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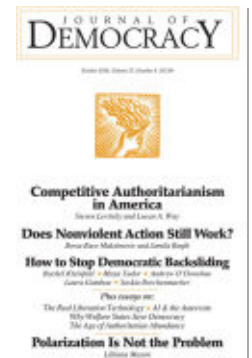
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HOW COURTS SURVIVE DEMOCRATIC BACKSLIDING

Andrew O'Donohue

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When elected political leaders threaten to defy court orders and curb judicial independence, what can stop them? Since the 2000s, almost 80 percent of democratic breakdowns have occurred through “executive aggrandizement,” a process in which elected leaders weaken checks on their power from the judiciary, legislature, and other institutions.¹ Because this form of democratic erosion typically occurs through legal maneuvers, one of the first moves backsliding executives make is to capture democracy’s referees: the courts.² In recent years, elected executives have attempted to weaken judicial constraints in numerous countries—from Brazil, Israel, and Mexico to Poland, Turkey, and the United States.

Yet courts sometimes survive attacks by political leaders. In Brazil, when President Jair Bolsonaro threatened to shut down the Federal Supreme Court (STF) and impeach two justices, the judiciary managed to forestall this attempted power grab. In Senegal in 2024, the Constitutional Council prevented President Macky Sall from indefinitely postponing elections. In South Korea, after President Yoon Suk Yeol attempted to impose martial law and suspend political activity in 2024, the National Assembly voted to impeach Yoon, and the Constitutional Court ruled unanimously to remove him from office.

A long intellectual tradition, dating back to Alexander Hamilton, argues that independent judiciaries act as “bulwarks” against democratic backsliding.³ Yet courts rarely prevent executive power grabs on their own. Rather, judges depend on *judicial allies* outside the courts to help defend judicial independence. This is a reciprocal relationship, in which judicial allies empower the courts in the face of executive interference, and the courts, in turn, protect these allies and enable their mobilization.

To understand the importance of judicial allies in protecting judicial independence, I survey cross-national evidence from 25 cases of

attempted executive aggrandizement by elected leaders between 2000 and 2025 and conduct three in-depth case studies. (Cases of democratic breakdowns through military coups, such as Thailand in 2006, are not included.) The cross-national evidence shows that judicial independence is most likely to survive executive attacks when legislators act as judicial allies—and, specifically, when opposition political parties wield at least some power in the legislature.⁴ But even when legislators fail to safeguard the courts, other judicial allies can help prevent the executive from weakening judicial independence.

Three types of judicial allies—legislators, civil society, and international institutions—are particularly effective in empowering courts. The case studies I analyze show how each of these different groups can serve as judicial allies and help to protect the rule of law: legislators in Brazil, civil society in Israel, and international institutions in Poland. All three cases illustrate how mobilization and support from judicial allies generate positive feedback effects, as judicial allies empower courts to take anti-government decisions, which in turn inspire further mobilization. Civil society protests can constrain executive aggrandizement through an unexpected, indirect pathway—empowering judges to rule against the elected government. International institutions, including international courts and foreign governments, can also limit executive power grabs. While protecting an independent judiciary is vital to the rule of law, the courts that judicial allies defend are rarely perfect. Indeed, even independent courts sometimes undermine democracy.⁵ Thus judicial allies must not only defend the courts but also think ahead about how to reform them.

When Courts Prevail

Why does judicial independence sometimes survive attacks from the elected government? This is a crucial question. In the more than two-dozen cases I surveyed, all the countries were electoral or liberal democracies, as coded by the Varieties of Democracy (V-Dem) project, for at least ten years before the onset of democratic backsliding. To measure the impact of executive attacks on the high courts, I use V-Dem's measure of high-court independence to calculate the change in independence between the start and end of each episode of democratic erosion.⁶

The Table presents the 25 cases, with those that saw the greatest increase in judicial independence at the top and those that experienced the sharpest decline at the bottom. Three countries—Israel, Poland, and the United States—appear multiple times, since political leaders or governments that sought to expand executive power held office in multiple, distinct periods. The righthand column calculates the change in high-court independence using V-Dem's five-point scale. The second column from the right codes whether the elected leader wielded a single-party majority in the legislature; a “no” indicates that opposition legislators

had greater institutional power to protect the courts and act as judicial allies.

Across cases of attempted democratic erosion, judiciaries have varied

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markedly in their resilience against executive attacks. Surprisingly, high-court independence increased appreciably in four countries: Brazil under Jair Bolsonaro, Guatemala under Alejandro Giammattei, Senegal under Macky Sall, and South Korea under Yoon Suk Yeol. Judicial independence effectively held constant, changing by less than 0.1 points, in five additional cases, including Colombia under Alvaro Uribe and Israel under Benjamin Netanyahu from 2009 to 2021.

However, high-court independence declined—often sharply—in almost two-thirds of the cases. Scores

fell by a full point or more in eight countries: Ecuador, El Salvador, Hungary, Mexico, Poland, Romania, Turkey, and Venezuela. Other democracies experienced smaller but notable declines in judicial independence, including India under Narendra Modi, Serbia under Aleksandar Vučić, and the United States during Donald Trump’s first term.

Why has judicial independence weathered attempts at executive aggrandizement in some cases but not others? Theories focused on the judiciary itself, rather than on judicial allies, emphasize that a prior history of judicial independence and a strong rule-of-law legacy make courts more resilient to attacks.⁷ Yet an independent judiciary in the past does not guarantee one in the future. When democratic backsliding began in India, Poland, Romania, and Turkey, the high courts were independent of the elected government, all scoring three or higher on V-Dem’s five-point scale. Yet in all these cases, once-independent high courts suffered a decline in independence. I argue that the support of judicial allies offers a more powerful explanation than does prior independence for why some courts survive attacks by elected governments.

Legislative allies. The clearest cross-national pattern emerging from these 25 cases is that an independent judiciary is more likely to survive when opposition political parties wield power in the legislature. In almost every case where judicial independence either increased or held constant, the government lacked single-party control of the legislature, and opposition legislators therefore had the power to block attacks on judicial independence. In the four cases where judicial independence increased—Brazil, Guatemala, Senegal, and South Korea—the presi-

TABLE—CHANGE IN HIGH-COURT INDEPENDENCE FOR CASES OF ATTEMPTED EXECUTIVE AGGRANDIZEMENT, 2000–2025

Country	Leader	Years	Single-Party Legislative Majority	Change in Judicial Independence
<i>Increase in Judicial Independence</i>				
Guatemala	Alejandro Giammattei	2020–24	No	0.51
Senegal	Macky Sall	2012–24	No	0.49
South Korea	Yoon Suk Yeol	2022–25	No	0.30
Brazil	Jair Bolsonaro	2019–22	No	0.29
<i>Judicial Independence Constant</i>				
Israel	Benjamin Netanyahu	2009–21	No	0.01
Israel	Benjamin Netanyahu	2022–	No	0.00
Poland	Law and Justice Party, Jarosław Kaczyński	2005–2007	No	0.00
Colombia	Alvaro Uribe	2002–10	No	-0.09
United States	Donald Trump	2025–	Yes	-0.09
<i>Decrease in Judicial Independence</i>				
United States	Donald Trump	2017–21	Yes (2017–19), No (2019–21)	-0.18
Slovakia	Robert Fico	2023–	No	-0.24
Nicaragua	Daniel Ortega	2007–	Yes, supermajority (2012–)	-0.46
Greece	Kyriakos Mitsotakis	2019–23, 2023–25	Yes	-0.49
Bolivia	Evo Morales	2006–19	Yes, supermajority (2010–19)	-0.55
Serbia	Aleksandar Vučić	2014–	Yes, supermajority (2020–22)	-0.58
India	Narendra Modi	2014–	Yes (2014–24), No (2024–)	-0.70
Benin	Patrice Talon	2016–	No	-0.77
Ecuador	Rafael Correa	2007–17	Yes, supermajority (2013–17)	-1.06
Turkey	Recep Tayyip Erdoğan	2002–	Yes (2002–15, 2015–18), No (2018–)	-1.29
Romania	Klaus Iohannis	2014–25	No	-1.41
Mexico	Andrés Manuel López Obrador (2018–24), Claudia Sheinbaum Pardo (2024–)	2018–	No	-1.45
Venezuela	Hugo Chávez	1999–2013	Yes, supermajority (2006–10)	-1.50
Hungary	Viktor Orbán (Fidesz)	2010–	Yes, supermajority (2010–)	-1.93
Poland	Law and Justice Party, Jarosław Kaczyński	2015–23	Yes	-2.13
El Salvador	Nayib Bukele	2019–	No (2019–21), Yes, supermajority (2021–)	-2.30

dent's political party lacked a majority in the legislature. In four of the five cases where independence remained constant, the ruling party depended on a coalition, as in Israel under Netanyahu. In the fifth case, the United States during the first year of Donald Trump's second term (2025–), the ruling party held the executive branch and a legislative majority; however, it is too soon to tell the effect on judicial independence given the short period covered by existing data.

Conversely, when illiberal executives hold single-party majorities or supermajorities in the legislature, judicial independence is in danger. Consider the cases in which elected governments at first lacked, then gained, single-party majorities: When Hungary's Viktor Orbán first rose to power in 1998 as the head of a coalition government, judicial independence held steady. Yet when Orbán's Fidesz party won a legislative supermajority in 2010, the government used that power to rewrite Hungary's constitution and sharply curb judicial independence. Similarly, in Poland, when the Law and Justice party depended on a legislative coalition to govern from 2005 to 2007, judicial independence was unaffected. But when Law and Justice won both the presidency and a single-party legislative majority in 2015, the party used its power to pack Poland's Constitutional Tribunal. In El Salvador, although President Nayib Bukele rose to power in 2019, his party only moved to fire the entire bench of El Salvador's top court after winning a legislative supermajority in 2021. When courts confront an executive backed by a legislative supermajority, they are often steamrolled. The surest protection for judicial independence is the opposition's control of the legislature.

Civil society mobilization. Even when the elected executive controls the legislature, civil society can step up to help the judiciary survive attacks. Mobilization by civil society allies often generates a positive feedback loop by empowering the judiciary to take antigovernment decisions, which in turn energize further protests. In Israel, opposition voiced by key social sectors gave the Supreme Court the popular legitimacy needed to strike down government legislation; the Supreme Court's decision, in turn, gave a boost to antigovernment protesters. Mass mobilization can also limit executive aggrandizement by supporting other institutional players, such as legislators. In South Korea, mass mobilization gave opposition lawmakers in the National Assembly the time and support they needed to resist President Yoon's effort to impose martial law.

However, civil society protests are not always successful. In Poland in 2015 and Mexico in 2024, protests failed to prevent elected governments from passing laws to weaken the judiciary. In Israel, although mass mobilization initially helped to block key elements of the government's judicial changes, the rule of law significantly weakened after the onset of the war in Gaza in 2023.⁸ To understand why societal protests succeed or fail in protecting judicial independence, the Israel case study below looks at this shift more closely.

International actors. International players, such as foreign governments and supranational courts, can serve as a third and final backstop for the rule of law, although their leverage is often limited and varies across regions. Even after national high courts lost their independence in several European countries, the European Union, the European Court of Human Rights, and the Court of Justice of the European Union have acted as a constraint of last resort on illiberal governments. Still, the effect of these supranational bodies has primarily been to mitigate, rather than prevent, the damage to judicial independence. Indeed, EU members such as Hungary, Poland, and Romania have experienced sharp slides in high-court independence in recent years.

Rather than supporting the courts against illiberal leaders, international institutions may also do the opposite—and thus enable executive aggrandizement. Although U.S. presidents once emphasized democracy promotion as an element of the United States’ global role, since 2025 U.S. foreign policy has made an about-face from defending independent judiciaries toward opposing them. Under President Joe Biden (2021–25), the United States engaged in a meaningful though inconsistent policy of democracy promotion, including by opposing Bolsonaro’s 2022–23 power grab in Brazil and publicly criticizing the Israeli government’s attempt to curb judicial powers in 2023. Under the second Trump administration, the United States has instead supported executives or former executives against their judiciaries, sometimes engaging in active “autocracy promotion.”⁹ After Trump accused the Brazilian judiciary of conducting a “witch hunt” against Bolsonaro, the United States imposed a 50 percent tariff on most Brazilian exports, revoked officials’ visas, and sanctioned a Brazilian supreme court justice.¹⁰ In Israel, President Trump called for the judiciary to cancel the corruption trials against Netanyahu, which Trump decried as a “ridiculous witch hunt.”¹¹

Thus, although the influence of different judicial allies varies across cases and over time, legislators, civil society, and international institutions have each enabled courts to defend the rule of law. How, then, do these judicial allies empower courts? And what lessons can democracy’s defenders learn about how best to protect judicial independence? Three cases illustrate how judicial allies have worked, with varying degrees of success, to safeguard the rule of law.

How Elected Officials Empower Courts: The Brazilian Case

When an elected leader attacks the rule of law, the judicial allies most capable of defending the courts are elected officials, including legislators, governors, and mayors. Brazil under former President Bolsonaro (2019–22) offers valuable lessons on how elected officials can support the judiciary and also how the judiciary can win the support of key elected officials.

After Bolsonaro took office in 2019, he clashed repeatedly with Brazil's high court. He threatened to impeach two STF justices, defy a judge's rulings, and even shut down Brazil's top court. Yet Brazil's judiciary stood up to the defiant president. The STF repeatedly ruled against Bolsonaro's attempts to weaken the rule of law—for example, by blocking him from appointing a family friend as director of Brazil's Federal Police in 2020. When Bolsonaro falsely alleged election fraud, Brazil's Superior Electoral Court imposed the largest fine in its history on Bolsonaro's party. Most consequentially, in 2025, the STF convicted Bolsonaro of plotting to overturn the result of the 2022 presidential election and sentenced the former president to 27 years in prison.

Although some accounts portray Brazil's high court as the “only check” on Bolsonaro,¹² in fact, the judiciary depended on support from elected officials, especially legislators, who blocked Bolsonaro's efforts to curb the courts. The leader of Brazil's Senate, a pragmatic politician outside Bolsonaro's party, flatly rejected the president's request to impeach an STF justice, and legislators endorsed the detention of a fellow member of Congress who publicly threatened Supreme Court justices. This resistance was possible because Bolsonaro lacked anything close to single-party control over the legislature. Indeed, Bolsonaro did not have a political party of his own for more than half of his presidency and famously complained that he was “obliged to form a coalition.”¹³ Although the legislature was more conservative than it had been in decades, and thus more ideologically aligned with Bolsonaro, the National Congress “consistently signaled that it [would] not support attacks on the court.”¹⁴

Why did Brazil's legislators ally with the judiciary, rather than collaborating with Bolsonaro to weaken the courts? As political scientist Gabriela Armani argues, the STF won the support of key legislators by strategically opting not to punish legislators involved in corruption cases.¹⁵ Armani uses comprehensive data on more than four-thousand STF rulings to show that during Bolsonaro's presidency the Court became less likely to punish members of Congress for corruption—especially in cases involving influential politicians, such as congressional leaders. The judiciary's decision to avoid antagonizing its congressional allies helped prevent Bolsonaro from winning over a broad legislative coalition in support of court curbing. At the same time, by weakening legal accountability for corruption, the judiciary's strategy entailed a trade-off for democracy.

Brazil's elected officials also empowered the judiciary by bringing cases against the government to the courts. Under Brazil's 1988 Constitution, political parties represented in Congress have direct and powerful access to the STF. During Bolsonaro's presidency, opposition parties used this access to file lawsuits against government policies. Opposition parties brought cases that enabled the STF to require the full and transparent publication of covid-19 data and to block the president's efforts to make it harder for social-media platforms to regulate disinfor-

mation.¹⁶ Thus, far from acting on its own, Brazil's judiciary received support from political parties that challenged government policies.

Finally, elected officials empowered the judiciary to punish an attempted insurrection by leveraging their symbolic power as representatives of the people. In January 2023, after antidemocratic protesters challenged Bolsonaro's electoral defeat and invaded Brazil's Congress, presidential palace, and Supreme Court, elected officials across political parties and branches of government took a unified stand in defense of democracy. The day after the attempted insurrection, "President Lula, the Speakers of the Chamber of Deputies and the Senate, the Supreme Court's justices, and state governors rallied to the capital, Brasília" to march together, hold hands, and demonstrate their unity in support of democracy.¹⁷ Just months later, Brazil's highest electoral court banned Bolsonaro from holding political office for eight years. Brazil's judges were not acting without support; elected officials had signaled clearly that the courts had the political backing to act swiftly and decisively to punish Bolsonaro.

How Protests Empower the Courts: The Israeli Case

When elected officials fail to constrain the executive branch, courts can resist an attack through support from a second type of judicial ally: civil society protest movements. Protests can protect the rule of law not only directly, by sending a signal to the elected executive, but also indirectly, by sending a signal to others, including the courts, who then feel empowered to constrain the government.

The case of Israel under Netanyahu illuminates both when and how protests succeed and when and how they fail in protecting the rule of law, because the protective effect of Israel's societal mobilization has varied over time. When Netanyahu's government launched a forceful attack on the judiciary's power in January 2023, civil society mobilized effectively to protect the courts. However, after the onset of war nine months later, this mobilization was weakened, and the rule of law in Israel has significantly deteriorated, in particular through increasing politicization of the police and attacks on legal institutions.¹⁸ The Israeli case offers five central lessons about when protests work—and when they do not—that can inform defenders of the rule of law.

Lesson 1: Successful protests mobilize influential groups. The success of protests often hinges on their ability to mobilize specific, influential groups, not just individual protesters. Israel offers a striking example of how mobilization by powerful groups protected the judiciary from political attack.

In 2023, the Netanyahu government announced sweeping proposals to weaken the judiciary—for example, by creating an "override clause" that would allow a simple majority in Israel's parliament, the Knesset,

to override judicial decisions. In the context of Israel's political system, the government's proposed changes threatened to severely undermine the rule of law. Because Israel lacks several checks and balances common in established democracies, its judiciary is especially important as a constraint on executive power. Israel does not have a fixed constitution or bill of rights; it has a unicameral parliament with no second chamber to oversee legislation; and it has not joined any international courts.¹⁹ Moreover, because Israel is a parliamentary system, the prime minister depends on a majority in the legislature—and could plausibly use that majority to override the courts.

In response to the government's proposed legislation, numerous sectors of Israeli society—including military reservists, business leaders, and civil society organizations—mobilized and sustained large-scale, long-term protests. Perhaps the most influential judicial ally was Israel's national-security establishment. In January 2023, a group of military reservists formed an organization, Brothers and Sisters in Arms, to mobilize resistance within the Israeli military against the government's changes to the judiciary. Hundreds of Israeli reservists—including specialized and hard-to-replace troops such as combat pilots, intelligence officers, and members of special-forces units—vowed to refuse service if the government pushed through its proposed changes. More than 1,700 current and former members of the Israeli Air Force reserve signed a statement in support of those reservists. Mobilization by this powerful group created fissures within the government's coalition and led the defense minister to warn that the judicial changes could undermine unity within the armed forces. When Netanyahu fired the defense minister for voicing these concerns, mass protests led Netanyahu to reverse his decision and temporarily suspend the judicial overhaul.²⁰

Economic actors, including business leaders, labor unions, central bankers, and economists, also stepped up as judicial allies. CEOs from Israel's tech sector, whose companies were valued at more than US\$50 billion, spoke out against the judicial changes in the interest of preserving “the continued growth of the Israeli economy and the high-tech industry in particular.”²¹ Tech and venture-capital companies warned that they were moving cash out of Israel to hedge against the economic damage that the judicial changes might cause. Large employers, such as a major chain of shopping malls, scaled back operations in protest of the judicial plan, and Israel's largest labor union, the Histadrut, which represents a quarter of the Israeli workforce, launched a general strike. Hundreds of Israeli economists, the head of Israel's central bank, and JP Morgan Chase all warned that the judicial changes would weaken Israel's economy.²²

Mobilization by these actors put economic pressure on Israel's government. The general strike closed banks, shops, ports, and Ben Gurion International Airport in March 2023. Venture-capital investment

in Israel's start-up sector fell to its lowest level since 2018, and Israel's currency, the shekel, fell 7 percent against the dollar in just a month, including 2 percent on the day after the Knesset began voting on the judicial changes. Israel's central bank estimated that the ongoing political crisis would reduce annual GDP by 2.8 percent.²³

Israel's legal community, including law firms, professional associations, and law professors, acted as a third group of judicial allies. Law firms formed a united front against the government's attacks on the judiciary, and seventeen of Israel's largest law firms signed a public letter warning that the government's proposals would harm the rule of law.²⁴ The Israel Bar Association vocally opposed the government's plans, calling the protests one of the most important fights in Israel's history. Almost two hundred law professors signed a public letter opposing the government's proposals. Law professors also acted as "thought leaders" within the protest movement, often speaking at rallies to explain how the technical details of the government's changes would affect the rule of law for citizens.²⁵ Legal scholars further acted as judicial allies by

publishing . . . position papers, giving community talks, collaborating with other parts of the protest movement, providing media commentary, writing op-eds, taking part in political negotiations, and engaging in outreach to the international legal community and international institutions.²⁶

Thus, although Israel's judiciary was the target of the government's attack, the courts were not the only—or even the most important—actor who thwarted that attack. Instead, Israel's judiciary benefited from a major civil society effort that mobilized specific, influential groups as allies to protect judicial independence.

Lesson 2: Protests may mobilize some groups—yet marginalize others.

Although Israel's protest movement mobilized powerful constituencies in Israeli society, it marginalized other groups, especially Palestinians and Arab Israelis. Protest organizers said they chose to put aside the issue of Israel's military occupation of the West Bank and Golan Heights to focus on winning support among Israel's Jewish majority. That choice entailed trade-offs. On the one hand, protest organizers felt that this strategy allowed them to win support from a broader swath of influential constituencies. As one student organizer described,

The main choice we made was not to have anti-occupation slogans. On the ground, there was an anti-occupation bloc. But they were always in the back. . . . It was very clear that our group was not going to put anti-occupation messages at the front, not because the majority of students weren't anti-occupation, but because we knew that would limit the reach [of the protests]. We knew it would not be a mainstream movement.²⁷

On the other hand, persistently marginalizing the issue of the occupation

has enabled a sharp deterioration in the rule of law in the Occupied Territories, including increased violence by Israeli settlers, lax policing of this violence, and escalating displacement of Palestinians.²⁸

Lesson 3: Protests have both direct and indirect effects. Protests can create change through a direct pathway, in which the protesters' audience is the elected government: Citizens protest against a policy, and the government withdraws that policy. In Israel, after mass protests emerged against judicial changes, the government temporarily suspended those changes in March 2023.

Protests can also generate change through a second, indirect pathway, in which the audience is other institutions: Civic mobilization can empower the judiciary or its allies to constrain governments. When the Israeli government passed a law in July 2023 to curtail the longstanding power of the Supreme Court to review the "reasonableness" of government decisions, large-scale protests gave the judiciary the legitimacy to rule against this legislation. As Israeli law professor Barak Medina observed in an interview,

The protest movement was critical for providing the court the needed popular legitimacy. . . . We never expected that the government will be concerned because we are out there on the streets. . . . We are doing that in order to back the court, to give the court the needed legitimacy.²⁹

In other words, protests can generate change by sending signals to multiple audiences—not only to the elected government but also to other actors, such as judges, legal organizations, and opposition leaders, who then act to constrain it.

Lesson 4: Protests and judicial decisions can generate positive feedback loops. Israel's experience shows that civil society protests and judicial decisions can be mutually reinforcing, creating a positive feedback loop. First, societal mobilization provided Israel's Supreme Court with the legitimacy to strike down the law on reviewing the "reasonableness" of government policies, a law designed to weaken the judiciary. That decision, in turn, further energized the protests. In the words of Barak Medina,

The court's decision to strike down the reasonableness law was very important. If the court had decided otherwise, it would be a blow to the protest movement. We could not continue. It would be so frustrating because the government does not really listen to us, and if we do not have even the court with us, the cause is lost.³⁰

Thus, mass mobilization empowered the Supreme Court to rule against the government, and the Court's decision in turn galvanized mobilization by showing protesters that their voice could be effective.

Lesson 5: Protests are not a long-term solution. Sustaining mass protests is challenging. Even when protests succeed in blocking a policy change in the short term, the government can often outlast protesters in the long term. Thus, absent a change in the government or the law to lock in their gains, protesters may struggle to achieve enduring change.

In Israel, although protests were effective in the short term, since the war began in October 2023 civil society mobilization to protect the judiciary has weakened. For many Israelis, the conflict has become the top priority, and key judicial allies shifted their focus from the judiciary to the war effort: For example, Brothers and Sisters in Arms suspended all protest and political activity from October 2023 until mid-2024 and dedicated itself to wartime relief. The war has enabled executive aggrandizement not by generating majority support for Israel's prime minister but rather by weakening societal efforts to constrain him.³¹

Amid the conflict, the government quickly seized the opportunity to pursue executive aggrandizement and has severely undermined the rule of law. Credible reporting indicates that Netanyahu's government prolonged the war to stay in power—and thus that the government actively enlarged its opportunity for executive aggrandizement.³² Israel's minister of national security, Itamar Ben-Gvir, has “weaponized Israel's police” to shield supporters and punish opponents.³³ Under his direction, the police have been accused “of lax policing of settler violence in the occupied West Bank, of aggressive tactics against antigovernment protesters, and of failing to halt far-right attacks on aid convoys to besieged Gaza.”³⁴ Israel's justice minister, Yariv Levin, has refused to recognize the president of Israel's Supreme Court or to appoint new judges. By leaving four Supreme Court seats vacant and dozens vacant in lower courts, the government has punished judges by increasing their workload—and shifted the Supreme Court's ideological balance in favor of more conservative justices. In March 2025, the government also passed a law to give politicians greater power over selecting judges and moved to fire Israel's independent-minded attorney general, who oversees the ongoing criminal trials against Netanyahu.

Although the context of war makes Israel distinct from many cases of executive aggrandizement, the broader lesson is the difficulty of sustaining protests indefinitely, across rapidly changing geopolitical and domestic circumstances. In Israel, where elections are scheduled for October 2026, the ultimate test for the protest movement will be whether it can translate support on the streets into seats in government.

How International Allies Protect the Rule of Law: The Polish Case

When an elected government has captured a country's highest court, what can be done to protect the rule of law? Poland offers an example of how international judicial allies, such as international courts, can mitigate democratic backsliding effectively.

After Poland's Law and Justice party won control of the presidency and legislature in 2015, the party launched a multipronged effort to curb judicial independence. Law and Justice refused to recognize judges on the Constitutional Tribunal appointed by the outgoing parliament, installed its own nominees, and passed statutory changes to limit the Tribunal's power. Then the party moved to dramatically reshape the composition of the judiciary, passing a law that lowered the retirement age for judges and enabling the party to remove large numbers of them, while also giving the government's justice minister discretionary power to grant some judges an extension of service. The party also installed a new disciplinary regime for judges, restructured the body responsible for judicial appointments, and even passed a "muzzle law" that barred judges from questioning the legality of judicial appointments or limits on judicial independence. Because Law and Justice controlled a majority in the legislature, opposition parties were unable to block the government's attack.

Even after the Law and Justice government captured Poland's Constitutional Tribunal, domestic and international institutions worked together to resist democratic backsliding. One vivid illustration came in 2017, when Poland's parliament passed laws designed to force all Supreme Court justices to resign and giving the government greater power over the selection of judicial candidates. Yet domestic and international action forced the ruling party to suspend these laws: In response to growing street protests and warnings from EU officials that these laws could spark legal action and even sanctions, Poland's President Andrzej Duda, an ally of Law and Justice, vetoed the two laws.

Domestic groups also spurred international allies into action by bringing litigation to supranational courts. In one landmark case, three Polish judges appealed directly to the Court of Justice of the European Union to consider whether Poland's judiciary met EU requirements for judicial independence. In its 2019 decision, the court formulated an EU standard for judicial independence and ruled that national judges could set aside the jurisdiction of domestic courts that do not meet this standard of independence. Polish litigants also brought cases to the European Court of Human Rights, which ruled in 2021 that specially created chambers of Poland's Supreme Court were invalid and that the Law and Justice party's appointment of judges to a panel on Poland's Constitutional Tribunal rendered the panel unlawful.

The European Commission, the executive arm of the EU, also acted as an international ally by bringing cases to supranational courts. After Poland's government lowered the retirement age for judges, the Commission challenged the law at the European Court of Justice, which ruled that Poland's actions violated the EU Charter. Weeks later, Poland complied by reversing the retirement-age law and allowing affected judges to resume their duties. These actions by international bodies did not

protect the independence of Poland's Constitutional Tribunal—which swiftly declined—but nonetheless preserved space for opposition mobilization. In 2023, Poland's opposition parties won control of the legislature and launched a program of democratic recovery, including efforts to redress the cooptation of judicial institutions.

Reforming the Judiciary After Defending It

The courts that judicial allies defend are rarely perfect. Even when judges are independent of the elected government, the judiciary's behavior may undermine democracy.³⁵ In Brazil, although the STF prevented a power grab by Bolsonaro, the justices have avoided addressing claims of corruption among political allies, their own family members, and businesspeople with whom they have close ties. Brazil's high court also exercises such significant power over ordinary policy issues that it is undermining elected officials' power to govern. In Israel, although the high court has checked executive power inside the country in certain cases, in the Occupied Territories, it has often deferred to security authorities and legitimized a decades-long military occupation.³⁶ In the United States, the Supreme Court, while formally independent of the elected branches of government, has weakened legal protections against gerrymandering, political corruption, and abuses of presidential power.

Rather than ignore a judiciary's democracy-subverting behavior, judicial allies should pursue a two-pronged strategy: Work in the short term to defend legal limits on executive power and in the long term to reform the judiciary itself. When an elected leader threatens to curb the judiciary or defy court orders, elected officials, protesters, and international institutions must focus on supporting legal restraints on government power. However, at the same time that judicial allies speak out for judicial independence as an ideal, they can also offer a vision for reforming flawed institutions.

Indeed, reformers have a menu of options for renovating judicial institutions. One option is reforming the process for selecting judges. A supermajority requirement in the legislature for selecting judges, as exists in Argentina, Germany, and Italy, requires compromise among different actors and thus helps to prevent court capture by any one person or group. A retirement age or term limits for justices also helps to ensure predictable rotation in the appointment of judges and mitigates the problem of judges retiring strategically to advantage a particular political camp. A second reform option is to expand direct access to the high courts for citizens, as exists in Colombia, or for elected officials, as exists in Brazil. This increased access bolsters the ability of ordinary citizens and political parties to act as judicial allies by bringing cases to the court—but it risks the potential trade-off of flooding the high court with an unmanageable number of cases. A third option is joining or deepening collaboration

with international courts, such as the European Court of Human Rights and Inter-American Court of Human Rights. Joining these supranational courts creates new opportunities for domestic groups to protect the rule of law by escalating litigation to the international level.

Thus, while scholars and practitioners often think of independent courts as defending democracy on their own, the political reality is that judicial allies—from legislators to protesters and from civil society organizations to international courts—are necessary to empower the judiciary. Mobilization by judicial allies can generate a powerful, positive feedback loop, as allies empower courts to take courageous decisions, which in turn provide energy, legal protection, and evidence of a path forward for judicial allies. The role of civil society protests is likewise multifaceted: Protests may achieve change directly by stalling executive efforts to curb the judiciary, but they can also support change indirectly by encouraging or empowering others, such as the judiciary, to stand up to illiberal governments. At a time when democratic backsliding increasingly occurs through legal means, courts globally have come under attack. Judicial allies thus have a central role to play in empowering the judiciary and, in the longer term, renovating it.

NOTES

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