

SPECIAL ISSUE EDITORIAL: ASSESSING CONSTITUTIONAL DECAY, BREAKDOWN AND RENEWAL WORLDWIDE

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The Virtual Global Roundtable “Democracy 2020: Assessing Constitutional Decay, Breakdown and Renewal Worldwide” was a global event held on 18–26 November 2020, featuring fifty-eight speakers from five continents across nine webinars, and an audience of almost six hundred from fifty-four countries. The roundtable, organised under the aegis of the International Association of Constitutional Law (IACL), was co-sponsored by the Laureate Program in Comparative Constitutional Law at Melbourne Law School and the School of Government at the University of Melbourne.

This special issue of *Constitutional Studies* aims to provide a sense of the breadth and depth of discussions at the Global Roundtable and to identify how they advance our understanding of different dimensions of constitutional decay, breakdown, and renewal worldwide. In this introduction we provide an overview of the Roundtable, an overview of the seven contributions to this special issue, and our own reflections on the productive directions researchers are taking worldwide.

I. THE GLOBAL ROUNDTABLE: OVERVIEW

The aim of this Global Roundtable was to bring together a group of leading and emerging experts to engage in a global “stock-taking” exercise, aiming to

map the health and trajectory of key democracies worldwide, pinpoint gaps in analysis, and divine what broader lessons may be learned from multiple contexts and experiences.

Due to the constraints presented by the COVID-19 pandemic, the Roundtable, which had originally been envisaged as an in-person event, was organised as a series of nine webinars held on 18, 19, 24, 25, and 26 November 2020. Each webinar was two and a half hours long, devoted to an array of themes, including global and regional overviews, challenges from algorithmic governance to voter suppression, understudied countries, key actors like courts, parliaments and parties, and possible remedies and renewal of our democratic systems:

Webinar 1 - Global Challenges: Threats & Resilience

Webinar 2 - Global Challenges: The Big Picture

Webinar 3 - Americas: Constitutional Decay, Breakdown & Resilience

Webinar 4 - Middle East & Africa: Constitutionalism, Corruption & Courts

Webinar 5 - Asia: Non-Linear Constitutional Pathways

Webinar 6 - Europe: Constitutional Impatience & Uncertainty

Webinar 7 - Asia: Spotlight on India & Sri Lanka

Webinar 8 - Europe: Spotlight on Hungary & Poland

Webinar 9 - Saving Constitutional Democracy: Remedies & Renewal

The Roundtable featured analysis of at least 30 countries and territories: Australia, Belarus, Brazil, Cameroon, Canada, Chile, China, France, Hungary, India, Indonesia, Israel, Kenya, Latvia, Lithuania, Malaysia, Malawi, Malta, Nepal, Nigeria, North Macedonia, Palestine, Philippines, Poland, Slovakia, South Africa, Sri Lanka, Turkey, United Kingdom, United States and Zimbabwe. Both emerging and established experts presented as equal participants in each panel: seventeen of fifty-eight speakers (29%) were early career scholars (i.e., doctoral or postdoctoral researchers). Care was taken to ensure gender balance across the event, for both chairs and panellists.

This special issue is the flagship output of the event, which took a broad multimedia approach, including webinar recordings, interviews with selected speakers, a “pop-up” blog with forty-six posts, and a conference e-book issued in December 2020. These other outputs are all still accessible on the conference website: www.iacl-democracy-2020.org.

II. INSIGHTS FROM THE GLOBAL ROUNDTABLE

For anyone interested in the health and trajectory of constitutional democracy worldwide, the Global Roundtable generated a range of highly valuable insights into how the field as a whole is developing.

On the side of democratic decay and constitutional breakdown, we encountered familiar themes from existing literature, such as executive aggrandizement and abusive constitutionalism. We showcased analysis of attacks on courts, media freedom, and civil society—the institutions that ensure that power is held to account and is not concentrated in one government, party, or ruler’s hands. Speakers debated the legitimacy and capacity of domestic organs to act as a bulwark against anti-democratic governments, as well as international intervention. The analysis at the Roundtable provided greater nuance, detail, and fresh case studies to sharpen our understanding of these processes, including understudied countries (e.g., Bangladesh, Ecuador, Malaysia, and Malta) and regions (e.g., an overview of Arab states).

We also got a sense of clear shifts in global scholarship, such as an increasing focus on the inner workings of Parliament (e.g., abuse of procedure, the Speaker’s role, the values of bicameralism), the importance of political parties (including party discipline, dominant parties, and the importance of the opposition), and electoral processes (how they are manipulated, how they can be shored up, and how they can become part of the solution to democracy’s ills). The view of already central organs in constitutional thought, such as courts, is also shifting: authors charted how they can help by acting as useful “decelerators” in the face of rash constitutional action (e.g., in the United Kingdom, discussed below), and can be unexpectedly assertive (e.g., in Ecuador), but also have clear limits—and, when captured or fully cowed (e.g., in Hungary or Sri Lanka), hold out little hope. Perhaps most striking was the view, expressed by multiple participants, of the Supreme Court of India as having simply capitulated to the Modi regime; its legitimacy and standing appear to have collapsed, at least among many scholars. Additional issues included the relationship between anti-democratic trends and religion, especially the use of law to favour a majority religion, and how courts have been complicit in these trends in France, the United States, and India.

In addition, we discerned a greater focus on issues that have not been foregrounded, or at least fully teased out, in the constitutional literature to date, and which affect every democracy worldwide, including the relationship between algorithmic governance and public and private power; between automation, inequality,

and democracy (addressed in the Australian context); and between corruption and viable democratic rule. The latter issue cropped up as such a central issue from country to country, as well as a threat for entire political projects (e.g., the European Union), that it merits a roundtable of its own.

The impact of COVID-19 also loomed large, as would be expected. This came through in country case studies, assessing rights protection, the (ab)use of emergency powers, executive dominance, and constitution-making (both positive and abusive) from Chile to Poland to Sri Lanka—with many states seeing acceleration of authoritarian trends due to the pandemic. It also came through in the big questions and big solutions contemplated: Will the pandemic ultimately weaken populism? Should states provide full training and job guarantees to mitigate the effects of automation? Should political advertising be regulated more strongly? The latter speak to perhaps a changing view of the state’s role in actively addressing root causes of democratic decline and crisis, albeit applicable only where the state remains in the hands of democrats.

III. THE SEVEN ARTICLES IN THIS SPECIAL ISSUE

The seven contributions collected in this special issue provide an excellent reflection of the breadth and originality of the discussions at the Global Roundtable. We see them as speaking to five major themes at the roundtable: major global challenges that transcend national boundaries; the role of courts as guardians of democracy; the manipulation of elections to undermine democratic rule; the ambiguities of democratisation in many states; and the search for sources of resilience.

In a co-authored article, Oreste Pollicino and Giovanni De Gregorio address the challenges of “digital populism”—namely, the spread and prevalence of populist narratives online. Examining the rise of private powers in our societies, the specific issues arising under the banner of digital populism, and the available constitutional avenues for remedial action, they argue that achieving democratic regulation of content online can play a vital role in mitigating the strategies of populist movements without impairing political speech.

Turning to the role of courts, Raphaël Girard focuses on the issue of temporality by examining how courts can act as “institutional stabilisers” decelerating the constitutional impatience of populists bent on achieving rapid change. Taking prorogation of Parliament in the United Kingdom as a case study, he argues that courts can act to slow down populist acceleration and counteract the tendency to circumvent institutional intermediaries such as Parliament and the courts.

Staying with the judicial theme, but focusing on the democracy-enhancing roles of courts in transitional societies and fledgling democracies rather than long-established democracies, Ugochukwu Ezech analyses the democracy-enhancing functions of courts in the context of electoral adjudication. Examining the contested results of Nigeria's 1979 presidential election, he demonstrates that while electoral litigation has in some ways assisted consolidation of a democratic constitutional order, it has also been weaponised through anti-democratic litigation strategies and raises the difficulties of backlash against courts.

Focusing on different dimensions of the electoral arena, Dorjana Bojanovska Popovska assesses how manipulation of electoral processes can present a "less detectable" way for illiberal leaders to further their agendas, compared to constitutional amendment or replacement. Focusing on North Macedonia from 2006 to 2016, a period in which five snap general elections were held, she examines how such elections are used to nourish government narratives of electoral legitimacy justifying the violation of constitutional restraints, enable leaders to change the composition of government organs to entrench their power, and are "controlled" processes through means such as securing votes through public employment and voter/employee intimidation.

In the fifth contribution, Dian Shah pursues a comparative analysis of Indonesia and Malaysia as neighbouring states where significant steps in democratising the political system have encountered challenges and even regression and have been shaped by the particularities of the constitutional system. Looking at the challenges that have arisen, as well as the responses of different state institutions, political actors, and citizens, she examines whether the patterns indicate constitutional decline or resilience, highlighting issues such as the repression of anti-government voices in the lead up to the 2019 Indonesian presidential elections, and also the role of the monarchy in Malaysia's democratic system.

Providing further reflections on this question of resilience, Atagün Mert Kejanlioğlu in his contribution takes Ozan Varol's account of "stealth authoritarianism" in Turkey and addresses a possible countercurrent: "stealth pluralism." Providing an account of opposition actors in local government, he argues that local democracy deserves more attention as a tool against democratic decay on the basis that local authorities (unlike courts or fourth-branch institutions) can claim the same electoral legitimacy as populist authoritarians and may therefore be able to strengthen pluralism against democratic decay. His analysis connects with existing accounts of the value of federalism as a bulwark against authoritarian populism, but in a unitary setting that resonates with other unitary states such as Hungary, where local opposition actors have become more prominent.

In the final contribution to this collection, Michael Henry Yusingco also calls for closer attention to overlooked institutions—in this case, the Barangay Assembly in the Philippines, “the smallest territorial and political subdivision of the state” under the post-dictatorship 1987 Constitution—which reflect *bayanihan*, the Filipino custom of collective action. Identifying factors hampering the performance of these bodies (over 40,000 in all), such as infrequent meetings, a lack of inclusiveness, and political interference and dominance, he argues that their full potential could be realised through the involvement of civil society organisations such as non-governmental organisations, associations, and the university sector, which can assist in organising, managing, and mediating their proceedings. His argument might be usefully understood as lying within the slipstream of the global “deliberative wave,” whose most prominent focus has been on bodies such as citizens’ assemblies, and forms a bridge between Global South and Global South experiences—which was another core aim of the Roundtable.

IV. FINAL REFLECTIONS: FUTURE DIRECTIONS

Since the articles here were finalised, the world has experienced a range of developments, including the Biden administration’s international Summit for Democracy and the Russian invasion of Ukraine. At the time of writing, crucial developments for global democracy include pivotal elections in states such as Hungary, Brazil, and the United States across 2022, and the constitution-drafting process in Chile.

The articles in this collection, and discussions at the Roundtable itself, raise important questions to grapple with as a global research agenda, including these: How can constitutionalists better understand the nature of power beyond public power (whether tech giants like Apple or Facebook, the military, or political dynasties), and how to subject it to limits? How can we better address the impacts of inequality and technology on the viability of constitutional democracy, even when no anti-democratic government is in place? What lessons can the Global North learn from the Global South, rather than vice versa (e.g., in addressing electoral integrity, public participation)? How can we best understand nonlinear patterns of democratic development featuring contradictory features of progress and backsliding? (particularly obvious in analysis of Latvia and Lithuania, Malta, Indonesia, Malaysia, Nepal, and Slovakia).

Most importantly, this collection, and the Roundtable more widely, provides many reasons for hope. Webinar 9 focused on democratic resilience and renewal most squarely—including “toolkits” for pushback against anti-democratic governments and the untapped potential of existing institutions (especially the

Barangay Assembly in the Philippines and local actors in Turkey, mentioned earlier). Yet, hope could be found throughout the Roundtable, whether the appetite for addressing the big challenges facing democracy, the possibility of addressing discrete but fundamental issues like voter suppression, shifting to a broader view of where pushback and resilience might be found (e.g., the importance of civil society and opposition parties), and the attitudes and activities of younger demographics.

It was in Webinar 7 that Menaka Guruswamy, as chair, asked the speakers, “What gives you hope?” We wish we had asked this at the end of each webinar, but that remains the animating force behind this global conversation: to anatomise serious challenges, but to focus on what solutions are available, and to feed resolve rather than fatalism. If there are two overarching lessons from the Roundtable, first is that constitutional democracy contains the seeds of its own recovery; and second is that constitutionalists worldwide are vital to this process—and we now have a greater capacity, ironically due to the pandemic, to connect and share our knowledge in a truly global way.

Our sincere thanks to everyone who contributed to the success of this event, and a special thanks to the IACL Executive Committee, all the participants at the Roundtable, the contributors to this special issue, to our research assistant James Choi for providing valuable assistance with editing, and to the *Constitutional Studies* team for co-producing this collection.

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