SYMPOSIUM

Public Law and Political Oppositions: An Introduction to a Complex Relationship

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A. Introduction: How Does Public Law Treat Opposition?

This special issue brings together a range of contributions that thematize and problematize the way in which public law treats, regulates and interacts with the political opposition. The relationship is complex, contingent, and often paradoxical. While the existence of a functioning opposition is a hallmark of liberal constitutional democracy, public law frameworks can simultaneously serve as a shield that protects dissent, a stage upon which resistance is enacted, or a sword used to neutralise challengers. Legality itself emerges as a primary terrain of struggle, where opposition actors adapt, subvert, or contest the very structures that enable or constrain their activity. To navigate this complexity, this special issue suggests that adopting a "varieties of constitutionalism" framework offers a productive path for future research, allowing for a more nuanced analysis that moves beyond traditional binaries of "democratic" and "non-democratic", "liberal" and "illiberal".[1]

The importance of this inquiry is underscored by the contemporary crisis of constitutionalism unfolding against a backdrop of global polycrisis. This is not merely a crisis for liberal constitutionalism, but a period of intense contestation among different constitutional visions. The rise of autocratic legalism and constitutional authoritarianism as alternative models of governance challenges the post-Cold War assumption of a global convergence around liberal norms.[2] In this environment, the political opposition often stands as a critical line of defense. From a normative perspective, a robust opposition is seen as a key solution to deficits in accountability and a bulwark against the erosion of democratic norms. Opposi-

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1 On this framework and approach, see *Michael Riegner*, Varieties of Constitutionalism: Contestations of Liberalism in Comparative Constitutional Law, World Comparative Law 57 (2024), p. 161; *Mark Tushnet*, Editorial: Varieties of constitutionalism, International Journal of Constitutional Law 14 (2016), p. 1.

2 For a recent discussion of the concept of autocratic legalism, see *Fabio de Sa e Silva*, Autocratic Legalism 2.0: Insights from a Global Collaborative Research Project, World Comparative Law 55 (2022), p. 419, and the other contributions in that special issue.

tion actors can use legal and political tools to challenge would-be autocrats, making them key players in resisting and mitigating autocratization processes.

However, the role of opposition is not without its own problems. Opposition can be a source of obstruction and legislative gridlock. From the perspective of militant democracy, opposition groups themselves can be extremist or anti-system forces that exploit democratic freedoms to undermine the constitutional order. The very existence of an opposition is not necessarily synonymous with the advancement of democracy or liberalism; indeed, as some contributions to this volume show, a co-opted "loyal" opposition can serve to stabilize an authoritarian regime, lending it a façade of pluralism.

Methodologically, this special issue adopts a socio-legal approach that goes beyond textual analysis and is informed by the realities of political practice. In doing so, it bridges political science and comparative constitutional law as well as the North-South divide in comparative constitutional law, taking Southern constitutional experiences seriously to not only expand the "gene pool" of comparative constitutional law, but also to pluralise its theoretical and conceptual frameworks. In this vein, this introductory article adopts a varieties of constitutionalism lens, in order to move beyond simple democratic-autocratic binaries and to provide a richer taxonomy for comparative analysis, capable of capturing the nuanced differences between liberal, social, transformative, illiberal, and authoritarian constitutional systems. Further research will help us understand how the function and legal status of oppositions differ profoundly depending on the constitutional variety in which they operate.

Against this background, this introductory article proceeds in four parts. Following this introduction, section B develops a conceptual framework to unpack the plural and complex nature of "oppositions", distinguishing between different legal statuses, regime contexts, and strategic postures. Section C, provides an overview of the contributions to this special issue, demonstrating how each paper empirically or theoretically explores the themes and typologies previously outlined. The article concludes with an outlook offering thoughts on new avenues for research at the intersection of public law and political opposition in the light of growing constitutional contestation and variety.

B. Unpacking the Concept of Political Opposition(s)

Acknowledging the fundamental importance of opposition for every political system, the term usually refers to actors criticizing and challenging the government group, thereby being "logically … the dialectic counterpart of power"[3]. Such umbrella concept, however, risks missing the underlying complexity while also letting scholars talk past each other. We start this introduction by developing a conceptual framework that helps to arrive at a more

3 *Ghiţa Ionescu / Isabel de Madariaga*, Opposition. Past and present of a political institution, London 1968, p. 1.

nuanced analysis of the relationship between political oppositions and public law depending on national contexts and political circumstances.

At the most basic level, opposition can be recognized, legalized, alegal or illegal. Various African constitutions, for instance, today acknowledge "the opposition" as such, hence providing the highest status to the principle of opposition irrespective of the size of its forces.[4] Such explicit protection, as found in Morocco[5], goes one step further than simply legalizing multi-partyism as has been witnessed in the wake of Africa's constitutional revival following the end of the Cold war.[6] In contrast, opposition forces can be strictly forbidden forcing them to operate outside the system like in most historical dictatorships or China.[7] Another category lying in-between has been termed alegal by authoritarianism scholar Juan Linz: The governing elite in this case does not legalize but tolerates its opponents who are, thus, "outside the law".[8]

Closely related to but analytically independent of this distinction are the regime type opposition forces operate in, the question whether legal frameworks are respected or not, and the opposition's strategic stance towards the political system. To begin with, oppositions can act in democratic systems, hybrid regimes that combine autocratic features with democratic ones, and closed autocracies.[9] Adding a dynamic view, we can even include the question whether regimes move in a democratic or autocratic direction. The recent wave of autocratization[10], for example, includes several democracies suffering gradual setbacks (backsliding) that alter the political and, in some cases, legal conditions for opposition forces. Usually, opposition groups are considered key actors to mitigate autocratization[11], who, from the angle of public law, face two situations. On the one hand, they can

4 See *Danny Schindler*, Constitutionalizing dissent: The universe of opposition rules in African constitutions, Global Constitutionalism, First View (2024), pp. 1–26

5 *Rachid El Bazzim*, The Parliamentary Opposition in Morocco: Evolution and Legal Challenges, World Comparative Law 57 (2024), in this issue.

6 *Henry Kwasi Prempeh*, Africa's "constitutionalism revival". False start or new dawn?, International Journal of Constitutional Law 5 (2007), pp. 469–506.

7 *Jieren Hu / Johannes Rossi*, Control through the State of Exception: Opposition, Surveillance, and Fragmentation under Chinese Digital Authoritarianism, World Comparative Law 57 (2024), in this issue.

8 *Juan J. Linz*, Opposition to and under an authoritarian regime: The case of Spain, in: Robert A. Dahl (ed.), Regimes and oppositions, New Haven 1973, pp. 171–259, p. 191.

9 One out of many empirical operationalizations is the index by Freedom House which categorizes countries as free, partly free or unfree. Even more differentiated concepts can be used (especially for the broad type of hybrid regimes), yet some uncertainties remain about the analytical thresholds that have to be crossed to enter into another category.

10 *Anna Lührmann / Staffan I. Lindberg*, A third wave of autocratization is here: what is new about it?, Democratization 26 (2019), pp. 1095–1113.

11 *Laura Gamboa*, How Oppositions Fight Back, Journal of Democracy 34 (2023), pp. 90–104.

weaponize legal instruments to resist processes of backsliding (democratic lawfare).[12] On the other hand, they are usually confronted with a narrowing of their own manoeuvring space through legal reforms by which autocrats and would-be autocrats seek to consolidate their power (autocratic lawfare).[13] Often, this includes borrowing and abusing democratic constitutional designs, for instance hate speech and memory laws, for autocratic ends.[14] Different from such scenarios of "opposition to autocrats in power" are autocratic-minded "populists in opposition"[15]. As recently witnessed in Germany, such forces may seek to delegitimize judicial institutions while also facing legal reforms to protect the apex courts.[16]

When it comes to non-democratic regimes, a crucial question also is constitutional compliance or legal compliance in general. Borrowing from *Law* and *Versteeg*, oppositions might operate under a sham legal framework that includes far-reaching opposition-related rules but fails to fulfil them in practice (sham constitution).[17] As another variant, we might encounter supreme laws which promise little to the opposition but are still cheap talk (weak constitution). For the sake of completeness, countries can exhibit comprehensive legal rules strengthening the opposition both in theory and in practice (strong constitutions) or they even overperform by promising relatively little but de facto respecting a panoply of opposition rights in reality (modest constitutions).

In the case of sham or weak legal systems for opposition forces, public law primarily serves as window dressing rather than as operation manuals (describing actual practice).[18] However, looking at legal compliance from the government's perspective, we also have to point to the phenomenon of autocratic legalism which can be defined as the use of law in

12 *Siri Gloppen / Lise Rakner*, Legalised resistance to autocratisation in common law Africa, Third World Quarterly 46 (2025), pp. 136–152.

13 *Kim Scheppele*, Autocratic Legalism, University of Chicago Law Review 85 (2018), pp. 545–583.

14 *Rosalind Dixon / David E. Landau*, Abusive constitutional borrowing. Legal globalization and the subversion of liberal democracy, Oxford 2021, pp. 56 ff.

15 *Sarah L. de Lange / Larissa Böckmann*, Populists in Opposition: A Neglected Threat to Liberal Democracy?, PS: Political Science & Politics 58 (2025), pp. 72–76.

16 On the role of courts for safeguarding opposition rights, see *Nomfundo Ramalekana* / *Alfred Mavedzenge,* Courts as a Forum for Safeguarding the Right of Opposition Parties to Participate in Democratic Processes: A Comparative Analysis of South Africa and Zimbabwe*,* World Comparative Law 57 (2024), in this issue; see also *Philipp Köker / Tilko Swalve / Merle Huber / Christoph Hönnige / Dominic Nyhuis*, Populists before power: delegitimization strategies against independent judiciaries, Democratization, online first (2025), pp. 1–18; *Konrad Duden*, Protect the German Federal Constitutional Court!, Verfassungsblog, 13 February 2024, https://verfassungsblog.de/protect-the-german-federal-constitutional-court/ (last accessed on 30 June 2025), DOI: 10.59704/fe9b21f9344b927a.

17 *David S. Law / Mila Versteeg*, Sham Constitutions, California Law Review 101 (2013), pp. 863–952.

18 See on the different functions of autocratic constitutions *Tom Ginsburg / Alberto Simpser*, Introduction: Constitutions in Authoritarian Regimes, in: Tom Ginsburg / Alberto Simpser (eds.), Constitutions in authoritarian regimes, New York 2014, pp. 1–17.

the service of an illiberal agenda.[19] Autocrats and autocratic-minded incumbents nowadays more than ever apply formally legal techniques to undermine their opponents. For this purpose, they might alter provisions (for instance by enacting anti-civil society laws) or benefit from lacking legal clarity as recently in Zimbabwe where the regime was able to disrupt the opposition trough recall rules while also preserving a rule of law façade.[20] This again underlines that focusing on single provisions that formally protect opposition forces often provides a delusive picture of their legal and political leeway.[21]

Furthermore, we can look at the oppositions' overall strategies and distinguish between those who oppose a government as "loyal" opposition at one end of the spectrum and those who oppose the legitimacy of the state and the political order as "anti-system" opposition at the other one. While some might argue that radical forces unwilling to accept the constitutional system should not be included in the opposition concept, the emergence of and the debate on new anti-system parties who differ from the totalitarian counterparts in the 20th century justify such encompassing conception of opposition.[22] In particular, the distinction between constitutional/unconstitutional or system/anti-system groups is relative and can be actively established by the government to disadvantage opposition forces, as has been done with Israeli Arab parties.[23] In the same vein, regime elites can seek to divide the opposition camp into loyalists and radicals, thereby preventing the mobilization of political unrest, as has been found for Morocco.[24] Dealing with non-democratic regimes, we should also mention that loyal oppositions can serve functions entirely different from those in their democratic counterparts: They might not even be opponents of incumbents in the strict sense (as the umbrella concept of opposition implies), but as coopted allies rather act as "mechanism for societal control beyond pure repression"[25]. Hence, the government's opponents might not erode but stabilize authoritarianism which questions some passionate acknowledgment that the existence of a viable opposition always fosters democratic development. In the end, an overly loyal pseudo-opposition also goes well together with a strong

19 *Scheppele*, note 13.

20 *Danny Schindler*, Recall rules as a legalistic autocrat's toolkit. The case of Zimbabwe, Democratization, online first (2025), pp. 1–22.

21 On the legal framework promoting opposition parties in anglophone Eastern Africa, see *Johannes Socher*, Constitutionalisation of Political Parties, Multipartyism and Political Opposition in Anglophone Eastern Africa, World Comparative Law 57 (2024), in this issue.

22 *Ludger Helms*, Political Oppositions in Democratic and Authoritarian Regimes: A State-of-the-Field(s) Review, Government and Opposition 58 (2023), pp. 391–414, p. 392.

23 On the fragility of legal categories in Pakistan, see *Marva Khan Cheema,* Dictatorships and Democracy: Dissecting the Role of Political Opposition in Pakistan, World Comparative Law 57 (2024), in this issue; see also *Nathalie Brack / Sharon Weinblum*, "Political Opposition": Towards a Renewed Research Agenda, Interdisciplinary Political Studies 1 (2011), pp. 69–79, p. 72.

24 *El Bazzim,* note 5; see also *Ellen Lust-Okar*, Divided They Rule: The Management and Manipulation of Political Opposition, Comparative Politics 36 (2004), pp. 159–178.

25 *Holger Albrecht*, How can opposition support authoritarianism? Lessons from Egypt, Democratization 12 (2005), pp. 378–397, p. 391.

system of opposition rights, i.e., it provides a low-risk path for autocrats who want to keep a democratic façade.

One of the most crucial differentiations in analytical terms is between opposition forces inside and outside parliament. Given a legislature's role as key institution of contestation, opposition placed inside the assembly has been rightly termed the "most advanced and institutionalized form of political conflict"[26]. Crucial topics for public law are of course electoral rules but also the rights given to opposition forces. Yet, identifying the parliamentary opposition can be intricate if we deal with autocratic one-party states, minority governments (supported by parties on a permanent base) or presidential systems in which executives are not automatically affiliated with an own majority by design.[27] Moreover, it is often misleading to treat the parliamentary minority as quasi-discrete and stable entity in conceptual terms.[28] Opposition forces can be highly fragmented and ideologically heterogeneous entailing intra-opposition rivalry. Therefore, it matters a lot whether opposition-related rights (interpellation, committees of inquiry etc.) are allotted to single parliamentary groups or to "the opposition" (requiring some agreement between its parts or leaving scope for interpretation and specification in the parliamentary rules of procedure).[29] Hence, scholars not only have to consider the varying relationships between government and opposition (ranging from close cooperation to fierce competition) but also the potential complexity inside the parliamentary minority. Again, legal systems are not less relevant in autocratic regimes in which opposition MPs can use tools like parliamentary questions to challenge incumbents[30] while also facing an unlevel playing field through the manipulation of legislative rules of procedure.[31]

Opposition inside parliament is not the only counterpart or ruling elites, though. Parties boycotting elections and small parties failing to pass the electoral threshold can still use extra-parliamentary tools (like strategic litigation) to keep tabs on the government. Simi-

26 *Ionescu / de Madariaga*, note 1, p. 9.

27 To be sure, presidents are usually able to build and maintain stable majority support even if their party holds less than half of the assembly's seats. See e.g., *Paul Chaisty / Nic Cheeseman / Timothy J. Power*, Coalitional presidentialism in comparative perspective. Minority presidents in multiparty systems, Oxford 2018, for the phenomenon of coalitional presidentialism and the incumbent's tools to control the coalition. This is one reason why studies in constitutional law have demonstrated that the conventional distinction between presidentialism and parliamentarism is less important than usually assumed. See *Richard Albert*, The Fusion of Presidentialism and Parliamentarism, The American Journal of Comparative Law (2009), pp. 531-577.

28 See *Pascale Cancik*, Parlamentarische Opposition in den Landesverfassungen. Eine verfassungsrechtliche Analyse der neuen Oppositionsregelungen, Berlin 2000, pp. 126 ff.; see also *El Bazzim*, note 5.

29 For empirical examples, see e.g., *Schindler*, note 4, p. 17

30 *Bryce Loidolt / Quinn Mecham*, Parliamentary Opposition Under Hybrid Regimes: Evidence from Egypt, Legislative Studies Quarterly 41 (2016), pp. 997–1022.

31 See e.g., *Regina Smyth / William Bianco / Kwan Nok Chan*, Legislative Rules in Electoral Authoritarian Regimes: The Case of Hong Kong's Legislative Council, The Journal of Politics 81 (2019), pp. 892–905.

larly, non-partisan "fourth-branch institutions" like ombuds offices or electoral management boards can be conceptualized as opposition actors.[32] The same holds true for civil society organizations, youth movements, churches and religious groups, professional associations such as labour unions or law societies, the media or even protesting crowds.[33] In countries with weak parties or opposition parties coopted by incumbents, the mentioned non-party actors might bear the main burden to be a counterpart of power. The assumption that civil society, for instance, should be considered a potential opposition force is corroborated by the increasing legal clampdown in recent decades. A case in point is Africa where various governments imposed legal restrictions on the actions and funding options of civil society organizations, especially on those perceived as engaging in political activities.[34] Also, civic opposition groups are relevant from a public law perspective, since they often articulate grievances through a rights-based and justice-oriented framing, as has been illustrated for Hungary and Turkey.[35]

Going one step further to arrive again at a more dynamic perspective, studies might also pay attention to the interactions between parliamentary and extra-parliamentary opposition forces. Their relations can be regarded as competitive, i.e., both types of actors coexist and rival for leverage, reputation or resources, or as complementary, if they "fill in gaps" by addressing demands or constituencies not dealt with by the other force.[36] A third theoretical option, however, is a substitutive status, for instance if non-party actors stand in for failing or non-existent parliamentary opposition parties.

The listed differentiations (to be sure, more can be added) reveal a nuanced picture of the relationship between opposition and the public law. Overall, they suggest a broad notion of opposition not based on actors, actions and sites of action. Such inclusive concept for instance is offered by *Brack* and *Weinblum* who define opposition as "a disagreement with the government or its policies, the political elite, or the political regime as a whole, expressed in public sphere, by an organized actor through different modes of action".[37] Importantly, in line with this Special Issue's topic, this definition implies that opposition is not referred to in the singular anymore but rather as *oppositions*. Also, this pluralization

32 *Hernán Gómez Yuri* / *Fernando Loayza Jordán,* Fourth-Branch Institutions and Political Oppositions, World Comparative Law 57 (2024), in this issue.

33 *Francesco Cavatorta / Azzam Elananza*, Political Opposition in Civil Society: An Analysis of the Interactions of Secular and Religious Associations in Algeria and Jordan, Government and Opposition 43 (2008), pp. 561–578; *Mirjam Künkler*, Mobilization and Arenas of Opposition in Indonesia's New Order (1966–1998), American Behavioral Scientist 69 (2025), pp. 902-920; *Janette Yarwood*, The Power of Protest, Journal of Democracy 27 (2016), pp. 51–60.

34 See e.g. *Kendra Dupuy / Leonardo R. Arriola / Lise Rakner*, Political Participation and Regime Responses, in: Leonardo R. Arriola / Lise Rakner / Nicolas van de Walle (eds.), Democratic Backsliding in Africa? Autocratization, Resilience, and Contention, Oxford 2023, pp. 37–57.

35 *Bilge Yabanci*, Civic Opposition and Democratic Backsliding: Mobilization Dynamics and Rapport with Political Parties, Government and Opposition 60 (2025), pp. 431-455, p. 436.

36 *Brack / Weinblum*, note 23, p. 75.

37 Ibid., p. 74.

allows to go beyond the sometimes rather restrictive vision of opposition prevalent in Western perspectives.

C. Public Law and the Practices of Opposition: Lessons from the Contributions

The typology outlined in section B established a vocabulary for analysing how public law frames, enables, and constrains political oppositions across different constitutional settings. It also problematised any static or universal model of "opposition," emphasising instead the interplay between legal recognition, regime trajectory, institutional form, and oppositional strategy. Part C now turns to the empirical and doctrinal contributions of the seven articles in this volume, which trace this interplay across various jurisdictions, institutions, and methodologies. These papers do not seek to generalise beyond their cases. Still, when read together, they generate a comparative mosaic that deepens our understanding of how oppositions operate within – and against – the public law frameworks that structure political life.

One theme that runs through several of the contributions is the disjunction between legal form and political practice – between constitutional recognition of opposition and the substantive space available for it to operate. *Aishwarya Singh* and *Meenakshi Ramkumar*'s study of India demonstrates this tension in the context of a constitutional democracy where opposition parties formally retain rights yet struggle to exercise meaningful influence in a populist-majoritarian political climate.[38] Focusing on India's Parliament (specifically its democratically elected lower house), their paper explores how opposition actors, facing a numerically dominant ruling coalition and a shift in political norms, have come to rely increasingly on obstructionist tactics and performative dissent. They argue that these are not symptoms of dysfunction but rather adaptations to a degraded deliberative environment and attempts to reclaim visibility and relevance through the tools that remain. The procedural devices of public law, such as adjournments, walkouts, and the staging of coordinated disruption, thus become instruments of democratic resistance. By closely analysing the institutional logic and symbolic grammar of these practices, *Singh* and *Ramkumar* show how public law is not only a system of rules but a site of contest over legitimacy and authority. Their account reminds us that oppositions, even in established democracies, often operate within shifting and contested legal terrain where formal protections mask shrinking substantive space.

This pattern of formal constitutionalism and substantive constraint also appears in *Rachid El Bazzim*'s examination of Morocco.[39] In a region where multiparty politics often operate within authoritarian parameters, Morocco stands out for having constitutionally recognised the political opposition in its 2011 constitutional reforms, notably through

38 *Aishwarya Singh / Meenakshi Ramkumar*, Oppositional Practice in India: Understanding Parliamentary Responses to Populism, World Comparative Law 57 (2024), in this issue.

39 *El Bazzim,* note 5.

Article 10. Yet, *El Bazzim*'s analysis demonstrates how this recognition coexists with systemic marginalisation, enacted through a combination of procedural hurdles, institutional design, and executive dominance. Moroccan opposition parties, while formally included in the political system, are functionally restricted by a rationalised model of parliamentarism – one that concentrates agenda-setting and legislative initiative in the executive and renders opposition initiatives symbolically important but politically inconsequential. In this environment, public law stabilises a hegemonic political order rather than facilitates genuine contestation. *El Bazzim* further highlights how regime elites strategically differentiate between "loyal" and "disloyal" opposition forces, using constitutional and procedural categories to fragment and weaken oppositional capacity. As such, the Moroccan case reveals a subtle but powerful dynamic: constitutional recognition becomes not a shield for opposition, but a containment device – a façade of pluralism that masks executive consolidation.

A related dynamic is visible in *Johannes Socher*'s contribution on Anglophone Eastern Africa, which shifts the focus from North Africa to a regional comparison across Kenya, Uganda, and Zimbabwe.[40] These jurisdictions, too, have embraced the language of multiparty democracy and opposition rights in their post-authoritarian constitutional texts. Yet, as *Socher* shows, the operational reality is one of strategic procedural manipulation. Through measures such as campaign finance restrictions, the abuse of parliamentary standing orders, and the instrumental use of anti-defection provisions, ruling parties maintain dominance while preserving a legal order that claims to protect pluralism. Particularly in Uganda and Zimbabwe, this manipulation is not incidental but systemic: it reflects a deliberate strategy of autocratic legalism, in which the forms of constitutionalism are maintained even as their spirit is hollowed out. *Socher*'s analysis thus confirms one of the central insights of this special issue—that public law is not only a site of opposition but also a tool of regime entrenchment. His East African case studies illustrate how authoritarian-minded actors exploit the ambiguity and technicality of legal rules to reconstitute political opposition as legally permissible but practically ineffective.

Where *Singh* and *Ramkumar*, *El Bazzim*, and *Socher* focus on legislative institutions, the paper by *Marva Khan Cheema* turns to Pakistan's hybrid democracy to interrogate how opposition status itself becomes unstable and politically contingent.[41] In a system where formal democratic institutions coexist with entrenched military tutelage, *Cheema* argues that opposition is not a fixed legal identity but a fluid political category, defined and redefined by power holders. Her analysis shows how the legal status of opposition leaders—especially the Leader of the Opposition in parliament—has been instrumentalised in political bargaining and rendered conditional on the preferences of the military establishment. This creates an environment of legal uncertainty and strategic ambiguity, where opposition actors are tolerated but not institutionally protected, and where legality operates

40 *Socher*, note 21.

41 *Khan Cheema*, note 23.

more as a discretionary resource than a binding framework. The paper captures the "alegal" opposition phenomenon as discussed in Part B, where actors are neither fully outlawed nor fully protected, but exist in a grey zone of tolerated contestation. *Cheema* also highlights the blurring of opposition and establishment identities, especially when entire segments of the political class find themselves structurally excluded from decision-making. Her analysis calls attention to the fragility of legal categories under hybrid regimes and the importance of understanding opposition not merely as a legal status but as a shifting political role that is constantly negotiated.

If the preceding contributions focus on opposition actors within or adjacent to the legislative sphere, the paper by *Nomfundo Ramalekana* and *Justice Alfred Mavedzenge* broadens the lens to judicial institutions as forums where opposition rights are either protected or undermined.[42] Their comparative study of South Africa and Zimbabwe reveals how courts can occupy sharply divergent roles in shaping the legal possibilities for opposition under democratic stress. In South Africa, the Constitutional Court has actively reinforced the institutional integrity of the opposition by invalidating laws and executive decisions that infringe upon principles of fairness, accountability, and equality in the electoral process. The Court's jurisprudence in cases dealing with party funding disclosure, voter registration access, and the role of independent electoral institutions illustrates a constitutional culture where public law serves not only as a constraint on majoritarian power but as a tool for institutional empowerment of dissent. This creates a positive feedback loop: courts strengthen the opposition's legal standing, which in turn contributes to the preservation of pluralist democratic norms.

In contrast, Zimbabwe's judicial system has often acted as an enabler of executive domination, despite operating under a constitutional framework that nominally protects multipartyism and opposition rights. *Ramalekana* and *Mavedzenge* document how the courts in Zimbabwe have issued rulings that validate executive overreach, ignore violations of opposition freedoms, and allow strategic legal reforms that entrench ruling-party control. Far from being neutral arbiters, these courts become sites of legal legitimation for the status quo, exemplifying a form of autocratic legalism where legality is preserved in form but weaponised in function. The juxtaposition of these two cases underlines a core insight of this special issue: that public law institutions are not merely passive reflections of political configurations but active participants in the construction – or deconstruction – of oppositional space. The same constitutional text can have diametrically different implications depending on judicial independence, institutional design, and prevailing political incentives.

The institutional landscape of oppositional politics is further enriched in the contribution by *Gómez Yuri* and *Loayza Jordán* , which discusses "fourth-branch institutions" as constitutional actors that mediate between government and opposition in Latin America.[43]

42 *Ramalekana* / *Mavedzenge*, note 16.

43 *Gómez Yuri* / *Loayza Jordán,* note 32.

These bodies, such as ombuds offices, electoral management boards, and state auditors, are typically tasked with non-partisan oversight and are formally insulated from political influence. Yet as *Gómez Yuri* and *Loayza Jordán* show, they often become tangled in political conflict, especially in polarised or fragile democratic contexts. Their relationship with opposition actors can range from protective to obstructive, depending on how they are embedded in the political and legal system. In cases such as Peru, Bolivia, and Colombia, fourth-branch institutions have served as venues through which opposition parties and civil society actors challenge executive abuses and defend constitutional norms. In other settings, these same institutions are captured by dominant coalitions and repurposed to block or delegitimise dissent.

Crucially, the paper illustrates that these institutions do not simply reflect partisan alignments; instead, they constitute a distinct layer of constitutional design that can facilitate or frustrate oppositional politics. By foregrounding fourth-branch bodies as constitutional actors in their own right, *Gómez Yuri* and *Loayza Jordán* move beyond a binary view of state and opposition and invite us to think about accountability ecologies that are both institutional and strategic. Their contribution also highlights the value of expanding the analytic category of "opposition" beyond political parties to include a wider set of actors that hold power to account through quasi-legal means. This resonates with the broader argument advanced in Part B of this introduction: that oppositional contestation occurs across multiple sites and is shaped not only by formal rules but by institutional interplay, credibility, and the wider ecosystem of democratic – or authoritarian – governance.

While most contributions explore oppositions that are tolerated, marginalised, or manipulated, the final paper by *Jieren Hu* and *Johannes Rossi* shifts focus to a context where opposition is not merely constrained but structurally precluded.[44] Their study of China's digital constitutionalism introduces a strikingly different configuration – one in which the legal order is engineered to anticipate and pre-empt oppositional activity through the fusion of public law and digital governance. In China, the concept of "rightful control" over cyberspace is enshrined in a constitutional and statutory framework that defines surveillance, content moderation, and platform regulation not as exceptions but as integral to the legal order. *Hu* and *Rossi* argue that this digital paradigm effectively forecloses the conditions under which opposition could even emerge, by criminalising dissent, fragmenting associational space, and algorithmically filtering contentious expression.

What makes this contribution particularly salient for comparative public law is its insistence on legality as a site of legitimation. Rather than suspending legality to suppress opposition, the Chinese regime constitutionalises surveillance and control, thereby embedding authoritarian prerogatives into the legal fabric of the state. The opposition in such a system is not a legal category under siege; it is an ontological impossibility. Yet even here, the role of public law is central – not because it protects dissent, but because it structures the very absence of dissent. In doing so, *Hu* and *Rossi* offer a powerful counterpoint to the

44 *Hu / Rossi*, note 7.

other contributions in this issue. Their paper reminds us that the relationship between public law and opposition is not always adversarial or dialectical – it can also be constitutive, shaping what kinds of oppositional agency are thinkable, legal, or imaginable.

Together, these contributions chart a complex and contingent landscape in which opposition is not a static institutional role but a shifting function, shaped by constitutional text, legal practice, institutional actors, and broader political dynamics. Whether operating through parliamentary tactics, constitutional litigation, fourth-branch oversight, or digital circumvention, oppositional actors adapt to the opportunities and constraints presented by public law. These case studies reveal not only the vulnerability of opposition under democratic backsliding but also its ingenuity and resilience across diverse regime types.

The contributions in this special issue offer a textured and multifaceted account of the relationship between political opposition and public law. While grounded in disparate contexts, ranging from India's performative parliamentarism to China's pre-emptive digital authoritarianism, they collectively demonstrate that opposition is neither a fixed role nor a guaranteed right. It is, instead, a contingent position continuously constituted and reconstituted through law. Public law, in turn, is revealed to be a double-edged instrument: it can serve as a shield that protects dissent, a stage upon which resistance is enacted, or a sword used to neutralise challengers. Across the papers, legality emerges as a terrain of struggle, where opposition actors adapt, subvert, or contest the structures that enable or constrain their activity.

Three cross-cutting insights merit emphasis. First, legality is elastic. From *Singh* and *Ramkumar*'s account of procedural resistance in India to *Hu* and *Rossi's* documentation of digital suppression in China, the boundaries of what is lawful are both strategic and shifting. Opposition actors often weaponise legal ambiguity – just as regimes do – to assert or preserve their space. Second, the institutional location of opposition matters, but not always in predictable ways. Parliaments, courts, and fourth-branch institutions can empower or exclude, depending not only on their formal design but on how they are positioned within a broader regime ecology. Third, the category of opposition itself is plural and expansive. Several contributions push us to consider actors beyond political parties – civil society groups, watchdog institutions, even protest movements – as crucial players in the constitutional politics of opposition.

In synthesising these themes, this special issue reframes opposition not as a residual or reactive category, but as a constitutive element of public law. Understanding how oppositions operate under pressure, whether through legal resistance, institutional innovation, or digital evasion, offers critical insight into the health and trajectory of constitutional orders. These case studies not only deepen our understanding of how oppositional agency persists or collapses under varying conditions; they also raise new questions about the design, resilience, and legitimacy of public law itself. These questions form the foundation for the last section below, where we turn to the future: What are the most pressing research agendas for scholars of opposition and public law? How might comparative constitutional

studies better account for oppositional politics' varieties, venues, and vulnerabilities across regime types?

D. Outlook: Avenues for Future Research

The rich comparative material in this volume opens several promising avenues for future research.

A pressing agenda must involve a deeper investigation into how legal frameworks can be designed to foster constitutional resilience in the face of autocratic legalism and democratic backsliding. Adopting a varieties of constitutionalism framework can help distinguish between legitimate adaptation to new challenges and the erosion of core democratic principles. Future scholarship should explore how different constitutional varieties – be they liberal, transformative, or social – can build resilience, and what lessons can be drawn from the experiences of Global South constitutional orders that have long navigated conditions of crisis.[45] For instance, do transformative constitutions in the Global South, with their emphasis on substantive equality and social change, offer unique legal tools for opposition that are absent in classical liberal frameworks? How do illiberal constitutional systems selectively adopt opposition-related provisions whilst undermining their substance? Such comparative analysis would move beyond the democratic-autocratic binary to reveal more nuanced patterns of oppositional possibility across different constitutional varieties.

Furthermore, the contributions here call for more research into the long-term effectiveness of different oppositional strategies. What are the trade-offs between disruptive parliamentary tactics, strategic litigation, and extra-parliamentary mobilization? And how do former opposition forces behave if they come to power themselves in non-democratic settings? Do they enact legal reforms to create a level playing field as often promised during electoral campaigns or rather manipulate the law to their advantage? The role of fourth-branch institutions in hybrid and backsliding regimes also requires more sustained analysis, particularly concerning how their independence can be institutionally safeguarded.

The concern with autocratic legalism that runs through multiple papers also suggests a research agenda focused on legal innovation by regime actors. Just as this special issue documents oppositional adaptation to constrained circumstances, future work should examine how autocratic and hybrid regimes learn and borrow from each other in developing legally sophisticated tools to manage opposition.[46] Understanding these processes of authoritarian learning and borrowing in the context of suppressing oppositions could help identify emerging threats to oppositional space before they become entrenched.

Besides, the conceptual framework outlined in section B offers various starting points for comparative analyses. For instance, what role does public law play for the dynamic interactions between parliamentary and extra-parliamentary oppositions? Do legal restrictions

45 *Riegner*, note 1, p. 182 et seq.

46 For a study of how illiberal regimes learn from each other, see *Dixon* / *Landau*, note 14.

and lack of constitutional compliance account for competitive, complementary or substitutive relations between both forces? Also, the prevalence of and constitutional compliance with opposition rights is a worthwhile topic for quantitative empirical study on a global scale. Do we observe numerous sham constitutions (as in the field of human rights law) or are constitutional guarantees for oppositions more likely uphold since they belong to the political realm?

The relationship between legal form and political practice, a central tension identified across the contributions, deserves longitudinal study. How do gaps between constitutional text and oppositional reality evolve over time? Research tracking specific jurisdictions through periods of democratic consolidation, backsliding, and potential recovery could reveal whether formal opposition rights serve as "constitutional anchors" or "focal points" that facilitate democratic restoration or merely as empty vessels that legitimate authoritarian rule. This would help answer a crucial question implicit in several contributions: when does constitutional recognition of opposition matter?

Finally, this special issue demonstrates that the study of opposition in the Global South offers vital lessons for the Global North. Phenomena like populist majoritarianism, the weaponization of legal procedure, and the erosion of institutional neutrality are not confined to emerging democracies. The experiences documented in this volume provide both cautionary tales and a potential playbook of resistance for established democracies facing similar pressures. Those experiences show, for instance, that to develop and support strategies against democratic backsliding and constitutional erosion, scholars also need to study how the law and practice of formal oppositions interacts with social movements, traditional and religious authorities, militaries and businesses, with individual and collective practices of dissidence, civil disobedience, and resistance, and with the insurgent normativities and legalities that may arise from such practices. By looking beyond traditional concepts and case studies, and by embracing the full spectrum of constitutional varieties, comparative scholarship can better account for the venues and vulnerabilities of oppositional politics, ultimately enriching our understanding of the universal struggle to hold power to account.