

ples, the distinction is important for Kelly's defense of the "mutually reinforcing activist approach to rights that originates with the cabinet and the bureaucratic arena that supports its legislative agenda" (39). He continues, "Judicial activism is more a reflection of the institutional failure of legislative activism to ensure that Charter values are addressed in the design of legislation than it is an indication of the danger of judicial supremacy" (39). But this is true only if we take judicial specifications of "Charter values" as conclusive. The real problems associated with "judicial activism" would occur when—or if—the Department of Justice's rights vetting process relied on the department's independent and reasonable specification of those values. Although Kelly's work opens up important lines of inquiry here, we will need further investigations to fill in the picture he has outlined.

As the book's subtitle indicates, Kelly's analysis moves beyond his central theme into other areas. He argues that the Supreme Court's activism is consistent with the intent of some of the Charter's framers, especially Pierre Trudeau. Though convincing on the level of framers' intent, this argument does not in itself defeat the conservative critique of the Court's activism. On its face, it eliminates one version of the originalist criticism of activism, without affecting other grounds of criticism, such as the non-democratic nature of activism. And even in originalist terms, a framers'-intent analysis is unresponsive to more recent versions of originalism that focus on general public understanding of a constitution's terms and structures. Kelly relies heavily on what specific authors had in mind when they adopted the Charter but does not show that the public understood what it was getting.

Kelly also points out that a substantial number—52 per cent by one count—of Charter cases involve challenges not to the constitutionality of legislation but to the exercise of discretion delegated to public officials, such as the police (35). Such cases raise no deep questions of the consistency between constitutional review and democratic self-government, and indeed can be handled—as they traditionally were under British law—as matters of administrative law.

Kelly's provocative cabinet-centred approach is a major addition to the literature on constitutional review in Canada and should influence discussions of comparative constitutional review as well. He has opened up important lines of inquiry even if he has not fully sorted through distinctions that later scholars will undoubtedly feel compelled to make.

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The Primacy of Politics: Social Democracy and the Making of Europe's Twentieth Century

Sheri Berman

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Berman's captivating chronological analysis of the development of European social democracy over the last century leaves little to be desired. Uniting both theoretical analysis of social democracy with real world evidence of party development in five European cases (Austria, France, Germany, Italy, and Sweden), her work contextualizes both the broader rise of the welfare state in the post-Second World War era along with the more specific and troubling examples of the ascendancy of fascism and national socialism in Italy and Germany respectively. What is missing is a serious treatment of the rise of the New Right and a deeper discussion of the relative power and importance of pragmatic politics versus idealistic ideology.

Berman begins with a rather unexpected metaphor in relation to ideology in general. Writing as a staunch advocate of social democracy, she nonetheless suggests

ideological developments can be understood in terms of markets with supply and demand. One of her propositions is that social democracy in Europe emerged in the first part of the twentieth century as a serious and differentiated alternative to both the harsher effects of liberalism and capitalism and the theoretical and practical irrelevance of Marxism—a market opportunity in terms of unmet ideological demand. There are two rather important suggestions that emerge from this discussion: the first is that social democracy is something quite different than “embedded” or reformed liberalism; the second is that current challenges arising from the contemporary forces of globalization are creating a similar market opportunity for social democracy, properly understood, to be revitalized and deployed on the global stage.

Differentiating social democracy from liberalism, Berman argues that, at its core, social democracy espouses the primacy of politics along with communitarianism, countering the liberal assertions of the primacy of economics (or markets more broadly) and individualism. Nonetheless, there are both liberals (reform or welfare) and conservatives (red) whose visions do not stray far from social democracy thus described. She argues further that to talk of the “third way,” often associated with Blair’s reconstitution of the British Labour Party, as an embedded or reformed liberalism, is incorrect and misleading (and indeed she notes that Britain’s New Labour is not a party of social democracy at all, but rather a wolf of neo-liberal orientation in sheep’s clothing). The third way, representing an alternative to communism and unfettered capitalism, is indeed the home of true social democracy.

Berman laments the weakened state of social democratic parties in Europe at the turn of the millennium. Despite the tremendous successes wrought by social democracy in the post-war era (most notably, the reconciliation of capitalism, democracy and social stability which historically had not been dreamed of, she suggests), contemporary European parties of the left appear to have abandoned the idealism associated with transforming society for the better and thus have become “like dead men walking, losing momentum, enthusiasm, and the ability to weather difficulties” (217). In short, the pragmatism which has come to accompany political success has edged out the idealism which drove the early advocates of social democracy who convinced the populace that things could be better if their parties were governing. Consequently, at this particular moment of great opportunity globally, social democracy seems as tired as Marxism did at the turn of the last century. Has this leftist fatigue created an ideological market opportunity for the New Right?

Her analysis of the rise of both fascism in Italy and national socialism in Germany is based on the assertion that, while socialists were arguing over the relevance of orthodox Marxist theory at the start of the last century, a strong communitarian desire was rising in European peoples as a result of the First World War. Socialist revisionists broke into two main camps: democratic revisionists and revolutionary revisionists. The democratic revisionists ultimately bore the creation and political success of social democracy, while some of the revolutionary revisionists (also rejecting both Marxism and capitalism) joined with nationalistic forces which ultimately led to the creation of the totalitarian regimes of Mussolini and Hitler. Thus Berman demonstrates a strong connection between social democracy and those distorted visions—all three ideologies espoused the primacy of politics over markets and communitarianism over individualism. The distinctions emerged in methodology, with fascists and national socialists rejecting democracy as a means of securing social and political objectives.

Aside from the cases of Italy and Germany which are broadly familiar to many students of politics, the detailed discussions of party developments in the other case states seemed less interesting, although clearly relevant, with the exception of Sweden. Sweden’s long-established tradition of social democracy is based on political pragmatism which allowed for electoral success and social consensus from early on

in the twentieth century, which raises the question as to how social democratic parties can maintain their idealism in the face of continued responsibilities of governing in the diverse societies of today. And while Berman mentions Blair's third way, a more serious treatment of the UK, and indeed of Anglo-America in general, would be most interesting. The emergence of the New Right there and elsewhere has overshadowed social democracy and its accomplishments, some would argue even replacing it as the ideology of the time.

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La répression des homosexuels au Québec et en France. Du bûcher à la mairie

Patrice Corriveau

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Le livre *La répression des homosexuels au Québec et en France. Du bûcher à la mairie* de Patrice Corriveau porte sur l'évolution de la doctrine juridique des mœurs homoérotiques. Issu d'une thèse de doctorat en sociologie, le livre est un questionnement sur les origines de la répression sociale et légale de l'homosexualité. Concrètement, l'auteur analyse et compare les discours dominants en France et au Québec en ce qui concerne l'homosexualité (12). Au moyen de la méthode historico-comparative, l'auteur tente de retracer l'évolution des mœurs homosexuelles. Il souligne «l'évolution de la répression juridique des mœurs homoérotiques en France et au Québec, du XVII^e siècle à aujourd'hui» (11). S'appuyant sur la méthode quantitative, Patrice Corriveau exploite plusieurs statistiques pour corroborer sa thèse : l'oppression des homosexuels à travers l'histoire. Ce livre est le fruit des recherches soutenues par une expérience personnelle de l'auteur face à l'homophobie, une expérience vécue à Montréal un certain «jeudi soir de juin 1997» (9).

L'ouvrage est divisé en cinq chapitres, dont le premier est une abondante recherche sur les mœurs homoérotiques de l'antiquité grecque jusqu'au dix-septième siècle. Qu'en était-il de l'homosexualité avant le dix-septième siècle en Europe? Les quatre derniers chapitres portent sur l'évolution de l'homosexualité en France et au Québec. En dépit du fait que ces deux sociétés ont une histoire commune, la répression de l'homosexualité y a évolué de manière différente.

Les origines des mœurs homoérotiques ne peuvent être établies avec certitude. Toujours est-il qu'elles remontent à l'Antiquité. Dans la Grèce antique, «ces comportements sont ouvertement pratiqués» (19). Dans certaines cités, «telles Crète et Sparte (...)», l'homosexualité est érigée en institution officielle (20). La même attitude est observée dans l'Empire romain. «Selon toute vraisemblance, la gestion des mœurs homoérotiques chez les Anciens consiste surtout à réguler la sexualité à l'intérieur de certaines limites...» (25). Avec l'ère chrétienne, l'homosexualité vacille entre la tolérance et la répression. Plusieurs facteurs peuvent expliquer ces différents comportements : l'Église catholique a son propre droit, le droit canonique. D'où la nouvelle appellation des mœurs homoérotiques : la sodomie, «crime contre nature» (35–36). Qu'en est-il de son évolution en France et au Québec?

Deux faits méritent d'être soulignés avec l'auteur. D'abord, le fait qu'avec le bûcher on brûlait et le criminel et les minutes du procès (44). Ensuite, le fait que ce crime contre nature ne pouvait que discrètement être puni pour éviter la «contagion». C'est là le «paradoxe du crime innommable», «nefendum crimen» (51). La sodomie, en France comme au Québec, devient un crime de lèse-majesté divine, «un crime contre la moralité et non un crime contre la personne» (51). Le système de justice de la Nouvelle-France n'est que le reflet de la mère Patrie. Le paradoxe est grand face au comportement homoérotique. Le pouvoir judiciaire et les autorités ecclé-