

The Limits of the International Order and the Reconfiguration of Authoritarian Regimes in Latin America.

Interview with Tom Ginsburg

Tom Ginsburg 

Amid the rise of illiberalism and the weakening of democratic institutions, Latin America faces persistent challenges related to institutional fragility, social inequality, and the strategic use of law by authoritarian governments and leaders. In this interview, Professor Tom Ginsburg, Doctor of Law from the University of California, Berkeley, academic director of the Forum on Freedom of Research and Expression, and author of the award-winning book *Democracies and International Law*, to whom I am grateful for his time and willingness, analyzes the authoritarian turn in the region, the instrumentalization of laws and courts, and the tensions between international law and the dynamics of state power. Furthermore, he reflects on the role of the opposition, the limits of international mechanisms, and the institutional reforms necessary to strengthen democracy and halt the advance of authoritarianism.

Sergio Angel (S.A.) Professor Ginsburg, your work "*Democracies and International Law*" directly links respect for domestic laws and international law to the sustainability of democracies. In this framework, what legal and political factors explain the authoritarian turn of left-wing governments in Latin American countries?

Tom Ginsburg (T.G.) We've seen a general turn towards illiberalism in both the left and the right, in these decades. In Latin America, the rise of the ping tide, let initially by Hugo Chávez in Venezuela, really set the thing in motion. He was always a demagogue with authoritarian leanings and his ability to transfer power to his successor, Nicolás Maduro, who lacked the same charisma, meant that Venezuela had no choice but to become more authoritarian if the regime was to retain power. I think that model was replicated, but it also generated a reaction in many other countries. And so the authoritarian left-wing turn also created pressure for a right-wing or centrist kind of balance, which eventually swung the pendulum back at least in some countries. Notice that the international dimension was important here. Chávez thought about trying to use authoritarian international to create coalitions among the left-wing governments of the region, but

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these institutions really fell apart quite quickly after his own demise.

S.A. From your perspective and experience in a forum on freedom of research and opinion, how do you assess the situation of political and social freedoms in Latin America?

T.G. Latin America is a very interesting region, obviously it's a region, famously with a great amount of inequality, great amount of poverty, and legacies of social exclusion. But it's also a region in which rhetoric and rights use have been very high. And this is really triviality to the region of, say, the stage where I do a lot of work.

Rights discourse is important there. The actual state of the political and social freedoms in Latin America is hindered by economic inequality. But in some areas, like freedom of expression, I think the region performs pretty well, generally speaking. Academic research is hamstrung by underfunding of universities in some countries. But there's also a tradition of autonomous universities that are engaged with political and social issues, and so again, I think the region maybe performs relatively well here compared with other regions of comparable levels of income. There's been an investment in education and some investment in the idea that people can hold opinions freely.

S.A. Particularly, Venezuela underwent significant constitutional and legal modifications after the establishment of the Chavista regime and its prolongation under Nicolás Maduro's administration. How do radical leaders manage to instrumentalize law to legitimize and sustain autocratic governments?

T.G. Venezuela in the region's use of law was very instrumental; they treated the Constitution as completely plastic. They didn't see it as much of a constraint on their own behavior. Well, like other authoritarian governments, they were perfectly willing to use the courts to persecute their political enemies.

The legal system in Venezuela initially provided some good resistance to Hugo Chávez, but he understood that he had to capture the courts in order to implement the program. There

are some really important cases for the Latin American Court, where some of the judges that he fired were able to return to win cases against the government and to get some recompense eventually, but it didn't stop the institutional overturning of the rule of law. And I think there's a lesson here, which is that, you know, sustained authoritarian regimes will always be able to, with enough time, take over the courts and other institutions.

S.A. The arrest of Nicolás Maduro by the U.S. and his subsequent judicial process for narcoterrorism presents an unprecedented scenario for international and domestic law in the region. From your perspective, what implications does the arrest and prosecution of authoritarian leaders have for international law and the principle of non-intervention?

T.G. Well, the arrest of Maduro obviously divided several norms of international law, including the norm of non-interference, territorial integrity, I suppose, and the norm of immunity for sitting heads of state.

I think the immediate consequences were positive in the sense that Venezuela seems to be heading in a better direction, and the hideous Maduro is now out of power. But at the same time, the precedent is very disturbing because it seems to mark a new period of American imperialism in which the United States is not constrained by norms of international law, or even less constrained than it usually is, and is willing to intervene to advance its own interests without paying much attention to the rules and to the need for legitimacy. I think it's one of these kinds of interesting situations in which the law and morality don't immediately align, but in the long term I don't think we can have a functioning world order without international law. I think on balance it's not a great situation.

There's also the interesting possibility that Maduro is going to be tried before American courts, which are real courts, and he might be acquitted by a jury. Now, standing by the Trump administration attempt to persecute them, that will be an interesting result.

S.A. Facing a possible scenario of democratic transition in Venezuela and the prosecution of Nicolás Maduro, how can the U.S. and other international actors help restore democratic order and the rule of law?

T.G. I think it's a very interesting model that might emerge in Venezuela. There are really two possibilities. One is that the core of the Chavista regime remains intact and holds on to power, even as the country is pushed to liberalize a little bit.

And the other is that there's a kind of opening process in which the economy gets restored a bit. There's greater political freedom, and eventually a process is undertaken

which returns to a real democracy with turnover in power. That would be a very interesting one, and it would in some sense parallel some of the countries in East Asia where you had developed under an authoritarian regime that eventually led to democratization. But that's an optimistic view, and there's certainly the possibility that corrupt leaders remain in power in Venezuela and simply allow a little more freedom even as they continue to steal for their own benefit.

S.A. Along these lines, what role should the political opposition assume and what challenges should it overcome to be a legitimate actor in the democratic turn?

T.G. When oppositions are divided, the authoritarians succeed. When the opposition is united, there's a chance for liberalization. And this is something we're facing right now in the United States. The Democrats are very divided between the more traditional wing and a more progressive wing, and those internal fights are very, very severe. They've been apparent for a decade or more, but each one blames the other for why the party is failing, even against the very unpopular Mr. Trump. We're kind of like the opposition in many other countries where it's just too divided, and that allows the authoritarian right to maintain power.

The most important thing there is for the opposition to get united and to be able to cooperate with each other tactically, even when they might have serious ideological disagreement. These ideological disagreements need to be postponed until institutions are more secure. But as long as institutions are under threat, the obsession should be to stay united in their defense, and I'm very afraid that's very hard to do. It's an important lesson for oppositions everywhere.

S.A. In the region, authoritarian regimes and autocratic left-wing governments, for example, Cuba, Nicaragua, and Venezuela, have been subject to international sanctions and pressures. In your opinion, what limits and what guarantees do international law and regional integration mechanisms offer to protect democracies from the rise of autocratic leaders and regimes?

T.G. All right, what elements and guarantees do international law mechanisms offer to protect democracies?

Well, international mechanisms are really backstops at the end of the day. Democracy is ultimately a phenomenon that exists at the national level and not the international level. The international institutions, if they function well, can help to monitor when there's backsliding and can help to protect institutions from the worst excesses and from being abused too severely by populist authoritarian leaders. They could do so by providing arenas in which national leaders can go appeal and sometimes win legal cases or organize at transnational

institutions to call attention to abuses, actually a very important thing which can do some good. In some circumstances they can actually sanction and punish leaders who are taking autocratic actions, like the European Union system obviously uses sanctions and fines against rulers that don't comply with the core values of the European Union. Nevertheless, all these mechanisms are highly imperfect. And I'm afraid that in the Americas, we are seeing that many of these mechanisms might be becoming weaker because the United States is turning away from its traditional role as a defender of democracy.

Even though the United States supported authoritarian governments in certain times and places, at the end of the day we've always stood at least nominally as a defender of democracy, and now under the Trump administration all that is going. All the institutional structure to support democracy have been ended, unilaterally and in violation of law. And that means that there's less resources to turn to, both institutionally, and countries won't be looking to the United States as a leader for democracy anymore. Also, I think it's a very bad time. The international mechanisms are weakened by American withdrawal.

S.A. Finally, looking to the future, what legal, institutional, and judicial reforms are priorities to strengthen democracy in Latin America and prevent the continued spread of authoritarianism in the region?

T.G. You know, authoritarian attacks on institutions are happening everywhere. And obviously, you need institutions that can prevent corruption, that are seen as providing services to society, and that function well.

And if you don't have courts and prosecutors and bureaucrats who are able to play that role, you're going to see populists finding easy targets to attack. I think one thing we really need to see is programs to find which institutions are functioning well in any particular country and to reinforce them, and to maintain in situations when things are going very badly, to maintain what I call islands of integrity that can play the role that they're supposed to. We have many examples around the world where even in pretty bad regimes, you still have some islands of institutions that can function pretty well, so those are very important. I'd like to see those kinds of efforts to shore those things up.

And, you know, finally, it's very important for the public to realize the importance of the rule of law. Bureaucrats and judges need to be monitored, of course, but without their insistence on legality and their insistence on non-corrupt leaders, you know, all can easily be lost. Also, I think that's an important thing as well. All right, that last question wasn't a very good one, but if you can transcribe this, maybe it can be added and we can be done. Thanks

S.A. I thank Professor Tom Ginsburg for his valuable insights and reflections on the relationship between law, institutions, and democracy in Latin America. His analysis demonstrates that democratic weakening responds not only to political and social factors, but also to the strategic use of law by authoritarian leaderships that are able to instrumentalize judicial institutions and weaken the rule of law from within. Likewise, it highlights the limitations of international law, emphasizing that the defense of democracy ultimately depends on the strength of national institutions and on society's capacity to demand their proper functioning. Therefore, strengthening independent judicial systems, preserving "islands of institutional integrity", and ensuring the unity of opposition forces are indispensable factors to curb the advance of authoritarianism and guarantee the sustainability of democracy in the region.