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Bradley C.S. Watson. *Civil Rights and the Paradox of Liberal Democracy.* Lanham, Md: Lexington Books, 1999. xi + 203 pp. $55.00 (cloth), ISBN 978-0-7391-0038-7.

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Rights and the Twilight of Consent

Bradley Watson attempts to do a great deal in the space of 183 pages. He seeks to identify the central debilitating paradox in liberal democracy; trace the career of this debilitation through the emergence of the rhetoric of legal-constitutional rights; substantiate this insight by way of an empirical comparative examination of the American and Canadian bill of rights experiences; delve into the foundations of modernity and particularly Kantian ethical thought to discern the root of the problem; and finally propose some practical measures to reverse the decline of liberal democracy.

This is an ambitious project which he does not quite manage to achieve. It is a good attempt, however, and is a persuasive addition to the literature examining the nature and history of that most complex of modern phenomena: liberal democracy. An additional merit of this book is that it self-consciously straddles strict subdisciplinary boundaries within political science. Any thoughtful political observer must chafe at these boundaries when pursuing a topic of public importance. Watson simply ignores them. The result is a sweeping analysis. The danger to which he has fallen subject is that specialists in the various areas of inquiry which he visits will find things to quarrel with. Indeed, the book is uneven. While the chapters on the philosophical origins of the current instabilities are rich, detailed, and persuasive, the chapters on rights jurisprudence lack detail and nuance.

Liberal democracy, Watson claims, is about the conjunction of equality and liberty, consent and individualism. Equality's institutional complement, consent, means that individual persons must submit themselves to the requirements of the self-governing community. They must embrace the minimal virtues of self-government in modern conditions. But the respect for the individual at the core of liberalism too easily leads to an exaltation of the individual self and its bottomless passions and desires over and above the legitimate requirements of the community. Individualism tends to the tyrannical, thereby occluding the consent of the whole. In this way liberal democracy "carries within it the seeds of its own destruction" (p. 4). What Watson calls "self-expressive individualism" – the groundless assertion of the unconstrained will – is a corruption of older doctrines of natural rights

on which liberal democracy depends for its continued vitality.

Crucial to the exacerbation of liberal democracy's paradox is the late-modern fixation with legally enforceable bills of rights. Liberals of old liked rights, but as the Federalists wrote, the constitution is itself a bill of rights. Watson sees in the arguments for a separate, legally enforceable bill of rights a sign of troubles to come. The new rights rhetoric, combined with its institutional complement, the courts and the legal profession, has led to solipsistic self-expression, the liberation of the passions, an increasingly therapeutic, psychologized politics of the self, and ultimately the demise of liberal democratic government. It is not that liberal democracy was ever without its deep and fundamental instabilities; it is simply that the new legalism attempts to resolve them in a way that will ruin the whole project.

For evidence of the movement he sees, Watson examines (all too cursorily) Canadian and American civil liberties jurisprudence. He concludes that an unhinged, self-expressive individualism averse to democratic self-government forms the basis of constitutional rights enforcement. He chooses a rather small number of cases to make his point and is not particularly sensitive to jurisprudential nuances. Confusingly, in the chapter on the Canadian Charter, he cites American cases and American scholarly commentary. And when the subject is Canada in this same chapter, he relies too heavily on the work of Seymour Martin Lipset. Watson could have profitably read some important work on Canadian republicanism by Peter Smith and Janet Ajzenstat, among others.

I am troubled by his discussion of voting rights. This is an important right for him because the problem that informs the whole book is that rights talk is leading "consent" (democratic self-government, with its attendant citizen obligations and virtues) into a twilight. The right to be consulted "is, arguably, the most important civil right of all" (p. 78). The US Supreme Court, he argues, makes an inappropriate distinction between the right itself and "the specific manner in which that right is exercised" (ibid). But, to give the courts their due, there is at least in principle good reason to ask whether a right – especially this penultimate right – is capable of being exercised. Is it meaningful to speak of the existence of property rights but refuse to consider whether the law of trespass is being enforced? While one can properly criticize the courts' preference for mathematical precision in its voter equality decisions, to dismiss all concern with the efficacy of the exercise of a right is not a good way to make the case.

This problem is compounded when we consider the Canadian experience. Canada and the United States both use the single-member constituency electoral system. Widely disparate populations per constituency have been a problem in Canada, and the courts addressed them as voting rights cases under s. 3 of the Canadian Charter of Rights and Freedoms. Canadian high courts have refused to follow the American example. The Supreme Court of Canada has preferred the concept of "effective representation" to strict mathematical voter equality. Thus Canada recognizes interests other than purely individual voter efficacy. This fact does not help Watson's case. It makes Canada's role in the larger movement he describes more complicated than he allows.

The greater part of the book is devoted to an analysis of the history of modern ethical and political philosophy in order to discern the point at which the conceptual foundation for a doctrine of rights – grounded in objective nature or reason beyond the subjective, willing individual – was decisively undermined. Watson blames Kant. And Kant in turn leads to Nietszche. (In a digression whose significance for the argument is questionable, Watson feels further compelled to demonstrate that Nietszche misunderstood and misrepresented Socrates.)

Watson's book is ultimately an attempt to recover liberal democracy from its present ills. He looks to the founders of the American Constitution, who "attempted to strike a salutary balance between the claims of a dangerous modernity and an unworkable classicism" (p. 170). He seeks to cultivate the quasi-aristocratic virtues of the political class, especially in and amongst senators and the president. He wants to strengthen Congress against the bureaucracy and strengthen the states against Congress. He wants everyone to stand up to the courts. Finally, and improbably, he wants more space exploration: this would subordinate Americans to an awesome project of discovery, conquest, and mastery. Presumably it would restore the American way and dim the bright light of self-expressive individualism. Why the conquest of space is not another hubristic working out of the logic of modernity, why it is not an Arendtian flight from the world, is not at all clear to me.

Watson's book can be placed on the shelf with scores of others that critically examine the relationship between courts and legislatures. This book quotes from the pantheon of contemporary conservative thinkers, placing the recent development of rights discourse into a rich philosophical context. While there are problems in ex-

ecution, Watson adds to our understanding of the depth of the current malaise. Recommended for graduate students and specialists.

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