

for stagnation and clientalism. It also bears examining by those in comparative politics interested in the debate about whether multiparty or majoritarian systems produce better representation and better governance over time. O'Dwyer enters this debate between the proponents of Arend Lijphart (*Patterns of Democracy*, 1999) and G. Bingham Powell (*Elections as Instruments of Democracy: Majoritarian and Proportional Visions*, 2000) on the side of Powell, insofar as he sees the need to distinguish between advanced industrial democracies and emerging democracies, in which weak states in a multiparty system become captive to patronage politics, and in the process delegitimize the entire democratic project.

It will be another decade before we see the cumulative effect of these changes on state building. Will Poland and Slovakia be reined in by EU or popular pressures? It is too soon to tell, but O'Dwyer's excellent book is surely strong enough to warrant a sequel.

Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic.

By Cindy Skach. Princeton: Princeton University Press, 2005. 151p. \$29.95.
DOI: 10.1017/S1537592707072623

— Peer Zumbansen, *York University*

Comparative constitutionalism reigns high on the current academic agenda. Political scientists and legal scholars alike have been displaying a heightened interest in the comparative study of political organization through an analysis of constitutional structures and principles. As such, comparative studies of constitutional law open many new doors and raise new questions. As a result, any new contribution to this fast-growing field will certainly be measured by the degree to which its author can move the analysis along and, importantly, by how much this scholarly enterprise is undertaken and carried out with the awareness of the larger context of comparative constitutionalism.

Cindy Skach's comparative study of French and German constitutional law under the Fifth Republic (since 1958) and in Weimar (1919–33), respectively, appears some 15 years after the collapse of communism. This period began in 1989 and has since been marked by a continued frenzy in conceptualizing, drafting, and imagining constitutional design, unfolding in a transnational dialogue with many voices, viewpoints, experiences, and proposals. The post–Cold War experience is, to be sure, not the only one that casts a shadow or provides inspiration for such a project. At the same time, constitutionalism takes first place in the to-do lists of contemporary policy and legal knowledge advisors in so-called “failed” states, whether as a result of internally brought-about political change (the Czech Republic) or

following external military and political intervention (Iraq). Constitutionalism as an essential part of “transitional justice” (Ruti Teitel) itself has, of course, a much longer heritage.

Here, particular national and regional histories and experiences shape the legal and political imagination, where we find allusions to “*L'Année Zero*” (France, Germany 1945), “universalism vs. positivism” (the famous Radbruch Thesis of 1946), or “retroactive justice” versus reconciliation (South Africa's Truth and Reconciliation Commission and Rwanda's Gacaca Courts). Constitutionalism has at least two other important applicatory contexts today, one being the contestations around the constitutional character of the World Trade Organization and the other the ongoing European search for a constitution for the (European) Union. Taken together, these examples underline the degree to which constitutionalism has become a significantly transnationalized area of legal and political imagination. Whether we are concerned with constitutional judges' global dialogues, informally exchanging views and opinions, or courts citing other countries' courts' opinions, or, more generally and even more indirectly, foreign constitutional principles or rules inspiring and informing domestic constitutional change (e.g., the introduction of parliamentary hearings for Supreme Court candidates in Canada), one thing is becoming increasingly clear: Comparative constitutionalism has long taken a prominent place within comparative law and law and development studies, thus unfolding as an increasingly lively and influential field. The latter is particularly important as regards the claims of substate groups and peoples for self-determination and politico-legal autonomy, which themselves build on and feed back into discussions of “peoples' rights,” group rights, and groups' self-determination.

Skach's book brings together findings from a research project that she carried out in the United States, France, Germany, and the UK over more than a decade. Its focus is the particular constitutional structure of semi-presidentialism, which the book analyses in particular with regard to the cases of the Weimar Constitution of 1919 and the Constitution of the Fifth French Republic, inaugurated in 1958. Semi-presidentialism is characterized by a unique combination of “elements of pure presidentialism and pure parliamentarism in one type” (p. 1). For Skach, these constitutional regimes serve, as we are about to discover, as strong reminders of “how not to do it” when it comes to devising a constitutional democracy. This, however, would only be the half-truth, as in fact she does see the French model in a comparatively more favorable light than its German, historically earlier counterpart.

Providing a comprehensive study of these two examples in detail, Skach points to the highly problematic tension

that results from a system whose drafters attempt to please the ideals of both a presidentialist and a parliamentary regime. Drawing on a rich selection of sources, both original and secondary, statistical and analytical, the comparative case studies drive home a number of non-negligible points. Taking the particular tensions arising out of a semi-presidential system for the institutions in charge (premiers/chancellors vs. presidents and parliaments) as the starting point and not the end of her inquiry, she illuminates the dynamics of the semi-presidential system by introducing a data-based time horizon. Using, for example, the 1986–88 cohabitation between a socialist president (François Mitterand) and a conservative prime minister (Jacques Chirac), Skach underscores the importance of timing elections to the presidency and the National Assembly (pp. 84, 111–2). Her analysis shows how “one of the main lessons from this experience, with respect to semi-presidentialism as a model for export to democratizing countries, was that everyday politics was affected by the power struggle between the president and the prime minister” (p. 112).

Preempting the obvious question of “why study *these* two countries at *that* time,” Skach justifies her choice early on (p. 9). For her, Weimar is a case in point because of its inauguration of semi-presidentialism, since that time frequently copied (in contrast to the less-followed French system), but—just as importantly—almost half of Weimar’s life (1919–33) was spent in the particular form of a “divided minority government” (pp. 9, 50). Her careful study of the election developments renders this analysis of Weimar particularly poignant. A story otherwise well known of Weimar’s erosion due to “too much democracy, too early” is here retold in a refreshing fashion and with an open eye to the particular role played by the infamous emergency powers in Article 48 of the Weimar Constitution. Based on a broad analysis of mostly German literature, this analysis shows the gradual shift from a habitual use of Article 48 in the absence of a majority government to its more dramatic use to concentrate power against democratic forces. It is certainly this feature that provoked Carl Schmitt’s post–World War II suggestion to the drafters of the *Grundgesetz* to include a particular protection of the rule of law (Art. 79, *Grundgesetz*).

The French case, in contrast, is important for its demonstration of France’s gradual learning to appreciate political parties, a love that stands in contrast with a period of much lesser enthusiasm during the Fourth Republic. Skach compares the years of mostly consolidated majority governments during the Fifth Republic and finds that they lent themselves to comparatively lesser conflict between the parliament and government. In contrast, the earlier period of the Fourth Republic, when France was struggling with its Algerian problem (1994–99), put particular strains on the existing constitutional regime.

A high point in the author’s analysis is when she raises and answers the question “Who rules in France?” There can certainly be no valid analysis of the French constitutional regime without looking closer at the problematic way that a prime minister has been positioned alongside a potent president (p. 100). She rightly points out that coincidental solutions to this problem, say, by concurring presidential and parliamentary majorities, may prove too volatile in the long run. An illustration of the unpatched holes in the French democratic regime is provided later during a comparative study of the Weimar Constitution’s Article 48 and President Charles de Gaulle’s very limited resorting to Article 16 of the French Constitution in 1961. This comparison is important as it shows that in a moment of invoking presidential emergency powers, de Gaulle acted within the constitutional framework, seeking opinion from the prime minister and the presidents of the Senate and National Assembly and from the Constitutional Council (pp. 103–4). Overall, however, the verdict is that de Gaulle’s five-month use of Article 16 came “close to constitutional dictatorship,” which Skach defines as “the unaccountable, unconstitutional use of emergency powers over a prolonged time period, during which—although the immediate crisis warranting these powers has passed—authority transferred to nonpartisan, above-party sources, leading to a loss of substance in the democratic process” (p. 105).

The last chapter includes a summary of Skach’s findings, along with a considerably outspoken set of recommendations for existing and future situations of law reform in transition economies. Here, her study suggests that the experiences from both Germany and France illustrate the risks but also the chances of semi-presidentialist regimes. Her focus on the tendency of postauthoritarian societies to opt for democracy while maintaining a centrally located strong hand is well articulated and reasonable. She makes very clear that the historical experiences should alert us to the dangers inherent in a system that makes place for a hero but puts few safeguards in place to determine when the state of emergency is over.

Now, where does this study fit in the larger picture of comparative constitutionalism, to which I have briefly alluded? Apart from occasional references to further reading (e.g., p. 24, n. 31), Skach’s study does not readily offer a “view from the peak” nor a map of the land. Instead, it constitutes a contained historical case study of two polities that she finds to be connected through their comparable structural features, ensuing political and legal problems and their contemporary, contested relevance for today’s constitutional reform. Her concluding suggestions are constructive to the degree that they directly build on the cases studied, not more, not less. At the same time, one would have wished for at least some discussion of the broader literatures on constitutionalism and how this historical study contributes to their advancement.