

Open Call – Special Issue for the German Political Science Quarterly

Will law save democracy? Exploring the role of courts and justice in times of rising authoritarianism

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The current multiple crises, characterised by socio-economic disparities, social conflicts, wars and growing militarism, are embedded in a context of growing authoritarianism. In several countries, democratic institutions are being threatened by authoritarian or right-wing parties that are either part of ruling coalitions or have won high percentages in elections. One of the first steps in undermining democracy is delegitimising the rule of law and weakening the courts. Different approaches in political science research are trying to make sense of the multiple implications of these current threats to democracy (Fraser, Bua, and Vlahos 2024; Manow 2024a; Pichl 2024). The state, the civil society, the economy and the legal system are encompassed in the wave of the authoritarian turn. This produces new conflicts over political discourses, law-making and the counter-majoritarian role of courts, which raises the question of whether the law could offer a safety net against the dismantlement of state and legally anchored guarantees.

In times of rising authoritarianism, courts are, in general, strategic targets of right-wing initiatives aiming to exert control against counter-majoritarian attempts to restrain their power, as recent examples in Hungary, Poland, or Israel demonstrate (Bojarski 2021; Graver and Gyöngyi 2024; Navot and Lurie 2024). At the same time, courts become a central arena for defending democracy against authoritarian backlash or despotism when rulings counteract the widespread of false information defending pivotal democratic principles and the rule of law, as the intense judicial interventions of the Brazilian Supreme Court over the last years demonstrate (Paula da Cruz 2024). While a series of recent editorials in the New York Times (e.g. Nicas 2024) ask whether courts can save democracy, others would argue that excessive legal intervention in political matters represents an overstepping of the political competence of parliaments and the democratic separation of powers (Jaestaedt et al. 2011; Manow 2024b; Maus 2018a). However, regarding the history of German national socialism, one can attest that courts are always political actors; they can support the authoritarian rise by remaining inactive against attempts of a coup d'état or even arguing in favour of its legitimacy (Fraenkel 1984; Gusy 1991; Lahusen 2022; Rüthers 2012; Schulz 2019).

Our special issue would like to explore conflicts shaped by and against the authoritarian rise, especially focusing on how they unfold in the interplay of the legal and political arenas. We depart from historical research (Fraenkel 1984; Neumann 2018) and current investigation (e. g. Chemerinsky 2025; Duffy, Hammarström, and Babická 2025; Lorenz et al. 2024; Nalepa 2021; Vladeck 2025) about the role of legal institutions in times of authoritarian threat. We want to shed light on the tender line between legitimate legal interference in the defence of democracy and the overstretching of legal competencies. On the one hand, since courts and judges play a central role in decision-making by interpreting legal frameworks, we invite contributions that engage in research efforts analysing their professional behaviour and how they cope with political, economic and cultural influence over decision-making within a profession, which claims neutrality and objectivity. On the other hand, looking at the examples of Argentina, USA or Germany, we would like to invite contributions that offer empirically based evidence and analytical reflections on the processes of dismantling legal guarantees, civil liberties or economic, labour and social rights via administrative practices and political negotiation.

We want to bring both pieces of the puzzle together in order to decode how disputes about norms, law-making and the definition of bureaucratic competencies before judicial conflicts and judicialisation come together and influence each other.

The role of courts and their relationship with political institutions in a democracy is a recurring discussion in political science research. Since Tate and Valinder (1995) coined in the 1990s the notion of 'judicialisation' for the US-American debate, they introduced it as an analytical category to address the growing global influence of rulings on policy-making. This body of research analyses how judicialisation affects political discourse and how it shapes political decision-making within democratic frameworks (Epstein et al. 2001; Tsbelis 2002). It advanced in producing an important body of empirical research about judicial behaviour and theoretical insights about the risks of the direct intervention of courts in politics, i.e. the direct interference of rulings in social and economic policies.

Judicialisation is also a normative category. It describes a process of imbalance of institutional power, as it marks a potential overstepping of the courts over the competence of political actors with direct competence in law-making and execution. Judicialisation as a normative category is mobilised to clarify what is legitimate within the limits of judicial decision-making and when rulings become overly political (Habermas 1990; Maus 2011, 2018). A challenge of theoretical research here is to overcome dichotomies based on the idea that a complete separation of the legal and political arenas could exist. While there is a justified caution that warns against an overeager justice, we would like to raise the questions of when, how and under which conditions courts should act against authoritarian attacks resorting to their institutional power.

To this special issue, we suggest a new critical approach to this already multifaceted debate. Our perspective focuses on the entanglements of the legal and political arenas, departing from the perspective that the legal form – as in codification, adjudication or the development of a bureaucratic habitus – played a constitutive role in the construction of the state and democratic regimes, i. e. in the constitution of what is perceived as the field of power or bureaucracy (Bourdieu 2014). To introduce our research interest, we argue that, in times of crisis and the rise of authoritarianism, the question at stake is less to offer a new critique of the consequences of judicialisation nor only to discuss its normative dimension. Departing from the existing research on these dimensions, we would like to trace the conditions, the actors involved, the resources needed, and the consequences of political processes once they are translated into the logic of the legal form (Buckel 2021) or brought in front of the courts. By doing so, we can offer a new approach to comprehending the various forms of conflicts in the interplay of the legal and political, as well as judicial strategies or responses to authoritarianism. Finally, we want to look at the internal dynamics of the courts, engaging with research efforts about judicial behaviour and their working methods – even under political or 'merely' institutional pressure – and examine the banalities of everyday legal practice in terms of their resilience to the authoritarian threat (Thurn 2023).

With this special issue, we want to offer an overview of the agency of legal actors in times of authoritarian threat and the crucial role of courts. Our special issue sheds attention on the process of politicisation that precedes judicialisation itself. Contributions are invited to, **first**, examine how contentious discourses, social disparities and processes of dismantling the guarantees of the rule of law itself are translated into legal frameworks to be potentially addressed in legal reasoning. We also want to examine how judges understand their role in decision-making. In other words, we take the perspective that courts are political actors not only because they influence politics through their rulings but also because they deal with inherently political issues that cannot be resolved through legal

reasoning alone. How do courts tie their legitimacy back to the seemingly clear boundaries of the rule of law? Where do they prioritise the transparent, democratically legitimised process, and where do political or over-positive arguments break throughout legal reasoning, either paving the way for authoritarianism or seeking to set limits to it?

We aim to analyse the 'how' of judicialization, meaning the process when political struggles become a matter of legal interpretation and intervention, enabling courts to be tasked with 'securing' democracy in the face of authoritarian weakening. Therefore, we ask, **secondly**, for contributions that evaluate current developments of judicialisation in different regions or countries around the world, such as, for example, the latest role of US courts as counterparts to the Trump Administration's executive orders, the Brazilian Supreme Court's interventions against fake news and hate speech, the actions of the Polish judiciary after the PIS Government or the preventive measures of Germany's Federal State of Thuringia trying to build democratic resilience against potential authoritarian threats coming from right-wing political actors who are bound to win majorities in elections.

The proposal for the special issue reunites a first selection of articles addressing the examples above and a theoretical overview of the debates about judicialisation of politics. Besides, it welcomes articles that engage with theoretical reflections or empirical examination of conflicts and legal responses against authoritarianism or the context of the authoritarian rise. The following questions are guiding insights for the submission of proposals:

1. In which context do judicial responses have a better chance of being effective in the protection of the rule of law? How do courts themselves need to be secured institutionally?
2. How does one tackle the paradox of resorting to courts to save democratic institutions and, by doing that, increasing their power of intervention?
3. How does the constant evocation of legal reasoning to answer to political contention affect public opinion? Does this mean a further risk for the political sphere in the context of growing authoritarianism?
4. What are the different responses of specific legal areas, such as labour law, penal law or constitutional law, to authoritarian projects, initiatives and ideology?

Please send **abstracts** by the **1st of July 2025** to sarah.schulz@uni-kassel.de and carolina.vestena@uni-kassel.de. We will respond by July 15th 2025, to confirm whether the article proposal has been accepted for the special issue. Our **internal deadline for submission of full articles is the 30th of September 2025**. **Feedback from the guest editors** will be provided until the 15th of October 2025. **Full versions of the manuscripts must then be submitted online by the 30th of November 2025** in accordance with [PVS/GPSQ's submission guidelines](#). The articles will be double-blind reviewed prior to final acceptance.

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