How Courts Undermine Democracy

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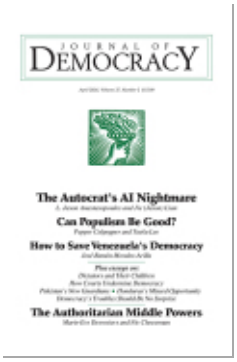

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Because democratic backsliding increasingly occurs through *legal* means,[1] courts are central actors. Elected political leaders have clashed with the judiciary in numerous cases of democratic erosion—from Brazil, Israel, and Mexico to Hungary, India, Poland, Turkey, and the United States. Conventional wisdom holds that when courts are independent of the elected government, they act as "bulwarks" against democratic backsliding.[2] Alexander Hamilton, a key architect of the U.S. Constitution, wrote that the judiciary is "an excellent barrier to the encroachments and oppressions" of elected politicians.[3] Building on this long intellectual tradition, scholars lionize independent judiciaries as "defenders of democracy."[4]

While the judiciary is widely assumed to defend democracy, this essay argues that courts frequently *undermine* democracy instead. When courts are dependent on the elected government, they often damage democracy by enabling executive power grabs.[5] But even when courts are *independent* of the elected government, meaning that they are able to make decisions free from government influence, judiciaries globally have engaged in diverse types of antidemocratic behavior. Judges have subverted free and fair elections, restricted citizens' rights, excessively limited elected officials' power to govern, and even legitimized military coups. Surprisingly, courts can endanger democracy not only by enabling executives but also by aggressively fighting them.

Why do courts sometimes undermine democracy? And what can be done to make courts work for democracy instead? The answer, I argue, lies in how judges are selected. When the institutions for selecting judges concentrate power in the hands of one political figure or group,

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they enable *court capture*, or a process whereby political, economic, or social actors influence court decisions in favor of their own interests. Whereas existing research focuses on how elected governments capture the courts, I show that diverse actors—from political parties and ethnic groups to militaries and business interests—can use the judiciary to undermine democracy. Paradoxically, when actors outside the elected government capture the courts, the judiciary's behavior may be independent of the government yet subversive of democracy. Understanding why courts undermine democracy also offers a road map for reforming them. When institutions for selecting judges disperse power—for example, through a supermajority requirement, shared power in the selection process, or term limits for judges—they protect courts from capture. Mobilization by prodemocratic judicial allies, including elected officials and social movements, can further empower courts to defend democracy.

Courts versus Democracy

As Steven Levitsky and Daniel Ziblatt have written in these pages, countermajoritarian institutions such as the judiciary can be either "democracy-enhancing" or "democracy-subverting."[6] Scholars have long argued that unelected judges may endanger democracy by obstructing the legitimate policy choices of elected majorities.[7] Yet as I argue, there are many other types of democracy-subverting judicial behavior.

To understand whether and how the judiciary's behavior is undermining democracy, one must first define democracy. By Steven Levitsky and Lucan Way's definition, democracy entails several requirements: 1) "free, fair, and competitive elections"; 2) "full adult suffrage" and "broad protections for civil liberties, including freedom of speech, press, and association"; 3) "the absence of nonelected 'tutelary' authorities (e.g., militaries, monarchies, or religious bodies) that limit elected officials' power to govern"; and 4) a "level playing field between incumbents and opposition."[8]

Judiciaries can undermine democracy along each of these dimensions. Because democracy is a multidimensional concept, there are multiple, distinct types of democracy-subverting judicial behavior. Furthermore, whether or not courts rule against the government—the most commonly used measure of judicial independence—fails to capture whether the judiciary is safeguarding or subverting democracy. When the elected government is attempting to restrict civil liberties, ruling against the government protects democracy. But when government policies seek to advance civil liberties or bring an unaccountable military under civilian control, ruling against the government damages democracy. To identify whether and how judicial behavior undermines democracy, one must look instead at the specific content of court decisions. This essay identifies five different types of democracy-subverting judicial behavior.

Executive-Enabling Behavior. The first and most common way in which courts subvert democracy is by systematically favoring the elected government and thus tilting the playing field in the incumbent's favor. Judiciaries around the world have often enabled "executive aggrandizement," or a process by which elected executives weaken checks on their power.[9] One clear indicator of executive-enabling behavior is that high courts have allowed incumbents to circumvent constitutionally mandated term limits in nineteen countries since 1990.[10] For instance, in El Salvador in 2021, the Constitutional Court allowed President Nayib Bukele to run for a second term, even though the constitution, in six different places, prohibits consecutive presidential terms. In Bolivia in 2017, after voters rejected a constitutional referendum to allow President Evo Morales to run for a fourth term, a friendly Constitutional Tribunal authorized indefinite reelection.

Election-Subverting Behavior. Courts often damage democracy by undermining free, fair, and competitive elections. When judiciaries are dependent on the elected government, they have overturned or nullified elections won by the opposition. This happened, for example, in Côte d'Ivoire in 2010, Turkey in 2019, and Venezuela in 2016 and 2024. Yet courts have also subverted elections by ruling in the opposite direction, undermining the legitimate victories of incumbent governments. Egypt during the Arab Spring offers a striking example. In 2012, Egypt's Supreme Constitutional Court destabilized a fragile democratic transition by dissolving the Islamist-led parliament—Egypt's first popularly elected parliament in six decades. Months later, a top court canceled the scheduled parliamentary elections. Despite being fiercely independent of the newly elected Islamist government, Egypt's judiciary handed down decisions that derailed, rather than defended, free and fair elections.

For another textbook example of election-subverting behavior, take Thailand. In May 2006, Thailand's Constitutional Court annulled the election victory of Prime Minister Thaksin Shinawatra, just days after Thailand's king called on high-ranking judges to nullify the election results. Considering that Thaksin had won three consecutive victories at the polls, the judiciary's decision demonstrated striking independence from the elected government. Yet by invalidating the election results, the Constitutional Court undermined that government and enabled a military coup in 2006. In 2014, the Constitutional Court again removed an elected prime minister—this time Thaksin's sister, Yingluck Shinawatra—creating a power vacuum that facilitated another military coup just two weeks later. The Thai judiciary's game of electoral "Whac-a-Mole" continues to this day. In 2025, the Constitutional Court ousted Prime Minister Paetongtarn Shinawatra, Thaksin's daughter. As political scientist Eugénie Mérieau observes, since 1997 Thailand's Constitutional

Court has "dissolved most, if not all, of the pro-democracy, anti-military political parties, dismissed all elected prime ministers, and paved the way for two military coups."[11]

Rights-Restricting Behavior. Courts also subvert democracy by curbing, rather than protecting, citizens' rights, including the right to vote and civil liberties. Especially in political systems dominated by one ethnic or ascriptive group, judiciaries often restrict the rights of marginalized groups. Consider the record of the U.S. Supreme Court. In 1857, the Court ruled in *Dred Scott v. Sandford* that enslaved or formerly enslaved people of African descent, whom the Court asserted were historically "regarded as … so far inferior, that they had no rights which the white man was bound to respect," could not be citizens. Nor could their descendants. In 1875, in *Minor v. Happersett*, the Supreme Court unanimously upheld the constitutionality of laws denying women the right to vote, on the grounds that U.S. citizens were not entitled to suffrage. In 1896, the Supreme Court subverted equal access to civil rights by authorizing racial segregation under the doctrine of "separate but equal" in *Plessy v. Ferguson*. Thus, even when courts are independent of the elected government, they may actively curtail citizens' rights.

Empowering Nonelected Elites. Judiciaries also frequently undermine democracy by empowering nonelected elites, including militaries, monarchs, business interests, and religious authorities. At an extreme, courts have even legitimized democratic breakdowns via military coups. In Honduras in 2009, the Supreme Court of Justice provided legal cover for a military intervention against President Manuel Zelaya by issuing an order for Zelaya's arrest. When the military proceeded to stage a coup and exile Zelaya, the Honduran judiciary then exonerated the military high command.

In Pakistan in 2000, the Supreme Court unanimously upheld General Pervez Musharraf's 1999 coup. In Egypt in 2013, when the military ousted the elected Islamist president, Mohamed Morsi, the chief justice of Egypt's Supreme Constitutional Court collaborated with the coup plotters by taking over as interim president. Judiciaries have enabled or legitimized military coups—for example, by creating a legal pretext for intervention or declaring coup leaders' actions lawful—in Burkina Faso (2022), Guinea (2021), Mali (2021), Thailand (2006, 2014), Venezuela (2002), and Zimbabwe (2017).

Excessive Judicial Review. Finally, courts often subvert democracy by taking away elected officials' power to govern. As Steven Levitsky and Daniel Ziblatt argue, "excessive judicial review" occurs when "courts strike down . . . regular legislation that does not threaten basic rights or the democratic process."[12] This form of democracy-subvert-

ing judicial behavior is common in countries with highly independent courts. In Brazil, although the Federal Supreme Court helped to constrain an attempted power grab by former president Jair Bolsonaro, the judiciary today exerts vast power over ordinary policy issues. Brazil's highest court has struck down or set policies involving the decriminalization of marijuana, the regulation of online speech, the minimum wage for nurses, and the tax base for social-security contributions. In Pakistan, even as the judiciary has asserted greater independence from the executive and military since 2007, the Supreme Court has undercut the elected parliament's role in governing. As legal scholar Yasser Kureshi argues, Pakistan's judiciary has engaged in "judicial aggrandizement" by replacing elected institutions with the courts as the primary venue for the representation of interests.[13]

Thus, democracy-subverting judicial behavior is diverse, widespread, and consequential. Surprisingly, even when courts are independent of elected governments, judges have undermined democracy in various ways. What, then, drives this behavior?

Why Courts Undermine Democracy

This essay advances an *institutional* theory to explain why the judiciary's behavior subverts democracy. Across legal systems, *judicial-selection institutions*, or the written and unwritten procedures for selecting judges, vary widely in whether they disperse or concentrate power among different political actors. Some institutions *disperse* power to select judges. For instance, a supermajority requirement for appointing judges gives more political actors a veto over candidates. Selection procedures that give a role to both houses of the legislature, or to elected officials, current judges, and legal professionals, share power among stakeholders with diverse preferences. Term limits and mandatory retirement ages for judges help to ensure that, over time, no single political party or perspective can monopolize power over appointing judges. Conversely, other institutions *concentrate* the power to select judges in the hands of one person or group. For instance, under Thailand's 2017 Constitution, the king wields the power to appoint and remove judges, and all judges are required to swear an oath that they "will be loyal to his Majesty the King."

When judicial-selection institutions concentrate power in the hands of one political actor or group, they enable judicial behavior that subverts democracy. The reason is that power-concentrating institutions enable *court capture*, or a process whereby certain political, economic, or social actors influence court decisions to repeatedly favor their own interests. Different types of actors can capture the courts, from elected executives to unelected elites, leading to distinct varieties of democracy-subverting judicial behavior.

How do we know when the courts are captured? Anyone can claim, for example, that billionaires have captured the judiciary. Proving court capture requires three pieces of evidence. The first is a consistent pattern of judicial bias. For instance, if billionaires have captured the courts, judges should be more likely to rule in favor of billionaires than lower-, middle-, or other upper-class litigants. The second is a pattern of judicial decisions that deviate from established law. It is not just that the legislature has written laws advantaging billionaires or that the constitution protects property holders; rather, courts must be interpreting laws, such as campaign-finance laws, in ways that empower billionaires. The third and final piece of evidence necessary to prove court capture is intent and action to influence the judiciary. Billionaires will have, for example, repeatedly socialized with judges, given judges financial benefits, or flown judges on their private planes.

Diverse forces—including nonelected elites, political parties, and ethnic groups—can capture the courts, leading to distinct varieties of democracy-subverting judicial behavior.

Who captures the courts powerfully shapes which type of democracy-subverting judicial behavior results. Existing research on executive aggrandizement emphasizes how elected leaders capture the courts, leading to a pattern of executive-enabling judicial behavior. For instance, in El Salvador in 2021, after a legislature controlled by President Bukele's party dismissed all five judges on the Constitutional Court, the newly appointed justices swiftly ruled that Bukele could run for another term. In Venezuela, after the government of Hugo Chávez passed a law in 2004 expanding the size of the Supreme Court and making it easier for the legislature to dismiss justices, the Court "ruled in favor of the government in essentially all significant cases."[14]

But the executive is not the only one who can capture the courts. Diverse forces—including nonelected elites, political parties, and ethnic groups—can capture the courts, leading to distinct varieties of democracy-subverting judicial behavior. Paradoxically, when courts are captured from outside the elected government, they may be independent of the elected executive yet still dependent on other actors. In such cases, judicial independence from the executive is double-edged, as courts constrain executive power but undermine democracy along other dimensions.

Sometimes, nonelected elites, such as militaries or monarchs, capture courts and use them to sabotage elected governments. In Egypt during the Arab Spring, high-ranking judges who had been appointed under the toppled dictator protected the old elite, undermined the newly elected Islamist government, and ultimately enabled the 2013 military coup. In

Thailand, where the king dominates the selection of judges, courts have repeatedly ousted elected governments that challenge the constitutional principle of "Democracy with the King as Head of State." Thailand's king demonstrated clear intent and action to influence the judiciary in 2006, for example, when he gave a speech to high-ranking judges calling on them to cancel the Thaksin government's election victory—a decision the judges made just days later. In both cases, nonelected elites—namely, Egypt's military and Thailand's monarchy—weaponized the courts against elected politicians.

Political parties also frequently capture the courts, leading to a distinct pattern of democracy-subverting judicial behavior. In Poland, after the populist Law and Justice party rose to power in 2015 and packed the Constitutional Tribunal, the judiciary engaged in textbook executive-enabling behavior. For example, after the government moved to assert control over the judiciary and media regulators, Poland's high court gave the government legal cover to ignore adverse decisions from the European Court of Justice by ruling that Polish law had primacy over European Union law. But ever since an opposition coalition won control of Poland's parliament in 2023, the Constitutional Tribunal has undermined democracy in a different way: by ruling *against* the newly elected government. A constitutional court dominated by Law and Justice appointees has blocked democratizing reforms to the media and judiciary, and even opened a criminal investigation into the new government.

Court capture increases the likelihood of democratic backsliding in two distinct ways. The first is a *behavior* effect: Court capture by one camp increases the likelihood of democracy-subverting judicial behavior in that camp's favor. The second is a *backlash* effect: Court capture by one political camp often triggers backlash from the opposing camp, galvanizing attacks on the judiciary.

Bad Institutions, Worse Allies: The Case of Turkey

To understand how judicial-selection institutions sometimes enable court capture and drive democratic backsliding, consider Turkey after the election of Recep Tayyip Erdoğan as prime minister in 2003. Under Turkey's 1982 Constitution, judicial-selection institutions concentrated power in the hands of nonelected elites. Turkey's nonelected president appointed all fifteen justices on the Constitutional Court. The president did not even need to consult with the elected prime minister and parliament—let alone achieve a supermajority. What is more, Turkey's Constitution, itself drafted and ratified under military dictatorship, reserved two seats on the Constitutional Court for judges from the military's judicial system. Nonelected elites had such significant power over appointing judges that Turkey's elected government, led by then–Prime Minister Erdoğan and his Justice and Development Party (AKP), did not

appoint a single justice to the Constitutional Court for its first six years in power.

These power-concentrating institutions for selecting judges enabled court capture by nonelected elites. Turkey's judicial-selection institutions gave the president wide latitude to select judges who were ideologically aligned and embedded in certain social networks. One Constitutional Court justice described in an interview how, during a meeting before his nomination, he openly informed the president of his frustration with the religious-conservative AKP and discussed his relative's leading role in a secular political party.[15]

Turkey's Constitutional Court, in turn, consistently ruled in the president's favor—the first indicator of court capture. My quantitative analysis of a comprehensive dataset of Constitutional Court decisions during the ten-year period from 1997 to 2007 shows that when the nonelected president challenged the elected government's legislation, the president won 83 percent of the time at the Court.[16] By comparison, when opposition parties in parliament called on Turkey's Constitutional Court to strike down government legislation, they won just 59 percent of the time. When other high courts questioned the constitutionality of government policies, the Constitutional Court ruled against the government 52 percent of the time. Compared to other actors, the president was more likely to win in court.

Because the Constitutional Court was captured by a secular, nonelected elite, the judiciary ruled frequently against the elected government after Erdoğan's Islamist political party rose to power in 2002. But in many cases, Erdoğan's AKP was not breaking the law as written; rather, the Constitutional Court was deviating from legal precedent to rule against the party—the second sign of court capture. In 2007, the Constitutional Court for the first time blocked the appointment of a new president, using a "super-quorum" rule that had never been previously recognized to prevent the AKP from gaining control of the presidency.[17] In 2008, after the AKP passed constitutional amendments with more than 80 percent support in the parliament, the Constitutional Court for the first time struck down constitutional amendments on substantive, rather than procedural, grounds.[18] In 2008, again for the first time, the Constitutional Court ruled on whether to ban the governing AKP, narrowly voting no.

The judiciary's decisions also bore the final hallmark of court capture: nonelected elites' intent and action to influence court decisions. For instance, in 2007, immediately before the Constitutional Court blocked the appointment of an AKP president, the military and incumbent president publicly voiced their opposition to an AKP presidency, with the military's top brass implicitly threatening a coup. In 2008, as the judges were weighing whether to ban the party, a deputy chief justice of the Constitutional Court acknowledged that he had met repeatedly with Tur-

key's highest-ranking general. Another justice told me in an interview that the chief justice had "experienced a lot of pressure from the military and bureaucracy . . . They call you, they visit your home, they invite you to dinner . . . It's like neighborhood pressure [*mahalle baskısı*]."[19]

Court capture in Turkey enabled democratic backsliding in two distinct ways. First, court capture by nonelected elites led to democracy-subverting judicial behavior. When the Constitutional Court prevented the appointment of an AKP president—at the behest of the incumbent president and military—the justices empowered nonelected authorities and limited elected officials' power to govern. When, in 2008, the Constitutional Court struck down constitutional amendments passed by a supermajority in parliament to allow Muslim women to wear the Islamic headscarf at universities, the judges again undermined the elected parliament's capacity to govern.

Of equal importance, court capture galvanized backlash and increased Erdoğan's incentives and capacity to attack the judiciary. After the Constitutional Court came just one vote short of banning the AKP in 2008, Erdoğan's government counterattacked. In a 2010 referendum, the government passed constitutional changes that increased the size of the Constitutional Court, removed reserved seats for military justices, and expanded the government's control over appointing and promoting judges. In advocating for these changes, Erdoğan hammered home the judiciary's antidemocratic behavior and argued that giving the elected government sway over the courts was about saying, "Yes to the rule of law. No to the law of the rulers." The tragedy of the Turkish case is that rather than adopt power-dispersing institutions for selecting judges, such as a supermajority requirement, the AKP instead concentrated power in its own hands. As a result, court capture has passed from one elite to the next.

Making Courts Work for Democracy

What can be done to empower courts to act as defenders of democracy? Understanding the ways in which courts undermine democracy, together with the key factors that drive such behavior, points to a road map for reforming the judiciary so that it will serve as a bulwark for democracy—namely, instituting judicial-selection procedures that disperse power and prevent court capture.

Three institutions, in particular, help to insulate courts from capture. The first is a supermajority requirement for selecting high-court judges. By giving more actors a veto over judicial appointments, supermajority requirements prevent elected leaders, political parties, and allied groups from securing ideologically aligned judges with a bare partisan majority. In a cross-national statistical analysis that uses original data on judicial-selection institutions in 139 countries from 1990 to 2023, I

find that a supermajority requirement for selecting high-court judges is significantly associated with increased high-court independence.[20] Since 1990, 26 countries—including Argentina, Belgium, Chile, Italy, Israel, Germany, Portugal, and Spain—have required a supermajority for appointing judges to their highest court.

The second power-dispersing institution, seen in many democracies, is the division of authority over selecting high-court judges among parties with diverse preferences. In France, Italy, and Germany, for example, both houses of the legislature play a role in selecting high-court judges. In Colombia, Italy, and Israel, elected politicians share power over selecting high-court judges with current members of the judiciary. By dividing power among parties with different or opposing views and objectives, such arrangements mitigate the possibility of court capture. The third power-dispersing institution comprises mandatory retirement ages or term limits for judges, both of which prevent any one politician, party, or interest group from locking in long-term influence over the judiciary through life appointments.

The United States is a notable outlier among democracies globally in that its institutions for selecting judges require little power-sharing. Indeed, the country's judicial-selection institutions have become increasingly power-concentrating over time. Historically, confirming federal and Supreme Court judges required a supermajority in the Senate due to the filibuster. However, ever since the Senate eliminated the supermajority requirement for federal judges in 2013 and Supreme Court justices in 2017, appointing judges to life terms requires only a simple majority.

Nor does the American system do much to prevent the concentration of power over judicial selections in the hands of one party. In principle, the framers of the U.S. Constitution sought to disperse this power between the president, who nominates judges, and the Senate, which confirms them. In practice, however, as partisan polarization has intensified, the president can increasingly appoint closely aligned judges when the executive and Senate are controlled by the same party. What is more, unlike every other established democracy and all but one U.S. state, the United States does not stipulate either a retirement age for Supreme Court justices or, given their lifetime appointments, term limits.

When and how do countries reform judicial-selection institutions to disperse power? As the example of Turkey demonstrates, power-concentrating institutions tend to be persistent. When institutions give the president concentrated power over selecting judges, newly elected presidents have incentives to use that power for themselves rather than tie their own hands with a supermajority requirement.

Yet numerous countries have adopted institutions to strengthen the judiciary and disperse power over judicial selections. Ruling parties

sometimes adopt judicial reforms when they expect that they may lose power, as in Mexico in 1994. An independent judiciary offers a form of "insurance" in case the ruling party finds itself in the opposition.[21] In other cases, a crisis of legitimacy for the judiciary has made court reform a salient political issue. In Argentina in 1994, the ruling party and opposition parties negotiated a deal in which the president gave up certain powers, including over the courts, in exchange for allowing presidential reelection. Finally, countries have adopted judicial reforms during moments of democratization when constitutions are being rewritten, as in Portugal in 1976, Spain in 1978, Uruguay in 1985, Colombia in 1991, South Africa in 1996, and Kenya in 2010. When opportunities for institutional change arrive, whether due to shifting political winds or crises of judicial legitimacy, reformers must be ready with ideas to renovate the judiciary.

While institutional reform offers a long-term objective for democracy's defenders, an immediately available strategy is mobilization by *judicial allies*—or groups outside the judiciary who support certain court decisions. Just as antidemocratic judicial allies such as militaries can support democracy-subverting court rulings, prodemocratic judicial allies can support democracy-enhancing ones. Furthermore, mobilization by prodemocratic judicial allies can generate positive feedback effects, empowering courts to take courageous prodemocratic decisions that in turn energize opposition mobilization.

Elected officials, including legislators, governors, and mayors, are one type of judicial ally that can empower prodemocratic judicial behavior. Brazil under former president Jair Bolsonaro offers a useful example. After Bolsonaro was elected in 2018, he threatened to close Brazil's Federal Supreme Court, impeach its justices, and even defy a judge's rulings. Yet mobilization by judicial allies enabled the courts to constrain a defiant president. The leader of Brazil's Senate rejected Bolsonaro's request to impeach a Supreme Court justice. When the Court ruled that the president could not override local public-health measures during the covid-19 pandemic, mayors and governors put muscle behind the ruling by implementing their own public-health policies. Elected officials likewise mobilized to act as judicial allies against Bolsonaro's attempted power grab after he lost reelection in 2022. The Court's decisions, in turn, offered focal points around which elected officials coordinated and mobilized.

Civil society and protest movements are a second type of judicial ally that can mobilize support for prodemocratic court decisions. Consider the example of Israel under Benjamin Netanyahu. In 2023, after Netanyahu's government announced sweeping proposals to reduce the judiciary's power, numerous sectors of Israeli society—including civil society groups, tech leaders, and military reservists—mobilized to sustain large-scale, long-term protests. These protests created a powerful

positive feedback loop. Societal mobilization provided Israel's Supreme Court with the popular legitimacy to strike down government legislation; in turn, the Court's decision energized the protests. These mass demonstrations protected Israel's judiciary for months, until the onset of war in October 2023.

Thus, at a time when courts are central to democracy's global fortunes, there is consequential variation in whether courts act as bulwarks against backsliding or as enablers of erosion. Certain factors tip the balance. Power-concentrating institutions for selecting judges and court capture by unsavory judicial allies have often led courts to subvert, rather than safeguard, democracy. Yet smart institutional reforms and mobilization by prodemocratic judicial allies can ensure the opposite, helping courts to fulfill their promise as defenders of democracy.

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10. These countries are Bolivia (2013, 2017), Burundi (2015), Cameroon (2008), Côte d'Ivoire (2020), Democratic Republic of Congo (2016), Ecuador (2014), El Salvador (2021), Guinea (2020), Honduras (2015), Nicaragua (2009), Russia (2020), Rwanda (2015), Senegal (2012), Sri Lanka (2010), Tajikistan (2016), Turkey (2023), Uganda (2005, 2019), Venezuela (2008), and Zambia (2018).

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15. Author interview with former Turkish judge, Istanbul, Turkey, July 2024.

16. Andrew O'Donohue, "Law versus Democracy: Judicial Selection Institutions, Court Capture, and Democratic Backsliding," SSRN Scholarly Paper no. 4465840, 28 August 2023, *https://doi.org/10.2139/ssrn.4465840*.

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