What are the differences between centralized and decentralized systems of constitutional review? What are the historical and philosophical implications of such differences? How can their impact be evaluated and understood in both emerging and established democratic societies?

Some of the world’s most eminent legal scholars, social scientists, and legal and political philosophers gathered at Washington University School of Law to examine these issues at the Conference on Constitutional Courts sponsored by the Institute for Global Legal Studies, held November 1–3, 2001, at Anheuser-Busch Hall.

The conference theme provided both an interdisciplinary and an international context for the legal community. The Institute’s director, Stephen H. Legomsky, who is also the Charles F. Nagel Professor of International and Comparative Law, chose two leading constitutional scholars to organize the event: Stanley L. Paulson and Lee Epstein.

Paulson, the William Gardiner Hammond Professor of Law and a professor of philosophy in Arts & Sciences, is a noted authority on European legal philosophy. He has studied, worked, and traveled internationally throughout his career. Among his many accolades, Paulson was recently awarded the prestigious Humboldt Research Prize for “internationally recognized foreign scholars in the humanities” by the Alexander von Humboldt Foundation in Germany. The substantial stipend will promote his research in Continental legal philosophy.

Epstein is the Edward Mallinckrodt Distinguished University Professor in Political Science in Arts & Sciences and a professor of law. A highly regarded teacher and political scientist, her interests include coalition formation among justices of the Supreme Court of the United States and interest-group participation in litigation.

The conference examined the American and European models of constitutional review—a study in contrasts that warrants close examination and serious comparative scholarship. For Paulson, the conference was a way for students and scholars of many disciplines—not just lawyers—to familiarize themselves with the European centralized system of constitutional review.

“Our American decentralized system allows any court of ordinary jurisdiction to pass on constitutional questions. When we compare the American system with the centralized European model, where a single court is empowered to decide constitutional issues, we can highlight certain problem areas in our own system, like the lack of uniformity in affirmative-action decisions,” says Paulson.

For Epstein, a central purpose of the conference was to help students recognize the structural differences between the judicial systems here and throughout the world. “We took advantage of the multidisciplinary strengths Washington University provides to build something universal at this conference. Examining judicial structures and practices internationally promotes outside-the-box thinking when it comes to U.S. constitutional advocacy and thought,” says Epstein.

Donald P. Kommers, the Joseph and Elizabeth Robbie Professor of Government and a professor of law at the University of Notre Dame, set the stage with his keynote address, “Constitutional Review in the Contemporary World.”

A leader in understanding Germany’s centralized court and its record over the last 50 years, Kommers contrasted the Supreme Court of the United States with Germany’s high-court model. “The German federal constitutional court, like the German constitution, is the leading model of constitutional government around the world. Most of the world’s constitu-
tional democracies have established specialized constitutional courts very much like the German. The powers of these courts are specified in the constitution, their judges are appointed mainly by legislatures, their tenure is limited, and the power to invalidate laws on constitutional grounds is exclusive,” says Kammers.

This constitutional form of judicial review, he continues, spread like wildfire around the world in the aftermath of World War II: “It’s a revolutionary development because these countries now regard their own constitution as a kind of higher law, requiring a special court to enforce these laws. As a result, constitutional courts in these countries are seen as part of the structure of separation of powers and checks and balances.”

The first portion of the conference focused on the historical development of the centralized constitutional-court model—from its inception in 1920 in Austria and in 1951 in Germany to its implementation in many other countries. Topics included “Centralized Constitutional Review in Austria: Developments in the Post-World War I Period,” “Aspects of the History of Centralized Constitutional Review in Germany,” and “Centralized Constitutional Review in the Post-World War II Period.” Among the speakers were Wilhelm Brauneder, professor of law at the University of Vienna and the leading historian of Austrian public law; Victor Ferreres, professor of law at Pompeu Fabra University in Barcelona; Theo Öhlinger, professor of law at the University of Vienna; Kim Lane Scheppel, professor of law and sociology at the University of Pennsylvania and former co-director of the Program on Gender and Culture at Central European University in Budapest; Michael Stolleis, director of the Max Planck Institute for Legal History in Frankfurt and the leading historian of German public law; and Michel Troper, professor of law at the Université de Paris-X and fellow at the Institut Universitaire de France.

The second portion of the conference dealt with “Access to High Courts” and “Judicial Selection, Judicial Decisions.” Issues included questions of institutional design: Who uses the courts? How do people get access to them? How are judicial decisions made?

The final segment of the conference, titled “Juridico-Philosophical Dimensions of Constitutional Review,” featured a panel of international authorities in legal philosophy who addressed the work of constitutional courts. Panelists included Robert Alexy, professor at the University of Kiel and Germany’s leading legal philosopher; Ronald Dworkin, the leading legal philosopher in the English-speaking world; Jürgen Habermas, Europe’s leading social and political philosopher; and Frank Michelman, the Robert Walmsley University Professor at Harvard Law School. Among the topics discussed were “Constitutional Rights, Balancing and Rationality,” “On Law and Disagreement—Some Comments on ‘Interpretive Pluralism,’ ” “The Moral Reading of the American Constitution,” and “Constitutional Review as a Juridico-Philosophical Issue.”

“The problem we examined turns on the competing claims of the people who, in a democracy, define themselves as sovereign. Namely, there is some concern that constitutional courts might be depriv ing people in a democratic society of a voice on certain issues, especially when the right in question is controversial, such as a woman’s right to an abortion,” Paulson says.

The more than 30 conference participants also included Rodolfo Arango, Martin Borowski, Gregory Caldeira, John Ferejohn, Mark Gillis, Gretchen Helmeke, Werner Heun, Jack Knight, Stacy A. Nyikos, Sunita Parikh, Pasquale Pasquino, Wojciech Sadurski, Georg Schmitz, Olga Shvetsova, and Pablo Spiller.

“We had an interesting mix of presenters from Europe and the United States. Many have had long, distinguished careers, while some of the younger presenters had recently completed their doctoral dissertations on the issues up for discussion,” Epstein says.

The conference drew a diverse audience of students and faculty in the areas of law, social science, philosophy, and history from local and regional institutions.

As a way to build on the ideas and information shared at the conference, Epstein plans to edit a volume of the presented papers.

A direct educational benefit to Washington University students was a semester-long seminar for law students and graduate students in political science titled Constitutional Courts. Taught by Epstein in fall 2001, the course covered topics that dovetailed with the innovative conference material, enabling students to study constitutional courts in depth.

In summing up the constitutional courts conference, Paulson says, “Washington University has expanded its scope to embrace events that are comparative, international, and collaborative in nature. This latest conference invites the attention of scholars of many disciplines, here and abroad, to Washington University.”

Renowned legal scholars, social scientists, and legal and political philosophers analyzed the role of constitutional courts from international, historical, and interdisciplinary perspectives.