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**RICHARD BELLAMY**

**DEFENDING THE POLITICAL  
CONSTITUTION**

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Political constitutionalism is a philosophical and jurisprudential outlook insisting that final authority in political affairs must ultimately rest with a body of elected legislators - by and large, it is the model of the United Kingdom. It stands opposed to the system found in the United States: *legal* constitutionalism, with a foundational body of law (such as a written constitution), interpreted and ruled on by a legal body (such as a Supreme Court), which sets out the rules by which politicians must abide. According to legal constitutionalism, the courts can and must lay down what politicians are and are not allowed to do. But according to political constitutionalists this is troublingly antidemocratic, deeply confused about the nature of politics, and a recipe for poor governance. Whom should we believe?

Richard Bellamy's *Defending the Political Constitution* makes a powerful case for the superiority of political constitutionalism. Bellamy pursues various approaches here, but three are worth emphasizing. First is his insistence that only elected legislatures can properly embody a commitment to the fundamental equality of human beings. While there should certainly be a place for judicial review - to ensure that a legislative body is continuing to act within the rule of law - judges cannot ultimately be placed above elected politicians. Or rather: if judges are placed above elected representatives, this makes a mockery of our status as self-ruling democratic agents.

Similarly, Bellamy forces us to confront the fact that there is no resting point outside of politics to which we can finally hope to appeal. Legal constitutionalism requires us to believe that human beings are capable of constructing laws that somehow stand above politics. It also needs us to believe that such laws could be interpreted and applied impartially, by mere human agents, themselves somehow free of political taint. Yet precisely because this is impossible, we need to recognize that it is ultimately politics all the way down (even if the rule of law, and courts enforcing it, remain indispensable).

Bellamy further contends that however well legal constitutionalism might perform in theory, it frequently fails in practice. It is commonly held that only an independent court system, one enforcing higher laws to keep nefarious politicians under control, can secure the equal rights and freedoms of a democratic citizenry. Yet calling this into question, Bellamy examines the track record of courts when it comes to looking after ordinary citizens. Drawing on the case of the United States, he highlights the appalling record of the Supreme Court in serving as any kind of meaningful check to the abuse of power by politicians. From *Dred Scott v Sandford* to *Citizens United v FEC*, the Court has repeatedly failed the cause of American legal, moral and political equality. Better, Bellamy contends, to put faith in direct political action: in campaigning, voting and representation.

This book is not, however, without surprises. For a start, it might be thought that political constitutionalism is straightforwardly incompatible with a commitment to

international law. Surely it is antithetical for domestic political agents to be bound by supranational legal obligations? Bellamy contends that this is not necessarily so: that international human rights conventions (for example) can be both compatible with, and even enhance the effective operation of, political constitutionalism.

Against the charge that only legal constitutionalism can safeguard against a rising tide of populism, Bellamy cautions the opposite. Insofar as right-wing populists feed off dissatisfaction that elites are unresponsive to the needs of ordinary people, subordinating democratic outcomes to legal rulings will only add fuel to the fire. Yet as a direct result Bellamy suggests that left-wing populism may be entirely warranted: an emphasis on the need for political institutions to reconnect with the needs of ordinary people. Right-wing populists exploit this insincerely; for Bellamy, the role of the left is to do it in good faith.

In turn Bellamy sees an enduring role for referendums within political constitutionalism. Taking the case of Brexit, Bellamy makes clear that he wishes the vote had gone the other way, and that Conservative administrations had not so bungled the process. But he rejects the idea that the vote should never have been held. On the contrary, if it is politics all the way down, then sometimes it is only politics that can do the job. Sometimes, that means asking the people directly. That you don't like their answer is a fact to be lived with, not wished away.



