



LAW AND COURTS

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

FROM THE SECTION CHAIR

Lee Epstein

Washington University in St. Louis

The Comparative Advantage



Introduction

Over the past decade, observers of the judicial process have drawn attention to the increasingly marginal role played by the U.S. Supreme Court in American society (*e.g.*, Shapiro 1995).¹ To support this claim, they point to the Court's declining plenary docket (*e.g.*, Hellman 1996), its inclination to reject especially salient cases (*e.g.*, Sunstein 1999), its use of various gate-keeping devices to dispose of controversial cases it has accepted (*e.g.*, Entin 1997), and its inability to generate social change (*e.g.*, Rosenberg 1991).

What makes this claim especially intriguing is that it comes at the very same time scholars are taking note of the increasingly important role played by courts in European democracies. As Schwartz (1992) puts it, "Before World War II, few European States had constitutional courts, and virtually none exercised any significant judicial review over legislation. After 1945 all that changed. [They] created tribunals with power to annul legislative enactments inconsistent with constitutional requirements. Many of these courts have become significant—even powerful—actors." Henckaerts and Van der Jeught (1998) agree, asserting that courts in Europe "have played an active role in ensuring the supremacy of constitutional principles."

If these comments are to be believed, then we must confront an essential irony: We judicial specialists continue to focus on the U.S. Supreme Court, despite its (potentially) decreasing importance, and continue (with limited exceptions²) to ignore courts abroad, despite their increasing prominence. Of the 249 Ph.D. dissertations on the subject of courts produced over the last five years, 85.9% (n=214) centered on American courts; only 14.1% considered courts elsewhere. Of the 42 articles published on courts in the *American Political Science Review* and the *American Journal of Political Science* since 1993, only 5 (even nominally) contemplated courts abroad, while 33 focused on the U.S. Supreme Court (the remaining 4 were on other U.S. courts). Scholars of comparative politics have been equally inattentive. Of the 727 articles published in that field between 1982 and 1997, less than 1% were on courts (Hull 1999). It is thus easy to understand why Gibson and his colleagues (1998) recently lamented

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General Information

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

Footnote and reference style should follow that of the *American Political Science Review*. Please submit two copies of the manuscript; enclose a diskette containing the contents of the submission; provide a description of the disk's format (for example, DOS, MAC) and of the word processing package used (for example, WORD, Wordperfect). For manuscripts submitted via electronic mail, please use ASCII or Rich Text Format (RTF).

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

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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 Sue Davis at *suedavis@udel.edu*, of publication of manuscripts.

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comparativists know precious little about the judicial and legal systems in countries outside the United States. We understand little or nothing about the degree to which various judiciaries are politicized; how judges make decisions; how, whether, and to what extent those decisions are implemented; ...or what effect courts have on institutions and cultures. *The degree to which the field of comparative politics has ignored courts and law is as remarkable as it is regrettable.* (My emphasis.)

It is regrettable, I might add, because it is a badge of our ignorance of the political world, of events unfolding around us. After all, we, as citizens, are bombarded with press reports of courts abroad generating major policies.³ And, as social scientists, we have been told of the expansion of judicial power or what some call the “judicialization of politics” (Tate and Vallinder 1995a) throughout the world and, concomitantly, the part many legal tribunals are playing in fostering democratic stability.

It is regrettable because a failure to move beyond the American case closes doors to law scholars just when we desperately need to open new ones. At a time when we spend countless hours on our listserv engaging in trivial pursuits—such as, defending a model (the “legal” model) that so many of our colleagues in the legal world long abandoned—other fields have moved on to genuinely interesting questions, with matters of the creation and effect of formal and informal institutions near the top of the list.

Why haven’t we followed suit? At least part of the answer implicates our American-centricism: We simply don’t have sufficient variation to exploit. Consider the case of judicial institutions pertaining to the selection and retention of judges. No (formal) differences exist at the federal level and those which do in the states may be, as some scholars are now implying (*e.g.*, Baum 1995), so trivial as to create distinctions without meaning.

Now consider the comparative context. The variation is of such a magnitude that it’s hard to imagine a selection-retention mechanism that does not exist. Nations have created institutions enabling some combination of legislatures, executives, cabinet members and/or even the justices themselves to nominate and/or appoint members to their constitutional courts. Their retention systems are equally variable. In some countries, justices serve for life or until they reach a specified age; in others, they have set, albeit renewable, terms; and, in still others, they sit for only a limited period of time. Some have even changed their rules in relatively short order; between 1991 and 1993, Russia’s constitutional court justices enjoyed life tenure but, now, all new appointees serve for a set term.

It is regrettable that we have not exploited this variation to answer important questions—questions that have not (cannot?) be raised in the American context: Why do designers adopt one set of judicial selection institutions over others? Is the choice of institutions simply the first of a two-stage game, as Tsebelis (1990) and others (*e.g.*, Garrett 1992) have suggested, in which we can explain behavior at the first vis-à-vis payoffs at the second, the policy stage (see Bawn 1993)? If so, do designers’ institutional choices have the anticipated effects? If not, if institutional design can continue later in the game, then under what circumstances will political actors seek to supplant the existing rules (Boix 1999)? Answers to these questions would, to be sure, enrich our field. But, as the foregoing citations indicate, they also would be of great interest to our colleagues, in so many other areas of the discipline, who are concerned with institutional design—comparativists, formal theorists, international relations specialists, and Americanists.

Note that I do include Americanists on this list. That’s because I believe that Americanists, regardless of their particularized concern, have a great deal to learn from comparative analyses even though I realize, that, to date, the arrow has worked in the opposite direction: Comparativists have taken many of their most interesting insights from American work. But that will change as we come to understand that America is just another case of (fill in the blank), that is, of whatever phenomenon we are studying.

It is regrettable, to bring the discussion full circle, that we, law and courts scholars, are not at the forefront of this movement. For we, who have spent decades studying and being transfixed by a particular aspect of American politics, are likely to be the greatest beneficiaries of comparative insight. Think about norms governing justiciability, to take but one example. We have been led to believe that at least some of these work to insulate judges from politics by enabling them to opt out of on-going disputes among elected actors. In many European nations, however, constitutional courts can exercise review in the absence of a real case or controversy (abstract review); some even have a priori review power over governmental acts (see the table below). Do these rules hinder the ability of courts to establish their independence? Or do they facilitate independence? If so, then might we not begin to question the logic underlying various interpretations of the case-or-controversy restriction embedded in Article III?

From Regret to Action

Enough regret. It’s time to think about the steps we can take to fill the enormous void that has been created from years, even decades, of neglect of courts abroad.

For starters I should note that steps have already been taken. Some have come in the form of relatively recent books that provide nice introductions to courts elsewhere, as well as to the types of research programs we can undertake. Jacob et al. (1996) *Courts, Law, & Politics in Comparative Perspective* and Tate and Vallinder's (1995a) *The Global Expansion of Judicial Power* immediately come to mind. Another step came just this Fall, when specialists in comparative and judicial politics assembled for a two-day meeting in College Station, Texas. At this conference, we were able to identify mutual areas of interest, points of disagreement, and intriguing sets of questions. But, most important and consequential of all, we heard from young scholars—again from both fields—who were beginning to undertake comparative judicial research.⁴ The quality of their work and the degree of their interest bode well for the future.

But what about the rest of us—those of us who have spent our careers studying American courts? How can we begin to move from regret to action? The Texas A&M conference, along with the recent spate of books, commends the following:

1. We must start educating ourselves about courts elsewhere. For example, some of us probably don't realize that when nations go about the task of designing constitutional courts, they generally adapt one of two *basic* models, the American or European—with extant literature pointing to several key differences.⁵ (see table below)

How do these distinctions—and various others that come in the details of particular schemes—affect the role courts play in constitutional democracies? Do specific institutional designs serve to raise or lower the opportunity costs of justices? Do centralized courts have an easier time gaining public respect? The list of questions is endless but until we have some sense of the fundamentals it's hard, if not impossible, to answer them.

Learning the basics is not all that difficult. There are now at least a handful of books and articles to help us get up to speed. Jacob et al. and Tate and Vallinder are two; others can be found on a bibliography located at www.artsci.wustl.edu/~polisci/epstein/comparative.html.

2. This URL is actually the Home Page of the Comparative Judicial Politics Reading Group here at Washington University. For the last two years, we—faculty and graduate students, comparativists and judicial specialists alike—have been meeting to discuss various studies and to exchange ideas.

I commend this model or some variant thereof to you. You may be surprised to learn, as I was, just how eager your comparative colleagues are to discuss courts and law; indeed, and despite the dismal statistics cited above, some comparativists tell me that judicial politics is the “hottest” area in their field. That may be a stretch but I do feel sure that their community will benefit greatly from greater contact with ours.

	<i>American System</i>	<i>European System</i>
Institutional Structure (Who has the power to engage in judicial review?)	Diffused. Ordinary courts can engage in judicial review, that is, they can declare an act unconstitutional.	Centralized. Only a single court (usually called a “constitutional court” [CC]) can exercise judicial review; other courts are typically barred from so doing, though they may refer constitutional questions to the CC.
Timing (When can judicial review occur?)	A Posteriori. Courts can only exercise judicial review after an act has occurred or taken effect.	A Priori and A Posteriori Many CCs have a priori review over treaties; some have a priori review over governmental acts; others have both a priori and a posteriori review, while still others have either but not both.
Type (Can judicial review take place in the absence of a real case or controversy?)	Concrete. Courts can only resolve real cases or controversies.	Abstract and Concrete Review. Most CCs can exercise review in the absence of a real case or controversy; many can exercise concrete review as well.
Standing (Who can initiate disputes?)	Litigants, engaged in a real case or controversy, who have a personal and real stake in the outcome, can bring suit.	The range can be large, from governmental actors (including executives and members of the legislature) to individual citizens.
<i>Sources:</i> Kitchin 1992; Tate 1992; Schwartz 1993; Stone 1994; Utter and Lundsgaard 1994; Ludwikowski 1996; Finer et al. 1995; Tate and Vallinder 1995a.		

And I know we will benefit. Comparativists, perhaps more than any other members of our discipline, have thought long and hard about matters of theory, research design, and data. Even for those among us who won't give up "our" courts, there is much to gain from interaction with this group of scholars.

3. We must start translating whatever knowledge we obtain into concrete research programs. Some of these will inevitably focus on courts *qua* courts—a focus that reflects much of the work done on American tribunals over the past half century. That's just fine by me at least in part because we have seen what can happen to "our" institutions when we leave them to non-specialists. I think here of many (if not all) of the U.S. separation of powers studies that are so rich in institutional detail when it comes to legislatures but treat the judiciary as something of a black box. It would be unfortunate if that approach perpetuated itself as scholars of all ilks begin to turn to courts elsewhere.

Other research programs will attempt to situate courts within a larger institutional context and explore, among many other possibilities, the relative role courts play in democratization efforts. This is good too since I, and I know many of you, believe that if we are interested in understanding democratic politics, we ignore the judicial branch of government at our own peril.

I can envisage many others, such as extensions of Gibson, Caldeira, and Baird's (1998) excellent essay on public perceptions of high courts, but it is the general point that should not be missed: For us to engage members of our own field, not to mention the balance of the Political Science community, we must move forward with all due speed in developing research that is substantively interesting, theoretically developed, methodologically sound—and, yes, connected to larger disciplinary concerns. Given the grist comparative courts and law provides, this should not be difficult.

4. Finally, we can and should look to the Section to help us fill gaps in our knowledge and build bridges with our comparative colleagues. Along these lines, I am taking two steps. First, in consultation with our executive council, I am composing a committee that will develop a short course, for the 2001 APSA meeting, on comparative judicial politics and law. Of course I will leave it to the committee to develop its structure and content. But I hope that the course will serve as a source of information on courts and law abroad as well as a forum for the exchange of ideas and for the presentation of concrete research findings. (The 2000 short course will focus on professional development issues. The next issue of *Law and Courts* will provide complete details.)

Second, in recognition of the fact that, for too many conferences, we have ghettoized comparative work—placing it on panels titled "Research on Courts Abroad," "Comparative Judicial Research," and the like—I am asking conference program chairs to integrate panels, to include (whenever possible) papers on American and non-American courts and law. I can thus imagine a session on agenda setting on which one paper might consider the US case, another Russia, and perhaps another that compares several different (or similar or some combination thereof) systems. And so on. I am also asking chairs to contact their comparative counterparts to crosslist appropriate panels. More engagement with colleagues in this field will only help to improve the quality of our work and theirs.

Of course, I would be interested in hearing your ideas. Feel free to e-mail me at: epstein@artsci.wustl.edu.

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¹I adapt the first few paragraphs of this column from research I am conducting with my colleagues, Jack Knight and Olga Shvetsova. I thank them for allowing me to use material that is, without question, the product of our many interactions. I am also grateful to Jack and Olga, as well as to Sunita Parikh, for their useful comments on this essay. Finally, I benefited from the remarks of participants at the 1999 Annual Meeting of the Conference Group on the Scientific Study of Judicial Politics, held at Texas A&M University. Jim Alt, Greg Caldeira, Micheal Giles, Michelle Taylor-Robinson, and Jennifer Widener offered especially useful insights, of which I have unabashedly made use. They have my sincere appreciation.

²Recent published work includes Haynie 1992; Volcansek 1992; Stone 1994; Melone 1997; Gibson et al. 1998; Vanberg 1998; chapters in Holland 1991; Jackson and Tate 1992; Tate and Vallinder 1995; Jacob et al. 1996; and articles in Volcansek 1991; Shapiro and Stone 1994.

³In the last year alone, the *New York Times* published an article roughly every four days on courts outside the US.

⁴The Conference paper archive is at <http://www.artsci.wustl.edu/~polisci/epstein/conference/>

⁵I stress "basic" because variants exist. For example, within the European (also called the Austrian or Kelsen) model, some constitutional courts have a priori review or a posteriori review; others have both. Nonetheless, since the vast majority of scholars classify courts on the basis of these two models (e.g., Finer, Bogdanor, and Rudden 1995; Schwartz 1993; Tate and Vallinder 1995b; Utter and Lundsgaard 1994; Vallinder 1995) and since the similarities among courts within each classification may be greater than their differences (e.g., Stone 1992), I follow suit.

CONSTITUTIONAL STRATEGY AND THE CLINTON CRISIS*

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The administrations of Ronald Reagan and George Bush saw the advent of what might be called “constitutional strategy” – a self-conscious approach to the maintenance and extension of the President’s constitutional power. There were two background factors driving the adoption of a constitutional strategy during the Reagan-Bush presidencies: (1) the post-Watergate presidency, with its emphasis on distrust of all politicians, new restrictions on presidential authority enacted by Congress, and new precedents set in federal courts during Watergate (most notably *United States v. Nixon*); and (2) the phenomenon of divided government. President Reagan took office with the House of Representatives still controlled by the Democrats and hence his administration reasonably anticipated that conflicts would erupt that would involve constitutional considerations.

What is a constitutional strategy? In the context of the presidency, it is:

- (1) a normative vision of what the powers and privileges of the presidency should be under the Constitution, founded in a legalistic argument that draws on the resources of the American constitutional tradition. The purpose of this vision is not only to provide guidance on specific issues, but to support the proper role for the President as leader of the government. In the post-Watergate context of the Reagan-Bush administrations, the point was to reclaim what was seen as the traditional and appropriate position of the presidency.
- (2) A practical plan to implement the normative vision founded in a realistic appraisal of the President’s political situation.

To descend from these abstractions, my point with reference to the Clinton crisis is that Presidents Reagan and Bush at least had a normative vision, although they may have lacked a practical political plan to implement it, while President Clinton did not even have a vision. This affected both the way the Clinton crisis began to develop during Clinton’s first term and the frenzied events of January 1998 that set the course for his impeachment and trial.

The Reagan-Bush normative vision was called the “unitary executive.” The concept of the unitary executive was advanced in a very deliberate and programmatic way by officials in the Reagan Justice Department who were

concerned with constitutional issues – officials such as Solicitor General Charles Fried, heads of the Office of Legal Counsel Theodore Olson and Douglas Kmiec, and Attorney General Edwin Meese (Fried 1991; Kmiec 1992). In their hands, the unitary executive did not simply mean that the Framers had rejected a plural executive (an executive council). It meant also that the Constitution deliberately assigned to the President *all* executive power and therefore no one else in the government (including supposedly independent agencies and independent counsels) could exercise such power unless they were under direct presidential supervision (Fried 1991). The more ideological purpose of the unitary executive concept was to circumvent the post-Watergate decline of presidential authority by basing the president’s authority on original intent, thus bypassing the debate over whether the New Deal or the Cold War justified the expansion of presidential power. What was thus seen as the necessary and appropriate reestablishment of the unitary executive also served to provide a shared sense of purpose among the lawyers of the executive branch.

To the extent that the Reaganites had a practical plan for implementing the unitary executive concept, it was to rely on the image of presidential dignity and authority projected by Ronald Reagan. Unfortunately, this tactic avoided the necessity of devising specifically political ways of implementing the unitary executive concept in a more institutionally secure fashion. As Nelson Lund argues, although President Bush had a definite interest in reclaiming presidential authority, particularly in foreign affairs, he had no real idea about how to go about it (Lund 1995). Certainly Bush could not project the same image of authority achieved with apparent ease by Reagan.

So the fact that the Reaganites had a vision did not guarantee success. The implementation of the unitary executive concept remained in the hands of lawyers who tended to litigate every issue that arose. These lawyers ignored the possibility that they might have to pick and choose their battles. As Mark Rozell has recently documented, Presidents Reagan and Bush lost most of their confrontations over executive privilege with Congress, generally folding when Congress used its contempt power (Rozell 1999). As Charles Fried notes, the proponents of the unitary executive did achieve successes in *INS v. Chadha* and *Bowsher v. Synar*, but lost substantial ground in *Morrison v. Olson* and *Mistretta v. United States* (Fried 1991).

By contrast, President Clinton entered office without either a normative vision or a practical plan. It might be thought he didn't need one since he could count on cooperation from a Democratic Congress. If this is the judgment that Clinton made, however, it was shortsighted. While no one in 1993 could have reasonably anticipated the House turning Republican, it was possible to conceive of the Senate doing just that, since control of the Senate had turned over twice in the 1980s. In addition, the politics of scandal was already well entrenched in Washington when Clinton took office (Ginsberg and Shefter 1999). Even in the minority, Republicans could demand independent counsel investigations just as Democrats had done during the Reagan-Bush era.

There is another element to Clinton's lack of vision that deserves special mention: none of the leading legal academics advising the Clinton administration were presidentialists or followers of the unitary executive vision. I think it is fair to say that legal scholars with Democratic leanings in the post-Watergate period were not enamored of the presidency. It was most unfortunate for the Clinton presidency that Democratic constitutionalists disabled themselves in this fashion. Unlike Republicans, who at least managed to come up with the unitary executive concept as a way of coping with the post-Watergate presidency, there was no similar creative rethinking of the role of the President among Democrats. In other words, Democratic constitutional law scholars were in a rut. The post-Watergate conventional wisdom on the undesirability of the imperial presidency did not translate into an effective constitutional stance once the Democrats regained the presidency. Indeed, as the Reagan-Bush years went on, the invocations of the dangers of the imperial presidency by Democratic legal scholars took on a ritualistic tone and became the basis of an oppositionist constitutional ideology which exalted the Congress. While there is nothing wrong with valuing the Congress per se, this reflexive response avoided the need to think realistically about the President's constitutional role in a post-Cold War world.

As President Clinton began to cope with his first challenges in 1993, Democratic constitutional thought was thus impoverished at both the political and intellectual level. In particular, there was no adjustment to the new combative politics prevailing in Washington. Ideally, Clinton should have been on guard immediately against any erosion of presidential power. It was foreseeable at the time that he should not have supported the renewal of the independent counsel law. Once Republicans took control of Congress in 1994, there was a significant erosion of traditional deference to presidential nominations, particularly in the area of the federal judiciary (Kline 1999).

To respond fully to Republican attacks Clinton would have needed not only a normative vision, but the political tactics to carry it out, something not even Reagan or Bush were able to devise. Such tactics would include a commitment to the vision in the party platform, at least a minor theme being sounded in the election campaign so the President can later claim a mandate for change, and the appointment of carefully selected lawyers for key positions at the Department of Justice and in the White House Counsel's office who adhere to the view that a strong presidency is both necessary and desirable. Finally, there should be coordination between the President's legal and political advisers so that he can advance his constitutional strategy when political conditions are favorable. For example, it will be easier to take Congress and the judiciary to task for encroaching on legitimate presidential powers during a period when the President is popular and either one of those branches is seen as overstepping their boundaries. The President should try to use such opportunities to make an affirmative case that the other branches have become too powerful and aggressive.

How would this have changed what came to be called the Clinton crisis? I think it is clear that the crisis would not have played out the same way in a Republican administration – not because Republicans are inherently less reckless or more devoted to their wives, but because there would have been no independent counsel law, a limited Whitewater investigation (since without the law the original counsel Robert Fiske would never have been replaced by Kenneth Starr), and a more focused handling of constitutional questions like the challenge to deference to the President's judicial nominations.

Most important, as I argue elsewhere, it would have meant that when the storm hit in January 1998 the Department of Justice would have had a clear conception of its constitutional role (Griffin forthcoming). The DOJ had already decided during Watergate that a sitting President could not be reached through the criminal process, a position reaffirmed by Acting Solicitor General Walter Dellinger in the government's *amicus* brief filed in *Clinton v. Jones*. Following this considered constitutional judgment, Attorney General Reno should have referred the Lewinsky matter to Congress. Such an immediate congressional referral would have had various effects, but all of them would have been in the public interest and would have ensured that the whole affair was over much faster and that the process and result would have been more expressive of public opinion.

Obviously there will be plenty of rethinking of the now defunct independent counsel law and the impeachment process among constitutional scholars. But there is still no sign, at least among Democratic legal scholars, of any

rethinking of the presidency as such and its role in the post-Cold War (and now, post-Clinton) political environment. If a Republican is elected President in 2000, however, it is safe to predict that we will see an executive branch once again devoted to maintaining the constitutional position of the presidency.

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* Copyright 1999 by Stephen M. Griffin. Professor Griffin is the author of *American Constitutionalism: From Theory to Politics* (Princeton University Press, 1996). E-mail: sgriffin@law.tulane.edu. This article is based on a presentation I made at the 1999 APSA meeting in a roundtable on "The Clinton Crisis and the Presidency." I thank the other members of the roundtable, Louis Fisher, Joel Grossman, Neal Devins, and Keith Whittington, for their comments and Mark Graber for his encouraging remarks.

SELECTING UNITS FOR ANALYSIS:

A CAUTIONARY NOTE ABOUT METHODS OF ANALYZING CASES AND JUDGES

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With the infusion of massive quantities of new data on the decision making behaviors of American courts and judges has come renewed interest in understanding how judges make decisions. The landmark work by Segal and Spaeth—*The Attitudinal Model*—has focused the attention of the field on models of judicial choice. The field of judicial behavior has become revitalized by these major theoretical and empirical advances.

Analyses motivated by trying to understand the behavior of judges often use different units of analysis. The obvious choice—the judge—is not necessarily the only choice. Indeed, a casual reading of the literature suggests that scholars are just about as likely to use the case (or docket number) as the unit of analysis as the judge. When one sees such different analytical strategies, one naturally wonders whether the selection of the unit of analysis makes any real difference for the substantive conclusions drawn.

My purpose in this paper is to explore that issue. In particular, I worry especially about studies that attempt to test hypotheses about how judges make decisions on the bases of data sets defined by *the case* as the unit of analysis. I critique this design first through a theoretical argument about how the particular mix of judges in a data set can influence the nature of the conclusions drawn from the analysis. I then demonstrate just how volatile such findings can be, based on a simulation of judicial decision making I designed. I believe the important lesson that must be drawn from this analysis is that the unit of analysis matters, and that studies testing *hypotheses about judges* must use judges as the most appropriate unit for analysis.

UNITS OF ANALYSIS: THE ALTERNATIVES

If someone were interested in testing the attitudinal model, he or she would begin by assembling a set of N cases, decided by k judges. Of course, in the case of the U.S. Supreme Court, $k = 9$ (within any given natural court). Let us assume that there are 100 cases, and that all of the judges participate in each of the cases.

One approach to analyzing these data is to use the judge as the unit of analysis. This would require aggregating the 100

decisions by judge. Each judge might be scored, for instance, by the proportion of the 100 cases in which the judge voted for a liberal outcome.¹ The attitudinal model would then be tested by supplementing this data set with some measure of judicial attitudes. The analysis would be based on the judge as the unit of analysis and the N would be 9. Of course, with only 9 judges (in this illustration), the results generated from the analysis would be highly unstable (e.g., highly susceptible to influence by outliers). For an excellent example of just such a study see Segal et al. (1995).

Within studies of collegial courts, this is the strategy typically followed. Of course, one could change the unit of analysis to the case, and then conduct the research *within judge*, focusing for instance on how case attributes affect decision making. In this strategy, the case is the unit of analysis, and the analysis is conducted within judge (for each judge). This too is a fairly common strategy (e.g., search and seizure research—see Segal 1986).

When one moves beyond collegial courts, matters get quite a bit more complicated. Following Supreme Court analyses, some use the judge as the unit of analysis, with appropriate controls for differences in case attributes (e.g., Gibson 1978a). Others, however, shift to the case as the unit of analysis. For instance, consider the U.S. District Courts and specifically our desire to know whether Democratic judges make more liberal decisions than Republican judges (e.g., Carp and Rowland 1996). For analyses of this sort, the unit is typically the case, not the judge. To try to aggregate the cases by judge would be problematical since most judges will have decided only a tiny number of cases. Therefore, the hypothesis is tested at the case level, with the dependent variable being the degree of liberalism in the decision and the independent variable being the party identification of the deciding judge.

This sort of research is based upon a cross-level design—the dependent variable is taken from the cases; the independent variable is taken from the judges. It is this sort of design that gives me pause.

My major concern with this design is that the results may be dependent upon the specific mix of judges involved in the cases

in the sample. Let me assume for a moment that the case mix includes southern and northern judges. Let me further assume that southern judges are more conservative than northern judges. If only a small percentage of the cases were decided by southern judges then the hypothesis that party identification predicts behavior would most likely be supported, with Democrats making more liberal decisions. If on the other hand, the cases were dominated by southern judges, then it is unlikely the hypothesis would receive strong support (if it received any support at all) since Democrats and Republicans in the South differ so little in their ideological orientations. Indeed, it is quite reasonable to hypothesize that the degree of support for the hypothesis is a function of the proportion of cases decided by southern judges. This is an unfortunate artifact of using the case as the unit of analysis.

Is it possible that different types of judges are represented disproportionately in different samples of cases? Obviously, it is possible, especially if the focus is on specific types of cases. If the dependent variable were voting for the liberal interest in Voting Rights cases, cases overwhelmingly heard in the South, then obviously southern judges would be disproportionately represented. One can readily imagine a variety of scenarios by which analysis of certain types of cases would generate a non-random sample of the universe of available judges.

What about analyses of a simple randomly selected sample of cases; would any bias be likely? If cases were randomly assigned to judges, in equal numbers, than only chance fluctuation would be worrisome. But consider another possibility. Let me assume that judges who are more likely to overturn existing precedents are more likely to receive cases than judges who would simply ratify existing precedents, since litigants surely engage in some degree of “judge shopping.” Further, certain types of litigation tends to be filed in certain areas of the country. It seems to be quite unlikely that the caseload of each judge mirrors the caseload of judges as whole.

The Influence of Judicial Activism

I can expand this argument further, relying upon the well-established distinction between activist and restraintist judges. Let me define activist judges as those who are more willing to make decisions on the basis of their own sense of justice in the case and who are less willing to follow the law when it conflicts with their views of a just outcome. Consequently, activists with liberal ideologies will tend to make liberal decisions; conservative activists will tend to make conservative decisions. Restraintist judges are exactly the opposite—they will defer to the law to the extent possible, even when it conflicts with their senses of justice. When the law is relatively liberal, restraintists will make liberal decisions; when it is conservative, they will tend to confirm that conservatism (see Gibson 1977).

An essential distinction between activists and restraintists is the degree to which their attitudes and ideologies influence their behaviors. But a variety of factors make it unlikely that the attitudes of activists are perfectly correlated with their behavior. Sometimes law is unquestionably clear, sometimes peculiar facts interact with law; sometimes political realities block the simple implementation of judges’ ideologies in their decisions. Activists may not always be able to make a liberal decision in absolute terms; instead, they make as liberal a decision as possible under the circumstances (relative or strategic liberalism). For this and other reasons, I posit that the relationship between these judges’ ideology and their behavior is on the order of .7.² I therefore assume that for activist judges:

$$Y = .7 * X + e$$

where Y is the liberalism of the judge’s decisional behavior and X is the judge’s ideology.³

Conversely, restraintists tend to follow the law, but do not always do so. Restraintists’ behaviors should not be assumed to be completely independent of their ideologies since there are some areas of law in which a restraintist decision *cannot* be made⁴, and in such instances judges are forced to rely on their ideological predilections (or their “senses of justice,” which are of course ideologically grounded). Therefore, I posit that, for restraintists,

$$Y = .2 * X + e$$

Liberal restraintists will tend to make liberal decisions, but not very strongly or consistently.

It is probably intuitively obvious that were I to examine a set of cases in which each of the judges is a restraintist, the relationship between judicial attitudes and behaviors would be .2. Were I to have a sample of cases exclusively decided by activist judges, the relationship between attitudes and behaviors would be .7. Much more problematical are the instances in which the sample of cases reflects an unknown mix of activists and restraintists. Perhaps a simulation of the mix can reveal something of the consequences of using the case as the unit of analysis.

THE SIMULATION

In order to test these ideas, I have created a small simulation of judicial decision making. The elements are:

Assumptions

1. I assume that activist judges attempt to implement their own ideologies in their behavior. For a variety of reasons (cases, colleagues, law, etc.), these judges cannot always succeed in their goal of making an ideological decision. I therefore assume

that the relationship between attitudes and behaviors for these judges is .7.

2. Restraintist judges are those who seek to follow the law as closely as possible and who therefore do not seek to rely on their own ideologies in making decisions. Because ideologies influence perceptions of law, their behavior is not completely independent of their ideologies, however. I therefore assume that the relationship between the attitudes and behaviors of restraintist judges is .2.

3. The mix of restraintist and activist judges within any given sample varies. I have therefore run this simulation for varying combinations of the two types of judges, ranging from a sample of all restraintists to a sample of all activists, incrementing the mix by 10 percentage points in each sample.

Procedures

1. I first created estimates of the attitudes and behaviors of activist judges. Beginning with a normally distributed, random variable (mean = 0 ; standard deviation = 1.0), I created a measure of attitudes and a measure of behavior. High scores indicate greater degrees of liberalism. I forced a relationship of .7 between the two variables. The variables are standardized so the regression coefficient (*beta*) linking attitudes and behavior is also .7. I use a sample of 100 judges.

2. I then created analogous variables for the restraintist judges, linking their attitudes and behavior at .2.

3. For purposes of this exercise, I dichotomize the judges as either activists or restraintists. I then varied the mix of judges from 0 % activists to 100 % activists. This of course changed

the means and the standard deviations of the attitude and behavior variables, depending upon the particular mix of judges in the sample. The results are reported in Table 1.

Results

I set up this simulation with the assumption that the relationship between attitudes and behaviors ranges from .2 to .7. Thus, if all judges were restraintists, then the relationship would be .2; if all were activists, the relationship would be .7. The first and last rows in the tables represent these limiting conditions.

Varying the mix of judges has rather dramatic implications for the relationship coefficient. For instance, when 30 % of the judges are activists, the relationship between attitudes and behaviors is .39; when 70 % are activists, the relationship is .54. Most importantly, the magnitude of the relationship is a direct function of the mix of types of judges in the sample. The observed relationship in any given data set can range from .20 to .70, a very considerable range indeed.⁵

Extensions

Obviously, this same argument could be made about any characteristic of judges. For instance, if Catholic judges tend to be more homogeneous and liberal, then the relationship between their "Catholicism" and their behavior might be on the order of .4. But Protestant judges are more heterogeneous, with some being liberal and some being conservative, with the consequence that their attitudes and behaviors are only connected at the .2 level. Different mixes of Protestants and Catholics within a case sample would therefore affect the observed coefficients, using the case as the unit of analysis.

% Activist Judges	% Restraintist Judges	Relationship of Attitudes & Behavior
0	100	.2
10	90	.3
20	80	.36
30	70	.39
40	60	.36
50	50	.39
60	40	.38
70	30	.54
80	20	.56
90	10	.67
100	0	.7
N = 100 Judges		

Perhaps less obvious is the impact of this lesson on studies of racial and gender discrimination in judges. Gibson (1978b) argued long ago that the appropriate unit of analysis of studying racial discrimination in sentencing is the judge. Consider why. Assume that some judges are oblivious to the race of the defendant and therefore the relationship between race and outcome for those judges is 0. But other judges discriminate against minorities, and therefore their relationship is, say, .5. A small number of judges discriminate *in favor of* minorities, with a resulting relationship of -.6. The observed relationship in a sample of cases drawn from these three types of judges would vary enormously depending upon the specific weight given to each. Analyses cast at the level of the case would almost inevitably misleading.

CONCLUDING REMARKS

I am just beginning to consider all of the consequences of using different units of analysis in different sorts of investigations. It is clear from this short exercise, however, that selecting the unit is an important theoretical issue. Furthermore, empirical results may depend mightily on chance fluctuations to which investigators have been generally insensitive. Finally, the lesson of this analysis is that if one is attempting to draw cross-level conclusions about how the attributes of *judges* affect the outcomes in *cases*, the most appropriate unit of analysis is the judge.

I am not insensitive to the methodological difficulties of using the judge as the unit of analysis, especially in analyses of non-collegial courts. The numbers of cases upon which behavior scores might be based can be very small, and hence behavioral variables are highly unstable and unreliable. Some statistical techniques can adjust for differences in the reliability of different observations (e.g., weighted least squares), but not, of course, when the number of decisions by each judge is tiny. Cross-level analyses present some of the most difficult problems in empirical research, and no solution is likely to be entirely without critics.

Perhaps two important consequences should flow from the warning issued in this paper. First, analysts will surely want to consider their results using *both* units of analysis. I contend that using the case as the unit is inherently flawed, and I recognize the problems of basing behavior scores on small numbers of decisions. Were analysts to report both sets of results, then perhaps I could have greater confidence in the stability of the findings.

Secondly, perhaps some analysis of the distribution of types of judges within case samples could be routinely conducted. For instance, consider comparisons of two samples, each interested in determining whether party identification influences decision making. At a minimum, it would be useful to know the

partisan composition of the judges deciding the cases in each of the samples. If one sample were overwhelmingly of one party (e.g., appointed by the same president), then of course the party identification of the judges would be essentially a constant, drastically reducing the observed relationship (or even making it impossible to calculate). If one case-based sample is made up of relatively younger judges, but another is comprised of relatively older judges, then this distribution must be reported and considered. If young judges are ambitious while older judges are not, then the attitude-behavior relationship may be weaker among the older and stronger among the young. Simply reporting the attributes of the decision makers will not solve all difficulties of cross-level analyses, but they will provide some insights into the likely generalizability of the observed coefficients.

Methodological decisions such as selecting the unit of analysis may seem arcane to many. But the burden of this paper is that units do indeed matter. Future analyses of judicial decision making must be mindful of the substantive importance of selecting the correct unit for their research.

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¹Of course, one must be careful about the minimum number of cases upon which these percentages can be based. Epstein and Mershon (1996, 268) use a minimum of 10 cases in their analysis of decision making on the U.S. Supreme Court.

made.

²I assume no measurement error in this paper. Unless measurement error is systematic, it most likely has no effect whatsoever on the argument I present here.

³Note that I cast my argument in terms of standardized coefficients so as to simplify the analysis (e.g., the intercept of the equation is 0).

⁴That is, where there are no constitutional or statutory provisions at issue, and/or no prior judicial decisions have been

⁵If I change the .2 and .7 assumed coefficients to .1 and .9, then the resulting correlations vary from .21 (10 % activist judges) to .83 (90 % activist judges).

*This is a revised version of a paper prepared for delivery at the "Annual Conference on the Scientific Study of Judicial Politics," October 3-5, 1998, Michigan State University, East Lansing, Michigan. I am indebted to Chris Zorn and Ingrid Anderson for valuable comments on an earlier version of the paper.

HOW TO SUCCEED IN PUBLIC LAW:

A NEW INSTITUTIONALIST APPROACH TO TRANSFORMING AND RETHINKING A BESIEGED BUT LIVING NON-MAJORITARIAN LAW AND COURTS RATINGS SYSTEM FOR DEPARTMENTAL AND SELF-PROMOTION

MARK A. GRABER, UNIVERSITY OF MARYLAND *
HOWARD GILLMAN, UNIVERSITY OF SOUTHERN CALIFORNIA**

Law and Courts has recently published several articles ranking public law programs (Whittington 1998; Kuersten 1999; Spaeth 1999; Gerber 1999). This article is our contribution to this important endeavor. Our methods may seem strange to the untutored. Nevertheless, they are fully consistent with the spirit of the ranking enterprise.

Before presenting our research design and conclusions, we detail the three features of previous rankings in public law that justify and legitimate our approach.

First, no correlation exists among different rankings. There is little overlap between the top ten programs as ranked by Whittington and the top ten programs as ranked by Kuersten. Gerber maintains that Virginia, unranked by Kuersten, probably has the finest public law program in the country. (We are applying for NSF funding for a study seeing whether public law programs ranked by first graders correlate as well with particular public law surveys as existing public law studies correlate with each other.)

Second, as supporters of the attitudinal model of judicial decision-making consistently point out, decisional outcomes that do not converge upon obvious right answers cannot be the result of the application of neutral or objective rules or standards. If variation in judicial decisions prove that justices are not motivated by legal norms, then the outcome of public law surveys prove with equal validity that public law scholars are not reaching conclusions based on principled application of objective disciplinary standards.

Third, as prevailing models of judicial decision-making remind us, most decision-makers devise or apply standards in ways that promote their narrow self-interest, even though those interests are masked as mere fidelity to professional, institutional, or disciplinary norms. The evidence supporting this hypothesis in the case of recent public law rankings is overwhelming. The one consistent element in all ratings is that *the home institution of the authors always does best on their survey than in any other survey*. Whittington, a Yale PhD now teaching at Princeton, ranks Yale fourth and Princeton tied for ninth among public law faculty. Neither makes the top twenty-

five of the Kuersten survey. Kuersten, a newly minted South Carolina PhD, ranks South Carolina third or first. Whittington ranked that institution nineteenth. Spaeth of Michigan State points out that a slight change in Kuersten's methods would put Michigan State first. Gerber, a Virginia PhD, suggests that the best rating system would have Virginia at or near the top.

We might continue the practice of criticizing past methodologies. Such an argument, however, reflects precisely the naivete about the existence of neutral standards belied by our findings. Taking our cue from the past, the only basis upon which to criticize past surveys is clearly a self-interested one: we would do much better in rankings if some other criteria was used. Moreover, the true lesson of the rankings process is that if you want to be ranked high, do the rankings yourself.

Following this advice, we have produced a more definitive public law ranking. "Definitive," of course, cannot mean "widely accepted as a reflection of a disciplinary consensus about merit." Rather, "definitive" in this context means what it always has meant: definitive enough for our chair to raise our salaries.

In keeping with traditional public law scholarship, our rankings were devised as follows. We attempted to use plausible categories that could be assessed without too much effort and would put us at the top of the public law profession. In case of conflict, the plausibility criterion yielded to the convenience criterion, and the need to put us on top was given higher priority than either the plausibility or convenience criterion. Graber, as first author, had final say over the exact criteria used. Gillman, however, wishes to point out that a slight (but eminently justifiable) change in the criteria would have yielded a very important change in the rankings (see below).

In our survey, excellence in public law is best measured by publication during the 1998-99 academic year in *Law and Courts*, the *Law and Politics Book Review*, the Law and Courts e-mail discussion group known as "lawcourts-I", the two anthologies of public law writing recently published by Chicago and Kansas (Clayton and Gillman 1999; Gillman and Clayton 1999), and participation in the prestigious Law and Courts

short course held during the 1998 Annual Meeting of the American Political Science Meeting. Two factors justify these sensible choices. First, just as rankings of political science department never consider interdisciplinary work, we do not believe that rankings of public law programs should consider work published in such interfield journals as the *American Political Science Review*. The publications we consider, by comparison, are all edited by some of the top scholars in our field as identified and selected by the democratically-elected leadership of the Law and Courts section. The two anthologies were added because they represent field-specific collections of essays by major university presses; moreover, the co-editors of these anthologies were chosen to lead other Law and Courts publications, and so there is some external valida-

tion for treating these collections as reliable indicators of merit and reputation. Second, just as rankings of college athletic programs are based on what the program has done this year, so should the rankings of public law scholars be based on what they have done this year. Unlike other rankings, we control for those who are content to sit on their past laurels.

Focused solely on excellence, we determined the top ten participants in each forum. The top participant was given ten points, the second best nine, and so on. In each forum there was a total of 55 points to be distributed; in case of a tie the participants received the appropriate proportion of those points. We then added the total score to determine who the top public law scholars were. The results are as follows (see table 1):

Table 1: Rate of Contribution of Leading Public Law Scholars to Leading Public Law Publications and Officially-Sponsored Section Activities

Participant	Points Earned*	Participant	Points Earned
<i>Contributions to the Law and Courts Newsletter</i>			
Sue Davis	9.5	Ronald Kahn	5.5
Mark Graber	9.5	Cornell Clayton	5.5
Ronald Kahn	6.5	Eileen McDonagh	5.5
Cornell Clayton	6.5	Michael McCann	5.5
Michael Giles	6.5	John Brigham	5.5
Scott Gerber	6.5	Christine Harrington	5.5
Rogers Smith	.67	Mark Graber	5.5
Eileen McDonagh	.67	Paul Pierson	5.5
Roy Flemming	.67	Howard Gillman	5.5
Christine Harrington	.67	Rogers Smith	5.5
Howard Gillman	.67	<i>Law and Courts Short Course at 98 APSA</i>	
Michael McCann	.67	Howard Gillman	10
Sue Lawrence	.67	Leslie Goldstein	9
Sheldon Goldman	.67	Stephen Wasby	8
Sandy Levinson	.67	Lief Carter	7
Mark Tushnet	.67	Sandy Levinson	6
Keith Whittington	.67	James Hanley	5
Gayle Binion	.67	Mark Graber	4
Katy Harriger	.67	Cornell Clayton	3
Ashlyn Kuersten	.67	Frank Cross	2
Harold Spaeth	.67	Roger Hartley	.5
<i>Contributions to the Law and Politics Book Review</i>			
Mary Atwell	10	Stephen Griffin	.5
Donald Jackson	8.5	<i>Contributions to Chicago and Kansas anthologies**</i>	
Richard A. Glenn	8.5	Howard Gillman	9.5
Mark Graber	6.5	Cornell Clayton	9.5
John M. Scheb	1.3	Ronald Kahn	8
Joseph R. Reiser	1.3	David O'Brien	2.125
Kenneth J. Meier	1.3	Charles Sheldon	2.125
Scott Gerber	1.3	Sue Davis	2.125
Tinsley Yarbrough	1.3	Elizabeth Bussiere	2.125
James Meernick	1.3	Lawrence Baum	2.125
John Blakeman	1.3	Jeff Segal	2.125
Gerald J. Russello	1.3	Charles Epp	2.125
Mary L. Volkansek	1.3	John Brigham	2.125
Richard Brisbin	1.3	Michael McCann	2.125
		John Gates	2.125
		Kevin McGuire	2.125
		Mark Silverstein	2.125
		Leslie Goldstein	2.125
		Susan Burgess	2.125
		Keith Bybee	2.125

*The raw data in support of these point distributions are available from the authors upon request.
 ** Forrest Matzman, James Spriggs II, Paul Wahlbeck, Lee Epstein, Jack Knight, Melinda Gann Hall, and Paul Brace contributed to these fine volumes, but did not make the top 10 because they wrote co-authored chapters.

Table 2: Definitive Ranking of Top Ten Public Law Scholars in Political Science*

1. Mark Graber (27.625 total points)
2. Howard Gillman (25.67)
3. Cornell Clayton (24.5)
4. Ronald Kahn (20)
5. Sue Davis (11.625)
6. Mary Atwell (10)
7. Leslie Goldstein (9)
8. Donald Jackson (8.5)
9. Richard A. Glenn (8.5)
10. Michael McCann (8.295)

* Permission is hereby granted to reproduce this table and its supporting documentation.

The results should be no surprise (see Table 2). Mark Graber of the University of Maryland is clearly the top public law scholar in the country, followed closely by Howard Gillman of the University of Southern California. No other scholar comes close, except for the editor of the *Law and Courts* newsletter. Indeed, we doubt whether any other scholar would come close to these two extraordinarily gifted minds had our categories been manipulated slightly (i.e., counting total words rather than number of contributions). Gillman notes, however, that if in the research design the two anthologies were treated as two separate forums rather than combined into one then *he* would have ranked higher than Graber. As best we can tell, though, this is the only aspect of the research design in which a matter of subjective judgment would have significantly changed the outcome of the study.

Lest anyone doubt whether these findings are sufficiently objective to warrant publication in *Law and Courts* we reiterate that Cornell Clayton, the editor of *Law and Courts*, does substantially better in our survey than in any other published ranking.

We recognize that not all scholars will agree with the measures we used. But this was true of all earlier surveys as well. Still, we believe our ranking serves important scholarly ends. First, we have enabled our chair and dean in the battle for funding. They are now able to tell administrators, alumni and donors that we ranked first or second in a survey published by a major public law publication. Second, we have provided a model that other scholars may use who wish to have their chair or dean assert that they were placed at the absolute top of their field or discipline. Of course, those future rankings should cite our work as we have gracefully cited those who came before us. Thus, by further increasing our cite count, we will also do better on future surveys. Indeed, we both anticipate and fear that this essay will be the most cited and influential piece that either of us writes.*

* Author of *Transforming Free Speech, Rethinking Abortion, "The Non-Majoritarian Difficulty,"* and other major works.

** Author of *The Constitution Besieged*, co-edited of *Supreme Court Decision-Making: New Institutional Approaches*, author of "The Rise of the Living Constitution," and other major works.

* Editor's Note: This article in no way reflect the views of Law and Courts or its editorial board, although many of us agree with this last sentence.

1999 SECTION AWARD WINNERS



C. HERMAN PRITCHETT
AWARD
CHARLES EPP,
UNIVERSITY OF KANSAS
The Rights Revolution

Individual rights and equality are core values in the American national myth, and yet the U.S. Supreme Court gave

little attention to rights claims (other than property rights) until well into this century. By the 1970s, modern rights (freedom of speech and the press, due process, and freedom from discrimination on grounds of race, sex and other characteristics) dominated U.S. Supreme Court's agenda, and by the 1980s had gained a prominent place on the agendas of other countries' supreme courts as well. In *The Rights Revolution*, I examined the conditions that supported this remarkable development.

My thesis is that the rights revolution rested not only on judicial leadership and favorable constitutional and cultural conditions, but also, crucially, on the development of a "support structure for legal mobilization." The support structure — consisting of a range of organizational, financial, and legal resources — enabled a rising tide of rights claimants to pursue legal claims in a sustained way in court. The development of these resources provided the key condition for the cultivation of new rights-claims and for novel legal research and widespread appellate litigation in support of such claims. Although judicial leadership clearly played a crucial role in the judicial rights revolution, my book, in sum, provides evidence that the revolution depended on a democratization of access to the higher judiciary.

The basis for my thesis is a comparison of judicial agendas (focusing particularly on women's rights and the rights of criminal defendants and prisoners) in the supreme courts of the United States, Canada, Britain, and India, from 1960 through 1990. These countries share the English legal tradition but differ significantly in other ways, particularly in the strength and timing of their rights revolutions, the presence or absence of a constitutional bill of rights, the attitudes of their supreme court justices (and changes in these attitudes over time), and the patterns of development in extra-judicial support for rights-advocacy litigation. Based on these comparisons and on changes over time in each country, I show that the presence of modern individual rights-claims on supreme court agendas has depended on the development of support structures in civil society. For instance, claims regarding individual rights began to appear

with regularity on the U.S. Supreme Court's agenda in the early decades of this century, after the development of organizational and legal resources for litigating such claims. By contrast, similar developments in the judicial agendas of other national high courts were delayed until after the development of similar support structures in those countries, typically after the late 1960s. The strength of the support structure has varied considerably among countries. For instance, it remains relatively weak in India and, as a consequence, even though Indian justices have been even more "liberal" and "activist" than their counterparts in the Warren Court, the rights agenda of the Indian Supreme Court has remained relatively fragmented and stunted.

My current research builds on the analysis in my book. The rights revolution has contributed to (and is in part constituted by) widespread perceptions of legal liability related to individual rights. Thus, managers in both public and private organizations commonly believe that they face significant threats of legal liability, particularly with regard to civil rights claims. The evolution of organizations arguably is shaped in part by these perceptions and, in turn, by perceptions of appropriate responses to legal liability. I am currently examining the nature and sources of these perceptions through a survey of managers of city departments in a wide range of cities around the country. The research, I hope, will shed significant light on the administrative construction of civil rights and liberties, and thus it is a natural outgrowth of my research on the rights revolution.

AMERICAN JUDICATURE SOCIETY AWARD
MELINDA GANN HALL, MICHIGAN STATE
UNIVERSITY

**"Competition in Judicial Elections,
1980 – 1995"**

This paper, which is the first judicial election study national in scope, examines electoral competition in state supreme court elections, in order to address a variety of issues related to the politics of institutional design. Although judicial elections have been virtually ignored by political scientists, advocates of court reform (including politicians, attorneys, law professors, and organized interests) have offered numerous assertions about

the presumed advantages and disadvantages of partisan, non-partisan, and retention election schemes. Though much of the discussion is normative, the literature is rife with contradictions and unsubstantiated claims.

One of the most significant controversies over judicial selection concerns the issue of whether partisan elections actually ensure any measure of accountability, the presumed *raison d'être* of such systems. Opponents of partisan elections as a means for selecting judges argue that these races, often characterized by lackluster campaigns devoid of content, are completely disconnected from substantive evaluations of the candidates or other meaningful political considerations relevant to the judiciary. By this standard, partisan elections are ineffective mechanisms of accountability.

A second important issue concerns judicial independence. Court reform advocates argue that nonpartisan and retention elections remove from the selection process the influence of external partisan forces that impinge upon the independence of courts, thereby maximizing this important dimension.

This paper attempts to shed some light on the controversy over judicial selection by analyzing electoral competition in elections to state courts of last resort from 1980 through 1995 in the 38 states that use some form of elections to select their judges. If the basic thrust of the reformers' arguments is correct, two general patterns should emerge. First, electoral competition in partisan elections should not be systematically influenced by macro-level variables generally representative of retrospective voting or candidate-related evaluations. Second, external political conditions should remain unimportant influences on competition in nonpartisan and retention races, though such factors may be highly significant in partisan elections.

Results indicate that reformers have underestimated the extent to which competition in partisan elections has a tangible substantive component and have overestimated the extent to which nonpartisan and retention races are insulated from partisan politics. At least on these two fundamental issues, arguments of the reformers fail. Moreover, the extraordinary variations in electoral competition across systems and over time, which bear directly upon the representative nature of courts, merit further attention and explanation.

This paper is part of a larger project on the impact of democratic politics on elected courts. Other work in progress includes an assessment of voluntary retirements, or whether perceptions of electoral vulnerability contribute to justices' decisions not to seek reelection. A second project evaluates ballot roll-off in supreme court elections, to establish whether the electorate is, or is not, responsive to contextual and institutional forces that enhance opportunities to cast meaningful ballots. Collectively,

these studies suggest that elections are more effective for providing democratic control of the bench than previously suggested or widely believed and that judicial elections bear close resemblance to elections for many other public offices.

CQ PRESS AWARD

CO-WINNER

GRETCHEN HELMKE, UNIVERSITY OF CHICAGO

“Toward a Formal Theory of an Informal Institution: Insecure Tenure and Judicial Independence in Argentina, 1976-1995”

One of the key challenges facing new democracies around the world is to establish independent judiciaries capable of upholding the rule of law and limiting the arbitrary exercise of power by the government. Few regions appear more in need of bolstering their judiciaries' independence than does Latin America where presidents regularly ignore court rulings, harass and dismiss judges with whom they disagree, and appoint their friends and cronies to the bench with little congressional oversight. Yet, despite the frequent incursions by governments against courts throughout the region, the striking fact uncovered by my research is that Latin American judges *do* rule against their governments, and sometimes against the very government by whom they were appointed. My 1998 paper “Towards a Formal Theory of an Informal Institution: Insecure Tenure and Judicial Independence in Argentina, 1976-1995,” draws on many of the core empirical and theoretical findings contained in my dissertation entitled, “Ruling Against the Rulers: Court-Executive Relations in Argentina, 1976-2000” to document and explain the paradox that some of the world's least independent judges appear most willing to hand down decisions that go against the government of the day.

Using new systematic evidence I gathered on the Argentine Supreme Court's decisions between 1976 and 1995, the paper begins by evaluating two hypotheses widely held by scholars of comparative politics and comparative legal studies, but rarely tested: 1) that judges under democracy are more independent than judges under dictatorship and 2) that the civil law legal culture precludes judges from checking the power of the government. Contrary to conventional wisdom, I find that over the last two decades the Argentine Supreme Court's willingness to rule against the government in power has neither been associated with the regimes transition to democracy, nor has it

been the case that judges have remained consistently loyal to the government in power. In fact, even when controlling for legality of the regime and case importance, what the data show is that both macro-level explanations focusing on democracy and culture cannot account for the patterns of variation observed.

To develop a better understanding of judicial independence in comparative studies of courts, my paper argues that macro-level theories need to be supplemented by a micro-level analysis of judges as individual decision-makers worthy of sustained theoretical attention. To this end, I build on the emerging separation of powers literature in U.S. judicial politics that treats judges as strategic actors who alter their behavior in response to the constraints posed by other institutional actors (Clinton 1998; Eskridge Jr. 1991; Epstein and Knight 1996; 1998; Spiller and Gely 1990; Spiller *et al.* 1998; Weingast and Ferejohn 1992). My theoretical point of departure in the paper is to focus on how the particular constraints imposed by the informal institution of insecure tenure, a *de facto* norm that permits incoming executives in Argentina to remove sitting justices, affect the court's behavior. Using a simple rational choice model, I posit that justices will seek to strategically defect from the current government whenever they believe that the government is likely to lose power and that defection from the current government can improve their situation. Initial tests of the theory using the new data on voting patterns provides strong support for the idea that judges under dictatorship and democracy engage in forward-looking strategic decision-making.

To conclude, my paper and the larger dissertation project of which it is a part offers a new analytic perspective on a heretofore under-theorized topic in comparative studies of courts: Namely, how the informal institutional constraints that judges in developing countries face influence the choices they make. While the paper's findings do not sit comfortably with classical notions of judicial independence, the more general implication that emerges from my research is that the cluster of attributes that are generally used to define judicial independence need not always vary together empirically. Just as independent judges may sometimes rule in favor of the government, so do "dependent" judges rule against the government. Indeed, as my research on the Argentine case suggests it is precisely the informal institution that appear most inimical to judicial independence—insecure tenure—that provokes judges to "check" the power of the government.

References

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Boston, MA.

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CQ PRESS AWARD

Co-WINNER

JOSHUA CLINTON, STANFORD UNIVERSITY

"An Independent Judiciary"

In the paper entitled "An Independent Judiciary?," I examine the extent to which legislative and Presidential preferences influence the Supreme Court's federal statutory interpretation decisions. In so doing, I derive a mechanism that enables the measurement of Congress, the President and the Court on an identical ideological scale. This avoids having to make arbitrary assumptions about the relative ideological locations of these bodies. Having aligned the preferences of these bodies on a common scale, I derive and test implications of the Separation of Powers model. The empirical tests run to determine the influence of Congress on the Court, all indicate null effects. Hence, by default, the implications of the attitudinal model is confirmed.

I am presently pursuing a Ph.D. degree in Political Science, a M.S. in Statistics and a M.A. in Economics at Stanford University. My current academic concentration is in methodological issues in American politics. To that end, I am currently revisiting a topic in my paper: specifically, the derivation of a means to align the ideology of Congress, the President and the Su-

preme Court on a comparable and measureable scale. As applications of this, I am looking at both the influence of Congress over the Court's statutory interpretation decisions, as well as determining the influence of Senate preferences on Supreme Court nominees.



**LIFETIME ACHIEVEMENT
AWARD**

**Honoring a Distinguished
Career of Achievement and
Service in the Field of Law
and Courts**

**GLENDON SCHUBERT
UNIVERSITY OF HAWAII,
MANOA**

Glendon Schubert received his Ph.D. at Syracuse University in 1948. He began teaching at the University of Hawaii, Manoa, in 1967 after having taught at a dozen other universities in North America and Europe. Professor Schubert's research interests include (1) political behavior and public policy, with a particular emphasis on judicial behavior and U.S. Supreme Court policy-making, and (2) the interaction of the biology of politics with political culture, as exemplified by evolutionary aspects of human cognition and behavior in relation to modern primatology and anthropology, and political feminism. He is the author of more than 120 journal articles and 26 books including his seminal works *The Judicial Mind* (1965) and *The Judicial Mind Revisited* (1974).

Professor Harold Spaeth, Michigan State University, presented the award to Professor Schubert at the Section meeting in Atlanta this past year.

Glen came to the study of Political Science and courts and judges via a route somewhat more circuitous than that taken by most of us. He garnered his first degree with a major in English, a discipline less removed from our present-day precincts than is the case today. But for the intervention of World War II, Glen would have acquired a Ph.D. with an emphasis on American Literary criticism. Its loss has been our inestimable gain.

But for him, a number of us would not be here, myself among them. His willingness and interest in taking a callow scholar under his wing and leading them to the cutting edge of the discipline provided the intellectual spark that continues to guide my endeavors to this day. Absent Glen's nurture, the Jeff Segal's, Greg Rathjen's, Tim Hagle's, and Sara Benesh's - among others - would have had to find another mentor, and the Saul Brenner's, Tom Walker's, and Lee Epstein's another co-author.

In nominating Glen for the award, Walter Murphy stated the case precisely:

His contributions to public law, more precisely judicial behavior, are enormous. In the dedication of one of his books, he wrote: "To Herman Pritchett, who blazed a trail." There was truth in that thought, but if Herman blazed the trail, Glen turned it into a paved road. Throughout the 1950's and 1960's he was indefatigable in demonstrating, against vocal and sometimes vituperative, opponents that judicial behavior was a legitimate subfield of political science and that it could be studied rigorously using statistical techniques as well as mathematical modeling.

For the last two decades, there has been little, if any, writing in judicial behavior that has not depended at least indirectly on Glen's insights - and sacrifices. He may have annoyed us at times, but he also taught us, and not only about American judges. He encouraged and included in his edited volumes work on India and Japan, among other countries. I hope I am not alone in believing that the most important criteria for this award should be importance of published work and its positive impact on the discipline. On these two counts, I cannot think of anyone since Herman Pritchett more deserving of the award.

Section News and Awards

Call for Nominations

At its 2000 business meeting in Washington, D.C., the Law and Courts Section will elect three officers: a Chair-Elect and two members of the Executive Committee. The following Nominating Committee has been appointed to present a slate of candidates at that meeting:

Roy B. Flemming, Chair Texas A&M University 409.845.5623/4845 roy@polisci.tamu.edu	Sara C. Benesh, University of New Orleans Gayle Binion, University of California-Santa Barbara	Milton Heumann, Rutgers University Steve Van Winkle, SUNY-Stony Brook
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The Nominating Committee solicits suggestions from the membership for individuals to fill these positions. If there are particular Section members you would like to have considered for these offices, please e-mail or phone Nominating Committee Chair, Roy B. Flemming.

All suggestions must be received by April 1, 2000. The Nominating Committee's recommended slate of candidates will be published in the Summer issue of Law and Courts.

The CQ Press Award

The CQ Press Award is given annually for the best paper on law and courts written by a graduate student. To be eligible the nominated paper must have been written by a full-time graduate student. Single- and co-authored papers are eligible. In the case of co-authored papers, each author must have been a full-time graduate student at the time the paper was written. Papers may have been written for any purpose (e.g., seminars, scholarly meetings, potential publication in scholarly journals). This is not a thesis or dissertation competition. Papers may be nominated by faculty members or by the students themselves. The papers must have been written during the twelve months previous to the nomination deadline. The award carries a cash prize of \$200.

The nomination deadline is June 1, 2000. To be considered for this year's competition, a copy of the nominated paper should be submitted to each member of the award committee (e-mail attachments, in the form of .pdf files, are acceptable):

Beth Henschen, Chair
5605 Glen Oak Ct.
Saline, MI 48176
bhenschen@ONLINE.EMICH.EDU

Charles M. Cameron
Department of Political Science
Columbia University
New York, NY 10027
cmcl@columbia.edu

Nancy E. Crowe
Dartmouth College
Department of Government
6108 Silsby Hall
Hanover, NH 03755
Nancy.E.Crowe@Dartmouth.EDU

The McGraw-Hill Award

The McGraw-Hill Award will be given annually for the best journal article on law and courts written by a political scientist and published the previous year. Articles published in all refereed journals and in law reviews are eligible but book reviews, review essays, and chapters published in edited volumes are not. Articles may be nominated by journal editors or by members of the Section. The award carries a cash prize of \$250.

The first McGraw-Hill Award will be made at the 2001 meeting of the American Political Science Association. Sheldon Goldman, chair-elect, will compose the committee next Fall.

The Lifetime Achievement Award

The Lifetime Achievement Award is given every year to honor a distinguished career of scholarly achievement and service in the field of law and courts. Any political scientist who has been active in the field for at least 25 years or has reached the age of 65 years is eligible. Nominations may be made by any member of the Section and should consist of a statement outlining the contributions of the nominee and, if possible, the nominee's vitae.

The deadline for nominations is January 1, 2000. Nomination materials should be sent to the **Chair** of the Committee who will forward them to other members. This year's committee is:

Sheldon Goldman, Chair
University of Massachusetts
Department of Political Science
Box 37520
Amherst, MA 01003-7520
Fax: 413-545-3349
Phone: 413-545-6179
sheldon.goldman@polsci.umass.edu

Judith A. Baer
j-baer@tamu.edu
Malcolm Feeley
mmf@uclink4.berkeley.edu

Lynn Mather
Lynn.M.Mather@Dartmouth.EDU
Jennifer A. Segal
jsegal1@pop.uky.edu

The Harcourt College Publishers Award

The Harcourt College Publishers Award is given annually for a book or journal article, 10 years or older, that has made a lasting impression on the field of law and courts. Only books and articles written by political scientists are eligible; single-authored work produced winners of the Lifetime Achievement Award is not. Nominations may be made by any member of the Section and should consist of a statement outlining the nature of the contribution of the nominated work. The award carries a cash prize of \$250.

The deadline for nominations is February 1, 2000. To be considered for this year's competition, the name of the nominated book or article should be submitted to each member of the award committee:

Jeffrey A. Segal, Chair
Department of Political Science
SUNY-Stony Brook
Stony Brook, NY 11794-4392
jeffrey.segal@sunysb.edu

Rogers Smith
Department of Political Science
Yale University
New Haven, CT 06520
rogers.smith@yale.edu

Shannon Smithey
Department of Political Science
4L01 Forbes Quad
University of Pittsburgh
Pittsburgh, Pa 15260
smithey+@pitt.edu

The C. Herman Pritchett Award

The C. Herman Pritchett Award is given annually for the best book on law and courts written by a political scientist and published the previous year. Case books and edited books are not eligible. Books may be nominated by publishers or by members of the Section. The award carries a cash prize of \$250.

The deadline for nominations is February 1, 2000. To be considered for this year's competition, a copy of the nominated book should be submitted to each member of the award committee:

Gerald N. Rosenberg, Chair
University of Chicago
Department of Political Science

Edward V. Heck
San Diego State University
Political Science Department
5500 Campanile Drive
San Diego, CA. 92182-4427

Rorie L. Spill
Department of Political Science
Binghamton University
PO Box 6000
Binghamton, NY 13902-6000

The American Judicature Society Award

The American Judicature Society Award is given annually for the best paper on law and courts presented at the previous year's annual meetings of the American, Midwest, Northeastern, Southern, Southwestern, or Western Political Science Associations. Single- and co-authored papers, written by political scientists, are eligible. Papers may be nominated by any member of the Section. The award carries a cash prize of \$100.

The nomination deadline is February 1, 2000. To be considered for this year's competition, a copy of the nominated paper should be submitted to each member of the award committee (e-mail attachments, in the form of .pdf files, are acceptable):

Susette Talarico, Chair
Political Science
University of Georgia
Baldwin Hall
Athens, GA 30602-1615

Charles H. Franklin
Department of Political Science
University of Wisconsin, Madison
316 North Hall/1050 Bascom Mall
Madison, WI 53706
franklin@polisci.wisc.edu

Georg Vanberg
Department of Political Science
Florida State University
Tallahassee, FL 32306-2230
gvanberg@mailier.fsu.edu

Web Announcements

FirstSearch. FirstSearch, a cost-free on-line tool for undergraduate research, has asked Lee Epstein to create a list of about 60 "premium" web sites relating to law and courts. If you have any favorites, please email the URLs to: epstein@artsci.wustl.edu

The Law and Courts Web Site. The Section has updated and redesigned its web site. Check it out at <http://www.artsci.wustl.edu/~polisci/lawcourt.html>.

We will continue to update on a weekly basis. So please e-mail URLs to your syllabi, home pages, reading lists, and research papers to the new webmaster, Jeff Staton, at: jkstaton@artsci.wustl.edu. We also will accept .pdf files attached to e-mails or on disks. Send disks to Jeff, at: Department of Political Science, Washington University, CB 1063, 1 Brookings Drive, St. Louis MO 63130.

Report on the 4th Annual Conference on the Scientific Study of Judicial Politics

The 4th Annual Conference on the Scientific Study of Judicial Politics was held 21-24 October at Texas A&M University. Over 35 graduate students and faculty from around the country participated in the conference which this year focused on the opportunities and challenges of comparative judicial politics research. In addition to the formal presentations and lively discussions, many of the conference participants took advantage of the chance to see Associate Justice Clarence Thomas and former President George Bush talk about the Supreme Court in a casual question and answer session at the nearby Bush Conference Center. Copies of the papers presented at the conference are available at: www.artsci.wustl.edu/~polisci/epstein/conference.

CONFERENCES, EVENTS AND CALLS FOR PAPERS

UPCOMING CONFERENCES

2000

CONFERENCE	DATE	LOCATION	CHAIR
SWPSA	MARCH 15-18	GALVESTON, TEXAS	MARGARET ELLIS, WICHITA STATE UNIVERSITY MELLIS@TWSUVM.UC.TWSU.EDU
WPSA	MARCH 24-26	SAN JOSE, CALIFORNIA	ALISON DUNDES RENTELN, USC ARENTELN@RCF.USC.EDU
MWPSA	APRIL 27-30	CHICAGO, ILLINOIS	VALERIA HOEKSTRA, WASHINGTON UNIVERSITY HOEKSTRA@ARTSCI.WSUSTL.EDU
APSA	AUG. 31- SEPT. 3	WASHINGTON, D.C.	LAW & COURTS: ROY FLEMING, TEXAS A&M ROY@POLISCI.TAMU.EDU JURISPRUDENCE: GERALD ROSENBERG, U CHICAGO G-ROSENBERG@UCHICAGO.EDU

NATIONAL JUDICIAL COLLEGE DEAN

The National Judicial College is a non-profit educational institution providing continuing education to state judges, federal and state administrative law judges, tribal judges and other court officials. The College, affiliated with the American Bar Association and located on the campus of the University of Nevada, Reno, seeks a Dean with experience in judicial and continuing professional education, and with strong interpersonal, organizational and administrative skills. Judicial and computer technological experience is desirable. The Dean

reports to the President and serves as the supervisor of the Academic Department and is responsible for its daily operations. The Dean acts for the President in his or her absence and assists the President in external relations and in developing long-range plans. The salary is competitive, plus excellent fringe benefits. Applicants will be considered until the position is filled. Contact the President's office for a more complete job description at 775-784-6747. Please send resume in confidence by December 1 to:

President Percy R. Luney, Jr.
The National Judicial College
Judicial College Building, MS 358
University of Nevada, Reno
Reno, Nevada 89557
Fax: 775-784-4234

ANEQUAL OPPORTUNITY EMPLOYER

FELLOWSHIP ANNOUNCEMENT

The Program in Law and Public Affairs (LAPA) invites outstanding teachers, scholars, lawyers and judges to apply for appointments as Fellows for the academic year 2000-2001. Successful candidates will devote an academic year in residence at Princeton to research, discussions, and scholarly collaborations concerned with when and how legal systems, practices and concepts contribute to justice, order, individual well being and

the common good. The Program is a joint venture of the Woodrow Wilson School, the University Center for Human Values, and the Politics Department.

Additional information and application procedures can be found at:

<http://www.princeton.edu/~lapa/>

Director of the Division of Social and Economic Sciences (wbutz@nsf.gov, telephone: 703-306-1760). Information about the Law and Social Science Program can be found on the Program's web page (<http://www.nsf.gov/sbe/ses/law/start.htm>). Applicants should send a letter of interest, a curriculum vitae, and the names and addresses of at least three references to the Law and Social Science Program, c/o Program Assistant Stephanie Israel, Room 980, Division of Social and Economic Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. As an equal-opportunity employer, the National Science Foundation welcomes and strongly encourages women, ethnic/racial minorities, and persons with disabilities to apply. The Foundation is committed to employing highly qualified staff that reflects the diversity of our nation.

*STATE POLITICS AND
POLICY JOURNAL*

The Illinois Legislative Studies Center at the University of Illinois at Springfield is launching a new journal, which will be the official publication of the State Politics and Policy section of the APSA. Tentatively titled *State Politics and Policy Quarterly*, the mission of the journal will be to foster, highlight and promote the rigorous, theoretically-driven and methodologically sound study of political behavior and policy, using the methodologically advantageous venue of the U.S. states. There has long been a need for such a journal, and SPPQ will fill that need. This will

be a carefully refereed journal of high academic quality with a specialty focus, at the level of *Legislative Studies Quarterly*, *Political Behavior*, and *American Politics Quarterly*. A first-class Organizing Committee has been assembled to guide the journal's development—Virginia Gray, Kenneth Meier, Richard Niemi, Gary King, Keith Hamm, James Garand, Paul Brace, David Lowery, Ronald Weber, William Berry, Malcolm Jewell, Gerald Wright, Elinor Scarbrough, and Thomas Holbrook. The first official call for papers will be sent out to members of the APSA's State Politics and Policy, Public Policy, Urban Politics, Legislative Studies, Public Administration, Law and Courts, and Federalism and Intergovernmental Relations sections in early 2000. The first issue is slated to appear in March 2001.

I strongly encourage members of the Law and Courts Politics section who work in the area of state politics and policy to submit their best manuscripts to SPPQ. This would be a great place to publish some of that really top notch comparative state judicial work with a behavioral bent. This is your chance to be there at the creation! To do so, please send four copies (three with identifying references removed) to me at the ILSC. We will strive to provide you with careful and thorough referees' reports in a timely fashion. Watch your mail in early 2000 for a more detailed announcement.

for more information contact:

Chris Mooney, Director
Illinois Legislative Studies Center, PAC 484
PO. Box 19243
University of Illinois at Springfield
Springfield, IL 62794-9243

*RESEARCH
COMMITTEE ON
COMPARATIVE
JUDICIAL STUDIES*

The Research Committee on Comparative Judicial Studies of the International Political Science Association (RC #9) will have at least two panels at the forthcoming World Congress of the IPSA in Quebec City, August 1-6, 2000. There possibly will be an associated meeting of RC #9 in Ottawa prior to the Quebec World Congress. For paper proposals please submit to the Convensor, Ted Morton, at morton@ucalgary.ca by December 1, 1999. One of the panels at the World Congress will be a state of the art panel on comparative judicial studies.

The next interim meeting of RC #9 will be held in Cape Town, South Africa, on January 7-9, 2001. For this meeting also please submit paper proposals by December 1, 1999. Presentations will be confirmed by January 15, 2000, so that you can make airline reservations well in advance of the Cape Town meeting. Inexpensive seats are scarce on flights from the U.S. to South Africa. Tentative panel topics include: justice in transition systems (one on South Africa, one on other systems), the role of public prosecutors, and interest groups in rights litigation. Proposals will also be welcome on other topics.

*BOUNDARIES OF
FREEDOM OF EXPRESSION
AND ORDER
IN A DEMOCRATIC SOCIETY*

Kent State University
May 1-2, 2000

Purpose of the Symposium: Beginning with the 30th Anniversary of the May 4, 1970 tragedy at Kent State, where four students were killed and nine students were wounded, the University plans to hold an annual scholarly symposium focusing on the challenges of living in a democratic society. The

events of May 4, 1970 represented a clash between the sometimes conflicting values of freedom and order, and thus it is appropriate to have as the theme of the inaugural symposium "Boundaries of Freedom of Expression and Order in a Democratic Society."

Call for papers: The symposium will examine the current status of freedom of expression in American society by asking what are the limits of freedom of expression and are these the appropriate limits. Paper topics might include hate speech, political protest, libel, obscenity, the Internet, etc. We also welcome proposals involving historical, philosophical, sociological, and other approaches to freedom of expression as well as comparative analysis involving other countries. We are especially interested in a paper examining the conflict between freedom and order which occurred at Kent State on May 4, 1970.

If a proposal is accepted, a \$2000 honorarium will be paid at the end of the symposium upon successful completion of all responsibilities, which include providing a final copy of the paper by April 1, 2000 to allow discussants time to read it. A book is also being planned based upon the symposium.

Keynote Speakers

Anthony Lewis, Pulitzer Prize Winning Columnist, New York Times

Cass Sunstein, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School

Kathleen Sullivan, Stanley Morrison Professor of Law and Dean, Stanford University Law School

The deadline for receipt of a one-page proposal and a curriculum vitae is **December 1, 1999**.

These materials should be sent to:

Dr. Thomas R. Hensley

Department of Political Science- Kent State University

Kent, OH 44242.

e-mail: thensley@kent.edu

330-672-2060 (office) 330-672-3362 (fax)

*NATIONAL SCIENCE FOUNDATION
LAW AND SOCIAL
SCIENCE PROGRAM
DIRECTOR*

The Law and Social Science Program at the National Science Foundation invites applications for the position of Program Director. This program fosters empirical research on law and law-like norms and systems in local, comparative, and global contexts. The appointment will begin on or about September 1, 2000 and will

run for one year, with the possibility of renewal for the following year. The Director manages the Law and Social Science Program, providing intellectual leadership in its various activities, encouraging submissions, and taking administrative responsibility for evaluating proposals. The position entails working with directors of other programs and other divisions at NSF in developing new initiatives and representing the agency in other settings. Applicants should have a Ph.D. or equivalent in one of the social or behavioral sciences and a record of at least six years of scholarship and research experience. Applicants should also be able to show evidence of initiative, administrative skill, and ability to work well with others. More information about the position is available from Doris Marie Provine, the current director (dprovine@nsf.gov, telephone: 703-306-1762) and from William Butz.

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

The deadline for submissions for the next issue of **Law and Courts** is March 1, 2000.

Law and Courts

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