Stanford Law School | Neukom Center for the Rule of Law

Conference Report: Rule of Law and Democracy: Innovations and Challenges

September 19–20, 2025

Sponsored by The Neukom Center for the Rule of Law at Stanford Law School and The Europe Center and the Center on Democracy, Development, and the Rule of Law at the Freeman Spogli Institute at Stanford University.

March 2026

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Executive Summary

In September 2025, leading scholars, judges, and policy makers from across the world gathered at Stanford Law School for the first "Rule of Law and Democracy: Innovations and Challenges" conference. Over two days, conference participants explored two topics: (1) judicial innovations that have demonstrably improved the competence and independence of a country's judiciary and (2) the prosecution of former heads of state for abuse of power while in office. Both topics are near the center of challenges to democracy and the rule of law today.

Academic and policy debates around the rule of law are not new. The fundamental principles of the rule of law—judicial independence, governmental transparency, consistent decision-making—are well established and broadly accepted. Similarly, the harms caused by recent waves of democratic erosion and autocratization are now well documented. The harder questions concern what institutional success actually looks like in practice. After the third wave of democratization in the late 1980s and early 1990s, dozens of countries undertook ambitious judicial reform efforts with optimism about building effective legal institutions. Yet when we examine the outcomes, the results are sobering: a recent study of more than forty instances where presidents attempted to defy term limits—perhaps the clearest threat to constitutional democracy—found that courts ruled against the executive in only two cases. Similarly, the proliferation of prosecutions against former heads of state in countries like Peru, Korea, Ecuador, Brazil, and France raises difficult questions about whether such accountability measures ultimately safeguard or destabilize democratic institutions.

Rather than revisiting well-worn debates about constitutional rights and access to services, this conference examined a few harder empirical and institutional questions:

- What judicial reforms have actually succeeded in building competent and independent judiciaries? And how has that helped the rule of law?
- What positive examples exist of courts resisting executive overreach?
- Is it a good idea to prosecute former heads of state for abuse of power?
- Do such prosecutions ultimately safeguard or undermine democracy and the rule of law?
- How should immunity for heads of state be structured?

Conference participants dug into these and other questions, considered points of consensus and disagreement, and outlined areas in need of further research and scholarly inquiry.

Other topics included:

- The challenge in prosecuting former leaders and the political risks involved.
- The role of judicial capture and its effects on case outcomes, especially in abuse of loans.
- Resource allocation within the judiciary and its use as a tool for influence or punishment.
- Issues tied to the use of technology such as spyware against both criminal and political actors.
- The complexities in removing or confirming judges with questionable appointments.
- Parliamentary oversight aimed at preventing politically motivated prosecutions.

Key Takeaways

- **Informal norms, not formal rules, drive judicial performance.** Decades of judicial reform have focused on codifying constitutional "best practices" for judicial selection and evaluation, yet research presented at the conference found that written selection processes show little correlation with actual judicial performance. Instead, judges tend to be selected through informal norms, networks, and pre-selection pathways that operate beneath formal constitutional structures. This finding suggests that efforts to improve judiciaries must grapple with how informal practices can be deliberately cultivated rather than simply importing formal institutional designs.

- **AI offers efficiency gains but threatens professional de-skilling.** Courts in Latin America and Asia are rapidly adopting AI tools for case management, legal research, and opinion drafting to address crushing caseloads and resource constraints. While AI can strengthen courts through efficient administration and enhanced accessibility, participants warned of serious risks: overreliance on AI may erode legal reasoning skills among judges and lawyers, and litigants may reject decisions perceived as made by machines rather than human judgment. Even with human oversight, the widespread integration of AI into judicial work raises questions about what happens to legal expertise when technology becomes the first—and sometimes only—research tool.

- **Prosecuting former leaders involves genuine trade-offs with no clear answer.** The conference revealed fundamental disagreement about whether prosecuting former heads of state ultimately strengthens or undermines democracy. On one hand, such prosecutions represent the pinnacle of equal justice and institutional independence. On the other, they increase the costs of leaving office and create incentives for leaders to cling to power, risk being weaponized against political opponents, and can consolidate opposition support around the prosecuted leader. With 40% of Latin American presidents from 1990–2025 facing prosecution, and recent cases in Brazil, Korea, France, and the United States, the question is urgent—but conference participants found no consensus on the right approach.

Key Takeaways, Continued

- **Rule of law concepts lack doctrinal anchors in U.S. constitutional law.** While rule of law principles are widely invoked in political discourse, they have limited purchase in actual judicial doctrine, particularly in the United States. Lawyers and judges lack a clear doctrinal vocabulary for translating rule of law values into constitutional arguments that courts can apply. Developing this doctrinal language—including originalist framings where appropriate—emerged as an essential "generational project" that would allow rule of law principles to be invoked and defended with the same rigor as other constitutional commitments.

- **Trust and effectiveness, not just procedure, sustain the rule of law.** The rule of law becomes unstable when citizens distrust institutions, whether due to polarization, populist rhetoric, corruption, or government ineffectiveness. But participants also warned against "procedural fetishism"—excessive rules and regulations that paralyze decision-making and fuel public frustration. When over-bureaucratization produces government failure, citizens lose faith and turn to anti-system politicians. Sustaining the rule of law requires striking a balance: enough procedure to ensure fairness and accountability, but not so much that government cannot deliver results. Innovations in administrative efficiency, regulatory streamlining, and public communication are essential to maintaining legitimacy.

Report

Day 1: Judicial Innovations to Sustain the Rule of Law

A nation's judiciary, the third branch of government, plays a well-recognized and central role in upholding the rule of law. But beyond legal adjudication, the judiciary's administrative and policy role is also key to supporting and sustaining the rule of law and democracy. The first day of the conference focused on judicial innovations in administration from across the world, seeking to identify new approaches, emerging trends, and specific metrics for assessment.

The first panel considered judicial selection, education, and experience. The panel, featuring members of the academy and policymakers with extensive experience in judicial vetting and selection, focused on the interplay between formal rules and informal norms in ensuring an independent and high performing judiciary.

Panel 1: Judicial Selection, Education, and Experience

Presenters analyzed the process of appointing judges. Research indicated that although countries often look to formal rules to improve their judicial system, formal constitutional rules have limited impact on judicial performance. Informal norms, including networks, pre-selection practices, and NGO influence, shape judicial selection more than written rules. Strong informal norms more often explain judicial independence and high performance, as demonstrated by Colombia and the United States. On the other hand, efforts to adopt formal "best practices" often do not produce significant changes in judicial efficacy, as demonstrated by Ukraine.

Mexico is at a critical constitutional moment following the reform of September 2024 which dramatically transformed the judicial appointment system. The merit-based model was replaced with judicial elections. On June 1, 2025, voters elected nearly half of the almost two thousand federal judges, most of whom have little or no experience in the judiciary. The Office of the Reporter of Decisions of the Mexican Supreme Court launched an ambitious project to develop a platform to identify and binding precedents for a given case. The platform would be a practical tool for new, inexperienced judges in what is already a weak precedent system. The Mexican Supreme Court does not publish its written opinion publicly, but instead publishes short explanations of reasoning called

"Tesis." As a result, lawyers refer to incomplete and inconsistent "Tesis" in their briefing rather than precedential decisions.

An administrator discussed the achievements of Judicial Performance Evaluations (JPE) as a procedural accountability tool that enhances legitimacy and education. JPE is a resource to inform voters about a judge's performance in uncontested judicial retention elections. The evaluations incorporate surveys, case management data, courtroom observation, opinion review, self-evaluation, interviews with judges, and public comment. JPE is intended to evaluate judges not by the outcome of their ruling but by the strength of the procedural process. JPE can be used for judicial education efforts and the adoption of proven procedural and interactive processes.

Key Takeaways

- Informal norms dominate judicial appointments and performance outcomes.
- Transparency and consistency in judicial opinions is vital for public trust.
- Procedural evaluations like JPE improve fairness and legitimacy.

Panel 2: AI as Tool for Judicial Administration: Benefits and Challenges

Presenters shared a variety of applications of AI within judicial chambers. The Colombian Constitutional Court employs an AI-assisted triage tool called *PretoriA* tool for constitutional case selection. The tool ingests lower-court rulings, labels issues, clusters similar cases, and generates summaries to help the high court select the 500 cases it reviews each year out of over one million cases in *tutela* docket. *PretoriA* is used under full human oversight, and the Constitutional Court issued a ruling in 2024 requiring transparency, explainability, and human responsibility for any judicial AI use. The Constitutional Court did not issue a violation for a lower court judge who used an LLM to write a *tutela* judgment.

A team of researchers is piloting *JudgeGPT* in the judiciary of Pakistan, using retrieval-augmented generation built on OpenAI's GPT model to assist overstretched judges. The project is the first large-scale field experiment evaluating the integration of generative AI into a national judicial system. Pakistan was an ideal pilot country as the fifth largest country in the world with an underdeveloped and overburdened legal system. Judges write opinions without clerks or legal technology. Approximately randomly assigned 1,500 trial court judges, representing nearly half of the country's lower judiciary, tested *JudgeGPT* along with training in AI use. The majority of judges used *JudgeGPT* to summarize cases and assist with legal research while a minority employed it to assist in writing opinions.

The group reflected what they viewed as the current consensus on AI in the legal decisionmaking process: AI is extremely useful in judicial administration and efficiency, but it is not yet ready to take on reasoning and judgment. Some risks identified included "de-skilling" of lawyers and judges who start relying on AI and distrust or rejection of rules made by a machine not subject to the rules it is promulgating. In the near future, the practitioners on the panel predict AI will serve more as an administrative aid than a judicial substitute.

Key Takeaways

- AI can enhance efficiency, access, and transparency, but must retain "human-in-the-loop."
- Risks include hallucinations, bias, and erosion of moral reasoning.
- Safeguards (disclosure, oversight, confidentiality) are essential.
- AI's future role: administrative aid, not judicial substitute.

Panel 3: Administrative Innovations to Enhance the Courts' Democratic Role

Framed with the notion from Federalist 78 that the executive holds the sword, the legislature commands the purse, and the judiciary relies on the faith of the people, the panel discussed how the judiciary can maintain that faith by bolstering access and efficiency.

Arizona has taken steps to expand access through a series of regulatory reforms, including eliminating restrictions on fee-sharing between lawyers and non-lawyers and creating bar affiliation for non-lawyers to practice family law. These reforms address lawyer shortages, particularly in "legal deserts." The bar now accepts lawyers from most states, with alternative pathways for those with substantial criminal law experience.

New technology is also enhancing accessibility and efficiency. In the US, it has become cheap to check for felonies and expungement eligibility electronically, lowering barriers for individuals with prior convictions to seek expungement, particularly after the legalization of marijuana. A team based at Stanford Law School is working with the LA Superior Court on a variety of digital resources, including an AI-assisted filing system, redesigned courtesy eviction notice, user-friendly self-help tools, and a court-hosted referral system. In Chile, when data about case timelines and clearance rates were made available, judges scheduled more hearings and moved cases along faster.

Putting the AI tools in context, the group discussed that even if it were to develop the capability to reliably execute reasoning and judgment, the character of the court changes when decisions are made by computers rather than humans. Stanford's John Hart Ely argued that courts are democratically reinforcing.

Key Takeaways

- Trust and accessibility are pillars of judicial legitimacy.
- Access to administrative data, such as case timelines and clearance rates, improves efficiency.
- Courts as democratic institutions should foster compliance and participation, not merely adjudicate.
- Internal bureaucratic tensions can undermine reform unless coordinated leadership exists.

Day 2: Challenges to the Rule of Law

The second day moved from managing innovations to addressing some of the most difficult challenges facing backsliding democracies today. Speakers from a wide range of regions and fields addressed the question of how to hold leaders to account without destabilizing democracy itself.

Participants stressed that abstract concepts like rule of law may not resonate with the public unless their personal interests are adversely affected. The idea of an "abundance agenda" in politics was discussed, with a call for a clearer theory of "public harm." It was noted that the government lacks a consistent definition of public harm, and judges should articulate why certain harms motivate judicial action, balancing private rights and the public good.

Panel 1: Constitutionalism and the Prosecution of Former Heads of State

The decision to prosecute a former head of state is not easy. Significant trade-offs come to bear. This panel examined how courts and constitutional structures respond when democratically elected leaders undermine democratic norms, breach their constitutional obligations, or attempt to cling to power. Speakers discussed how to balance holding former leaders accountable without losing democratic legitimacy. In Latin America, 40% of former presidents (1990–2025) faced prosecution. The prevalence raises the question whether prosecution strengthens or weakens democracy. Normalizing post-tenure prosecution may make a leader less likely to leave the position. Or the tool could be used by each subsequent administration to punish the previous leader.

The group took a comparative view. Brazil's 1988 Constitution was designed to prevent authoritarian relapse after decades of military rule, creating a powerful constitutional court (STF). But Bolsonaro exploited "autocratic infralegalism"—using decrees, executive orders, and regulatory powers below the constitutional level—to hollow out environmental protections, target civil servants, and undermine checks without formally violating the Constitution. The Brazilian Supreme Court shifted from a deferential posture to an active defense against Bolsonaro's decrees. The "defensive democracy" posture risks judicial overreach that unduly restricts freedoms, victimizes future leaders, and sparks backlash; but without it, core democratic features including constitutional rules and a fair electoral process are in jeopardy.

Korea's Constitutional Court is a specialized institution with the power to review the constitutionality of government actions, including impeachment power. The impeachment of President Yoon Suk Yeol in 2025 in response to his declaration of

martial law in December 2024 reaffirmed Korea's constitutional guardrails. Although the ability to prosecute former heads of state is a feature of constitutionalism, Ecuador's frequent prosecutions show accountability risks turning into "lawfare." Every former leader in Ecuador has been charged with crimes. Holding leaders to account suggests institutions are working independently, but politically-motivated prosecutions—or the appearance of them—undermine democracy.

One panelist presented a dataset showing that prosecution likelihood rises when leaders leave office weak and unpopular, whether due to a scandal, loss of party strength, or economic downturn. Bolsonaro is an anomaly. Despite leaving office politically strong, Bolsonaro was tried and convicted. If courts are sufficiently independent, there may be divergences from the theory. Even so, prosecuting political opponents is inherently risky for the successor government: trials can turn former leaders into heroes, can trigger and consolidate the opposition, can undermine the prosecuting government's legitimacy, and can lead to retaliation against the successor government when the previous government comes back to power.

Increasing the cost of the exit will mean current leaders will not want to give up power and new leaders can use the tool against opponents. Any tool or tactic that is created can and will be used by both sides to further their interests, for instance the tit-for-tat efforts to remove Trump and Biden from the ballot in 2024.

Key Takeaways

- Defensive democracy protects institutions but risks politicizing justice.
- Prosecution timing matters—too fast undermines fairness; too slow erodes trust.
- Impunity collapses when political equilibrium breaks.
- Courts must navigate legitimacy vs. deterrence trade-offs.

Panel 2: To Prosecute or Not to Prosecute: Institutions, Factors, Decisionmakers

This panel considered the practical effects of prosecutions against former presidents. The risk of prosecution is itself a driver of authoritarian entrenchment. One-quarter of world leaders try to overstay their term; 80 percent of those attempts succeed, often through constitutional amendment or reinterpretation rather than coups. Leaders overstay because they fear loss of power and privilege, retaliation or prosecution, reversal of policy legacies, and unfinished political projects. But term-limit evasion fuels later prosecutions.

Presidential immunity raises the same trade-off between individual accountability and state legitimacy. A comparative view of immunity regimes in the U.S. and France challenges the binary of all-or-nothing immunity. France shields presidents for official acts during office but not after; the U.S. still grants unusually broad post-office immunity. Conditional immunity may lower backlash risks and stabilize transitions.

A possible model to achieve justice while minimizing backlash, as noted by a former Jan 6 prosecutor, is "stakes-lowering prosecution," charging widely but calibrating offenses and sentences to vindicate rule of law values without becoming partisan or overly punitive. Translating rule of law values and concepts into doctrinal language that judges can use is an essential "generational project."

Key Takeaways

- Term-limit evasion and immunity gaps drive democratic decline.
- Conditional immunity can lower backlash risk while ensuring accountability.
- Translating rule of law concepts into a doctrine could provide judges with workable doctrinal anchors.
- Speed, transparency, and proportionality define legitimate prosecutions.

Panel 3: Challenges to the Rule of Law

The final panel considered tensions between law and democracy, including defects that threaten good governance from public harms to over-legalization. Corruption and ethical breaches are central to rule of law challenges. Despite systematic dismantling of institutions at the federal level, states continue to robustly enforce ethics laws. One panelist shared results from surveys of ethics experts about the public harms of ethics violation, finding bribery and conflicts of interest were viewed as most harmful, while disclosure violations rank low despite their prevalence. When ethics laws are violated and not punished, public trust diminishes alongside the rule of law.

In addition to traditional harms, the group discussed "procedural fetishism" where excessive rules can paralyze decision-making. Some of the barriers to public and private action come from regulatory burdens; others from judicial discretion in interpreting the law. For instance, new student housing at Berkeley was thwarted under a CEQA suit brought by local residents claiming environmental and public harm would result. When over-bureaucratization produces government failure, the public loses faith in government and turns to populist politicians. The solution is not to hollow out government as DOGE did but streamline procedural overhang within the law. This panel shared further insights into regulatory and procedural burdens, such as the thousands of congressionally mandated reports that often go unread.

Key Takeaways

- Democracies must strike a balance: too little rule of law enables abuse; too much creates paralysis.
- The legitimacy of democracy hinges not only on clean process but on effective results.
- Judges and policymakers need a vocabulary for explaining public harm and weighing procedural burdens against democratic outcomes.

Conclusion

The conference surfaced several findings that challenge conventional wisdom about strengthening the rule of law. Perhaps most striking was the evidence that formal constitutional rules governing judicial appointments have surprisingly little impact on judicial performance—instead, informal norms, networks, and pre-selection practices appear to be primary factors shaping judicial independence and competence. This suggests that decades of reform efforts focused on codifying "best practices" in judicial selection may have missed the mark. The conference also revealed genuine and unresolved disagreement about whether prosecuting former heads of state ultimately strengthens or undermines democracy, with compelling arguments on both sides: accountability may vindicate the principle of equal justice, but it also raises the costs of leaving office and risks weaponization against political opponents. On judicial innovation, some Latin American courts are moving aggressively to adopt AI tools for case management and research assistance, even as participants warned that overreliance on AI risks "de-skilling" the legal profession and alienating litigants who value the human character of justice.

These findings show that the most important questions about the rule of law today are empirical and institutional rather than purely normative. As democracies face mounting pressures from autocratic erosion, technological disruption, and declining public trust, success will depend on understanding what actually works in practice—not simply what sounds right in theory. Future scholarship and reform efforts must grapple with these harder questions: how informal norms can be deliberately cultivated, how accountability mechanisms can be designed to minimize backlash, and how technology can enhance rather than hollow out the exercise of legal judgment.

Appendix 1: Conference Participants

Elliott Ash, Associate Professor, ETH Zurich

Adam Bodnar, Professor of SWPS University in Warsaw, Senator of the Republic of Poland

Eleonora Bottini, Professor of Public Law at the University of Caen Normandy

Hon. Natalia Angel Cabo, Justice, Colombian Constitutional Court; Professor of Law, Universidad de los Andes, Faculty of Law

Zachary Elkins, Professor, University of Texas at Austin

David Freeman Engstrom, LSVF Professor in Law, Co-Director, Deborah L. Rhode Center on the Legal Profession, Stanford Law School

Francis Fukuyama, Oliver Nomellini Senior Fellow, Freeman Spogli Institute for International Studies, Faculty Member, Center on Democracy, Development, and the Rule of Law, Director, For Dorsey Master's in International Policy, Professor (by courtesy) of Political Science, Stanford University

Anna Grizmala-Busse, Michelle and Kevin Douglas Professor of International Studies and Senior Fellow at the Freeman Spogli Institute for International Studies

Margaret Hagan, Executive Director, Legal Design Lab, Stanford Law School

Gretchen Helmke, Thomas H. Jackson Distinguished University Professor, Department of Political Science, University of Rochester

Adam Hofmann, Deputy Judicial Appointments Secretary, Office of the Governor, California

Erik Jensen, Director, Neukom Center for the Rule of Law, Stanford Law School

Jung-Won Kim, Secretary General, the Constitutional Court of the Republic of Korea

Daniela Salazar Marín, Law Professor at Universidad San Francisco de Quito, Former Judge at the Constitutional Court of Ecuador

Sonia Mittal, Clinical Lecturer in Law, Yale Law School

Omar Hernández Salgado, Instituto Tecnológico Autónomo de México (ITAM)

Bernardo Silveira, Assistant Professor in Economics, University of California - Los Angeles

Hon. Ann S. Timmer, Chief Justice, Arizona Supreme Court

Oscar Vilhena - Dean, FGV Sao Paulo Law School (FGV Direito SP)

Right Hon. Dame Helen Winkelmann, Chief Justice of New Zealand

Abby K. Wood, Professor of Law, Political Science, and Public Policy, University of Southern California

Jennifer MJ Yim, Board Administrator, Utah Board of Pardons and Parole

Diego A. Zambrano, Professor of Law, Associate Dean for Global Programs, Faculty Director, Neukom Center for the Rule of Law, Stanford Law School