

BETWEEN THE PEOPLE AND THE POPULISTS: SAFEGUARDING JUDICIAL INDEPENDENCE IN A CHANGING WORLD

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Abstract

This article examines the impact of social media on the dissemination and influence of populist ideology, as well as the strategies populist movements have employed to erode the independence of the judiciary, including public resistance, constitutional amendments, and the expansion of the judiciary. This article analyzes strategies and solutions designed to preserve and safeguard judicial independence. The in question strategy includes strengthening the legal and institutional framework, cultivating a culture that upholds the supremacy of law, increasing judicial accountability, and encouraging collaborative dialogue between judicial institutions. This paper employs a case study methodology to examine the resistance of the judiciary to populist pressures in South Africa, Colombia, and Indonesia. This article's conclusion demonstrates that the court faces a dilemma between the importance of maintaining judicial independence from populist interests over legal requirements and the necessity of popular opinion for public legitimacy. In the context of populism, this is a challenge for judicial independence. Therefore, this paper encourages collaboration between academics, practitioners, and policymakers to safeguard judicial independence in an increasingly interconnected and rapidly developing world.

Keywords: Constitutional Court; Judicial Independence; Populist Movement; Public Support

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I. INTRODUCTION

1.1. Populist and the Threat to Judicial Independence

Populism is a political phenomenon characterized by the appeal to the “common people” against a perceived elite or establishment. Populist movements often claim to represent the will of the majority and seek to mobilize the masses against established institutions, including the judiciary.¹ Populism has grown in popularity in recent years, with populist politicians and parties attaining power in countries such as the United States, Brazil, Hungary, and Poland.²

Judicial independence is a key premise of the rule of law, which holds that all individuals and institutions, including the government, are subject to and accountable to the law. An independent judiciary assures that judges may make decisions free of other influences like as political intervention or public opinion, and that they can safeguard the rights and liberties of all citizens, not just those who support the ruling party or popular movements.³

The rise of populism poses serious challenges to judicial independence. In pursuit of their political goals, populist movements frequently attack existing institutions, including the judiciary, and may strive to undermine the rule of law. This can show itself in a variety of ways, including public criticism of judges, attempts to modify the composition of the courts, and efforts to rewrite the constitution to diminish judicial independence.⁴

Populist leaders’ public criticism of judges can weaken public trust in the court and create a climate in which judges may feel pushed to submit to populist demands. In the United States, for example, President Trump often criticised judges and court judgements with which he disagreed, potentially weakening public trust in the impartiality of the judiciary.⁵ Attempts to alter the composition of the courts, such as court-packing, can potentially jeopardise

¹ Anya Bernstein and Glen Staszewski, “Judicial Populism,” *Minnesota Law Review* 106 (2021): 283.

² Vasileios Adamidis, “Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness,” *Politics* (2021).

³ Erik Voeten, “Populism and Backlashes against International Courts,” *Perspectives on Politics* 18, no. 2 (2020): 407–22.

⁴ William A. Galston, “The Populist Challenge to Liberal Democracy,” *Journal of Democracy* 29, no. 2 (2018): 5–19.

⁵ Charles Gardner Geyh, “Judicial Independence at Twilight,” *Case Western Reserve Law Review* 71 (2020): 1045.

judicial independence. In Poland, the ruling Law and Justice party has moved to fill the country's Constitutional Tribunal with party loyalists, raising concerns about the judiciary's independence.⁶ Constitutional amendments are another tool that populist movements might use to undermine judicial independence. In Hungary, the ruling Fidesz party has made significant modifications to the country's constitution, including clauses affecting the independence of the judiciary.⁷ These changes have raised concerns about the erosion of the rule of law in Hungary.

In addition to these strategies, populist movements may use social media to influence public opinion and exert pressure on judges.⁸ Populist leaders can create an environment in which judges feel obliged to make rulings that agree with the populist agenda rather than sticking to the principle of the rule of law by using social media platforms to promote their ideas and rally their supporters.

As a result, the growth of populism poses serious dangers to judicial independence. These dangers can show themselves in a variety of ways, including public criticism of judges, attempts to change the composition of the courts, and moves to rewrite the constitution to diminish judicial independence. It is critical for judiciaries to stay attentive and robust in the face of populist demands, as judicial independence is fundamental for sustaining the rule of law and protecting all individuals' rights and liberties.

This article will discuss populism, its impact on judicial independence, and measures that can be taken to defend judicial independence against populist assaults. This article consists of seven chapters, the first of which aims to provide an overview of populism. I will attempt to define populism, judicial independence, and populist actors in this chapter. The second chapter will then examine populist strategies that can erode judicial independence. The third chapter will then discuss techniques and remedies for safeguarding the independence of the judiciary. The fifth chapter will then investigate case studies of the Constitutional Court's

⁶ Bernstein and Staszewski, "Judicial Populism."

⁷ James Corl and Mushin Yunus Sozen, "The Effect of Populism on American and Turkish Judiciaries," *Journal of Student Research* 11, no. 1 (2022).

⁸ Nick Friedman, "The Impact of Populism on Courts: Institutional Legitimacy and the Popular Will," *The Foundation for Law, Justice and Society* (2019).

efforts to maintain judicial resilience and resilience in the face of populism. The sixth chapter will address how the court can maintain judicial independence while gaining public support. The seventh and final chapter is the concluding chapter and will summarize the discussion.

1.2. Understanding Populism

Populism is a political ideology that highlights the gap between “the people” and “the elite.” Populist movements frequently present ordinary people as morally decent while portraying the elite as corrupt and self-serving.⁹ Populism can be associated with broader ideologies such as nationalism or socialism, which implies that different populists can disagree on a variety of subjects with the exception of the separation of society into the people and the elite.¹⁰

Several causes have contributed to the growth and spread of populism in various nations, including economic disparity, unhappiness with the political elite, and the growing impact of social media. Populist movements have evolved in several political systems, with leaders including Donald Trump in the United States, Rodrigo Duterte in the Philippines, and Jair Bolsonaro in Brazil, to name a few.

Cas Mudde defines populism as a “thin-centered ideology” that believes society is eventually divided into two homogeneous and antagonistic groups: “the pure people” and “the corrupt elite.”¹¹ Populist movements frequently rely on public opinion and the media to exert pressure on the judiciary and other institutions. Populist leaders can create an environment in which judges feel obliged to make rulings that agree with the populist agenda rather than sticking to the principles of the rule of law by using media channels to propagate their views and rally their supporters.

Populism has presented itself in many ways in various political systems. Populist movements have eroded democratic institutions and the rule of law

⁹ David Molloy, “What Is Populism, and What Does the Term Actually Mean?” BBC News, published March 6, 2018,

¹⁰ Chris Drew, “15 Famous Examples of Populism,” Helpful Professor.com, published July 2, 2023.

¹¹ Cas Mudde, “Populism in the Twenty-First Century: An Illiberal Democratic Response to Undemocratic Liberalism” (Paper (published) presented at the conference “Democracy in Trouble?” at the University of Pennsylvania’s Andrea Mitchell Center for the Study of Democracy, 2018).

in some circumstances, while in others, they have resulted in the introduction of policies that address the concerns of marginalised people.¹² Depending on the specific circumstances and acts of populist leaders, populism's impact on political systems can be both favourable and detrimental.

In Latin America, for example, populism has been associated with charismatic leaders such as Argentina's Juan Perón, who pursued measures aimed at resolving social and economic disparities.¹³ However, some populist leaders in the area have been chastised for eroding democratic institutions and concentrating power in the executive, raising concerns about the long-term consequences of populist influence on democracy.¹⁴ The growth of right-wing populist parties in Europe has resulted in rising anti-immigrant sentiment and nationalist agendas, calling into question the principles of liberal democracy and the European Union. These parties have achieved significant electoral support in some cases, raising questions about the future of democratic governance in the region.¹⁵

Populism can also exist in a range of socioeconomic areas and be used to achieve the aims of many people. Populist politicians, such as Hungary's Victor Orban and the Philippines' Rodrigo Duterte, frequently present themselves as the voice of "the people," promising to challenge the system. In order to consolidate power, they may attempt to weaken checks and balances, including judicial independence. Political leaders can use their ideas to excite entire political parties that base their programmes on populist rhetoric. These parties may use their legislative power to challenge or overturn judicial judgements, putting judicial independence at risk. Non-governmental organisations (NGOs) can also utilise populist narratives to rally public support and exert influence over the judiciary by filing lawsuits to force policy changes. Having their own goal, non-governmental organisations (NGOs) have frequently used the courts for political advocacy, which has the potential to pervert the judiciary's role.

¹² Ann Lian, "Populism and Political Systems," *Democratic Erosion*, published May 20, 2022.

¹³ Jordan Kyle, Limor Gultchin, "Populists in Power Around the World," *Tony Blair Institute for Global Change*, published November 7, 2018.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

We may also mention interest groups, freedom fighters or liberation movements, religious organisations, social movements, or internet communities that have evolved into populist actors. These groups can use social media to disseminate populist messages and unify against perceived elites. Their capacity to shape public opinion may put the judiciary under pressure. A wide range of players can exploit populist beliefs to advance their own goals. While not all pose a direct threat to judicial independence, their influence on the court can apply pressure in a variety of ways, potentially undermining its impartiality and independence.

1.3. Understanding Judicial Independence

Judicial independence refers to the idea that the judiciary should be separate from the other departments of government, which means that courts should not be influenced improperly by the administrative or legislative branches, or by private or party interests. This independence is critical for upholding the rule of law and assuring the protection of all people's rights and liberties. Judicial independence protects the rights and privileges guaranteed by a restricted constitution by preventing executive and legislative infringement on such rights. It also serves as a foundation for democracy and the rule of law by requiring all authority and power to be derived from an ultimate source of law.

As populist movements often aim to challenge established institutions and norms, including the court, the emergence of populism in numerous countries has posed substantial challenges to judicial independence. Populist leaders may apply pressure on the court through media outlets and public opinion, creating a climate in which judges may feel obligated to make rulings that agree with the populist agenda rather than sticking to the ideals of the rule of law.¹⁶ Populist movements can develop in a variety of political systems, resulting in both positive and negative outcomes depending on the setting and actions of populist leaders. Understanding the connection between populism and judicial independence is

¹⁶ "The Importance of Judicial Independence: - Judge Robert C. Leuba," State of Connecticut Judicial Branch, published October 10, 2000.

critical for establishing strategies to protect democratic institutions and promote inclusive governance.

The Court is not a “insulate” institution. In order to attain “true political power,” the Court must first gain public support. Public support for the judiciary is vital in every democratic society. This is because the judiciary holds a unique position of trust in society because it is tasked with interpreting and applying the law. Its decisions, whether popular or unpopular, have a significant impact on people’s lives. When citizens have faith in the court, they are more likely to accept verdicts, even if they disagree with them, since they believe the decisions were made fairly and in accordance with the law. The relationship between the judiciary and the public, on the other hand, can be convoluted and occasionally conflicting. On the one hand, courts must maintain their independence and resist populist pressures to prioritise popular sentiment above legal requirements. On the other hand, they cannot completely disregard popular opinion because doing so would jeopardise their legitimacy and public support. As a result, in this delicate balance, courts must walk carefully.

II. POPULIST TACTICS: UNDERMINING JUDICIAL INDEPENDENCE

Populist groups are known to use a variety of strategies to weaken judicial independence. These strategies can vary from public shaming of judges to more drastic steps like constitutional amendments, administrative measures and court-packing. In this part, we will look more closely at these strategies and present examples of populist politicians using them to undermine the independence of their judiciaries.¹⁷

2.1. Public Criticism of Judges

Public criticism of judges is a common approach employed by populist leaders to weaken judicial independence. Populist leaders can weaken public trust in the judiciary and create a climate in which judges may feel pushed to submit to populist demands by publicly criticising judges and their decisions.

¹⁷ Bernstein and Staszewski, “Judicial Populism.”

In the United States, for example, President Trump often criticised judges and court judgements with which he disagreed, potentially weakening public trust in the impartiality of the judiciary.¹⁸ Public criticism can also chill judges, who may become more careful in their decision-making in order to avoid being attacked by populist politicians. As a result, judges may prioritise the will of the majority over the ideals of the rule of law, thus weakening the judiciary's independence.¹⁹

2.2. Constitutional Amendments

Constitutional amendments are another tool that populist movements might use to undermine judicial independence. Populist leaders can gain greater control over the courts and their judgements by changing the constitution to modify the structure and operation of the judiciary. In Hungary, for example, the ruling Fidesz party has proposed significant amendments to the country's constitution, including clauses affecting the independence of the court.²⁰ These reforms have sparked concerns in Hungary about the deterioration of the rule of law. Similarly, the ruling AK Party in Turkey has adopted constitutional revisions that have enhanced administrative authority over the judiciary, creating worries about the independence of Turkish courts.²¹

2.3. Court-Packing

Another method employed by populist movements to influence the composition of courts and, thus, their judgements is court-packing. Populist leaders can ensure that the courts make judgements that fit with their political agenda by nominating judges who are loyal to the ruling party or the populist movement. In Poland, the ruling Law and Justice party has moved to fill the country's Constitutional Tribunal with party loyalists, raising concerns about the judiciary's independence.²² Court-packing can also result in justices who are

¹⁸ Voeten, "Populism and Backlashes."

¹⁹ Ibid.

²⁰ Zoltán Szente, "Constitutional Changes in Populist Times," *Review of Central and East European Law* 47, no. 1 (March 8, 2022): 12–36.

²¹ Corl and Sozen, "The Effect of Populism."

²² Bernstein and Staszewski, "Judicial Populism."

more concerned with pleasing the ruling party or populist movement than with maintaining the principles of the rule of law. This has the potential to erode judicial independence and the rule of law.

2.4. Legislative and Administrative Measures

Populist movements may utilise legislative and administrative measures to weaken judicial independence in addition to the strategies listed above. Populist politicians, for example, may pass legislation that limits the judiciary's power to examine government acts or limits the courts' authority in specific areas. Indonesia Constitutional Court has these experience through the amendment of constitutional court law, even though the Court able to turn back.²³ These actions have the potential to erode the judiciary's ability to operate as a check on the executive and legislative arms of government, eroding the rule of law even more. Budget cuts or changes to the judicial nomination process can also be used to weaken the court and make it more susceptible to populist influence. Populist leaders can exert greater control over the judiciary and its decisions by decreasing the resources available to the courts or changing the nomination process to favour judges loyal to the ruling party or populist movement.

Populist movements often rely on media and public opinion to exert pressure on the judiciary. By using media outlets to disseminate their messages and rally their supporters, populist leaders can create an environment where judges may feel compelled to make decisions that align with the populist agenda, rather than adhering to the principles of the rule of law. In some circumstances, populist leaders may publicly criticize judges and court rulings on social media, weakening public trust in the judiciary and creating a climate in which judges may feel pressured to submit to populist demands.²⁴ This has the potential to erode judicial independence and the rule of law. The following chapter will look at how populists utilize social media to erode judicial independence.

²³ Fritz Siregar, "Indonesian Constitutional Politics 2003-2013" (PhD Thesis, University of New South Wales, Sydney, 2016).

²⁴ Geyh, "Judicial Independence at Twilight."

III. THE ROLE OF SOCIAL MEDIA IN POPULIST MOVEMENTS

Social media has evolved into a potent weapon for populist mobilisation, allowing individuals to connect directly with their voice. Populist movements and leaders have used social media platforms to amplify their messages, bypass traditional media gatekeepers, and communicate with a larger audience.²⁵ One of the reasons populists thrive on social media is that these platforms alter the public sphere's communication structure, making it more difficult for citizens to access facts that refutes populist views.²⁶ Populist themes frequently resonate with people's emotions and frustrations, and social media platforms enable these messages to spread quickly and gain support.²⁷

3.1. Social Media as a Tool for Populist Mobilization

Populist movements have successfully used social media to mobilize people and spread their beliefs. Populist leaders may swiftly establish a big and engaged following by creating and sharing material that resonates with their target demographic. This allows them to influence public opinion and impose pressure on political institutions such as the judiciary. Populist movements can also use social media platforms to avoid traditional media gatekeepers, allowing them to distribute their messages without being subjected to the same amount of scrutiny as mainstream media outlets. This can result in the spread of disinformation and the construction of echo chambers, in which people are exposed primarily to content that validates their existing opinions.

Populist posts on platforms like Facebook tend to elicit more replies, shares, and comments than mainstream political leaders' posts, showing the ability of social media enabling populist actors to affect public opinion without the assistance of professional media outlets. Furthermore, social media platforms exacerbate political polarization, fuel populism, and erode trust in governments,

²⁵ Paolo Gerbaudo et al., "Angry Posts Mobilize: Emotional Communication and Online Mobilization in the Facebook Pages of Western European Right-Wing Populist Leaders," *Social Media + Society* 9, no. 1 (January 2023): 20563051231163330.

²⁶ Kai Spiekermann, "Why Populists Do Well on Social Networks," *Global Justice: Theory Practice Rhetoric* 12, no. 2 (November 2020): 50-7.

²⁷ Gerbaudo et al., "Angry Posts Mobilize."

news media, and institutions.²⁸ Populism has spread deeper into the political realm in the age of social media, with platforms like Twitter providing new insights into an old phenomena. With the introduction of social media came the emergence of digital populism, and populist parties have become proficient at exploiting new technologies to amplify their message, recruit, and organize.²⁹

3.2. Method in Utilizing Social Media

The populists have a thorough understanding of how to use algorithms in social media and maximize with three methods: (1) creating echo chambers and filter bubbles; (2) disseminating misinformation and disinformation; and (3) engaging with the people.

Social media can frequently produce echo chambers and filter bubbles in which users are only exposed to content that validates their pre-existing ideas. This is known as the *echo chambers and filter bubbles method*. This has the potential to intensify polarisation and make populist sentiments appear more popular or generally accepted than they are. Courts must be aware of this and remain committed to impartiality and legal standards, rather than succumbing to heightened public sentiment. Algorithms on social media platforms are frequently used to present users content based on their previous behaviours and interests. This can result in “echo chambers” and “filter bubbles,” in which individuals are primarily exposed to viewpoints that are similar to their own. This can put pressure on courts to make judgements that appear to support these points of view. Courts, on the other hand, must keep in mind that these digital phenomena may not always reflect the whole diversity of public opinion and must seek to make judgements based on constitutional principles and comprehensive legal research.³⁰ Cass Sunstein, a legal scholar, discusses similar concepts in his work “Republic.com 2.0” (2007), in which he expresses concern about the polarizing effect of online echo chambers on democracy.³¹

²⁸ Piergiuseppe Fortunato and Marco Pecoraro, “Social Media, Education, and the Rise of Populist Euroscepticism,” *Humanities and Social Sciences Communications* 9, no. 1 (August 2022).

²⁹ “Digital Populism,” ECPS, accessed July 12, 2023.

³⁰ Eli Pariser, *The Filter Bubble: What the Internet Is Hiding from You* (Penguin Press: UK, 2011).

³¹ Cass R. Sunstein, *Republic. Com* (Princeton: University Press, 2001).

In the digital age, the propagation of incorrect or misleading information is a big issue. This strategy is known as *disinformation and misinformation dissemination*. Courts must maintain their function as a source of authoritative and accurate legal interpretations while resisting populist demands based on disinformation. The purposeful or unintentional transmission of incorrect or misleading information has become a significant concern in the digital age. Populist narratives frequently rely on simplistic explanations and scapegoating, which might be based on or promote misinformation. As a result, courts must make decisions in an atmosphere where public opinion may be swayed by inaccurate or misleading information. It is vital that courts maintain their commitment to making decisions based on trustworthy information and legal principles. Furthermore, by properly expressing their conclusions and the legal basis behind them, they could help to prevent misinformation.³²

While social media can offer difficulties, it can also be an effective tool for courts to communicate with the public. This is the final method, which we referred to as *the interaction with the public method*. The Court can utilise these forums to clarify their judgements and legal concepts, promoting a better awareness of the law and the role of the courts among the general public. This can serve to improve public understanding of the legal system and potentially counteract disinformation. Such participation, however, must be properly regulated in order to preserve the court's dignity and impartiality. Richard Posner lays the groundwork for understanding why public interaction is important.³³ Scholars such as David Kaye have lately written about the potential of social media as a tool for public institutions.³⁴

The power of populist movements to sway public opinion via social media has serious consequences for judicial independence. When making decisions, judges may be more prone to heed public opinion, especially in high-profile cases that garner extensive media coverage. This can result in a situation in

³² Robert Chesney and Danielle Citron, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security," *California Law Review* 107 (2019): 1753.

³³ Richard A. Posner, *How Judges Think* (London: Harvard University Press, 2010).

³⁴ David Kaye, "Speech Police: The Global Struggle to Govern the Internet," *Columbia Global Reports* (2019): 144.

which judges priorities the will of the majority over the principles of the rule of law, potentially weakening the judiciary's independence. What should the Court do to protect its judicial independence? We shall make an attempt to answer that query.

IV. SAFEGUARDING JUDICIAL INDEPENDENCE: STRATEGIES AND SOLUTIONS

In the face of populist threats, it is critical to establish methods and measures that increase the resilience of the court while maintaining judicial independence. However, distinguishing between popular and justified decisions frequently necessitates further context research. This section will provide numerous techniques and explore the relevance of legal and institutional structures in maintaining judicial independence, aside from the influence that the populist movement attempted to impose, drawing on the writings of scholars such as Theunis Roux, David Landau, and Rosalind Dixon.

4.1. The Theoretical Foundations of Judicial Independence

Before delving into specific strategies, it is important to understand the theoretical foundations of judicial independence as discussed by scholars like Roux, Landau, and Dixon. These scholars emphasize the importance of maintaining a balance between judicial independence and judicial accountability, arguing that a strong and independent judiciary is essential for upholding the rule of law and protecting the rights of all citizens.

Theunis Roux, for example, has written extensively on the concept of “transformative constitutionalism,” which emphasizes the role of the judiciary in promoting social and political change. In this context, judicial independence is crucial for ensuring that judges can make decisions that advance the goals of transformative constitutionalism without being influenced by political pressures or populist movements.³⁵ David Landau, on the other hand, has focused on the concept of “abusive constitutionalism,” which refers to the use of constitutional

³⁵ Theunis Roux, “Transformative Constitutionalism and the Best Interpretation of the South African Constitution: Distinction without a Difference?” *Stellenbosch Law Review* 20, no. 2 (2009): 258–85.

amendments and other legal mechanisms by populist leaders to undermine democratic institutions, including the judiciary. Landau argues that judicial independence is essential for preventing the erosion of the rule of law and protecting democratic institutions from abusive constitutional practices.³⁶ Rosalind Dixon has explored the relationship between judicial independence and constitutional resilience, arguing that a strong and independent judiciary is crucial for maintaining the stability and adaptability of constitutional systems. Dixon emphasizes the importance of institutional arrangements, such as judicial review and constitutional interpretation, in safeguarding judicial independence and promoting constitutional resilience.³⁷

To finish the theoretical foundation, the collective wisdom of academics such as Roux, Landau, and Dixon shows the critical importance of judicial independence in upholding the rule of law, mitigating the hazards of abusive constitutionalism, and creating constitutional resilience. Recognising the theoretical grounds of judicial independence, however, is only the first step. These theories must be translated into effective methods in practise in order to effectively protect our judiciary from the destabilising impacts of populism.

In the following sections, we will look at various options for bolstering judicial independence. These are intended not merely to survive current populist pressures, but also to provide our judiciary with the resilience required to face future difficulties. The ultimate goal is to establish a strong and independent judiciary that can protect the rule of law and serve as a beacon of justice in our democratic society. Let us now dissect these methods and discuss their relevance in today's political atmosphere.

4.2. Specific Strategies

Understanding that the court has significant judicial independence is one thing; understanding how to apply that understanding in specific ways to resist populist movements is quite another. We proposed a fourth option for the Court

³⁶ David Landau, "Abusive Constitutionalism," *UC Davis Law Review* 189, no. 646 (2013).

³⁷ Rosalind Dixon and Tim Ginsburg, *Comparative Constitutional Law in Asia* (Edward Elgar Publishing, 2014), Rosalind Dixon and Tom Ginsburg, eds., *Comparative Constitutional Law in Asia* (Cheltenham, UK: Edward Elgar Publishing, 2014), accessed July 12, 2023.

to examine. The first stage is to establish legal and institutional frameworks. The second phase is to instill a culture of legal observance. The third phase is to increase judicial transparency and accountability. The fourth and final proposed strategy is to encourage judicial conversation and cooperation.

*Our first suggestion is to make legal and institutional structures.*³⁸ Institutional arrangements are critical to ensuring judicial independence. Clear constitutional measures protecting the independence of the judiciary, such as laws governing the nomination and dismissal of judges, can help protect the courts from political intervention. Furthermore, strong judicial councils or similar groups can provide oversight and assistance to the judiciary, ensuring that judges can do their duties without being unduly influenced by populist movements.³⁹

The second strategy is that it promotes a culture of respect for the rule of law. It is critical for preserving judicial independence.⁴⁰ This can be accomplished by public education campaigns emphasizing the importance of the judiciary's responsibility in protecting all citizens' rights and liberties, not only those who support the ruling party or popular movements. Populist narratives that seek to undermine judicial independence can be resisted by promoting a greater awareness of the judiciary's role in society.

The third strategy is to improve judicial accountability and transparency. It can also aid in the preservation of judicial independence.⁴¹ Public faith in the judiciary can be preserved by holding judges accountable for their acts and rulings, decreasing the possibility for populist movements to exploit public unhappiness with the courts. Making court rulings and processes more accessible to the public, for example, can assist counter populist narratives that depict the judiciary as secretive or elitist.

³⁸ Christopher M. Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," *American Journal of Comparative Law* 44 (1996): 605.

³⁹ Markus B. Zimmer, "Judicial Systems Institutional Frameworks: An Overview of the Interplay Between Self-Governance and Independence," *SSRN Scholarly Paper* (December 2010).

⁴⁰ Tom Ginsburg and Aziz Z Huq, "How to Save a Constitutional Democracy," *International Journal of Constitutional Law* 16, no. 4 (October 2018): 1352-57.

⁴¹ James Melton and Tom Ginsburg, "Does De Jure Judicial Independence Really Matter?: A Reevaluation of Explanations for Judicial Independence," *Journal of Law and Courts* 2, no. 2 (October 2014): 187-217.

Judicial accountability measures, in my opinion, are the most critical things a constitutional court justice should apply. The Court's priority should be to demonstrate that each decision is based on a meticulous, impartial assessment of the law and the constitution, rather than popular mood or political factors. The Court could employ those tactics in a variety of ways. The Court should emphasize that each decision is based on a careful examination of legal principles, statute law, and precedent. Highlight the importance of adhering to legal principles and precedents in the decision-making process.⁴² The Court must also demonstrate that its approach to constitutional interpretation has been consistent throughout decisions, regardless of its political or popular repercussions.⁴³ Provide detailed and precise legal reasons, and each decision will be strengthened. This rationale should be based on the law and the constitution, rather than on popular feeling or political concerns. Finally, the Court should highlight judgements in which the Court defended the rights of minorities or vulnerable groups against popular opposition. This indicates a dedication to safeguarding the rights of all citizens, not just the majority.⁴⁴

Finally, judicial discourse and cooperation strategies, both within and beyond countries, can serve to strengthen judicial independence in the face of populist threats.⁴⁵ Judges can share experiences and best practices for retaining their independence and supporting the rule of law by engaging in discourse with their colleagues. International collaboration, such as that provided by regional judicial networks or organizations, can also provide assistance and resources to judiciaries facing populist challenges.

To protect judicial independence in the face of populist threats, a multifaceted approach is required, including strong legal and institutional arrangements, cultivating a culture of respect for the rule of law, increasing judicial accountability and transparency, and encouraging judicial dialogue and cooperation. Judiciaries

⁴² Shena Solanki, "Stare Decisis: Definition, Examples and Critical Analysis," [Legal.thomsonreuters.com](https://www.legal.thomsonreuters.com), accessed July 13, 2023.

⁴³ Fritz Edward Siregar, "Indonesia Constitutional Court Constitutional Interpretation Methodology (2003-2008)," *Constitutional Review* 1 (2015): 1.

⁴⁴ "Why Are Minority Rights Important?" Political Youth Network, accessed July 13, 2023.

⁴⁵ Ruth Mackenzie, et al., "Manual on International Courts and Tribunals," Google Books, accessed July 14, 2023.

can better protect their independence and maintain the rule of law in an increasingly interconnected and rapidly changing world by understanding the theoretical foundations of judicial independence as discussed by scholars such as Roux, Landau, and Dixon and implementing the strategies they propose.

V. CASE STUDIES: JUDICIAL RESISTANCE AND RESILIENCE

Several courts have successfully resisted populist pressures, providing significant lessons to other countries. Populist movements have challenged the Langa Court in South Africa, Poland's Constitutional Tribunal, the Colombian Constitutional Court, and the Indonesian Constitutional Court. These courts have used a variety of measures to protect their independence, emphasising the need of strong legal and institutional frameworks in preserving judicial independence.

5.1. The Langa Court in South Africa

South Africa's Langa Court, named for Chief Justice Pius Langa, is an example of a judiciary that has successfully defied populist demands. The court encountered severe problems during Langa's tenure as Chief Justice, from 2005 to 2009, including political interference and attempts to undermine its independence. Despite these obstacles, the Langa Court was able to keep its independence and protect the rule of law. A variety of circumstances contributed to the court's tenacity. First, the Langa Court adhered to the concepts of transformative constitutionalism, which emphasises the judiciary's role in effecting social and political transformation.⁴⁶ This dedication enabled the court to defy populist influences and stay focused on its mission.

Second, the Langa Court benefited from widespread public support, which helped to shield it from political pressure. The court was able to maintain its legitimacy and credibility in the eyes of the public by developing a culture of respect for the rule of law and engaging with the public through outreach program and other activities. Finally, the Langa Court benefited from solid institutional

⁴⁶ Innocent Batsani-Ncube, "Governing from the Opposition?": Tracing the Impact of EFF's 'Niche Populist Politics' on ANC Policy Shifts," *Africa Review* 13, no. 2 (November 2021): 199–216.

arrangements, such as a well-functioning Judicial Service Commission and a strong judicial review mechanism.⁴⁷ These agreements provided the court with the necessary resources and assistance to maintain its independence in the face of populist threats. The Langa Court's experience can help other judiciaries dealing with populist pressures. Judiciaries can maintain their independence and uphold the rule of law by adhering to the principles of transformational constitutionalism, garnering popular support, and depending on robust institutional arrangements.

5.2. The Colombian Constitutional Court

Colombia's Constitutional Court has been critical in safeguarding judicial independence against populist demands. Since its inception in 1991, the court has encountered several difficulties, including populist leaders' attempts to undermine its authority and impair its independence.⁴⁸ In 2010, then-President Ivárru Uribe attempted to change the constitution to allow him to run for a third term. The court ruled that the proposed amendment was illegal, citing its authority to defend the constitution's democratic ideals.⁴⁹

The Colombian Constitutional Court has used a variety of measures to maintain its independence. First, the court has relied on strong constitutional safeguards that safeguard its power and independence, such as those governing the nomination and removal of judges. Second, the court has participated in communication and collaboration with other regional judiciaries, sharing experiences and best practises for preserving judicial independence.⁵⁰ The Colombian Constitutional Court's example can help other courts dealing with populist pressures. The court has been able to maintain its independence and uphold the rule of law by relying on strong constitutional provisions and participating in communication and cooperation with other judiciaries.⁵¹

⁴⁷ Ibid.

⁴⁸ Rodrigo Uprimny, "The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges," *Texas Law Review* 89, no. 7 (September 2014):1587-1609.

⁴⁹ Manuel José Cepeda-Espinosa, "Judicial Activism in a Violent Context: The Origin, Role, and Impact of the Colombian Constitutional Court," *Washington University Global Studies Law Review* 3, no. 4 (2004): 524.

⁵⁰ Lisa Hilbink, *Judges beyond Politics in Democracy and Dictatorship* (Cambridge: University Press, 2010).

⁵¹ Dixon and Ginsburg, "Comparative Constitutional Law."

5.3. The Indonesian Constitutional Court

The Indonesian Constitutional Court has encountered populist influence concerns, particularly in issues involving Ulayat rights and educational rights.⁵² In these examples, the independence of the court may have been influenced by the issue of judicial populism, which happens when judicial branches are more influenced by the interests of the majority of the people.⁵³

In Indonesia, the Constitutional Court has been viewed as more populist and concerned with public opinion.⁵⁴ The court's popularity has helped to shield it from political pressure, with public opinion playing an important part in maintaining the court's independence.⁵⁵ In Indonesia, one example of judicial populism is the matter of Ulayat rights and educational rights, where the independence of the Indonesian Constitutional Court may have been influenced by the issue of judicial populism. The majority's will may have influenced the court's rulings on these issues, thereby weakening the judiciary's independence.⁵⁶

The Indonesian Constitutional Court's experience demonstrates the possible risks to judicial independence posed by populist movements. By becoming more concerned with public opinion and majority will, the court may unintentionally weaken its own independence and the rule of law.⁵⁷ This highlights the importance

⁵² Rosa Ristawati and Radian Salman, "Judicial Independence Vis-à-Vis Judicial Populism: The Case of Ulayat Rights and Educational Rights," *Constitutional Review* 6, no. 1 (2020): 110–32.

⁵³ Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar Publishing, 2018).

⁵⁴ Simon Butt, "Anti-Corruption Reform in Indonesia: An Obituary?" *Bulletin of Indonesian Economic Studies* 47 (2011): 381–94.

⁵⁵ Marcus Mietzner, "Indonesia's Democratic Stagnation: Anti-Reformist Elites and Resilient Civil Society," *Democratization iFirst* (May 2011).

⁵⁶ Tim Lindsey, "Indonesian Constitutional Reform: Muddling Towards Democracy," *Singapore Journal of International and Comparative Law* 6, no. 1 (2002): 244–301.

⁵⁷ Stefanus Hendrianto, *Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes* (Routledge, 2018). It illustrates how Indonesia's recent experience offers a stark contrast between the different models. First, a prudential-minimalist heroic chief justice who knows how to enhance the Court's authority while fortifying the Court's status by playing a minimalist role in policy areas. Second, a bold and aggressive heroic chief justice, employing an ambitious constitutional interpretation. The third model is a soldier-type chief justice, who portrays himself as a subordinate of the Executive and Legislature. Contrary perhaps to expectations, the book's findings show a more cautious initial approach to be the most effective. The experience of Indonesia clearly illustrates the importance of heroic judicial leadership and how the approach chosen by a court can have serious consequences for its success. This book will be a valuable resource for those interested in the law and politics of Indonesia, comparative constitutional law, and comparative judicial politics. "ISBN": "978-1-351-58491-3", "language": "en", "note": "Google-Books-ID: 5YFWDwAAQBAJ", "number-of-pages": "370", "publisher": "Routledge", "source": "Google Books", "title": "Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes", "title-short": "Law and Politics of Constitutional Courts", "author": [{"family": "Hendrianto", "given": "Stefanus"}], "issued": {"date-parts": [{"2018", "4", "17"}]}}, "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}]

of judiciaries remaining alert and resilient in the face of populist influences, ensuring that their decisions are anchored in the principles of the rule of law and the protection of all people's rights and liberties.⁵⁸

Several techniques can be used by each country to maintain judicial independence against the influence of social media and populist movements. According to the above-mentioned court experience, there is no single rule that can be used by every court. Apart of judicial decision that the Court rendered, the Court need to response strategically. We may offer many approaches that the court could use. First, judges and judicial institutions should actively connect with the public via social media and other avenues of communication, increasing transparency and fostering a greater awareness of the judiciary's role in society. Second, judicial institutions should invest in media literacy and public education programmed to assist citizens in critically evaluating the information they come across on social media. This can serve to fight misinformation and decrease the impact of populist narratives on public opinion. Finally, judges should be aware of the possible influence of social media on their decision-making and work hard to maintain their independence in the face of public pressure. This may entail gathering information from a variety of sources and engaging in continual professional development to ensure that their choices are founded on the principles of the rule of law.

The rise of social media has had a huge impact on the propagation and popularity of populist movements, with serious consequences for judicial independence. Understanding how social media can be used to manipulate public opinion and put pressure on judges allows judicial institutions to devise methods to protect their independence and uphold the rule of law in an increasingly linked and fast changing world.

⁵⁸ Nicole Curato, *Democracy in a Time of Misery: From Spectacular Tragedies to Deliberative Action* (Oxford University Press, 2019).

VI. PARADOX OF PUBLIC SUPPORT, POPULIST MOVEMENT AND RULE OF LAW

This chapter investigates the complex interplay of public support, populist movements, and rule of law - a trinity that creates an intriguing conundrum in the area of constitutional law. While public engagement is the foundation of a healthy democracy, it becomes a complicated problem when populist movements enter the picture, especially when these movements enjoy widespread public support. Finally, we ask, “Why not take sides with the Populist Movement?” We face difficult issues regarding the appeal and risks of uniting with populism. This part encourages us to consider the function and obligations of judicial institutions in populist times. Each part aims to shed light on a different aspect of this perplexing dilemma. We urge readers to accompany us on this intellectual trip as we explore unexplored territory of public involvement, populist movements, and the rule of law.

6.1. Defining the Paradox: The Populist Regime and the Rule of Law

The contradictory relationship between populist regimes and the rule of law is based on a basic tension: while populist leaders claim to represent the people, they frequently undercut the same legal principles that support democratic governance. This tension forms the backdrop for this chapter’s exploration of the populist regime and their respect to the rule of law.⁵⁹ Populist regimes frequently defend their acts by claiming to be acting in accordance with the will of the people. They cast their government as a struggle against a corrupt or disengaged elite. In this environment, the populist leader is portrayed as the actual protector of the people’s interests, and all actions performed, even those that undermine constitutional standards or the rule of law, are justified as necessary to protect the people’s rights. It is critical to comprehend the peculiar role of courts in populist political settings.⁶⁰

Courts frequently walk a tightrope, attempting to uphold their role of preserving the rule of law while facing populist regimes that seek to undermine

⁵⁹ Cas Mudde and Cristobal Rovira Kaltwasser, *Populism: A Very Short Introduction* (Oxford University Press, 2017).

⁶⁰ Jan-Werner Müller, *What Is Populism?* (Penguin UK, 2017).

their independence.⁶¹ Using the conceptual framework of the “Politico-Legal Character of the Courts,” it is possible to recognize that courts do not function in a political vacuum. They are frequently trapped in a power struggle, with populist politicians attempting to undermine their authority and independence.⁶²

Another critical aspect of this issue is populist regimes’ use of constitutional amendment as instruments. While campaigning for the will of the people, populist leaders frequently change or distort the constitution in order to consolidate their authority. These constitutional tamperings may have long-term consequences for a democracy’s health, undermining institutional checks and balances that keep power in check.⁶³ However, while populist regimes may strive to manipulate the constitution, they frequently do it within the bounds of law, using constitutional amendment procedures. This poses a unique issue for the rule of law, as the legal structure of these modifications can make them difficult to resist, despite their potential to undermine democratic norms.⁶⁴

As a result, recognising the populist regime’s dilemma with the rule of law necessitates a thorough examination of the political dynamics between populist leaders and judicial institutions, as well as the role of constitutional modifications in creating these dynamics.⁶⁵ This investigation gives important insights into the intricate mechanisms by which populist regimes can undermine the rule of law, assisting in the identification of potential measures for sustaining judicial independence and democratic government.⁶⁶

6.2. Public Support

The Court requires public support and is a critical component of democratic administration. Despite their seeming independence from popular opinion politics, judicial institutions are no exception to this rule. The need for public

⁶¹ Lord Neuburger et al., “The Need for Independent Judges and a Free Press in a Democracy,” *UNODC*, accessed July 13, 2023.

⁶² Tom Ginsburg and Aziz Z. Huq, *How to Save a Constitutional Democracy* (University of Chicago Press, 2018).

⁶³ Laurent Pech and Kim Lane Scheppele, “Illiberalism Within: Rule of Law Backsliding in the EU,” *Cambridge Yearbook of European Legal Studies* 19 (December 2017): 3–47.

⁶⁴ Theunis Roux, *The Politics of Principle: The First South African Constitutional Court, 1995–2005* (Cambridge: Cambridge University Press, 2013).

⁶⁵ David Landau, “Populist Constitutions,” *University of Chicago Law Review* 85 (2018): 521.

⁶⁶ “Civic Education: The Key to Preserving Judicial Independence,” *Judicature*, accessed July 13, 2023.

support stems from a variety of circumstances and can play an important role in preserving the courts' independence and effectiveness.⁶⁷

The court serves as an important check and balance on the other arms of government in a democracy. The judiciary ensures that all citizens, regardless of political power or influence, are held accountable to the law through rendering unbiased judgements. The judiciary can only play this duty successfully if the public trusts and believes in it. When the judiciary is regarded to be biased or corrupt, public trust in the justice system suffers, resulting in a weakening of the rule of law.⁶⁸

The public's backing can also be a valuable safeguard for judicial independence. When other branches of government threaten the judiciary, public support can act as a check, ensuring that the judiciary can carry out its tasks without undue influence or interference. Tom Ginsburg and Aziz Huq highlight the necessity of public support in protecting judicial independence. The argument behind this is that if you're going to have a good time, you should be able to find a way to use it.⁶⁹

So, what's the harm in siding with public opinion? Is the Court in need of popular support? Indeed, public support can be important to the legitimacy and efficiency of a court. The primary role of a court, particularly a constitutional court, is to uphold the rule of law and constitutional values. These values frequently include the defence of fundamental rights, even when doing so contradicts popular opinion. The danger of a court that is too closely aligned with public opinion is that it may undermine the rule of law and minority rights. The notion of majority rule and the protection of minority rights are both vital to democratic institutions. Democracy is more than just majority rule; it also entails respecting and protecting the rights of minority groups. If a court bases its decisions solely on public opinion, it risks failing to respect the rights of minorities.

⁶⁷ "Issue 2: Preserving Public Trust, Confidence, and Understanding | United States Courts," United State Courts, accessed July 13, 2023.

⁶⁸ Ibid.

⁶⁹ Ginsburg and Huq, "How to Save a Constitutional Democracy."

Furthermore, public opinion can be fickle and influenced by a variety of factors, including current events, popular emotion, and charismatic leaders. Based on these varying perspectives, judicial rulings may result in contradictions in the application of the law. Furthermore, a court that is too closely aligned with popular feeling risks being used for political purposes. This may jeopardise the independence of the court, which is a critical foundation of any democracy. As a result, while courts require public support to function properly, their main allegiance should be to the law and the constitution. Balancing the need for public support while upholding the law is a difficult issue for any court.

Finally, public support can help the judiciary gain legitimacy. The power of the social media as discussed above is a powerful tool, but it's also a dangerous one. As a result, a judiciary that has the public's backing is more likely to be recognized as genuine and authoritative. Barry Friedman argues that popular support can boost the judiciary's perceived legitimacy, making it more effective in its position as a check on power. As previously said, cultivating public support should not jeopardise the judiciary's dedication to the rule of law.⁷⁰ Rosalind Dixon and Tom Ginsburg also stated that judicial independence should not be surrendered for popularity. Public support should not be sought at the risk of making politically expedient but legally illegitimate judgements. Yes, in a democracy, public support for the court is critical. It can protect judicial independence, promote the effective implementation of judicial decisions, and boost the judiciary's legitimacy.⁷¹ However, it is critical that this assistance be sought in a manner that respects the rule of law and preserves the independence of the court.

6.3. Why Not Taking Side with the Populist?

As we enter the third portion of this sub-chapter, "Why Not Taking Side with the Populist Movement?" we are confronted with a very contentious question: to what extent, if any, should judges identify with populist movements? Many

⁷⁰ Barry Friedman, "The Will of the People and the Process of Constitutional Change," *George Washington Law Review* 78, no. 6 (July 2010): 10-41.

⁷¹ Dixon and Ginsburg, "Comparative Constitutional Law in Asia."

constitutional academics are concerned about the potential impact of populism on the judicial system and the overall rule of law. However, a small but notable group of these researchers recognizes the potential benefits of a populist approach. These benefits can include increasing democratic participation or implying that courts, while keeping their primary purpose and independence, should not ignore popular feeling entirely.

Mark Tushnet is one of these scholars. He postulates about the possible benefits of a populist strategy in enhancing democratic engagement. His concept of “populist constitutional law” advocates for a more democratic approach to constitutional interpretation, in which the voices of ordinary persons are prioritised and given fair weight.⁷² Tushnet’s viewpoint does not argue for the abolition of judicial review; rather, he emphasises the significance of balancing judicial review with democratic norms and popular opinion. In addition to Tushnet’s viewpoint, Barry Friedman dives into the concept of “dialogic judicial review”.⁷³ This concept is based on the idea that during the decision-making process, courts should engage in an active dialogue with not just the general public, but also with other parts of government. Friedman stops short of pushing for courts to support populism. He does, however, imply that judges cannot ignore the pulse of public opinion and must take it into account throughout their deliberations. Jeremy Waldron champions a similar stance in his key essay, “The Core of the Case Against Judicial Review”.⁷⁴ His thoughts could be considered as more populist in their approach to constitutional law. He contends that constitutional rights determinations should be the result of democratic processes rather than being put completely in the hands of the judges.

It is important to note, however, that these scholars advocate for a careful and nuanced balance when it comes to populist beliefs. They advocate for a level of engagement with public opinion or populist notions that benefits democracy and the rule of law. They, however, sternly caution against going so far as to jeopardies constitutional norms or judicial independence. They recognize the

⁷² Mark Tushnet, *Taking the Constitution Atakway from the Courts* (Princeton University Press, 2000).

⁷³ Friedman, “The Will of the People.”

⁷⁴ Jeremy Waldron, “The Core of the Case against Judicial Review,” *The Yale Law Journal* 115, no. 6 (April 2006): 1346.

importance of public participation and democratic legitimacy, but warn against pursuing these objectives at the price of constitutional safeguards.

As a result, these academics demonstrate that the relationship between the courts, populism, and the public is laden with ambiguities and nuances. Courts must tread carefully in this delicate balance, ensuring that, while considering popular feelings, they do not jeopardise their independence or constitutional values. These arguments serve as a powerful reminder that courts are critical in protecting democracy and the rule of law from populist challenges. The courts' responsibility is not only to reflect popular emotion, but to analyse and scrutinise it against a framework of constitutional norms and democratic values. Given the complicated and often unforeseen ways populism can interact with judicial systems and constitutional law, it is critical that we keep these factors in mind as we move forward.

VII. CONCLUSION

This article has examined the numerous threats to judicial independence and the rule of law faced by the development of populism. To weaken judicial independence, populist movements use strategies such as public criticism, constitutional modifications, and court-packing. Social media has also played an important part in the propagation and influence of populist movements, with the ability to manipulate public opinion and exert pressure on judges.

Several tactics and solutions have been proposed to solve these difficulties, building on the work of researchers such as Theunis Roux, David Landau, and Rosalind Dixon. Strengthening legal and institutional structures, promoting a culture of respect for the rule of law, increasing judicial accountability and openness, and encouraging judicial discourse and collaboration are among the ways. Case studies from South Africa, Colombia, and Indonesia have proved the durability of judiciaries in the face of populist forces. These case studies provide significant insights into the issues that judiciaries face, as well as measures for maintaining judicial independence.

In sum, maintaining judicial independence in the face of populist threats is essential to upholding the rule of law and safeguarding the rights and freedoms of all people. The Indonesian Constitutional Court is a clear example of populist assaults that have weakened the independence of the judiciary. Remember that the Indonesian Constitutional Court has a reputation for being more populist and sensitive to public opinion. By becoming more concerned with public opinion and the majority's will, the Indonesian Constitutional Court inadvertently undermines its independence and legal pre-eminence. In order to defend the justice system at the Indonesian Constitutional Court from populist attacks, the strategies and solutions outlined in this article are relevant to consider. However, additional research is required to investigate the relationship between populism and judicial independence, particularly in developing democracies and diverse legal systems.

This article can catalyze academics, practitioners, and policymakers to develop innovative methods for preserving judicial independence in an increasingly interconnected and swiftly changing world. Collaboration between these parties is required to ensure that the judiciary remains a solid and independent institution, upholding the supremacy of law and safeguarding all citizens regardless of the political climate.

BIBLIOGRAPHY

- Adamidis, Vasileios. "Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness." *Politics* (2021), <https://doi.org/10.1177/02633957211041444>.
- Batsani-Ncube, Innocent. "Governing from the Opposition?: Tracing the Impact of EFF's 'Niche Populist Politics' on ANC Policy Shifts." *Africa Review* 13, no. 2 (November 2021): 199–216, <https://doi.org/10.1080/09744053.2021.1943145>.
- Bernstein, Anya, and Glen Staszewski. "Judicial Populism." *Minnesota Law Review* 106 (2021): 283, <https://dx.doi.org/10.2139/ssrn.3694132>.
- Butt, Simon. "Anti-Corruption Reform in Indonesia: An Obituary?" *Bulletin of Indonesian Economic Studies* 47 (2011): 381–94, <https://doi.org/10.1080/00074918.2011.619051>.

- Cepeda-Espinosa, Manuel José. “Judicial Activism in a Violent Context: The Origin, Role, and Impact of the Colombian Constitutional Court.” *Washington University Global Studies Law Review* 3, no. 4 (2004): 524, https://openscholarship.wustl.edu/law_globalstudies/vol3/iss4/2/.
- Chesney, Bobby, and Danielle Citron. “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security.” *California Law Review* 107 (2019): 1753, <https://dx.doi.org/10.2139/ssrn.3213954>.
- “Civic Education: The Key to Preserving Judicial Independence.” Judicature, accessed July 13, 2023. <https://judicature.duke.edu/articles/civic-education-the-key-to-preserving-judicial-independence/>.
- Corl, James, and Mushin Yunus Sozen. “The Effect of Populism on American and Turkish Judiciaries.” *Journal of Student Research* 11, no. 1 (2022), <https://doi.org/10.47611/jsr.v11i1.1574>.
- Curato, Nicole. *Democracy in a Time of Misery: From Spectacular Tragedies to Deliberative Action*. Oxford University Press, 2019.
- “Digital Populism.” ECPS, accessed July 12, 2023. <https://www.populismstudies.org/Vocabulary/digital-populism/>.
- Dixon, Rosalind, and Tom Ginsburg, eds. *Comparative Constitutional Law in Asia*. Cheltenham, UK: Edward Elgar Publishing, 2014. <https://doi.org/10.4337/9781781002704>.
- Drew, Cris. “15 Famous Examples of Populism (2023).” Helpful Professor, published July 12, 2023. <https://helpfulprofessor.com/examples-of-populism/>.
- Fortunato, Piergiuseppe, and Marco Pecoraro. “Social Media, Education, and the Rise of Populist Euroscepticism.” *Humanities and Social Sciences Communications* 9, no. 1 (August 2022), <https://doi.org/10.1057/s41599-022-01317-y>.
- Friedman, Barry. “The Will of the People and the Process of Constitutional Change.” *George Washington Law Review* 78, no. 6 (July 2010): 10-41, <https://ssrn.com/abstract=1647728>.

- Friedman, Nick. "The Impact of Populism on Courts: Institutional Legitimacy and the Popular Will." *The Foundation for Law, Justice and Society* (2019), <https://www.fljs.org/sites/www.fljs.org>.
- Galston, William A. "The Populist Challenge to Liberal Democracy." *Journal of Democracy* 29, no. 2 (2018): 5–19, <https://doi.org/10.1353/jod.2018.0020>.
- Gerbaudo, Paolo. "Angry Posts Mobilize: Emotional Communication and Online Mobilization in the Facebook Pages of Western European Right-Wing Populist Leaders." *Social Media + Society* 9, no. 1 (January 2023): 20563051231163330, <https://doi.org/10.1177/20563051231163327>.
- Geyh, Charles Gardner. "Judicial Independence at Twilight." *Case Western Reserve Law Review* 71 (2020): 1045, <https://scholarlycommons.law.case.edu/caselrev/vol71/iss3/5>.
- Ginsburg, Tom, and Aziz Z Huq. *How to Save a Constitutional Democracy*. University of Chicago Press, 2018.
- Hendrianto, Stefanus. *Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes*. Routledge, 2018.
- Hilbink, Lisa. *Judges beyond Politics in Democracy and Dictatorship*. Cambridge University Press, 2010.
- "Issue 2: Preserving Public Trust, Confidence, and Understanding | United States Courts." Accessed July 13, 2023. <https://www.uscourts.gov/statistics-reports/issue-2-preserving-public-trust-confidence-and-understanding>.
- Kaye, David. "Speech Police: The Global Struggle to Govern the Internet." *Columbia Global Reports* (2019): 144, <https://doi.org/10.2307/j.ctv1fx4h8v>.
- Kyle, Jordan and Gultchin, Limor. "Populists in Power Around the World." Tony Blair Institute for Global Change, published November 7, 2018. <https://www.institute.global/insights/geopolitics-and-security/populists-power-around-world>.
- Landau, David. "Abusive Constitutionalism." *UC Davis Law Review* 189, no. 646 (2013), <https://ssrn.com/abstract=2244629>.

- Landau, David. "Populist Constitutions." *University of Chicago Law Review* 85 (2018): 521, <https://chicagounbound.uchicago.edu/uclrev/vol85/iss2/3>.
- Larkins, Christopher M. "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis." *American Journal of Comparative Law* 44 (1996): 605, <https://doi.org/10.2307/840623>.
- Lian, Ann. "Populism and Political Systems." *Democratic Erosion*, published May 20, 2022. <https://www.democratic-erosion.com/2022/05/20/populism-and-political-systems/>.
- Lindsey, Tim. "Indonesian Constitutional Reform: Muddling Towards Democracy." *Singapore Journal of International and Comparative Law* 6, no. 1 (2002): 244–301, <http://138.25.65.110/au/journals/ELECD/2008/24.pdf>.
- Mackenzie, Ruth. "Manual on International Courts and Tribunals." Google Books, accessed July 14, 2023.
- Melton, James, and Tom Ginsburg. Tom Ginsburg and Aziz Z Huq. "How to Save a Constitutional Democracy." *International Journal of Constitutional Law* 16, no. 4 (October 2018): 1352–57, <https://doi.org/10.1093/icon/moy107>.
- Mietzner, Marcus. "Indonesia's Democratic Stagnation: Anti-Reformist Elites and Resilient Civil Society." *Democratization* iFirst (May 2011), <http://dx.doi.org/10.1080/13510347.2011.572620>.
- Molloy, David. "What Is Populism, and What Does the Term Actually Mean?" BBC News, published March 6, 2018. <https://www.bbc.com/news/world-43301423>.
- Mudde, Cas. "Populism in the Twenty-First Century: An Illiberal Democratic Response to Undemocratic Liberalism." Paper, presented at the conference "Democracy in Trouble?" at the University of Pennsylvania's Andrea Mitchell Center for the Study of Democracy, 2018.
- Mudde, Cas and Rovira Kaltwasser, Cristobal. "Populism: A Very Short Introduction." Oxford Academic, accessed July 14, 2023. <https://academic.oup.com/book/866>.
- Müller, Jan-Werner. *What Is Populism?*. Penguin UK, 2017.

- Neuberger, Lord. "The Need for Independent Judges and a Free Press in a Democracy." UNODC, accessed July 13, 2023. <https://www.unodc.org/dohadeclaration/en/news/2021/05/the-need-for-independent-judges-and-a-free-press-in-a-democracy.html>.
- Pech, Laurent, and Kim Lane Scheppele. "Illiberalism Within: Rule of Law Backsliding in the EU." *Cambridge Yearbook of European Legal Studies* 19 (December 2017): 3–47, <https://doi.org/10.1017/cel.2017.9>
- Posner, Richard A. *How Judges Think*. London: Harvard University Press, 2010.
- Ristawati, Rosa and Radian Salman. "Judicial Independence Vis-à-Vis Judicial Populism: The Case of Ulayat Rights and Educational Rights." *Constitutional Review* 6, no. 1 (2020): 110–32. <https://doi.org/10.31078/consrev614>.
- Roux, Theunis. *The Politics of Principle: The First South African Constitutional Court, 1995–2005*. Cambridge: Cambridge University Press, 2013.
- Roux, Theunis. "Transformative Constitutionalism and the Best Interpretation of the South African Constitution: Distinction without a Difference?" *Stellenbosch Law Review* 20, no. 2 (2009): 258–85, <https://journals.co.za/doi/abs/10.10520/EJC54704>.
- Siregar, Fritz. "Indonesian Constitutional Politics 2003–2013." PhD Thesis, UNSW Sydney, 2016.
- Siregar, Fritz Edward. "Indonesia Constitutional Court Constitutional Interpretation Methodology (2003–2008)." *Constitutional Review* 1 (2015): 1, <https://doi.org/10.31078/consrev111>.
- Spiekermann, Kai. "Why Populists Do Well on Social Networks." *Global Justice : Theory Practice Rhetoric* 12, no. 02 (November 2020): 50–71, <https://doi.org/10.21248/gjn.12.02.203>.
- Solanki, Shena. "Stare Decisis: Definition, Examples and Critical Analysis." Legal. [thomsonreuters.com](https://www.thomsonreuters.com/blog/the-doctrine-of-stare-decisis/), accessed July 13, 2023. <https://www.thomsonreuters.com/blog/the-doctrine-of-stare-decisis/>.
- Sunstein, Cass R. *Republic. Com*. Princeton: University Press, 2001.

- Szente, Zoltán. "Constitutional Changes in Populist Times." *Review of Central and East European Law* 47, no. 1 (2022): 12–36. <https://doi.org/10.1163/15730352-47010001>.
- "The Importance of Judicial Independence: - Judge Robert C. Leuba." State of Connecticut Judicial Branch, published October 10, 2000. <https://www.jud.ct.gov/external/news/presso36.html>.
- Tushnet, Mark. *Advanced Introduction to Comparative Constitutional Law*. Edward Elgar Publishing, 2018.
- Uprimny, Rodrigo. "The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges." *Texas Law Review* 89, no. 7 (September 2014): 1587-1609, <https://doi.org/10.4324/9780203797655-13>.
- Voeten, Erik. "Populism and Backlashes against International Courts." *Perspectives on Politics* 18, no. 2 (2020): 407–22, <https://doi.org/10.1017/S1537592719000975>.
- Waldron, Jeremy. "The Core of the Case against Judicial Review." *The Yale Law Journal* 115, no. 6 (April 1, 2006): 1346, <https://doi.org/10.2307/20455656>.
- "Why Are Minority Rights Important?" Political Youth Network, accessed July 13, 2023. <https://politicalyouthnetwork.org/why-are-minority-rights-important-2/>.
- Zimmer, Markus B. "Judicial Systems Institutional Frameworks: An Overview of the Interplay Between Self-Governance and Independence." *SSRN Scholarly Paper* (December 2010), <https://papers.ssrn.com/abstract=2284465>