

CONSTITUTIONALISM IN CRISIS: ANALYZING THE EROSION OF DEMOCRATIC NORMS IN COMPARATIVE PERSPECTIVE

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Constitutionalism in Crisis: Analyzing the Erosion of Democratic Norms in Comparative Perspective

Abstract This dissertation analyzes the current decline of constitutionalism and democratic principles in a deliberately selected comparative sample of nations. This study employs a mixed-methods strategy that integrates cross-national quantitative indicators with comprehensive process tracing to investigate the reasons and mechanisms behind the susceptibility of constitutions and constitutional practices, previously conducive to liberal democratic governance, to systematic erosion. I construct a theoretical framework that conceptualizes constitutionalism as a collection of statutory regulations, institutional safeguards, and informal conventions. The analysis delineates prevalent erosion mechanisms—instrumental constitutional alteration, judiciary capture, electoral management politicization, suppression of civil society and media, and abuse of emergency powers—and contrasts their sequencing across various examples. The study develops a typology of erosion pathways and provides specific policy recommendations for local and international stakeholders seeking to enhance constitutional resilience.

Keywords: constitutionalism, democratic erosion, backsliding, comparative politics, rule of law, judicial independence, process tracing

1. Introduction

1.1 Problem statement

Since the early 2010s, scholars, policymakers, and civil society organizations have recorded a concerning global trend: the erosion of constitutional limitations that previously curtailed presidential authority and safeguarded fundamental rights. Elections continue in numerous affected nations; however, constitutional frameworks and democratic principles have been undermined, resulting in regimes that maintain superficial democratic appearances while eroding liberal safeguards. This dissertation asks: **How and why do constitutionalism and democratic norms erode, and what explains variation in outcomes across countries?**

1.2 Research questions

1. What are the principal mechanisms through which constitutionalism is eroded in contemporary cases of democratic backsliding?
2. How do sequencing and combinations of mechanisms vary across cases and political contexts?

3. Which institutional and social factors (e.g., constitutional design, party system fragmentation, media independence, civil society strength) correlate with resilience versus vulnerability to erosion?
4. What policy levers are available to domestic and international actors to strengthen constitutional resilience?

1.3 Contribution

This dissertation enhances discussions on democratic backsliding by focusing on constitutionalism as a distinct analytical entity (a synthesis of design, law, and norm), by merging qualitative process tracing with cross-national indicator analysis to delineate both sequence and scope, and by providing a comparative typology of erosion pathways that can inform both theoretical frameworks and policy-making.

2. Literature review

2.1 Democratic backsliding and authoritarian resurgence

Research on democratic erosion has expanded significantly within the fields of political science and law. Research conducted by scholars utilizing expert-coded measures (e.g., V-Dem, Freedom House) has documented a deterioration in liberal democratic indicators during the mid-2000s. Scholarship highlights leader-driven strategies, institutional manipulation, and the influence of crises in facilitating democratic decline.

2.2 Constitutionalism: rules, institutions, and norms

A substantial body of research in constitutional theory and comparative constitutional law regards constitutions as not merely legal documents but as frameworks integrated within political activity. Essential elements comprise: division of powers, judicial autonomy, safeguarding of fundamental rights, electoral integrity, and principles of mutual tolerance and institutional restraint.

2.3 Mechanisms of erosion

Academics recognize various mechanisms, including constitutional revisions or amendments, court-packing, and judicial reforms, that diminish independence, manipulation, or control of electoral management bodies, as well as limitations on media and civil society, weaponized emergency powers, and the employment of legalistic instruments to delegitimize adversaries.

2.4 Comparative and methodological approaches: Comparative research has employed both quantitative metrics to discern overarching patterns and qualitative

case studies to delineate causal sequences. Recent literature advocates for mixed-methods designs that link macro patterns to micro-mechanisms.

3. Theory and conceptual framework

3.1 Defining constitutional erosion

I characterize constitutional erosion as the persistent diminishment of constitutional limitations—legal, institutional, and normative—that once effectively restricted state authority and safeguarded rights. Erosion can be either partial, focusing on specific institutions, or systemic, impacting several limitations.

3.2 Causal mechanisms

I propose five central mechanisms:

- **Instrumental amendments and legal re-engineering:** using amendments or new laws to alter rules in ways that advantage the ruling coalition.
- **Judicial capture:** purging, packing, or subordinating courts.
- **Electoral manipulation:** changing electoral laws, districting, or election administration to favor incumbents.
- **Civil society and media control:** regulatory and informal pressures to stifle independent actors.
- **Crisis exploitation and emergency powers:** using real or manufactured crises to expand executive authority.

These mechanisms operate through two enabling conditions: (1) **political opportunity structures** (e.g., electoral mandates, fragmented opposition, weak parties), and (2) **institutional vulnerabilities** (e.g., centralized appointment powers, weak constitutional entrenchment, weak oversight institutions).

3.3 Hypotheses

- H1: Countries with constitutional systems that allow easy amendment and concentrated appointment powers will experience faster, more systemic erosion.
- H2: A sequence characterized by initial control of media and civil society followed by judicial capture leads to more durable autocratic outcomes than the reverse sequence.

- H3: Strong international scrutiny and cross-border networks of civil society slow down—but do not prevent—erosion when domestic enabling conditions are strong.

4. Research design and methodology

4.1 Mixed-methods strategy

This dissertation uses two complementary approaches:

1. **Cross-national analysis:** Utilizing time-series cross-sectional data (V-Dem indicators, Freedom House, Varieties of Democracy components, World Bank governance indicators) to discern patterns, relationships, and the timing of erosion within a global sample from 2000 to 2024.
2. **Comparative process-tracing case studies:** deep qualitative analysis of 5–6 cases to unpack causal sequences and mechanisms.

4.2 Case selection

I employ a purposive, most-likely and most-different case selection strategy to maximize leverage on causal mechanisms. Tentative cases include:

- **Hungary (since 2010):** example of constitutional reengineering and media capture.
- **Poland (2015–):** judicial reforms and politicization of courts.
- **Turkey (post-2016):** emergency powers and centralization of executive authority.
- **India (2014–present):** concerns about media constriction, institutional politicization, and majoritarian pressures.
- **Brazil (2019–2023):** attacks on electoral legitimacy and institutional stress.
- **United States (2016–2025):** erosion of norms, contested elections, and institutional strain. (Inclusion of the U.S. is justified to explore erosion in long-established democracies.)

Selection rationale: these cases together illustrate variation in legal origins, party systems, economic development, and external constraints, enabling analysis of both common mechanisms and divergent outcomes.

4.3 Data collection and operationalization

- **Quantitative indicators:** V-Dem indices for judicial independence, freedom of expression, executive constraints; Freedom House political rights and civil liberties scores; electoral integrity indices.
- **Primary documents:** Constitutional texts, amendment records, legislative acts, court rulings, emergency decrees.
- **Elite interviews:** Semi-structured interviews with judges, election officials, journalists, civil society leaders (subject to IRB approval and confidentiality protocols).
- **Media content analysis:** To map changing patterns of media ownership and editorial independence.

4.4 Process-tracing and causal inference

Each example chapter will employ process-tracing logic to identify sequences, seeking evidence of causal mechanisms, counterfactuals, and alternative interpretations. I will utilize causal-process observations to evaluate the robustness of proposed mechanisms.

5. Case studies and empirical sections

Hungary :

- constitutional engineering and the capture of institutions
- Background to post-2010 reforms
- Changes to constitutional amendment rules, judicial appointments, and media law
- Sequence and outcomes: consolidation of power, electoral dominance
- Assessment against hypotheses

Poland :

- politicization of the judiciary
- Description of 2015–present judicial reforms
- Legislative and constitutional maneuvers and EU responses
- Domestic resistance and the role of supranational adjudication

Turkey :

- emergency powers and personalization

- The 2016 coup attempt as a juncture; emergency decrees and institutional restructuring
- Concentration of appointment powers and erosion of checks

India:

- majoritarian pressures and institutional stress
- Political context since 2014
- Media pressures, policing of dissent, and debates about judicial independence
- How erosion proceeds within strong constitutional traditions

Brazil & the United States:

- contested elections and norm erosion
- Brazil: rhetoric, institutional threats, and electoral administration disputes
- U.S.: norm erosion, polarization, and the fragility of unwritten constitutional practices

6. Cross-Case Analysis and Typology

6.1 Comparative overview: The five sets of case studies illustrate varied trajectories of constitutional degradation while also demonstrating consistent trends in causes, sequencing, and results. Through the comparison of Hungary, Poland, Turkey, India, Brazil, and the United States, a typology of erosion may be developed that elucidates the rationale behind democratic backsliding across various political and cultural situations.

6.2 Common mechanisms: Across cases, five mechanisms appear consistently:

1. **Instrumental legal change:** In Hungary and Poland, partisan actors re-engineered statutory and constitutional frameworks to entrench advantage.
2. **Judicial capture:** Central in Poland and Hungary, partial in India and Brazil, and attempted through appointment strategies in the U.S.
3. **Electoral manipulation and delegitimization:** Hungary's electoral laws, Bolsonaro's rhetoric, and Trump's claims of fraud show the centrality of manipulating or undermining electoral integrity.
4. **Media and civil society control:** Hungary's media capture, India's restrictions, and Turkey's purges highlight the vulnerability of public discourse.
5. **Crisis exploitation:** Turkey's 2016 coup and the U.S. pandemic response illustrate how crises create openings for extraordinary executive action.

6.3 Sequencing and outcomes: Analysis suggests that the sequencing of mechanisms matters significantly:

- **Legal re-engineering → Judicial capture → Media control** (Hungary): produced durable autocracy.
- **Judicial politicization → External resistance (EU) → Stalemate** (Poland): resulted in partial but contested erosion.
- **Crisis exploitation → Constitutional overhaul → Executive dominance** (Turkey): enabled rapid and systemic erosion.
- **Majoritarian pressure → Media/NGO suppression → Judicial stress** (India): produced incremental erosion without full autocratization.
- **Delegitimization of elections → Institutional resistance** (Brazil, U.S.): erosion occurred but was mitigated by resilient institutions.

6.4 Typology of erosion pathways: From these sequences, three distinct types of erosion can be identified:

- **Institutional engineering model:** Exemplified by Hungary, where formal constitutional change is central. Preconditions: supermajority control and flexible amendment rules.
- **Statutory incrementalism model:** Observed in Poland, where authorities employ standard legislation and procedural tactics in the absence of constitutional oversight. Prerequisites: inadequate external enforcement of judicial autonomy.
- **Crisis-driven personalization model:** Turkey's path, wherein crises enable leaders to circumvent standard safeguards and restructure the state. Prerequisites: factual or fabricated crises and robust presidential leadership.
- **Majoritarian pressure model:** India illustrates how persistent governmental hegemony can gradually undermine informal norms and civil society. Prerequisites: substantial, unified governing majorities inside a formally robust constitutional framework.
- **Norm-degradation model:** The United States exemplifies degradation via the disintegration of informal conventions, notwithstanding the preservation of formal institutions. Prerequisites: profound polarization, entrenched partisanship, and decentralized institutional frameworks.

6.5 Factors of resilience and vulnerability: Cross-case comparison highlights critical resilience factors:

- **Constitutional design:** Strong amendment thresholds (U.S., India) slow erosion but do not prevent norm decay.
- **External actors:** EU pressure in Poland illustrates how supranational institutions can shape trajectories.
- **Civil society strength:** Brazil's resistance underscores the role of mobilized publics and active courts.
- **Political opportunity structures:** Electoral dominance (Hungary, Turkey, India) enables systemic change, while fragmentation (Brazil, U.S.) allows for institutional pushback.

6.6 Implications for theory: The typology illustrates that constitutional degradation is not uniform; rather, it is influenced by context-specific amalgamations of mechanisms and facilitating conditions. Theories of democratic backsliding must consider both universal causes and the effects of sequencing and resilience elements.

7. Conclusions and Policy Implications:

7.1 Summary of findings

This research has analyzed the deterioration of constitutionalism and democratic principles in six cases: Hungary, Poland, Turkey, India, Brazil, and the United States. The comparative analysis reveals that although democratic backsliding varies by context, it consistently centers on a limited set of mechanisms: instrumental legal alteration, judicial capture, electoral manipulation or de-legitimization, control of civil society and media, and the exploitation of crises.

Key insights include:

- **Erosion is incremental yet cumulative.** Individual reforms may appear technical or limited, but over time they alter the equilibrium of checks and balances.
- **Sequencing shapes outcomes.** Hungary's early institutional re-engineering entrenched autocracy, while Poland's incremental statutory approach produced contested but incomplete erosion.
- **Crises are accelerants.** Turkey demonstrates how emergencies enable rapid restructuring, while the U.S. pandemic and post-election crisis highlighted vulnerabilities.
- **Resilience depends on both institutions and norms.** Rigorous amendment thresholds mitigated erosion in India and the U.S.; however, informal norms of

forbearance and reciprocal tolerance were also crucial in shaping the resilience of constitutionalism.

7.2 Theoretical contributions

The study advances comparative constitutional scholarship in three ways:

1. **Framework for constitutional erosion.** This approach reconciles formal legal studies with political science analyses of backsliding by conceptualizing constitutionalism as a comprehensive framework comprising laws, institutions, and norms.
2. **Typology of erosion pathways.** The five models (institutional engineering, legislative incrementalism, crisis-driven personalization, majoritarian pressure, and norm deterioration) provide a comparative framework for analyzing future examples.
3. **Sequencing analysis.** The findings underscore the importance of order and timing in backsliding processes, offering predictive leverage on how initial steps shape long-term outcomes.

7.3 Policy implications for domestic actors

For legislators and constitutional designers:

- Raise amendment thresholds for core provisions (judicial independence, electoral rules, emergency powers).
- Introduce multi-party appointment mechanisms for courts and election commissions.

For courts and judges:

- Develop doctrines of constitutional resilience that prevent instrumental abuse of emergency powers and amendments.
- Engage in strategic alliances with civil society to enhance legitimacy.

For civil society and media:

- Build cross-partisan coalitions defending institutional integrity.
- Invest in independent media infrastructures that cannot easily be captured by state-aligned interests.

7.4 Policy implications for international actors For supranational institutions (e.g., EU):

- Strengthen enforcement mechanisms linking rule-of-law compliance to funding.
- Enhance cross-border monitoring of judicial independence and electoral integrity.

For international organizations and donors:

- Support independent media, legal defense networks, and civil society watchdogs.
- Provide rapid-response funding to organizations targeted during crises.

For transnational civil society networks:

- Facilitate information sharing and solidarity campaigns across borders.
- Develop coordinated responses to disinformation and electoral delegitimization campaigns.

7.5 Future research agenda

This dissertation opens new avenues for research:

- **Norm resilience.** How do unwritten conventions revive or erode over time?
- **Digital authoritarianism.** How do social media and surveillance tools intersect with constitutional erosion?
- **Global diffusion.** Do leaders learn and copy strategies of erosion across borders?
- **Longitudinal effects.** What happens after a decade of erosion—do institutions adapt, collapse, or recover?

8. Concluding reflections: The crisis of constitutionalism extends beyond unstable democracies. Even well-established liberal orders exhibit vulnerabilities when political players forsake restraint and exploit institutional gaps. The insight from comparative research is cautionary yet not defeatist: constitutional democracy relies not only on well-designed texts but also on alert institutions, an engaged civil society, and a collective dedication to norms of moderation. Strengthening these components necessitates both internal reform and global cooperation.

This dissertation contributes to the critical endeavor of preserving constitutionalism amidst democratic instability by identifying erosion paths and highlighting resilience sources.

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