

Deliberative Democracy and Weak Courts: Constitutional Design in Nascent Democracies

Edsel F. Tupaz

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In this Article, the Author argues fervently that citizens in a given democracy — most especially in younger ones — will best learn civic responsibility and craft their own national policies if judicial review is weak (as best exemplified by the present Canadian and U.K. models), as opposed to judicial review characterized as strong (as in the American model). As framework for this end, he encourages “dialogical constitutionalism” or “dialogical politics” where the citizens may publicly debate among themselves as to social issues and burdens, as well as come up with their own models of constitution-making, constitutional learning, and a widespread conviction for the Rule of Law.

The Author presents his main argument in four parts. A brief account on the political and social conditions of young democracies is first presented, followed by a discussion on his proposed model of “dialogical constitutionalism or politics.” In the last parts of the Article, the Author focuses on the potency of *weak* judicial review as a vehicle which could effectively institutionalize his proposal for “deliberative democracy,” vis-à-vis the limits to the expansion of the public sphere brought about by strong judicial review.

In conclusion, while the Author acknowledges the probability of “reform fatigue” brought by weak judicial reviews, he stands firm in his stand — “that the irreducibly normative dimension of the dialogical strain of deliberative democracy, perhaps seen as a kind of shared cooperative activity, has so far provoked no better alternative in the field of constitutional design for young democracies.”