Constitutional Adjudication: Beyond Reductionist Reading of Democracy

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In February 2024, the Supreme Court of India unanimously struck down the Electoral Bonds Scheme—a mechanism through which corporations could make anonymous donations to political parties—holding that anonymous donations to political parties violated the right to information. The Court ordered the disclosure of the hitherto anonymous data of contributions.[1] Chief Justice DY Chandrachud's opinion engaged with the problem of corporate influence on democratic politics, drawing on evidence of campaign finance, political inequality and *quid pro quo* dynamics, and even making references to the US Supreme Court's decision in Citizens United,[2] but it ultimately channeled this analysis through the doctrinal frame of right to information rather than developing an independent structural conception of democracy.

The result was a self-limiting judgement: it vindicated a procedural right to know and it struck down the scheme and ordered retroactive disclosure, but it did not address the democratic validity of election conducted under the scheme, or the structural advantage conferred on the incumbent party by the information asymmetry which the scheme created.[3] The gap, in other words, was not between a thin diagnosis and a thin remedy, but between a richly substantive democratic theory embedded in the reasoning and the institutional consequences the Court was willing to draw from it. This ruling represents a significant development in constitutional adjudication, as, on the one hand, it represents a limitation of what a court can accomplish within existing frameworks of democracy, and on the other, it illustrates the risks of not developing a thicker conception of democracy and the remedies for breaching it.[4]

Titania and Bottom by Sir Edwin Landseer. Photo by Raunaq Jaiswal.

This gap between a judicial diagnosis and democratic outcome is not unique to India. It is, as the contributions to this blog series suggest, a structural feature of how constitutional courts engage with democracy. Whilst they can identify procedural minimum standards, they remain conceptually underprepared for deeper work of constraining the structural conditions through which democratic self-government is eroded.

The study of constitutional courts has long been examined primarily through a doctrinal lens, while legal doctrine has remained somewhat resistant to substantive engagement with democratic theory. The *double institutional insularity* has arguably produced a diminished account of constitutional adjudication—one which reduces the concept of democracy to majority rule or electoral competition, and leaves courts conceptually ill-equipped to address the structural conditions under which democratic self-government is undermined. The Electoral Bonds Scheme judgment is symptomatic rather than exceptional. As the contributions to this series demonstrate, this conceptual under-preparedness is not a failure of any specific court. Rather, it is a structural feature of how constitutional adjudication has been theorized[5] and practiced globally—a product, we argue, of constitutional judges' hesitation to engage with democratic theory seriously. Whether rare

attempts at such engagement[6] can reach constitutional practitioners before autocratization gets too far remains uncertain as well. This uncertainty amplifies the urgency of broader alliances in the study and practice of constitutional courts.

This editorial post reflects on the contributions to the blog series. Together, the contributions offer empirical and granular insights into how constitutional courts engage with democracy—not merely as an abstract concept, but as a contested terrain of conceptions—deploying these insights as a springboard for understanding the contemporary state of democracy. A series of exploratory contributions from across several continents, including constitutional courts operating in Western Europe and North America, former state socialist regimes, and the 'Global South' enables a preliminary comparative mapping. We posit that constitutional courts have not been able to escape the shadow of the dominant scholarly discourses that pit them against democracy and encourage judges to conceptualize their roles as external to, rather than constitutive of, democratic governance. In other words, constitutional courts remain largely captive to a scholarly hegemony which paints them as inherently counter-majoritarian, and by extension, trains judges to understand themselves as operating outside of, rather than within the democratic system.

We then note that recently the hegemonic scholarship is beginning to be disrupted, but it is unlikely to yield significant shifts in the short run, not least because judiciaries rarely embrace major ideational change.[7] One promising avenue of breaking out of the cage of reductionist reading of democracy that collapses democracy into electoral competition or unrestrained majority rule alone, is the struggle against oligarchy and corruption corroding democratic institutions. Here, constitutional courts can play a pivotal role due to the tendency of oligarchic and corrupt elites to violate or at least try to evade the law.

We conclude by calling for building stronger alliances between two fields which have been developed in relative isolation—constitutional studies and democracy studies—to help amplify the reach of meanings of democracy beyond elections and sheer majoritarianism to constitutional

practitioners, and place constitutional courts more integrally within the purview of diverse research agendas concerned with democracy.

The focus on elections, rarely beyond – even in "transformative" jurisdictions

If the legislature got it "right" all the time, the constitutional courts would seldom be required. However, as we have witnessed, that has not been the case. Constitutional courts are routinely endowed with a heavy portfolio of tasks—something that has only gotten heavier over time.[8] Although initially envisioned as focusing on the supervision of governing power, rather than defending individual rights,[9] their competences have commonly expanded after the catastrophes of the Second World War, which brought rights violations to the forefront of visibility.[10]

The increased awareness of the harm that unaccountable executive power can do has elevated constitutional courts to the status of a—sometimes the last—institutional resort for the protection of fundamental rights, for safeguarding the rule of law against attempts at concentration of arbitrary power and for coming to terms with the authoritarian past of the society. Their significance extends to questions of regional and global integration due to their authoritative position in interpreting the relationship between domestic constitutional law and international law or regional human rights frameworks.

Yet, most of these roles—which are evaluated in diverse ways depending on the interpreters' conceptual and normative preferences and their exposure to operational nuances of specific constitutional courts—are rarely explicitly connected to *democracy*. Constitutional court action tends to be invoked in relation to the rule of law and human rights, the other two values sometimes referred to as a 'holy trinity' with a European subtext.[11]

Connections to democracy, when they do arise, tend to appear in two ways. The first is the constitutional court's role in contributing to legal guarantees of free and fair elections that even reductionist conceptions of democracy cannot dispense with.[12] Here, constitutional courts may plausibly be situated within the democratic ecosystem, for example, to

safeguard majority will, articulated through elections. This role is not insignificant: elections remain a pivotal moment of public mobilization.[13] Ensuring that they fruitfully channel majority will is a meaningful, if circumscribed, contribution of the constitutional courts.[14] The second is the opposite: the presentation of constitutional courts as *counter-majoritarian* and hence*antidemocratic* (or at least, *undemocratic*).[15] According to this narrative, constitutional courts are important, maybe even in the broader democratic ecosystem, but on their own they are not democratic, because their judges do not enjoy the legitimacy granted by regular popular vote in (free and fair) elections. The counter-majoritarian narrative gives rise to extensive debates on whether and when judicial 'intervention'—a framing that already prejudges the court as an intruder into an otherwise self-sufficient democratic process—is legitimate in the sense of not overly undermining the 'will of the people',[16] which itself is a contested fiction that papers over deep disagreements about whose will counts, how it is aggregated, and whether majority preference alone exhausts the normative content of democratic legitimacy. The Indian Electoral Bonds case discussed above illustrates this tension with particular clarity.[17] The Supreme Court answered the narrower questions of accountability, but refused to clearly address the implication which it would have had on the democracy.

In the late 2010s to early 2020s, the references to democracy in the context of constitutional adjudication have been cautiously extended to encompass constitutional courts' role in the 'democratic minimum core',[18] which still retains the primacy of elections but adds basic requirements needed to prevent the total concentration of power in a single institution and thereby to uphold independent guarantees of human rights "with teeth".[19] Several mutually compatible explanations for this shift arise. One is the global wave of autocratization, which has increasingly placed constitutional courts between a rock and a hard place, that is, between accommodation and resistance.[20] Faced with this dilemma, courts either accommodated autocratizing elites—and in doing so were gradually captured—or resisted, at institutional risk but without abdicating their constitutional mandates. Instances of judicial resistance build on slightly more robust conceptions of democracy.[21]

Another explanation is the growing dissatisfaction with the reductionist reading of democracy. It has been around in conventional parlance, but appears to be failing to deliver,[22] especially if it is supposed to deliver not only material wealth, but also trust, physical and mental health, community or sustainability.[23] Without subjective prospects for an optimistic future,[24] quantitative indicators of humanity as a whole doing better than ever before hold little purchase. It is precisely here that constitutional courts become relevant—not as technocratic guardians of procedure, but as institutions capable of giving legal form to the collective demand that democracy should deliver something beyond the ballot box. When peoples experience democracy as failing to address inequality, precarity or ecological collapse, the question of what courts can and cannot do with the concept of democracy becomes urgent in a way that purely electoral conceptions cannot capture.

A court engaging with a thicker understanding of democracy, such as in the Electoral Bonds case, might have asked whether a scheme enabling anonymous corporate money to flow in governing parties structurally compromises the conditions of political competition. If so, were the elections held during the tenure of electoral bonds "democratic"? If not, then what is stopping the court from setting the election results aside? Now, if the orientation towards sheer majority rule does not cut it, perhaps democracy needs to be linked explicitly to outcomes, or at least to higher standards than free and fair elections alone are able to offer. Both scholars and institutions responsive to such sentiments—including constitutional courts—might become more open to broader readings of democracy as a result.

A third explanation for the extension of constitutional courts' democratic role stems from the globalization of ideas. Scholarship and local public discourses—which by themselves can shape the public understanding of central concepts and institutions[25]—are increasingly available to global audiences, thanks to digitalization and the rapid improvement of automated translation. This can yield recognition, previously more difficult to reach, of similar constitutional challenges faced by geographically and, at least in some respects, isolated communities.[26] No longer is it unimaginable that a constitutional court

in a small country has something instructive to offer to the practice of another, continents away.[27]

These previously "hidden"[28] jurisdictions necessitate conceptual innovation in so far as they had engaged in it autochthonously, addressing local challenges with the use of ideas and concepts developed in that environment. Here, democracy need not be read in reductionist terms, and instead more expansive associations may emerge, such as inherently linking democracy to development and derive implications for (the legal enforcement of) public welfare commitments from this connection.[29]

Yet this scholarly broadening towards a 'democratic minimum core' is not—at least based on tentative evidence from this blog series—translated into constitutional court reasoning about democracy, which remains restrictively focused on elections, public representation and majority will articulation. In short, there is a gap between scholarly and adjudicatory innovation, not least because scholars and judges raising this innovation are rarely the same.[30] This gap fuels the "race to the bottom"—the entrenchment of reductionist conceptions of democracy particularly when (partisan or scholarly) pushback appears in response to an attempt to broaden them.

The first sprouts of a shift-constitutional courts as challengers of oligarchy and corruption

The series hints at a shift in the hegemonic debate that may become increasingly pronounced globally amidst the rise of concerns about democracy being eroded by excessive concentrations of wealth and power,[31] and not necessarily via lawful means. Actors presenting themselves as private—such as companies doing business with natural resources, social media companies or large retail companies—are amassing disproportionate influence, aided by the deliberate cultivation of unaccountability and convergence of personal interests of wealth by some authoritarian partisan politicians.[32] In this environment, democracy is a 'struggle' where democratic actors need 'all hands on deck', including the tools of 'constitutionalism, competition, universalism

[…], antimonopoly, countervailing power and systemic redistribution' to counter the tendencies of state capture.[33]

The impetus comes primarily from Global South courts, in this series visible in the Supreme Court of Brazil.[34] The emphasis on prosecuting actions of corruption as corrosive of democratic self-government—while upholding due process—directly engages the demand that no one, including the most powerful elected leaders—stands above "the law". These proceedings impose extraordinary pressure on constitutional courts; trials are likely to be widely publicized and die-hard supporters of the leaders charged by corruption remain immune to any evidence that may question their idol. Judges can be expected to be "trash-talked" or subjected to orchestrated delegitimization campaigns, if they proceed in their duty. Exit (in Hirschman's terms)[35] becomes easier as those who understand the value of independent institutions are unlikely to move beyond the critique of the particular judgment towards challenging the institution as such.[36]

In short, some constitutional courts have begun to recognize that democracy plagued by unbridled corruption inevitably degrades into oligarchy and that this degradation is not merely a political problem to be resolved through elections or legislative majorities, but a constitutional one—demanding broader engagement. In Kuhner's terms, courts are increasingly aware that 'constitutional interpretation turns on competing views of oligarchy'.[37] The question is whether this gradual realization is enough or it is destined to be too little too late to buttress constitutional court practices that advance democracy. Strands of contemporary democratic theory highlight the potential of uncertainty and surprise that are inherent in democratic politics.[38] These features of democracy ensure that representatives remain subject to ongoing scrutiny. The public assesses their performance with the aid of intermediary institutions,[39] notably media and political parties.[40]

Unlike media, political parties and non-governmental organizations, constitutional courts are not typically seen as part of the 'critical infrastructure of democracy',[41] particularly since democracy can exist without constitutional courts but is hardly imaginable without media or political parties.[42] Nevertheless, constitutional courts in the sense of

de-oligarchizing institutions—a term which captures their potential role in checking the concentration of power—stand *closer* to these intermediaries than the executive or the legislature, the latter being the key institutions in mainstream democratic thought.[43]

Constitutional court power brings uncertainty into democracy, as it has the capacity to reverse representatives' decisions, to force them to come back to the "drawing board" and it can yield surprising turns beyond binary choices. Hence, this power adds to democracy seen as 'a constantly destabilizing transgressive practice of resistance to oligarchic domination'.[44] Paradoxically, the very features that constrain constitutional courts—their lack of enforcement powers, their insulation from electoral politics, their relative remoteness from daily life—may also be what can prevent them from becoming oligarchic institutions themselves.[45]

From constitutional adjudication to the integration of constitutional and democracy studies: Time is of the essence

Unlike a few decades ago, constitutional studies have emerged as a genuinely interdisciplinary field, focusing on constitutions and constitutionalism. Constitutional courts are naturally a central institution of interest to constitutional studies, and most contextually rich studies that do not assume a reductionist definition of democracy can find home here. Yet, the field retains a gravitational pull towards legal studies at the expense of other disciplines. Entering the field without this "ticket" is possibly easier than with doctrinal legal studies, but there remains less motivation for those without formal legal background to attempt such an entry, in effect giving legal education a de facto monopoly over the epistemology of institutional practice.

In particular, democratic theorists, empirical democracy scholars and "interdisciplinarians" who are interested, but not primarily, in law and courts, have less motivation to engage with constitutional studies, especially if the latter engages with the concept of democracy only tangentially. However, democracy researchers are hardly a key point of reference for constitutional practitioners, as they would be seen as "non-legal outsiders", outsiders to the "legal" discourse. Amidst the rise of

quantity of scholarship, with no institutional incentive to look beyond the legal doctrine, constitutional practitioners, including judges, have little to no reason to engage with the democracy studies literature or turn to democracy scholars. This then completes the vicious circle aiding the dominance of the reductionist reading of democracy commonplace in doctrinal legal studies.

The increasing complexity that constitutional courts face in the (dis)information age amplifies the opportunity costs of this vicious circle not only for the understanding and operations of these institutions, but also for democracy at large. Voices on the death of democracy and its inability to 're-energize' are growing.[46]

In contrast to those voices, the present blog series, through initially mapping how democracy is invoked by the judges, raises broader questions about the costs of disciplinary insularity, triggering the blind spots of scholarly collaboration that bear costs beyond academia. This editorial cannot offer a comprehensive recipe for remedy, nor can it predict the future. Yet it can formulate a starting point: for scholars of constitutional courts to engage more with recent, cutting-edge advancements in democracy studies, and for the 'scientists of democracy'[47] to place constitutional adjudication more centrally within their research agenda. Doing so could shift the vicious circle into a virtuous one.

Richer exchanges would reinvigorate democratic theory, which has stalled in widening the gap between theoretical proposals for deepening democracy and the stubborn failures of implementation.[48] They would equally revitalize constitutional studies, where the current tendency is to foreground structural constraints at the expense of judicial agency[49]—further insulating judges from responsibility for democratic and planetary futures. The stakes are high.

AI Declaration: No AI tools were used in writing and editing this contribution.

Notes

[1] Association for Democratic Reforms v. Union of India (2024) 5 SCC 1 (SC) [173].

[2] Citizens United v. Federal Election Commission (2010) 558 U.S. 310.

[3] Advay Vora, 'Supreme Court Rules Electoral Bond Scheme Is Unconstitutional | Judgement Matrix' (*Supreme Court Observer*, 15 February 2024), https://www.scobserver.in/reports/supreme-court-rules-electoral-bond-scheme-is-unconstitutional-judgement-matrix/.

[4] Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton University Press 2004), 12-21.

[5] This conceptual under-preparedness reflects deeper features of constitutional theory itself. Jeremy Waldron as its canonical representative has argued that constitutional adjudication has historically been theorized in ways that risk displacing democratic decision-making and insulating constitutional interpretation from democratic participation. *See generally* Jeremy Waldron, *Law and Disagreement* (OUP 1999).

[6] For example, David Robertson, *The Judge as Political Theorist: Contemporary Constitutional Review* (Princeton University Press 2010); Justin Collings, *Democracy's Guardians: A History of the German Federal Constitutional Court, 1951-2001* (OUP 2015).

[7] *See generally* Nuno Garoupa and Tom Ginsburg, *Judicial Reputation: A Comparative Theory* (University of Chicago Press 2015).

[8] Michaela Hailbronner, *The Failures of Others: Justifying Institutional Expansion in Comparative Public and International Law* (CUP 2026) 127.

[9] Lars Vinx, 'Kelsen's Argument for Constitutional Review: A Reappraisal' in David Ragazzoni and Sandrine Baume (eds), *Hans Kelsen on Constitutional Democracy: Genesis, Theory, Legacies* (CUP 2026) 194-196.

[10] Víctor Ferreres Comella, *Constitutional Courts and Democratic Values: A European Perspective* (Yale University Press 2009); Tom Ginsburg, 'The Global Spread of Constitutional Review' in Keith E. Whittington, R. Daniel Kelemen and Gregory A. Caldeira (eds), *The Oxford Handbook of Law and Politics* (OUP 2010).

[11] JHH Weiler, 'The European Circumstance and the Politics of Meaning: Not on Bread Alone Doth Man Liveth (Deut. 8:3; Mat 4:4)' (2020) 21 German Law Journal 96.

[12] Rosa Ristawati, 'The Constitutional Court of the Republic of Indonesia: Experimenting with a Developmental Conception of Democracy' (*TRAFO –*

Blog for Transregional Research, 16 December 2025), https://trafo.hypotheses.org/62557; Arnisa Tepelija, 'Constitutional Imperative vs. Parliamentary Defiance in Albania: The Unresolved Case of an Alleged Mandate Incompatibility' (*TRAFO – Blog for Transregional Research*, 13 January 2026), https://trafo.hypotheses.org/63823.

[13] Consider the example of Hungary prior to the April 2026 elections: even though the electoral system is heavily skewed in the way how the results of the ballot are translated into the number of seats in parliament, and there is almost total governmental control of the strongest media channels, there was, based on poll estimates, a realistic possibility for the opposition party to prevail.

[14] On the other hand, if the constitutional courts have competences also over adjudicating complaints in local elections, they can become overwhelmed with minute disputes from municipalities with a few hundred inhabitants. If the constitutional court does not adjudicate local electoral disputes in the first instance, its impact need not be undermined.

[15] Although these terms are sometimes used interchangeably, they can signal a difference: anti-democratic actions actively oppose democracy while undemocratic actions "merely" occur outside the frame of democracy/autocracy. If a constitutional court is undemocratic, it may still contribute to democracy—here stands a common narrative of the constitutional courts as "correctives" to democracy understood in majoritarian terms. However, if it is antidemocratic, then its actions hamper democracy. An antidemocratic court might still be a choice for democrats if they understand democracy to stand in tension with, for example, minority protection or substantive justice. On this tendency of 'value reductionism' that enables democrats to support institutions they present as antidemocratic, see (in the EU context) Max Steuer and James Organ, 'Reductionism and Holism in European Union "Value Talk": The Case of the Conference on the Future of Europe' (2025) 23 International Journal of Constitutional Law 435, 438–443, 452–458.

[16] Of course, there are exceptions, we discuss only the general trend in broad terms.

[17] The tension within the judgement is visible within its architecture. *See* Association for Democratic Reforms v Union of India (2024) 5 SCC 1 (SC) [173] at ¶44. Chief Justice (CJI) Chandrachud

engages with John Hart Ely's *Democracy and Distrust*—a source for representation reinforcement theory—as one justification for heightened judicial scrutiny of electoral laws. On Ely's proceduralist account, courts are legitimately counter-majoritarian, precisely when they police the processes of democratic self-government, clearing the channels of political participation against distortion caused by narrow incumbent legislators acting in self-interest. This framing would, at its most ambitious, support a narrow but defensible judicial role ensuring that the rules of the electoral game are not gamed towards those who already hold the power. CJI Chandrachud does not stop here. In Part E, the opinion proceeds to develop what is unmistakably a substantive account of political equality and how money creates entry barriers and erode the very representational link that Ely's model is designed to protect. Thus, the judgement inhabits two democratic theories simultaneously, i.e., it invokes Ely's proceduralism to justify intervention, and then deploys a richer, substantive theory of political equality to ground its findings on essentiality of disclosure. What it conspicuously declines to do is draw the consequences that the substantive theory logically demands, asking, for instance, whether elections held under a scheme that structurally advantaged one party can be treated as genuinely democratic in outcome. The gap, in other words, is not between a thin diagnosis and a thin remedy, but between the Court's own democratic theory and the institutional conclusions it was prepared to draw from it.

[18] *See* Rosalind Dixon and David Landau, 'Competitive Democracy and the Constitutional Minimum Core' in Aziz Huq and Tom Ginsburg (eds), *Assessing Constitutional Performance* (CUP 2016). *Also* Samuel Issacharoff, 'Constitutional Courts and Democratic Hedging' (2011) 99 Georgetown Law Journal 961, 964; Tom Gerald Daly, 'The Alchemists: Courts as Democracy-Builders in Contemporary Thought' (2017) 6 Global Constitutionalism 101, 118-122.

[19] Rosalind Dixon, *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age* (OUP 2023).

[20] Bojan Bugarič and Tom Ginsburg, 'The Assault on Postcommunist Courts' (2016) 27 Journal of Democracy 69; Zoltán Szente and Fruzsina Gárdos-Orosz, 'Constitutional Courts under Pressure – An Assessment' in Zoltán Szente and Fruzsina Gárdos-Orosz (eds), *New Challenges to Constitutional Adjudication in Europe: A Comparative Perspective* (Routledge 2018).

[21] Gábor Halmai, Ágnes Kovács and Max Steuer, 'The Resilience of Constitutional Courts and Their Resistance to Autocratization: Beyond Binaries, Where Time Matters' (2025) 25 Global Jurist 373.
[22] Francis Fukuyama, Chris Dann and Beatriz Magaloni, 'Delivering for Democracy: Why Results Matter' (2025) 36 Journal of Democracy 5.
[23] *Cf.* Paul W Kahn, 'What Is Democracy?' (2025) 1 Public Humanities e16.
[24] Jan Zielonka, *The Lost Future: And How to Reclaim It* (Yale University Press 2023).
[25] *See* the Egyptian example discussed in this series: Mohamed 'Arafa, 'Islamocracy and Judicial Review in Egypt' (*TRAFO – Blog for Transregional Research*, 21 October 2025), https://trafo.hypotheses.org/61941.
[26] *See also* Michael Ignatieff, *The Ordinary Virtues* (Harvard University Press 2017), although he makes a broader argument.
[27] For example, Benin on constitutional amendments. Markus Böckenförde, '(Unconstitutional) Constitutional Amendments in Africa: Mapping the Field' (2025) 11 Constitutional Studies 1, 11–15. Lithuania on same-sex marriages (from this series) is a similar case: Donatas Murauskas, 'Addressing Value Pluralism: The Lithuanian Constitutional Court Enhances Democracy by Resolving the Deadlock of Civil Unions' (*TRAFO – Blog for Transregional Research*, 18 November 2025), https://trafo.hypotheses.org/62459.
[28] Of course, they were very much there before, but ignored, due to first-world bias.
[29] Keith Dowding, Robert E. Goodin and Carole Pateman, 'Introduction: Between Justice and Democracy' in Keith Dowding, Robert E Goodin and Carole Pateman (eds), *Justice and Democracy: Essays for Brian Barry* (CUP 2004); Toby S James, 'Real Democracy: A Critical Realist Approach to Democracy and Democratic Theory' (2024) 46 New Political Science 228.
[30] Exceptions—from among those who combine these identities or have no scholarly role but generate innovation that scholars then reflect on—have good prospects to make it to collections of 'heroic' or 'towering' judges.
[31] Jean L Cohen, 'Cycles of Oligarchy, Democracy, and Authoritarianism: Lessons from the United States' (2025) 32 Constellations 212.
[32] Timothy K. Kuhner, *Capitalism v. Democracy: Money in Politics and the Free Market Constitution* (Stanford University Press 2014).

[33] Samuel Ely Bagg, *The Dispersion of Power: A Critical Realist Theory of Democracy* (OUP 2024) 243; for an illustrative case of capture, see Bálint Magyar, *Post-Communist Mafia State: The Case of Hungary* (CEU Press 2016).

[34] Arthur Guerra Filho, 'How Should Elected Politicians Behave? Constitutional Insights from the U.S. and Brazilian Supreme Courts' (*TRAFO – Blog for Transregional Research*, 23 September 2025), https://trafo.hypotheses.org/61515; Julia Wand-del-Rey Cani, 'Judicial Power and Democratic Erosion: The Procedural–Substantive Dilemma of Democracy in the Brazilian Supreme Court' (*TRAFO – Blog for Transregional Research*, 10 February 2026), https://trafo.hypotheses.org/64252.

[35] *See* Doreen Lustig and JHH Weiler, 'Judicial Review in the Contemporary World—Retrospective and Prospective' (2018) 16 International Journal of Constitutional Law 315.

[36] At least until judgments marking the court's exit multiply and even prevail, leaving the court to appear of little value as an independent guardian, instead of being particular elites' spokesperson. With some differences, the breakdown of the court's standing appears to unfold in the US, Poland or Hungary, among others. E.g. Dave Bridge, *Pushback: The Political Fallout of Unpopular Supreme Court Decisions* (University of Missouri Press 2024); Wojciech Włoch and Maciej Serowaniec, 'Constitutional Deconstruction as a Form of Extra-Systemic Dissensus: The Polish Case' (2025) 24 European Political Science 453; Ágnes Kovács and Gábor Halmai, 'The Hungarian Constitutional Court: From a Target to an Agent of Autocratization' (2025) 25 Global Jurist 265.

[37] Timothy K. Kuhner, 'Plutocracy and Partyocracy: Oligarchies Born of Constitutional Interpretation' (2016) 21 Review of Constitutional Studies 115, 141.

[38] Sofia Näsström, *Democracy in Ten Questions* (Springer 2025), 82-84.

[39] Lawrence Hamilton, 'Representative Democracy Against Oligarchy' (2025) 47 New Political Science 532, 542–543.

[40] Jan-Werner Müller, 'A Theory of Standards for Intermediary Powers' (2021) 3 Jus Cogens 141. *See also* Johan P Olsen, 'Democratic Accountability and the Terms of Political Order' (2017) 9 European Political Science Review 519.

[41] Jan-Werner Müller, 'Democracy's Critical Infrastructure: Rethinking Intermediary Powers' (2021) 47 Philosophy & Social Criticism 269.

[42] Some normative scholarship has begun to challenge the centrality of political parties—and the representative principle more broadly—in a democracy. Hélène Landemore, *Open Democracy: Reinventing Popular Rule for the Twenty-First Century* (Princeton University Press 2020).

[43] Giovanni Sartori, *The Theory of Democracy Revisited: Part One: The Contemporary Debate, Vol. 1* (CQ Press 1987); Robert A Dahl, *Democracy and Its Critics* (New edition, Yale University Press 1991).

[44] Hamilton (n 39) 550.

[45] Which is not to say that specific judgments of the constitutional courts may not help, rather than obfuscate oligarchy. *See also* Gerald N Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Second edition, University of Chicago Press 2008).

[46] Näsström (n 38) 73–74, 78–79; Jonathan White, *In the Long Run: The Future as a Political Idea* (Profile Books 2024).

[47] Jean-Paul Gagnon, 'Science of Democracy 2.0' (*The Loop*, 15 July 2025) <https://theloop.ecpr.eu/science-of-democracy-2-0/>.

[48] Veith Selk, 'The Exhaustion of Democratic Theory' (2025) 28 European Journal of Social Theory 526.

[49] Theunis Robert Roux, 'A Tale of Two Citadels: Constitutional Court Resilience Against Creeping Autocratisation in India and South Africa' (2025) 25 Global Jurist 321.

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