

“Constitutionalism is the rule of law over government itself—the rule of law reinforced by a second tier of standing laws over the lawmakers” (Paul Starr, *Freedom’s Power*: 59).

This I take to be Starr’s way of acknowledging the point that Beer makes by distinguishing the two capacities of the people’s sovereignty as “the common source of the authority of all governments”—their “*constituent* sovereignty” and their “*governmental* sovereignty” (*To Make a Nation*: 314).

Granted that the distinction between what is properly “structural” and what is properly “structured,” in the sense of falling within or under structures, is not absolute but relative, there is at least a relative distinction between constituting and governing under some constitution, both conceived as “political” capacities. In a broad sense of “political,” then, the same relative distinction remains between constituting (structures) and governing (within or under some structures).

13 June 2007