

# PARLIAMENTARY RULES IN DEMOCRATIC BACKSLIDING AND RESILIENT DESIGN



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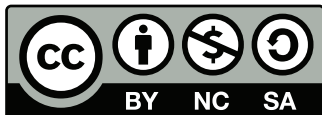
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Cover illustration: Generated with ChatGPT  
Design and layout: International IDEA  
Copyeditor: Curtis Budden

DOI: <<https://doi.org/10.31752/81166>>

ISBN: 978-91-8137-153-6 (PDF)

# Acknowledgements

International IDEA would like to thank the author, Madeleine Rogers, for her professionalism, diligence, research and acute insights in the development of this report. We would also like to express our gratitude for the reviews and comments from Francis Delperée and Nicola Lupo, which led to helpful improvements in the text.

We would like to acknowledge the roles of Aurélie Bellon, Sumit Bisarya and Jonathan Murphy in conceptualizing and providing iterative reviews for the paper, and the role of Lisa Hagman in leading the publication process.

# Abbreviations

<b>CSO</b>	Civil society organization
<b>GSoD</b>	Global State of Democracy
<b>MAS</b>	Movement Towards Socialism, Bolivia
<b>MP</b>	Member of parliament
<b>PAC</b>	Public accounts committee
<b>PiS</b>	Law and Justice, Poland

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# EXECUTIVE SUMMARY

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## THE GROUNDWORK: PROCEDURE, POWER AND DESIGN CHALLENGES

Democratic backsliding has become a defining feature of global politics in recent decades. While headlines often focus on constitutional overhauls, judicial packing or assaults on the media, this report demonstrates that one of the most effective and least visible tools for eroding democracy is the manipulation of parliamentary procedure. Rules governing how parliaments set agendas, allocate time, discipline members and channel legislation are not neutral or merely technical. They are the infrastructure through which power is exercised, contested and legitimated.

Agenda-setting powers can privilege government bills and bury opposition initiatives; time rules can accelerate, truncate or suffocate debate; and disciplinary measures can be deployed to silence dissent. While these capacities exist in all legislatures, they are particularly attractive to would-be autocrats because they offer a powerful yet obscure means to undermine democratic institutions, aggrandize power and tilt the electoral playing field. Procedural tweaks often attract little public scrutiny, fall outside the expertise of most observers and incur lower political costs than overt constitutional changes.

Yet designing procedures resistant to abuse is fraught with difficulty. This report identifies several recurring dilemmas. Legislatures generally allow the majority to write their own rules and select their referees, creating obvious conflicts of interest. Presiding officers such as speakers exercise broad discretion, but over-codification can be equally problematic, pushing decisions into opaque 'back

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**Democratic backsliding has become a defining feature of global politics in recent decades.**

rooms'. Opposition rights must be protected, but too much latitude enables obstruction that can justify majoritarian clampdowns. And across all these dimensions lies the perennial problem of motive: rules intended for efficiency or accountability can be repurposed for partisan advantage. These tensions mean that no procedural system is airtight; every design embodies trade-offs between efficiency, flexibility, inclusivity and resilience.

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## PROCEDURAL TACTICS OF BACKSLIDING

Against this backdrop, Chapter 2 of the report catalogues the tactics through which backsliding governments have exploited procedural vulnerabilities. Drawing on comparative examples, the report identifies recurring patterns that constitute a procedural playbook for democratic erosion:

1. *Fast-tracking*. Urgency procedures and disingenuous use of private members' bills allow governments to bypass scrutiny. In El Salvador, Hungary and Poland, reliance on such mechanisms skyrocketed, with constitutional amendments and sweeping reforms passed in days. While fast-tracking is intended for crises, vague thresholds and executive control over designations have enabled its abuse for non-urgent legislation, cutting out committees, consultation and debate.
2. *Accelerating the legislative process*. Even outside designated fast-track channels, other procedures have curtailed scrutiny by limiting debate, reducing intervals between readings or introducing last-minute changes. In Poland, speeches were capped at 30 seconds; in Türkiye, speaking time for opposition motions was slashed; in India, guillotine procedures ended debates weeks before adjournment. These tactics deprive opposition parties of opportunities to prepare, mobilize and hold the government to account.
3. *Alternative legislative channels*. Controversial measures can be attached to confidence votes, bundled into omnibus bills or mislabelled as money bills, thereby shielding them from normal scrutiny. Such manoeuvres compress distinct initiatives into single up-or-down votes, forcing legislators to accept illiberal provisions as the price of passing unrelated measures.
4. *Undermining the opposition*. Changing committee composition, altering thresholds or delegating legislative power to the executive redistributes authority in ways that systematically weaken the opposition. Even small adjustments—shifting committees

from parity to proportional composition or raising quorum requirements—can tilt the institutional balance decisively towards the governing party.

5. *Abusing disciplinary measures.* Parliamentary majorities have relied on disciplinary rules to fine, suspend or expel opposition members under accusations of disorderly conduct. Beyond direct sanctions, the allocation of offices, staff and international delegations provides further levers of patronage and punishment. Together, these tools transform rules of decorum into instruments of political control.
6. *Empowering partisan speakers.* Finally, abuse of the powers of the speaker, which underlies all of the above tactics and often serves as the channel through which they are effectuated, merits special attention. Presiding officers, expected to act impartially, increasingly operate as partisan enforcers. Expanded discretion over agenda setting, recognition of speakers and enforcement of rules has allowed speakers in backsliding contexts to shut down opposition participation and advance executive priorities with little restraint.

Individually, these tactics degrade legislative quality; collectively, they corrode the constitutional core by eliminating public and political scrutiny, silencing opposition and insulating governments from accountability. Because they operate under the guise of ordinary procedure, they allow governments to hollow out democracy while maintaining legality. While some of these practices are not uncommon even in the most robust democracies, the regularity with which they have been used to dismantle critical democratic infrastructure—such as the independence of courts and the media—has been a significant characteristic in episodes of democratic backsliding.

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## LESSONS LEARNED

The analysis in Chapter 3 highlights that fortifying parliamentary procedure against abuse is not a matter of plugging holes in a dam. Designing resilience is less about prohibiting each tactic than about structuring procedures to minimize incentives for abuse while preserving their democratic functions. Three overarching caveats apply. First, no rulebook can anticipate every contingency, and over-codification often produces new levers for manipulation. Second, procedural design is replete with inherent trade-offs—majority versus minority, efficiency versus deliberation, discretion

versus rigidity. These cannot be balanced once and for all; instead, the design of parliamentary procedure should pursue optimization, placing efficiency controls and deliberation safeguards where they expand rather than cannibalize the democratic space. Third, while the opposition is the primary institutional guardian of oversight, the ultimate goal is not to empower any given opposition per se, but to preserve the normatively desirable merits of procedure—reason giving, transparency, scrutiny and debate—that usually fall to the opposition to defend. Opposition protections must not go so far that they prevent elected majorities from governing, as excessive obstruction fuels the very disaffection that backsliding exploits.

Within this framework, six broad lessons emerge:

1. *Protect the rules.* If the rules can be changed by the political majority, they will always be susceptible to political manipulation. At the same time, creating a threshold for change which is too difficult can result in rules which are overly rigid and unable to adapt to changing circumstances. Thus, consideration should be given to tiered or targeted formulas for entrenchment of rules which are critical in resilience against backsliding.
2. *Redesign fast-track procedures.* Broad legislation regulating state institutions—such as judicial reforms or the establishment or disestablishment of key independent oversight institutions—rarely, if ever, merits the use of urgency procedures. Prohibiting fast-track procedures—or at least raising the threshold for their use—in matters relating to key democratic safeguards can reduce the risk that such procedures will be abused to further democratic backsliding. Further, fast-track procedures can also be better designed to allow for speed without unduly sacrificing inclusion and oversight.
3. *Target conflicts of interest.* Political systems frequently vest decision-making power in actors who stand to benefit from the decisions they make. One method for ameliorating this conflict is to separate the decision maker from the beneficiary of the decision. The concentration of discretion in a single office, especially the speaker, also makes abuse more likely. Dispersing powers—by requiring multiparty steering committees to authorize urgency designations, or by sharing control of agenda setting between government and opposition—creates overlapping checks. These arrangements may slow decision making, but they make capture by a single actor far harder.
4. *Optimize the opposition.* Opposition rights are vital to scrutiny, yet they must be structured so as not to incentivize permanent obstruction. Empowering the opposition to provide oversight,

without over-strengthening their hand in terms of blocking legislation, may optimize this balance. Guaranteeing opposition chairs on key oversight committees, funding for research staff and protected speaking time can help ensure their watchdog role is meaningful.

5. *Ensure opportunities for review.* Particularly where discretionary powers provide wide latitude for abuse—such as decisions of the speaker or to fast-track a bill—mechanisms for review both help correct abuse of discretion and deter abuse in the first instance. Further, when procedure is undermined so substantially as to weaken the democratic legitimacy of laws, judicial review must be able to identify procedural defects as a constitutional violation.
6. *Institutionalize civic participation.* Ultimately, the last stand against democratic backsliding must come from the people. Members of parliament are representatives of the people and must be responsive and accountable to them. Civil society and citizens can also provide additional, external oversight of the executive when parliamentary channels are weak. Embedding consultation procedures, publishing draft bills with sufficient lead time and using digital platforms to solicit feedback make legislative processes more transparent and inclusive. These mechanisms not only deter abuse by shining light on opaque practices but also strengthen the democratic culture, which is resistant to backsliding.

# INTRODUCTION

Over the past few decades, the ‘third wave’ of democracy has ebbed, as nascent and entrenched democracies alike have found their democratic consolidation unravelling. Throughout this process, much attention has been paid to the dramatic, marquee aspects of democratic backsliding, such as constitutional overhauls, the elimination of term limits and the packing of the courts (e.g. Graber, Levinson and Tushnet 2018; [Haggard and Kaufman 2021a](#)). Much less attention has been paid, however ([Sadurski 2019](#)), to what in many ways has served as a key pillar of the backsliding process—namely, the abuse and manipulation of parliamentary procedure.

This report examines the ways in which backsliding actors have used parliamentary procedures as tools to further democratic backsliding. It draws from a diverse mix of cases in terms of region, system of government and level of democracy—and where helpful to illustrate a point, from countries which may not meet the criteria for backsliding but which have exhibited tendencies in that direction (such as Italy and the United Kingdom).

While many of the tactics presented can be (and are) used in non-backsliding contexts to consolidate political advantage, such tactics are frequently used in cases of democratic backsliding to degrade the ‘constitutional core’—those ‘institutions, procedures, and individual rights that are necessary to maintain a system of multiparty competitive democracy’ ([Dixon and Landau 2016: 269](#)). Procedure enables backsliding regimes to further this democratic degradation because it can be used to undermine and sideline the political opposition—primarily the opposition sitting in parliament, but also opposition expressed by the media, civil society and the populace. Because the mandate of an illiberal majority in the legislature ‘comes from the electorate, the electorate and the coordination of opposition

parties are the sites of potentially effective—but necessarily lagged—resistance’ (Riedl et al. 2024: 16). As the parliamentary opposition and civil society are two critical sites of potential democratic resistance (some argue, in fact, that they are *the* crucial sites of resistance (Carothers 2024; Riedl et al. 2024)), quashing the ability of these actors to mobilize, organize, participate and exercise scrutiny and oversight facilitates actions that undermine the constitutional core.

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## OVERVIEW OF THE REPORT

The report begins in Chapter 1 by laying the groundwork—establishing the importance and key components of parliamentary procedure, the reasons for its usefulness as a backsliding tool and some problems inherent in procedural design.

Parliamentary procedure is an incredibly powerful tool in the political process. In many cases, it dictates the allocation of precious political resources, from committee seats to opportunities to raise questions to the government and to hold the political stage. It similarly controls the flow of time, which both affects the allocation of time as a resource and structures the opportunities (or lack thereof) for debate, scrutiny, oversight, deliberation, negotiation, the consultation of experts and other critical aspects of the legislative process. In many cases, procedure can even dictate outcomes—for example, through agenda-setting power or vote cycling.

Process is also integral to the quality of legislation. Properly ‘planned and coordinated legislation, inclusiveness throughout the legislative cycle, good legislative drafting or formal logistics, the methodological linkage between ex-ante and ex-post assessment, gender-neutral language, the use of technology in the legislative process, observation of constitutional principles such as transparency and language diversity just to mention a few among the many aspects of the quality that a democratic legislative process strives to achieve’ (Drinóczi and Cormacain 2021: 271). For this reason, ‘the quality of the content (eg, constitutionality, conformity with international, and European standards, where applicable) and the procedure should go hand in hand’ (Drinóczi and Cormacain 2021: 271).

Moreover, parliamentary procedure is integral to the promotion of the core values of democracy. It provides the institutional architecture

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supporting and furthering—or inhibiting—reason giving, deliberation, participation, transparency, oversight and representation.

Because parliamentary procedure is so fundamental to democratic function, and plays such a significant steering role, it is also ripe for abuse. Control over procedure can often mean outsized control over outcomes, as well as the ability to unduly undermine the opposition. In addition to depriving the opposition of opportunities for scrutiny and oversight, it affects their ability to mobilize, both among themselves and among the larger electorate, and can be used to punish the opposition through disciplinary measures.

On the other hand, parliamentary procedure is also an attractive channel for backsliding because of its subtlety. While powerful, procedural rules are often embedded in lower-level regulations, buried in confusing complexities that are difficult for non-experts to disentangle, and well outside of the attention of the general public (Riedl et al. 2024: 14). For this reason, changes to, or even clear violations of, parliamentary procedure generally incur a much lower political cost than changes to, or violations of, statutes. Furthermore, in many cases procedural violations are more difficult to challenge, insulating the majority from consequences for their abuse.

At the same time, structuring parliamentary procedure so as to avoid these pitfalls is no easy task, as the design of procedure is subject to several thorny tensions and trade-offs. Giving the majority the power to set their own rules and to choose their own means of enforcement creates clear conflicts of interest, but it also has implications for democratic legitimacy, supports a flexibility that can be desirable for complex procedures and can help avoid procedural obstructionism. Additionally, while codification can help minimize areas of discretion or overly subjective criteria, which can be weaponized when placed in the hands of partisan actors, over-codification can incentivize political actors to slip the bonds of formal procedure by shifting aspects of the process away from the intended forum into informal, back-room decision making, where safeguards are absent. These and other theoretical issues raise questions which do not appear to have satisfying answers.

In light of the powers and problems of parliamentary procedure and their relationship to democratic backsliding examined in Chapter 1, Chapter 2 identifies the main procedural tactics that backsliders have used in order to further their agendas. To this end, it draws on a broad range of cases globally, in particular those countries whose demonstrable backsliding episodes have been examined in

the backsliding literature.<sup>1</sup> Each of these tactics highlights both the power of procedure and the unsatisfying trade-offs that accompany design. Chapter 2 examines a variety of tools and tactics used to this effect, which fall into six rough categories:

1. *Fast-tracking*. Fast-track procedures generally comprise urgency procedures, which are designed to enable the expediting of policy in circumstances where time is of the essence, and the feeding of government bills to majority members of parliament (MPs) to be introduced as private members' bills, which in some parliaments are subject to fewer oversight requirements and shorter processes.
2. *Dictating the flow of proceedings*. Similarly to fast-tracking, manipulating time allocation and speed at a more granular procedural level (such as the time allocated for debate, the number of amendments that can be added or the time members are given to review legislation or amendments before voting) can be used to limit opportunities for scrutiny.
3. *Alternative legislative channels*. In addition to fast-track procedures, other tactics can be used to embed backsliding measures within different types of legislation that follow separate procedural pathways. Often, legislative changes which, if introduced on their own, might stand out as backsliding efforts and might even struggle to secure legislative approval can be pushed through by folding them into omnibus bills, tying them to confidence votes, misclassifying them as money bills or otherwise bundling proposals in ways that force groups of initiatives into a single up-or-down vote.
4. *Cutting out the opposition*. The opposition can be cut out through manipulation of the agenda—sidelining opposition bills, skipping over their allotted questions or denying them access to debate. Parliamentary rules allocate power—for example, by structuring the composition of committees, dictating who has the right to introduce legislation or setting the thresholds required to make a decision (and thereby creating veto players). Backsliding majorities change the way that power is allocated, such as by changing the composition of committees or giving the executive the ability to bypass parliament in certain policy areas, to siphon power away from the opposition.

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1 Drawing on literature and case studies globally, the report covers Benin, Bolivia, Ecuador, El Salvador, Georgia, Greece, Guatemala, Hungary, India, Israel, Mexico, Nepal, Nicaragua, Nigeria, Peru, Poland, Serbia, Slovakia, South Korea, Sri Lanka, Türkiye, Ukraine, the United States, Venezuela and Zambia. However, it also includes illustrative examples from other countries where appropriate and draws on examples of extant practice from nations globally in Chapter 3.

5. *Abuse of disciplinary measures.* Parliamentary rules generally include the controls regarding the disciplining of members—such as for disruption of business in the chamber—and the sanctions that can be leveraged, including fines and expulsion, which can be used to punish and silence opposition members.
6. *Abuse of speakers' powers.* Finally, it is worthwhile to note that many procedural tactics are enabled by the power and discretion of a partisan presiding officer (variously referred to as the speaker, marshal, chairperson, president or other office; 'speaker' will be used here for consistency and simplicity). Broad powers paired with wide discretion endow the speaker with expansive capabilities to shut out the opposition through agenda-setting powers, the ability to control access to the floor, and the interpretation and enforcement of parliamentary rules.

Finally, Chapter 3 of the report will, in light of the preceding discussion, extract reflections and lessons learned for how to better design parliamentary procedure to encourage resilience against democratic backsliding in the future. It presents six such takeaways:

1. *Protect the rules.* Certain foundational procedures should be insulated from easy majoritarian change, to prevent their instrumentalization for partisan ends. Codification—when used selectively—can increase the political cost of trying to manipulate procedure and signals a national commitment to upholding protection of these foundational procedures.
2. *Redesign fast-track procedures.* Core constitutional tenets should be protected against the use of procedure to degrade them, such as by immunizing certain core democratic safeguards from fast-track procedures. Fast-track procedures can also be better designed to allow for speed without unduly sacrificing inclusion and oversight, by both adjusting the structure of such procedures and placing clear limits on what types of legislation cannot be fast-tracked.
3. *Target conflicts of interest.* Where decision makers stand to benefit from their own decisions, decision-making power should be tempered. Oversight of agenda-setting, time allocation and disciplinary powers should be shared across actors or subject to multipartisan approval, reducing the risks of concentrated discretion.
4. *Optimize the role of the opposition.* Formalize opposition rights in oversight contexts while constraining obstructionist incentives in routine lawmaking, ensuring accountability without paralyzing governance.

5. *Ensure opportunities for review.* Even where speed is necessary, legislative processes should provide for meaningful ex post scrutiny, particularly where there is wide latitude for abuse of discretion and where procedural defects undermine the democratic legitimacy of legislation.
6. *Institutionalize civic participation.* Consultation, transparency and accessible procedures empower citizens and civil society to act as external monitors of government conduct, broadening the protective ecosystem.

Together, these lessons underscore that procedural reform is both possible and essential. While manipulation can never be fully eliminated, careful design—anchored in values of accountability and deliberation—can make parliaments more resilient to backsliding pressures.

## Chapter 1

# LAYING THE GROUNDWORK: POWER AND PROBLEMS OF PROCEDURE

Democratic backsliding does not begin with tanks in the streets or the shuttering of courts. Rather, it unfolds under the veneer of legality, carried out not through dramatic ruptures but through calculated tweaks to institutional design and procedure. While scholars have focused heavily on constitutional amendments, judicial restructuring and executive aggrandizement, one of the most quietly powerful tools in the backslider's arsenal is parliamentary procedure. Parliamentary rules may appear dry, technical or apolitical, but they determine who gets to speak, what gets debated, and how and when—and sometimes whether—decisions are made. These low-visibility levers of power are not only foundational to democratic practice but also extremely susceptible to manipulation by illiberal actors.

This chapter lays the groundwork for understanding how the procedural architecture of parliaments can be weaponized to degrade democracy from within. It begins by clarifying what we mean by democratic backsliding, surveys the institutional landscape of parliamentary procedure and identifies the key tensions and vulnerabilities that make procedure such an effective vector for democratic erosion.

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### 1.1. BACKSLIDING: DEFINITION AND BACKGROUND

'Democratic backsliding' is a relatively loose term which has been used to encompass a wide variety of means of democratic erosion, from institutional tactics such as changing the design of the judiciary, to softer political tactics such as stoking polarization through populist rhetoric, to extra-legal or illegal manoeuvres such as ignoring constitutional protections or instituting covert disinformation

campaigns (e.g. [Waldner and Lust 2015](#)). This report takes a relatively narrow, legal–institutional approach, adopting the definition formulated in the International Institute for Democracy and Electoral Assistance’s (International IDEA) 2023 report *Designing Resistance: Democratic Institutions and the Threat of Backsliding*, which frames backsliding as the ‘deliberate, government-driven weakening of safeguards for democracy and the rule of law’ ([Bisarya and Rogers 2023: 18](#)) in order to aggrandize power, undermine checks and tilt the electoral playing field. Specifically, backsliding involves three definitional elements:

1. First, it applies only to democratically elected governments, rather than governments which have come to power by extra-legal means such as a coup ([Choudhry 2018](#)).
2. Second, it occurs through legal means, ‘in the sense of both (a) acting within the formal constraints of the law and (b) instrumentalizing the law to further self-serving partisan ends of insulating the regime from constraints and competition’ ([Bisarya and Rogers 2023: 20](#)).
3. Third, the ends of such manipulation are to remain in power by undermining the core elements of constitutional democracy—including institutions, rules and elections, as well as so-called first-generation rights (such as freedom of speech and the press) which make such elections meaningful—and constitutional governance, whereby ‘democratic government and the state apparatus’ are ‘held accountable to, and become habituated to, the rule of law’ ([Ginsburg and Huq 2018: 11–13](#)).

Backsliding of this type has become increasingly prevalent in democracies across the world over the past couple of decades, affecting more fragile or nascent democracies such as those in Eastern Europe, Latin America or post-colonial countries, as well as even the most entrenched democracies, such as the United States.

While scholars have been aware of backsliding for some time, to date it has been impossible to turn, or even slow, the tide of this democratic regression. International IDEA’s Global State of Democracy (GSoD) initiative indicates that the rate of democratic decline has not only increased; it has accelerated relatively steadily since around 2010. The 2025 GSoD report found that nearly twice as many countries (94) had undergone democratic retrogression compared with 2015 as had experienced democratic improvement in the same timeframe ([International IDEA 2025a: 55](#)). Of the indicators used by the GSoD, declines were most prominent in Rights and

Representation, the latter of which encompasses elections as well as—notably for the purposes of this report—effective parliament.

Legally and institutionally, a broad selection of possible avenues is available to backsliders. The 2023 *Designing Resistance* report examines global backsliding episodes to assemble a catalogue of the specific tactics that backsliders have used to advance their objectives, from lowering judicial retirement ages to the selective prosecution of low-level infractions and the use of civil and criminal defamation. From this catalogue, the report then extracts 12 overarching strategies that backsliding regimes tend to employ, such as draining, packing and instrumentalizing the judiciary; tilting the electoral playing field; and weakening the opposition.

The use, abuse and non-use (Corrales 2015: 38) of parliamentary procedure can be used to facilitate all of these goals because many of the changes required to achieve them go through the parliament. At the procedural level, these changes involve procedural tweaks to cut out opportunities for oversight on the part of the opposition as well as civil society, media and other oversight institutions like ombuds offices and supranational organizations.

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## 1.2. PARLIAMENTARY PROCEDURE: AN OVERVIEW

Before evaluating the power of procedure and problems with design, a brief overview of the elements of parliamentary procedure is warranted, including a description of the importance of procedure to democracy and the major facets in which different systems depart in their design.

### 1.2.1. The importance of parliamentary procedure: Procedure and democracy

Parliamentary procedure is one of the less-visible, yet still critical, expressions of a political system's institutional architecture. It plays a constitutive role in the functioning of a democracy by providing the framework through which authority is exercised, contested and legitimated. It has effects before the legislative process formally begins, and long after it ends (Kazai 2021). Procedure acts as a 'deal-making technology', providing 'a set of rules and an order of moves according to which agent inputs are transformed into outcomes' (Shepsle 1996: 208). In a multiparty democracy, '[d]emocratic society is built around conflict ..., not organic unity or harmony' (Urbiniati 2006: 39), and procedure structures the means by which the 'jarring

of parties' in the legislature results in coherent policy (Hamilton 1787: Federalist 70). It constrains choices and behaviour, confers legitimacy on legislative decisions and can have a substantive effect on outcomes.

Further, parliamentary procedure operationalizes the core values of a democratic system, including deliberation, participation, transparency, oversight and representation.

First, procedure structures deliberation—the reasoned exchange of arguments among representatives charged with making decisions on behalf of the public. Democratic legitimacy depends not only on aggregating preferences but also on subjecting them to public reasoning in a forum where justifications must be offered and challenged (Habermas 1996; Gutmann and Thompson 1996). Parliamentary rules structure these forums, enabling deliberation to take place in ways that are orderly, inclusive and responsive to critique.

Second, procedure facilitates oversight, enabling the legislature—and specifically the political opposition—to scrutinize executive action. Procedure provides and protects access to the mechanisms—from interpellations, to budget oversight to impeachment—that are central to the ability to check the concentration of power (Mill 1861; Tushnet 2014; Young 2017).

Third, procedure underpins participation—both direct and mediated. While most modern democracies are representative, mechanisms for including the public in the legislative process can be built into the system, such as rights of petition and legislative initiative and, increasingly, citizen assemblies and other mechanisms of deliberative democracy. Procedure also governs consultation with stakeholders, experts and the general public.

Fourth, parliamentary procedure can help support transparency, a necessary prerequisite for both public trust and democratic accountability. Citizens must be able to observe and understand the processes through which decisions are made (Dahl 1971). Standing orders that govern speaking time, amendment procedures and voting methods help ensure not only that legislative processes are fair but also that they are seen to be fair.

Finally, parliamentary procedure preserves and enables representation. Legislative chambers should reflect the political and geographic diversity of the polity, but it is through procedural

rules—who may speak, propose, amend or veto—that representation becomes meaningful.

In addition to operationalizing democratic values, procedure is integral to the quality of legislation, which Sebők, Kiss and Kovács (2023: 743) divide along four lines: '(i) public policy (such as policy effectiveness, efficiency, the availability and sensibility of cost-benefit analyses); (ii) legal-constitutional-formal (see laws struck down by constitutional courts); (iii) procedural (having the necessary stakeholder consultations and parliamentary procedures) and (iv) stability (the text of adopted laws is durable and not changed extensively over the short course)'.

The quality of legislation is further underpinned by a suite of subsidiary considerations, such as legality, coherence (i.e. laws must not be self-contradictory), stability, predictability, publicity, clarity, non-retroactivity, feasibility and arbitrariness (Fuller 1969; Tai 2018: 117). Process itself can improve content, as the 'involvement of stakeholder[s], experts, the public in general, parliamentary actors [is] both legal requisites and normative prescriptions for good quality law-making as consultations may point out issues with the original draft that are less costly (in both a material and immaterial sense) to rectify in the proposal phase' (Sebők, Kiss and Kovács 2023: 752).

In this light, parliamentary procedure is not a neutral or technical feature of government. It is a normative infrastructure, a set of institutionalized practices that embody and enable core democratic commitments. Moreover, the way in which parliamentary rules are structured will affect the balance of power along two axes—between the parliamentary majority and the opposition, and also between the government and the backbenchers, including those in the party/parties of government.

The former axis is important in providing mechanisms for oversight and scrutiny of the parliamentary majority, as well as in structuring the legislature in a way which gives voice and agency to non-government parties. The latter concerns the strength of parliament vis-à-vis the government, including what rights and powers they possess surrounding the budget (what amendments they can make, etc.) (Santiso 2008), the procedures through which they can call members of the executive to account and whether the executive has a role in choosing officers within parliament (Bulmer and Storey 2024).

In theory, both of these axes could be important in the dynamics of resisting democratic backsliding—the opposition providing oversight and scrutiny, and democrats within the governing parties acting as a moderating force on government through both internal deliberation and, if necessary, public dissent (Bustamante and Meyer 2021). Global studies of backsliding episodes indicate, however, that resilience emerges more often along the majority–opposition axis. This is not exclusively the case: majority-party defection was critical in, for example, the impeachment of President Park Geun-hye in South Korea, and in preventing President Olusegun Obasanjo of Nigeria from passing a constitutional amendment to allow for a third term (Posner and Young 2007: 126; McCurry 2016). However, while, on the one hand, backbenchers continue to make their voices heard on particular issues of policy, for the most part populist parties have managed to maintain tight discipline and structure, with little resistance from the parliamentary party of government on critical issues of democratic backsliding. On the other hand, different studies have stressed the importance of a coherent opposition as a critical factor for the reversal of backsliding (e.g. see Bianchi, Cheeseman and Cyr 2025; Carrier and Carothers 2025). Indeed, along with a vibrant civic space, strong opposition has emerged as the sine qua non of democratic resilience across numerous cases.

For this reason, the majority–opposition axis gains pre-eminence in the backsliding context, and—along with concerns over civic space—is the primary focus of this report (though, it should be noted, a lively opposition may help encourage majority backbenchers to be more vocal, reinforcing that axis as well). The central question here is the following: if a strong and coherent opposition and a vibrant civic space are critical for democratic resilience, how have parliamentary procedures been used and abused to diminish these dynamics, and how could they be better designed to be more resilient to manipulation?

### 1.2.2. Aspects of procedure: A comparative overview

While the relationship between parliamentary procedure and democratic values exists across all systems, the way these values are realized varies significantly across contexts. The procedures governing parliament are shaped by different layers of authority (often more than one layer in any given context), from constitutional provisions to statutes, standing internal regulations, parliamentary precedent and unwritten conventions. Other constitutional or structural aspects will also have a major effect on how procedure is implemented. Congressional (or presidential) systems' separation-of-powers arrangements may, for example, use procedures involving

veto players to force competition and compromise, whereas the fusion of powers in parliamentary systems is more generally geared towards oversight and deliberation rather than vetoes. In bicameral systems, chambers may be symmetrical or asymmetrical. They may require that both chambers approve legislation in identical form, use conference committee-type procedures, or have rules specifying the required origin of certain types of legislation (as when money bills must originate in the lower house). Furthermore, systems will diverge depending on whether they adopt a committee-first (Brazil, Germany) or plenary-first (Jamaica, Mexico) legislative process: in the former, bills are sent directly to committee after being introduced; in the latter, the legislative process begins with a full debate in plenary session. Many other procedural variables (agenda-setting procedures, committee structures) and even quasi- or non-procedural variables (such as party system concentration, party structure, floor-crossing rules, etc.) will have a significant impact on both the design of parliamentary procedure and its effects in differing contexts. The recommendations presented in this report are sufficiently general in nature as to be relevant to any system, although adaptation to the particular context at hand will always be necessary.

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**Procedure has significant effects on output, but it is simultaneously low-level and obscure and thus entails a relatively low political cost for its manipulation.**

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### 1.3. THE UTILITY OF PROCEDURE FOR BACKSLIDING

Described as ‘the handmaiden of the party in government’, parliamentary procedure, and oversight thereof, can be incredibly powerful in politics. As such, it presents an attractive and effective channel for democratic backsliding. Parliamentary procedure constrains choices and conditions behaviour (Norton 2001: 29). It can ‘constrain the members of the governing majority by conditioning their behavior, by forcing them to go through a lengthy and formalized process, and by enabling other actors to delay, influence, or even block the implementation of certain items of their political program’ (Kazai 2024: 8). Procedure has significant effects on output, but it is simultaneously low-level and obscure and thus entails a relatively low political cost for its manipulation (Riedl et al. 2024: 14–15). Importantly, procedure is also particularly useful in circumstances where a backsliding party lacks a constitutional majority, and is thus confined to sub-constitutional changes—for example, to legislation and regulations. The situations of Hungary and Poland illustrate this point. In Hungary, Fidesz commanded a robust supermajority and came into office ushering in a new constitution and several subsequent amendments thereto. In Poland, where Law and Justice (PiS) lacked a supermajority and even lost its majority in the Senate

in 2019, PiS was unable to make sweeping changes comparable to those implemented by Fidesz. And yet, while Hungary's democracy score dropped by 1.5 points on Freedom House's democracy index between 2010 and 2019, Poland's dropped the same amount in about half the time, from 2015 to 2019 (Haggard and Kaufman 2021a: 146).

This section outlines three principal reasons why parliamentary procedure can prove to be such a useful channel for democratic backsliding. At base, parliamentary procedure serves as an effective channel for democratic backsliding largely because it provides a means of attacking and undermining the opposition and other avenues of accountability—and certain inherent properties or procedure, discussed in this section, facilitate such attacks.

It should be noted that the benefits incurred from abusing procedure are not limited to backsliding, and indeed all political actors will be incentivized to use these benefits to their political advantage. These benefits are considered in the context of democratic backsliding here partly because this report's purpose is to examine how backsliding episodes have been furthered by the abuse and manipulation of procedure and to demonstrate that such manipulation has been a core component of the backslider's playbook, and partly because backsliding governments have proven particularly willing to leverage procedure—and to be adept at doing so—to undermine democratic institutions.

### 1.3.1. Procedure influences outcome

First, procedure has a significant effect on outcomes and in some cases can dictate what those outcomes will be. Indeed, Cheibub and Limongi (2002: 176) have argued that the effects of institutions on government systems are mainly derived not from macro-level constitutional fundamentals but rather from 'the way the decision making process is organised'. The 'specific impact of the rules on the process and the outcome of law-making can be put into three categories: proximal, intermediate, and final effects' (Cox 2000). Rules 'establish internal subdivisions ... and endow them with resources and procedural rights' (proximal effects); have 'an impact on both the options that legislators can choose from throughout the procedure and their voting behavior (intermediate effects)'; and 'influence the parliament's final policy choices by helping the majority "get its way" ... and by simplifying legislative negotiation (final effects) (Kazai 2024: 48). Each of these effects may come to bear on legislative outcomes.

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**By shaping the legislative agenda, the majority is able to advance its own priorities over those of the opposition.**

One key component of these procedural effects is agenda-setting power, which encompasses both positive agenda control and negative agenda powers (the ability of governments and their supporting parties to delay or block opposition bills from being discussed on the floor of parliament (Zubek 2011: 173–74)). Agenda-setting power operates at both the level of setting the overall legislative agenda (policy priorities) and the level of control over the order of day-to-day business. By shaping the legislative agenda, the majority is able to advance its own priorities over those of the opposition. This power also often extends to decisions about whether legislation is introduced at all, or whether an initiative is deferred indefinitely, thus sealing its fate decisively and unilaterally. Further, inherent in the ability to set the agenda is the power to set the baseline. This power puts the burden on the opposition to overcome the inertia of the default in order to depart from the status quo.

The power to set the agenda often lies with (a) the executive, (b) the speaker or (c) a steering committee, all of which are in general decisively controlled by the majority and, hence, in parliamentary systems, the executive (Bach 1999: 214). Even where the minority may receive representation of some kind on a steering committee, its inclusion does not necessarily equate to actual influence. The US House of Representatives' Committee on Rules, which proposes the sequence of, and procedures for, major bills, is one such system, as illustrated by the following anecdote:

During the late nineteenth century and the first years of the twentieth century, the speaker chaired this committee and appointed its other members. One speaker during the 1890s, the formidable Thomas B. Reed, is reputed to have informed the opposition party members of the committee that he and his majority party colleagues had 'decided to perpetrate the following outrage, of which we all desire you to have due notice.' Due notice is all that any opposition has the right to expect.

(Bach 1999: 214)

In other cases, procedure affects outcome by stabilizing the 'perpetual disequilibrium' that can result 'from the intransitivity of majority voting' (Goodin 1996: 12). One illustrative example of this is the paradox exposed by the social choice theorists Condorcet (1785) and Arrow (1950), who demonstrate that, in cases in which a majority of voters prefer outcome A to outcome B, B to C and C to A, no voting system can guarantee that the outcome will be supported by a majority of the voters. Institutional devices 'such as committee

structures in legislatures, or bicameral legislatures, or judicial norms or constitutional constraints on the majoritarian decision-making can sometimes ensure a “structure-induced equilibrium” in a situation where none would otherwise exist’ (Goodin 1996: 12).

Similar issues arise with other models. The no-show paradox, for example, illustrates cases in which the best way to ensure that one’s preference wins out is not to vote. Sequence, too, can influence outcome, as the order of events develops causal power (Gerschewski 2021: 54). These and other quirks of procedure can have decisive impact, and those who hold both the knowledge of these quirks and the power to leverage them have substantial influence in the decision-making process.

### 1.3.2. Procedure enables time control

Second, control over procedure means that the presiding officer and/or the majority has control over the flow of proceedings, which has a surprisingly large impact on the ability to evade scrutiny and undercut the opposition.

Time is part and parcel of the legislative process, and in many ways procedure is just the rules structuring various temporal elements of any process. In parliaments,

numerous lower-level rules set the time parameters of political debate and decision-making as it proceeds on a day-to-day basis. Temporal micro-rules channel the ongoing flow of decisions. They set the timetables of everyday politics by defining schedules, structuring time budgets, allocating time slots, distributing speaking time and waiting time, opening and closing political debates, setting deadlines, fixing maximum or minimum intervals, synchronizing or diachronizing activities and expectations, sequencing events or imposing simultaneity, opening or closing windows of opportunity, institutionalizing reversibility or fixing points of no return, distinguishing special times from ordinary ones, and so on.

(Schedler and Santiso 1998: 9)

Manipulation of these rules can be used to shut the opposition out, in a variety of ways.

First, there is the ability to take up time. Time, in a debate, is zero-sum, and time in the legislative process is thus in many ways equivalent to space and attention. The power to take up time at

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**Control over procedure means that the presiding officer and/or the majority has control over the flow of proceedings, which has a surprisingly large impact on the ability to evade scrutiny and undercut the opposition.**

the expense of the opposition allows an actor to monopolize the stage. In our increasingly attention-based economy, where capturing and holding the finite resource of public attention is critical to success, the upper hand when competing for the public's attention is especially valuable (Heitmayer 2024). Squeezing the opposition out of the debate—for example, by curtailing their speaking time, which will be discussed in Chapter 2—limits their ability to present their own arguments, as well as the opportunity to present themselves and their ideas to the electorate as an alternative option available to voters in the next election.

A second aspect of controlling time is the ability to use speed to one's advantage. For example, speeding up the legislative process—such as through the use of fast-track procedures—reduces transparency and oversight. Skipping steps enables the majority to bypass points at which the opposition would be able to make counterarguments or point out flaws; at which the public, stakeholders or experts might be consulted; and, in some cases, at which the media or the opposition would be able to shed light on parts of a bill which the majority had hoped to sneak through unnoticed, such as a bill fast-tracked in Slovakia amending the statute of limitations on crimes for which members of the majority were being investigated (Čuroš 2024a). Speed also undercuts the ability of the opposition to organize, whether internally or when mobilizing civil society and the public, liaising with international actors such as the Venice Commission or getting word out to the media. Further, some cases have seen the majority move so quickly as to eliminate the ability of members of the opposition to familiarize themselves with bills and to prepare, thus significantly undermining their ability to participate at all.

Diminishing the opposition's ability to participate in this way increases control over policy and reduces the need to compromise. Beyond parliament, it also limits citizen engagement and public participation in the parliamentary process. Scholars have noted a general 'reduction of the importance of the citizen in the legislative process. Instead of being an active participant, they are passive—legislation is done to them, rather than them being involved in its making' (Drinóczi and Cormacain 2021: 274). This situation has led governments in many countries—Türkiye is a prime example—to take a paternalistic approach in which 'the Government knows best and the engagement of citizens in the legislative process is unhelpful' (Drinóczi and Cormacain 2021: 274).

Further, moving rapidly and cutting out the opposition enables the majority to avoid the obligation to provide justification for their

decisions, which harms accountability. It also means that the objections and reservations, counterarguments and alternatives which would have been offered by the opposition in response to this justification are kept off the record. The result is a thin and sparse legislative record that can provide little support for later legislative challenges, both in the courts and at the ballot box.

### 1.3.3. Procedural change is politically inexpensive

Procedural rules—and parliamentary rules generally—are largely perceived to be dry and technical, even old and dusty artefacts that may be anachronistic in the context of modern politics. For this reason, abuse of, and changes to, procedures take place below the political surface, garnering less attention and, thus, incurring a lower political cost. In fact, procedures can be legitimizing (Kazai 2024), and so relying on procedures, even if disingenuously or counter to their spirit, can lend credence to legislative actions, similarly to the distinction between rule of law and rule by law (Sajó 2021).

These types of rules also generally fall within the sole autonomy of the chamber employing them, under the principle of self-regulation. The legislature does not need the agreement of the executive to enact or change their rules, and in bicameral systems, one chamber does not need the consent of the other. The ability to act unilaterally (at the institutional level) does away with transaction costs, publicity and potential veto points. It is also thus especially useful where an illiberal party has control of one chamber but not the other, or of the legislature but not (in presidential systems) the executive.

Relatedly, in many contexts, procedural adjustments also help insulate subversive acts from judicial review. Courts are often highly wary of touching ‘what is said or done within the walls of Parliament’<sup>2</sup> under the maxim ‘that whatever matter arises concerning either house of parliament, ought to be examined, discussed, and adjudged in that house to which it relates, and not elsewhere’ (Blackstone 2016: 109). Generally relying on doctrines of parliamentary privilege and exclusive cognizance, courts give deference to the acts of parliamentarians in their chambers—including in such areas as discretionary judgments under the rules of procedure (Lui 2022). This insulation further cloaks the misuse of procedure (Rousseau, Gahdoun and Bonnet 2020: 350), making it a less risky tool.

<sup>2</sup> Lord Coleridge, CJ, in *Bradlaugh v. Gossett* (1884) 12 QBD 271, 275.

#### 1.3.4. Procedure enables punishment

Fourth, control over procedure hands backsliders levers that can be used to punish opposition. Most obviously, these levers include the rules governing member discipline and punishment. As will be discussed below, a partisan speaker given discretion over member discipline for procedural violations such as disruption can use shallow and thinly veiled justifications to fine opposition members or have them removed from the chamber.

Short of punitive disciplinary measures, procedure can still be used to punish members—whether members of the opposition or members of the governing party trying to voice criticism—through informal sanctions and procedural penalties. The allocation of resources such as staff or coveted office space or opportunities to attend events or travel abroad augment the speaker’s influence underlying their formal powers.

Backsliders often push the boundaries of disciplinary rules beyond ordinary decorum, reframing opposition activity as disorderly conduct to justify increasingly harsh sanctions. They may use sanctions immediately despite the fact that they have been customarily considered a last resort. Moreover, the mere threat of punitive measures can deter members from engaging in robust scrutiny—particularly in fragile parliaments where party discipline is already strong. Fines, loss of speaking rights or repeated naming-and-shaming in the chamber create reputational and financial costs that make criticism costly.

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### 1.4. PROBLEMS WITH PROCEDURAL DESIGN

Designing procedures that are less susceptible to the kinds of incentives discussed above is far from straightforward, in large part because of several tensions that underlie the way that procedure is designed generally. There are always trade-offs—majority rule versus minority rights, flexibility versus resilience and efficiency versus deliberation being core (Bulmer and Storey 2024: 2). Certain sticking points, however, can make optimizing these balances difficult. These problems exist in all contexts, backsliding or otherwise. Their intractability is a large part of what makes designing procedures that better support democratic resilience so difficult. This section will touch on five such problems: (a) the conflict of interest inherent in allowing the majority to write their own rules and choose their own means of enforcement; (b) the trade-offs of discretion and

over-codification; (c) back channels and back-room dealings; (d) opposition incentives towards obstruction; and (e) the problem of motive.

#### 1.4.1. Conflicts of interest in choosing rules and referees

The first problem is that, under current design models, democratic systems generally give the majority the power to write (or amend) their own rules. The logic behind this is clear—who better to determine how to most effectively run a legislature than the legislators themselves?—but so too is the glaring conflict of interest. While there may be considerable political constraints, few legal barriers prevent a confident majority from rewriting the rules of procedure to play significantly to their advantage.

Often, it is a simple majority vote that determines the rules for any given debate, including the overall time for debate or even whether any given member is allowed to speak. Consider an example from Poland, where a member of the main opposition party was denied the right to ask the prime minister a question at question time based on majority vote:

PiS [the majority] used a simple trick by announcing, at the last moment, that its member of Parliament had ‘his own’ question to the government (as it turned out, a friendly question regarding Poland’s use of EU subsidies in health care). Although a custom had been established that all political parties had the right to ask a question on a rotating basis in subsequent sessions of Parliament, the Speaker Marek Kuchciński (PiS) departed from custom on this occasion. Although it was the PO’s [the opposition’s] turn, under the pretext that more than one question [was] foreshadowed, but that there was only time for one question and governmental response, the speaker subjected the matter as a point of order to a vote on the floor of the Sejm [the lower house of the Polish Parliament]. Of course, the Sejm voted to allow the PiS MP to speak, and deny the PO its voice. In this way, a constitutional custom was extinguished, and the opposition effectively gagged.

(Sadurski 2019: 135)

Relatedly, existing parliamentary procedures tend to give the majority the power to choose who will get to enforce both that majority’s own rules (i.e. the rules of procedure) and the other rules that bind them (i.e. the constitution). These procedures also generally allow the majority to select the actors who will be able to exercise broad

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**Existing parliamentary procedures tend to give the majority the power to choose who will get to enforce both that majority's own rules (i.e. the rules of procedure) and the other rules that bind them (i.e. the constitution).**

discretion over decisions that can advantage or disadvantage different parties, interpret provisions that may be open to subjective interpretation and even decide who, ultimately, will be able to review the legality of parliamentary decisions (i.e. judges).

In this vein, one of the major channels through which backsliders have usurped procedure is the office of the presiding officer (the speaker). While theoretically the speaker takes the role of a neutral arbiter managing proceedings and maintaining decorum, in fact the office exercises broad powers that give the speaker major influence over myriad aspects of parliamentary function. These powers vary significantly, of course, but they tend to be broad. They touch on such areas as the management of the assembly, setting the agenda, allocating various resources, applying and enforcing (and interpreting) standing orders, exercising discretion over what gets debated—and when and by whom it gets debated—all on top of the privileges and powers of being an MP. Much of the problem with speakers acting as rule enforcers comes down to the latitude for discretion, which will be discussed below.

However, even where the speaker is not formally vested with certain procedural powers, decision-making authority over the same matters often rests with the majority, producing an effect that may have no functional difference from vesting those powers in the speaker. In the British system, for example, the speaker lacks the power to make many decisions surrounding when and for how long the House of Commons (the lower house of parliament) conducts its business, the duration of debate and of speeches in a debate, and so forth. Instead, these decisions rest with the House itself, 'and that means essentially by the Government of the day who, through its majority, has secured control over the arrangement of business' (Bach 1999: 220).

#### **1.4.2. Discretion versus over-codification**

The issue of allowing the majority to choose their own referees and other issues that result from having a powerful speaker feed directly into another general quandary of procedure—namely, the problem of discretion. In some ways, giving the presiding officer discretion is both necessary and normatively desirable. There invariably exist certain situations, such as when a matter falls into a grey or unforeseen area, where no system of rules can be a match for human judgment. And no 'body of standing orders can be sufficiently elaborate and complete to provide for every procedural contingency that may arise' (Bach 1999: 212). The wider the discretion, however, the wider the horizon for abuse.

The danger here largely stems from mixing the breadth of the discretion with partisanship and is particularly relevant to the office of the speaker. Two relevant dimensions—the degree of the speaker's partisanship and the breadth of their discretion—can roughly be thought of as creating a two-dimensional matrix, yielding four types of speakers: (a) more partisan with wide discretion; (b) more partisan with narrow discretion; (c) less partisan with wide discretion; and (d) less partisan with narrow discretion. Writing nearly three decades ago, Bach (1999) found a general inverse relationship between partisanship and discretion. In other words, speakers tended to be grouped in the less partisan/more discretion and more partisan/less discretion quadrants. In systems in which presiding officers were expected to renounce all party affiliation and act according to norms of dignified neutrality (such as the UK), there tended to be fewer constraints on their discretion. In systems where speakers were expected to remain partisan actors (such as the USA), the system generally was more likely to anticipate the danger of abuse and constrain their discretion more tightly. Still, even the latter type of systems relied to some extent on a norm of restrained partisanship.

In many backsliding cases in recent decades, however, the powers of speakers have been significantly expanded. At the same time, norms holding the office of the speaker to be an impartial and politically neutral position have degraded, encouraging the appointment of increasingly partisan members to the office. Taken together, the expansion of speakers' powers and the erosion of neutrality norms push presiding officers towards the more partisan/more discretion quadrant. A subsidiary design question, then, is whether to give speakers less discretion, or whether they need to be less partisan. And if the latter is true, another question is how to reduce partisanship without relying on norms which appear to be vestiges of the past. In current circumstances, granting the speaker agenda-setting power, for example, has the effect of de facto granting this power directly to the executive (Zubek 2011).

An overly elaborate system of rules, on the other hand, could prove counterproductive, as it could 'deny the assembly the flexibility necessary to conduct business equitably and conveniently' (Bach 1999: 212). It could, additionally, lead to a logjam and enable arbitrary decision making, where a definitive interpretation of the rules is impossible due to their complexity. An overly codified system may also have unintended consequences. One such example is the possible chilling effect noted by scholars who evaluate the relationship between reporting requirements and actual transparency. While requirements on reporting recorded information may

generally be thought to enhance transparency by laying out clear, comprehensive and enforceable rules, some research has found that, in fact, when actors know that what they record will be made publicly available, they 'may be increasingly reluctant to create paper records' documenting their actions ([United Kingdom Parliament 2012: 75](#); [Worthy and Hazell 2017](#)). Similar types of unintended consequences can also appear with over-codification of procedural rules.

### 1.4.3. The back-room problem

No matter how comprehensive, clear and fair parliamentary procedures are, they have no force or effect in the world beyond the chamber where they are applied. No parliamentary rules can (or should) prevent legislators from talking to each other behind closed doors or making informal deals or otherwise prevent interpersonal communication. In fact, over-regulation of the chamber may have the effect of pushing things which might otherwise have occurred in the public arena of parliament into back channels.

The abuse of private members' bills, discussed in Chapter 2, is one manifestation of this effect. Facing heightened scrutiny requirements for government bills, ministers can feed pre-drafted legislation personally to individual party members behind closed doors. Nothing prevents a minister from suggesting a policy initiative to another member of their party. This also gives rise to the problem of 'hidden bills', a practice wherein legislation is drafted in secret and then sprung on the chamber with no warning ([Maatsch 2021](#)). This practice gives the opposition no opportunity to prepare, which could be important with large, politically divisive initiatives, and especially where fast-track procedures are used to squeeze out opportunities to become familiar with, study and gather evidence for counterarguments against active bills.

Other back-room dynamics further illustrate the limits of procedural design. Party caucuses can determine their positions in advance and in private, rendering floor debate purely symbolic. Committee stages lose meaning where, as is often the case, all of the substantive drafting has already occurred within ministries, coalition councils or executive offices, with committees merely endorsing deals struck elsewhere. Agenda control, too, may be exercised through closed-door negotiations in speakers' conferences or business committees, such that, by the time a bill reaches the floor, its sequencing and time allocation have already been determined. In each case, the formal procedures of parliament remain intact, but the locus of decision making has shifted away from public deliberation into informal, less accountable settings. This is the essence of the back-room problem:

the more the designers try to regulate and channel parliamentary debate, the more incentives political actors have to relocate it to spaces beyond the chamber's reach. In short, the inability of formal procedures to regulate informal and personal relationships limits the efficacy of procedures, no matter how well designed.

#### 1.4.4. Opposition inclusion versus obstructionism

A core tension in the design of parliamentary procedures lies in balancing opposition inclusion with the risk of enabling obstruction. This can also be thought of as the tension between protecting the rights of the opposition and enabling the elected government to implement its programme. On the one hand, institutionalizing the rights of the opposition is an important barrier for protecting the opposition from the tyranny of the majority. On the other hand, the opposition faces perverse incentives in its use of powers.

Because the opposition presents itself at elections as a superior alternative to the current government, the opposition has a vested interest in the failure of the majority's agenda (Rosanvallon 2008). Rather than contribute to the improvement of legislative quality and use its powers for constructive oversight, therefore, the opposition is incentivized to use obstruction to thwart and disrupt progress of all sorts. Excessive procedural latitude enables strategic obstruction tactics—filibusters, walkouts, endless amendments or procedural motions not to improve legislation but to derail or delegitimize the government's programme. These measures can lead to policy gridlock, erode public confidence in parliamentary efficacy and, in polarized contexts, provoke the ruling majority to curtail procedural rights in the name of governability. The challenge for designers of parliamentary procedure is to simultaneously preserve spaces for opposition to speak, contest and influence while maintaining institutional capacity for majority rule and coherent governance. Getting this balance wrong can weaken either democratic resilience or state capacity—both of which are necessary for stable constitutional democracy.

This effect may be tempered by other political pressures. Opposition parties 'have two main concerns: i) to avoid supporting budgets that do not increase their chances of making the current government fall, but also ii) to avoid those that worsen the conditions that they may eventually face when in government' (Falcó-Gimeno and Jurado 2011: 556). Further, in district-based representative systems, the opposition may be somewhat constrained, provided sufficient transparency, in its ability to undermine government efficacy, as representatives face pressure from their constituents to fight for their interests. Whether

representatives make a particular choice based on the interests of their constituents or other factors raises another problem (see 1.4.5: The problem of motive and the 'double-edged sword').

#### 1.4.5. The problem of motive and the 'double-edged sword'

Finally, rules exist in many cases to be used for particular purposes in particular circumstances, but they can also be used for other reasons (De David Beauregard-Berthier 2009: 451; Rousseau, Gahdoun and Bonnet 2020: 350). This is a fundamental paradox of design: almost all tools that are implemented for legitimate purposes—whether efficiency, parliamentary function, deliberation or any other normatively desirable goal—can be used for ill purposes. Where rules can cut both ways, the underlying motive becomes a salient but invisible factor.

In such cases, '(formal) procedures are the script, not the play' (Zubek 2011: 189). Closure (*cloture* in France and the USA) is an illustrative example in this regard. The original underlying idea of a closure vote is that the assembly is really voting on the question of whether there has been sufficient debate. The values at stake are ensuring thorough debate, recognizing that parliament has limited time, and preventing obstruction. To protect these values, closure usually requires a heightened majority, so that a majority is not able to truncate debate unilaterally. However, the vote that is taken is not, in practice, truly 'whether there has been sufficient time for debate', but 'whether to bring debate to a close'. And nothing can prevent those who would like to lengthen or shorten debate for reasons unrelated to deliberation or efficiency from voting accordingly.

The same problem arises across a range of procedures where the stated rationale and the actual incentives for use diverge. Fast-track, or urgency, procedures, for example, are formally intended for exceptional situations where swift action is necessary, but in practice they are often invoked to limit scrutiny of controversial measures. Likewise, 'poison pill' amendments—ostensibly ordinary proposals to refine legislation—can be deployed strategically to make a bill unpalatable to its supporters or to force the majority into politically costly votes. In each case, the problem is not the absence of rules but the impossibility of constraining the motives of those empowered to apply them.

The four preceding problems—conflicts of interest in setting rules and referees, discretion, back-room dealings and obstructionism—all stem to some extent from this motive problem. Parliamentary design

is then forced to regulate a practice despite the fact that motive, intent and purpose cannot be verified or enforced. The proclivity of political actors to choose a rule because it is beneficial, rather than good, or add an amendment to use up debate time, rather than improve the law, is a major facet of parliamentary behaviour that procedural design must try to account for and regulate. How to root out or prevent ill-intentioned uses without smothering legitimate ones is a challenge to which this report will return in Chapter 3 (see 3.5: Ensure opportunities for review).

Ultimately, the power of procedure lies in the following paradox: it is at once foundational and invisible, essential and easily overlooked. To treat parliamentary rules as mere formalities is to misunderstand their potential—both to sustain democracy and to subvert it.

## Chapter 2

# PROCEDURAL TACTICS USED IN DEMOCRATIC BACKSLIDING

Regardless of where 'it occurs ... the primary menace posed by the manipulation and violation of the rules on parliamentary law-making is the same: the elimination of the procedural constraints imposed on the ruling political forces to prevent their arbitrary exercise of power' (Kazai 2024: 8).

This chapter examines the ways in which backsliding regimes have used parliamentary procedure in order to further efforts to eliminate procedural constraints meant to prevent the arbitrary exercise of power on the part of ruling political forces. It enumerates several specific tactics, which are organized into six categories: (a) using fast-track procedures to circumvent parts of the legislative process; (b) manipulating the tempo of proceedings to speed through (as opposed to circumvent) the steps of the lawmaking process; (c) sending bills through alternative legislative pathways; (d) undermining the opposition; (e) using disciplinary measures and sanctions to punish the opposition; and (f) exploiting the discretionary powers of the presiding officer. Each of these tactics relates to one or more of the reasons that relying on procedure can be useful for backsliding discussed in Chapter 1 (see 1.3: The utility of procedure for backsliding) and demonstrates and underscores one or more of the problems of procedural design discussed in the same chapter (see 1.4: Problems with procedural design). Additionally, they each operate in some capacity to undermine the ability of the opposition and civil society to conduct oversight, mobilize and respond. The list is non-exhaustive; varying contexts mean that there will always be unique and creative possibilities in different legal landscapes. It captures, rather, the standard menu that parliamentary procedure generally provides for undermining the very processes it is meant to protect.

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## 2.1. FAST-TRACK PROCEDURES

In the first 100 days of Robert Fico's second term as Slovakia's Prime Minister, over 72 per cent of bills passed were adopted using fast-track procedures (Čuroš 2024b). This legislative package included a bill abolishing the Special Prosecutor's Office, an amendment to the Criminal Code affecting all of the offences therein and measures making prosecution more difficult for certain crimes—for which members of the ruling party were at that time being investigated.

This example illustrates the power and prevalence of fast-track procedures, which have become the principal procedural tool relied on by backsliding regimes in recent years—in fact, reliance on fast-tracking has been one of the core strategies across the backslider's toolkit as a whole. Consider the following series of events in Hungary. Fidesz began in their first month in Government by amending the rules of procedure to abolish a threshold requiring a vote in parliament passed by a four-fifths majority to trigger urgency procedures (Kerekes 2016; Ilonszki and Vajda 2021: 777). The next year, 2013, two individual MPs put forth an amendment to the Freedom of Information Law (Lendvai 2017: 98). One day later, they moved for the amendment to be considered as urgent legislation. The proposal for urgency went to the constitutional committee, which referred the proposal to the plenary after 12 minutes; the proposal was accepted by the chamber two hours later. The bill having been designated as urgent, opposition and other members then had 180 minutes in which to put forth amendments. These amendments went to the constitutional committee that evening, which rejected all of them in under five minutes. The proposal was then returned to the plenary around 21:00, where it was allocated 64 minutes for debate. It was then passed first thing the following morning. Less than 48 hours transpired between the proposal of the amendment and the final vote (Lendvai 2017: 98).

Fast-tracking generally takes two forms—the use of urgency provisions and the disingenuous introduction of government bills as private members' bills.

Urgency provisions allow the legislature to skip steps or shorten timeframes within the legislative process. These provisions frequently include skipping initial consultation requirements, public comment periods and impact assessments, which deprives legislators and the public of the opportunity to scrutinize proposals before they reach the floor. They may limit debate time (a 2012 reform in Hungary allowed the final vote on a legislative project to

occur one day after submission (Ilonszki and Vajda 2021: 774)). They also often curtail the amount of time a bill spends in committee, which is where important details are attended to, information is gathered and refinements are made. Rushing the committee stage limits the ability of committees to oversee and participate in the executive's legislative projects, denies an important opportunity to make amendments and reduces the overall quality of legislation. On the floor, such provisions can often significantly truncate debate, eliminating virtually all opportunity to justify reasoning and to lodge objections or counterarguments.

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**Fast-tracking also has the effect of shrinking public debate and marginalizing civil society, both of which are crucial to resisting backsliding.**

Fast-tracking also has the effect of shrinking public debate and marginalizing civil society, both of which are crucial to resisting backsliding. In general, the inclusion of civil society in the legislative process has the empirical benefits of improving the quality of legislation—by contributing technical expertise and feedback that make laws more effective—and of reducing inequality, with studies showing that greater engagement of civil society organizations (CSOs) is correlated with more equitable social outcomes (Gogsadze 2011: 18; OSCE Parliamentary Assembly 2024: 12; Sintos, Chletsos and Kontos 2024). It also ensures transparency, as lawmaking is not confined to the bargaining of political elites alone, but remains tethered to the broader public interest, embedding pluralism and accountability into the core of the legislative process. Speeding past consultation periods and ushering changes in under the radar cuts civil society and public debate out of the process. Transparency International (2017) noted, for example, that the Polish legislature was using fast-track procedures to try and implement new transparency rules that would make it far more difficult for CSOs to obtain information, while requiring such organizations to disclose their own sensitive information. The organization, along with the Stefan Batory Foundation, pointed out that lack of consultation on the law served to cut civil society out of the debate on a law which had a significant impact on that very civil society (Transparency International 2017).

Urgency provisions are undoubtedly of critical importance. The circumstances they are designed to address are becoming more pressing and fast-moving in the modern world, as illustrated by technological threats or pandemics fuelled by modern travel. The problem arises, however, when such provisions are applied to measures that are not in fact of an urgent nature. Three junctures within urgency provisions allow for this to happen. First, in some cases the grounds on which a bill may be considered under an urgency procedure are not clearly enumerated or are sufficiently

broad or vague as to allow for a wide degree of interpretation. Second, even where such grounds are enumerated, the question arises as to who gets to decide whether those grounds are met. Third, review mechanisms are often absent; in many cases, no procedure is in place to challenge the decision to classify a bill as urgent.

In Brazil, for example, the Chamber of Deputies' (the lower house of parliament) internal urgency petition system allows any bill to be fast-tracked by majority vote, but no substantive standard or threshold specifies which circumstances truly merit urgent treatment. This procedure gives a proactive power to majorities but sidesteps committees and detailed deliberation—even for controversial bills—with minimal normative restraint built into the rules themselves (Almeida and Santos 2009). Elsewhere, types of laws which cannot be subjected to an urgent procedure are enumerated: the Polish Constitution, for example, prohibits the use of fast-tracking for tax bills, bills governing elections and bills covering the structure and jurisdiction of public authorities, but no affirmative grounds are required for showing actual urgency in other cases (article 123). In Slovakia, meanwhile, the standing orders stipulate that urgency procedures are 'limited only to extraordinary cases, such as a threat of an imminent breach of fundamental rights and substantial economic damage to the state' (section 89(1)). These provisions, however, can be triggered unilaterally by the government and are not subject to review.

A second type of fast-tracking is the use of private members' bills—initiatives proposed by individual members of the assembly (opposition or majority) or other non-government actors (such as, in some cases, the president). Inapt use of private members' bills entails handing what are in fact government-backed bills to individual members to be introduced as private members' bills. This mechanism can be used as a form of fast-tracking because private members' bills are generally subjected to fewer procedural requirements than government-sponsored bills (Fish and Kroenig 2009). Many of these requirements are preliminary steps such as consultations, public comment periods and impact assessments. Private members' bills present subtler issues than urgency provisions because they are a vitally important part of the legislative power. They protect not only the opposition's right to introduce legislation but also that of members of the majority party. Without the ability to propose policy changes, majority party members may be relegated to rubber stamping the government's programme with little opportunity to participate in policymaking themselves, undermining the intended legislative function of the legislative branch. This applies to

majority members' ability to voice criticism against the government themselves, as well as to push ideas and bring attention to issue areas that are not on the government's agenda.

### Box 2.1. Hungary

In Hungary, 12 per cent of the legislation adopted between 2002 and 2006 originated as (majority) private members' bills (Szabó 2017: 34). During the 2010–2014 cycle, this share jumped to 31 per cent (Kazai 2019). The success rate of private members' bills also skyrocketed during this session, from 37 per cent to 74 per cent (Szabó 2017: 34; Kazai 2019). Simultaneously, the success of private members' bills introduced by the opposition plummeted: while the National Assembly adopted 15 out of 236 motions between 2006 and 2010, only 3 out of 533 were adopted the following cycle, and none were adopted between 2014 and 2016 (Szabó 2017: 34; Kazai 2019). Private members' bills were even used for constitutional amendments, allowing for constitutional changes 'to be taken from first proposal into full legal effect in a very short period of time, sometimes as little as ten days' (Haggard and Kaufman 2021a: 107).

### Box 2.2. Sri Lanka

In Sri Lanka, the 18th Amendment to the Constitution was introduced not as a government bill but as a private member's bill by a parliamentarian from the ruling United People's Freedom Alliance. The amendment—enacted in September 2010—abolished the two-term presidential limit and vested sweeping appointment powers in the president by replacing the Constitutional Council with a weaker Parliamentary Council (Welikala 2011). The introduction and adoption of the amendment took place with extraordinary speed: proposed on 31 August 2010, it passed both the committee stage and its third reading by 8 September, despite the profound constitutional transformation it entailed (Welikala 2011).

The two routes described above are not the only fast-tracking procedures in existence. The Hungarian rules, for example, contain both an urgent procedure, which accelerates the decision-making process by shortening applicable deadlines, and an exceptional procedure, which moves substantial portions of the debate and work on legislative proposals from the plenary to committees. The two can be used in combination, which has enabled major legislative reforms to be pushed through the legislature in under 48 hours (Lendvai 2017: 98). El Salvador provides another example, where the legislature is able to declare bills simply 'exempt from procedure' (Human Rights Watch 2021) under a state of exception which has been in place

since 2022 and renewed at least 43 times as of the writing of this report ([Inter-American Commission on Human Rights 2025](#)).

These provisions can also be combined with a ‘hidden bill’ manoeuvre, under which a bill is prepared in secret and without prior notice. This procedure makes it possible to spring de facto government bills without warning that they were being prepared, much less the conduct of prior impact assessments, evaluations or social consultations, thereby further depriving the opposition of the opportunity to become familiar with, prepare for, and respond to, impending legislation ([Sebők, Kiss and Kovács 2023](#)).

Because of the benefits of bypassing oversight, excluding the opposition and drawing less attention to what might be unpopular or politically costly laws, reliance on fast-track procedures has spiked dramatically in backsliding episodes. In Serbia, for example, urgency procedures were used prior to 2000 for around 42 per cent of bills; this number has climbed since, with nearly 72 per cent of laws following urgency procedures in 2014 ([Dragojlo 2015](#)). In Poland, the first full year of rule by PiS saw over 40 per cent of bills introduced as private members’ bills (up from 15 and 13 per cent, respectively, over the previous two legislative terms) ([Sadurski 2019: 133](#)). And in Hungary, fast-tracking was even used to pass constitutional amendments ([Haggard and Kaufman 2021a: 107](#)). Increased use of, or political pushes for, these procedures has also been noted in Greece, India, Israel, Kenya, Sri Lanka and elsewhere. Indeed, the practice of using fast-track procedures has been on the rise in backsliding and non-backsliding cases alike. Its salience here, however, stems from the way in which backsliding regimes have been particularly adept and liberal in their use of these tactics, and towards the ends of degrading the constitutional core.

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## 2.2. ACCELERATING THE LEGISLATIVE PROCESS

In contrast to fast-track procedures, which put specifically designated legislation on a separate legislative track subject to a distinct process, backsliding majorities can also accelerate the process by cinching, truncating or speeding through the individual steps to which ordinary legislation is generally subject. These steps are often taken under the discretionary powers of the speaker, but they can also be implemented through majority vote, as with setting ad hoc procedural rules for a specific initiative like the amount of time to be allotted for debate.

A wide variety of micro-tactics in this vein have been employed, and there are exponential possibilities depending on the context. This section provides a sample of the types of tactics that have been frequently used.

### 2.2.1. Limiting speaking time

Limiting speaking time speeds up debate by shortening it, which prevents the opposition from putting its arguments on the record. Often, limiting debate concomitantly reduces the amount of time the majority has at its disposal, which at first glance might appear to undermine its power. However, with an assured party-line vote and no interest in the qualitative improvement of its proposals, shortening its own debate time in fact excuses the majority from its obligation to justify and defend its proposals.

#### Box 2.3. Poland

Law and Justice (PiS) has frequently limited speaking time in Poland. In a committee debate on amendments to the laws on the Supreme Court and on the regular courts, for example, speeches were limited to 1 minute—and in some cases capped at 30 seconds ([Fundacja im. Stefana Batorego 2023](#)). At times, PiS has limited speaking time 'by the simple method of turning the microphone off' ([Sadurski 2019: 133](#)). It has been noted that,

[i]n the hurried pace of pushing through some of the most momentous changes, such as the law on the [Supreme Court], even the MPs representing the ruling party limited themselves to the most perfunctory statements, knowing full well that whatever they said ultimately did not matter because it would be followed by a vote based on party lines. In one of the most important legal changes (to the law on the [Supreme Court]), the 'speech' by a representative of the PiS proponents of the bill in the Sejm plenary session on 20 July 2018 lasted seven seconds. ([Sadurski 2019: 133–34](#))

Parliamentary rules have also been changed in ways that limit (or eliminate) the opportunity to speak, such as restricting the number of questions members can raise in the discussion of a bill and excluding any plenary discussion in the lower house of Senate-proposed amendments to a bill ([Sadurski 2019: 134](#); Wyrzykowski 2019).

Similarly, changes to the by-laws of the Turkish legislature in 2017 halved the amount of time allowed for opposition parties to speak

when they submit a motion to the agenda in the plenary, and the time allotted for a deputy to speak when raising a procedural issue was lowered from 10 minutes to 3 (Bozkurt 2017).

Next to limiting speaking time by focusing on the length of individual speeches is compressing the time allotted for debate as a whole (Palonen 2019: 191). In India, for example, observers have noted instances in which motions have been put straight to a vote without further discussion, including where the tabled bill had proposed amendments which had not yet been put forward for debate, and where three weeks remained in the session (*The Telegraph* 2018; Khaitan 2020: 67).

Time limitations may be imposed either on an ad hoc or a discretionary basis as debate unfolds or through total time limits set in advance, often called guillotine procedures or gag rules. These latter types of limits are often used in debates on budget proposals. Budget scrutiny and amendment are two of the principal checks that the legislature exercises on the executive, particularly in a parliamentary system. Apart from the separation of powers between the legislature and the executive, budget debates also provide an important opportunity for the opposition to exercise its oversight function (Stapenhurst et al. 2008). Curtailing debate up front reduces the legislature's capacity to scrutinize the accuracy and appropriateness of budgetary estimates, negotiate trade-offs and challenge the government's priorities.

In addition to speaking time, there are also other aspects of the process that may be limited, to the disadvantage of the opposition. In particular, shortening the time between debates—the interstitial periods in which MPs have received an initiative and can read, study and evaluate it; prepare counterarguments and counterproposals; and organize among themselves—has reduced meaningful opposition participation. In Poland, requests by the opposition for intervals in committee meetings 'in order to have time to get acquainted with ... newly submitted drafts' have been 'summarily refused' (Sadurski 2019: 134). Hidden bills have the same effect by reducing the time the opposition has to prepare pre-debate. And in the Sri Lankan Supreme Court's hearing on whether the proposed 18th Amendment qualified for the urgency procedure, intervening parties such as opposition MPs were supplied with the actual text of the amendment only partway through the proceedings (Edrisinha and Jayakody 2011: 63).

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### 2.2.2. Using up time for debate

Time is a parliamentary resource that must be budgeted (Koß 2021). In addition to ending a debate before issues have been adequately discussed, guillotine rules also open the door to another related tactic, which is the practice of using up the time allotted to squeeze the opposition out of the debate. The majority can hold the floor and speak on unrelated matters, redundantly underscore the same points (such as repeating their preferred sound bites) or use the pulpit as an opportunity to harangue the opposition. While all of this behaviour is usually forbidden by the rules of procedure, enforcement generally falls to the speaker.

The Serbian parliamentary majority employed this tactic by proposing a large number of irrelevant amendments to its own bills. During the discussion of the 2018 budget, the ruling majority spent 600 minutes of debate time explaining more than 300 nearly identical amendments (Belgrade Centre for Human Rights 2018: 238). Most of these amendments were then withdrawn just before the vote (Damnjanović 2018).

### 2.2.3. Short notice

Last-minute changes—to a bill, the agenda or the timing of, or the venue for, voting or decisions to commence or adjourn a session—can pull the rug out from under the opposition, preventing them from being able to contribute to the process, and in some instances preventing them from being present at all.

Such changes often take the form of a bait and switch. In Hungary, one bill introduced (by two majority private members) proposed an amendment to a single paragraph of the law governing remuneration of MPs (Kazai 2019). Four months after the introduction of the bill but only one day before the final vote, the Committee of Constitutional Affairs submitted a 12-page amendment to the proposal, modifying several acts unrelated to parliamentary salaries. Last-minute amendments have also been used in Greece, where their ‘immoderate use’ has become a standing practice (Tsiftoglou 2019; Haggard and Kaufman 2021a).

A similar device was used regarding the venue of a vote in Poland. In that case, PiS members convened a caucus meeting in a side room of the parliament building. Immediately after the meeting, a plenary session was called in the same room. Given the small size of the room, even those opposition members who had heard about the session were unable to enter—an obstacle that was not helped by the fact that the chairs had been arranged to create a row blocking the

door, thus making it difficult to enter the room. According to Sadurski (2019: 134), it was impossible to count votes reliably in such a situation—a high-stakes situation given that the session was used to adopt the 2017 budget.

In Poland, as well as in Greece and elsewhere, sessions were held during irregular hours, and ‘laws were often voted on at unusual times, making it difficult for the opposition to intervene and challenge the majority’ (Haggard and Kaufman 2021a: 96). In Poland, ‘the usual timing of parliamentary sessions also changed’ (Maatsch 2021: 793). During PiS’s tenure, ‘late night sessions taking place until early in the morning became a regular practice. Although the rules of procedure do not set any limits regarding the working hours of the parliament, the timing of deliberation is believed to discourage parliamentarians’ active involvement in the deliberation process’ (Maatsch 2021: 793).

In the USA, subnational legislatures have used last-minute or extraordinary sessions to effectuate partisan power shifts with minimal scrutiny. After the 2018 State Assembly election in Wisconsin, the Republican-controlled legislature convened an extraordinary overnight lame-duck session to pass a package of laws curbing the powers of the incoming Democratic governor and attorney general (Wisconsin Public Radio 2018). The bills, introduced and approved over the course of a few days, included limits on executive appointment powers and restrictions on administrative rulemaking, with virtually no opportunity for debate or public input (Wisconsin Public Radio 2018). A similar episode occurred in North Carolina in 2016, when the legislature, in a surprise special session, stripped the incoming governor of the authority to appoint members of the state Board of Elections and to the University of North Carolina’s Board of Trustees (Associated Press 2016). Although formally lawful, these tactics relied on compressed timelines and opaque scheduling to neutralize electoral outcomes, undermining legislative transparency and the spirit of checks and balances.

Changes might even be made as proceedings unfold, such as by halting and reassuming the vote, which can be employed when a vote appears not to be going the majority’s way but not all the majority members are presently in the chamber. In such an instance, the speaker can temporarily halt the vote and resume the process later, when more majority members have arrived or the opposition has departed. Or, as has occurred in Poland, in some cases the presiding officer may be able to repeat the vote (for example, by claiming procedural irregularities in the original vote) when the first vote resulted unfavourably to their party (Sadurski 2019: 134).

Fast-track procedures and the above time-clipping strategies together have made the manipulation of political tempo exceedingly effective: during the first year of the legislative term preceding the rise of PiS in Poland, ‘an average legislative project was processed in 87 days—counting from publishing of the bill to its signing by the president’ (Maatsch 2021: 793). In ‘the first four months of the eighth legislative period, a legislative project was processed, on average, within just 19 days’ (Maatsch 2021: 793). This sharp reduction in legislative processing time has severe effects on the ability of the opposition and civil society to resist and oppose backsliding.

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### 2.3. ALTERNATIVE LEGISLATIVE CHANNELS

In addition to fast-track procedures, other tactics can be used to attach backsliding measures to other types of legislation that follow a different procedural pathway. Often, legislative changes which could cause alarm on their own can be pushed through by folding them into omnibus bills, tying them to confidence votes, misclassifying them as money bills or otherwise bundling proposals to force groups of initiatives into a single up-or-down vote.

First, for example, isolated changes can be attached to omnibus legislation or the budget (Arifin 2021). This subsumes the change into a much larger issue which MPs might care about much more (Dodek 2017). Comparative research has documented that in Türkiye, for example, major changes to the judiciary were folded into an omnibus bill dealing with a variety of subjects, including ‘changes in the Penal Code, administrative reorientation of the courts, Council of State, the Court of Cassation, and the Council of Judges and Prosecutors ... , changes in the structure and responsibilities of the military courts following the failed coup attempt of July 2016, and speeding up the judicial processes’ (Özcan and Kimya 2024: 896–97). Some of the more fundamental reforms ‘stripped almost all of the existing members of the Council of State and the Court of Cassation of their duties while reducing the size of these courts’ (Özcan and Kimya 2024: 896). Similarly, in Greece, a practice developed whereby the Government would collect laws submitted from various ministries and bundle them together into a single bill, thereby cleaving the more controversial aspects to the more popular ones (Haggard and Kaufman 2021a: 96).

In addition to forcing an up-or-down vote, this strategy also allows the majority to bury unpopular or illiberal changes amid a host of other,

less objectionable, proposals. In some cases, they may be planted in initiatives which are on the whole facially democratic, thus erecting a 'democratic shell' around themselves. Again in Türkiye, a package of proposed constitutional amendments included liberal provisions such as granting the legislature new powers to protect women and other minorities, as well as other democratic reforms, which were lauded by the European Union (Varol 2018: 348). The same package, however, contained amendments simultaneously increasing presidential power and expanding the Constitutional Court and Supreme Council to make way for court packing. Additionally, and to underscore the point, the 'liberal' powers granted to the legislature enabling minority protection crucially did not *require* any such protections—the legislature was also free to do nothing at all (Bisarya and Rogers 2023: 42).

Related to omnibus legislation is the use of legislative riders—'amendments which are only loosely linked, if at all, to the legislative proposal under parliamentary discussion' (Kazai 2024: 195). Often, the discretionary power of a partisan speaker (discussed further below) allows for a wide pass regarding what counts as relevant, and adding loosely related amendments at the end of the process (as in Greece and Serbia) provides 'an opportunity to bypass many procedural guarantees, such as the consultation with the Council of State, the discussion of the bill in the Council of Ministers, the referral of the proposal to the parliamentary committees, and the thorough deliberation of the text in both chambers' (Kazai 2024: 203, describing the French system).

Another tactic which falls under the same broad family includes misclassifying bills to subject them to another procedure. For example, the Indian Constitution stipulates a particular set of requirements for money bills (article 123). The speaker has the ultimate power to certify a proposal as such. Money bills can originate only in the lower house (the Lok Sabha), and the upper house (the Rajya Sabha) has no amendment power; it can only return the bill to the lower house with its non-binding recommendations after a period of debate limited to 14 days. Once the Lok Sabha speaker certifies a bill as a money bill, the Rajya Sabha is effectively sidelined—undermining bicameralism and allowing the executive to bypass deliberation or negotiation in the upper house.

This procedure poses a risk when the ruling party lacks a majority in the Rajya Sabha (Jain 2022). The system as it currently stands could allow for the insertion of unrelated provisions into bills that touch on matters listed under article 110—such as taxation or expenditures

from the Consolidated Fund of India—then certifying the entire bill as a money bill, despite the constitutional requirement that it address only those topics.

Comparative research documents the example of the 2016 Aadhaar act. Though its preamble frames the Act as a mechanism for targeted subsidy delivery funded by the Consolidated Fund, the legislation also includes provisions—like section 57—that authorize private entities to mandate the presentation of an Aadhaar number (a biometric identity number) for identity verification ‘for any purpose’. It further allows the Unique Identification Authority of India to expand the use of Aadhaar numbers beyond the act’s stated scope. Despite these non-monetary aspects, the act was certified as a money bill, which had the effect of limiting a controversial debate in the Rajya Sabha ([Jain 2022](#)).

Several other tactics can be used to help grease the wheels for unpopular provisions. In Greece, for example, a practice arose of compressing hundreds of pages into a single article, and in Italy, one incident involved a single-article amendment containing hundreds of subsections, which in fact replaced the text of the entire bill ([Fasone 2021: 804](#); [Haggard and Kaufman 2021a: 96](#)). In Poland, proposed amendments were bundled together and subjected to a block vote. Further, these bundles were grouped not according to the subject matter of the amendment but rather by which party submitted them ([Bien-Kacała 2021: 285](#)).

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**Via statute, the parliament may grant the executive broad decision-making authority. This authority may come in the form of administrative law, which delegates policy decisions to administrative bodies in the executive branch, or in the form of exigency laws which grant the executive decision-making power in certain emergency circumstances.**

A separate legislative channel that can be exploited is delegated powers. A personalist populist party, headed by a strong figure in the executive, may actively undermine its own powers, siphoning their own rights to legislate and control to that leader ([Maatsch and Miklin 2021: 763](#)). Via statute, the parliament may grant the executive broad decision-making authority. This authority may come in the form of administrative law, which delegates policy decisions to administrative bodies in the executive branch, or in the form of exigency laws, which grant the executive decision-making power in certain emergency circumstances. Once this channel is established, the government and/or the majority party can use their delegated powers to bypass the legislative process altogether. The Venezuelan ‘enabling law’, for example, delegated sweeping legislative authority to the president, allowing the president to bypass ordinary legislative procedure and the legislature to remove itself from the equation ([Garcia-Serra 2001](#)).

On the administrative side, Israeli Minister of Communications Shlomo Karhi has proposed a restructuring of the state’s broadcasting landscape, which is currently under consideration

in the Knesset, Israel's parliament (Gueta 2025). The proposal suggests transferring broad regulatory authority to a new regulatory body, which would be appointed entirely by officials in the Ministry of Communications (Shwartz Altshuler 2023). If passed, the shift to executive control of the media regulatory authority would grant the executive power to make major decisions in the realm of the media without legislative deliberation (Shwartz Altshuler 2023). The framework has been criticized as an attempt to quash freedoms of speech and the press with '[n]o oversight, no ethics, no independent news' (Sharon 2025).

On the exigency side, following a 2016 coup attempt in Türkiye, President Recep Erdoğan declared a state of emergency, which enabled him to issue sweeping decrees without having to involve the legislature at all. These powers were used for numerous purposes, including to clamp down on fundamental rights such as freedom of assembly. During the two-year state of emergency, several protests were shut down, including a weekly vigil called the Saturday Mothers, in which elderly women and others would gather and sit on the ground to 'commemorate the disappearances of relatives following their detention by Turkish security forces in the 1980s and 1990s and call for accountability' (United States Department of State 2018). The move was justified with the claim that the mothers were 'exploiting the concept of motherhood to mask support for terrorism' (United States Department of State 2018). In El Salvador, an ongoing state of exception has enabled President Nayib Bukele to exercise power over issues such as access to information, and in Sri Lanka, secondary legislation triggered during the Covid-19 pandemic was used to impose a curfew that served as the justification for thousands of arrests (Fonseka, Ganeshathasan and Welikala 2021).

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## 2.4. UNDERMINING THE OPPOSITION

At base all of the strategies explored in this chapter have the effect of suppressing the opposition. This section looks at tactics geared directly toward sidelining the opposition, by (a) shifting power from the opposition to the majority; (b) excluding the opposition from the legislative process; (c) undermining the opposition's capacity to exercise oversight over the majority as well as the executive; and (d) eliminating protections for individual members.

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**Power can shift and be shifted, and interested political actors can tilt the balance of power by redistributing decision-making authority.**

making authority. Power may be taken out of one person's hands and put in another's, moved from a group to an individual or vice versa. Decision-making authority may also be altered by changing the proportion of a group that is necessary, sufficient or both to effectuate a decision (Strøm 2012).

One way to shift power is to change the composition of decision-making bodies, such as committees. While committees generally tend to mirror the party composition of the plenary, in some cases—particularly with oversight committees—the composition may be weighted in favour of the opposition, such as by using a parity model (in which there is a single member for each party regardless of size) or by earmarking the chairship of certain committees for opposition members. This thumb on the scale can be removed by shifting power into another configuration. In Hungary, one such shift was made concerning the appointment of judges to the Constitutional Court. Judges are approved by a supermajority (Fidesz controls more than two thirds of the National Assembly), after being chosen by a nominating committee. The structure of this committee was originally a model 'in which every political group in Parliament was represented': the change moved the committee to one of proportional party representation (Haggard and Kaufman 2021a: 108). Fidesz's outsized majority gave them 'virtually complete control' of both stages of the process (Haggard and Kaufman 2021a: 108).

Changing the threshold required to make a decision can have a similar effect, a tactic that was employed in Bolivia (see Box 2.4).

A second category of tactics concerns excluding the opposition from the legislative process. In addition to taking up time and space and using speed in a way that de facto cuts out the opposition, majorities may seek to affirmatively exclude the opposition by denying them access to the floor, declining to include or consult them, or refusing to discuss their initiatives.

Though sometimes informal, inclusion can play an important role. Many Westminster systems, for example, require that the leader of the opposition be 'regularly briefed on matters of national security, military deployment or foreign affairs; that is, core affairs of state which are not usually the subject of partisan politics' (Rhodes, Wanna and Weller 2009: 209). This practice can 'provide a useful backchannel of communication between the government and the opposition, both to build consensus on issues of national importance and to ensure policy stability through electoral cycles' (Bulmer 2021:

### Box 2.4. Bolivia

The 2020 Bolivian parliamentary election saw the majority Movement Towards Socialism (MAS) party retain a simple majority in the legislature, at 55 per cent, but lose what had previously been a supermajority ([Bolivia Verifica 2020](#)). In the final hours of the term, before losing its supermajority, the MAS voted to amend the standing orders of the assembly. Under the articles as they stood, several important procedures were protected against manipulation by requiring approval by a two-thirds majority to amend them. Using their supermajority, the MAS amended these provisions to lower the threshold from two thirds to a simple majority ([Bolivia Verifica 2020](#)).

The threshold adjustment affected such matters as:

- submitting challenges against senators to the Plurinational Electoral Body (article 12);
- the creation of special committees (article 53);
- modification of the agenda (articles 81 and 111);
- exemptions of proposals from the normal procedure (article 107);
- closure motions (article 109); and
- modifications to the rules themselves.

32). Conversely, exclusion not only sidelines the opposition but also may feed polarization as a result.

Hidden bills and the practice of having committee work shadow-written by ministries are two examples of denying the opposition the opportunity to be involved in discussions and the drafting process. A more overt example is refusing to debate or schedule opposition initiatives, effectively blocking them before they even begin—denial of deliberation as a strategic practice. In the USA, Republicans used their majority in the Senate to decline to hold a hearing or vote on President Barack Obama’s 2016 Supreme Court nominee, Merrick Garland, reportedly to prevent the balance on the Court shifting during an election year—a justification which was not taken up again when the same issue arose under a Republican administration in 2020. The nominee languished for 293 days without any action—no hearing, no floor time and ultimately no outcome at all—despite being widely regarded as highly qualified. In El Salvador, such ‘shelving’ tactics have also been used to block bills protecting fundamental rights ([Human Rights Watch 2021](#)).

More directly, exclusion can occur by curtailing the powers of the opposition wholesale—limiting the number of questions that minority parties can raise at question time or the number of initiatives they can introduce in a given session, for example. Reforms to the

Turkish Parliament's Rules of Procedure passed in 2017 introduced a host of changes, many of which served to undermine the powers of the opposition. For example, each member of the assembly may introduce only one legislative initiative over the course of an entire legislative session (lasting up to five years). Each party group, meanwhile, is given only one day per month on which they may air their agenda. Because the majority can funnel their preferred initiatives through the Government, this restriction has a significantly disproportionate effect on smaller and opposition parties ([Bozkurt 2017](#)).

Third (and beyond the extent to which participation in the legislative process is itself a form of oversight), is the curtailment of oversight-specific tools. Reforms adopted in 2014 to the Hungarian Parliament's standing orders, for example, made it significantly more difficult for the opposition to initiate a committee of inquiry. Whereas, previously, committees of inquiry could be established at the call of one fifth of the chamber and operated under a parity structure, the reforms stated that each of the standing committees would set up subcommittees themselves to conduct inquiries as necessary ([Tanács-Mandák 2025: 9](#)). As these standing committees are proportional, the inquiry subcommittees now operate with a government majority ([Tanács-Mandák 2025: 9](#)). Reallocating the distribution of questions or interpellations allowed per party—as in the Poland example discussed above (see 1.4.1: Conflicts of interest in choosing rules and referees)—is another way oversight tools can be undermined.

Fourth, backsliding majorities may either change or exploit procedure to eliminate protections for members of the opposition, leading to the abuse of disciplinary measures—the subject of the next subsection. The above-mentioned reforms to the Turkish Parliamentary Rules of Procedure, for example, included a change under which the privilege of parliamentary immunity was shifted from attaching upon election to attaching upon taking the oath of office. Because members need to be physically present in Parliament to take the oath of office, tying immunity to the oath effectively bars duly elected opposition candidates who are incarcerated from receiving parliamentary immunity ([Bozkurt 2017](#)).

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## 2.5. ABUSE OF DISCIPLINARY MEASURES

The fifth group of tactics involves abuse of disciplinary measures enshrined in rules of procedure to punish members of the opposition or other vocal critics. Parliamentary rules generally provide for sanctioning members for disruptive behaviour or other improprieties. These sanctions most often take the form of fines, but some systems allow the assembly to expel a member for a number of days. Rules also explain the process by which an MP can be permanently expelled or removed from office. Backsliding regimes can abuse these measures by (a) claiming, on the basis of dubious findings, that criteria for punishment have been met; (b) enforcing rules selectively to punish opposition members and give wide berth to the majority for the same behaviour; and (c) treating measures that had traditionally been regarded as a last resort as first-instance responses ([Maatsch 2021](#)).

In North Macedonia in 2012, members of the opposition threatened to derail the Government's budget proposals. In response, the Government forcibly expelled members of the opposition as well as members of the press from the chamber ([Haggard and Kaufman 2021a: 122](#)). In Nicaragua, meanwhile, 16 members of the opposition were ousted from their seats. Prior to the episode, the Supreme Court removed the former opposition leader, Eduardo Montealegre, following a political dispute, on highly contested grounds ([Galeano 2016](#); [Bisarya and Rogers 2023: 125](#)). The Supreme Court then awarded the office to Pedro Reyes, who many considered to be an agent of Daniel Ortega, Nicaragua's President at the time. After opposition legislators refused to recognize Reyes as the speaker (and thus to recognize his authority), the Supreme Electoral Council removed the members from their seats on these grounds, decimating the remaining opposition ([Galeano 2016](#)).

In India, the expulsion of 100 members from the Lok Sabha and a further 46 members from the Rajya Sabha left only half of opposition members remaining, a decrease which had the effect of allowing legislation to pass through the chamber without robust debate ([Veer 2024](#)). In December 2023, opposition members launched a campaign in both houses to ask the Government for a statement on the measures it was taking after a security incident in which gas canisters were set off by members of the public ([Shamim 2023](#)). In light of this campaign, a significant number of opposition members were expelled for the remainder of the term, under a rule that allows expulsion for 'persistently blocking parliamentary business' (Lok Sabha Rule 373; Rajya Sabha Rule 255).

One of the laws passed during this time of decreased opposition representation concerned the mode of appointment for the Election Commission. Under the act, commissioners are chosen by a select committee comprised of the prime minister, the leader of the opposition and another member chosen by the prime minister, which can generally be expected to give the parliamentary majority a natural 2–1 advantage (Bill No. LVII-C of 2023). The law also enables the president to expand or reduce the size of the commission. This might be considered a vulnerability in the law, because similar provisions have been used in other contexts to pack an institution (Bill No. LVII-C of 2023). Finally, the laws expanded the definition of ‘terrorism’, which may have the effect of bringing protestors or civil society organizations under the statutory definition ([Mishra 2023](#)).

Backsliding administrations can also expand the grounds on which disciplinary sanctions can be imposed. In Türkiye, an amendment to the rules of procedure forbade the use of placards, signs and other expressive media; wearing a T-shirt with a message on it in protest was included. The change also provided for the ‘temporary expulsion of lawmakers from the plenary when he or she offends or insults the Turkish president, parliament speaker [or] other lawmakers; levels accusations against the history of Türkiye and its common past; or mocks the constitutional order and questions regime structures that are accepted in the constitution’ ([Bozkurt 2017](#)).

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## 2.6. ABUSING THE POWERS OF THE PRESIDING OFFICER

In many ways, this final category cuts across all of the others, as speaker discretion is the channel through which many of the other tactics are carried out. Because it is so instrumental, it is worth briefly noting on its own.

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**One of the simplest ways to make procedural changes with the aim of furthering backsliding is to expand the powers of the speaker, which is usually allowed by majority vote.**

Since many of the tactics discussed in the preceding sections are carried out via the speaker, one of the simplest ways to make procedural changes with the aim of furthering backsliding is to expand the powers of the speaker, which is usually allowed by majority vote. Expanding those powers augments the utility of several potential channels for using backsliding tactics at once. In Hungary, Fidesz’s tenure in office has seen broad expansions to the office of the speaker, including increased powers to leverage fines against MPs and to exclude them from parliamentary sessions ([Ilonszki](#)

and Vajda 2021; Ilonszki and Dudzińska 2021). These increased powers led to a steep increase in the exercise of disciplinary powers: financial penalties were applied against MPs in 22 cases between 2014 and 2018 and in 45 cases between 2018 and 2020 (Ilonszki and Dudzińska 2021). Similarly, in Poland, a reform of the standing orders expanded the powers of the marshal of the Sejm, the speaker of parliament, by allowing ‘the speaker and the presidium (also controlled by the ruling majority) to select MP’s questions but also to decide on the order in which the questions should be posed’ (Maatsch 2021: 797). Because of the finite time available for questions, ‘the entitlement to pre-select questions severely disempowered the parliament in holding the executive accountable’ (Maatsch 2021: 797).

Apart from formal changes to speaker powers, abuse of discretion is a form of power redistribution or expansion—through the informal process of degrading the norms that had previously acted as constraints on power.

There are too many examples of the above tactics being carried out in the margins of speaker discretion to enumerate, and many examples are described throughout this section of the report. It was speaker discretion, for example, that allowed for the halting and resumption of voting, the reallocation of questions during question time and the surprise moving or convening of a session in Poland; the use of the guillotine procedure and certification of bills as money bills in India; and the imposition of politically motivated disciplinary sanctions in Georgia, Nicaragua, North Macedonia, Poland, Türkiye and other countries.

Each of the examples in this section serves both to demonstrate the ways in which power over procedure can skew to the advantage of a backsliding regime and to illustrate undergirding tensions and problems which plague the issue of design. While these advantages and problems may remain constant—agenda-setting power will always be advantageous, and no configuration of rules will be able to prevent every form of abuse—this catalogue of tactics does shed light on some particularly vulnerable areas of parliamentary procedure where design ought to be revisited.

What these examples also reveal is the cumulative toll such practices take on the opposition and on civil society: deprived of floor time, excluded from committees or shut out of consultations, they are denied both the opportunity to scrutinize government action and

the institutional platforms through which to mobilize broader public debate. In this way, manipulation of procedure not only streamlines government priorities; it also simultaneously narrows the political space for contestation and thus quashes what have proven to be two key mechanisms for resisting and reversing backsliding. The next chapter will extract lessons from these experiences in order to offer considerations for fortifying parliamentary procedures against backsliding and bolstering democratic resilience.

## Chapter 3

# LESSONS LEARNED

The observations presented in the preceding chapter should lead foremost to the conclusion that backsliding is not simply a political strategy: the possibility of backsliding speaks to the weakness of the original constitutional, institutional and procedural design. ([Gargarella 2022](#)). Viewing backsliding—and resilience to it—as a design problem cautions that a return to the status quo ante will be insufficient to stave off future backsliding episodes.

In light of the powers, challenges, problems, uses and abuses of parliamentary procedure in an era of backsliding, this chapter examines institutional design choices for democratic resilience. ‘Democratic resilience’ is a broad term encompassing different specific aspects of resilience ([Merkel and Lührmann 2021](#)): here, the focus is specifically on identifying ways in which thoughtful design can help prevent future backsliding majorities from abusing and manipulating parliamentary procedure to further backsliding. These design choices may themselves be procedural or may speak to larger overarching choices which nevertheless may have an impact on the availability of procedural manipulation as a backsliding tool. Design choices geared towards this aim will be relevant to the design of parliamentary procedures and standing orders themselves, but also to constitutional design to a greater extent. The suggestions provided in this chapter thus span from significant constitutional provisions to small adjustments to minor procedures. All of these design considerations aim to work together to raise the cost and lower the efficacy of the tactics surveyed in the preceding chapter.

A few overarching considerations place important caveats on these lessons. First, the solution is not a matter of simply plugging holes in a dam. Identifying each tactic used and changing the rules to simply prohibit that tactic is cumbersome and almost certainly

counterproductive. No set of rules can anticipate every contingency, and instituting new rules may create as many new points of leverage for abuse as it fixes (Calabresi 2015). Relatedly, tools are contextual, and what serves as a solution in one context may prove detrimental in another. Questions may call for different answers depending on the institutional framework in which they are considered (Gardbaum 2024). Oversight mechanisms useful in a parliamentary system may prove irrelevant or counterproductive in a presidential system, for example, and the subtleties of the norms and cultures of an institution will affect the operation of instituted rules in innumerable and intangible ways. Party systems, too, will form a major part of the architecture being affected by design choices. Indeed, evaluating the institutional considerations below without ‘simultaneously considering party systems and electoral systems normatively, is looking at a seriously distorted picture of constitutional practice’ (Khaitan 2021: 90).

Further, it cannot be ignored that rules and practice are quite separate matters, and the gap between them can widen. Application, interpretation and practice in fact are the ultimate measure of the success of design choices. Still, this is not to say that design choices do not matter—for all the reasons discussed in Chapter 1 (see 1.3: The utility of procedure for backsliding)—and rules do shape practice. Their design, therefore, will have a tangible impact on political action.

Another overarching principle concerns the tensions that are inherent in design, between majority rule and minority rights, between efficiency and deliberation, and so on. In evaluating these trade-offs, the problem often seems to be one of balance, of finding the midpoint which allows for an equilibrium. But procedure is nuanced, and this trade-off shows up in different ways. It may be more helpful, therefore, to approach the challenge as one of *optimization* rather than *maximization*. In other words, the task is not to maximize efficiency at the expense of deliberation, as a zero-sum pool, but to design efficiency controls and deliberation safeguards in order to *expand* that pool, and optimize the relationship between the two (Fisher and Ury 1981).

Finally and potentially most importantly, the opposition has proven to be a major theme when it comes to the tactics described in this report, and many of the recommendations which follow focus on protecting or empowering the opposition. However, it is not the opposition per se that the lessons described in this chapter show to be important; rather, it is the democratic pillars of reason giving, oversight, scrutiny, deliberation and debate, which the opposition of

the moment tends to be incentivized to ensure, and thus responsible for ensuring, in a context of democratic backsliding. However, while the opposition in many cases should receive stronger and codified protections, opposition empowerment should not encroach on the majority to the extent that the majority is unable to act on its programme. Constraining the majority such that it is unable to deliver on its campaign promises reduces the efficacy of government and, moreover, sows precisely the kind of discontent and disaffection with democracy that gives rise to populist, illiberal leaders in the first place (Rosa 2005).

One useful concept in thinking about the empower/constrain divide is what Dixon and Landau (2016: 269) describe as the ‘constitutional core’—that ‘set of institutions, procedures, and individual rights that are necessary to maintain a system of multiparty competitive democracy’. In thinking about where to constrain, as opposed to empower, one potential lodestar to keep in mind is the idea of constraining the ability of one-time majorities to damage the constitutional core (Bisarya and Rogers 2023). On the one hand, where a parliamentary majority is able to make changes to that core—particularly when it may do so in the space of a single term—it is able to redesign the rules during its turn, and to its benefit. Changing the rules enables the majority to lock the door behind them after entering office, preventing the opposition from being able to regain power, before the opposition has had the opportunity to contest the majority on a level playing field. Constraining the ability of a one-time majority to make such fundamental alterations for its own gain is an important consideration in the design suggestions that follow. On the other hand, as discussed, overly constraining the majority such that it is unable to deliver on policy may simply lead to more backsliding. Thus, in seeking to codify without overly constraining, optimize competing aims and protect the opposition while empowering the majority to govern, a focus on those areas which help prevent a one-time majority from altering the constitutional core serves as a useful delineating principle and guide.

With these overarching points in mind, this chapter addresses six takeaways for institutional design in protecting against the manipulation of parliamentary procedure in backsliding contexts: (a) protect the rules by entrenching certain rules against change; (b) rethink the design of fast-track procedures; (c) target political conflicts of interest; (d) optimize the opposition, empowering it to exercise oversight without creating undue opportunities for obstruction; (e) ensure opportunities for review of key discretionary,

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**Constraining the majority such that it is unable to deliver on its campaign promises reduces the efficacy of government and, moreover, sows precisely the kind of discontent and disaffection with democracy that gives rise to populist, illiberal leaders in the first place.**

delegated and procedural decisions; and (f) institutionalize public participation in the legislative process.

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### 3.1. ENTRENCHMENT AGAINST ABUSIVE CHANGE

The challenge with relying solely on the design of parliamentary procedures is that such rules can always be changed, undone and even removed altogether—in many cases by a simple majority. Thus, a threshold question arises as to how to protect the rules.

One option is to entrench the rules by requiring a higher threshold for change—for example two thirds. This approach faces two challenges. First, it may be too rigid, with even minor and necessary changes requiring cross-party consensus and thus potentially leading to dysfunction. Second, should a party obtain the necessary supermajority, it would be free to change the rules at its discretion. Such a situation occurred in Hungary, where Fidesz used its large majority in parliament to amend the rules of procedure on several occasions to minimize scrutiny and oversight and to expand the discretionary powers of the speaker.

The issue of rigidity may be tempered with a tiered amendment approach, whereby some rules can be changed by simple or absolute majority, but others—for example, those concerning the powers and representation of non-governmental parties or urgency procedures—require a higher threshold (Albert 2023). This logic has been applied at the constitutional level, using higher amendment thresholds for more foundational provisions (or those likely to be targets of abuse, such as term limits) (Dixon and Landau 2018) and may be applied by analogy in lower-level parliamentary rules.

The same effect can also be achieved by ensconcing particularly important aspects of procedure in the constitution itself. Two salient effects are brought about by constitutionalization—entrenchment, on the one hand, and judicialization (candidacy for constitutional review), on the other (Ginsburg and Versteeg 2024). Some constitutions specify the grounds on which urgent or delegated legislation may be based (more on this below). Others exclude specific types or subject matters from certain procedures. The Constitution of Spain, for instance, provides that the Government can issue decree-laws when there is urgent need and prohibits certain subject matters—such as state institutions, the electoral law and basic freedoms—from this procedure (article 86).

Alternatively, the convention in some jurisdictions that changes to standing orders should be made by consensus could be constitutionalized for issues affecting the constitutional core by, for example, requiring unanimous consensus on a procedure committee which includes members of the opposition for urgency or other exceptional legislative procedures when the subject matter includes reform of state institutions or fundamental rights.

The underlying principle is that, while certain rules can be designed to make parliamentary procedure more resilient to backsliding, the rules themselves need to be protected from abusive change by the political majority.

Separately from entrenching the rules of procedure themselves, constitutionalizing other aspects of parliamentary structure and function may indirectly, but substantially, affect the ability of the majority to institute the tactics surveyed in the preceding section. For example, it is not uncommon to see constitutional recognition of the leader of the opposition, along with guarantees of certain status, salary and benefits, and responsibilities such as to be consulted on the legislative agenda (Constitution of the Seychelles, article 94(3)), to chair the public accounts committee (e.g. Constitution of Trinidad and Tobago, section 119) or to serve as the deputy speaker (Constitution of Madagascar, article 78). Other aspects which affect the ability of a majority to abuse procedure to effectuate backsliding—such as opposition representation on committees or the grounds and procedures surrounding loss of parliamentary immunity—may similarly merit consideration for inclusion in the constitutional text.

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## 3.2. REDESIGNING THE FAST TRACK

The design challenge with constraining the use of fast-track procedures, including urgency procedures and private members' bills, is that they play crucial roles and, when used as intended, can foster and protect a nation and its democracy. For this reason, rather than suggesting that restrictions be placed on such procedures in general—such as subjecting private members' bills to more scrutiny across the board or making the need for urgency harder to establish—this report instead recommends distinguishing between ordinary policy-related initiatives and those which touch on the constitutional core, and protecting the latter by requiring that they be subject to

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**This report recommends distinguishing between ordinary policy-related initiatives and those which touch on the constitutional core, and protecting the latter by requiring that they be subject to certain oversight procedures regardless of the legislative track on which they are set.**

certain oversight procedures regardless of the legislative track on which they are set (Rogers and Bisarya forthcoming 2026).

For example, simply placing constrictions on private members' bills may limit opportunities for both opposition members and backbenchers to contribute to policymaking. Instead, a rule requiring that, when such a bill concerns certain aspects such as fundamental rights, core procedures or changes to political institutions, it must undergo the same kinds of scrutiny as government bills, such as posting periods and impact assessments, may reduce the incentive for abuse by the government while protecting the interests such processes are meant to protect (Rogers and Bisarya forthcoming 2026). Similarly, such foundational initiatives may be subject to a certain minimum time for familiarization, consideration and debate, even where otherwise considered urgent. In addition, the threshold for establishing urgency may be expanded where legislation touches on the core in order to ensure the procedure is used only when genuinely urgent. Limits might also be placed on certain types of legislative acts (as opposed to content). While budget and omnibus bills, for example, may not touch on the constitutional core, they may be excluded on the grounds of their size and impact, as they require more scrutiny and are not likely to deal with exigent circumstances requiring urgency.

A second design strategy for guarding against the abuse of fast-track procedures generally (regardless of the bill's subject matter) is to use procedures which tighten timeframes but do not skip steps or subject urgent bills to separate requirements. Compare the constitutions of Singapore and Colombia. Under the Constitution of Singapore, general legislative initiatives are sent to the Council for Minority Rights, which has 30 days to evaluate whether any provision of the measure 'is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities' (articles 68 and 78). If the Council so finds, the initiative may only be passed into law with a two-thirds majority vote. Bills passed under urgency procedures are sent to the Council as soon as possible, and the report of the Council (which again has 30 days to evaluate each bill) is to be 'presented to Parliament as soon as possible'; however, by that time, the parliament may have already passed the legislation by simple majority vote (article 79). Because the prime minister has the power to certify a bill as urgent, this structure allows the prime minister to use the procedure as a back door through which to usher laws past the Council for Minority Rights. An alternative possibility would be to subject urgent bills to the same evaluation

requirement but to fast-track the Council's deliberation, by shortening its evaluation period (to, say, 15 days) before sending such bills back to the legislature for a vote.

By contrast, under the Constitution of Colombia, urgent bills must go through each of the same steps as regular legislation. Rather than skipping requirements, the Constitution allows for streamlining the process by (a) shortening the overall period Congress has to deliberate; (b) giving the urgent legislation priority over other items on the agenda; and (c) providing for the relevant committees in each house to 'deliberate jointly with the corresponding committee of the other House' rather than sequentially (article 163). This structure optimizes the competing demands of speed and procedural thoroughness. Indeed, in 2017 the Colombian Supreme Court struck down fast-tracked laws that deviated from these procedures. The procedures used in that instance, which were put in place to implement the peace process with the Revolutionary Armed Forces of Colombia (FARC), included aspects such as requiring 'votes to be as a block and requiring presidential approval for any changes', which the Court found 'replaced the basic constitutional principle of deliberative democracy' ([Landau 2022: 514](#)).

To sum up, the two strategies proposed here would be to prohibit, or increase the threshold for, fast-track initiatives which concern issues of the constitutional core such as fundamental political rights or democratic institutions—including by ensuring the government cannot decide unilaterally whether an initiative qualifies as such—and to design fast-track procedures such that they accelerate the legislative process but do not entirely eliminate opportunities for oversight and deliberation.

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### 3.3. TARGET CONFLICTS OF INTEREST

The Constitution of Zimbabwe requires Parliament to appoint a standing committee called the Committee on Standing Rules and Orders (article 151). The core function of the Committee is the formulation of Parliament's standing orders. The Constitution also allows the Committee to exercise other powers and functions conferred by the Constitution—or by the standing orders. This circularity gives the Committee the power to bestow its own powers, creating a conflict of interest in its mandate.

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**One way to stem the abuse of parliamentary procedure is to identify where these conflicts of interest exist and to mediate, eliminate or counter such conflicts.**

Such conflicts of interest abound in government systems—for example, allowing the legislature to draw electoral districts, to set its own salaries and to choose the judges who will rule on its actions. One way to stem the abuse of parliamentary procedure is to identify where these conflicts of interest exist and to mediate, eliminate or counter such conflicts. This section suggests two (overlapping) strategies for mediating conflicts of interest: (a) separating the decision maker from the beneficiary; and (b) diffusing powers.

The first strategy in this regard is to create space between the decision maker and the beneficiary of the decision maker's decisions. This is the case, for example, when an independent board sets legislators' salaries, or when laws which directly benefit legislators do not enter into effect until the term after they are adopted (examples of which can be found in Zambia and the USA).

In the context of parliamentary procedure, this strategy applies primarily to the powers of the speaker, whose breadth of discretion and partisan affiliation often combine to make them a beneficiary of their own decisions. On the one hand, speakers might be made less of a beneficiary—making the speaker less partisan and providing opportunities for review would both operate on that side of the equation. In some cases, however, it may also be wise to consider adding others to the decision-maker side of the equation (Braithwaite 1997).

The Office of the Parliamentarian, which exists in both houses of the US Congress, is interesting in this regard. The parliamentary staff act as official advisors to the presiding officer on matters of interpretation of the respective chamber's rules. While the role is advisory, the neutrality and authority of the parliamentarian—who spans administrations and may remain in the post for decades—carries significant weight, and their interpretations are rarely overturned. In a recent episode, for example, the Senate parliamentarian advised that certain key provisions of the Republicans' tax and domestic policy bill could not be included because they did not meet the chamber's budget rules (Fox, Raju and Rimmer 2025). While some Republican lawmakers objected, even calling for the parliamentarian's removal, others professed 'no intention' to overrule her finding, with one influential Republican lawmaker stating that they 'just [couldn't] imagine' that the majority would vote to overrule, and another stating that the party was 'not going to throw the parliamentarian under the bus' (Bradner 2025).

A second strategy for diluting the problems associated with conflicts of interest is to diffuse powers that are traditionally concentrated in a single institutional actor, such as the presiding officer of a legislature. 'Diffusion', in this sense, refers 'not to numerical diffusion of different types of institution and office, but to internal diffusion through allocating the tasks of one office to multiple office-holders' (Daly 2025: 21). By redistributing decision-making authority—whether to a collegiate body or a cross-party committee or by including the opposition or a non-partisan advisory body in a consultative capacity—this approach helps ensure that no single individual or party can unilaterally control key legislative functions or stifle opposition voices. It also promotes an anti-concentration principle, stalling power aggrandizement (Gardbaum 2020). Naturally, overlapping mandates can lead to turf wars, and where actors share procedural powers without clear separation or limits, such powers can be weaponized to win procedural advantage.<sup>3</sup> Diffusion without gridlock is a delicate line to walk.

One version of this approach involves simply taking powers previously held by a single officer and placing them instead in the hands of a collegiate body. This is commonly seen in systems that utilize a bureau or steering committee (such as Benin, France and Senegal), which seeks to spread agenda-setting and other powers among multiple people. Sharing power may be particularly important in systems where the speaker is expected to be partisan. Still, this type of diffusion, while helpful, is constrained by the effects of party discipline; usually, such a body will be weighted proportionally to party strength, giving the majority in the chamber in question a majority in the bureau. Some other systems use mechanisms designed to diffuse power so as to also meaningfully spread power across party or other lines. Such can be seen in the Presidium of the Bundestag, Germany's federal parliament, which is comprised of a president from the majority party and several vice-presidents, with each parliamentary group entitled to at least one vice-president. When sitting in plenary, the president and vice-presidents rotate through the chair every two hours, with the sitting chair exercising the powers associated with the conduct of parliamentary sittings (Deutscher Bundestag n.d.a). A separate body called the Council of Elders is composed of the Presidium and representatives of the parliamentary groups and is tasked with powers such as determining the agenda and deciding committee chairs. It also serves as an important forum for interparty negotiations on specific legislation and procedural issues (Deutscher Bundestag n.d.b).

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<sup>3</sup> See also Negretto (2007).

A further example can be seen in Uruguay's departmental legislatures (*juntas departamentales*), where presiding authority is structurally vested in a board (*mesa*) rather than in a single officer. The board, composed of the president, two vice-presidents and the secretary-general, exercises functions that in many jurisdictions are the exclusive responsibility of a speaker. For instance, under the Internal Regulations of the Junta Departamental de Salto, the board determines how written submissions are routed ('the board shall report on the submission and determine the procedure to be followed', article 22) and directly liaises with advisory commissions to coordinate the processing of matters and address internal procedural issues (article 10).

Requiring a certain amount of cross-party consensus is another way to diffuse power. Under the standing orders of the Parliament of Slovenia, for example, a cross-partisan body decides on proposals for the adoption of draft laws by urgent procedure (Standing Order, article 21(6)). The body—the Council of the President of the National Assembly—'consists of the President and Vice-Presidents of the National Assembly, the leaders of the deputy groups [parties], and the deputies of the national communities [Italian and Hungarian minorities]' (article 21(2)).

In Scotland, meanwhile, the Parliamentary Bureau is composed of the presiding officer and one nominated representative from each political party or group with five or more seats, as designated by their party leader (Standing Orders, Chapter 5). The Bureau is vested with authority over essential functions such as proposing the parliamentary business programme, amending daily business lists, establishing committees and allocating competing committee responsibilities (Standing Orders, Chapter 5).

Each of these examples grants parity to the parties in the chamber rather than weighting proportionally. This approach raises in turn questions about minority protection versus majority rule:

The efficacy of a business committee depends on its composition and culture. Cross-party inclusion is a must, but there are variations. Are all parties represented, or only those above a certain threshold in size, which might exclude the smallest parties? (In the latter case, there might be a 'mixed group', in which the smaller parties have a representative shared between them). Are parties represented according to their voting strength, or according to a fixed formula?

The latter might over- or under-represent certain parties, but might also ensure a balance between government and opposition. Is an ordinary majority sufficient, or do certain decisions require a super-majority?

(Bulmer and Storey 2024: 40)

Spain and France both provide a middle ground between proportionality, where the majority will have total control, and parity, where each party receives equal representation. Spain's Mesa del Congreso (which decides, among other things, on whether to institute fast-track procedures) is comprised of the president of the Congress, four vice-presidents and four secretaries. Both the vice-presidents and the secretaries are chosen through a procedure wherein members of Congress write the name of their choice, and the top four candidates with the most votes are elected (Rules of Procedure, article 37). This model gives smaller parties the opportunity to bargain and coordinate, potentially resulting in higher than proportional (but lower than parity) representation. Under the French system, the Conférence des Présidents, which helps set the agenda, is comprised of both the heads of committees (generally proportional by party) and the presidents of each parliamentary group, blending proportional and parity representation—though the majority still generally retains the upper hand.

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### 3.4. OPTIMIZE THE OPPOSITION

One of the most critical strategies for preserving democratic resilience and preventing backsliding is optimizing the role of the opposition within legislative processes.

At the outset, it is important to highlight that the features of the opposition vary widely depending on context, party structure, electoral system, number of parties, coalition rules and the like. It also bears repeating that 'the opposition' may refer to different groups: generally, in parliamentary systems, it refers to the party or group of parties that are not part of the governing coalition; in presidential systems, it often refers to the minority party (in two-party systems) or minority parties opposed to the dominant party, but it can also refer, in some jurisdictions, to the party in the legislature which is not the party of the president, regardless of whether they have a majority or minority in the chamber.

**In optimizing the opposition, the goal is not to undermine the majority party's ability to enact its policy agenda but to empower the opposition to serve the inward-facing, custodial function of government.**

In optimizing the opposition, the goal is not to undermine the majority party's ability to enact its policy agenda but to empower the opposition to serve the inward-facing, custodial function of government—what James Madison described as 'obliging the government to control itself' (Madison 1787: Federalist 51)—through participation and oversight. Rather than the formal equality of equal voting power, the goal is a more substantive equality of participatory power (Waldron 2010; Sajó and Uitz 2017; Kazai 2024: 43). Strengthening the opposition's institutional position makes it possible to maintain a healthy balance that prevents any single party or faction from monopolizing power, while ensuring that the government's programme is subject to effective scrutiny.

Opposition rights can serve as a diagnostic indicator of democratic health (Thiers and Rozenburg 2014). Generally, opposition rights regimes contain three components (Choudhry 2020):

1. They create an opposition team through provisions that encourage the aggregation of, or coordination among, opposition legislators to act collectively.
2. They confer rights exercisable by the opposition team or its recognized leaders that further one or both of the key functions of opposition parties: (a) to scrutinize the conduct of the executive and hold it accountable through powers of oversight; and (b) to provide a government-in-waiting through agenda-setting powers.
3. They contain an enforcement mechanism consisting of constitutional court referrals and/or speakers of the legislature.

#### **3.4.1. Institutionalize the opposition**

Along these lines, a preliminary method of strengthening the opposition is to institutionalize the office of the leader of the opposition, making it a formal constitutional institution with defined rights and responsibilities. Several constitutions do this explicitly. The Constitution of Malta provides that 'there shall be a Leader of the Opposition', appointed by the president as the member who, in the president's judgment, commands the support of the largest party in opposition to the Government (article 90). Kenya follows a similar model: article 108 of the Constitution designates the leader of the minority party as the leader of the second-largest party or coalition in the National Assembly and accords that office formal recognition alongside the speaker and majority leader. Mauritius adopts a comparable formula in section 73 of its Constitution, requiring the president to appoint the member who leads the largest opposition party in the Assembly—or, if no party clearly predominates, the person judged to be 'most acceptable' to the opposition parties. These

provisions ensure not only that the opposition leader is recognized but also that the appointment rules are transparent and rooted in legislative representation, thereby transforming the position into a constitutional counterweight rather than a matter of parliamentary convention.

Other constitutions strengthen the opposition by guaranteeing funding and administrative support. The Constitution of South Africa provides that the National Assembly ‘must make rules and orders concerning its business ... and provide for financial and administrative assistance to each party represented in the Assembly in proportion to its representation, to enable the party and its leader to perform their functions’ (article 57(2)(c)). By constitutionalizing resource allocation, South Africa ensures that opposition parties cannot be deprived of the means to function effectively.

Constitutions can also institutionalize the rights of opposition parties within the legislature more broadly. Article 112 of Colombia’s Constitution affords opposition parties the unequivocal right to criticize the government freely and to propose alternative policies, as well as gain access to information and to the media (including a right of reply in the media) and the right to participate in executive committees of the collegiate bodies. It also stipulates that the runner-up for the offices of president, vice-president and lower-level executives are automatically given a seat in the Senate, the House of Representatives and lower-level assemblies, respectively.

#### 3.4.2. Enhance oversight tools

There is a ‘clear relationship between the level of democracy and the number of oversight tools’ available in parliaments (Pelizzo and Stapenhurst 2008: 19). Across contexts, ‘differences in the form of government and other constitutional arrangements create considerable variation in the tools [parliaments] use to perform their oversight function’ (Pelizzo and Stapenhurst 2007: 380). These tools ‘include legislative committees, questions in the legislature, interpellations, debates, the estimates process, scrutiny of delegated legislation, private members’ motions, and adjournment debates that allow legislators to raise issues relating to the use or proposed use of governmental power, to call on the government to explain actions it has taken, and to require it to defend and justify its policies or administrative decisions’ (Pelizzo and Stapenhurst 2007: 380). It is important to note that oversight tools need not apply only to the opposition; they can and ought to be available for minority groups of all types, including backbenchers, factions within the majority or ad hoc/issue-based cross-party coalitions, as well as for the legislature

to oversee the executive where the majority in parliament is willing to do so.

Opposition oversight powers may support democratic resilience in multiple ways. Their exercise, of course, has direct substantive effects. There is also an accountability-forcing aspect, wherein the opposition can 'force the majority to make a highly visible, ultimate substantive decision on a given question, rather than disposing of the issue in some less prominent fashion, including simple inaction' (Vermeule 2005: 79). Increasing the visibility of final decisions 'will affect outcomes by increasing the ratio of publicly or discursively justifiable decisions to decisions based on private bargaining' (Vermeule 2005: 79). This sentiment was articulated at the US Constitutional Convention of 1787 by Charles Crisp of Georgia, who said, 'I believe the minority party has the right to smoke out the majority and make them face issues, make them vote on great public questions' (Madison 1840; Vermeule 2005: 82). Moreover, endowing the opposition with oversight powers gives it leverage and forces the majority to bargain in the shadow of those powers. Knowing that the opposition retains the option to use oversight powers to expose, delay or otherwise impose political costs on the majority's plans may make the majority more amenable to negotiating at the upstream end rather than facing consequences downstream (see Elster 2000).

Oversight tools can often be paired as upstream and downstream corollaries of each other. Consultation at the front end, for example, encourages input, whereas questions and interpellations after the fact require the government to justify why they have done things differently than the opposition would have liked. Similarly, fiscal oversight can be exercised both on the front end, through budget oversight, and ex post, through auditing.

Fiscal oversight is one of the cornerstones of executive oversight and should receive particular attention.

Budget oversight has traditionally been a form of legislative-executive oversight in the standard separation-of-powers sense. As discussed, modern party structures tend to give the executive sufficient control that, particularly in backsliding cases, this oversight does not carry substantial weight. Rather, it often falls to the opposition to be critics of executive action and administrative policy (Campion 1952). The budget is also not generally a locus of opposition power, as it deals most fundamentally with implementing the government's (or majority's in congressional systems) programme. Some cases, however, have built-in opportunities for the

opposition to play a role—whether marginal or even decisive—in the budget process.

The Swedish system is perhaps the starkest example of this principle. Different parliamentary groups in Sweden may make their own proposals for the budget; these are generally referred to as shadow budgets in contrast to the Government budget ([Swedish Riksdag n.d.](#)). Opposition proposals are voted on and ‘eliminated until one main alternative remains’ ([Molander 2001: 36](#); [Wehner 2010: 113–14](#)). This tournament-style vote can give rise to situations where a minority budget ends up being enacted, which occurred in 2014, for example, where three budgets were put forth—by the Government, by an alliance of opposition parties and by the Sweden Democrats. While the Sweden Democrats may have favoured their own budget over those of the Government and the alliance, they evidently preferred the alliance’s proposal to the Government’s and lent their votes in favour of the alliance, tipping the scales and resulting in the adoption of an opposition budget ([BBC 2014](#)).

Perhaps more important from the standpoint of opposition empowerment is downstream fiscal oversight, usually in the form of a public accounts committee (PAC) (or analogous body in a non-Westminster system, such as an audit or fiscal responsibility committee). Generally, extant PACs, like most other committees, are constituted proportionally, with a majority in the chamber having a majority in the committee. In many cases, however, a member of the opposition serves as the PAC chair to help counterbalance this weight ([Pelizzo and Stapenhurst 2007: 381](#)). This is important to counter the power of ‘professional enablers’—advisors, firms or compatriot party members—to facilitate misuse of funds by a powerful executive (see [Dávid-Barrett 2023](#)).

On both the upstream and downstream ends of fiscal management, another way to enhance executive oversight and improve outcomes is to include a ‘nonpartisan, independent, objective analytic unit to the legislative role in both enacting and overseeing implementation of the budget’ ([Johnson and Stapenhurst 2007: 359](#)). Such bodies supply legislatures with technical expertise to scrutinize complex fiscal measures, strengthen their capacity to hold the executive to account, and foster continuity and institutional memory that transcends partisan shifts. They also provide an avenue for the acquisition of independent budget and economic information, rather than forcing committees to rely on the executive for information. Canada, Mexico, the Philippines, Uganda and the USA all utilize analytic units of this type.

It is important to note that the opposition is not the only site of oversight in parliament. Often, backbenchers add diversity and nuance to the views of the majority party and play a crucial role in oversight of the executive. Empowering backbenchers on both sides of the aisle may reduce polarization, mediate the power of party leadership and temper the direct connection between the executive and the parliamentary majority. In these ways, providing for backbench empowerment, such as by protecting or increasing the number of days devoted to private members' business, may also have an indirect effect on backsliding by alleviating some of its contributing factors.

### 3.4.3. Look to committees

In the vein of including the opposition on a strong public accounts committee, a broader observation may be made about the role of the opposition on committees generally.

As discussed previously in this report, considerations surrounding committees fall generally more along the axis of legislative versus executive power. In polarized backsliding societies, with substantial party discipline, this axis becomes weakened, and committees, as 'engine rooms of parliament' (Gargarella 2015), are more apt to lean in the direction of 'engine rooms of democratic erosion' (Mezey 2020).

It is unsurprising that, given the separation of parties observed in place of the separation of powers (Levinson and Pildes 2006), an inverse relationship has been observed both between party strength and committee strength and between executive power and committee strength (Strøm 2012: 27; also see Cox and McCubbins 1993) (though it is also true that 'pressures to enhance legislative authority can be seen at the committee level throughout the world' (Shaw 2012: 225). Without making assumptions as to the cause of this correlation, it does seem likely that both polarization and executive aggrandizement will have some, likely negative, effect on committees' democratic functions.

Still, committees present an important arena in which the opposition can play an oversight role. A committee's political advantages stem from '(1) economies of operation, (2) gains from trade, (3) information acquisition, and (4) partisan co-ordination' (Strøm 2012: 24). Each of these aspects provides room for the opposition to manoeuvre. Specialization (points 1 and 3), for example, enhances a member's credibility; personal relationships with members of other parties (point 4) create possibilities for depolarizing forces; and

the power to force information from the executive (point 3) helps force transparency in a way that the majority cannot subsequently reverse. Further, tools can be made available within committees. Minority reports provide opposition parties with an official channel to register dissent, document alternative evidence and inform legislative intent. These tools not only strengthen oversight by ensuring that government narratives are contested but also arm civil society, the media and the courts with authoritative material to hold the majority accountable beyond the committee room. In Denmark, committees can submit committee questions to ministers while scrutinizing bills; those ministers are requested to provide written or oral answers (Strøm 2012: 53). While ‘these questions formally are put by the committee, in reality any committee member can usually forward a question through the committee’ (Strøm 2012: 53).

A more salient point is that the opposition may be able to play an especially important role on certain types of committees. Committees by and large are structured proportionally, such that the makeup of the committee reflects the number of seats held by each party in the chamber. This is appropriate where committees are engaged with policy being put forth by the government. However, where committees are tasked with a government control function like oversight or minority protection, there is an argument to be made that weighting the power or the composition of the committee to some degree in favour of the opposition is appropriate, as the committee is in that case acting as a check more so than a legislative workhorse. Committees often hold significant influence over the investigation of executive actions (Wehner 2010; Palonen 2019). Ensuring that key committees—such as those overseeing standards, public finance or accountability—utilize sufficient opposition involvement encourages a level of independence and credibility in the oversight process.<sup>4</sup>

The most common example of current manifestations of this principle is earmarking the chair of certain committees for members of the opposition. Thus, PACs or audit committees are often a standard candidate for opposition chairship. More weight could also be given to the opposition, however, in the weighting of the composition. One configuration in this regard is bipartisan splits, as with Canada’s Board of Internal Economy, which is ‘responsible for all matters of financial and administrative policy affecting the House of Commons’ and requires parity between majority and opposition members. Another possibility is a parity system in which each party

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**Ensuring that key committees utilize sufficient opposition involvement encourages a level of independence and credibility in the oversight process.**

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<sup>4</sup> Ensuring that the opposition played an important role on committees was a key recommendation put forth by the 2025 July Charter in Bangladesh, intended to reform the country’s Constitution.

(or each party with at least a certain number of seats, or a certain number of the largest parties) gets one seat on the committee. The Estonian Anti-Corruption Select Committee, for example, is 'composed of six MPs representing the whole political spectrum in parliament and is chaired by an MP from the opposition' (GRECO 2018: 27–28). And in Spain, the Official Secrets Committee, which has special privileges to receive classified information and also has control over reserved funds, is made up of one MP from each parliamentary group, each of whom is elected by the plenary by a three-fifths majority. Finally, an alternative to weighting the opposition directly is to dilute the power of the majority. The UK Committee on Standards, as an example, consists of seven MPs as well as seven lay members, meaning that a majority in the chamber does not necessarily result in a majority in the Committee (UK Standing Orders, article 149). While the lay members cannot vote, they are involved in all of the work of the Committee, which includes responsibilities 'to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Financial Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; and to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner' (UK Standing Orders, article 149).

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**In some cases, approaching this type of equality may require rules which, on their face, may seem countermajoritarian but are in fact designed to use a sort of positive discrimination to promote compromise and consensus rather than a winner-takes-all approach.**

#### 3.4.4. Submajority rules

A general problem with majoritarian politics is that, in effect, the winner takes all (Abebe 2024). Assuming strong party discipline, the majority will have 100 per cent of the say on policy 100 per cent of the time. In such circumstances, Viktor Orban's 1998 quip that 'the House works even without the opposition' captures an important truth: quorum requirements aside, a cohesive majority can govern without a meaningful opposition. Democracy, however, is not mere majoritarianism; rather, it is founded on the principle of pluralism (Mouffe 2000). A structure in which 'the majority gets all, while the minority deserves nothing ... misses the point completely' (Sajó and Uitz 2017). Legislative rules ought to be structured in a way that ensures that the opposition can participate in a meaningful way in rough proportion to its size. In this context, it is useful to distinguish between different conceptions of legislative equality. Narrowly, equality of MPs refers to equality of vote. A broader conception, however, looks to equality of participation (Kazai 2024). In some cases, approaching this type of equality may require rules which, on their face, may seem countermajoritarian but are in fact designed to use a sort of positive discrimination to promote compromise

and consensus rather than a winner-takes-all approach (Thiers and Rozenberg 2014). Submajority rules are one such mechanism.

Submajority rules are rules wherein ‘a voting minority is granted the affirmative power to change the status quo’ (Vermeule 2005: 74). They empower the opposition to move beyond obstruction and instead to exercise the power ‘to control the operations of entities of government in order to coerce action’ (Fontana 2009: 556). These rules stand in contrast to supermajority or other veto-type rules, where a minority is empowered only to prevent someone else’s proposed change to the status quo. In conditional terms, where supermajority rules make the minority necessary, submajority rules make the minority sufficient.

Submajority rules are closely related to oversight mechanisms, insofar as they often serve as the trigger for such mechanisms—for example, where a minority of the chamber can call for a commission of inquiry. Their use, however, is conceptually different and is not limited to triggering oversight tools.

Adrian Vermeule (2005: 74) finds that submajority rules tend to be present ‘for preliminary and procedural questions, and to set agendas—for voting on the question of which issues are to come up for a substantive vote by simple or special majorities’. This may be a desirable use for two reasons. First, the substance of the decision remains subject to the majority; the minority cannot dictate the final outcome. Second, one problem foreseeable with submajority rules is the possibility that they will simply be overturned by the majority. Using submajority rules thus makes the most sense in situations where reversal is difficult—when posing sequential questions (procedure, agendas) or extracting information (e.g. from the executive), which may be impossible to put back in the bag once it has been conveyed.

Submajority rules may also be useful in strengthening accountability because they can require a majority to vote on something it might otherwise leave unaddressed to avoid public scrutiny or avoid through inaction. While the concept of deliberation may seem less useful in polarized party systems than in more collegiate assemblies (Issacharoff 2023), Vermeule (2005: 82) points out that bringing issues to light and forcing a debate on them—forcing members to vocalize a rationale—induces actors to ‘behave as *though* their actions are motivated by publicly justifiable reasons’ even where they would prefer to act, or are in fact acting, for private gain. This dynamic occurs where actors know there will be a political cost to

pay for publicly admitting that their actions were aimed at enriching themselves; rather, they will be pressured to express their decision in normative terms, necessarily limiting them to decisions that are normatively justifiable.

Submajority rules supply several interesting possibilities for empowering the opposition in countering backsliding. A foremost example is a discharge rule where a specified minority in the plenary can force a committee to discharge its report on a bill. This rule works as a counterweight, preventing the committee from otherwise sitting indefinitely on a bill and never sending it to the floor for a vote. When such a discharge rule was in place in the USA, it was paired with a guarantee that bills discharged in this manner must be voted on in the plenary within a certain timeframe in order to keep the speaker or majority from simply using the same tactic (Vermeule 2005: 91). This rule does not empower the minority to change a law; it merely forces the majority to publicly vote on (or against) it. A second example is used in the USA under House Rule 11, which allows minorities in committee to call witnesses at hearings. Like the previous example, this procedure also does not affect the outcome, but it does affect the information environment in which decisions are taken. Similarly, a minority of designated committees in the US Senate can force the executive branch to divulge information (Senate Rule XXVI). Other examples—some already quite common—include enabling a specified minority to call for a committee of inquiry to be established, to issue a rollcall vote, to convene a special session or to send a bill to the constitutional court or to subject it a referendum.

### 3.4.5. Protect opposition time

As illustrated in Chapter 2, one key way in which backsliding regimes have been successful in undermining the opposition is by cutting them out of the legislative process, largely by taking away their time to speak, ask questions, familiarize themselves with initiatives, deliberate or even access the chamber where a vote is being held. Protecting the opposition's time protects its ability to serve as an effective check (Rogers and Bisarya forthcoming 2026).

One safeguard lies in codifying rules that limit the speaker's discretion over speaking time in a debate and during parliamentary questions. Guarantees such as fixed rotations in a debate or a minimum number of questions for each party remove the possibility of manipulation through selective recognition. Transparent allocation rules keep opposition participation regular and predictable rather than contingent on the presiding officer's alignment.

Protected time windows—such as deliberation windows or a minimum time for reviewing bills and amendments—can also provide valuable space. Under Poland’s Constitution, the Senate has 30 days in which to review legislation from the Sejm. Though the Senate’s amendments can be overridden by a simple majority in the lower house, opposition senators and civil society allies have used this interval to hold public hearings, air counterarguments, engage the media and liaise with international actors such as the Venice Commission. The guaranteed window thus created a platform for voicing dissent and framing backsliding initiatives in ways that resonated both domestically and abroad. Even without binding force, the interval slows the majority’s tempo and creates a platform for contestation that fast-track rules cannot (Rogers and Bisarya forthcoming 2026).

Time is also valuable because it confers visibility. Protecting the opposition’s time is crucial to preserving a channel through which it can communicate its criticism of the majority and counter its proposals in the public sphere. The Supreme Court of Ghana, in this vein, has ruled that opposition parties have an affirmative right ‘to be granted access to public media to respond to an annual budget presentation by the government’<sup>5</sup> (Abebe 2024: 127).

Beyond protection of allotted time, a less-common tool worthy of increased study and consideration is enabling the opposition in certain cases to decelerate (Rogers and Bisarya forthcoming 2026). Some systems empower parliamentary minorities to halt or delay legislation that concerns constitutional fundamentals. In Sweden, for example, if 10 MPs make such a request, a bill concerning fundamental rights must be postponed until after the next general election, effectively conditioning such legislation on renewed electoral endorsement. Denmark provides a similar instrument that strikes a different balance: a minority of the Folketing, the Danish Parliament, may delay the passage of nearly any bill—except money bills, naturalization laws and emergency measures—but the threshold is higher, requiring the support of two fifths of members, and the pause is shorter, at 12 days (article 41.3). These provisions are rarely invoked; again, such rules may be most helpful in forcing the majority to bargain in their shadow and make concessions rather than run the risk of their use.

Elsewhere, this type of mechanism is used to protect a specific minority, such as an ethnic, religious or linguistic population. The

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**Protecting the opposition’s time is crucial to preserving a channel through which it can communicate its criticism of the majority and counter its proposals in the public sphere.**

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5 *New Patriotic Party v. Ghana Broadcasting Corporation* [1993–1994] 2 GLR 354.

Belgian ‘alarm bell’ procedure is one such example, combining deceleration with cross-partisan deliberation. Where 75 per cent of the members of one of the nation’s linguistic groups signs a motion stating that a proposed bill or motion is ‘of a nature to gravely damage relations between the [Flemish and Walloon] Communities’, the motion or law is paused and referred to the federal cabinet (Constitution of Belgium, article 54). The cabinet must have as many French-speaking as Dutch-speaking members, and it operates on a consensus, rather than majority, basis (article 99). Upon receipt of the bill, the cabinet must work together to prepare a recommendation to the Parliament, after which the Parliament reconsiders the bill (article 54). This approach acts as a mediation procedure which leverages the pause to attempt to find a mutually acceptable resolution.

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### 3.5. ENSURE OPPORTUNITIES FOR REVIEW

Establishing credible avenues for reviewing procedural decisions is vital to prevent abuse, deter backsliding and preserve the integrity of legislative processes. Review can take several forms and is not limited to the judicial sphere. It can take place *ex ante* or *ex post*: article 61 of the French Constitution, for instance, requires that rules of procedure must be referred to the Constitutional Council before coming into force. Mechanisms may provide a broad range of tools for (a) monitoring; (b) review; and (c) correction of any legislative activity (Kazai 2024). Bodies tasked with these activities may range from experts within executive offices responsible for evaluating whether a law is regular or cardinal (and thus which procedure is required to enact it), to parliamentary committees engaged in the ongoing monitoring of delegated powers, to the executive’s veto and finally to constitutional review bodies such as a constitutional court (Kazai 2024).

Turning to areas particularly important for oversight: first, discretionary decisions that can be subject to abuse, such as whether the criteria for triggering an urgency procedure have been met, should be reviewable. Under the rules of the Israeli Knesset, for instance, every member has the right to appeal a ruling of the chairperson to the Interpretations Committee, which is made up of members chosen by the Committee of the House (article 143(b)).<sup>6</sup> An office akin to the US parliamentarian might be another useful (non-partisan instead

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6 The composition of the Committee of the House is subject to statute, which is a potential weakness here (article 102).

of cross-partisan) outlet for reviewing speaker decisions under an abuse-of-discretion standard. Decisions by such an unelected or appointed technical office need not necessarily be binding; putting the opinion on the record, even if the speaker is able to ignore it, may create political pressure to keep the speaker from habitual overreach.

### Box 3.1. France

The French Constitutional Council has developed a system for reining in speaker discretion in the realm of legislative riders (*cavaliers législatifs*). Excessive last-minute amendments proved detrimental both in the hands of the opposition—which could use them for obstruction—and, even more so, in the hands of the majority, which could use them to gain ‘an opportunity to bypass many procedural guarantees, such as the consultation with the Council of State, the discussion of the bill in the Council of Ministers, the referral of the proposal to the parliamentary committees, and the thorough deliberation of the text in both chambers’ (Kazai 2024: 203). In response, the Constitutional Council developed the ‘funnel doctrine’, which approaches the legislative process longitudinally, beginning with wide latitude and narrowing as the process moves forward. At the early stages, amendments may be added which stray further from the original text of the bill; at successive stages, however, the nexus of relevance gets tighter and tighter. After bills emerge from the Joint Conciliation Committee, ‘any additional provisions attached to the text still under discussion have to be either directly related to the articles approved by both chambers or dictated by the need to guarantee compliance with the Constitution, to ensure coordination with other texts under deliberation, or to correct a clerical error’ (Kazai 2024: 206).

Second, parliamentary review of executive action is a critical aspect of oversight—particularly where the executive exercises legislative powers, as with secondary legislation enacted using delegated powers. Both Canada and Nepal utilize standing committees tasked specifically with the review of secondary legislation (Kirkby, Abel and Hilton 2022; Lupo 2026). Canada’s Standing Joint Committee for the Scrutiny of Regulations—empowered both by statute and by the rules of procedure—reviews draft regulations that have been proposed by a regulation-making authority and approved by the relevant minister (Kirkby, Abel and Hilton 2022: 2). The criteria by which the Committee reviews regulations ‘range from the highly substantive, for example, whether an instrument is unlawful or invalid or whether it unduly interferes with the rights and liberties of individuals, to the less substantive, such as whether the drafting of a regulation is defective’ (Kirkby, Abel and Hilton 2022: 3). The Committee is chaired by joint chairs from the House and the Senate, with the Senate chair pulled from the Government party, the House chair from the Official Opposition, the first vice-chair from the Government party and the

second vice-chair from an opposition party other than the Official Opposition in order to encourage cross-party consensus (Kirkby, Abel and Hilton 2022: 2).

A third avenue of review is judicial review of legislation on procedural or semi-procedural grounds. Many systems currently allow the courts to strike down legislation on the grounds that it was passed using faulty procedures. One such jurisdiction is Colombia, where the Constitutional Court has developed the ‘evasion of debate’ doctrine, under which the Court will give closer scrutiny to, and potentially strike down, acts which ‘deviate in major ways from constitutional or statutory prescriptions on the legislative process’ (Cepeda Espinosa and Landau 2021: 558).

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**Expanding procedural review opens another channel through which sites of resistance against democratic backsliding may seek to stanch backsliding efforts.**

Many other jurisdictions—particularly those modelled on the Westminster system—limit this ability. Expanding procedural review opens another channel through which sites of resistance against democratic backsliding may seek to stanch backsliding efforts. In Colombia, the evasion-of-debate doctrine has been used, for example, ‘where major topics were intentionally added into the law late in the legislative process, so that some of the constitutionally prescribed debates (committees in each chamber, and floor vote in each chamber) were missed’ or when ‘a floor vote had been pretextually suspended for a lack of order rather than allowed to fail’ (Cepeda Espinosa and Landau 2021: 558). This type of review is most useful where the standards of procedure are clear, including which procedural violations can be sufficient for nullification. Too little guidance gives increased discretionary power to the Court, which can be exercised subjectively and risks politicizing the Court. Standards that set clear procedural benchmarks (such as prohibiting the skipping of certain steps) rather than subjective aspirations (such as consulting the opposition insofar as is practicable) are an important requisite condition for procedural review.

In addition to pure procedural review, courts increasingly take on what Bar-Siman-Tov (2012) calls ‘semiprocedural review’, where the substance and the procedure of the law intermingle. Semiprocedural review ‘integrate[s] an examination of the legislature’s decisionmaking process into the judicial tests for determining the permissibility of constitutional infringements’. Such a review might include, for example, assessing the sufficiency of evidence gathering or—as seen in the jurisprudence of the European Court of Human Rights and the European Court of Justice—considering the legislative process as part of a court’s proportionality analysis (Bar-Siman-

### Box 3.2. Colombia

The opposition in Colombia, for example, relied heavily on judicial procedural review under the administration of President Álvaro Uribe, to great success (Gamboa 2022: 164–71). The opposition monitored legislative proceedings meticulously, intervening frequently to note procedural irregularities—interventions which were then a part of the parliamentary record. In one instance, the ‘irregularities reported in the congressional records’ prompted the Constitutional Court ‘to go beyond the normal review process and ask for supporting documentation of the bill before it was submitted to the legislature’ (Gamboa 2022: 170). On the other hand, the opposition also furthered this strategy by manufacturing procedural irregularities to create grounds for challenging the law down the line (Gamboa 2022: 161–63). In this way, opposition members relied on precisely the kind of procedural tactics that are used by backsliders, even if they were used in the service of more democratic ends. This underscores the need to include clear rules that give the opposition the opportunity to, in good faith, slow or counter backsliding; otherwise, they are incentivized to use the very means they find objectionable.

Tov 2012). Increasingly, these courts have ‘seemed to base their conclusion about proportionality, at least in part, on the question of whether the infringing Act was enacted through a process that included procedural requirements such as consultation procedures, appropriate investigations and studies, and sufficient parliamentary debate’ (Bar-Siman-Tov 2012).

Courts may also be able to exercise a form of semi-procedural review by noting when form begins to tip over into substance. In *Senate of the Republic of Kenya & 4 Others v. Speaker of the National Assembly & Another*,<sup>7</sup> the High Court of Kenya invalidated 23 acts of Parliament that had been enacted by the National Assembly without involving the Senate, contrary to article 110(3) of the Constitution, which requires joint certification by the speakers of both houses for any bill ‘concerning counties’. The National Assembly had attempted to sidestep bicameralism by unilaterally classifying wide-ranging measures—including the Tax Laws (Amendment) Act 2018, the Statute Law (Miscellaneous Amendments) Act 2018, the Computer Misuse and Cybercrimes Act 2018 and the Kenya Coast Guard Service Act 2018—as not affecting counties, thereby excluding the Senate from the legislative process (CFL Advocates n.d.). The Court held that concurrence was a mandatory and substantive requirement, not a discretionary or formal one, and that misclassification could not insulate unconstitutional procedure (CFL

7 [2020] eKLR.

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**Arbitrary expulsion, or other, even constructive, exclusion from debate, for example, may violate a right to due process or political participation or a right to exercise public office.**

*Advocates n.d.*). In other words, form cannot be manipulated to defeat the substance of constitutional safeguards.

Similarly, and beyond ‘error’ per se, courts might recognize that rushing through the legislative process too quickly may reach the point of compromising specific democratic commitments. Setting minimum standards of underlying democratic or constitutional principles would encompass many fast-tracking strategies, for example. In Mexico, the Supreme Court overturned a suite of laws on the electoral system which had been rushed through in an overnight fast-track procedure (Copeland 2023). And in Israel, the High Court in *Quantinsky v. Knesset*<sup>8</sup> held that bypassing meaningful legislative debate fundamentally undermined the right of Knesset members to participate fully in the legislative process (Roznai 2018; Weill 2022). Similarly, the rights of legislators themselves—qua legislators—may provide potential grounds for review. The *amparo* model in Latin America, for example, provides an avenue for courts to step in immediately in cases where the rights of an individual have been violated. Such a model could include both the legislative and the personal rights of MPs. Abuses of procedure may be challenged when they have infringed on such rights. Arbitrary expulsion, or other, even constructive, exclusion from debate, for example, may violate a right to due process or political participation or a right to exercise public office.

Finally, a willingness on the part of judges to be candid about legislative intent may help courts address cases in which the motive is clear. In many cases, the stated rationale given for a legislative change may be undermined by evidence indicating an alternate rationale. In such cases, the courts may need to look beyond formal committee reports and debates to statements made by the proponents or opponents of an initiative in the political arena, in the press or on the campaign trail, which may show a blatantly different motive.

Patterns of behaviour may be another source of evidence regarding motive. The Israeli Knesset has looked at the repeated practice of minor procedural irregularities—which are difficult to take issue with based on a sole occurrence—in order to establish abuse of procedure and therefore strike down a decision on procedural grounds. One such case involved ‘temporary amendments to the Basic Laws’ issued by the Knesset to approve a biennial (instead of the constitutionally required annual) budget (Roznai 2021). While such

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8 HCJ 10042/16 [2017].

temporary amendments are allowed, the Supreme Court warned that they should be used sparingly and only in extreme circumstances. Despite this warning, the practice steadily increased in frequency such that it became somewhat of a habit. The point at which permissible use tips into misuse is, as Yaniv Roznai (2021) puts it, a sort of ‘which straw broke the camel’s back’ question. In the end, ‘[i]t was the accumulation of the temporary amendments that was conclusive’. Justice Hanan Melcer

explained in his opinion [that] a one-time temporary change of the annual budget rule to a biennial one is an infringement of the constitutional rule without essentially modifying the basic rule (annual budget). However, the recurring use of the temporary amendment turned the ‘infringement’ of the constitutional rule into its ‘modification’. In other words, the Court has taken an aggregated review, considering not only the ‘qualitative’ effect of the fifth amendment on its own but also the ‘quantity’—all the previous amendments that, when considering all the amendments together, have led the country not to have an annual budget for a decade. (Roznai 2021)

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### 3.6. INSTITUTIONALIZE CIVIC PARTICIPATION

Backsliding leaders routinely rely on a thin, majoritarian conception of democracy to justify a wide mandate which they exercise on behalf of the people. While democratic in form, this understanding shifts democracy away from ‘representative democracy’ and towards ‘delegative democracy’, where the people cede power to their leaders (O’Donnell 1994). In many backsliding cases, superficial modes of participation, or modes of participation that are closely controlled by the government, as in the case of Ecuador’s Council for Citizen Participation and Social Control, are used to legitimize power grabs that come at the expense of plural democracy (Conaghan 2016: 112). Such power grabs are especially likely in left-leaning populist backsliding regimes, such as many of those in Latin America. The valves of democracy are slowly cut off as traditional methods of participation—such as the franchise and civil society—are warped or excluded. Building in structural ‘stents’ for these valves, so to speak, helps keep the channels of democracy open. One such stent is the institutionalization of robust and meaningful (rather than token) civic participation.

**Mechanisms for inclusion can empower citizen groups to have an effect on the agenda, shape the drafting stages and make it more difficult for a backsliding majority to try to usher changes through unnoticed.**

Institutionalized civic participation may help guard against backsliding across the board by shifting power from the political party in power to the populace. It may also be used in particular, however, to target the problem of manipulation of parliamentary procedure, for precisely the same reason. Mechanisms for inclusion—particularly participation in the legislative process, the focus of this section—can empower citizen groups to have an effect on the agenda, shape the drafting stages and make it more difficult for a backsliding majority to try to usher changes through unnoticed.

Globally, there has been increasing recognition over the past century of the right to participate in governance beyond the mere exercise of the vote. The Universal Declaration of Human Rights recognizes the right ‘to take part in the government of one’s country’, and the United Nations Human Rights Committee has interpreted ‘participation’ under a similar provision in the International Covenant on Civil and Political Rights as

a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

(United Nations Human Rights Committee 1996)

Citizen engagement generally creates a two-way channel, creating a reciprocal relationship between governance and citizenship: ‘legislation is better when legislators are required to invite and attend to public input, and ... citizenship is better when legislators are required to invite and attend to public input’ (Czapanskiy and Manjoo 2008: 4; see also [Mill 1861](#)). For this reason, a guide on citizen engagement for parliaments from International IDEA’s Inter Pares project ([2025b: 4](#)) notes that, with ‘trust in institutional politics declining around the world ... parliaments must develop mechanisms for two-way engagement with citizens’. Genuine public representation allows democracies to ‘reap dividends in the form of better legislation and policy grounded in the views and experiences of people, greater legitimacy for parliaments and enhanced trust in democratic processes’ ([Inter Pares 2025: 4](#)).

Civic engagement writ large comes in a variety of forms. Inter Pares (2025b: 5) identifies five modes of parliamentary public engagement: (a) information ('providing updates on parliamentary business using tools such as websites, social media, radio or materials disseminated to communities'); (b) communication ('enabling interaction between people and parliaments, building on information channels to enable two-way engagement'); (c) education ('improving public understanding of parliament and its work, usually with a focus on young people'); (d) consultation ('facilitating input into parliamentary business from the general public or specific groups'); and (e) participation ('directly involving individuals or groups in parliamentary processes or decisions'). While each of these components is crucial, this section's focus on using institutionalized inclusion to stem procedural manipulation for the purposes of backsliding concerns itself particularly with the latter two, which are more active modes of engagement—consultation and participation (referred to together here for convenience simply as 'participation').

First, however, it is important to illustrate that a necessary prerequisite of effective citizen engagement is transparency. Transparency addresses the agency problem of representative government by allowing citizens to observe and evaluate legislative conduct. By opening the government up to active oversight and the need to publicly justify their actions, transparency increases the cost of backsliding. Where procedural tricks are hidden in the shadows, sufficient transparency enables democracy-oriented civil society organizations (and citizens) to highlight manipulation and abuse.

The trade-offs of transparency are well studied, although 'it is a daunting empirical task to specify how the relevant variables should be weighed in particular settings' (Vermeule 2005: 87). While access to information is vital for media, civil society and the electorate alike, the interplay between accountability and candid discourse is complex. This debate is especially acute in the realm of committee meetings. Committee meetings are arguably meant to be more deliberative than the plenary, which might instead give more weight to values like representation. Additionally, to return to the 'back room' problem from Chapter 1, transparency 'might simply drive decision-making underground, creating "deliberations" that are sham rituals while the real bargaining is conducted in less accessible and less formal venues, off the legislative floor or in closed committee mark-up sessions' (Vermeule 2005: 88).

Many constitutions—such as that of Romania—require parliament to hold open sessions and yet allow it to hold closed sessions at

its own discretion (article 68), opening the door to misuse. The Constitution of Ireland helps mitigate this risk by allowing the houses of parliament to hold private sittings only 'in case of special emergency' and with the approval of two thirds of the members present (article 15(8); [Bulmer and Storey 2024: 47](#)).

A potentially less-contentious aspect of transparency is access to information. This includes liberal freedom-of-information (FOI) laws and competent fulfilment of FOI requests and transparency requirements. In India, for example, FOI requests have been an instrumental and heavily utilized tool for civil society to uncover corruption, monitor service delivery and put public pressure on government agencies ([Roberts 2010](#); [Calland and Bently 2013](#)).

To return to participation, methods of participation in the legislative process can range from the more casual to the more formal (from open comment periods all the way to structural inclusion in constitutional bodies), and from passive to proactive (from an open invitation to provide feedback to more actively seeking input from groups less likely to provide it otherwise). Examples include town halls, notice-and-comment periods, public hearings, digital feedback platforms and the solicitation of feedback from stakeholders.

### Box 3.3. Kenya

The Public Participation Bill of 2025 was originally introduced in the Kenyan Parliament in 2023 in order to 'establish a minimum legal framework for public participation, vest oversight in a Public Participation Register and County Directors and create standards for public participation plans, reports, and feedback mechanisms' ([Houghton 2025](#)). The Bill includes innovations such as requiring opportunities for online submissions through a diverse range of social media platforms and requires public authorities to back up their decisions by 'report[ing] on participation outcomes, and demonstrat[ing] how public input was used' ([Houghton 2025](#)). It further 'paves way for citizens' involvement in matters of governance by setting out a mechanism for complaints and their redress through institutions such as the National Commission on Human Rights..., Commission on Administrative Justice, Independent Police Oversight Authority, among others' ([Munyu and Abdi 2024](#)). The Bill does not, however, 'speak to the quantitative aspect of public participation, including ascertaining the appropriate and acceptable sample size for nationwide public participation' ([Munyu and Abdi 2024](#)). For this reason, incorporation of more concrete quantitative guidelines, or models such as 'Arnstein's ladder of participation' (laying out degrees of participation from none at all to full citizen control), have been suggested as possible ways to strengthen the bill ([Munyu and Abdi 2024](#); [Arnstein 1969](#)).

It is important to note that more passive forms of seeking input, while laudable, may have unintended effects by magnifying the voices of privileged groups and interest groups while failing to amplify underrepresented and marginalized groups. Proactivity is thus vital in facilitating participation. The Parliament of the Solomon Islands, for example, ‘conducts week-long constituency visits on a regular basis, consisting of morning sessions in local schools followed by afternoon and evening sessions in villages to engage those returning from the day’s work’ ([International IDEA 2025b: 10](#)). Trinidad and Tobago has a similar initiative in the form of a public outreach caravan, which ‘takes parliamentary staff across the country to speak with local communities and gather their feedback on the work of parliament’ before passing their findings to relevant committees ([International IDEA 2025b: 10](#)).

The South African Constitution stipulates that the National Assembly, the National Council of the Provinces and the provincial legislatures each must ‘facilitate public involvement in the legislative and other processes of the Assembly and its committees’ (article 59(1)(a)). This provision was expounded by the Supreme Court in *Doctors for Life v. Speaker of the National Assembly*,<sup>9</sup> in which the Court ‘recognized two aspects of the duty to facilitate public involvement: the duty to provide meaningful opportunities for participation in the law-making process and the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided’ (Czapanskiy and Manjoo 2008: 12). This duty, the Court found, required consultations with affected groups in certain circumstances, particularly ‘where the affected groups have been previously discriminated against, marginalized, silenced, received no recognition, and have an interest in laws that will directly impact them’ (Czapanskiy and Manjoo 2008: 9). Institutionalizing proactive involvement in this way forces parliament to include participation directly in its legislative procedure, running the risk of having adopted laws struck down if it fails to do so.

Another, increasingly popular, method of incorporating the public in the legislative process is the use of forms of direct democracy. The state of Oregon in the USA, for example, has developed and increased the use of citizens’ assemblies, wherein a randomized but representative group of ordinary citizens come together to discuss a politically salient issue, hear from experts, debate and deliberate, and ultimately develop and endorse a set of policy proposals to be set in front of the legislature ([Romeo 2024](#)). These assemblies have

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9 [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC).

been convened to deal with issues such as youth homelessness and the state's response to the Covid-19 pandemic. Empowering groups of citizens to present the legislature with ideas allows them to put issues on the legislative agenda that may have otherwise been lost in partisan agenda setting.

Public participation can also be used as a procedural backstop similar to the 'pause buttons' discussed in the context of the opposition. Allowing a certain percentage of MPs to submit a bill to a referendum—as in Ireland—adds a procedural safeguard where bills may be particularly contentious or partisan. Referendums may be especially desirable because they are thoroughly majoritarian—they merely shift the decision from the parliamentary majority to the popular majority, endowing an initiative with even purer democratic legitimacy. They are also expensive and cumbersome, however, and the more obscure the topics they touch upon, the more they may warp the picture of actual opinion by limiting participation to those with particularly strong preferences. This may or may not be a good thing: an argument can be made that accounting for intensity of preference is valuable. However, design should keep in mind when this effect is due to cultural problems such as unequal education or better resource organization among people of different classes (see, for example, [Smith 2010](#)).

Finally, civic participation can be incorporated structurally by bringing the public into government. In the Senate of Trinidad and Tobago, 9 of the 31 members are appointed by the president on a non-partisan basis 'from outstanding persons from economic or social or community organizations and other major fields of endeavour' (article 40). In Belize, 6 of the 13 members of the Senate are selected by the majority, 3 by the opposition, and 1 each by the church, commerce, labour and civil society sectors, such that it is possible (though rare) for the majority bloc to be outvoted—a potential stopgap against complete majority party control. And as mentioned above, the British Committee on Standards offers an example at the parliamentary procedure level: the committee is comprised of seven MPs and seven lay members who do not vote but who do otherwise participate in deliberation and the pursuit of the committee's mandate (House of Commons Standing Orders, article 149). Bringing laypeople directly into government in this fashion is also subject to its own objections. Laypeople are unelected by definition, and appointment procedures would need to be carefully calibrated to dilute the possibility of interest-group capture. This method may hold promise when selectively used in conjunction with other strategies, but it must be met with caution.

## Chapter 4

# CONCLUSION

Democratic backsliding rarely announces itself through dramatic rupture. Rather, it seeps into the institutional bloodstream by way of small procedural manipulations that are easy to dismiss as technical, obscure or politically inevitable. This report has shown that parliamentary procedure—rules governing who speaks, how long they speak, what gets debated and how decisions are recorded—has proven to be one of the most effective vectors for democratic erosion. Precisely because these rules are viewed as neutral and technical, they allow illiberal governments to degrade oversight, weaken the opposition and tilt the playing field while maintaining the façade of legality.

Three overarching insights emerge. First, no design can be airtight. Procedures will always reflect inherent tensions—between majority rule and minority protection, between efficiency and deliberation, and between flexibility and predictability. Backsliders exploit these tensions, not by openly rejecting democracy but by manipulating its internal machinery. Second, the most vulnerable points are those where discretion is concentrated—in the speaker, in agenda control and in fast-track procedures that collapse deliberation. Third, while oversight must be strong and accessible, oversight measures should not overly constrain the ability of the majority to deliver on its policy promises.

Yet the report also demonstrates that design choices can make a difference. Comparative practice suggests that resilience can be strengthened by protecting a constitutional core from rapid manipulation, diffusing power across actors and institutions, and embedding the opposition in oversight structures such as public accounts committees. Procedures can be optimized to protect minority rights without paralysing majority governance, ensuring

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**Comparative practice suggests that resilience can be strengthened by protecting a constitutional core from rapid manipulation, diffusing power across actors and institutions, and embedding the opposition in oversight structures such as public accounts committees.**

both accountability and governability. Rebalancing the role of private members' bills, safeguarding consultation and guaranteeing opportunities for review all help limit incentives for abuse. And by embedding transparency and civic participation in legislative processes, parliaments can enlist society itself in monitoring the guardians of democracy.

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**Ultimately, parliamentary procedure is not merely technical scaffolding; it is constitutional architecture in action.**

Ultimately, parliamentary procedure is not merely technical scaffolding; it is constitutional architecture in action. If democracy is to endure, its defenders must look beyond grand constitutional amendments and judicial battles and attend also to the quiet, everyday rules that shape legislative practice. Backsliders have already learned how to weaponize procedure. The task for reformers is to reclaim it—not only to shield against erosion but to renew the democratic promise of parliaments as arenas of open deliberation, contestation and accountability.

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# About the author

**Madeleine Rogers** is a DPhil candidate in law at the University of Oxford and holds a JD from Harvard Law School, where she graduated cum laude. Her current research focuses on democratic resilience and constitutional design. Since 2022, she has also worked as a consultant with International IDEA on issues relating to democratic backsliding, constitution-building processes and institutional design.

# About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with 35 Member States founded in 1995, with a mandate to support sustainable democracy worldwide.

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Democratic backsliding often advances not through dramatic constitutional change, but through the quiet manipulation of parliamentary procedure. This report shows how rules on agendas, debate, discipline and legislative scrutiny can be turned into tools for silencing opposition, concentrating power and weakening democratic accountability.

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**ISBN:** 978-91-8137-153-6 (PDF)