Law and Courts

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From the Section Chair

Lee Epstein
Washington University in St. Louis

Professional Development for New Political Scientists

A Look Back, A Look Ahead

As my term as Section chair draws to a close, I thought it appropriate to review key Section activities over the past year and detail some of the challenges I see for the next.

Section Activities, 1999-2000

Section membership, as I noted in a recent list-serv posting, may be at an all-time high. At the very least, we have grown substantially, from 679 members in June 1999 to 887 as of June 2000 (representing an increase of 30%).

These and other bits of data lead me to the same conclusions Micheal Giles reached last year: "The Section is in excellent health...The finances of the section are excellent. Most importantly, the organizational life of the section is vibrant." To provide some examples of Micheal's last point:

•Between June 1999 and June 2000, the Law and Court's listserv attracted 790 postings. This is an extraordinary figure—one I attribute, first and foremost, to Howard Gillman, who does an outstanding job in moderating the list. Just when the "conversation" seems to be dragging, Howard always manages to pick it up, posing an interesting question or making a claim bound to generate discussion. Also important, I think, was the Section's decision to add automatically all its members to the list. Expanded participation has only served to enhance the list serv's role as our central mechanism for intellectual exchange.

•The Law and Politics Book Review, founded by Herb Jacob, continues to perform a major service—not just for our Section but for the whole discipline—by providing e-book reviews in a *timely* fashion. While reviews of books published in 1998 are just now surfacing in the *American Political Science Review*, those for volumes issued as recently as six months ago are appearing in our e-mail boxes. This is a credit to Book Review Editor Dick Brisbin. Not only does Dick keep those reviews coming, but he has engaged scores of scholars—both here and abroad— in the effort, as well.

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Instructions to Contributors

General Information

Law and Courts publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** is published three times a year in Winter, Spring, and Summer. Deadlines for submission of materials are: November 1 (Winter), March 1 (Spring), and July 1 (Summer). Contributions to **Law and Courts** should be sent to:

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Articles, Notes, and Commentary

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

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

Symposia

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

Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when posible. Finally, authors should notify Sue Davis at suedavis@udel.edu, of publication of manuscripts.

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•The Law and Courts newsletter has improved markedly over the years. At one time, it served (largely) as a simple communication device, alerting members of key dates and awards; today, it continues to perform that function but it now also provides a forum for serious intellectual discussion and debate. For this we must thank Cornell Clayton, who has done a remarkable job in elevating Law and Courts to new heights. Surely it now stands as one of (if not) the best newsletters in the discipline.

•Since its early days, the Section has acknowledged significant scholarly accomplishments via the conferral of awards. But the number of prizes has grown over time, such that we now present five. Next year, we will add a sixth: The McGraw-Hill award, "which 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."

Given the number and quality of nominees, selecting winners is a time-consuming and difficult task. Accordingly, we should express our sincere thanks to the 22 Section members who served on our 5 award and 1 nominating committees. (For this year's committee members and award winners, see page **X**).

•Owing to the tireless of efforts of Kevin McGuire and Rorie Spill, we are looking forward to an outstanding short course at the 2000 meeting of the American Political Science Association. About 40 graduate students and faculty already have registered for "Professional Development," and it has attracted substantial interest from the APSA. If you haven't signed up yet, it's not too late. Simply complete the registration form (page **X**) and send it, along with a $10 check, to Reggie Sheehan.

•Speaking of the APSA meeting, division heads Roy Flemming (Law and Courts) and Gerry Rosenberg (Constitutional Law) have put together terrific panels—ones covering the range of theoretical, substantive, and empirical concerns in our field. All in all, over 200 faculty and graduate students will participate on one or more of the nearly 30 law-related panels and poster sessions. I am, as I know many of you are, especially delighted to see the number of panels (by my count, 11) that deal explicitly with comparative courts, law, or both. (For key Section events at the APSA, see page **X.**)

Challenges

As I hope even this brief review makes clear, 2000 has been a rewarding and exciting year for the Section. If the Section is to continue to thrive, however, we must now turn to the future and confront some important challenges. To me, these mostly center on connections among scholars in our field and specialists in others that we have yet to make or, at best, are only starting to make. Let me elaborate but be forewarned: I have far more questions than answers.

•*Connections among Political Scientists in the Law and Courts Field.* Our list serv and newsletter have, without doubt, worked wonders to foster connections among those of us taking distinct theoretical and analytical approaches to the same substantive topics—law and courts; at the very least, they have helped us to understand better, if not appreciate, particular claims and positions. And, yet, as I read articles published in Law and Courts and notes posted on the list serv, I can't help but think that we continue to talk past, rather than listening to, each other.

Can we overcome our (occasionally fundamental) disagreements? Should we attempt to do so? If yes, how might political scientists of different theoretical and analytical leanings combine their strengths to produce new and richer insights into law, courts, and judicial politics? What role can or should the Section play in this process?

I plan to put these and related questions to the Executive Committee at our 2000 annual meeting. If you have ideas, I'm sure the Committee would be interested. Simply email me at: (epstein@artsci.wustl.edu) or post a note on the list serv.

•*Connections between Political Scientists and Members of the Legal Academy.* Over the past few years, more and more law professors have joined our Section, play various roles in our activities, and participate at our panels. I, for one, applaud this trend, for I think we have much to gain from interaction with our law colleagues.

If Section members agree, then perhaps we ought consider mechanisms designed to induce even greater interaction. I have a few ideas along these lines that, again, I hope to discuss with the Executive Committee. Of course, I would be very interested in hearing yours.

•*Connections between Law/Courts Specialists Here and Our Colleagues Abroad.* Roughly 10% of all panelists and poster presenters on law-related sessions slated for the 2000 APSA meeting are affiliated with universities outside the United States. And this figure represents just a small sample of scholars throughout the world who share our interests.

While building connections to our counterparts elsewhere always has been important, it may be even more so today—what with so many of us interested in comparative law and courts. Since conducting such research "should involve more than academic tourism…[and] more than picking a place on a map and sending forth agents to bring back data," as Kim Lane Scheppele recently observed, many of us lacking local knowledge desire to develop relationships and, perhaps, collaborations with colleagues abroad. (For more on this point, see Kim's excellent contribution in the last issue of Law and Courts.)

What steps can the Section take to facilitate these connections? Are we best off working with existing groups and centers or ought we undertake independent activities? In this day and age of electronic communication, it should not be altogether difficult to devise answers; translating them into solutions and implementing them effectively, however, will present many challenges.

•*Connections between Law/Court Scholars and Specialists in Other Fields.* In an essay Greg Caldeira and I wrote 6 years, we suggested that the "study of courts and law is in danger of becoming marginal to the discipline…In fact, our general sense is that other political scientists view us and our concerns as an enterprise somewhat disconnected from the core of the discipline." Undoubtedly the situation has improved since 1994—with the integration of courts into separation-of-powers models one example—but we still have some distance to go. I am disturbed that only a handful of the some 100 APSA panels listed in comparative divisions (11-15) touch on courts and law. And I am equally concerned about the lack of attention our substantive interests receive in work conducted by political methodologists; indeed, it is the rare statistically-focused paper that takes advantage of the rich data bases we have to offer.

If we believe that comparativists and methodologists, to name just two, can gain as much from interaction with us as we can from them, then the lack of these connections creates a lose-lose situation. How can we turn it into a win-win? With regard to our colleagues in comparative, we are hoping to involve them in the Section's 2001 short course, which will focus on law and courts abroad. But surely there other ways to bridge the existing gaps, and the Executive Committee will explore them at our September meeting

A long list of challenges, I know. Yet I can't help but feel that they we can meet them, for no other Section, in my estimation, has been as innovative (and relentless) as ours. This is a credit to all you who have labored unselfishly in the past and continue to do so. I have already expressed our collective debt of gratitude to Howard, Cornell, Dick, Kevin, Rorie, Gerry, and Roy. But let me end with our appreciation to the members of the Executive Committee— Dick Brisbin (again), Susan Burgess, Shelly Goldman (incoming chair), Mark Graber, Stacia Haynie, Kevin McGuire (again), Barbara Perry, and Reggie Sheehan—all of whom devote countless hours to keeping our Section as vibrant as it is.

"Comparative Advantage"

A Response from the Field

Donald Jackson
Texas Christian University and
Secretary, Research Committee on Comparative Judicial Studies

Lee Epstein's essay in the Winter 1999 issue of *Law and Courts* was timely in several senses, one being that the XVIII World Congress of the International Political Science Association will convene in Quebec City August 1-5, 2000. There the Research Committee on Comparative Judicial Studies (RC #9) of IPSA will offer a panel on "The Status of Political Science at the Year 2000: Comparative Judicial Studies." The panel will be chaired by Martin Edelman, SUNY, Albany, former Convenor of RC #9, and the panel will include papers by Guiseppe di Federico of the University of Bologna, Neal Tate of the University of North Texas, Menachem Hofnung of The Hebrew University of Jerusalem and Peter Russell, Emeritus Professor the University of Toronto.

Professor Epstein's essay caused me some mild dismay by reminding me once again how many apparently mutually exclusive circles there are amongst us who study law and courts. For example, the Research Committee on Comparative Judicial Studies was first recognized by IPSA in 1973 and is one of thirty-eight active research committees. In addition to IPSA and APSA, and the Law and Society Association, within the past two years the U.S. Association of the International Association of Constitutional Law has been organized, with its first meeting being held in New York City in November 1998. Area studies associations, for example the Latin American Studies Association, also include panels on law and courts. Some of our circles indeed consist mostly of academic lawyers, some mostly of sociologists or anthropologists, some mostly of political scientists, but the big problem is that our work is neither as comparative nor as cumulative as it ought to be. That is because we too often are unaware of the one another's research. And we too easily forget those whose work preceded our own, sometimes even by decades.

Below you will find three brief essays. The first, written by Peter Russell, provides the perspective of a senior scholar from Canada who has been a key member of RC#9. Peter offers both historical perspective and what may be called "institutional awareness." The second two, by Don Kommers and Kim Scheppele first appeared on the Law and Courts list serve. Both stake worthy claims for the study of comparative law and courts.

Peter H. Russell
University of Toronto

Professor Lee Epstein is a little hard on her American political science colleagues for neglecting the comparative study of courts. American political scientists have been at the very forefront of developing the field of comparative judicial studies. Much of their contribution has been made through the activities of the International Political Science Association's Research Committee on Comparative Judicial Studies. Epstein's list of references includes publications of a number of the American scholars who are currently active in the IPSA Research Committee's work, but makes no mention of works by those who many of us outside the United States would regard as "founding fathers'" of comparative judicial studies – scholars such as Henry Abraham, Walter Murphy and John Schmidhauser.

Still, Epstein has a point – the vast majority of American political scientists engaged in judicial studies have paid little attention to major developments in judicial politics outside the United States, and, this diminishes their understanding of the judicial role. However, I would offer an explanation of this neglect, that perhaps would not occur to an American colleague.

My explanation is the Roman syndrome. With respect to the role of the judiciary as a repository of political justice, reviewing and striking down decisions of the other branches of government that run afoul of judicial conceptions of the polity's fundamental principles, the United States has been the exemplar for the world. This core feature of American constitutionalism has played a role in the modern world akin to that of Roman law centuries ago. Americans, like

Romans, do not readily become interested in how the provinces are adapting their model.

Provincial peoples, such as we Canadians, living in the shadow of Rome have no choice. It would make little sense to study high courts practicing judicial review in our own countries without reference to the American model – even if only to explain the different spin we have put on that model. We are perforce comparativists. For a useful introduction to these foreign spins on the American model let me recommend a book by two fine American comparativists, Louis Hencken and Albert Rosentahal, *Constitutionalism and Rights: The Influence of the United States Constitutional Abroad* – an excellent book even if it does treat Canada as too much of a province to be considered "abroad".

But the role of high courts as oracles of political justice should not monopolize the attention of political science comparativists in judicial studies. If that were to happen the field would indeed be in danger of excessive Americanization. It is essential for comparativists who aspire to a deep level of analysis to consider how ordinary "courts" doing the everyday business of adjudication perform in other societies. Only with this kind of knowledge about the traditional judicial culture of societies (or the absence thereof) can intelligent answers be given to the "design" questions posed for would-be comparativists by Professor Epstein – why is one set of institutions adopted over another to perform the function of judicial review? Again, I think of no better place to begin such deep level comparative study than the work of another great American comparativist, Martin Shapiro – not the two articles of his cited in Epstein's references, but his book *Courts: A Comparative and Political Analysis*.

In summoning American political scientists to move forward quickly into the field of comparative judicial studies, Epstein cautions that this research must be "theoretically interesting and methodologically sound." I am not sure that these words include an effort to be clear about the meaning of key terms. But if they don't, they should. And no term is more central to comparative judicial studies, and yet used in so many different ways by political scientists, than "judicial independence." Note that the test that Epstein would apply to a comparative study of justiciability is how do these different rules enhance or undermine judicial independence.

David O'Brien of the University of Virginia and I have just finished organizing and editing a comparative study of judicial independence. Our book, to be published later this year by the University Press of Virginia includes analyses of how "judicial independence" has been experienced in a variety of settings around the world, including Australia, Central America, Great Britain, Western and Eastern Europe, Hong Kong, Israel, Japan, Russia, South Africa and the United States. This is yet another project of IPSA's Comparative Judicial Studies group, a successor to the books edited by Donald Jackson and Neal Tate, and by Neal Tate and Torbjorn Valinder, listed in Epstein's references.

In the introduction to this volume I point out that while virtually every political scientist who writes about the judiciary takes "judicial independence" to be a governing norm, there is very little agreement as to what judicial independence is (whether it is a relationship, a form or behavior, or both) or how much of it is a good or necessary thing for a constitutional democracy. I go on to suggest the various dimensions of judicial independence as a relational term, and questions – empirical and normative – that might be asked about it. While I have no illusions about enacting linguistic legislation for a group as independent –minded as political scientists, I would urge judicial comparativists to at least come clean at the beginning of their work about what they mean by judicial independence. And, to do this they might find it helpful to dip into the O'Brien/Russell volume, if only to position themselves with respect to the various options it sets out.

Donald P. Kommers
Univeristy of Notre Dame

Lee Epstein's recent piece in Law and Courts was a source of encouragement for those of us who have long been laboring in the vineyard of comparative constitutional law. It was equally encouraging to read the many responses to her fine article. The article, however, did not say much about comparative developments in the field of constitutional law and interpretation, as opposed to institutional and judicial process studies. Yet comparative constitutional law has blossomed into a major field of academic study, one impressive sign of which is the recently published book, *Comparative Constitutional Law*, by Mark Tushnet and Vicki Jackson (Foundation Press, 1999) the first of its kind since the early pioneering course book, published in 1976, by Murphy and Tanenhaus. (Other comparative casebooks are in preparation.)

Comparative constitutional analysis seems now to be a standard part of judicial interpretation in many advanced democracies around the world. One justice of South Africa's Constitutional Court has written: "The work of [our] court continues to be very challenging, but most fascinating and deeply rewarding, particularly because we are trying to develop our jurisprudence with proper regard to the work done in the major senior domestic courts through the world."

The one constitutional tribunal that continues to resist the comparative perspective is our own Supreme Court, although at the recent law teachers conference in Washington, D.C., Justice Ginsburg commented on how the Court is beginning to be informed by comparative work, all of which raises the interesting question of the extent to which courses in American constitutional law should begin to incorporate comparative materials. I suspect that there are mixed views among our colleagues on this question. (American constitutional law seems to be the last sub-field in our discipline still resistant to the comparative approach.)

In 1998 John Finn and I published *American Constitutional Law: Essays, Cases, and Comparative Notes* (Boston: West/ Wadsworth), one of the first attempts, we believe, to introduce students to the variety and richness of comparative (i.e., foreign) materials in the basic undergraduate course in American constitutional law. We thought the time was ripe to introduce a comparative perspective and to do so with some consistency throughout the book. We tried to do this in three ways: (1) by referring to comparative doctrinal developments and modes of interpretation in our original essays to each topical chapter; (2) by including boxes (about 90 altogether) featuring extracts from foreign cases, carefully spliced into the text so as to focus on points of special interest; and (3) by raising comparative (as well as interpretive and normative) issues in the notes and queries to each edited case. Although the comparative materials are limited, we think they are sufficient to provide a springboard for fresh reflection on the meaning of the United States Constitution. (We draw our materials mainly but not exclusively from Germany, Canada, South Africa, and the European Court of Human Rights.)

The Comparative perspective in constitutional law has not caught on as well as we had hoped, although the course book is doing well enough to prompt West/Wadsworth seriously to consider a second edition, and this is where we would appreciate having the candid views of teachers who have seen the book or have used it in the standard college course.

We are interested in knowing whether the book over-emphasizes the comparative dimension or whether it gets in the way of an adequate presentation of American judicial opinions? Alternatively, could more be done with comparative materials? We have been asked to consider including longer passages from foreign case law instead of confining it to short, boxed extracts. Our fear, however, is one of overload. After all, the book is designed for courses in American, not comparative constitutional law, just as we found it crucial in this book to give equally consistent emphasis to various interpretive and normative issues. A couple of teachers have told us that the book is a mite too difficult for undergraduates and that it could be put to more appropriate use in graduate courses. On the other hand, we have been told that it works quite well at the undergraduate level. (It has worked well at this level for us at Wesleyan and Notre Dame.) Anyway, we invite suggestions of how the book might be improved as a teaching tool in the standard course in American constitutional law. Or, alternatively, has the time arrived to begin thinking of offering courses in comparative constitutional law at the undergraduate level? (At least one effort in this direction is underway.)

Kim Lane Scheppele
University of Pennsylvania

I want to applaud Lee for putting the question of comparative law on the agenda for all of us. I think her call to debate in the newsletter is exemplary! And, as someone who made the switch several years ago from the study of American law to the study of law elsewhere, I want to second Lee's call to move to the study of comparative law. But I also want to exhort people to move carefully if they choose to follow this route.

The American legal system is peculiar in the wide world of law, and generalizing from it to other systems can be dangerous. Some institutions that we take for granted in the US (the jury, the dissent) are also present in other legal systems, but they mean something quite different from what they mean here. Comparing them is therefore not straightforward. Other institutions are wholly new when seen from an American perspective (the procurator, the Constitutional Court, the deputy state secretary for political affairs in the justice ministry) and understanding what they do requires learning the logic of new institutions. Unless one is immersed in the legal culture of a new place, one is likely to commit howlers - and it takes awhile to learn a new legal culture. So comparative law should not be done on a hit-and-run basis.

To give an example of a howler that runs the other way, from somewhere else back to the US, I recall reading a paper from a brilliant Hungarian student of mine (who had never been to the US, but had read a lot about the American legal debates concerning affirmative action) in which she asserted that affirmative action in the US was controversial because it was designed primarily for disadvantaged Jews, who were discriminated against everywhere. She knew all about the philosophical debates over affirmative action, but had the referents all wrong. This was a classic case of taking local

knowledge (anti-Semitism in Hungary is never all that deep below the surface of public discourse and people of African descent are nearly absent) and projecting it to the new place, never realizing that the new context is wholly different. Unfortunately American scholars are all-too-likely to commit the same sorts of mistakes in reverse.

Hit-and-run scholarship is unfortunately frequent among born-again comparativists. And there's a good reason. It's hard to learn a new language in order to conduct research in a new place, and law in particular is so sensitive to language that it is very difficult to understand what is going on unless one actually understands words. While many of us have become accustomed to spending a great deal of time learning new software or new statistical tools, most of us are not accustomed to spending the time it takes to learn new languages. If our field wants to encourage comparative work, we should encourage long-term investments in getting the "cultural capital" to carry out research in the new place also.

Thinking that one should know how to understand the language of a new place does not necessarily settle the question of what methodological tools one should use to study law comparatively. We are in a field that has a huge diversity in the methodologies we employ. Comparative work should also be carried out using this diversity of methods that we find in American research. But here, too, there is a danger – and it's the danger that the remote control of data collection only compounds ignorance.

Much large-scale data collection is research by delegation – or, to put it differently, research by remote control. The Principal Investigator (PI) in a large-scale <u>quantitative</u> data collection project generally hires other people to gather, code, input and often run the models on the data. The PI then interprets what the results mean. If the PI lives in the culture from which the data are drawn or the PI knows that culture very well, then the interpretation is difficult but manageable. One can make educated guesses about what the data mean because one understands a great deal more than is in the model. The model provides the opportunity for testing hypotheses generated by a knowledgeable literature or figuring out in an exploratory way what is a sensible explanation of the phenomena under consideration – but the information that goes into the interpretations is usually a great deal more, wider and different from the knowledge literally coded into the statistical results themselves. One needs to know more than the data to make sense of them. Hit-and-run researchers working in what is to them a new culture will have a hard time doing this.

This problem of needing to know more than is in the data does not just apply to statistical methodologies. Qualitative research done at a distance has the same problems, though the infrequency of examples where someone writes a book using field notes gathered by someone else makes this a less cutting observation. But in-depth interviews conducted by research assistants, content analysis of distant news coverage, even archival research done by someone else who does understand the local language pose the very same problems of interpretation if the researcher doesn't know the broader context within which to interpret the results. When any methodology relies on remote instruments, getting comparative phenomena "right" is problematic unless the researcher knows more than the data literally say. It's hard enough to interpret results well where the PI is working in her own home context – but it's virtually impossible to get it right when the PI doesn't know what is just beyond the edges of the data.

For example, in Eastern Europe where I work, someone might actually think that the Hungarian Justice and Life Party cares about either justice or life or that the Russian Liberal Democratic Party is either liberal or democratic. Or that when the Hungarian Constitutional Court said that property was the lowest ranked value in the constitutional order, the Court was harking back to communist times. Instead, the Hungarian Justice and Life Party is the fascist party, the Russian Liberal Democratic Party is an extremely nationalist one, and the Hungarian Court was speaking in a world where almost all substantial property was still state-owned. Putting a high value on property in the case before them would have prevented almost all later privatization which the Court wanted to encourage. This is hardly a ringing endorsement of communism. Oh yes - and I'd hate to see any of these examples from Eastern Europe coded along a liberal/conservative continuum without a lot of specification about what liberal and conservative mean. For example, if conservatism is about slowing down change, then the Communists are the most conservative party in that part of the world. But that's probably not what most American researchers have in mind when they think about conservatism!

When we work in cultures where we know what things mean, it's easy to miss how much goes into the interpretation of data that are not directly in the data set but are instead in our background knowledge. When we move to a new legal culture - either literally or virtually - it's easy to miss what we don't know is there.

Finally, I want to make a point about collaborative research. Many Americans move into comparative research by working together with someone from the new culture. This is generally a laudable strategy – certainly much better than collecting data in the dark. A research collaborator who knows the language and the culture can head off the worst mistakes and

can help to educate someone who has newly come to a distant place. But there is a danger here too – the danger of colonialism. I've written about this elsewhere at greater length (see György Csepeli, Antal Örkény and Kim Lane Scheppele, "Acquired Immune Deficiency Syndrome in the Social Science in Eastern Europe: The Colonization of the Social Sciences in Eastern Europe." *Social Research* 63 (2): 487-510 (1996)), but the gist of that article is that Americans are in a very privileged position when they do research abroad. Americans have extraordinary resources for collecting data compared with academics in many other parts of the world.

In Eastern Europe, for example, academics with worldwide reputations who would be full professors if they had made their careers in the US cannot survive on their academic salaries. To make matters worse, nearly all money for original data collection disappeared with the one-party state. So the "transition" in Eastern Europe has produced a large group of exceptionally gifted people who are willing to work on a (heavily discounted) piece-rate basis, doing research with Americans – because they must supplement their meager salaries in order to survive. This sad fact has generated a lot of collaborative research, and has created opportunities for Americans to move into cultures that they did not previously know in order to take advantage of the comparative turn.

But this is also an opportunity to remember the old saying that he who pays the piper calls the tune. And the research questions asked and the data gathered in these newly poor parts of the world (to say nothing of the always-poor parts of the world) are disproportionately decided upon by those with money, who are disproportionately foreigners to the place of study. The local partner is often not treated as an equal when it comes to deciding either what is interesting to do research about or which other countries would make for an informative comparison. So the local partner is called in only after the basic framework has already been decided upon, when "examples" are being sought, usually to test a theory generated elsewhere. These basic decisions about the infrastructure of the research are often made by exactly those researchers who are broadly ignorant of the cultures into which their research dollars are now to be inserted. The result is not only badly designed research, but also a kind of intellectual colonization of the community of local scholars, where the economics of dependency force these scholars to collaborate in the research efforts of those coming from abroad without themselves being treated as equals in the research process.

How can American researchers working in new places be sensitive to these dynamics? For one thing, Americans can ensure that their international collaborators have strong input into the design of projects at the start, and that these collaborators have opportunities to further their own intellectual agendas too. Then there must be recognition of the intellectual contributions to a project. Co-authoring is one start; supporting collaborators for their own independent grants for follow-on research is another. Ensuring that researchers are paid not according to their country of citizenship but according to their membership in a community of equals matters too. And lobbying grants-making foundations and agencies to broaden the scope of eligible principal investigators helps as well, so that scholars in poorer parts of the world have a chance to do research that responds to their own sense of what is important.

One practice that particularly irks me involves large-scale data collection in multiple countries, where a common research instrument is distributed so that the results can be compared across countries. In this sort of research project, often the PI is an American who hires local researchers to supervise the data collection in each country. In return for their service in the data collection business, the local researchers are paid for their labor and given access in the end only to the data for their own country. The large comparative dataset out of which the most prestigious results will be generated is then reserved for the distant PI alone. This sort of research design succeeds in reproducing exactly the sort of inequalities that were present at the start: the Americans get all the credit for doing "theory" (based on many cases), while the local and poorer researchers are confined in the international academic pecking order to being "area specialists" who can only speak about their own locale. They, too, need the luxury of being able to do comparative research.

Doing comparative research requires local knowledge, including local knowledge of the circumstances of one's research partners. Knowledgeable and ethical academic research requires different preparatory strategies than one might use for research in one's home country. So while I approve wholeheartedly of Lee's call to comparativism, I want to add, if it's not already obvious, that comparative research should involve more than academic tourism. And it should involve also more than picking a place on a map and sending forth agents to bring back data, the way that the traders of early modern times would venture forth to bring back silk and spices from distant lands. We usually spend a lifetime learning about the culture we plan to write about when we write about our own country; we should have enough respect for the places to which our new research takes us to spend some time learning about them too. Only then can we take the comparative turn – in the right direction.

Final Remarks
Donald Jackson

In other comments on the Law and Courts list serve on the Epstein piece, Albert Melone suggested that we ought to redesign the undergraduate public law curriculum to include comparative constitutional law and comparative judicial politics courses. The list serve moderator, Howard Gillman, responded by noting that this was already being done at the University of Southern California, partly under the influence of John Schmidhauser, and partly due to the contribution of his colleague, Alison Renteln, who teaches a course on "Cultural Diversity and the Law." Howard noted also that his new colleague, Jeffrey Sellers, is currently teaching an undergraduate course on comparative constitutional law. I must add that I have been teaching a course for several years on "Human Rights in Comparative Perspective." No doubt there are hundreds of other examples. It seems clear that there is rich fruit to be picked in our field if only we take the time to engage in some comparative "shopping."

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GIBSON VERSUS CASE-BASED APPROACHES:

CONCURRING IN PART, DISSENTING IN PART[1]

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Introduction

Within the judicial sub-field, quantitative scholars typically employ the judge or the case as the unit of analysis. In a recent article in this newsletter entitled "Selecting Units For Analysis: A Cautionary Note About Methods of Analyzing Cases and Judges" Jim Gibson demonstrates that a research design that employs cases as the unit of analysis ***may*** yield different results from one that employs judges. He concludes, "…that using the case as the unit is inherently flawed…" and proffers the judge as the appropriate unit for analysis. While we applaud Jim for raising this important and complex issue, we find ourselves concurring in part and dissenting in part from his conclusions.

We structure our comments around two questions that are typically confounded in discussions of the unit of analysis: What unit should be employed in the selection of phenomena to be studied? And what unit should provide the basis for analyses and testing of hypotheses? Jim's answer to both questions is the judge. While less critical of the use of case-based selection than Jim, we think he makes a good argument for using the judge as the preferred unit for selection. Where we disagree with Jim is with regard to the second question. Instead, we argue that for many if not most analysis of judicial behavior the case, or more precisely the judge-case (i.e., the vote), is the appropriate unit.[2]

Selection Based on Cases or Selection Based on Judges?

Throughout his examples, Jim argues that case-based research designs are inherently flawed. While he offers multiple illustrations, all take the same logical form. The most extensive example is that involving the influence of judicial activism or restraint on behavior. He assumes that the relationship between judicial ideology and behavior is conditioned by the judge's commitment to an activist or restraintist position. He posits that among activist judges the relationship is Y=.7*X+e, and among restraintist judges it is Y=.2*X+e, where Y is the liberalism of the judge's decisional behavior and X is the judge's ideology. Jim proceeds to conduct a simulation demonstrating that the estimate of the relationship between judicial ideology and decisional behavior will vary depending upon the mix of activists and restraintist judges included in the study. He shows that a sample of cases in which all of the judges are restraintists would yield a coefficient of .2, while a set of cases in which each of the judges is an activist would yield a coefficient of .7. "Much more problematical," he notes, "are the instances in which the sample of cases reflects an unknown mix of activists and restraintists" (p.11).

Given the assumptions made in this example, the conclusions flow straightforwardly. However, it is important to note that this and all other examples employed by Jim depend on three conditions being met: (a) the presence of an interactive relationship, (b) a link between the conditioning variable and the case distribution and (c) the omission from researcher's analytic model of the interactive relationship.[3] In the previous example, the effect of judicial ideology on decisions is assumed to be conditioned by (i.e., to interact with) the judge's position on an activist/restraintist continuum. It is not sufficient that case based selection simply restricts the range of a relevant independent variable to create the bias demonstrated in the example.[4] That is, whether activists are over- or underrepresented does not bias estimated causal effects absent an interactive relationship. Moreover, for bias to occur differences in judicial caseloads must be related to the judge's position on the activist/restraintist continuum. If this assumption is not met, then activist and restraintist judges contribute proportionately to the case mix and, hence, should be proportionately represented in the study. Finally, while Jim does not mention this point, it is evident that he is assuming that the analyst does not recognize there is an interactive effect and/or is unable to measure and model it. If the analyst recognizes and appropriately models this interactive relationship, the resulting parameters will be unbiased.

In sum, we agree with Jim that there are conditions under which a case-based research design will yield potentially

misleading outcomes, but the frequency with which the three conditions necessary to produce this outcome actually occur is uncertain. With this said we believe that their occurrence is sufficiently probable to warrant caution in employing existing case-based data sets and in assessing the results of published studies that have employed the case approach. Most clearly, prudence recommends that analysts interested in judicial behavior employ judge-based selection criteria in their research designs in the future.

But while we agree with Jim on this point, we would emphasize that simply adopting a judge-based approach to case selection does not eliminate some of the problems Jim attributes to the case-based approach. For example, Jim recommends that, "…the distribution of types of judges within case samples could be routinely conducted…(to)…provide some insights into the likely generalizability of the observed coefficients (p.13)." Such a recommendation is equally appropriate in judge-based studies. Obviously, a study based on a large random sample of the total population of American judges would provide a data set where the characteristics of the judges studied approximated that of the population of judges. In reality, however, we are unaware of any such study, at least for non-collegial courts. More typically, judge-based studies are and will be spatially and/or temporally constrained, focusing on selected geographic areas and/or time periods. In those instances, before generalizing the results of such studies to other sets of judges and/or time periods, researchers should examine how the sample of judges and their spatio-temporal context differs from the larger population of judges.[5]

As an example of the inherent flaws in the case-based approach, Jim considers the likelihood that a case based study that oversampled southern judges might find ideology (measured by the partisanship of the judge) to be unrelated to liberal conservative outcomes because "…Democrats and Republicans in the South differ so little in their ideological orientations" (p. 11). Of course, a judge-based design that intentionally or unintentionally focused on southern judges would encounter the same difficulty.[6] Likewise a judge-based analysis of the effect of ideology on decisions in a state with disproportionately young and ambitious judges (to use another one of Jim's examples) may yield coefficients of questionable generalizability to the larger, more age diverse population of judges. Moreover, a judge based approach that fails to recognize and model an interactive relationship between ideology and judicial ambition will incorrectly misestimate the effects of each just as would a mis-specified case-based approach. Thus, as actually implemented (and as opposed to an idealized random sample of the universe of judges), judge-based studies are subject to many of the same challenges and vagaries as case based studies.

Analysis Based on Cases or Analysis Based on Judges?

We agree with Jim that a research design that initially employs a judge-based as opposed to a case-based approach to selection is preferable. For example, if we want to study the effect of judicial ideology on voting in civil rights cases, we might begin by selecting a random sample of Federal District Court judges sitting during some relevant time period, say between 1965 and 1985. Such a sample by itself, of course, provides us with no information on the dependent variable. Realizing the difficulties in such data collection in real life, let us simply assume for purposes of exposition that we are able to obtain case information, including outcomes, on every case decided by our sample of judges during the time period. For some of the judges the number may be zero, and they will be excluded; for others the number may be quite small (one or two) while for others the number may be substantial (perhaps ten or even twenty). In effect, we have multiple observations for many of our judges. In this situation, while recognizing the problems associated with the small "N's," Jim's recommendation is that we create an aggregate score for each judge based on his/her votes.

For several reasons, we consider this approach to be problematic. First, assuming that cases are not randomly distributed across judges (and, as Jim notes, there is good reason to assume that they are not),[7] it is important to control for variation in case characteristics. Doing this through aggregation encounters a fundamental problem of inference. For example, while interested principally in the effect of judicial ideology on outcomes in civil rights cases, we would want to control for the types of civil rights claims heard by different judges. Working at the judge level, this might involve including in the analysis the percentage of civil rights cases raising racial discrimination claims (as opposed to, say, gender or sexual preference claims) heard by the judge. If we found that the percentage of liberal decisions in civil rights cases was correlated with the percentage of racial discrimination claims decided by a judge, we would want to infer that there is something about racial discrimination that contributes to the likelihood of a liberal decision. Moreover, we would want to say that we had controlled for this effect in assessing our primary hypothesis by including the percentage of racial discrimination claims as a variable in the model. But the causal mechanism underlying the relationship between the type of case and the judge's decision and, hence, the appropriate test of our conclusion, occurs at the case level.[8]

Second, interactions among case-level variables, or between case- and judge-specific variables, cannot be controlled for or examined by aggregating to the judge level. One might readily suspect that the effects of judge-level variables such as judicial ideology may not be constant across case types:

ideology might have little effect in traditional voting rights cases but strong effects in cases involving affirmative action. Such nuanced assessments of cross-level interaction are ruled out by aggregating to the judge level, and the resulting conclusions regarding the effects of ideology on decision-making, therefore, may be misleading.

Third, non-case factors such as public opinion, and the shifting liberalism of the Supreme Court or of the supervising appellate courts may impact the outcomes of cases and/or condition the effects of judge and case factors on outcomes. The impacts of ideology on outcomes, for example, may well be conditioned by the precedential and/or strategic factors associated with ideological control of the appellate hierarchy. Moreover, the willingness of civil rights claimants to bring cases and/or to pursue their claims in the federal courts will no doubt vary by such shifts in control, thus systematically altering the nature of the case mix. Since such factors vary during the tenure of a judge, they are best captured analytically through a case-based analysis. More generally, this observation holds for the whole range of analyses in which case-level factors are expected to interact with those operating at other levels of aggregation, including justice-level influences in the U.S. Supreme Court (e.g. Maltzman and Wahlbeck 1996), panels of the ~~C~~courts of ~~A~~appeals (e.g. Humphries and Songer 1999), and others. Thus, even if a researcher's principal focus is on understanding the impact of judicial characteristics (e.g. ideology, legal training, age, etc.) on decision-making, a rigorous and nuanced assessment of that relationship requires a case-based analysis.

For the preceding reasons, we advocate a two-step design that first selects a set of judges and then employs a set of cases decided by the judges as the unit of analysis. Does such a design respond to Jim's original critique of case- based studies? The initial step of selecting on the judge can overcome some of the potential selection bias that arises from case- based selection since for the latter the probability of a judge being included increases with the relative frequency of cases decided. However, it cannot fully solve the problem of an interactive relationship that is linked to different rates of case participation by judges. If judicial activism conditions the effects of ideology and activists decide a higher proportion of cases in a substantive area, both a case-based and judge-based analyses will be affected. Our response to this is twofold. First, whether analysis is judge-based or case- based, the failure to specify the appropriate model (in this case an interactive one) will result in misestimated effects, irrespective of the level of analysis at which the inquiry is conducted. If you have reason to believe that a relationship is interactive, then model it as such. Second, if you have no theoretical reason to expect such an interactive effect but simply fear the possibility, then you can adopt a "balanced" design at step two by including an equal number of cases from each judge. If an "unknown" interaction exists this approach has the virtue of giving you the same (wrong) answer that a judge- based analysis would while maintaining the virtues noted above of a case- based approach.

The Case for Caution in Case-Based Analyses

While we endorse the use of the case as the primary unit of analysis, we must also introduce a word of caution for those accepting our advice. The multilevel structure of the case-based approach raises a complex issue of statistical inference: how can one make statements about judge level effects when using the case as the primary unit of analysis? Most studies that have adopted the case-based approach have failed to recognize and take into account the multilevel structure of the data and its effects on statistical inference.

In essence, the problem faced by judicial behavior scholars employing case‑based analysis is analogous to one widely encountered in, for example, education research. Consider this discussion of an example, taken from the Multilevel Models Project:

> "A well known and influential study of primary (elementary) school children carried out in the 1970's ... claimed that children exposed to so called 'formal' styles of teaching reading exhibited more progress than those who were not. The data were analyzed using traditional multiple regression techniques which recognized only the individual children as the units of analysis and ignored their groupings within teachers and into classes. The results were statistically significant. Subsequently, Aitkin et. al. (1981) demonstrated that when the analysis accounted properly for the grouping of children into classes, the significant differences disappeared and the 'formally' taught children could not be shown to differ from the others.
>
> This reanalysis is the first important example of a multilevel analysis of social science data. In essence what was occurring here was that the children within any one classroom, because they were taught together, tended to be similar in their performance. As a result they provide rather less information than would have been the case if the same number of students had been taught separately by different teachers. In other words, the basic unit for purposes of comparison should have been the teacher, not the student. The function of the students can be seen as providing, for

> each teacher, an estimate of that teacher's effectiveness. Increasing the number of students per teacher would increase the precision of those estimates but not change the number of teachers being compared. Beyond a certain point, simply increasing the numbers of students in this way hardly improves things at all. On the other hand, increasing the number of teachers to be compared, with the same or somewhat smaller number of students per teacher, considerably improves the precision of the comparisons" (Multilevel Models Project 1999).

The analogy to judges and cases (or votes) is clear. To examine judge-level hypotheses, we first need a sufficient number of judges in order to obtain estimates of judge-level variable effects and to make inferences. For any specific judge, increasing the number of cases analyzed improves our estimates of case-level effects. Conversely, increasing the number of judges improves our estimates of the influence of judge-level variables.

The intuition behind this is simple if we consider two extreme cases. On one hand, a study involving every case voted upon by a single justice can present a clear picture of that justice's voting behavior, including the effects of case-level variables on his or her decisions, but can offer no evidence toward justice-level effects (e.g. background variables, or ideology, if, as is commonly the case, ideology is assumed to be fixed for a given justice) on his or her vote. Conversely, an analysis based on all nine justice's votes in a single case can reveal (to a small degree) the effects of justice-level variables, but tells us nothing about potential case-level effects. Generally, then, estimates of judge-level effects are improved by increasing our sample of judges, and those for case-level effects by including more cases in our analyses.

That said, the primary problem of cross level inference remains: How to obtain good estimates of judge-level effects in a case-based analysis? As noted above, this problem arises because additional observations within a particular judge provide less information on judge-level influences than would observations across two or more different judges. Models that fail to account for this decreased information will generally (but not necessarily) yield downward-biased standard errors and overly optimistic inferences about parameters. Happily, a number of methods for correcting such biases exist. Multilevel models (e.g. Goldstein 1995; Jones and Steenburgen 2000) do so by explicitly considering the hierarchical structure of the data. Various kinds of panel and correlated data models (e.g. Hsaio 1986; Zorn 2000) are also available to correct for the correlation of cases or votes within a particular judge.

Perhaps the simplest approach, but one which is also quite effective, is the use of "robust" standard errors (e.g. White 1980; Beck 1996). Robust standard errors work by adjusting the estimated standard errors to correct for correlation within units defined by the analyst. They are available in most widely used statistical packages (e.g. SAS, Stata, etc.). Most important, use of robust standard errors provides a simple, easily implemented means of making asymptotically-correct inferences about cross-level effects. Such inferences can be quite different than those based on "naïve" estimates, as we demonstrate in the following section.

An Example

We illustrate our points regarding cross-level inferences using data on all civil rights and liberties decisions decided during the 1994-1996 terms of the U.S. Supreme Court. The data are drawn from Spaeth (1998) and represent a recent natural Court. We analyze judicial behavior (here, voting) as a function of ideology, captured by the widely used Segal-Cover scores (Segal and Cover 1989; Epstein and Mershon 1996). We also examine the effect of the presence of the U.S. arguing for a particular outcome, and its interaction with ideology, as a means of looking at a simple interactive hypothesis. One might expect that, whether due to institutional deference, quality of advocacy, or strategic litigation decisions, the presence of the U.S. as a litigant might lessen the influence of ideology on the justices' decisions.

We present analyses at two levels: the first, at the justice level, takes as the dependent variable the proportion of cases in which each justice voted in a liberal direction (**N** = 9). The second analysis is conducted at the level of the justice's vote (**N** = 1600), where the dependent variable equals one if the justice voted in a liberal direction in that case and zero if his or her vote was for a conservative outcome. The results of OLS regressions for the different analyses are presented in Table 1. The first two analyses examine only the judge-level hypothesis that ideology affects justices' votes, and two characteristics of these results immediately stand out. First, the estimated coefficients for both the constant and the ideology variable are identical in direction and size, indicating that no bias occurs as a function of the level of analysis from which the estimates are made. Equally important, however, are the estimates of the standard errors: the "naïve" (non-robust) standard errors for the vote-level model grossly underestimate the amount of variability in the coefficient estimates. Relative to those in the justice-level analysis, the unadjusted vote-level standard error for the ideology variable is half that of the aggregate analysis ($t = 7.56$, versus 3.59 for the justice-level model). Thus, failing to adjust the standard errors results in our being overconfident about the results of the case-level analysis. However, when robust standard errors

Table 1

Ideology and Litigant Effects on Supreme Court Merits Voting,
Civil Rights and Liberties Cases OT1994-96

Variable	Justice-Level OLS	Vote-Level OLS	Interactive Model
(Constant)	0.518	0.518	0.558
		[0.017]	[0.019]
	(.051)	(0.048)	(0.054)
Segal-Cover Score	0.227	0.226	0.275
		[0.030]	[0.034]
	(0.063)	(0.059)	(0.063)
Conservative U.S. Litigant	-	-	-0.177
			[0.041]
			(0.042)
Segal-Cover Score × Conservative U.S. Litigant	-	-	-0.217
			[0.071]
			(0.035)
N	9	1600	1600

Note: Non-robust standard errors are in square braces; robust standard errors, clustered by justice, are in parentheses. Vote-level analyses consist of 180 cases with an average of 8.9 votes per case. See text fore details.

are used to correct for "clustering" by justice, the case-level and justice-level results are essentially identical ($t = 3.82$ and 3.59, respectively).

A similar pattern emerges when we examine a model in which ideology is allowed to interact with case-specific factors; here, with the presence of the U.S. as a party, arguing for a conservative outcome. Once again, for the justice-level variable, the non-robust standard errors are too small by a factor of two; cross-level inferences based on those estimates would again be overconfident in the statistical significance of the observed relationship. Conversely, naïve standard error estimates for the interaction term are too large, while the standard errors for the case-level effects remain largely unchanged. The net result of failing to correct one's standard errors for cross-level variables, then, is to overestimate the significance of ideology while underestimating that of ideology's interaction with U.S. participation.

This example amply illustrates the danger of making statistical inferences about judges using the case-based approach without taking the multilevel structure of the data into account. Such inferences are problematic even for a collegial court, like the Supreme Court, where participation rates are comparable across the judges in question. Fortunately, the robust standard errors approach to cross level inference employed in the example fortunately is equally appropriate for courts, such as trial courts, where judges may differ substantially in the numbers and types of cases they decide. Of course, no statistical approach will compensate for a model that fails to specify appropriately an interactive, or any other, relationship.

Conclusion

Jim Gibson has done all of us a favor by raising the issue of units of analysis. Too often applied researchers undertake their analyses with little or no consideration of the proper

units for testing the hypotheses in which they are interested, or of the potential for making misleading statements as a result of incorrect cross-level inferences. Jim's main point — one with which we agree — that "selecting the unit is an important theoretical issue" (1999, 13) cannot be overstated, and we have tried to delineate the circumstances under which Gibson's concerns should and should not be operative. Additionally, the crux of our argument, like that of Gibson's, is that researchers need to be cognizant of the units they choose to analyze, and we agree with his general sentiment that, to test judge-level hypotheses, analysts need sufficient variation in factors which vary only across judges, and that this requires an analysis with a sufficiently large number of judges to make estimation of those effects both possible and reliable.

That said, we dissent from Jim's blanket prescription in favor of judge-level analyses. The aggregation necessary to the conduct of judge-level analyses gives rise to a problem of ecological inference that can be avoided through examinations conducted at the case level. Such a research strategy also limits researchers' ability to assess hypotheses at the case level, as well as those involving interactions between cross-level influences on judicial decision making. Moreover, the potential problems for cross-level inference associated with case-level studies are easily addressed through the use of relatively simple, widely available analytical techniques such as robust standard errors. Thus, we feel that, on balance, the benefits of case-level studies more than outweigh the potential difficulties with such work.

Notes

1 We appreciate the comments received from Jim Gibson on this paper, and note that a full reading of the body of his work suggests that his position on case based studies is somewhat more moderate than that presented in the article to which we are responding.

2 As we will argue, much of this analysis will involve both judge- and case-level variables. In such cross-level analyses of collegial courts the unit of analysis is more precisely designated as the vote, which varies by both judge and case. Such analyses are comparable to those that use the country/year as the unit of analysis in cross-national time series work in international relations (e.g. Hicks and Swank 1992).

3 Jim's example regarding northern and southern judges assumes that the effects of ideology (measured by party identification) will vary by region, and that northern or southern judges will appear disproportionately in the case based sample. Likewise, his last example, focusing on youth as a surrogate for ambition, posits an interactive relationship between age/ambition and ideology and assumes disproportionate caseloads by age.

4 King, Keohane and Verba (1994, p. 130-138 and Figure 4.1) note that, "(B)y limiting the range of our key causal variable, we may limit the generality of our conclusion or the certainty with which we can legitimately hold it, but we do not introduce bias".

5 Jim is of course arguing that case based designs raise issues of both internal and external validity, while we are suggesting that the external validity of judge based studies may also be questioned (Campbell & Stanley 1963).

6 For example, a judge-based approach that focused on behavior in school desegregation cases in the 1950's and 1960's would unintentionally eliminate from consideration judges outside of the South. Non-southern judges might appear in the dataset, but would not contribute to the study because they would have rendered no decisions.

7 Even for the U.S. Courts of Appeals, where random case assignment occurs within circuits, considerable variation occurs across circuits.

8 The inferential problem here is exactly comparable to that of the ecological fallacy (e.g. King 1997). A district judge for whom 50% of her cases involve racial discrimination may decide a higher percentage of cases in a conservative direction than a judge for whom 75% his cases involved racial discrimination. This finding does not, however, tell us if this difference in outcomes is due to the difference in case mix, since the first judge may in fact have decided the racial cases liberally and been very conservative on the gender cases.

9 We are as aware as anyone of the myriad difficulties with using OLS when one's dependent variable is dichotomous. Nonetheless, and without any endorsement, express or implied, of such an approach, we do so here to aid in the comparability of estimates across the different levels of analysis.

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POST DOCTORAL FELLOWSHIP WELLESLEY COLLEGE

Wellesley College. The Department of Sociology is seeking candidates to fill a two year post-doctoral fellowship provided by the Mellon Foundation. Applicants should have a Ph.D. obtained within the past five years and should have an active research program in either comparative popular culture, or the sociology of culture, crime, law, or inequality. The Mellon Fellowship is designed to bring to Wellesley a recent Ph.D. who will develop pedagogical skills and conduct scholarly work before seeking a full-time teaching position. The teaching load is one course in year one and two courses in year two of the fellowship. The Fellow will have an opportunity to work with faculty and students on projects of his/her own design or may join already ongoing projects. Beginning salary is $33,500 with additional research support and faculty benefits. The Fellow will be eligible for faculty travel and research awards and will have the potential for affiliation with Wellesley's two research centers, The Center for Research on Women and the Stone Center for Developmental Services and Studies. Wellesley College is a small, private, highly selective liberal arts college for women located in a suburb of Boston. Please send vita, three letters of recommendation, no more than three reprints or writing samples, and a statement of teaching and research interests to Susan Silbey, Chair, Department of Sociology, Wellesley College, Wellesley MA 02481 781-283-2137 (email ssilbey@wellesley.edu). Applications will remain open until the position is filled; interviewing will begin after April 15. Wellesley College is an Equal Opportunity/Affirmative Action educational institution and employer. Applications from women, minorities, veterans, and candidates with disabilities are encouraged.

BOOKS TO WATCH FOR

Sue Davis
University of Delaware

Christopher Banks' (University of Akron) *Judicial Politics in the D.C. Circuit Court* Johns Hopkins University Press was published in September 1999. The D.C. Circuit is a special, *de facto* administrative law court because the court was politically transformed in its jurisdiction, membership, and jurisprudence in criminal and administrative law after 1960. Historically, the federal court is anomalous because it possessed "local" jurisdiction over criminal appeals in the District of Columbia, the site of the nation's capitol. During the 1960's, the D.C. Circuit earned a reputation as a liberal court that aggressively protected the rights of criminal defendants. In 1970, however, conservatives in Congress and the Executive responded to the court's activism by enacting court reform that removed the court's authority over local criminal appeals and substantially modified the court's docket. Although the bench's liberal composition was still intact throughout the 1970's, changing the court's jurisdiction caused the court's docket to swell with regulatory cases during a time of increasing social regulation by Congress. As the country became more conservative in the 1980s, the D.C. Circuit assumed more influence over administrative law, a judicial role that allowed it to take more active control over the federal bureaucracy and, in the process, make it a leading court of last resort in regulation.

The judicial politics of the D.C. Circuit caused the court to evolve into a quasi-specialized court of administrative law and, perhaps, a contemporary working model for reforming the circuit courts. Since the court wields considerable influence over the subject matter of administrative law, some have argued that the court ought to be reformed into a subject matter court in light of the "caseload crisis." If nothing else, this argument underscores the reality Congress should recognize that the D.C. Circuit has a unique place in the intermediate tier of federal courts in debating the issue of circuit court reform. Moreover, since the political transformation of the court and its contemporary judicial role has not been analyzed by scholars, Banks' book is timely because it is the first published book concerning the modern D.C. Circuit that exclusively inspects the court's function and its political impact on the American administrative state. It is also only one of a handful of books that examine the key influence that circuit courts of appeals have in affecting legal, social, and political change in America. Accordingly, the manuscript contributes to the study of law and courts by underscoring the significance of the intermediate tier of the federal courts and demonstrating the extent to which the D.C. Circuit shapes national regulatory policy at a time when the federal judiciary is on the verge of undergoing significant structural change.

In *American Legal Thought From Premodernism to Postmodernism: An Intellectual Voyage* (Oxford University Press, 2000). **Stephen M. Feldman** (University of Tulsa), tells the story of the journey of American legal thought remarkably from premodernism through modernism and into postmodernism in just over two hundred years. This intellectual history of jurisprudence stresses that ideas unfold within specific historical contexts yet move in certain directions partly because of the content and force of the ideas themselves. Feldman first defines the general concepts of premodernism, modernism, and postmodernism, and then explains American legal thought as developing through these three intellectual periods, running from the nation's founding through today. The narrative revolves around two broad interrelated themes: jurisprudential foundations and the idea of progress. Much of the story of American jurisprudence turns on the problem of identifying or doubting the foundations for the American legal system and judicial decision-making. Premodern jurisprudes largely agreed that natural law principles undergirded the American legal system; modernists repudiated natural law and thus set forth on a quest for some alternative foundation; and postmodernists now deny the existence of any objective foundations. The various notions regarding foundations closely tie to shifting ideas of progress—ideas that entail a series of different definitions of progress, different assumptions about the possibility of progress, and different hopes about how law might contribute to progress.

Forrest Maltzman's (George Washington University), **James F. Spriggs II** (University of California, Davis), and **Paul J. Wahlbeck's** (George Washington University), *Crafting Law on The Supreme Court: The Collegial Game* will be published in June by Cambridge University Press. In the book, the authors use material gleaned from internal memos circulated among justices on the Supreme Court to account systematically for the building of majority opinions. Maltzman, Spriggs, and Wahlbeck argue that at the heart of this process are policy-seeking justices who are constrained

by the choices made by the other justices. By strategically using threats, signals, and persuasion, justices attempt to influence the behavior of their colleagues on the bench. Evidence derived from the recently released papers of justices Brennan, Douglas, Marshall, and Powell is used to test the authors' theory of opinion writing. The portrait of the Supreme Court that emerges stands in sharp contrast to the conventional portrait where justices act solely on the basis of the law or their personal policy preferences.

Lucas A. Powe, Jr.'s (University of Texas) *The Warren Court and American Politics* (Belknap Press of Harvard University Press), which will be available in March, is consciously written in the tradition of Corwin, Mason, McCloskey, and Walter F. Murphy. Challenging the reigning consensus that the Warren Court was protecting minorities, Lucas Powe revives the valuable tradition of looking at the Supreme Court in the wide political environment to find the Warren Court a functioning partner in Kennedy-Johnson liberalism. He argues that the court helped to impose national liberal-elite values on groups that were outliers to that tradition—the white South, rural America, and areas of Roman Catholic dominance. Powe discusses over 200 rulings including Brown, reapportionment, the gradual elimination of anti-Communist domestic security programs, the reform of criminal procedures, the ban on school prayer, and a new law on pornography.

Susan Bandes (New York University School of Law) has edited *The Passions of Law* (NYU Press, Critical America Series Forthcoming January, 2000). This anthology of original essays by leading scholars of law, theology, political science, classics and philosophy treats the role that emotions play, don't play, and ought to play in the practice and conception of law and justice. Lying at the intersection of law, psychology, and philosophy, the emergent field of emotion theory raises some of the most profound and interesting questions at the heart of jurisprudence. For example, what role do emotions ranging from disgust to compassion play in the decision-making processes of judges, lawyers, juries and clients? What emotions belong in which legal contexts? Is there a hierarchy of emotions, and if so, through what sources do we identify it? To what extent are emotions subject to change or tutelage? How can we evaluate the role of emotion in such disparate contexts as death sentencing, laws about same sex marriage, hate crime legislation, punitive damages or shaming penalties? The essays in this volume reveal that the role of emotion in these and other legal contexts is much greater than most of us tend to think. This volume includes essays by Martha Nussbaum, Dan Kahan, Toni Massaro, Robert Solomon, Jeffrie Murphy, Austin Sarat, Danielle Allen, Cheshire Calhoun, William Ian Miller, Martha Minow, John Deigh, Richard Posner, and Samuel H. Pillsbury.

In *The Supreme Court and Sexual Harassment: Preventing Harassment While Preserving Free Speech* (Lexington Books, March 2000), **Paul I. Weizer** (Fitchburg State College) argues that, as responses to the problem of sexual harassment have evolved, free speech and due process have become increasingly threatened. Because the Supreme Court has given little guidance, confronting harassment has been difficult and haphazard. *The Supreme Court and Sexual Harassment* examines the crux between limiting workplace speech and preventing sexual harassment. Weizer argues that the courts need to clarify further the meaning of sexual harassment and employers need to clarify their own and their employees' speech and due process rights in the workplace. The book offers a lucid examination of how the First Amendment has evolved in the past century, an investigation of comparative areas of unpopular speech, and an analysis of how sexual harassment precedent has developed. Weizer concludes with a proposal for a less restrictive alternative that would prevent true harassment while preserving free expression. Adding another strong voice to the debate on sexual harassment in America, this is an important book for our time.

Send information about your forthcoming work to Sue Davis at:
SueDavis@udel.edu

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

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
cmc1@columbia.edu

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6108 Silsby Hall
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CONFERENCES, EVENTS AND CALLS FOR PAPERS

Upcoming Conferences

2000

Conference	Date	Location	Chair
MWPSA	April 27-30	Chicago, Il	Valerie Hoekstra, Washington University hoekstra@artsci.wsustl.edu
NEPSA (New England)	May 5-6	Hartford, Ct	Brian Waddell, Trinity College bwaddell@trincoll.edu
Law & Society	May 26-29	Miami Beach, Fl	
APSA	Aug. 31- Sep. 3	Washington, D.C.	Law & Courts: Roy Fleming, Texas A&M roy@polisci.tamu.edu Jurisprudence: Gerald Rosenberg, U Chicago g-rosenberg@uchicago.edu
SPSA	November 8-11	Atlanta, Ga	
NEPSA (Northeastern)	November 9-11	Albany, NY	Jeffrey Kraus, Wagner College JFKraus1@aol.com

THE CONFERENCE GROUP ON THE SCIENTIFIC STUDY OF JUDICIAL POLITICS

The Conference Group on the Scientific Study of Judicial Politics will hold its 4th annual meeting on October 19-21 at Ohio State University in Columbus, OH. We are particularly interested in research on comparative judicial politics but also welcome papers and posters on the broad array of topics related to the scientific inquiry of law and courts.

Those wishing to present research should send a proposal to Tom Walker (polstw@emory.edu). All proposals should include an abstract of the paper or poster to be presented. Graduate students are especially welcome. Deadline for submissions is April 25, 2000.

Travel and other expenses will be provided for a limited number of participants. For information on registration or the conference more generally, email Lee Epstein (epstein@artsci.wustl.edu) or Greg Caldeira (caldeira.1@osu.edu). The Conference Group's web site, which includes programs from past meetings and paper archives, is at: www.artsci.wustl.edu/~polisci/epstein/conference/

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.

CONFERENCE ON THE STATE OF STATE CONSTITUTIONS

The center for State Constitutional Studiesw at Rutgers Univ ersity-Camden will hold a conference on "The State of State Constitutions" on May 4-6, 2000, in Philadelphia, Pennsylvania. The conference, whic h has been underwritten by the Ford Foundation, will bring together scholars, government officials, and interested members of the general public to assess the strengths and weaknesses of current state constitutions, the changes necessary to meet the challenges of the 21st century, and the prospects for state constitutional reform.

For more information about the conference, contact the Center for State Constitutional Studies at (856) 225 6625 or e-mail the Center's Director, Alan Tarr, at: tarr@crab.rutgers.edu. Information is also available at their website: www.camlaw.rutgers.edu/statecon

SUPREME COURT ECONOMIC REVIEW CALL FOR SUBMISSIONS

The Supreme Court Economic Review is accepting submissions for Volume 9, scheduled to be published in the Spring of 2001. The Review is an interdisciplinary series that seeks to focus economic and legal scholarship on the work of the United States Supreme Court. The Review was recently ranked 8th in the nation in an empirical study of specialized law reviews.

Contributions to the Review will typically provide an economic analysis of the situations and events that generated a case or group of cases. They may explore the explicit or implicit economic reasoning underlying the outcome, or the economic consequences of the Court's decisions. Articles and commentaries dealing with the Supreme Court as an organization, with the organization of the U.S. judicial system, or with other issues not directly tied to particular judicial decisions are also quite welcome.

Peer review is an important feature of this publication. Accordingly, manuscripts should be submitted by September 15, 2000, accompanied by a cover letter indicating that the submission is being made on an exclusive basis. Inquires and submissions should be sent to: Larry E. Ribstein, Editor Supreme Court Economic Review
George Mason University School of Law
3401 N. Fairfax Drive Arlington, Va 22201-4498
e-mail: lribstei@gmu.edu; phone: (703) 993-8041

CALL FOR MANUSCRIPTS
PETER LANG PUBLISHING

Peter Lang Publishing, Inc., publishes three book series devoted to law, politics, and criminal justice.
Submissions of book-length single-author and collaborative studies, as well as essay collections are invited.

The series Studies in Law and Politics (edited by David Schultz, Hamline University) explores the multidimensional and multidisciplinary areas of law and politics. Subject matters to be addressed include but will not be limited to: constitutional law; civil rights and liberties issues; law, race, gender, and gender orientation studies; law and ethics; women and the law; judicial behavior and decision-making; legal theory; sociology of law; comparative legal systems; criminal justice; courts and the political process, and other topics on the law and the political process that are of interest to legal and political scholars.

The series Teaching Texts in Law and Politics (edited by David Schultz, Hamline University) places special emphasis on textbooks written for the undergraduate classroom. Subject matters of interest are those addressed in the Studies in Law and Politics series above.

Studies in Crime and Punishment (edited by Christina DeJong, Michigan State University, and David Schultz, Hamline University) is a new multidisciplinary series that will publish scholarly and teaching materials from a wide range of methodological approaches and explores sentencing and criminology issues from a single nation or comparative perspective. Subject areas will include criminology, sentencing and incarceration, policing, law and the courts, juvenile crime, alternative sentencing methods, and criminological research methods.

All proposals, manuscripts, and queries should be sent to:
Phyllis Korper, Acquisitions Editor
Peter Lang Publishing, Inc.
275 Seventh Avenue
New York, New York 10001
Phone: (212) 647-7700
Fax: (212) 647-7700
phyllisk@plang.com

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."

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

For More Information Contact:
Dr. Thomas R. Hensley
Deparment of Political Science
Kent State University
e-mail: thensley@kent.edu

LAW AND COURTS SHORT COURSE PROFESSIONAL DEVELOPMENT

Beginning and maintaining a career as a political scientist can be difficult. There are a number of critical concerns with which the new scholar has to come to terms—how to interview, how to secure an initial placement, how to publish, how to generate external grants, how to prepare for promotion and tenure, to name but a few. Ironically, despite their obvious importance, these are issues on which advanced graduate students and junior faculty receive relatively little guidance.

Our aim in this short course is to provide practical advice to political scientists who are just entering academic life. Presenters include current and former department chairs, placement directors, journal editors, NSF program officers, and other active members of the section. In addition, a packet of the proceedings and some reference material will be available to participants. Of course, these issues are by no means unique to the field of law and courts. *In fact, we welcome the participation of political scientists from any field of the discipline.*

This short course will be offered as part of the APSA's 2000 annual meeting and held on Wednesday, August 30, 2000 from 1:00 p.m. and run until 3:00 p.m. Other specifics will be posted on the Law and Courts Discussion list. To join the discussion list, send an e-mail to listproc@usc.edu. Please, leave the subject line blank and in the body of the message type: subscribe lawcourts-l <your name>.

In the meantime, for more information feel free to contact Kevin T. McGuire, Department of Political Science, University of North Carolina, CB# 3265 Hamilton Hall, Chapel Hill, NC 27599; phone (919) 962-0431; fax (919) 962-0432; email: kmcguire@unc.edu.

To register, please send the following form and a $10 check (payable to the Law and Courts Section of the American Political Science Association) to Reggie Sheehan, Department of Political Science, Michigan State University, East Lansing, MI 48824.

Professional Development for New Political Scientists: A Short Course
Registration Form

Name: ____

Institutional Affiliation:__________________________________

Please send this form and a $10 check (payable to the Law and Courts Section of the American Political Science Association) to:

Reggie Sheehan
Department of Political Science
Michigan State University
East Lansing, MI 48824.

For more information, please see the Chair's Letter on Page 1

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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 July 1, 2000.

Law and Courts

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