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[Editor's Note. In recent years, a number of scholars have begun to consider questions of constitutional interpretation in light of hermeneutics and interpretive ideologies. This article by Gregory Leyh provides a general orientation to hermeneutics and view of what that perspective can provide teachers of constitutional law.]

CONTEMPORARY CONSTITUTIONAL THEORY AND HERMENEUTICS

Gregory Leyh
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Constitutional theory is a growth industry. One interested observer notes that "[n]ever has so much professional talent been devoted to general theories about the role of courts under the Constitution."¹ Some regard this outbreak of theoretical imagination as a mark of intellectual renewal and innovation; others, including Judge Bork, see "the spectacular efflorescence of modern theory [a]s not a sign of vigor and health but [a]s the brilliant flower of decay."²

Constitutional law is one of several disciplines presently undergoing an intensive self-examination of fundamental positions and premises. In constitutional law this self-examination is especially visible in debates about the nature of interpretation, for it is here that questions of meaning, fundamental values, and the grounds of human judgment receive extensive attention. But similar and related reconsiderations of well-entrenched orthodoxies have also become standard practice in disciplines such as philosophy, theology, and literary theory. Indeed what has recently been said about philosophy could easily apply to constitutional theory: "In the long run this proliferation of approaches to philosophy may turn out to be quite fruitful; in the short run it has produced confusion and consternation in the absence of a coherent overview of the issues that separate them."³ *Pace* Judge Bork, the revival of constitutional theory indicates far more than a desire to prescribe "unguided and expanded judicial power."⁴ It reflects a search for secure intellectual foundations at a time when the prevailing structure appears cracked and destined for further stress.

This theoretical renewal makes it next to impossible to keep up with all of the books, articles, conferences, and symposia addressing salient constitutional questions. To further complicate matters, the teacher-scholar not only faces numerous works of high quality, but inevitably also confronts the work of dilettantes and those whose insights follow less from mature wisdom than from pride and prolixity.

An additional byproduct of the growth of theory is that the idiom of constitutional discourse is changing. The constitutional conversation now frequently invokes the categories and names of foreign-sounding protagonists: phenomenology, hermeneutics, poststructuralism, deconstruction, Habermas, Derrida, and so on. It is enough to make the yeomen who deliver courses in constitutional law throw up their hands in protest.

In this essay I shall suggest that such a response -- while perhaps understandable -- is nonetheless premature. I argue that philosophical

understandable -- is nonetheless premature. I argue that philosophical hermeneutics has a potentially illuminating role to play in the renewal of constitutional theory. The best response to the theory industry, then, is more theory.⁵ Teachers of constitutional law face the choice of either engaging in these theoretical debates or risking the dogmatism of those who are unduly insulated from the primary intellectual issues of the day. "Hermes has arrived here now, so we must let him speak."⁶

Hermeneutics and Constitutional Interpretation

What is hermeneutics and why should it matter to those who teach constitutional law and judicial politics? Hermeneutics is the study of the principles of interpretation. An older understanding of hermeneutics addressed the principles of biblical interpretation. Later, hermeneutics became synonymous with the general methods of classical philology. Thus the cluster of issues related to determining the nature of textual meaning and the methods of its recovery has long been at the center of hermeneutical inquiry.

Contemporary hermeneutics, however, is less closely wedded to methodological or philosophical concerns. The seminal work of Hans-Georg Gadamer, for example, explores the *ontological* rather than methodological character of human understanding of texts and text analogues. Gadamer insists that he seeks to identify "not what we do or what we ought to do [in interpretation], but what happens to us over and above our wanting and doing."⁷ Hence the phrase "philosophical hermeneutics" generally refers to the attempt to describe the ineliminable conditions of all human understanding. Gadamer's *magnum opus*, *Truth and Method*, is a phenomenological map of the event of understanding the data of our world. As such, philosophical hermeneutics identifies phenomenological fenceposts which particular interpretive theories cross at their own philosophical peril.

We must keep in mind that this philosophical project does not underwrite a set of interpretive rules or correct procedures for arriving at true statements about textual meaning. Philosophical hermeneutics does not legislate interpretive practice. Instead, it serves as a standard for the evaluation of contesting modes and methods of interpretation. In Swearingen's apt phrase, philosophical hermeneutics "describes the possibility of any method whatever."⁸ A theory of constitutional interpretation ignorant of the irreducible features of human understanding risks undermining its own conclusions. For such a theory demonstrates a lack of self-understanding, and thereby implicates itself in the philosophical disarray characteristic of much contemporary constitutional discourse.

To illustrate the limited yet important contribution of hermeneutics to debates about legal interpretation, consider the example of originalist constitutional theory. The leitmotif of originalism is the notion that constitutional meaning resides in the text's original meaning. Constitutional meaning lies in the past and the purpose of interpretation is the recovery of the past meaning that lies in waiting. On this view the Supreme Court should not stray beyond the original meaning of the Constitution and has no authority to make fundamental value choices that are not encased in the "four corners of the document." In the words of Raoul Berger, constitutional interpretation ought to

stick closely to "the 'fixed Constitution' to which the Founders were attached" or risk reducing our fundamental law to "ropes of sand."⁹ Judge Bork adds that "we have come to expect that the nature of the Constitution will change, often quite dramatically, as the personnel of the Supreme Court changes. In the present state of affairs that expectation is inevitable, but it is nevertheless deplorable."¹⁰ Embedded in this perspective is the idea that the constitution's meaning, if interpretation is properly understood, does not change. Meaning is a static, fixed property of the text.

But as I will point out in the next part of this essay, philosophical hermeneutics offers an account of interpretation -- an account predicated on arguments concerning the ontological character of human understanding -- that is deeply at odds with originalism. Hermeneutics teaches us that meaning is not the exclusive property of texts, but rather is construed with reference to the evolving contexts of interpretation. Interpretation can never be finished or completed. To suppose otherwise, as does originalism, is to miss the ontological aspects of understanding.¹¹

My point, here, however is less about the merits of originalism than about the *kind* of contribution hermeneutics can make to the study of constitutional interpretation. It offers us a deep standard for evaluating arguments about textual meaning and descriptions of interpretation. In the preceding example, hermeneutics enables us to see how originalism misdescribes interpretation and hence misunderstands the nature of its own activity. This insight is helpful as we evaluate interpretive theories and perspectives. Hermeneutics is valuable in clarifying debates about methods of interpretation without presuming to dictate or legislate correct methodological practices.

Why should political scientists teaching courses in constitutional law worry about all of this? Most constitutional law teachers probably offer students one analytical framework or another when introducing them to the distinct modes of interpretation discoverable in Supreme Court opinions. Hermeneutics can be a strong ally in clarifying the nature and limits of the various modes of constitutional interpretation. Moreover, from a Gadamerian perspective, the debate presently raging between interpretivists and noninterpretivists, textualists and preservatists, originalists and nonoriginalists, may reflect a lack of knowledge about the general nature of interpretation. These categories and debates present the standard interpretive choice as, on the one hand, adherence to some conception of original understanding, or, on the other hand, reliance on the contemporary context as the determinative standard of constitutional meaning. Yet if Gadamer is right, this presents a false choice. Understanding always involves a fusion of the original or historical horizon with the horizon (or context) of the interpreter. Constitutional theory will take a step forward when it eliminates from its discourse hermeneutically unreflective and one-sided interpretative frameworks such as originalism, nonoriginalism, interpretivism, and noninterpretivism.

In addition, because the Supreme Court may now be undergoing an historic transition and future appointments to the Court may be influenced by a nominee's views of what the constitution means, the need for clear thinking about the limits and possibilities of interpretation is particularly pressing. Constitutional theory and practice merge in the appointment process. While it

may be too much to expect Senators Hatch and Biden to set aside evenings for the study of Heidegger or Gadamer, it remains true that those who scrutinize the philosophical presuppositions of various interpretive theories may discover the intellectual hollowness and politically-driven character of some contemporary jurisprudence. Philosophical hermeneutics is an important source of such clarification and may have a role to play in articulating desirable practical antidotes to overly partisan jurisprudence (With the recent news of Judge Bork's nomination to the U.S. Supreme Court, I confess wishing that bad ontology was an accepted criterion for Senate rejection of nominees to the Court.)

Gadamer's Philosophical Hermeneutics

The power of Gadamer's writing lies in its placement of the practical activity of interpreting texts in a philosophic mode. Constitutional theory now needs not more knowledge of the framers' intentions or of the constitution's original meaning, but a self-critical study of the underlying premises of popular conceptions of interpretation. Constitutional theorists are unduly parsimonious as they reflect on the conditions that make historical knowledge possible. The typical posture is one that assumes the acquisition of historical understanding is epistemologically unproblematic (although it may be problematic for other reasons, such as an absence of documentary evidence). This common posture is what philosophical hermeneutics calls into question. Hermeneutics invites us to participate in a conversation about how interpretation is possible at all.

Gadamer sees historicity and language as playing universal roles in human understanding. The term "historicity" denotes the inevitable role of the interpreter in the construction of meaning. The reference to language suggests a pervasive theme in modern -- especially continental -- philosophy, *viz.*, that we can never experience our world in an unmediated way. The concepts and categories in our language both mediate and constitute the world we experience. Historicity and language are basic conditions of all understanding, hence they are intractable features of any interpretation. Historicity and language not only make interpretation possible, they also suggest limits and constraints on what might be said about a text's meaning. It follows from the centrality of these two concepts that to become clear about the universal roles played by language and history is to be in a position to avoid futile methodological or exegetical strategies. Because philosophical hermeneutics is concerned with what precedes method, *viz.*, with the nature of understanding itself, it enables us to come to question method with the knowledge of what is in fact methodologically feasible.

The idea that the evolving history from which a text emerges conditions all interpretations of that text is a central ingredient in hermeneutical thought. Intervening historical conditions -- an inextricable part of all interpretive situations -- always color interpretations of texts, even when the interpreter is unaware of this. Gadamer denies that texts have any determinate or transhistorical content the recovery of which ought to drive all interpretation. Historicity in understanding suggests that it would profit us to give up the Archimedean idea of the existence of privileged places outside of time and place from which to render neutral, objective, or historically detached interpretations. Although this claim raises the spectre of relativism, Gadamer insists that historicity does not lead to unrestrained relativism or to solipsism. Quite the contrary. Philosophical hermeneutics recognizes the primary role of tradition in

the construal of meaning. By tradition, Gadamer refers to that which our interpretations of the past affirm and preserve. Tradition "is, essentially, preservation, such as is active in all historical change."¹² Far from leading constitutional interpretation down the path of nihilism, solipsism, or other sundry directions, hermeneutics displays qualities of preservation and conservation.

In an especially relevant section of *Truth and Method*, one which illuminates the vital role of traditions in interpretation, Gadamer attempts to show how the present always conditions our understanding of the past through an analysis of juridical hermeneutics. Here he seeks to demonstrate that "[h]istorical knowledge can be gained only by seeing the past in its continuity with the present -- which is exactly what the jurist does in his practical, normative work of 'ensuring the unbroken continuance of law and preserving the tradition of the legal idea'."¹³ Gadamer goes so far as to describe juridical hermeneutics as the paradigm of all human understanding. When deciding a case a jurist attempts to validate the meaning of the law by applying it to the concrete set of facts at hand. The judge frames her interpretation according to the nature of the legal dispute before the court. To put it another way, the present context plays a constitutive role in the judge's interpretation. Judicial opinions emerge from a mediation of the legal text, the intervening history of interpretations and practices related to that text, and the contemporary situation that calls us to understand that law in the first place. In Gadamer's words, "[u]nderstanding...is always the fusion of these horizons which we imagine to exist by themselves."¹⁴

Philosophical hermeneutics regards language as a constitutive institution in the construction of meaning, truth, and reality. Such a view of language is hardly unique to hermeneutics. Besides Gadamer, philosophers such as Wittgenstein, Arendt, Rorty, and Taylor have each suggested that our legal, moral, and political realities are in important ways linguistically constituted realities. Gadamer sees language as the historical vehicle through which all interpretations are mediated. Language is the medium of all human experience, for we can understand the world around us only through words. But we enter a world already filled with language. Since language precedes us in the world, the *hermeneutical* objective is not to create new languages or even master existing ones, but rather to figure out what "takes place through the medium of language."¹⁵ Central to this figuring out is the knowledge that learning a language enables us to see a past otherwise unavailable to us. We do not make this past or the language through which we inherit it, but both nonetheless inevitably inform our judgments about contemporary topics. Philosophical hermeneutics regards language as both enabling and constraining. Language enables as it opens up the past to us, and constrains as it functions to condition what we take the past and present to mean.

Gadamer illustrates the role of language as simultaneously enabling and constraining in his discussion of translation. Translation shows what happens as we attempt to bridge the linguistic, conceptual, and temporal distance between past and present. Successful translation strives for more than a mechanical reproduction of a meaning discovered in some remote text. The successful translator has the obligation of making remote messages meaningful to contemporary audiences:

Here the translator must translate the meaning to be understood into the context in which the other speaker lives. This does not, of course, mean that he is at liberty to falsify the meaning of what the other person says. Rather, the meaning must be preserved, but since it must be understood within a new linguistic world, it must be expressed within a new way . . . the translator must respect the character of his own language, into which he is translating, while still recognizing the value of the alien, even antagonistic character of the text and its expressions.¹⁶

The payoff of Gadamer's conception of historicity and language for constitutional theory is significant. Most importantly, philosophical hermeneutics suggests that constitutional meaning *always* results from a practical mediation of textual language, intervening history, and contemporary legal and moral realities. From the hermeneutical standpoint, judges invariably strive to incorporate *relevant* conceptual changes in their judicial opinions, and attempt to apply the legal text's terms and tradition to the dispute at hand in a way that exhibits fidelity to the fundamental purposes of the text itself. Constitutional interpretation aims to achieve a "fusion of horizons" between the past and present.

A Note on Philosophical Hermeneutics and Contemporary Views of Interpretation

Theoretical positions such as originalism, nonoriginalism, interpretivism, or noninterpretivism abound in much of the current discussion about constitutional interpretation. These familiar positions present the false interpretive choice between construals of meaning based on either a static past meaning or on a fluid contemporary meaning. Philosophical hermeneutics denies that these choices are exhaustive of the possibilities. All accounts of textual meaning, indeed all human understanding, involve the fusion of historical and present horizons that we mistakenly think exist in isolation from one another. This is the point at which a hermeneutical account of constitutional jurisprudence begins.

Furthermore, the customary ways of expressing issues in constitutional adjudication often misdescribe the actual nature of interpretation. Originalists tend to misdescribe interpretation as they recommend sealing off contemporary influences in favor of original meaning. Nonoriginalists tend to misdescribe interpretation as they pay too little attention to the ways that original and past meanings necessarily condition present ones. Philosophical hermeneutics may offend all parties to the dispute over the nature of constitutional interpretation. For the hermeneutical perspective leads to interpretations that are somewhat more flexible than originalists usually recommend, and rather more conservative than many nonoriginalists prefer.

It is unfair to leave the impression that all constitutional theory concerning interpretation is hermeneutically unsound. Indeed this misdescribes the current state of affairs in a different way. Although limitations of space do not allow for extended argument, I should like to argue in closing that Ronald Dworkin's recent book, *Law's Empire*,¹⁷ presents a theory of law -- a theory Dworkin calls law as integrity -- that comes close to serving as a paradigm case of hermeneutically sound jurisprudence. If philosophical hermeneutics serves as a

basis for discriminating among the theories of constitutional interpretation presently competing for our attention, then Dworkin's law as integrity jurisprudence has a distinct advantage over the competitors. This advantage derives from the hermeneutical integrity of Dworkin's picture of legal interpretation.

Dworkin's account of legal reasoning and interpretation in *Law's Empire* shares important affinities with Gadamer's remarks on historicity, language, and juridical hermeneutics. For example, Dworkin describes law as integrity as "relentlessly interpretive" and "essentially, not just contingently, interpretive."¹⁸ Dworkin characterizes interpretation as inescapably mediatory and historical. He acknowledges the historicity of interpretation by noting that "interpreters think within a tradition of interpretation from which they cannot escape," and that "[t]he interpretive situation is not an Archimedian point."¹⁹

Dworkin's analysis of *Dronenburg v. Zech*²⁰ underscores this point concerning the context-laden aspects of all interpretation. Following nine years of service in the Navy, Dronenburg was discharged for engaging in homosexual acts. He sued on the grounds that the discharge violated his privacy rights. In describing what is (mis)labeled the "preinterpretive" stage of judging this case, Dworkin also makes the hermeneutical point that the past always conditions contemporary understandings of constitutional meaning. For the rules and standards that set the stage for interpreting Dronenburg's rights also serve as the historical horizon for discerning the meaning of privacy law. In other words, before we can determine the scope of Dronenburg's privacy rights we necessarily begin by observing our place in the continually evolving historical horizon of the constitutional law of privacy.

In this case, the pertinent historical horizon includes *Griswold v. Connecticut*,²¹ *Eisenstadt v. Baird*,²² *Carey v. Population Services International*,²³ *Loving v. Virginia*,²⁴ and *Roe v. Wade*.²⁵ Few would argue that in contests over privacy rights such as those at issue in *Dronenburg*, the language and history of these cases function as necessary background materials from which to determine the scope and content of privacy.²⁶ Speaking in a more hermeneutical idiom, this evolving horizon organizes a judge's understanding of privacy's contemporary meaning. Legal reasoning of this kind recognizes that the evolving horizon surrounding discrete cases conditions all contemporary interpretations of law. And the content of these horizons continually changes. In Gadamer's words, horizons are never closed: "the horizon of the past, out of which all human life lives and which exists in the form of tradition, is always in motion."²⁷

While this description of judicial interpretation calls attention to some fluidity in the meaning of a legal text, the judge is not authorized to interpret the law according to individual moral or political preferences. The contrary is true, since the judge's interpretation must fit with the already existing tradition of understanding the legal text. In this way the horizon functions both to frame and to constrain legal interpretation. Dworkin is keenly aware of the limitations built into the hermeneutical situation:

anyone who accepts law as integrity must accept that the actual political history of his community will sometimes check his other

political convictions in his overall interpretive judgment. If he does not -- if his threshold of fit is wholly derivative from and adjustable to his convictions of justice, so that the latter automatically provide an eligible interpretation -- then he cannot claim in good faith to be interpreting his legal practice at all.²⁸

As we have seen, philosophical hermeneutics understands not only that the past invariably conditions the present in sometimes unforeseen ways, but that the present situation provides a context of meaning such that a conversation with the past is possible. Gadamer's discussion of juridical hermeneutics forcefully advances this same point. Hence the "real meaning of a text . . . is always partly determined . . . by the historical situation of the interpreter."²⁹

Dworkin's example of the chain novel sets forth a similar hermeneutical idea. Dworkin argues that judicial decision-making resembles authoring a chain novel. In a chain novel, the first author writes chapter one and then sends it to the second author. Author two must write the second chapter in a way that builds on and extends chapter one, but still exhibits continuity with the novel's beginnings. Chapters one and two are then forwarded to the third author, who proceeds under similar constraints. And so on. The example reveals Dworkin's view that law emerges both from its own past and from its present constructions. Authors in the chain violate the rules of construction if they start over from scratch, although each may extend the meaning of the novel in acceptable ways. The illustration discloses that interpretation entails more than a straightforward recovery of past meaning. It involves the projection of the present into the materials of the past. Like the judge of which Gadamer speaks in his commentary on legal hermeneutics, Dworkin's Hercules vigorously searches for the developing meaning of law in order to apply it faithfully to contemporary situations. The hermeneutical integrity of Dworkin's legal theory resides in his acknowledgement that judges are inevitably "authors as well as critics."³⁰

But my claim that Dworkin's jurisprudence in *Law's Empire* bears strong affinity with Gadamer's hermeneutics requires more argument than I provide here. For example, the obvious and important differences between law as integrity and philosophical hermeneutics warrant close study. The comments on law as integrity offered here suggest a more general point about philosophical hermeneutics. If the renewal of constitutional theory has its source in the search for secure intellectual ground at a moment when disciplinary foundations across the liberal arts are under stress, then it may be wise to reconsider the philosophical premises of the constitutional and interpretive enterprise. And philosophical hermeneutics has important things to say about these premises.

The contribution of a constitutional hermeneutics lies in clearly identifying the limits and possibilities of the various interpretive strategies in use. Although hermeneutics cannot dictate correct procedures for arriving at textual truths, it can serve as an invaluable standard for measuring the philosophical integrity of methods commonly used in constitutional law. This might at least illumine and improve the standards of legal argument and elevate the constitutional conversation. For if theoretical "confusion and consternation" lies behind the conflict of methodologies in constitutional law, hermeneutics may help to identify the salient issues in the debate and, perchance, contribute to some change in political and legal practice.

Notes

1. Judge Robert Bork, "Foreword" to Gary McDowell, *The Constitution and Contemporary Constitutional Theory* (1985).
2. *Ibid.*
3. Kenneth Baynes, James Bohman, and Thomas McCarthy (eds.), "General Introduction," to *After Philosophy: End or Transformation?* (Cambridge, Mass.: MIT Press, 1987,) p. 3.
4. Bork, *supra* n. 1.
5. Bork seems to agree: "If health is to be restored, we must begin in theory," *supra* n. 1.
6. Gary Shapiro and Alan Sica, "Introduction" to Shapiro and Sica (eds.), *Hermeneutics: Questions and Prospects* (Amherst: University of Massachusetts Press, 1984), p. 3.
7. Hans-Georg Gadamer, *Truth and Method* (New York: Crossroad Publishing, 1982), p. xvi.
8. James Swearingen, "Philosophical Hermeneutics and the Renewal of Tradition," 22 *The Eighteenth Century* 218 (1981).
9. Raoul Berger, *Government By Judiciary: The Transformation of the Fourteenth Amendment* (Cambridge, Mass.: Harvard University Press, 1977), p. 371.
10. Robert Bork, "Neutral Principles and Some First Amendment Problems," 47 *Indiana Law Journal* 1 (1971).
11. This hermeneutical critique of originalist constitutional theory is developed further in my essay, "Toward A Constitutional Hermeneutics," *American Journal of Political Science* (forthcoming, May 1988).
12. Gadamer, *supra* n. 7 at 250.
13. Gadamer, *supra* n. 7 at 292.
14. Gadamer, *supra* n. 7 at 273.
15. Gadamer, *supra* n. 7 at 346-7.
16. Gadamer, *supra* n. 7 at 346, 349.
17. Ronald Dworkin, *Law's Empire*, (Cambridge, Mass.: Harvard University Press, 1986).
18. Dworkin, *supra* n. 17 at 226.
19. Dworkin, *supra* n. 17 at 61-2.
20. *Dronenburg v. Zech*, 741 F.2d 1388 (D.C. Cir. 1984). Dworkin's analysis of this case appears in "Law's Ambitions For Itself," 71 *Virginia Law Review* 173 (1985). See also, "Reagan's Justice," *New York Review of Books*, November 8, 1984, pp. 27-31.
21. *Griswold v. Connecticut*, 381 U.S. 479 (1965).
22. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).
23. *Carey v. Population Services International*, 431 U.S. 678 (1977).
24. *Loving v. Virginia*, 388 U.S. 1 (1967).
25. *Roe v. Wade*, 410 U.S. 113 (1973).
26. Even Judge Bork, author of the appellate court opinion in *Dronenburg*, concedes in his dismissal of *Dronenburg's* claims that the aforementioned cases demand attention before a verdict can be reached in this case. Unlike Dworkin, however, Bork argues that the privacy rights identified in this line of Supreme Court decisions are not rooted in a specific provisions or amendment to the Constitution, but instead are judicial creations, hence not binding on lower courts. For Dworkin's critique

of Bork's ruling, see "Reagan's Justice," *New York Review of Books*, November 8, 1984, pp. 27-31. For more of Dworkin on Bork, see "Bork the Radical," *New York Review of Books*, August 13, 1987. For a careful review of Bork's opinion in *Dronenburg* in light of the academic literature discussing judicial review, see Richard B. Saphire, "Gay Rights and the Constitution: An Essay on Constitutional Theory, Practice, and *Dronenburg v. Zech*," *10 University of Dayton Law Review* 767 (1985).

27. Gadamer, *supra* n. 7 at 271.
28. Dworkin, *supra* n. 17 at 255.
29. Gadamer, *supra* n. 7 at 263.
30. Dworkin, *supra* n. 17 at 229.

Suggestions for Further Reading

A. On Hermeneutics

Terence Ball, "Deadly Hermeneutics: or Sinn and the Social Scientist," in Terence Ball (ed.), *Idioms of Inquiry: Critique and Renewal in Political Science* (Albany: State University of New York Press, 1987).

Richard Bernstein, *Beyond Objectivism and Relativism* (Philadelphia: University of Pennsylvania Press, 1983).

Hans-Georg Gadamer, *Truth and Method* (New York: Crossroad Publishing, 1982).

----- *Philosophical Hermeneutics*, translated and edited by David E. Linge (Berkeley: University of California Press, 1976).

Robert Hollinger (ed.), *Hermeneutics and Praxis* (Notre Dame: University of Notre Dame Press, 1985).

David Hoy, *The Critical Circle: Literature, History and Philosophical Hermeneutics* (Berkeley: University of California Press, 1982).

Kurt Mueller-Vollmer (ed.) *The Hermeneutics Reader* (New York: Continuum, 1985).

Richard Palmer, *Hermeneutics* (Evanston: Northwestern University Press, 1969).

Gary Shapiro and Alan Sica (eds.), *Hermeneutics: Questions and Prospect* (Amherst: University of Massachusetts Press, 1984).

Brice P. Wachterhauser (ed.), *Hermeneutics and Modern Philosophy* (Albany: State University of New York Press, 1986).

Joel C. Weinsheimer, *Gadamer's Hermeneutics: A Reading of 'Truth and Method'* (New Haven: Yale University Press, 1985).

B. On Hermeneutics and Law

Gerald L. Bruns, "Law as Hermeneutics: A Response to Ronald Dworkin," in W.J.T. Mitchell (ed.), *The Politics of Interpretation* (Chicago: University of Chicago Press, 1983).

Lief H. Carter, *Contemporary Constitutional Lawmaking: The Supreme Court and the Art of Politics* (New York: Pergamon Press, 1985).

Paul G. Chevigny, "Why the Continental Disputes are Important: A Comment on Hoy and Garet," *58 Southern California Law Review* 199 (1985).

Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986).

David Hoy, "Interpreting the Law: Hermeneutical and Poststructuralist Perspectives," 58 *Southern California Law Review* 135 (1985).

Gregory Leyh, Review of Lief H. Carter's *Contemporary Constitutional Lawmaking*, 3 *Constitutional Commentary* 588 (1986).

----- "Toward A Constitutional Hermeneutics," *American Journal of Political Science* (forthcoming, May 1988).

[Editor's note: Professor F.L. ("Ted") Morton, Political Scientist at the University of Calgary, attended, as an invited guest, the conference which he summarizes below:]

JUDGES VS. LEGISLATORS AN AMERICAN DEBATE COMES TO FRANCE

by
F.L. Morton
University of Calgary

1. On Friday, March 13, in the historical setting of the National Assembly buildings, an important French tradition was officially buried. After almost two hundred years of parliamentary supremacy, representatives of four of France's five major political parties acknowledged the supremacy of the French Constitution as interpreted by the "neuf sages" (nine wisemen) of the Conseil Constitutionnel. The conference was organized by a group of leading constitutional and political experts to discuss the growing role of the Conseil Constitutionnel in French politics. The agenda: Did the political parties recognize the authority of the Conseil to nullify legislation that it finds unconstitutional? The answer: a resounding "yes" from each party except the Communists, who refused any limitations whatsoever on the "absolute sovereignty of the people."

2. While the conference was organized by constitutional scholars, the question of the Conseil Constitutionnel's growing political role was hardly academic. In January, it nullified the "Amendement Seguin," an attempt by the conservative Chirac government to bypass normal parliamentary procedure in its rush to dismantle the economic and social policies of the preceding Socialist government. But the Conseil has not been one-sided in the exercise of its new power. The Socialists have also felt the sting of its judgment. After their historic electoral victories of 1981, President Mitterand and his Socialist majority in the National Assembly launched an ambitious series of economic and social reforms. In a confrontation reminiscent of President Roosevelt's "New Deal" battle with the American Supreme Court, the Conseil declared 21 of 48 socialist initiatives unconstitutional—including the controversial bill nationalizing banks and major industries. (A reformed version with a more generous formula for compensating former stockholders was subsequently upheld.) Grumbled one socialist deputy: "We represent the people; they represent the majority of an earlier time." Menaced another: "You are legally wrong because you are politically in the minority." On the Left there were calls for the abolition of the Conseil Constitutionnel.

3. While Americans have long since accepted the practice of judicial review, the consensus of March 13 represents a novel development in French politics.

Ever since Jean-Jacques Rousseau immortalized the concept of "la volonté generale" (the general will of the people), legislative supremacy has been the working rule in French democracy. At the beginning of the French Revolution, special care was taken to ensure that courts could not obstruct the work of Parlement, and this arrangement was continued in each of the successive French republics.

4. Not until 1958 did the French accept the practice of placing constitutional controls on the activity of the National Assembly. In a constitution drafted by and for General de Gaulle, the Conseil Constitutionnel was created to act as a constitutional watchdog on Parlement, but not the President—that is, de Gaulle himself. For a decade and a half, the Conseil fulfilled this relatively modest and low profile separation of powers function. But in the 1970s' two events occurred that transformed the political role of the Conseil and catapulted it onto the center stage of French politics.

First, in a 1972 decision dubbed by some as the "Marbury vs. Madison of France," the Conseil interpreted the Constitution as effectively incorporating the 1789 Declaration of the Rights of Man. Prior to this, France had no judicially-enforceable Bill of Rights. By this bold judicial stroke, Parlement's freedom to legislate was suddenly fenced in by the full panoply of liberal rights and freedoms. Subsequent decisions incorporated additional rights declared in previous French laws and constitutions.

The second catalyst of the Conseil's rise to political prominence was the 1974 reform that extended its authority to rule on the constitutionality of a law upon petition by sixty or more members of Parlement. Opposition parties immediately seized this procedure as a way to obstruct, at least temporarily, new government policies. The number of laws brought before the Conseil increased more than tenfold over the pre-1974 levels. It is now common practice for all major government bills to be challenged in this manner by the opposition. Combined with the vastly expanded restrictions imposed by the Declaration of the Rights of Man, this new procedure has thrust the Conseil to the center of the policy-making process.

5. The testimony of the March 13 conference demonstrated that the legitimacy of the Conseil's role as the guardian of constitutional values is now widely accepted. But while each spokesman (except the communist) affirmed his party's support for the Conseil, each also expressed second thoughts on the potential for abuse of this new power. The socialist deputy was skeptical about the Conseil's commitment to "social and economic rights." The Guallist government deputy speculated that too broad an interpretation of individual freedoms could frustrate government efforts to deal effectively with social problems such as AIDS. There was a general agreement that in cases where the constitutional text is open to several equally plausible interpretations, the Conseil should defer to the government's interpretation. And all party representatives were unanimous in condemning the spectre of an American-style "government des juges."

6. The acceptance of the Conseil Constitutionnel as guardian of constitutional rights against Parlement marks an historic break with France's past. French political leadership has rejected the practice of unrestricted parliamentary supremacy. At the same time, there is an equally strong aversion to what is

perceived as the judicial over-reaching of the American Supreme Court. The task confronting the Conseil in the coming years is to steer a steady course between these extremes.

This was written while on sabbatical in France during the Winter of 1987. A fuller treatment of the subject, "Judicial Review in France: A Comparative Perspective," was presented at the Interim Meeting of the IPSA Committee for Comparative Judicial Studies, Rotterdam, August 10-12, 1987. A copy of the paper, which includes up-to-date French and English bibliographies is available for \$5 Cdn (\$3.50 US) from the Research Unit for Socio-Legal Studies; University of Calgary, Calgary, Alberta T2N 1N4; Canada.

SECTION NEWS

Editor's Note

With this issue of the Newsletter, I begin the effort to replace Charles Johnson as Editor. Those of us in the field of Judicial Process and Law have benefited greatly from Charlie's editorship over the past four years. He is certainly one of the "founding fathers" of the Section, and his professional and personal energy have provided all of us with useful information. I have asked Lief Carter and Charles Lamb to continue as associate editors. Their experience will be most helpful. I have added a third Associate Editor to the Newsletter. Wayne McIntosh has agreed to serve as a collection point and disseminator of information about data sets and problems of analysis. It seems to me that, whether we crunch numbers, read cases, or talk to judges, lawyers, and other participants, we would benefit from having a central point where information, problems, solutions, and ideas might be collected. I encourage you to send Wayne your ideas, descriptions of data sets, problems or questions, or anything else which can loosely fit within this heading.

I am enthusiastic about editing the Newsletter, but Charlie's high standards for the Newsletter will be difficult to match. I hope that you can bear with me as I learn. The Newsletter is to serve your interests and needs--to provide information and a forum. Please give us your ideas and comments about what you would like to see in the Newsletter.

W.P.M.

[As a result of several requests from Section members, I will include contributor's BITNET addresses whenever possible. That should encourage the exchange of ideas with authors. If you would like a BITNET address your computer "center" should be able to make the necessary arrangements.]

Annual Section Meeting, 1987

The annual meeting of the Law, Courts, and Judicial Process Section was held at 5:30 p.m. on Thursday, September 3, 1987, at the Palmer House in Chicago. Section chair Larry Baum presided.

Baum reported on the nominations for section officers by the nominating committee, chaired by Joel Grossman. The following nominees were selected by the committee: Karen O'Connor of Emory University as president-elect; and Neal Tate of North Texas State University, Christine Harrington of New York University, and Henry Glick of Florida State University as members of the

executive committee. No other nominations were made, and these nominees were thereby elected.

William McLauchlan of Purdue University was introduced as the new editor of the section newsletter. He discussed his plans for the newsletter, including the addition of a third associate editor (Wayne McIntosh of the University of Maryland) for data resources. Charles Johnson was given a tumultuous round of applause for his excellent service as first editor of the newsletter.

Secretary-Treasurer Gene Flango reported on the budget for the Section. As of July 21, 1987, the current balance was \$3,170.25, with projected expenditures of \$500 for the newsletter and paper award.

Lettie Wenner, chair of the committee to select the best conference paper by a graduate student, announced the committee's selection. The winner was Patrick Bruer of the University of Wisconsin, now teaching at the University of North Carolina. His paper, "Washington Lobby Groups and Public Law Litigation," was presented at the 1987 Midwest meeting.

Marie Provine, new chair of the section, reported on her plans for panels at the 1988 APSA convention. She emphasized the need to get proposals to her as early as possible. She will be working closely with Shep Melnick, member of the program committee for public law and judicial politics, whose general plans were announced in his absence. Announcements were made by members of the section who will be organizing panels at other conferences in 1988.

Baum announced that members of the executive committee had expressed their views on the proposal for an annual award to a retired or retiring scholar in the judicial field. Opinions were generally negative, so the proposal will not be pursued at this time. He also announced Alan Tarr's suggestion that the section or the APSA as a whole endorse the idea of televising Supreme Court proceedings; that suggestion was passed on to the executive committee for further consideration.

The meeting was adjourned at 6:10, much to the delight of section members.

1988 Annual Meeting of the Section Executive Committee

The Section Executive Committee met at 5:30 on Friday, September 4, 1987 at the Palmer House in Chicago. Members present were: Henry Glick, and Christine Harrington. Also present were Karen O'Connor, Alan Tarr, *Newsletter* editor Will McLauchlan, Secretary-treasurer Gene Flango, and Larry Baum, immediate past-president of the Section.

(1) The Committee discussed the need to limit the number of panels next year, necessitated by limited meeting space at the Washington Hilton. The number of Organized Section panels will be required to shrink by one fifth, according to APSA projections. The two-participation rule will be extended to Organized Sections in a further effort to deal with reduced space.

(2) The Committee considered, but rejected by unanimous vote, an APSA proposal to centralize budgeting at the Washington office.

(3) The Committee adopted a resolution in favor of video-taped sessions of the U.S. Supreme Court. Section Chair Provine will pass on this resolution to the APSA Executive Committee for action at its February meeting.

(4) The issue of exclusion of judicial-process scholarship from disciplinary journals was the subject of considerable discussion. The Committee decided to ask Walter Murphy, who has expressed interest in this problem, whether he would act as a reference point for those with problems in getting their work

considered by the discipline's journals. It was agreed to suspend further action on this issue pending the collection of this information.

(5) The Committee also discussed how to spend Section dues. Various options: support for graduate-student attendance at the meeting, a cocktail party before or after the Section meeting, and a Section-sponsored journal. The Committee agreed to defer action until later in the year on this issue, so as to have a better idea of the Section's financial status after the fall and spring *Newsletter*.

[Editor's Note: This is Wayne McIntosh's first "column". I hope all the section members will contribute and benefit from this effort.]

Data Column

The Newsletter would like to add a dimension to the professional communications taking place among Law, Courts, and Judicial Process (LCJP) colleagues. The new exchange concerns public availability of data sets and special analysis and data set problems.

Fortunately a rather large number of data collections have been archived with the Inter-University Consortium for Political and Social Research (ICPSR). And, ICPSR quite competently documents, publishes, and updates its holdings. I will try to keep our subfield abreast (selectively) of recent additions and changes in this column each quarter. More complete and up-to-date information can be obtained directly from the consortium.

Unfortunately, however, data archival and data sharing have occurred in a small minority of projects. Government and foundation supported research are generally mandated to archive any data sets generated therefrom. Otherwise, availability for public use has come entirely on an adhoc basis. This means that a great deal of time, thought and effort is expended on single-cycle academic projects. For some, it is perhaps just as well. For many, it is a waste.

The issue of data preservation needs to be addressed from several directions simultaneously and calls for short-term interim measures as well as consideration of the future. The Newsletter can serve as an open forum for exchange of ideas, suggestions, and concerns and will publish communiques from colleagues regarding these and related matters. In the long-term we need to consider conscientiously and systematically questions of retention and preservation for secondary use of information at the time of (perhaps as a prequel to) the collection process. Given the pace with which the technologies of communication are maturing, to facilitate storage and documentation and to allow transfer of even massive quantities of information literally on impulse, the project of data sharing looms significantly smaller today than just five years ago. Our academic siblings across the social sciences (Sociology, Law, and Criminal Justice, at least) are also tasking themselves with the problems of preservation and re-cycling.

As for the short-term, we can begin to build a "public library" consisting of non-archived sets of data for which we no longer have any use, ourselves. Such collections may have far greater value than one might at first visualize. For example, they can both be supplemented with more or more current information, or they can supplement research in progress. They might provide excellent grist

for our graduate seminars/mills, or perhaps be used in undergraduate classes. Additional suggestions and ideas are welcome.

I will serve as "librarian" for the section and will publish information about newly "catalogued" data files as they are donated. Entries will be stored so that a current listing can be obtained from me at any time either by BITNET or conventional mail. In addition, I can, depending on your preferences, warehouse donated data sets at the University of Maryland for dispersal upon your request. Delivery can be taken either through BITNET directly or through the mail on IBM-PC disk. Again, I am wide-open to suggestions.

Two colleagues, Lee Epstein (SMU) [bitnet: H6FR1001@SMUVM1] and John Stookey (ASU), have agreed to make the charter contributions to the library. Their interest and service to the community is commendable. As a result, the LCJP Section Data Library now contains the following entries:

1. Ideological Groups and the Supreme Court. This contains cases decided by the Court between 1969 and 1981 in which a conservative or liberal interest group participated as an amicus curiae or a sponsor. For each case, we have coded these variables: citation, terms, major issue (49 categories), minor issue, liberal sponsor, conservative sponsor, number of liberal amicus briefs, and number of conservative briefs.
2. States and the Supreme Court. This contains cases involving criminal rights decided by the Court between 1969 and 1983 in which a state participated. For each case, we have coded: citation, term, court decision (for or against state), the specific state, and the appealing party.
3. Arizona State Supreme Court - 1912-1980. All cases by general type, criminal, civil, and dissent.

These data sets and code books should be available from me by November 1, 1987. I look forward to hearing from others wishing to follow Lee's and John's example.

Existing Data Archives and Information Systems

You can generally obtain a current data set directory and/or information packet upon your request. I will add to this list as I become aware of others.

ICPSR, The Institute for Social Research, P.O. Box 1248, Ann Arbor, MI 48106, 313/764-2570

The Criminal Justice Archive and Information Network (CJAIN), The University of Michigan, P.O. Box 1248, Ann Arbor, MI 48106, 313/764-2570

The Bureau of Justice Statistics issues frequent reports based upon the data it sponsors. Contact:
National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850, 301/251-5500

The Federal Justice Center offers a Catalog of Publications. Contact:
Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005 202/633-6365

Additions to ICPSR Holdings (as of May 1987)

1. James Alan Fox and Glenn L. Pierce
UNIFORM CRIME REPORTS (UNITED STATES): SUPPLEMENTARY
HOMICIDE REPORTS, 1976-1983 (ICPSR 8657)
UNIVERSE: Homicides in the United States from January 1976 through
December 1983.
2. Home Office Research and Planning Unit
BRITISH CRIME SURVEY, 1982 (ICPSR 8672)
UNIVERSE: People aged 16 and over living in private households in
England and Wales and whose addresses appear in the electoral registers.
3. Calvin G. Mackenzie and Paul Light
PRESIDENTIAL APPOINTEES, 1964-1984 (ICPSR 8458)
UNIVERSE: All Presidential appointees to full-time positions which
required Senate confirmation from November, 1964 through December, 1964.
4. Brian Forst and William Rhodes
SENTENCING IN EIGHT UNITED STATES DISTRICT COURTS, 1973-1978
(ICPSR 8622)
UNIVERSE: All defendants sentenced in Federal District Courts from
1973-1978 for eleven selected offenses.
5. Brian Forst and William Rhodes
SIX-YEAR FOLLOW-UP STUDY ON CAREER CRIMINALS, 1970-1976:
[UNITED STATES] (ICPSR 8648)
UNIVERSE: Defendants convicted of federal offenses in 1969-1970 and
sentenced to up to a year in prison, given probation, or fined, and
federal offenders released from prison during the first six months of
1970.
6. Robert M. Groves
NATIONAL CRIME SURVEYS REDESIGN DATA: PEORIA RECORD CHECK
STUDY (ICPSR 8669)
UNIVERSE: All person in the United States twelve years of age or older.
7. National Center for Juvenile Justice
JUVENILE COURT STATISTICS, 1983: [UNITED STATES] (ICPSR 8656)
UNIVERSE: Delinquency and dependency/neglect cases disposed in 1983 by
courts in the United States having jurisdiction over juvenile matters.
8. Marc Reidel and Margaret Zahn
TRENDS IN AMERICAN HOMICIDE, 1968-1978: VICTIM-LEVEL
SUPPLEMENTARY
HOMICIDE REPORTS (ICPSR 8676)
UNIVERSE: Homicide victims in the United States.

Remember when joining the APSA or renewing
your membership, be sure to check the
Law, Courts, and Judicial Process Section
box and join the Section.

ANNOUNCEMENTS

Funding Opportunities Law and Social Science Program National Science Foundation

The Program for Law and Social Science at the National Science Foundation supports social scientific studies of law and law-like systems of rules. These can include but are not limited to research designed to enhance the scientific understanding of the impact of law; the role of law and normative ordering in society; the dynamics of legal decisionmaking; and the nature, sources, and consequences of variations and changes in legal institutions. The primary consideration is that the research aims to advance a fundamental understanding of law and legal processes. Within this framework, the Program has an "open window" for diverse theoretical perspectives, methods, and contexts for study, including non-U.S., cross-cultural and comparative research. Examples of recently supported research include the following: "The Role of Appellate Courts in Sentencing Decisions," "The Impact of Expert Scientific Testimony on Jury Decisionmaking," and "The Effect of Federal Judicial Appointments on Judicial Process and Behavior." Research on dispute processing, modelling jury decisionmaking, legal and social change, social control, patterns of discretion in sentencing, procedural justice, the social and economic impacts of law, compliance and deterrence, regulatory enforcement, and legal socialization and the legal profession are among the many areas that have recently received program support.

The review process for the Law and Social Science Program takes six to nine months. It includes appraisal of proposals by ad hoc reviewers selected for their expertise from throughout the social scientific community and by an advisory panel that meets twice a year. The next target dates for the submission of proposals are January 15, for proposals to be funded on or after July 1988 and August 15, for proposals to be funded after January 1989. For further information on application procedures, write or call Felice J. Levine, Program Director, Law and Social Science Program, National Science Foundation, Washington, D.C. 20550; (202) 357-9567.

There are a number of initiatives at the National Science Foundation which represent potential additional funding opportunities of interest to the law and social science community. Among these are several pertaining to women scientists and engineers: the Visiting Professorships for Women Program enables experienced women scientists and engineers to undertake advanced research and teaching at host institutions; Research Initiation Awards are for women who have not previously received Federal research support or who are returning to research activities after a career interruption; and Research Planning Grants are small grants for a limited duration to help women develop competitive research programs. For further information on application procedures, contact Margrete S. Klein, Program Director, Visiting Professorships for Women Program and Research Opportunities for Women, National Science Foundation, Washington, D.C. 20550; (202) 357-7734.

1988-89 Judicial Fellows Program

The Judicial Fellows Program seeks to attract and select outstanding individuals from a variety of disciplinary backgrounds who have an interest in judicial administration and who show promise of making a contribution to the judiciary. Fellows spend one year in Washington, D.C. at the Supreme Court of the United States, the Federal Judicial Center or the Administrative Office of the U.S. Courts working on various projects concerning the federal court system and judicial administration.

Candidates should be familiar with the judicial system, have at least one postgraduate degree and two or more years of professional experience with a record of high performance. Multi-disciplinary training and experience is highly desirable. Backgrounds of fellows previously selected include political science, public and business administration, economics, the behavioral sciences, systems analysis, journalism and law.

The complete application should be received by November 30, 1987, to ensure consideration. For additional information, please write to:

Noel J. Augustyn
Executive Director, Judicial Fellows Program
Supreme Court of the United States
Washington, DC 20543

CONFERENCE INFORMATION

APSA: Law, Courts, and Judicial Process Section (1988)

Our section will sponsor panels at next year's APSA meeting in Washington, D.C., as it has in the past. I will be organizing panels for the section and coordinating my efforts with Shep Melnick, the member of the APSA program committee for public law and judicial politics, and with Kim Scheppele, of the conference group on jurisprudence and public law. Shep's ideas for the meeting are set forth in the summer issue of PS; a notice from the Conference Group about next year's meeting appeared in its summer mailing.

I encourage you to submit papers and panels for sponsorship by our section. Flexibility in the format you choose for presenting your work will be welcomed, as will efforts to include on panels scholars whose primary expertise lies outside the field of judicial politics. Such cross pollination can help up demonstrate to colleagues in other specialties the connections between our work and theirs, an important project in light of the persistent tendency among some political scientists to see law as separate and irrelevant to their concerns.

A theme I would like especially to encourage at next year's meeting is the responsiveness of legal institutions to changing economic and political realities. Law practice is clearly in a period of major readjustment, which has consequences for the availability of legal services and for the demands made upon courts. Judges are responding to these and other constraints with internal reforms that are important for political scientists to examine. The rapid rise of alternative fora for dispute resolution raises the further question of whether the

traditional functions of courts are being displaced by other institutions, and if so, whether this is desirable or not.

Please let me know as soon as possible your plans for next year, especially if you need assistance in locating people to fill out a panel. Early action is especially important this year because we are under unusually stringent constraints regarding the number of panels we sponsor next year. The Washington Hilton is smaller than recent convention hotels, dictating an overall reduction in the meeting of 253 panels (from the all-time record of 659 this year). The number of panels the organized sections sponsor will have to shrink by about 1/5 (which, as you can see, is a smaller cut than the program chairs and unaffiliated groups must absorb).

The necessity of cutting back has also had an impact on the participation rule. For next year, the requirement that no one participate in any capacity on more than two panels will apply across the board, whether participation is through the official program, the organized sections, or the unaffiliated groups, or some combination of these.

So take note that the final deadline for completed panels is December 1. My address is: Department of Political Science, Maxwell Hall, Syracuse University, Syracuse, New York 13210. My office number there is 315-423-3802, or if I'm not in, you may find it convenient to call the department and leave a message at 315-423-2416. Feel free to send your proposals to other panel-organizers as well as me, but do let each of us know if you do so, so we can coordinate our efforts.

Marie Provine

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- Kathleen A. Kemp, "Lawyers, Politics, and Economic Regulation," *Social Science Quarterly* Vol. 67 (1986) 267.
- Stephen H. Wainscott and J. David Woodard, "School Finance and School Desegregation: Ten-Year Effects in Southern School Districts," *Social Science Quarterly* Vol. 67 (1986) 587.
- Philip E. Secret, James B. Johnson, and Susan Welch, "Racial Differences in Attitudes toward the Supreme Court's Decision on Prayer in the Public Schools," *Social Science Quarterly* Vol. 67 (1986) 877.
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- Sue David, "Federalism and Property Rights: An Examination of Justice Rehnquist's Legal Positivism," *Western Political Quarterly* Vol. 39 (1986) 250.
- Philip L. Dubois, "Penny For Your Thoughts? Campaign Spending in California Trial Court Elections, 1976-1982," *Western Political Quarterly* Vol. 39 (1986) 265.
- Saul Brenner and Harold J. Spaeth, "Issue Specialization in Majority Opinion Assignment on the Burger Court," *Western Political Quarterly* Vol. 39 (1986) 520.
- Gerard S. Gryski and Eleanor C. Main, "Social Backgrounds as Predictors of Votes on State Courts of Last Resort: The Case of Sex Discrimination," *Western Political Quarterly* Vol. 39 (1986) 528.
- Charles A. Johnson, "Follow-Up Citations in the U.S. Supreme Court," *Western Political Quarterly* Vol. 39 (1986) 538.
- George W. Pruet, Jr., and Henry R. Glick, "Social Environment, Public Opinion, and Judicial Policymaking: A Search for Judicial Representation," *American Politics Quarterly* Vol. 14 (1986) 5.
- Brian J. Cook, "Characteristics of Administrative Decisions About Regulatory Form: A Case Analysis," *American Politics Quarterly* Vol. 14 (1986) 294.
- David H. Willison, "Judicial Review of Administrative Decisions: Agency Cases Before the Court of Appeals for the District of Columbia, 1981-1984," *American Politics Quarterly* Vol. 14 (1986) 317.
- Sue Davis, "President Carter's Selection Reforms and Judicial Policymaking: A Voting Analysis of the United States Courts of Appeals," *American Politics Quarterly* Vol. 14 (1986) 328.

SOUTHERN POLITICAL SCIENCE ASSOCIATION (1987)

The following papers will be presented at the annual meeting of the Southern Political Science Association, November 5-7, 1987, in Charlotte, North Carolina:

NON-DOCTRINAL INFLUENCES ON JUDGES

Chair: Charles A. Johnson, Texas A & M University

Papers: Alissa Worden, Michigan State University, "The Determinants of Local Legal Culture"

Robert Carp, University of Houston, Ronald Stidham, Lamar University, and C.K. Rowland, University of Kansas, "Executive Influences on Federal District Courts: Commercial Regulation Policy, 1933-1985"

Robert C. Bradley, Illinois State University, "Federal District Court Intervention in State Corrections: The Impact of Social Background Characteristics"

Discussants: Donald Songer, University of South Carolina
Susette Talarico, University of Georgia

CURRENT DIRECTIONS OF JUDICIAL POLICY

Chair: Timothy O'Neill, Wellesley/Southwestern University

Papers: Bradley Canon, University of Kentucky, "Justice Stevens' Civil Liberties Jurisprudence"

Kathleen Simon, Appalachian State University, "The Supreme Court on Rights of the Accused, 1975-1986"

Charles Lamb, SUNY-Buffalo, "Fair Housing and the Intent to Discriminate"

James Bolner, Louisiana State University, "The Supreme Court and Affirmative Action"

Discussants: Jerome Hanus, American University
Daniel Hoffman, Johnson C. Smith University

JUDICIAL ADMINISTRATION AND ADMINISTRATIVE LAW

Chair: Lee Epstein, Southern Methodist University

Papers: Euel Elliott, Virginia Polytechnic Institute and State University, and Deborah Barrow, Auburn University, "Determinants of Judicial Retirement from the Federal Bench"

Connie Mauney, Emporia State University, "An Ecology of Public Administration: The Kansas Appellate Court System"

William Harader and Christopher Perry, Indiana State University, "Public Sector Drug Testing: Doctrinal and Situational Concerns"

J. Michael Thomson, Northern Kentucky University, and John Winkle, University of Mississippi, "The Impact of Caseloads on State Criminal Dispositional Processes: The Controversy Continues"

Discussants: William R. Wilkerson, SUNY-Albany
Lee Epstein, Southern Methodist University

CONSTITUTIONAL INTERPRETATION

Chair: John Anthony Maltese, The John Hopkins University

Papers: James Stoner, Goucher College, "Dr. Bonham's Case and Rehnquist's Court: Common Law Constitutionalism"

Joseph Kobylka, Southern Methodist University, "The Debate Over Original Intent"

Tinsley Yarborough, East Carolina University, "Justice Black's Interpretivist Jurisprudence"

Sue Davis, University of Delaware, "The Jurisprudence of Justice Rehnquist"

Discussants: Lief Carter, University of Georgia
Janet Blasecki, University of Delaware

THE FIRST AMENDMENT AND THE SUPREME COURT

Chair: James Magee, University of Delaware

Papers: Kenneth Nugef, University of South Alabama, "Creationism and the Religion Clauses"

Brian Murphy, North Georgia College, "The Dilemma of Religious Speech"

Walter Mead, Illinois State University, "The Original Intent of the Religion Clauses"

Discussants: Robert Langran, Villanova University
Rodney Grunes, Centenary College

NORTHEASTERN POLITICAL SCIENCE ASSOCIATION (1987)

The following papers will be presented at the annual meeting of the Northeastern Political Science Association, November 12-14, 1987, in Philadelphia, Pennsylvania.

COURTS AND CIVIL LIBERTIES

Chair: Richard Brisbin, West Virginia University

Papers: J.M. Sanchez, Adelphi University, "Minorities in Politics"

Lorrie Clemo, SUNY/Binghamton, "State Judicial Activism and Principles of Equity: The Case of Public Education"

Kenneth F. Mott, Gettysburg College, "Religion in the Schools: The Supreme Court and the Wisdom of the Ages"

Discussant: Robert W. Langran, Villanova University

THE MAKING OF STATE CONSTITUTIONS

Chair: William Hudson, Providence College

Papers: Edgar C. Leduc, University of Rhode Island, "Delegates to the Rhode Island Constitutional Convention"

Voorhees E. Dunn, Jr., "The New Jersey State Constitution of 1947"

Discussant:

JUDICIAL SELECTION AND BEHAVIOR

Chair: Richard Maiman, University of Southern Maine

Papers: John M. Scheb, University of Tennessee, "Judicial Backgrounds and Judicial Roles: A National Study of State Appeals Court Judges"

Ralph Baker, Ball State University, "Good Faith and the Exclusionary Rule"

John Massaro, SUNY/Potsdam, "The Forgotten Factor: Presidential Management and Unsuccessful Supreme Court Nominations"

Discussant: William R. Wilkerson, SUNY/Albany

POLITICAL THEORY AND CONSTITUTIONAL HISTORY

Chair: Raymond Wrabley, Casper College

Papers: Clyde Barrow, Texas A & M, "Beard and Constitution"

Ronald Lettieri, Mount Ida College, "Madisonian Views"

John Vile, McNeese State University, LA, "Views on Jefferson"

H.L. Pohlman, Dickinson College, "Justice Holmes and Free Speech"

Discussant: Bruce Caswell, Temple University

CALL FOR PAPERS

Annual Meeting of the Law and Society Association
Vail, Colorado. June 9-12, 1988

The Program Committee solicits proposals for papers, panels, roundtables, or other forms of presentation that address issues related to how socio-legal studies are constructed. The theme of the meeting is "The Archeology of Socio-Legal Studies: Constructing Questions." Proposals are encouraged that address issues in the context of ongoing research of how legal phenomena are defined; questions are asked or unasked; decisions are made about what forms of evidence are persuasive; and how disciplines, theoretical orientations, ideologies, values, and belief systems, create biases and silences in socio-legal research.

Proposals should be submitted by January 22, 1988 to either program co-chair, Marie Provine (Department of Political Science, Syracuse University, Syracuse, NY 13244 [315 423-2416]) or Carroll Seron (Business and Public Administration, Baruch College, CUNY, 17 Lexington Ave., Box 336, New York, NY 10010 [212 725-3375])

CALL FOR PAPERS

Special Issue of the *Law and Society Review* on Law and Ideology

The guest editors of the special issue are interested in receiving papers which use, or criticize, explicitly or indirectly, the concept of ideology as applied to law, legal systems, or the legal profession. They are also interested in work which, while not specifically addressing the concept of ideology, would enrich discussion of the concept in application, to law. Particular interest is the exploration of professional ideologies, ideologies of particular groups and classes, and assessments of particular legal problems in terms of ideology. Empirical and theoretical work is sought from a range of disciplines and theoretical orientations.

Papers should be submitted by December 15, 1987 with three copies sent to the Amherst Seminar on Legal Ideology and Legal Process, c/o Department of Political Science, Amherst College, Amherst, MA 01002.