

Oxford Constitutional Law



Democracy

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Content type: Encyclopedia entries

Product: Max Planck Encyclopedia of Comparative Constitutional Law [MPECCoL]

Article last updated: September 2025

Subject(s):

Egalitarianism — Citizens' rights — Judicial independence — Authoritarianism — Direct democracy — Representative democracy — Equality — Individual rights

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A. Introduction

1 Democracy is a form of governance (→ *forms of government*) in which sovereignty (→ *Sovereignty*) is vested in the people, implying that it is responsive to the collective will of the *demos* as a whole rather than to a numerical → *majority*. Majority decisions are not always democratic (Elster and Novak). However, under conditions of political → *equality* and inclusive principles—namely, the inclusion of all those ‘affected by’ and ‘subjected to’ the decisions of a government (Dahl (1970) 64; Dahl (1989) 120)—the ‘majority principle’ (Locke) can serve the common good. In other words, → *majoritarianism* is a procedural rule associated with democracies, but it does not, by itself, define democracy. If a ruling majority excludes opposition parties (→ *political parties or fractions in legislative bodies*) or minority groups from decision-making, it violates the normative core of democracy (Lewis 64–65)—except where the excluded actor’s programme is itself hostile to democratic values (Schupmann 53). When institutional checks are weak, a political majority or a ‘majority faction’ (→ *factions*) may implement undemocratic rules, leading to the ‘tyranny of the majority’ (Tocqueville) or the ‘tyranny of the prevailing opinion and feeling’ (Mill). Therefore, a well-functioning democracy requires constitutional and institutional safeguards to prevent abuse of power. When a ruling majority’s policies are inclusive—that is, they serve the legitimate interests of parties and groups excluded from power—the system approximates the ‘government for the people’ definition of democracy (Lijphart 31).

2 Abraham Lincoln, in his Gettysburg Address (1863), defined democracy as ‘government of the people, by the people, and for the people’. This principle is articulated in Article 21(3) of the Universal Declaration of Human Rights (1948), which states that ‘the will of the people shall be the basis of the authority of government’. Accordingly, governments do not become democratic just because they hold periodic → *elections* and allow political participation (→ *principle of participation*) but because they guarantee and protect fundamental rights including minority rights, and safeguard values essential to democracy by subordinating power to the → *rule of law*; by preventing concentration of powers through → *separation of powers*, and → *checks and balances*; and by subjecting the acts issued by the legislature or an executive body to → *judicial review*.

3 Different countries adapt democratic principles to their historical and political contexts. While the terminology may vary—ranging from ‘democracy’ to ‘→ *republicanism*’ (→ *republic*)—the essential idea is that political power must be exercised with the consent of the governed (Dorsen and others). International instruments, such as the → *International Covenant on Civil and Political Rights* (1966) (→ *civil and political rights*), encourage states to uphold civil and political freedoms under international law (→ *application of international law in domestic legal systems*).

B. Definition and Core Meanings

1. Constitutional References to Democracy

4 Some constitutions explicitly mention the term democracy, while others establish democratic principles without mentioning the term. For example, the Basic Law for the Federal Republic of Germany: 23 May 1949 (as Amended to 13 July 2017) (Ger) declares in Article 20(1) that: ‘The Federal Republic of Germany is a democratic and social federal state’. Paragraph 2 states that: ‘All state authority is derived from the people’. The Basic Law thus establishes a ‘→ *militant democracy*’ which means that parties can be banned when they ‘seek to undermine or abolish the free democratic basic order’ (Art. 21(2) Basic Law of Germany). Similarly, Article 18 allows the forfeiture of → *individual rights* if these are used to challenge the liberal democratic order. In the *Socialist Reich Party Case* of 1952 (Ger) the → *Federal Constitutional Court of Germany* (*Bundesverfassungsgericht*) defined a

‘free democratic order’ as one ‘which eschews any form of rule by force or arbitrary rule in favour of the rule of law based on the → *self-determination* (→ *Self-Determination*) of the people in accordance with the will of the current majority and on the principles of liberty and equality. It comprises at least the respect of the fundamental rights specified in the Basic Law, above all of the right of any person to life and free development, → *popular sovereignty*, separation of powers, accountability of the government (→ *political accountability*; → *judicial accountability*), subordination of the administration to the law, → *independence of the judiciary*, a multi-party system, and the right of political parties to compete in conditions of equality as well as the right to form and conduct a lawful opposition. In the *Communist Party Ban Case* of 1956 (Ger), the Constitutional Court argued that it had an obligation to defend and maintain militant democracy. The Court found that the Communist Party (‘KPD’) sought to overthrow the democratic basic order and therefore ordered its dissolution and confiscation of its property (→ *state interference with private property*).

5 The Federal Constitution of the Swiss Confederation: 18 April 1999 (as Amended to 2018) (Switz), in its Preamble (→ *preamble*), expresses the Swiss People’s resolve to strengthen ‘liberty and democracy’. Article 51(1) of the Constitution states that each Canton shall adopt a democratic constitution, and it must be approved by the people.

6 The Preamble to the Constitution of India: 26 January 1950 (as Amended to 16 September 2016) (India), resolves to constitute India as a ‘sovereign, socialist, secular, and democratic republic’ (→ *secularism*). The Constitution does not define ‘democracy’ in a single article, yet it is implied in the provisions of → *universal suffrage* (→ *suffrage*), the fundamental rights enshrined in Part III, and the directive principles of state policy in Part IV. In *Kesavananda Bharati v State of Kerala* (1973) (India), the → *Supreme Court of India* has interpreted democracy as part of the Constitution’s ‘basic structure’.

7 The Preamble to the Constitution of the Republic of South Africa: 18 December 1996 (as Amended to 2012) (S Afr), establishes a society based on democratic values, social justice, and human rights, and lays the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law. Section 1(d) of the Constitution identifies ‘universal adult suffrage, a national common voters’ roll, regular elections and a multi-party system of democratic government’ as core democratic values. In the Constitution ‘democracy’ appears in Sections 1, 7, 36(1), 39(1), 57, 59(2), 61(3), 70(1), 72(2), 116, 118(2), 152(1), 160(8), 181(1), 195(1), 234, and 236. In *Doctors for Life International v Speaker of the National Assembly and Others* (2006) (S Afr), the → *Constitutional Court of South Africa* held that the constitution contemplates a democratic government ‘that is partly representative and partly participatory, is accountable, responsive and transparent and makes provision for public participation in the law-making processes’ (para. 116).

8 The Constitution of the Federative Republic of Brazil: 5 October 1988 (as Amended to 2017) (Braz)—often called the ‘Citizen Constitution’—emphasizes in its Preamble the creation of ‘a democratic state destined to ensure the exercise of social and individual rights, liberty, security, well-being, development, equality and justice’. Article 1 of the Constitution states that the Federative Republic of Brazil is founded on principles such as sovereignty, → *citizenship*, human dignity (→ *human dignity and autonomy*), social values of work and free initiative (→ *labour rights*), and political pluralism.

2. Constitutional References to Democratic Norms without Explicit Terminology

9 Many constitutions do not explicitly mention the word ‘democracy’ but are still democratic insofar as the government derives its → *legitimacy* from the will of the people it governs and is both representative and responsive to their collective will. For example, the Commonwealth of Australia Constitution Act: 9 July 1900 (consolidated as of 4 September 2013) (Austl) does not mention the term ‘democracy’. However, the High Court of Australia has used terms such as ‘→ *representative democracy*’ and ‘representative government’. In *Theophanous v Herald and Weekly Times* (1994) (Austl), the court linked democracy in Australia to the operation of the freedom that ‘extends to all those who participate in political discussion’ (at 123) but also maintained that the freedom is not absolute because the concept of representative democracy does not require an absolute → *immunity* (→ *immunity of legislative body members*; → *immunity of heads of state under constitutional law*) (at 133–34). In *Lange v Australian Broadcasting Corporation* (1997) (Austl), the Court accepted that the Constitution provides representative and responsible government, by way of implication drawn from Sections 7, 24, 64, 128, and related Sections (at 557–58).

10 Likewise, the Constitution of the United States of America: 17 September 1787 (as Amended to 1992) (US) does not use the word ‘democracy’. However, the Preamble begins with the phrase ‘We the People’, which reflects a commitment to popular sovereignty. Article I recognizes the supremacy (→ *supremacy / primacy*) of the people through their elected representatives. Articles I–III implement the doctrines of separation of powers and checks and balances to prevent the unconstrained exercise of power. Article IV provides for a republican form of government in each state. The → *Supreme Court of the United States* upholds the principle of popular sovereignty. For instance, Justice James Wilson in *Chisholm v Georgia* (1793) (US) reasoned that sovereignty belongs to the people, who—by ratifying the Constitution (→ *ratification of constitutions*)—bound themselves to the nation’s laws. Similarly, Chief Justice Marshall in *McCulloch v Maryland* (1819) (US) expressed that: “The government proceeds directly from the people; is “ordained and established” in the name of the people ... “in order to ... secure the blessings of liberty to themselves and to their posterity”” (at 404).

3. Overlapping Concepts and Disambiguation

11 The term ‘democracy’ overlaps with concepts such as representative democracy, liberal democracy, social democracy, egalitarian democracy (→ *egalitarianism*), participatory democracy, deliberative democracy, and → *direct democracy*. Modern democracies are representative, that is, citizens elect representatives to make laws on their behalf. In this ‘electoral model’, the composition of the executive is determined by free, fair, and competitive election which makes rulers responsive to citizens.

12 A liberal democracy is a form of representative democracy that imposes constraints and constitutional limits on representative government in order to protect civil liberties. → *Liberalism* takes a ‘negative’ view of power and conceptualizes liberty as ‘absence of coercion’ (Hayek 11). It seeks to build institutions to prevent → *totalitarianism* (Bell 698). This liberal model judges the quality of democracy by the extent of limits placed on → *executive powers* through the rule of law, separation of powers, an independent → *judiciary*, checks and balances (vertical, horizontal, and popular), and the role of media (→ *regulation of the media*) as the Fourth Estate—a watchdog monitoring the misuse of power.

13 Social democracy adds another dimension to liberal democracy, which is social and economic justice. It prescribes the use of democratic collective action to achieve socio-economic equality through policies such as social welfare (→ *general welfare*) and economic redistribution. It seeks to use the power of the democratic state to counter inequality and injustice created by laissez-faire capitalism (Jackson) and create a better world (Berman). Countries such as Sweden, Norway, Denmark, and Finland are social democracies which combine liberal → *constitutionalism* with extensive social protections (Brandal and others). The social democratic model succeeded in reconciling economic freedom (laissez-faire) and equality (welfarism), resulting in egalitarian-democratic governance (Przeworski).

14 However, the egalitarian effect can be achieved without a party-ideological project. Thus, researchers from the Varieties of Democracy ('V-Dem') Institute define and measure egalitarian democracy without reference to social democracy. Egalitarian democracy is achieved when rights and freedoms of all social groups are protected; resources like education (→ *secondary education*; → *right to education*; → *primary education*), health (→ *right to health*), and social protection are equally distributed across groups; all social groups have equal access to political power; and no single social group in the society dominates (Coppedge and others 45, 55).

15 While constitutional guarantees of political equality, social justice, and economic security are essential for democratic legitimacy, they are not sufficient to complete the democratic project. A vibrant democratic polity also requires a participatory society which educates, trains, and prepares citizens for active and empowered civic participation. Thus, in a participatory democracy, the scope of participatory decision making extends beyond the state, well into the business of the workplace, where individuals learn participatory procedures and skills (Pateman 41). However, participation alone is not sufficient; the quality of participation is equally important, because high participation backed by ideological polarization, hyper nationalism, and intimidation can collapse into fascism and totalitarianism. Therefore, once avenues for participation are established, the focus must shift to the quality of democratic engagement. This is where deliberative democracy comes into play, which can arguably reverse the rise of populist leaders who seek to increase the scope of participation and yet suppress the space for deliberation.

16 Deliberative democracy is characterized by informed, inclusive, and reasoned deliberation among free and equal citizens—and their representatives—both before (the agenda-setting stage) and after (the evaluation stage) policy decisions, with the aim of shaping present or future public policies (Dryzek; Gutman and Thompson). Drawing on John Rawls's (1997) idea of public reason and Jürgen Habermas's (1981) theory of communicative action, the aspiration is that public policies should not be designed or imposed (→ *imposed constitutions (constitutions octroyées)*) on the basis of the ideological or partisan preferences of ruling majorities but should be co-created and co-produced by citizens and public authorities through rational-critical debate and high-quality argumentation.

17 Direct democracy aims to 'give citizens a voice on questions of public policy' (*James v Valtierra* (1971) (US), cited in *City of Eastlake v Forest City Enterprises, Inc.* (1976) (US) at p. 673). In practice, it allows citizens—rather than representatives—to vote on specific issues, policies, and laws. It integrates participatory and deliberative principles through institutionalized mechanisms such as initiatives and referendums that are preceded by reasoned public discourse (Matsusaka). Pure direct democracy is rare; most democracies adopt mechanisms of direct democracy as a corrective or complement to a representative system (Altman). However, in some countries it is an integral part of the political system—

for example, in Switzerland and Liechtenstein; in several US states (eg, California); and, to some extent, in Germany and Italy.

18 Beyond categories like representative, liberal, social, egalitarian, participative, deliberative, and direct democracy, some regimes are understood through labels such as ‘illiberal democracy’, ‘guided democracy’, ‘managed democracy’, and ‘over-managed democracy’. These terms describe systems that retain democratic structures and processes but seriously compromise liberal-democratic safeguards.

19 Illiberal democracy is a regime which maintains a democratic constitution and holds regular elections but weakens liberal democratic guarantees such as pluralism and dissent, checks and balances, minority rights, the rule of law, and judicial independence (Zakaria). For example, in 2014, Hungarian Prime Minister (→ *prime minister and chancellor*) Viktor Orbán openly embraced the illiberal democratic model. He argued that liberalism puts individual interests above national unity. Therefore, he upheld and sought to emulate ‘work-based models of illiberal states’ such as China, Russia, Singapore, and Turkey (Bíró-Nagy).

20 Guided democracy is a system where the outward appearance of democratic processes is maintained, but the elections are tightly controlled by the executive. Indonesian President Sukarno, from 1959 to 1966, implemented ‘Guided Democracy’ to centralize authority and address political instability (Feith). This approach also curtails democratic processes and dissent.

21 Managed democracy refers to a system where competitive elections are held and institutional pluralism is maintained; yet the ruling party influences the electoral playing field—by controlling media narratives and restricting opposition activities—primarily to make sure that it continues to win elections. Russia in the early Putin era (2000–2008) represents this model. It uses sophisticated mechanisms of control, such as the use of modern technology to influence public opinion and suppress dissent (Tsygankov).

22 Overmanaged democracy (Petrov and others) is an extreme form of managed democracy where governance becomes highly intrusive, personalized, and reactive. Like all illiberal models of democracy, it offers short-term political stability, but in the long run it weakens state capacity and induces what Olson called ‘institutional sclerosis’ (Olson). Russia under Vladimir Putin after 2008 is the closest approximation to the ideal type of this model (Petrov and others).

C. Evolution of Democracy

1. Ancient Foundations

23 Athenian democracy is the earliest example of direct democracy. The reforms of Cleisthenes in 508 BCE initiated democratic governance. However, the democratic ideas of public deliberation and popular sovereignty reached their peak under the rule of Pericles between 461 and 429 BCE—the Golden Age of Athenian democracy (Mitchell). The Assembly (*Ekklesia*) served as the decision-making body, open to all free adult male Athenian citizens to debate and vote on laws (Carey). Athens’ democracy was briefly replaced by a pro-Spartan oligarchy after Athen’s defeat in the Peloponnesian War in 404 BCE. As tyranny failed, the Spartans allowed the Athenians to restore a moderate form of democracy in 403 BCE. Athenians—having seen the limits of unchecked popular rule—gave primacy to the sovereignty of law over popular sovereignty (Ostwald). Later, Athenian

democracy was decisively replaced with a Macedonian oligarchic settlement after the Lamian War in 322 BCE.

24 The Roman Republic (509 BCE–27 BCE) introduced a system of mixed governments (→ *history and theory of mixed governments*) that combined elements of monarchy (→ *monarchical constitutions*), aristocracy, and democracy to establish an ‘equilibrium’ between the power of the consuls, the power of the senate (→ *bicameralism*), and the power of the people (Gwynn; Lintott). Therefore, Roman *res publica* was different from Athenian *demokratia* in the sense that power in the Roman Constitution was separated among consuls, the Senate, and the assemblies rather than being concentrated in the *demos* (the people). The assemblies of the people—the *comitia centuriata*, *comitia tributa*—laid the foundation for mechanisms of representation as well as direct democracy. They had the final word in the election of magistrates and exercised the whole spectrum of → *legislative powers*. However, by the 1st century BCE, inequality, land-grabs, and civil wars (→ *Armed Conflict, Non-International*) had weakened republican values in public life. This eventually paved the way for the Principate in 27 BCE. Thereafter, power became centralized, and autocracy replaced citizen participation (Kershaw; Wells). The assemblies survived in form but lost substance and became ceremonial over time.

2. Medieval Transition and Proto-Constitutionalism (476 CE–1453 CE)

25 In 476 CE, the Western Roman Empire disintegrated into small kingdoms and tribal regions (→ *rights of indigenous communities*; → *constitutional protection of the autonomy of ethnic groups*). The unified Roman law system and tax (→ *taxes*) system broke down. These systems were replaced by customary (→ *custom (customary law)*) or tribal laws and private protection rackets led by local chieftains, military leaders, and landowners who offered protection in exchange for loyalty, service, kinship, labour, or rent. This laid the groundwork for feudalism during the Middle Ages (Ganshof; Ward-Perkins). The Catholic Church filled the void created by the absence of an imperial authority. The Bishop of Rome—the Pope—provided leadership and political direction. After 1030 CE, centralized monarchies began to re-emerge leading to new tensions between the monarch, the Church, and the nobility. King Conrad II of Germany in 1037 CE and King Henry of England in 1100 CE assured the nobles that their interests will be protected. In 1215, the nobility rebelled against King John of England, seeking to limit his authority.

26 Rebellious barons forced King John of England to sign the → *Magna Carta (1215)* which limited his monarchical powers. The charter subjected monarchs to the rule of law and affirmed basic liberties. The king was compelled to consult barons before taxation (→ *public finance*) and the latter also got protection from arbitrary imprisonment (→ *prisons and prisoners*). This laid the foundation of → *parliamentary systems* (→ *legislative bodies*) and legal rights-based constitutionalism. However, this did not lead to democratization, that is participation of people in political affairs because the political power remained concentrated in feudal lords and the Church (Holt and others; Vincent).

27 The English Parliament began to take shape with the summoning of the Model Parliament by Edward I in 1295, which included not only nobles and clergy but also commoners—a limited step toward representative institutions (Maddicott). Elsewhere in Europe, city-states like Venice, Genoa, and certain German Free Cities experimented with oligarchic or proto-republican systems of governance (Wilson).

3. The Renaissance, Rationalism, and Reformation

28 The Renaissance (1300–1700) signified ‘rebirth’ of classical wisdom—a shift from the Middle Ages’ theocentric (God-centred) (→ *express recognition of deity in constitutions*) to an anthropocentric (human-centred) vision of society and politics. It emphasized reason, scientific inquiry, humanism, individualism, and secularism. The core idea was that the goal of political authority is to fulfil needs and aspirations of people rather than to establish a divine order (Skinner). The fall of Constantinople in 1453, which ended the Eastern Roman Empire, was a turning point in terms of the rise of democratic thought. Byzantine scholars who had preserved ancient Greek and Roman texts fled to cities like Florence, Venice, and Paris, spreading and popularizing democratic ideas in early modern Europe (Downing).

29 In 1517, Martin Luther challenged the supremacy of the Catholic Church and emphasized individual conscience (→ *freedom of conscience and religion or belief*) and political awareness. This triggered the Protestant Reformation. As a result, several monarchs in Northern Europe rejected authority of the Roman Church. On the other hand, in Central and Southern Europe, the Catholic Church retained its spiritual authority through its counter-reformation efforts. However, when the Catholic Holy Roman Emperor Ferdinand II reimposed Catholic orthodoxy, there was a strong resistance from Protestants. This ignited the Thirty Years’ War (1618–1648).

30 The Thirty Years’ War (1618–1648) ended with the Treaty of Westphalia (cf → *Westphalian System*). It reduced the power of the Church and supported the idea that rulers had control over their own territory. The treaty did not create democracy, but it sowed the seeds of the idea of modern states—where rulers could govern without outside interference. After the decline of the Catholic Church’s political authority, several European monarchs asserted absolute power. In 1655, King Louis XIV of France famously declared: ‘*L’État, c’est moi*’ (‘I am the state’).

4. The Enlightenment (1650–1800): Intellectual Foundations of Constitutional Democracy and Democratic Revolutions

31 While → *absolutism* dominated much of continental Europe, a counter current was underway in England. In 1642, King Charles I’s efforts to deny Parliament’s involvement in passing laws, imposing taxes and raising an army led to civil war between supporters of King Charles I, the Royalists, and the Parliamentarians. In 1649, the Parliamentarians emerged victorious; Charles I was sentenced to death, and a republic—the → *Commonwealth*—was established under the leadership of Oliver Cromwell. After Cromwell died in 1658, the republic unravelled and monarchy was restored in 1660 under Charles II. His successor, James II, openly supported Catholicism and royal absolutism, which alarmed the Protestant political elite. In 1688, Parliament deposed the Catholic King James II and invited his daughter Mary and her Dutch husband, William of Orange, both Protestants, to the throne to rule jointly on the condition that they accept a constitutional monarchy (Vallance). This event is known as the Glorious Revolution (→ *revolution*). It led to the enactment of the → *Bill of Rights (1689)* (→ *bill of rights*), which established → *parliamentary sovereignty* in the United Kingdom.

32 Despite not being a democracy in the modern sense, 17th century England demonstrated that limited executive power, legal accountability, and individual rights were essential elements of democratic governance (Cartledge; Vallance).

33 At the heart of the Enlightenment thought was not only the rejection of absolute monarchy, but more importantly, the revolutionary idea that citizens could hold their leaders accountable. Immanuel Kant in ‘What is Enlightenment?’ (1784) defined the Enlightenment as man’s emergence from his self-imposed immaturity and his ability to think independently and critically and question authority. John Locke in the ‘Two Treatises of Government’ (1689) challenged the divine-right theory and defended individuals’ natural rights (→ *philosophical foundations of natural rights*) to life, liberty, and property. He argued that it is legitimate to bring about the dissolution of a government (cf → *dissolution of the legislative body*) that fails to protect individuals’ natural rights. Montesquieu in ‘The Spirit of Laws’ (1748), argued that the only way to guard against tyranny and preserve liberty is to divide powers among executive, legislative, and judicial branches. In ‘The Social Contract’ (1762) Jean-Jacques Rousseau articulates his vision of a Republic as a free community of equals where citizens, rather than representatives, ratify the laws. Rousseau favours direct-democratic sovereignty but not direct democracy as a form of government. Similarly, he rejects representative sovereignty but not representative government (Colón-Ríos; Douglass; Verli). Voltaire, in his novella ‘Candide’ (1759), attacked religious intolerance (→ *tolerance*) and advocated freedom of speech and religion (→ *relation of religion to state and society*). Thomas Paine’s ‘Common Sense’ (1776) supported the American Revolution and the idea of republicanism. In ‘The Rights of Man’ (1791–1792), he defended the French Revolution and highlighted the necessity of revolutions to achieve self-governance.

34 The Enlightenment ideals of liberty, equality, civil and natural rights, and responsible citizenship inspired the American Revolution (1776). ‘No taxation without representation’ was a phrase that emphasized the principles of self-governance, political representation, and popular sovereignty. After independence, the United States Constitution of 1787 founded a republic based on the tenets of → *federalism*, separation of powers, checks and balances, and judicial review. The first ten amendments to the United States Constitution, collectively known as the Bill of Rights, were ratified in 1791.

35 The French Revolution (1789–1799) was inspired by the Enlightenment ideas such as liberty, equality, and fraternity. It challenged all kinds of dominance, including that of the monarchy, nobility, and clergy. These values are enshrined in the → *French Declaration of the Rights of Man and of the Citizen* (1789). The Revolution was marred by the Jacobins’ Reign of Terror (1793–1794) against monarchists. In 1799, Napoleon seized power and authoritarian (→ *authoritarianism*) rule returned; yet he integrated into the administrative framework of France many revolutionary principles such as equality before the law, secular authority, property rights, and abolition of feudal privileges.

5. Three Waves of Democracy

36 The first wave of democracy (1828–1926) started with the expansion of the → *right to vote* (Huntington). In the United States, the presidential (→ *presidential systems*) election of 1828—under the banner of Jacksonian democracy—extended voting rights to working-class white men by eliminating property requirements for voting. In the United Kingdom, a series of Reform Acts (1832, 1867, 1884) gradually expanded voting rights—from the landed elite to middle-class men to urban working-class men and to rural labourers. In 1893, New Zealand became the first country in the world to extend voting rights to women. In 1918, the United Kingdom granted voting rights to women over the age of 30, acknowledging their contributions during World War I. A decade later, in 1928, suffrage was extended to

women on equal terms with men. In the United States, women gained the right to vote with the 19th Amendment in 1920.

37 World War I (1914–1918) led to the collapse of the Ottoman, Austro-Hungarian, German, and Russian empires. The idea of self-determination promoted by United States President Woodrow Wilson in the → *Fourteen Points of Wilson* (1918) encouraged countries to adopt democratic constitutions. By 1926, about 29 countries had introduced some form of electoral democracy.

38 In the context of post-war economic hardships and distrust in weak democratic governments, many countries slid back into authoritarianism. In Italy, Benito Mussolini established a fascist dictatorship in 1922. Adolf Hitler, the leader of the Nazi Party, was appointed Chancellor of the Weimar Republic of Germany on 30 January 1933. In the Soviet Union, Joseph Stalin assumed power and became dictator in 1924. By the end of 1942, there were 12 democracies.

39 The Second Wave of Democracy started after World War II (1939–1945). It was characterized by the downfall of fascist regimes in Japan, Italy, and Germany. → *Decolonization* (→ *decolonization*; → *colonization*) swept through Asia, Africa, and the Middle East, resulting in newly independent states, many of which adopted democratic constitutions. The United Nations was founded in 1945 to support self-determination, democratization, and protection of human rights and promotion of international peace and stability. Over time, the hypothesis that there exists a correlation between democratization and international peace evolved into two different theories. The ‘Democratic Peace Theory’ posits that democratic nations are less likely to engage in armed conflict with each other (Doyle; Russett). On the other hand, the ‘Territorial Peace Theory’ posits that a climate of peace, stability, and security promotes democratization (Gibler). By 1962, the democracies rose from 12 to 36.

40 In the late 1960s and 1970s, democracy collapsed in many newly independent countries in Asia, Africa, and Latin America. The shift from democracy to authoritarianism in these countries was driven by public dissatisfaction with the democratic systems’ inability to resolve economic crises and social conflicts, as well as foreign support for the alternative authoritarian regimes. In the context of the → *Cold War* (1947–91) rivalries, both the United States and the USSR supported authoritarian regimes. The United States supported right-wing authoritarian regimes that opposed → *communism*, for instance, in Chile (1973), Iran (1953), the Philippines (1972), South Vietnam (1955–1963), and Indonesia (1965–1966). On the other hand, the Soviet Union supported left-wing authoritarianism. Many countries in Eastern Europe, such as East Germany, Poland, Hungary, Czechoslovakia (→ *Czechoslovakia, Dissolution of*), Romania, and Bulgaria had already become Soviet satellite states after World War II. The USSR also provided economic and military support to the communist movements in Cuba (1959), Vietnam (1975), Angola (1975), and Mozambique (1975). As a result, by the mid-1970s, the number of functioning democracies declined to 30.

41 The Third Wave of Democracy started in 1974 with a peaceful military coup (→ *coup d'état*) in Portugal called the Carnation Revolution. This movement inspired similar transitions in Greece (1974) and Spain (1975). These transformations in Southern Europe catalysed the collapse of authoritarian communist regimes throughout Eastern Europe during the late 1980s and early 1990s. The Fall of the Berlin Wall on 9 November 1989 (→ *Berlin* (1945–91)), became the symbol of communist collapse. Mikhail Gorbachev’s 1985–1986 reforms, known as *Perestroika* (restructuring) and *Glasnost* (openness), ended the Brezhnev Doctrine and decreased Soviet interference in Eastern Europe. As a result, Soviet-backed communist regimes transitioned to democratic governance between 1989 and 1990,

including Poland (1989), Hungary (1989), East Germany (1989–1990), Czechoslovakia (1989), Bulgaria (1989–1990), and Romania (1989). The process culminated in the disintegration of the Soviet Union on 31 December 1991 and the end of the bipolar global order. The USSR was replaced by 15 sovereign republics. In Latin America, Argentina (1983), Brazil (1985), Chile (1988–1990), and Uruguay (1985) moved toward democratic systems. In Asia, the Philippines (1986) and South Korea (1987) overthrew authoritarian regimes. By 1991, the number of democracies had risen to 118, up from 30 in the mid-1970s.

6. Role of International Organizations

42 International organizations have promoted and supported democracy in postcolonial and post-conflict states. United Nations missions have guided → *drafting of constitutions* in accordance with the benchmarks of self-determination set in the → *United Nations Charter* (1945), the Universal Declaration of Human Rights (1948), and the International Covenant on Civil and Political Rights (1966). Similarly, the → *European Court of Human Rights (ECtHR)* has shaped constitutional reform across Europe. The → *Organization of American States (OAS)* and its Inter-American Democratic Charter (2001) have supported democracy in Costa Rica, Colombia, Haiti, Honduras, Paraguay, Venezuela, Bolivia, Nicaragua, and Peru.

D. Analysed Constitutions

43 This entry analyses seven constitutions—selected from North America (United States), Europe (Germany and Switzerland), Asia (India), Africa (South Africa), Latin America (Brazil), and Oceania (Australia). The United States Constitution (1787) establishes a presidential federal democracy based on separation of powers, judicial review, and individual rights. Germany's Basic Law (1949) establishes a parliamentary federal system with proportional (cf → *proportionality*) representation and a constitutional court with a commitment to the idea of 'militant democracy'. India's Constitution (1950) combines parliamentary democracy, quasi-federalism, and an independent judiciary. Judicial review is a part of the basic structure of the constitutional framework. India is an example of inclusive and representative governance in the face of → *cultural diversity* and regional disparities. The 1996 Constitution of South Africa establishes a unitary-decentralized (→ *decentralization*) parliamentary republic based on the principle of cooperative governance. The Bill of Rights protects a wide range of civil, political, and socioeconomic rights. Brazil's 1988 Constitution, known as the 'Citizen Constitution,' establishes a presidential federal democracy that combines American-style separation of powers with a European-style → *social rights*. The executive is directly elected (as in the United States), but the legislature is elected through proportional representation in multi-member districts. This results in a hybrid government structure known as 'coalition presidentialism'—a unique paradigm of democratic constitutionalism in the Global South. Switzerland's 1999 Constitution is a unique model of direct democracy within a federal framework. The executive power is exercised by a seven-member collegial Federal Council—a collective presidency reflecting the country's commitment to power-sharing across its diverse linguistic and religious communities. Finally, Australia's Constitution (1901) exemplifies a 'Washminster' model, combining a federal US-style structure with a British-style parliamentary democracy (Thompson).

E. Comparative Description

1. Constitutional Recognition of Popular Sovereignty

44 Popular sovereignty is a doctrine which states that all political power rests with the people, and government derives its power from those it governs. In the United States, the Supreme Court declared in *Chisholm v Georgia* (1793) (US) that the supreme power resides in the people of the country. Though the Eleventh Amendment reversed *Chisholm* on the issue of → *state immunity*, it did not repudiate the idea of popular sovereignty. Germany's Basic Law enshrines this principle in Article 20(2) and protects it from amendment via the 'eternity clause' (→ *entrenched clauses*) in Article 79(3). In *Solange I* (1974) (Ger), the Federal Constitutional Court held that powers transferred to the European Union must not undermine German fundamental rights and other constitutional principles. Article 1 of Switzerland's Constitution, states that the people and the cantons together form the Swiss Confederation (→ *Confederations of States*). Article 51 requires that each canton must adopt a democratic constitution approved by the people and open to revision (→ *amendment or revision of constitutions*). The Swiss system gives citizens two tools to influence laws and policies: referendums and popular initiatives. Brazil's Constitution, states in Article 1: 'All power emanates from the people'. Like the United States, the Preamble to India's Constitution also begins with the phrase 'We, the People of India', indicating popular sovereignty. In *Kesavananda Bharati v State of Kerala* (1973) (India), the Supreme Court held that democracy is part of the Constitution's 'basic structure'. In *SR Bommai v Union of India* (1994) (India), the Court observed that legal sovereignty resides in the people, and the Prime Minister and his Council of Ministers (→ *ministries and departments*) is accountable to the people. In South Africa's Constitution, Section 1 identifies the democratic system as 'based on the will of the people'. In *New National Party v Government of the Republic of South Africa* (1999) (S Afr), the Constitutional Court established popular sovereignty as a condition for legitimacy. In Australia, the High Court in *Lange v Australian Broadcasting Corporation* (1997) (Austl), has interpreted the Constitution as reflecting a system of democratic accountability and responsible government, which makes popular sovereignty a part of the constitutional order.

45 Popular sovereignty is a principle embedded in constitutional texts and judicial interpretations (→ *interpretation of constitutions*). However, its actual role within legal systems remains a matter of debate. In elite-dominated democracies, the notion of popular sovereignty masks and legitimizes elite control, rather than acting as a mechanism of political control by the people (Levinson). Even when not seen as a constitutive fiction, popular sovereignty cannot be understood as the people's direct authority over lawmaking but rather as a principle that lends legitimacy to representative institutions while being itself bounded by the rule of law (Beckman).

2. Provision for an Elected and Accountable Executive

46 A constitutional democracy requires that the executive branch is chosen by means of competitive elections and remains politically accountable to the electorate or the representative legislature (Dahl (1971); Linz and Stepan; Sartori). In contrast, executives in monarchies, military regimes, or autocracies do not act as people's representatives but rather exercise power without accountability.

47 In the United States, voters in each state choose electors (the electoral college), who subsequently vote for the president (Art. II, s 1). On the other hand, Brazil's president is directly elected. If no candidate receives more than 50 per cent of the vote in the first round, a second round is held between the top two candidates to guarantee that the winner receives majority support (Art. 77). Germany has a parliamentary system in which members of the *Bundestag* (the parliament) elect the executive, the Chancellor. Typically, the

Chancellor is the leader of the majority party or coalition in the *Bundestag* (Art. 63). In South Africa, the President is chosen by the lower house of Parliament—the National Assembly (s 86). The President serves as both the head of state and the head of government (→ *heads of state and government*). India has a parliamentary system where the president is the nominal executive or head of state, and the prime minister is the real executive and leads the government. The President is elected by the members of the parliament and the legislative assemblies of the states and union territories (Art. 54). The leader of the majority party or coalition in the *Lok Sabha* (the lower house of Parliament) is appointed as Prime Minister by the President (Art. 75). Australia is a federal parliamentary constitutional monarchy. The Prime Minister is the head of government and the leader of the House of Representatives' majority party or coalition. The Governor-General (cf → *government of component federal units*) is the monarch's representative and formally appoints the Prime Minister according to established customs, not any particular constitutional provisions.

3. Provision for an Elected and Representative Legislature

48 An elected and representative legislature is key to democratic constitutionalism (Dahl (1971); Linz and Stepan; Sartori). This is different from ceremonial or rubber-stamp legislatures of authoritarian regimes.

49 The United States Congress is bicameral. Article I, Section 1 of the Constitution establishes the legislative branch's structure, consisting of the Senate and the House of Representatives. The electoral processes are governed by a combination of constitutional provisions and legislative statutes. Article I, Section 2 specifies that the people of each state directly elect members of the House. Originally, state governments elected senators, but the Seventeenth Amendment (1913) to Article I, Section 3 provided for their direct election by the people. Most states use a plurality voting technique (the 'first-past-the-post' system), and some states use different methods, such as ranked-choice or runoff elections.

50 Brazil's National Congress is bicameral, comprising the Federal Senate (*Senado Federal*) and the Chamber of Deputies (*Câmara dos Deputados*) (→ *chamber of deputies*), as established in Article 44. Elections to the *Câmara dos Deputados* are based on an open-list proportional representation system (Art. 45). Each state sends three senators to the Federal Senate for eight-year terms. Every four years, either one-third or two-thirds of the seats are up for election, and the elections are staggered, that is, they don't all happen at once. The Superior Electoral Court (*Tribunal Superior Eleitoral* ('TSE') (→ *electoral courts*) makes sure that the Electoral Code (Law No. 4,737 of 1965) (Braz) is followed.

51 Germany's federal legislature comprises two legislative chambers: the *Bundestag* and the *Bundesrat*. The *Bundestag* is directly elected by the German people using a mixed-member proportional representation system (Art. 38). The *Bundesrat* represents the governments of the federal states or *Länder* (Arts 50 and 51). Its members are appointed by the governments of the 16 *Länder* (Art. 51(1)).

52 Switzerland's Federal Assembly is also bicameral. Members of the National Council are elected by the people through proportional representation (Art. 149). The Council of States represents the cantons. Its members are elected according to cantonal laws (Art. 150).

53 South Africa's Parliament is bicameral, consisting of the National Assembly and the National Council of Provinces (s 42(1)). The National Assembly is elected through a closed-list proportional representation system as outlined in Section 46(1)(d). The National Council

of Provinces ('NCOP') represents the provincial interests (s 42(4)). The members of NCOP are appointed by the provincial legislatures in accordance with Section 60(1).

54 India's Parliament is bicameral, comprising the House of the People and the Council of States (Art. 79). Members of the *Lok Sabha* are elected by the first-past-the-post system (Art. 81). The *Rajya Sabha* members are elected by the elected members of the state legislative assemblies through a single transferable vote system (Art. 80(4)). The *Rajya Sabha* is a permanent body, with one-third of its members retiring every two years (Art. 83(1)).

55 Australia's Parliament is bicameral, comprising the House of Representatives and the Senate (s 1). Members of the House of Representatives are chosen directly by the people (s 24) using a full preferential voting system governed by the Commonwealth Electoral Act 1918 (Austl). Senators are directly chosen by the people of each state (s 7) employing a proportional representation system with single transferable votes, detailed in the Commonwealth Electoral Act 1918.

4. Guarantee of Fundamental Rights

56 Fundamental rights—codified (→ *codified / uncoded constitution*) in a bill of rights—are structural foundations of democratic governance (Fleming). The → *freedom of expression*, association (→ *freedom of association*), assembly (→ *freedom of assembly*), and the right to vote are its indispensable instruments.

57 The Constitution of the United States protects civil liberties through the Bill of Rights. The First Amendment guarantees freedom of religion, expression, assembly, and the right to → *petition*. It prohibits Congress from both promoting any particular religion and also restricting any person's religious practices. In the → *Marbury v Madison Case (US)* (1803), the Court assumed upon itself the role of a guardian of fundamental liberties. In *Espinoza v Montana Department of Revenue* (2020) (US), the Court reaffirmed the principle that state policies must not violate the rights under the First Amendment.

58 In Germany's Basic Law (*Grundgesetz*), fundamental rights (*Grundrechte*) are enshrined at the very beginning of the constitutional text (Arts 1–19). Article 1(1) declares that: 'Human dignity shall be inviolable', and Article 1(3) affirms that 'basic rights shall bind the legislature, the executive, and the judiciary'. The German Federal Constitutional Court interprets fundamental rights not just as negative liberties protecting individuals from state overreach, but also as positive obligations on the state. In the → *Lüth Case (Ger)* from 1958, the Court held that fundamental rights extend beyond state-citizen relations and structure the democratic public sphere itself.

59 Switzerland's Constitution enshrines fundamental rights in Title 2 (Arts. 7–36). Article 35(1) declares that 'fundamental rights must be upheld throughout the legal system'. The Federal Supreme Court (*Tribunal fédéral*) plays a key role in protecting these rights and retains authority to strike down cantonal and communal laws that violate constitutional rights.

60 In Brazil, Title II (Arts 5–17) protects fundamental rights (*direitos fundamentais*). Article 1(III) recognizes human dignity as a pillar of the democratic constitutional order. Article 5(§1–2) states that the Constitution protects all rights that are mentioned in international human rights (→ *international human rights law and municipal law*) treaties (→ *treaty power*). The → *Supreme Federal Tribunal of Brazil (Supremo Tribunal Federal)* interprets these rights not only as shields against state overreach but also as instruments to affirm democratic inclusion, equality, and social justice. In the *Ellwanger* case (HC 82.424/RS (2003) (Braz)), the Court held that freedom of expression does not cover any speech that

incites racial hatred (an imprescriptible crime). In RE 466.343/SP (2008) (Braz), the Court held that civil imprisonment of a *depositário infiel* is unlawful because it violates human rights.

61 The Constitution of India guarantees fundamental rights in Part III of the Constitution (Arts 12 to 35). → *Constitutional remedies* are provided under Article 32. In *SR Bommai v Union of India* (1994) (India), the Court affirmed that ‘fundamental rights enshrined in Arts 15, 16, and 25 to 30 leave no manner of doubt that they form part of the basic structure of the Constitution’.

62 In South Africa, the Bill of Rights is provided in Chapter 2. Section 7(1) states that the ‘Bill of Rights is a cornerstone of democracy in South Africa’. The Constitutional Court has interpreted these rights not only as protections against state action (→ *state action doctrine*) but also as obligations requiring the state to advance social justice (→ *Government of the Republic of South Africa v Grootboom Case* (S Afr)).

63 The Australian model of democracy is unique because it does not entrench constitutional rights. However, democratic rights are safeguarded through a set of constitutional rights (eg, ss 51(xxxi), 80, 116, 117). In *Australian Capital Television v Commonwealth* (1992) (Austl) and *Nationwide News v Wills* (1992) (Austl), the High Court recognized an implied freedom of political communication derived from Sections 7 and 24. Rights are also protected through the ‘principle of legality’ (→ *legality principle*), which means that courts will presume that Parliament did not intend to limit people’s basic rights. Finally, the Human Rights (Parliamentary Scrutiny) Act 2011 (Austl), requires new federal laws to be checked for consistency with international human rights standards.

5. Provision for an Independent and Impartial Judiciary

64 In the United States, the independence of the judiciary is constitutionally enshrined in Article III, Section 1 of the Constitution. This provision grants them life tenure unless removed via → *impeachment*. The compensation they receive for their services cannot be diminished during their continuance in office.

65 In Brazil, Article 92 of the Constitution lists the different courts that make up the judiciary. These include the Supreme Federal Court (*Supremo Tribunal Federal* (‘STF’)), the Superior Court of Justice (*Superior Tribunal de Justiça* (‘STJ’)), and other specialized courts for specific cases. Article 95 says that judges shall have life tenure and can only be removed by a court decision. Their salary cannot be reduced while they are in office. Article 99 ensures the financial autonomy of the judiciary. That is, courts can manage their own budgets.

66 In Germany, Article 97 of the Basic Law explicitly states that judges are independent and subject only to the law. Article 92 vests → *judicial powers* in the hands of judges, exercised by the Federal Constitutional Court, federal courts established by the Basic Law, and the courts of the *Länder*. Article 98 stipulates that federal judges are appointed jointly by the Federal Minister of Justice and a committee for the → *selection of judges* (→ *selection of judges at constitutional courts / supreme courts*) and can be removed from office by judicial decision only.

67 In India, Article 124 stipulates that Supreme Court judges are appointed by the President after consultation with judges of the Supreme Court and High Courts. A Judge of the Supreme Court retires at the age of 65. Article 217 outlines a similar process for High Court judges, who serve until the age of 62. Articles 121 and 211 protect the independence of the judiciary by preventing the legislature from questioning the judicial conduct of

judges, in the Parliament and State Legislatures, respectively, except in the case of impeachment.

68 In South Africa's Constitution, Section 165(2) affirms that the courts are independent and subject only to the Constitution and the law. Section 165(3) prohibits any organ of state from interfering with the functioning of the courts. Section 165(4) mandates that organs of state, must assist the courts to ensure their independence. Section 178 set up the Judicial Service Commission ('JSC'), which protects the courts from political pressure.

69 Chapter III of the Australian Constitution protects the independence of the judiciary. As per Section 71, the judicial power of the Commonwealth is vested in the High Court of Australia. Section 72 stipulates that judges are appointed by the Governor-General in Council and can only be removed on an address from both Houses of Parliament in the same session, on the ground of proved misbehaviour or incapacity. Furthermore, their remuneration cannot be diminished during their term in office.

6. Institutional Safeguards

(a) Checks and Balances

70 Institutional safeguards are essential for the preservation of constitutional democracy. Systems rely on separation of powers and checks and balances as 'auxiliary precautions' against tyranny (Madison). Separation of powers allocates governmental authority to separate institutions, and checks and balances equip actors to restrain one another. Checks and balances include horizontal checks (→ *veto* and veto-override; legislative oversight—committees, inquiries, hearings; bicameralism; impeachment; judicial review; independent auditors (→ *auditing*), ombudsmen, prosecutors), vertical checks (federalism and regional autonomy), and popular checks (referendums and initiatives). The balances are the built-in institutional counterweights by which each branch's ambition is met by countervailing ambition, preserving democratic equilibrium (Barak; Madison).

71 Constitutions around the world operationalize checks and balances differently. Key determinants include regime type (presidential versus parliamentary) and territorial structure (federal versus unitary). Presidential democracies establish coequal legislative, executive, and judicial branches, each with the ability to check the others. In parliamentary systems, executive authority is closely tied to parliamentary support. The legislature can withdraw confidence and force the government to resign. Federal systems add another layer of checks through state governments and/or a bicameral legislature, which protect regional interests against central overreach. Across all democratic systems, an independent judiciary with the power of constitutional review acts as a check on both the legislature and the executive.

72 A system of checks and balances is indispensable to democracy because periodic elections are not sufficient if elected representatives can exercise power without legal constraint or oversight. Where a polity relies almost entirely on electoral accountability, with weak horizontal controls—elected leaders will erode liberal-democratic norms. Such systems—what O'Donnell calls 'delegative democracies' (O'Donnell (1994))—risk sliding into what Lord Hailsham termed an 'elective dictatorship' (Hailsham) in which a majority government exploits its dominance to evade scrutiny. Therefore, a system of checks and balances enhances horizontal accountability by subjecting governmental decisions to scrutiny, justification, and potential veto by other organs (O'Donnell (1994); O'Donnell (1998)), obliging government to control itself (Madison).

73 Populist or illiberal governments weaken checks and balances by pretending to take 'decisive action'. They maintain a democratic façade but treat institutional oversight as an obstruction created by the elite to suppress the common man's voice, which they claim to represent. The intent is to concentrate authority not through authoritarian reversion, but rather through constitutional retrogression—that is, a subtle, incremental erosion of the institutional predicates of democracy (Ginsburg and Huq).

74 The Constitution of the United States sets up a system of checks and balances between the legislative, executive, and judicial branches. This structure, as articulated in Federalist No. 51 (Madison), ensures that 'ambition must be made to counteract ambition'. The President can veto bills passed by Congress (Art. I, s 7). Congress controls federal spending (Art. I, s 9) and can override President's veto with a two-thirds majority in both houses (Art. I, s 7). The Supreme Court can strike down laws passed by Congress or invalidate executive actions (*Marbury v Madison* (1803) (US)). The House of Representatives can impeach the President by majority vote but only the Senate can remove the President with a two-thirds vote (Art. I, ss 2 and 3).

75 Brazil follows a presidential system based on a formal separation of powers. The President is elected by direct popular vote. The President can veto bills passed by the National Congress (Art. 66). Congress may override the veto by an absolute majority in both houses. The National Congress can initiate impeachment proceedings against the President (Art. 85). The Senate conducts the trial (Art. 52 (I)). The Supreme Federal Court exercises judicial review.

76 Germany follows a parliamentary system based on the principle of cooperation rather than a strict separation of powers. The executive (Federal Chancellor and Cabinet (→ *cabinet*)) is drawn from and accountable to the legislature (*Bundestag*). The *Bundestag* may remove the Chancellor through a constructive of → *no confidence vote*, whereby it simultaneously elects a successor (Art. 67). The Federal Constitutional Court (*Bundesverfassungsgericht*) acts as the guardian of the Basic Law.

77 Switzerland follows a federal system rooted in direct democracy and consensual governance. This structure itself acts as a check on the concentration of power in any one organ of the government. Executive authority lies with the seven-member Federal Council. The presidency rotates annually among its members (Arts. 174-177). This collegial model limits executive dominance. Additionally, the Federal Assembly holds the executive accountable through questions, interpellations, and investigations (→ *power of legislature to conduct investigations*). Finally, frequent referendums allow citizens to directly check parliamentary decisions.

78 South Africa follows a parliamentary system, where the executive is collectively accountable to the legislature (s 92). The President can be removed through a motion passed by a simple majority (s 102). The Parliament checks the executive via committees, debates, and enquiries. The judiciary examines legislative and executive actions.

79 In India's parliamentary system, the executive is part of the legislature and is accountable to it (Art. 75(3)). There is no strict separation of powers. However, a functional separation of power exists. The Constitution establishes checks and balances through legislative oversight on the executive, the executive's responsibility to the legislature and judicial review. The executive is part of the legislature. The *Lok Sabha* can remove the Council of Ministers through a no-confidence motion. The Supreme Court can strike down laws that violate the Constitution (Art. 13) and enforce fundamental rights through writs (Art. 32). High Courts exercise similar powers under Article 226. Judges enjoy security of

tenure (Art. 124), but Parliament can remove them for proven misbehaviour or incapacity by special majority (Art. 124(4)).

80 Australia follows a federal parliamentary system. The executive, led by the Prime Minister and Cabinet, is drawn from the legislature and remains accountable to it (ss 62–64). The House of Representatives (s 24) can remove the executive through a vote of no confidence. The Senate (s 7) acts as a check on the lower house by reviewing, amending, or rejecting legislation.

(b) Judicial Review

81 Judicial independence and judicial review are the strongest safeguard against legislative and executive overreach. As the Supreme Court of India observed in *S R Bommai v Union of India* (1994) (India): ‘If the fabric of pluralism and pluralist democracy and the unity and integrity of the country are to be preserved, judiciary in the circumstances is the only institution which can act as the saviour of the system and of the nation’. The Court also observed that ‘frustration with democracy has often in the past, led to an invitation to fascism and dictatorship of one form or the other’.

82 The United States Constitution does not mention judicial review, yet the foundations for judicial review were laid out in *Marbury v Madison* (1803) (US), where the Court asserted its power to strike down laws inconsistent with the Constitution.

83 In Brazil, the Supreme Federal Court assesses the constitutionality of federal and state laws using a mechanism called the ‘Direct Action of Unconstitutionality’ (*Ação Direta de Inconstitucionalidade* (‘ADI’)). The Supreme Federal Court can also look into violations of constitutional principles utilizing the so-called ‘Allegation of Disobedience of Fundamental Precept’ (*Arguição de Descumprimento de Preceito Fundamental* (‘ADPF’)).

84 In Germany, the Federal Constitutional Court (*Bundesverfassungsgericht*) exercises both ‘abstract judicial review’ under Article 93(1) and ‘concrete judicial review’ under Article 100(1). Abstract review allows the federal government, a state (*Land*) government, or one-third of the members of the *Bundestag* to challenge the constitutionality of a federal or state law. Concrete judicial review is initiated when a regular court doubts the constitutionality of a law during the hearing of a specific case and refers the matter to the Federal Constitutional Court.

85 In Switzerland, the judiciary plays a limited role in reviewing the constitutionality of federal legislation (Art. 190). The reason is the country’s faith in the principle of direct democracy, where citizens are empowered to approve or reject federal laws via referendums. However, in the context of specific cases, Swiss courts look into the constitutionality of cantonal laws or administrative regulations. Article 29a states that people have the right to approach judiciary to settle legal disputes. So, the rule of law is upheld.

86 Judicial review in South Africa is provided in Section 2 of the Constitution. Section 167 sets up the Constitutional Court to ensure that the executive and the legislature follow the Constitution.

87 The Constitution of India stipulates judicial review in Articles 13, 32, and 226. Article 13 grants courts the power to invalidate laws that violate fundamental rights. Article 32 provides that the Supreme Court can use writs to safeguard these rights. Similarly, Article 226 enables High Courts to protect fundamental rights as well as other legal rights.

88 The Australian Constitution does not explicitly mention judicial review. However, the High Court of Australia has affirmed its authority to invalidate laws and executive actions that contravene constitutional provisions in landmark cases such as *Kirk v Industrial Relations Commission of New South Wales* (2010) (Austl) and *NZYQ v Minister for Immigration* (2023) (Austl).

7. Political Pluralism and Multi-party Competition

89 Political pluralism and multi-party competition are important components of democracy. Political pluralism and genuine multi-party competition are core components of democracy. Pluralism protects freedom of expression and promotes political participation among diverse social groups. It allows these groups to interact and seek representation through multi-party competition. Although the United States Constitution does not guarantee a multi-party system, nonetheless, there is no legal prohibition. The US system includes primaries that often function as multi-faction contests within parties. Furthermore, all states allow third parties and independent candidates to run. The First Amendment of the Bill of Rights protects freedoms of speech, assembly, and association. Citizens are free to form parties and advocate any political ideology. In *Williams v Rhodes* (1968) (US), the Court recognized competition in the political market as a core constitutional value.

90 Germany's electoral system for the *Bundestag*—a mixed-member proportional representation system—is designed to foster pluralism. Different political parties can openly compete, and coalition governments are common. The German Basic Law in its Article 21(1) stipulates that 'political parties shall participate in the formation of the political will of the people' and guarantees that parties may be freely established. Article 21(2) allows for the banning of parties that seek to undermine the 'free democratic basic order'.

91 The Constitution of Switzerland in Article 137 acknowledges the role of political parties in 'forming of the people's opinion and will'. The Swiss system provides for inclusive governance, which is described as 'consociational'. Therefore, political pluralism is ingrained in Swiss political culture (cf → *culture*; → *legal cultures*) and constitutional ethos of power-sharing among cantons.

92 Brazil's Constitution enshrines political pluralism as a foundational principle in Article 1. Article 17 guarantees 'the plurality of political parties' subject to the respect for national sovereignty. In ADI 1.351 (2006) (Braz), the Supreme Federal Court struck down a statutory (→ *statutory law*) 'barrier clause' that denied small parties access to parliamentary resources.

93 The Constitution of India enables political pluralism through the freedom to form associations (Art. 19(1)(c)), which includes the → *right to form political parties*. In *SR Bommai vs Union of India* (1994) (India), the court observed that 'we have adopted a pluralist democracy. It implies, among other things, a multi-party system'. In *Kuldip Nayar v Union of India* (2006) (India), the Court observed that parliamentary democracy and multi-party system are an inherent part of India's constitutional basic structure.

94 South Africa's Constitution in Section 1(d) declares that the Republic is founded on 'universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government'. In *New Nation Movement NPC v President of RSA* (2020) (S Afr), the Court struck down parts of the Electoral Act (1998) (S Afr) to allow independent candidates, interpreting Section 1(d) to mean South Africa must never become a one-party state.

95 Australia's Constitution does not mandate a multi-party system. However, the country's electoral structures and legal provisions, including the recognition of parties and compulsory voting, promote political competition and encourage broad participation among society's diverse groups. In *Lange v Australian Broadcasting Corporation* (1997) (Austl), the High Court of Australia acknowledged the 'freedom of communication on matters of government and politics' as implied in Sections 7 and 24. The court determined that 'free communication' was indispensable to the democratic process (at 560–61).

F. Comparative Assessment

1. Diverse Constitutional Routes to Democracy

96 The lived experiences across different political systems reflect distinct types of democracy in action. The United States and Brazil are both federal presidential democracies characterized by a separation of powers. However, Brazil's system is distinguished by its practice of 'coalition presidentialism' where the Executive is organized on the basis of large coalition majorities in Parliament (Abranches). In fact, Brazil's multiparty system requires the president to build coalitions across diverse political parties. Democratic institutions in both countries have faced challenges such as executive overreach and disinformation campaigns. While this has led to tensions between the executive and judiciary in the United States (Greenburg; Steamer), in Brazil, the activist Supreme Federal Court addressed threats to democracy (Anderson; Pooler and Stott).

97 Germany is a parliamentary federal democracy with strong constitutional protections. It is an example of militant democracy because constitutional courts protect the democratic order from extremist threats (Molier and Rijpkema). The principle of the *Sozialstaat* (social state) (→ *social or welfare state*) also shows Germany's commitment to social justice. The Federal Constitutional Court supports the 'free democratic basic order' (*freiheitliche demokratische Grundordnung*).

98 India represents a parliamentary quasi-federal democracy with a progressive and redistributive constitution (Austin). The Supreme Court has protected democracy through the 'basic structure doctrine' first articulated in the *Kesavananda Bharati v State of Kerala* (1973) (India). However, there are growing concerns over executive centralization, partisan federalism, and shrinking civic space.

99 South Africa's post-apartheid (→ *Apartheid*) democracy stands out for its transformative constitutionalism (Klare). Unlike most liberal democracies that restrict the state from interfering in individual rights and freedoms (negative rights), South Africa's Constitution imposes a positive obligation on the state to take proactive measures to facilitate individual rights. Overall, in Germany, India, and South Africa, courts have fortified democracy by defining its core principles.

100 In contrast, the Swiss legal system restricts the judiciary's ability to review federal legislation (Lienhard and others). This limitation underscores a deep-seated trust in the mechanisms of direct democracy, where citizens exercise constitutional oversight through referendums and popular initiatives. While democracy thrives through popular sovereignty in Switzerland, the democratic system in Australia has evolved through judicial interpretation and political conventions.

101 Australia offers a convention-driven parliamentary federal democracy with no formal bill of rights (Galligan and others). For this reason, Australia's constitutional framework has remained relatively unchanged since its inception.

2. Democratic Backsliding

102 Democratic backsliding indicates an ongoing decline in the quality of democracy. Nancy Bermeo argues that democratic backsliding manifests through ‘executive aggrandisement’, where elected leaders maintain the facade of democracy and yet subvert it by using legal means (Bermeo). The incumbents use their official authority to weaken institutional checks, censor (→ *censorship*) the media, and manipulate elections. Steven Levitsky and Daniel Ziblatt emphasize that democratic backsliding occurs when elected leaders do not recognize political opponents as legitimate (lack of mutual toleration) and weaponize their control over institutions to marginalize opposition, intimidate → *civil society*, or manipulate electoral and judicial systems (lack of institutional forbearance) (Levitsky and Ziblatt).

103 The United States—long regarded as a beacon of liberal democracy—has experienced democratic backsliding. The 6 January 2021 attack on the United States Capitol marks a dramatic rupture in democratic practice. The Trump administration’s (2017–2021 and 2025 onwards) attacks on the judiciary (Brennan Center for Justice) and the press (Pasha-Robinson) pose serious democratic challenges. Donald J Trump has demonstrated his willingness to consolidate executive power at the expense of democratic accountability through initiatives such as ‘Project 2025’. Freedom House identifies partisan gerrymandering, political violence, and intimidation as factors contributing to the decline in the Freedom Score from 94 in 2011 to 83 in 2023, representing an 11-point decrease (Repucci and Slipowitz, 10, 31). The V-Dem Institute project describes the United States as having ‘autocratized to a significant degree’ by 2022 (Papada and others 21) while continuing to classify it as a liberal democracy (Nord and others 13). The Economist Intelligence Unit (‘EIU’) downgraded the United States from a ‘full democracy’ to a ‘flawed democracy’ in its Democracy Index 2016 and retains this classification in the Democracy Index 2024 (Economist Intelligence Unit, 2017, 3; Economist Intelligence Unit, 2025, 16).

104 Brazil exhibited signs of democratic backsliding under President Jair Bolsonaro (2019–2022). Investigations revealed that he was involved in plans to arrest justices and overturn the 2022 election results (Brito). In response, Brazil’s judiciary dismantled digital disinformation networks, notably the *Gabinete do Ódio* (‘Hate Cabinet’), which was orchestrating campaigns to spread false information about Brazil’s democratic institutions (Bustamante and Peluso Neder Meyer). The judiciary’s activism safeguarded Brazil’s democracy in the face of executive overreach.

105 Germany is also grappling with internal threats to democracy. Far-right populists represented by the Alternative for Germany (‘AfD’) are exploiting democratic freedoms to weaken the democratic system. In a recent decision from 13 May 2024 (5 A 1218/22 (2024) (Ger)), the Higher Administrative Court for North Rhine-Westphalia upheld the classification of the AfD as a *Verdachtsfall* (suspected extremist case). The AfD uses aggressive disinformation campaigns to undermine public trust in liberal democracy and to promote exclusionary ideologies. However, mainstream parties have refused to collaborate with the AfD to prevent the mainstreaming of extremist ideologies. Germany’s current government, formed in May 2025, is a ‘grand coalition’ comprising the centre-right and the centre-left parties. The success of the current coalition is critical to preventing the further ascent of far-right populism.

106 Switzerland, known for its commitment to direct democracy, has thus far avoided significant democratic backsliding or executive aggrandisement. The nation’s unique

political framework limits the concentration of power and promotes a culture of consensus (Lijphart; Linder and Mueller).

107 South Africa has not experienced overt democratic backsliding. However, during Jacob Zuma's presidency (2009–2018), South Africa experienced erosion of democratic institutions. The president misused his control over administration to benefit the private interests of one business family, called the Gupta family. The Gupta family exerted considerable influence over government decision-making, leading to the allegations of 'state capture' (Judicial Commission of Inquiry). The Constitutional Court declared Zuma guilty of breaching the Constitution in a 2016 decision (→ *Economic Freedom Fighters and Others v Speaker of the National Assembly and Others Cases (S Afr)*). On 5 April 2016, however, the move to impeach him failed because the African National Congress ('ANC') had a majority in Parliament. Still, civil society groups and a strong media sector have kept democratic values alive. The ANC lost its majority in parliament for the first time in 2024, signalling a new era of coalition politics in South Africa.

108 Political scientists largely agree that India has been an example of democratic backsliding since 2014, characterized by the fusion of party and state, the use of public institutions for partisan gain, the weakening of checks on the executive, control over the media, suppression of opposition, and the erosion of vertical (electoral), horizontal (institutional), and diagonal (civil society and media) accountability (Khaitan; Tudor). Unlike the Emergency of the 1970s (a brief period of overt authoritarian rule), the recent decline has been gradual and subtle. Therefore, it has also been argued that India's democracy is deteriorating not by repression, but via a gradual disintegration of liberal democratic norms—rooted in a majoritarian philosophy that endorses executive overreach (Tudor). India is now a hybrid government since elections still happen, but civil liberties, institutional independence, pluralism, and federalism have been compromised. Sharma and Swenden (2022) assert that federal backsliding has occurred since 2014 not because of the rise of the Bharatiya Janata Party ('BJP') as a dominant party, but rather because the dominant party is internally centralized and personalized, advocates unitarism, and functions within a framework of weak constitutional, political, procedural, and judicial protections for self- and shared-rule (Sharma and Swenden). V-Dem Institute's Annual Democracy Report 2018 downgraded India's status from a liberal democracy to an electoral autocracy (Lührmann and others 29). A subsequent report describes India as 'one of the worst autocratisers' (Nord and others 11). Additionally, Freedom House classifies the country as 'partly free' (Repucci and Slipowitz 2). The central idea is that, while formal institutions like elections remain intact, their democratic substance has been hollowed out—making India an emblem of how democracies die with the normalization of illiberalism.

109 It is worth noting that the Government of India rejects the democratic backsliding diagnosis. The Prime Minister's Economic Advisory Council argues that global democracy indices rely heavily on perceptions and expert opinion, contain methodological bias, and fail to account for India's size, federal design, and social diversity (Sanyal and Arora). Similarly, those who believe that regular, competitive national and state elections—and the BJP's losses in several state assembly elections—are the key indicators of democratic vitality also reject the claim that India is 'backsliding' democratically. From this perspective, illiberal practices—such as the rise of ethnoreligious rhetoric, the censorship of critical voices, and negative attitudes towards minorities—do not indicate institutional decay on their own; instead, they highlight the illiberal attitudes that are prevalent in Indian society and are reflected in both democratic politics and government functioning (Pillalamarri).

110 Australia has not experienced democratic backsliding. Its constitutional framework continues to function effectively because of its institutional safeguards, such as compulsory voting and an impartial → *electoral commission*. Australia is classified as a ‘liberal democracy’ in the V-Dem Democracy Report 2025 (Nord and others 14) and as a ‘full democracy’ in the Economist Intelligence Unit’s Democracy Index 2024 (Economist Intelligence Unit, 2025, 15). Although dissatisfaction with political leadership and disagreement over policies are common, there is no credible evidence of democratic backsliding.

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