

Constitutionalism as a Dynamic of Constitutional Power: A Critical Engagement with the Thought of Landau and Albert

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Abstract

Recent constitutional scholarship highlights a troubling trend of democratic decline fueled by actions of majoritarian branches, particularly the legislature and executive. These actions, though cloaked in democratic appearances, use formal constitutional mechanisms to centralize power in authoritarian figures. Unlike traditional coups, this erosion of democracy is achieved through unconstitutional constitutional amendments, legitimized by legislative processes and often driven by populist leaders, prioritizing political self-interest over genuine representation. David Landau's concept of "abusive constitutionalism" and Richard Albert's theory of "constitutional dismemberment" have become pivotal in understanding this phenomenon. Both frameworks reveal how constitutional tools can be repurposed to dismantle democratic norms, enabling authoritarian control while maintaining a façade of legitimacy. This study investigates the interplay between constitutionalism and democracy, questioning whether modern constitutional frameworks sufficiently guard against authoritarian subversion. It begins by examining constitutionalism's liberal roots as a constraint on state power, then analyzes Landau's and Albert's contributions to theories of democratic erosion. The study further critiques the notion that contemporary constitutions inherently empower authoritarianism, arguing instead that modern democracies, shaped by complex social dynamics and constant public oversight, resist such simplifications. Ultimately, the analysis challenges whether constitutionalism and democracy can coexist as distinct concepts or whether their entanglement creates vulnerabilities. By exploring these tensions, the study aims to refine the understanding of constitutionalism, framing it not only as a limit on power but as a safeguard for democratic integrity in the face of evolving threats.

Keywords

Constitutionalism, Constitution, Abusive Constitutionalism, Unconstitutional Constitutional Amendment

1. Introduction

A recent trend in constitutional thought highlights a significant democratic decline arising from the actions of majoritarian branches of power (legislative and executive). These actions, which conflict with constitutionally protected principles, seek to establish an authoritarian state cloaked in democratic appearances. This phenomenon involves the use of formal constitutional amendment mechanisms to concentrate governmental power in autocratic figures. Traditional military coups have been replaced by a new method of undermining democratic norms: unconstitutional constitutional amendments, legitimized by the legislature and incited by a populist executive leader. These actions often serve as part of a covert dynamic aimed at protecting individual political interests rather than representing the people.

The theory of democratic decline under constitutional frameworks has gained traction in the writings of David Landau and Richard Albert. They argue for a relationship between constitutionalism and democracy characterized by the dismantling (or destruction) of constitutional texts to concentrate power in a leader or political party, exhibiting authoritarian tendencies disguised as democratic political processes. Although not directly explored by the authors, this suggests an understanding of constitutionalism as the product of a power dynamic between an authoritarian constitutional doctrine—which subverts a promulgated text into an imposed one, and democracy as a system of governance dominated by, albeit transient, majorities.

It does not seem to be the case that contemporary constitutions confer authoritarian prerogatives on democratic institutions. If they did, one could no longer speak of constitutionalism but rather of an authoritarian state under an imposed constitution. Moreover, modern democracies are the product of highly complex societies with social interactions far different from those of the past. Popular participation, social movements, and the constant circulation of information appear to preclude the absence of the necessary oversight to prevent a mere majoritarian game. If the critique of democratic decay is correct, a heavy burden falls on those who argue otherwise: they must either acknowledge the use of “constitutionalism” as mere terminology devoid of conceptual substance, relinquishing its distinction from democracy; consider constitutionalism and democracy as a majoritarian relationship in which one can profoundly affect the other without self-inflicted harm; or admit that the theoretical framework ignores the liberal meaning of these terms, requiring the development of a conceptual philosophy capable of substantiating the critique within one (or all) of the schools of constitutional thought that operate

under this assumption.

The proposed work explores the dynamic relationship between constitutionalism and democracy as presented in the writings of Landau and Albert, aiming to extract a meaning that transcends the merely liberal notion of constitutionalism as a limitation on the exercise of state power. To this end, it begins with a literature review on the liberal understanding of constitutionalism; then examines the concept of abusive constitutionalism as advocated by Landau and its intersection with a recent school of thought that argues for the existence of an observable global democratic decline. It proceeds to discuss Albert's doctrine of constitutional dismemberment and its direct impact on the perception of constitutionalism—once aimed at limiting power, now potentially serving to enhance the exercise of power. The study concludes with a critique of the authors' developments.

2. A Brief Construction of Constitutionalism: Liberalism and Power Structures

Liberal constitutionalism represented a form of political and legal organization of power aimed at the popular emancipation from state arbitrariness. This ideology (or ideologies) was enshrined in a rigid constitutional text—characterized by arduous, uncommon, and extraordinary procedures for textual amendments, distinct from those governing ordinary infraconstitutional legislation. Such a constitution is endowed with superior authority over other normative acts, hierarchically supreme within the legal system, serving as both the first and ultimate stage of legality, dedicated to preserving the victorious ideals it embodies (Barroso, 2019). It aligns with the notion of a promulgated constitution, one born from a democratic moment and textually constructed with the participation of the people. Conversely, it diverges from the concept of an imposed constitution (Law, 2019), which is enacted by the arbitrary will of those in power, without social oversight, as an expression of the dominance exerted by a new ruling force over the state apparatus.

In doctrine, it appears as a type of “school of thought aimed at achieving consistent political objectives, fundamentally involving the limitation of public powers and the consolidation of spheres of autonomy guaranteed through a system of norms” (Fioravanti, 2014). It can be studied both as a socio-political movement and as a legal-philosophical doctrine, comprising at least three constitutive elements: 1) fear of the perpetuation of oppressive conditions, 2) fundamental rights which, when constitutionally protected, must establish 3) a constitutional relationship that ensures democratic governance procedures and the possibility of popular influence on political decision-making (Guedes, 2014).

A minimal conceptualisation of liberal constitutionalism is: a social movement that may or may not produce legal consequences (when successful, it is symbolised in the creation of a constitution or power structures aimed at a process of constitutionalisation). Its claims become constitutionally protected and enshrined in a normative text, arising from 1) the awareness and mobilisation of the populace against the arbitrariness of those holding state power to prevent the perpetu-

ation of conditions gravely harmful to fundamental rights, or to institute such rights within the legal framework. 2) At its core, it also entails the popular struggle for the protection and guarantee of fundamental rights in a constitutional text. Upon achieving success, 3) this text must be safeguarded by constitutionally defined procedural instruments and by society itself through democratic practice (Guedes, 2014).

Despite the various challenges historically posed to the term and its conceptual substance, the idea of liberal constitutionalism, in its origin as a limitation on the exercise of state power, remained relatively well-accepted and uncontroversial until around the mid-20th century. At that time, the *nazistaate* presented horrors to the global community after taking control of the state through majoritarian voting and sequential changes to the Weimar Constitution. It was from that moment onward, as a reaction against what transpired, that constitutional doctrine began to focus more intensively on the study of constitutionalism in relation to a promulgated constitution, one that can be victimized or usurped by authoritarian regimes, leading to severe consequences or the destruction of the democratic system of governance (Cf. Loewenstein, 1965).

Constitutional theory identifies two major consequences of the studies emerging from the second half of the 20th century, as a way to create barriers and prevent a repetitive cycle of history: (a) a political choice for a system of control over legal acts, which grants an institution—whether or not linked to the Judiciary—competence to review legislative expressions (or those equivalent to legislation) originating from other branches of power; (b) a rigid regime for modifying the constitutional norm to prevent issues of a transitional nature, i.e., authoritarian majorities, populist leaders with autocratic projects of power concentration, etc.

In the first case (a), constitutional jurisdiction (*judicial review*) is the most comprehensive institutional model of the last century, with the creation of constitutional courts or the expansion of the powers of existing ones being widely documented (Brinks & Blass, 2017). This phenomenon is observable in several countries that have granted the judiciary the competence to review the compatibility of normative acts with the constitution and, if deemed unconstitutional, to invalidate them, suspend their effectiveness, challenge their existence, or even declare them null and void.

This configuration has had a direct impact on the design of the state, on the power dynamics between constitution and constitutionalism, and has placed democracy as a system of governance not solely within the realm of majoritarian reserve. It created an element, beyond direct popular vote scrutiny, that operates in the political balance through legal argumentations in defence of the constitution. Furthermore, countries that had already adopted the rigid model of constitutional justice, in the last quarter of the century, began to reformulate it in an attempt to safeguard the independence of powers, ensure greater protection of fundamental rights, preserve the democratic process, and uphold the rule of law (Brinks & Blass, 2017).

In the second case (b), clauses act as barriers to participation and alteration of the democratic process by parties or political groups with disreputable, hateful, or exterminatory rhetoric towards minorities. In more rigid cases, prohibitions may be applied to those with non-secular, non-universalizable speech, or speech containing content contrary to human rights (Issacharoff, 2015). Constitutions with clauses of eternity and a solemn process for amendments are structured to form a system of checks and balances capable of ensuring interdependence among powers, safeguarding specific competencies, and strongly adhering to international human rights protection in an effort to shield society from authoritarian governments, despots, and, most importantly, to prevent attacks on democracy (as a system of government) and democratic foundations (organised civil society, pressure groups, discursive dynamics in political power struggles, etc.) in terms of pluralistic popular participation (Halmai, 2024).

Despite the relative political stability in the Western world following the Second World War¹, with apparent congruence between the various subsequent constitutional models, two major critiques—or counter-responses—emerged regarding the theoretical consequences of structuring the state based on the constitutional order: against the expansion of constitutional jurisdiction, there is an argument of usurpation of the people’s reading of the constitution, a process of removing the constitution from the people and transferring it (or “seizing” it) to (by) a supreme court. This is somewhat known as the “Countermajoritarian difficulty,”² which establishes a regime that grants the judiciary the “last or final word” on the meaning of the constitutional norm, a model of “judicial supremacy” opposed to “popular supremacy.”³

In opposition to a constitutionally rigid regime capable of ensuring and protecting democracy, there is the rise to power of political leaders with non-democratic tendencies, who have found refuge in the processes of reform or replacement of the constitutional norm, thus establishing an “abusive” relationship of constitutionalism, which undermines the democratic system of government. Can the constitution be contrary to democracy? Can democracy exist within an authoritarian model of state?⁴ Can constitutionalism, the constitution, and the democratic system of government coexist harmoniously, while also being in tension to ensure the best efficiency from one another? Can a system display authoritarian traits under the aegis of the constitution and still be a democracy? Can constitutionalism be radicalised in any of its variations to enhance a particular constitutional model, thereby weakening its own democratic legitimacy? If so, what would this represent? Constitutionalism e Democracy, as concepts, suffers from the constitutional hardening of the political game system in the face of the necessary democratic opening for popular participation; it is the dichotomy between constitutional supremacy and popular sovereignty.

¹Relative, as it was merely apparent, see Hobsbawm (1995).

²Cf. Bickel (1986).

³See Fernandes and Guedes (2023).

⁴Cf. Varol (2017).

The tension is best understood as follows: from constitutionalism, the limitation on the exercise of power through the organization and structuring of the state, the struggle for fundamental rights with the symbolic consecration of the movement(s) through the normalization of a process of political achievements formalized in a document historically referred to as a “constitution” (Fioravanti, 2014), which creates and hardens the legal system based on the choices contained within it, breaking or merging a previous *status quo* with what will then become a new *status quo*; from democracy, the pluralistic discursivity of social participation in the formation of power voices capable of actively influencing the decision-making process on the paths to be taken by the state (Habermas, 1996: p. 94), popular sovereignty with the necessary maximized openness for rationalized-critical action (Guedes, 2024).

For a minimal conceptualization of what is referred to here, the research draws on Daly’s (2019) definition, according to which the problem can be seen as follows: “In recent years, the gradual deterioration of democratic regimes worldwide has become a major concern in various fields of research and disciplines—especially in public law and political science,” something that has prompted an understanding of “the emerging threats to a wide range of democratic systems.” It is thus acknowledged that “many terms are now used to refer to the incremental degradation of the democratic regime worldwide or ‘democratic decay.’” This is the term adopted in the text. Other terms that may be found with similar meanings include: “Abusive constitutionalism. Autocratic legalism. Populist constitutionalism. Bad-faith constitutionalism. Constitutional decay. Democratic backsliding. Authoritarian backsliding. Rule of law regression. Democratic erosion. Democratic recession” (Daly, 2019)—among many others. The central issue, from the perspective of the research, is that the military coups of the past have given way to a new way of circumventing the democratic process through unconstitutional constitutional amendments or the packaging of constitutional courts, both examples legitimized by the legislature and incited by the figure of a populist leader in the executive branch, which are part of a covert dynamic aimed at protecting personal political interests rather than representing those of the people. The concept of “the people or we, the people” is, in fact, a dimension often overlooked by scholars in this field⁵.

The thesis of democratic decay under the constitutional aegis gains traction in the writings of Landau (2013) and Albert (2018), to exemplify just a few of the various authors who address the theme under converging principles, considering other legal systems⁶. They argue for a type of relationship between constitutional-

⁵It is worth noting that, as observed by Przeworski (2019), studies often fail to address the dimension of “the people,” their role, and their intentions in this process, which is frequently described as a “decline” of democracy or the democratic game. This omission, at least at first glance, appears to overlook a central element for understanding and conveying the problem.

⁶Given the breadth of authors addressing the topic in a similar manner, Landau and Albert appear to form a cohesive universalising dimension regarding the factors discussed in other writings, which justifies the selection of their works, albeit partially at the expense of others. In a somewhat similar vein, see Daly (2019a).

ism and democracy involving the dismantling (or destruction) of the constitutional text for the purpose of concentrating power in the figure of a leader or party⁷, with manifestations of authoritarian tendencies disguised as political-democratic processes. Although not directly explored by the authors, this suggests an understanding of constitutionalism as the outcome of a power dynamic between an authoritarian constitution doctrine⁸—one that perverts a promulgated text into a granted one—and democracy as a system of government dominated by majorities, albeit transient ones. This is the point of dialogue that the text now engages with.

3. Abusive Constitutionalism in the Thought of David Landau and the Constitutional Dismemberment in the Thought of Richard Albert

In Landau's (2013) argument, the term "abusive constitutionalism" is used to draw attention to "the use of constitutional change mechanisms to erode the democratic order." He presents the cases of Hungary, Egypt, and Venezuela as examples that, according to the author, demonstrate the accuracy of the argument that "tools for constitutional change, such as unconstitutional amendments or the replacement of the constitutional text, can be used by would-be autocrats to undermine democracy with relative ease." He goes on to state that "as military coups and other gross ruptures in the constitutional order have fallen into disuse, actors instead reformulate the constitutional order with subtle changes," aiming "to make themselves difficult to remove [from power] and to neutralize or politicize the courts and other accountability institutions" in their favor and to serve their interests.

If correct, this implies a hybrid regime: not entirely authoritarian but with characteristics of democratic systems—a regime with a single voice, guided by the political direction capable of resonating with popular appeal under the leadership of a charismatic politician, with populist state policies that create a structural dimension within the state for the implementation of a personal agenda, even at the expense of the best social interests or public order considerations. This is why Landau (2013) rightly asserts that any proposed solution "must recognize the difficulty of the task," as the popular will—at least in the author's argument—appears to be the underlying support for the authoritarian paths of state power, where democratic structures are maintained merely as a facade for the formal maintenance of the rule of law under a constitutional aegis; a constitution, though promulgated, which, with such policies, begins to undermine the essence of democratic functioning, being perverted for the pleasure of those in power, in a granted form:

"The resulting regimes continue to hold elections and are not fully authoritarian, but they are significantly less democratic than they were previously.

⁷It appears to be, it must be said, a common point in the argumentation of all those who address this topic, cf. Daly (2019a).

⁸In a somewhat similar vein, see Fioravanti (2012).

Even worse, the problem of abusive constitutionalism remains largely unsolved, as the mechanisms for democratic defense, both in comparative constitutional law and international law, are largely ineffective against it. Some of the most cited mechanisms in the literature—such as the German concept of militant democracy and the doctrine of unconstitutional-constitutional amendments—are, in fact, difficult to apply against the threat of abusive constitutionalism or easily avoidable by aspiring authoritarian actors”.

Concerned with the phenomenon of abusive constitutionalism, Landau seeks to offer ways to strengthen democratic defenses against what he perceives as authoritarian attacks. The problem is that the analysis reveals a large number of practices: “abusive constitutional practices can take a variety of different paths to achieve the same objectives” (Landau, 2013)—which implies that the possibility of democratic protection does not seem to lie solely in institutions, but also within them. In other words, the system must be able to combat autocratic attempts is the same old story. The issue, from the perspective of the narrative, is the process of justification and the presumption of validity of the imperative “democracy” over authoritarian attempts. Otherwise, a heavy argumentative burden falls on popular choices when free elections are possible.

However, this is not merely an issue of the electoral process. “Constitutional substitution can be used if attempts at constitutional amendment are blocked, and would-be autocrats can resort to weakening various institutions in different ways to achieve their objectives.” (Landau, 2013) It is also a problem, as Landau (2013) reads it, of the electoral system. “The problem of abusive constitutionalism seems more likely to arise in relatively homogeneous states, where vote counting tends to be more unstable and political parties are often less entrenched,” which appears to suggest “a broad agenda of institutional and electoral design for scholars working in relatively homogeneous states.” However, studies on heterogeneous states are increasingly common, which Landau did not foresee. For his conclusions, the author focused on what was available for scrutiny, especially the Hungarian case⁹:

“The Hungarian example is perhaps the best illustration of this problem of fungibility: Fidesz amended and then replaced the Constitution, using a variety of different techniques, both constitutional and legal, to undermine the power of control institutions and consolidate the party’s power. For example, Fidesz weakened the judiciary by changing the jurisdiction of the Constitutional Court, expanding the size of the court and then filling it with allies, altering the retirement age of regular judges, and controlling the institution responsible for ordinary judicial appointments. Finding effective responses to this type of structural weakening is a complex task. Nevertheless, the importance of the practice of abusive constitutionalism can help reorient some of the central issues in the field. For example, recent studies have focused largely on multi-ethnic states, which are seen as more likely to face a variety

⁹On the Hungarian case, for a comprehensive analysis, see Halmi (2024).

of ills, including violence and democratic collapse. (...) Furthermore, the problem of abusive constitutionalism reinforces a crucial point: the formal rules incorporated into constitutions are often surprisingly fragile, and even seemingly strong rules can be captured in a surprisingly high number of circumstances. The challenge, of course, is to preserve constitutionalism in the face of this reality. In part, the responses lie in the construction of a more intricate formal system of constitutional change: this is what amendment levels or substitution clauses do. But, perhaps more significantly, the answer lies in developing a different conception of constitutionalism. The doctrine of unconstitutional-constitutional amendments, and perhaps the emerging responses from Europe to Hungary, suggest a more substantive conception of constitutionalism—that which asserts that a constitution is not truly constitutional unless it functions in certain ways and adheres to certain fundamental principles”.

It is worth noting that, when analyzing the Hungarian case, [Halmai's \(2024\)](#) writing seems to take a more sophisticated approach when suggesting the question “of how to distribute responsibility for democratic backsliding between the elites and the citizens, influenced and often manipulated by leaders.” This seems to be an important consideration for the topic. Beyond the various interpretative issues presented in Landau's writing, such as the comparative use of legal regimes and dialogue with regional authors under non-universalizing predicates (or the lack thereof), it appears to assume that, although constitutional courts may be subject to undue interference by autocratic leaders, they must also be capable of demonstrating resilience in confronting “attacks” on democracy or the democratic process. This argumentative dimension informs both endogenous and exogenous factors in the understanding of the observed reality, a point well explored by [Šipulová and Kosař \(2023\)](#):

“Democratization can take the form of executive-led attacks, as well as incremental decay, the gradual emptying of underlying constitutional values, and state inertia. Contrary to common wisdom, both exogenous erosion and endogenous decay are strongly affected by informality. As courts are often the first institutions affected by democratization, this article analyzes informality in the erosion and decay of judicial institutions. It is argued that these institutions interact with democracy in two main directions. The first is endogenous and describes the decay of democratic judiciaries as a result of a long-term incongruence between formal and informal judicial institutions. The second direction captures the gradual erosion of informal institutions that have positive effects on judicial democratic resilience. These two processes, the decay and erosion of informal judicial institutions, should not be overlooked. While they are less visible, slower, and often unintended, they are just as dangerous as executive-led frontal attacks on the courts because they significantly increase the window of opportunity for politicians seeking to degrade the substance of democracy or even implement a regime change”.

It truly concerns a more in-depth version of Landau's argument, where the institutional aspect of the narrative seems to refocus attention on the functioning of the court and its institutional possibilities for "defending" the democratic game, beyond standards unrelated to the control of the constitutional court itself. In addition to the lack of clarity on how this functioning would take place, Landau falls short in equating political leaders from different spectrums who do not communicate—something, incidentally, that can be said to be a distinctive feature of authors who follow a similar line of thought. [Levitsky and Ziblatt \(2018\)](#), for example, go so far as to place Hitler, Getúlio Vargas, Hugo Chávez, and Alberto Fujimori in the same sentence as if their actions were comparable, with the authors justifying this by stating that they were "authoritarian by nature".

Each authoritarian figure cited by the authors would deserve its own reflection. Radicalizations of thought, such as those of Levitsky and Ziblatt, can be found in various other authors within the same line of thought. This reasoning is also followed in the writings of [Ginsburg and Huq \(2018\)](#), [Runciman \(2019\)](#), and many others¹⁰—a problem recognized even by those who defend the ideas developed in the works of the aforementioned authors¹¹. Still, it is possible to acknowledge that they conducted an interesting analysis of the structure of current constitutional democracies, identifying points of stress that lead to a sequential (and gradual) rupture of the system: "disregard for 'mutual tolerance' and 'institutional forbearance' could cause serious damage to a democratic project without the need for more explicit affronts to the constitutional system." ([Meyer, 2021](#))

If it is true that "academic studies on democratic decline can help clarify, for citizens and policymakers, the main dilemmas involved in expanding the Supreme Court, restricting extremist discourse, and other democratic reform proposals," ([Keck, 2023](#)) it is also true that, when the representation of the realities in which these studies aim to operate is not structured, the analysis tends to be dismissed as unnecessary alarmism and less significant. The engagement with Landau's writing appears more complete when considering the dimension of constitutional normativity – here, the study of the doctrine of unconstitutional constitutional amendments is particularly important, especially in Richard [Albert's \(2018\)](#) construction of thought regarding "constitutional dismemberment." The core of the argument is that there is a peculiar element in constitutional theory, which can be observed in various parts of the constitutionalized world. It has recently been a constant the use of "constitutional amendments that are not truly amendments," but rather "self-conscious efforts to repudiate essential features of the constitution and destroy its foundations".

Such legislative moves "dismantle the basic structure of the constitution and, at the same time, build a new foundation rooted in principles contrary to the old ones," with profound impacts on social order, fundamental rights (especially social rights, as many of these changes refer to ideological modifications that result

¹⁰See [Mounk \(2018\)](#).

¹¹See [Meyer \(2021\)](#).

in the suppression of public investment in education or healthcare), and “substantial consequences for the entire legal system and society”. [Albert \(2018\)](#) makes a crucial distinction between two types of constitutional changes: amendment and dismemberment. He defines constitutional amendment as a modification that adjusts or updates the constitution without altering its identity or fundamental principles, maintaining the continuity of the legal system. In contrast, constitutional dismemberment occurs when a change is so profound that it transforms the essence of the constitution, altering its basic principles and the structure of power, resulting in a new configuration of the constitutional system. Albert emphasizes that some changes made under the guise of amendments may, in fact, be disguised dismemberments, which could fundamentally alter the governance of a country without proper debate or reflection. What remains particularly interesting in the author’s construction is the way he approaches the problem:

“Constitutional dismemberment is both a phenomenon and a concept. We cannot deny that constitutional dismemberment exists as a phenomenon today: around the world, we continue to observe efforts to implement transformative constitutional changes without disrupting legal continuity. I sought to identify this phenomenon by giving it a name: constitutional dismemberment. A constitutional dismemberment deliberately seeks to alter fundamental rights, the structure, or the identity of the constitution, using the ordinary rules of constitutional amendment. The conventional theory of constitutional change denies the legitimacy of constitutional dismemberment. Therefore, courts generally reject constitutional dismemberments for exceeding the amendment power held by the actors proposing the change. In the conventional theory of constitutional change, a constitutional alteration results in one of two possible outcomes. Either it is an amendment, in which case the courts recognize it as constitutional because the amendment modifies the constitution in a way that is consistent with its existing structure and assumptions. Or, alternatively, it introduces a change that does not align with the existing constitution, in which case the courts generally invalidate the change made as an amendment and require political actors to engage in a new process of constitutional creation to formalize the transformative change they seek to make. The concept of constitutional dismemberment occupies the space between an amendment and a new constitution. It recognizes that a transformative change does not necessarily result in a new constitution, but rather, that transformative change should be understood as the deconstruction of the constitution within the existing constitutional order, subject to its own internal rules.”

While Landau and his interlocutors appear more interested in describing the phenomenon without necessarily addressing the normative incursions regarding the premises raised, [Albert \(2018\)](#) sheds light on procedural aspects and how courts should act to resolve the problem he identifies—the intention to alter the constitutional order, its structures, and liberal assumptions of functioning, to al-

low the rise of autocratic figures to power and the implementation of non-democratic power projects. This is why he views constitutional dismemberment, “at the same time, as both a doctrine and a theory,” as both descriptive and normative regarding the events proposed for analysis. As a doctrine, “it concerns how courts should approach the review of constitutional amendments,” (Negishi, 2020) where the role of the courts, of constitutional courts, would be as “catalysts, not obstacles; they should not invalidate amendments, but rather collaborate constructively with political actors to determine whether the transformative change reflects the considered judgment of the people and their representatives,” (Albert, 2018) suggesting a judicial self-restraint. He continues, further explaining what seems to be the most interesting part of his proposal, constitutional dismemberment as a theory:

“I suggested that the rule of mutuality should be the standard expectation that political actors must meet when attempting to dismember the constitution. The rule of mutuality includes four factors—differentiation, symmetry, unification, and recognition—all of which are necessary to defend the constitution, urging those who promote the amendment to verify whether there is substantial democratic support for a transformative change to the constitution and to protect the underlying constitutional agreement made on behalf of the people. The theory of constitutional dismemberment is based on the phenomenon, concept, and doctrine of dismemberment to incorporate a comprehensive set of strategies for managing the constitutional change process. The theory of dismemberment is driven by the theory of constituent power—a theory that, as I suggested, is currently not adequately equipped to guide political actors on how they should alter the constitution and is not sufficiently precise to allow the constitutional community to assess the legitimacy of a transformative constitutional change. The theory of constitutional dismemberment seeks to rescue the theory of constituent power in light of the constitutional changes we have witnessed. In essence, the theory of constitutional dismemberment concerns the present constitutional settlement and how changes are made; the theory does not advance a normative claim about what constitutes a good constitution or what should be enshrined in a constitution. The theory is localist, not globalist or transnationalist. It respects indigeneity and local norms, national sovereignty, and the fundamental reality that the theory of constituent power will manifest differently across borders”.

Note that what the author “proposes to constitutional designers interested in preserving legal continuity” is that they “codify procedures not only for amendment but also for dismemberment, that is, a fundamental rupture with the commitments or underlying assumptions of the constitution” (Negishi, 2020)—something that is not necessarily unheard of in constitutional experience¹², but also

¹²The best example of this is Article 347 of the Venezuelan Constitution: “The original constituent power resides in the people of Venezuela. This power may be exercised through the convening of a National Constituent Assembly with the purpose of transforming the State, creating a new legal order, and drafting a new Constitution.”

does not seem advisable, given that the constitutional order is intended to be eternal (Suteu, 2021). On the other hand, it is a contribution aimed at controlling the previously informed autocratic practices, as “the objectivist perspective of constitutional designers can be an advantageous standpoint for evaluating the socially transformative rupture of constitutional dismemberment,” (Suteu, 2021) while also helping to curb authoritarianism in its objective dimension, which would be focused on disfiguring the fundamental predicates of the Constitution. This is why Albert defends the idea as both a phenomenon and a concept (Albert, 2018):

“Constitutional dismemberment is both a phenomenon and a concept. We cannot deny that constitutional dismemberment exists as a phenomenon today: around the world, we continue to observe efforts to carry out transformative constitutional changes without breaking legal continuity. I have sought to identify this phenomenon by giving it a name: constitutional dismemberment. Constitutional dismemberment deliberately seeks to alter fundamental rights, the structure, or the identity of the constitution, using the ordinary rules of constitutional amendment. The conventional theory of constitutional change denies the legitimacy of constitutional dismemberment. Therefore, courts generally reject constitutional dismemberments for exceeding the amendment power held by the actors promoting the change. In conventional constitutional change theory, a constitutional alteration results in one of two possible outcomes. Either it is an amendment, in which case courts recognize it as constitutional, since the amendment modifies the constitution in a manner consistent with its existing structure and assumptions. Or, alternatively, it introduces a change that does not align with the existing constitution, in which case courts generally invalidate the alteration made as an amendment and require that political actors engage in a new process of constitutional creation to formalize the transformative change they wish to make. The concept of constitutional dismemberment occupies the space between an amendment and a new constitution. It acknowledges that a transformative change does not necessarily need to result in a new constitution, but rather that transformative change should be understood as the deconstruction of the constitution within the existing constitutional order, subject to its own internal rules”.

Beyond mere consideration of constitutional reform procedures, it has been able to influence, from the perspective of democratic decay (Negishi, 2020), the role of judicial bodies¹³—especially the postures and institutional behaviours to be assumed when confronting an authoritarian threat. The author’s developments have also not overlooked the semantic or conceptual problems, such as when considering the case of Latin America and its tendency towards amendments that fail

¹³Especially at the preventive level—in constitutional orders that previously did not foresee the possibility of such control, see, for a comprehensive analysis, Danélienè (2018).

to bring significant changes to the constitution's body¹⁴.

David Landau and Richard Albert both offer important frameworks for understanding the contemporary erosion of constitutional democracy, though their approaches differ in focus, conceptual design, and normative commitments. Landau's account of "abusive constitutionalism" shows how legal instruments—especially constitutional amendments and judicial interpretations—can be used deliberately by political actors to weaken democratic institutions from within, often under the appearance of legality and institutional continuity. His work draws attention to how democratic backsliding can occur through the very mechanisms that are meant to uphold constitutionalism. Albert, by contrast, is primarily concerned with the theory of constitutional change. Through his distinctions between formal and informal amendments and his concept of "constitutional dismemberment," he explores how certain changes, even when legally enacted, may cross a threshold that transforms the identity of the constitution itself. While Landau focuses more directly on the political misuse of constitutional tools, Albert is engaged with the normative and conceptual boundaries that define legitimate constitutional transformation. Read together, their perspectives offer a more complete picture of democratic decay—one that accounts both for the strategic manipulation of constitutional forms and for the deeper structural and theoretical vulnerabilities that such manipulation exploits.

4. Constitutionalism as a Limit on Power and a Safeguard for Democratic Integrity

But why, or for what reasons, is this discussion important? Well, if the authors mentioned above are correct, it would imply that, as in the distant past, "republic" and, later, "democracy" gain a new horizon of meaning, which would indicate that "both concepts [aim] at the only legitimate Constitution, rendering all other types of constitutions illegitimate," (Koselleck, 2020) and that they would have undergone a change, perhaps a rupture in their horizons, allowing a more instrumental sense of democracy—which would distort constitutional legitimacy into autocracy.

A similar argument could be made regarding the concept formulated by the authors for "constitutionalism" and "constitution" when placed within a democratic dynamic: they would merely serve as ornaments of power aimed at formally legitimizing or legally justifying the tendencies and attempts at authoritarian consolidation inherent in the political projects of populist leaders, subject to their arbitrary will, as if these were categories devoid of their own historicity or of the

¹⁴"Some constitutional changes are constitutional amendments in name only. These unusual constitutional changes dismantle the basic structure of the constitution while simultaneously building a new foundation rooted in principles contrary to the previous ones. They are conscious efforts to repudiate the essential features of the constitution and destroy its foundations. Changes of this magnitude should not be understood as mere amendments. They are better understood as constitutional dismemberments. These constitutional changes dismantle one or more of the constitution's elemental parts by altering a fundamental right, an essential structural design, or a central aspect of the constitution's identity" (Albert et al., 2022).

popular substance constructed and embedded within society, integral elements of its identity.

It demonstrates “an inability to address both the phenomena it describes and its own objectives, as it neither innovates nor goes beyond the classical theory of constituent power and the traditional doctrine of unconstitutional constitutional amendments.” (Neto, 2023) Not only for this reason, but also due to a belief in the judiciary’s role as capable of addressing authoritarianism from other state powers, without considering, in the works of both Landau (2013) and Albert (2018), that it can also be a potential agent of authoritarianism or its legitimization¹⁵. This may occur either as a consequence (through court-packing) or as a trigger via rulings incompatible with the constitutional order itself, aimed at maintaining or elevating an authoritarian figure to power (Estorilio & Benvindo, 2017).

The mere disregard for the possibility that the court itself may engage in authoritarian practices—thereby distorting the democratic distribution of power—is, in itself, deeply problematic. It suggests that both Albert and Landau tend to adopt an institutional analysis primarily focused on the actions of the executive and legislative branches, while overlooking the significant and substantive role that supreme or constitutional courts may play in sustaining or fragmenting, advancing, or even legitimizing ruptures in the constitutional order. Beyond this omission, their approach further reveals a tendency to ascribe a kind of moral virtuousness to judicial activity—a presumption that the judiciary inherently carries a pro-democratic mandate, acting in defense of the foundational principles of the State and the Constitution. This assumption, however, remains analytically underdeveloped, as the authors do not clearly articulate the modalities through which such a duty would be exercised—whether through the declaration of unconstitutionality, the practice of constitutional review, or the deployment of militant democracy—each of which entails its own set of normative dilemmas and legitimacy challenges.

This may well be the main argumentative flaw presented by both authors: their inability to grapple with their own conceptualizations, treating them as if they were merely empty rhetorical categories, devoid of any sociopolitical relevance or grounding (Daly, 2019). It is as though the historical context that shapes these structural meanings could be dismissed or ignored. It is impossible to discuss such conceptual categories without acknowledging that they are the result of human construction—of political history and sociopolitical and economic struggles—recorded over centuries and shared globally across various constitutionally organized societies. Thus, disregarding ‘the people’ and their participation in this process of dismantling the democratic framework can already be considered a significant error.

But the critique goes further: Landau and Albert’s arguments imply a minimalistic and overly simplistic understanding of “democracy”, “constitutionalism”,

¹⁵It is true, however, that Landau (2013), in particular, acknowledges the court’s role and seems to aspire to such a possibility, albeit without further in-depth development.

and “constitution”. Although not explicitly stated by the authors, it appears evident that democracy is conceived merely as a majority-rule game, where the electoral choices of the majority could lead to an autocratic leadership of the executive branch. This leadership, justified by the majority’s votes, would exploit its powers to seize democracy as a whole, expanding its authority legislatively to the point of dismantling the constitutionally established checks and balances on its power. This perspective, however, overlooks a central aspect of the problem: such circumstances would only be possible if the “people” as an element supported or agreed with them. Otherwise, we would witness widespread protests and public dissent aimed at preventing the authoritarian expansion of power, potentially resulting in the collapse of the elected regime—a phenomenon frequently documented in democracies.

Is it, in [Burke’s \(1993\)](#) critical irony, the use of a macrostructure with a relatively well-defined historical context in people’s ideologies, only to counterpose its meanings to other signifiers—thereby demonstrating, through this, a phenomenon different from what the object of the argument would indicate? Or is it precisely what the authors directly inform—a shift in meaning? In the writings of the British thinker, it appears that “the idea of democracy can be used to ‘mystify’, to conceal how much power is exercised by a small group.” In the [Landau \(2013\)](#) thinking, there is no attempt at disguise, but rather the instrumentalisation of liberal standards to achieve authoritarian ends. What again seems to affirm the [Burke \(1993\)](#) correction is his suggestion that the dimension of legitimacy in the democratic game, as well as its cohesion, “is negative rather than positive,” meaning “in other words, that it does not depend on a consensus about the fundamental values embedded in the regime, but rather on a lack of consensus regarding criticisms of the government” or of the system itself.

This is why it is a history of the history of what is meant to be told—it is a propositional dimension that engages with other structuring foundations, beyond those informing the concept itself, resulting in a distortion of the horizon of possible realities that could be represented in the conceptual reality itself¹⁶. So much so, that it indicates a mismatch between the democratic game of power and the

¹⁶“Without delving into matters of content here, I would like, in conclusion, to draw attention to an analogy that connects constitutional history to the history of concepts, and vice versa. Primarily, these two fields of research do not deal with singular and unrepeatable events. Instead, they both deal with repetitions, with iterative structures, albeit temporary ones in the course of history. Indeed, concepts such as *politeia*, *res publica*, or Constitution emerged in specific situations and were always used concretely. But they also contain possibilities that can be reactivated, as the states of affairs they conceptualise can return under the sign of analogy, though not of identity. There are concepts that do not age and whose core meanings change only partially. Republic and democracy are such concepts, which must be employed in constitutional histories, ancient or modern, in meaningful ways. It is entirely possible to describe phenomena associated with contemporary totalitarian dictatorships using Aristotelian categories. And when such categories are no longer sufficient, we must coin and use new concepts to understand the otherness and novelty of our modern experience. Broadly speaking, every constitutional history not only carries historical aspects but also always implies systematic and structural questions. Such questions, however, cannot be answered without recourse to concepts and their definitions” ([Koselleck, 2020](#)).

democratic quality of a given state in a specific space-time—it then becomes conditioned to a strictly institutional and majority dimension of what democracy is, to the point that in this dimension, an authoritarian core is contained, which, aimed at concentrating the powers of those in positions of power, would weaken, through legislative changes—thus with the support of the Legislative Power—the normative dimension of the Constitution itself.

The works of Landau (2013) and Albert (2018) can be read together, offering a richer dimension when combined. The former establishes the centrality of critique, shedding light on the problem it identifies, while the latter succeeds in demonstrating how such an authoritarian process could unfold and how it might be carried out under the guise of democratic normality. However, for both frameworks to be feasible, it is insufficient to merely point to examples of how these processes occurred in one place or another. The truth is that each experience presents its own challenges, understandings, and tensions. While a global community of constitutionalism may be discussed, each society retains its own peculiarities. Moreover, it is impossible to construct a coherent argument of this nature without first providing a minimum conceptual framework for what is being opposed or deconstructed. Without such a foundation, any claim to universality falters due to the lack of a comparative standard.

Accepting the authors' arguments would also necessitate asserting that democracy and constitutionalism, in contemporary experience, have diverged from their liberal meanings solely to act in opposition to or in attack against one another, as if they were inherently oppositional—an assertion that is simply incorrect. The central issue is that, as historically conceived categories, democracy and constitutionalism are in constant flux, undergoing transformation in the meanings they convey, in a process that has no definitive endpoint. Preventing these pathways from leading to authoritarian outcomes is both a challenge and a privilege that only democratically organized societies can enjoy. Understanding the authoritarian processes that subvert constitutional order is crucial for developing defenses for the constitutional system. However, interpreting every legislative project, constitutional amendment, judicial decision, or similar action—such as Landau, Albert, and many others do—as a marker of democratic decline solely because it secures or denies a right, particularly when dealing with a conservative agenda that also deserves respect and consideration in liberal democracies, appears to undermine the very democratic process itself. This represents a radicalization of liberal thought rather than an authentic engagement with the democratic game.

However, on the other hand, this in no way implies that such a process of transformation, or even the attempt at transformation, would be silently applauded and accepted by society, which, most likely—as seen in the systems investigated by the aforementioned authors—would take to the streets in a democratic exercise, protesting, opposing, and establishing political coalitions to institutionally face such circumstances, thus resulting in a democratic strengthening, at least in the “popular” dimension of the system. This is why such studies—on democratic decay—

usually distance themselves from analysis involving the “people”¹⁷ (or popular elements, socio-political organisations, civil society, etc.) as a relevant structure of the represented reality, as it is a severe argumentative burden for those who argue for the shift in the horizons of democracy as a concept.

5. Conclusion

Authors such as David Landau and Richard Albert have examined the interplay between constitutionalism and democracy, arguing that processes involving the dismemberment or destruction of constitutional texts often serve to consolidate power in the hands of leaders or political parties, thereby fostering authoritarian tendencies under the guise of democratic systems. He contends that as military coups have declined, political actors have increasingly adopted subtle methods to reshape the constitutional order, making it more difficult to remove them from power and weakening oversight institutions. These practices result in hybrid regimes that retain some democratic features but exhibit authoritarian tendencies, often led by charismatic leaders pursuing their own agendas at the expense of public interest. While Landau acknowledges the complexity of addressing this issue, he implies that popular support often sustains these authoritarian tendencies, preserving a democratic facade while the system’s essence is eroded.

The analysis of constitutional normativity, as presented by Richard Albert and David Landau, highlights a concerning trend in contemporary constitutional thought. Albert introduces the concept of “constitutional dismemberment”, referring to profound changes to the constitution that transform its essence, in contrast to amendments that adjust or update the text without altering its fundamental principles. Constitutional dismemberment is characterized by changes that dismantle the existing constitutional structure and replace it with a new one, often with authoritarian objectives concealed beneath a democratic veneer. Albert argues that such changes can undermine democracy and strengthen autocratic regimes, noting that certain constitutional alterations presented as amendments may, in fact, disguise dismemberments that fundamentally alter the constitution without proper deliberation or reflection.

This discussion extends to the role of constitutional courts and how they should approach such changes. Albert suggests that courts should not simply invalidate amendments but instead collaborate with political actors to ensure that constitutional changes reflect the considered judgment of the people and their representatives, advocating for judicial self-restraint. In the context of democratic decay, these changes can distort the concept of democracy, transforming it into a tool for authoritarian ends. This occurs when liberal norms are exploited to justify the concentration of power, thereby eroding the constitution’s normative dimension. Burke critiques this distortion, asserting that the concept of democracy can be

¹⁷Or, when they do address it, it is done in a rather discreet manner—the category of “the people” typically appears as the “victim” of the tyranny of the “elites,” which, once again, does not resolve the issue but instead creates new ones.

manipulated to obscure the true concentration of power in the hands of a select few.

The instrumentalization of liberal concepts for authoritarian purposes signals a shift in the understanding of constitutional legitimacy. While constitutional transformation and democratic erosion may be evident in legislative changes and the centralization of power, such developments do not go unnoticed by society. The literature demonstrates that the populace often reacts against these transformations, potentially leading to democratic renewal through popular mobilization and opposition. Thus, studies on democratic decay frequently overlook the active role of society—a critical factor influencing the preservation of democracy itself. Addressing this issue presents a significant challenge for scholars and theorists, who must reconcile the transformation of constitutional concepts with lived realities and the responses of the populace.

For all practical and theoretical purposes, and taking into account both the thematic constraints and the available avenues of inquiry, the term “people”, or “we the people”, functions as a performative abstraction, operating in a manner comparable to the universal validity claim central to Habermasian thought. Within this framework, the interactive dynamic suggests that it is in the name of, and through, this abstraction that power is constituted, initiated, exercised, and developed, as if embedded in a structure that moves along the trajectories of power itself. What remains absent in the work of Landau and Albert is precisely the recognition of this dynamic. Both authors adopt an approach that privileges an exclusively institutional perspective, thereby disregarding the complex and, at times, elusive philosophical conception of “the people” and their will in shaping what we understand as democracy.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- Albert, R. (2018). Constitutional Amendment and Dismemberment. *Yale Journal of International Law*, 43, 1-84.
<https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6721/RichardAlbertConstitution.pdf?sequence=2&isAllowed=y>
- Albert, R., Zaiden Benvindo, J., Jiménez Ramírez, M. C., & Villalonga, C. (2022). Constitutional Dismemberment in Latin America. *Revista Derecho del Estado*, 52, 93-133.
<https://doi.org/10.18601/01229893.n52.04>
- Barroso, L. R. (2019). Countermajoritarian, Representative, and Enlightened: The Roles of Constitutional Courts in Democracies. *The American Journal of Comparative Law*, 67, 109-143. <https://doi.org/10.1093/ajcl/avz009>
- Bickel, A. (1986). *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Yale University Press.
- Brinks, D. M., & Blass, A. (2017). Rethinking Judicial Empowerment: The New Foundations of Constitutional Justice. *International Journal of Constitutional Law*, 15, 296-331.

<https://doi.org/10.1093/icon/mox045>

- Burke, P. (1993). *History and Social Theory*. Cornell University Press.
- Daly, T. G. (2019). Democratic Decay: Conceptualising an Emerging Research Field. *Hague Journal on the Rule of Law*, 11, 9-36. <https://doi.org/10.1007/s40803-019-00086-2>
- Danélienė, I. (2018). *The Judicial Role in Constitutional Amendment and Dismemberment* (pp. 89-96). <https://www.vdu.lt/cris/entities/publication/12eaafa6-5c84-4c78-b965-39386efd008c>
- Estorilio, R., & Benvindo, J. Z. (2017). O Supremo Tribunal Federal como agente do constitucionalismo abusivo. *Cadernos Adenauer*, 18, 173-192.
- Fernandes, B. G., & Guedes, M. S. B. (2023). The Counter-Majoritarian Difficulty as an Issue of Interpretative Assumption: Constitutional Jurisdiction and Normative Reason. In B. G. Fernandes, M. A. Cattoni de Oliveira, & M. S. B. Guedes (Eds.), *A Constituição e o passado, a constituição e o futuro, a constituição e o que não veio: Em homenagem aos 35 anos da Constituição Brasileira de 1988* (pp. 741-802). D'Plácido.
- Fioravanti, M. (2012). As doutrinas da constituição em sentido material. *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito*, 4, 103-109. <https://doi.org/10.4013/rechtd.2012.42.01>
- Fioravanti, M. (2014). *Constitucionalismo: Experiencias históricas y tendencias actuales*. Trotta.
- Ginsburg, T., & Huq, A. Z. (2018). *How to Save a Constitutional Democracy*. University of Chicago Press. <https://doi.org/10.7208/chicago/9780226564418.001.0001>
- Guedes, M. S. B. (2014). A constituição do plano político ao normativo: Base teórica para a construção do neoconstitucionalismo. *Revista do Instituto do Direito Brasileiro (RIDB)*, 3, 4267-4297. https://www.cidp.pt/revistas/ridb/2014/06/2014_06_04267_04297.pdf
- Guedes, M. S. B. (2024). *A constituição narrativa: teoria da realidade constitucional*. Ph.D. Thesis, Federal University of Minas Gerais.
- Habermas, J. (1996). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. MIT Press.
- Halmay, G. (2024). From Liberal Democracy to Illiberal Populist Autocracy: Possible Reasons for Hungary's Autocratization. *Hague Journal on the Rule of Law*, 16, 439-463. <https://doi.org/10.1007/s40803-024-00231-6>
- Hobsbawm, E. (1995). *The Age of the Extremes*. Little Brown and Company.
- Issacharoff, S. (2015). *Fragile Democracies: Contested Power in the Era of Constitutional Courts*. Cambridge University Press. <https://doi.org/10.1017/cbo9781139839334>
- Keck, T. M. (2023). Erosion, Backsliding, or Abuse: Three Metaphors for Democratic Decline. *Law & Social Inquiry*, 48, 314-339. <https://doi.org/10.1017/lsi.2022.43>
- Koselleck, R. (2020). *Histórias de conceitos: estudos sobre a semântica e a pragmática da linguagem política e social (e-book)*. Contraponto.
- Landau, D. (2013). Abusive Constitutionalism. *UC Davis Law Review*, 47, 189-260.
- Law, D. S. (2019). Imposed Constitutions and Romantic Constitutions. In R. Albert, X. Contiades, & A. Fotiadou (Eds.), *The Law and Legitimacy of Imposed Constitutions* (pp. 34-57). Routledge. <https://doi.org/10.4324/9781351038980-3>
- Levitsky, S., & Ziblatt, D. (2018). *How Democracies Die*. Crown.
- Loewenstein, K. (1965). *Political Power and the Governmental Process*. University of Chicago Press.
- Meyer, E. P. N. (2021). *Constitutional Erosion in Brazil*. Hart Publishing.

<https://doi.org/10.5040/9781509941971>

- Mounk, Y. (2018). *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It*. Harvard University Press. <https://doi.org/10.4159/9780674984776>
- Negishi, Y. (2020). The Theory and Phenomenology of Constitutional Dismemberment. *Revista de Investigações Constitucionais*, 7, 813-827. <https://doi.org/10.5380/rinc.v7i3.73987>
- Neto, A. M. (2023). Desmembramento constitucional: Considerações críticas. *Revista de Informação Legislativa*, 61, 123-139. https://doi.org/10.70015/ril_v61_n243_p123
- Przeworski, A. (2019). *Crises of Democracy*. Cambridge University Press. <https://doi.org/10.1017/9781108671019>
- Runciman, D. (2019). *How Democracy Ends*. Profile Books.
- Šipulová, K., & Kosař, D. (2023). Decay or Erosion? The Role of Informal Institutions in Challenges Faced by Democratic Judiciaries. *German Law Journal*, 24, 1577-1595. <https://doi.org/10.1017/glj.2023.89>
- Suteu, S. (2021). Eternity Clauses as Tools for Exclusionary Constitutional Projects. In R. Abeyratne, & N. S. Bui (Eds.), *The Law and Politics of Unconstitutional Constitutional Amendments in Asia* (pp. 257-273). Routledge. <https://doi.org/10.4324/9781003097099-19>
- Varol, O. (2017). *The Democratic Coup d'état*. Oxford University Press.