



**Tim Koopmans.** *Courts and Political Institutions: A Comparative View.* Cambridge: Cambridge University Press, 2003. xxi + 299 pp. \$88.00 (cloth), ISBN 978-0-521-82662-4; \$39.99 (paper), ISBN 978-0-521-53399-7.

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Published on H-Law (September, 2004)



## Comparing Courts: Law and Politics in Contrast

Tim Koopmans has undertaken an ambitious project. He seeks to derive general truths about the functioning of law through a comparison of how courts relate to political bodies such as legislatures and executive branches. His comparisons range over the United States, the United Kingdom, Germany, France, and, to a lesser extent, the Netherlands, Belgium, and Italy. He is uniquely qualified to write such an examination, having been Professor of Constitutional Law at the University of Leiden, a judge of the Court of Justice of the European Communities, and Advocate General at the Dutch Supreme Court. Indeed, the present work is a refashioning of some already published articles and a previous volume along with some entirely new chapters.

Because he defines his argument at the outset as a comparison that uses history, but not history per se, this review will not evaluate *Courts and Political Institutions* as a history. Instead, the review will focus on the success of Koopmans's comparative approach as he has defined it (regardless of this reviewer's professional conviction that arguments about historical events like court opinions should be constructed according to the canons of historical scholarship. Otherwise, the history in them may be misleading or even misused.)

The project is confronted at the outset by two obstacles. First, Koopmans has to compare legal systems that work with different languages, foundational concepts, and assumptions. These often widely varying phenomena do not translate well, thus some comparisons

among them have to be forced. Second, his assumption that there is a bright line distinction between law and politics, between the judiciary and other bodies, is circular and ahistorical (think of Nazi Germany or antebellum Southern courts). He makes the distinction by definition rather than by historical inquiry, and dismisses the idea that courts are political institutions.

That he succeeds in offering a cogent, coherent, and insightful overview of the constitutional issues that face courts is testimony to his organizational, analytical, and intellectual abilities. In effect, he adopts the techniques of the experimental scientist, creating a control group, in this instance a common set of problems, to get solid, independently verifiable results. His chapters methodically examine a series of categories of cases. As a result, the book closely resembles a textbook both in layout (the use of subheadings) and in tone.

The first chapters set up three systems as Koopmans defines them: the British or parliamentary system, the U.S. system, and the mixed systems in France, Germany, and the Netherlands, among others. He then considers in separate chapters the limits of judicial review, the legality of administrative actions, issues between courts and executive authorities, individual rights, and how judges and justices consider "higher" questions like general legal principles or higher law. The differences, similarities, and nuances among each country's judicial system are laid out clearly with due consideration to competing arguments of opposing parties that invariably occur in

questions of this importance.

One has to be impressed with Koopmans's depth of knowledge, though there are some problems with his otherwise convincing argument. First, there are a few factual errors that in and of themselves are not mortally damaging, but all together raise some doubt as to the conclusions Koopmans draws—especially regarding this reviewer's realm of expertise, U.S. political history. While the fact that Franklin Delano Roosevelt was not Theodore Roosevelt's nephew, that Robert Bork's nomination to the U.S. Supreme Court was not terminated by Bork's withdrawal but by an adverse Senate vote, that we have a Department of Defense not a Ministry of Defense, that the creation of the Interstate Commerce Commission was not prompted by a desire to save a troubled railroad industry, or that William Rehnquist was a Richard Nixon appointee to the U.S. Supreme Court and nominated for the Chief Justiceship by Ronald Reagan instead of being a Reagan nominee to the Court, may not be of paramount importance, but these mistakes do testify to the dangers

inherent in a work of this scope (pp. 58, 61, 159, 195, 279, and 282, respectively).

The particular import of an event can turn on a difference like those noted above. This becomes important when Koopmans makes judgments about the propriety of certain judicial decisions. For example, his use of the word "activist" to describe the U.S. judges and justices during the 1960s and 1970s is partisan—it takes the side of those who opposed social justice and criminal procedure decisions. One begins to wonder if the scale and scope of Koopmans's project prevented him from going beyond the casebooks, textbooks, and standard reference works he cites in his slender footnotes.

Nevertheless, with the amount of material Koopmans has thoughtfully probed and analyzed, he can be forgiven for the occasional glitch. The debate over the political nature of courts will continue, and Tim Koopmans has provided a solid addition to that discussion. The book is well-suited for classroom adoption though the teacher will have to translate some Latin phrases.

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**Citation:** Williamjames H. Hoffer. Review of Koopmans, Tim, *Courts and Political Institutions: A Comparative View*. H-Law, H-Net Reviews. September, 2004.

**URL:** <http://www.h-net.org/reviews/showrev.php?id=9814>

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