Stopping Autocratic Legalism in America - Before It Is Too Late

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President Donald Trump's recent speech to the Department of Justice was meant as a declaration of war against lawyers. His words made clear that the most effective way to consolidate autocracy is by systematically dismantling the independent centers of power that support a healthy democracy, including the independent public prosecutor.

As the Executive Orders targeting law firms underscore: the entire legal profession is next. This is no coincidence.

Over the past century, lawyers have played a vanguard role in making American democracy live up to its highest aspirations, using the constitutional commitment to "equality under law" to provide universal suffrage and civil rights, elevating the US as a source of inspiration for democratic movements around the world.

But today, America has become the world-leading incubator of a far more dangerous innovation: democratic backsliding, in which autocracies develop through law, not force. What we have learned from researching backsliding countries around the world—and what this administration has learned too—is that lawyers are the crucial ingredient for autocracy to flourish: designing, drafting, and defending legal rules that weaken independent democratic institutions and undermine resistance.

This is why, for democracy—in America and Europe—to stand a fighting chance, lawyers committed to the rule of law must take action now.

The Autocratic Legal Playbook

To understand what action to take requires clarity about the democratic assault now being advanced with brutal efficiency against the United States. Trump and his legal team have carefully studied how democracies die. And they have learned the key lesson: democratic backsliding occurs when elected leaders claim a mandate to erode the pillars of democracy—free and fair elections, fundamental rights, and checks and balances—to enlarge executive power.

The "autocratic legal playbook" is the strategic roadmap to this consolidation. The targets are well-established: capture the *courts*; erase internal pockets of independence within the *public bureaucracy*; silent sources of free thought and expression in *universities*, *civil society*, and the *media*; replace independent *public prosecutors and government lawyers* with loyalists; and disable legal resistance by coopting *law firms and the professional bar*.

Leaders following this playbook devise different routes to the same antidemocratic ends. For example, in Hungary and Poland, parliament passed laws reducing the mandatory retirement age so the ruling party could appoint loyalist judges to fill depleted ranks. Now in the United States, we see efforts to remove federal judges who rule against the administration through impeachment and legislative jurisdiction-stripping measures. These are different legal paths toward the same end of judicial capture.

From Trump 1.0 Election Attacks to Trump 2.0 Executive Orders

The seeds of today's move towards autocracy in America were sown in the attack on the 2020 US presidential election, which radicalized Trump lawyers and crystallized the importance of subverting truth—in that case, by filing dozens of lawsuits falsely claiming voter fraud to undermine election certification—as an essential part of a strategy to destabilize democracy.

The plan ultimately failed only because courts rejected the election lawsuits and top government

lawyers in the White House and Department of Justice threatened to quit. In a very real sense, these government lawyers saved American democracy in the first Trump administration.

This is precisely why Project 2025, the governance plan for Trump 2.0 drafted largely by far-right lawyers before the election, hinged on capturing government legal offices that thwarted the first Trump administration and staffing them with loyalists dedicated to doing Trump's bidding whether legal or not.

Notwithstanding the President's pre-election assertions that he did not know about Project 2025, it serves as the essential foundation for his onslaught of Executive Orders—themselves drafted by many of the lawyers. Although the orders purport to be about immigrants, DEI, and government efficiency, they aim at a far bigger goal: following the autocratic playbook to dismantle all independent checks on the president's power, particularly the legal profession.

This can be seen in Trump's Executive Order on Ending the Weaponization of the Federal Government. While styled as an effort to "correct past misconduct" by the Biden administration, the real intent of the order is to weaponize the claim of "weaponization" to go after lawyers who dare stand up for the rule of law.

The order is premised on the false claim that the Biden administration engaged in a "systematic campaign against its perceived political opponents," with its premier example being the "ruthless" prosecution of the January 6 insurrectionists. In purporting to address prosecutorial misconduct, the order authorizes the takeover of DOJ—ultimately enabling the very misconduct that it claims to eliminate.

This misconduct was on display in then Acting Deputy Attorney General Emil Bove's deal to shut down the prosecution of New York City Mayor Eric Adams in exchange for his help deporting immigrants and Bove's subsequent decision to investigate the lead prosecutor on the case who resigned in protest rather than follow Bove's orders to file the dismissal.

It now reaches outside of the DOJ to target the most prestigious law firms in the United States—for having the temerity to provide legal representation to those whom the President views as his enemy.

This is the point of Trump's executive orders targeting law firms, which follow the autocratic playbook by making false claims of weaponization to prevent administration targets from defending themselves in court and, even further, to stop law firms from honoring a cornerstone professional commitment: engaging in pro bono service bringing access to justice to Americans.

The president's most recent Executive Order "Preventing Abuses of the Legal System and the Federal Court" is a stunning expansion of his assault on the legal profession as an independent pillar of American democracy. It is nothing short of an all-out declaration of war on the very concept of an adversary system in which every person is entitled to zealous representation by a lawyer in an impartial tribunal.

Emboldened by the capitulation of the prestigious Paul Weiss law firm after the last order, this new one, which falsely asserts that lawyers representing immigrants in seeking legally authorized means of admission to the country are engaged in "fraudulent" conduct, expands the list of law firms against whom Trump may target federal sanctions to a nearly unlimited number—given that almost all major US law firms represent immigrant clients on a pro bono basis. The fact that the order directs the Attorney General to "review conduct by attorneys or their law firms in litigation against the Federal Government over the last 8 years" makes it clear that the administration is prepared to blow any ethical misstep—real or manufactured—into grounds for law firm targeting.

As retribution, the order proposes to revoke lawyer security clearances (making it impossible for them to defend clients accused of crimes based on classified information), bar access to federal courthouses, and terminate government contracts for *clients* that retain the firm. This is a classic autocratic legal move, the intended consequence of which is to force *all* US law firms to face a stark choice: stop representing clients Trump does not like or go out of business.

The Time Is Now to Learn the Playbook in Reverse

While the autocratic legal playbook provides a roadmap for attacks on democracy, it also can be read

in reverse: as a way for pro-democracy lawyers to anticipate lines of attack and proactively promote professional resistance.

The foundation for resistance is already strong. During the first Trump administration, new civil society organizations were started with a goal of monitoring lawyers' behavior and bringing legal complaints to bars for unethical conduct. These groups were successful in pushing state bars to launch investigations and to discipline key lawyers involved in efforts to overturn the 2020 election through bogus claims of election fraud asserted in court cases and behind-the-scenes legal planning to subvert the Electoral College.

This administration knows that the organized bar poses a barrier to its plan. Accordingly, the Trump team also has a playbook for destroying its independence.

This playbook includes a targeted operation against bar associations to undermine or eliminate their powers to discipline government lawyers who violate their ethical duties, thereby removing one of the only levers to prevent these lawyers from continuing to use their expertise to undermine democratic institutions. It also includes a series of attacks against the American Bar Association for defending the rule of law, aimed at destroying its very existence and thus silence the national voice of the legal profession.

As Elon Musk's intermeddling in Germany's recent election makes clear, this playbook is now being directed to the whole of Europe, which means *now is the time*, while power is not yet concentrated and resistance is still possible, to learn the playbook in reverse and close the loopholes that might be exploited should autocratic leaders come to power.

This requires a Project 2025 *for* Democracy—a deep dive into national legal systems to strengthen the ethical role of government lawyers and protect bar independence to preemptively address the type of attacks the US is now experiencing—learning from the US mistakes. The Council of Europe recently passed a new convention strengthening "the protection of the profession" against harassment and executive interference. Countries need to build on this declaration to take proactive steps to elevate ethical standards and promote professional resilience.

In the US, the window for action is closing, and when it does, there will no longer be opportunities for meaningful action against the lawyers in charge of this radical democratic takedown. Once this happens, as it has in other autocracies, the bar will be captured by the regime and levers of influence will be eradicated.

The clear lesson from these regimes is that a wait-and-see approach does not work and attempts at appeasement end up facilitating autocratic consolidation.

Ultimately, democracies die when people lose hope that change is possible. But we must not succumb to this pessimism.

To the contrary, lawyers everywhere must do our part to raise awareness of what is ultimately at stake by looking at what is now happening in the US, where we have moved into the danger zone in which family, friends, and neighbors are being targeted, detained, and deported without access to lawyers or legal process. This—as we have seen over the past days with the expulsion of academic colleagues for criticizing Trump—could happen to any one of us for expressing a dissenting view. And this is no longer democracy.

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