Saving Constitutional Democracy from the Right (and the Left)

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Tom Ginsburg and Aziz Z. Huq, **How to Save a Constitutional Democracy** (2018).

The challenges of democratic backsliding and institutional resilience have recently exploded onto the agenda of research scholarship across the social sciences, especially in world and economic history, comparative politics, and constitutional law. Tom Ginsburg and Aziz Z. Huq's *How to Save a Constitutional Democracy* is one of the most lucid and authoritative accounts in this increasingly crowded yet scholastically sophisticated field.

As with many other such recent treatments, the catalyst for the book has been the election of President Trump in the United States, and many others like him in varying degrees and styles of strong leadership across the world. The challenge these leaders pose for established assumptions about the nature of political order are fundamental, the book argues, and not simply a transient choice of ordinary democratic competition. In varying degrees, these leaders and the movements they lead challenge the values of political liberty and cultural pluralism, the principle of government limited by laws of general application, and the norms of behaviour that flow from the distinction between political power and legal authority.

The book explains the foundational (or aspirational) unit of the post-World War II international order—or "Liberal Constitutional Democracy," as Ginsburg and Huq call it—and the alternative conceptions of statehood that challenge it. The core of the book, and the most interesting discussion within it, is the account offered by Ginsburg and Huq about how Liberal Constitutional Democracies sometimes collapse, or more often, decay. The book's great strength is not only that it offers explanatory theories on all these questions, but that it sets out a practical agenda for institutional reform and political mobilisation, if Liberal Constitutional Democracies are to survive the challenge posed by authoritarian populism animated by appeals to primordial identities. In this, it reflects the authors' strengths as serious scholars of both theory and institutions, as well as active contributors to policymaking and constitution-building across the world.

There was a time not so long ago when the world could neatly, if somewhat simplistically, be divided into countries that were Liberal Constitutional Democracies, and those that were not. The former category contained the Western nation-states, which had completed the processes of constitutional and democratic modernity in the post-World War II era. They stood as tangible examples of societies that reaped the benefits of the European Enlightenment's forms of peace, order, and good government, in unprecedented levels of material prosperity and political liberty for their people. In some cases, such as the countries of the European Union, they had even begun experimenting with advanced institutional forms of post-sovereign and post-modern constitutional organisation. Normative debates about constitutional order beyond the nation-state had become the cutting-edge issues in constitutional theory.

Meanwhile, in Africa, the Middle East, and parts of Asia and Latin America, Liberal Constitutional Democracy, as the signpost of a developed political modernity, remained an elusive aim. Here, human history's more familiar norms of tyranny, conflict, hierarchy, domination, and poverty seemed to flourish. Given this distressing contrast between the West and the Rest, the challenge for all decent and right-minded people was how to replicate the West's successes with Liberal Constitutional Democracy in these places and bring succour to the wretched of the earth.

These were the assumptions that governed both international relations and policy as well as much of mainstream social science scholarship since the end of the Cold War, especially in comparative constitutional studies and the practice of transformative constitution-making. The solidity of those assumptions, however, has been jarred

suddenly—although not wholly unanticipatedly—by the rise of populist movements in the West, which challenge or reject outright the liberal democratic political settlement that lay at the heart of the successes of Western states and societies. The barbarians of ethnic nationalism and of power-over-authority populism are now at the gates of liberalism's Western citadels, and in some cases, have overrun them. Ironically, therefore, this internal challenge within Western democracies has made for a narrowing of the comparative gap between North and South in understanding the nature of Liberal Constitutional Democracy. Ginsburg and Huq's work is primarily concerned with explaining and countering this threat. They offer a sustained set of prescriptions in terms of both institutions and culture that have application in both the West and the rest of the world, provided we are prepared to make the core normative re-commitment to Liberal Constitutional Democracy on the basis of their critique of populist authoritarianism.

The book is less concerned, however, with another type of threat emanating from the other end of the political spectrum. Ever more particularist claims from "identity politics" are on what seems like a relentless ascendance in Western societies. This left-wing challenge destabilises liberal polities in no less a way than does the right-wing challenge of populism. The reification of subjective grievance as a dominant mode of political claim-making constricts the broad and tolerant political centre that is essential to Liberal Constitutional Democracy as a framework for the management of diversity, difference, and disagreement.

And it is not merely the immediate targets of these challenges from Left and Right—whether it is the "patriarchy" or the "cosmopolitan liberal elites"—that need to worry. These dramatic developments in Western democracies expose an age-old conceptual paradox of Enlightenment liberalism itself. Is constitutional democracy of the Western mould based on a procedural liberalism that provides an organising framework for peaceful coexistence, or is it a substantive liberalism that holds itself out as the sole and universal conception of the good life? The left-liberal claims that drive the identity politics of Western societies is a variant of the latter tradition. As such, this discourse has much less to offer Liberal Constitutional Democracy as a model of political organisation on a global scale, because it rejects the accommodation of plural cultural traditions that must underpin a global model of democracy. So far, it is mainly authors identified with the centre-right who have grappled with this challenge, but it really ought to be an issue for those concerned with a defence of Liberal Constitutional Democracy from the political centre as well.

But for the moment it can certainly be said that, alongside a number of other notable contributions in this first wave of scholarly responses to the rise of populism, Ginsburg and Huq have done a great job of showing us why we should be concerned with the threat of populism, why Liberal Constitutional Democracy is worth defending, and what we should do to protect and foster it. Everyone concerned with these issues should read their elegant book.

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