

manière ambivalente par Castoriadis : « La nation est une forme qui en droit est historiquement dépassée, mais qui en fait ne l'est nullement. C'est la grande antinomie de l'époque » (40). À plusieurs endroits, Castoriadis revalorise et relégitime l'idée de la nation : « la nation est le dernier pôle d'identification » (37). Plus loin, Enrique Escobar résume la conception de la société que se faisait Cornelius Castoriadis, génératrice de visions et de perspectives contrastées, « chaque fois institution d'un magma de significations imaginaires sociales » (37).

Dans *Écologie et politique*, Castoriadis présente l'écologie comme un « fait fondamental » pour nos sociétés et ajoute, à propos de l'environnement : « il ne peut pas y avoir de vie sociale qui n'accorde une importance centrale à l'environnement dans lequel elle se déroule » (191). Sans être nommée comme telle, la dimension écocitoyenne apparaît fréquemment dans ce livre, par exemple dans ce passage de « L'écologie contre les marchands », article paru en 1992, affirmant que « L'écologie est subversive car elle met en question l'imaginaire capitaliste qui domine la planète » (187). Implicitement, *Écologie et politique*, répond aux questions (et anticipe même les objections) des opposants à la cause écocitoyenne en fournissant des arguments rigoureux. Du même souffle, Castoriadis réaffirme la dimension politique inhérente à l'écologie : « L'écologie est essentiellement politique, elle n'est pas 'scientifique' » (191). Et Castoriadis poursuit : « La science est incapable, en tant que science, de fixer ses propres limites ou ses finalités » (191). Ailleurs, la pérennité du pouvoir est admirablement bien formulée par Cornelius Castoriadis : « le système tient parce qu'il réussit à créer l'adhésion des gens à ce qui est » (123).

La pensée de Castoriadis demeure pertinente pour solidifier un cadre théorique de toute recherche en théories politiques, en philosophie politique, en politiques urbaines ou en sociologie de l'environnement. Il réaffirme la nécessité de critiquer le système industriel qui favorise la surproduction, le gaspillage et le culte de la technique (131). Ce livre rare – et de ce fait indispensable aux bibliothèques universitaires – fournira des arguments au chercheur voulant démontrer comment le capitalisme surexploite indûment les ressources de la nature et par quels moyens l'écologie politique tente de critiquer ce que plusieurs considèrent simplement comme une évidence, un mouvement inévitable, un signe de progrès et de prospérité (131).

Democracy and Constitutions: Putting Citizens First

Allan C. Hutchinson, Toronto: University of Toronto Press, 2021, pp. 220

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In this short book, Allan Hutchinson—one of Canada's foremost public law thinkers—revisits the age-old tension between constitutionalism and democracy in light of the rise of populism and what has been termed by concerned liberal constitutionalists as “democratic backsliding” and “constitutional retrogression.” The immediate trigger is what Hutchinson sees as the North American manifestations of these trends (for example, the presidency of Donald Trump and the premiership of Doug Ford) and, in particular, the call by proponents of liberal constitutionalism for stricter constitutional checks and balances to effectively counter, or at least tame, populism. Hutchinson argues that it is our democratic institutions—not our constitutional ones—that need strengthening. Along the way, he pokes some significant holes in the facade of self-righteousness that often characterizes canonical liberal constitutional theory.

In the first two-thirds of the book, Hutchinson analyzes the undemocratic features of US and Canadian constitutions by considering the elitist history of their drafting, the “skewed and selective” values enshrined in constitutions (54), and the formal (for example, Article V) and informal (for example, judicial interpretation) routes to constitutional change. These factors have left the United States and Canada with an enduring commitment to strong (yet thin, normatively and empirically speaking) constitutionalism over strong democracy. He takes aim at today’s “elite democracy” (anticipated by de Tocqueville), noting the populist backlash that has arisen from disaffection with the moneyed few controlling democratic processes.

Hutchinson opens his text by arguing that Canada and the United States have a historical preference for strong constitutionalism over weak democracy, wherein society tends to defer to a “legal elite”; judges reign supreme through constitutional interpretation. In fact, argues Hutchinson, constitutions should be working for democracy, instead of democracy serving as an offshoot of constitutions (4). The underlying question driving Hutchinson’s critique of constitutionalism revolves around the so-called counter-majoritarian difficulty embedded in judicial review. Boiled down, we may ask why non-elected judicial bureaucrats hold the final say on contested political decisions (32–33). Hutchinson rejects the conventional justifications of the judiciary’s “benevolent dictatorship” and, in the final third of the book, maps pathways toward promoting greater popular participation in democracy. His gamut of thought-provoking proposals (which this brief review cannot address or do justice to) includes democratizing courts (ch. 8) and bolstering democratizing institutions beyond courts (ch. 9). One of his most interesting proposals to move us further down the road toward democratic constitutions (ch. 10) involves constitutional forums or conventions, specifically revising constitutional content, reformatting amendment procedures, and creating constitutional juries. Hutchinson ends by reminding us of the need for a strong democracy by, for and of the people. This would require a dismantling of today’s elitist democracies, a recognition that judicial review is inherently political, and a grappling with the failures of the legislative and executive branches to live up to their democratic duties.

A bow to Milan Kundera’s novel *The Book of Laughter and Forgetting* enlivens Hutchinson’s narrative: we may “laugh” at constitutionalist assertions that courts are apolitical/impartial and unveil the institutional “forgetfulness” of the undemocratic origins of constitutions. These rhetorical pillars help combat the wilful blindness of the elite’s clinging to constitutionalism. “This book,” he concludes, has sought to “adopt a devilish and laughter-filled democratic approach in the task of confronting the angelic pretensions of traditional constitutionalist thinking and its concerted effort to erase memory” (183).

Theoretically speaking, many of the arguments at the core of Hutchinson’s analysis have already been made elsewhere by leading critics of judicial review (for example, Jeremy Waldron), by proponents of “popular constitutionalism” (for example, Larry Kramer), by advocates of “political constitutionalism” (for example, Richard Bellamy), by thinkers who question the democratic credentials of the American constitutional order and call for its reorganization (for example, Sanford Levinson), by left-leaning critics of American constitutional history (for example, Joseph Fishkin and Willy Forbath) and of Canadian constitutional history (for example, Michael Mandel, and occasionally Hutchinson himself). Hutchinson admits that of all these branches of critical thought (not all of which he refers to directly, alas), his arguments are most closely aligned with those of Mark Tushnet—in particular, Tushnet’s call to “take the constitution away from the courts” in order to foster greater popular engagement with the constitution. But in a somewhat cursory mention, Hutchinson suggests that Tushnet’s (as well as others’) position is largely stuck within existing constitutional parameters (140).

The book’s occasional theoretical *déjà vu* feel notwithstanding, there is something refreshing and contemporary in Hutchinson’s discussion, owing to his unambiguous, against-the-grain position contrasted with the chorus-like, liberal-constitutionalist reaction to

the rise of populism. His book is also exceptionally reader-friendly. Hutchinson is a gifted writer who turns complex themes and arguments into an often-entertaining, witty and provocative (in the best sense of the term) read. This light approach enables him to cover much terrain, even turning the occasional corner-cutting nature of his discussion into an advantage. Although published in 2021, it is relevant today in view of the ultraconservative 2022 US Supreme Court rulings (severely limiting the right to have an abortion, states' capacity to regulate guns, and the federal government's ability to regulate the environment—among other things).

While the book succeeds in putting a critical realist mirror in front of mainstream liberal constitutionalists, it is not entirely clear why it focuses exclusively on North American constitutionalism, leaving aside the comparative scholarship of the last decade. This scholarship considers democratic backsliding, constitutional capture, and retrogression elsewhere, in settings as diverse as Hungary, Poland, Brazil, India, Turkey and Israel. Hutchinson's account is largely framed as a general critique of oft-complacent liberal constitutionalism, not merely of its North American variant (assuming, as Hutchinson does, that such a unified US-Canada variant even exists—an assumption that some would vehemently contest). Likewise, Hutchinson does not refer to the empirically rigorous and theoretically advanced accounts of judicial decision making that cast serious doubt about the Dworkinian notion of Herculean judges that are removed from politics and are tasked with preserving the enduring values of the polity. And despite Hutchinson's proposals for institutional changes, the book's broad treatment of democracy, in particular of the participatory variant—supposedly a viable alternative to high-voltage “legal constitutionalism”—remains an abstract, pie-in-the-sky notion that is not discussed at all.

In summary, while lifelong scholars of constitutional theory and constitutional history in the United States and Canada might only find modestly novel insights here, Hutchinson's intellectual honesty, his commanding grasp of the American and, in particular, the Canadian constitutional terrains, and above all his accessible and captivating presentation more than make up for that. Every open-minded student of contemporary constitutionalism can enjoy reading this book and will benefit from grappling with some of the inconvenient truths it presents.

The New Climate Activism: NGO Authority and Participation in Climate Change Governance

Jen Iris Allan, Toronto: University of Toronto Press, 2021, pp. 226

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The New Climate Activism provides important and timely insights into why some civil society activists have successfully inserted their issues into the climate change regime, while others remain outside it. Allan provides a theory of “forum multiplying,” whereby activists from other issue areas—including labour, human rights, gender, climate justice, and health—mobilize to insert themselves into the intergovernmental climate negotiations that occur under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC).

Allan offers a cogent and sensible explanation of forum multiplying. In order to be successful, nongovernmental organizations (NGOs) must first identify and organize around a discursive frame that links their issue to climate. For example, the network of gender NGOs focused on women's ability to contribute to climate solutions, as well as the disproportionate effects of climate change on women. Second, NGOs must identify allies within the climate regime who vouch for them and introduce them into the existing network of climate NGOs. In other words,