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Book Review. The Supreme Court and Constitutional Theory: 1953-1993

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sympathy and indifference of men to women. Perry admits this antidiscrimination argument is counter-factual. If this is so, there is no principled way to draw the line between permitting abortions in situations of incest, rape, and the possibility of a deformed child but not in other situations. Perry's antidiscrimination principle is too much like the differences approach which seeks to protect women (and other subordinated groups) only when they engage in behaviors similar to those of dominant groups. Rights-based constitutional theories, such as Perry's antidiscrimination principle, need to be supplemented with far more complex theories of polity malfunctions for subordinated groups. This book is must reading for both jurists and Court followers.

RONALD KAHN
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The Supreme Court and Constitutional Theory: 1953–1993 by *Ronald Kahn*.
Lawrence, University of Kansas Press, 1994. 320 pp. \$35.00.

Ronald Kahn takes legal culture seriously. On one level, this book is a comprehensive and effective treatment of the central political ideas that have dominated scholarly and political discussion of the Court for the last forty years. Kahn considers each of a large number of influential theories about the role of the Court, from the pluralist politics of Robert Dahl, through a detailed treatment of work by John Ely, Martin Shapiro, Sanford Levinson, Mark Tushnet, and Larry Tribe, among others, to recent writing about the role of civic republicanism. He finds each of them wanting in explanatory and practical power. In their place—and arguably present all along—Kahn offers a dialogic framework built upon two key elements. The first is a dialectic of polity (for example, where decision-making power should be located) and individual rights as the implicit framework of at least the last four decades of conceptual theory and actual case-by-case decision making by the Court. The second is an acknowledgement that this constitutive dialogue takes place within the specific context of a particular interpretive community (for example, the scholars, politicians, lawyers, journalists, and others who are the central consumers of the Court's work). In the jurisprudential and practical framework that sets the terms of the dialogue here, Kahn argues, law and ideas matter at least as much as politics. In the process, Kahn takes serious issue with the conventional instrumental theories typically associated with Dahl and others that the Court is best understood as another type of political body with a framework for decision making only superficially altered from that at work in the openly political branches of government. In effect (and in what amounts to an unstated contribution to modern centrist legal theory), Kahn takes both critique and legalism seriously and argues that the juxtaposition of critique and legalism is not only possible but necessary. For this reason, the argument is an important one worth even more elaborate development.

On another level, using this analysis, Kahn takes issue with the received wisdom of the dominant understanding of the Warren and Burger Courts. The conventional wisdom characterizes the Warren Court as one dominated by rights and informed by a clear, conceptually coherent jurisprudence; while the Burger Court is typically presented (in Vincent Blasi's words) as "the counter-revolution that wasn't," hampered by a shallow, undistinguished, and less principled jurisprudence. Kahn argues that both characterizations are misconceived. He argues that the Warren Court was far more simplistic and less removed from the apologetic

pluralistic perspective ascendant among political scientists at the time and that the jurisprudence of the Burger Court involved a more sophisticated and consistent understanding of polity versus rights than that used by the Warren Court. As a secondary, but important point, he also argues that the dominant interpretation of the Warren Court as rights-based and the Burger Court as political is linked ultimately to the explanatory and theoretical difficulties inherent in the instrumentalism and interest group politics that dominated political science discourse during those periods.

Perhaps this could have been two books rather than one, and perhaps there could have been a deeper entry into some of the wealth of recent legal theory work. But that is a small matter that ultimately underscores the potential potency of the argument.

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America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century by *Tony Smith*. Princeton, NJ, Princeton University Press, 1994. 455 pp. \$24.95.

For political scientists, some have said half in jest, history ended in 1945 and international relations began. Tony Smith points out that World War II also led political scientists to isolate international from national politics; and he says, not at all in jest, that the results have been bad both for them and those they would influence. Students of international relations ignore domestic politics both as potential cause and consequence; students of comparative politics ignore international pressures on political development. Marxists have avoided the separation, but are hampered as usual by a refusal to take states' desires for physical security as seriously as those for profits.

Smith would reconcile the studies of internal and external politics by illustrating their interaction in twentieth-century American foreign policy. He argues that most U.S. leaders have genuinely tried to spread liberal democracy to foreign countries because they believe a democratic world safer for America. He argues that democratization has often been successful, most notably in the postwar liberalizations of Germany and Japan. Finally, he argues that the United States ought to carry this Wilsonianism into the twenty-first century, albeit with more skill and humility.

Smith will doubtless draw the ire of those who consider Wilsonianism dangerous sentimentality, veiled imperialism, or capitalist hypocrisy. Yet he is highly persuasive. He teases out a bright thread that runs through the policies of McKinley, Taft, Wilson, Franklin Roosevelt, Truman, Eisenhower, Kennedy, Carter, Reagan, Bush, and Clinton, toward such nations as the Philippines, the Dominican Republic, Guatemala, Nicaragua, Iran, Vietnam, Chile, Grenada, South Africa, Germany, and Japan. American leaders talk and act as though they believed democratization vital to U.S. security.

Where Wilsonianism has failed, Americans have typically misunderstood local conditions, especially the need for land reform, and have been reluctant to alienate antidemocratic elites. They (and their critics) have also overestimated America's power to shape foreign polities. Most notoriously, they have opposed true democrats who seemed too sympathetic to communism. Smith might have explained this paradox more clearly by reiterating that democratization has been a means to the end of national security rather than a pious end in itself. It was