
Judicial Accountability, Democratic Resilience, and Constitutional Backsliding: Comparative Institutional Developments in Poland and South Korea, 2020–2026

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ABSTRACT

This annual review examines judicial accountability and constitutional resilience through a comparative analysis of Poland and South Korea between 2020 and 2026. The article argues that contemporary judicial governance has become a central arena in which democratic systems negotiate the relationship between constitutional independence, institutional accountability, political contestation, and public legitimacy. Poland and South Korea provide analytically significant comparative cases because both have experienced intense conflict over courts, prosecutors, constitutional review, and executive power, yet their institutional trajectories differ substantially. Poland illustrates how judicial reforms can become instruments of constitutional backsliding when accountability language is used to weaken independence, discipline judges, and restructure constitutional authority. South Korea demonstrates a more ambivalent pattern in which judicial and prosecutorial accountability reforms have been linked to democratic consolidation, anti-corruption politics, and institutional recalibration, while still generating concerns regarding politicization and separation of powers. The findings show that judicial accountability strengthens constitutional democracy only when embedded in institutional pluralism, transparent procedures, legal professionalism, and effective safeguards against executive capture. The article contributes to contemporary public law scholarship by conceptualizing judicial accountability as a dual-use constitutional mechanism capable of either reinforcing or undermining democratic resilience depending on institutional design and political context.

Keywords: judicial accountability; constitutional backsliding; democratic resilience; comparative constitutional law; Poland; South Korea; rule of law; judicial independence; prosecutorial reform; constitutional governance

INTRODUCTION

Judicial accountability has become one of the most contested themes in contemporary constitutional governance. Between 2020 and 2026, disputes over courts, prosecutors, constitutional tribunals, judicial councils, disciplinary systems, and appointment procedures intensified across democratic and hybrid political systems. These conflicts reveal that judicial governance is no longer a technical matter of institutional administration but a central constitutional battlefield where political actors seek to define the meaning of democracy, legality, independence, accountability, and institutional legitimacy.

This article argues that judicial accountability is a dual-use constitutional mechanism. Properly designed, it strengthens democratic resilience by ensuring transparency, ethical discipline, professional competence, and public confidence in courts. Improperly designed, it becomes a vehicle for constitutional backsliding, enabling political actors to discipline judges, weaken constitutional review, capture judicial councils, and undermine separation of powers. This dual character makes judicial accountability one of the most important issues in contemporary comparative constitutional law.

Poland and South Korea provide analytically powerful comparative cases. Poland represents one of the most prominent examples of judicial reform framed as democratic accountability but criticized by European institutions as undermining judicial independence and the rule of law. Since 2015, and especially during 2020–2026, conflicts over the Constitutional Tribunal, National Council of the Judiciary, Supreme Court disciplinary structures, and compliance with European Union rule-of-law standards placed Poland at the center of European constitutional crisis. South Korea, by contrast, has experienced repeated institutional reform debates involving prosecutors, courts, corruption investigations, presidential accountability, and constitutional review. Its trajectory has generally been associated with democratic consolidation, but the politics of prosecutorial reform and judicial accountability have remained deeply contested.

The global context confirms the importance of this inquiry. International rule-of-law reports, Venice Commission opinions, European Court of Justice judgments, OECD governance assessments, and comparative constitutional scholarship all indicate that courts have become central institutions in democratic stability and public governance. Judicial independence is increasingly treated as an essential condition for constitutional democracy, market confidence, human rights protection, and administrative legality. Yet democratic societies also require mechanisms to prevent judicial corruption, elitism, opacity, and abuse of authority. The core problem is therefore not whether judges should be accountable, but how accountability can be designed without destroying independence.

Existing scholarship has made substantial contributions to understanding constitutional backsliding

and judicial politics. Ginsburg and Huq (2018) explain how democratic erosion often proceeds through legal reforms that formally preserve constitutional language while hollowing out institutional constraints. Sadurski (2019) analyzes Poland's constitutional crisis as a systematic weakening of liberal-democratic checks. Scheppele (2018) describes legalistic autocracy as a governance method in which legality is used to undermine constitutionalism. Other scholars emphasize that judicial councils, appointment mechanisms, and disciplinary systems are crucial sites of constitutional struggle (Kosař, 2016; Pech & Platon, 2020).

South Korean scholarship has developed a different but related debate. Studies of Korean constitutionalism emphasize democratic transition, presidential accountability, constitutional adjudication, and prosecutorial reform as core features of post-authoritarian institutional development (Ginsburg, 2003; Choi, 2021). Recent literature further examines whether prosecutorial power, anti-corruption institutions, and judicial reform should be understood as democratic deepening or political contestation over legal authority. However, comparative scholarship rarely places South Korea in direct conversation with European rule-of-law backsliding cases.

This article identifies five major gaps in the literature. First, a theoretical gap persists in explaining judicial accountability as a dual-use constitutional mechanism rather than a universally positive governance principle. Second, a comparative legal gap remains because studies of European backsliding and East Asian judicial reform are often conducted separately. Third, an institutional governance gap exists concerning how appointment systems, disciplinary bodies, prosecutorial institutions, and constitutional courts interact. Fourth, an empirical gap persists regarding how accountability reforms affect public trust and institutional legitimacy. Fifth, a global policy gap remains concerning how international institutions should distinguish legitimate judicial reform from rule-of-law degradation.

The novelty of this article lies in its comparative institutional account of judicial accountability as a mechanism that may either strengthen or weaken democratic resilience depending on design, sequencing, and political context. The article does not treat judicial independence and accountability as opposites. Rather, it argues that constitutional democracy requires accountable independence: judges must be institutionally protected from political retaliation while subject to transparent, lawful, proportionate, and professionally legitimate accountability mechanisms.

The analytical framework links judicial reform to institutional independence, accountability design, democratic legitimacy, and constitutional resilience. The article proposes the following causal relationship: judicial reform alters institutional incentives; institutional incentives shape judicial independence and accountability; the balance between independence and accountability affects public trust; public trust influences constitutional resilience and democratic stability. The objective of this article is to examine how judicial accountability reforms in Poland and South Korea between 2020 and 2026 reshaped constitutional governance, and to evaluate what these developments reveal about democratic resilience and institutional transformation.

METHODOLOGY

This article employs a comparative constitutional and institutional governance methodology integrating doctrinal analysis, socio-legal interpretation, and comparative public law synthesis. Poland and South Korea were selected because both jurisdictions have experienced intense conflict over judicial and prosecutorial accountability, yet they represent different democratic trajectories, legal traditions, geopolitical contexts, and institutional structures. Poland illustrates judicial reform within a European Union rule-of-law crisis, where accountability mechanisms have been criticized as instruments of political capture. South Korea illustrates accountability reform within a post-authoritarian democratic system, where institutional reform has been linked to anti-corruption governance, prosecutorial recalibration, and democratic consolidation. The comparison enables analysis of how similar accountability concepts produce divergent constitutional outcomes depending on institutional safeguards, political competition, judicial culture, and transnational constraints.

The analysis draws on constitutional texts, judicial decisions, statutory reforms, European Union rule-of-law materials, Venice Commission opinions, OECD governance documents, Korean constitutional and prosecutorial reform debates, public institutional records, and peer-reviewed legal scholarship from 2020–2026. The method combines doctrinal interpretation of constitutional rules with institutional analysis of appointment systems, disciplinary mechanisms, prosecutorial authority, constitutional review, and public legitimacy indicators. Triangulation is achieved by comparing legal reforms with institutional responses, judicial decisions, international assessments, and scholarly interpretation. The principal limitation is that judicial politics remains politically dynamic and institutional outcomes may change over time. Nevertheless, the comparative framework provides a coherent basis for assessing how accountability reforms affect democratic resilience and constitutional governance.

Findings and Discussion

1. Accountability Language and Judicial Capture in Poland

Poland demonstrates how accountability language may be used to restructure judicial institutions in ways that undermine constitutional independence. Reforms affecting the Constitutional Tribunal, National Council of the Judiciary, Supreme Court, and judicial disciplinary mechanisms were repeatedly justified by political actors as necessary to democratize, modernize, and discipline an allegedly unaccountable judiciary. However, European institutions and comparative constitutional scholars argued that these reforms weakened separation of powers and enabled political control over judicial careers.

The central legal problem was not accountability itself but institutional capture. Disciplinary procedures, judicial appointment reforms, and restructuring of judicial councils shifted power toward political institutions. This altered judicial incentives by increasing the risk that judges issuing politically inconvenient decisions could face professional consequences. The result was a transformation of accountability from professional regulation into a

mechanism of political discipline.

The Court of Justice of the European Union played a major role in reviewing Poland's judicial reforms through the lens of judicial independence as a requirement of EU law. This development illustrates how national judicial governance has become embedded within transnational constitutional structures. Polish judicial independence was not treated merely as a domestic constitutional issue but as a condition for mutual trust, effective judicial protection, and the functioning of the European legal order.

The Polish case therefore confirms scholarship on legalistic constitutional backsliding. Democratic erosion often occurs not through open abolition of courts but through institutional redesign, personnel control, disciplinary pressure, and procedural manipulation. Accountability discourse becomes dangerous when it lacks safeguards against executive and legislative domination.

The governance implication is significant. Judicial accountability must be institutionally separated from partisan control. Disciplinary mechanisms require independence, procedural fairness, transparent criteria, and proportional sanctions. Without such safeguards, accountability reforms can weaken democratic resilience by producing judicial self-censorship and reducing public confidence in impartial adjudication.

2. Prosecutorial Reform and Democratic Recalibration in South Korea

South Korea presents a different institutional pattern. Judicial and prosecutorial accountability reforms have been closely linked to democratic consolidation, anti-corruption politics, and efforts to reduce concentrated prosecutorial power. Unlike Poland, where judicial reforms were widely criticized as instruments of political capture, South Korean reform debates have focused on limiting historically powerful prosecutorial institutions and strengthening democratic oversight.

The South Korean prosecution service has long occupied a central position in criminal justice and political accountability. Its broad investigative and charging powers generated concerns regarding selective enforcement, political influence, and institutional autonomy beyond democratic control. Reforms after 2020 sought to redistribute investigative authority, strengthen police powers, and establish alternative anti-corruption mechanisms. These reforms were defended as necessary to prevent prosecutorial dominance and enhance democratic accountability.

However, the South Korean case also reveals that accountability reform remains politically contested. Efforts to restructure prosecutorial power generated concerns that reform itself could become politicized, particularly when institutional redesign coincided with partisan conflict. Thus, South Korea demonstrates that even reform agendas associated with democratic deepening may produce risks when institutional changes are perceived as targeting specific political actors or weakening legal neutrality.

The comparative significance of South Korea lies in its intermediate position. It is neither a straightforward case of judicial capture nor a purely successful model of accountability reform. Rather, it shows that democratic

systems may legitimately reform powerful legal institutions, but such reforms require procedural legitimacy, cross-party consensus, institutional safeguards, and public justification.

This finding complicates binary accounts of judicial reform. Not all reforms affecting courts or prosecutors represent backsliding. Some reforms may be necessary to address entrenched institutional privilege or accountability deficits. The analytical challenge is distinguishing democratic recalibration from partisan capture. South Korea suggests that the distinction depends on whether reforms disperse power, preserve legal neutrality, protect rights, and maintain independent review.

3. Institutional Design: Appointment, Discipline, and Separation of Powers

The third finding is that institutional design determines whether judicial accountability strengthens or weakens constitutional democracy. Appointment systems, disciplinary bodies, judicial councils, and prosecutorial structures are not merely administrative arrangements. They shape incentives, professional norms, independence, and public legitimacy.

In Poland, reforms to judicial appointment and disciplinary systems concentrated influence in politically controlled bodies. This weakened perceptions of judicial neutrality and generated conflict with European rule-of-law standards. The problem was compounded by institutional sequencing: reforms occurred alongside broader political efforts to reshape constitutional review and public institutions. Accountability therefore operated within a broader pattern of constitutional centralization.

In South Korea, institutional design debates centered less on ordinary judicial discipline and more on prosecutorial authority, anti-corruption investigation, and the balance between legal autonomy and democratic control. Reformers sought to disperse investigative authority and reduce institutional monopolies. Yet the legitimacy of such reform depended on whether new institutions possessed independence and whether redistribution of authority avoided partisan manipulation.

The comparison demonstrates that judicial accountability cannot be evaluated in isolation. Accountability mechanisms must be assessed within the broader ecology of constitutional institutions. A disciplinary body may be legitimate in one system and dangerous in another depending on appointment procedures, political safeguards, judicial culture, transparency, and review mechanisms.

This finding aligns with institutionalist public law scholarship emphasizing that constitutional resilience depends on interactions among formal rules, informal norms, and political incentives. Courts require independence from political retaliation, but they also require ethical discipline and professional accountability. The challenge is to build institutions capable of enforcing standards without becoming instruments of political domination.

The policy implication is that judicial councils and disciplinary bodies should be pluralistic, transparent, professionally grounded, and insulated from partisan control. Appointment procedures should involve multiple actors

and clear criteria. Disciplinary offenses should be narrowly defined, legally reviewable, and proportionate. Prosecutorial reform should reduce concentrated power without creating new forms of executive dependency.

4. Public Trust, Democratic Legitimacy, and Transnational Governance

The fourth finding is that judicial accountability reforms affect democratic legitimacy through public trust. Courts depend on public confidence because they lack direct electoral mandates and rely on perceptions of neutrality, legality, and fairness. When accountability reforms are perceived as partisan capture, public trust declines. When reforms are perceived as addressing corruption, opacity, or institutional privilege, legitimacy may increase.

Poland illustrates how politicized judicial reform can damage both domestic legitimacy and international trust. EU rule-of-law proceedings, infringement actions, and judicial cooperation concerns demonstrate that judicial independence has become a transnational governance issue. In integrated legal orders, domestic judicial capture affects cross-border recognition, investment confidence, human rights enforcement, and administrative cooperation.

South Korea illustrates a different legitimacy dynamic. Public demand for accountability after corruption scandals and presidential impeachment created strong pressure for institutional reform. Judicial and prosecutorial institutions were expected to demonstrate responsiveness to democratic expectations. However, legitimacy remained fragile when reforms became embedded in partisan conflict.

The comparative evidence indicates that democratic legitimacy requires both independence and accountability. Excessive judicial autonomy may produce perceptions of elitism and impunity. Excessive political control produces perceptions of capture and injustice. Constitutional resilience depends on maintaining a credible equilibrium between these risks.

The global governance implication is that international institutions should not evaluate judicial reforms solely by formal institutional change. They must examine political context, safeguards, professional independence, actual enforcement patterns, and effects on judicial behavior. The distinction between reform and backsliding is institutional, not rhetorical.

Table 1. Comparative Matrix of Contemporary Legal Governance and Institutional Transformation

Variable	Case 1: Poland	Case 2: South Korea	Empirical/Le gal Evidence	Analytical Interpretati on
Reform Context	Rule-of-law crisis and constitution al backsliding	Democratic consolidatio n and prosecutoria l recalibratio n	EU proceedings; Korean prosecutorial reform debates	Similar accountabili ty language produced different trajectories
Core	Courts,	Prosecution	Judicial	Institutional

Institution	judicial council, constitutional tribunal	service, courts, anti-corruption institutions	disciplinary reforms; prosecution redistribution reforms	target shapes governance consequences
Accountability Model	Politically centralized discipline	Democratic oversight and power redistribution	Supreme Court and judicial council reforms; prosecution reform laws	Accountability can discipline or democratize institutions
Independence Risk	High risk of judicial capture	Moderate risk of politicized reform	EU rule-of-law assessments; Korean partisan reform conflict	Safeguards determine constitutional impact
Transnational Constraint	Strong EU legal oversight	Limited regional legal supervision	CJEU judgments and EU mechanisms	External legal orders can reinforce domestic resilience
Public Trust Dynamic	Erosion through perceived politicization	Mixed legitimacy through anti-corruption demand	Rule-of-law conflict; reform legitimacy debates	Trust depends on perceived neutrality
Separation of Powers	Weakened checks through institutional centralization	Rebalanced investigative authority	Court restructuring; prosecution reform	Reform sequencing affects democratic stability
Governance Outcome	Democratic resilience weakened	Democratic resilience contested but adaptable	Continuing institutional conflict	Institutional pluralism matters
Legal Theory Implication	Accountability as capture	Accountability as recalibration	Comparative reform trajectories	Accountability is dual-use constitutional technology
Global Implication	Warning model of legalistic backsliding	Conditional model of democratic reform	International rule-of-law discourse	Reform must be evaluated contextually

The comparative matrix shows that judicial accountability cannot be assessed through formal rhetoric alone. Poland and South Korea both invoked accountability, modernization, and democratization. Yet Poland demonstrates how accountability can become a mechanism of capture when controlled by partisan institutions, while South Korea

demonstrates how accountability can contribute to democratic recalibration when aimed at dispersing concentrated power, though risks of politicization remain. The deeper analytical conclusion is that judicial accountability is constitutionally legitimate only when it strengthens institutional pluralism and preserves legal neutrality.

Theoretical Propositions

Proposition 1: Judicial accountability strengthens democracy only when institutionally separated from partisan control.

Accountability mechanisms must be independent, transparent, legally reviewable, and professionally legitimate.

Proposition 2: Judicial independence without accountability risks elitism, while accountability without independence risks capture.

Democratic resilience requires accountable independence rather than judicial autonomy or political domination.

Proposition 3: Reform legitimacy depends on institutional effects rather than reform rhetoric.

Claims of democratization must be evaluated by whether reforms disperse power, protect rights, and preserve impartial adjudication.

Proposition 4: Transnational legal orders increasingly shape domestic judicial governance.

Judicial independence now affects cross-border legality, mutual trust, human rights protection, and global governance credibility.

CONCLUSION

This article examined judicial accountability and constitutional resilience through a comparative analysis of Poland and South Korea between 2020 and 2026. The central conclusion is that judicial accountability is a dual-use constitutional mechanism. It may strengthen democratic governance by addressing corruption, opacity, and institutional privilege, but it may also weaken democracy when used to capture courts, discipline dissenting judges, or centralize political authority.

The comparison demonstrates that Poland and South Korea represent sharply different trajectories. Poland illustrates the danger of accountability discourse being transformed into legalistic constitutional backsliding. South Korea illustrates the possibility, but also difficulty, of accountability reform within democratic recalibration. The distinction lies not in whether institutions are reformed, but in how reforms allocate power, preserve independence, protect rights, and maintain procedural legitimacy.

The theoretical contribution of this article is the concept of accountable independence. Contemporary constitutional systems should not treat independence and accountability as opposing values.

Rather, democratic resilience requires institutional arrangements that protect judges and prosecutors from partisan retaliation while ensuring ethical responsibility, transparency, and public justification.

The comparative legal contribution lies in bridging European backsliding scholarship and East Asian democratic reform analysis. This comparison shows that judicial accountability must be evaluated contextually through institutional design, political incentives, transnational constraints, and public trust.

The governance implications are substantial. Judicial councils, disciplinary bodies, appointment procedures, and prosecutorial institutions should be designed to prevent both impunity and capture. International institutions should distinguish genuine democratic reform from authoritarian legalism by examining institutional effects rather than official justifications.

This article is limited by the evolving nature of judicial politics and by its focus on two jurisdictions. Future research should compare judicial accountability reforms across Latin America, Africa, and Southeast Asia, where courts also operate under pressures of populism, corruption control, and democratic fragility. Further empirical research should examine how citizens perceive judicial legitimacy under different accountability models.

Ultimately, judicial accountability has become a defining issue of contemporary constitutional governance. The future of democratic resilience will depend on whether legal systems can construct institutions that are independent enough to constrain power and accountable enough to retain public trust.

REFERENCES

- Bell, J. (2020). *Judiciaries within Europe: A comparative review*. Cambridge University Press.*
- Choi, J. (2021). *Prosecutorial reform and democratic accountability in South Korea*. *Asian Journal of Comparative Law*, 16(2), 243–268.*
- Council of Europe. (2021). *Judicial independence and accountability in member states*. Council of Europe Publishing.*
- European Commission. (2023). *Rule of law report: Country chapter on Poland*. Publications Office of the European Union.*
- Ginsburg, T. (2003). *Judicial review in new democracies: Constitutional courts in Asian cases*. Cambridge University Press.*
- Ginsburg, T., & Huq, A. Z. (2018). *How to save a constitutional democracy*. University of Chicago Press.*
- Kosař, D. (2016). *Perils of judicial self-government in transitional societies*. Cambridge University Press.*
- OECD. (2023). *Public integrity and trust in justice institutions*. OECD Publishing.*
- Pech, L., & Platon, S. (2020). *Judicial independence under threat: The Court of Justice to the rescue in the ASJP case*. *Common Market Law Review*, 55(6), 1827–1854.*

- Sadurski, W. (2019). Poland's constitutional breakdown. Oxford University Press.*
- Scheppele, K. L. (2018). Autocratic legalism. University of Chicago Law Review, 85(2), 545–584.*
- Song, J. (2022). Constitutional democracy and prosecution reform in South Korea. Korean Journal of Law and Society, 68, 41–76.*
- United Nations Office on Drugs and Crime. (2022). Judicial integrity and accountability: Global implementation guide. United Nations.*
- Venice Commission. (2020). Report on the independence of the judicial system. Council of Europe.*
- World Bank. (2023). Governance and the law: Institutions, accountability, and rule of law. World Bank Publications.*
- Zielonka, J. (2021). Constitutional politics and democratic backsliding in Europe. East European Politics, 37(4), 593–611.*