Parliament cannot override.) The only question is which institution is better able to interpret the constitutional rules correctly; and in the case of a written, consciously created constitution, courts seem to be better constructed to get the meaning of rules right. This is true whether the rules are rules about structure or rules creating and elaborating rights. For the meaning of the rules is a matter of historical fact: what their authors' intended meaning was. And ascertaining historical facts is right in the wheelhouse of courts.

Even if the desideratum for rules is that their meaning not be controversial —after all, their function is to settle controversy and avert its costs—authorially intended meanings will often not be clear to everyone and thus will often leave matters unsettled unless authoritatively interpreted. The hope then is that even if the constitutional authors' intended meaning is not clear enough to avert controversy, the courts rendering of that meaning will be.

If a constitution contains standards, matters are different. Standards tell a decision-maker to do "the right thing" within a decisional area cabined by rules. There is no reason to assume that courts are necessarily better reasoners about morality and policy than legislatures or the executive. However, I see no reason of democratic principle against leaving the authoritative fleshing out of standards to courts. Although Jeremy Waldron disagrees,46 the question for me is what mix of democratic and nondemocratic institutions is most likely to "do the right thing." If courts are epistemically and motivationally superior to legislatures in fleshing out standards, then good constitutional design will give that task to them.

In any event, even if a constitution were all rules and no standards, courts would have to consult moral and other practical considerations in designing doctrines to implement those rules. For, as Mitch Berman and others have pointed out, judicial enforcement of a constitution's rules will require the creation of doctrines —rules —regarding burdens of proof and other similar matters. These doctrines could themselves be contained in constitutional rules, but often they are not.

Thus, courts are likely to need to resort to moral and prudential practical reasoning in fleshing out (rulifying) constitutional standards and in constructing doctrines for implementing both constitutional rules and constitutional standards. If courts are not superior to democratic legislatures in such first-order practical reasoning, then perhaps the judicially created doctrines for fleshing out constitutional standards and for implementing constitutional rules and standards should not be finally authoritative within the legal system, but should be subject to legislative overrides. Again, the principal reason would be one of relative competence, not Waldron's reason that there is a moral right to have controversial moral issues resolved by a democratic vote.

Finally, what if a constitution refers to preexisting moral rights, notwithstanding the perils of incorporating morality to which I have alluded? As I have said, if that is what a constitution does, then this would imply that such moral rights are to be enforced by the judiciary. After all, the legislature and the executive are always supposed to make their actions consistent with moral requirements, whether or not those requirements are also found in the constitution. So explicitly referring to preexisting moral requirements in a constitution signals not merely that such requirements bind the government but also that they are to be enforced by the courts. Whether or not it is wise as a matter of constitutional design to make courts the moral censors of government action is a question about which reasonable minds can disagree. (A body with the responsibility of hearing individual moral complaints about proposed and enacted legislation and advising the