

The Docket

The Newsletter of the IPSA Research Committee on Comparative Judicial Studies (RC09)

July 2009 Issue 43

Mandate of RC09

The Research Committee for Comparative Judicial Studies (IPSA RC09) is one of 49 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. RC09 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.

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In this Issue

Page

- 2 Recent Meeting – Santiago, Chile, July 12-16, 2009
- 3 Past Meeting – Montréal, Canada, June 24-26, 2008.
- 5 Future Meetings – Bologna, Italy (2010), Irvine, California (2011), Madrid, Spain (2012)
- 6 Call for Papers – 2010 Interim Meeting, University of Bologna, Italy, June 21-23
- 7 Recent Publications by RC09 Members
- 11 New RC09 Website
- 11 New Executive Committee Member
- 11 High Courts Judicial Database
- 12 Membership List

1 Recent Meeting – Santiago, Chile, July 12-16, 2009

21st IPSA World Congress

Santiago, Chile, July 12-16, 2009

Panel 141 Role of International and Domestic Courts in Authoritarian and Transitional States

Sabrina Pinnell (San Jose State University) “The Second Russian Constitutional Court: A 12-Year Assessment of its Role in Center-Regional Conflicts”

Maria Fernanda (Vanderbilt University) “Courts in Uruguay: Independent, Incorruptible, and Insignificant?”

Madhukar Shyam Chaturvedi (University of Rajasthan) “Proclamations and Political Translations of Social Justice in India: A Study of Judicial Response in the Last Two Decades”

Panel 142 Indigenous Peoples and Post-Colonial Justice

Lorne Sossin (University of Toronto) “The Duty to Consult: Procedural Justice as Aboriginal Rights”

John Kilwein (West Virginia University) “Comparing Aboriginal Rights Litigation in the Canadian and U.S. Sub-National Courts of Last Resort and Federal Intermediate Appellate Courts

Peter Russell (University of Toronto) “Courts as Agents of Justice in Indigenous-Settler Relations”

Panel 143 Evolution of Judicial Systems in Europe

Carlo Guarnieri (University of Bologna) and Daniela Piana (University of Bologna) “Judicial and Prosecutorial Independence in the Fight Against Political Corruption: The Case of European States”

Mary Volcansek (Texas Christian University) “The ECJ's Role in the Evolution of European Judicial Systems”

Panel 148 Legislative and Judicial Control of Executive Power in Comparative Perspective

James Kelly (Concordia University) "Executive Versus Parliamentary Supremacy: Victoria's Charter of Human Rights and Responsibilities and Intra-Parliamentary Relationships"

Graham Dodds (Concordia University) "When Courts & Congress Contest the U.S. President's Unilateral Directives"

Brian Galligan (University of Melbourne) "Legislative & Judicial Control of the Executive in Subnational Governments"

2 Past Meeting – Montréal, June 24-26, 2008.

2008 Interim Meeting

Concordia University

Montréal, Quebec, Canada

Host: Professor James Kelly

Panel 1 Executive-Judicial Relationships

John Chesterman, Brian Galligan and Emma Larkin (University of Melbourne) "Contesting the Separation of Judicial and Executive Powers in Australia: Detention of Terror Suspects and the Haneef Case"

Graham Dodds (Concordia University) "Nothing New Under the Cuban Sun: The Constitutionality of Executive Directives in Wartime"

David G. Barnum (DePaul University) "Legislative and Judicial Oversight of Executive Branch Electronic Surveillance: The American Experience in Comparative Perspective"

James B. Kelly (Concordia University) "Weak-form Judicial Review Notwithstanding the Legislative Override: Statutory Reversal of Common Law Decisions by the Supreme Court of Canada"

Panel 2 Separation of Powers: Developing Nations

Joseph Isanga, Research Fellow (University of Notre Dame) "Courts and Separation of Powers: A Comparative Study of the Uganda and South Africa Experiences"

Rachel Ellett (Northeastern University) "Executive-Judicial Tensions in sub-Saharan Africa: Malawi, Uganda, and Tanzania"

Michael Tolley (Northeastern University) "Creating Space for Normal Politics: Judicial Enforcement of Separation of Powers in Emerging Democracies"

Radha Persuad (Glendon College, York University) "The Separation of Powers and Conflict Over the Office of Chief Justice of Trinidad and Tobago"

Panel 3 Separation of Powers: Developed Nations

Mary Volcansek (Texas Christian University) "The Insurance Policy Theory of Separation of Powers: The Italian Case"

Dennis Baker (University of Guelph) "The Real Protection of the People: The Royal Recommendation and Canada's Separation of Powers"

Panel 4 Constitutional Courts and Judicial Reform

Gemma Sala, Visiting Instructor (Wesleyan University) "By-passing the Court: The Politics of 'Unconstitutional' Legislation in Spain"

Panel 5 Judges, Prosecutors and Public Servants

Kyela Leakey, Ph.D. student (Queen Mary, University of London) "Chief Justices in the Commonwealth,"

Lorne Sossin (University of Toronto) "Courts and the Constitutional Identity of the Public Service"

Matthew A. Hennigar (Brock University) "Federal Government Concessions before the Supreme Court of Canada in Charter Rights Cases"

Panel 6 Civil Liberties and the Rights Revolution

Donald R. Songer (University of South Carolina), Susan W. Johnson (University of North Carolina, Greensboro) and Jennifer Barnes Bowie (University of South Carolina) "Do Bills of Rights Matter? A Reconsideration of Epp's Conclusions"

Janet L. Hiebert (Queen's University) "Governing under the United Kingdom's *Human Rights Act*"

Jeremy A. Clarke, Ph.D. student (Queen's University) "The Charter of Rights and a Margin of Appreciation for Federalism,"

Panel 7 Judicial Appointments and Decision Making

Lori Hausegger (Boise State University), Matt Hennigar (Brock University) and Troy Riddell (University of Guelph) "The Influence of Patronage on Canadian Federal Judicial Appointment"

Jeffrey Stanton (Emory University) and Georg Vanberg (University of North Carolina – Chapel Hill) "Legal Institutions and the Democratic Order"

Panel 8 Principles of Judicial Review

Douglas E. Edlin (Dickinson College) "A Constitutional Right to Judicial Review: Access to Courts and Ouster Clauses in England and the United States"

Donald Jackson (Texas Christian University) "The International Center for the Settlement of Investment Disputes (ICSID) and Contemporary Commercial Arbitration"

3 Future Meetings

2010 Interim Meeting

University of Bologna, Italy

June 21-23, 2010

Host: Professor Carlo Guarnieri

2011 Interim Meeting

University of California – Irvine

July 21-23, 2011

Hosts: Professor Tony Smith and Professor Diana Kapiszewski

2012 Triennial Meeting

22nd IPSA World Congress

Madrid, Spain

4 Call for Papers**2010 Interim Meeting**

University of Bologna, Italy

June 21-23, 2010

Host: Professor Carlo Guarnieri

Conference Theme: *“Judicial Review as ‘Insurance Policy’: Horizontal and Vertical Accountability in Democratic and Transitional States”*

Paper and panel proposals for the 2010 Interim Meeting of the Research Committee on Comparative Judicial Studies are now being accepted. The meeting is open to all scholars interested in the study of law and courts from a comparative and national perspective.

The theme of the 2010 meeting is “Judicial review as ‘Insurance Policy’: Horizontal and Vertical Accountability in Democratic and Transitional States.” Papers and panels devoted to the following topics (though not limited to) would be especially welcome:

- Judicial Reform as Political Insurance in Authoritative and Transitional States.
- Judicial Review and the Administration of Justice in New Democracies.
- The Judicialization of Politics – A Global Phenomena?
- Parliamentary and Judicial Oversight of Executive Action.
- Judicial Policy-making in Comparative Perspective.
- Legal Mobilization and Judicial Review.
- Judicial Reform in Eastern and Central Europe.

Submission of Proposals

Please submit your proposals via email by October 15, 2009, to **both** the conference convenor: Professor James Kelly (james.kelly@concordia.ca) and the conference host: Professor Carlo Guarnieri (carlo.guarniericalbo@unibo.it)

5 Recent Publications by RC09 Members

Barnum, David G. "Foreign Intelligence Surveillance in the United States: Update," *European Human Rights Law Review* 2008:5, 633-655.

Bateman, Thomas M.J., Janet L. Hiebert, Rainer Knopff, Peter H. Russell, *The Court and the Charter: Leading Cases*. Emond Montgomery Publications, 2008.

Breslin, Beau. *From Words to Worlds: Exploring Constitutional Functionality*. Baltimore: Johns Hopkins University Press, 2009.

Carnota, Walter F. "Rights and Politics in Argentine Social Security Reform." *Australian Journal of Political Science* 44:1 (2009), 115-126.

Chesterman, John and Brian Galligan. "The Politics of Rights Protections in Western Democracies." *Australian Journal of Political Science* 44:1 (2009), 29-40.

Cohn, Margit. "Non-Statutory Executive Powers and the Bancoult Affair: An Anxious Model of Judicial Review", *Public Law* (2009), 260-286

Cohn, Margit. "Everything Flows: On Mark Tushnet's Rights Revolution", *Israel Law Review* (2009)

Dodds, Graham. "Political Apologies and Racial Reconciliation." Chapter in Sean P. Hier and B. Singh Bolaria, eds. *Racism and Justice: Dialogue on the Politics of Inequality and Change*. Fernwood Press, 2009, 137-151.

Dodds, Graham. "By Order of George W. Bush: The Unilateral Directives of a Unilateralist President." *American Review of Politics* 29:3 (2008), 197-213.

Finkel, Jodi S. *Judicial Reform as Political Insurance: Argentina, Peru, and Mexico in the 1990s*. Notre Dame: University of Notre Dame Press, 2008.

Galligan, Brian and Emma Larkin. "Rights Protections – Comparative Perspectives." *Australian Journal of Political Science* 44:1 (2009), 1-12.

Galligan, Brian and Emma Larkin. "Rights Protection: The Bills of Rights Debate and Rights Protection in Australia's States and Territories." *Adelaide Law Review* 28 (2007), 177-199.

Hausegger, Lori, Matthew Hennigar and Troy Riddell, *Canadian Courts: Law, Politics and Process*. Don Mills: Oxford University Press, 2008.

Hiebert, Janet L. "Compromise and the Notwithstanding Clause: Why the Dominant Narrative Distorts our Understanding," in James B. Kelly and Christopher Manfredi, eds., *Contested Constitutionalism: Reflections on the Charter of Rights and Freedoms*. Vancouver: UBC Press 2009.

Hennigar, Matthew. "Reference re Same-Sex Marriage: Making Sense of the Government's Litigation Strategy," in *Contested Constitutionalism*, edited by James Kelly and Christopher Manfredi. UBC Press, 2009

Hennigar, Matthew. "Conceptualizing Attorney General Conduct in Charter Litigation: From Independence to Central Agency," *Canadian Public Administration*, vol. 51:2 (2008), 193-215.

Hofnung, Menachem. "Litigating Military Service at Civil Court." *Australian Journal of Political Science* 44:1 (2009), 97-114.

Jackson, Donald, Michael Tolley and Mary Volcansek (eds.), *Globalizing Justice: Critical Perspectives on Transnational Law and the Cross-Border Migration of Legal Norms*. Albany: SUNY Press, 2010.

Jackson, Donald and Mary Volcansek. "Human Rights or Trade Protection? US Politics and the World Trade Organization." *Australian Journal of Political Science* 44:1 (2009), 115-172.

Kelly, James B. and Christopher P. Manfredi, eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*. Vancouver: UBC Press, 2009.

Kelly, James B. and Christopher P. Manfredi, "Should We Cheer? Contested Constitutionalism and the Charter of Rights and Freedoms," in James B. Kelly and Christopher P. Manfredi, eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*. Vancouver: UBC Press, 2009, 3-29.

Kelly, James B. "Legislative Activism and Parliamentary Bills of Rights: Institutional Lessons for Canada," in James B. Kelly and Christopher P. Manfredi, eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*. Vancouver: UBC Press, 2009, 86-106.

Kommers, Donald P. John E. Finn, & Gary J. Jacobsohn, *American Constitutional Law: Essays, Cases & Comparative Materials*, 3rd edition. Rowman and Littlefield, 2009.

Malleson, Kate. 'Promoting Judicial independence in the international Courts: Lessons from the Caribbean' *International and Comparative Law Quarterly* (forthcoming summer 2009).

Malleson, Kate and Peter H. Russell, eds. *Appointing Judges in an Age of Judicial Power: Critical Perspectives from Around the World*. Toronto: University of Toronto Press, 2006.

Malleson, Kate. 'Parliamentary scrutiny of Supreme Court nominees: A view from the UK' *Osgoode Hall Law Journal* issue 44. no 3 Fall 2006

Malleson, Kate. 'Creating a Judicial Appointments Commission: Which Model Works Best?' *Public Law*, Spring 2004.

Popova, Maria. "Political Competition as an Obstacle to Judicial Independence," *Comparative Political Studies* 43:10 (2010).

Riddell, Troy, Lori Hausegger and Matthew Hennigar. "Federal Judicial Selection: Examining the Harper Appointments and Reforms," *Journal of Parliamentary and Political Law*, vol. 2 (2009), 499-522.

Rush, Mark. "Election Law Issues on the United States Supreme Court's Agenda after the Presidential Election of 2008." *Journal of Parliamentary and Political Law* 3:1 (2009).

Rush, Mark and Christopher Manfredi: "From Deference and Democracy to Dialogue and Distrust: The Evolution of the Court's View of the Franchise and Its Impact on the Judicial Activism Debate." 45 *Supreme Court Law Review* (2d series) 19 (2009).

Russell, Peter H. and Lorne Sossin, eds., *Parliamentary Democracy in Crisis*. Toronto: University of Toronto Press, 2009.

Russell, Peter H., Rainer Knopff, Thomas M.J. Bateman, Janet Hiebert, *The Court and the Constitution: Leading Cases*. Emond Montgomery Publications, 2008.

Smith, Charles Anthony. "Credible Commitments and the Early American Supreme Court" *Law & Society Review* 42:1 (2008), 75-110.

Smith, Charles Anthony and Heather M. Smith. "Embedded Realpolitik: Re-evaluating the U.S. Opposition to the ICC." in *The Global Politics of the International Criminal Court: Global Governance in Context*. Steven C. Roach, ed., Oxford University Press, 2009.

Songer, Donald R. *The Transformation of the Supreme Court of Canada: An Empirical Examination*. University of Toronto Press, 2008.

Songer, Donald R. & Julia Siripurapu . (2009) "The Unanimous Decisions of the Supreme Court of Canada as a Test of the Attitudinal Model" *Canadian Journal of Political Science* 42: 65-92.

Tate, C. Neal, Linda Camp Keith and Steven C. Poe. "Is the Law a Mere Parchment Barrier to Human Rights Abuse?" *Journal of Politics* 71:2 (2009), 644-660.

Tolley, Michael C. "Parliamentary Scrutiny of Rights in the United Kingdom: Assessing the Work on the Joint Committee on Human Rights." *Australian Journal of Political Science* 44:1 (2009), 41-56.

Trochev, Alexi. *Judging Russia: Constitutional Courts in Russian Politics, 1990-2006*. Cambridge: Cambridge University Press, 2008.

Trochev, Alexei. "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia," *Demokratizatsiya* 17:2 (2009),145-178.

6 New RC09 Website

Available at <http://rc09.ipsa.org>

7 New Executive Committee Member

The Executive Committee welcomes the newest member, Daniela Piana, from the University of Bologna. Daniela's appointment was confirmed during the recent RC09 Business Meeting at IPSA 2009 in Santiago, Chile.

8 High Courts Judicial Database (HCJD)

With NSF support (Awards 9975315 and 0137141), **C. Neal Tate of Vanderbilt University, Stacia Haynie of Louisiana State University, Reginald Sheehan of Michigan State University, and Donald Songer of the University of South Carolina** have completed and archived for public access the **High Courts Judicial Database (HCJD)**. The HCJD is a major collection of systematically-coded decisions data of the top (supreme) courts of 11 nations, Australia, Canada, India, Namibia, the Philippines, South Africa, Tanzania, the United Kingdom, the United States, Zambia, and Zimbabwe. It contains for each country information on the universe or a random sample of 100 decisions per year (whichever is smaller) for periods beginning in 1970 and ranging up to 34 years of coverage. The HCJD and its documentation are available for use by anyone at:

http://sitemason.vanderbilt.edu/site/d5YnT2/Data_Sets_Available

Though it has been freely available for public use since its mid-2007 release date, the HCJD P.I.s stress that the database should be considered still a work in progress. They expect to be cleaning and correcting newly discovered errors for some time.

9 Membership List

We are in the process of updating the membership list for RC09. Please send a recent entry, in the following format, to James Kelly james.kelly@concordia.ca

Entry Format

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CANADA