

The Docket

The Newsletter of the IPSA Research Committee on Comparative Judicial Studies (R.C.#9)

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The Research Committee on Comparative Judicial Studies (IPSA RC #9) is one of 51 active research committees of the International Political Science Association. Our purpose is to promote scholarly work on law, courts, and judicial processes from a comparative perspective. Ultimately, we seek to bring the study of the various dimensions of judicial systems within the mainstream of comparative political research. RC #9 encourages comparative research on judicial systems and the participation of scholars in our program regardless of the disciplinary origins and commitments of those who do the research.

For inquiries regarding this newsletter, contact Michael Tolley, Secretary/Treasurer, at 303 Meserve Hall, Northeastern University, Boston, MA 02115 USA
m.tolley@neu.edu

Fort Worth, Texas Meeting March 18-20, 2002

Final Program
Interim Meeting
Research Committee on Comparative Judicial Studies, IPSA

Convenors:

Professors Mary Volcansek and Donald Jackson, Texas Christian University

Site:

The Ashton Hotel, Fort Worth, Texas

Panel I. Constitutions: Creation and Evolution

Chair: Rachel Cichowski, University of Washington

Papers:

Martin Edelman, University of Albany
"The Utility of Written Constitutions"

Eileen McDonagh, Northeastern University
"Gender, Political Citizenship and Group Rights: A Comparative Constitutional Analysis"

Discussant: Rachel Cichowski

Panel II. Sports, Civil Rights and Constitutional Politics

Chair: Mary Volcansek, Texas Christian University

Papers:

John Blakeman, Baylor University
"Rugby and the Constitutional Politics of Nation-Building in Post-Apartheid South Africa"

Discussant: Mary Volcansek

Panel III. Human Rights and the Rule of Law

Chair: Rich Riley, Baylor University

Papers:

Kenneth Holland, University of Memphis
"China, the WTO, and the Rule of Law"

Michael Dodson and Donald Jackson, Texas Christian University
"The Ombudsman for the Defense of Human Rights in Central America: An Alternative Institution for Protecting the Rule of Law"

Discussant: Rich Riley

Panel IV. War Crimes Tribunals

Chair: Donald Jackson, Texas Christian University

Papers:

James Meernik, University of North Texas
“Proving and Punishing Genocide: A Comparative Analysis of the Yugoslavia and Rwandan War Crimes Tribunals”

Kimi King, University of North Texas
“Bringing Her Out of the Shadows: An Empirical Analysis of Sentences in Rape Cases Before International War Crimes Tribunals”

Discussant: Donald Jackson

Panel V. Varieties of Judicial Review: Settings, Context and Exercise

Chair: Victoria Farrar-Myers, University of Texas at Arlington

Papers:

Jason Pierce, University of Texas
“A Bedeviling Bevy of Platonic Guardians? The Judicial Committee of the Privy Council, 1900—1999”

Michael Tolley, Northeastern University
“Judicial Review of Agency Interpretation of Statutes: Deference Doctrines in Comparative Perspective”

Bradley Chilton, University of North Texas
“Digital Judgment: Canada’s Judicial Affairs Information

Networks (JAIN) and Judicial Reasoning”

Discussant: Victoria Farrar-Myers

Panel VI. Judicial Activism and Supremacy

Chair: Michael Tolley, Northeastern University

Papers:

Eugene Dais, University of Calgary
“Judicial Supremacy and Democracy in Canada, Great Britain, and the United States”

Discussant: Michael Tolley

Announcements

Request for New Publications

Members are invited to forward information about new books and articles that would be of interest to scholars in the field of comparative law and courts. This information will be included on the website. Send a brief abstract along with full bibliographic information to Professor Michael Tolley, Secretary.

Nominations for RC #9’s Executive Council

Members of the Research Committee on Comparative Judicial Studies interested in serving on this group’s Executive Council are encouraged to send along their

names to Mary Volcansek, Dean, AddRan College of Humanities and Social Sciences, P.O. Box 297200, Texas Christian University, Fort Worth, Texas 76129 USA (fax-817-257-7709; Ph.-817-257-7160) m.volcansek@tcu.edu

Future Meetings

Research Committee on Comparative Judicial Studies (University of Parma, Parma Italy) June 16-18, 2003)

Call for Papers and Panels

Paper and panel proposals (500 words or less) for the Parma Meeting of the Research Committee on Comparative Judicial Studies should be sent to Professors Donald Jackson and Mary L. Volcansek by October 1, 2002:

Political Science Department
TCU Box 297021
Texas Christian University
Fort Worth, Texas 76129
d.w.jackson@tcu.edu or
m.volcansek@tcu.edu

Professor Carlo Rossetti, Department of Political and Social Studies, Legal Studies Unit, University of Parma, will be hosting this meeting.

To follow is a description of the Parma Meeting's theme:

RESEARCH ON THE LEGITIMACY OF COURTS

Recent concerns raised chiefly by *Bush v. Gore* (2000) about the legitimacy of the Supreme Court of the United States may be sufficient to revive our interest in studying the legitimacy of courts in contemporary politics, but there are other compelling reasons as well. The prospect of a permanent international criminal court; the judicialization of politics in many countries (Tate and Vallinder, 1995); the growing importance of regional courts such as the European Court of Human Rights and the Inter-American Court of Human Rights; the exercise of universal criminal jurisdiction for war crimes, crimes against humanity and genocide in the courts of countries such as Spain or Belgium; the transformation of European politics by the expansion of the European Union and the consequent territorial expansion of the Union's courts all implicate the exercise of judicial power in new or changed settings.

David Beetham's preface to his critique of Max Weber's conception of legitimacy begins with the caveat that, "How far power is legitimate, what makes it so, and why it matters" are "all inherently difficult and contentious questions." He suggests that for legal scholars and constitutional lawyers "power is legitimate where its acquisition and exercise conform to established law" or what we

would call legal validity. How power is distributed and justified also encompasses larger questions of moral and political philosophy. Beetham writes that from that perspective "power is legitimate where the rules governing it are justifiable according to rationally defensible normative principles." He argues, in other words, that social scientists' reason for studying legitimacy is explanatory, a matter of "identifying the empirical consequences that legitimacy has for the character of power relations, for the different ways in which they are organized, or for the extent to which the powerful can actually count on the obedience or support of those subordinate to them." (1991, 3-5).

Beetham argues with Weber's view that legitimate power is based on peoples' views or, in other words, that Weber sees power as legitimate when it is regarded by people as legitimate. This position, Beetham writes, "transforms the issue of legitimacy from a question about the actual characteristics of a system of power into one concerning the beliefs people hold about it." (p. 9) The reformulation he proposes is the following: A given power relationship is not legitimate because people believe in it, but because it can be *justified in terms of their beliefs.*" (p. 11). We might change that formulation slightly to say that a power relationship is legitimate because it can be justified in terms of the normative expectations of elites and/or mass publics.

We might disagree with Beetham's revision, for in another context Weber wrote that legitimacy can be ascribed to a particular phenomenon by: a) tradition, b) affectual attitudes, c) belief in its absolute value (*Wertrational*), or d) because it has been established in a *legal* or *lawful* manner. Weber argued that "the most usual basis for legitimacy is the belief in legality, the readiness to conform with rules which are formally correct and have been imposed in an accepted procedure" (1947, 131).

David Easton's formulation is, we think, better because of its clarity. Easton offers the view that support for a regime or for an institution may be derived "from the conviction on the part of [a] member that it is right and proper for him to accept and obey the authorities and to abide by the requirements of the regime. It reflects that fact that in some vague or explicit way he sees these objects as conforming to his own moral principles, his own sense of what is right and proper in the political sphere." Easton calls this foundational element of legitimacy "*diffuse support*" (1965, 278).

Probably the most important recent application of legitimacy as a theoretical construct is that of Gibson, Caldeira and Baird (1998), in their "On the Legitimacy of National High Courts." Although they have worked for several years on other venues of legitimacy (Gibson, 1989; Gibson and Caldeira, 1995 and 1998; Gibson and Baird, 1997), their research on the legitimacy of national high

courts was based on an analysis of large public opinion datasets. We are convinced, however, that there are conceptual, theoretical and policy issues for which other methods are equally appropriate. There certainly is no dearth of settings for such research as our call for paper reveals.

CALL FOR PAPERS: Research Committee on Comparative Judicial Studies, Parma, Italy June 16-18, 2003

"Judicial Legitimacy: Concepts and Relationships"

We seek theoretical and/or empirical papers on the relationships between titled concepts above, including the following contexts (other contexts may be proposed):

- I. National courts where the rule of law is threatened, doubtful or non-existent.
- II. National courts in emerging democracies.
- III. National courts in mature democracies.
- IV. National constitutional courts.
- V. Transnational courts.
- VI. International courts.

We expect to organize several panels around this theme and these contexts.

Preliminary References:

Ackerman, Bruce (ed.) 2002. *Bush v. Gore: The Question of Legitimacy* (New Haven: Yale University Press).

Beetham, David. 1991. *The Legitimation of Power* (Atlantic Highlands, NJ: Humanities Press International).

Easton, David. 1965. *A Systems Analysis of Political Life*. New York: John Wiley.

Gibson, James L. 1989. "Understandings of Justice: Institutional Legitimacy, Procedural Justice and Political Tolerance." *Law and Society Review* 23 (August): 469-96

Gibson, James L. and Vanessa Baird. 1997. "The Legitimacy of the United States Supreme Court: A Conceptual and Empirical Analysis." In *Perspectives on American and Texas Politics*, 5th ed. Ed. Donald S. Lutz, Kent L. Tedlin and Edward P. Fuchs. Dubuque, IA: Kendall/Hunt: 89-113.

Gibson, James L. and Gregory A. Caldeira. 1995. "The Legitimacy of Transnational Legal Institutions: Compliance, Support and the European Court of Justice." *American Journal of Political Science* 39 (May): 459-89.

_____. 1998. "Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis." *British Journal of Political Science* 28 (January): 63-91.

Gibson, James L., Gregory A. Caldeira and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92 (June): 343-58.

Tate, C. Neal and Torbjörn Vallinder (eds.). 1995. *The Global Expansion of Judicial Power* (New York: New York University Press).

Weber, Max. 1964. *The Theory of Social and Economic Organization*. (Toronto: Free Press Paperback Edition).

Other Calls for Papers:

International Political Science Association— World Congress June 29 to July 4, 2003 Durban, South Africa

The 2003 IPSA World Congress is being organized around the theme "Democracy, Tolerance, Justice: Challenges for Political Change." The sub-themes under this general thematic rubric are: 1) Reconstructing the Past: The Politics of Remembrance, 2) Political Tolerance, 3) Globalization: Then and Now, 4) Justice: Contextual, Universal, and Individual, 5) Race, Ethnicity, and Gender: Concepts, Structure, Institutions, and Attitudes, 6) New Democracies: Colonial Past and Cultural Values, 7) Cosmopolitanism, Patriotism, and Citizenship, 8) Politics of Property, Territory, and the Environment, 9) Making and Implementing Public Policy, 10) Terrorism, Conflict, and Human Rights, 11) Parliaments, Parties, and Elections, and 12) **Courts and the Justice System**.

We welcome submission of paper and full-panel and roundtable proposals for any

of the sub-theme areas. Those proposals should be submitted under the “Main Theme Panels” category. Those interested in presenting papers or proposing full-panels on general political science topics should submit their proposals under the “General Panels” category. We also welcome offers to serve as chairs and discussants on both sub-theme and general panels. All proposals MUST be submitted to the IPSA Secretariat on the online form available on IPSA’s website (address: www.ipsa.ca).

IPSA Research Committees will also be putting together panels. Individuals interested

in submitting proposals to one of IPSA’s Research Committees should submit their proposals through the IPSA website (www.ipsa.ca) to one of the 51 Research Committees.

Deadline for submission is December 1, 2002. Individuals will be notified by January 1, 2003, of their acceptance.

For more information about the 2003 IPSA World Congress, contact program co-chairs Professor Paula D. McClain, Duke University and Professor James L. Gibson, Washington University, St. Louis jgibson@artsci.wustl.edu

Symposia

Short articles on subjects related to comparative judicial studies are welcome. Please contact the Mary Volcansek if you have ideas about symposia to be published in future issues of *The Docket*.

**IPSA—Research Committee on Comparative
Judicial Studies**

C/O Professor Michael C. Tolley
Northeastern University
303 Meserve Hall
Boston, MA 02115 USA

Address Correction Requested

Important Dates:

**October 1, 2002 Deadline for Submitting Proposals for the
Interim Meeting—University of Parma**

**December 1, 2002 Deadline for Submitting Proposals for the 2003
IPSA World Congress—Durban, South Africa**

**June 16-18, 2003 Interim Meeting of the Research Committee
on Comparative Judicial Studies—Parma, Italy**

**June 29-July 4, 2003 IPSA World Congress—Durban, South
Africa**