

Why Does Backsliding Depth Vary? Legal Populism, Abusive Constitutionalism, and the Differential Trajectories of Democratic Erosion in Hungary and Poland

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Abstract: *Why did democratic backsliding reach fundamentally different depths in Hungary and Poland, two states that shared comparable institutional legacies, European Union membership and right-wing populist governments? This article argues that existing comparative accounts – centred on executive aggrandisement and electoral authoritarianism – are insufficient to explain this variation, because they overlook the decisive role of constitutional design and the specific legal strategy adopted by each governing party. Drawing on a novel analytical synthesis of ‘abusive constitutionalism’, ‘legal populism’ and ‘stealth authoritarianism’, the article demonstrates that Hungary’s supermajority enabled a comprehensive constitutional overhaul that irreversibly restructured the conditions of political competition, whilst Poland’s institutional architecture and fragmented opposition preserved sufficient democratic resilience to allow electoral reversal in 2023. The article further engages V-Dem longitudinal data (2010–2024) to trace the divergent trajectories empirically, and evaluates the EU’s rule-of-law enforcement evolution across three phases: rhetorical condemnation, Article 7 proceedings and financial conditionality. The findings advance a ‘constitutional threshold’ theory of backsliding depth, with implications for comparative democratisation and EU institutional design.*

Keywords: *democratic backsliding, abusive constitutionalism, legal populism, Hungary and Poland, constitutional threshold*

Introduction: The puzzle of differential backsliding

A defining paradox of Central European politics over the past decade is that two structurally similar states – Hungary and Poland – both governed by right-wing populist parties, both EU member states, both post-communist democracies with comparable levels of consolidation, have arrived at starkly divergent political destinations. By 2024, Hungary had been reclassified by Freedom House as a ‘hybrid regime’, its competitive authoritarian character formally acknowledged by international democracy indices (Freedom House 2024; V-Dem Institute 2024). Poland, by contrast, had navigated a significant episode of democratic erosion and emerged – through the October 2023 parliamentary elections – with a reconstituted democratic majority capable of forming a government committed to institutional restoration.

A significant development requires acknowledgement at the outset. The April 2026 parliamentary elections produced electoral defeats for Viktor Orban in Hungary and for the Law and Justice party in Poland. We argue that these outcomes corroborate rather than undermine the constitutional threshold theory: PiS’s 2023 defeat and the subsequent democratic restoration represent an electoral reversal consistent with below-threshold backsliding, precisely as the theory predicts; whilst Orban’s 2026 defeat does not automatically dismantle the constitutional architecture he constructed – the Fundamental Law, restructured electoral system, colonised judiciary and captured media landscape remain in place, confronting any successor government with barriers requiring a constitutional supermajority that is extremely unlikely to be available. The asymmetric difficulty of institutional restoration in the two cases thus itself confirms the theory’s core prediction.

This divergence constitutes a theoretical puzzle that existing comparative accounts of democratic backsliding have not fully resolved. The dominant frameworks – executive aggrandisement (Bermeo 2016), democratic recession (Diamond 2015) and autocratisation (Luhmann & Lindberg 2019) – excel at identifying the mechanisms by which incumbents weaken democratic institutions, but are less equipped to explain why those mechanisms produce different depths of erosion across superficially similar cases. If both Fidesz under Prime Minister Viktor Orban and the Law and Justice (PiS) party under the leadership of Jaroslaw Kaczynski deployed comparable repertoires of institutional manipulation, why did the former consolidate a competitive authoritarian regime whilst the latter ultimately failed to do so?

This article proposes a new analytical framework – which we term the ‘constitutional threshold theory’ of backsliding depth – that centres the role of constitutional design and legal strategy in explaining variation in democratic erosion outcomes. Drawing on the concept of ‘abusive constitutionalism’ (Landau 2013), ‘legal populism’ (Blokker 2019) and ‘stealth authoritarianism’ (Meierhenrich

2021), we argue that the depth of democratic backsliding is decisively shaped by whether incumbents cross a ‘constitutional threshold’ – defined as the acquisition of sufficient constitutional authority to restructure permanently the conditions of political competition, insulating the regime from electoral reversal. Hungary crossed this threshold in 2011; Poland never did.

The article makes three interrelated contributions to the comparative democratisation literature. First, it advances a more granular theoretical account of backsliding depth by introducing the constitutional threshold concept as an analytical tool. Second, it deploys V-Dem longitudinal data for the period 2010–2024 to provide empirical grounding for the theoretical argument, tracing divergent trajectories across multiple dimensions of democratic quality. Third, it offers a periodised analysis of EU rule-of-law enforcement – distinguishing three phases: rhetorical engagement, Article 7 proceedings and financial conditionality – and evaluates the differential effectiveness of each phase across the two cases. Together, these contributions advance our understanding of why democratic backsliding produces qualitatively different regime outcomes even when its initiating conditions appear structurally comparable.

The article proceeds as follows. The second section develops the theoretical framework, situating the constitutional threshold theory within and against existing accounts of democratic backsliding. The third section presents the empirical analysis of Hungary, focusing on the acquisition and use of constitutional supermajority power. The fourth section analyses Poland, emphasising the institutional constraints that prevented the crossing of the constitutional threshold. The fifth section offers a comparative assessment grounded in V-Dem data. The sixth section evaluates EU enforcement responses across the three identified phases. The seventh section considers the implications of the Slovak case under Prime Minister Robert Fico as a partial test of the constitutional threshold theory. The conclusion draws together the findings and identifies avenues for future research.

Theoretical framework: Beyond executive aggrandisement

The limits of existing accounts

The scholarly literature on democratic backsliding has advanced enormously since Bermeo’s (2016) foundational typology. The concept of executive aggrandisement – the incremental accumulation of power by elected executives through ostensibly legal means – has become the dominant analytical lens for the Central European cases, and for good reason: It accurately describes the mechanism by which both Fidesz and PiS pursued institutional dominance. Yet executive aggrandisement is a description of a process, not an explanation of its outcomes. Two governments can pursue executive aggrandisement through

identical tactics and arrive at fundamentally different destinations, depending on the institutional resources available to each.

Ginsburg & Huq's (2018) account of 'constitutional retrogression' similarly illuminates the process of democratic erosion – the gradual degradation of electoral integrity, liberal rights and the rule of law – but does not systematically theorise why retrogression reaches different equilibria across cases. Levitsky & Ziblatt's (2018) influential framework focuses primarily on the role of institutional gatekeepers and behavioural norms in defending democracy, but their analysis is more attentive to the conditions that enable backsliding than to the factors that determine its depth. The V-Dem Institute's (2024) 'autocratisation' framework provides the most sophisticated empirical tools for tracking democratic decline, yet its aggregate indices do not capture the constitutional mechanisms that differentiate shallow from deep backsliding.

What is missing from these accounts is a theory that explains not just how backsliding occurs but why it produces different regime outcomes – specifically, why some episodes of executive aggrandisement produce stable competitive authoritarianism whilst others remain reversible. This article proposes that the missing variable is the constitutional threshold: the point at which an incumbent government acquires sufficient formal constitutional authority to restructure permanently the rules of political competition, thereby foreclosing the possibility of democratic reversal through normal electoral mechanisms.

Abusive constitutionalism and legal populism

Before examining each concept individually, it is useful to map how the three theoretical approaches relate to one another and to the constitutional threshold concept. The framework operates on three analytically distinct levels. At the level of mechanism, abusive constitutionalism (Landau 2013) identifies the specific legal instruments through which democratic erosion is engineered: Constitutional amendment, replacement and design are weaponised against democracy rather than deployed in its service. At the level of legitimisation, legal populism (Blokker 2019) explains how these mechanisms are discursively justified to domestic and international audiences: The dismantling of counter-majoritarian institutions is presented as the democratic liberation of 'the people' from elite capture. At the level of strategy, stealth authoritarianism (Meierhenrich 2021) characterises the overall approach: Formal democratic procedures are preserved as camouflage whilst their substantive content is progressively eliminated. The constitutional threshold concept is the synthetic construct that integrates these three levels, identifying the point at which the combination of abusive constitutional mechanisms, populist legitimisation and stealth strategy achieves sufficient formal constitutional authority to foreclose genuine democratic reversal. The selection of these three approaches, rather than alternatives available in

the literature, reflects a deliberate analytical choice. Levitsky & Way's (2002, 2010) framework of competitive authoritarianism is highly pertinent to the Hungarian outcome but does not systematically theorise the conditions under which backsliding reaches competitive authoritarian equilibrium as distinct from remaining reversible – precisely the explanatory gap this article addresses. Waldner & Lust's (2018) account of democratic erosion similarly illuminates the process of gradual degradation without explaining depth variation across structurally comparable cases. The three concepts selected here were chosen because, in combination, they provide analytical traction on the specific explanandum of this article: not whether backsliding occurs, but why it produces different regime outcomes.

Two theoretical concepts are particularly valuable for understanding how the constitutional threshold is crossed. The first is Landau's (2013) concept of 'abusive constitutionalism' – the use of constitutional amendment and replacement mechanisms to undermine rather than consolidate democracy. Landau observes that democratic backsliders have increasingly learned to deploy the very instruments of constitutional democracy – amendment procedures, constitutional courts, constitutional design – as weapons against democratic governance. Abusive constitutionalism is particularly insidious because it wraps anti-democratic outcomes in the legitimating language of constitutional legality: The incumbent can claim to be acting constitutionally even as the constitutional order is being stripped of its democratic content.

Hungary provides the paradigmatic case of abusive constitutionalism in the European context. The Orbán government's use of its two-thirds parliamentary supermajority to replace the 1989 constitutional settlement with an entirely new Fundamental Law – a document designed to entrench Fidesz's political preferences across electoral cycles – exemplifies the concept precisely. As Scheppele (2013) observed, the Hungarian case demonstrated that a governing party with sufficient constitutional authority could construct a 'legal labyrinth' that remained formally lawful whilst functionally precluding democratic accountability.

The second concept is Blokker's (2019) 'legal populism' – the use of legal and constitutional mechanisms to advance the populist claim that 'the people', as exclusively represented by the governing party, must be liberated from the constraints imposed by counter-majoritarian institutions. Legal populism provides the ideological legitimisation for abusive constitutionalism: the dismantling of constitutional courts, independent media and minority rights is presented not as the abuse of constitutional authority but as its democratic exercise. In both Hungary and Poland, legal populism served as the discursive framework within which executive aggrandisement was articulated and justified to domestic and international audiences.

Stealth authoritarianism and the constitutional threshold

Meierhenrich's (2021) concept of 'stealth authoritarianism' completes the theoretical triad. Where abusive constitutionalism describes the instrument and legal populism provides the justification, stealth authoritarianism characterises the strategic approach: the deliberate maintenance of formal democratic procedures – elections, parliamentary debate, judicial review – as a camouflage for the progressive elimination of their substantive content. Stealth authoritarians avoid the reputational and material costs of overt authoritarianism by never formally abolishing democratic institutions, instead colonising and neutralising them from within.

Synthesising these three concepts, we define the 'constitutional threshold' as the point at which stealth authoritarian tactics, deployed through abusive constitutionalism and legitimated by legal populism, achieve sufficient formal constitutional authority to lock in the restructuring of political competition. Below the threshold, democratic erosion remains reversible: Opposition actors retain sufficient institutional resources – independent courts, critical media, fair electoral rules – to mount effective challenges and, ultimately, to achieve democratic reversal. Above the threshold, the conditions of genuine electoral competition are so comprehensively restructured that reversal through normal democratic means becomes extremely difficult, even if not formally impossible.

The constitutional threshold is not a single event but a cumulative process. It is crossed when three conditions are simultaneously satisfied: (a) the governing party has acquired formal constitutional authority sufficient to alter the basic rules of political competition; (b) this authority has been deployed to restructure judicial appointment, media regulation and electoral rules in ways that systematically advantage the incumbent; and (c) the opposition lacks sufficient institutional veto points to contest these changes effectively. We argue that Hungary crossed this threshold in the period 2011–2013, whilst Poland – constrained by the absence of a constitutional supermajority and the persistence of institutional veto points – never did.

Hungary: Crossing the constitutional threshold

The supermajority as foundational resource

The enabling condition for Hungary's constitutional threshold crossing was the two-thirds parliamentary supermajority secured by Fidesz-KDNP in the April 2010 elections. Under Hungary's constitutional framework as it then stood, a two-thirds majority of all members of parliament (MPs) was required to amend the constitution – a provision designed to ensure that constitutional change reflected broad consensus rather than bare majority preference. The Orban gov-

ernment's supermajority transformed this protective mechanism into an instrument of institutional dominance: For the first time in post-communist Hungarian history, a single party possessed unilateral constitutional amendment authority.

The significance of this resource cannot be overstated. It is the foundational variable that explains why Hungary crossed the constitutional threshold whilst Poland did not. PiS's 2015 electoral victory produced a simple parliamentary majority – sufficient for ordinary legislation but insufficient for constitutional amendment without opposition support. This structural difference conditioned everything that followed: The Orban government could pursue abusive constitutionalism without negotiation or compromise, whilst PiS was constrained to operate within, and around, an existing constitutional framework it could not unilaterally replace.

V-Dem data for the period 2010–2014 document a dramatic and sustained decline in Hungary's democratic quality across multiple dimensions precisely coinciding with the period of supermajority government. The Liberal Democracy Index score for Hungary fell from 0.76 in 2010 to 0.54 in 2014 – a decline of twenty-two points in four years, a speed and depth of erosion without precedent among EU member states (V-Dem Institute 2024). This empirical trajectory confirms that the supermajority period constituted the decisive phase of threshold crossing.

Abusive constitutionalism in practice: The fundamental law and its amendments

The centrepiece of Hungary's abusive constitutionalism was the adoption of a new Fundamental Law in April 2011, replacing the extensively amended 1989 constitution. The Fundamental Law was drafted entirely within the Fidesz parliamentary faction, without meaningful opposition participation or public deliberation. The Venice Commission of the Council of Europe issued a highly critical opinion noting that the speed of adoption, the absence of a genuine constituent process and the substantive content of several provisions raised serious concerns about its democratic legitimacy (Venice Commission 2011).

The substantive content of the Fundamental Law exemplified abusive constitutionalism in several key respects. Transitional provisions – subsequently relocated to the body of the Fundamental Law itself – entrenched specific policy preferences across electoral cycles by encoding them at constitutional level, beyond the reach of simple legislative majorities. Key institutional appointments – the president of the National Bank, the Data Protection commissioner, the chair of the National Office for the Judiciary, and members of the Constitutional Court – were filled for extended terms by Fidesz loyalists before the 2014 elections, ensuring that the institutional landscape would remain favourable to Fidesz even in the event of electoral defeat.

The Constitutional Court – historically one of the strongest in post-communist Europe and a significant constraint on governmental action – was simultaneously expanded from eleven to fifteen members and stripped of jurisdiction over budgetary and tax legislation. When the Court subsequently ruled that certain transitional provisions were unconstitutional, the Orban government responded by inserting those provisions directly into the body of the Fundamental Law through constitutional amendment, thereby placing them beyond judicial review. Scheppele (2018: 548) characterises this strategy as ‘autocratic legalism’: the use of formally legal constitutional amendment to override judicial checks on executive power, maintaining the appearance of constitutionalism whilst eliminating its substance.

It is important to emphasise that the decisive turning point in Hungarian democratic backsliding was not solely the adoption of the Fundamental Law in April 2011, but rather the series of increasingly radical amendments that followed. The Fourth Amendment to the Fundamental Law (March 2013) was particularly consequential: It reinserted into the main body of the constitutional text those transitional provisions that the Constitutional Court had struck down as unconstitutional, thereby placing them beyond judicial review whilst simultaneously curtailing the Court’s jurisdiction to assess constitutional amendments against the internal consistency of the constitution itself. The Seventh Amendment (2018) further entrenched the regime’s preferences by constitutionalising provisions related to migration and the authority of the National Council for the Judiciary. This pattern of progressive constitutional radicalisation – driven by consistently available supermajority authority and an increasingly unrestrained political will to deploy that authority – reveals that crossing the constitutional threshold was a cumulative process rather than a single founding act. The constitutional threshold was not simply the adoption of a new Fundamental Law; it was the progressive weaponisation of that law through successive amendments calibrated to the regime’s evolving political requirements.

Electoral reengineering and the consolidation of competitive authoritarianism

Having secured constitutional control of the institutional landscape, the Orban government proceeded to restructure the electoral rules governing future competition. The 2011 electoral reform reduced the number of parliamentary seats from 386 to 199 and replaced the previous mixed electoral system with a predominantly single-round, first-past-the-post mechanism for constituency seats. Constituency boundaries were simultaneously redrawn in ways that analysts characterised as systematic gerrymandering, concentrating opposition support in a smaller number of ‘safe’ seats whilst distributing Fidesz support more efficiently across a larger number of marginal constituencies.

The cumulative effect of these electoral changes was dramatic. In 2014, Fidesz secured 44.5 percent of the vote but won 66.8 percent of parliamentary seats – a disproportionality ratio without precedent in Hungarian electoral history. In 2018, a similar dynamic produced another two-thirds majority from a popular vote share of 49.3 percent. V-Dem’s Electoral Democracy Index for Hungary declined from 0.85 in 2009 to 0.62 in 2018, reflecting the systematic erosion of competitive conditions (V-Dem Institute 2024). By 2022, the opposition had recognised that winning a parliamentary majority required a vote share roughly fifteen percentage points higher than Fidesz’s – a structural disadvantage built into the electoral architecture itself.

Media capture and the information environment

The final dimension of Hungary’s constitutional threshold crossing was the systematic restructuring of the media landscape. The 2010 Media Law established a Media Council composed exclusively of Fidesz appointees with sweeping regulatory powers over broadcast content, licensing and fines. Public broadcasters were rapidly colonised by loyalists and transformed into partisan instruments. Over the following decade, pro-government businesspeople systematically acquired private media outlets, culminating in the 2018 consolidation of approximately five hundred media assets into the Central European Press and Media Foundation (KESMA) under a government decree exempting the transaction from competition law review.

By 2022, independent journalism in Hungary had been reduced to a small number of online outlets operating under conditions of sustained financial and regulatory pressure. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) observed in its assessment of the 2022 Hungarian elections that ‘the media environment remained unbalanced’ and that ‘the public broadcaster provided a platform almost exclusively for the ruling party’ (ODIHR 2022). A degraded media environment does not merely disadvantage opposition campaigns in the short term; it shapes the information environment in which citizens form political preferences, creating structural advantages for incumbents that persist across electoral cycles.

Poland: Significant erosion without threshold crossing

The absence of constitutional authority as a constraining variable

Poland’s democratic backsliding under PiS (2015–2023) was real, significant and deeply troubling by any reasonable standard. The constitutional crisis of 2015–2016, the judicial overhaul of 2017–2019 and the transformation of public broadcasting all constituted serious erosions of democratic governance. Yet the backsliding never crossed the constitutional threshold as defined in this article,

and this failure to cross the threshold ultimately permitted democratic reversal. Understanding why PiS could not cross the threshold requires attention to the institutional constraints that the simple parliamentary majority imposed.

The most fundamental constraint was the absence of constitutional amendment authority. With approximately 38 percent of the popular vote and 51 percent of parliamentary seats in 2015, PiS could govern but could not constitutionally restructure the basic rules of political competition. Electoral law could be modified at the margins but not fundamentally redesigned. The constitutional framework could be violated but not replaced. Judicial appointments could be manipulated but only within the existing constitutional architecture. These constraints meant that PiS's executive aggrandisement operated below the constitutional threshold, producing significant but ultimately reversible institutional damage.

V-Dem data confirm this interpretation. Poland's Liberal Democracy Index fell from 0.82 in 2015 to 0.61 in 2020 – a significant decline, but one that left Poland at a level of democratic quality higher than Hungary had reached in 2013 (V-Dem Institute 2024). More tellingly, Poland's Electoral Democracy Index declined far less sharply than Hungary's equivalent measure: from 0.87 in 2015 to 0.72 in 2022, compared to Hungary's fall from 0.85 in 2009 to 0.62 in 2018. The relative resilience of Poland's electoral environment reflects the absence of the constitutional restructuring of competitive conditions that Hungary underwent.

Legal populism without abusive constitutionalism: The limits of statutory manipulation

PiS's approach to institutional manipulation exemplifies what we term 'legal populism without abusive constitutionalism' – the deployment of statutory legislation to advance populist political control over institutions without the formal constitutional authority to restructure those institutions permanently. This strategy produced significant short-term gains for PiS: The Constitutional Tribunal was not merely paralysed but progressively transformed into a governmental enabler – a trajectory that Sadurski (2019b) traces from activist court, through paralysis, to instrument of PiS policy – the National Council of the Judiciary (KRS) was captured, the Supreme Court was disrupted and public broadcasting was subordinated. But because these changes were achieved through ordinary legislation rather than constitutional amendment, they remained formally reversible by a subsequent parliamentary majority, even if that reversal proved slower and more contested in practice than initially anticipated.

The distinction between statutory and constitutional entrenchment is crucial to the constitutional threshold theory. Statutory changes – however consequential in the short term – can be repealed, reformed or reinterpreted by successor governments. Constitutional changes – particularly those encoded in a new

constitutional text designed to entrench incumbent preferences – cannot be reversed by simple legislative majority. PiS's institutional manipulation therefore produced a form of democratic erosion that was severe in the moment but structurally reversible, whereas Fidesz's abusive constitutionalism produced changes that are extremely difficult to undo without the same constitutional supermajority that enabled them.

The rule-of-law crisis generated by PiS's judicial manipulation was real and extensively documented by the Venice Commission, the European Commission and the CJEU. However, the institutional resilience preserved by Poland's constitutional architecture – including the ability of opposition judges to contest their own removal, the persistence of parallel judicial structures and the eventual role of the CJEU in compelling withdrawal of the most egregious provisions – meant that the judiciary, though damaged, was never fully captured in the manner achieved in Hungary.

Institutional veto points and democratic resilience

A second key variable distinguishing Poland from Hungary is the persistence of effective institutional veto points. Poland's constitutional design includes a president with significant veto powers – separate from the parliamentary majority and elected by direct popular vote on a different electoral cycle. President Andrzej Duda, though elected on the PiS ticket, exercised an independent check on the government's legislative agenda on several critical occasions: vetoing the 2017 Supreme Court bill in its initial form, vetoing the 2021 media law targeting TVN and, in the final period of PiS government, increasingly distancing himself from the party's most extreme proposals.

The presidential veto mechanism exemplifies the significance of constitutional design for backsliding resilience. Hungary's constitutional framework, both before and after 2011, concentrated executive authority in the prime minister and cabinet, with a relatively weak presidency lacking effective veto powers. Poland's presidential system created a structural veto point that PiS could not eliminate without constitutional authority it did not possess. This veto point preserved spaces of institutional contestation that proved critical to the democratic reversal of 2023.

The 2023 electoral reversal as theoretical test

The October 2023 parliamentary elections in Poland constitute the most important empirical test of the constitutional threshold theory offered by this article. If our argument is correct, Poland's failure to cross the constitutional threshold – manifested in the persistence of genuine electoral competition, functional institutional veto points and a relatively less distorted media environment –

should have preserved conditions under which democratic reversal through electoral means remained possible. The 2023 elections confirm this prediction.

The opposition coalition – comprising the Civic Coalition of former Prime Minister Donald Tusk, the Third Way alliance and the Left – secured a combined vote share of approximately 54 percent and a parliamentary majority sufficient to form a government. Crucially, the election was conducted under conditions that, whilst not fully fair – given the systematic bias of public broadcasting, the deployment of public resources in support of the incumbent and the attempts by the PiS government to influence the composition of the State Electoral Commission (PKW) through politically aligned appointments, as documented by OSCE/ODIHR (2023) – preserved sufficient openness to enable an opposition victory. The fact that PiS's manipulation of the media environment and electoral administration, however significant, was insufficient to prevent an opposition parliamentary majority illustrates precisely what the constitutional threshold theory predicts: Below-threshold backsliding produces institutional damage without foreclosing democratic reversal.

The subsequent formation of a Tusk-led government, and its programme of institutional restoration, further validates the theoretical framework. However, the limits of that restoration must also be acknowledged. The Constitutional Tribunal had been not merely paralysed but actively weaponised by PiS as a governmental enabler (Sadurski 2019a). In recognition of this reality, the lower chamber of parliament (Sejm) passed a resolution on 6 March 2024 (M.P. 2024 poz. 198) declining to recognise the Tribunal as a legitimate judicial body, and the Council of Ministers followed on 18 December 2024 (M.P. 2024 poz. 1068) with a decision not to promulgate or implement its rulings. The so-called neo-judges appointed by the PiS-controlled National Council of the Judiciary continued to adjudicate in both the Supreme Court and ordinary courts. Popular dissatisfaction with this institutional impasse contributed to the replacement of Minister of Justice Adam Bodnar in 2025. Notwithstanding these significant obstacles, the Tusk government's attempts at institutional restoration demonstrate that below-threshold erosion leaves sufficient institutional resources for democratic recovery to be structurally possible. The difficulty of full restoration reflects the characteristics of sub-threshold institutional damage rather than the irreversibility that characterises above-threshold competitive authoritarianism in Hungary.

Comparative empirical assessment: V-Dem trajectories

Tracking divergence across democratic dimensions

The V-Dem (Varieties of Democracy) dataset provides the most comprehensive available instrument for tracking democratic quality across multiple dimensions over time, and its longitudinal data for Hungary and Poland offer strong empiri-

cal support for the constitutional threshold theory advanced in this article. We focus on three key indices: the Liberal Democracy Index (LDI), the Electoral Democracy Index (EDI) and the Rule of Law Index (RLI), each of which captures a distinct dimension of democratic quality relevant to our theoretical argument.

On the Liberal Democracy Index, Hungary's score fell from 0.76 in 2010 to 0.44 in 2022 – a decline of 32 points over twelve years, placing Hungary among the ten fastest-declining democracies globally during this period (V-Dem Institute 2024). Poland's LDI fell from 0.82 in 2015 to 0.58 in 2022 – a decline of 24 points over seven years, less severe in absolute terms and concentrated in a shorter period. Crucially, Poland's 2023 LDI score showed the beginnings of stabilisation and incipient recovery, whilst Hungary's continued on its downward trajectory. This divergence is precisely what the constitutional threshold theory predicts: below-threshold erosion is reversible; above-threshold erosion is self-reinforcing.

On the Electoral Democracy Index, the divergence is even sharper. Hungary's EDI fell from 0.85 in 2009 to 0.52 in 2022 – a decline of 33 points, reflecting the cumulative effect of electoral engineering, media capture and the restructuring of campaign finance rules. Poland's EDI fell from 0.87 in 2015 to 0.72 in 2022, then recovered to 0.79 in 2023 – a trajectory consistent with significant but reversible erosion. The threshold between Hungary's 0.52 and Poland's 0.72–0.79 is not merely quantitative; it reflects the qualitative difference between a competitive authoritarian regime and a damaged but recoverable democracy.

On the Rule of Law Index, Hungary declined from 0.71 in 2010 to 0.38 in 2022, whilst Poland fell from 0.75 in 2015 to 0.49 in 2022 before showing partial recovery. The depth of Hungary's rule-of-law decline – more than 30 points over twelve years – reflects the comprehensive judicial capture achieved through abusive constitutionalism. Poland's less severe decline reflects the constraints imposed by the constitutional framework on PiS's judicial manipulation strategy.

The constitutional threshold in empirical terms

Translating the constitutional threshold into empirical terms, we propose that a Liberal Democracy Index score below 0.5 may serve as an exploratory indicator of threshold-proximate conditions – a level at which the cumulative erosion of democratic institutions appears to have reached a point that fundamentally compromises the conditions of genuine electoral competition. Hungary crossed this level in approximately 2018–2019, coinciding with the consolidation of media capture through KESMA and the conclusion of the judicial reorganisation programme. Poland, at its nadir, reached 0.58 – above this indicative level, consistent with our characterisation of Polish backsliding as significant but sub-threshold. It must be emphasised, however, that this empirical op-

erationisation is strictly illustrative and exploratory in character. The rigorous empirical validation of the constitutional threshold as a cross-nationally generalisable concept would require a large-N quantitative comparative study encompassing a substantial sample of countries over a considerable period of time – a study that lies beyond the scope of the present article but that represents an important agenda for future research. The two-case analysis presented here provides theoretical plausibility and illustrative empirical support; it does not constitute definitive quantitative proof of the proposed threshold value or its generalisability.

It is important to note that empirical thresholds of this kind are always approximations and should be treated with appropriate methodological caution. The V-Dem indices are composite measures that aggregate diverse indicators, and their specific numerical values are subject to measurement uncertainty. The constitutional threshold as theorised in this article is a structural concept – defined by the formal constitutional authority acquired by the incumbent and the persistence of effective veto points – that empirical indices can track but not fully capture. Nevertheless, the convergence between the theoretical prediction and the empirical trajectories documented by V-Dem provides significant evidence for the constitutional threshold theory.

EU rule-of-law enforcement: A three-phase analysis

Phase One: Rhetorical engagement (2011–2017)

The first phase of the EU's response to democratic backsliding in Hungary and Poland was characterised by rhetorical engagement – formal statements of concern, diplomatic pressure and the commissioning of expert opinions – without deployment of formal enforcement mechanisms. The European Commission issued a series of critical assessments of Hungary's Fundamental Law and its implementing legislation, and the Venice Commission produced multiple opinions documenting compatibility concerns. Yet no formal enforcement action was initiated, and Hungary's accession to the new Fundamental Law in January 2012 proceeded without institutional challenge.

This phase of rhetorical engagement reflected the EU's institutional assumption – prevalent among policymakers throughout the pre-2015 period – that member state governments would ultimately respond to normative pressure from peer institutions and would self-correct when confronted with credible evidence that their conduct was incompatible with European values. The Hungarian case demonstrated conclusively that this assumption was unfounded when applied to governments with sufficient domestic political dominance to absorb reputational costs without electoral consequences.

Two additional contextual factors significantly shaped Phase One dynamics and deserve explicit treatment. First, Fidesz's membership of the European People's Party (EPP) provided effective political insulation against formal EU action throughout this period. EPP leaders were unwilling to exert meaningful pressure on a party coalition that remained a significant source of votes and parliamentary seats in the European Parliament, and Fidesz's formal suspension from the EPP group – not achieved until March 2021, and ultimately resulting in Fidesz's departure – came far too late to constrain the most consequential phase of democratic backsliding. Second, the Hungarian-Polish axis of mutual support constituted a structural obstacle to EU enforcement. The collaborative dimension of Central European backsliding – encompassing the cordial early relationship between Orban and Donald Tusk (prior to PiS's rise), the deepening Fidesz-PiS alliance and the systematic deployment of mutual veto threats in the Council of the EU – has been documented in detail by Holesch & Kyriazi (2022). This cross-national solidarity effectively immunised both governments against Article 7 proceedings, since each could be relied upon to veto any Council determination against the other, rendering the mechanism structurally inoperative (Holesch & Kyriazi 2022).

The initiation of Article 7 proceedings against Poland in December 2017 – the first time in EU history that this mechanism had been activated – marked the symbolic end of Phase One. But the activation of Article 7 simultaneously exposed the fundamental structural weakness of the EU's enforcement architecture: The four-fifths majority requirement for Council action, combined with Orban's explicit commitment to veto any Article 7 determination against Poland, ensured that the proceedings would stall at the early stages. The Article 7 proceedings against Hungary, initiated in September 2018, faced the same structural obstacle in reverse (Sedelmeier 2017).

Phase Two: Article 7 and CJEU activism (2017–2020)

The second phase of EU enforcement was characterised by the paralysis of the Article 7 mechanism and the compensatory activism of the CJEU. In a series of significant judgments, the Court ruled against Hungary and Poland on specific judicial reform measures – including the forced early retirement of judges in both countries, the independence of the KRS in Poland, and the provisions of the Hungarian Higher Education Law directed at the Central European University. These judgments were significant in establishing that specific legislative measures violated EU law, but they were limited in their broader impact on democratic trajectories.

The CJEU's effectiveness was constrained by two structural factors. First, its jurisdiction is limited to questions of EU law – it cannot directly rule on the democratic character of member state governments, only on the compatibility of specific measures with specific EU legal obligations. This limitation meant that

the Court could compel the withdrawal of particular provisions whilst leaving the broader institutional architecture of democratic erosion untouched. Second, even where the Court's judgments were formally complied with, compliance was often achieved through minimal legislative adjustments that satisfied the letter but not the spirit of the ruling – the 'formal compliance' strategy that characterises stealth authoritarianism.

Phase Three: Financial conditionality (2020–2024)

The third and most consequential phase of EU enforcement was the introduction of financial conditionality – the formal linkage of access to EU structural funds to compliance with rule-of-law standards. The Rule of Law Conditionality Regulation, adopted in December 2020 after protracted negotiations (during which Hungary and Poland successfully negotiated a delayed implementation timeline), provided the Commission with a new instrument whose effectiveness rested on material rather than normative incentives.

The mechanism was first deployed against Hungary in September 2022, when the Commission proposed suspending approximately EUR 7.5 billion of cohesion funds pending the implementation of a package of anti-corruption and judicial reforms. Hungary responded by enacting a series of formal legislative changes – establishing a new anti-corruption authority, modifying the judicial appointment procedures – that the Commission ultimately accepted as meeting minimum conditionality requirements, releasing a portion of the suspended funds. Critics, including Scheppele et al. (2022), argued that this outcome demonstrated the conditionality mechanism's susceptibility to 'Potemkin reforms' – formal legislative changes designed to satisfy conditionality criteria without producing substantive institutional change.

The differential application of financial conditionality across Hungary and Poland illustrates the constitutional threshold theory in an important respect. For Hungary – which had crossed the constitutional threshold – financial conditionality operated at the margin of an already-consolidated competitive authoritarian regime. The Orban government had sufficient domestic political dominance and alternative revenue streams (including bilateral funding arrangements with China and deepened commercial relationships with Russia prior to 2022) to absorb conditionality pressure without fundamental institutional change. For Poland – which had not crossed the threshold – the democratic reversal of 2023 rendered conditionality largely moot as an enforcement instrument; the new government was itself committed to rule-of-law restoration and actively engaged with Commission mechanisms to recover suspended funds.

The controversy surrounding Poland's National Recovery and Resilience Plan (KPO) merits particular attention as a case study in the politics of conditionality. The European Commission's effective blocking of approximately EUR 35.4 bil-

lion in grants and loans – pending the implementation of judicial independence reforms – played a significant and contested role in the 2023 Polish parliamentary election campaign. The PiS government framed the Commission’s position as external coercion and an affront to Polish sovereignty, deploying it as a mobilising grievance for its electoral base. This framing proved double-edged: A substantial portion of the electorate voted for the opposition coalition partly out of a desire for improved EU relations and access to the blocked funds. The incoming Tusk government negotiated the conditions for disbursement and successfully secured the release of initial tranches in early 2024 (DW 2024), illustrating how financial conditionality, whilst insufficient to compel reform from a recalcitrant incumbent, can function as a significant electoral incentive for democratic reversal once a below-threshold backslider approaches competitive elections.

The Slovak case: A partial test of the constitutional threshold theory

A partial test of the constitutional threshold theory is provided by the trajectory of Slovakia under the government of Prime Minister Robert Fico, which returned to power in October 2023 with a programme that critics have compared to the Hungarian and Polish models of democratic backsliding. The Slovak case is theoretically interesting because it shares several structural similarities with Poland at the beginning of PiS’s tenure: a right-wing populist government operating without a constitutional supermajority, pursuing executive aggrandisement through statutory means and generating significant domestic and international concern about democratic quality.

Fico’s return to power in 2023 was accompanied by immediate moves to restructure public broadcasting, place the Prosecutor General’s office under greater political control and withdraw Slovakia’s support for Ukrainian aid – the latter move serving as a geopolitical signal of alignment with the ‘Eastern Opening’ strategy pursued by Hungary. However, as of the period covered by this analysis, Slovakia had not acquired the constitutional amendment authority that would enable threshold crossing, and its institutional landscape retained significant veto points – including a Constitutional Court that remained functionally independent and a president, Zuzana Caputova, whose independent electoral mandate provided a significant institutional counterweight.

President Caputova’s decision not to seek re-election in 2024, and the subsequent election of a Fico-aligned candidate, Peter Pellegrini, to the presidency, altered this institutional balance and raised the possibility of a more comprehensive executive aggrandisement strategy. Whether Slovakia will follow the Polish path of significant-but-reversible erosion or the Hungarian path of threshold crossing will depend critically on whether Fico’s coalition acquires constitutional amendment authority – a development that remains uncertain

as of the time of writing. The Slovak case thus serves as a prospective test of the constitutional threshold theory, one whose resolution will provide additional evidence for or against the framework's predictive validity.

Conclusion: Towards a constitutional threshold theory of backsliding depth

This article has advanced a new theoretical framework – the constitutional threshold theory of backsliding depth – to explain why democratic erosion reaches fundamentally different outcomes across structurally similar cases. Synthesising the concepts of abusive constitutionalism (Landau 2013), legal populism (Blokker 2019) and stealth authoritarianism (Meierhenrich 2021) with the empirical record documented by V-Dem longitudinal data, the article has argued that the decisive variable distinguishing Hungary's competitive authoritarianism from Poland's significant-but-reversible democratic erosion is the acquisition of constitutional amendment authority sufficient to restructure permanently the conditions of political competition.

Hungary crossed the constitutional threshold in the period 2011–2013 through the deployment of its two-thirds parliamentary supermajority to enact a new Fundamental Law, colonise the Constitutional Court, restructure the electoral system and capture the media landscape. Each of these changes was embedded at a level of formal entrenchment – constitutional or quasi-constitutional – that made reversal extremely difficult without the same constitutional majority that enabled it. Poland's PiS government, constrained by the absence of constitutional amendment authority and the persistence of institutional veto points including the presidential veto, pursued statutory manipulation that was significant but structurally reversible – a characterisation confirmed by the democratic reversal achieved through the 2023 elections.

Three broader implications of this argument merit emphasis. First, the constitutional threshold theory directs attention to constitutional design as a critical variable in democratic resilience. Scholars and policymakers concerned with backsliding prevention should attend carefully to the distribution of constitutional amendment authority, the design of veto mechanisms and the insulation of key institutional appointments from partisan capture. Constitutional frameworks that concentrate amendment authority in simple parliamentary majorities, or that permit incumbent governments to fill institutional positions for extended terms, are structurally more vulnerable to abusive constitutionalism than those that distribute veto power across multiple institutions.

Second, the analysis of EU enforcement across three phases suggests that material conditionality – specifically, the Rule of Law Conditionality Regulation – represents a more effective instrument than either rhetorical engagement or Article 7 proceedings, but that its effectiveness is modulated by the depth of

backsliding in the target state. For sub-threshold backsliders, conditionality can provide incentives for reform that reinforce domestic democratic pressures; for above-threshold competitive authoritarians, conditionality may be insufficient to overcome the structural advantages that threshold crossing has conferred on the incumbent.

Third, the constitutional threshold theory carries sobering implications for the reversibility of democratic backsliding in Hungary. The Orbán government's deployment of abusive constitutionalism has produced an institutional architecture that is extremely difficult to reverse through normal electoral means: Even an opposition majority must overcome gerrymandered constituencies, a captured media environment, a colonised judiciary and a constitutional framework designed to insulate incumbents from accountability. The April 2026 elections, which produced an electoral defeat for Fidesz-KDNP, constitute an important test of this proposition. If the incoming government lacks a constitutional supermajority – as current projections suggest – it will face structural barriers to institutional restoration qualitatively different from those confronting the Tusk government in Poland. The depth of the institutional challenge confronting post-2026 Hungarian democracy is thus itself a confirmation of the constitutional threshold theory's core prediction: Above-threshold backsliding produces institutional damage that electoral change alone cannot undo.

Finally, the Slovak case demonstrates the prospective value of the constitutional threshold theory as an analytical tool for anticipating the trajectories of emerging backsliding episodes. By focusing attention on the acquisition of constitutional amendment authority and the persistence of effective veto points, the theory provides a framework for assessing whether a given episode of executive aggrandisement is likely to remain sub-threshold and reversible, or whether it threatens to cross into the territory of durable competitive authoritarianism. This predictive dimension is perhaps the most practically significant contribution of the theoretical framework, as it enables early identification of the institutional changes that most urgently require defensive attention from democratic actors within and beyond the affected states. The April 2026 electoral outcomes in Hungary and Poland – and the divergent post-electoral trajectories that are now unfolding – provide a natural experiment for further testing the theory's predictions about asymmetric reversibility, and constitute an urgent and fertile agenda for future empirical research.

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