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Newsletter
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From the Section Chair

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I look forward to seeing many of you at the upcoming meeting of the APSA in San Francisco. I want to thank the two program chairs, Mitch Pickerill (Law and Courts Division) and Julie Novkov (Constitutional Law and Jurisprudence Division) for assembling a terrific set of panels for the meeting. Jointly they organized 24 panels covering the breadth and range of research on law and courts. There will be something for everyone to enjoy at the meeting. In addition to the wonderful panels, let me also highlight a few other important events to add to your meeting calendar:



Lifetime Achievement panel honoring Donald Songer. I especially wish to call your attention to this year's Lifetime Achievement panel honoring Don Songer (University of South Carolina), which is scheduled to take place at a special time on Thursday, September 3, from 6:30-8:00 p.m. The panel is scheduled later than normal this year. The good news is that it will not conflict with other panels, but please note the later time so that you can be sure to join us in marking Don's many contributions over the years to the Section and the study of law and courts.

Section Business Meeting. The Section's business meeting is scheduled to take place on Friday, September 4, from 6:30-7:30 p.m., at the Nikko Hotel. In addition to discussing the Section's budget we will have updates from the editors of the *Journal of Law and Courts*, the *Law and Courts Book Review*, and the Section newsletter, as well as from the moderator of the LAW COURT-listserv and the Section's webmaster. Of course, we will also celebrate the winners of this year's section awards (whom were announced in the spring issue of the newsletter).

The business meeting will also consider the slate of candidates for Section officers. As put forward by the nominating committee, they include:

Chair-Elect: Tim Johnson (Univ. of Minnesota)

Secretary: Rachel Cichowski (Univ. of Washington)

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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** publishes three editions a year (Fall, Summer, and Spring). Deadlines for submission of materials are: February 1 (Spring), June 1 (Summer), and October 1 (Fall). Contributions to **Law and Courts** should be sent to the Editor:

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Articles, Notes, and Commentary

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

Footnote and reference style should follow that of the *American Political Science Review*. Please submit your manuscript electronically in MS Word (.doc) or compatible software. Graphics are best submitted as separate files. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

Symposia

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

Announcements

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

Law and Courts Newsletter

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Section Reception to be Co-hosted by the Journal of Law & Courts. Finally, directly following the business meeting we will hold our reception, from 7:30-8:30 p.m. Even if you do not usually attend the reception, I hope you will plan to come this year. Thanks to its editor, David Klein, the *Journal of Law & Courts* is co-hosting our reception this year, which means that there will be a (limited) hosted bar! If that is not enough encouragement for you to attend, the Section is also experimenting with a new feature at the reception this year. Our program chairs selected the four best graduate student posters at the conference for special recognition. In addition to recognizing the authors of these posters during our business meeting, we have asked these students to also present their posters during the reception. Our hope is that this will both enliven discussion and socialization during the reception and also increase members exposure to the excellent research being done by our graduate students. So be sure to come!

Innovations Coming Next Year to the APSA

As some of you are aware, the leadership of the APSA is in the process of rethinking how the annual meeting is organized in an effort to make it a more useful and engaging experience for members. Last year they began a process for reformulating how panel slots are allocated between divisions, and I expect to hear more about this while in San Francisco this year. In the meantime, the allocation model continues to weigh heavily the attendance at division panels the previous year. So, in addition to the rich intellectual rewards, I remind you that there are strategic reasons for us to attend panels.

The other major innovation coming to the APSA in 2016, is experimentation with new presentation formats. In addition to traditional paper panels and roundtables, several new presentation formats are being suggested for next year. These include: mini-conferences; sequential paper presentation; research, teaching or professionalization cafés; poster sessions with discussants, and several other format ideas. To help you start thinking about how your work might fit into these different formats, let me briefly explain some of these ideas.

The proposed mini-conferences will be longer (half-day to full-day) sessions devoted to a single theme in pursuit of a larger cohesive goal than traditional panels provide, such as an edited volume or an omnibus dataset. Ca-

fés envision shorter sessions devoted to a handful of topic clusters, each staffed with experts in a particular methodological or epistemological framework, archives, translations, datasets, pedagogical approaches, learning activities, or professionalization concerns. The sequential paper presentation format would consist of 3 or 4 papers strung together on a related topic; each paper would be accorded 30 minutes for presentation and a single discussant (sessions might also follow the “Brookings format,” in which the discussant presents and then comments on the paper). Finally, for posters, division chairs seek one discussant per poster or ask a discussant to handle 2-3 posters. They are also looking at alternative formats for the poster sessions, including e-Posters and iPosters.

None of these formats have been formalized yet and the APSA leadership is interested in hearing other ideas about how to make the conference more engaging. Overall, their goal is to have the submission software for next year’s annual meeting include a menu of formats that authors can select from when submitting. Division chairs will also be given broad discretion to rearrange submissions into various formats as they see fit.

The two program chairs for next year are Lisa Hilbink (Law and Courts) and Liz Beaumont (Constitutional Law and Jurisprudence). So, if you have ideas about these formats or other suggestions, I encourage you to contact them early in the process and share your thoughts.

Other News

As always, Todd Collins has done a remarkable job assembling this issue of the newsletter. Art Ward, the Section Webmaster, has been busy the past year making over the website, and he shares with us some of the changes and new features in his update. In addition, this issue of the newsletter includes a wonderful set of articles discussing the direction of new research, and the emergence of new data sets, in the subfield of comparative judicial politics. Enjoy!

Finally, it has been a distinct privilege for me to serve as Section Chair this past year, not least of which is because of the many fine people I have had the opportunity to work with. I am constantly amazed at how willing people are to give freely of their time for the good of our Section, and I would be derelict if I did not thank some of these folks now.

Kevin McGuire will be taking over for me in September, and he, as well as last year’s chair, Gordon Silverstein, both have been wonderful to work with and great sources of advice. I also leave with a heavy debt of gratitude to our outstanding executive council members

(Anna Law, Amy Steigerwalt, Justin Crowe, Christina Boyd and Ryan Owens), as well as Section Treasurer Mariah Zeisberg and Section Secretary Carol Nackenoff. I especially want to recognize Carol, whose term also ends this year, and without whose help I would have been lost.

The Section also has the good fortune of a remarkable team of individuals running our various publications and organs for communication. Our webmaster (Art Ward), whom I have already mentioned, has done yeoman's work updating the website, and he deservedly is receiving the Section's award for service this year. In addition, LawCourts listmaster (Paul Collins), *Law and Politics* Book Review editor (Stephen Meinhold), editor of *The*

Journal of Law & Courts (David Klein), and newsletter editor (Todd Collins), are consummate professionals, who individually and collectively provide enormous service to the Section. They deserve our gratitude and more.

Lastly, I wish to thank again, publicly, our program chairs for the APSA meeting, and all those who served on the award committees this past year. These are time-consuming commitments, essential to the operation of our Section, but often with little or no recognition or reward. We owe these folks a lot, and I hope you will join me in recognizing and thanking them for their service.

Have a great summer and I hope to see you in San Francisco.

Mini-Symposium: International and Comparative Law Research

The "Comparative Advantage" in Comparative Judicial Politics

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Since the inception of this newsletter in 1983, the subfield of comparative judicial politics has been the object of periodic scrutiny and assessment (Tate 1989; Epstein 1999; Scheppelle 2000; Hilbink 2009; Kewar et al. 2012). Several common themes emerge from these sub-field reviews.

Comparative work is construed as not only an exciting opportunity to advance our understanding of law and courts, but also a chance to make an explicit break from the field's focus on the U.S. Supreme Court as the primary object of institutional analysis (Tate 1989; Epstein 1999; Kewar et al. 2012). Second, comparative analyses are heralded for distinct analytical advantages for investigating of formal institutions, leveraging cross-sectional variance in rules and political contexts to evaluate comparative statics or to subject competing hypotheses to scrutiny (Tate 1989; Epstein 1999). Third, many observers note the high start-up costs of comparative research, as considerable investment and expertise is necessary to avoid "hit and run" comparative work (Scheppelle 2000; Kewar et al. 2012).

These commonalities often give way to a divergence of opinion regarding the best path forward. Though some would encourage statistical testing and aim for general

theory (Tate 1989; Epstein 1999), others would advocate for the decentralization of our view beyond the usual topics of inquiry, probing the unique ways that law and politics co-evolve (Scheppelle 2000; Kewar et al. 2012). Instead, I briefly summarize several lines of inquiry in the area of comparative judicial politics that exemplify one or more aspects of the "comparative advantage" (Epstein 1999).

These research agendas meaningfully engage scholars from diverse backgrounds and methodological perspectives, both within the United States and around the globe. Each demonstrates a healthy reciprocity between theory and empirical research, such that theoretical puzzles inform empirical research designs, the results of which extend and modify subsequent theoretical models. Finally, these lines of inquiry critically engage with larger disciplinary trends beyond the law and courts community. I close by identifying some of the best practices these research agendas exemplify, such that similar progress might be replicated in the future.

Public Support and Institutional Legitimacy

Lacking both the "purse" and "the sword," judicial institutions are uniquely feeble in their ability to compel or persuade acceptance of their decisions. This fact looms large in the wider arena of democratic politics, where judicial institutions regularly face elected offi-

cials who would seek to evade, undermine or even capture judicial institutions. It has long been recognized that courts are uniquely dependent on public support, through which judicial legitimacy is conferred, institutional integrity protected, and decisional compliance made viable.

Building on the literature on public support for the U.S. Supreme Court, Caldeira, Gibson and Baird thrust the question of public support for courts squarely into comparative perspective, analyzing Europeans' public awareness of, approval of, institutional support for, and intended compliance with the European Court of Justice and the national high courts of Europe (Caldeira & Gibson 1995; Gibson & Caldeira 1995; Gibson, Caldeira and Baird 1998). As with the U.S. public, Europeans' support for their national and transnational judiciaries appeared conditional on their awareness thereof, though public familiarity and support for European courts were strikingly low by comparison. The authors worried this lack of support could pose a barrier to expanding institutional legitimacy, posing an obstacle to judicial power and broader political influence. This research highlighted the U.S. Supreme Court as a relative outlier, pointing to previously unacknowledged conditions and assumptions that would require an extension to theoretical frameworks.

Vanberg also theorized the connection between public support and judicial influence, generalizing beyond the U.S. with a case study of inter-branch conflict within the German separation of powers system (2000). His analysis suggested that neither public support nor the institutional separation of powers were necessary to maintain the German high court's independence (yet either may have been sufficient). He would later formalize the conditions under which public support enhanced judicial power *vis a vis* the legislature, spelling out its consequences for compliance and judicial deference (2005). Recasting public awareness as transparency, Vanberg shifted what had been a prominent attitudinal correlate of public support into a facilitating informational condition for judicial independence and legitimacy, situating transparency as an explanatory variable of primary theoretical interest, without which the effect of a supportive public would be limited.

Scholars have since endogenized transparency as an object of strategic judicial behavior, wherein judges seek

to influence the informational environment to enhance their institutional legitimacy (Staton 2006; Staton & Vanberg 2008; Krehbiel 2015). Staton theorized the conditions for when judges will publicize or promote their decisions, strategically communicating with the public to cultivate public support (2006). Krehbiel makes the case that judicial procedures are also deployed strategically, suggesting that the German Constitutional Tribunal opts for oral public trials to curry public sympathies (2015). This research highlights that transparency is not an unalloyed good: judges may value transparency insofar as it fosters public support, but would prefer a protective veil of obscurity to safeguard their institution's legitimacy (Staton & Vanberg 2008).

Judicial Independence

Despite its widespread relevance and political import, judicial independence as a concept has long defied easy or common definition (c.f. Peabody et al. 2011). Americanists generally conceive judicial independence as judge impartiality, while comparativists weigh the institutional aspects of judicial independence; an independent court is one whose influence is felt and whose position as a veto player is anticipated by players in the political game. Accordingly, an exciting frontier of this research clarifies the conceptualization and empirical measurement of judicial independence around the world.

The Comparative Constitutions Project catalogues the *de jure* components of judicial independence in all national constitutions between 1789 and 2015, detailing institutional arrangements that are theorized to ensure impartiality (e.g. judge tenure, rules governing judicial nominations or removal), or to endow courts with independent authority (e.g. constitutional or abstract review powers) (Elkins et al. 2014). Yet these scholars also observe we have very little empirical evidence as to the downstream consequences of institutional design, or the extent to which institutional protections produce their intended effects (Melton & Ginsburg 2014). Decoupling autonomy-promoting institutional arrangements from those that expand court authority, Brinks and Blass (2014) chart the evolution of formal judicial power in Latin America, pointing to ways in which its expansion has invited and provoked inter-branch conflict. My own work shifts the focus from high courts to the actors responsible for their institutional (re)design, classifying the proposals of judicial reform advanced by legislative and executive authorities. I theorize and infer

actors' motivations for enhancing or curtailing judicial independence, examine the stated objectives that motivated reforms and identify the conditions that facilitate their eventual adoption and subsequent success (Driscoll 2014).

Considering instead *de facto* judicial independence, Linzer and Staton's (2012) measure of latent judicial independence synthesizes various independent measures thereof for nearly 200 countries in the post-war period, accounting for the uncertainty and potential boundedness of underlying metrics. Jazayeri's (2015) approach casts judicial independence as only indirectly observable, though one that may be recoverable by evaluating the social, political and economic outcomes that high court independence theoretically implies. Finally, forthcoming expert survey data from the Varieties of Democracies Project (VDem) promises new insights into various metrics of judicial independence, including the frequency of court curbing or judicial purges or the prevalence of compliance with judicial decisions.

State courts and the legal hierarchy within the U.S.

Though "comparative judicial politics" often refers to the study of courts outside the U.S., a prominent example of the "comparative advantage" has been in the realm of judicial politics within the United States. Taking seriously the call to diversify the object of study beyond the nation's high court, Brace and Hall (1995; 1997) leveraged institutional variation across state supreme courts, suggesting that the effects of many case-level, litigant and judge-specific covariates are conditional on the institutional contexts in which courts operate. A voluminous literature has since considered how methods of judicial selection impacts the public's evaluation of judges and judicial institutions, paying special regard to the variability in the direct election of judges across the states (Bonneau and Hall 2009; Kritzer 2011). As to the effects of judicial selection procedures, Canes-Wrone et al. (2014) show that reelection incentives are a strong predictor of the severity of judges' sentencing decisions, while others extend this logic to directly elected prosecutors, who also benefit from appearing "tough on crime" (Nelson 2013). Electoral institutions and campaign conditions create powerful incentives for judicial behavior, with broad consequences for both policy and the evolution of law.

Related literature examines the variability in constraints and professional incentives within the U.S. judicial hierarchy (Boyd 2015), eschewing the distinctions between the jurisprudential, attitudinal and strategic models of judicial behavior. Though the rapid generation of theoretical models currently outpaces empirical testing (c.f. Lax 2011), empirical research increasingly reflects this new theoretical approach and comparative orientation. For example, Hinkle (2015) cleverly exploits variation in justiciability of precedent, as precedent is legally binding within appellate circuits, though merely 'persuasive' across them. Modeling judge citations as a function of justiciability and ideology, she shows that *stare decisis* constrains judges in their citation of precedent, yet judges appear ideologically motivated in their treatment of non-binding cases. Her cross-circuit research design provides a novel identification strategy to observe the oft-cited notion of "legal constraint" as one of several determinants of judicial behavior.

Having identified three lines of inquiry that exemplify the "comparative advantage," how can we account for their relative success? Below I enumerate several contributing factors and offer some final reflections on the future of the field.

'Have theory, will travel'

Beyond a desire to see how a particular approach "traveled," much of this research was informed by contemporary theoretical debates and thoughtful adaptation of existing concepts and measures. Beyond the prescription to avoid "hit-and-run" comparative work (Scheppelle 2000), consider the following example: prior to Caldeira and Gibson's foray into the comparative judicial politics, both authors were deeply ensconced in the U.S.-based literature on public support and judicial legitimacy. This experience is evident in the authors' design of their cross-national survey instrument, which avoided imprecise notions of "institutional trust" in favor of multi-dimensional scales of diffuse and specific support in accordance with Easton's original conceptualization (1965). Though the comparative orientation of Caldeira and Gibson's research was unprecedented, this attention to research design set the stage for the authors to engage with multiple audiences on theoretical terms, including those who cared little for the novelty of their empirical extension or the particulars of the European cases.

Both large-N and case study research contribute, albeit in different ways

Sub-field overviews and prescriptions for future research often generate lively epistemological and methodological debates (c.f. Gilman, Tate & Haynie 1994; Kewar et al. 2012). Yet each of the aforementioned literatures engage scholars from diverse backgrounds with different toolkits, the combined efforts of which make for a more comprehensive research agenda. At the same time that Gibson, Caldeira and Baird (1998) situated public support for SCOTUS into the wider distribution of public support for national judiciaries, Vanberg advocated the case study method as an appropriate lens through which high courts' and legislatures' strategic calculations may be considered and causal mechanisms identified. This U.S. research is an excellent example of decentralizing our analyses to better probe the theoretical and empirical boundaries of law (Hilbink 2009), though doing so in a way that builds on and contributes to extant theoretical models (Kewar et al. 2012). In the area of judicial independence, there is a clear give-and-take: Without a well-defined concept, it is hard to know what to measure; lacking sufficient comparative information we may never understand the extent to which our concepts are a meaningful characterization of a larger distribution. Pitting large-N statistical approaches against case study methods misses the respective contributions each can provide. Casting prescriptions for future research in "either/or" terms is unhelpful.

On information and inference

It was once the case that comparative judicial politics was stifled for lack of adequate comparative data. Today, the ever-expanding availability of information from courts, legal actors and institutions around the world provides an endless stream of interesting puzzles, with much more (and far richer) data than ever before. This poses a challenge if we seek to advance a research agenda or line of inquiry as a coherent theoretical whole.

Though description and discovery are an important part of cataloging the boundaries of our collective knowledge, insofar as we care about inference or the identification of cause and effect, we must be willing, minimally, to bin data into that which is "more" or "less" informative for our chosen theoretical framework. Whereas any theoretical model articulates a simplified version of the world, differentiating the systematic versus idiosyncratic components of variance or causes will necessarily imply we

set some information aside.

This is not to marginalize residual puzzles as uninteresting or uninformative. Rather, it is encouragement to let theory be our map for chartering unexplored territory. Gaining an understanding for how the world works is a fundamental motivation for engaging in any comparative work, but navigating with a map can help us reach our intended destination.

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The Politics of Judicial Review: Looking Beyond the US Supreme Court

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Historically, scholars studying judicial review have focused on the United States and, in particular, its Supreme Court (SCOTUS). Increasingly, though, research has engaged courts outside the United States—both at the national and international level.” This change has expanded the questions we are asking, by allowing us to ask new questions in the comparative and international context and by offering important new insights about judicial review in the United States and the power and role of the Supreme Court in the US political process.



Studies focused solely on the United States, and its Supreme Court, can suffer from the classic challenges of studying a single case. First, theoretical arguments developed and examined in the context of one country can suffer from serious empirical and conceptual limitations. These limitations can undermine our understanding of judicial review in the United States and in contemporary democracies more generally. Second, it is difficult to imagine, theorize about, and test for counterfactual conditions based on a single, invariant, judicial system. Thus, for students of US judicial politics it may be important to look beyond the Supreme Court to understand important facets of judicial review in the US. Finally, the practice of judicial review in the United States diverges in important ways from practices in other democracies. As

a result, the US experience with judicial review may provide limited insight into the wider questions about the influence of courts on the performance of democratic political systems.

Of course, there are reasons for the traditional US focus. Historically, the comparative study of judicial politics has failed to develop either the impressive empirical basis or, to a lesser extent, the theoretical foundation we find in the US judicial politics literature. This is due, in part, to practical and institutional constraints on data collection present in many non-US judicial systems. However, recent institutional developments, technological advances in data availability, and creative theoretical work have made non-US research both more attractive and valuable to understanding the politics of judicial review, in the US as well as abroad.

For the remainder of the essay, we highlight some recent examples of these principles in practice. We review research from non-US courts that engage three general questions around the politics of judicial review: how rules defining the *de jure* independence of a court influence its rulings; how courts manage threats of noncompliance; and how courts operate in a geographically decentralized (e.g., federal) political system.

1. Political Institutions, Party Competition, and Judicial Independence

A long tradition of research, both in the US and more recently in comparative politics, has investigated how the *de jure* institutions governing the selection of judg-

es and the operation of the court affect the independence of the judges on that court [Harvey (2012) provides a good summary of research on this topic]. One of the key questions is to what extent the institutional rules defining the relationship between the executive, legislative, and judicial branches insulate judges from political pressure from the other branches. We find dramatically more variation in these rules outside the United States than we find in the US federal judiciary. This is true both across countries and, in some ways, across judges on the same court in a country (e.g., where judges serve staggered terms).

These institutional differences are invaluable for analysis of theories of judicial decision-making. Do high court judges outside the United States operate with an eye toward reappointment? With the limited terms in office, might they also have incentives to obtain post-court careers? Recent work on the courts in Central and Eastern Europe indicates that in fact they do. Bricker (2015) finds evidence that judges respond to reappointment incentives, and that younger judges (where we would expect the incentive to matter most) also respond to career-based incentives. Specifically, younger judges move their judgments closer to their appointing party's expected policy interests as their terms on the bench come to an end. Like their elected counterparts in the US state courts, constitutional judges subject to reappointment often decide cases in ways designed to further their career on the bench.

Similarly, the level and character of party competition in a legislature can also affect the level of judicial independence (Vanberg 2008). If judges worry about retribution for rulings opposed by legislators, the effect of any such threat will vary with the likelihood the coalition of opposed legislators is capable of punishing the judges in question. The experience of judicial review outside the US—with relatively wide variation in the number of legislative parties and the number of parties in government—allows for more nuanced evaluations of this concern. Are judges hesitant to challenge single-party, or minimum winning coalition legislation, given the assumption these are stronger, more durable governments? Bricker (2015) determines that courts are much more likely to overturn legislation when faced with a surplus majority government coalition. With more parties than necessary, and with the looser ties that exist among many of these parties, there are real incentives to defect from a surplus coalition once a given party's piece of legislation has been enacted (Volden and Carrubba 2004). Thus, the court encounters a weaker threat of sanction than when facing a minimum winning government coalition.

2. Judicial Politics and Threats of Noncompliance

As Alexander Hamilton famously observed, “[The Supreme Court] may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments” (Federalist #78). This limitation of SCOTUS is shared by constitutional courts generally, and suggests that courts concerned about effective rulings should respond strategically in their rulings so as to maximize the chances of executive compliance. Several recent studies from outside the US have developed creative and compelling accounts of how constitutional courts exploit their political context and their institutional prerogatives to enlist the electorate to help compel the executive to comply with adverse rulings. Of particular note, Vanberg (2001, 2005) argues that constitutional courts in democracies can trade on strong public legitimacy to induce compliance only in so far as the public is aware of rulings against the government. He then showed that the German Constitutional Court tempers its rulings based on the likelihood the public will observe the decision and compel the government to comply. A key feature of Vanberg's argument is that courts cannot assume that their rulings will always attract the necessary public attention to assure compliance. Based on this insight, scholars have investigated how courts might strategically use their procedural discretion to enhance public attention. Staton (2006, 2010) showed that the Mexican Supreme Court strategically issues press releases to increase the likelihood of compliance. Similarly, Krehbiel (2015) shows that the German Constitutional Court uses its discretion over one of its most prominent procedures, public oral hearings, to raise public awareness when faced with credible threats of non-compliance.

Vanberg's argument has also been successfully extended to the US context (Carrubba and Zorn 2010). They show empirically that SCOTUS is more likely to rule against the US government when the case is most likely to engage the electorate as an indirect enforcer: in cases where the public is best able to evaluate whether the government is in compliance with the ruling and in cases where the public is most likely aware of the ruling.

3. Courts and the Politics of Inter-state Bargains in Federal and International Settings

Staton and Moore (2011) provide a valuable corrective to a longstanding distinction between national and international courts. As they argue, in many important ways, national courts and international courts face similar constraints on their power: they both lack a direct means of enforcing adverse decisions on governments. Indeed, international courts attempting to alter the behavior of their member-states face very similar challenges to fed-

eral constitutional courts attempting to compel states or even the high courts of those states to comply with adverse rulings. Carrubba and Gabel (2015) present a theoretical argument and supporting empirical evidence that a court can facilitate cooperation among the members of an international organization with treaty obligations, and this salutary effect relies in no way on the court having any direct or indirect power or influence over the members. Carrubba and Rogers (2003) develop a very similar theoretical argument with respect to relations between the states in the United States and role of the Supreme Court in enforcing and developing the Dormant Commerce Clause. They revisit the conventional account of the Court's role and show that the effectiveness of SCOTUS in enforcing this important constitutional obligation does not require (nor necessarily result from) any independent power of the court. Indeed, as in the international context, a "weak" SCOTUS could significantly enhance inter-state commerce.

Footnotes

1. This is, of course, a well-rehearsed claim about US focused research on institutions. See, for example, Huber and Shipan 2002..

2. For such an example from the United States, see the failure of SCOTUS to gain compliance from the Oregon Supreme Court in the context of its rulings against Phillip Morris. On the history of these rulings see, Barnes, Robert "Supreme Court Ends Phillip Morris's Challenge of Punitive Award," Washington Post, April 1, 2009.

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Learning about Law and Politics in Post-Communist Eurasia

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Learning about law and politics in the thirty-five post-communist countries of Eurasia, stretching from the shores of Adriatic Sea to the Mongolian desert steppes, is fascinating. At the same time, most scholars of post-communist law and politics face the additional burden of demonstrating that law matters in the lawless "Wild East." Indeed, these countries share

the same starting point – the breakdown of Communist rule in the late 1980s and early 1990s – and have declared, at least on paper, their commitment to the rule of law; human rights and ombudsmen responsible for their protection; judicial independence; and constitutional courts in charge of policing constitutionality of public policies. These countries have sought to join various

international human rights protecting institutions, and have experimented with various innovations, most of which came from Western legal systems, including the US legal system.

Yet, a quarter of a century later, these countries significantly vary in terms of the actual respect for human rights, arbitrariness of government action, and real extent of judicial power that they demonstrate. They also greatly vary in terms of how open and accessible their legal systems are as field research sites. Some countries like Turkmenistan, where President himself approves the list of admitted law school students, remain closed to researchers interested in the interplay between law and politics. Others, like Russia and Tajikistan, sometimes detain and deport foreign scholars

working together with local lawyers, under the pretext of visa violations. Yet in other countries, like Lithuania, prison officials allow researchers to choose the prisons they wish to observe and interview prisoners. Let me briefly focus on the new ways of describing, measuring and explaining the interplay between law and politics in order to argue that despite this variation, scholars now have an easier access to various kinds of data that can help us understand the legal systems in post-Communist countries. This allows for the systematic study of law and politics, and more broadly, of state-society relations in this part of the world.

During the 1990s, many scholars demonstrated how post-communist law and politics interact by citing newly written legal texts: constitutional amendments, new laws and regulations, and judicial decisions. Following that, some scholars relied on published interviews, memoirs and speeches from constitution-makers, top judges and legal professionals to show that some legal professionals were no longer Soviet, corrupt, dependent, incompetent, and so on. No doubt that these accounts gave a one-sided picture displaying the hard work of these actors, who had a strong stake in maintaining the status quo in the newly-established post-communist legal system. However, very few scholars have actually observed how post-communist judiciaries worked in practice outside the capital cities.¹ Even fewer scholars focused on the consumers of the legal systems.²

More recently, however, scholars have switched their focus on the demand for rights and legal accountability and turned their attention to the actual and potential users of legal system through the use of surveys, focus group and individual interviews, and ethnographic observation.³ The reasons for this switch are manifold. In some cases, this is due to the general rise of social activism and middle class, which demands a stronger rights protection and cannot be ignored by the social scientists studying the region.⁴ In other cases, human rights activists, investigative journalists, skillful lawyers or government detectives generate publicity or reveal scandals, like prison torture in Saakashvili's Georgia, triggering some kind of response from the government, the response that social scientists analyze.⁵ Finally, proliferation of inexpensive wiretapping devices, digital media, smartphones and Internet access coupled with the popularity of online social networks allows ordinary citizens, whose voices are not usually heard in the scholarly literature, to provide new kinds of evidence of heroic actions or misconduct of legal professionals, like a Russian judge-napping during the trial or a Kazakh judge weeping

about the interference from the top. This enables scholars to provide a much deeper description of informal aspects of interplay between law and politics.

The new ways of measuring how law works on the ground in post-communist countries include a more sophisticated analysis of quantitative indicators of performance of government agencies, including courts, and public attitudes towards them. Many post-communist law-enforcement agencies and judiciaries have recently improved their official data collection and some of them make this data publicly available, which makes it possible to analyze their performance, including the content analysis of judicial decisions and government documents, over time.⁶ For example, courts in Poland, Bulgaria, Russia and Ukraine have the same arrest, conviction and acquittal rates now as they had in 1989 on the eve of the breakdown of the Communist rule.⁷ Drawing on the biographical data of appellate judges and prosecutors and criminal sentencing in Russia, some argue that the career instability of these officials tends to strengthen the repressiveness of the criminal justice system.⁸ In addition to simple and abstract questions about trust in the legal system, public opinion surveys on law-related topics have also included experimental questions about policing, the persuasive authority of courts, and other topics.⁹ Surveys of judges and other legal professionals as well as court users are also becoming popular in the region and can generate interesting research data for social scientists.¹⁰

In addition to analyzing the newly available datasets, learning about informality in the legal system requires collecting and analyzing qualitative evidence of how law makes a difference in the state-society relations. Drawing on extensive field research and working together with the local counterparts on the ground, scholars have identified the following ways in which informal rules, practices and collectivities function and malfunction in the legal system: Late socialist legacies have varying levels of influence on both thinking and performance of legal institutions and public attitudes towards the law.¹¹ Legal reforms have a higher chance of being implemented if street-level bureaucrats support them, which reflects a divide between top leadership and officials on the ground.¹² Many post-communist states could be characterized as dual states with arbitrary administrative regimes, in which short-term political expediency rules, and constitutional regimes, in which legality drives the routine decision-making of citizens and officials.¹³ For example, contrary to the strategic accounts of judicial empowerment, insecure incumbents in Ukraine have strong incentives to interfere in the administration of justice, mass media, and elections,¹⁴ while Russia's criminal justice officials on the ground choose to prosecute certain crimes using pre-existing practices and routines with little interference from the top.¹⁵ Finally, it is

important to view post-communist states as hierarchies of multiple overlapping domestic and transnational networks, in which legal professionals play significant roles. These networks shape crucial political processes such as high-level constitutional politics, regime survival, judicial governance, eradication of mafias, and government-business relations.¹⁶

To conclude, today's greater availability of both easily quantifiable data and qualitative evidence allows scholars to more deeply analyze the growing disparities in legal transformations among post-communist countries and to fruitfully compare them to law and politics in other parts of the world.

Footnotes

1. See, e.g., Hendley, Katherine, "Remaking an Institution: The Transition in Russia from State Arbitrazh to Arbitrazh Courts," *American Journal of Comparative Law*, vol. 46, no. 1, 93-127, 1998; Pomorski, Stanislaw, "In a Siberian Criminal Court," *11 East European Constitutional Review* 111 (2002)

2. See, e.g., Kurkchian, Marina (2003), "The Illegitimacy of Law in Post-Soviet Societies" in Galligan, Denis and Marina Kurkchian (eds.), *Law and Informal Practices: the Post-Communist Experience*, Oxford UP; Verdery, Katherine. *The Vanishing Hectare: Property and Value in Postsocialist Transylvania*. Cornell University Press, 2003; Wanner, Catherine. "Money, Morality and New Forms of Exchange in Postsocialist Ukraine." *Ethnos* 70.04 (2005): 515-537.

3. See, e.g., Beyer, Judith. "Constitutional Faith Law and Hope in Revolutionary Kyrgyzstan." *Ethnos* 80.3 (2015): 320-345; Kurkchian, Marina. "Justice Through Bureaucracy: The Ukrainian Model," *Social & Legal Studies* (2013): vol. 22 no. 4 515-533; Urinboyev, Rustamjon, and Måns Svensson. "Living law, legal pluralism, and corruption in post-Soviet Uzbekistan." *The Journal of Legal Pluralism and Unofficial Law* 45.3 (2013): 372-390; Hendley, Katherine, "Everyday Law in Russia," forthcoming; Lauren A. McCarthy, "Trafficking Justice: How Russian Police Enforce New Laws, from Crime to Courtroom," Cornell University Press, 2015.

4. See, e.g., Stan, Lavinia. "The Roof Over Our Heads: Property Restitution in Romania." *Journal of Communist Studies and Transition Politics* 22.2 (2006): 180-205; Phillips, Sarah D. *Disability and Mobile Citizenship in Postsocialist Ukraine*. Indiana University Press, 2010. Gans-Morse, Jordan. "Threats to Property Rights in Russia: From Private Coercion to State Aggression." *Post-Soviet Affairs* 28.3 (2012): 263-295; Markus, Stanislav. *Property, Predation, and Protection*. Cambridge University Press, 2015.

5. Peter Kabachnik, *Prison, Nuisance, or Spectacle? The 2009 "Cell" Protests in Tbilisi, Georgia*, Geopolitics, Vol. 18, Iss. 1, 2013, 1-23

6. For example, official court statistics are available at the website of the National Statistics Institute of Bulgaria at <http://www.nsi.bg/otrasal.php?otr=25>, of the Polish Justice Ministry at <http://www.bip.ms.gov.pl/pl/dzialalnosc/statystyki>, of the Supreme Court of Ukraine at <http://www.scourt.gov.ua>, of the Judicial Department of the Russian Supreme Court at <http://www.cdep.ru>, of the Procurator General Office of Kazakhstan at <http://service.pravstat.kz>. The Institute for the Rule of Law at the European University at Saint-Petersburg has created a Russian Criminal Justice Atlas based on all sentencing decisions issued in 2009, available at <http://atlasjustice.com>. See also, Annus, Taavi, and Margit Tavits. "Judicial Behavior After a Change of Regime: The Effects of Judge and Defendant Characteristics." *Law & Society Review* 38.4 (2004): 711-736.

7. See, e.g., Trochev, Alexei. "How Judges Arrest and Acquit: Soviet Legacies in Postcommunist Criminal Justice," in Kotkin, Stephen, and Mark R. Beissinger. "The Historical Legacies of Communism: An Empirical Agenda." (eds.) *Historical Legacies of Communism in Russia and Eastern Europe* (2014): 152-178.

8. See, e.g., Schultz, André, Vladimir Kozlov, and Alexander Libman. "Judicial Alignment and Criminal Justice: Evidence from Russian Courts." *Post-Soviet Affairs* 30.2-3 (2014): 137-170.

9. Ledeneva, Alena. "Telephone justice in Russia." *Post-Soviet Affairs* 24.4 (2008): 324-350; Baird, Vanessa A., and Debra Javeline. "The Persuasive Power of Russian Courts." *Political Research Quarterly* 60.3 (2007): 429-442; Buckley, N., Frye, T., Gehlbach, S., & McCarthy, L. (2014). *Cooperating with the State: Evidence from Survey Experiments on Policing*. Available at SSRN.

10. Kyiv-based Center of Judicial Studies has been conducting annual surveys of Ukrainian judges, results of which are available at <http://www.judges.org.ua/Mon.htm>. The Institute for the Rule of Law at the European University at Saint-Petersburg has conducted a survey of 759 Russian judges in 2011, results of which are available at <http://enforce.spb.ru/en/projects/the-judicial-community-and-organizations>. Beers, Daniel J. "Judicial Self-Governance and the Rule of Law: Evidence from Romania and the Czech Republic." *Problems of Post-Communism* 59.5 (2012): 50-67.

11. See, e.g., Karstedt, Susanne. "Legacies of a Culture of Inequality: The Janus Face of Crime in Post-Communist Countries." *Crime, Law and Social Change* 40.2-3 (2003): 295-320; Mendelski, Martin, and Alexander Libman. "Demand for Litigation in the Absence of Traditions of Rule of Law: an Example of Ottoman and Habsburg Legacies in Romania." *Constitutional Political Economy* 25.2 (2014): 177-206.; Khechumyan, Aleksandr, and Satenik Margaryan. "The Practice of Pretrial Detention in Armenia: an Examination of the Role of the Soviet Legacy." *European Journal on Criminal Policy and Research* 21.1 (2014): 117-134; Solomon, Peter H. "Post-Soviet Criminal Justice: The Persistence of Distorted Neo-Inquisitorialism." *Theoretical Criminology* 19.2 (2015): 159-178.

12. See, e.g., Solomon, Peter H., and Todd S. Foglesong. *Courts and Transition in Russia: The Challenge of Judicial Reform*. Westview Press, 2000; Piana, Daniela. *Judicial Accountabilities in New Europe: from Rule of Law to Quality of Justice*. Ashgate Publishing, Ltd., 2013.

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14. See, e.g., Popova, Maria. *Politicized Justice in Emerging Democracies: a Study of Courts in Russia and Ukraine*. Cambridge University Press, 2012; Trochev, Alexei. "Meddling with Justice: Competitive Politics, Impunity, and Distrusted Courts in Post-orange Ukraine." *Demokratizatsiya* 18.2 (2010): 122-147.

15. See, e.g., McCarthy, *Trafficking Justice: How Russian Police Enforce New Laws, from Crime to Courtroom*.

16. Hale, Henry E. *Patronal Politics: Eurasian Regime Dynamics in Comparative Perspective*. Cambridge University Press, 2014; Lewis, David "Crime, Terror and the State in Central Asia," *Global Crime*, Volume 15, Issue 3-4, 2014, 337-356; Slade, Gavin, "Reorganising Crime: Mafia and Anti-Mafia in Post-Soviet Georgia," Oxford UP, 2013; Markowitz, Lawrence P. *State Erosion: Subtitle Unlootable Resources and Unruly Elites in Central Asia*, Cornell University Press 2013; Engvall, Johan. "The State as Investment Market: A Framework for Interpreting the Post-Soviet State in Eurasia." *Governance* 28.1 (2015): 25-40; Dallara, Cristina and Daniela Piana. *Networking the Rule of Law: How Change Agents Reshape Judicial Governance in the EU*, Ashgate 2015

Data on International Courts

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Since the end of the Cold War, we have witnessed a proliferation in the number of international courts and adjudicative bodies. Moreover, these courts have become increasingly active. By June of 2015, the European Court of Human Rights (ECtHR) had issued 46,000 legally binding judgments, with 33,000 of

those being issued in the past decade. While other courts are less prolific, there are still hundreds of judgments from the Court of Justice of the European (CJEU), international criminal tribunals, the World Trade Organization's (WTO) dispute settlement panels, various investment arbitration panels, and the Inter-American Court of Human Rights. New global courts, such as the International Criminal Court (ICC) and the United Nations Convention on the Law of the Sea (UNCLOS) tribunal, have started to take on cases. Regional courts in Africa and the Andean region have also begun to develop (Helfer and Alter 2013).

These developments raise important substantive and theoretical questions as well as opportunities for empirical research.¹ The newly available data can be used to shed light on broader debates in the field of judicial behavior and politics. For example, scholars have used dissents from the ECtHR to examine the ideological structure of judicial behavior and the effects of political appointments in ways that ought to be familiar to scholars of U.S. judicial politics (Voeten 2007). Others use citation data to examine whether precedent operates in similar ways on international tribunals as it does on national courts despite the different formal role for precedent in international law (Lupu and Voeten 2012; Pelc 2014). Others focus on questions that are more specific to the context of international courts, such as the extent to which national governments constrain the behavior of international courts (e.g. Carrubba, Gabel, and Hankla 2008; Stone, Sweet, and Brunell 2012).

In the process, scholars have amassed large amounts of data on dissents, citations, case outcomes, compliance, biographical details of judges and arbitrators, the texts of judicial decisions, NGO participation, third party participation, and many other facets related to international judicial processes. Scholars have barely scratched the surface of the already-available data.

Still, the data collection is occurring in an almost entirely decentralized manner. This creates at least three problems. The first is duplication of efforts. There must be at least a dozen researchers collecting data on investment disputes (a hot area of research) with little effort to coordinate efforts.

Second, and perhaps more problematic, these data are collected for the purpose of specific research projects and thus rarely updated when these projects are completed. There is, as far as I know, nothing along the lines of the Supreme Court Database (<http://supremecourtdatabase.org/>) for any international court.² Many of the courts have, however, very well developed on-line databases from which usable research datasets could be constructed and maintained at reasonable cost.

Third, efforts have not been made to standardize data collection practices across courts. International judges and arbitrators regularly move across courts and panels. International courts frequently cite each other and forum shopping is often a realistic possibility. Simple practices such as assigning unique ID numbers to judges, arbitrators, and cases could make cross-court research much more convenient.

Two major research centers in Scandinavia are starting to tackle some of these issues. PluriCourts is a Norwegian Center of Excellence funded by the Norwegian Research Council. iCourts is a similar Center funded by the Danish Research Council. Both centers are interdisciplinary, have a long time horizon, and have the funding to contribute to centralization efforts.

I recently organized a workshop at PluriCourts with the aim of inducing more cooperation on such matters. A first step is to organize a clearinghouse web-site that surveys what data is already available. Researchers can also submit their own datasets on the PluriCourts dataverse: <https://dataverse.harvard.edu/dataverse/PluriCourts>. I encourage anyone who wishes to have their dataset posted on the clearinghouse web-site or hosted at Dataverse to contact me.

Yet, this is just a first step. As international courts have become more prolific, they are also becoming more con-

troversial. We have seen street protests in response to ECtHR and WTO judgments and countries withdrawing from investment dispute systems, while the ICC continues to be a hotbed of political controversy. This increased politicization will undoubtedly attract more scholars to what is an exciting new area of research. This will undoubtedly lead to new data collection; hopefully, we can ensure that data collection is conducted in a way that profits from and adds on to existing datasets.

Footnotes

1. For recent overviews of empirical literatures on international law, see (Hafner-Burton, Victor, and Lupu 2012; Shaffer and Ginsburg 2012)
2. One dataset that is at least updated regularly is James Meernik's data on international criminal tribunals: <http://www.psci.unt.edu/~meernik/International%20Criminal%20Tribunals%20Website.htm> (accessed 6/18/2015). The World Bank semi-regularly updates a database on WTO disputes but the latest update is from 2011: <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0..contentMDK:20804376~pagePK:64214825~piPK:64214943~theSitePK:469382.00.html>. Accessed 6/18/2015.

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Measuring Judicial Independence

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A significant and increasing focus in the comparative study of courts is on the institution of the judiciary vis-à-vis other actors, specifically the degree to which it possesses *de jure* or *de facto* independence from the executive and legislature. Although scholars have recently examined both the causes and consequences of judicial independence, trying to understand how it relates to a host of phenomena, including "big" issues such as development, democratization, and conflict, we have only begun to scratch the surface. Here I will highlight two important data sources on *de facto* judicial independence and two important challenges that need to be addressed going forward.

Some readers will already be familiar with the Linzer and Staton (2015) measure of *de facto* judicial independence, as it has garnered over 50 citations since being presented as a working paper at APSA in 2011. Linzer and Staton's contribution is a measure that leverages agreement and availability among eight existing measures of *de facto* judicial independence. Building on existing Item Response Theory models, they develop a measure of *de facto* independence

explicitly taking into account two important theoretical aspects of the phenomenon (for more detail see Linzer and Staton 2015). First, that we expect it to be highly sticky, changing gradually over time, but still subject to large shifts. Second, that it is conceptually bounded, there existing some level at which a judiciary can be no more dependent on or independent of the government. Their result is an interval measure, bounded by 0 and 1, for over 200 countries from 1948 to 2012, and the uncertainty around these estimates. This measure has been used in studies of treaty compliance, repression, and regime and leader survival (Conrad and Ritter 2013; Epperly 2013; Escribà i Folch and Wright 2012; Hill and Jones 2014; Staton, Reenock, and Radean 2013).

The Varieties of Democracy (V-Dem) project, a global collaboration of scholars to better identify core concepts, properties, and components of democracy, is scheduled for full public release in December 2015. While not focused solely on the judiciary, V-Dem contains numerous *de facto* measures that will be of great interest to comparative courts scholars, including assessments of government attacks on the judiciary, court packing, and compliance (as well as a host of *de jure* features of judiciaries). All of these are of

great relevance to those studying judicial independence, and might be better able to address the question of judicial autonomy and power discussed by Ríos Figueroa and Staton (2014). Going back to 1900, V-Dem uses multiple (5+) expert codings for each country and year, attempting to increase the validity of such by bridge and lateral coding, whereby country experts code other countries (to ascertain comparisons and baselines), and self-assessed certainty scores. These codings are used in an IRT model to better identify, correct, and quantify measurement error. While these data are not yet publicly available, they soon will be, and offer significant promise to comparative courts scholars.

Despite these two recent developments in comparative courts data, two significant remaining challenges are worth noting. First, there is serious need for data on the operation and independence of different types of courts. Empirically, we observe that different types of courts in a single system can operate with varying degrees of independence. In autocracies, special (military, exceptional, etc.) courts can serve to corral “political” cases away from the ordinary judiciary, freeing it up to behave with some degree of independence and allowing the regime to reap the gains thereof (Moustafa 2007, Aguilar and Ríos Figueroa 2014). Even in consolidated democracies, the placement of constitutional tribunals outside the ordinary judiciary is a way to insulate regular judges from the need to weigh in on questions of a constitutional or political nature. With regards to the causes and consequences of judicial independence, there is good reason to suspect certain types of courts might matter more than others. If what drives autocrats to empower courts is assuaging investors' confidence, for example, then ideally we desire a measure of courts relevant to investor decisions, in most likely *not* the highest, constitutional court. On the other hand, if we think political leaders in democracies empower courts to provide political insurance once they leave power, judicial review of government decisions is key, and constitutional courts are of prime concern. Unfortunately, to date we have extremely limited data on variation within a country across types of courts. While V-Dem attempts to assess such, it simply asks about “high” vs. “low” courts, with low being all other courts. While a potential step forward, significant room exists for systematic research on variation in types of courts, even within single countries or clusters of countries over time.

A second challenge, and room for serious contribution to study, concerns not variation in types of courts within a country, but rather geographic variation within individual countries. Recent research has identified the phenomenon of sub-national authoritarianism, or enclaves within federal democratic states—such as

the American South from Reconstruction to the Civil Rights era—that remain solidly authoritarian (Gibson 2013). In such instances, we should certainly expect non-federal judiciaries in these regions to operate far less independently than in democratic sub-national regions of the same state. Even in sub-national entities of solidly democratic (or authoritarian) states, we might expect significant sub-national variation. Empirical support for such exists: in democracies and autocracies alike, citizen surveys by the World Justice Project on rule of law matters shows significant sub-national variation to the question of whether judges decide cases according to law (Botero and Ponce 2014). Not only do such (preliminary) findings challenge how we conceptualize what judicial independence actually is, the lack of systematic cross-national data makes it nigh impossible to determine precisely when, where, and why such variation exists. As with the first challenge, wide avenues exist for fruitful research and serious contributions.

While attention has no doubt been paid to judicial institutions, they have received far less than many other objects of study in comparative politics. A cursory glance at the state of the comparative literature on the other two branches of government illustrates this: far more study has been dedicated to the causes and consequences of institutional variation among executives and legislatures. While many would likely say this is apt, given the relative importance of the branches, I suspect those reading this newsletter would disagree. If that is the case, it is incumbent on those who study comparative law and courts to embrace the creation and use of cross-national measures capturing various facets of judicial politics. This is not to say that existing measures specifically, or cross-national work generally, are sufficient to understand how courts operate across space and time. All attempts to measure latent concepts, especially those that are “essentially contested,” require difficult choices open to objection, and certainly some in the subfield object to our ability to make valid comparisons.

These good-faith objections are misguided, however, for two simple reasons. First, even comparisons within single countries across time involve the measurement of latent concepts: *de jure* and *de facto* features of individual courts change, existing courts are abolished, and new courts created. For example, does moving security matters to special courts under complete government control and allowing the regular judiciary to rule more freely on non-security matters increase or decrease judicial independence? Expanding access but limiting the scope of review? The question of how to assess such changes, either theoretically or empirically, is hardly limited to those writing codebooks for cross-national datasets, and applies also to those examining change in a single country's judiciary over time. Second, it is only by

employing existing measures in published work that we are able to refine them and create newer, better measures; without demand, supply will be limited, and without the rewards of measures being used and cited, the incentives to create better measures are minimal. The fact that existing measures are far from perfect is a call for more, not less, work in this area. And the fact that we today have better and more exhaustive measures of judicial independence only underscores the need for theoretical and empirical advances where we continue to fall short.

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Law & Courts Section Website: Past, Present, and Future

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The origins of the section website date back to fall 1996. Then-section chair Tom Walker reported in the Winter 1996-1997 newsletter: "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.... It already contains some wonderful information, and promises to develop into a major Section resource."

The site went "live" on October 31, 1996 at the address <http://www.artsci.wustl.edu/~polisci/lawcourt.html> (see Figure 1). It contained a number of features that have been retained throughout the years, such as information about the section—including the by-laws, officers, and awards—and links to section-supported publications such as the *Law and Politics Book Review* (LPBR), the section newsletter, *Law and Courts*, and the

section discussion list. It also contained some features that have not been retained over time including a membership directory of names and email addresses, a syllabi archive, and working paper archive. Presumably these things can more easily be found these days through APSA, SSRN, and simple web searches.

Lee Epstein and Jerry Goldman published an article in the Winter 1996-1997 newsletter detailing the new website and provided instructions on how to access and navigate it. Looking back twenty years, it may be hard for us to remember—and impossible for our junior colleagues to comprehend—just how new the idea of the Internet and the World Wide Web was. The authors noted:

"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 Courts section, we decided to save that discussion for the Spring Issue and focus instead on the new site. To access the Law and Court's web site, simply point your browser to

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 December 30, 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](#)

Figure 1: 1996

<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."

How many of us recall switching from Mosaic to Netscape Navigator as our preferred browser in those early days?

One later development was a dataset archive added a few years later (see Figure 2). In 2002, the site moved to New York University, with Christine Harrington serving as webmaster, at the address <http://www.law.nyu.edu/lawcourts> (see Figure 3). In 2009, the section decided to procure its own website independent of a university affiliation. I took over as webmaster and moved the site to its current web address/home at www.lawcourts.org-- we also own the domain name lawandcourts.org (see Figure 4).

The primary development since then has been the updating of archival material to include the most complete and comprehensive information about the section's activities since its founding in 1983. For example, nearly every physical issue of the *Law and Courts* newsletter dating back to the first issue from 1983 was located, converted to a PDF file, and uploaded to the site. In addition, complete lists of award recipients and committee service were compiled by scouring past newsletters, section business meeting programs, and issues of *PS: Political Science & Politics*.

Law and Courts

An Organized Section of the American Political Science Association

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With 790+ members, Law and Courts is one of the APSA's largest. To join the section, [click here](#).

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(last updated on November 1, 1999)



This site is maintained by [Lee Epstein](#) and [Jeff Staton](#) at the Department of Political Science, Washington University, St. Louis.

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Figure 2: 1999

The second major development was moving the archives of the LPBR. Initially, the book review was housed at the home institutions of the editors. In 2007, during the editorship of Wayne McIntosh of the University of Maryland, new issues of the book review began being published on a stand-alone, non-university affiliated website: www.lpbr.net. Yet the archives of past issues, dating back to 1990, remained on Maryland's server. The pre-lpbr.net reviews have now all been transferred to www.lawcourts.org.

Finally, new features such as Facebook and twitter accounts, pages, and feeds were added. Section mem-

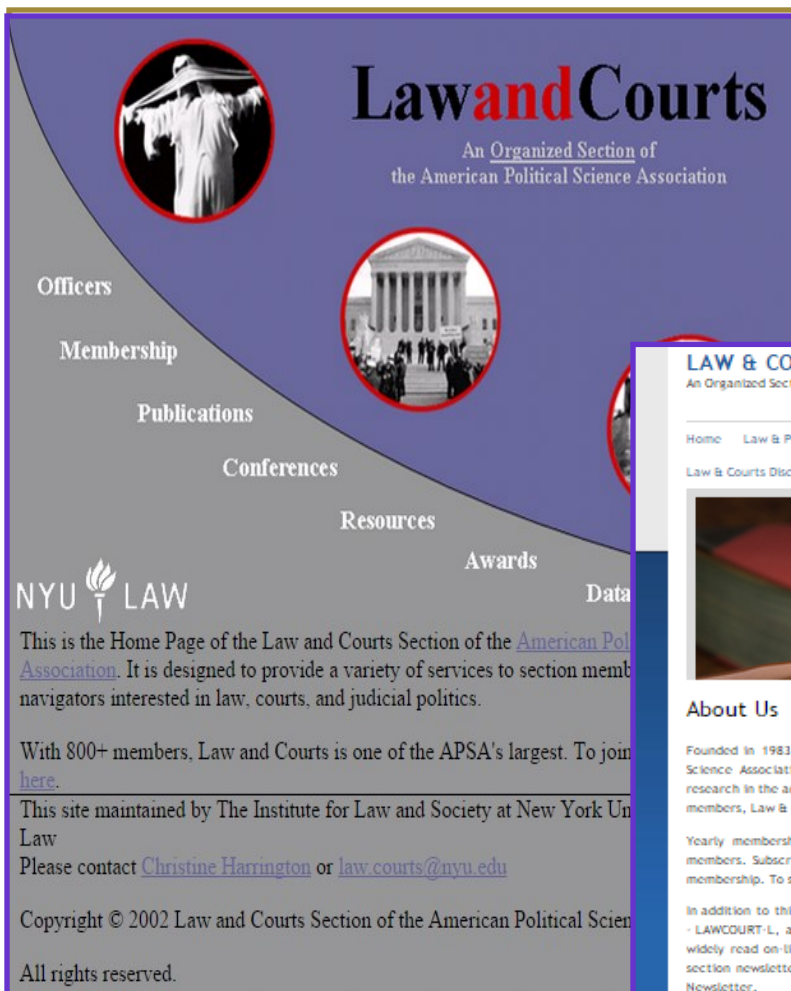


Figure 3: 2002

Members are encouraged to “like” and “follow” us on Facebook at www.facebook.com/lawandcourts and on Twitter @LawCourtsAPSA <https://twitter.com/LawCourtsAPSA>.

There is still much work to be done to complete the process of creating an on-line institutional memory for the section, including ad-hoc section committees and their work—e.g. the committee to establish a section journal, the “professionals” committee, and committees to fill section positions such as newsletter editor and listserv moderator. Toward that end, if anyone has any corrections or additions to the information on the website, please contact me at aeaward@niu.edu. For example, it appears that we are missing at least a few newsletters and possibly more as the publication schedule was not always regular. See the note at the bottom of www.lawcourts.org/pubs/newsletter for further details. In future, we are planning to expand the newsletter archives to list the contents of each issue and provide hyperlinks to individual articles.

We would also like to create an image archive for the section containing photographs and other images of sec-

tion members, conferences, and related events relating to the section. At present, many images of recent conferences are currently on the section’s Facebook page. Please share your images with us on Facebook or twitter or contact the webmaster. Finally, any suggestions for further improvements to the website should also be directed my way. Two decades ago, Epstein and Goldman encouraged



Figure 4: 2015

section members to think creatively about future uses: “the services that our site can provide are limited only by our imaginations.” As our Facebook and Twitter feeds suggest, the section can benefit from new technological developments. All it takes is some technical knowledge and a desire to serve the section. Law and Courts smartphone app, anyone?

Books to Watch For

Spring 2015

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Stephen E. Gottlieb (Albany Law School) has published *Unfit for Democracy: The Roberts Court and the Breakdown of American Politics* (NYU Press, ISBN 978-0814732427). *Unfit for Democracy* works through a basis for criticizing the Court before discussing its decisions. It begins historically with influential ideas about how to preserve a democratic republic, follows those ideas onto the world stage in the mid-twentieth century and into the courts of countries whose constitutions make democracy eligible for the courts to consider, then follows the political science of the survival and breakdown of democracy before addressing the Roberts Court on the issues relevant to the survival of democracy. The last chapter addresses constitutional interpretation to determine whether democracy is eligible for consideration by the Court. It also considers the significance of judicial consideration, and the challenge of works like Rosenberg's *The Hollow Hope* which treat the court as an insignificant factor in national change. On that basis the book concludes, as its title implies, that the Court has been undermining democracy in a wide spectrum of decisions from commercial rules to criminal procedure as well as those that directly regulate politics.

Susan B. Haire (University of Georgia) and **Laura P. Moyer** (University of Louisville) have co-authored *Diversity Matters: Judicial Policy Making in the U.S. Courts of Appeals* (University of Virginia Press, ISBN: 978-0-8139-3718-2). With few exceptions, the U.S. Courts of Appeals had been composed only of white males until President Jimmy Carter launched an effort to diversify the lower federal courts. By 2008, over a quarter of the sitting circuit judges were women and fifteen percent were African American or Hispanic. Underlying the argument made by administration officials for a diverse federal judiciary is the expectation that the presence of women and minorities will ensure that the policy of the courts will reflect the experiences of a diverse population. But have these changes actually affected judicial policy making as advocates had proposed? Drawing on oral histories and data on appellate decisions through 2008, the authors conclude in this work that judicial diversity has had a measurable impact on the business of the U.S. Courts of Appeals. While judges on these courts agree on most issues, race and gender differences in decision making were more likely to contribute to differences in civil rights cases: areas where African American and women judges had experienced prejudice personally. The level of diversity also influenced

deliberations and decision-making norms of each circuit. Greater demographic diversity in the small group setting of the panel led to more thorough deliberative outputs than those generated by homogeneous panels. However, the presence of a single woman and/or minority had no effect on decisional outputs of a panel or the circuit. When women and minorities reached a critical mass and held leadership positions in the circuit, decision-making processes shifted in that court. The authors conclude that these process effects will only become more pronounced as a result of the highly diverse Obama appointment cohort.

Herbert (Bert) Kritzer (University of Minnesota) has published two works:

Lawyers at Work (Quid Pro Books, ISBN 978-1610272834): "This collection of articles and essays...draws on [Kritzer's] extensive research related to lawyers and legal practice conducted over the last 35 years. That research has applied existing theoretical frameworks and developed innovative ways of thinking about how to understand what it is that lawyers do. The chapters reflect the wide range of both qualitative and quantitative research methods he has employed, and draw on his work on the Civil Litigation Research Project, a massive study funded by the U.S. Department of Justice under the Carter administration, and continues through subsequent studies of lawyer-client relationships in Canada, contingency fee legal practice, and insurance defense practice. This book is for scholars and practitioners interested in understanding the work of lawyers in day-to-day litigation-like settings—and those concerned about what the future might hold for the structure of the legal profession and the nature of legal practice."

Justices on the Ballot: Continuity and Change in State Supreme Court Elections (Cambridge University Press, 978-1107090866). The book examines patterns and trends in all types of state supreme court elections between 1946 and 2013 (with some notes regarding 2014). The book also includes a chapter on the impact of elections on both the public's view of the courts and on the decisions of state supreme court justices, and concludes with a chapter describing some potentially major departures from the current variations in the methods used for judicial selection and retention.

Stephen L. Wasby (University at Albany-SUNY) has self-published *A Life In Judging: Ted Goodwin Of Oregon* (available from Powell's or Espresso Book Machines, ondemandbooks.com). The work begins with Judge Goodwin's background through law school and his brief law practice, but it is not a standard biography. Instead, the work of a single judge is used as a lens through which to view the courts he served. The book is, thus, a judicial biography with a focus on the work of the courts of which Judge Goodwin was a member and on the judge himself. The book provides an extensive examination of his service on each court. It begins with the types of cases in which he participated on the Circuit Court for Lane County and continues with the internal workings of

the Oregon Supreme Court and the judge's many rulings for it. It then discusses the types of cases he handled as a federal trial judge and his demeanor in court. It ends with focused examination of his further contributions to Oregon law in the Ninth Circuit cases from Oregon in which he participated. This volume provides treatment of high-profile cases, such as the *Jackson* case striking down Oregon's obscenity statute, the *Eugene Cross* and *Oregon Beaches* cases in the Oregon Supreme Court, the complex *Mt. Hood Stages* antitrust case in a U.S. district court, and the Ninth Circuit's spotted owl cases. Also examined are the wide range of other subjects in criminal law and procedure, contracts, torts, and matrimonial law that came before the judge.

Announcements

2016 Annual Meeting of the Law and Society Association: Changes in Submission Processes

Planning for the 2016 Law and Society Association annual meeting in New Orleans has already started, and we anticipate an exciting meeting in a remarkable location. The Program Committee expects that submissions of paper, roundtable, and panel proposals will open on August 18, with submissions closing on October 15.

We wanted to let those who might be interested in being on the program for the 2016 meeting know about a change to the paper proposal process that the Program Committee is implementing and to explain the reason behind the change. For reasons we explain below, we will require those proposing papers to provide a 1,000-word summary of their proposed paper rather than the often minimal abstract that has been asked for in the past. Those proposing to organize a roundtable will be asked to provide a 500-word summary of the topic and the contributions they expect the proposed participants to make.

The substantial majority of those who submit proposals for the Law & Society Association's annual conference attend the conference and participate as planned. Occasionally submitters encounter unanticipated family, medical, or financial emergencies that make it impossible to follow through on plans to attend. However, over the last several years, a significant minority of people have withdrawn their proposed papers or panels after the sessions have already been scheduled and the LSA conference program is set. In the last couple of years, the number of withdrawals has been around 25% of the total number of proposed papers and sessions.

These withdrawals cause both logistical and financial problems. We suspect that many of you who have attended a recent LSA meeting have been affect-

ed by them, when you have attended a session to hear a promising paper only to learn that the person will not appear, or even by "collapsing panels" when multiple paper presenters fail to show. The withdrawals cause problems for the Program Committee which on short notice must try to re-form and reschedule panels. The LSA books additional hotel space to accommodate the expected number of panels, but when panels are withdrawn, that extra hotel space is an unnecessary expense, driving up costs for everyone.

Some other associations require that submitters pay a fee to submit a proposal; others mandate that papers go through a selective review process. Although both of these options could reduce the submission withdrawal problem, neither of these options was in keeping with the LSA's tradition of openness, and we are making the current change with the goal of avoiding having to consider changes that might limit who can present at the annual meeting.

Instead, we thought a better option was to ask for an expanded summary of the proposed paper, participation, or panel. We are trying to ensure that people who submit proposals are committed to attending once the proposal is accepted for presentation.

The committee recognizes that this requirement creates a new, albeit modest, obligation for those submitting proposals. This is why we are providing this alert as early as possible so that those thinking about participating in the 2016 meeting have sufficient time to think about what it is they want to propose.

For more information contact co-chairs Heinz Klug, University of Wisconsin (heinz.klug@wisc.edu) or Bert Kritzer, University of Minnesota, (kritzer@umn.edu).