

DELIBERATIVE DEMOCRACY AND WEAK COURTS: CONSTITUTIONAL DESIGN IN NASCENT DEMOCRACIES

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ABSTRACT:

This Article addresses the question of constitutional design in young and transitional democracies. It argues for the adoption of a “weak” form of judicial review, as opposed to “strong” review which typifies much of contemporary adjudication. It briefly describes how the dialogical strain of deliberative democratic theory might well constitute the normative predicate for systems of weak review. In doing so, the Article draws from various judicial practices, from European supranational tribunals to Canadian courts and even Indian jurisprudence. The Article concludes with the suggestion that no judicial apparatus other than the weak structure of judicial review can better incite grassroots constitutional learning of liberal legality among citizens of aspiring liberal democracies.

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