

Republicanism in the History of Political Philosophy and Today

3rd Biennial *Ideas in Politics* Conference

Prague: November 3rd-4th, 2017

Panel 3.1 Abstracts

Narratives of Constitutionalism, Popular Engagement, and the Transformation of Modern Constitutionalism

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The modern constitution is predominantly understood as a way of instituting and limiting power, and is expected to contribute to (societal) stability, certainty, and order. But modern constitutions are equally about positive engagement with the political order, in terms of political engagement, participation, and creativity, and hence about citizenship. The argument here is that modern constitutionalism is grounded in a dual constitutional imaginary, which consists of an imaginary of order and stability (which can be broken down in distinctive components: state sovereignty, absoluteness, fabrication, endurance, and distrust of the people), on the one hand, and of collective autonomy (creativity, dynamism, self-government and popular sovereignty), on the other. This dual imaginary is in many ways in tension, and, hence, in order for modern constitutions to be legally, politically, and socially viable, a balance or some form of positive relationship needs to be found in theories or narratives of the constitution as well as in constitutional practices.

In the first part, the paper will engage with different theories of constitutionalism as found in legal and political theory, and will analyse the different ways in which such theories engage with, and attempt to balance, the dual imaginary of order and autonomy. The theories discussed are: legal constitutionalism, political constitutionalism, popular constitutionalism, and democratic constitutionalism.

In the second part, the paper will discuss how the various theories relate to distinctive trends that have emerged in recent times, and that strongly affect the meaning and practice of modern constitutionalism, including transnationalism and constitutional pluralism, populist constitutionalism, and participatory constitutionalism.

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Reasonable Disagreement and Moral Consensus in Richard Bellamy's Political Constitutionalism

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Reasonable moral disagreement is one of the most critical issues in contemporary political liberalism and democratic constitutionalism. As some scholars have stressed, our society is characterized by a deep disagreement on fundamental moral values; moving from a critique of Rawlsian idea of “reasonable pluralism”, some scholars such as Jeremy Waldron and Richard Bellamy suggest a liberal-democratic approach in which moral disagreement is enhanced and promoted, instead of being questioned and reduced. In the way to expand the Rawlsian political liberalism, Alessandro Ferrara has however recently highlights the fact that our contemporary society is now characterized by a new and wider form of pluralism, which he calls it as hyperpluralism.

This contribution moves from Richard Bellamy's political constitutionalism, trying to focus the attention on some critical remarks which Bellamy addresses to the Rawlsian political liberalism. On the one hand, defending the idea of a political compromise as opposed to the Rawlsian overlapping consensus – a consensus based on purely moral values – Bellamy is convinced it is impossible to exclude our comprehensive doctrines from public political debate and democratic deliberation.

On the other hand, Jan author such as Jeremy Waldron criticizes the deliberative model of democracy arguing that deliberative democracy fails in considering political dissent and moral disagreement as two problematic aspects of democracy. In this sense, Waldron proposes the so called circumstances of politics, an idea taken up by Bellamy and according to which we disagree both on the right and the good and we should defense and enhance this disagreement instead of limiting it.

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Non-Arbitrary Power and the Democratic Constitution

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In contemporary republican theory it is uncontroversial freedom to be defined as an 'absence of arbitrary power'. However, among scholars of freedom as non-domination, what is a matter of controversy are answers to the question: what should count as non-arbitrary power? This paper broaches this problem by asking the specific question: 'what should count as non-arbitrary power in political decision-making'? It defends a 'deliberative-procedural' account of non-arbitrary political power, where political decisions and their normative content are determined by the negotiation and compromise of citizens' interests in the political process. This is contrasted with what the paper terms the 'constrained-procedural' and 'pure-procedural' accounts of non-arbitrary power; associated respectively with Philip Pettit and Ian Shapiro's anti-domination-orientated theories of democratic politics. The comparative examination of these accounts serves to determine what type of constitution – mixed or unitary, electorally proportional or plurality-based – a non-arbitrary republican polity should adopt. It defends a unitary and proportional system, but contrasts this with a similar account defended by Richard Bellamy, which it argues does not capture the interests of groups who have insufficient power to participate with others on equal terms in the mainstream political system. The paper defends the claims of discrete and insular minorities, and groups close to this end of the excluded-to-fully-included continuum of political participation, to have their own procedural channels of democratic self-government, so that they can register their interests on the political agenda and ultimately be subject to non-arbitrary political power.

The paper begins by providing by conceptual clarity to the debate over different conceptions of non-arbitrary power. It contrasts objective, subjective, and procedural conceptions of non-arbitrary power, showing how any plausible account of non-arbitrariness requires a procedural component. The significance of this requirement is demonstrated and it is shown how different conceptions of non-arbitrariness are manifest in the constrained, pure, and deliberative-procedural accounts of non-arbitrary power.

In section two the paper problematises Pettit's constrained-procedural account, instituted in a revised form of the mixed constitution. The paper critiques the depoliticised institutions that form Pettit's democratic constitution. It is argued these institutions entrench interests which citizens have an interest in contesting, yet cannot, despite the stipulations' of Pettit's account. It is shown in this section how electoral processes provide a much better means for resolving political disagreement and maintaining citizens' allegiance to the law.

Section three examines Shapiro's pure-procedural account, critiquing it as an interest-free descriptive conception of non-arbitrary power that: i) fails to diagnose exclusions from the political community as domination, and ii) fails to capture all citizens' interests in the electoral process through its emphasis on giving citizens only influence, but not control over the direction of government.

Section four concludes by detailing the deliberative-procedural account, first with reference to Bellamy's account, then by discussing what the ideas of negotiation and compromise specifically entail, and lastly by providing the justification for special processes of self-government and representation, in addition to proposals for the support of certain groups in the public sphere and the reform of mainstream political processes.