

DESIGNING THE DEMOCRACY- DEFENDING CITIZEN

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ABSTRACT

Concerns regarding threats to the endurance of liberal democracy worldwide have spurred a renewed focus on constitutional design, regarding both the identification of weaknesses and the potential for design innovation to enhance democratic resilience. To date, this debate has focused more squarely on identifying key mechanisms from existing constitutions, reforming existing constitutional organs (e.g., courts), or bringing extraconstitutional institutions within the constitutional realm (e.g., political parties), all couched within a meta-debate about whether constitutional design overall actually makes any difference to democratic resilience. Citizens have been somehow both central and peripheral to these discussions. Often reduced to tropes, they are viewed by turns as *rebels* against liberal democracy, *victims* of neo-authoritarian forces and trends reshaping democratic governance, *cyphers* for the imaginaries of both democrats and populists, and *saviors*—the ultimate bulwark when all other defenses have failed. This article seeks to help us better see the people in this debate through focus on three key dimensions of constitutional design: constitutional rights of resistance against unjust rule or threats to democracy; the question of constitutionalising civic education; and the spread of citizens' assemblies, which have not been enshrined as constitutional mechanisms but which warrant analysis from a constitutional design

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standpoint. In doing so, it is argued that we face stark limitations in designing the democracy-defending citizen through constitutional law but that a greater focus on the people is vital in the developing constitutional design debates.

KEYWORDS: *Democracy, democratic decay, the people, constitutional design, popular control, sortition, representation*

INTRODUCTION: THE PEOPLE AS CENTRAL AND PERIPHERAL

One argument to explain the contemporary challenges facing liberal democracy worldwide is that the people were overlooked—that in both the third wave of democratization and in older democracies, elite counter-majoritarian institutions such as courts and the state’s technocratic apparatus were accorded too much weight and power, leaving the voice of the people stifled, until it rebelled. The global (especially authoritarian) populist tide, for instance, has been described by Francis Fukuyama (2016) as “the democratic part of the political system rising up against the liberal part.” This points to one of the central tensions in postwar constitutionalism: between the wish to empower people to govern themselves (“we the people”) and concerns that the people need to be protected from themselves and that minorities must be protected from the majority (“we fear the people”). It also speaks to the framing of the contemporary crisis of liberal democracy as ultimately a crisis of representation.

Concerns regarding threats to the endurance of liberal democracy worldwide have spurred a renewed focus on constitutional design regarding both the identification of weaknesses and the potential for design innovation that might help to achieve enhanced protection for the democratic system. To date, this debate has focused more squarely on issues like judicial reform or bringing political parties within the constitutional realm, couched within a more fundamental debate about whether constitutional design overall actually makes any difference to democratic resilience. Where do we locate the people in this discussion?

Looking at the expanding literature on “democratic decay” (Daly 2019),² one sees that the people are often reduced to tropes—as *rebel* (rising up against the “closed circuit” system of liberal technocracy that reached its height after 1989 and heeding the siren song of the authoritarian populist); as *victim* (the individual

2. I will use this term here, although many others exist, such as “constitutional retrogression” and “democratic backsliding.”

buffeted by forces far larger than herself, including globalization, inequality, misinformation, and technological transformation, such as social media and artificial intelligence); as *cypher* (in liberal thought, for all its emphasis on the individual, “the people” also acts as the repository of its worst fears, whereas for the authoritarian populist, the idea of “the people” is of course an entity to be reimagined, redrawn, and weaponized to serve a specific agenda); or as *savior* (the people as the only bulwark left against authoritarian advances after all key democratic institutions have been captured). Often, these tropes leave the people underconceptualized, faceless, shorn of agency and critical faculties, and portrayed as a mass rather than individuals—each with her own complex relationships to, and understandings of, the state and governance.

Evidently, the very notion of the people as a democratic defense seems paradoxical unless one accepts that “true democracy” must mean more than majority rule. The broad consensus in the literature, captured in the term “liberal constitutional democracy” (e.g., Scheppele 2018), observes that a liberal democratic system incorporating counter-majoritarian mechanisms as well as mechanisms for popular control is the global norm. The literature also shows that channels for representative government through majority control can become distorted and threaten key tenets of liberal democracy, including a government limited by independent accountability institutions, and respect for the rule of law, core democratic rights, and minority rights. Viewed in this light, the people *are* the problem, voting for illiberal parties and leaders—captured in the title of Yascha Mounk’s book *The People versus Democracy* (2018). However, despite talk of “the people” and the public being central to democratic discourse, and discussion of threats to liberal democracy, they often remain a barely sketched presence.

This article seeks to help us better see the people in this debate through focus on three key dimensions of constitutional design of relevance to whether we can actually design democracy-defending citizens through constitutional law. Part I sketches the renewed focus on constitutional design as a response to the global phenomenon of democratic decay. Part II examines constitutional provisions enshrining a right to resist unjust rule, focusing on provisions in the German and Venezuelan constitutions. Part III asks whether civic education should be constitutionally mandated on the basis that constitutional ignorance is a central obstacle to individuals’ capacity to act as democracy defenders. Part IV discusses the spread of new mechanisms for achieving citizen participation in the democratic system from a constitutional design standpoint, especially citizens’ assemblies. The main argument pursued throughout is that though we face stark limitations in designing the democracy-defending citizen through constitutional law, a greater focus on the

people is needed in the emerging constitutional design debates. A necessary caveat from the outset is that this analysis rests on a rather broad comparative enquiry that resonates with, but is not centered on, the US experience.

DEMOCRATIC DECAY AND CONSTITUTIONAL DESIGN

The term “democratic decay” is used here to refer to the manner in which liberal democracy is under challenge worldwide. Leading democracy indices indicate that after decades of global advances, democratic progress has gone into reverse across the world in every year since the mid-2000s (see, e.g., Freedom House 2019). Larry Diamond suggests that this “democratic recession” encompasses four broad categories: (1) a deepening of authoritarianism in nondemocratic states, (2) an acceleration in the breakdown of democratic regimes, (3) a decline in the stability or quality of democracy in younger democracies, and (4) a decline in the vigor of long-established democracies (Diamond 2015, 144). The threats to liberal democracy in younger and longer-established democracies might further be subdivided into master-plan scenarios and more diffuse degradation of the democratic system. As regards master-plan scenarios, democratically elected governments of various states (e.g., Poland, Hungary, and arguably India) have rolled out a sequence of measures to diminish accountability institutions such as independent courts and the prosecution service, civil service, and media. They have also tended to change electoral rules and institutions to entrench themselves in power, thus hollowing out the democratic system from within. As many analysts have observed (e.g., Levitsky and Ziblatt 2018), authoritarian leaders worldwide do not identify themselves as autocrats; rather, they tend to present themselves as “true democrats” wrenching power from unresponsive elites and elite institutions. The result tends not to be “hard” authoritarianism. For instance, Hungary, under some indices, is no longer considered a liberal democracy but is seen as a hybrid system that blends elements of democratic rule (e.g., elections) with elements of authoritarian rule (e.g., excessive concentration of power in the governing party).

Older Western democracies appear to be in a significantly different position. For example, although some see a strong similarity between Hungary’s Viktor Orbán, Turkey’s Recep Tayyip Erdoğan, and President Trump in the United States, the Trump administration cannot be said to have taken actions like those of the Hungarian or Turkish governments as regards assaults on democratic institutions. Although judicial appointments have prompted controversy and structural attacks on the electoral system, such as gerrymandering and voter disenfranchisement at the state level, the structures of the democratic system remain in place: the

courts remain independent and functioning; there is a strong and active political opposition; media remain free; and avenues for popular protest and mobilization remain open. The same may be said of the United Kingdom, for despite the highly charged political environment of Brexit, especially as a result of the recent political crisis concerning the attempted prorogation of Parliament, the core structures of the democratic system remain functional.

It is on the substance side—the norms and shared understandings that underpin democratic rule—that concerns have been most acute in these long-standing democracies. These concerns include the delegitimization of democratic institutions rather than their capture by the executive; the breakdown of previously accepted political conventions and norms of political behavior; a rise in hyper-partisanship and “constitutional hardball” (i.e., more aggressive brinkmanship tactics in government-opposition dealings, discarding established norms); the polarization of the electorate; and declining faith in democratic institutions as well as trust in democratic rule as a system of government. These challenges have not cropped up overnight; rather, recent years have witnessed the intensification of trends that have often been developing for decades. Nor is this an exclusively Anglosphere phenomenon: from the countrywide *gilets jaunes* (yellow vests) protests in France to the rise of the nativist (or even authoritarian populist) *Alternativ für Deutschland* (AfD) party in Germany and the Nazi-rooted Sweden Democrats party, liberal democratic values and the long-standing political party system in the most highly regarded democratic systems worldwide are under pressure as electorates express dissatisfaction with the status quo. All democracies face wider and deeper tectonic trends, such as a crisis of representation with declining party membership and citizen connection to government; fading public faith in democratic institutions and democratic rule itself; cultural backlash against rapid social, moral, and demographic change; rising economic inequality; and the profound—and often negative—effects of technology on society and the political system, spreading misinformation and creating political “echo chambers,” which degrade the public’s capacity to engage in the democratic process (see, e.g., Mols and Jetten 2017; Mounk 2018 Rosenfeld 2018;; Norris and Inglehart 2019; Zuboff 2019).

In many states, especially European states, these developments have brought fresh urgency to a long-standing debate concerning militant democracy—namely, the employment of illiberal means to protect the liberal democratic order from threat or collapse, such as political party bans. This debate cannot be captured here. It may suffice to note that the animating logic of militant democracy remains dominated by “the Weimar scenario,” that is, framing the problem in relation to the historical experience of democratic breakdown in Germany’s Weimar Republic

spurred by overtly antidemocratic actors (Bligh 2013, 1325). However, the overwhelming consensus is that the dominant contemporary threat arises from actors whose relationship to liberal democracy tends to be more ambiguous, such as “far right lite” parties (Daly and Jones 2020) and broader threats such as acute distortion of the democratic sphere through social media.

The focus in this section is more specifically on sketching the general debate on constitutional design that has been spurred by this global trend of democratic deterioration. This discussion has four broad strands: adopting constitutional design options from specific existing constitutions (borrowing); reforming the existing institutions within the constitutional structure (fixing); bringing extraconstitutional organs such as parties within the constitutional realm (absorption); and finally, developing a meta-debate concerning whether constitutional design can really provide any kind of bulwark against the phenomenon of democratic decay (added value).

Examples of the first strand include arguments by Huq and Ginsburg—in response to the abuse of constitutional amendment powers in various states—for the adoption of the extended multistage constitutional amendment process found in Scandinavian states, where a legislative majority first proposes an amendment, which can then be passed by a majority (or even supermajority) only after an intervening election and may even require a ratifying referendum (Huq and Ginsburg 2018, 174–3175). Examples of the second strand include Orentlicher’s arguments for reform of the appointment and functioning of the US Supreme Court, such as replacing lifetime tenure with eighteen-year nonrenewable terms, with staggered expiry of justices’ terms (Orentlicher 2018), or earlier even more audacious arguments for a bipartisan executive (Orentlicher 2013). The third strand has been dominated by a focus on political parties, as constitutional lawyers have woken up to how peripheral parties remain in constitutional law scholarship despite their centrality to the operation and maintenance of a liberal democratic order. Tarunabh Khaitan, for instance, has argued in the Indian context that the offices of the leader of opposition and the shadow cabinet should be constitutionalized and that the opposition should be given a clear role in appointments to “fourth branch” offices such as the electoral commission (Khaitan 2020), which chimes with Sujit Choudhry’s work highlighting the need to view parties as creatures of constitutional importance (Choudhry 2018b).

Fourth is the meta-debate as to whether constitutional design really makes any difference to democratic resilience. Of course, scholars tend to agree that even the best designed constitution cannot withstand the determined advances of a determined autocrat and that once a political force focused on eroding the democratic system is in power, it is too late to discuss institutional reform. Once this point has

been reached, say Huq and Ginsburg, “it is only the determined mobilization of citizens, political party elites, and officials committed to the rule of law that can preserve [democratic] institutions and practices” (Huq and Ginsburg 2018, 3). In the Polish context, Wojciech Sadurski’s conclusion is that the successful capture of the democratic system by the ruling PiS (Law and Justice party) since entering government in October 2015 is not a result of any particular weakness of the 1997 Constitution and that the precise institutional structure itself is not determinative. Rather, the best designed constitution cannot function, nor endure, without a “culture and ethics” that respects the constitutional text and the values underpinning it (Sadurski 2019, 185).

The Polish experience therefore suggests that various constraints, such as constitutional courts or supermajority rules for constitutional amendment and replacement—which are key features of the Polish Constitution—are not as significant a protection as some may have thought. Yet, even Sadurski’s analysis suggests that the nature of the constitution can slow down the budding autocrat’s advances: after all, it took two full years of relentless legislative and political activity, from a party bent on maximizing its power, to hollow out Poland’s democratic system. His account also highlights the role of unexpected heroes, such as the ombudsman, who has strongly resisted the government. This suggests that although we cannot design individual institutions to play a robust defensive role, the prospect of constitutional defense is improved with a broad-based system that puts multiple defensive sites in place, any one of which may be activated. Sadurski’s close institutionalist account does not, however, address the role of the people more broadly.

What unites all these discussions is that the people tend to remain a shadowy presence. They seem peripheral, or even problematic, as pawns of would-be autocrats or even ambivalent about liberal democracy themselves. Evidently, it is nothing new to say that constitutional democracy in general has an awkward relationship with the people whom it purports to serve, and this seems to provide the unacknowledged backdrop to the revived constitutional design debates canvassed earlier. There is, on the one hand, “the people,” an imaginary construct, a symbolic whole that enjoys a beatific aura of goodness. It is this people that we think of as acting as the ultimate repository of sovereignty and of legitimate power. On the other hand, we have the rather grubbier reality of “people” or “the public,” a more fragmented, shifting, discordant, and imperfect collection of individuals who do not always appear to heed the “better angels of our nature,” as Lincoln put it.

In the context of democratic decay, the potential of democratic rule to degenerate into tyrannical rule has, of course, been a preoccupation of political thought dating back to Aristotle (Morgan 2013). The contradictions between the idealized people and real people course through our most fundamental understandings of

democratic and constitutional government and come to the fore in the centuries-long debates concerning practices now described in terms of direct and representative democracy, dating at least to Jean-Jacques Rousseau and Emmanuel-Joseph Sieyès, in Western constitutional traditions. In the drafting of the US Constitution, for instance—a landmark in this long constitutional story—the tensions between the people as source of sovereignty and the actual power accorded to the people are found throughout the text, with the power of the naked majority trammelled by everything from the Electoral College to the Supreme Court. It is also reflected in the framing of voting rights as a privilege, as well as the slow extension of the franchise's original scope (through the Fifteenth, Nineteenth, and Twenty-sixth Amendments).

The following sections seek to build on these well-established observations by focusing on three key areas relevant to constitutional design where the people come into sharper focus.

RECOGNIZING A RIGHT TO RESISTANCE

The preceding discussion regarding the limited capacity of constitutional design to protect democracy is perhaps best highlighted by constitutional provisions enshrining the people's right to resist unjust rule—or more specifically, threats to the democratic system. This section examines the very limited effect of such rights while noting that in certain contexts they may have some limited value.

In the United States, despite the the Framers' clear tendency to curb the untempered popular majority, as Ginsburg et al. (2013, 1203–04) have noted, the original leaders of the Revolution were (albeit not universally) also “enthusiastic proponents of a right to rebel against unjust tyranny,” which is evidenced in both the Virginia Bill of Rights and the Declaration of Independence. They note not only Thomas Jefferson's observation that the repeated rejection of petitions by King George justified the revolt against his rule but also that he viewed resistance against “absolute despotism” as a duty as well as a right, in line with thinkers such as John Locke (1988) and the *Sachsenspiegel* (the highest law of the Holy Roman Empire) before him. American colonists identified the power to resist as deriving from both natural law and English common law.

Ginsburg et al. (2013, 1184–85) suggest that in modern constitutions, the constitutional right to resist, albeit relatively rare, serves a dual function depending on its context. It can represent a fundamentally democratic and prospective prophylactic aimed at constraining future government abuse, empowering the national citizenry, and operating as an insurance policy against democratic backsliding (e.g., postwar Germany, the Czech Republic, the Slovak Republic, and Rwanda). Alternatively, it

can serve as a backward-looking justification for coup leaders who seek to retroactively legitimize whatever illegal action led to their being able to install a new constitution in the first place (e.g., Portugal, Ghana, Guatemala, and Venezuela). This section focuses on key examples of right-to-resist provisions in Germany and Venezuela, respectively representing each type. Of course, a violent revolt against unjust rule does not depend on the existence of a right to rise up, but as will be discussed, the presence of a right may lend a revolt the aura of constitutional propriety.

Article 20(4) of Germany's 1949 Basic Law states: "All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available." In decimated post-Nazi West Germany the hallmark of the Basic Law was the strong constraint placed on the exercise of democratic majoritarian decision-making. Key constitutional features cutting down the latitude of "what can be decided" (in Luigi Ferrajoli's memorable term) included a generous raft of individual rights, "eternity clauses" (forbidding amendment of constitutional clauses enshrining the new polity's status as a democratic federal republic based on the rule of law, fundamental rights, and the separation of powers), and a powerful Federal Constitutional Court. The Basic Law also evinced a clear distaste for mechanisms of direct democracy, aimed at avoiding government abuse of plebiscitary mechanisms, and enshrined specific mechanisms to allow for oversight of the political process, including not only impeachment of the president but also the outlawing of political parties. West Germany, unlike the Weimar Republic that preceded the Nazi era, was to be a "militant democracy" fully equipped to address threats to democratic rule (Collings 2015, xxiii). The strong focus on the liberal elements of liberal democracy appeared to produce something more akin to a *Rechtsstaat* than democracy. Leading thinkers such as Jürgen Habermas have questioned this development, summarized by Collings (2015, 61) thus: "Policy came from Bonn; values from Karlsruhe; but what came from the People?"

Articles 18–21 of the Basic Law set out the better-known militant democracy powers to ban political parties (Art. 19) and restrict the core democratic rights of citizens who abuse their rights in order to combat the "free democratic basic order" (Art. 18). The right of citizens to resist threats to the democratic system, nestled in Article 20(4), is lesser known. Enshrining a right to resist only where "no other remedy is available," it would come into play only if all other possible bulwarks have failed. The leading militant democracy theorist Markus Thiel (2016) provides a potted account of this odd provision, noting that the right did not exist in the original text the Parliamentary Council adopted on May 8, 1949. Initially, an extraconstitutional right of resistance was recognized by the Federal Constitutional Court in the early years after its establishment in 1951. In 1968, almost twenty years

after the Basic Law's adoption, the right came into being as an express provision, as a counterbalance to the adoption of constitutional amendments according to the federal government extensive emergency powers to act in crises such as uprisings or wars (a condition imposed by the Allies for transferring full sovereignty to the Federal Republic after World War II to protect troops still stationed there) but provoked serious opposition fears about its possible impact on the democratic system. Thiel (2016, 126) has remarked that it was intended to "raise the citizens' 'political vigilance'" against any abuse of the new powers.

The right functions quite differently, in practical terms, to the other militant democracy provisions in Articles 18–21. As Thiel suggests (2016, 127), rather than proceeding through established institutional channels, in the case of citizen resistance "the democracy does not defend itself by its own hands, but—speaking metaphorically—sends ahead its citizens as a militia." The text permits citizens to choose the means, active or passive, to defend the free democratic constitutional order itself, but the threat must be manifest (rather than mere intent) and is expressly designed to be invoked as a last resort if no alternative remedy is available. As might be expected, Article 20(4) has had a rather muted impact. The main focus has remained on other institutional bulwarks such as the courts.

More important, like the Basic Law's other militant democracy provisions, the right seems predicated on the assumption that threats to the democratic order will be rather obvious; the Weimar paradigm of democracy falling to avowed antidemocratic forces looms large. Yet, the hallmark of contemporary political threats to liberal democracy is their ambiguity. For instance, in Germany's September 2017 elections a significant number of voters brought a far-right-leaning party to parliament for the first time since the 1960s, with Alternative für Deutschland (AfD) gaining 12.6 percent of the total vote, becoming the main opposition in the Bundestag following formation of another "grand coalition" between the mainstream Christian-democratic and social-democratic parties (CDU/CSU-SPD). The AfD is one of a growing number of "far-right-lite" parties (Daly and Jones 2020) with partially detoxified platforms that steer away from any overt challenge to democratic governance and tend to frame their racist, xenophobic, and illiberal views in a sophisticated manner that sets them apart from the likes of the neo-Nazi National Democratic Party (NPD). Maximilian Steinbeis (2017) has called the AfD the "Party of the Extreme Normal."

Even if the AfD in government were to follow an increasingly authoritarian path, like Fidesz in Hungary or PiS in Poland, contemporary authoritarian advances tend to be so incremental that determining when no other remedy but resistance is available to citizens is extremely difficult. For example, in the contemporary Polish context, does the ombudsman's role as the sole independent

institution holding government to account still factor as a remedy? Faced with such ambiguity, traditional militant democracy mechanisms—including the right in Article 20(4)—appear rather outmoded.

By contrast to the German experience, in Venezuela two articles concerning citizens' right of resistance were inscribed in the 1999 Constitution. Article 350 states: "The people of Venezuela, true to their republican tradition and their struggle for independence, peace, and freedom, shall disown any regime, legislation or authority that violates democratic values, principles, and guarantees or encroaches upon human rights." Article 333 states: "This Constitution shall not cease to be in effect if it ceases to be observed due to acts of force or because of repeal in any manner other than as provided for herein. In such eventuality, every citizen, whether or not vested with official authority, has a duty to assist in bringing it back into actual effect." It is important to note that the 1999 Constitution was adopted after Hugo Chávez ascended to the presidency in 1998 promising greater prosperity and an outsider's ability to fix a broken political system—and after he had made a failed coup attempt in 1992. The 1999 Constitution itself was touted as a vehicle of the socialist revolution intended to hand power and prosperity to the people in a country where politics was long sewn up between a small number of parties sharing power and patronage. Called a postliberal constitution, it formed part of a regional trend toward experimenting with new models for separation of powers, rafts of social rights, more direct democracy and deliberative democracy mechanisms, and less focus on core tenets of liberalism like judicial independence (Uprimny 2011).

Of course, what we saw under Chávez was not a new dawn but a highly distorted constitutional regime through governance that bypassed democratic institutions and included widespread reliance on extraconstitutional action by the government. In practice, Chávez successively expanded the powers of the presidency and enhanced government control over the media and the courts. In addition, Venezuela's new Supreme Court, established in 2000, quickly gained a reputation as a tool of the Chávez regime. With all checks and balances and accountability institutions removed, the hard-wired deficiencies of Venezuela's "petro-State"—corruption, rent-seeking, and diminishing state capacity—worsened, producing a triple-pronged political, economic, and humanitarian crisis. Given the hardening of authoritarianism under President Maduro, well over 3 million people have left Venezuela since 2014. Inflation reached 1 million percent in 2018, and the country is now facing major blackouts, with the international community divided on how to address the crisis (see, e.g., UN Security Council 2019).

Since January 2016 Venezuela has faced an intensifying constitutional crisis after elections returned an opposition-majority National Congress for the first time in sixteen

years, which has led to a running battle between the executive (and allied organs such as the Supreme Court and Electoral Commission) and the National Assembly as the sole organ in the state with democratic legitimacy. This battle has generally been framed as an interinstitutional battle and focused on the use of constitutional mechanisms by each side, including attempts by the National Assembly to hold a recall referendum to oust Maduro and, on the Maduro side, the Supreme Court's attempt to assume the powers of the National Assembly, which failed as a result of domestic and international pushback (Daly 2018, 15–16) and the establishment of a Constituent Assembly as a form of rival congress in 2017, tasked with re-writing the Venezuelan Constitution.

Articles 333 and 350 have featured in the pushback against the government in multiple ways. Most dramatically, Article 350 was invoked to justify a helicopter attack on the Supreme Court and Interior Ministry in Caracas in June 2017, led by a police agent and self-professed rebel leader Óscar Pérez (Londoño and Casey 2017). Article 333 has been invoked by opposition politicians urging the citizens of Venezuela to take to the streets against the Maduro government. Away from the streets, the Statutes for the Transition to restore the Venezuelan Constitution and Democracy, passed by the National Assembly on February 5, 2019, invoked and directly applied Article 333. More controversially, prominent lawyer Juan Carlos Sosa Azpúrua's proposal, circulating on social media, has argued that Article 350 could be invoked to create a parallel executive. Thereby the Congress could decree the illegitimacy of the Maduro government and appoint an inclusive transition government, putting Chávismo dissidents in key positions of the public administration and the armed forces and breaking the taboo surrounding the request for US military backing for the fight against the dictatorship (arguably permitted under Article 187).

Some analysts, such as José Amando Mejía Betancourt (2017, 53), see both articles as imposing a clear *duty* on citizens, as an exercise of constituent power, to take action in defense of the constitutional order. Other analysts raise the open-ended nature of these articles. For instance, Mariano de Alba (2017) asks: What effect does Article 350 have on the monopoly of violence and political power? Does it allow opponents to move from self-defense to offense? And, if so, to what extent? These questions are not answered by constitutional law or the Supreme Court (which, in any case, is not an independent, neutral arbiter).

What we can take away from this discussion, from the perspective of constitutional design, are a number of key lessons. First, in general, these provisions become salient only in the most extreme circumstances; for most liberal democracies worldwide facing degradation of the democratic system, they appear rather irrelevant as regards their practical application. However, provisions of this nature may have some utility in extreme circumstances. Even if written into the constitution for

retrospective, self-serving means, they can take on an independent life within the constitutional order, as seen in Venezuela. For instance, constitutional provisions enshrining a right to resistance might provide a symbolic marker for the importance of liberal democratic rule and a reminder of the sovereignty of the people in a way that has more bite than general provisions affirming that the state is democratic—as often found in preambles and first articles of the constitutional text—in the sense that they provide an additional center of gravity within the constitution to which a resistance movement can refer. Third, and in this connection, they may provide a point of connection between elite or political actors and the wider public in opposing illegitimate or tyrannical government, although what weight the average citizen places on such provisions remains difficult to tell. Fourth, in places like Venezuela, they may also have the potential to provide a legitimating link between a democratic order, before its takeover by an antidemocratic government, and a new order (which may or may not involve the production of a new constitution, and which may focus on restoration of the old order or a new revolutionary order). With the post-Nazi German experience in mind, they might assume importance in a transition to nourish a narrative of legal continuity, with the authoritarian interlude characterized as an aberration not to be repeated.

That said, these provisions raise more questions than they answer; for instance, we are also left with the questions raised by the wording of these provisions: Article 20(4) refers to “all Germans,” whereas the Venezuelans refer to “the people” and “every citizen.” Who, then, counts as “the people”? Would, for instance, an uprising by one minority community be legitimate under these provisions (which brings to mind historical fears of slave rebellions in the United States)? Moreover, in the German context Article 20(4) may even have the odd effect of suggesting that ordinary citizens must be capable of discerning the point at which all other possible remedies have been neutered before resistance, including violent resistance, becomes legitimate under this provision. This is a particularly difficult proposition in contemporary subtler and more incremental cases of democratic takeover by antidemocratic governments. The next section addresses in more depth this issue of citizen knowledge.

CONSTITUTIONALIZING CIVIC EDUCATION

In 2010 Mark Tushnet, discussing the issue of civic education, noted an ambitious strain in Rousseau’s thought: that “constitutional institutions hold out the prospect of making men better than they now are.” For Tushnet, this goes beyond the general view in constitutional design that a liberty-respecting constitutional system should take individuals as they are, while preventing them from becoming worse (Tushnet

2010, 210–11). If the right of resistance is a measure of last resort (and a generally irrelevant one at that), an alternative approach is the preventive measure of ensuring adequate civic education, which, it may be argued, can arm the citizens with enough knowledge to appreciate the fundamental values of the democratic state, discern the falsity in the siren song of the authoritarian populist, and identify unconstitutional behavior and threats against the system. In short, constitutional design may be viewed as capable of enhancing citizens' role as democracy-defenders. This section discusses how this issue has been addressed from a constitutional design perspective.

A useful starting point is that in long-established democracies, a common perception seems to be that adequate constitutional knowledge is in short supply. For instance, in September 2014 at the University of Texas (Bridges 2014), US Supreme Court Justice Clarence Thomas warned of “constitutional ignorance.” Exhorting the audience members to familiarize themselves with the text of the US Constitution, he stated, “I bet you more people have read the instructions on how to use your smartphones than read the Constitution of the United States.” More broadly, as one US observer has noted: “Compounding general constitutional illiteracy, civics classes have been stripped from high school curricula” (Ferguson 2013, 266). Under half of states now require students to take even a one-semester course in American government, compared to widespread civic education in the 1960s. Civil society's efforts to stop the gap have not been successful. As a consequence, vast swathes of the American public have become lapsed adherents to the much-vaunted “secular religion” of US Constitution-worship. These observations have gained a certain urgency for some analysts since the election of President Trump in 2016; claiming that constitutional illiteracy among the electorate arguably allowed highly questionable (in constitutional terms) campaign pledges and policies from the Trump campaign to gain traction (Conerty 2016). Discussion of what we might call constitutional ignorance dovetails with Ilya Somin's concerns regarding “political ignorance” in the US context, arguing that the paucity of citizen knowledge of the political system raises serious questions for democratic states and the capacity of citizens to participate in governance (Somin 2016).

This is, of course, not merely a US problem. In the United Kingdom, for instance, the very success of the “Leave” side in the 2016 Brexit referendum (as well as support for plans to repeal the Human Rights Act, the UK's quasi-bill of rights) may, at least partly, be rooted in widespread public ignorance of the United Kingdom's constitutional structure and traditions. In this connection, it is notable that the public fund devoted to educating the UK public about the EU has been slashed repeatedly since the 1980s and that the public has come to view “human rights” as a toxic term of little relevance to their daily lives, linked mainly to protection of

unpalatable “others” such as terrorists and prisoners (Daly and Lock 2017). Perhaps most strikingly, “What is the EU?” was the second most Googled question in the United Kingdom on the day of the referendum result, June 24, 2016 (Roberts 2016).

It might be argued that constitutional ignorance is more understandable in the United Kingdom, both in Westminster and on the street, where the combination of an unentrenched constitution, a perplexingly evanescent line between constitutional law and politics, and a suite of cross-cutting and highly complex constitutional reforms in just twenty years has rendered the fabric of the UK Constitution a forbiddingly dense tangle of rules, lacking a fully coherent pattern and marred by far too many loose threads. However, in the era of expansive government *all* constitutional systems tend to present a daunting level of complexity. In the United States, for instance, reading the US Constitution will take you only so far and may provide a skewed picture, especially in a constitutional system where judicial decisions play a central part in addressing the meaning, abeyances, and silences of the terse and venerable constitutional text.

The foregoing might be seen as supporting constitutional design that somehow mandates the provision of civic education in order to enhance democratic resilience. In this connection, a little-remarked international trend has been the move toward addressing civic education in the text of the constitution itself. However, this trend seems largely limited to states that are not full liberal democracies, some of which are outright authoritarian, others hybrid regimes or transitioning from dictatorship. For instance, the draft Constitution of The Gambia, issued on November 13, 2019, and produced in the context of the transition to democracy after the Yahya Jammeh dictatorship, contains a raft of measures, including Section 299, which mandates the establishment of a National Council for Civic Education (NCCE). Article 299 sets out the functions of the Council, which are targeted at, *inter alia*, fostering awareness of the principles and aims of the Constitution as well as encouraging citizens to defend the Constitution. The sheer scope of its application warrants setting out the article in full:

- a. to create and sustain within society an awareness of the principles and `objectives of this Constitution as the fundamental law of The Gambia;
- b. to educate and encourage the public to defend this Constitution against all forms of abuse and violence;
- c. to sensitise the people of proposed legislative measures published for public and expert opinion to enable the public to understand the issues and provide meaningful contributions;
- d. to educate and sensitise the public on key legislation that affect their lives and affairs as a mechanism for ensuring greater compliance with the laws;

- e. to formulate, from time to time, for the consideration of the Government programmes at national, constituency and district levels aimed at realising the objects of this Constitution;
- f. to formulate, implement and oversee programmes aimed at inculcating in the citizens of The Gambia awareness of their civic and fundamental rights, duties and responsibilities;
- g. to raise awareness that service rendered by public officials and civil society are not in the nature of favours to the people but rather as constitutional, legal and civic responsibilities;
- h. to educate the citizens of The Gambia about international, regional and sub-regional instruments and other matters relevant to The Gambia; and
- i. to perform such powers and other functions as an Act of the National Assembly may provide.

Other constitutions, such as the 1992 Constitution of Ghana, also establish dedicated civic education bodies. In some other states civic education is addressed as a *duty* of citizens. For instance, Article 45 of the 1994 Constitution of Mozambique states: “Every individual shall have the duty to . . . advocate, in his or her relations with the community, the preservation of cultural values, the spirit of tolerance and of dialogue and, in general, to *contribute to civic education and advancement*.” Article 100 of the Panamanian Constitution states: “The history of Panama and civic education shall always be taught by Panamanians.”

It is not possible here to examine these provisions in depth, but they raise the question, Why are such provisions not found in the constitutions of long-established democracies? A central answer lies in the ambivalence of liberal political thought toward the tutelary role of the state, particularly the direct provision of civic education. As Tushnet (2010) has discussed, for political conservatives in the nineteenth and twentieth centuries the very idea of the government engaging in such a clear tutelary role, in seeking to overtly shape citizen preferences, tended to undermine the necessary respect for citizens’ liberty and individual choice. That fear gained a particularly sharp edge in the twentieth century with the rise of totalitarian regimes seeking to remake the individual, such as the New Soviet Man. Government, in this view, could provide indirect civic education solely through modeling civic conduct. Today, although the threat of twentieth century-style totalitarian regimes has largely disappeared,³ the potential risks of government involvement in civic education are clear, especially in the context of democratic decay. For instance, a less

3. This article was written before the novel coronavirus (COVID-19) global pandemic, which has evidently intensified fears of overweening government surveillance worldwide.

commented feature of serious democratic backsliding in Hungary has been the wholesale attack on gender studies (Grzebalska and Pető 2018), and even stronger measures seeking to reshape public understandings of the state, such as Poland’s “memory laws” criminalizing the claim that Poland participated in the Holocaust (Bucholc 2018). Even where those seeking greater state provision of civic education are committed democrats, there is the peril of treating the people as an animalized herd to be shepherded toward the “right” kind of democratic behavior and shown just why they are so wrong for rebelling by voting for candidates whose commitment to the constitution or democratic niceties is in doubt.

The historical understanding of civic education must also be considered against key questions raised in the contemporary context. First is that it has become increasingly difficult to contend that government provides indirect civic education through its own behavior. The rise of hyper-polarization, “constitutional hardball,” and racist and misogynistic invective can hardly be said to model civic virtues. Second is the transformation of what we might call the information economy. Unlike the scarcity of information, and significant government control of information that pertained when the foregoing debate took form, the clearest threat today is the prevalence of misinformation. Sophia Rosenfeld (2018) has questioned whether constitutional government worthy of a self-governing people can be maintained in an age of widespread misinformation and polarization, arguing that we are witnessing the unraveling of a long-standing functional relationship between competing aspects of democratic culture—the supposed wisdom of the crowd and the need for information to be vetted and evaluated by a learned elite—and the end of earlier assumptions that technological advances such as the internet would enhance democratic discourse by empowering citizens and disrupt outmoded hierarchical systems of epistemic authority. Third is the question of what we view as civic education. We might prioritize that students, and citizens more widely, are taught the basics and values of their constitution, for instance. However, civic education cannot be exclusively about forcing bored teenagers to sit through arid lectures on the separation of powers and how laws are made. Skills such as critical thinking and navigating an information environment marred by misinformation seems perhaps more important for students and for citizens more generally. This, in a way, brings us back to other questions of constitutional design. For instance, should constitutions today establish and provide clear protections and funding for public broadcasters or public-interest journalism, for instance, to empower citizens by providing access to facts? Or, even more broadly, do constitution designers need to pay more attention to what Vicki Jackson (2019) calls “knowledge institutions” capable of providing objective information (e.g., not just the free press, but also

government and nongovernmental watchdogs, and universities)? To quote Lincoln again: “Whoever moulds public sentiment goes deeper than he who enacts statutes or pronounces judicial decisions.” (Lincoln 1858, 553)

These serious challenges and questions cannot be pursued fully here. Perhaps the most important point is that the answer cannot be to simply leave it to the experts because the electorate has handed the reins of power to authoritarian populists: the resounding message across the world seems to be that electorates are tired of the decades-long supremacy of technocrats if this means they are rendered voiceless. It seems indefensible for legal constitutionalists to defend the continuance of an unreconstructed elite, top-down approach where the “constitutional” in “constitutional democracy” cannibalizes its conceptual partner through focusing excessively on expert legal and technical knowledge while placing little emphasis on how the people operate as a constitutional actor—a position rooted not only in fears of majority tyranny but also in doubts as to the average citizen’s capacity to grapple with the intricacies of constitutional government.

Constitutional ignorance—encompassing lack of knowledge, strongly held misconceptions, and disdain for law as elite knowledge—also presents a stark challenge to political constitutionalists: in the current climate their guiding premise that elected bodies and individuals tend to be fundamentally rational and reasonable cannot be uncritically accepted. In this manner, concerns regarding constitutional ignorance dovetail with wider concerns regarding citizens’ political ignorance and exposure to “fake news,” as discussed. One answer offered to these questions is discussed in the next section: the rise of deliberative mechanisms and, in particular, citizens’ assemblies.

DEFENDING DEMOCRACY THROUGH DELIBERATION

The most energetic discussion on protecting democracy focuses on institutional innovation as a means of renewing democracy, rendering it more responsive and participatory, and thereby enhancing the resilience of the democratic system. Although not a new discussion, it is one whose time has come. From citizens’ assemblies across Europe, to calls for greater experimentation in the United States, to the introduction of deliberative polling for constitutional amendment in Mongolia, the people again come into sharper focus. The spread of deliberative mechanisms responds to key issues of the crisis of representation, calls for meaningful popular control, the prevalence of misinformation, the resistance against experts, and—connecting with the preceding discussion—the perceived need for more effective civic education. While these innovations have not yet been implemented through constitutional design, they raise key questions of central importance for constitution designers.

Perhaps the leading proponent of institution innovation is James Fishkin, who sees deliberative democracy models as presenting a practical option for reinvigorating democracy, and a way of getting a “thoughtful and representative” public voice that merits attention (Fishkin 2018, 1). Citizens’ assemblies in particular are increasingly touted worldwide as an antidote to democratic decay. Such assemblies tend to involve the convening of a representative “mini-public,” ordinarily chosen by sortition, to discuss selected reform issues, which are usually tabled by government in advance, and usually with the assistance of selected subject experts.

Silvia Suteu (2019) has argued that citizen-centric deliberative approaches can work as an antidote to populism because they take discontent with liberal democracy seriously. Simon Niemeyer (2019) argues that the deliberation of mini-publics, when properly harnessed, can reshape public discourse and “decontaminate” public debate of polarized strategic political arguments. Claudia Chwalisz (2017) sees them as capable of improving how policy is made. Citizens’ assemblies may also have the potential to operate as a center of gravity for a form of civic education that is more organic and tied to the realities of the political and constitutional system. As Zoran Oklopčic (2019) recently put it, liberal democracy needs to be approached as a living community of practice rather than “an abstract template of legitimate government.”

Assemblies may also have the potential to address the dual challenge of increasing diversity among populations and of countering populist narratives offering a distorted view of the people. By creating a mini-public, assemblies offer the capacity to shore up the often deficient representativeness of the political structures and provide a body—unlike, say, Cabinet or Congress—that more closely resembles the wider society. As regards populist narratives, the quintessence of authoritarian populism for Jan-Werner Müller (2017) and others is, of course, the framing of societal struggles as a battle of “us versus them,” of the “real” people against a corrupt or entrenched elite, which includes framing not only the opposition but also certain portions of the electorate as enemies. Rather than the traditional left-right divide, the primary divide is now usually claimed to be the gap between an out-of-touch elite and the public, which has been a central rhetorical device everywhere from Hungary to Poland, the United States, Brazil, and India.⁴ With the “true people” existing only partly in reality and partly as an imaginary construct, assemblies can provide a reality check regarding the nature, diversity, and views of the electorate as a whole.

4. Others—usually those focused on the “international liberal order” and globalization—have framed it as a division between those open and those closed to these internationalist values. See, for instance, “The New political Divide,” *The Economist*, 16 July 2016, <https://econ.st/2MBunt1>.

With such an array of potential advantages, it is unsurprising that the number of deliberative experiments has risen internationally, especially in the past three years. In Ireland, experiments with deliberative bodies are viewed as key to the country's increasingly progressive constitutional reforms—such as introducing same-sex marriage and liberalizing the abortion regime—bucking the global trend of regression in rights protection and expansion. France recently organized its nationwide Grand Débat (Great Debate) on everything from democracy and participation to the environment. Held at President Macron's instigation in the face of yellow vests protests, across France between mid-December 2018 and mid-March 2019, the event involved ten thousand citizen debates, gathering 1.4 million contributions (uploaded to online platforms) and with a further eighteen Citizen Conferences scheduled.⁵ A range of such assemblies are being rolled out in the United Kingdom, addressing everything from the constitutional future of Scotland to climate change. Indeed, the latter subject has become something of a mainstay for such assemblies: France has also organized a 150-member citizens' convention on climate change, which launched in August 2019 at the end of the Great Debate and is charged with setting out a range of measures to achieve a 40 percent reduction in CO₂ emissions by 2030.⁶

As indicated, what is striking about these innovations is how they tend not to be achieved through formal constitutional design. The tendency has been to view them as experiments and to roll them out without any change to the constitutional text. Yet, these bodies have the clear potential to significantly transform the manner in which representative democratic government operates, and they warrant analysis from a constitutional design standpoint. This section focuses on three key aspects.

The first aspect concerns intrinsic design and success. Whether the French and Belgian experiments are a success is too early to tell. However, a range of recent analysis gives pause for thought. Experts on Ireland's first Citizens' Assembly, which was convened across twelve weekends from November 2016 to April 2018 and which broke a long-standing political deadlock regarding the vexed issue of abortion reform, voice caution about seeing these bodies as a panacea. While they note the positive aspects of achieving a better mechanism for fact-based discussion, including more effective interaction among citizens and experts, they identify multiple deficiencies and limitations in the operation of the Assembly. These include practical shortcomings in the selection process (which was not quite as random as envisaged), difficulties in even securing enough citizens to participate, and the

5. The official website is at <https://granddebat.fr/>.

6. See <https://www.conventioncitoyennepourleclimat.fr/>.

selection of who would appear before the Assembly as experts. They also include broader shortcomings—namely, that the Assembly itself could not shore up the severe inadequacies of the political system and that its impact as an exercise in wider civic education is open to doubt.⁷ Insights from constitutional design may offer at least partial solutions, particularly to procedural deficiencies.

The second aspect is permanence. While these bodies still tend to be perceived and established as temporary experimental entities (e.g., in Ireland, Canada, and Australia), the first permanent body has already been established. February 2019 saw the world's first permanent Citizen Council established by the Parliament of the small German-speaking community in Belgium (with a population of just 76,000 people) as a coequal institution to Parliament. This twenty-four-member Citizen Council will set the agenda and monitor whether elected politicians follow up on the recommendations of a number of citizens' assemblies (comprising twenty-five citizens each, selected by sortition). However, while its legal basis is provided by ordinary law, it has not been enshrined in the country's constitution. In addition, in Ireland the place of the citizens' assembly in the democratic system is slowly being formalized. To date, this has only taken the form of a short technical law, the Citizens' Assemblies Act 2019, to provide for the use of the electoral register to select members for forthcoming citizens' assemblies on gender equality and on local government in Dublin. Should such assemblies become a perennial feature of the landscape, however, bringing these bodies within the constitutional realm, to reflect their systemic importance, would be prudent.

The third aspect concerns systemic reform. At a minimum, if assemblies are to be integrated into the constitutional text, doing so cannot simply involve parachuting them in as though they will operate in isolation from other key institutions; it may require a fuller review of the constitution itself, identifying precisely how such assemblies should relate to the existing three branches of government, for instance. As Richard Youngs (2019) observes, "Dovetailing participation with other areas of democratic reform still presents a significant challenge." More broadly, in contemplating the enthusiasm for citizens' assemblies, we need to consider the design of the democratic system in the round. For instance, one question to consider is whether these bodies are simply being used as "bypass institutions" (Mota Prado and Trebilcock 2018), to avoid the difficult and overdue work of reforming existing underperforming political structures such as parliament/Congress by creating

7. This is a summary of a range of blog posts in the blog symposium "The Citizens' Assembly in Ireland: A Successful Experiment in Deliberative Democracy?" on the *IACL-AIDC Blog* (official blog of the International Association of Constitutional Law), November 19–December 12, 2018.

a new body to replicate what, ideally, parliament should do. In this connection, rather than focusing on assemblies, some analysts propose a drastic overhaul of the existing representative structures. For example, one group of US scholars (Neblo et al. 2018) propose the development of a “directly representative democracy” as a new way of connecting citizens and elected officials to improve representative government, with congressional representatives meeting groups of their constituents “via online, deliberative town hall meetings to discuss some of the most important and controversial issues of the day.” They argue that this can empower citizens and move past “the broken system of interest group politics and partisan bloodsport.”

However, others, such as Hibbing and Theiss-Morse (2002) claim that most individuals do not seek greater involvement in government: “Peoples’ wish for the political system is that decision makers be . . . non-self-interested, not that they be responsive and accountable to the people’s largely nonexistent policy preferences or, even worse, that the people be obligated to participate directly in decision making.” That said, they also note that individuals express greater enthusiasm for enhanced political involvement when popular democracy is framed as the only alternative to dominance of the political system by self-serving elites (2012, 130). Perhaps there is, in fact, no universal answer to this debate: it may differ from country to country and be highly contingent on existing traditions of participation and governance, as well as perceptions of who truly holds political power. However, citizens’ assemblies may again provide a useful compromise by enhancing citizen participation without placing the burden on the electorate as a whole.

Finally, and continuing the need for a whole-system approach to such assemblies, even if the operation of assemblies is well integrated with other bodies such as parliament, their operation must also connect to wider forces in the democracy, especially in the arts and cultural sphere, to have maximal effect. Following the recommendations of Ireland’s 2015 Constitutional Convention (a deliberative body convening citizens and politicians), for instance, campaigners for the introduction of same-sex marriage by referendum in 2015 were highly effective in their use of language, appealing to deeply rooted notions of fairness, community, and inclusiveness rather than couching their appeals exclusively in rights terms. They also ran an effective campaign of encouraging yes voters to contact those who might vote no and drawing on the Irish tradition of storytelling by telling powerful individual stories to personalize the issue. In essence, the central aim is not just to increase technical knowledge and provide one additional channel for participation but to embed values culturally and enhance, as far as possible, the resonances between tradition, language, and practice in support of liberal democracy. A citizens’ assembly cannot succeed unless it is approached as merely one hub for broader action.

It probably goes without saying that citizens' assemblies hold out promise only in democratic states that have not suffered excessive decay: in places like Hungary, the overweening control of the state by the executive makes it likely that any such body would be simply manipulated to serve the regime's ends rather than enhancing deliberation and enhancing the public's voice in governance. Indeed, in Venezuela the 1999 Constitution included key organs such as worker cooperatives, Bolivarian circles, and municipal participatory budgeting councils. However, these were sidelined by Chávez, never given the space to develop, and are viewed as having been used as a fig leaf to justify the weakening of existing institutions (Braver 2019). For countries such as the United States, France, or the United Kingdom, though, where decay is somewhat more diffuse and the master plan scenario does not pertain, they may hold out some hope to help enhance democratic resilience and renew the democratic system.

CONCLUSION

John Koenig, in his *Dictionary of Obscure Sorrows*,⁸ uses the term “sonder” to capture “the realization that each random passerby is living a life as vivid and complex as your own.” Whom do we think of when we think about the citizen as a democracy defender? Is it our families, our friends? The individuals who pass us by in the street—what are their aspirations for freedom, for their lives and the community? Do we think of a nameless mass—teeming protesters at the barricades, or diametrically opposed camps? Do we think of the polite surrounds of a citizens' assembly? Or humanity seen from a height, their differences blending into a beetle-like sameness? Do we think of all of them at once in a fuzzily inchoate mental mosaic?

The purpose of this piece was, not to draw concrete conclusions and constitutional design proposals, but to bring the role of citizens as democracy-defenders into sharper focus, as both a bulwark against authoritarian advances and a key to long-term democratic resilience through enhancement of the democratic process. As the renewed debates concerning constitutional design as a response to democratic decay develop, it is vital to place citizens center-stage. Although the potential to use constitutional design to transform citizens into democracy defenders has evident limitations, a number of matters are nevertheless clear. The citizen as democratic defender has a lot less to do with the fiery heroics of the helicopter pilot and a lot more to do with the hard graft of difficult, well-crafted institutional reform that not only takes the positive approach of enhancing representation but also seeks to address key

8. <http://www.dictionaryofobscuresorrows.com/post/23536922667/sonder>.

distortions, blockages, and asymmetries affecting the political system and democratic sphere more widely. Despite the promise of innovations such as citizens' assemblies, there is no quick fix. We cannot simply tack on improvements to a rotten system: one does not repair a bicycle with broken wheels by adding more wheels. As Sujit Choudhry (2018a) has recently offered, we need not only to be modest about what constitutional design can achieve but also "to steer a middle course between constitutional idealism and nihilism." Perhaps most important, if liberal democracy is to honor its own name by offering governance that accords the democratic community as a whole a meaningful say in government, we cannot simply seek to return to the status quo ante, to an imagined golden era before the perceived authoritarian tide took hold. It is time for big ideas and bold visions. As the American cartoonist Walt Kelly's character Pogo offered at the height of the Nixon presidency: "We have met the enemy and he is us." (Horton 2007). We also know the savior, and she, too, is us.

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