

# From the Court to the Classroom: Judges' Work in International Judicial Education

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This Article explores international judicial education and training, which are commonly associated with rule of law initiatives and development projects. Judicial education programs address everything from leadership competencies and substantive review of human rights legislation to client service and communication, skills training on docket management software, and alternative dispute resolution. Over the last twenty years, judicial education in support of the rule of law has become big business both in the United States and internationally. The World Bank alone spends approximately U.S. \$24 million per year for funded projects primarily attending to improving court performance. And yet, the specifics of judicial education remains unknown in terms of its place in the industry of rule of law initiatives, the number of judges who act as educators, and the mechanisms that secure their participation. This Article focuses on the judges' experiences; in particular, the judges of the Supreme Court of Israel who were instrumental in establishing the International Organization of Judicial Training.

Lawyers, development practitioners, justice experts, and government officials participate in training judges. Less well known is the extent to which judges themselves interact internationally as learners, educators, and directors of training institutes. While much scholarly attention has been paid to finding a global juristocracy in constitutional law, scholars have overlooked the role that judges play in the transnational movement of ideas about court structure, legal procedure, case management, and court administration. Similarly, scholarship examines the way legal norms cir-

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culate, the source of institutional change, and the way “transnational legal processes” increase the role of courts within national legal systems. There is little scholarly attention, however, to judges as actors in these transnational processes.

This Article situates judicial education and training within the context of judicial functions as an example of judicial involvement in non-case-related law reform. This Article challenges the instrumental connection between judicial education and the rule of law, arguing that international judicial education became a solution at the same time that the problem—a rule of law deficit—was being identified. This Article also explores whether international judicial education can stand as an instantiation of a global judicial dialogue. Judges have immersed themselves in foreign relations. They are, however, less strategic in pushing their ideological agenda than literature about judges and politics would suggest. This Article argues that judges experience politics as a series of partial connections, which resemble most legal actors’ engagement with the personal and the political.

<b>Introduction</b> .....	618
<b>I. Brief Explanation of Judicial Functions and Judges’ <i>Other</i> Work</b> .....	627
<b>II. Common Beliefs About Judges in the International Domain</b> .....	634
A. Judicial Education and the Rule of Law .....	634
B. International Relations and the Global Judicial Dialogue .....	639
<b>III. Judges’ <i>Other</i> Work: International Judicial Education</b> .....	643
A. Transnational Movement of Judicial Education .....	643
B. Israeli Judges’ Experiences with Judicial Education .....	648
C. Early Days of the International Organization for Judicial Training .....	652
D. Judges’ Strategic Behavior? .....	653
<b>IV. International Conferences on Judicial Education</b> .....	657
A. Judicial Education in Support of the Rule of Law .....	657
B. Judges’ Foreign Relations .....	662
<b>Conclusion</b> .....	668

## Introduction

In 1976, then Tel Aviv District Court Judge, Dr. Shlomo Levin, traveled to a National Judicial College<sup>1</sup> training session in Reno, Nevada. Described

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1. As a private not-for-profit created in 1963, the National Judicial College trains U.S. federal and state court judges as well as judges from South America, Europe, Asia, the Middle East, and Africa. The National Judicial College manages a current annual operating budget of U.S. \$8.6 million for the training of over 3,000 judges attending from approximately 150 countries. *Organizational Profile*, National Judicial College (Mar. 8, 2011) (on file with author) [hereinafter *Organizational Profile of the NJC*].

as “a man of vision,”<sup>2</sup> Dr. Levin was one of the first foreign judges to study at the Advanced Institute for Judges hosted by the National Judicial College.<sup>3</sup> When he returned home, Dr. Levin met with Justice Yoel Zussman, President of the Supreme Court of Israel, to recommend that Israel set up a similar institution. President Zussman was agreeable, and they set to work on creating a domestic training institute for Israeli judges.<sup>4</sup>

Twenty years later, Dr. Levin, by then a judge and the Deputy President of the Supreme Court of Israel,<sup>5</sup> and Professor Amnon Carmi (Faculty of Law, Haifa University), a retired judge, attended a meeting in São Paulo with judges from North and South America and Europe. At that meeting, the judges developed plans to establish an international umbrella organization that would bring together already-existing national training institutes. In 2002, twenty-four member countries formally established the International Organization for Judicial Training (“IOJT”). The Supreme Court of Israel acted as the administrative office, and the Israeli judiciary hosted the first international conference in 2002. As of August 2015, the IOJT’s membership includes 123 member institutes from 75 countries.<sup>6</sup>

In contrast to research on judicial review and global constitutionalism,<sup>7</sup> scholars have largely overlooked the role that all judges—including

2. Interview with Staff (Attorney), Supreme Court of Israel, Israeli Courts Research Division, in Jerusalem, Isr. (Mar. 12, 2014).

3. Interview with Judge A (Retired), Supreme Court of Israel, in Jerusalem, Isr. (Mar. 6, 2014). The idea of a foreign judge attending the National Judicial College was so new that the Director became confused when introducing Justice Levin at graduation. Other attendees were introduced by name and home state (e.g., the State of New York). As a result, it must have seemed odd to the Director to introduce Justice Levin as attending from the State of Israel: “One of the stories is that in the end they delivered the certificates. Everyone was American. So they started to say, Mr. so-and-so from the state of [blank]. Then it came to [Dr. Levin], and [the director] hesitated. . . [and] said, ‘The Republic of Israel.’” *Id.*

4. *Id.*

5. Dr. Levin was a judge at the Supreme Court of Israel from 1980–2003 and Deputy President from 1995–2003.

6. INT’L ORG. FOR JUD. TRAINING, <http://www.iojt.org/> (last visited Feb. 16, 2016).

7. For examples of research on judicial review and global constitutionalism, refer to RAN HIRSCHL, *TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM* (2004) (examining the political origins of the recent constitutional “revolutions” in Canada, New Zealand, Israel, and South Africa); VICKI C. JACKSON, *CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA* 42 (2010) (examining the use of foreign authority in constitutional adjudication, including human rights law and its influence in developing a “transnational legal consensus”); THE MIGRATION OF CONSTITUTIONAL IDEAS 42 (Sujit Choudhry ed., 2006); Ran Hirschl, *The Realist Turn in Comparative Constitutional Politics*, 62 *POL. RES. Q.* 825, 825 (2009); Alec Stone Sweet, *Constitutionalism, Legal Pluralism, and International Regimes*, 16 *IND. J. GLOBAL LEGAL STUD.* 621, 633–36 (2009) (examining specialized constitutional courts and national high court jurisdiction over constitutional norms). *But see* Jacco Bomhoff, *Balancing, the Global and the Local: Judicial Balancing As a Problematic Topic in Comparative (Constitutional) Law*, 31 *HASTINGS INT’L & COMP. L. REV.* 555, 557 (2008) (arguing that the broad ranges of references to balancing in constitutional adjudication does not necessarily point to a “community of discourse”); David Kennedy, *The Mystery of Global Governance*, in *RULING THE WORLD?: CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE* 37, 37–38 (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009) (arguing that, in addition to global constitutionalism, various projects and literatures are trying to capture the nor-

high court and first- and second-instance judges—play in the international sphere and in the transnational movement<sup>8</sup> of ideas about court structure, procedure, case management, and court administration. Similarly, scholarship examines the way legal norms circulate,<sup>9</sup> the source of institutional change within national legal systems,<sup>10</sup> and the way “transnational legal

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mative space opened by the global regulatory field). Even scholars who do not focus exclusively on constitutional courts tend to limit their research to the highest national courts (which may still include constitutional review, especially where a constitutional court does not exist as a separate institution, as is the case in Israel, the United States, and Canada). See generally BRICE DICKSON, *JUDICIAL ACTIVISM IN COMMON LAW SUPREME COURTS 1–2* (2007); DIANA KAPISZEWSKI, GORDON SILVERSTEIN & ROBERT A. KAGAN, *CONSEQUENTIAL COURTS: JUDICIAL ROLES IN GLOBAL PERSPECTIVE* (2013); ELAINE MAK, *JUDICIAL DECISION-MAKING IN A GLOBALISED WORLD: A COMPARATIVE ANALYSIS OF THE CHANGING PRACTICES OF WESTERN HIGHEST COURTS 1* (2013).

8. Harold Hongju Koh, *On American Exceptionalism*, 55 *STAN. L. REV.* 1479, 1502–03 (2003) (arguing that legal norms are “internalized into domestic legal systems through a variety of legal, political, and social channels” and suggesting that “[t]hose seeking to create and embed certain human rights principles into international and domestic law should trigger transnational interactions, that generate legal interpretations, that can in turn be internalized into the domestic law. . .”); Harold Hongju Koh, *Transnational Legal Process*, 75 *NEB. L. REV.* 181, 184 (1996) (describing the dynamic process of interaction through which “new rules of law emerge, which are interpreted, internalized, and enforced.”).

9. See, e.g., JUTTA BRUNNEE & STEPHEN J. TOOPE, *LEGITIMACY AND LEGALITY IN INTERNATIONAL LAW: AN INTERACTIONAL ACCOUNT 8–9* (2010) (arguing that legal norm diffusion and the socializing effects of norms enable, shape, and constrain state behavior); YVES DEZALAY & BRYANT GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES 176–77* (2002); Karen J. Alter, *The European Union’s Legal System and Domestic Policy: Spillover or Backlash?*, 54 *INT’L ORG.* 489, 489–90 (2000) (exploring the European Court of Justice’s role in the expansion of European law into nation states and subsequent backlash against integration); Martha Finnemore & Katherine Sikkink, *International Norm Dynamics and Political Change*, 52 *INT’L ORG.* 887, 888 (1998); Terence Halliday, *Recursivity of Global Normmaking: A Sociolegal Agenda*, 5 *ANN. REV. L. SOC. SCI.* 263, 266, 269 (2009) (arguing that legal norms are created, articulated, and constructed through repeated interactions, through norm enunciation and interpretation, and through processes of cyclicity and recursivity: “mechanisms of recursive global normmaking drive forward processes of reform until the inherent tensions with them are resolved and normmaking settles”); Anne-Marie Slaughter, Andrew S. Tulumello & Stephan Wood, *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 *AM. J. INT’L L.* 367, 373 (1998) (arguing that global institutions that result from social processes of normmaking—such as international law, sovereignty, and anarchy—constitute identities which then figure in interest formation); see also SIDNEY TARROW, *THE NEW TRANSNATIONAL ACTIVISM 35–56* (2005) (arguing that the transnational activities of domestic-based activists contributes to a transnational activist community that brings foreign resources to the politics of their home countries); Martha Finnemore & Stephen J. Toope, *Alternatives to ‘Legalization’: Richer Views of Law and Politics*, 55 *INT’L ORG.* 743, 743–44 (2001).

10. See, e.g., Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, 43 *AM. J. INT’L L.* 93, 115 (1995) (arguing that the promotion of market economy through the dissemination of new legal models in eastern Europe is guided by the prestige of Common Law models as well as political opportunity); Benjamin Brake & Peter J. Katzenstein, *Lost in Translation? Nonstate Actors and the Transnational Movement of Procedural Law*, 67 *INT’L ORG.* 725, 726–28 (2013); John Gillespie & Pip Nicholson, *Taking the Interpretation of Legal Transfers Seriously: The Challenge for Law and Development*, in *LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSES OF LEGAL TRANSFERS 1*, 1–26 (John Gillespie & Pip Nicholson eds., 2012); Toby S. Goldbach, Benjamin Brake & Peter

processes”<sup>11</sup> increase the role of courts “within national legal systems, sometimes providing courts with new leverage to increase their authority in relation to executives.”<sup>12</sup> Yet there is little scholarly attention to *judges* as actors in these transnational processes.<sup>13</sup>

By way of contrast, Justice Kirby, former High Court of Australia and Court of Appeal of New South Wales judge and member of the Judicial Reference Group of the UN High Commissioner for Human Rights, observes that “a distinctive feature of the present age has been the increase in dialogue between judges and other lawyers across national boundaries.”<sup>14</sup> According to Justice Kirby, judges and lawyers discuss substantive law, as well as the “doctrines and procedures for conducting trials, appeals[,] and the work of the courts generally.”<sup>15</sup> One of the primary venues where judges discuss ideas about court management, judicial administration, and court procedure is the judicial education or training seminar.<sup>16</sup>

Conventionally, judicial education refers to teaching judges substantive law whereas judicial training involves instruction on “judgecraft”—court procedure or skills for leadership and judging.<sup>17</sup> Together, judicial

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J. Katzenstein, *The Movement of U.S. Criminal and Administrative Law: Processes of Transplanting and Translating*, 20 *IND. J. GLOBAL LEGAL STUD.* 141, 151-52 (2013); Terence Halliday, *Architects of the State: International Financial Institutions and the Reconstruction of States in East Asia*, 37 *L. & SOC. INQUIRY* 265, 276 (2012) (arguing that International Financial Institutions introduced large numbers of reforms effectively moving beyond trade-law reforms to restructure the state, often unsuccessfully); Mariana Mota Prado, *The Paradox of Rule of Law Reforms: How Early Reforms Can Create Obstacles to Future Ones*, 60 *U. TORONTO L.J.* 555, 556 (2010). See generally *TRANSNATIONAL LEGAL ORDERING AND STATE CHANGE* (Gregory C. Shaffer ed., 2012).

11. Gregory Shaffer, *Transnational Legal Process and State Change*, 37 *L. & SOC. INQUIRY* 229, 245 (2012).

12. *Id.* (“Courts have been traditionally weak in many developing countries, but transnational legal processes provide them with new tools to assert themselves. Klug shows how judges have been empowered to force the hand of state bureaucrats regarding state-provided medical treatment. Halliday notes the enhancement of judicial power over corporate bankruptcy in South Korea, as well as its potential in China and Indonesia.”).

13. See discussion *infra* note 120; see, e.g., Linn Hammergren, *Latin American Experience with Rule of Law Reforms and Its Applicability to Nation Building Efforts*, 38 *CASE W. RES. J. INT’L L.* 63, 67 (2006) [hereinafter Hammergren, *Latin American Exp.*] (noting how reform designers were independent scholars because judges “were usually seen as products of a problematic system”). But see Eval Benvenisti, *Judges and Foreign Affairs: A Comment on the Institut De Droit International’s Resolution on ‘the Activities of National Courts and the International Relations of Their State,’* 5 *EUR. J. INT’L L.* 423, 424 (1994) (arguing that state court judges refuse to apply international norms when those norms could impinge on national interests); Richard Lempert, *A Jury for Japan?*, 40 *AM. J. COMP. L.* 37, 38-39 (1992) (noting the judiciaries’ role in transplanting a jury system into the Japanese criminal trial).

14. Hon. J. Michael Kirby, *Transnational Judicial Dialogue, Internationalisation of Law, and Australian Judges*, 9 *MELB. J. INT’L L.* 171, 171 (2008).

15. *Id.* at 180.

16. *Id.* at 179.

17. Hon. J. Clifford Wallace, *Globalization of Judicial Education*, 28 *YALE J. INT’L L.* 355, 355 (2003) [hereinafter Wallace (2003)]; see Livingston Armytage, *Judicial Education as an Agent of Leadership and Change* (Nov. 2013) (unpublished paper for the 6th

education and training “assist judges in acquiring the knowledge, skills, and attitudes necessary to perform their judicial responsibilities fairly, correctly, and efficiently.”<sup>18</sup> Programs address everything from leadership competencies,<sup>19</sup> substantive review of human rights legislation,<sup>20</sup> “social context” education,<sup>21</sup> judicial ethics,<sup>22</sup> and foundations of the rule of law and anti-corruption measures,<sup>23</sup> to alternative dispute resolution procedures,<sup>24</sup> client service and communication,<sup>25</sup> dealing with witnesses, court interpreters, and unrepresented accused,<sup>26</sup> and skills training on docket management software.<sup>27</sup>

Judicial education is commonly associated with rule of law initiatives

International IOJT Conference), <http://www.iojt-dc2013.org/-/media/Microsites/Files/IOJT/11042013-Leadership-for-Judicial-Educators-other.ashx> [hereinafter Armytage (2013)].

18. Wallace (2003), *supra* note 17, at 358; see NAT'L ASS'N ST. JUD. EDUCATORS, NATIONAL PRINCIPLES AND STANDARDS OF JUDICIAL BRANCH EDUCATION 4, <http://nasje.org/wp-content/uploads/2011/05/principles.pdf> (last visited Sept. 22, 2016). Even though “education” and “training” initially had different connotations, they are now used somewhat interchangeable. For the purposes of ease and readability, the rest of this Article will use the terminology “judicial education” to refer to both substantive legal education as well as more professional or procedural training.

19. NAT'L ASS'N ST. JUD. EDUCATORS, *supra* note 18, at 19–20.

20. See, e.g., *Judicial Education for Rights-Respecting Courts*, COLUM. L. SCH. (Jan. 25, 2016), [https://www.law.columbia.edu/media\\_inquiries/news\\_events/2016/january2016/hri-judicial-seminar-2016](https://www.law.columbia.edu/media_inquiries/news_events/2016/january2016/hri-judicial-seminar-2016).

21. NAT'L JUD. INST., JUDICIAL EDUCATION COURSE CALENDAR AND RESOURCES 2, <https://www.nji-inm.ca/index.cfm/judicial-education/the-nji-s-judicial-education-portfolio> (last visited Sept. 22, 2016) [hereinafter NAT'L JUD. INST., COURSE CAL. & RESOURCES] (“Social Context is a broad term that encompasses the aspects of the decision-making milieu that are linked to social diversity.”); NAT'L JUD. INST., SOCIAL CONTEXT EDUCATION INTEGRATION PROTOCOL FOR SOCIAL CONTEXT 1–2 (2009), [www.iojt-dc2013.org/-/media/Microsites/Files/IOJT/11042013-Integration-Protocol-for-Social-Context.ashx](http://www.iojt-dc2013.org/-/media/Microsites/Files/IOJT/11042013-Integration-Protocol-for-Social-Context.ashx) (last visited Sept. 22, 2016) [hereinafter NAT'L JUD. INST., SOCIAL CONTEXT]; see also Hon. J. Brian W. Lennox & Natalie Williams, *Social Context and Judicial Education in Canada*, 1 JUD. EDUC. & TRAINING: J. INT'L ORG. FOR JUD. TRAINING 31, 31–44 (2013).

22. Telephone Interview with Judge C, New Brunswick Court of Appeal, Can. (Jun. 24, 2014).

23. Livingston Armytage, *Leadership for Judicial Educators: Vision for Reform*, 3 JUD. EDUC. & TRAINING: J. INT'L ORG. FOR JUD. TRAINING 16, 17 (2015), <http://www.iojt.org/journal/iojtjournal003-20150427.pdf> [hereinafter Armytage (2015)]; Linn Hammergren, *Fighting Judicial Corruption: A Comparative Perspective from Latin America*, in GLOBAL CORRUPTION REPORT 138, 139 (2007); Wallace (2003), *supra* note 17, at 356; J. Clifford Wallace, *Resolving Judicial Corruption While Preserving Judicial Independence: Comparative Perspectives*, 28 CAL. W. INT'L L.J. 341, 346 (1998) [hereinafter Wallace (1998)]; see Kerry Rittich, *The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social*, 261 MICH. J. INT'L L. 199, 217 (2004).

24. See, e.g., *Stronger Judicial Systems, Stronger Economies*, JUSTICE (National Judicial Institute, Ontario, Can.), Oct. 2010, at 1–2, [https://www.nji-inm.ca/nji/inm/collaboration-intl/JUSTICE%20Newsltr\\_Oct%202010\\_ENG.pdf](https://www.nji-inm.ca/nji/inm/collaboration-intl/JUSTICE%20Newsltr_Oct%202010_ENG.pdf); see also Anthony Wanis-St. John, *Implementing ADR in Transitioning States: Lessons Learned from Practice*, 5 HARV. NEGOT. L. REV. 339, 350 (2000).

25. See, e.g., NAT'L JUD. INST., COURSE CAL. & RESOURCES, *supra* note 21, at 22.

26. See, e.g., *id.* at 23; Richard Zorza, Nat'l Ctr for St. Cts. & Self-Represented Litig. Network, *Curricula: Access to Justice for the Self Represented*, SELF-REPRESENTED LITIG. NETWORK (Aug. 8, 2013) <http://www.srln.org/node/202/judicial-curricula-access-justice-self-represented>.

27. See, e.g., NAT'L JUD. INST., COURSE CAL. & RESOURCES, *supra* note 21, at 15.

and development projects.<sup>28</sup> This association is instrumental; common wisdom holds that judicial education builds a strong and independent judiciary that will in turn support the rule of law and economic development.<sup>29</sup> As I have explained elsewhere,<sup>30</sup> this kind of instrumental approach dominates contemporary legal thinking.<sup>31</sup>

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28. C.J. Ivor Archie, *Judicial Training and the Rule of Law*, 1 JUD. EDUC. & TRAINING: J. INT'L ORG. FOR JUDICIAL TRAINING 15, 15 (2013) ("The objective of judicial training therefore is to locate, articulate, communicate, and ultimately to apply those principles of rectitude to which our personal preferences, desires[,] and emotions must be subordinated. We call it the rule of law."); Hammergren, *Latin American Exp.*, *supra* note 13, at 67; Wallace (2003), *supra* note 17, at 356 ("Globalization, to me, connotes the widening of horizons, establishing synergistic relationships as countries explore and experiment together with education curricula and methodologies. The goal would be to enhance judicial education worldwide, resulting in improvement in court systems and eventually global establishment of the rule of law."); Wanis-St. John, *supra* note 24, at 344 ("Judicial reforms in transitioning states are also the embodiment of efforts to solidify ROL."); see also DORY REILING ET AL., JUSTICE SECTOR ASSESSMENTS: A HANDBOOK 71 (2007), [http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWebEdition\\_1.pdf](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWebEdition_1.pdf) ("[U]ltimately, corruption is symptomatic of a poorly functioning system. Consequently, reducing its most pernicious forms will require myriad individual steps . . . . Particularly important is improving accountability and transparency by: Ensuring merit-based systems for judicial appointment, promotion, and disciplinary proceedings, as well as adequate judicial salaries and training . . .").

29. MICHAEL J. TREBILCOCK & RONALD J. DANIELS, RULE OF LAW REFORM AND DEVELOPMENT: CHARTING THE FRAGILE PATH OF PROGRESS 58 (2008) ("That judicial reform is a necessary part of the rule of law reform has been emphasized by leading development theorists and is reflected prominently in international consensus." (citations omitted)); Juan Carlos Botero et al., *Judicial Reform*, 18 WORLD BANK RES. OBSERVER 61, 61-62 (2003) (describing the perceived link between "good judiciaries," judicial independence, and economic development: "well-functioning courts support economic development broadly by checking government abuses and upholding the rule of law." In addition, "judicial efficiency enhances economic development by facilitating fruitful exchanges between private individuals."); Terence C. Halliday, *Architects of the State: International Financial Institutions and the Reconstruction of States in East Asia*, 37 L. & SOC. INQUIRY 265, 273 (2012) (describing how the post-Washington Consensus era of development saw legal institutions "as critical regulatory structures for developing economies." The "mantra repeatedly stated by all IFIs" was that "good law increases investment, which in turn stimulates economic growth."); Linn Hamnergren, *Twenty-Five Years of Latin American Judicial Reforms: Achievements, Disappointments, and Emerging Issues*, 9 WHITEHEAD J. DIPL. & INT'L L. REL. 89, 90 (2008) (arguing that U.S. government aid organizations, especially USAID—the U.S. Agency for International Development—felt that strengthening the courts "was critical to advancing democratic governance in the war-torn Central American nations."); see e.g., J. Amady Ba, Opening Plenary at the 6th International Conference on the Training of the Judiciary: Leadership in Judicial Education (Nov. 4, 2013) (promoting the work of the Ecole Pour La Magistrature (Senegal) as contributing to "delivering credible, independent and impartial justice" and "to enhancing the rule of law"). See generally Chantal Thomas, *Law and Neoclassical Economic Development in Theory and Practice: Toward an Institutional Critique of Institutionalism*, 96 CORNELL L. REV. 967, 972 (2011) (describing the development of an institutionalist approach to law and development).

30. See Toby S. Goldbach, *Instrumentalizing the Expressive: Transplanting Sentencing Circles into the Canadian Criminal Trial*, 25 TRANSNAT'L L. & CONTEMP. PROBS. 61, 62-64 (2015) (examining the progress of sentencing reforms as an instantiation of using culture and the expressive aspects of law as a tool for social change).

31. ANNEISE RILES, COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS 64-65 (2011) (arguing that the "technical character of law" includes a "problem-solving paradigm - an orientation toward defining concrete practical problems

Because of the involvement of international financial institutions and civil society organizations, common wisdom also holds that lawyers, development practitioners, and justice experts train judges.<sup>32</sup> Increasingly, however, judges are travelling internationally to educate their peers and take part in sharing knowledge and experiences.<sup>33</sup> Judges serve as educa-

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and toward crafting solutions”); Sally F. Moore, *Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949-1999*, 7 J. ROYAL ANTHROPOLOGICAL INST. 95, 97 (2001) (arguing that one general interpretation or explanation of law is that it “is a rational response to social problems”); see also DEBORAH A. STONE, *POLICY PARADOX AND POLITICAL REASON* 9 (1988) (demonstrating the prevalence of a problem-solution analytic framework in policy objectives, so that each has three parts: (i) something is good, bad, or part of a necessary trade-off (Problems); (ii) we do not currently have enough of what is good or have too much of what is bad (Goals); and (iii) we work to uncover how can the government [read: law] remedy this situation (Solutions)); Austin Sarat & Susan Silbey, *The Pull of the Policy Audience*, 10 L. & POL’Y. 97, 114 (1988) (arguing that the influence of a policy audience makes legal scholars less concerned about “science” or methods and more concerned about “the consequences of particular courses of action” and the “capacity of social scientists to recommend solutions for immediate problems”). Recent scholarship, however, questions whether the practice or operation of law as a tool is so straightforward. See Richard L. Abel, *Law and Society: Project and Practice*, 6 ANN. REV. L. & SOC. SCI. 1, 1-23 (2010) (recounting scholar after scholar declaring skepticism, “widespread demoralization,” and warning against an “unrealistic view of law as a vehicle for achieving social justice” (citations omitted)); Annelise Riles, *Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage*, 108 AM. ANTHROPOLOGIST 52, 56 (2006) (observing that human rights lawyers continue to work in the area of human rights, notwithstanding a “profound and sophisticated skepticism” of the human rights regime: “What is interesting about all of these figures is that they elaborate critiques of the human rights regime in the very course of their own engagement with ‘doing’ human rights work”). See generally RICHARD L. ABEL, *Introduction*, in THE POLITICS OF INFORMAL JUSTICE 1, 2 (Richard L. Abel ed., 1982).

32. See, e.g., TREBILCOCK & DANIELS, *supra* note 29, at 68 (citing USAID Off. Democracy & Governance, *Achievements in Building and Maintaining the Rule of Law: MSI’s Studies in LAC, E&E, AFR and ANE*, OCCASIONAL PAPER SERIES, Nov. 2002, at 34 (noting USAID’s sponsorship of judicial education in Argentina)). Especially when development organizations are prolific in systematizing judicial education internationally, it is easy to view judicial training as emanating only from development assistance work. See, e.g., HARRY BLAIR, GARY HANSEN, & CTR. FOR DEV. INFO. & EVALUATION, *WEIGHING IN ON THE SCALES OF JUSTICE: STRATEGIC APPROACHES FOR DONOR-SUPPORTED RULE OF LAW PROGRAMS* 4 (1994) (“[M]ost USAID legal system programs in Latin America have focused on improving the courts’ effectiveness and efficiency. Project activities have included modernizing court administration, including automating case processing, legal codes, personnel systems, and budget and planning systems; training judges; hiring more judges, public defenders, and public prosecutors, expanding and strengthening the role of public defenders, reforming penal codes, and introducing career and merit appointments for judges and other judicial personnel.”); Richard E. Messick, *Judicial Reform and Economic Development: A Survey of the Issues*, 14 WORLD BANK RES. OBSERVER 117, 117, 125 (1999); USAID Off. Democracy & Governance, *Guidance for Promoting Judicial Independence and Impartiality*, TECHNICAL PUBLICATION SERIES, Jan. 2002.

33. Interview with Senior Legal Counsel/Program Director for National Center for State Courts International, in Washington, D.C. (Nov. 21, 2013); see, e.g., Information Brochure National School of Judiciary and Public Prosecution (Poland) (on file with author); see also T. Brett Dawson, *Judicial Education: Pedagogy for a Change*, 2015 J. DISP. RESOL. 175, 177 (2015) (describing the learning process involved in attending and speaking at a conference referring to conference attended by academics from the US, Canada, and Australia); S. I. Strong, *Judicial Education and Regulatory Capture: Does the Current System of Educating Judges Promote a Well-Functioning Judiciary and Adequately Serve the Public Interest?*, 2015 J. DISP. RESOL. 1, 20 (2015).



tors and directors of training institutes,<sup>34</sup> and interact internationally in that capacity. Yet the specifics of judicial education programs remain unknown in terms of their place in the industry of rule of law programs,<sup>35</sup> the number of judges who act as educators,<sup>36</sup> and the mechanisms that secure their participation. This Article explores judges' international work in judicial education as an example of "extra-disputing" judicial activity—work undertaken by contemporary judges that moves beyond the specific case but still affects courts and the operation of trials.

This Article also poses descriptive and normative questions about judicial engagement with politics. A great deal of the literature on judicial politics focuses on partisanship in judicial decision-making—the relationship between party politics and judicial decisions or votes in multi-judge panels.<sup>37</sup> But, in what ways are judges situated in political debates outside of their case-work? Scholars and development practitioners often stress the importance of judicial independence—either the judiciary's institutional

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34. Dawson, *supra* note 33, at 175; Strong, *supra* note 33, at 15–16 ("Judicial influence over the educational curriculum is pervasive not only at the individual level, but also at the institutional level, as illustrated by the number of judges serving on the advisory boards of organizations specializing in judicial education." (footnote omitted)).

35. See Steve Miller & Livingston Armytage, *Legal and Judicial Reform Performance Monitoring: the PNG Approach*, 20 EUR. J. DEV. RES. 141, 141–42 (2008) [hereinafter Miller & Armytage (2008)] ("[T]he World Bank estimates that it is now financing some 600 projects relating to legal and judicial reform, ranging from Latin American to Mongolia, Togo, Zambia[,] and Cambodia. Other international development agencies at the multilateral level – such as the UNDP and Asian Development Bank (ADB) – and at the bilateral level – such as United States Agency for Development (USAID), UK's Department for International Development (DFID), Japanese International Cooperation Agency (JICA) and Germany's Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) – support innumerable legal and judicial reform programmes in developing, transitional and post-conflict jurisdictions. To illustrate the size of this growth, ADB has committed U.S. \$350 million to rebuilding courts and related capacity-building in one country, Pakistan. USAID has committed almost U.S. \$50 million to promote the rule of law in two countries, Afghanistan and Cambodia." (citations omitted)).

36. Interview with Senior Legal Counsel/Program Director for National Center for State Courts International, *supra* note 33; Interview with Director at American Society of International Law, in Washington, D.C. (Nov. 11, 2013) (Even though they do not practice International Law, federal and state court judges engaged in judicial education internationally have joined the ASIL forum because there is little other infrastructure for dialogue about courts and judges internationally).

37. See e.g., LEE EPSTEIN & JACK KNIGHT, *THE CHOICES JUSTICES MAKE* (1998); JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL* 65 (1993) [hereinafter SEGAL & SPAETH (1993)]; JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED* 86 (2002) [hereinafter SEGAL & SPAETH (2002)]; Cass R. Sunstein, David Schkade & Lisa Michelle Ellman, *Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation*, 90 VA. L. REV. 301, 302, 304 (2004); Keren Weinshall-Margel, *Attitudinal and Neo-Institutional Models of Supreme Court Decision Making: An Empirical and Comparative Perspective from Israel*, 8 J. EMPIRICAL LEGAL STUD. 556, 556–57 (2011); see also Frank B. Cross, *Political Science and the New Legal Realism: A Case of Unfortunate Interdisciplinary Ignorance*, 92 NW. L. REV. 251, 251–54 (1997); Lee Epstein & Jack Knight, *Reconsidering Judicial Preferences*, 16 ANN. REV. POL. SCI. 11, 11–12 (2013); Thomas J. Miles & Cass R. Sunstein, *The New Legal Realism*, 75 CHI. L. REV. 831, 832, 835–36 (2008).

independence from the other branches of government,<sup>38</sup> or a judge's personal independence that enables her to decide in an impartial manner, free from pressures or inducements.<sup>39</sup> What does judicial independence look like? How do judges navigate these "relationships"?

With respect to the international sphere, scholars speak of a global judicial dialogue or a global community of courts, where judges meet internationally and exchange ideas—a kind of global rights convergence.<sup>40</sup> But to what extent are judges actually forming such transnational epistemic communities?<sup>41</sup> How do judges actually interact with their "global community"? We know little of the specifics or details.

This Article demonstrates that judges are implicated in politics beyond the written decision. It also suggests that when we look at judges ethnographically—as people—we find that they can sometimes blunder and be ineffective in bringing about their ideological agenda. Judges do not appear to be as strategic or effective as the literature would suggest. Judges experience politics as a series of partial connections,<sup>42</sup> and these partial connections in many ways resemble most legal actors' engagement with the personal and the political.

Judges' experiences in international judicial education also highlight the tendency of law reform projects to trigger incompatible norms and goals that manage to hold together.<sup>43</sup> Law reform projects may encompass conflicting norms and goals—such as judicial education and judicial independence—which are brought into conflict when judges attend "training junkets" that threaten the public's perception of the judiciary. As scholars, our instinct is to resolve difference or explain contradiction. This Article argues, however, that subsisting tensions is an inherent feature of legal instrumentalism.

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38. See, e.g., Adam Dodek, *Judicial Independence as a Public Policy Instrument*, in JUDICIAL INDEPENDENCE IN CONTEXT 295 (Adam Dodek & Lorne Sossin eds., 2010); Christopher M. Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605 (1996); Patrick Monahan & Byron Shaw, *The Impact of Extra-Judicial Service on the Canadian Judiciary: The Need for Reform*, in JUDICIARIES IN COMPARATIVE PERSPECTIVE 428, 438 (H. P. Lee ed., 2011); Rogelio Pérez-Perdomo, *Independence and Accountability: Issues of Power and Control*, in COMPREHENSIVE LEGAL AND JUDICIAL DEVELOPMENT: TOWARD AN AGENDA FOR A JUST AND EQUITABLE SOCIETY IN THE 21ST CENTURY 205, 208 (Rudolf V. Van Puymbroeck ed., 2001) ("Judicial independence means that we believe, normatively, that judges should not be parties to the political process—that is, they should evince no sympathy for the governing authorities or political parties, and should not be guided by them or by opinion polls or the media."); Shimon Shetreet, *The Critical Challenge of Judicial Independence in Israel*, in JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 233, 245 (Peter H. Russell & David M. O'Brien eds., 2001).

39. Dodek, *supra* note 38, at 302 (While impartiality "refers to a state of mind or attitude," independence "refers to the 'status or relationship to others'").

40. MAK, *supra* note 7, at 4-5.

41. Peter M. Haas, *Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control*, 43 INT'L ORG. 377 (1989); see Peter M. Haas, *Banning Chlorofluorocarbons: Epistemic Community Efforts to Protect Stratospheric Ozone*, 46 INT'L ORG. 187 (1992) [hereinafter Haas (1992)].

42. MARILYN STRATHERN, PARTIAL CONNECTIONS 35 (1991).

43. *Id.*

This Article delves into judicial education, focusing on the work of the judiciary in Israel as an example of an important “extra-disputing” activity for contemporary judges. The Article proceeds as follows. Part I sets the stage for the rest of the Article, briefly describing the meaning of “extra-disputing” judicial activity within the framework of judicial functions. Part II presents the scholarly context by reviewing the standard narratives that are told about judicial education and judges in the international domain. Part III examines judges’ involvement in judicial education, focusing on Israeli judges’ international activities through the IOJT. Part IV recounts interactions that took place at the 6th International Conference of the IOJT and the World Bank Group’s Law, Justice, and Development Week,<sup>44</sup> both held in Washington, D.C. in November 2013. Part IV also reconsiders judicial functions in international education and foreign relations in light of judges’ experiences at international conferences and other transnational engagements. This part assesses how judicial education in support of the rule of law and judicial politics operate “in action.” This Article argues that legal actors participate in law reform projects in ways that are partial and complex, and in a manner that tends to hold incompatible “things” (goals, concepts, norms) together.<sup>45</sup> Legal actors also function in a less strategic manner than our current thinking about law would suggest.

### I. Brief Explanation of Judicial Functions and Judges’ *Other* Work

Generally speaking, legal scholarship addresses the products of judicial work that are related to a specific case or trial—the judge’s decision. The written decision depicts judges as they appear publicly. It is their “official portrait,”<sup>46</sup> the most visible and accessible sketches of the judge’s work and her involvement in politics and legal change.

On the other hand, judges and court staff are well aware that judges work on procedural reforms and public relations, maintaining and improving the reputation of the court in addition to their case-work.<sup>47</sup> Judges sit

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44. The World Bank Group hosts a Law, Justice, and Development Week yearly on varying themes. The event is organized by the legal department of the World Bank, the International Finance Corporation, Multilateral Investment Guarantee Agency, and the International Centre for Settlement of Investment Disputes. Attendees include lawyers from each of the World Bank group institutions, plus “colleagues from other development organizations, government officials, academicians, civil society organizations[,] and other experts in the field.” WORLD BANK, LAW, JUSTICE, AND DEVELOPMENT WEEK 2013 POST-EVENT SUMMARY 5 (2013).

45. STRATHERN, *supra* note 42, at 35 (quoting Donna Haraway, *A Manifesto for Cyborgs: Science, Technology and Socialist Feminism in the 1980s*, 80 SOCIALIST REV. 65 (1985)).

46. Mitchel de S.-O.-l’E Lasser, *Judicial (Self-)Portraits: Judicial Discourse in the French Legal System*, 104 YALE L.J. 1325, 1334 (1995).

47. Most research on judicial reputation investigates how courts and judges seek to maintain or improve reputation through citations or written decisions. See, e.g., SHAI DOTAN, REPUTATION AND JUDICIAL TACTICS: A THEORY OF NATIONAL AND INTERNATIONAL COURTS 5 (2015); NUNO GAROUPA & TOM GINSBURG, JUDICIAL REPUTATION: A COMPARATIVE THEORY 4-5 (2015); Olga Frishman, *Transnational Judicial Dialogue As an Organisational Field*, 19 EUR. L.J. 739, 750 (2013) (arguing that a court’s reputation will effect whether or not other courts cite to it); Bert I. Huang & Tejas N. Narechania, *Judicial Priorities*,

as administrative heads of court, assigning cases, deciding on judicial rotations, or even structuring the way cases are heard.<sup>48</sup> Judges devise reforms for criminal and civil trial procedure<sup>49</sup> and consult on physical changes and design of courtrooms.<sup>50</sup> These activities do not necessarily relate to a particular dispute, but they shape the structure of dispute processing, affecting how facts, cases, and legal actors are channeled.<sup>51</sup> These “extra-

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163 U. PENN. L. REV. 1719, 1725-26 (2015) (arguing that Illinois appellate courts published the same proportion of affirmation of lower court decisions even after being forced to reduce the overall number of published decisions because of a concern for outward appearances, in order “to avoid creating the impression that the trial courts were getting it wrong”); see also Guy Davidov & Maayan Davidov, *How Judges Use Weapons of Influence: The Social Psychology of Courts*, 46 ISR. L. REV. 7, 8 (2013) (courts use various psychological influence techniques in their judgments “as a means of securing acceptance of those judgments and reducing resistance”).

Recent research (sometimes by former law clerks) investigates other ways courts seek to maintain and improve their reputation. See e.g., JUDITH RESNIK & DENNIS CURTIS, REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY STATES AND DEMOCRATIC COURTROOMS 172 (2011) (examining the symbolic messages that judges intend to convey through courthouse architecture); Keith J. Bybee & Angela G. Narasimhan, *Courts and Judges: The Legitimacy Imperative and the Importance of Appearances*, in THE HANDBOOK OF LAW AND SOCIETY 118, 123 (Austin Sarat & Patricia Ewick, eds., 2015) (reviewing diverse scholarship on “images transmitted by courts” including the “physical structures and spaces in which courts and judges operate”); Olga Frishman, *Should Courts Fear Transnational Engagement?*, 49 VAND. J. TRANSNAT’L L. 59, 86-87 (2016) (examining courts’ “intended images” and courts’ intentions to “present themselves to their audiences” in particular ways).

48. See, e.g., ONTARIO COURT OF JUSTICE & MINISTRY OF THE ATTORNEY GENERAL JOINT FLY-IN COURT WORKING GROUP, REPORT ON FLY-IN COURT OPERATIONS 5 (2013); WARREN WINKLER, EVALUATION OF CIVIL CASE MANAGEMENT IN THE TORONTO REGION, at ii (2008); Warren Winkler, *Access to Justice, Mediation: Panacea or Pariah?*, 16 CAN. ARB. & MEDIATION J. 5, 8-9 (2007).

49. For examples of judicial innovations in court procedures to design “problem-solving courts” and “therapeutic judging” (for example, domestic violence courts and conciliation family courts), see GREG BERMAN ET AL., GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE 3 (2005) and JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 3 (Bruce J. Winick & David B. Wexler eds., 2003). For judges developing case-management systems and procedures for multi-jurisdictional cases, see JUDITH RESNIK, MANAGERIAL JUDGES 5 (1982); William B. Rubenstein, *A Transactional Model of Adjudication*, 89 GEO. L.J. 366, 371-72 (2000-2001) and Tobias B. Wolff, *Managerial Judging and Substantive Law*, 90 WASH. U. L. REV. 1027, 1030 (2013). For examples of judicial participation in working groups and civil justice reform projects, see Coulter A. Osborne, *Civil Justice Reform Project, Summary of Findings and Recommendations*, ONTARIO MINISTRY ATT’Y GEN. (Nov. 2007), [www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/); see also LAW COMMISSION OF ONTARIO, REVIEW OF THE FORESTRY WORKERS LIEN FOR WAGES ACT FINAL REPORT, at iii (2013).

50. Resnik et al., *Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere*, in LAW, CULTURE AND VISUAL STUDIES 515, 522-23 (A. Wagner & R.K. Sherwin eds., 2014). See generally STEPHEN G. BREYER, FORWARD TO CELEBRATING THE COURTHOUSE: A GUIDE FOR ARCHITECTS, THEIR CLIENTS, AND THE PUBLIC 9 (Steven Flanders ed., 2006).

51. Lon L. Fuller, *Consideration and Form*, 41 COLUM. L. REV. 799, 801 (1941) (describing “one of the most important functions of form”—the “channeling function,” whereby form, the “legal framework into which the party may fit his actions . . . channels for the legally effective expression of intention.”); Wolff, supra note 49, at 1027-28 (2013) (admonishing scholars for ignoring “the dynamic nature of the relationship that frequently exists between the mechanisms of litigation and the underlying substantive law”; moreover, arguing that procedural norms “interface with controlling liability and

disputing” judicial activities (e.g., not all of what judges do is resolve disputes)<sup>52</sup> have a facilitative impact on case-work and decision-making,<sup>53</sup> changing the nature of disputing from the ground up.<sup>54</sup> These activities also situate judges in highly political debates,<sup>55</sup> even while remaining significantly understudied.

This Article provides one example of judicial “law-making” activity (broadly defined) that cannot be found by reading decisions. The Article is part of a larger project examining multiple instances where judges participate in law reform and legal change in addition to or outside of their regular case-work. Both the larger project and this Article ask descriptive questions: what do judges—high *and* lower court judges—do? What do judges do when they are not sitting at trial or writing decisions? How does this work relate to court reform and legal change? This section begins to work through some of these questions, arguing that the evaluation of whether a particular activity is appropriately deemed a judicial function should be made according to the activity’s relationship to courts and state-centered dispute processing, rather than whether the activity relates to a particular trial or takes place in the courtroom. This understanding of

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regulatory policies in defining the parameters of litigation”); see also JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* (1949); Jerome Frank, *What Courts Do in Fact, Part One*, 26 ILL. L. REV. 645, 650 (1931-1932) (discussing the effect of the adversarial system on the production of facts in the courtroom); Susan S. Silbey, *After Legal Consciousness*, 1 ANNU. REV. L. & SOC. SCI. 323, 333 n.4 (2005) (“By collapsing the distance between the words to legal fact, we emphasize the procedures of law that are the grounds for constructing facts, that is, legal facts. In other words, jurisprudence recognizes at its core that its truths are created only through its particular procedures.”).

52. I have coined this term as a kind of inverse of Legal Pluralism’s exploration of the everyday life of the law. Where legal pluralism examines what has been called “extra-judicial dispute resolution” (not all of what is law takes place in state-centered institutions), this research explores “extra-disputing judicial activity” (not all of what judges do is resolve disputes). See also Carli N. Conklin, *Transformed, Not Transcended: The Role of Extrajudicial Dispute Resolution in Antebellum Kentucky and New Jersey*, 48 AM. J. LEGAL HIST. 39, 39 (2006). See generally David M. Engel, *Legal Pluralism in an American Community: Perspectives on a Civil Trial Court*, 5 AM. B. FOUND. RES. J. 425, 432 (1980); Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC’Y REV. 869, 881, 885 (1988) (referring to alternative normative orders, “nonjudicial forms of dispute resolution,” and “extralegal mechanisms for dispute resolution”).

53. AUSTIN SARAT, LAWRENCE DOUGLAS & MARTHA MERRILL UMPHREY, *THE PLACE OF LAW* 7 (2003); Susan Silbey & Austin Sarat, *Critical Traditions in Law and Society Research*, 21 L. SOC. REV. 165, 165-74 (1987) (examining law’s role in constituting social relations).

54. Mark C. Suchman & Elizabeth Mertz, *Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism*, 6 ANN. REV. L. SOC. SCI. 555, 561 (2010) (Contrasting the “ground-level up perspective” in the new legal realism (“NLR”) movement, which “draws attention to the effect of law on the everyday lives of ordinary people,” instead of only focusing on, for example, formal legal rules). See generally Sally Engle Merry, *Anthropology and International Law*, 35 ANN. REV. ANTHROPOLOGY 99, 108, 111 (2006) (Advocating for a research agenda that includes “studying up”—that is, one that examines transnational organizations “to see how they create rules and impose pressure to support them” and which considers the individuals, issues, practices, and meanings “that constitute international law as a social process”); Silbey, *supra* note 51, at 334.

55. See, e.g., Dodek, *supra* note 38.

judicial function corresponds more closely to contemporary judiciaries' work and sensibilities.

Some recent scholarship explores judicial activities that go beyond deciding cases.<sup>56</sup> For example, Bryant Garth acknowledges the "judicial entrepreneurs of case management" in U.S. federal courts who innovated to bring new procedures to manage their dockets and bring cases to a close.<sup>57</sup> He even writes that "the most famous judges became not the authors of great opinions but rather the leaders of new devices for resolving dispute—early neutral evaluations, court-annexed arbitrations and mediations, summary jury trials, mini-trials, and the like."<sup>58</sup>

Most legal scholars, however, take a narrow view of judicial service or duties. For example, Garoupa and Ginsburg describe a spectrum of "non-judicial functions" which, for them, ranges from "serving on law commissions, playing management roles, serving as public intellectuals, and even serving as interim executives," such as interim Prime Minister or acting President.<sup>59</sup> While recognizing that "the distinction between a judicial and a nonjudicial function is in itself complicated and convoluted,"<sup>60</sup> Garoupa and Ginsburg define the judicial function simply as "activity exercised by a judge inside the courtroom."<sup>61</sup> The judicial function is to make decisions at trial. Similarly, Adam Dodek, whose concern centers around judges acting as heads of public inquires and governmental commissions,<sup>62</sup> also defines the judicial function narrowly: "Simply put, judges interpret and apply the law to specific situations; they adjudicate; they decide dis-

56. See, e.g., Nuno Garoupa & Tom Ginsburg, *Judicial Roles in Nonjudicial Functions*, 12 WASH. U. GLOBAL STUD. L. REV. 755 (2013). See generally Wolff, *supra* note 49 (reviewing examples of federal court judicial innovation in implementing "managerial litigation policies" to manage non-class mass aggregate litigation).

57. Bryant Garth, *Observations on an Uncomfortable Relationship: Civil Procedure and Empirical Research*, 49 ALA. L. REV. 103, 127-28 (1997-1998); see also JUDITH RESNIK, *MANAGERIAL JUDGES* (1982); Wolff, *supra* note 49.

58. Garth, *supra* note 57, at 126.

59. Garoupa & Ginsburg, *supra* note 56, at 756.

60. *Id.*

61. *Id.* at 758; see also Karen Alter, *The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review*, in *INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 345, 345* (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013) (in her review of international courts and tribunals, Alter breaks down the courtroom function into four roles: enforcing state compliance with the relevant law, reviewing administrative decisions, reviewing the constitutionality of legislative and government actions, and settling disputes, "perhaps the broadest judicial role").

62. Other similarly troublesome roles might include acting on commissions to set electoral boundaries and administer elections, or acting as chairs of tribunals or Royal Commissions. See Monahan & Shaw, *supra* note 38, at 437 ("extra-judicial service" includes inquires, special prosecutors, electoral boundaries commissions, advisory councils to the Order of Canada, and other federally constituted tribunals such as Pensions Appeals board); Jeffrey M. Shaman, *Judges and Non-judicial Functions in the United States*, in *JUDICIARIES IN COMPARATIVE PERSPECTIVE 512, 514-26* (H. P. Lee ed., 2011) (examples of extra judicial services in the U.S. include appointment to government commissions such as an Electoral Commission in 1876, the Warren commission investigating the death of Kennedy, the Sentencing Commission, appearance at public hearings, teaching and writing, "associational activities," and charitable activities).

putes.”<sup>63</sup> The judge’s “primary task” is to decide cases.<sup>64</sup>

But these scholars must be in error. Judges engage in activity outside the courtroom, which, even under their limited definition of the judicial function, Garoupa and Ginsburg would be hard pressed to exclude. A great deal of *case-related* activity—activity required to complete the work that goes on inside the courtroom—nevertheless happens *outside* of the courtroom. Judges review briefs, pleadings, factum in their chambers; they meet with parties in settlement conference rooms; appellate court judges meet outside of the courtroom to discuss findings;<sup>65</sup> judges discuss materials and may request additional research from law clerks; and, most obviously, judges compose written decisions outside of the courtroom.<sup>66</sup>

Moreover, while codes of conduct and constitutive legislation require judges to devote themselves exclusively to their judicial duties,<sup>67</sup> these

63. Dodek, *supra* note 38, at 302.

64. Monahan & Shaw, *supra* note 38, at 428 (“In a 1985 speech to the Canadian Bar Association, Chief Justice Dickson emphasised the importance of an independent and impartial judiciary . . . . For Dickson, the rule of law required not only that the judiciary should be the exclusive arbiter of disputes, but that the judges should ‘not depart from their proper function of law interpretation and application’ and their ‘primary task of deciding cases and dispensing justice’. . . . Recent experience has demonstrated that Dickson’s advice has not always been followed. Canadian governments at both the federal and provincial levels have increasingly looked to sitting judges to occupy non-judicial roles.”). By way of corollary, these scholars’ domain of non-judicial functions is quite expansive. Garoupa & Ginsberg, *supra* note 56, at 758 (defining “nonjudicial functions” as “an activity exercised by a judge outside of the courtroom”); see also LEE EPSTEIN, WILLIAM M. LANDES & RICHARD A. POSNER, *THE BEHAVIOR OF FEDERAL JUDGES: A THEORETICAL AND EMPIRICAL STUDY OF RATIONAL CHOICE* 37 (2013) (extrajudicial activities include writing autobiographies and going on book tours, participating in mock trials and ethnic pride activities, and speech giving: “Even as dignified and reserved a Justice as Ruth Bader Ginsburg consented to preside, wearing a Civil War uniform, at a mock public court-martial of General Custer for losing the Battle of the Little Big Horn.”).

65. See, e.g., SEGAL & SPAETH (2002), *supra* note 37 (discussing the judicial conference process in the U.S. Supreme Court, which on occasion included Justice Stevens calling in his vote from his winter home in Florida).

66. GERALDINE PHILLET, FACILITY PROGRAM, THUNDER BAY CONSOLIDATED COURTHOUSE 37 (2007) (prepared for the Ontario Ministry of the Attorney General) (on file with author) (reviewing the types of case-related activity that take place inside the judge’s chamber for the purposes of the construction of a new courthouse). The planning consultant identified the following activities: “preparation of judgements[sic] and documents, review of transcripts, legal research with or without computers, and reading and quiet reflection.” *Id.* In addition, judges hold “meetings and confidential discussions with other judges, counsel[,] and/or court personnel” in their chambers. *Id.*

67. For example, the American Bar Association’s suggested Model Code of Judicial Conduct Canon 3 states that, “A judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.” MODEL CODE OF JUD. CONDUCT Canon 3 (AM. BAR ASS’N 2010). The Judges Act of Canada, Section 55 states, “No judge shall, either directly or indirectly, for himself or herself or others, engage in any occupation or business other than his or her judicial duties, but every judge shall devote himself or herself exclusively to those judicial duties.” Judges Act, R.S.C. 1985, c. J-1, s. 55 (Can.). Similarly, the Basic Law of Israel, Judiciary (1984) states that: “11. A judge shall not engage in an additional occupation, and shall not carry out any public function save with the consent of the President of the Supreme Court and the Minister of Justice.” Basic Law: The Judiciary, 5744-1984, art. 11 (Isr.).

codes allow judges to engage in activities “that are consistent with the obligations of judicial office.”<sup>68</sup> Regulatory legislation contemplates an analytic difference between activities that benefit judges and the administration of justice, as opposed to activities outside that realm. For example, the Canadian Judicial Council calls on judges to “be diligent in the performance of their judicial duties,” specifically advising that “Judges should devote their professional activity to judicial duties broadly defined, which include not only presiding in court and making decisions, but other judicial tasks essential to the court’s operation.”<sup>69</sup>

As scholars of legal pluralism and legal consciousness discovered, not all law-making and legal regulation happens in the courtroom. Multiple normative orders regulate behavior,<sup>70</sup> and the boundaries between state and non-state regulatory practices—rules “about rights and obligations” that emanate from “the field of action itself”<sup>71</sup>—can be easily blurred. “Legality” is part of an ongoing process of social action that often takes place outside of the normal or conventional places where we expect law to be produced.<sup>72</sup> In a similar way, a good part of the work for judicial administration and court reform happens outside of the courtroom, behind the scenes in meetings, through reports or commissions, outside of the “normal” places where we expect judges to do their work.<sup>73</sup>

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68. U.S. Code of Conduct, Canon 4, which applies to all federal court judges, states: “A judge may engage in extrajudicial activities that are consistent with the obligations of judicial office.” CODE OF CONDUCT FOR U.S. JUDGES Canon 4 (JUD. CONF. 1973). This includes serving as an officer or director of “a nonprofit organization devoted to the law, the legal system or the administration of justice.” *Id.*

69. CANADIAN JUDICIAL COUNCIL, ETHICAL PRINCIPLES FOR JUDGES 17, 19, 22 (2004), [https://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](https://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf) (“It is useful to consider the subject of judicial diligence under three headings: Adjudicative Duties, Administrative and Other Out of Court Duties, and Contributions to the Administration of Justice Generally”; furthermore, “Judges are uniquely placed to make a variety of contributions to the administration of justice. Judges, to the extent that time permits and subject to the limitations imposed by judicial office, may contribute to the administration of justice . . .”).

70. Paul Schiff Berman, *From Legal Pluralism to Global Legal Pluralism*, in *LAW, SOCIETY AND COMMUNITY: SOCIO-LEGAL ESSAYS IN HONOUR OF ROGER COTTERRELL* 255, 255 (Richard Nobles & David Schiff eds., 2014); Ralf Michaels, *Global Legal Pluralism*, 5 ANN. REV. L. SOC. SCI. 243, 245 (2009). See generally Roderick A. Macdonald, *Recognizing and Legitimizing Aboriginal Justice: Implications for a Reconstruction of Non-Aboriginal Legal Systems in Canada in Royal Commission on Aboriginal Peoples*, in *ABORIGINAL PEOPLES AND THE JUSTICE SYSTEM: REPORT OF THE NATIONAL ROUND TABLE ON ABORIGINAL JUSTICE ISSUES* 232 (1993).

71. Sally Falk Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, 7 L. & SOC. REV. 719, 728 (1973).

72. Silbey, *supra* note 51, at 327–28 (2005); see Lawrence M. Friedman, *Coming of Age: Law and Society Enters an Exclusive Club*, 1 ANN. REV. L. & SOC. SCI. 1, 1–2 (2005).

73. RICHARD A. POSNER, *HOW JUDGES THINK* 37 (2010) (arguing that “the judge as labor-market participant” impacts on the way judges decide cases).



**Figure 1. Judicial and Non-Judicial Functions Revisited**

Institutional Type of Activity	Court Related / Judicial Functions	Not Related to Court / Non-judicial Functions
Adjudicative	Decisions, hearings, motions	Public inquiries, special prosecutors, arbitration
Non Adjudicative	“Extra-disputing” judicial activities	Public speaking, academic writing, attending conferences

Instead of focusing on location (the courtroom) as the analytic divide, scholars should inquire into both (i) subject matters that are related to the court as a workplace<sup>74</sup> or institution and (ii) adjudicative (decision-making on disputes) versus non-adjudicative activities (see Figure 1 above). Judicial functions would thus include “working with colleagues and staff” on matters related to hearing and deciding cases, even if those activities happen outside of the courtroom and do not involve adjudication.<sup>75</sup> Judicial innovations in court procedures to design “problem-solving courts” would be part of the judicial function,<sup>76</sup> as would judicial development of case-management systems and procedures for multi-jurisdictional cases,<sup>77</sup> judicial participation in working groups,<sup>78</sup> civil justice reform projects,<sup>79</sup> and judicial research centers.<sup>80</sup> Serving as the director of a judicial training institute, as well as working as an educator, both domestically and abroad,

74. See generally EPSTEIN, LANDES & POSNER, *supra* note 64; POSNER, *supra* note 73.

75. EPSTEIN, LANDES & POSNER, *supra* note 64.

76. BERMAN ET AL., *supra* note 49; see also JUDGING IN A THERAPEUTIC KEY, *supra* note 49.

77. See generally William W Schwarzer, Alan Hirsch & Edward Sussman, *Judicial Federalism: A Proposal to Amend the Multidistrict Litigation Statute to Permit Discovery Coordination of Large-Scale Litigation Pending in State and Federal Courts*, 73 TEX. L. REV. 1529 (1994).

78. Judges have sat as members of the Juries Review Implementation Committee, which is currently working to implement the recommendations of former Supreme Court Justice Frank Iacobucci to include better representation on Aboriginal jurors on panels. Ontario Ministry of the Attorney General, *First National Representation on Ontario Juries*, ONTARIO MINISTRY ATT’Y GEN., [http://www.attorneygeneral.jus.gov.on.ca/english/juries\\_implementation\\_committee.asp](http://www.attorneygeneral.jus.gov.on.ca/english/juries_implementation_committee.asp) (last visited Jan. 3, 2017). Judges also participated in a joint Ontario Court of Justice and Ministry of the Attorney General Working Group on Fly-In Court Operations. See ONTARIO COURT OF JUSTICE AND MINISTRY OF THE ATTORNEY GENERAL JOINT FLY-IN COURT WORKING GROUP, REPORT ON FLY-IN COURT OPERATIONS (2013), <http://www.ontariocourts.ca/ocj/files/reports/fly-in.pdf>.

79. See, e.g., Osborne, *supra* note 49.

80. Interview with Staff (Attorney), *supra* note 2; see also Barbara Rothstein & Ivor Archie, *Judiciary-Based Applied Research Centres: Enhancing the Administration of Justice While Strengthening Judicial Independence and Improving Judicial Training*, 2 J. INT’L ORG. JUD. TRAINING 20 (2014); Yigal Mersel & Keren Weinshall-Margel, *Establishing a Judiciary-Based Research Centre: The Israeli Experience*, 2 J. INT’L ORG. JUD. TRAINING 35 (2014).

would also properly be part of the judicial function.<sup>81</sup>

Why does it matter? Why should we care about whether particular activities are part of the judicial function? As a general matter, if legal scholars care about judicial law-making and judicialization of politics, then they ought to investigate the various sites where this occurs. These other sites of lawmaking and politics may be more “normatively laden” and contentious than the lack of treatment would suggest.<sup>82</sup> On the other hand, judges may be particularly well suited for these judicial administration or law reform projects and so their involvement complicates current acceptable views about judging and legal reform. Either way, ignoring procedural and administrative interventions most certainly means that a particular kind of judicial foray into legal change escapes review.

In addition, if we expand the domain of inquiry, we see that judicialization of politics is not merely a matter of inserting ideas or ideology into casework. Scholarship on judicial discretion in decision-making focuses on partisanship, judicial connection to party politics, and the ways this plays out in decision-making or voting on judicial panels.<sup>83</sup> However, once we think of the judicial function in a more inclusive way—one that resonates with judges themselves—we can see how the “problem” of politics in law is “much more interesting, variegated, uncertain, complicated, far reaching, heterogeneous, risky, historical, local, material[,]” and relational than the literature presents.<sup>84</sup>

## II. Common Beliefs About Judges in the International Domain

### A. Judicial Education and the Rule of Law

This Part outlines the common beliefs about judges in the international domain, specifically, regarding (1) the connection between judicial education, judicial independence, and the rule of law, and (2) the development of a global judicial dialogue between judges of different states. As much as possible, I limit the discussion to domestic state court and high court judges, excluding for now a review of literature about judges serving on international courts and tribunals. This Part describes these accounts, and the subsequent Parts (Parts III and IV) review the narrative from the perspective of the judiciary.

The IOJT states that its mission is “[t]o promote the rule of law by

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81. The Canadian Judicial Council recognizes contributions that judges make “to the administration of justice,” including “for example, taking part in continuing legal education programs for lawyers and judges and in activities to make the law and the legal process more understandable and accessible to the public.” CANADIAN JUDICIAL COUNCIL, *supra* note 69, at 22.

82. ANNELISE RILES, *COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS* 27 (2011).

83. See generally Gregory C. Sisk & Michael Heise, *Judges and Ideology: Public and Academic Debates About Statistical Measures*, 99 NW. U. L. REV. 743, 744 (2005).

84. Bruno Latour, *From Realpolitik to Dingpolitik—or How to Make Things Public*, in *MAKING THINGS PUBLIC: ATMOSPHERES OF DEMOCRACY* 14, 23 (B. Latour & P. Weibel eds., 2005).

supporting the work of judicial education institutions around the world.”<sup>85</sup> This mission statement echoes a current phenomenon placing judges and judicial education at the center of the rule of law, democracy, and law and development programs.<sup>86</sup> Judicial education and the rule of law have become rallying cries among development experts, civil society, and international organizations.<sup>87</sup>

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85. *About Us*, INT’L ORG. FOR JUD. TRAINING, <http://www.iojt.org/page-aboutus.html> (last visited Jan. 3, 2017) [hereinafter *IOJT About Us*].

86. Ronald J. Daniels & Michael Trebilcock, *The Political Economy of Rule of Law Reform in Developing Countries*, 26 MICH. J. INT’L L. 99, 102, 110 (2004–2005) (“Over the past decade or so, the judiciary has been the focal point of rule of law reforms in the developing world. This attention derives from the central role that an independent, effective, and non-corrupt judiciary plays in the promotion of the rule of law in society.”); Miller & Armytage (2008), *supra* note 35, at 141 (“Over the past 15 years, in particular, there has been a massive increase in overseas development assistance (ODA) in legal and judicial reform. This marks a general shift in foreign aid strategy into governance and democratisation, sometimes described as the ‘rule of law revival’ . . . . Judicial and legal reform is now recognised as foundational in all governance and economic development strategies . . . .”); John K.M. Ohnesorge, *The Rule of Law*, 3 ANN. REV. L. & SOC. SCI. 99, 100, 109 (2007) [hereinafter Ohnesorge, *The Rule of Law*] (describing a “resurrection of the Rule of Law in American legal discourse during the 1990s,” and “an association of judicialization with the Rule of Law . . . [which] assumes that judges are more law-bound (less political) in their decision making than are actors in the other branches, and thus a country more ruled by judges is more ruled by law (and less by politics)”). See generally Tom Ginsburg, *Courts and New Democracies: Recent Works*, 37 L. & SOC. INQUIRY 720, 720 (2010) (“The past generation has seen two great trends in much of the developing world: democratization and judicialization.”); Siri Gloppen, Roberto Gargarella & Elin Skaar, *Introduction: The Accountability Function of the Courts in New Democracies*, in DEMOCRATIZATION AND THE JUDICIARY: THE ACCOUNTABILITY FUNCTION OF COURTS IN NEW DEMOCRACIES 1, 1 (Siri Gloppen, Roberto Gargarella & Elin Skaar eds., 2003); Kerry Rittich, *The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social*, 26 MICH. J. INT’L L. 199, 217 (2004–2005) (“[T]here has been an astonishing proliferation of judicial reform projects in recent years . . . . Judicial reforms encompass alterations to judicial institutions and training, as well as an enhanced focus on process, procedure, and access to justice.”).

87. YVES DEZALAY & BRYANT G. GARTH, *GLOBAL PRESCRIPTIONS: THE PRODUCTION, EXPORTATION, AND IMPORTATION OF A NEW LEGAL ORTHODOXY* 5 (2002); Daniels & Trebilcock, *supra* note 86, at 110–11; see Deval Desai & Michael Woolcock, *Experimental Justice Reform: Lessons from the World Bank and Beyond*, 11 ANN. REV. L. & SOC. SCI. 155, 156 (2015) (“There has been recognition, founded or otherwise, since ancient times that countries possessing effective justice systems and what we now call the rule of law were likely to be more prosperous than those that did not); Stephan Haggard, Andrew MacIntyre & Lydia Tiede, *The Rule of Law and Economic Development*, 11 ANN. REV. POLIT. SCI. 205, 215 (2008). Strong judicial systems guarantee a stable mechanism for resolving commercial disputes in countries seeking foreign direct investment. Footnote 6 explains the rationale:

A lack of resources has a myriad of consequences. Courts face overwhelming caseloads, which lead to delays and distortions in the processing of cases. These weaknesses in turn have a deterrent effect on the use of the courts. A lack of resources also threatens the integrity of courts, independently of the issue of outright corruption. Without resources, courts cannot provide poor and unsophisticated individuals with information about the court system or legal assistance; access is correspondingly limited and judicial outcomes will favor wealthy and savvy insiders over other claimants. Resource scarcity also has an effect on corruption, as underpaid judges and legal staff turn to bribery and extortion to supplement their incomes.

International financial institutions (“IFIs”) and civil society organizations (“CSOs”)—such as the World Bank, the American Bar Association, the International Association of Women Judges, and the National Center for State Courts (United States)—quasi-governmental institutions such as Justice Coopération Internationale (France), the Federal Judicial Affairs (Canada), or international organizations such as the Council of Europe, all administer education programs for judges to support development or the rule of law.<sup>88</sup>

Development practitioners assert that an educated judiciary will be efficient, independent, and accountable, and will have the necessary skills to support the development of democratic institutions<sup>89</sup> and encourage trade and investment.<sup>90</sup> For example, the World Bank maintains that a well-trained judiciary forms part of the mandate to reduce poverty “since a capable and accountable state creates opportunities for poor people, provides better services[,] and improves development outcomes.”<sup>91</sup> One organization’s promotional material describing its motivations for a program in Lebanon between 2005 and 2014 links judicial education with “capacity building”:

[F]or actors attached to the Ministry of Justice to adopt the principle of training would lead to a less expensive, faster, more reliable[,] and professional judicial system, given the number of judges and other justice professionals who will be trained, the reduced average time of litigations[,] and the simplification of procedures. The objectives of access to justice for citizens and judicial efficiency would then be achieved.<sup>92</sup>

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Haggard, MacIntyre & Tiede, *supra* note 87, at 215 n.6 (citations omitted). See generally John K.M. Ohnesorge, *On Rule of Law Rhetoric, Economic Development, and Northeast Asia*, 25 WIS. INT’L L.J. 301, 305 (2007) [hereinafter Ohnesorge, *Rule of Law Rhetoric*] (describing the rise of “rule of law rhetoric” by international financial institutions in the 1990s because of “[t]he ‘discovery’ that legal systems matter for economic performance”).

88. See, e.g., JUSTICE COOPÉRATION INTERNATIONALE, SUPPORT TO THE PROFESSIONALIZATION OF JUDICIAL ACTORS AND CAPACITY BUILDING OF THE JUDICIARY (2015), [http://www.gip-jci-justice.fr/wp-content/uploads/2015/01/JCI\\_Intervention\\_LJDW.pdf](http://www.gip-jci-justice.fr/wp-content/uploads/2015/01/JCI_Intervention_LJDW.pdf); WORLD BANK, INITIATIVES IN LEGAL AND JUDICIAL REFORM (2002), <http://documents.worldbank.org/curated/en/139831468778813637/pdf/250820040Edition.pdf>; 13th Biennial International Conference: Women Judges and the Rule of Law, INT’L ASS’N WOMEN JUDGES, <http://www.iawj.org/WashingtonDCConferenceMainpage.html> (last visited Jan. 3, 2017); ABA Rule of Law Initiative, AM. BAR ASS’N, [https://www.americanbar.org/advocacy/rule\\_of\\_law.html](https://www.americanbar.org/advocacy/rule_of_law.html) (last visited Sept. 11, 2016); COUNCIL EUR., <http://www.coe.int/en/> (last visited Jan. 3, 2017); AJA Offers Online Domestic Violence Education Tool, NAT’L CENT. FOR STATE CTS., <http://www.ncsc.org/Education-and-Careers/DV-Education-for-Judges.aspx> (last visited Jan. 3, 2017); *Judges Language Training*, OFF. COMM. FOR FED. JUD. AFF. CAN., <http://www.fja-cmf.gc.ca/training-formation/index-eng.html> (last visited Sept. 11, 2016).

89. Miller & Armytage (2008), *supra* note 35, at 141.

90. See Haggard, MacIntyre & Tiede, *supra* note 87, at 206, 221; Ohnesorge, *Rule of Law Rhetoric*, *supra* note 87, at 305.

91. LEGAL VICE PRESIDENCY OF THE WORLD BANK, THE WORLD BANK: NEW DIRECTIONS IN JUSTICE REFORM 1 (2012), <http://documents.worldbank.org/curated/en/928641468338516754/pdf/706400REPLACEM0Justice0Reform0Final.pdf>.

92. JUSTICE COOPÉRATION INTERNATIONALE, *supra* note 88; see also LINN A. HAMMERGREN, JUSTICE REFORM AND DEVELOPMENT 108 (2014) (“donor programs continue to incor-

Commonly, the view of international judicial education is driven by the experience of IFIs and CSOs.<sup>93</sup> From their perspectives, the history of the growth of judicial education would be told as follows: after the failure of World Bank and International Monetary Fund conditionality programs in the 1990s, IFIs and U.S. aid organizations recognized the importance of institution building as the path to development.<sup>94</sup> Stable and efficient legal institutions that support property rights and the rule of law were identified as the institutional foundation for foreign direct investment and a functioning market economy.<sup>95</sup> The judiciary was then called upon to create and enable development.<sup>96</sup> The World Bank looked to judicial institutions to secure the foundations for a stable state that would foster “private sector growth” by “ensuring compliance of private sector actors and citizens with legal and regulatory frameworks.”<sup>97</sup>

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porate activities aimed at improving the quality of work performed by judges . . . . Moreover training programs are relatively easy to set up, can be adapted to any budget, and usually find an excess of local and international experts and organizations eager to provide services.”)

93. See, e.g., WORLD BANK, INITIATIVES IN LEGAL AND JUDICIAL REFORM, *supra* note 88 (describing the World Bank’s projects on judicial reform, including judicial training in Zambia, Venezuela, the West Bank and Gaza, Argentina, Lebanon, etc.).

94. Adrian Di Giovanni, Int’l Dev. Research Ctr., Courts and the Science of Delivery in Latin America, Opening Remarks at The World Bank Law Justice and Development Week 2013 (Nov. 19, 2013). See generally WORLD BANK, INITIATIVES IN LEGAL AND JUDICIAL REFORM, *supra* note 88; Ritu Birla, *The Rule of Law and Economic Development Global Scripts, Vernacular Translations*, in THE HANDBOOK OF LAW AND SOCIETY 399, 405 (Austin Sarat & Patricia Ewick eds., 2015); Daniels & Trebilcock, *supra* note 86, at 102, 110 (“It now appears to be regarded as a truism that the ‘rule of law’ is causally connected to economic development.”); David Kennedy, *The “Rule of Law,” Political Choices, and Development Common Sense*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 95, 150–59 (David M. Trubek & Alvaro Santos eds., 2006); Ohnesorge, *The Rule of Law*, *supra* note 86.

95. David M. Trubek & Alvaro Santos, *Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 1, 6 (David M. Trubek & Alvaro Santos eds., 2006) (“Second Moment legal reforms were designed to strengthen the rights of property and ensure that contracts would be enforceable. Emphasis was placed on the role of the judiciary both as a way to restrain the state and to facilitate markets. It was thought that an independent judiciary using formalistic methods would provide fidelity to the law and predictability. The model was thought to be universal: markets were markets, and the same legal foundations would be needed and could operate anywhere.”); Daniels & Trebilcock, *supra* note 86, at 110.

96. Trubek & Santos, *supra* note 95, at 6.

97. LEGAL VICE PRESIDENCY OF THE WORLD BANK, *supra* note 91, at 9. In describing the prevailing consensus about development after 1995, David Kennedy writes:

The most important and visible institutional object of attention has been the judiciary. Judges and reliable courts seem like good ideas for lots of reasons: to enforce private arrangements, support criminal prosecution, fight administrative corruption, and review government actions for their respect of human rights, including the right to property. Moreover, many development professionals became convinced that the reputation of national judges was an important element in the investment decisions of foreign investors. It is not clear that foreign investors in fact use courts at home that often – that they expect to when investing abroad . . . . Nevertheless, for a period at the turn of the century, having a “reformed” judiciary with powers of judicial review became a sign for national willingness to respect investors’ rights and allow profit repatriation.

An independent judiciary also became central in supporting emerging democracies<sup>98</sup> and other social policy objectives.<sup>99</sup> Judges, in strengthening human rights and the rule of law, were seen as vehicles to support an expanded view of development that included socio-political and ethical dimensions.<sup>100</sup> Since courts in their role as intermediaries oversee and monitor the state and protect citizens, an independent judiciary would help ensure the government's accountability.<sup>101</sup>

As a result of this emphasis on an independent judiciary as an instrument in economic and democratic development, a well-trained judiciary formed specific and key elements of rule of law and law and development programs.<sup>102</sup> Education became a central part of judicial reform programs as "judicial education and professional training" became linked to "the effectiveness of judiciaries and of individual judges in many countries throughout the world."<sup>103</sup> Judicial education and training—arming judges

Kennedy, *supra* note 94, at 159.

98. See DEZALAY & GARTH, *GLOBAL PRESCRIPTIONS*, *supra* note 87, at 5; Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, 43 AM. J. COMP. L. 93, 113 (1995); Terence C. Halliday, *Architects of the State: International Financial Institutions and the Reconstruction of States in East Asia*, 37 L. SOC. INQUIRY 265, 282 (2012); Pip Nicholson & Simon Pitt, *Official Discourses and Court-oriented Legal Reform in Vietnam*, in *LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSES OF LEGAL TRANSFERS* 202, 203 (John Gillespie & Pip Nicholson eds., 2012); Ohnesorge, *The Rule of Law*, *supra* note 86, at 100; Laure-Hélène Piron, *Time to Learn, Time to Act in Africa*, in *PROMOTING THE RULE OF LAW ABROAD* 275, 277 (Thomas Carothers ed., 2006).

99. Dodek, *supra* note 38, at 299; Daniel M. Brinks & Varun Gauri, *The Law's Majestic Equality?: the Distributive Impact of Litigating Social and Economic Rights*, 3 World Bank Development Research Group WPS5999 (March 2012). See generally *COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD* (Varun Gauri & Daniel M. Brinks eds., 2008).

100. Trubek & Santos, *supra* note 95, at 9 (explaining that "[n]ow judges not only have to protect property rights and be sure contracts are enforced; they also have to be sure they interpret regulatory law correctly, protect a wider range of human rights, and contribute to poverty reduction."). See generally Ohnesorge, *The Rule of Law*, *supra* note 86, at 106 (stating that "[d]emocracy, justice, human rights, and clean government are now layered on top of thin Rule of Law attributes such as clarity and predictability, the enforcement of property and contract rights, and the control of bureaucratic discretion"); Amartya Sen, *How Does Culture Matter?*, in *CULTURE AND PUBLIC ACTION* 37, 37-58 (Vijayendra Rao & Michael Walton eds., 2004).

101. See, e.g., NATIONAL ASSOCIATION OF STATE JUDICIAL EDUCATORS, *PRINCIPLES AND STANDARDS OF JUDICIAL BRANCH EDUCATION I*, <http://nasje.org/resources/principles.pdf> (stating that "[c]ourts have a critical role in free societies to ensure that the rule of man does not overtake the rule of law").

102. Thomas Carothers, *Rule of law Temptations*, in *GLOBAL PERSPECTIVES ON THE RULE OF LAW* 18, 25 (James J. Heckman, Robert L. Nelson & Lee Cabatingan eds., 2009); *Judicial Reform*, AM. BAR ASS'N, [http://www.americanbar.org/advocacy/rule\\_of\\_law/thematic\\_areas/judicial\\_reform.html](http://www.americanbar.org/advocacy/rule_of_law/thematic_areas/judicial_reform.html) (last visited Jan. 3, 2017) (describing how the American Bar Association established rule of law programs such as the Central European and Eurasian Law Initiative (CEELI) in 1990 after the fall of the Berlin Wall to train judges in case-management systems, court administration, or anti-corruption measures).

103. Carothers, *supra* note 102; see also CHERYL THOMAS, *REVIEW OF JUDICIAL TRAINING AND EDUCATION IN OTHER JURISDICTIONS* 13 (2006) (explaining that "[a]t the most fundamental level, other jurisdictions view judicial education and training as an essential element of judicial independence, as it helps to ensure the competency of the judiciary. The quality of the judiciary is an essential component in achieving access to justice, and a key element in maintaining the high quality of the judiciary is judicial education.").

with the technical, legal, and practical skills they need to ensure a well-functioning court—became the focus to ensuring public trust and confidence in the justice system, as well as engendering the rule of law, democracy, and development.<sup>104</sup>

## B. International Relations and the Global Judicial Dialogue

A second narrative on the transnational interactions of judges relates to the development of a *global judicial dialogue*.<sup>105</sup> International relations scholars have looked to judges' meetings as evidence of the existence of a global judicial community, through which the international dissemination of ideas takes place.<sup>106</sup> Following Anne-Marie Slaughter who coined the term "A Global Community of Courts,"<sup>107</sup> others have found a Global Judicial Dialogue,<sup>108</sup> Judicial Internationalization,<sup>109</sup> or the Judicialization of International Relations.<sup>110</sup> Scholars have suggested the presence of a global or transnational judicial dialogue, and looked for a common judicial enterprise that transcends states and unites judges.<sup>111</sup> For example, the research institute Hague Institute for the Internationalization of Law ("Hiil") declares that "Judicial Internationalization is *happening*."<sup>112</sup> Contemporary judges are part of an internationalizing world, which includes an "incremental process whereby judges cite the decisions of their foreign

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104. There is an abundance of examples tying judicial education with judicial independence and the rule of law. For example, consider LIVINGSTON ARMYTAGE, *EDUCATING JUDGES: TOWARDS A NEW MODEL OF CONTINUING JUDICIAL LEARNING* 30 (1996) [hereinafter ARMYTAGE, *EDUCATING JUDGES*] which quotes a passage from Li PM's 1976 essay, *Keeping Judges Awake to Contemporary Needs*, where PM stated that "[t]he American judiciary, in addressing the long-pressing needs of the state courts, has come to realize that judicial education is one of the most effective, and perhaps an indispensable, means of enhancing the fair and efficient administration of justice." Li PM, *Keeping Judges Awake to Contemporary Needs*, 15 *JUDGE'S J.* 78, 78 (1976); see, e.g., Livingston Armytage, *Judicial Education as an Agent of Leadership and Change* (Nov. 2013) (unpublished paper for the 6th International IOJT Conference), <http://www.iojt-dc2013.org/-/media/Microsites/Files/IOJT/11042013-Leadership-for-Judicial-Educators-other.ashx> (explaining how as "in the examples of Cambodia, Palestine, and Haiti, judicial education plays a significant role in social governance through the promotion of rule of law: free and fair trial, the consolidation of judicial identity and independence, and the preservation of human rights."); *Organizational Profile of the NJC*, *supra* note 1 ("Education shapes better judges and better judges make better justice."); Wallace (2003), *supra* note 17, at 356.

105. Olga Frishman, *Transnational Judicial Dialogue as an Organisational Field*, 19 *EUR. L.J.* 739, 741 (2013) [hereinafter Frishman (2013)].

106. Anne-Marie Slaughter, *A Global Community of Courts*, 44 *HARV. INT'L L.J.* 191, 192 (2003).

107. *Id.*; see also ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 80 (2004).

108. Claire L'Heureux-Dubé, *The Importance of Dialogue: Globalization and the International Impact of the Rehnquist Court*, 34 *TULSA L.J.* 15, 17 (1999); see Frishman (2013), *supra* note 105, at 741.

109. See, e.g., *The Changing Role of Highest Courts in an Internationalising World*, 2008 Law of the Future Conference Concept Paper, HAGUE INSTITUTE FOR THE INTERNATIONALIZATION OF LAW (Hiil) 1 (2008), [http://www.hiil.org/data/sitesmanagement/media/Highest\\_courts\\_ac2008\\_inventory\\_bibliography.pdf](http://www.hiil.org/data/sitesmanagement/media/Highest_courts_ac2008_inventory_bibliography.pdf) [hereinafter Hiil].

110. See KAREN J. ALTER, *THE NEW TERRAIN OF INTERNATIONAL LAW: COURTS, POLITICS, RIGHTS* (2014).

111. Hiil, *supra* note 109, at 7.

112. *Id.* at 3.

counterparts, engage in transnational dialogues, attend conferences, and generally show themselves to be highly attentive to developments beyond their own national borders.”<sup>113</sup>

Scholars of judges in the international domain thus point to two sets of activities or practices that act as mechanisms in the *judicialization* of international relations.<sup>114</sup> The first is citing foreign law in judicial decisions, often referred to as cross-referencing.<sup>115</sup> Because disputes are increasingly subject to international treaties and take place in “a more complex global environment,” judges increasingly engage with foreign or international law.<sup>116</sup> Claire L’Heureux Dube, justice of the Supreme Court of Canada from 1987–2002, writes that this is no longer a matter of courts deferring to one or two Supreme Courts: “cross-pollination and dialogue between jurisdictions is increasingly occurring . . . . Judges around the world look to each other for persuasive authority, rather than some judges being ‘givers’ of law while others are ‘receivers.’ Reception is turning to dialogue.”<sup>117</sup>

Other than reading each other’s cases, how do judges exchange ideas? Scholars have also suggested that judges engage in direct dialogue, meeting at court visits or conferences.<sup>118</sup> This dialogue contributes to the building

113. *Id.* at 2–4 (stating that “[d]espite the continued relevance of national legal orders . . . the consequences of globalisation are far-reaching, and this fact complicates the core judicial task of reaching decisions on concrete contentious issues brought before the courts”).

114. *See id.* at 12 (“[T]ransjudicial borrowing’ arises in situations in which judges, of their own volition and within their margins of discretion, choose to employ non-domestic legal material as heuristic aids or persuasive arguments in the adjudication of essentially domestic disputes.”); *see also* Cesare Romano, Karen J. Alter & Yuval Shany, *Mapping International Adjudicative Bodies, the Issues, and Players*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* 3, 9 (2014) (“One of the most remarkable features of contemporary international relations is the large and growing array of international adjudicative bodies.”).

115. *See, e.g.*, Antje Wiener & Philip Liste, *Lost Without Translation? Cross-Referencing and a New Global Community of Courts*, 21 *IND. J. GLOB. LEGAL STUD.* 263, 264 (2014).

116. MAK, *supra* note 7, at 2; *see also* HiiL, *supra* note 109, at 8. *See generally* JACKSON, *supra* note 7.

117. L’Heureux-Dubé, *supra* note 108, at 17; *see also* Eyal Benvenisti & George W. Downs, *Democratizing Courts: How National and International Courts Promote Democracy in an Era of Global Governance*, 46 *N.Y.U. J. INT’L L. & POL.* 741, 752. *But see* David Law, *Judicial Comparativism and Judicial Diplomacy*, 163 *U. PA. L. REV.* 927, 935–39 (2014–2015) (examining why some courts make greater use of foreign law than others); David S. Law & Wen-Chen Chang, *The Limits of Global Judicial Dialogue*, 86 *WASH. L. REV.* 523, 529 (2011) (arguing that “[t]he act of judicial review may involve a substantial amount of dialogue, but it is not dialogue with constitutional courts in other countries. The decisions that a court renders are necessarily targeted first and foremost at the domestic audiences who will be legally bound by them”; furthermore constitutional courts may engage in comparative analysis and may pay attention to decisions of constitutional courts in other countries but this does not constitute a judicial dialogue); Wiener & Liste, *supra* note 115 (arguing that cross citation happens mostly one way, and that citation would still depend on shared meanings or shared experiences; for example, German interviewees felt affinity to European courts and Canadians to courts from current/former commonwealth countries).

118. *See, e.g.*, Dawson, *supra* note 33, at 177.



of epistemic networks<sup>119</sup> and a global community of courts.<sup>120</sup> Both Slaughter and Jackson thus point to an emergence of a judicial community through social practice<sup>121</sup> and a growing body of judicial networks that affects the work that judges do.<sup>122</sup> David Law and Wen-Chen Chang, however, are skeptical that judicial meetings or conferences have any effect on legal institutions.<sup>123</sup> With respect to constitutional law, they write that judge-to-judge dialogue and judicial networks, “as eye-catching as they may be, have limited impact on constitutional adjudication.”<sup>124</sup> As to the broader or more general phenomenon of a Global Judicial Dialogue, they write:

Actual interaction between judges, especially of the face-to-face variety that receives such emphasis in the literature, feels at once both glamorous and vaguely conspiratorial. Existing accounts of this species of judicial dialogue, cobbled together from snippets and reports of closed meetings in Bangalore and Johannesburg and New Haven tantalize the reader with glimpses of something elusive and, for that very reason, seemingly important . . . . The resultant sense, perhaps, is that of being privy to the inner life of opaque “judicial networks” that engage in de facto global governance, or the exercise of power without authority, as part of a “new world order” . . . .

The opposite and more skeptical view would be that the entire notion of J2J [judicial to judicial] dialogue boils down to the unexceptional and incon-

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119. Haas (1992), *supra* note 41, at 187–88; see Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT’L ORG. 1, 3 (1992) (defining epistemic communities as a network of professionals who share systems of belief (a “common policy enterprise”) as well as ideas about what counts as valid knowledge, coordinating “intersubjective, internally defined criteria for weighing and validating knowledge in the domain of their expertise”).

120. SLAUGHTER, *A NEW WORLD ORDER*, *supra* note 107; Slaughter, *A Global Community of Courts*, *supra* note 106, at 216; Wiener & Liste, *supra* note 115. Similarly, Michael Moore, former judge of the Federal Court of Australia (1994–2011) explains:

Judges from many and sometimes disparate national legal systems are interacting with each other with greater frequency and, in a sense, as a form of increasingly acknowledged fellowship. The interaction can simply take the form of one judge creating and another reading a judgment on an issue of common concern. It may involve extracurricular dialogue. It may involve meetings, workshops, conferences[,] or judicial exchanges.

Justice Michael Moore, *The Internationalization of Judging*, at the International Commercial Litigation and Dispute Resolution Conference (Nov. 27–28, 2009), <http://www.austlii.edu.au/au/journals/FedJSchol/2009/20.html>.

121. JACKSON, *supra* note 7; SLAUGHTER, *A NEW WORLD ORDER*, *supra* note 107; Wiener & Liste, *supra* note 115. Some of the literature on the emergence of a judicial community through social practice tends to be teleological, pointing to transnational connections as the harbinger of a harmonized international consensus on human rights and procedural fairness. See, e.g., MAK, *supra* note 7, at 4.

122. JACKSON, *supra* note 7, at 39–49; SLAUGHTER, *A NEW WORLD ORDER*, *supra* note 107, at 66–68. HiiL published an Inventory list of Face-to-Face Judicial Dialogue—as well as a “Dialogue Initiated and hosted by academic institutions and/or NGOs (conferences, seminars, etc.)”—as Appendix A to its publication on its 2008 Law of the Future Conference. HiiL, *supra* note 109, at 63–77.

123. Law & Chang, *supra* note 117, at 523–24.

124. *Id.* at 527. Instead, Law and Chang argue that institutional factors such as court staff and incentives for learning foreign law factor more in the extent to which foreign law is cited in constitutional adjudication.

sequential claim that judges enjoy a growing range of opportunities to socialize over cocktails and have also learned to e-mail one another. On this view, one might be forgiven for thinking that the “global community of courts” constituted by “transnational judicial dialogue” is a toothless development that bears more resemblance to “a literary salon writ large” than an innovation in global governance . . . .<sup>125</sup>

Law and Chang are correct to point out that the empirical research on judge to judge dialogue is haphazard and unmethodical. However, it would be wrong to definitively conclude that judicial interactions have no effect. For example, judges of the Supreme Court of Japan traveled to the United States, the United Kingdom, Germany, and France to investigate both jury and mixed tribunal models before instituting the Saiban-in Seido (Lay Judge System) [裁判員制度, saiban-in (裁判員) means “a person who judges” or “lay judge” and seido (制度) means “system.” Translations can include “Citizen Judge System” or what seems to be the accepted translation, “Lay Judge System.”], a mixed judge/lay person model common in civil law jurisdictions.<sup>126</sup> Judges in Mexico worked with judges from Canada to assist in the transition from inquisitorial to adversarial criminal justice systems.<sup>127</sup> Finally, the commercial court in Ghana (established in 2005) as well as its court-connected ADR (established in 2010) were the product of conversations between judges in Ghana, Tanzania, Uganda, Denmark, the United Kingdom, and Canada.<sup>128</sup> Nevertheless, in regards to judicial interactions that are not targeted or connected to a specific set of reforms, scholarship on the details of activities or the format of judicial encounters remains vague.<sup>129</sup> Are judges forming networks and, if so, what does that mean, specifically?

The next section, Part III, examines international judicial networks formed through judicial education. It also revisits the history of the development of international judicial education from the perspective of the judiciary, in light of the Israeli judges’ experiences and based on information obtained from judges participating in the IOJT.

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125. *Id.* at 534.

126. See Hiroshi Fukurai, *Japan’s Quasi-Jury and Grand Jury Systems as Deliberative Agents of Social Change: De-colonial Strategies and Deliberative Participatory Democracy*, 86 CHI-KENT L. REV. 789, 803-04 (2011); Lempert, *supra* note 13, at 38-39; see also Toby S. Goldbach, Benjamin Brake & Peter J. Katzenstein, *The Movement of U.S. Criminal and Administrative Law: Processes of Transplanting and Translating*, 20 IND. J. GLOBAL LEGAL STUD. 141, 160 (2013).

127. Telephone Interview with Judge C, *supra* note 22. This judge travelled to Mexico eight times in two years to work on criminal law and judicial ethics.

128. See Kofi Date-Bah, *Developing a New Commercial Court in Ghana*, 42 TEX. INT’L L.J. 619, 621 (2007); see also Sandra Cofie, *Ghana: Establishment of Commercial Courts*, DOING BUS. (Dec. 2007), <http://www.doingbusiness.org/reports/case-studies/smart-lessons/establishment-of-commercial-courts-in-ghana>.

129. Law & Chang, *supra* note 117, at 525-34.

### III. Judges' *Other Work*: International Judicial Education

#### A. Transnational Movement of Judicial Education

In thinking about a “global judicial dialogue,” which influences judges “as they approach the resolution of local legal problems,”<sup>130</sup> Justice Kirby writes that “[i]n more recent years, the judiciary in most countries . . . have become involved in activities of judicial education, in global and regional meetings designed to promote the exchange of experience and ideas . . . concerned with shared questions of legal doctrine, the administration of justice[,] and human rights.”<sup>131</sup> This section describes the development of judicial education in common law countries, the establishment of judicial education institutes, and their expansion into the international sphere. It then moves to a more focused recounting of the development of judicial education in Israel, and the establishment of the IOJT.

Intuitively and normatively judicial education has common sense appeal: “Lawyers don’t become good judges by the wave of a magic wand. Not even the best lawyers. To reappear behind the bench as a skilled jurist is a tricky maneuver.”<sup>132</sup> But while judicial education was the norm in countries of the civil law tradition,<sup>133</sup> in 1993, Livingston Armytage, then Education Director of the Judicial Commission of New South Wales, was still introducing the idea of judicial education to common law judges in Australia:

In civil law countries, with their tradition of career appointments, aspiring or probationary judges are trained accordingly. In common law countries, however, with their preference for mid-career appointments, the process has until recently been entirely unformalised. There has, however, recently emerged an increasing recognition of the need for and value of structured training or education for the judiciary. This tendency has not, however, emerged without considerable debate and controversy.<sup>134</sup>

Historically, lawyers and judges in common law jurisdictions opposed continuing education for judges.<sup>135</sup> Lawyers were concerned that judges would rely on information that was not introduced at trial by the litigants. Specifically, they felt it would be inappropriate if judges, “fresh from a new educational program, [would] not permit a challenge to their expertise . . .

130. Kirby, *supra* note 14, at 173.

131. *Id.* at 174.

132. Dennis W. Catlin, *Michigan’s Magic Touch in Educating Judges*, 25 JUDGES’ J. 32, 32 (1986).

133. Judges in the Civil Law tradition choose their career track straight out of law school and often receive additional training particular to their position, as opposed to Common Law judges who, generally speaking, can only seek appointment after a number of years practicing as a lawyer or other legal professional. See, e.g., Felix V. Azon Vilas, *Judiciary School—The Spanish Approach*, 2 J. INT’L ORG. JUD. TRAINING 69 (2014); Joseph Dainow, *The Civil Law and the Common Law: Some Points of Comparison*, 15 AM. J. COMP. L. 419, 431 (1966–1967).

134. Livingston Armytage, *The Need for Continuing Judicial Education*, 16 U.N.S.W. L.J. 536, 540–41 (1993) [hereinafter Armytage (1993)].

135. Livingston Armytage, *Judicial Education on Equality*, 58 MOD. L. REV. 160, 162 (1995) [hereinafter Armytage (1995)].

A judge, or court, that claims ownership of a subject is not an ideal tribunal."<sup>136</sup> Judges were similarly concerned that a requirement to partake in training programs would weaken judicial independence.<sup>137</sup> For example, if government or public organizations were involved in creating the content of judicial education, judges were concerned that external agencies would tell them how to think. Justice Dowsett expressed the following concerns at an annual Judicial College of Australia colloquium:

It is very easy to assume that any form of education must be beneficial to some degree, or at least not harmful. In general, I agree. However, as with any other innovation affecting an ancient institution, it is as well that we take time to consider how such a programme may affect the substance of the judiciary and public perceptions of it . . . .

How can an education programme undermine judicial independence or the perception of judicial independence? I suggest that there are at least three ways in which such a programme may have negative effects in this area. The first, and most obvious, is that a programme which is apparently sponsored by and/or controlled by government would seriously affect perceptions of the separation of the judiciary from government. There would be the real risk of a perception that government was telling judges what to do and how to do it.<sup>138</sup>

Judges promoted after working for several years—the frequent practice in common law jurisdictions—felt that they did not need additional training.<sup>139</sup> Former Chief Judge of the U.S. Ninth Circuit Court of Appeals Clifford Wallace recalled his early experiences with judicial education in a recent edition of the journal published by the IOJT:

When I first began working with countries overseas in the 1970s, I remember well many chief justices rejecting the idea of judicial education. They would often refer to it as “training” and insist that judges would not have been appointed if they did not have the knowledge and techniques to be judges and that, therefore, judicial training is superfluous. Indeed, some chief justices were offended by the idea. But that was then, and since that time, there has been a common recognition among most judicial leaders worldwide that appropriate judicial education to advance skills and knowledge is a vital part of improving the judiciary.<sup>140</sup>

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136. William Stevenson, *The Founding of the Canadian Judicial Centre*, in LAW, POLICY, AND INTERNATIONAL JUSTICE: ESSAYS IN HONOUR OF MAXWELL COHEN 481, 482 (William Kaplan & Donald McRae eds., 1991).

137. J. J.A. Dowsett, *Judicial Education*, presented at the National Judicial College of Australia Colloquium, (November 6–8, 1998), <https://njca.com.au/wp-content/uploads/2013/07/Judicial-Education-Dowsett.pdf>.

138. *Id.*

139. Armytage (1993), *supra* note 134, at 548. Armytage observed judges “by reason of their position and experience, have had difficulty acknowledging a need for formalised continuing education, particularly if it [was] externally imposed. Judges [were] also understandably challenged by any suggestion that they may be anything but consummately competent.” *Id.*

140. Clifford Wallace, *Globalisation of Judicial Education*, 2 J. INT’L ORG. JUD. TRAINING 13, 13 (2014), <http://www.iojt.org/journal/page-journal.html>.

What changed? When did judicial education institutes begin to proliferate?

In common law jurisdictions, judges took leadership in promoting judicial education as early as the 1960s and 1970s. The National Judicial College—established in 1963 and host to Dr. Levin in 1976—was one of the first institutes advancing a more formalized judicial education program,<sup>141</sup> with early support from Chief Justice Warren Burger, who publicly endorsed the idea of judges participating in continuing judicial education.<sup>142</sup>

Canadian and Australian judicial education programs developed roughly at the same time. Australia began moving toward formal judicial education in 1983. The move was supported by then Chairman of the Australian Law Reform Commission Justice Michael Kirby, who would become President of the New South Wales Court of Appeal.<sup>143</sup> Canada's judicial oversight body, the Canadian Judicial Council, began conducting seminars for superior court judges in the 1970s, and in 1974 it established the independent, university-housed Canadian Institute for the Administration of Justice to conduct education programs for judges and members of administrative tribunals.<sup>144</sup>

In the twenty to thirty years that followed, more judicial institutes and training centers opened: Germany (est. 1973),<sup>145</sup> Mexico (est. 1978),<sup>146</sup>

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141. ARMYTAGE, EDUCATING JUDGES, *supra* note 104, at 13 (noting that all U.S. states provided some form of education for its judges by 1986 and that in most states some classes were mandatory); *see also* Strong, *supra* note 33, at 3.

142. See Strong, *supra* note 33, at 13; *see* ARMYTAGE, EDUCATING JUDGES, *supra* note 104, at 13.

143. ARMYTAGE, EDUCATING JUDGES, *supra* note 104, at 17.

144. David C. McDonald, *The Role of the Canadian Institute for the Administration of Justice in the Development of Judicial Education in Canada*, in LAW, POLICY, AND INTERNATIONAL JUSTICE: ESSAYS IN HONOUR OF MAXWELL COHEN 455, 457 (William Kaplan & Donald McRae eds., 1991) (noting that in the 1980s the independent Canadian Institute for the Administration of Justice (CIAJ) began organizing educational programs on behalf of the federal judicial regulatory body, the Canadian Judicial Council (CJC)). In 1987 the CJC founded the Canadian Judicial Center (which eventually became the National Judicial Institute) that would be governed and operated by judges as an institute “[c]ontrolled by and responding to the needs of all judges.” Stevenson, *supra* note 136, at 488.

145. Helmut Palder, Senior Officer in the Bavarian State Ministry of Justice, In-Service Training: Content, Methods and Evaluation of Results, Presented at the Multilateral Meeting Organized by the Council of Europe in conjunction with the Centre for Judicial Studies, Lisbon (Apr. 27-28, 1995), in THE TRAINING OF JUDGES AND PUBLIC PROSECUTORS IN EUROPE 57 (1996).

146. Sergio López-Ayllón & Héctor Fix-Fierro, “Faraway, So Close!”: *The Rule of Law and Legal Change in Mexico, 1970-2000*, in LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 321-22 (Lawrence M. Friedman & Rogelio Pérez-Perdomo, eds., 2003) (“In 1978, the federal judiciary created the *Instituto de Especialización Judicial*, which has offered an annual course since 1983. It changed its name to *Instituto de la Judicatura Federal* in 1995 and has expanded its courses, both in Mexico City and outside the capital. In 2000, it started an intensive six-month training program for candidates for a district or circuit judgeship. The state judiciaries have followed suit. In 1997, of thirty-two local judiciaries, twenty-three had established an institute, center, or agency charged with judicial training and education. In 2000, only four state judiciaries did not have their own training institute or center . . . . All these advancements

Canada (National Judicial Institute, 1988),<sup>147</sup> Argentina (the Institute Superior de la Magistratura in Argentina; Foundation Institute of Magistracy which includes the Judicial School, est. 1989),<sup>148</sup> India (National Judicial Academy India, 1993),<sup>149</sup> Moldova (National Institute of Justice, 2007),<sup>150</sup> Poland (National School of Judiciary and Public Prosecution, 2009),<sup>151</sup> and Burundi (Professional Training Centre For Justice, operational since 2010).<sup>152</sup> While some institutes are divisions of justice ministries, several institutes—such as those institutes in Canada, Mexico, Israel, and Kenya—were established as independent and judge-led organizations by the judiciary, sitting or retired judges.<sup>153</sup>

Figure 2, below, charts the proliferation of organizations that undertook to train the judiciary. The list includes a sample of fifty organizations from thirty-nine countries whose dates of establishment were available. The selection of organizations was not randomized. As a result, readers should be cautious about drawing conclusions regarding trends in dates of establishment. The types of organizations include civil society organizations, independent training institutes, umbrella organizations, and governmental organizations. All organizations included are IOJT members. The full list of IOJT members with dates of establishment where known is included as Appendix A.

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notwithstanding, and with some local exceptions (and mostly for minor judges), in Mexico it is still not a legal requirement to obtain specialized training to become a judge . . . .” (citations omitted)).

147. *About the NJI*, NAT’L JUD. INST., <https://www.nji-inm.ca/index.cfm/about/about-the-nji/?langSwitch=en> (Can.) (last visited Sept. 22, 2016).

148. *Fundación Instituto Superior de la Magistratura*, ASOCIACIÓN DE MAGISTRADOS Y FUNCIONARIOS DE LA JUSTICIA NACIONAL, <http://www.amfjn.org.ar/isdlm-historia> (Arg.) (last visited Sept. 22, 2016).

149. *The Institution*, NAT’L JUD. ACAD. INDIA, <http://www.nja.nic.in/the-institution.html> (India) (last visited Sept. 22, 2016).

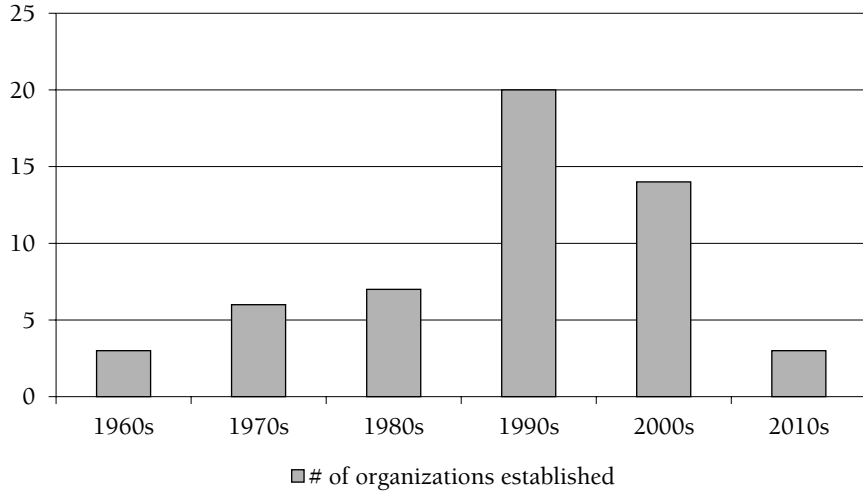
150. *Despre INJ [About NIJ]*, INSTITUTUL NAȚIONAL AL JUSTIȚIEI [NAT’L INST. JUST.], <http://www.inj.md/ro/despre-inj> (Mold.) (last visited Sept. 22, 2016).

151. *Background*, NAT’L SCH. OF JUDICIARY AND PUB. PROSECUTION, <https://www.kssip.gov.pl/angielski> (Pol.) (last visited Sept. 22, 2016).

152. PROF. TRAINING CTR. FOR JUST., <http://www.btccbt.org/files/web/project/publications/Dépliant%20CFPJ%202ème%20version%20ANGL-%20oct%202013%20mail.pdf> (Burundi) (last visited Sept. 22, 2016).

153. See *About NJI*, *supra* note 150.

Figure 2. Example of Growth of Judicial Education Worldwide



\*Sample of fifty organizations from thirty-nine countries;<sup>154</sup> includes civil society organizations, independent training institutes, umbrella organizations, and governmental organizations. Judicial education in countries following a Civil Law tradition is often administrated through a branch of the ministry of justice.

Judges have taken on various roles in these institutes, serving as teachers, board members, trustees, and institute directors.<sup>155</sup> Several institutes—such as the Institute for Advanced Judicial Studies (“IAJS”) in Israel and institutes in Australia and Canada—were founded as independent non-profit organizations, with judges managing operations and directing curriculum.<sup>156</sup> Within the last twenty-five years, many institutes have extended their reach internationally, establishing programs or divisions to work with or to train judges from other countries. The National Center for State Courts, founded in 1972, established an international programs division in 1992.<sup>157</sup> The National Judicial Institute in Canada began hosting educational programs through its international collaboration group at least as early as 2003.<sup>158</sup> In Israel, the Supreme Court took on greater role in international activities both through the office of the president and through the growing international activities of the IAJS.<sup>159</sup> With this turn to inter-

154. See list of organizations with dates establishment *infra* Appendix A, Table 2.

155. See Nat’l Jud. Inst., Social Context, *supra* note 21, at 3.

156. *The Institute of Advanced Judicial Studies in Israel*, INT’L ORG. JUD. TRAINING (IOJT), <http://elyon1.court.gov.il/eng/iji.pdf> (Isr.) (last visited Sept. 22, 2016); see *About NJI*, *supra* note 150; CTR. FOR JUD. STUD., <http://www.centreforjudicialstudies.com/> (Austl.) (last visited Sept. 22, 2016).

157. *About Us*, NAT’L CTR. FOR ST. CTS., <http://www.ncsc.org/About-us.aspx> (last visited Sept. 23, 2016).

158. *Message from the Executive Director*, NAT’L JUD. INST., <https://www.nji-inm.ca/index.cfm/about/message-from-the-executive-director/> (Can.) (last visited Sept. 23, 2016).

159. Edna Azrieli began working in the office of the President of the Supreme Court of Israel in 1998. She had no court experience but was put in the role of Director of International Relations in the office of Supreme Court President Aharon Barak because of her language abilities, a position which she maintained for fifteen years. Interview

national engagement, judges, not just development practitioners, began travelling to meet with and train their peers in other countries.<sup>160</sup> The next section delves more deeply into the activities of the Israeli judges who were instrumental in founding a local training institute and working with partners from other countries to establish the IOJT.

## B. Israeli Judges' Experiences with Judicial Education

There is a kind of uneasiness that persists in Israel. Nothing is “*éùø*” [yashar]—straightforward or direct. Israel’s foreign relations with its neighbors is the preeminent example of a protracted conflict,<sup>161</sup> and the state’s founding principle of a Jewish and democratic state<sup>162</sup> has itself been described as an existential paradox.<sup>163</sup> While this Article is oriented toward international judicial activity, the Israeli socio-cultural and legal context set the stage for the research and my interpretation of the events observed.<sup>164</sup> Having been temporarily immersed in Israel’s contradictions and subsisting tensions,<sup>165</sup> the idea of “incompatibles that hold together

with Staff (Retired), Supreme Court of Israel, in Jerusalem, Isr. (Mar. 20, 2014); see Alon Hadar, *Finked Out*, HAARETZ (Dec. 8, 2005), <http://www.haaretz.com/beta/finked-out-1.176179>.

160. INST. OF ADVANCED JUD. STUD., ADVANCED STUDIES CALENDAR 2008 (Isr.), [http://elyon1.court.gov.il/eng/Institute\\_of\\_Advanced\\_Judicial\\_Studies\\_for\\_2008.doc](http://elyon1.court.gov.il/eng/Institute_of_Advanced_Judicial_Studies_for_2008.doc).

161. See Edward E. Azar, Paul Jureidini & Ronald McLaurin, *Protracted Social Conflict: Theory and Practice in the Middle East*, 8 J. PALESTINE STUD. 41, 43 (1978); Margaret Sullivan, *The Conflict and the Coverage*, N.Y. TIMES (Nov. 22, 2014), [http://www.nytimes.com/2014/11/23/opinion/sunday/the-conflict-and-the-coverage.html?\\_r=0](http://www.nytimes.com/2014/11/23/opinion/sunday/the-conflict-and-the-coverage.html?_r=0).

162. See Basic Law: The Knesset, 5747-1958, art. 7a, (as amended) (Isr.), [http://www.knesset.gov.il/laws/special/eng/basic2\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic2_eng.htm).

163. See Pnina Lahav, *Israel’s Supreme Court*, in CONTEMPORARY ISRAEL: DOMESTIC POLITICS, FOREIGN POLICY, AND SECURITY CHALLENGES 135, 139-40 (Robert O. Freedman ed., 2009); Yoram Shachar, *The Dialectics of Zionism and Democracy in the Law of Mandatory Palestine*, in THE HISTORY OF LAW IN A MULTI-CULTURAL SOCIETY: ISRAEL 1917-1967, at 95, 95-96 (Ron Harris et al. eds., 2002).

164. In addition to conducting interviews of judges and court staff in Tel Aviv, Jerusalem, and Herzliya, Israel, I also attended the 6th IOJT International Conference, and the World Bank Law, Justice, and Development Week held in Washington D.C. in November 2013. See discussion *infra* Part IV.

165. During the short time I was in Israel to conduct interviews, events arose relating to Supreme Court of Israel cases on army service, voter fraud, and secular-religious conflicts. On my first day in Israel, *Haradim* (Jewish ultra-orthodox Israelis) demonstrated in front of the Knesset (the Israeli parliament) as the government voted on new legislation that would require some form of conscription for yeshiva students. See HCJ 6298/07 Resler v. Knesset (2012) (Isr.) (the High Court of Justice’s (H.C.J.) 6-3 decision striking down the long-standing exemption for yeshiva students); see also Yair Ettinger & Gili Cohen, *Israel’s High Court Rules Tal Law Unconstitutional, Says Knesset Cannot Extend It in Present Form*, HAARETZ (Feb. 21, 2012), <http://www.haaretz.com/news/israel/israel-s-high-court-rules-tal-law-unconstitutional-says-knesset-cannot-extend-it-in-present-form-1.414009>; Isabel Kershner, *Ultra-Orthodox Jews Clog Jerusalem Streets to Protest a Draft Bill*, N.Y. TIMES (Mar. 2, 2014), <http://www.nytimes.com/2014/03/03/world/middleeast/ultra-orthodox-jews-clog-jerusalem-streets-to-protest-a-draft-bill.html>; Ruth Levush, *Israeli Conscription laws for Ultra-Orthodox Jews*, LIBR. CONGRESS (Apr. 17, 2014), <http://blogs.loc.gov/law/2014/04/israeli-conscription-laws-for-ultra-orthodox-jews>.

During one of my interview days, the Supreme Court was scheduled to hear Cinema City’s petition requesting that the decision requiring Sabbath closure be reversed. See



but do not resolve”<sup>166</sup> became a touchstone for the analysis of judicial functions and judges and politics.

Israel, writes Ron Hirschl, is “arguably one of the world’s capitals of embedded, near-oxymoronic contradictions . . . .”<sup>167</sup> There are thirty-four political parties in the Knesset (the Israeli Parliament) for a total of 120 seats, making coalitions a permanent feature of Israeli domestic politics.<sup>168</sup> Even the status of the Occupied Territories is contested and unclear.<sup>169</sup> The Israeli military withdrew from the Gaza Strip in 2005, yet

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Daniel K. Eisenbud, *Deputy finance minister backs Cinema City’s Shabbat closure reversal petition*, JERUSALEM POST (Mar. 3, 2014, 7:34 PM), <http://www.jpost.com/Israel/Deputy-Finance-Minister-backs-Cinema-Citys-Shabbat-closure-reversal-petition-344143>. As an embodiment of incompatibles that hold together, the courthouse for the Supreme Court of Israel is located across the street from a new multiplex theater, Cinema City, which is inside a shopping complex that also houses a Bible museum, a Smurf Village, and “Noah’s Ark.” The courthouse itself exemplifies a kind of chaos that manages to subsist. Each courtroom is a different size, with almost every space separating into multiple layers. Paul Goldberger of the New York Times wrote on the courthouse’s opening in 1995:

Curiously, for a building that is as inviting as this one, the design is fairly complex: there is no clear front door and no simple pattern to the organization . . . . [The building] doesn’t look the same from one side to the other, and were it not for the rich Jerusalem stone that by law covers this and every building here with a warm, sensuous, even texture, the Supreme Court might well seem like a disjointed mix of elements.

Paul Goldberger, *Architecture View: A Public Work That Ennobles As It Serves*, N.Y. TIMES (Aug. 13, 1995), <http://www.nytimes.com/1995/08/13/arts/architecture-view-a-public-work-that-ennobles-as-it-serves.html>.

166. See STRATHERN, *supra* note 42, at 35.

167. Ran Hirschl, *Constitutional Courts as Bulwarks of Secularism*, in CONSEQUENTIAL COURTS: JUDICIAL ROLES IN GLOBAL PERSPECTIVE 311, 327 (Diana Kapiszewski et al. eds., 2013); Lahav, *supra* note 163, at 140 (“[Is [the state] primarily Jewish, or primarily democratic, or should one strive to avoid conflict between the two? The question has not been resolved, but the Knesset decided to incorporate both concepts into the 1992 Basic Laws, refusing to indicate whether one may trump the other.”); see Shachar, *supra* note 163, at 95–97.

168. Israel’s electoral system is based on strict proportional representation. See *Guide to Israel’s political parties*, BBC (Jan. 21, 2013), <http://www.bbc.com/news/world-middle-east-21073450>; *The Electoral System in Israel*, KNESSET, [https://www.knesset.gov.il/description/eng/eng\\_mimshal\\_beh.htm](https://www.knesset.gov.il/description/eng/eng_mimshal_beh.htm) (Isr.) (last visited Sept. 8, 2016).

169. While Israel maintains a military force and settlements in the West Bank, the government withdrew all military presence, “disengaging” from the Gaza Strip. Government Resolution no. 1996, 5764–2004, § 2(a)(3.1) (Isr.) (“Israel will evacuate the Gaza Strip including all existing Israeli towns and villages . . . . Upon completion of this process, there shall be no permanent presence of Israeli security forces on the ground in the areas to be evacuated”); Government Resolution no. 4235, 5766–2005 (Isr.) (“[T]he IDF will withdraw its forces from the territory of the Gaza Strip, including from the area of the border between the Gaza Strip and Egypt (‘Philadelphi Route’)”); *Agreement documents on movement and access from and to Gaza*, ISR. MINISTRY FOREIGN AFF. (Nov. 15, 2005), <http://www.mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/agreed%20documents%20on%20movement%20and%20access%20from%20and%20to%20gaza%2015-nov-2005.aspx>; *The Disengagement Plan-General Outline*, ISR. MINISTRY FOREIGN AFF. (Apr. 18, 2004), <http://www.mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/disengagement%20plan%20-%20general%20outline.aspx>; see also Jefferson Morley, *Israeli Withdrawal From Gaza Explained*, WASH. POST (Aug. 10, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/10/AR2005081000713.html>. See generally Robert H. Mnookin, Ehud Eiran & Shula Gilad, *Is Unilateralism Always*

its legal status and whether Israel continues to “occupy” Gaza pursuant to international law depends on whether Israel has “effective control” of the territory, “a concept that is intimately linked with, but not entirely dependent upon, military ground presence in the territory.”<sup>170</sup>

The Israeli legal system is similarly complicated.<sup>171</sup> Going through two colonial periods—the Ottoman Empire and the British mandate periods—the legal system is a pastiche of civil code law, common law, and Islamic and Jewish religious law with limited jurisdiction by subject matter.<sup>172</sup> The Supreme Court of Israel is the highest court, acting as a High Court with original jurisdiction in petitions against government agencies and ministers and as the Supreme Court in appeals from the District or Magistrate Courts.<sup>173</sup> Sitting as the High Court of Justice and the Supreme Court (the final appellate court), the Supreme Court of Israel hears cases covering matters of national security<sup>174</sup>—such as the legality of targeting

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*Bad? Negotiation Lessons from Israel’s “Unilateral” Gaza Withdrawal*, 30 NEGOT. J. 131 (2014); Benjamin Rubin, *Disengagement from the Gaza Strip and Post-Occupation Duties*, 42 ISR. L. REV. 528 (2009).

170. SARI BASHI & KENNETH MANN, *DISENGAGED OCCUPIERS: THE LEGAL STATUS OF GAZA* 14 (2007).

171. See e.g., Eliezer Rivlin, *Israeli as a Mixed Jurisdiction*, 57 MCGILL L.J. 781, 782 (2012). Justice Rivlin describes the origins of the legal system in Israel in the following way:

Historically, the Israeli legal system was composed of several chronological “layers.” First, Turkish law, originating in the Ottoman era—the region that is now the state of Israel was part of the Ottoman Empire for four hundred years—was the law of the land. Essentially, Ottoman law was Islamic religious law influenced by European (e.g., Austrian, Swiss, and French) law. Then, British law became the law of the land. At the end of the First World War, the region was conquered by the British army and it became a part of the British Mandate under the League of Nations . . . . The rules of English common law and the principles of equity were imported into the region . . . . After the establishment of the state of Israel in 1948, and since then, the Israeli Parliament—the Knesset—has enacted new statutes that have turned the Israeli legal system into a modern one—an original system in many senses.

*Id.*

172. Theodore Eisenberg, Talia Fisher & Issi Rosen-Zvi, *Israel’s Supreme Court Appellate Jurisdiction: an Empirical Study*, 96 CORNELL L. REV. 693, 700 (2011); see also Daphna Hacker, *Law and Society Jurisprudence*, 96 CORNELL L. REV. 727, 734 (2011); Amnon Reichman, *Judicial Constitution Making in a Divided Society: the Israeli Case*, in CONSEQUENTIAL COURTS: JUDICIAL ROLES IN GLOBAL PERSPECTIVE 233, 235 n.3, 250 n.26 (Diana (Kapiszewski et al. eds., 2013); Eli Salzberger, *Judicial Activism in Israel*, in JUDICIAL ACTIVISM IN COMMON LAW SUPREME COURTS 217, 223–24 (Brice Dickson ed., 2007); Shetreet, *supra* note 38, at 234; Patricia J. Woods, *The Ideational Foundations of Israel’s “Constitutional Revolution,”* 62 POL. RES. Q. 811, 820 (2009).

173. Shetreet, *supra* note 38, at 234.

174. The range of cases the Supreme Court of Israel hears has increased since it loosened its standing requirements, moving from a formal approach to a pragmatic balancing approach. Against the “fear of overburdening the court with petitions,” the Court now balances its interest in addressing matters of “special public importance” or matters that point to “a serious fault in the actions of the authorities.” Shetreet, *supra* note 38, at 236; see also Amnon Reichman, *Judicial Non-Dependence: Operational Closure, Cognitive Openness, and the Underlying Rationale of the Provincial Judges References—The Israeli Perspective*, in JUDICIAL INDEPENDENCE IN CONTEXT 438, 450–51 (Adam Dodek & Lorne Sossin eds., 2010).

killing<sup>175</sup>—as well as claims by Palestinians<sup>176</sup> and questions about “who is a Jew.”<sup>177</sup>

In 1984, Dr. Levin, by then a judge of the Supreme Court of Israel, worked with his colleagues to establish a local training institute for judges.<sup>178</sup> The IAJS started small, with courses specific to different areas of law.<sup>179</sup> By 2013, when field research for this Article was conducted, the IAJS was hosting approximately fifty courses for judges throughout Israel, including general interest courses, such as Judging and Literature, as well as mandatory classes, for example, for judges that specialize in monetary tort damages.<sup>180</sup> The IAJS also hosts a one-week course and evaluation for new judicial candidates seeking appointment to the bench.<sup>181</sup>

The IAJS is managed by an all-judge board of directors, which has included Justice Eliezer Rivlin, who was Deputy President of the Supreme Court while serving on the board of the IAJS;<sup>182</sup> Justice Asher Grunis, Chief Justice of the Supreme Court of Israel until 2015; Judge Bilha Gillor, President of the Haifa District Court; Judge Zvi Zylbertal, Deputy President

175. Galit Ragan, *Adjudicating Armed Conflict in Domestic Courts: The Experience of Israel's Supreme Court*, 13 Y.B. INT'L HUMANITARIAN L. 61, 77 (2010).

176. Shimon Shetreet, *Judicial Independence and Accountability in Israel*, 33 INT'L & COMP. L.Q. 979, 982 (1984). The Supreme Court, sitting as the High Court of Justice, heard a petition by residents of the village Rujeib in the West Bank challenging the government's decision to construct the settlement Elon Moreh. See Prime Minister's Office, *The "Elon Moreh" High Court Decision of 22 October 1979 and the Israeli Government's Reaction*, ISR. ST. ARCHIVES, [http://www.archives.gov.il/ArchiveGov\\_Eng/Publications/ElectronicPirsum/ElonMoreh/](http://www.archives.gov.il/ArchiveGov_Eng/Publications/ElectronicPirsum/ElonMoreh/) (Isr.) (last visited Sept. 10, 2016).

177. The answer to which has practical implications since Jews are entitled to immediate citizenship on immigrating to Israel. See Hirschl, *supra* note 167, at 327; Gidon Sapir, *How Should a Court Deal with a Primary Question That the Legislature Seeks to Avoid? The Israeli Controversy over Who is a Jew as an Illustration*, 39 VAND. J. TRANSNAT'L L. 1233, 1237 (2006).

178. Interview with Judge A (Retired), *supra* note 3; see also THE INSTITUTE OF ADVANCED JUDICIAL STUDIES, THE INSTITUTE OF ADVANCED JUDICIAL STUDIES IN ISRAEL, <http://elyon1.court.gov.il/eng/iji.pdf>.

179. Interview with Judge A (Retired), *supra* note 3.

180. *Id.* Only a limited number of the Institute for Advanced Judicial Studies (“IAJS”) courses are mandatory; for example, for new judges or for specialized courts such as the family or labor court. My informants reported that, even still, approximately 85% of Israeli judges participate in the classes at one time or another. I was also advised that judges get time off to participate in IAJS classes. Classes are usually limited to forty persons per course.

181. *Id.* This course is particularly interesting to indicate the extent to which the IAJS is immersed in the judicial system in Israel. The Judicial Appointments Committee in Israel sends all candidates to the IAJS, essentially for evaluation and review. Each class comprises twenty-one people, lasting one work week from Sunday to Friday. The judicial candidates participate in a host of activities: classes, moot trials, discussion groups, and writing exercises. Three judges, with at least one judge from the Supreme Court of Israel, plus a professional psychologist run each session. At the end, the course leaders provide an evaluation and recommendation to the judicial appointments committee. The recommendations on judicial nominations supplied by the IAJS are not binding, but “usually the committee gives a lot of weight to this recommendation.” *Id.*; see also J. Haim Porat, *Candidates for the Judiciary in Israel: An Evaluation Course*, IOJT NEWSLETTER, 2008 (on file with author).

182. Justice Rivlin was a judge of the Supreme Court of Israel 2000–2012 and Deputy President 2006–2012.

of the Jerusalem District Court; Judge Yigal Mersel, Judge of the Jerusalem District Court; and Dr. Levin, sitting as Director at the time of writing.<sup>183</sup>

In 1998, almost fifteen years after establishing the IAJS, judges from Israel met with their colleagues from, among other countries, Brazil, Uruguay, Chile, the Netherlands, France, the United States, and Germany.<sup>184</sup> Collectively, these judges established the First International Congress of School of Judges and signed a declaration of intent, committing to the exchange of information and to working on creating or expanding networks and cooperative initiatives.<sup>185</sup> The São Paulo and Jerusalem Proclamations<sup>186</sup> documented their plan to establish an international body that would connect the various national or domestic institutes, so that educators might work together and exchange ideas.<sup>187</sup>

### C. Early Days of the International Organization for Judicial Training

The first conference for the IOJT was held in Jerusalem, Israel in March 2002.<sup>188</sup> In attendance were forty representatives from twenty-four countries, including Canada, the United States, Madagascar, Germany, and Italy, as well as representatives from the Council of Europe and the World Bank.<sup>189</sup> The conference was held one week after the bombing of Café

183. Until 2011, Justice Levin was IOJT President. He was succeeded by Justice Rivlin, currently serving as President. Justice Yigal Mersel, a district court judge in Jerusalem, was Secretary General, most recently succeeded in 2013 by the head of the U.S. State Courts, Mary McQueen. This combination of Justices Levin, Rivlin, and Mersel, together with one or two other judges, has been responsible for either establishing or, since establishment, managing the operations of three significant institutes that are attached to the judiciary in Israel: the IAJS, the IOJT, and the Israeli Courts Research Division, an independent judiciary-based applied research unit. The Israeli Courts Research Division steering committee consists of the President of the Supreme Court of Israel, Justice Levin in his capacity as Director of the IAJS, and Justice Mersel. Examples of research conducted by the Israeli Courts Research Division include: conviction and acquittal rates in criminal proceedings; the development of “case weights” per case type, to optimize judicial time management and improve case-load distribution; study of cost-shifting practices; study of functioning and quality of small-claims courts, and a study of class actions in Israel. See generally Mersel & Weinshall-Margel, *supra* note 80.

184. In total, there were twenty-two judges from ten countries meeting in São Paulo, Brazil. Declaration of São Paulo Concerning the Intention to Implement a Network of Cooperation Amongst Judges and Persons Responsible for Training and Schooling Judges, March 7, 1998 (on file with author).

185. *Id.*

186. Jerusalem Declaration, Preparatory Convention Aimed at Establishing an International Body of Judiciary Training Organizations, December 6-8, 1999 (on file with author).

187. Some members of the original group—Dr. Levin, Justice Luis Solano of Costa Rica, and Justice Rosa Jansen of the Netherlands—and other key figures in judicial education held a “Preparatory Convention” in Jerusalem in 2001 with the aim of establishing an international body that would bring together the various judicial training organizations. Jerusalem Declaration of the Preparatory Convention Aimed at Establishing an International Body of Judiciary Training Organizations, Dec. 6-8, 1999 (on file with author).

188. Shlomo Levin, *Letter from the President*, IOJT NEWSLETTER, 2008 (on file with author); Interview with Judge A (Retired), *supra* note 3; Interview with Staff (Retired), *supra* note 159.

189. See Interview with Judge A (Retired), *supra* note 3.

Moment, a popular café in Jerusalem, killing eleven—including a security guard who worked at the Jerusalem Magistrate’s Court—and injuring fifty-four.<sup>190</sup> It is sad and yet oddly typical that memories of the first conference are entwined with one of the worst months of the second Intifada (Palestinian uprising), a paradigmatic case of trying to do anything in Israel.<sup>191</sup>

In preparation for the first conference, the first Secretary General, Amnon Carmi, drafted statutes.<sup>192</sup> The Director of Israeli Courts agreed to house and finance an office for the IOJT.<sup>193</sup> Also at this first conference, the name “International Organization for Judicial Training” was decided upon, and the establishing statutes were approved.<sup>194</sup> Attendees elected Dr. Levin, then Director of the IAJS, as IOJT President.<sup>195</sup> They also elected five regional vice presidents, a Secretary General, and Treasurer and established an Executive Committee and various additional committees.<sup>196</sup> The Secretariat, Edna Azreili, had no legal background but was part of the Office of the President of the Supreme Court of Israel because of her fluency in multiple languages.<sup>197</sup> Together with Professor Carmi and the core judges of the IOJT in the early years, Mrs. Azreili researched judicial institutes and sent out letters and emails to introduce the IOJT and expand its membership.<sup>198</sup>

#### D. Judges’ Strategic Behavior?

Judicial Politics literature takes the self-interested judge pursuing ideological goals as its starting point.<sup>199</sup> Attitudinal and rational choice models of judicial behavior posit the judge as a strategic policy preference seeker, with either complete autonomy to pursue policy preferences (attitudinal model), or with some institutional constraints (rational choice

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190. Israel Ministry of Foreign Affairs, *In Memoriam Uri Felix*, ISR. MINISTRY FOREIGN AFF. (Mar. 9, 2002), <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/Uri%20Felix.asp>; see *Chronology*, 31 J. PALESTINE STUD. 199, 205 (2002).

191. My informants described what it was like to organize the conference during the Intifada and how it was difficult to obtain visas for visitors. One chuckled, asking me if I wanted to hear this history of how the IOJT started (it was the same kind of laugh that my host had when telling me that the town where he worked was bombed that day—as if to make it normal by laughing). Another, and again with a kind of nervous laughter, told me how difficult it was to secure a visa for one participant who had a Muslim sounding name and was in Morocco the week before at another conference—even though this was the delegate from the World Bank. My informants expressed pride that, except for one judge in the United States, everyone who registered attended.

192. Interview with Judge A (Retired), *supra* note 3; Interview with Staff (Retired), *supra* note 159.

193. Interview with Judge A (Retired), *supra* note 3.

194. Interview with Staff (Retired), *supra* note 159.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. See generally EPSTEIN & KNIGHT (1998), *supra* note 37; SEGAL & SPAETH (1993), *supra* note 37; Cross, *supra* note 37; Epstein & Knight (2013), *supra* note 37.

model).<sup>200</sup> Similarly, standard narratives about law and development and international judicial education imply that legal actors develop legal solutions in response to previously identified sociological problems. Here, however, the goal for strong judicial institutions to support the rule of law was already enmeshed in training institutes and education initiatives, the foundations for which were being laid out in the 1970s and 1980s. The questions asked about the problems to be overcome reflected legal actors' experienced present, which included the solutions at hand.<sup>201</sup>

Judges created solutions by engaging in "goal-oriented activities,"<sup>202</sup> building bridges between "new" and "old" knowledge.<sup>203</sup> Judges established training institutes and the IOJT using methods they were familiar with—conferences, charters, proclamations—and employed their tool based on its inherent practicality, not necessarily with objects or endpoints clearly in mind.<sup>204</sup> Judges in Israel became involved in teaching and training, either because it seemed like a good idea or because they were asked to do so.<sup>205</sup> They were interested in helping and doing good work even if they

200. EPSTEIN AND KNIGHT (1998), *supra* note 37; SEGAL AND SPAETH (1993), *supra* note 37; Stephen B. Burbank, *On the Study of Judicial Behaviors: Law Politics, Science and Humility*, in *WHAT'S LAW GOT TO DO WITH IT? WHAT JUDGES DO, WHY THEY DO IT, AND WHAT'S AT STAKE* 41, 45 (Charles Gardner Geyh ed., 2011); Weinshall-Margel, *supra* note 37.

201. Both political theorists and legal anthropologists discuss the bounded link between envisioned solutions, "anticipated futures," and "political presents"—those "questions and answers around which a horizon of identifiable stakes . . . hangs." See DAVID SCOTT, *CONSCRIPTS OF MODERNITY: THE TRAGEDY OF COLONIAL ENLIGHTENMENT* 4 (2004) (discussing how our problems and solutions are shaped by the extant "problem space" which clarifies "the particular questions that seem worth asking and the kinds of answers that seem worth having"); STRATHERN *supra* note 42, at 7 ("The only way that reality can be grasped, then, is through a medium that already has a form of its own.").

202. BRIAN Z. TAMANAHA, *LAW AS A MEANS TO AN END: THREAT TO THE RULE OF LAW* 63, 127 (2006) (pragmatist theorists arguing against truth claims: "The pragmatic philosophy of James, Pierce, and Dewey was primarily a negative critique of absolutist theories of truth. Their core argument was that knowledge is contextual and instrumental, derived through our activities in the world within a community of inquirers. Whatever proves consistently reliable in the pursuit of these projects is true").

203. Andrew Pickering, *From Science as Knowledge to Science as Practice*, in *SCIENCE AS PRACTICE AND CULTURE* 1, 4-5 (Andrew Pickering ed., 1992) (concluding that, in the process of modeling, the mathematician does not try to construct a mathematical system out of nothing; instead, she moves from the known to the unknown); see also Alain Pottage, *Law after Anthropology: Object and Technique in Roman Law*, 31 *THEORY, CULTURE & SOCIETY* 147, 155 (2014) ("[L]egal technique is about making rather than knowing.").

204. See discussion *supra* Parts III.A-C.

205. I heard similar stories from judges who attended the IOJT conference in Washington D.C. When asked why they became involved in judicial education, several judges indicated that they attended the IOJT conference because they were asked to, either by a Chief Justice, or by someone they knew who worked in one of the judicial training institutes. One judge was asked to come by the director of his national judicial institute who was the former Chief Justice for his court. Another judge indicated that he attended, because he saw an advert on the domestic judicial training institute website and had always been impressed with their courses. One judge told me that he became involved in teaching because the Chief Justice at his court thought he would be good at it. This judge has travelled to Mexico, Latin America, Africa, and Moldavia for judicial education projects.

did not explicitly intend to solve democracy and development problems. When I asked the Israeli judges about their decision to become involved in the IOJT, one of the judges told me that he started as a student at the IAJS when he became a judge. Then he became one of the teachers, then management, and then he became involved with the IOJT. As for the second judge, the following was our exchange:

TG: What was your interest in being involved in education, in these organizations? What is the motivation for you?

Judge A: (laughs) It is a difficult question. I don't know . . . . When I met with other people in the world, I saw that there is a common interest to meet together and speak together. And it was only natural that I should do something that nobody did. So when nobody does something, do it yourself if you want.<sup>206</sup>

Israeli judges worked from organizational structures that were familiar to them, modeling their organizations on U.S. institutes such as the Federal Judicial Center or the National Judicial College, and establishing an umbrella organization which would bring already existing national institutes together. The Jerusalem and São Paulo declarations stated that: "it is of the utmost importance to exchange information and ideas on the various national programs" because establishing a network or forum would improve the exchange of information.<sup>207</sup> At the same time, the São Paulo declaration acknowledged that these networks for exchange and sharing information already existed.<sup>208</sup>

Judges adopted models and utilized tools that were known to them, often working on legalistic projects like producing declarations or reports. At meetings to establish the IOJT in São Paulo and Jerusalem, attendees articulated *do-able* goals for the group: (1) establishing a not-for-profit society; (2) publishing an organization journal or newsletter (currently they have both a newsletter and a journal, having published the first edition of the journal in 2013); (3) identifying all the judicial schools and directors worldwide; and (4) organizing an "international congress of judicial training organizations" in Jerusalem in 2001.<sup>209</sup>

For the most part, judges' other work is anonymous and goes unnoticed.<sup>210</sup> For example, Justice Levin, who served as a judge for thirty-seven

206. Interview with Judge A (Retired), *supra* note 3.

207. Declaration of São Paulo, *supra* note 184 ("Considering that it is of the utmost importance to exchange information and ideas on the various national programmes on initial and permanent training of judges[.]")

208. *Id.* ("Considering that it is well known to the undersigning parties that there already exist networks and cooperative initiatives between various schools of judges and/or persons responsible [sic] for training and educating judges . . . .")

209. Jerusalem Declaration, declaration from Preparatory Convention Aimed at Establishing an International Body of Judiciary Training Organizations, Jerusalem, Israel, December 6-8, 1999.

210. So "anonymous" is this work that the security at the Supreme Court of Israel building where the IOJT and IAJS offices are housed did not know where those offices were. Nor did the staff at the Office of the President recognize the name of the secretary who has worked for the IAJS for over twenty years. IOJT meetings similarly go unnoticed. In contrast to the World Bank's Law, Justice, and Development Week, there is no

years (twenty-three years on the Supreme Court with eight years as Deputy President), left a legacy of significant casework and yet is hardly known outside Israel.<sup>211</sup> Dr. Levin is not nearly as well-known as former Chief Justice Aharon Barak, who, throughout his tenure, made conference and other academic appearances and published books and articles,<sup>212</sup> many of which have become well known in the United States and Canada.<sup>213</sup>

Israeli judges' extra-disputing work in international judicial education was thus pragmatic,<sup>214</sup> but not in the way that extant thinking about legal

general security at IOJT conferences. At the Washington meetings, the Israeli judges had a security detail that followed them, but there was no security and no screening to get into the event site. One judge indicated that he was proud that no one knows that chief justices from all around the world are gathered: "you get all these judges together with all of their politics, but there is no media there, no attention, and so they can meet and talk like people." Interview with Judge B (Retired), Supreme Court of Israel, in Jerusalem, Isr. (Mar. 6, 2014).

211. Justice Levin wrote the decision (August 18, 1993) on the motion for John (Ivan) Demjanjuk's trial on charges of war crimes at Sobibor and other concentration camps. He sat on the Rubenstein, Sheinbein case which went against the religious ultra-orthodox opposition to the archaeological dig at the City of David. In a 2011 newspaper article on Justice Asher Grunis, President of the Supreme Court of Israel from 2012-2015, lawyers compared Dr. Levin and President Grunis because of their background in civil matters and their attention to procedure. President Grunis was described as "a poor man's Shlomo Levin": "He does not have Levin's intellectual heft and broad education . . . Levin handed down deep and splendid decisions on civil matters. Grunis has nothing." Dalia Karpel & Tomer Zarchin, *The Quiet Man Who's Making a Storm in Israel's Supreme Court Scene: Justice Asher Grunis*, HAARETZ (Dec. 17, 2011), <http://www.haaretz.com/israel-news/the-quiet-man-who-s-making-a-storm-in-israel-s-supreme-court-scene-justice-asher-grunis-1.401911>.

212. See, e.g., AHARON BARAK, JUDICIAL DISCRETION (Yadin Kaufmann trans., 1989) (1987); Aharon Barak, *A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 19, 19-162 (2002).

213. See, e.g., Owen Fiss, *Law Is Everywhere*, 117 YALE L.J. 256, 256-78 (2007). Barak launched a "scholarly campaign" to entrench new basic laws. AMNON REICHMAN, JUDICIAL CONSTITUTION MAKING IN A DIVIDED SOCIETY: THE ISRAELI CASE, IN CONSEQUENTIAL COURTS: JUDICIAL ROLES IN GLOBAL PERSPECTIVE 233, 244 (Diana Kapiszewski, Gordon Silverstein & Robert A. Kagan, eds., 2013).

In a similar vein, Justice Wallace, one of the founders of the IOJT, four times nominated to the Supreme Court of the United States, and the first Chief Judge of the Ninth Circuit Court of Appeals to be based in San Diego was described in 1991 as follows:

With the Supreme Court apparently out of reach, Wallace has made himself in recent years into a specialist in the arcane world of judicial administration—the business of running a court. For the past eight years, he has even spent his vacations studying courts, often overseas . . . Wallace also passionately believes that more people would be fascinated—as he is—in judicial administration, if they knew more about it.

Alan Abrahamson, *Law and Order Judge Takes Over Key Appeals Court Post: Judiciary: J. Clifford Wallace becomes chief judge of the nation's largest circuit court of appeals. A defense attorney calls him bright but heartless*, L.A. TIMES (Feb. 4, 1991), [http://articles.latimes.com/1991-02-04/local/me-361\\_1\\_chief-judge](http://articles.latimes.com/1991-02-04/local/me-361_1_chief-judge) ("You could have the most important rights spelled out in statutes and constitutions, but they wouldn't be worth the paper they're written on, in the final analysis, unless there's a court system that can deliver justice," Wallace said. "And judicial administration is what that is all about.").

214. This is especially true of early pragmatism, which asserted that truths are made in the course of working on solutions. Michael Dorf & Charles Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267, 357 (1998); see, e.g., WILLIAM JAMES, PRAGMATISM: A NEW NAME FOR SOME OLD WAYS OF THINKING (1975). Similarly,



instrumentalism would suggest. This case study demonstrates that legal techniques are not always employed in response to a preexisting and identified problem. Rather, the problem itself may be generated and articulated in the process of working *with* legal solutions. Judges can be less strategic in pushing their political or ideological agenda than the literature would suggest, and thus the “primacy of policy preferences” cannot always explain judicial behavior.<sup>215</sup>

#### IV. International Conferences on Judicial Education

##### A. Judicial Education in Support of the Rule of Law

Since its first conference in 2002, the IOJT has held conferences every two years, in Ottawa (2004), Barcelona (2007), Sydney (2009), Bordeaux (2011), Washington (2013),<sup>216</sup> and most recently in Recife, Brazil (November 2015).<sup>217</sup> The IOJT hosts these international conferences in conjunction with a domestic judicial institute or organization.<sup>218</sup> In November 2013, the IOJT conference and the World Bank Group’s Law, Justice, and Development Week were both held in Washington, D.C.<sup>219</sup> This presented an opportunity to compare development practitioner and judicial approaches to the rule of law and development. It also provided a forum through which to inspect claims about the connections between judicial education and the rule of law and development.<sup>220</sup>

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Deval Desai and Michael Woolcock describe the new experimentalism in rule of law reform in developing countries, which includes “adopting an experimental approach to ‘finding and fitting’ solutions that respond to locally nominated and prioritized problems.” Desai & Woolcock, *supra* note 87, at 162.

215. See EPSTEIN & KNIGHT, *supra* note 37, at 9; Cornelia Woll, *Interests and Preferences in Political Economy Analyses* (Working Paper) (Economic Sociology and Political Economy, Max Planck Institute for the Study of Societies, Summer Conference Villa Vigoni, Lago di Como, Italy, 15–18 July 2006); Cornelia Woll, *Learning to Act on World Trade: Preference Formation of Large Firms in the United States and the European Union* 5–6 (Max-Planck-Institut für Gesellschaftsforschung Köln, Working Paper No. 1, 2005).

216. See *IOJT Conferences*, INT’L ORG. FOR JUD. TRAINING, <http://www.iojt.org/page-conferences.html> (last visited Aug. 9, 2015); see also VASTINA R. NSANZE, REPORT ON IOJT CONFERENCE, SYDNEY OCTOBER, 2009, at 25–29 (November 2009) (on file with author).

217. *Message from the President*, IOJT NEWSLETTER (IOJT), vol. 1, 2014, at 2–3.

218. See *IOJT About Us*, *supra* note 85.

219. The Law, Justice, and Development Week is organized by the legal departments in the International Bank for Reconstruction and Development, the International Development Association, the World Bank, International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID). *Partners and Sponsors - Law, Justice, and Development Week 2013*, WORLD BANK (Sept. 16, 2016), <http://web.worldbank.org/WBSITE/EXTERN/AL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:23468722-pagePK:210058-piPK:210062-theSitePK:445634,00.html>.

220. I devised three sets of short general questions that I could ask any participant: (1) What brings you here? What were you hoping to get out of the conference? What are the benefits or challenges of developing relationships with judges from other countries? (2) What do you think is the most important issue in judicial education? (3) How would you describe what you do at these meetings? How do you understand or share information about concepts like “best practices” or the “rule of law?” At the World Bank meeting, I was also part of a group from Cornell University Law School that carried out a survey on behalf of the Global Forum on Law, Justice, and Development—a consor-

The topic for the IOJT conference was “Judicial Excellence through Education.”<sup>221</sup> The IOJT organized the conference into theme days, for example, Leadership and Judicial Education (Day 1) and Judicial Education in Support of the Rule of Law (Day 2).<sup>222</sup> Sessions included discussions on leadership skills, judicial ethics, “Judicial Education as a Social or Institutional Change Agent,” education for adult learners, judgecraft, and how to involve judges in training programs.<sup>223</sup> Breakout sessions on the second day included “Judicial Education in Support of Justice System Reform, Independence, and Accountability” and “International Framework for Judicial Excellence.”<sup>224</sup>

The World Bank President summarized their theme, “Towards a Science of Delivery in Development: How Can Law and Justice Help Translate Voice, Social Contract[,] and Accountability into Development Impact?”<sup>225</sup> in his opening remarks:

At the World Bank Group we believe applying the science of delivery to law and justice issues involves two related, but distinct, outcomes. First, it means building better legal and justice systems that deliver justice directly. This involves working with legal and judicial systems, including courts, alternative dispute resolution institutions, law enforcement agencies[,] and legal practitioners. Second, it means using principles, grounded in law and notions of justice, to deliver just and equitable outcomes.<sup>226</sup>

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tium of 173 partners including universities, courts, professional organizations, judicial training institutes, and World Bank partners. The survey was a short questionnaire filled out following each session/panel by the Cornell representative and a session attendee. In total, 144 participants were surveyed about their participation at the Law, Justice, and Development Week.

221. See NCSC & IOJT, JUDICIAL EXCELLENCE THROUGH EDUCATION 1, [http://www.iojt-dc2013.org/-/media/Microsites/Files/IOJT/NCSC\\_IOJT\\_Program-English.ashx](http://www.iojt-dc2013.org/-/media/Microsites/Files/IOJT/NCSC_IOJT_Program-English.ashx).

222. See *id.* at 6.

223. See *id.*

224. The topics for day three and day four, respectively, were “Technology and Judicial Education” and “Judicial Education and the Academy.”

225. The theme was to explore how using the three “law and justice mechanisms”—(i) voices “ensuring that all stakeholders participate and are heard,” (ii) social contracts to “fully and fairly define the rights and obligations of parties,” and (iii) accountability to hold “relevant actors responsible and ensur[e] recourse is available when obligations are not fulfilled”—might assist the “science of [development] delivery.” Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel, Welcoming Remarks at the Law, Justice and Development Week 2013 (Nov. 18, 2013) (transcript available at *Welcoming Remarks by Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel, at the Law, Justice and Development Week 2013*, WORLD BANK, <http://web.worldbank.org/WB0SITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:23506523-pagePK:210058-piPK:210062-theSitePK:445634,00.html> (last visited Jan. 3, 2017)).

226. Jim Yong Kim, World Bank Group President, Opening Remarks at the Law, Justice and Development Week 2013 (Nov. 18, 2013) (transcript available at *Opening remarks by Jim Yong Kim, President, World Bank Group, at the Law, Justice and Development Week 2013*, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:23507046-pagePK:210058-piPK:210062-theSitePK:445634,00.html> (last visited Jan. 3, 2017)). Senior Vice President and General Counsel Anne-Marie Leroy articulated similar instrumental goals in her opening remarks. She stated that the aim of the Law, Justice, and Development week was to discern “how law and justice concepts, tools[,] and knowledge can be harnessed to improve development deliv-

The World Bank Group invited Willy Munyoki Mutunga, Chief Justice of the Supreme Court of Kenya to speak on “Just Development” (although he was unable to attend, his speech was read by the Honorable Lady Justice Pauline Nyamweya, of the Supreme Court of Kenya),<sup>227</sup> as well as judges from Kenya, Ghana, and Niger to speak on “The Transparency, Independence[,] and Accountability of the Judiciary in Africa.”<sup>228</sup> It hosted a panel on “Courts and the Science of Delivery in Latin America,” which focused on the research that the International Development Research Centre (Canada) funded on complex litigation affecting development as well as the judiciary’s role in monitoring development outcomes.<sup>229</sup> The Law, Justice, and Development week concluded with a round table panel of judges from São Paulo on “Delivering Justice to the People.”<sup>230</sup>

In formal settings such as panels or informally in interviews, when the topic of the rule of law was raised, judges often redirected the conversation to the issue of judicial independence<sup>231</sup> and the public’s perception of the justice system.<sup>232</sup> The judges thought of the rule of law in the context of their social practices—the ways that judges develop or remove themselves from relations and connections.<sup>233</sup> One judge’s response to my question about trying to improve the rule of law through judicial education also focused on practicalities:

I think that at the conference I saw workshops that judges sat in on [that dealt] with very practical issues that judges are coping with. I think this

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ery. If designed and implemented in the right way, law and justice mechanisms can make a difference.” See Anne-Marie Leroy, *supra* note 225.

227. See Law, Justice and Development Week 2013: Towards A Science of Delivery in Development, Program Agenda, (Nov. 18–22, 2013), <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:23384728-menuPK:445676-pagePK:64020865-piPK:51164185-theSitePK:445634,00.html>.

228. See generally *id.*

229. See generally *id.*

230. See *Law, Justice and Development Week 2013, Program Agenda*, WORLD BANK (Mar. 9, 2014), <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:23384728-menuPK:445676-pagePK:64020865-piPK:51164185-theSitePK:445634,00.html>.

231. Similarly, when asked to identify the most important issue in judicial education, a Canadian Senior Family Judge spoke about the need for independence in judicial education. He spoke of his apprehension when asked by others to attend training because they will be setting the agenda and it could lead to a perception of bias in future cases. Interview with Judge D, Ontario Superior Court, in Washington, D.C. (Nov. 3–7, 2013).

232. At a panel on the topic, Judicial Education in Support of the Rule of Law, Federal Judge and Director of Instituto Superior de la Magistratura in Argentina presented Argentina’s successful program where high school students participate in mock trial exercises. The judge conveyed how positive perception of the justice system increased once students personally experienced how difficult it was to decide. Most recently the mock trial was televised and had high ratings. When I interviewed a Canadian judge, Judge D, and asked about the meaning of “best practices,” this was the example that he recalled. *Id.*

233. When I spoke with a senior judge from Australia, she stated that the rule of law was a fundamental principle that underpins how courts fulfill their role when they engage with the public. In other words, instead of judges supporting the rule of law, the rule of law supported the work that judges do. Interview with Judge F, Austl. Supreme Court of Queensland, in Washington, D.C. (November 3–7, 2013).

took the main part of the conferences . . . practical lectures, exchanging of experience . . . how to administer the court, court administration, and the way you can watch the witnesses, the way you sit in a panel. All those issues are very practical. And then there is of course the overall idea, common idea, of the rule of law that you have to protect the rule of law to . . . everybody according to his system.<sup>234</sup>

Judges spoke of having to work with the material and immaterial of justice and big concepts, but also of people and realities. In his speech, Justice Sachs called it the “grand ideas of ages feeding into the daily lives of people.”<sup>235</sup> One judge from São Paulo, Brazil was more direct about the difficulties in holding the ideal and concrete together. When asked to describe what he did at these meetings, he expressed concern that sometimes there was not enough balancing of ideas and concrete plans: “the ideas are perfect” but “ok, now what do we do?”<sup>236</sup> He worked with prisoners, dealing with the execution of sentences and rehabilitation efforts, and told me that he wanted to see more concrete measures coming out of the conference:

It seems to me they know exactly what they have to do to end poverty and to end violence against women or to stop climate change. The ideas are perfect. The problem is when you say to someone ok, let's execute that idea, take from paper and put it on the streets . . .<sup>237</sup>

Judges raised other concerns about judicial education. They explained that it was difficult to convince judges of the benefits of education when it would add additional time to their work-life, but they were concerned about the public's perception of the judiciary if judges took time off for additional training.<sup>238</sup> Judges also explained that it is hard to know the effect training actually has on judges;<sup>239</sup> and asked how to involve judges who really do need training but self-assessed that they do not.<sup>240</sup> Judges talked about the specific needs of adult learners, jokingly stating that the format for the IOJT meetings stood in contradiction to eve-

234. Interview with Judge B (Retired), *supra* note 210.

235. Albie Sachs, Former Judge of the Constitutional Court of South Africa, Keynote Address at the Law, Justice and Development Week 2013 (Nov. 18, 2013), <http://www.worldbank.org/en/news/video/2013/11/18/albie-sachs-at-law-justice-and-development-week-2013>.

236. Interview with Judge G, Court of the State of São Paulo, in Washington, D.C. (Nov. 19, 2013).

237. *Id.*

238. Conversation with judges from Australia in small group breakout during the session, Leadership Skills for Judges, IOJT International Conference, Washington D.C. (Nov. 4, 2013). Justices Archie and Dressel led this session.

239. Question and Comment by Court of Appeal Judge (Senegal) and Director of the National Centre for Judicial Training of Senegal, during the opening plenary, Leadership in Judicial Education, IOJT International Conference, Washington D.C. (Nov. 4, 2013).

240. Conversation with judges from Australia in small group breakout, *supra* note 238. In countries where judicial education is voluntary, judges noted that the people who need training the most do not sign up for classes. Classes that mixed high and lower court judges could be a problem; one judge gave the example of a Chief Justice who answered all the questions throughout the course. *Id.*

rything that people knew about adult learners.<sup>241</sup>

A recurring discussion focused on the *tension* between judicial education and the rule of law. Judges expressed concern about the source of funding for training programs, and the public's perception that judges go on "weekend retreats."<sup>242</sup> At the final plenary session on Judicial Education and the Academy, titled, "Collaboration between the Academy and Judicial Training Institutes: Challenges and Opportunities," judges discussed the problem of "training junkets."<sup>243</sup> A judge from the High Court of Kenya spoke of externally funded training which took place in a resort town. People see judges "going on trips to coastal towns and having a good time," and their confidence in the justice system diminishes.<sup>244</sup> In addition, external sources of funding may direct training inefficiently. The judge shared a hypothetical, where out of the five hundred judicial officers attending a UNHCR training, only ten work on human rights, or if five hundred judges attend a USAID funded trip, only five handle drug cases.<sup>245</sup> Education funded by external donors often advances the donors needs and not the needs of judges.<sup>246</sup>

In an interview following the IOJT meetings, Judge Joan Churchill, retired judge of the Immigration Courts (United States), former President of the National Association of Women Judges, and member of the International Association of Women Judges, pointed out the "inherent contradiction" for the IOJT in linking judicial education and judicial independence.<sup>247</sup> As she understood it, one of the objectives articulated by the IOJT was to inspire confidence in the judiciary; yet holding training sessions in resort areas was often perceived as an abuse. The media often criticizes training, especially if organizations that are seen to have particular agendas invite judges to participate.<sup>248</sup> Training may seek to improve the judiciary, but executing or implementing judicial education continues to cause problems for impartiality and public confidence in the justice system.<sup>249</sup>

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241. Specifically, participants noted that adults only retain 5% of the information they receive through lectures whereas 50% of learning happens when discussing with peers. See Armytage (1993), *supra* note 134; Dawson, *supra* note 33, at 185, 187.

242. The Honorable Ivor Archie, C.J. Trinidad & Tobago Sup. Ct., Presentation at the IOJT International Conference: Leadership Skills for Judges (Nov. 4, 2013).

243. Conversations amongst final plenary session participants, Plenary 4.0: Collaboration between the Academy and Judicial Training Institutes: Challenges and Opportunities, at the IOJT International Conference (Nov. 7, 2013).

244. Hon. Joel Mwaura Ngugi, Judge, High Court of Kenya, Presentation at the International Conference on the Training of the Judiciary: Challenges and Opportunities (Nov. 7, 2013).

245. *Id.*

246. LINN HAMMERGREN, JUDICIAL TRAINING AND JUSTICE REFORM 6 (1998), <http://siteresources.worldbank.org/intlawjustinst/resources/judicialtraining.pdf>.

247. Interview with J. Joan Churchill, in Chevy Chase, Md. (Nov. 13, 2013). Judge Churchill indicated to me that she wanted her identity known in relation to this insight.

248. *Id.*

249. See e.g., Hon. Georgina R. Jackson, Justice of the Court of Appeal for Saskatchewan Regina, Saskatchewan, Canada, Presentation of Session 1.3: Judicial Education as a Social or Institutional Change Agent, 6th International Conference on the Training of

Judge Churchill considered her “inherent contradiction” as a challenge to the whole concept of judicial education. While it is the case that with training, funding, and judicial independence, the ideal and project execution are sometimes incompatible, for judges involved, goals and their actualization manage to hold together.<sup>250</sup> The presence of incompatibilities—and the tension and uneasiness of contradictions that do not resolve—is endemic to judging.<sup>251</sup> The subsistence of contradictions that do not resolve may also be a feature of using legal techniques to “solve” development problems.<sup>252</sup> The “continued and intransigent popularity of [law and development] efforts despite its equally intransigent track record of failure” is not so much a paradox but a feature of using law as a tool for social change.<sup>253</sup>

## B. Judges’ Foreign Relations

The international meetings provided an opportunity to investigate the way that knowledge is transferred when judges meet and examine claims about whether and how judges are involved in international or foreign rela-

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the Judicial in Washington, D.C. (Nov. 4, 2013), <http://www.iojt-dc2013.org/Presenter-List/Georgina-Jackson.aspx>, at slide 10 (identifying “Institutional Issues” which include: “Who pays for funding, Are strings attached to funding, Who decides programming, How is the organization that provides programming structured, Is programming balanced, Do the judges have the choice to attend or not, [and] Does competition exist”).

250. STRATHERN, *supra* note 42, at 27. Strathern discusses incompatible things that do not dissolve or resolve but somehow hold together. Initially Strathern speaks of the Feminist who is asked to be more than herself in order to grasp others’ story and issues, to “[hold] in one’s grasp what cannot be held . . . [and] make the body do more than it can do . . . .” In trying to address the problem of intersectionality for Feminist theory, Strathern argued that Feminism does not resolve into other aspects of one’s identity, but are connected in a partial manner. She moves on to describe other situations—like writing ethnography—that cannot facilitate an “integration” because of internal differences or fundamental connections to other things. She points out, however, that incompatible things can sometimes hold together. *Id.*

251. For example, the “Herculean task” of finding fit and consistency with all precedent, relevant statute, and constitutional principles. See e.g., Ronald Dworkin, *Hard Cases*, 88 HARV. L. REV. 1057, 1083 (1975).

252. With this in mind, it might be possible to move past frustration with the cycle of optimism and despairing confessionals that are characteristic of law and development scholarship. See Kevin E. Davis & Michael J. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 56 AM. J. COMP. L. 895, 896–97 (2008) (“[O]ptimistic views have come under attack from a variety of directions. The mildest of those attacks challenge the assumption that law and development practitioners are capable of identifying and implementing the legal reforms that promote development. More forceful attacks challenge the notion that would-be reformers can reasonably expect to effect meaningful legal change given the obstacles posed by various historical, economic, political[,] or cultural factors. The most thoroughly skeptical approach challenges the claim that law plays a significant causal role in development.”); Jedidiah Kroncke, *Law and Development as Anti-Comparative Law*, 45 VAND. J. TRANSNAT’L L. 477, 484–85 (2012) (“What is initially so striking about the literature on law and development is its consistent and ever-present self-critique. At both the theoretical and operational level, very little is written on foreign reform efforts that is not at some point reflective and inclusive of ‘lessons learned.’”); David Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies*, 4 WIS. L. REV. 1062, 1073–74 (1974).

253. Kroncke, *supra* note 252, at 485.

tions. Is there a global community of courts? How are judges interacting, and whom are they interacting with? Under the auspices of the IOJT and the Foreign Ministry, Israeli judges have travelled to Chili, Rwanda, Uzbekistan, and Kenya to help local judges plan courses and set up local training institutes.<sup>254</sup> Since the IOJT's first conference in 2002, member institutions have met every two years for an international conference co-hosted by a local training institute and the IOJT executive, with over two hundred people—including judges from all level of courts—attending a recent conference in Washington, D.C.<sup>255</sup>

International judicial education thus stands as an example of judicial engagement in politics beyond the individual case. The way judges have entered into this international relations or development world is in large part through this other kind of work. International judicial education also highlights that judicial politics cannot always be easily characterized as a confrontation between conservative and liberal politics. Judges express interest in law and development, foreign relations, internationalization, and globalization. Finally, international judicial education highlights that the rational choice model is not always enough to explain judicial behavior.<sup>256</sup> Standard approaches to judges and politics depict judges as rational or irrational, a composite of their political ideology and public policy preferences.<sup>257</sup> There is a kind of perfection that pervades this literature. But judges can also be awkward and ineffective. Even if we find a judge that exhibits rational and strategic behavior, her practices of sociality—developing relations and connections—are subject to the kinds of ambiguities, hazards, and slippages that normally accompany social interaction and material exchanges.<sup>258</sup> This section describes the interactions and communication between judges as well as their efforts at building transnational networks.

Initially, Justice Levin had the idea that the IOJT would be directly involved in law and development projects. He envisioned that the IOJT would coordinate with the World Bank and provide a group of experts who could travel to various countries to assist in either educating judges or helping judges establish their own judicial education institutes.<sup>259</sup> Unfor-

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254. Interview with Judge B (Retired), *supra* note 210.

255. The IOJT Attendee List as of Oct. 23, 2013 (just under two weeks before the conference) indicates 203 attendees, including 130 non-U.S. attendees, and more than 70 judges). See *infra* Appendix B, Table 3.

256. LEE EPSTEIN & JACK KNIGHT, *THE CHOICES JUSTICES MAKE* 9 (1998).

257. See, e.g., LAWRENCE BAUM, *THE SUPREME COURT* (10th ed. 2010); EPSTEIN & KNIGHT (1998), *supra* note 37; SEGAL & SPAETH (1993), *supra* note 37; SEGAL & SPAETH (2002), *supra* note 37; Charles Gardner Geyh, *Can the Rule of Law Survive Judicial Politics*, 97 CORNELL L. REV. 191, 194 (2012); Weinshall-Margel, *supra* note 37, at 556.

258. WEBB KEANE, *SIGNS OF RECOGNITION: POWERS AND HAZARDS OF REPRESENTATION IN AN INDONESIAN RECOMMENDATION 7* (1997) ("The relevant locus of agency . . . is subject to ongoing construction and transformation. It is liable to shift, subject to the strategies and miscues of the interaction, reflecting a more general set of possibilities . . . . Much of the work of power aims at, and is registered in, such transformations or constrictions of agency.")

259. Interview with Judge A (Retired), *supra* note 3.

tunately, the structure of the World Bank, which is organized according to regions would not allow for a thematic subgroup.<sup>260</sup>

Judges in Israel have been able to undertake some international travel to assist judges with education development. According to the judges and staff whom I interviewed, Israeli judges have travelled to Rwanda, Kenya, and Costa Rica in their capacity as members or instructors of the IOJT/IAJS, sponsored by the Israeli Ministry of Foreign Affairs.<sup>261</sup> For instance, under the auspices of the IOJT, Justice Levin met with judges in South America to develop a judicial education program.<sup>262</sup> Similarly, Justice Rivlin travelled to Kenya to help judges develop their judicial training institute.<sup>263</sup>

The Israeli judges were aware that assisting institutes in other countries could potentially improve Israel's reputation internationally. And the opportunity for positive perception of the Israeli judiciary must also be recognized by the Ministry of Foreign Relations, which funded IOJT board member trips (delegations = המשלחות, from לשלוח = to send) to Rwanda, Kenya, and countries in South Africa.<sup>264</sup>

In addition to this limited travel, in between conferences, the executive reviews institutes' membership requests to join the IOJT.<sup>265</sup> The organization also maintains contact through the internet. Recently (Summer 2014), the IOJT distributed a newsletter detailing some recent activities of the organization, including Justice Rivlin's trip to Uzbekistan and a request by the UN Counter Terrorism Committee, to assist in developing judicial education that could be delivered worldwide "in the field of application of rule of law in matters related to the ways judicial systems contend with terror related matters."<sup>266</sup> The IOJT also annually publishes an online journal, with the most recent issue, Vol. 6, published in 2016 and available for download on the IOJT website.<sup>267</sup> For the most part, however, contact between representatives of member organizations takes place at the inter-

260. As explained to me by one of my informants, "[the] IOJT along the years tried to be in touch with World Bank to see if they can cooperate . . . . Actually Justice Levin's idea was to establish a team of experts from all over the world that could travel from one developing country to another and assist in what they need. [B]ut without a budget it can't work, and . . . funding from the World Bank didn't work out in this kind of framework . . . because of the World Bank's focus on regions." Interview with Staff (Retired), *supra* note 159.

261. Interview with Judge A (Retired), *supra* note 3; Interview with Judge B (Retired), *supra* note 210; Interview with Staff (Retired), *supra* note 159.

262. Interview with Judge A (Retired), *supra* note 3.

263. Interview with Judge B (Retired), *supra* note 210. The trip to Kenya was described to me as follows: "They have the facilities, the place, nice location, but they have some problems with teachers with teaching there. We spent about a week there, we changed views, and we tried to bring them our experience, building and managing a school for judge." *Id.*

264. This was not without its controversy, for example, see Tomer Zarchin, *Five Days of Work in One-month Vacation? State Pays Airfare*, HAARETZ (Oct. 20, 2009), <http://www.haaretz.com/beta/five-days-of-work-in-one-month-vacation-state-pays-airfare-1.5827>.

265. Interview with Staff (Retired), *supra* note 159.

266. *Message from the President*, IOJT NEWSLETTER, *supra* note 217.

267. See *Journal*, IOJT, <http://www.iojt.org/Journal.aspx> (last visited Jan. 14, 2017).



national conferences that are held every other year.<sup>268</sup>

At the Washington meetings, communication was anecdotal, each person telling their own story and experiences. In and out of breakout sessions, judges exchanged stories about the work they did and reflected on how other judges' practices related to their own.<sup>269</sup> Presentations consisted of descriptions of programs run by a domestic training institute. Panelists shared anecdotes about their successes and challenges with particular training interventions. Participants also took the opportunity to tell their own stories even with the questions they asked. When asking questions during Q&A, participants conveyed anecdotes about their experiences as educators, using that experience to either challenge the speaker, or complain and ask for advice.<sup>270</sup>

Many judges indicated that the purpose of meeting judges from other countries was to share best practices, get ideas to implement at home, and learn what others do or learn other ways of doing things.<sup>271</sup> However, when asked this question, several judges also expressed disappointment that there was little organized activity that would facilitate exchange between the judges of different countries. Sessions led by more senior educators or institute directors who had been involved in judicial education for

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268. I asked my interviewees what communication or activities there were in between the biennial conferences. The response was consistent: everyone is busy and the organization does not have any money to pursue other activities. Initially the founders thought the regions could meet in between the biennial conference; however, other than the judicial institute in the Philippines, which organized a conference to introduce the IOJT to its region, these meetings did not happen.

269. A Canadian judge described to me his conversation with a judge from Jamaica, where the death penalty is still in effect: "In one day he sentenced three men to hang." This was "an eye opener." Interview with Judge E, Ontario Superior Court, in Washington, D.C. (Nov. 5, 2013). This judge was also interested to learn about the processes for appointment in other countries, which "brought home the importance of the role of the judiciary, in terms of the administration of justice [and society at large.] . . . The judiciary must be absolutely independent of government interference." *Id.*

270. The starkest example of narration as a format to share knowledge was the keynote speaker at the World Bank, Law, Justice, and Development Week, former judge of the Constitutional Court of South Africa, Albie Sachs. Sitting perched on a stool, as a grandfather regaling his heirs with his life story, Justice Sachs spoke about the three major cases that came before the Constitutional Court. First he told the story of the case of dealing with HIV medication: "Can judges prescribe drugs? When human rights are involved in such a profound way; when all the evidence showed that they drug was safe . . . when all the evidence before us showed that the doctors were clamoring . . . not only can we but we must, it's our duty under the constitution." He also recalled the case of a woman who lived in a shanty home with her three children and was asking for housing. He could not apply technical land law but had to find way of correlating rights of *ubuntu*, thus finding value in the idea of "meaningful engagement." The audience, attentive, cheered widely when he said that development must now include access to fundamental rights and fair process, and that judges are already used to working in the principled way that development now requires. Albie Sachs, *supra* note 235.

271. To that end, the judges appropriated corporate methods for networking or building connections: distributing gift bags with pens, smart phone accessories, and other "swag." At both conferences, I witnessed participants combing through the business cards they had collected, as if they were prized possessions. The business card was so much a presence at meetings that a business card holder with the IOJT insignia was given as a gift at the Library of Congress dinner.

many years were interactive.<sup>272</sup> However, few sessions included smaller group interactions or one-on-one discussions.<sup>273</sup> Even when there were breakout groups, judges expressed disappointment that people tended to stick with the judges from their own country.

Israeli judges were aware of and interested in the possibility of improving foreign relations through the IOJT. Judges and IOJT staff proudly informed me that the past attendees to IOJT conferences included a delegate from the Ministry of Justice of Jordan, judges from Egypt, the Palestinian Authority, Iraq, Iran, Abu Dhabi, and Pakistan.<sup>274</sup> I was also informed of new members following the 2013 conference, including the Judges' Institute in Sri Lanka and the judicial institute in Sierra Leone.<sup>275</sup> Judges and IOJT staff proudly told me about these exchanges with judges from the countries that had no relations with Israel. For an organization founded in part by Israeli judges and whose first two conferences were in Jerusalem, judges and staff felt these interactions were an accomplishment. One judge told me, "I think it's a miracle because [the IOJT] consists of countries that some of them don't speak with each other (sic), but it's different with judges and educators who put aside all politics and cooperate."<sup>276</sup>

The conferences were seen as a forum where Israeli judges could interact with their counterparts, even from countries with strained relations. An IOJT staff person recounted a conference where Justice Rivlin and a judge from Iraq were on the same panel:

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272. For example, the Hon. William F. Dressel, Judge and President of the National Judicial College in Reno, incorporated small breakout discussion groups into his session. Professor Jeremy Cooper, Director of Tribunals Training at the Judicial College in London and Judge of the Upper Tribunal and of the First Tier Tribunal (Mental Health), engaged his group in a trivia game about the conference. Most sessions led by judges or educators, however, consisted of presenting examples of programs conducted in their home countries, with some time left at the end for questions. Examples include: a presentation describing the National Judicial Institute (Canada) course, "Educating Judges about Social Context," and a presentation describing the establishment of a judicial training center in Macedonia with the help of the European Centre for Judges and Lawyers at the European Institute for Public Administration. See e.g., Session 1.3: Judicial Education as a Social or Institutional Change Agent (IOJT Conference Materials CD-ROM, Nov. 2013) (on file with author); Session 1.5: Challenges for Recently Established Training Institutes: Developing an Action Plan (IOJT Conference Materials CD-ROM, Nov. 2013) (on file with author).

273. In response to the question, "What advice would you give us to improve sessions such as this (sic) in the future?" in the World Bank Law, Justice, and Development Week 2013 survey, many attendees indicated that there was not enough time reserved for questions and participation by the "audience." For example, one participant indicated that "I think they have spent too much time on presentations and not enough time for discussions. I think next time they had [sic] better make more time for questions and reaction." Attendees also felt that the panels were too broad, or sometimes the speakers did not match, and that "panelists presented information that strayed from the intended focus of the panel." Law, Justice and Development Week Survey Data, Nov. 2013 (on file with author). Participants also acknowledged that the conference did not have the best learning format for adult learners. *Id.*

274. Interview with Judge A (Retired), *supra* note 3; Interview with Staff (Retired), *supra* note 159.

275. Interview with Judge B (Retired), *supra* note 210.

276. *Id.*

In Sydney we had the Chief Justice of Iraq as one of the members, and he had a session which was with two other Chief Justices; it was moderated [by] Justice Rivlin. And everybody was [wondering] whether he would cooperate, and it went beautifully. And we have a very nice justice from Pakistan, from the Supreme Court [of] Pakistan, who participated in at least Barcelona, certainly in Sydney, and in Bordeaux, I think three [times]. Again, Pakistan doesn't have formal relations with Israel, but yet he (sic) got very friendly with Rivlin, and I got very friendly with him . . . . I wanted him to locate the Supreme Court of Afghanistan and all that, which we can't do, and things like that.<sup>277</sup>

On the other hand, judges' engagement in epistemic community building or in foreign relations was not always effective. Inter-conference trips were met with limited success. With respect to the recent trip to Kenya to help the judiciary establish a school for judges, the itinerary was broad and it was unclear how much was accomplished. One of the interviewees described the technical obstacles that stood in the way of sharing information:

Look (sic) they went and they wanted to and they did go, and our Ministry of Foreign Affairs encouraged it. But it was not pointed enough . . . . As you said, it was like, they initially went to understand what they really need (sic) and how you can (sic) assist them . . . . Israel is already advanced, you are connected to the lawyers; everything is online. Can you do it in Kenya? Their request was very broad, so I think they went there to get to know [the] system a little closer and judge for themselves . . . . Because if you get a request like "we would like assistance in court computerization"—what would it mean? Do they have computers in every court? What does it mean really?<sup>278</sup>

The notion that judges interact through global networks and epistemic communities is more complicated when we examine those networks more closely. There were several instances when judges I interviewed seemed more entrenched in their ways of doing things after hearing about training methods used in other countries.<sup>279</sup> Judges themselves noted that conference attendees tended to stick with people they knew or with judges from their own country. There were also mismatches in the exchange: a judge from Cameroon brought up the unfortunate but obvious problem of learning about best practices from other countries, but not having the infra-

277. Interview with Staff (Retired), *supra* note 159.

278. *Id.*

279. For example, Judge D expressed concern for judicial independence in jurisdictions that did not have judges teaching judges, which is the structure of the National Judicial Institute (Canada). Interview with Judge D, *supra* note 231. Judge E remarked that it was important to interact with judges from other countries, in order to appreciate that judicial systems have a lot in common. But he also noted that it was interesting to see the differences. He referenced jurisdictions where new appointees are periodically reviewed or where new appointees must pass psychological testing, which "brought home" the role of the judiciary in the administration of justice. He stated that it was critical that judges be absolutely independent without government interference in judicial administration (again, which is the structure of judicial administration in that judge's home jurisdiction). Interview with Judge E, *supra* note 269.

structure to implement the recommended technology.<sup>280</sup> One judge complained to me that, though he trades business cards with judges, the judges rarely stay in touch. Indeed, they all collect business cards like prizes, but he never hears from anyone after a conference.<sup>281</sup>

In addition, judges have no means of maintaining connections through the IOJT. For example, the IOJT never heard from the Palestinian judge again:

We had, not this time in Washington, but in the first conferences, also delegates from the Palestinian authority and all was completely on professional basis. And never did we talk about politics. But he didn't appear anymore in the last two conferences; I don't know what happened. I know his name, but I don't know. He was invited but he never came. I don't know why. We thought we could do many things together if he wanted to.<sup>282</sup>

Both staff and judges mentioned connections with the Jordanian Ministry of Justice that were also unable to advance:

I'll tell you a story. One of our neighbors is Jordan. Several years ago a delegation from Jordan came also to one of our conferences. And I met with the Jordanian school of judges. They have a school of judges very similar to the French school of judges, a very good institute. And I told him, you know, we are neighbors, why don't we exchange delegations and information, and he was very open. He said in our country, all is politics. So try to do it; send a letter to the president of the Supreme Court, and we'll see. And we did it. And we never got an answer. So when politics involved [sic], you can do nothing.<sup>283</sup>

In Ottawa, we had an Egyptian judge and ministry [sic] of Justice from Jordan, but otherwise, we tried to engage the Jordanian institute to become a member but we didn't succeed, as many letters as we wrote.<sup>284</sup>

Does the foregoing mean that judges are not political? I do not want to suggest that judges try to do something for which they are not equipped, and therefore fail. Rather, my claim is that judges make connections in a partial manner,<sup>285</sup> that judges can only make connections in a partial manner, and that this is a common experience amongst many legal actors.

## Conclusion

This Article presents judges' international activities in education as an example of extra-disputing work that affects the administration of justice

280. Interview with Judge and Director of Cameroon's training institute, Ecole Nationale d'Administration et de Magistrature, in Washington, D.C. (November 6, 2013).

281. Telephone Interview with Judge C, *supra* note 22.

282. Interview with Judge A (Retired), *supra* note 3.

283. *Id.*

284. Interview with Staff (Retired), Supreme Court of Israel, *supra* note 159.

285. STRATHERN, *supra* note 42, at 27. Strathern analogizes the role or task of the anthropologist to that of the feminist, who is always something other or something more than just the feminist: "Rather, there is a sense of holding in one's grasp what cannot be held—of trying to make the body do more than it can do—of making a connection with others in a partial manner." *Id.* The discussion is certainly apt for the legal actor, who is constantly inserting herself into and removing herself from the lives of others.

and the operation of courts. Judges act as teachers, directors of institutes, board members, and executive officers. They travel abroad to work with their counterparts on judicial ethics, alternative dispute resolution, the establishment of commercial courts, and case management systems. Israeli judges have established an international organization to act as an umbrella organization that would bring together the various national judicial training institutes. Israeli judges have also traveled abroad in delegations funded by the Ministry of Foreign Affairs to assist newer training institutes in developing their curricula.

Israeli judges' experiences with judicial education provide insight into judicial functions that move beyond the prototypical adversarial trial. Their experiences demonstrate that judges participate in law reform projects and take part in a multitude of activities that affect dispute processing. But the remnants of these activities are not necessarily found in the artifact of a decision. Judges' experience with international judicial education also challenges standard formulations of the role of judicial education in the rule of law and development.

According to the standard narrative, judicial education has a purpose—it is a tool to strengthen courts and the judiciary,<sup>286</sup> to make judges more independent, to increase public confidence in the justice system, and to make judges more accountable.<sup>287</sup> As we saw in Part II.A, the standard story suggests that lawyers and development practitioners identified democratic and/or foreign direct investment deficiencies; they suggested that stable courts (strong justice institutions) would improve the rule of law and/or economic development;<sup>288</sup> and they suggested that judicial education would promote a strong and independent judiciary.

If we consider the development of judicial training institutes from the perspective of judges, however, we find that the development of judicial education across the globe has not been so straightforward. The legal instrumentalist thinking<sup>289</sup> that dominates accounts of rule of law and development programs fails to explain much about judges' involvement in judicial education.

Scholars speak of legal instrumentalism as if there were sociological problems that we can identify, and solutions that we can develop in response. An independent problem “hovers above”<sup>290</sup> and directs the for-

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286. See discussion *supra* Part II.A.

287. See Armytage (1995), *supra* note 135, at 164 (noting that “education is seen as an agent of change which is promoted through effective learning”). The IOJT panel, titled “Judicial Education in Support of Justice System Reform, Independence & Accountability,” is a case in point. Panel Discussion at the 6th International Conference on the Training of the Judiciary: Judicial Education in Support of Justice System Reform, Independence, and Accountability (Nov. 5, 2013).

288. Miller & Armytage (2008), *supra* note 35, at 141–42.

289. Anne-Marie Leroy, *supra* note 225 (noting that “[w]e are beginning an exciting transformation here at the World Bank Group—a transformation to a ‘solutions bank’ that deliberately places problem-solving and delivery at the center of our vision for development”).

290. See Pickering, *supra* note 203, at 1.

mation of legal solutions.<sup>291</sup> By way of contrast, both David Scott and Andrew Pickering invite us to see problems as structured by “the cultural field of resources that provides the instruments for their formulation and possible attainment.”<sup>292</sup> Our hopes and expectations for the future are bound up in the methods we use for their attainment. In other words, resources and tools structure how we see problems.<sup>293</sup>

This Article demonstrates that international judicial education developed pragmatically. Judges often figured out solutions by *doing*.<sup>294</sup> Moreover, there was an interaction between the choice of tools (means) and the definition of the goal (ends). Solutions were not constructed in response to identified problems. Rather, the growth of judicial education as a global phenomenon preceded—or at least developed at the same time as—the identification and articulation of the problem. Worldwide, judges have been involved in judicial education and training for over fifty years. In Israel, judges established a training institute for Israeli judges in 1984, and then beginning in 1999, worked to establish the International Organization for Judicial Training (IOJT). Rule of law initiatives developed alongside the increased transnational activity of judges as educators. The notion that judicial education would assist in strengthening the rule of law developed and became intuitive as judicial education institutes were being established.<sup>295</sup>

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291. By way of contrast, Alain Pottage writes that, historically, “the animating principle of legal actions” was to be found within the formula of the action itself.” Pottage, *supra* note 203, at 152, 154 (noting that objects and endpoints—“matters of concern”—were “not found in nature, ready to be discerned and acted upon by law through the exercise of cognitive and practical reason, but [were] instead immanent in the legal operations and transactions that act upon them”).

292. Andrew Pickering & Adam Stephanides, *Constructing quaternions: on the analysis of conceptual practice*, in SCIENCE AS PRACTICE AND CULTURE, *supra* note 203, at 163; see also SCOTT, *supra* note 201.

293. SCOTT, *supra* note 201 (noting that we see as a problem to be solved and the kinds of questions we ask are influenced by the “problem space” or cultural field); Pickering, *supra* note 203, at 163 (noting that the interests themselves—our questions—are “structured by the cultural field of resources that provides the instruments for their formulation and possible attainment”).

294. Livingston Armytage, *Educating Judges—Where to From Here?*, 2015 J. DISP. RESOL. 167, 170 (2015) (“[M]ost of what we do remains intuitive: yes, we are doubtless learning by doing, and presumably we are doing our best.”). Though not the subject of this Article, a related challenge to legal instrumentalism’s means-ends paradigm is found in the paucity of research on the effectiveness of judicial education and training. *Id.* at 171-72 (“[C]rucially, no systematic assessment of behavioral change on the part of judges as learners currently exists. Nor is there any assessment of impact or results in attaining any stated goals of judicial education . . . . Indeed, it is surprising funding bodies have not already insisted on being provided with evidence of results from their investments.”); see also Desai & Woolcock, *supra* note 87, at 156 (“This general enthusiasm for ‘building the rule of law’ as a signature development objective is matched only by the absence of a coherent track record on which it might be realized.”).

295. Miller & Armytage (2008), *supra* note 35, at 141 (“Over the past [fifteen] years, in particular, there has been a massive increase in overseas development assistance (ODA) in legal and judicial reform. This marks a general shift in foreign aid strategy into governance and democratisation, sometimes described as the ‘rule of law revival’ . . . .”)

Judges' experiences also highlight the way in which using law as a tool can engender conflicts and incongruous goals. "Training junkets" damage the public's perception that judges are independent and impartial. But these conflicts did not lead judges to abandon the project altogether. The IOJT continues to explore the normative and optimistic, as evidenced by articles in the recent editions of its journal: "Judicial Education in Promoting the Rule of Law"<sup>296</sup> and "World Bank Support for Judicial Systems Serving Good Governance."<sup>297</sup> Judges continue to move forward in their task even though they are aware of tensions and contradictions that arise through the process of their law reform projects.

Finally, judges' practices of sociality and their missteps in engaging with politics have much to teach us about how legal actors engage with the personal and political. The international judge exhibits aspects of "making connections with others in a partial manner."<sup>298</sup> On the one hand, judges in international education stands as an example of how everything is connected—judicial education supports judicial independence and the rule of law, which are connected to democracy and development. On the other hand, for judges, the political and personal are partial and fragmented. Judges engage in a form of politics: the IOJT held its first conference during the second intifada, and judges meet with colleagues from countries that do not speak to each other. There is, however, no provision or structure for maintaining ongoing relations. Israeli judges rely on the Foreign Ministry to fund delegations, and on private donors or civil society organizations to support the work of the IOJT. Thus, judges are both connected and removed. This way of experiencing the personal and political is not limited to judges.

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296. Surendra Kumar Sinha, *Judicial Education in Promoting the Rule of Law*, 3 JUD. EDUC. & TRAINING 119, 120-21 (2015).

297. Anne-Marie Leroy, *World Bank Support for Judicial Systems Serving Good Governance*, 2 JUD. EDUC. & TRAINING 92, 92-24 (2014).

298. STRATHERN, *supra* note 42, at 27.

TABLE 1: Past and Present IOJT Members, by order of membership<sup>299</sup>

	<b>Founding Members</b>	<b>Country</b>
1	Institute of Advanced Judicial Studies	Israel
2	National Judicial Institute	Canada
3	Judicial Academy	Chile
4	National Judges College	China
5	Escuela Judicial	Colombia
6	Latvian Judicial Training Center	Latvia
7	Judicial Studies Institute	Ireland
8	Lithuanian Judicial Training Center (closed)	Lithuania
9	Ecole Nationale de la Magistrature et des Greffes	Madagascar
10	Mexican Federal Judiciary Training Institute	Mexico
11	The National Institute of Justice	Moldova
12	Philippine Judicial Academy	Philippines
13	National Institute of Magistracy	Romania
14	National Center for State Courts	USA
15	Rule of Law Foundation (ceased operations)	USA
	<b>Members by Order of Application</b>	
16	Judicial Commission of New South Wales	Australia
17	The Judicial Training Institute	Belgium
18	Centre de Formation Judiciaire de Dakar	Senegal
19	Federal Court of Australia	Australia
20	Royal School for Training Judges and Prosecutors	Cambodia
21	Judicial Training Center	Mongolia
22	Judicial Training Institute	Bangkok
23	Judiciary Leadership Development Council	USA
24	Law and Economic Center, School of Law, George Mason University	USA
25	Continuing Judicial Education Council	Solomon Island
26	Judicial Education and Development, New Jersey Judiciary	USA
27	Federal Judicial Affairs	Canada
28	Shanghai Judges Training Center	China
29	Sichuan Judges College	China
30	Studiecentrum Rechtspleging	The Netherlands
31	National School of Judges of Ukraine	Ukraine
32	Ecole Regionale Superieure de la Magistrature	Benin
33	Judicial Training Center	Serbia
34	JERITT Project, Judicial Administration Program	USA
35	National Judicial Academy	India

299. *Members*, IOJT, <http://www.iojt.org/page-members.html> (last visited Aug. 9, 2015).



36	National Judicial Academy	Nepal
37	Commonwealth Magistrates' and Judges' Association	UK
38	Ecole Nationale d'Administration de la Magistrature	Cameroon
39	Judicial Training School	Vietnam
40	Vietnamese Judicial Academy	Vietnam
41	Judicial Studies Institute	Uganda
42	Ecole Nationale d'Administration et de Magistrature	Congo
43	The National Judicial College	USA
44	Ecole Nationale d'Administration et de Magistrature	Benin
45	Instituto de Capacitacion del Poder Judicial	Mexico
46	Institute for the Rule of Law and Governance	USA
47	Centre for Judicial Studies	Australia
48	Judicial Studies Committee	Scotland
49	Leadership Institute in Judicial Education	USA
50	The Judiciary of Gambia	Gambia
51	Centre de Formation et de Documentation Judiciaires	Guinea
52	Judicial Education Center	St. Lucia
53	National Judicial Education Program	USA
54	Federation of Law Societies of Canada	Canada
55	The Judicial College	UK
56	Russian Academy of Justice	Russia
57	Ecole Nationale d'Administration et de Magistrature	CAR
58	Training Center for Judges and Prosecutors	Ethiopia
59	Escuela Judicial de Costa Rica	Costa Rica
60	Judicial Training Institute	Ghana
61	Judiciary School of the Spanish General Council for the Judiciary	Spain
62	Asociacion de Magistrados y Fundionarios de la Justicis Nacional	Argentina
63	Estonian Law Center Foundation (closed)	
64	The School of Magistrates	Albania
65	Academy for Training of Judges and Public Prosecutors of the Republic of Macedonia	Macedonia
66	Centre d'Estudis Juridics i Formacio Especialitzada	Spain
67	Judicial Training Center of the Republic of Montenegro	Montenegro
68	Unidad de Capacitacion Institucional UCI Escuela de Estudios Judiciales	Guatemala
69	Ecole Nationale de la Magistrature	France
70	National Judicial College	Australia
71	Institute of Judicial Studies	New Zealand
72	Judicial College of Victoria	Australia
73	Federal Judicial Center	USA
74	Escuela Nacional de la Judicatura	Dominican Republic
75	Australasian Institute of Judicial Administration	AIJA
76	Institute of Continuing Judicial Education of Georgia	USA

77	The Supreme Court of Ohio Judicial College	USA
78	American Society of International Law	USA
79	Oromia Justice Sector Professionals Training and Legal Research Institute	Ethiopia
80	The Judicial Training Center	Slovenia
81	The Pacific Islands Committee of the Ninth Circuit Judicial Council	USA
82	The Institute of Legal Practice and Development ILPD	Rwanda
83	The National School of Judiciary and Public Prosecution	Poland
84	The National Council of Justice	Hungary
85	The National Institute of Justice	Bulgaria
86	Escola Nacional de Formacao e Aperfeicoamento de Magistrados do Trabalho ENAMAT	Brazil
87	The High Institute for the Magistracy	Morocco
88	Justice Study Center of The Americas	Chile
89	Commonwealth Judicial Education Institute	Canada
90	National Association of State Judicial Educators	USA
91	Administrative Office the Courts Education Division	USA
92	Escola Nacional de Formacao e Aperfeicoamento de Magistrados ENFAM	Brazil
93	Judicial Studies Board for Northern Ireland	Ireland
94	Judicial Education Board of Singapore	Singapore
95	Justice Academy of Turkey	Turkey
96	Justicna Akademia Slovenskej Republiky	Slovak Republic
97	Delhi Judicial Academy	India
98	Kenya Judiciary Training Institute	Kenya
99	Judicial Academy	Croatia
100	Centro De Capacitacion Judicial De Centro America Y El Caribe.	Costa Rica
101	Deutsche Richterakademie	Germany
102	Centre De Formation Des Professions De Justice	Togo
103	Canadian Institute for the Administration of Justice	Canada
104	Trinidad and Tobago Judicial Education Institute	The Republic of Trinidad and Tobago
105	Instituto de Estudios Judiciales del Tribunal Superior de Justicia del Distrito Federal	Mexico
106	Escuela Judicial del Estado de Campeche	Mexico
107	Red de Escuelas Judiciales de las Provincias Argentinas y de la Ciudad Autónoma de Buenos Aires REFLEJAR	Argentina
108	Instituto de Formación de Servidores Públicos del Poder Judicial del Estado de Guanajuato	Mexico
109	The Supreme Court of Seychelles	Seychelles
110	Institute of Judicial Administration-Lushoto	Tanzania
111	The Supreme Court of Estonia	Estonia
112	Centro de Capacitacion Judicial Electoral	Mexico

113	General Council of the Courts of Mongolia	Mongolia
114	Centro de Estudios Judiciales del Chaco	Argentina
115	Judges Academy, Judicial Yuan	Taiwan
116	Centre de Formation Professionnelle de la Justice au Burundi	Burundi
117	Academy for the Judiciary, Ministry of Justice	Taiwan
118	Escola Paulista da Magistratura	Brazil
119	Sri Lanka Judges Institute	Sri Lanka
120	Papua New Guinea Centre for Judicial Excellence	Papua New Guinea
121	High School of Justice Georgia	Georgia
122	College of Schools of the Brazilian State Judiciary-COPEDEM	Brazil
123	Lawyers' Training Center Republic of Uzbekistan	Uzbekistan

TABLE 2: Sample of Member Organizations, by year established<sup>300</sup>

Organization	Country	Est.	Training Institute*/ CSO/Umbrella
The National Judicial College	USA	1963	Institute
Ecole Nationale d'Administration de la Magistrature	Cameroon	1964	Gov't
Instituto Superior de la Magistratura	Argentina	1967	Institute
Escuela Judicial de Costa Rica	Costa Rica	1971	
National Center for State Courts	USA	1972	CSO
Center for Judiciary Education and Research	California	1973	Institute
Japan International Cooperation Agency	Japan	1974	Gov't (arm's length)
National Association of State Judicial Educators	USA	1975	Umbrella
Institute of the Federal Judiciary (formally Instituto de Especializacion Judicial)	Mexico	1978	Institute
Institute of Advanced Judicial Studies in Israel	Israel	1984	Institute
Sri Lanka Judges Institute	Sri Lanka	1984	Institute
Judicial Commission of New South Wales	Australia	1986	(regulatory body)
Escuela Judicial	Colombia	1987	
Escola Paulista da Magistratura	Brazil	1988	Institute
National Judicial Institute	Canada	1988	Institute
National Association of Women Judges	USA	1989	CSO
International Association of Women Judges	Int'l	1991	CSO/Umbrella
National Institute of Magistracy	Romania	1992	Institute
NCSC International Programs	USA	1992	CSO
Judicial Conference of Australia	Australia	1993	CSO
National Judicial Academy	India	1993	Institute
Academia Judicial	Chile	1994	Institute
Judicial Administration Training Institute	Bangladesh	1995	Institute
Judicial Training Institute (Institute of Continuing Judicial Education of Ghana)	Ghana	1995	Institute

300. Information for the sample of organizations involved in judicial education was derived from internet resources and from organization pamphlets and brochures collected at the meetings in Washington D.C. Both at the World Bank Law, Justice, and Development Week and at the IOJT Conference, provisions were made for the distribution of informational and promotional materials. For example, at the IOJT conference, organizers scheduled an "Exhibits and Knowledge Fair" the afternoon before the Gala Dinner. The fair provided an opportunity for "[j]udicial education organizations represented at the conference [to] display and demonstrate their work."

Latvian Judicial Training Center	Latvia	1995	Institute
Judicial Training Centre (CCEJ)	Senegal	1995	Institute
The School of Magistrates	Albania	1996	Gov't
Centre for Judicial Studies	Australia	1996	CSO
Judicial Studies Institute	Ireland	1996	Institute
Philippine Judicial Academy	Philippines	1996	Institute
National Judges College	China	1997	
Judicial Education Institute of the Eastern Caribbean Supreme Court	Saint Lucia	1997	Institute
Commonwealth Judicial Education Institute	International (Canada)	1998	Umbrella
Institute of Judicial Studies	New Zealand	1998	
Institute of Judicial Administration-Lushoto	Tanzania	1998	Institute/CSO
Ecole Nationale de la Magistrature et des Greffes	Madagascar	1999	
European Judicial Training Network	EU	2000	Umbrella
International Organization for Judicial Training	International (Israel)	2002	Umbrella
The National Judicial College	Australia	2002	Institute
Centre de Formation Professionnelle de la Justice (CFPJ) Professional Training Center for Justice	Burundi	2003	Institute (operational 2010)
Justice Academy of Turkey	Turkey	2003	Institute- Gov't
Judicial Studies Institute	Uganda	2004	Institute
Academy for Training of Judges and Public Prosecutors	Macedonia	2006	Institute
The National Institute of Justice	Moldova	2006	
The Judicial Training Institute	Belgium	2007	
Judiciary Training Institute	Kenya	2008	Institute
National School of Judiciary and Public Prosecution	Poland	2009	Institute
Gesellschaft für Internationale Zusammenarbeit	Germany	2011	CSO (private)
Judicial College	UK	2011	Institute
Justice Cooperation International	France	2012	CSO

**TABLE 3: Foreign (non-U.S.) attendees at the 2013 IOJT International Conference in Washington, D.C., by country, organization, and position (Table excludes seventy-three local U.S. attendees, of which at least eighteen were judges, as an indicator of international dialogue at the Conference)<sup>301</sup>**

<b>Organization</b>	<b>Function</b>	<b>Country</b>
School of Magistrates	Professor	Albania
Center for Judicial Studies	Director	Australia
Court of Appeal, Supreme Court of NSW	Justice	Australia
Judicial College of Victoria	Director of Education	Australia
Supreme Court of Queensland	Justice	Australia
National Judicial College of Australia		Australia
Supreme Court of Western Australia	Chief Justice	Australia
Family Court of Australia	Justice	Australia
National Judicial College of Australia	Chair Programs Advisory Committee	Australia
Federal Circuit Court	Judge	Australia
Australasian Institute of Judicial Administration	Executive Director	Australia
Judicial Commission of New South Wales	Chief Executive	Australia
Judicial Commission of NSW	Education Director	Australia
Supreme Court of Bangladesh	Justice	Bangladesh
International Criminal Court	Head of the International Cooperation Section	Belgium
Judicial Training Institute (IGO-IFJ)	Director	Belgium
Youth in Action for Development	Chairman	Benin
Bhutan National Legal Institute	Director	Bhutan
Court of Bosnia and Herzegovina	Judge	Bosnia and Herzegovina
	Judge	Brazil
Supreme Court of the State of Pernambuco Brasil	Justice - President of Judicial College	Brazil
National Institute of Justice	Deputy Director	Bulgaria
National Institute of Justice	Director	Bulgaria

301. IOJT Attendee List (As Revised) (IOJT Conference Materials CD-ROM, Nov. 2013) (on file with author).

Centre de Formation Professionnelle de la Justice (CFPJ)	Deputy Director	Burundi
Centre de Formation Professionnelle de la Justice (CFPJ)	Director	Burundi
CTB/Burundi	Assistant Technique National	Burundi
Royal Academy for Judicial Professions	Vice President	Cambodia
Ecole Nationale d'Administration et de Magistrature	Director General	Cameroon
Ecole Nationale d'Administration et de Magistrature	Chef de la Division de la Magistrature et des Greffes	Cameroon
Ecole Nationale d'Administration et de Magistrature	Chef de la Section Judiciaire	Cameroon
National Judicial Institute	Senior Advisor	Canada
Court of Quebec	Chief Judge	Canada
Court of Quebec	Judge	Canada
Provincial Court of British Columbia	Chief Judge	Canada
National Judicial Institute	Academic and Education Director	Canada
National Judicial Institute	Senior Advisor	Canada
Family Court Branch - Superior Court of Justice	Senior Family Justice	Canada
Court of Appeal for Saskatchewan	Justice	Canada
National Judicial Institute	Senior Advisor	Canada
Court of Queen's Bench of Alberta	Justice	Canada
National Judicial Institute	Executive Director	Canada
		Canada
Provincial Court of British Columbia	Judge	Canada
Court of Queen's Bench of Alberta	Justice	Canada
Conseil de la Magistrature du Quebec	Secrtaire	Canada
Commonwealth Judicial Education Institute	Chairperson	Canada
NB Court of Appeal/National Judicial Institute	Justice	Canada
Superior Court of Quebec	Judge	Canada
Nova Scotia Court of Appeal	Justice	Canada
National Judicial Institute	Exectuive Education Officer	Canada
Superior Court of Ontario Canada	Justice	Canada

National Judicial Institute	Senior Director International	Canada
Ecole Nationale de Formation Judiciaire	Manager	Chad
Academia Judicial	Deputy Director	Chile
Academia Judicial	Director	Chile
Supreme Court of Estonia	Head of Judicial Training Department	Estonia
Federal Justice Professionals Training Center	Director	Ethiopia
Addis Ababa University	Lecturer	Ethiopia
Ecole Nationale de la Magistrature	Judge	France
Court of Appeal of Colmar	Prosecutor General	France
Ecole Nationale de la Magistrature	Senior Judge	France
German Judicial Academy	Director	Germany
National Office for the Judiciary	Head of Department	Hungary
Supreme Court of the Republic of Indonesia	Deputy Chief Justice	Indonesia
Supreme Court of the Republic of Indonesia	Director of Supreme Court Training Center	Indonesia
Changes for Justice Project - USAID/Chemomics	Judicial Training Expert	Indonesia
Strengthening the Lesotho Justice Sector Project	Judicial Capacity Building Expert	Ireland
Central District Magistrate Court	President	Israel
	Professor	Israel
Supreme Court of Israel	President	Israel
IOJT	Administrative Director	Israel
Institute of Advanced Judicial Studies in Israel	Director	Israel
IOJT	Secretary General	Israel
	Professor	Israel
IOJT	President	Israel
University of Haifa	Professor	Israel
Supreme Court of Israel	Justice	Israel
Kyoto Women's University Faculty of Law	Professor	Japan
Judiciary	Magistrate	Liberia
European Institute of Public Administration	Director	Luxembourg
Supreme Court of Mauritius	Justice	Mauritius
Institute for Judicial and Legal Studies	Director	Mauritius
Secretary of Public Administration	Chief of Office	Mexico



Judiciary Federal Institute	Director	Mexico
Poder Judicial del Estado de Campeche	Dra. En Ciencias Penales y Politica Criminal	Mexico
High Court of Justice of Mexico City	General Director of the Institute of Judicial Studies	Mexico
Judicial Council of the State of Michoacan	Director of the Institute of the Judicature	Mexico
The Judicial General Council of Mongolia	Chairman	Mongolia
SSR		Netherlands
SSR	LL.M and MPA	Netherlands
District Court	Judge	New Zealand
District Courts of New Zealand	Chief Judge	New Zealand
Institute of Judicial Studies	Director	New Zealand
Ministry of Justice	Deputy Secretary	New Zealand
Institute of Judicial Studies	Chair	New Zealand
Adejuwon Rotimi Adedayo & Legal Associates	Barrister	Nigeria
Lagos State Judiciary		Nigeria
Lagos State Judiciary		Nigeria
Philippine Judicial Academy	Chancellor	Philippines
Philippine Judicial Academy	Professional Lecturer II	Philippines
National School of Judiciary and Public Prosecution	Judge - Head of International Cooperation Department	Poland
Supreme Court of Singapore	Organizational Development Specialist	Singapore
Subordinate Courts of Singapore	District Judge	Singapore
Subordinate Courts	Senior Executive	Singapore
General Council for Judiciary	Councillor	Spain
Judicial School - Spanish General Council of Judiciary	Director	Spain
Sri Lanka Judge's Institute/Judicial Service Commission	Director/Judge	Sri Lanka
	Senior Assistant Secretary/Magistrate	Sri Lanka
Judicial Service Commission of Sri Lanka	Magistrate/Registrar of the Supreme Court of Sri Lanka	Sri Lanka
Judicial Service Commission of Sri Lanka	Chief Magistrate	Sri Lanka
Judicial Service Commission of Sri Lanka	Judge	Sri Lanka
Sri Lanka Judge's Institute/Judicial Service Commission	Academic Coordinator/Magistrate	Sri Lanka
Judicial Service Commission of Sri Lanka	Senior Assistant Secretary/Magistrate	Sri Lanka

Judge Academy-The Judicial Yuan-Taiwan	Judge	Taiwan
Judges Academy -Judicial Yuan-Taiwan	Judge	Taiwan
Office of the Judiciary of Thailand	Deputy Secretary-General	Thailand
Judiciary of Trinidad & Tobago	Chief Justice	Trinidad and Tobago
Judiciary of Trinidad and Tobago	Justice/Chairman	Trinidad and Tobago
Justice Academy of Turkey	Judge	Turkey
Justice Academy of Turkey	Judge	Turkey
Supreme Court of Uganda	Justice	Uganda
Judicial Studies Institute	Justice (Rtd.)	Uganda
Commerical Court of Kyiv	Judge	Ukraine
High Commercial Court of Ukraine	Judge	Ukraine
USAID Ukraine FAIR Justice Project	Deputy Chief of Party	Ukraine
Abu Dhabi Judicial Department	Judge	United Arab Emirates
Abu Dhabi Judicial Department	Assistant Judge	United Arab Emirates
Abu Dhabi Judicial Department	Judge	United Arab Emirates
Judicial Institute for Scotland	Deputy Director	United Kingdom
Judicial College	Executive Director	United Kingdom