

Women, Democracy, and the Nineteenth Amendment

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Abstract

In my symposium paper, I adapt a benchmarking model developed by Professors Tom Ginsburg and Aziz Huq in their book, *How to Save a Constitutional Democracy*, to measure the status of women's participation in our democracy. My exploration of this issue is in response to both the commemoration of the Nineteenth Amendment's centennial and the deep misogyny aimed at women holding formal political power during the current pandemic.

In their book, Ginsburg and Huq look at the connection between constitutional design and the health of liberal constitutional democracies. They also lay out a three-part framework to evaluate how likely such a democracy is to either be converted to authoritarianism by collapse or—even more likely—by democratic erosion. The metrics in that framework are rule of law, liberal rights of speech and association, and free and fair elections. The latter two metrics, so essential to democratic governance, also have particularly gendered dimensions. The full participation of women in our democracy is not only morally right—such parity is central to both the legitimacy of the state and its continued existence. So it is important to examine the role that constitutional design, liberal rights of speech and association, and free and fair elections play in women's ability to engage in democratic governance.

My paper first describes the state of women's participation in formal and informal governance in our democracy. It then uses benchmarks identified by Ginsburg and Huq as a frame within which to identify legislative, judicial, or regulatory mechanisms that could be used to make that participation more robust. The paper concludes with suggestions for how those mechanisms can expand women's formal and informal participation in our democracy. This more robust participation would better comport with a “thick” understanding of the Nineteenth Amendment as securing more than the vote, and ensuring women's full political liberty.