its organization, methods of judicial recruitment, and decisionmaking practices—to the Supreme Court's approach to constitutional interpretation, and attitudes toward conflict resolution and law and society.

John R. Vile's ***Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues***, 1789-1995 (ABC-CLIO) examines the almost

11,000 amending proposals that have been introduced in Congress as well as relevant Supreme Court decisions, important organizations and personalities, unresolved amending issues, and major proposals that individuals outside Congress have offered. The first comprehensive review of amendments published since 1896, the Encyclopedia of Constitutional Amendments should be useful to political scientists, law professors, and historians.

Thomas W. Simon's ***Democracy and Social Injustice: Law, Politics, and Philosophy*** (Rowman and Littlefield), is an interdisciplinary study that reflects the author's work in philosophy, political science, law, and policy studies. Simon argues that democratic theory must address the injustices inflicted upon disadvantaged groups. By shifting theoretical sights from justice to injustice, Simon recasts the nature of democracy and provides a new perspective on social problems. He examines the causes and effects of injustice, victims' responses to injustice and historical theories of disadvantage, revealing that those theories have important repercussions for contemporary policy debates. Finally, Simon considers which institutions and practices come within the grasp of democracy and discusses the concept of "Negative Utopia," or, a future without injustice.

John Anthony Maltese received the C. Herman Pritchett Award this year for ***The Selling of Supreme Court Nominees*** (John Hopkins University Press). The book examines institutional changes that have affected the development of the modern Supreme Court appointment process. Particular attention is paid to the Framers' debate over the advice and consent clause, the development of interest groups in the late 1800s, the passage of the 17th Amendment to the Constitution, Senate rules changes in 1929, and the rise of the "institutional" presidency. Using unpublished archival documents, a canvass of newspaper accounts, interviews with participants in the process, and a review of secondary sources, Maltese focuses on several key confirmation battles to illustrate the evolution of the appointment process over time. These include the nominations of John Rutledge in 1795, Stanley Matthews in 1881 (the first in which organized interests actively lobbied against confirmation), John J. Parker in 1930, and Clement Haynsworth in 1969. It also discusses Bill Clinton's two appointments to the Court and various proposals to reform the process.

The book reminds us that nominees have been "Borked" since the days of George Washington. The process has always been political. What has changed is the openness of the process, the range and types of players involved, and the tactics employed by those players. The result is a highly public process in which presidents attempt to "sell" their nominees as part of an effort to further their policy agendas, and in which the nominees, Senators, and interest groups vie for public opinion in the confirmation battle.

Howard Gillman is finishing a manuscript for the University of Chicago Press entitled ***Preferred Freedoms: State-Building and the Rise of Modern Civil Liberties Jurisprudence***. One of the most important transformations in constitutional law occurred between the 1920s and the 1940s, when an older "libertarian" jurisprudence emphasizing limited government powers was replaced by one that promised special protections for particularly important liberties or "preferred freedoms." The book will begin with an examination of how "civil liberty" was conceptualized in eighteenth- and nineteenth-century constitutional theory and then will examine the political and cultural developments that eroded this tradition, including: the progressive interest in expanding government power beyond traditional boundaries, post-industrial reconceptualizations of "liberty", pragmatist concerns over accommodating political change, and early experiences with the totalitarian impulses of the modern state. The book will then discuss how debates over the search for "fundamental rights" has preoccupied judges and theorists since the New Deal, and then will end by discussing (a) the relationship between political development and constitutional theory and (b) the role that interpretive "new institutionalist" analyses can play inthe development of explanations of judicial politics/decisionmaking.

From the Section Chair

(continued from page 1)

appear on page 19 of this issue of **Law and Courts**. If you are aware of an outstanding research effort that should be considered for any of these awards, please take a few moments to nominate that particular book, paper, or career. The awards not only honor important scholarship that has already been done, but also help encourage future research efforts to enrich our understanding of law and courts.

SECTION NEWS AND ANNOUNCEMENTS

Awards Presented at the APSA Annual Meeting, August 30, 1996

CQ PRESS AWARD

Melissa Marschall and Andreas Broscheid
SUNY-Stony Brook
"Neo-Marksist Model of Supreme Court/Congress/President/Interaction: The Civil Rights Cases, 1953-1992"

Honorable Mention: Timothy R. Johnson and Andrew D. Martin, Washington University, "The Public's Conditional Response to Supreme Court Decisions"

AMERICAN JUDICATURE SOCIETY AWARD

Jeffrey A. Segal,
SUNY-Stony Brook
"Marksist (and Neo-Marksist) Models of Supreme Court Decision Making: Separation-of-Powers in the Positive Theory of Law and Courts"

C. HERMAN PRITCHETT AWARD

John Anthony Maltese
University of Georgia
The Selling of Supreme Court Nominees
(Johns Hopkins University Press, 1995)

EDWARD S. CORWIN AWARD*

Charles R. Epp
University of Kansas
"Constitutional Courts and the Rights Agenda in Comparative Perspective"

*APSA award for the best dissertation completed during 1994 or 1995

Awards for 1997: Call for Nominations

CQ PRESS AWARD

The CQ Press Award is given annually for the best paper on law and courts written by a graduate student. To be eligible the nominated paper must have been written by a full time graduate student. Single and coauthored papers are eligible. In the case of coauthored papers, each author must have been a full time graduate student at the time the paper was written. Papers may have been written for any purpose (e.g., seminars, scholarly meetings, potential publication in scholarly journals, etc.). This is not a thesis or dissertation competition.

Papers may be nominated by faculty members or by the students themselves. The papers must have been written during the twelve months previous to the nomination deadline. This year's nomination deadline is June 1, 1997. The award carries a cash prize of $200. To be considered for this year's competition, a copy of the nominated paper should be submitted to each of the award committee members:

Stacia Haynie (chair)
Department of Political Science*
Louisiana State University
Baton Rouge, Louisiana 70816

William McLauchlan
Purdue University
West Lafayette, Indiana 47907

John Winkle
University of Mississippi
University, Mississippi 38677

AMERICAN JUDICATURE SOCIETY AWARD

The American Judicature Society Award is given annually for the best paper on law and courts presented by a faculty member at the previous year's annual meeting of the American Political Science Association. Single and coauthored papers are eligible. In the case of coauthored papers, at least one of the authors must be a faculty member. Papers may be nominated by any member of the section. This year's nomination deadline is February 1, 1997. The award carries a cash prize of $100. A copy of the nominated paper should be submitted to each of the award committee members:

Micheal W. Giles (chair)
Emory University
Atlanta, GA 30322

William Lasser
Clemson University
Clemson, South Carolina 29634

Valerie Hoekstra
Washington University, St. Louis
St. Louis, Missouri 63130

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. The 1997 award competition will be for books published in 1996. Case books and edited books are not eligible.

Books may be nominated by publishers or by members of the Section. This year's deadline for nominations is February 1, 1997. The award carries a cash prize of $250. To be considered for this year's competition, a copy of the nominated book should be submitted to each of the award committee members:

Howard Gillman (Chair)
University of Southern California
Los Angeles, California 90089

Susette Talarico
University of Georgia
Athens, Georgia 30602

Paul Wahlbeck
George Washington University
Washington, DC 20052

THE LIFETIME ACHIEVEMENT AWARD

The Lifetime Achievement Award is given every two years to honor a distinguished career of scholarly achievement and service in the field of law and courts. Any political scientist who has been active in the field for at least 25 years or has reached the age of 65 years is eligible. Nominations may be made by any member of the Section and should consist of a statement outlining the contributions of the nominee and, if possible, the nominee's vita. The deadline for nominations for this year's award is April 20, 1997. Nomination materials should be sent to each of the award committee members:

Gregory A. Caldeira (Chair)
Ohio State University
Columbus, Ohio 43210

Nancy Maveety
Tulane University
New Orleans, Louisiana 70118

Roy B. Flemming
Texas A&M University
College Station, Texas 77843

*Note: Departments of all committee members are Political Science

More Announcements

New NSF Law and Social Science Program Director

The New Program Director of the National Science Foundations's Law and Social Science Program is Dr. Harmon Hosch, a Law and Psychology researcher and Professor at the University of Texas at El Paso. Dr. Hosch succeeds Neal Tate who has returned to the University of North Texas.

ABA College/University Mini-Grants for College Faculty

Mini-grants up to $2,500 available for a variety of educational projects— new courses, team-teaching, bibliographic and web-based materials, campus and co-curricular programs, etc. — designed to enhance teaching and learning about law, the legal system, and the role of law in society.

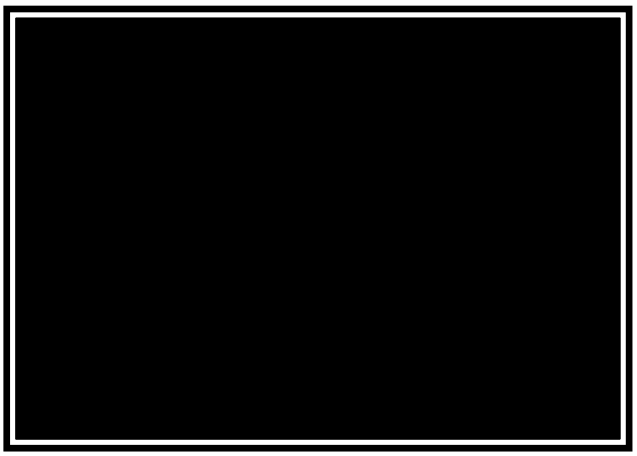
DEADLINE: April 1, 1997 (postmark).

To obtain complete application guidelines, see:

http://www.abanet.org/publiced/college.html

Or contact

Brian Doan,
ABA College & University Program,
541 N. Fairbanks Ct
Chicago, IL 60611-3314
Phone: 312/988-5736.



Symposium

The *Case Western Reserve Law Review* will sponsor a symposium on "Presidential Power in the Twenty-first Century" on Friday and Saturday, April 4 and 5, 1997.

The keynote address will be given by Theodore Lowi. Other confirmed participants include political scientists Louis Fisher, Ronald Kahn, and Jeffrey Tulis, as well as legal scholars Steven Calabresi, Neal Devins, Michael Fitts, Michael Gerhardt, Elena Kagan, Lawrence Lessig, John McGinnis, and Peter Shane.

Additional details about the program are available from:

Abby Levine, Symposium Coordinator
Case Western Reserve Law Review
11075 East Boulevard
Cleveland, OH 44106-7148
Phone: 216-368-3312.

Conferences

The **Socio Legal Studies Association Annual Conference** will take place in Cardiff, Wales, April 2-4, 1997.

The conference theme is "Crossing Boundaries" and there are streams committed as follows:

Environmental Risk and Regulation

Family Law

Feminist Legal studies

Housing Policy

Law and Religion

Central European Developments

Gypsies and Travellers

If you are interested in joining one of these streams, or if you would like more information, please contactSLSA97@cardiff.ac.uk .

Provided that your paper is 'socio legal' the organisers will find a slot for you to present a paper. There will be a number of 'readers and writers' sessions.

If you wish to present a paper send a 200 word abstract and title not later than January 11, 1997.

We anticipate over 300 people will attend the meeting which is the highlight of the UK conference circuit. As the theme suggests, we are particularly anxious to attract

scholars from other jurisdictions and other disciplines.

The host institution is Cardiff Law School, University of Wales, Cardiff. The Law School is probably the largest 'old' law school in the UK with over 1,500 students reading law at the undergraduate and post graduate level. There is a faculty commitment to socio legal studies. For example, the Journal of Law and Society is based at this school and the SLSA Newsletter is produced within and supported by the law school.

Plenary speakers are Bryant Garth, Director of the American Bar Foundation, Chicago, who will be talking about the 'globalisation of socio legal research'. In addition, Dr Jane Kelsey, law faculty University of Auckland, New Zealand will be talking about 'privatising the universities'.

The conference is on a single site which has just been refurbishedand upgraded. Accommodation ranges from en suite rooms to simpler but cheaper rooms with shared bathroom facilities. There is a brand new plenary hall with new coffee room and publisher's display facilities. The large bar is close to hand and the entire conference site is simple to negotiate and very user friendly in terms of making contacts and informal discussions. The caterers have promised to provide high quality food! The National Museum of Wales has been booked for a private evening function which will include the opening of the French Impressionist Gallery, Welsh music, bubbly, and a buffet supper in the main concourse of the museum. Thereafter, there will be a disco and late bar.

Cardiff is only two hours from London on a regular and frequent train service. It also has its own international airport linked to Schiphol, Amsterdam. The city of 300,000 is the capital of Wales and is a joy to visit.

We have managed to keep the conference prices at the same level as 1996. The prices are as follows:

Full residential conference rate: stlg205 (standard); stlg185 (discount)

Student rate: stlg120 (standard); stlg110 (SLSA discount)

For more information visit our web site at http://www.cf.ac.uk/uwcc/claws/events/slsa/

E mail address for registration and further information on accommodations is conference@cardiff.ac.uk

(Information on papers can be obtained from slsa97@cardiff.ac.uk)

A conference on **Land in the American West: Private Claims and the Common Good** will be held January 30 - February 1, 1997 at Oregon State University in Corvallis, Oregon.

This conference will address issues of reconciling private claims and public interests in the American West. Perspectives reflected in the program include history, political science, law, economics, ecology, environmental studies, philosophy, and urban studies.

Confirmed speakers include Richard White, University of Washington; Charles Wilkinson, University of Colorado; Daniel Bromley, University of Wisconsin; Jerry Franklin, University of Washington; Ed Whitelaw, University of Oregon; and William Kittredge, University of Montana.

For additional information contact:

Mecila Cross
Oregon State University
Corvallis, OR 97331-6202
phone: 541 737 4584
e-mail: crossm@cla.orst.edu

An Invitation from U.S. Association of Constitutional Law

For some time, a number of law professors have felt the need to organize fellow constitutionalists—law professors, professors in related disciplines, judges, selected practitioners—to serve academic-intellectual purposes in the United States, and to promote cooperation and exchange with counterparts in other countries. Existing organizations, notably the Section on Constitutional Law of the AALS, do not fully meet those needs, and they exclude others we consider relevant—judges, political scientists, and practioners of scholarly bent.

A principal impetus to establishing the U.S. Association has been a desire to strength the International Association of Constitutional Law (IACL), and made U.S. participation in it more useful.

IACL fosters "constitutionalism" through scholarly exchange and contacts among constitutionalists worldwide. The IACL meets every four years in a plenary World Congress open to all those belonging to national associations, as well as to individual members. (The most recent World Congress was held in September 1995 in Tokyo, Japan, with 400 participants from 54 countries. Previous World Congresses were held in Belgrade, Paris/Aix-en-Provence, and Warsaw.) In addition, the IACL holds yearly roundtables on subjects of international or comparative interest; it also sponsors publications, and facilitates bilateral and regional events.

Those of us who have participated in the IACL have had excellent opportunities to learn about the constitutional experiences of other countries, to contribute to constitutional thought and developments abroad, and to meet and collaborate with many of the leading constitutionalists throughout the world. But the IACL is comprised largely of national associations, with individual membership secondary. Some of us who have been active in IACL as individuals have felt that the absence of a U.S. association of constitutional law (while other constitutionally developed countries have such associations) has hindered the healthy growth of the International Association and has limited the U.S. contribution to the development of a jurisprudence of "constitutionalism" around the world.

The U.S. Association will coordinate participation by its members in IACL sponsored international meetings and foster exchanges between American and foreign constitutionalsts abroad. The U.S. Association will also organize periodic meetings where scholarly papers will be presented, and will facilitate informal exchanges among its diverse membership. The U.S. Association will have a minimal structure, a few officers selected periodically, small committees as needed.

The dues for the U.S Association are $25 a year; a form for joining is enclosed. Membership in the U.S. Association makes you eligible to participate in IACL activities as well.

Workshop

John Brigham and Sheldon Goldman (University of Massachusetts) are offering a workshop at the International Institute for the Sociology of Law in Onati in the Basque Country of Spain March 19-21, 1997. They hope to bring together roughly twenty-five scholars from around the world to share scholarship on the subject of judges. .

The objectives of the workshop are to assess the potential for cross-national analysis of the recruitment, selection and evaluation of judges. The organizers are particularly interested in the existence of global trends such as professionalization, representation (including the role of women in national judicariaries), and the perceived expansion of judicial power. This is meant to be an inquiry with strong international and comparative concerns.

All participants will be expected to contribute either with comments, papers or published material. The IISL in Onati will cover room and board during the workshop. Travel expenses will be the responsibility of the participants.

For additional information contact

John Brigham or Sheldon Goldman
Department of Political Science
Thompson Hall
Box 37520
Amherst, MA 01003-7520

The Judges' Journal invites manuscripts

The Judges' Journal, the quarterly publication of the Judicial Division of the American Bar Association, seeks manuscript submissions from authors on topics of interest to the Division's membership, which includes the state and federal trial, appellate and administrative judiciary, lawyers interested in the judicial process, legal and judicial scholars, court administrators and others concerned with the administration of justice. *The Judges' Journal* is especially (but not exclusively) interested in publishing articles about innovative programs that enhance the ability of courts to provide for the fair, just, effective and efficient administration of justice.

Please submit two copies of the printed manuscript with a disk to:

The Judges' Journal
750 North Lake Shore Drive
Chicago, ILL 60611

For information, contact

Fred Melcher, Editor
312 988 6077
e-mail: melcherf@staff.abanet.org
or
Luke Bierman, Director of Judicial Division
312 988 5703
e-mail biermanl@staff.abanet.org

U.S. Association of Constitutional Law
Membership Form

NAME: _____

INSTITUTION: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

OFFICE PHONE: _____

FAX: _____

E-MAIL: _____

My $25 membership dues through 1997 are enclosed.
(Make check payable to "U.S. Ass'n of Constitutional Law")
Return This Form with Your Check for $25 to:

Professor Michel Rosenfeld
Benjamin Cardozo School of Law
55 Fifth Avenue
New York, N.Y. 10003

Please check here if you are available for organizational work on behalf of the Association ☐

Law and Courts is the newsletter of the Law and Courts Section of the American Political Science Association.

Subscriptions to **Law and Courts** are free to members of the APSA's Law and Courts Section. Please contact the APSA to join the Section.

The deadline for submissions for the next issue of **Law and Courts**: March 1, 1997.

Law and Courts

Sue Davis, Editor
Department of Political Science
University of Delaware
Newark, DE 19716

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