

# Introduction: New Directions in the Study of Constitutional Democracy

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Constitutional (liberal) democracy pursues an ambitious project. It weaves together majority rule and minority rights and encapsulates a political and institutional organization of public life deliberately orchestrated to guarantee and safeguard rights and freedoms, the peaceful resolution of social and political conflict, and the widest-possible participation of citizens in democratic self-rule. Critical for these goals are procedural mechanisms that enhance the responsiveness and accountability of elected officeholders, contain the power of the governing majority, enable the mutual checks and balances involved with institutional prerogatives, and allow citizens to periodically assess their representatives and, should they want to, select new ones. This vision crystallized in the second half of the twentieth century, in the aftermath of totalitarian mono-partyism and the two world wars; it seemed destined for global hegemony after the end of the Cold War and—supposedly—of history. However, the present and future of constitutional, liberal democracies around the world looks less idyllic than the optimism seen at the turn of the century might have suggested. Even before the outbreak of the COVID-19 pandemic, debates about the wellbeing of liberal democratic regimes around the globe had been at the core of academic and public debates for at least a full decade.

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Over the past few years, this literature, spanning constitutional and democratic theory, historical political thought, political science, and economics, has gone from just a trickle to a virtual tsunami. Various frameworks—terminological and conceptual—have been mobilized to describe the weakening of Western democracies: regression, recession, backsliding, hollowing, deconsolidation, failure, rot, and even death. As scholars have aptly pointed out, cycles of prosperity and decline have been regular features of the democratic landscape ever since the end of World War II. However, the past ten years have witnessed the unusual concurrence of two distinct phenomena: regimes that once were at the forefront of democratic constitutionalism being increasingly under pressure; at the same time, no paradigm having emerged that has breathed new oxygen into the constitutional imagination of established democracies.

Democratic countries have been profoundly unsettled from within by the worsening of socioeconomic inequalities and the inability of mainstream parties to voice the discontent and resentment that has resulted. The hyperpolarization of domestic politics, together with the eruption of racist violence, has fueled the perception of divided countries on the verge of civil wars, contributing to the rise of right-wing, nationalistic, and xenophobic populisms. Exacerbating these anxieties has been a structural fact of contemporary political life: every democracy operates today within a global order largely shaped by international institutions and marked by challenges that demand globally coordinated strategies. Accordingly, states move on the chessboard of world politics under conditions that significantly constrain the latitude of their autonomous policymaking, fuel the resentment against transnational technocracies, and propel populist leaders to power. At the same time, Western democratic regimes have been increasingly challenged by alternative political models consolidating in Asia and Far Eastern Europe, consistently violating human rights while heralding authoritarianism as a response to the flaws of liberalism and democracy and as the most effective response to the challenges of globalization.

The outbreak of COVID-19 has further aggravated the precariousness of constitutional, liberal democracy on a global scale, making more visible than ever conundrums that are intrinsic to ordinary democratic life but that become explosive under conditions of unforeseen emergency.

The goal of this roundtable is to push such debates in new directions. It brings together foremost scholars in the areas of constitutional theory, comparative constitutionalism, and political science, whose long-standing work and most recent

monographs have largely shaped the literature on constitutional democracies and their challenges. The collection is concerned with both the accuracy of competing diagnoses of the malaise and fatigue of democratic regimes around the globe and the rival prognoses that have been offered.

As the title of the roundtable suggests, its primary goal is to move past the tendency to think of constitutional democracies as constructions that are doomed to either rise and thrive or decline and die. Drawing on the medical metaphor, this roundtable asks how democracies can “heal” and what antidotes democratic bodies politic do (or need to) possess to resist the pathogens—some more virulent and/or scrutinized than others—responsible for disrupting their stability. Accordingly, the following essays discuss some of the main paradigms in the scholarship on constitutionalism to assess whether and to what extent it is possible to reinvigorate our constitutional imagination amid old and new challenges.

This roundtable expands on a panel discussion that I organized and chaired at the Midwest Political Science Association in April 2021, a time when American politics was under global scrutiny in the aftermath of the presidential election of November 2020; the Capitol Hill insurrection of January 6, 2021; and the beginning of a new administration. Those events, and the challenges that both preceded and followed them, have provided new inclinations to think more carefully about the norms, institutions, and extra-institutional standards that house and orchestrate political contestation in a constitutional, liberal democracy.

The roundtable proceeds as follows. First, Rogers Smith examines the potential of progressive stories of national identities to advance themes of equality, freedom, and inclusion, and thus serve as antidotes to authoritarian nationalisms. Second, Rosalind Dixon and David Landau scrutinize two modalities of constitutional change—abusive and restorative—to distinguish between apparently similar promises to amend eroded democratic orders, understand the phenomenon of “abusive constitutional borrowing,” and examine the advantages and disadvantages of restorative constitutionalism. Next, Tom Ginsburg and Aziz Huq examine the pragmatics of democratic “front-sliding”—that is, the ways in which democracies that have undergone and survived brushes with authoritarianism manage to rebuild the pillars (political, legal, epistemic, and sociological) that are constitutive of a liberal, constitutional order, while also handling the challenge of punishing the individuals who contributed to democratic backsliding. Ran Hirschl then explores the spatial dimension of constitutional governance, bringing the burgeoning literature on urbanization, cities, and the urban-rural divide into

dialogue with the scholarship on constitutionalism. His essay unpacks the policy challenges posed by the “era of the city” to constitutional theory and design. In my own contribution, I discuss the relationship between constitutionalism, party democracy, and the revived challenge of factionalism. Finally, Ayelet Shachar identifies three strategies to rethink and expand the boundaries of citizenship and thus promote democratic renewal in post-pandemic times—“*jus contribuere*,” “solidarity in place,” and “stratification of membership.” Her essay explains why only the first two strategies succeed in enlarging the circle of membership and thus enhancing equality of status and public standing.

Overall, this roundtable pursues a twofold task. It seeks to demonstrate that, though constitutional democracies around the globe appear to be in trouble, debates about their road ahead are more alive than ever, giving scholars and citizens alike renewed hopes for the present and future of democratic life. Relatedly, it endeavors to emphasize the importance and the advantages of an interdisciplinary approach to the study of constitutionalism and democracy. Increased dialogue across neighboring fields is not only healthy because it connects overly compartmentalized bodies of literature; it also provides extraordinary resources for conjoining theory and practice and thus contributes to the ambition of healing, and eventually reimagining, constitutional, liberal democracy.