

Revisiting Ryan v Lennon to Make the Case against Judicial Supremacy

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Abstract : It is difficult to conceive of a case that might more starkly bring the arguments concerning judicial review to the fore than State (Ryan) v Lennon. Small wonder that it has attracted so much scholarly attention, although the fact that almost all of it has been in an Irish setting is perhaps surprising, given the illustrative value of the case in respect of a philosophical quandary that continues to command attention in all developed constitutional democracies. Should judges have power to invalidate legislation? This article revisits Ryan v Lennon with an eye on the importance of the idea of “democracy” in the case. It assesses the meaning of democracy: what its purpose might be and what practical implications might follow, specifically in respect of judicial review. Based on this assessment, it argues for a particular institutional model for the vindication of constitutional rights. In the context of calls for the drafting of a new constitution for Ireland, however forlorn these calls might be for the moment, it makes a broad and general case for the abandonment of judicial supremacy and for the taking up of a model in which judges have a constrained rights reviewing role that informs a more robust role that legislators would play, thereby enhancing the quality of the control that citizens have over their own laws. The article is in three parts. Part I assesses the exercise of judicial power over legislation in Ireland, with the primary emphasis on Ryan v Lennon. It considers the role played by the idea of democracy in that case and relates it to certain apparently intractable dilemmas that emerged in later Irish constitutional jurisprudence. Part II considers the concept of democracy more generally, with an eye on overall implications for judicial power. It argues for an account of democracy based on the idea of equally shared popular control over government. Part III assesses how this understanding might inform a new constitutional arrangement in the Irish setting for the vindication of fundamental rights.

Keywords : constitutional rights, democracy as popular control, Ireland, judicial power, republican theory, Ryan v Lennon

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