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ARTICLE

To Reinforce or Replace: Courts and Democratic Backsliding

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Abstract

Current scholarship conceives of courts as victims or targets of populist authoritarians. But can empowered courts facilitate democratic backsliding? This article develops a new framework for understanding the approaches judiciaries take when tackling political corruption and argues that when judges attempt to replace 'corrupted' elected branches as the primary representative institution, their actions and rhetoric can enable populist authoritarians to seize power, raising the risk of democratic backsliding. I combine jurisprudence, newspaper archives and interviews to trace the process through which Pakistan's Supreme Court, committed to playing a representation-replacement role, enabled the military-backed populist Pakistan Tehreek-e-Insaaf to come to power in 2018, and use its powers to reverse Pakistan's democratic transition. I also probe the political impact of anti-corruption jurisprudence in more established democracies. In doing so, I introduce a typology for understanding approaches courts take when combating corruption, and highlight the threat to democracy that can emerge from judiciaries.

Keywords: law and courts; corruption; democratic backsliding; judicial politics; South Asia

In a time of democratic backsliding around the world, a robust protection of rights by an independent and assertive judiciary is seen as essential to preserving liberal constitutional democracy (Mudde and Kaltwasser 2018; Müller 2016; Pappas 2019). Since constitutional courts exercise judicial review to defend rights and ensure that political institutions do not overstep the limits of the powers they were elected to exercise, there is a consensus that strong, independent courts can deter efforts to erode democracy (Gibler and Randazzo 2011). But what if empowered courts, contrary to scholarly expectation, sometimes use their powers in ways that make democratic backsliding *more* likely? In countries including Brazil, India and Pakistan the rise of populist authoritarians was preceded by frequent clashes between an elected executive and an interventionist judiciary deploying anti-political rhetoric. Therefore, in this article, I ask, can constitutionally empowered courts facilitate democratic backsliding?[1]

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This article integrates insights from literature on judicial activism across political science and public law to develop a framework for distinguishing between approaches courts take to impact political representation. Political corruption, or the 'inappropriate use of common power and authority for purposes of individual or group gain at common expense', subverts and undermines popular representation, and courts have a crucial role to play in holding state officials accountable and preventing corruption from impacting democratic governance (Warren 2004). I argue that when empowered courts decide to tackle political corruption assertively, they can either adopt a *representation-reinforcement* approach, supporting other institutions in ensuring that corrupt individuals and institutions are held accountable and the representativeness of lawmaking and policymaking processes are not subverted by private interests, or a *representation-replacement* approach, subordinating and displacing other institutions that are deemed corrupted or ill-equipped to resist corruption, and acting as the primary venue for the representation of interests in democratic governance.[2]

Where judiciaries adopt a representation-replacement approach they may facilitate democratic backsliding, particularly within emerging and weakly institutionalized democracies. When judges deem courts to be more representative than elected institutions, and make decisions on that basis, this leads to *judicial aggrandizement*, as the separation of powers between the judiciary and the elected branches breaks down and courts appropriate and constrain the governing authority and capacity of elected leaders, and the *framing effect* of these decisions is to provide aspiring populist authoritarians the rhetorical and symbolic frames for mobilizing support around challenging mainstream political elites and dismantling established political institutions. The weakening and delegitimizing of the political elite and elected institutions enable populist authoritarians to purge competing political elites and dismantle constraints, thus facilitating democratic backsliding.

In order to test and illustrate this argument, I process-trace Pakistan's failed democratic transition between 2009 and 2019. During this decade, Pakistan was transitioning towards democracy after a period of military rule, and had an elected parliament and a popular Supreme Court that played a critical role in setting the country on the path to democratization in 2007.

Through a study of the Supreme Court's approach to political corruption, I demonstrate the mechanics of anti-corruption jurisprudence guided by a representation-replacement approach. I combine insights from interviews with lawyers, politicians and scholars, and information gleaned from newspaper articles, political speeches and political advertisements to establish how the Court's decisions weakened the capacity of elected parties to organize and govern, and legitimized the anti-political framing of the populist political party, the Pakistan Tehreek-e-Insaaf (Pakistan Movement for Justice – PTI). The PTI capitalized on the Court's jurisprudence and discourse to campaign for political power, expand executive-led repression and undermine democratic pluralism.

This article contributes to important debates about democratic institutions in the following ways. First, it introduces a new way to distinguish between the approaches courts take when intervening in the actions and operations of other institutions in democratic systems. Second, it adds new insights to our understanding of relationships between democratic institutions, and the impact anti-corruption campaigns have on

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these relationships. Third, it highlights new pathways to democratic backsliding and autocratization.

I first review debates regarding the role of courts in combating corruption and protecting democracy. I then present a new framework for understanding variation in judicial approaches to combating corruption, and outline how this variation has important consequences for democratic stability. In the following section I use process-tracing methods to demonstrate the impact of a representation-replacement approach on Pakistan's democratic transition. Finally, I explore the conditions that shape the impact of anti-corruption jurisprudence on democratic outcomes cross-nationally.

Judicial roles in democracies

From the third wave of democratization, judicial review of executive and legislative action became a staple of constitutional frameworks, and states accepted that courts can directly intervene in questions of policymaking and public administration (Gauri and Brinks 2009; Hirschl 2008; King 2012; Maldonado 2013; Tate and Vallinder 1995).

Sceptics of the enhanced role of courts argued that if judges, who are unelected, unrepresentative elites, are striking down policies and actions of elected representative institutions, this would restrict the substantive scope of democratic decision-making (Rosenfeld 2019; Tushnet 2009; Waldron 2006). Supporters of an enhanced role argued that the sceptics' argument rests on an unrealistic assumption of well-functioning, adequately representative political institutions (Hilbink 2008; King 2012). Even in the most consolidated democracies, whether it is the impact of money, special interests or institutional design, elected legislatures and executives tend to over-represent interests of privileged elites. Concerns about the representativeness of the political system carry greater weight in weakly institutionalized and transitioning democracies, where political parties often lack durable roots in society, the electoral system may skew even further towards representing elite interests, and corruption is an entrenched and pervasive feature of political systems (Hilbink 2008; Landau 2014). David Landau (2014) argues that courts in these democracies must deal with problems of 'democratic dysfunction'.

Political corruption is especially considered a source of dysfunction within democracies, as it reduces public institutions to 'instruments of private benefit' and breaks the link between state decision-making and people's power to be represented in state decision-making (Ocantos et al. 2023; Rohac et al. 2017; Warren 2004). An empowered and independent judiciary can combat dysfunction generated by corruption and secure representation in the political system by providing an additional opportunity for deliberating and scrutinizing state actions, limiting the extent to which private interests are privileged over popular representation in political processes, and holding executive and legislative institutions and officials accountable (Ely 1978; Gardbaum 2020; Gauri and Brinks 2009; King 2012; Landau 2014; Landfried 2019). In short, courts intervene in the domain of legislative and executive institutions to curb democratic dysfunction produced by political corruption, and to secure democratic representation (Dixon 2023).

This is not just a normative justification from public law scholars, it also characterizes the way in which activist judges approach political corruption. The Colombian

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Constitutional Court struck down a legislative amendment that enabled President Uribe to enact anti-guerrilla measures because the president had interfered in the congressional procedure for passing the law, inferring that the president used state patronage to secure congressional votes, and thus 'distorted popular will' (Landau 2014). Thus, courts act to remedy the impact of corruption on the ability of state institutions to represent the public interests or hold public officers democratically accountable (Botero 2018; Landau 2010, 2014).

In the following section, I build on the work of constitutional scholars (Ely 1978; Gardbaum 2020; Landau 2014), to develop a new typology of approaches taken by courts in combating corruption in elected institutions.

Reinforcing and replacing 'corrupted' representative institutions

In dealing with democratic dysfunction produced by corruption in executive and legislative institutions, courts can:

1. Take an assertive approach, where they intervene in the affairs of elected institutions to correct dysfunction in these institutions so that they better represent the electorate's interests, which I call *representation-reinforcement*.
2. Take an assertive approach, where they intervene in the affairs of elected institutions to either supervise or appropriate their functions, due to the inability of these institutions to represent the electorate's interests, which I call *representation-replacement*.
3. Take a deferential approach, by avoiding intervening in processes and decisions of elected institutions and officials, leaving it to elected branches to correct dysfunctions and manage their affairs.

Where courts take a representation-reinforcement approach, they supplement and scrutinize the work of other branches, with the aim of ensuring that people's interests and principles are represented. The guiding assumption is that, given that corruption subverts representation in political institutions, the judiciary must intervene in legislative and executive processes to jointly ensure *all* branches of government represent the people's interests. If processes of lawmaking and policymaking are skewed towards upholding private interests at the expense of public representation, or if institutions meant to check the impact of private interests and hold public representatives accountable are not fulfilling their functions, the court will work with legislative and executive institutions to improve institutional processes and checks, thus reinforcing representation in the political process. In South Africa, when an investigation condemned President Zuma for using public funds for private purposes, the Constitutional Court intervened to direct internal legislative processes so that the legislature would uphold its obligation to hold the executive accountable for corruption (Kende 2003; Menell 2016).

Where courts take a representation-replacement approach, they scrutinize and substitute the work of the other branches, to ensure the political representation of the people's interests and principles. Some courts hold that political branches have been corrupted to an extent that they either cannot or will not represent the interests of

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the people, and therefore, it falls upon courts to step in, and either manage other institutions until they can do so, or carry out the work of the political branches themselves, or both (Landau 2014). The guiding assumption of the representation-replacement approach is that, given that corruption has rendered political institutions unrepresentative, the judiciary must intervene as it better represents the people's interests than the other branches do. Where judges believe the channels of democratic participation are not functioning and electoral incentives are skewed, it is judges, untied to concerns about short-term electoral gain and individual political prospects or affinity to a powerful political party leader, who are better equipped to discern and uphold the interests of the people (Barroso and Osorio 2019). In India in the 1990s and 2000s, courts, concerned about the impact of corruption on lawmaking, policymaking and administration, issued orders that directly prescribed policies for governments to implement, micro-managed the process of policy implementation through court-appointed bodies, and granted courts and court-appointed bodies special powers to directly supervise internal executive processes to weed out corruption (Bhuwania 2017; Chandrachud 2011; Gardbaum 2020; Mate 2014; Menell 2016).

In both the representation-reinforcement and representation-replacement approaches, the judiciary intervenes in the working of other branches to diagnose and remedy failures of democratic institutions to represent the interests of the public. The difference between these assertive approaches lies in: (1) the level of distrust in the democratic credentials of elected institutions and elites conveyed in judicial rhetoric; and (2) the remedies they prescribe in judicial proceedings and judgments.

Judicial rhetoric

In the representation-reinforcement approach, courts attribute institutional failures to address corruption or distortions in policymaking and administrative processes generated by corruption, to *specific* institutional process flaws or weaknesses that need addressing. In its rhetoric, the court emphasizes that its role is to act in aid of, or in dialogue with, elected institutions, to tackle corruption and the dysfunction it introduces in representative government (Gargarella 2014). In *Glenister v South Africa*, for example, Justice Ngbobo stated, 'The inclusion of each branch of government and the designation to each of a specified role follows from the importance of the fight against corruption to all aspects of government.'[3]

In the representation-replacement approach, courts view corruption as a *general* malaise endemic to the entire political system, which only the judiciary can address by either subordinating, cleansing or displacing 'corrupted' and unrepresentative political institutions. The court's rhetoric will provide a pessimistic assessment of political representatives and institutions that are seen as corrupt, unrepresentative and thus unable to fulfil their duties, often combined with an idealized conception of the court as the preferred representative of society's interests. Thus, the representation-replacement approach can be distinguished from the representation-reinforcement approach by rhetorical swipes at the political elite, representative institutions or political system, and references to the judiciary's superior claim to representativeness in the court's proceedings and judgments.

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Judicial remedies

Courts, when adopting the representation-reinforcement approach, will criticize the decisions of other institutions and at times even overturn them, but will not seek to have the last word on what the correct political and policy decision should be. Usually, they will craft decision-making processes that, at least in the eyes of judges, ensure that political actors can be held accountable and political and policy decisions are not distorted by private interests. For instance, the South African Court provided guidance on criteria for parliamentary accountability procedures but did not select or remove personnel within executive and legislative institutions, or displace legislative or guarantor institutions in combating political corruption (Gardbaum 2020; Menell 2016).[4]

Representation-replacement courts review and overturn political and policy decisions and will seek to have the last word on what decisions should be made instead, or what institutions and which officers should participate in governing processes. The court will insert judges directly into policymaking processes and institutional management, and may even remove and select institutional personnel for the development and implementation of directives. For instance, when the Indian Supreme Court intervened to tackle alleged corruption and kickbacks in the granting of licences to telecommunication companies, not only did it decide on the process through which these licences could now be allocated, but it micro-managed the different aspects of the process of the investigation into allegations of corruption, effectively running the state's investigative agencies (Chandrachud 2018). Thus, we can distinguish a representative-replacement approach when the remedies in corruption cases involve the court either: (1) directly running corruption investigations, (2) managing the administration of public institutions where corruption has been an issue or (3) appointing and removing personnel in political and administrative institutions.[5]

Judiciaries are not monolithic in how they approach corruption, and we may find elements of both a representation-replacement approach and a representation-reinforcement approach in the broader anti-corruption jurisprudence of the same court. Where judicial proceedings and decisions exhibit courts (1) calling out broad, systemic failures in political institutions and the political elite, (2) affirming the comparative representative strengths of the judiciary, (3) assuming the work of designing and determining institutional policies and (4) selecting and removing relevant institutional leadership and personnel, it would be apparent that the court has taken a representation-replacement approach to tackling corruption.

Representation-replacement courts and democratic backsliding

Today, in an era of democratic backsliding, arguments in support of judicial power have been reinforced by the attacks of populist authoritarians on constitutional courts (Blauberger and Keleman 2015; Lacey 2019). Scholars of democratic backsliding have focused on strategies deployed by elected executives to weaken checks on executive power through a series of institutional changes (Bermeo 2016; Pirro and Stanley 2021). Authoritarian leaders and parties who build their dominance through working democratic institutions rely on populist ideologies to mobilize popular support and demobilize resistance. Claiming to represent the 'popular will', populist authoritarians mobilize electoral majorities to bypass constitutional constraints, violate fundamental

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rights and dismantle accountability structures (Bakke and Sitter 2020; Bermeo 2016; Huq and Ginsburg 2018; Kellam and Berlucchi 2023; Khaitan 2020; Schepelle 2018).

Scholars have noted different causes for the rise of populist authoritarians. Demand-side explanations have focused on economic shocks, technological change, economic inequality and insecurity, changing demographic patterns and political polarization (Berman 2021; Diamond 2021; Gerschewski 2021; Iversen and Soskice 2019). Supply-side explanations have focused on the inability of political institutions to respond effectively to public grievances, and a growing dissatisfaction with mainstream political institutions that are perceived as corrupt, unresponsive or ineffective (Berman 2021). Voluntarist explanations argue that what matters is the *way* in which the actions and rhetoric of state and political elites give salience to socioeconomic grievances, or the corruption and unresponsiveness of mainstream political parties (Berman 2021; De Vries and Hobolt 2020; Kenny 2017). The key takeaway from this literature is that all these factors generate and exacerbate a crisis of representation in the existing political order, as large segments of the public lose trust in the ability of political institutions and the mainstream parties that populate these institutions, to represent their interests and respond to their discontent, and therefore are attracted to populist anti-system outsiders (Doyle 2011).

Where political corruption is a significant problem, the approach courts take to address corruption plays a significant role in shaping political attitudes and outcomes. The messaging of anti-corruption campaigns has a significant impact on support for populist and anti-system attitudes, as messaging that describes corruption as far-reaching and pervasive has been found to increase support for populism (Cheeseman and Peiffer 2025). The performance of courts in tackling corruption can shape public attitudes regarding corruption (Barbabela et al. 2022; Barbabela 2023; Magalhaes 2024; Yair et al. 2020). Judicial efforts to tackle high-profile political corruption typically involve the disclosure of evidence of wrongdoing on a grand scale (Poertner and Zhang 2023), and when judges craft a 'strong anti-politics message' to justify the way they tackle this corruption, this can diminish trust in the political system (Ocantos et al. 2023). Laura Gamboa et al. (2024) find that courts engaged in policing public administration institutions for corruption often use language that demonizes the entire political system and makes politics by established politicians look 'irredeemable', which can embolden populist political outsiders. Thus, the messaging of anti-corruption campaigns, and specifically the messaging and actions of courts engaged in anti-corruption campaigns, can impact political attitudes, trust in the political system (Kang and Zhu 2021) and support for anti-systemic populist ideas and populist actors.

The question is: which judicial anti-corruption campaigns are more likely to facilitate increased distrust in the political system and support for populist authoritarians, and how? I argue that, when courts take a representation-replacement approach to combating political corruption, this can facilitate the crisis of legitimacy that aspiring populist authoritarians can capitalize on.

Representation-replacement courts, when intervening in legislative and executive processes, substitute the authority and preferences of executive and legislative institutions in favour of their own. They justify their interventions and substitutive remedies based on criticisms of the systemic corruption and unrepresentativeness of the political

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institutions and the superior representativeness of the judiciary. This will have two effects.

The judicial aggrandizement effect of judicial remedies

When judges displace or subordinate the authority of elected officials and substitute it with their own, they aggrandize judicial authority. If 'executive aggrandizement' refers to weakening institutional checks on the executive leadership (Bermeo 2016), 'judicial aggrandizement' similarly refers to weakening limits and constraints on the power of judicial leadership. The remedies in representation-replacement anti-corruption jurisprudence expand the judiciary's authority to directly manage public administration institutions, determine policy choices and immunize judicial lawmaking from legislative challenge. In doing so, they dismantle the constitutional separation of powers as judges adopt functions of other branches and limit the ability of other institutions to challenge their adoption of those functions.

For instance, in representation-replacement remedies, judges may at least partly or fully assume management of public administrative institutions, either ones tasked with carrying out anti-corruption investigations or ones where corrupt activity has been identified that needs remedying. Rather than altering procedures through which the elected executive manages public administration decisions so that these institutions can function more transparently and meritocratically, courts may provide direct instructions to bureaucrats and decide which officers should be selected and promoted. In doing so, political control over public administrative institutions is displaced. Similarly, when judges overrule or amend anti-corruption legislation through judicial review and interpretation, disqualify elected officials from legislative office and then circumscribe the ability of legislators to amend judicially made laws or challenge disqualifications, they also assume the running and functions of an elected legislature and constrain the legislature's ability to place checks on judicial lawmaking.

Judicial aggrandizement induces a breakdown of the separation of powers between elected and unelected branches of government and disrupts processes of policymaking and administration handled by the elected political leadership. Rather than the judiciary acting as a check on the misuse of power by the elected executive, the judiciary assumes the elected executive is incapable of handling those powers on its own and appropriates at least some of those powers for itself, muddying the management of state institutions. For instance, when control over investigative and policing agencies is contested between the elected executive and a judiciary, it reduces the willingness and ability of officers to implement decisions and policies of the elected government. Distortions in the institutional separation of powers and dysfunction in policymaking and administrative processes erode public trust in these systems and undermine the ability of elected incumbents to withstand challenges from populist outsiders, vindicating their claims regarding the ills of the established political system.

The framing effect of judicial rhetoric

When judges justify their aggrandizement of authority by criticizing political elites populating elected institutions for being corrupt and unrepresentative, it can

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communicate to people that the problems they face are attributable to the corruption of an unrepresentative and irredeemable political class. In doing so, the court's rhetoric aligns with, grants salience to, and reinforces the antagonistic and anti-political frames through which populist leaders mobilize support for challenging and displacing incumbent political elites.

In any political system, people are exposed to multiple competing frames through which they can understand the problems they face, and their solutions (Benford and Snow 2000; Chong and Druckman 2007). Populist diagnostic frames propose that the problems people face can be blamed on a corrupt and unrepresentative political class, establishing an antagonism between the 'people' and the 'political elite' (Dias et al. 2021). Populist prognostic frames emphasize that supporting political outsiders in their campaigns to do whatever is necessary, even to alter democratic institutions and violate democratic norms, to oust the incumbent political elites and transform the political system, will yield a system that more authentically represents the people.

Given that constitutional courts in many states now occupy positions of heightened prominence and public visibility, their words and actions carry significant weight in public and political discourse, and their commentary can be useful to populist leaders and parties. If senior judges in an empowered judiciary with significant legitimacy chastise corrupt and unrepresentative political elites, and circumvent procedural rules and jurisdictional constraints to correct the failings of these elites, their rhetoric aligns with, and affirms, the diagnostic and prognostic frames of populist leaders and movements. When judges craft a 'strong anti-politics message', it can corroborate and reinforce the diagnostic frame of anti-system populists that not just ruling governments, but all mainstream parties are corrupt (Gonzales-Ocantos et al. 2023). Similarly, when judges justify pushing past procedural and jurisdictional constraints to overrule, subordinate and purge executive and legislative institutions, by invoking the 'public interest', this rhetoric corroborates prognostic frames of populist leaders and movements. Thus, judges can be both the targets of populist derision, as seen in Hungary (Pirro and Stanley 2021), and a source of validation for the claims of populist authoritarians, as seen in Brazil (Dias et al. 2021). Populist leaders and movements will rely on, and echo, the rhetoric of the court, to strengthen their position and appeal.

Thus, the alignment of frames for judicial action and frames for populist action against a common enemy – a corrupt political class – strengthens the populist framing, enabling populist leaders to mobilize more support in their campaign to challenge and displace the established political class, violate democratic norms and dismantle democratic institutions.

Judicial aggrandizement and the populist framing effect together help produce the conditions under which aspiring populist authoritarians can acquire power.

It could be argued that the interventions and rhetoric associated with representation-replacement are not the causes of a legitimacy crisis for political parties and institutions, but products or symptoms of an established legitimacy crisis generated by the revealed corruption of these political elites. And if there is extensive and systemic political corruption, aggressive judicial interventions and expansion of judicial authority may be a necessary evil, compared to enabling corruption to persist without any accountability or remedy. However, a corruption-induced legitimacy deficit could just as easily motivate courts to intervene to reinforce and improve

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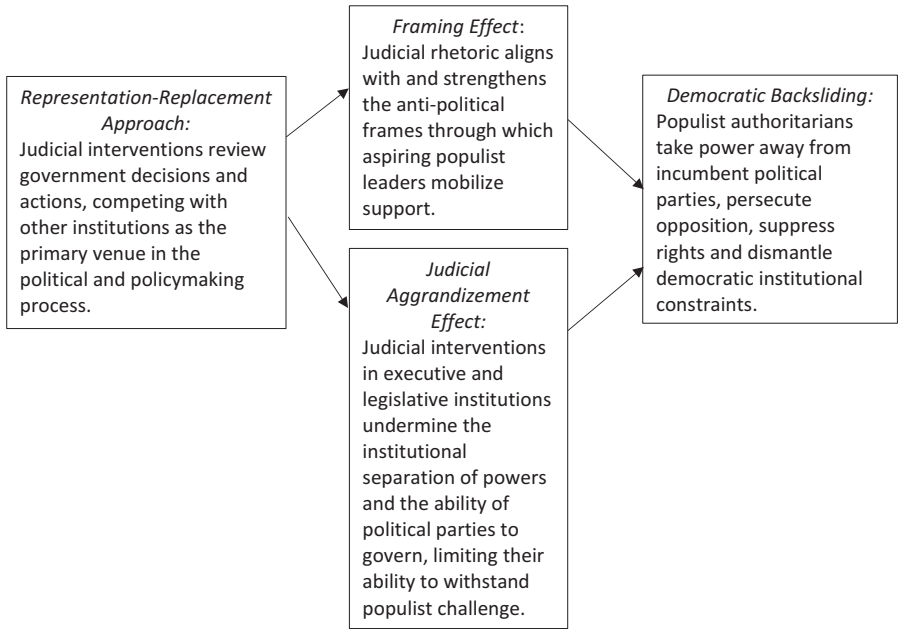


Figure 1. Representation-Replacement Approach and Democracy

representative institutions, as opposed to chastising and replacing them. What matters therefore is not just the presence of widespread corruption but the approach taken to tackle this corruption, the messaging and remedies associated with that approach and the impact that can have on the legitimacy of the system more broadly.

Thus, a representation-replacement approach to tackling political corruption can strengthen populist challenges to the established political institutional order and undermine the ability of incumbent institutions and mainstream political elites to counter this challenge. In more weakly institutionalized democracies, this pattern of judicial behaviour undercuts the already contested legitimacy, shallow party development and weak institutional foundations of the democratic order. In a weakly institutionalized democracy, where the judiciary enjoys significant authority and public visibility, and anti-system populist parties are present as alternatives to the incumbent and mainstream political parties, a representation-replacement approach to anti-corruption jurisprudence can facilitate the emergence of a favourable political opportunity structure for populist authoritarians to gain political power, and circumvent and discard democratic norms and constitutional constraints, all in service of a mandate to do whatever is necessary to purge a corrupt and unrepresentative political class. As populist authoritarians acquire power, weaken and purge the political opposition, dismantle checks on executive power and suppress civil and political rights, the state grows undemocratic (Bermeo 2016; Kellam and Berlucchi 2023). In this way, as shown in Figure 1, the actions of the representation-replacement courts can facilitate democratic backsliding.[6]

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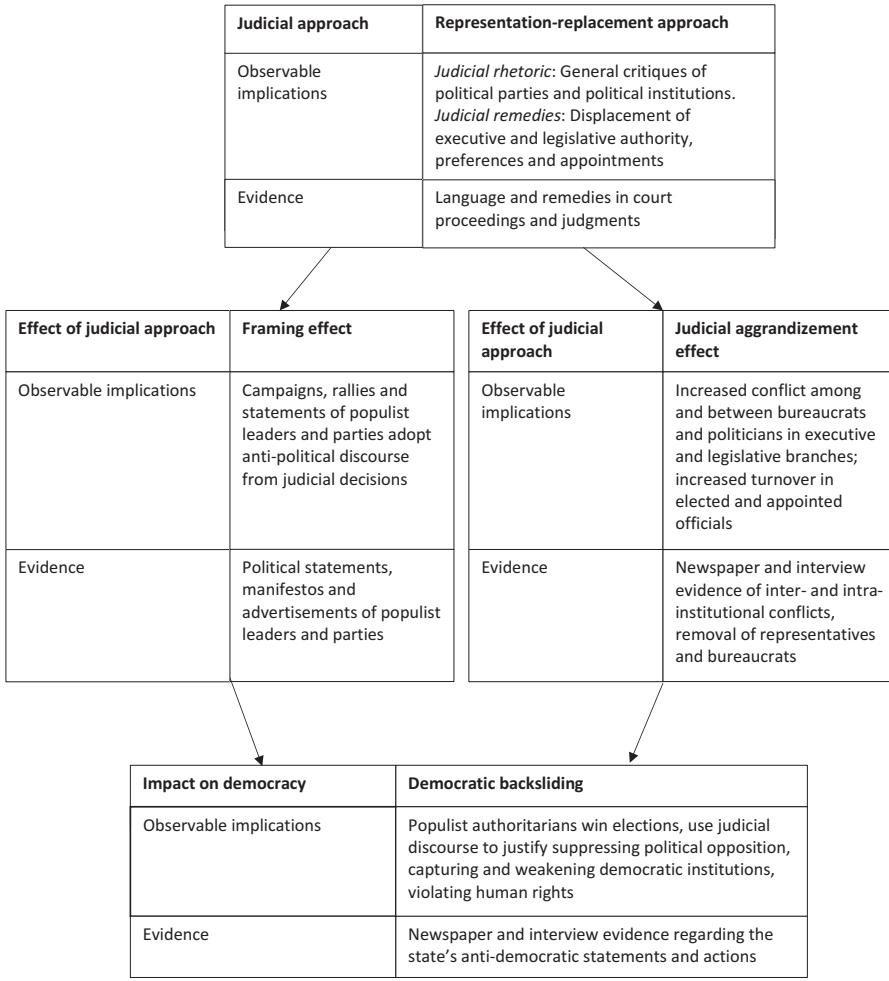


Figure 2. Tracing the Impact of Representational-Replacement Courts on Democracy

I adopt the Beach and Pedersen (2019) strategy for in-depth 'theory-testing process tracing', by first unpacking the causal process, distinguishing the mechanisms through which the interventions of a representation-replacement court facilitate democratic backsliding, and then identifying what, if any, observable evidence of these mechanisms is present in my case study. This requires identifying evidence of: (1) the representation-replacement approach in the court's anti-corruption jurisprudence, (2) the framing and judicial aggrandizement effects generated by this jurisprudence and (3) the resultant backsliding of democracy (Pavone and Stiansen 2021). I lay out the causal process, its observable implications and the evidence required to identify these observable implications in Figure 2.

I am not arguing that populist authoritarians would be unable to acquire power and subvert democratic institutions without the help of a representative-replacement court,

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or that a representation-replacement approach to tackling political corruption is a sufficient condition for explaining the rise of populist authoritarians. Instead, my argument is that when empowered courts adopt a representation-replacement approach when tackling political corruption, it can open up one significant pathway for populist authoritarianism and democratic backsliding.

Courts and democratic backsliding in Pakistan

In this section, I trace out the process through which a representation-replacement court impacted democratic outcomes in Pakistan. Pakistan's last military dictator (1999–2008) used (often unproven) corruption charges to convict, disqualify and exile the leadership of Pakistan's mainstream political parties, the Pakistan People's Party (PPP) and the Pakistan Muslim League-Nawaz (PML-N). In 2008, the dictatorship was brought down by a movement for democratization that emerged, initially, in support of an activist chief justice, Justice Chaudhry. In the elections of 2008, the PPP and PML-N returned victorious as the strongest parties in the post-authoritarian setup. Similarly, Chief Justice Chaudhry and the judges who were initially ousted by the military regime were restored to the superior judiciary in 2009, after widespread public pressure. Thus, from 2009 onwards, even though the military continued to intervene informally in politics (Shah 2014), it seemed Pakistan was making the transition towards being an electoral democracy.

However, a decade later, Pakistan's democratic transition appeared to stall. The Pakistan Tehreek-e-Insaaf (PTI), a right-wing populist party, led by former-cricketer-turned-politician Imran Khan, won the elections in 2018, with the military's support, running on an anti-political populist platform, pledging to purge the country of its political elite, which it blamed for all the country's problems (Shah 2019). Upon coming to power, the PTI government facilitated the military's return to a pre-eminent place in Pakistan's politics, and this coalition launched an anti-corruption drive, which became an instrument for debilitating the political opposition, detaining and arresting much of the leadership of the PPP and PML-N (Javid and Mufti 2020). The government also banned and prosecuted critical news outlets, censored media coverage of opposition rallies and charged dissenters with sedition. The failure of this democratic transition was a product of multiple factors, but it would not have been possible without the role of Pakistan's interventionist Supreme Court.

The constitutional framework endowed Pakistan's Supreme Court with the power to make orders on questions the Court deemed of public importance, with reference to the enforcement of fundamental rights (Khan 2015). Further, judicial precedents had incrementally realized greater independence from executive institutions over time, and the judiciary enjoyed widespread popular support after its restoration in 2009. Therefore, this provides ideal conditions to study the political impact of an assertive anti-corruption jurisprudence.[7]

In order to trace the process through which the Supreme Court's anti-corruption jurisprudence facilitated democratic backsliding, it is important to consider alternative explanations for democratic reversals in Pakistan.

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Political corruption

Pakistan's leading political parties were weak, structured around political dynasties and dependent upon clientelist relationships for support. Elite corruption and in-fighting therefore plagued these parties. A slew of well-publicized corruption scandals over this decade ensnared leading members of the PPP and PML-N. Their governments also frequently faced allegations of favouring the appointment and promotion of bureaucrats who looked out for their private interests. Thus, it could be argued that the Court's anti-corruption activism did not facilitate the PTI's anti-corruption populism, as *both* were facilitated by endemic political corruption.

Military interventions

In a weakly institutionalized democracy where the military wields political influence, military support for a populist party would play a critical role in tipping the political scales in favour of that party. In the build-up to the 2018 elections, the military helped nurture and build organizational depth and political support for the PTI. The military also used its influence to pressure politicians belonging to the PML-N and PPP to defect to the PTI, and to compel owners of private media houses and television anchors and journalists to influence media coverage in the PTI's favour (Shah 2019). Therefore, the actions the military took behind the scenes were critical to the electoral rise of the PTI.

However, while the pervasive nature of corruption in Pakistan's leading parties, and active military support for the PTI did also contribute to bringing the PTI to power, the judiciary, through its highly publicized interventions, focused public attention on political corruption, legitimized a narrative that the problems of the public could be blamed on the corruption of the political class *as a whole*, and weakened the ability of mainstream political parties to respond to the challenge from the PTI. I will show how the Supreme Court's anti-corruption jurisprudence exemplified the representation-replacement approach, and played a critical role in facilitating the rise of the military-backed PTI, thus enabling democratic backsliding.

Through a discussion of judgments pertaining to tackling corruption in the management of administrative bureaucracies and state-owned companies, and holding elected officials accountable, I will show how the Supreme Court circumvented procedural and jurisdictional constraints, substituted the authority and preferences of the elected executive and legislature for its own and justified these substitutions based on a critique of the corrupt, unrepresentative character of the political class, and the judiciary's superior representative credentials.

Second, I trace the judicial aggrandizement and framing effect of the Supreme Court's jurisprudence. Using information from newspaper articles and interviews with politicians, statements of the PTI's chairperson and the PTI's election advertisements and manifestos, I describe how the judiciary's decisions constrained the ability of elected institutions to govern effectively, and how the PTI drew upon the Court's rhetoric to reinforce and legitimize its own populist framing.

Finally, I show that the consequence of these combined effects was that the PTI was able to win at the polls, and, in alliance with the military, it used this victory to go after opposition parties and dissenters.

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In-depth mechanistic process tracing is not meant to dismiss alternative explanations and establish that representation-replacement courts are the sole cause for the rise of populist authoritarianism, but only to establish that there is observable evidence of the causal process connecting representation-replacement jurisprudence to democratic backsliding.

The representation-replacement Court[8]

After its restoration in 2009 the Supreme Court enjoyed widespread public support, and over the next 10 years repeatedly clashed with elected institutions.[9]

The first major confrontation between the Court and the elected executive was over the National Reconciliation Ordinance (NRO). Politically motivated corruption charges and convictions had previously been used to purge the leadership of mainstream parties from political life. They were undone to enable the leadership of Pakistan's mainstream parties to participate in future elections. The NRO lifted these corruption charges and convictions to make their participation in the 2008 elections possible. In December 2009, the Court invalidated the NRO and reopened all the quashed proceedings against political leaders and bureaucrats.

The notion that corruption convictions could just be made to disappear through an executive ordinance stood on thin ice legally, but what stood out was the Court's extensive discussion of political corruption (Kalhan 2013). During proceedings, judges themselves disseminated unverified media reports from the 1990s, discussing the alleged history of corruption of the PPP's leader, President Asif Zardari, to all those present in the courtroom.[10] Justice Chaudhry, in his judgment, favourably cited a lawyer who stated that 'the NRO is a kleptocratic lie, a kleptocracy is a manifestation of … supremacy of satanic forces'.[11] Similarly, Justice Sardar Raza stated in a concurring opinion, 'In a country where the wealth of a poor man is looted, its ruler has verily gone astray and faltered'. Thus, the Court cast aspersions on the intent of the elected parties.

The Court also did not accept the preferences of investigative and prosecutorial institutions within the executive branch, regarding the process of handling cases arising out of the quashing of the NRO. The Court was almost exclusively focused on reopening *one* corruption investigation, against the PPP leader, Asif Zardari, insisting that the government of Prime Minister Gilani should write to the Swiss authorities asking them to reopen closed investigations into wealth Zardari had allegedly amassed in Swiss bank accounts. When the PPP government evaded the Court's preferred investigative approach, the Court charged the elected prime minister, Yousuf Gilani, with contempt-of-court for failing to implement its order, and then disqualified him from holding elected office due to the contempt-of-court conviction.

The judges justified this sensational assertion of judicial power as necessary, given how politicians failed to represent the interests of the people, and had to be held accountable (Kureshi 2022). Justice Khosa, one of the authors of the judgment, adapted a poem by Khalil Gibran, in order to list rhetorical charges against the government, stating: 'Pity the nation that elected a leader as redeemer but expects him to bend every law to favour his benefactors … that punishes its weak and poor but is shy of bringing its high and mighty to book' (Popalzi 2012). A combination of strong-form judicial

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review, populist indictments of elected governments, media-friendly oral commentary during proceedings and punishment of any defiance or criticism, became increasingly familiar in subsequent judicial interventions.

Representation-replacement in administrative jurisprudence

The Court made it its mission to improve governance by curtailing political corruption within administrative institutions (Cheema 2021). In several cases, the Court aggressively pursued charges of corruption against senior ministers and members of the federal bureaucracy, and appointees to public corporations and regulatory authorities (Cheema 2018). The Court laid down guidelines for bureaucratic appointments, transfers and postings and asserted that all government appointments were reviewable by the judiciary.[12] Over this period, the judiciary frequently overruled government appointments, transfers and postings in state bureaucracies, public corporations and regulatory authorities, and asserted its own preferences regarding these appointments to prevent politically appointed officers furthering corruption and 'cronyism' within state institutions.[13] The Court justified these actions based on sweeping criticisms of the corruption of politicians running the bureaucracies, and claims regarding the judiciary's role in representing the public interest.

In 2011, the Court took notice of newspaper reports regarding government mismanagement of arrangements for the annual pilgrimage to Mecca (Asad 2016). The Court stated that 'corrupt practices by which pilgrims had been looted and robbed had brought a bad name to the country'.[14] During hearings the Court criticized and overruled the selection of officers for postings relevant to the investigation of mismanagement, providing its own assessment of suitable officers (Zulfiqar 2011). In justifying these interventions, the Court stated, 'transfers and postings come in the domain of the Court to ensure that money looted (by politicians) is recovered.'

Similarly, in a separate case, the Court took notice of the management of Pakistan's state-owned national carrier, Pakistan International Airlines (PIA), based on allegations of 'cronyism' within the management of the carrier. The Court alleged that top airline officials 'were bent upon selling national assets at throwaway prices'.[15] The Court determined that the PIA's chief executive was appointed because of his ties to 'a politically strong' individual, and this was why the airline 'ran into huge losses'. The Court said it was intervening to put a stop to 'the worst form of cronyism at public expense … without any regard to the interest of the people' (Kureshi 2024).

Thus, the Court, in trying to stem the corruption generated through practices of discretionary transfers and postings, chose to replace the elected government's authority and preferences with its own.

Representation-replacement in political accountability

Perhaps the most consequential series of court decisions pertaining to political corruption began when the so-called Panama Papers revealed offshore companies owned by the then elected prime minister Nawaz Sharif's two sons based in London. A petition was moved before the Supreme Court by the PTI, calling for Sharif's disqualification from political office, based on allegations that these properties were purchased by

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him for his sons using unexplained and ill-gotten income (Cheema 2018). Months of regular hearings received daily media coverage, in which Sharif's assets and financial dealings were openly scrutinized, making political corruption the most salient issue in political and media discourse. As one politician observed, 'the Court conducted daily hearings, almost 130 hearings in as many days, on the case of a misdeclaration of assets.'[16]

The Court had to determine, constitutionally, whether there was enough evidence available to disqualify Sharif for not meeting the constitutional criteria of honesty and sagacity. Rather than waiting for a complete investigation, trial and confirmation of financial misconduct, the Court disqualified Sharif from political office based on largely circumstantial evidence and a financial technicality, without any possibility of appeal. The Court used strong words to justify this assertion of judicial power. One judge referenced passages from Mario Puzo's *Godfather* to describe Sharif and opined that the judiciary had to 'cleanse the fountainhead of authority of the State so that the trickled-down authority may also become unpolluted. If this is achieved then the legislative and executive limbs of the State are purified.'[17]

In the following months, the Court ruled that such a disqualification from elected office was a lifetime ban that rendered the disqualified individual ineligible to hold a leadership position within any political party. The Court could now purge individuals from political life, on the basis of civil charges. Petitions were filed before the Court regarding multiple political leaders, pleading for their disqualification based on allegations of corruption. Many of these leaders belonged to the ruling PML-N, which bore the brunt of the Court's disqualification campaign (Javid and Mufti 2020).

Thus we see key features of the representation-replacement approach of the Pakistan judiciary. First, the Court justified its judicial interventions by alleging that systemic issues of political corruption were undermining the representation of interests and welfare of the public, and the judiciary was acting to uphold the public interest. Second in its remedies, the Court replaced the preferences of the political branches with its own preferences, assumed the authority of the elected executive, and purged political leaders.

Judicial aggrandizement effect

The Court's continued interventions into management of public administrative institutions and political processes blurred the distinctions between domains of the judiciary and the elected executive, and complicated the ability of elected governments to exert control over state bureaucracies. As a consequence of judicial interventions, PPP leaders in the province of Sindh complained that 'Government servants would appeal to the Court every time they were unhappy with their postings, and their cases would be taken up', and groups of bureaucrats informally aligned themselves with specific judges against the Sindh government.[18] Judicial interventions also confirmed for bureaucrats 'there was something wrong with the … politicians of the time.'[19] One member of the PPP lamented, 'What can we do, when all these judges all think they are messiahs now, all come to save the people?'[20]

Politicians and state officials were repeatedly called before the Court. Governing officials feared that any action taken by them could be overturned by the Supreme

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Court, and bureaucrats feared that implementing decisions of the elected government would lead to them being hauled up for contempt of court, if the Court disapproved of those decisions. As one Senator explained, 'Bureaucrats often did not know who to follow, because direct orders were given by the government, but then if they implemented those orders, and the Court disapproved of those orders, they could be demoted or held in contempt. So, the governing relationship got ruined.'[21] The result was, as a member of the PML-N complained, 'Anybody who works for the government knows it is impossible to do anything … the general environment of decision-making, judicial activism … all have contributed to literally paralyzing government.'[22]

Thus, the Court's anti-corruption jurisprudence undermined the separation of powers between the judicial and political leadership. This increase in institutional conflict and instability weakened political control of elected parties over state bureaucracies. The mainstream parties targeted by the Court's interventions and accompanying rhetoric saw their capacity to govern and organize curtailed.

Framing effect

Over the years, the orders and proceedings of the Court became a focus of coverage by Pakistan's burgeoning electronic media, thus placing the courts in a position to set the agenda for what issues were politically salient, and to shape public discourse.

As the Court chastised the corruption and vested interests of elected political elites, judges' statements were splashed across newspaper and news channel headlines. One politician expressed his disgruntlement, saying: 'Judges were handling sugar prices, managing hospitals, and speaking to the media to show them, the world, that only our institution is strong, other institutions are nothing.'[23]

The Court, in justifying its role as the superior representative institution, identified Pakistan's mainstream political parties, the PML-N and PPP, as the source of the problems facing the people. This blame attribution that undergirded the judiciary's representation-replacement approach, strengthened the PTI's populist appeal.

The PTI's political brand rested on its leader Imran Khan's status as a political outsider. The PTI hitched its wagon to the Court's interventions, using its judgments as vindication for its claims that Pakistan's mainstream parties were irredeemably corrupt and needed replacement.

When the Court overruled the NRO in 2010, the PTI celebrated and Khan called for the government to step down and organize new elections (*Frontier Star* 2009). The PTI capitalized on the Court's decision to declare the NRO void. Khan threatened to march on the capital if the Court's judgment was not implemented and investigations were not reopened against the PPP leadership. Khan said the PPP and PML-N were both part of the 'corruption corporation', and even suggested that the Court call in the army to remove the now 'illegitimate' government (*Daily the Pak Banker* 2010). Thus, the PTI used judicial interventions and rhetoric as vindication for its stance regarding the corruption of Pakistan's leading political parties and call for extraordinary actions to be taken against them. As the Court micro-managed the investigations into NRO beneficiaries, insisting that the government focus on President Zardari's Swiss bank accounts, Khan mirrored the Court's discourse, calling for the 'return of money looted and kept abroad' by political leaders (*Rupee News* 2011).

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Over this decade, Khan continued to blame problems in Pakistani governance and administration on a corrupt political class, and consciously aligned himself with Supreme Court rhetoric that mirrored and reinforced his own framing. For instance, when criticizing the country's law and order situation, he blamed it on political out-of-turn appointments in the police service and held that the Court, in scrutinizing these appointments was 'doing the job of government' (*Pakistan News* 2013).

We see the clearest alignment of frames between the PTI and the Court in the aftermath of decisions disqualifying Sharif and other PML-N members on corruption charges, as the Court's words about corruption across the political system seeped into the PTI's political discourse. Khan celebrated the Court's decision and organized a 'day of gratitude' to show the party's gratitude to the Court for vindicating its position and disqualifying Sharif. Khan stated:

> The Supreme Court did a historic decision to disqualify Nawaz Sharif and sent him packing … he was removed because he murdered the dreams of Pakistan. I also want to say that if they attack institutions like the Supreme Court … common Pakistanis … will stand with the Supreme Court.[24]

In the build-up to the 2018 elections, the PTI presented its populist platform and adopted language from the Court's decisions in campaign material. The PTI's campaign advertisements and candidate speeches referred to Sharif as an 'unqualified' leader and the 'godfather', borrowing the Court's words from its decision disqualifying Sharif.[25] In its election manifesto, the PTI declared that 'The legacy of misrule and misery by a corrupt elite will be relegated to the dustbin of history.' Two of its primary commitments were to 'depoliticize' the state's administrative institutions, and 'bring accountability to the core of government' by 'launching a drive to recover looted national wealth parked … offshore'.[26] The manifesto indicated how the PTI aligned its own vision and priorities with the Court's diagnosis and judicial priorities, in order to strengthen the legitimacy of its vision and win support from the urban middle classes which paid most attention to the Court. As one politician involved with the elections observed: 'The PTI made the best use of it (the Court's decisions). When your major opponent … is being blamed (by the courts) for corruption, then you can make claims like "I will eradicate corruption in 90 days, and I will get back 200 billion dollars from foreign banks".'[27]

Thus, the mainstream elected parties of the time, both in government and in parliamentary opposition, became targets of scathing judicial criticisms, on issues of political corruption. A leading columnist explained that the PPP was 'marred by charges of corruption and stigmatization by the Supreme Court' (Alam 2015). Meanwhile, the PTI built its populist platform on the back of the Court's interventions and rhetoric, adapting its populist diagnostic and prognostic frames to align with the framing of the Court. As one politician complained, 'It seemed like the Chief Justice was effectively campaigning for the PTI.'[28]

A failed democratic transition

The rhetoric in the Court's anti-corruption jurisprudence strengthened the PTI's populist framing which called for extraordinary actions to oust the mainstream political parties, and judicial aggrandizement added dysfunction into the governing system and

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hampered the ability of incumbent parties to counter the PTI's populist onslaught. In so doing, the judiciary's interventions helped pave the way for the PTI's electoral victory in 2018.

Within the first year of the PTI's government, the anti-corruption drive, mandated and legitimated by the electoral victory, became an instrument for eliminating political opposition. Through the National Accountability Bureau, leaders of the PML-N and PPP and allied bureaucrats were arrested on corruption charges. The military also now played an increasingly pre-eminent role in the governing structure with military officers, both serving and retired, running important commissions and policymaking bodies (Khan 2021).

The PTI government justified its use of executive power to target opposition leaders and clamp down on dissent, based on a mission to rid the country of political corruption, echoing the discourse of the Court's anti-corruption jurisprudence. Imran Khan defended his anti-corruption campaign targeting opposition parties, stating, 'all mafias have joined hands to get an NRO, but I will not give it' (*Dawn* 2020). When speaking of repressing and censoring critical media outlets, Khan said the 'media is used as a shield to defend political corruption' (*The News* 2020). And he referred to the arrested owner of a leading media outlet critical of his government as the 'godfather of the media', relying on phrases popularized by the Court, as justifications for authoritarian action (JournalismPakistan 2017). Thus, the anti-politics rhetoric the Court used to circumvent constraints and displace elected institutions was mirrored by the PTI, as it bypassed legal and constitutional restrictions in pursuit of political domination. With the increased use of executive power to censor, coerce and repress political opposition and dissent, Pakistan's transition towards democracy was effectively stalled.

This process was not attributable to an assertive judiciary alone as military interference and endemic corruption also played a role. Further, there is no doubt the Court *did* have to play a role in combating corruption and the democratic distortions it produced in Pakistan's governing system. However, the way in which the Court dealt with the issue of corruption, and the dynamics of its representative-replacement jurisprudence, privileged a discourse that blamed corruption of the entire mainstream political elite – both in power and in opposition – for all of Pakistan's problems and enabled a campaign for authoritarian power built on combating political corruption to gain legitimacy and ascendancy. Thus, the representation-replacement approach taken by Pakistan's Supreme Court contributed to reversing the democratic gains made over the previous decade.

Representation-replacement and democratic backsliding beyond Pakistan

In recent years, other more institutionalized democracies also saw courts deal with major corruption scandals that ensnared the political leadership. In this section, I will discuss how the impact on democratic institutions varied, depending upon: (1) the approach courts took when dealing with corruption scandals, (2) the extent to which democratic and constitutional institutions were entrenched and (3) whether populists were in power.

In Brazil, in a series of cases following the high-profile operation against corruption known as LavoJato, judges and prosecutors adopted a populist discourse that privileged

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the role of the judiciary in representing the public interest, and chastised elected politicians for corruption, in order to justify innovating new legal tools that bypassed legal constraints and expedited the prosecution of politicians (Gonzales-Ocantos et al. 2023). Supreme Federal Court Justice Lucia articulated this representative-replacement role conception, stating, 'A warning to whoever sails the dark waters of corruption and iniquities … criminals will not prevail over the judges of Brazil. [They] will not prevail over the new hopes of the Brazilian people' (Arguelhes 2017). The discourse of the LavoJato prosecutions and populist campaign of political outsider Jair Bolsonaro converged on the 'need to clean up the country's political system through popular support for exceptional measures' (dos Santos and Gollego 2022). This discourse justified Bolsonaro's agenda for weakening democratic institutional constraints, in order to target this political elite, and helped pave the way for Bolsonaro's rise to power (Meyer 2018). However, the alignment between Bolsonaro and the Court was short-lived as the Court repeatedly pushed back against some of Bolsonaro's more egregious efforts to aggrandize power and circumvent institutional checks, and eventually went on to overturn the very anti-corruption prosecutions that helped Bolsonaro come to power (Spektor 2025). Thus, unlike in Pakistan, in Brazil's system where constitutional and democratic institutions are more entrenched, representation-replacement courts certainly facilitated a serious threat to constitutional democracy, but these institutions proved more resilient compared to Pakistan's nascent democratic institutions.

In South Africa, the Nkandla inquiry exposed corruption by South Africa's President Zuma in 2010. When South Africa's National Assembly, dominated by Zuma's party, absolved Zuma of wrongdoing, the Constitutional Court intervened and issued a series of increasingly interventionist rulings, directing the legislature as to how to hold Zuma accountable (Gardbaum 2020). But the Court focused its rhetoric on specific institutional failures rather than broader systemic indictments of political institutions and parties, and limited its remedies to reinforcing the role of the legislature in holding the executive accountable, rather than displacing its authority. Thus, unlike the political fallout of the representation-replacement decisions in Pakistan and Brazil, the South African Court's representation-reinforcement approach strengthened the hand of segments of Zuma's own party who were pressuring him to resign, and South Africa saw a relatively smooth transition from one elected president to another.

In Italy, during the 1990s, judges and prosecutors in Italy's judicial service aggressively pursued corruption charges against Italian political elites, adopting a representation-replacement approach, and virtually taking on the role of the political opposition in Italy at the time (Della Porta 2001; Ginsburg 2023; Manzi 2024). While the rise of populist leader Silvio Berlusconi was widely attributed to this period of assertive anti-corruption jurisprudence (Broder 2020; Ginsburg 2023), soon Berlusconi's government and allies faced similar charges of corruption from Italy's judiciary. Berlusconi resorted to anti-judicial rhetoric and proposed schemes for curbing judicial powers (Nelken 2002).

Similarly, in Israel, the Israeli judiciary, which had built its authority and influence through its expansive anti-corruption jurisprudence, came close to losing its constitutional authority and autonomy when it moved forward with indictments against Israel's populist leader Benyamin Netanyahu, triggering a constitutional crisis in 2023 (Ginsburg 2023; Rogenhofer and Panievsky 2020). Thus, both Italy and Israel highlight

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that the centralizing and aggrandizing impulses of an incumbent populist authoritarian government usually trigger a backlash against a similarly aggrandizing judiciary.

A brief exploration of these institutionalized democracies across the world highlights how this framework of representation-reinforcement and representation-replacement travels to different contexts. The cases here suggest that the democratic impact of anti-corruption jurisprudence depends on whether courts adopt a representation-reinforcement or representation-replacement approach, the extent to which institutions of constitutional democracy have been entrenched, and whether there are populist incumbents already in power, or populists on the outside seeking power.

Conclusion

In this article, I find that assertive judges dealing with political corruption can sometimes adopt a representation-replacement approach in their anti-corruption jurisprudence. In the representation-replacement approach, courts, in seeking to restore the representation of public interests in politics and policymaking that has been subverted by corruption, will attempt to appropriate the functions and authority of elected political institutions. In doing so, judges undermine the legitimacy and stability of political parties and institutions, and create favourable conditions for populist authoritarians to rise to power. These authoritarians undermine democratic and constitutional institutions in pursuit of domination. Thus representation-replacement courts can facilitate democratic backsliding.

The consequences of these actions can eventually come back to haunt the courts. Pakistan's post-2018 experience highlights two possible forms of backlash. First, judges can fall victim to the anti-corruption politics that they championed. After the PTI came into power in alliance with the military, the same method of leveling and pursuing corruption allegations against politicians was then used to pressure unaligned judges to fall in line, and to purge recalcitrant judges who refused to fall in line (Kureshi 2022). Second, representation-replacement courts can produce an aggrieved political elite, which holds the judiciary responsible for its removal. Once the military fell out with the PTI in 2022, the military forged a new alliance with the PPP and PML-N, which removed the PTI and formed a new hybrid government with the military. The PML-N and PPP, with the backing of the military, acted upon their grievances regarding how the Supreme Court had treated them, to pass a constitutional amendment that enabled executive capture of the judiciary (Kureshi 2025). Thus, neither democratic breakdown nor anti-judicial backlash are inevitable in response to a representation-replacement court, and both depend on other facilitating conditions, but representation-replacement courts raise the risk of both anti-democratic outcomes.

Therefore, my analysis suggests that those interested in studying the roles of courts in protecting and enhancing liberal constitutional democracies must rethink how we understand the approaches courts take when combating corruption and their impact on democratic outcomes. It calls for further research on *how* different courts choose to combat corruption and enhance representation within political systems, and the important functions of judicial rhetoric in shaping democratic outcomes.

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Notes

1 I am not focused on courts that are captured by authoritarian elites and deployed towards furthering their authoritarian agenda (Landau and Dixon 2020).
2 By 'empowered', I mean constitutionally authorized to carry out judicial review.
3 *Glenister v President of the Republic of South Africa* (CCT 48/10) ZACC 6; 2011 (3) SA 347; www.saflii.org/za/cases/ZACC/2011/6.html.
4 Ibid.
5 The difference between a representation-reinforcement and representation-replacement approach is not the same as the difference between judicial activism and restraint. In both, the judiciary is intervening in the operations of other branches of government. But whereas the representation-reinforcement approach seeks to correct dysfunction in other institutions, the representation-replacement approach seeks to constrain and displace institutions suffering from dysfunction.
6 Even if representation-replacement courts help establish favourable conditions for democratic backsliding, backsliding is not inevitable, as it can be slowed down or blocked, whether it is because populist authoritarians do not take advantage of opportunities, elected and judicial institutions are protective of their entrenched authority, or opposition parties successfully coalesce and block aggrandizing efforts (Gamboa 2023).
7 Pakistan's history of judicial independence has been chequered, especially given previous judicial support for military coups, and military purges of the judiciary. But when the judiciary was restored in 2009 after successfully defying an attempted purge in 2007, the judiciary was well positioned to act in a more independent and assertive manner (Kureshi 2022).
8 This representation-replacement approach in the Supreme Court developed within the increasingly activist and agitational legal community and bar associations from which judges were recruited (Kureshi 2022, 2024).
9 The assertion of judicial power against the Musharraf regime marked the high point of the judiciary's shift away from the military after decades spent deferring to, and collaborating with, military power. But the judicial role conception that motivated judges to confront military power also motivated them to confront and regulate political parties who most judges saw as corrupt and incompetent (Kureshi 2022).
10 Interview with a lawyer involved in the NRO proceedings, 2 February 2021.
11 *Mubashir Hasan v Federation of Pakistan*, PLD 2010 SC 265.
12 Anita Turab, PLD 2013 SC 195.
13 *Khawaja Muhammad Asif v Federation of Pakistan* 2013 SCMR 1205.
14 Corruption in Hajj Arrangements in 2010, 2011 PLD 963 SC.
15 Human Rights Case no. 11827-S, 2019 CLD 1319.
16 Interview with politician, 10 December 2021.
17 *Imran Khan Niazi v Nawaz Sharif* 2017 PLD 692 SC.
18 Interview with a lawyer, 3 January 2021.
19 Interview with a scholar, 18 December 2021.
20 Interview with a politician, 3 December 2018.
21 Interview with a senator, 14 December 2021.
22 Interview with a Politician, 10 December 2021.
23 Interview with a senator, 14 December 2021.
24 Speech by Imran Khan, 1 August 2017.
25 Advertisement in July 2018, PTI Punjab Facebook page.

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26 PTI Election Manifesto, May 2018.
27 Interview with a politician, 10 December 2021.
28 Interview with a senator, 14 December 2021.

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