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# The Political Impact of Constitutional Courts

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# THE POLITICAL IMPACT OF CONSTITUTIONAL COURTS

## Foreword

*Donald P. Kommers*  
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The articles in this section are revisions of papers originally delivered by members of a special research committee (Specialist Group 3) at the Ninth World Congress of the International Political Science Association, held at Sir George Williams University in Montreal from August 20 to 25, 1973. Composed of prominent judicial scholars—lawyers and political scientists—from ten countries of Europe, Asia, and North America, the committee assembled for informal discussions and formal presentations of common research interests. The papers delivered at the conference divide roughly into transnational or cross-cultural studies of judicial attitudes or legal practices and studies of specific judicial structures or processes in single nations;\* the *political* relevance of judicial institutions, practices, and ideologies is their main emphasis. An important goal of the committee as a whole was to underscore the need for moving judicial research into the mainstream of a developing science of comparative politics. With the recent conversion of the special committee into a standing IPSA Research Committee on Comparative Judicial Studies, this goal is likely to be stressed even more in future Congresses.

Varying enormously in their conceptual and methodological approaches, the papers which appear in this volume of the *Notre Dame Lawyer* are concerned mainly with the political impact of constitutional courts. David J. Danelski (Cornell University) and Giovanni Bognetti (University of Pavia) deal respectively with the impact of the Japanese Supreme Court and the Italian Constitutional Court. These tribunals, created out of the ruins of World War II, are of particular interest since both Japan and Italy lack traditions of judicial review. Edward McWhinney (McGill University) shows how the Canadian Supreme Court has used its authority to influence political development in Canada.

Impact studies of foreign constitutional courts are of particular interest to students of comparative politics, as well as students of comparative constitutional law, since they can easily be related to a substantial literature already available on the political roles and impact of the United States Supreme Court. John R.

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\* Other papers presented to the 1973 Congress by Specialist Group 3 were Margherita Rendel (University of London), *The Political Impact of the French Conseil D'etat*; Paul Bartholomew (University of Notre Dame), *The Political Impact of the Supreme Court of Ireland*; Ram Naresh Trivedi (Ranchi University, India), *The Golaknath Case: Its Political Impact*; Joel B. Grossman (University of Wisconsin) and Austin Sarat (University of Wisconsin), *The Courts and Conflict Resolution: Some Comparative Observations of the Relative Frequency of Formal Litigation*; Peter G. Snow (University of Iowa), *Judges and Generals: The Role of the Argentine Supreme Court During Periods of Military Government*; Manfred Riegel (Mannheim University), *Political Attitudes and Judicial Perceptions of the Political System*; Raymond Werle (Mannheim University), *Professional Perceptions of the Legal System by Judges*; Glendon Schubert (University of Hawaii), *Political Culture and Judicial Ideology: Some Cross- and Sub-Cultural Comparisons*; and Rudolf Wildenmann (Mannheim University), *Attitudes of Judges as a Subject of Comparative Study: Design, Theory, and Method of an Empirical Study of Judges in Germany*.

Schmidhauser (University of Southern California), Larry L. Berg (University of Southern California), and Justin J. Green (University of Iowa), although concerned with the attitudes of legal professionals, deal with a phenomenon which may be regarded as one kind of Supreme Court impact in the United States. Stephen L. Wasby (Southern Illinois University) looks critically at judicial impact studies by American scholars and suggests a new framework of analysis for the study of the Supreme Court's impact. Joseph Tanenhaus (State University of New York, Stony Brook) and Walter F. Murphy (Princeton University) evaluate a variety of theoretical models for analyzing diffuse support of constitutional courts within political systems. R. Taylor Cole (Duke University), in a commentary on the foregoing papers, considers the future direction of impact research.

As chairman of the 1973 IPSA Research Committee, I should like to take this opportunity to thank Henry J. Abraham (University of Virginia), Edward Goldberg (California State University, Los Angeles), and John Meisel (Queen's University) for assuming the chairmanship of the IPSA panels. Henry W. Ehrmann (Dartmouth College), Kent Weeks (University of Dubuque), Laurence Baum (Ohio State University), Marc Galanter (State University of New York, Buffalo), Takeo Hayakawa (Kobe University, Japan), and R. Taylor Cole deserve a word of appreciation for serving as commentators. The assistance of Andre Philippart (Belgium), IPSA Secretary-General, and John Trent (University of Ottawa) is also acknowledged. Lastly, the entire committee joins me in thanking the editors of the *Notre Dame Lawyer*, particularly John Burns and John Gaither, for their generous assistance in preparing the IPSA papers for publication.

*Donald P. Kommers*  
Chairman, 1973 IPSA Research Committee