

attitudinal) tradition in the Supreme Courts literature. Since then, the APD community, broadly and specifically in terms of Courts scholars, has grown considerably.

The volume's essays are all case specific in nature, and are divided into subsections based on their overriding themes. The first section includes essays by Mark A. Graber and Ronald Kahn, which investigate the causal attributes of decision making on the Court by focusing on both internal factors (legal precedent and interpretation, as well as the policy preferences of the justices) and external factors (societal demands and pressures, and interest group preferences). The second section presents essays by Mark Tushnet, Howard Gillman, and Ken I. Kersch, which focus on the Court's effect on the more general political order in twentieth-century American society. The third section includes essays by Wayne D. Moore and Pamela Brandwein, which trace the emergence of authoritative constitutional interpretations at various points in the Court's history (specifically in the rulings in the *Slaughter-House* cases and the Civil Rights cases). The fourth section presents essays by Julie Novkov, Carol Nackenoff, and Thomas M. Keck, which examine how marginalized groups in society (like interracial couples, Native Americans, and racial minorities generally) gain inclusion in the American constitutional order.

Overall, *The Supreme Court and American Political Development* is an interesting and important volume. The essays are first rate and hang together well. The latter achievement is accomplished through the careful editing, comprehensive introduction, and concluding synthesis of Kahn and Kersch. Any serious students of APD or the Supreme Court will want to have this volume in their personal collection.

I do, however, want to raise one issue, which is both specific to the present volume and broader in nature. This involves the direction of political inquiry in the Courts literature and the larger political science literature. Too often, different approaches run parallel to each other in pursuit of similar answers. Here, Kahn and Kersch note that APD approaches to the Supreme Court have often been marginalized by those working within the behavioral tradition. Criticisms have been raised that such APD work is anachronistic or unscientific. Such criticisms are unfortunate, as they do not seek to engage the APD literature on its own terms. While decrying such criticisms, Kahn and Kersch at the same time pursue a similar approach. First, they claim that rational choice-based analyses of Courts (works within the "new institutionalism" paradigm) are merely supplements to the basic behavioralism approach. This is a clear mischaracterization of the new institutionalism. Second, the authors claim that historical institutionalism (which underlies APD work) provides a more useful approach to study institutional change, since the new institutionalism is static (a "snapshot model") and thus cannot account for political dynamics or trends (p. 15). This assertion that new institutionalist scholar-

ship does not focus on (and cannot account for) institutional change is patently incorrect. Finally, rather than seek to promote merit in different approaches, the authors follow the dismissive approach they ascribe to the behavioralists by claiming that "APD agendas are often more interesting and more engaged with questions that truly matter, than much of the work that is done today within the mainstream of the contemporary study of American politics" (p. 24). Such a brash claim is both disappointing and unnecessary.

In raising this issue, and critiquing Kahn and Kersch as I have done, I seek to promote a more collective scholarly enterprise. There is much that historical institutionalists (APD scholars) can learn from new institutionalists, and vice versa. Both sets of scholars are, after all, interested in *institutions*, and the effects that institutions have on political decisions and outcomes. They come at questions from different perspectives—historical institutionalists work within the sociological tradition and focus on the macro level, while new institutionalists work within the economics tradition and focus on the micro level—and in reality should *complement* each other, not endeavor to be substitutes for each other. The different levels of analysis can be integrated into a more general and comprehensive approach to political inquiry. A recent book that makes strides in this direction is *Preferences and Institutions: Points of Intersection Between Historical and Rational Choice Institutionalism* (2005), edited by Ira Katznelson (an historical institutionalist) and Barry R. Weingast (a new institutionalist). My hope is that such intersections between different theoretical camps and traditions will become more common, so that we can learn from each other and advance more expeditiously as a scholarly community.

The First Amendment in Cross-Cultural Perspective: A Comparative Legal Analysis of the Freedom of Speech. By Ronald J. Krotoszynski, Jr. New York: New York University Press, 2006. 336p. \$50.00.

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— David Yalof, *University of Connecticut*

The growing influence of modern foreign laws and legal rulings on the American model of constitutionalism is a dirty little secret no longer. In *Lawrence v. Texas* (2003), Supreme Court Justice Anthony Kennedy, writing for the majority, made no apologies about his willingness to consult with rulings from the European Court of Human Rights in holding that the Fourteenth Amendment's promise of due process of law forbids the state of Texas from prohibiting sodomy between consenting adults. Court observers should have seen this development coming: With the breakdown of the Soviet Union came the emergence of new Western-style democracies thrust into the position of building new republics from scratch. American constitutional scholars were called upon in the late 1980s and

early 1990s to consult with officials from these countries and advise them on the drafting of their own constitutions. Constitutionalism is now a commodity that travels across international lines. The Supreme Court's controversial method in *Lawrence* may or may not signal the beginning of a new era of cross-national consultations by the high Court. However, it does coincide with a growing interest on the part of political scientists studying comparative law and comparative constitutionalism during the past decade.

In that spirit, Ronald K. Krotoszynski's *The First Amendment in Cross-Cultural Perspective* is among the first book-length treatments of comparative law to consider just one aspect of all these modern constitutions: the guarantee of freedom of expression. Krotoszynski's decision to chew off just one provision represents something of a risk, as it can be quite difficult to draw comparisons between countries when considering just one element of their respective constitutions. So much that occurs is a product of varying circumstances and unpredictable forms of influence that it may be safer to think in terms of comparing entire constitutions against each other, or at least comparing large aspects of those constitutions. Charles Epp masterfully compared individual rights revolutions in the United States, Great Britain, India, and Canada in his award-winning 1998 book, *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective*. Judicial review and the power of judges have also been the subjects of some excellent and comprehensive book-length works in recent years. At this early stage in the study of comparative constitutional law, can a work that limits itself to just one provision of these constitutions provide enough insights for the present, while at the same time constructing enough building blocks for the future?

Thankfully, Professor Krotoszynski admits the limitations of his effort at the outset and yet still offers a fascinating testament to how American constitutionalism can benefit from a healthy dose of global perspectives from time to time. It helps that he has selected as his subject a provision that is recognized universally as being so critically important and yet still manages to befuddle so many new democracies when they are forced to put it into practice. The United States' experience provides a case in point. Advances in free speech produced by the Warren Court only came 170 years after the Bill of Rights was first ratified and over a quarter of a century after the Supreme Court first applied First Amendment free speech protections to the states. Meanwhile, the Supreme Court failed to curb government limits on free expression imposed by the government during World War I and during the red scare of the late 1940s and early 1950s. The author considers Holmes's "marketplace of ideas" and Meiklejohn's "democratic self-government" as competing theories that serve to frame the discussion of other countries. Yet before the 1940s, the First Amendment proved so timid in its

application that neither theory really held sway on a consistent basis. We should not be surprised when new democracies undergo some inevitable growing pains of their own in this context.

The First Amendment in Cross-Cultural Perspective forgoes more comprehensive analysis of First Amendment law to consider perspectives from five different nations. This is an eminently reasonable approach to the subject, although it does create some anomalies in the discussion of Supreme Court precedents for purposes of comparison: Although *Rust v. Sullivan* receives extensive treatment from the author (in part because it fosters interesting comparisons with a British case), such landmark cases as *Miller v. California* and *West Virginia Board of Education* receive only one mention each in the text.

After reading analyses of the boundaries and definitions of free speech in five industrial democracies, I was also hoping for a comprehensive concluding section that might provide a broader sweep of analysis; yet the final chapter was quite brief and offered only a limited take on the evidence that came before it. Krotoszynski's central findings are important, even if they are a bit predictable: He concludes that in determining the extent to which these other democracies offer thriving free speech protections, such factors as culture, preexisting constitutional structures, and ideology clearly do matter. That last factor, ideology, can cause some real obstacles to free speech rights in even the most liberal of countries. Canada's commitment to an ideology of "pluralism and multiculturalism" means that efforts to promote equality will often outweigh free expression rights; thus pornography can be more easily banned there than in the United States. Germany is apparently committed above all else to "human dignity values," in part as a reaction to its participation in the Holocaust. Notwithstanding constitutional provisions that protect the right to speak freely, free expression rights clearly begin at something of a disadvantage in those two nations.

In his conclusion, Professor Krotoszynski points to perhaps the greatest obstacle of all in trying to make apples-to-apples comparisons in this context: The meaning of free speech is "hardly fixed or immutable" (p. 222). Given this simple truth, one might ask whether it is even fair to compare the First Amendment as it now exists in post-Warren Court America, with comparable clauses from other democracies that are either still in their infancy (such as Germany and Japan) or which may be altogether new to the business of written free speech guarantees (the UK only passed a textual guarantee of free expression for the first time in 1998). Regardless of these difficulties, this book advances the field of comparative constitutionalism forward in an especially thoughtful and well-written manner. Perhaps it is a compliment to the author's fine research and presentation that the reader will be left wanting a bit more than is provided within its pages.