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RESEARCH ARTICLE



Populists before power: delegitimization strategies against independent judiciaries

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ABSTRACT

Research on the dangers of authoritarian populism for liberal democracy has almost exclusively focused on “populists in power” and those cases where dramatic changes have occurred. However, there is a notable gap in understanding the strategies and dangers of “populists before power”. We argue that authoritarian populists also pose a threat where they cannot effect constitutional change. By using “delegitimization strategies” they can significantly weaken liberal democratic institutions through a systematic erosion of public trust. Focusing on independent judiciaries as targets, we illustrate how attacks that link criticism of decisions, judges and judicial institutions with narratives of systemic failure may unfold and highlight the value of delegitimization within the larger populist tool kit. Thereby, the paper lays the conceptual foundation for an integrated research agenda on “populist before power”, including counter-reactions to delegitimization attempts, and contributes to the growing literature on the relationship between populism and democracy.

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1. Introduction

Populism has become a global phenomenon. Populist parties and politicians have managed to enter a vast number of national and subnational legislatures across a wide range of countries – in recent years, they have also increasingly joined or led governments, or won popular presidential elections. In this context, a number of scholars have warned of the threat to liberal democracy posed by authoritarian populism, a variant that has been embraced by the majority of populist parties and politicians across advanced democracies.¹ While democratic populism may function as a corrective by seeking to make political regimes more inclusive,² authoritarian populism clashes with central tenets of liberal democracy, as its adherents regard any restrictions on the “popular will” as illegitimate.³ Consequently, when such actors come to power,

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they often seek to dismantle the system of checks and balances and implement their own vision of democracy – a system with few if any constitutional protections for minorities, pared down powers of institutional veto players, and a judiciary that serves the interests of those in power.

In countries with strong constitutional and supreme courts, independent judiciaries have frequently been the primary targets of attacks by authoritarian populists. Prominently, governments in Hungary and Poland used both formal constitutional changes and informal means, such as court-packing, to curb the powers of independent judiciaries and remove checks on their power.⁴ In Turkey, President Recep Tayyip Erdoğan first almost doubled the number of judges on the constitutional court and then used the unsuccessful coup attempt in 2016 as a pretext for dismissing thousands of judges over alleged terrorist ties.⁵ In the Philippines, President Rodrigo Duterte orchestrated the dismissal of the Chief Justice after she confronted him over his criticism of the judiciary,⁶ while President Nayib Bukele of El Salvador implemented a constitutional reform that significantly reduced the powers of the Supreme Court after the latter had overturned several of his decrees.⁷ However, the threat presented by authoritarian populists is not limited to newer and ostensibly less consolidated democracies. US President Donald Trump frequently launched attacks on justices during his first term in office,⁸ while the Israeli government under Benjamin Netanyahu attempted to rid itself of accountability by limiting the Supreme Court's power of judicial review.⁹ These examples underline that independent judiciaries – as well as other counter-majoritarian institutions – are increasingly challenged by populists even in established democracies.

The public and academic discourse on the dangers of authoritarian populism remains largely centred on “populists in power”.¹⁰ Research is primarily focused on documenting cases where these actors have enacted far-reaching changes to the constitutional order (e.g. Hungary and Poland) and analysing their underlying motivations. In contrast, we know less about the dangers of “populists *before* power”. Although there is a wealth of scholarship on populist parties and politicians, scholars have rarely examined how actors unable to enact wholesale institutional changes can still act strategically to damage liberal democratic institutions. This paper seeks to broaden the scope of research on the detrimental effects of authoritarian populism and provide the conceptual–theoretical foundations for a research programme that explicitly engages with those cases where populists lack the means to rebuild the constitutional order outright or face constraints in the form of mainstream coalition partners. Building on the literature on authoritarian variants of populist constitutionalism and populist communication, we argue that populist actors who seek to dismantle the system of democratic checks and balances yet lack the necessary majorities will engage in “delegitimization strategies”.

Focusing on independent judiciaries as primary targets of authoritarian populists, we argue that these actors seek to weaken judiciaries through the systematic erosion of public trust – a crucial resource to ensure that their decisions are implemented – to eventually render them ineffective or see them abolished. We illustrate how rhetorical attacks against courts may unfold by showing how populists strategically link criticism of court decisions, individual judges, and the institutions themselves with superordinate delegitimizing narratives of systemic failure and need for drastic change. The paper furthermore discusses the broader role of delegitimization strategies within the authoritarian populist toolkit. Specifically, we posit that delegitimization

strategies are not only employed when actors lack the majorities to enact substantial institutional changes. Rather, such efforts are a natural first step for implementing a constitutional overhaul by justifying the need for such changes and continue even when populists have managed to enter government. We conclude by discussing the utility of our concept and outline further key aspects for a research agenda on populist delegitimization and counter-reactions by politicians, the public, and courts themselves.

2. Populists in power: dismantling counter-majoritarian institutions

Populism is commonly understood as a “thin-centred ideology concerning the structure of power”.¹¹ The starting point for virtually all variants of populism in describing this structure is a conceptualization of “the people” as a homogenous group defined by its membership of an economic class or based on ethnic or national characteristics. The emphasis on a “homogenous” people creates a clear distinction between an in-group (“the people”) and an out-group (those seen as opposed to the interests of the people). “The elite”, commonly portrayed as a powerful, globalist, and privileged group that uses its power to promote the interests and values of a small group, is seen as opposed to the people. While the “pure” people have a “common sense” understanding of what would benefit society at large, the elite are seen as corrupt and illegitimate with interests that are diametrically opposed to those of the people.¹² Consequently, populists argue that ultimate power should reside in the expression of the “general will” of the people.

Like populism, populist constitutionalism comes in various guises, offering a critique of liberal constitutionalism that seeks to counter the alienation of citizens from the state.¹³ However, where populist constitutionalism is implemented in practice, it has often adopted illiberal or authoritarian ideas that stand in stark contrast to the principles of liberal constitutionalism.¹⁴ Central to the idea of liberal democracy is a conception of the people as a pluralist society which cannot be represented by a single political force in its entirety.¹⁵ In contrast, authoritarian populism is generally anti-pluralist and unaccepting of those that do not fit its particular conception of “the people”.¹⁶ Liberal constitutionalism also seeks to establish a political and legal order that protects the pluralist nature of society and the rights of individuals by placing restrictions on majority rule, and entrenching these restrictions in fundamental laws elaborated in constitutions.¹⁷ This is meant to guarantee the protection of individual rights, and independent judiciaries are typically tasked as guardians of these limitations of government authority.¹⁸ In taking an extreme majoritarian stance, authoritarian populists reject limitations of government authority as illegitimate constraints on the “general will”.¹⁹ Finally, authoritarian variants of populist constitutionalism generally reject the idea that basic norms and fundamental laws should limit the reach of majority power. Instead, they embrace a Schmittian understanding of constitutions which stresses the superiority of the political and understands constitutions as documents of political unity for the protection of the state.²⁰

In political practice, authoritarian populists do not reject constitutions as a whole, but rather specific institutions that constitute obstacles to the implementation of the alleged “general will”. In particular, this concerns institutions that limit executive authority to safeguard minorities and liberal pluralism, and which act largely independently from democratic input.²¹ Rejecting these institutions is far from theoretical: where

authoritarian populists enjoy broad electoral support, changes to the constitutional order are often among their top priorities. Thereby, even the high thresholds required for constitutional changes are no guarantee for institutional stability as not all relevant regulations are subject to the same safeguards. Whereas supermajorities may be required to abolish or replace an institution, neuralgic points for their operations – such as qualifications for membership, selection procedures, or the binding force of decisions – are often regulated through ordinary law.²² Consequently, where authoritarian populists are in power, their strategies usually depend on their majority status and the level of institutional protections.

We can distinguish between situations in which authoritarian populists only hold an ordinary majority, and those where they command supermajorities that allow governments not only to change ordinary law, but also to modify the constitution. Hungary is perhaps the most prominent current example where the constitution was replaced. The Fidesz party came to power in 2010, winning an unprecedented two-thirds majority in the legislature. Fidesz quickly moved to implement a new constitution in 2011, claiming that it was only finalizing the country's transition to democracy. The new constitution and its amendments substantially increased the power of the executive and curbed the powers of the Constitutional Court. Among others, the changes increased the number of judges, changed the constitutionally mandated nomination procedure and decreased the mandatory retirement age.²³ Subsequently, the government appointed seven of the fifteen judges on the court in the first 18 months after taking office.²⁴ Furthermore, although the new constitution was in some parts a verbatim copy of the old document, the adoption of a new constitution invalidated over 20 years of case law including several landmark decisions. Notably, the new constitution also reduced the size of parliament by almost half and the government used its constitutional majority to make changes to the electoral code, which have since guaranteed Fidesz' continued grip on power.²⁵

Developments in Venezuela ten years prior took a similar course; however, here populists manufactured their supermajority by circumventing of constitutional rules. After Hugo Chávez was elected Venezuelan president in 1999, he used a consultative referendum as a back door to circumvent the supermajority required for amending the constitution and convened a constitutional convention in which his supporters "held 94% of the seats [...] despite having won only 53% of the votes."²⁶ The resulting constitution significantly expanded executive power and removed important checks; most prominently, it abolished the one-term limit for the president as well as the second chamber.²⁷ While the reforms also included a formal strengthening of the judiciary by creating a Constitutional Chamber within the Supreme Court, more stringent appointment procedures, which were never properly applied in practice, allowed for a greater politicization of the court. After the court failed to side with the government on several occasions, the number of judges was increased, allowing the government to appoint its allies to the new positions and remove others more easily.²⁸ While opposition protests continued throughout his presidency, Chávez faced little to no effective checks on his power.

However, even when populist governments do not command supermajorities or simply disregard constitutional restrictions, changes to ordinary laws combined with para-constitutional practices can still disrupt the functioning of constitutional safeguards.²⁹ The reforms pursued by Law and Justice (PiS) in Poland, 2015–2023, provide a particularly noteworthy example in this respect. In 2015, the newly-

elected PiS-allied president Andrzej Duda blocked the appointments of several judges to the Constitutional Tribunal. After PiS won a narrow majority in the parliamentary elections of the same year (albeit with less than 40% of the vote), the new government filled the open seats with their own nominees and refused to publish a ruling by the Constitutional Tribunal that declared three of these appointments unconstitutional. After packing the court, the government implemented several laws that the previous court would likely have held unconstitutional, arguing that it was impossible to implement the will of the people with the current restrictions.³⁰ In addition, the government restructured the National Council of the Judiciary, i.e. the body responsible for judicial appointments, so that its composition would be determined by the parliamentary majority.³¹ Moreover, the government added a new disciplinary chamber to the Supreme Court that was a thinly veiled attempt to gain control of the ordinary judiciary by removing or suspending judges that were not in line with the government.³² The fact that president Duda, even after PiS was ousted in 2023 and the above reforms were found to be in violation with European law, continued to appoint judges selected under the politicized rules, underscores the uphill battle in reversing sub-constitutional changes.

The examples illustrate the view of constitutions as subordinate to political decisions and the active opposition to counter-majoritarian institutions in authoritarian populism. Nevertheless, attributing the changes pursued by populists to a different concept of constitutionalism alone would fall short of capturing the motivations underlying populist actions. Given that changes to political institutions have gone hand in hand with other reforms, such as the restructuring of public service media, the aim of populist reforms often follows very practical concerns, such as the removal of democratic accountability mechanisms.³³ Research has widely documented the motivations and actions of “populists in power”, yet discussions have rarely extended beyond the early stages of their rise in politics. Despite extensive considerations of the detrimental effects of various aspects of populism on political discourse or democratic norms, surprisingly little attention has been paid to how “populists *before* power” attack the liberal democratic order. The next section first introduces independent judiciaries as targets of attack and then explains how “delegitimization strategies” can be employed to substantially weaken them even before populists are in a position to make constitutional changes.

3. Populists before power: delegitimizing independent judiciaries

Authoritarian populism and its ideas about constitutionalism run counter to established notions of democratic legitimacy. Consequently, authoritarian populists devote considerable effort to dismantling institutions that do not draw their legitimacy directly from “the people” and which ostensibly stand in the way of the popular will.³⁴ Despite several prominent examples where authoritarian populists won supermajorities and moved quickly to dismantle institutional structures, the majority of such parties and politicians initially receive limited political support and do not immediately wield sufficient influence to implement an agenda of institutional reform. Moreover, other parties are often reluctant to enter into coalitions with populists or object to any form of cooperation.³⁵ Yet, this does not stop authoritarian populists from pursuing an agenda of institutional change – rather, they choose other means to weaken the institutions that they deem objectionable and to prepare the ground for substantive

change in the future. As we outline below, independent judiciaries, especially supreme and constitutional courts, are often their primary target, and the weapon of choice are strategic delegitimization campaigns that are aimed at systematically eroding public trust in the courts.

3.1. Independent judiciaries as targets

Many liberal democracies have established strong counter-majoritarian institutions and institutional veto players, such as second chambers, central banks, and constitutional and supreme courts.³⁶ Strong courts, and independent judiciaries more generally, stand out in this group as they are not only particularly objectionable to authoritarian populists, but also particularly vulnerable despite their constitutionally entrenched status.

Constitutional and supreme courts are almost always equipped with the right to invalidate laws passed by the elected legislature and, thus, can present a significant obstacle to the implementation of any political agenda. Thereby, the preferences of apex courts often diverge from those of government and parliament due to the selection process and long tenure of their members.³⁷ Other counter-majoritarian institutions may adapt relatively quickly to a changing political climate, e.g. when elections change the composition of the second chamber.³⁸ In contrast, courts will be less affected by short-term political changes as in most countries judges are appointed or elected to non-renewable terms from nine to twelve years (sometimes even life terms), and vacancies usually only occur individually, thus providing little opportunity to alter the balance of power within the court. Due to the consensus-oriented appointment process, newer and smaller parties are also often excluded from selecting judges.³⁹ The resulting conflicts between new governing majorities and courts are not exclusive to authoritarian populists. In France in 1981, the newly elected socialist president Francois Mitterand and his new government proposed to curtail the powers of the Constitutional Council, whose members had been appointed by successive centre-right governments, after it halted the government's agenda of nationalization.⁴⁰ Similarly, when US President Franklin D. Roosevelt faced opposition to his New Deal policies from the Supreme Court, he controversially floated a plan to increase the size of the Court from nine to fifteen justices to achieve a majority in favour of his reforms.⁴¹

Unlike mainstream parties, authoritarian populists oppose the power of apex courts not only because of their practical ability to hold up government reforms (and, by extension, any changes to the institutional order), but also for more fundamental reasons. Given their purely majoritarian perspective on democracy, authoritarian populists perceive the fact that a court, whose judges are at best indirectly elected, is able to invalidate laws passed by an elected legislature as illegitimate.⁴² Thereby, an unelected judiciary that is removed from direct popular input can easily be distorted into populist narratives that postulate a division between “the elite” and “the people”. This is furthermore facilitated by the fact that judges have strong incentives to stay out of political conflicts so as not to jeopardize their neutrality⁴³; they cannot easily fight back against attacks and must rely on other parties to defend their position. Even though authoritarian populists can also use proceedings before apex courts to publicize their own policy agenda and constrain the current government, the combination of a perceived lack of legitimacy and their institutional setup makes courts particularly suitable targets.

The constitutional position of constitutional and supreme courts is also what makes them particularly vulnerable to attacks. While they have an entrenched status in constitutions and tend to be shielded from overt political influence, they face an implementation problem. Since the judiciary, in the words of Alexander Hamilton, “has no influence over either the sword or the purse”,⁴⁴ courts lack the means to ensure that their rulings are followed. They depend on the faithful implementation of their decisions by political actors in government and parliament who fear electoral retribution in case of non-compliance. Evasion costs are particularly high when citizens have high regard for the judiciary and when the actions of judicial actors are seen as legitimate. Hence, the power of the judiciary, and its ability to function as a bulwark of liberal democracy, is contingent on high levels of public trust.⁴⁵ Consequently, eroding public trust can weaken courts even without any changes to constitutions or ordinary law. As we argue in the next sections, this is systematically exploited by authoritarian populists who use strategic delegitimization campaigns against apex courts.

3.2. Conceptualizing delegitimization strategies

Debate about political institutions, including criticism, is an essential feature of any democratic system. It allows both citizens and the political opposition to point out deficiencies and hold the government to account between elections. Courts are not exempt from criticism and debate, and may face criticism from the public as well as from politicians for certain decisions or with regard to the conduct of their members.⁴⁶ Given the need for public accountability of courts, criticism as such is not necessarily detrimental to public trust in the judiciary – where criticism includes suggestions for positive change, it can reaffirm the importance of courts for the political system as a whole.

Given their opposition to powerful constitutional or supreme courts, authoritarian populists will often comment negatively on courts. However, in doing so they do not merely criticize courts but frequently engage in strategic delegitimization campaigns. Although previous research on populism has often stressed its “rhetorical character”⁴⁷ and the distinctive quality of populist communication,⁴⁸ delegitimization has only received scant attention by scholars to date.⁴⁹ Delegitimization campaigns unfold through continuous rhetorical/verbal attacks against courts over a longer period of time. Rather than seeking to effect positive change by offering constructive criticism, authoritarian populists act as “norm saboteurs”.⁵⁰ Their campaigns aim to erode public support for the judiciary by suggesting that it systematically fails to achieve its functions. To this end, each attack links its criticism of the court with a superordinate narrative of failure and need for dramatic changes or replacing the current system.⁵¹ While delegitimization often draws on established populist motifs, it differs in that its aim is not simply to foster and mobilize a general anti-elite sentiment or dissatisfaction with the political establishment to improve one’s own electoral fortunes. Instead, it is directed at a specific institution with the aim of rendering it ineffective or paving the way for its abolition through a systematic erosion of public support.⁵²

Delegitimization strategies target the weak point of judiciaries, i.e. their reliance on high levels of public support to see their decisions implemented. Furthermore, judges are known to take public opinion into account and consider whether their rulings will

be acceptable to the population, so as not to endanger their legitimacy.⁵³ Therefore, delegitimization campaigns may also provide benefits to authoritarian populists in the form of more favourable decisions long before the public has lost complete trust in the court or actors have had the opportunity to introduce formal changes in its staffing or operations.⁵⁴ Finally, authoritarian “populists before power” face little to no costs in pursuing delegitimization campaigns. Given their extreme majoritarian and anti-elite ideology as well as their generally polarizing rhetoric, this rather serves to strengthen their brand.

3.3. Populist delegitimization strategies in practice

Using delegitimization to change public opinion on courts constitutes an effective strategy for populists seeking to weaken a key adversary and prepare the ground for more substantial changes once they come into office. In the context of courts and independent judiciaries, delegitimization strategies seek to foster the view that the current institutional order is ineffective, corrupt, or only serves the interests of a privileged few. Nevertheless, to push these narratives, populists need more concrete targets than “the judiciary” as such. We posit that delegitimization strategies against independent judiciaries follow a three-pronged approach, attacking (1) court decisions, (2) individual judges, and (3) particular courts or aspects of the judicial system (Figure 1). Attacks on each of these targets thereby seeks to connect criticism of the court with different superordinate narratives of systemic failure, overgeneralizing to portray any issue as part of a broken, illegitimate system in need of drastic change. At a theoretical level, all paths of attack are equifinal in that they have the potential to lead to the same outcome, i.e. the weakening of independent judiciaries through the erosion of public trust in decisions, judges, and institutions. In practice, the effectiveness of different avenues of attack and the choice of a particular strategy will likely be contingent on a number of factors, including the actors engaging in delegitimization, the specifics of the institution, its political environment, and the response of other actors. In the following, we briefly outline how strategies may unfold in more detail.

3.3.1. Attacking judicial decisions

Court decisions present straightforward targets for authoritarian populists and offer perhaps the most subtle way to engage in delegitimization campaigns. Such decisions are always subject to debate, especially in the case of constitutional courts, which often

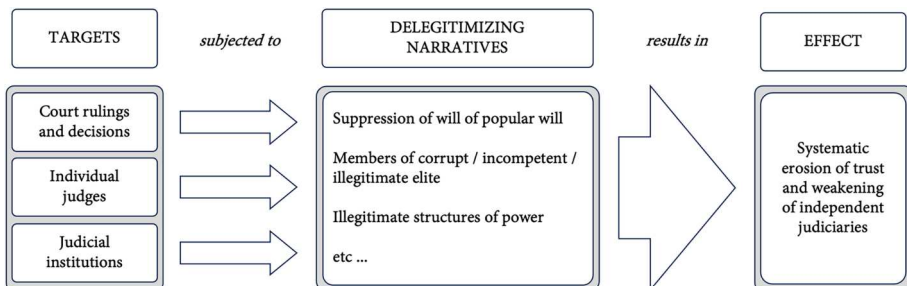


Figure 1. Populist delegitimization strategies against independent judiciaries.

deal with highly conflictual policy matters. However, the legitimacy of the judiciary is threatened when decisions are not merely criticized for their substance, and actors no longer focus on their content, but make (false) generalizations beyond the cases themselves. Decisions are thereby framed in a way that they can be linked to a narrative in which judicial decisions are portrayed as a means to suppress the alleged will of the people. For example, in 2021, the Slovak Constitutional Court rejected a public petition to hold a referendum on calling early elections to the National Council which had been elected only a year prior. Whereas the government focussed its criticism on the president, who had referred the petition to the court in the first place, several opposition parties used the decision to attack the court as such. Peter Pellegrini, leader of the left-populist HLAS party, claimed that the decision “denied [citizens] the opportunity to fulfil one of their fundamental democratic rights”, that the decision lacked “a democratic spirit” and set a “dangerous precedent for the future”.⁵⁵

Where populists in opposition use courts strategically to raise attention for their issues by starting proceedings against those in power, this can likewise present the basis for delegitimization campaigns. Thereby, any decision against them can be portrayed as proof that the judiciary defends the interests of the illegitimate ruling class. Nevertheless, where courts rule in their favour this can be used to bolster their anti-elite agenda as well, meaning that they benefit irrespective of the outcome. For instance, over the last years the Estonian far-right Conservative People’s Party (EKRE) has repeatedly turned to the constitutional chamber of the Supreme Court with various requests, ranging from the annulment of e-voting in legislative elections to a parliamentary decision to stop EKRE’s attempts to obstruct parliamentary proceedings, despite little chances of success. Yet, any time the court decided against them or refused to hear a case, EKRE MPs claimed that the court was “totally biased” and had “quite clearly crossed all reasonable boundaries”.⁵⁶

3.3.2. *Attacking individual judges*

Individual judges likewise present clear targets for delegitimization campaigns against courts. Whereas it is legitimate to question the conduct of individual judges where their behaviour appears to violate professional norms or suggests overdue partiality,⁵⁷ delegitimization campaigns seek to present judges as examples of the corrupt and privileged (political) elite that are opposed to the “pure” people. Apex court judges are usually elected or appointed by legislatures, government, or presidents, so that populist actors may portray judges as mere vicarious agents of their political opponents.⁵⁸ Yet even career judges, who are most frequently selected by judicial panels, are vulnerable to attacks as they lack the “popular” legitimacy desired by populists.

Continuous delegitimization campaigns against the judiciary by authoritarian populists have been best documented in the case of the Dutch Freedom Party (PVV) and its leader Geert Wilders. The chosen rhetoric thereby clearly illustrates how ad hominem attacks allow populists to portray judges as representatives of the privileged elites that seek to rule over the people. Successive PVV party manifestos have labelled judges as “left liberals in robes”, “divorced from reality”, “one-sided” and “tilting to the left”.⁵⁹ Following a survey in 2010 which revealed that almost a third of the incoming judges felt close to the left-liberal party D66 (compared to about 6 percent of the population at the time), this critique has been repeated many times in political debates about the judiciary.⁶⁰ Similar allegations against judges have also

repeatedly been levelled by the German “Alternative for Germany” (AfD) that has long accused “leftist judges” of letting their “criminal friends” go free.⁶¹

3.3.3. *Attacking judicial institutions*

Judicial institutions present less concrete targets for delegitimization campaigns, and attacks will therefore often overlap with, or be part of, campaigns against decisions or judges (e.g. by referencing the system of their selection). Nevertheless, attacks can also be directed against particular (procedural) aspects of courts or the judicial system, or patterns in outcomes that ostensibly go against the will of the people. While democratic criticism will offer positive suggestions for change, authoritarian populists are most likely to portray courts and the judiciary wholesale as illegitimate structures of power that must be abolished or curtailed. Thereby, attacks do not need to be limited to apex courts, and lower courts may be subject to attacks as well.

A common motif is the allegation that the current judicial system illegitimately favours certain actors – either “the elites” or others who are excluded from “the people” (e.g. foreigners) – by giving them more lenient sentences or not prosecuting them at all.⁶² Similarly, authoritarian populists have often portrayed any proceedings against them as a plot of the elite to suppress them. For instance, Marine Le Pen and the French National Rally have long claimed that the prosecution of Le Pen and others for embezzling funds from the European Parliament was orchestrated by the French interior minister and the president of the European parliament.⁶³ Delegitimization of the judiciary as such may also be connected to the dealings of courts with other institutions and seek to politicize innocuous contacts between the judiciary and government representatives or members of other parties as evidence of political coordination. For instance, in 2021, the Alternative for Germany (AfD) tried to cast an annual dinner of the federal government with judges of the Federal Constitutional Court as an attempt to conspire against the party, after it had previously launched proceedings against Chancellor Merkel. Notably, while the party’s petition to make the respective judges recuse themselves from proceedings was rejected, the Court eventually ruled in the AfD’s favour, which the party celebrated as a victory⁶⁴ – highlighting once again that such parties seek to benefit from proceedings they initiate regardless of outcome.

4. *Delegitimization strategies and the populist toolkit*

Delegitimization campaigns enable authoritarian populists to weaken independent judiciaries before they come to power. Strategic and systematic attacks on decisions, judges, and institutions, steadily chip away at the legitimacy of an independent judiciary. In doing so, it reduces public trust and severely limits the ability of courts to function effectively. Thus authoritarian populists can weaken the safeguards of liberal democracy even where they lack the majorities to effect change by formal-legal means. Nevertheless, delegitimization is also an important part of the populist toolkit where authoritarian populists have already achieved the required majorities to introduce more substantial changes. In fact, delegitimization can be considered as the first step in the implementation of an authoritarian constitutional agenda, as any substantial reform requires some type of justification.

Table 1 situates strategies of delegitimization within the wider toolkit of populist actors seeking to remove the constraints imposed by independent judiciaries and other counter-majoritarian constitutions. Rhetorical attacks are usually the only tool

Table 1. Majority status and populist attacks on counter-majoritarian institutions.

<i>Governing status</i>		<i>Before Power</i> Minority party / Opposition	<i>In Power</i> Majority party / Coalition government	<i>In Power</i> Supermajority
1	Delegitimization of decisions, individuals, and institutions through rhetorical attacks	✓	✓	✓
2a	Discontinuation and non-implementation of decisions		✓	✓
2b	Disruption of institutional functioning and/or packing with loyal actors *		(✓)	✓
3	Disabling or replacing institutions through change of constitutional law			✓

Note: * Depending on constitutional protection of the institutions and specific opportunities (e.g. vacancies).

at the disposal of “populist before power”. This should not be taken as evidence for the limited impact of attacks. Contemporary populism is intimately linked with the changing media landscape,⁶⁵ and the rise of social media has made it easier than ever to circumvent the gatekeepers of conventional media.⁶⁶ Research on Germany has shown that supporters of the AfD, i.e. those who are likely to be particularly receptive to the party’s anti-judiciary rhetoric, show significantly lower levels of support for the Federal Constitutional Court.⁶⁷ Thus, even where populist do not have the political standing or resources to access mainstream media to propagate their ideas, they possess a cheap and highly effective means to shape public opinion.⁶⁸

When populists enter government, they are usually not in a position to immediately replace existing institutions. Depending on the institutional entrenchment of counter-majoritarian institutions, it may only be possible for them to discontinue the application of particular decisions (2a). Given the opportunity, they may also be able to disrupt the institutional functioning and/or “pack” courts with loyal allies (2b). Such efforts will however still be accompanied by delegitimization strategies, which provides the basis for justifying and increasing the acceptance of reforms. For instance, before embarking on some of the more fundamental changes to the judiciary, the Polish government hired a US-based PR firm to run a billboard campaign in Poland and abroad called “Fair Courts” that presented judges as corrupt and incompetent and justified the reform as necessary to eliminate the “impunity” of judges.⁶⁹ Yet, even negative reactions to this campaign played into the hands of the government as it could uphold its narrative of fighting against entrenched elites, trying to prevent the implementation of the will of the people.

When authoritarian populists command a supermajority (or find means to circumvent such requirements) which allows them to enact substantial changes and disable or replace the entire institution (3), delegitimization strategies will continue nonetheless. Summoning ever-new enemies is part of the populist performance of crisis to mobilize people for their cause and a means to uphold their anti-elite narrative. The purported crisis then provides the basis and justification for the most substantial changes. Turkey presents a particularly illustrative example in this regard. Since coming to power in 2003, the ruling party implemented a series of controversial constitutional reforms and consolidated its power over the judiciary. Nevertheless, strategic delegitimization through verbal attacks against judges, decisions, and courts remains ever present.⁷⁰

Finally, although authoritarian populists may initially only target independent judiciaries or other counter-majoritarian institutions, the delegitimization of one pillar of

liberal democracy may affect the political system as whole. Where fundamental constitutional norms are repeatedly and intentionally violated, this not only weakens the institutions covered by those norms, but will eventually also destabilize the system as whole.⁷¹

5. Conclusion

Apex courts and other counter-majoritarian institutions tasked with constraining the power of political majorities increasingly find themselves challenged by the rise of authoritarian populist parties and politicians. As we have argued in this paper, these actors not only pose a threat when they command supermajorities and can enact constitutional changes, but “populists *before* power” also have the potential to inflict considerable damage. Focusing on independent judiciaries as targets of attack, we have outlined how strategic delegitimization campaigns, which link criticism of court decisions, judges, and judicial institutions with narratives of systemic failure, can be employed to systematically destabilize judiciaries by eroding public trust. Delegitimization is not an end in itself, but reduces the ability of these courts to fulfil their constitutional functions and is often only the first step in preparing more fundamental change. Our conceptual model thereby provides the basis for future empirical research in comparative and country-specific perspectives. Most importantly, it presents an important addition to research on authoritarian “populists in power” and means to understanding how these actors can strategically prepare far-reaching reforms and often implement them with little public resistance. In both retrospective analyses and evaluation of current developments, our model can be used to differentiate more clearly between mere (democratic) criticism of judiciaries and attacks on their independence with malicious intent. Moreover, by specifying three different levels of attack, it allows for a more nuanced analysis of how delegitimization differs depending on national contexts or political circumstances, and for the development of explanatory models. Our arguments should also apply to other counter-majoritarian institutions such as independent regulatory agencies or central banks, which are equally vulnerable to strategic delegitimization and have shown to be primary targets for authoritarian populists.⁷²

To fully understand the nature and impact of populist delegitimization strategies, we must also direct our focus onto counter-reactions to these attempts. After all, counter-majoritarian institutions are far from defenceless and neither are other political parties and the public silent witnesses to the attacks on apex courts. Research has shown that populist rhetoric creates incentives and opportunities for democratic parties to distance themselves from populist discourse,⁷³ yet it is unclear under which conditions this can successfully fend off delegitimizing narratives. Democratic parties definitely play a key role in strengthening the institutional defences of constitutional courts by ensuring that fundamental changes can only be achieved through supermajorities. However, discussions in Germany about enshrining provisions in the constitution that were previously covered only by ordinary law show that this can be difficult to achieve even when there is a general consensus on its necessity.⁷⁴ With regard to the public, trust in the judiciary is perhaps most important. As the level of trust varies greatly between judicial systems,⁷⁵ some courts are more vulnerable to delegitimization campaigns than others. However, research still has to ascertain whether there is a minimum threshold at which courts can withstand attacks more

easily, how quickly trust erodes in response to such efforts, and how long the effects of delegitimization last – especially after more fundamental changes have already taken place.⁷⁶ Finally, while judges have incentives to publicly stress their neutrality, they need not be passive targets.⁷⁷ Improving communication, e.g. through targeted press releases, may be a viable strategy to increase trust in the court.⁷⁸ Similarly, judges associations may be able to advocate more effectively where individual judges feel uncomfortable to speak out.⁷⁹ Considering these counter-reactions of politicians, the public, and courts to delegitimization attempts thereby helps to arrive at a more nuanced picture of the relationship between populism and democracy.

Notes

1. Bugarcic, “Could Populism Be Good”; Tushnet “Varieties of Populism”.
2. Bugarcic, “Two Faces of Populism”; Rovira Kaltwasser, “Ambivalence of Populism”.
3. Blokker, “Constitutional Resistance”.
4. Aydin-Cakir, “Effect of Court-curbing”; Drinóczi and Bień-Kacała, “Illiberal Constitutionalism”.
5. Kosar and Sipulova, “How to Fight Court-Packing?”
6. Curato, “Toxic Democracy?”.
7. Wolf, “A Populist President”.
8. Kromphardt and Salamone, “Unpresidential”.
9. Roznai, Dixon, and Landau, “Judicial Reform or Abusive Constitutionalism”.
10. Cf. Pappas, “Populists in Power”; Urbinati, “Political Theory of Populism”.
11. Mudde, “Populist Zeitgeist,” 544; Abts and Rummens, “Populism versus Democracy,” 408.
12. Mudde and Rovira Kaltwasser, “Populism and Liberal Democracy,” 8–9.
13. Blokker, “Varieties of Populist Constitutionalism”.
14. Blokker, “Populism as a Constitutional Project”. There is some disagreement as to whether populist constitutionalism accurately describes prominent examples of controversial constitutional reforms, e.g. in Hungary and in Poland. Szente argues that the reforms lack distinctive elements of populist constitutionalism and are better characterized as authoritarian only; Szente, “Populist or Authoritarian Constitutionalism”.
15. Rummens, “Populism as a Threat”.
16. Abts and Rummens, “Populism versus Democracy”.
17. Habermas, “Constitutional Democracy”.
18. Kelsen, *Hüter der Verfassung*.
19. Urbinati, “Principle of Majoritarianism”.
20. Blokker, “Constitutional Resistance”; “Populist Constitutionalism”.
21. Apart from judiciaries (see below), this includes central banks, ombuds institutions or international organizations; Zürn, “Non-majoritarian Institutions”.
22. See Gärditz and Steinbeis, “Polen und Ungarn”.
23. Aydin-Cakir, “Effect of Court-curbing”.
24. Bánkuti, Halmai, and Scheppele, “Disabling the Constitution”.
25. von Notz, “How to Abolish Democracy”.
26. Tushnet, “Authoritarian Constitutionalism,” 436.
27. Tushnet, “Authoritarian Constitutionalism”.
28. Urribarri, “Venezuelan Supreme Court”.
29. Aydin-Cakir, “Effect of Court-curbing”.
30. Sadurski, *Poland’s Constitutional Breakdown*.
31. Aydin-Cakir, “Effect of Court-curbing”.
32. The chamber was later found to be in violation of EU law; Sadurski, “The Disciplinary Chamber”.
33. See e.g., Holtz-Bacha, “Public Media Under Attack”. However, this ambition cannot necessarily be generalized to all populist governments; some have even suggested a potential positive effect of selected constitutional reforms pursued by populists; cf. König and Swalve, “Regression unter populistischen Regierungen”.

34. Urbinati, "Principle of Majoritarianism".
35. Where extreme parties enter coalitions with mainstream partners, they are unlikely to be successful in pushing for a fundamental change in institutions and often adopt more moderate policy positions; König and Swalve, "Populist Parties in Government".
36. Lijphart, *Patterns of Democracy*; Tsebelis, *Veto Players*.
37. Brouard and Hönnige, "Constitutional Courts as Veto Players".
38. Even staggered renewal, such as in the United States or the Czech Republic, can have dramatic effects on the majority situation.
39. For instance, the German Green Party, having first entered the Bundestag in 1983, was only able to make its first appointment to the Constitutional Court in 1998, while the far-left "Die Linke" (successor to the ruling party of the German Democratic Republic) has never been allowed to nominate a candidate.
40. Keeler and Stone, "Judicial-Political Confrontation".
41. In response to these plans, the US established a strong norm against court packing (although this has recently been challenged more and more openly by Donald Trump and other Republicans); Postema, "Constitutional Norms," 105f.
42. See also discussions of the so-called "counter-majoritarian difficulty", Bickel, *The Least Dangerous Branch*.
43. Sternberg et al., "Entscheidungen des Bundesverfassungsgerichts," 575.
44. Hamilton, *Federalist No. 78*.
45. Vanberg, "Legislative-judicial Relations"; *Constitutional review in Germany*.
46. Sternberg et al., "Entscheidungen des Bundesverfassungsgerichts," 571.
47. Urbinati, "Political Theory of Populism".
48. Jagers and Walgrave, "Populism as Communication Style".
49. Research has primarily focused on media criticism, see Egelhofer, Aaldering, and Lecheler, "Delegitimizing the Media"; Buttgeriet et al., "Beyond Lügenpresse".
50. Postema, "Constitutional Norms," 111.
51. Cf. Buttgeriet et al., "Beyond Lügenpresse," 3–4.
52. Cf. Buttgeriet et al., "Beyond Lügenpresse," 4.
53. Sternberg et al., "Entscheidungen des Bundesverfassungsgerichts".
54. For instance, apex courts in many democracies can ban parties seeking to overthrow the system of government or at least exclude them from state subsidies. Especially for parties relying heavily on state financing, weakening courts can be key to ensuring their own survival.
55. Noviny.sk, "Reakcie na rozhodnutie".
56. ERR, "Supreme Court Ruling was Biased".
57. See e.g. debates over US Supreme Court justice Clarence Thomas' links to Republican donors, Debusman, "Thomas Defends Luxury Trips".
58. This is exacerbated when nominees have previously served in important political roles, see e.g. the debate about the appointment of Peter Müller, state premier and justice minister of the Saarland, as a justice on the German Federal Constitutional Court in 2011. WELT, "Ex-Ministerpräsident wird Verfassungsrichter".
59. Mazzoleni and Voerman, "In the Name of Sovereignty".
60. Visscher, "Grote aantal rechters".
61. von Storch, "Linke Richter".
62. Dolle, "Justiz viel zu lasch".
63. Goury-Laffont, "Marine LePen's Career".
64. BVerfG, "Erfolgleses AfD-Ablehnungsgesuch".
65. Manucci, "Populism and the Media".
66. van Kessel and Castelein, "Shifting the Blame".
67. Arzheimer, "Identification with Anti-system Party".
68. Ernst et al., "Extreme Parties and Populism".
69. Matthes, "Judges as Activists"; Moliterno and Čuroš, "Attacks on Judicial Independence".
70. Aydin-Cakir and Driscoll, "Motives and Means".
71. Postema, "Constitutional Norms," 108.
72. Zürn, "Non-majoritarian Institutions".
73. Valentim and Widmann, "Radical-right Success".
74. Kornmeier, "Schutz des Verfassungsgerichts".

75. Sternberg, Brouard, and Hönnige, “Legitimacy-conferring Capacity of Courts”.
76. For some potentially indicative results see Aydin-Cakir, “Effect of Court Curbing”; Magalhães and Garoupa, “Public Trust in Courts”.
77. Matthes, “Judges as Activists”.
78. Meyer, “Media Coverage of Court Decisions”.
79. Puleo and Coman, “Explaining Judges’ Opposition”.

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Bibliography

- Abts, Koen, and Stefan Rummens. “Populism Versus Democracy.” *Political Studies* 55, no. 2 (2007): 405–424. doi:[10.1111/j.1467-9248.2007.00657.x](https://doi.org/10.1111/j.1467-9248.2007.00657.x).
- Arzheimer, Kai. “Identification with an Anti-System Party Undermines Diffuse Political Support: The Case of Alternative for Germany and Trust in the Federal Constitutional Court.” *Party Politics* (2024): 1–13. doi:[10.1177/13540688241237493](https://doi.org/10.1177/13540688241237493).
- Aydin-Cakir, Aylin. “The Varying Effect of Court-Curbing: Evidence from Hungary and Poland.” *Journal of European Public Policy* 31, no. 5 (2024): 1179–1205. doi:[10.1080/13501763.2023.2171089](https://doi.org/10.1080/13501763.2023.2171089).

- Aydin-Cakir, Aylin, and Amanda Driscoll. "On Motives and Means: How Approach and Justification for Court-Curbing Impact Public Trust." *Democratization* (2024): 1–25. doi:10.1080/13510347.2024.2428271.
- Bánkuti, Miklós, Gábor Halmai, and Kim Lane Scheppele. "Disabling the Constitution: Hungary's Illiberal Turn." *Journal of Democracy* 23, no. 3 (2012): 138–146. doi:10.1353/jod.2012.0054.
- Bickel, Alexander M. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. New Haven: Yale University Press, 1986.
- Blokker, Paul. "Constitutional Resistance in Populist Times." *Federal Law Review* 48, no. 4 (2020): 511–528. doi:10.1177/0067205x20955102.
- Blokker, Paul. "Populism as a Constitutional Project." *International Journal of Constitutional Law* 17, no. 2 (2019): 536–553. doi:10.1093/icon/moz028.
- Blokker, Paul. "Varieties of Populist Constitutionalism: The Transnational Dimension." *German Law Journal* 20, no. 3 (2019): 332–350. doi:10.1017/glj.2019.19.
- Brouard, Sylvain, and Christoph Hönnige. "Constitutional Courts as Veto Players: Lessons from the United States, France and Germany." *European Journal of Political Research* 56, no. 3 (2017): 529–552. doi:10.1111/1475-6765.12192.
- Bugaric, Bojan. "The Two Faces of Populism: Between Authoritarian and Democratic Populism." *German Law Journal* 20, no. 3 (2019): 390–400. doi:10.1017/glj.2019.20.
- Bugaric, Bojan. "Could Populism be Good for Constitutional Democracy?" *Annual Review of Law and Social Science* 15, no. 1 (2019): 41–58. doi:10.1146/annurev-lawsocsci-101518-042927.
- Buttgerreit, Lina, Michael Hameleers, Katjana Gattermann, and Andreas Schuck. "Beyond 'Lügenpresse': How Politicians Criticize and Delegitimize the Media in Germany." *The International Journal of Press/Politics* (2024): 1–23. doi:10.1177/19401612241291826.
- BVerfG. "Erfolgloses AfD-Ablehnungsgesuch: Abendessen mit Regierung macht BVerfG-Richter nicht befangen." July 20, 2021; <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2022/bvg22-053.html>.
- Curato, Nicole. "Toxic Democracy? The Philippines in 2018." *Southeast Asian Affairs* (2019): 261–274. doi:10.1355/9789814843164-018.
- Debusmann, Bernd, Jr. "Supreme Court's Clarence Thomas Defends Luxury Trips." *BBC*, April 8, 2023. <https://www.bbc.com/news/world-us-canada-65215407>.
- Dolle, Andre. "AfD: Deutsche Justiz ist viel zu lasch." *Braunschweiger Zeitung*, March 6, 2016. <https://www.braunschweiger-zeitung.de/region/article152216227/AfD-Deutsche-Justiz-ist-viel-zu-lasch.html>.
- Drinóczi, Timea, and Agnieszka Bień-Kacała. "Illiberal Constitutionalism: The Case of Hungary and Poland." *German Law Journal* 20, no. 8 (2019): 1140–1166. doi:10.1017/glj.2019.83.
- Egelhofer, Jana Laura, Loes Aaldering, and Sophie Lecheler. "Delegitimizing the Media? Analyzing Politicians' Media Criticism on Social Media." *Journal of Language and Politics* 20, no. 5 (2021): 653–675. doi:10.1075/jlp.20081.ege.
- Ernst, Nicole, Sven Engesser, Florin Büchel, Sina Blassnig, and Frank Esser. "Extreme Parties and Populism: An Analysis of Facebook and Twitter Across Six Countries." *Information, Communication & Society* 20, no. 9 (2017): 1347–1364. doi:10.1080/1369118x.2017.1329333.
- ERR. "Pölluas: Supreme Court Ruling was Biased." June 22, 2023. <https://news.err.ee/1609015523/polluaas-supreme-court-ruling-was-biased>.
- Gärditz, Klaus Ferdinand, and Maximilian Steinbeis. "Die meisten Dinge, die in Polen und Ungarn gelaufen sind, könnten ohne weiteres hier auch passieren." *VerfBlog*, February 22, 2018, <https://verfassungsblog.de/die-meisten-dinge-die-in-polen-und-ungarn-gelaufen-sind-koennten-ohne-weiteres-hier-auch-passieren/>.
- Goury-Laffont, Victor. "Verdict in Trial that Could Destroy Marine Le Pen's Career to Come on Mar. 31." *Politico*, November 27, 2024. <https://www.politico.eu/article/marine-le-pen-learn-verdict-date-trial-destroy-political-career/>.
- Habermas, Jürgen. "Constitutional Democracy: A Paradoxical Union of Contradictory Principles?" *Political Theory* 29, no. 6 (2001): 766–781. doi:10.1177/0090591701029006002.
- Hamilton, Alexander. *Federalist* No. 78, 1788.
- Holtz-Bacha, C. "The Kiss of Death. Public Service Media Under Right-Wing Populist Attack." *European Journal of Communication* 36, no. 3 (2021): 221–237. doi:10.1177/0267323121991334.
- Jagers, Jan, and Stefaan Walgrave. "Populism as Political Communication Style: An Empirical Study of Political Parties' Discourse in Belgium." *European Journal of Political Research* 46, no. 3 (2007): 319–345. doi:10.1111/j.1475-6765.2006.00690.x.

- Keeler, John T.S., and Alec Stone. "Judicial-Political Confrontation in Mitterrand's France." In *The Mitterrand Experiment*, edited by Stanley Hoffmann, Sylvia Malzacher, and George Ross, 161–181. Oxford: Polity Press, 1987.
- Kelsen, Hans. *Wer soll der Hüter der Verfassung sein?* Berlin-Grunewald: W. Rothschild, 1931.
- König, Jasmin Sarah, and Tilko Swalve. "Do Populist Parties in Government Produce Unconstitutional Policies? Evidence from Austria, 1980–2021." *European Journal of Political Research* 62, no. 3 (2023): 806–829. doi:10.1111/1475-6765.12573.
- König, Jasmin Sarah, and Tilko Swalve. "Zum Verhältnis von demokratischer und konstitutioneller Regression unter populistischen Regierungen. Eine empirische Analyse." In *Zur Diagnose demokratischer Regression (Leviathan Sonderband 40)*, edited by Peter Niesen, 255–281. Baden-Baden: Nomos, 2023.
- Kornmeier, Claudia. "Schutz des Verfassungsgerichts: Besser etwas als nichts." *tageschau.de*, December 19, 2024. <https://www.tagesschau.de/inland/innenpolitik/bundesverfassungsgericht-schutz-bundestag-100.html>.
- Kosar, David, and Katarina Sipulova. "How to Fight Court-Packing?" *Constitutional Studies* 6 (2020): 133–164.
- Kromphardt, Christopher D., and Michael F. Salamone. "Unpresidential! Or: What Happens When the President Attacks the Federal Judiciary on Twitter." *Journal of Information Technology & Politics* 18, no. 1 (2021): 84–100. doi:10.1080/19331681.2020.1805389.
- Lijphart, Arend. *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*. Newhaven, CT: Yale University Press, 2012.
- Magalhães, Pedro C., and Nuno Garoupa. "Populist Governments, Judicial Independence, and Public Trust in the Courts." *Journal of European Public Policy* 31, no. 9 (2024): 1–27. doi:10.1080/13501763.2023.2235386.
- Manucci, L. "Populism and the Media." In *The Oxford Handbook of Populism*, edited by Cristobal Rovira Kaltwasser, Paul A. Taggart, Paulina Ochoa Espejo, and Pierre Ostiguy, 467–488. Oxford: Oxford University Press, 2017.
- Matthes, Claudia-Y. "Judges as Activists: How Polish Judges Mobilise to Defend the Rule of law." *East European Politics* 38, no. 3 (2022): 468–487. doi:10.1080/21599165.2022.2092843.
- Mazzoleni, Oscar, and Gerrit Voerman. "In the Name of Sovereignty. Right-Wing Populism and the Power of the Judiciary in Western Europe." *Partecipazione e Conflitto* 13, no. 3 (2020): 1417–1432. doi:10.1285/i20356609v13i3p1417.
- Meyer, Philipp. "Explaining Media Coverage of Constitutional Court Decisions in Germany: The Role of Case Characteristics." *Political Communication* 38, no. 4 (2021): 426–446. doi:10.1080/10584609.2020.1784329.
- Moliterno, James E., and Peter Čuroš. "Recent Attacks on Judicial Independence: The Vulgar, the Systemic, and the Insidious." *German Law Journal* 22, no. 7 (2021): 1159–1191. doi:10.1017/glj.2021.63.
- Mudde, Cas. "The Populist Zeitgeist." *Government and Opposition* 39, no. 4 (2004): 541–563. doi:10.1111/j.1477-7053.2004.00135.x.
- Mudde, Cas, and Cristóbal Rovira Kaltwasser. "Populism and (Liberal) Democracy: A Framework for Analysis." In *Populism in Europe and the Americas: Threat or Corrective for Democracy?*, edited by Cas Mudde, and Cristóbal Rovira Kaltwasser, 1–26. Cambridge: Cambridge University Press, 2012.
- Noviny.sk. "Reakcie na rozhodnutie Ústavného súdu: Pellegrini to označil za čierny deň demokracie." July 7, 2021. <https://www.noviny.sk/slovensko/617933-reakcie-na-rozhodnutie-ustavneho-sudu-pellegrini-to-oznacil-za-cierny-den-demokracie>.
- Pappas, Takis S. "Populists in Power." *Journal of Democracy* 30, no. 2 (2019): 70–84. doi:10.1353/jod.2019.0026.
- Postema, Gerald J. "Constitutional Norms—Erosion, Sabotage, and Response." *Ratio Juris* 35, no. 2 (2022): 99–122. doi:10.1111/raju.12345.
- Puleo, Leonardo, and Ramona Coman. "Explaining Judges' Opposition When Judicial Independence is Undermined: Insights from Poland, Romania, and Hungary." *Democratization* 31, no. 1 (2024): 47–69. doi:10.1080/13510347.2023.2255833.
- Roznai, Yaniv, Rosalind Dixon, and David E. Landau. "Judicial Reform or Abusive Constitutionalism in Israel." *Israel Law Review* 56, no. 3 (2023): 292–304. doi:10.1017/s0021223723000171.
- Rummens, Stefan. "Populism as a Threat to Liberal Democracy." In *The Oxford Handbook of Populism*, edited by Cristobal Rovira Kaltwasser, Paul A. Taggart, Paulina Ochoa Espejo, and Pierre Ostiguy, 554–570. Oxford: Oxford University Press, 2017.

- Sadurski, Wojciech. "The Disciplinary Chamber May Go – but the Rotten System will Stay." *Verfassungsblog*, August 11, 2021. <https://verfassungsblog.de/the-disciplinary-chamber-may-go-but-the-rotten-system-will-stay/>.
- Sadurski, Wojciech. *Poland's Constitutional Breakdown*. Oxford: Oxford University Press, 2019.
- Sternberg, Sebastian, Sylvain Brouard, and Christoph Hönnige. "The Legitimacy-Confering Capacity of Constitutional Courts: Evidence from a Comparative Survey Experiment 1." *European Journal of Political Research* 61, no. 4 (2022): 973–996. doi:10.1111/1475-6765.12480.
- Sternberg, Sebastian, Thomas Gschwend, Caroline Wittig, and Benjamin G. Engst. "Zum Einfluss der öffentlichen Meinung auf Entscheidungen des Bundesverfassungsgerichts. Eine Analyse von abstrakten Normenkontrollen sowie Bund-Länder-Streitigkeiten 1974–2010." *Politische Vierteljahresschrift* 56, no. 4 (2015): 570–598. doi:10.5771/0032-3470-2015-4-570.
- Szente, Zoltán. "The Myth of Populist Constitutionalism in Hungary and Poland: Populist or Authoritarian Constitutionalism?" *International Journal of Constitutional Law* 21, no. 1 (2023): 127–155. doi:10.1093/icon/moad014.
- Tsebelis, George. *Veto Players: How Political Institutions Work*. Princeton, NJ: Princeton University Press, 2002.
- Tushnet, Mark. "Authoritarian Constitutionalism." *Cornell Law Review* 100 (2015): 391–461.
- Tushnet, Mark. "Varieties of Populism." *German Law Journal* 20, no. 3 (2019): 382–389. doi:10.1017/glj.2019.27.
- Urbinati, Nadia. "Populism and the Principle of Majority." In *The Oxford Handbook of Populism*, edited by Cristobal Rovira Kaltwasser, Paul A. Taggart, Paulina Ochoa Espejo, and Pierre Ostiguy, 571–589. Oxford: Oxford University Press, 2017.
- Urbinati, Nadia. "Political Theory of Populism." *Annual Review of Political Science* 22 (2019): 111–127. doi:10.1146/annurev-polisci-050317-070753.
- Urribarri, Raul A. Sanchez. "Courts Between Democracy and Hybrid Authoritarianism: Evidence from the Venezuelan Supreme Court." *Law & Social Inquiry* 36, no. 4 (2011): 854–884. doi:10.1111/j.1747-4469.2011.01253.x.
- Valentim, Vicente, and Tobias Widmann. "Does Radical-Right Success Make the Political Debate More Negative? Evidence from Emotional Rhetoric in German State Parliaments." *Political Behavior* 45, no. 1 (2023): 243–264. doi:10.1007/s11109-021-09697-8.
- Vanberg, Georg. "Legislative-judicial Relations: A Game-Theoretic Approach to Constitutional Review." *American Journal of Political Science* 45, no. 2 (2001): 346–361. doi:10.2307/2669345.
- Vanberg, Georg. *The Politics of Constitutional Review in Germany*. Cambridge: Cambridge University Press, 2004.
- Van Kessel, Stijn, and Remco Castelein. "Shifting the Blame. Populist Politicians' Use of Twitter as a Tool of Opposition." *Journal of Contemporary European Research* 12, no. 2 (2016): 594–614. doi:10.30950/jcer.v12i2.709.
- Visscher, J. "Grote aantal rechters met een D66-achtergrond baart zorgen." October 29, 2010. <https://archive.is/DNt2g#selection-637.15-981.430>.
- von Notz, Anna. "How to Abolish Democracy: Electoral System, Party Regulation and Opposition Rights in Hungary and Poland." *Verfassungsblog*, December 10, 2018. <https://verfassungsblog.de/how-to-abolish-democracy-electoral-system-party-regulation-and-opposition-rights-in-hungary-and-poland/>.
- von Storch, Beatrix. "Linke Richter lassen ihre kriminellen Freunde unbehelligt laufen." July 5, 2023. <https://www.freiewelt.net/blog/linke-richter-lassen-ihre-kriminellen-freunde-unbehelligt-laufen-10093632/>.
- WELT. "Ex-Ministerpräsident Müller wird Verfassungsrichter." November 25, 2011. <https://www.welt.de/politik/deutschland/article13734856/Ex-Ministerpraesident-Mueller-wird-Verfassungsrichter.html>.
- Wolf, Sonja. "A Populist President Tests El Salvador's Democracy." *Current History* 120, no. 823 (2021): 64–70. doi:10.1525/curh.2021.120.823.64.
- Zürn, Michael. "How Non-majoritarian Institutions Make Silent Majorities Vocal: A Political Explanation of Authoritarian Populism." *Perspectives on Politics* 20, no. 3 (2022): 788–807. doi:10.1017/s1537592721001043.