**‘The Beast Below’: *Doctor Who* and the popular negotiation of constitutional values**

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**Abstract**

The Doctor’s adventures frequently see him explore worlds with problems that are not dissimilar to those facing contemporary society. As a result, *Doctor Who* often provides and invites political critique. In contrast, relatively little attention has been paid to how the programme provides and invites legal discussion, even though the law is rarely absent from the Doctor’s adventures. This article seeks to close this gap by examining the constitutional law message contained within the 2010 episode ‘The Beast Below’. In this episode, the Doctor and Amy Pond must solve a dilemma which ivolves secretive and state-sponsored torture; this evokes broader constitutional law debates around the roles of law and politics in securing and enforcing human rights. By showing the limits of the Doctor’s interventions, the episode casts doubt on the appropriateness of the judiciary in establishing the scope of human rights. It endorses a political model of constitutionalism directing that citizens must play an active role in the contestation of executive power, so that constitutional constraints are ultimately negotiated and articulated by the public rather than by elites. By offering this reading, it is hoped that *Doctor Who*, and science fiction television more widely,can be appreciated as a constitutional text and a forum for constitutional discussion.

**Keywords; *Doctor Who*; human rights; science fiction; British politics; democracy; constitutional law; judges.**

Science fiction is marked by its ability to re-present contemporary issues within alternative realities. By postulating an imagined world that is read and experienced from the real world, the genre can create perspectives through which audiences may engage with and critique contemporary issues (Travis 2011: 252). *Doctor Who* (1963-89; 1996; 2005-)is an excellent example of this manoeuvre within science fiction television: the Doctor’s adventures frequently see him explore worlds experiencing problems that are not dissimilar to those facing contemporary society. The series carries a history of political commentary (Chapman 2013); less has been written about its representation of the law. This article seeks to close this gap by examining the constitutional law message contained within the 2010 episode ‘The Beast Below’. In this episode, the Doctor and his companion Amy Pond must solve a dilemma surrounding secretive and state-sponsored torture that evokes broader constitutional law debates around the roles of law and politics in securing and enforcing human rights. The episode casts doubt on the appropriateness of the judiciary in establishing the scope of human rights by showing the limits of the Doctor’s interventions. It endorses a political model of constitutionalism of direct relevance to the United Kingdom’s constitutional arrangements. It directs that citizens must play an active role in the contestation of executive power, so that constitutional constraints are ultimately negotiated and articulated by the public rather than controlled by elites.

The article proceeds in two stages. First, it sketches the salient features of the United Kingdom’s unwritten constitution and its relationship to *Doctor Who*. Interplay between law and politics characterizes the British constitution, and it is this that enables ‘The Beast Below’, and the seriesmore generally, to act as a cultural forum for constitutional debate. Second, it offers its constitutional reading of ‘The Beast Below’. It is hoped that this creates space to appreciate *Doctor Who* as a constitutional text.

**The UK Constitution and its Values**

Constitutions frame the legal and social order. They represent the basic laws of state governance, defining and framing the powers of government, the rights of citizens, and the relationship between them. Explicitly or not, they enshrine a series of moral, ethical, and political principles into the actual and normative operation of government and society, and these broadly reflect popular mores (Cram 2016). In most jurisdictions, these values are codified and thereby fall to be interpreted and enforced by a constitutional court and can only be modified by a complex political process. In the United Kingdom, the position is different: there is no single written constitution and no firmly established and binding hierarchy of legislation differentiating the constitutional from the everyday. British constitutional change is procedurally quite straightforward and can be achieved with an ordinary Act of Parliament. By way of illustration, the UK’s Supreme Court was created by the Constitutional Reform Act 2005. This was a significant constitutional change that created a new apex court, yet it passed through the same Parliamentary processes as the most banal legislation and was not subject to being overruled by any court. By contrast, in the Republic of Ireland, the courts are regulated by Article 34 of the Constitution; before a new Court of Appeal was established in 2014, a formal process of constitutional change including an affirmative popular referendum had to occur.

Absent a written constitution, the United Kingdom’s political process, rather than a constitutional court or pre-political document, ultimately articulates constitutional rights and boundaries. This is not to say that courts play no constitutional role – they interpret the law, often expansively, and ensure that the government operates within it – but the majority of constitutional rules and principles originate within the Parliamentary political process. These need not necessarily pass into law to gain constitutional status. Paradigmatic of this is that much of the United Kingdom’s constitution is governed by political conventions that the courts deem outside their jurisdiction. The content and enforceability of these conventions rests solely on politics. Taylor (2015: 622-26) provides a leading account of this phenomenon. He notes that some conventions are so embedded that it is almost unthinkable they would be breached, the paragon being that the monarch may only use executive prerogative powers on the advice of ministers, never of his or her own volition. There is no law stating that this is the case. It is an embedded political understanding that has steadily evolved since the conclusion of the Civil War. Other conventions are more open-ended; individual ministerial responsibility to Parliament is the clearest example. Its precise requirements range from clear – for example, ministers must answer Parliamentary questions – to grey rules dependent on political circumstance, for example at which point departmental or individual failings should prompt a minister to resign. Uniting both is that the convention is determined through political practice and expectation, rather than the legal process. Controls are treated as fundamentally political questions to be answered by an ongoing public conversation. The importance of this conversation is reflected by the fact that the government of the day is answerable to – and may be frustrated by – Parliament, and must resign if it loses their support. This creates a system of democracy wherein accountability flows from interactions between directly elected MPs on behalf of the electorate, as well as other political actors (Taylor 2015: 625-26). As a result, ‘political constitutionalism’ is often employed in descriptive and normative analysis of the UK constitution. This

[…] treats the constitution not as a framework of fundamental laws, but as a contingent response to the circumstances of politics that is itself the subject of political debate, as well as liable to the possibility of change, even radical change, through the ordinary, day-to-day political process. (Gee and Webber 2010: 279)

This model’s normativity has been identified with republican ideas of freedom as non-domination. Illegitimate and arbitrary rule is prevented because the exercise of public power takes place within contingent constitutional boundaries that are ultimately set and authorized by a contestatory and equal political process (Gee and Webber 2010: 287). Privileging political means of constitutional control requires citizens to engage in political deliberation and activity. Partly this is so energy and direction may be given to Parliamentary delegates, and partly to ensure continued popular contestation of executive power and a persistent negotiation of constitutional boundaries. Otherwise the circumstances of politics risk becoming unrepresentative of the citizenry, eroding the constitution’s legitimacy and opening up the possibility of domination by elites (Tomkins 2003: 175). It is this participatory and political aspect of the United Kingdom’s constitution with which ‘The Beast Below’ engages, for reasons developed in the following sections.

**Television, Politics, and Constitutional Law**

*Doctor Who* has a long history of political satire and commentary. Overtly legal storylines are rare, with the notable exception of the 1986 serial ‘The Trial Of A Time Lord’, in which the Doctor is prosecuted by his fellow Time Lords. Given that constitutional thought concerns broad questions, often political or moral, about the shape and justification of political authority within the state, the general absence of legal plotlines should not stand in the way of a constitutional reading of *Doctor Who*. Instead, its constitutional awareness may spring from the programme’s characteristic engagement with British politics. McKee (2004), although denying that the pre-2005 serials promoted a distinct political philosophy, found that the programme offers clear political resonances to its viewers. The spectrum of interpretations his focus groups identified, from anarchist to Thatcherite, suggest that viewers create their own understandings and views of what the Doctor does, and use this as part of their thinking about the foundations of society. Street, Inthorn and Scott (2011: 348) support this, concluding that popular culture opens up proto-political discussion even amongst those disengaged from politics. Regarding *Doctor Who*, ‘that popular culture involved an entirely imaginary, fictional world did not preclude it from being seen as how the world is, and indeed how politics operates within it’. Viewers form affinities with those in the programme and, reflecting upon its characters, they are able to make connections with the real world, allowing *Doctor Who* to act as cultural forum that ‘can effectively and persuasively generate [discussion] and respond to needs’ (Gregg 2004: 649).

The general political connotations within *Doctor Who* are enabled by the frequency with which he ‘meets queens, presidents, rebels and factions […] invasions, colonization, uprisings, rebellions and the over-throwing of corrupt administrations’ (McKee 2004: 202). Gregg (2004)’s analysis of ‘The Ark In Space’ (1975) offers a detailed demonstration. Here there is a spaceship on which the last humans lie in suspended animation, and as they awaken their bodies are taken over by malevolent parasites. Eventually the Doctor, with the help of the uninfected, defeats the usurpers. British society at the time had experienced significant upheaval: there had been two general elections in 1974, persistent civil unrest, and anxiety about acceding to the European Community. Gregg argues that the episode partially sought to reflect and answer popular concerns about Britain’s future and its identity, with the parasites acting as fairly transparent metaphors for the nation’s problems. He suggests that the Doctor’s strong leadership in a crisis, the fact that an obviously British culture has survived eons upon the Ark, its narrative about human ingenuity and survival, and the beneficial anti-authoritarianism of the protagonists, all generated and encouraged the audience to engage with a message of hope tailored towards a restive 1970s Britain (Gregg 2004: 657-59). Indeed, allegory is recurrent in *Doctor Who*. Chapman (2013: 66, 150, 169) notes, *inter alia*, that ‘The Ice Warriors’ (1967) satirized Enoch Powell's rivers of blood speech; ‘Frontios’ (1984)reflected the Beirut crisis; and ‘Paradise Towers’ (1987)engaged with 1980s race riots. This has continued into the post-2005 reboot, where one also finds a more consistent overarching political ethos than McKee found in the classic series, evidently connected to a production-level decision to re-position *Doctor Who* as ‘quality television’ (Hills 2010: 166-67). Charles (2008: 454-57) shows that the new seriesis infused with critical references to the war on terror and a general anti-war message. He identifies three episodes that essentially attack Tony Blair’s premiership on both grounds. ‘Aliens of London’ (2005) makes explicit reference to the false claims about Iraq’s capacity to use weapons of mass destruction; ‘The Christmas Invasion’ (2005), sees the Prime Minister’s decision to attack a fleeing alien invasion receive an angry intervention from the Doctor that ultimately leads to her resignation; and ‘The Sound of Drums’ (2007) portrays the Master as a highly charismatic but dangerous Prime Minister, a commentary on Tony Blair’s style of leadership and the wars in Afghanistan and Iraq. This theme has carried on in the 2015 episodes ‘The Zygon Invasion’ and ‘The Zygon Inversion’. Here, the Zygons – aliens who have assumed human form and live peacefully among us – see their Earth-based community taken over by a violent splinter group. This is clearly a commentary on radicalization, and broadly tracks contemporary debates around Daesh and Syria.

The law within *Doctor Who* has not been studied to the same extent as its politics. This is unsurprising given its lack of obviously legal storylines. Nonetheless the programme can connect with broader legal issues in the same way that it engages with the political. Legal debate need not be confined to courtrooms and boardrooms; law and film scholarship widely interrogates the interpenetration of law and film, scrutinizing representations of specific and general issues of justice and authority in addition to cinematic interpretations of the legal professions (Greenfield, Osborn and Robson 2010). The cultural legal studies movement takes this trend further by emphasising the epistemological relationship between the law and cultural texts. Here, the presence of legal issues, even in the abstract, is taken as a source of legal knowledge in its own right. The viewer does not merely see a representation of the ‘real’ law; they consume and react to a distinct legal text that helps constitute their normative legal consciousness (Collis and Bainbridge 2005: 160-62). Legal meaning thereby arises in essentially the same manner as the political insights divined by Street, Inthorn and Scott (2011). The ouroboros of UK constitutional law and politics, and *Doctor Who*’s tradition of political allegory within imagined communities, makes the programme well placed to provide constitutional commentary. ‘The Beast Below’ is a prime example of an episode whose political commentary creates constitutional meaning. It raises broad questions surrounding the distribution of power and the articulation of controlling moral principles. It acts generally as a cultural forum inviting the audience to explore these problems; it also contains a specific message distrustful of political and judicial authority. This emphasises the importance of citizens deliberating and participating in constitutionalism. A truly legitimate state requires that they negotiate, identify, and stand up for a set of values.

**Introducing ‘The Beast Below’**

‘The Beast Below’ is a fairly typical adventure, where ‘the Doctor must use his phenomenal acumen to uncover a mystery and unseat an oppressive regime’ (Britton 2011: 207-08). The episode takes place on Starship UK, a spaceship on which the British people have fled the burning Earth. It is not a subtle metaphor; Chapman (2013: 268) aptly refers to the *mise-en-scène*, including tube signs, county names, and red phone boxes, as a ‘pastiche’ of the United Kingdom. Indeed, the Doctor almost breaks the fourth wall when he tells Amy, his new companion and the viewer’s surrogate, that ‘this *is* the United Kingdom’ before commanding her – and us – ‘Use your eyes. Notice everything. What’s wrong with this picture?’; Starship UK is presented as a mirror to which the real world can be compared. In this strange world, it is Amy, a fairly normal human, with whom the audience is meant to identify. Her nature as the audience’s cipher intensifies throughout the episode. This is because, aside from the Doctor, the other major protagonist is the Queen, Liz 10. This allows a juxtaposition establishing three distinct character types. The Doctor is an alien; Liz is royalty; Amy is an ordinary citizen with whom the audience can identify. Importantly, Amy’s eventual heroism is the action of a common citizen.

‘The Beast Below’ revolves around the fact that Starship UK is carried through the cosmos atop a star whale. This is a secret protected by a violent police state. It is kept because the momentum of both whale and nation is maintained only through electric shocks aimed at the leviathan’s brain. This act of torture provides the episode’s most direct parallel to contemporary constitutional issues, and the episode’s cultural forum revolves around this reference point. Torture permeated the political atmosphere at the time of the episode’s broadcast in April 2010. In February 2010 the Court of Appeal ordered the release of information showing that the British intelligence services were aware of the Guantanamo detainee and British resident Binyam Mohamed’s torture, and in July 2010 the ill-fated Gibson Inquiry into the British treatment of detainees was announced.[[1]](#footnote-1) Although these specific events may not have been foreseen at the time of the episode’s production, allegations of British complicity in torture surfaced consistently from around 2008 (Joint Committee on Human Rights 2009: 5-11). These led to a certain amount of soul-searching within public discourse about the United Kingdom’s moral values. Announcing the Gibson Inquiry, the Prime Minister David Cameron summarised the issue:

Our reputation as a country that believes in human rights, justice, fairness and the rule of law – indeed, much of what the services exist to protect – risks being tarnished […] The longer these questions remain unanswered, the bigger will grow the stain on our reputation as a country that believes in freedom, fairness and human rights. (HC Deb 10 July 2010 vol 513, cc175-176)

This was not unjustified. The right not to be tortured is among the most fundamental human rights and is protected by major international and regional legal instruments. In international law, the United Kingdom is bound in this regard by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights (ECHR), and the UN Convention Against Torture. Domestically, the Human Rights Act 1998 incorporates the ECHR, and its prohibition on torture, into domestic law, complementing the fact that the judge-made common law has prohibited, if not prevented, the practice since Edward I’s reign in the thirteenth century (Hope 2004: 811).

The constitutional significance of these prohibitions rests as much on their symbolism as their practical purpose. Banning torture goes to the heart of the law’s moral legitimacy: ‘If law is forceful or coercive, it gets its way by non-brutal methods which respect rather than mutilate the dignity and agency of those who are its subjects’ (Waldron 2005: 1726). It is, as Lord Bingham has explained, a constitutional principle affirming that the Crown’s authority must not be brutally exercised against its citizens (*A v Secretary of State for the Home Department (No 2)* [2005] UKHL 71, paragraphs 12-13). This is totemic of a wider concern underpinning the prizing of human rights within contemporary constitutional theory. Human rights are intended to recognize the inherent equality and dignity of all; power is only democratically legitimate if exercised consistently with this truth (Gearty 2005: 50). The topical and constitutional significance of torture makes ‘The Beast Below’ well positioned to provide a cultural forum reflecting constitutional challenges and inviting the viewer to reflect on the real United Kingdom, both of the time and more broadly. Through Amy’s character arc and the Doctor’s failings, the episode declares a public duty to police the moral legitimacy of public power. It warns against apathy and relying on judicial or other authority figures to uphold constitutional standards.

**Apathy and Participation**

When the audience discovers the Starship’s secret, they are shown that the whale’s treatment is not entirely hidden. Early on, Amy goes walkabout to research this strange world. She stumbles into a voting booth, where it is revealed that every five years the electorate is told the truth before being asked to protest or – literally – forget. She watches the video shown to every citizen before they vote, which explains the significance of their decision:

If you choose to protest, understand this. If just one per cent of the population of this ship do likewise, the programme will be discontinued, with consequences for you all. If you choose to accept the situation – and we hope that you will – then press the ‘forget’ button. All the information I am about to give you will be erased from your memory. You will continue to enjoy the safety and amenities of Starship UK, unburdened by the knowledge of what has been done to save you. Here, then, is the truth about Starship UK, and the price that has been paid for the safety of the British people.

Nobody ever protests. Society chooses to forget. Starship UK’s citizens willingly ignore the moral questions that underpin, literally and figuratively, their direction of travel. Amy initially follows suit. She forgets and records a message begging her to take the Doctor and leave the ship, abandoning Starship UK to its fate. The consequences of this apathy are then developed. The ship’s dilemma evokes the ticking time-bomb hypothesis that is frequently cited during discussions of torture: is it acceptable to torture one individual in order to save thousands? (Waldron 2005: 1714-15). Here the ability of science fiction to depict imagined realities comes to the fore. ‘The Beast Below’ situates this question and a hypothetical response of ‘yes’ within a fully realized state. It depicts the deleterious consequences of allowing torture – an unopposed and morally corrupt police state – and shows that the public enabled this dystopia by abandoning responsibility for the moral standards underpinning their constitutional order.

The abject depths of apathy within Starship UK are underlined by Liz 10’s role in the episode. She is introduced in action-hero style. Amy and the Doctor are cornered by the secret police. Enter Liz, guns blazing and quipping: ‘basically, I rule’. She too is seeking Starship UK’s secrets, and her initial portrayal is heroic. But it transpires that this apparent saviour – the Queen, supposedly a majestic symbol of the enduring British spirit – is a collaborator, not a resister. Every decade she discovers the truth and must watch this self-recorded message:

If you wish our voyage to continue, then you must press the Forget button. Be again the heart of this nation, untainted. If not, press the other button. Your reign will end, the Star Whale will be released, and our ship will disintegrate.

Every time – the Doctor calculates a recurrence of almost 300 years – she chooses to forget what is being done to the whale. More than that, her statement glorifies and commands the turning of a blind eye through the ironic use of ‘untainted’. To be untainted is perpetuate vicious totalitarianism. The symbolic ‘heart of the nation’ is apathetic, enabling, and tarnished by centuries of complicity in torture; there is no pre-existing British spirit that will prevent atrocities. The Starship, then, is a version of the United Kingdom that revels in its abandonment of moral conscience. Liz’s unmasking occurs, as with the rest of the denouement, in the Tower of London. Here the Tower is a torture chamber, further underscoring that a failure to constitutionalize and continue to respect human rights leads to dystopia. It is not just the fact of the torture chamber which has this effect, but its broader symbolism. The popular historical imagination is aware that prisoners were historically kept and tortured in the Tower. Consequently, not only does the torture reference current events; not only does the episode construct a reality showing the totalitarian destination of continued state-sponsored torture; it also encourages the viewers to associate that reality with an even more undesirable and bloody medieval England where torture was commonplace. In the denouement, the Doctor lambasts Amy for trying to make him leave. He angrily tells her ‘you don't ever decide what I need to know’ and that she can no longer accompany him on his adventures. This vengeance is a reminder that if collective apathy with no single ringleader can lead to a vicious police state, individual apathy also has serious consequences too; you cannot simply claim that it is somebody else’s problem to deal with and be absolved of responsibility. This exchange starts a process that demonstrates the limitations of the Doctor’s interventions – the episode redoubles the failure of Liz, the other obvious authority figure, to deal with the problem – and encourages Amy to finally engage with the problems facing the ship rather than carry on with her willful blindness. Here the constitutional message resounds; it is citizens – not judges, politicians, or monarchs – who must safeguard the United Kingdom’s constitution and its values.

With Liz 10’s valiance discredited, the whale in agony, and Amy’s attempt to make him leave revealed, the Doctor is positioned as the only problem-solver. As he sees it, he must now save ‘humanity or the alien’. He sees three possibilities: ‘One: I let the Star Whale continue in unendurable agony for hundreds more years. Two: I kill everyone on this ship. Three: I murder a beautiful, innocent creature as painlessly as I can’, and resolves to paralyze the whale so that it keeps flying without feeling pain. Amy, who has been observing things more closely, is able to provide a better solution. She switches off the laser, deducing that because the whale has not been harming the children ostensibly sent to it as food, it must have some empathy towards the ship. Once relived of its pain the whale keeps flying: it ‘didn't come like a miracle all those years ago. It volunteered. You didn't have to trap it or torture it […] it came because it couldn't stand to watch your children cry’. Britton (2011: 207-10) reads this resolution as a critique of the Doctor’s habitual *deus ex machina* heroism. The Doctor acts recklessly and inflexibly, proposing a narrow solution that does not – cannot – satisfactorily resolve matters; it would result in injustice regardless of what he does. For Britton, the episode shows ‘limitations in the Doctor’s formidable powers of reasoning’ and deliberately undermines the perception that he is ‘a kind of faerie king, who may grant human wishes and desires’. Indeed, the Doctor’s fallibility in a crisis has been a minor theme post-2005, in keeping with the series’ exploration of his moral dark side. In ‘The Waters of Mars’ (2009), he attempts to change the course of history by saving the life of Captain Adelaide Brooke, one of Mars’ first human colonists. Although the Doctor successfully returns her to Earth, Adelaide kills herself when she realizes that history was supposed to record her as a hero whose death on Mars spurred on the exploration of the universe. A further example is ‘Into The Dalek’ (2014). In this episode, the Doctor comes aboard the military spacecraft *Aristotle* and is sent inside the body of a captured Dalek. His mission is to find out why it has uncharacteristically turned ‘good’ and started exclaiming its intention to exterminate all Daleks rather than all non-Daleks. The cause is a radiation leak; once fixed, the Dalek returns to its normal genocidal self, and deadly consequences follow. The Doctor’s initial reaction to this disaster is happiness, since it confirms his view that Daleks are irredeemably evil, even though everyone on the ship, including the Doctor, is facing annihilation; his appalled companion Clara points out that the Doctor is blind to the fact that they have discovered a way to make the Dalek ‘good’ again and save the *Aristotle*. Read constitutionally, such failings take on a meaning beyond *Doctor Who*’s mythos. Refusing to see the Doctor as infallible generates a sceptical message about the ability of traditional political or legal authorities to determine a nation’s progress and the content of its constitutional order. This re-frames the popular sovereign, the ordinary citizen, as the centre of constitutionalism.

‘The Beast Below’ contextualizes this constitutional debate within human rights, symbolized by the whale’s treatment. Frequently contested within human rights controversies is the question of who ought to ultimately define the content and scope of rights instruments, and how this relates to the balance of power between judges, politicians, and ultimately the public. This is often assessed within the dichotomy of political and legal constitutionalism. As mentioned, political constitutionalists generally prioritize political forms of accountability, whereas legal constitutionalists endorse widening the circumstances under which courts may check the executive (Gee and Webber 2010: 273). Speaking broadly, these approaches diverge on whether courts should be allowed to strike down – or otherwise interfere with the meaning and effect of – primary legislation or political decisions on the grounds that they interfere with human rights protections deemed above the political process (Bellamy 2007). This debate is often public. The Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR) into domestic law without authorizing judges to strike down legislation, has caused significant public, political, and legal controversy. Discussions of its repeal or replacement have long permeated the public sphere, particularly in the years leading up to transmission of ‘The Beast Below’, and this culminated in the Coalition government’s establishment of an expert commission to investigate the matter further (Commission on a Bill of Rights 2012: 131-37). Things remain unsettled: in May 2016, the Conservative government used the Queen’s Speech to pledge repeal of the Act. This pledge was interrupted by the Brexit vote and David Cameron’s resignation as Prime Minister, but the Conservative manifesto for the June 2017 General Election maintained that it would re-visit this matter, and the UK’s status as a signatory to the ECHR, after Brexit (Conservative and Unionist Party 2017: 37).

Objectors to greater judicial oversight rarely reject the protection of human rights per se. Rather, they see rights as controversies that should be settled in the contestatory forum of Parliament and *then* upheld by the courts, rather than be determined and then guarded by the judiciary. This is illustrated by *R (Nicklinson) v Director of Public Prosecutions* [2014] UKSC 38. This case concerned assisted suicide. One of the legal questions was whether the right to respect for one’s private life, contained in Article 8 ECHR and incorporated into domestic law by the Human Rights Act 1998, encompassed a right to end one’s life; and if so whether the Suicide Act 1961’s ban on assisted suicide breached this requirement. The ban was held to be acceptable. Lord Sumption argued that this was properly an issue for Parliament and the public:

[there is] a choice between two fundamental but mutually inconsistent moral values [whether or not to maintain the ban on assisted suicide], upon which there is at present no consensus in our society. Such choices are inherently legislative in nature. The decision cannot fail to be strongly influenced by the decision-makers' personal opinions about the moral case for assisted suicide. This is entirely appropriate if the decision-makers are those who represent the community at large. It is not appropriate for professional judges. The imposition of their personal opinions on matters of this kind would lack all constitutional legitimacy. (paragraph 230)

‘The Beast Below’ catches this aspect of the debate. The contrast between the Doctor and Amy during its final scenes goes beyond a simple message of participation. It prompts discussion of whether courts or Parliament – and by extension the electorate – ought to settle human rights issues. These exchanges send a sceptical message that distrusts the ability of the judiciary, or indeed any authority figure, to reliably and satisfactorily resolve issues of constitutional justice and morality. In doing so it pleads for a citizen-focused model of democracy, one with an active citizenry willing to involve themselves in the negotiation of their constitutional orders.

**Two views of judging, one view of citizenship**

The first depiction of judging in ‘The Beast Below’ critiques the ability of the judicial process to identify and enforce constitutional standards that may restrict government activity and potentially overrule decisions or laws made by democratically accountable actors. Defending the courts’ ability to do this, Allan (2002) argues that legal argument in a common law system like the United Kingdom’s is at least as appropriate a method for settling questions of constitutional justice as political deliberation:

Its dependence on elaborately reasoned argument as the basis for resolving controversy enables the common law to provide a constantly evolving and developing critique of established modes of thought […] Settled law must be tested and appraised in the light of explicitly articulated conceptions of the common good: the law is thereby brought into conformity with justice, as currently understood, but within the limits that the requirement of respect for precedent allows. (Allan 2002: 290-91)

An often-cited limit of this argument is that the judicial process operates within strict confines. Legal reasoning is often ‘narrowly focused on the needs of the parties to the case, almost devoid of consequentialist analysis and adheres quite rigidly to a limited number of pre-set forms of argument’ (Poole 2002: 472). Although common law courts have leeway to discuss wider issues that can influence the development of law, individual cases tend to be settled on grounds that cannot amount to a substitute for sustained public debate. The Doctor comes into this because he is frequently a quasi-judicial figure. Judgments authoritatively decide a legal dispute. The Doctor plays a similar role. He finds, or is shown, worlds facing problems of power, justice, and morality. At times he wields the laws of the universe, for example citing the Shadow Proclamation (Duncanson 2016: 218). In the more common situation where he wields no legal arguments, the binding force of his interventions tends to come from a mixture of moral authority, sheer power, and the common appreciation that, like a court seized of a legal dispute, only he can provide closure; in this vein, Duncanson (2016: 219) sees the Doctor as the embodiment of (British) sovereign power. Britton’s view that the episode is deliberately sceptical of the Doctor’s heroism carries a deeper meaning if these views are borne in mind. ‘The Beast Below’ undermines the authority of the state structures administrating sovereign power – the monarchy, the courts, and politicians. It reminds the viewer that popular sovereignty enables all of this, that the constituent power of the citizenry declares constitutional boundaries (Loughlin 2003: 112-13). The limits of relying upon the monarch and politicians to maintain a morally legitimate public order are clear within the episode. Commentary upon the judiciary becomes evident when the Doctor is conceptualized as a judge. His analysis maintains the framing given to him by the Starship’s government. The solution must be on their terms, forcing the Doctor into an uncharacteristic pragmatism (MacRory and Rustin, 2013: 167). Paralysing the whale does not sate Starship UK’s desperate need for constitutional morality. Instead it perpetuates its root misery. The whale stays *in situ*, it remains a secret, and it will not remove the police state. It provides no justice; fittingly, it paralyses progress. The disconnect between the Doctor’s promise and his results shadows the dissonances which often divide the abstract promise of justice though law from its application. The Doctor is unable to see Amy’s answer not because he is callous or unwilling, but because his thinking is confined. The message here is not to rely upon the judiciary to protect constitutional standards. Real change is only secured by Amy’s ability and willingness to pay attention to and intervene in her surroundings, by analogy through public engagement.

This is not to say that ‘The Beast Below’ rejects a constitutional role for the judiciary. It refuses to see them as a panacea and promotes citizen participation. Throughout the episode, Amy’s actions are responses to the Doctor. She investigates the ship because he tells her to; she tries to make him leave because she doesn’t want him in harms’ way; and she secures the ship’s future because of the inadequacy of his solution. This corresponds with models of constitutional democracy that place courts within an interlocutory process. Their pronouncements settle individual disputes but do not establish unchangeable standards. As Hübner Mendes (2013: 119) has it, court decisions that engage with constitutional principles should not shut down public debate, but contribute to it; they are ‘an igniter of larger societal argumentative processes about a community’s political identity’. Read constitutionally, ‘The Beast Below’ serves a similar purpose. As well as inviting viewers to reflect on contemporary politics and the destiny of the nightmarish Starship UK, it sends an important message: it is the ultimate responsibility of the citizen to maintain the United Kingdom’s constitutional order.

**Acknowledgements**

This article benefitted from the comments provided by Professor Danny Nicol, by the participants in the ‘Politics and Law of *Doctor Who*’ symposium at the University of Westminster in September 2014 and the ‘Law and Culture: Change’ Conference at St Mary’s University, Twickenham in September 2015, and by two anonymous reviewers at the *Journal of Popular Television*. All errors remain my own.

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1. The Gibson Inquiry ended prematurely in 2012, primarily because of fears that its continuance may prejudice the Metropolitan Police’s investigation into allegations that British intelligence officials colluded in the torture of Libyan dissidents (BBC News 2012). [↑](#footnote-ref-1)