Law & Social Inquiry
Volume 48, Issue 1, 292–313, February 2023

Law&
Social
Inquiry

Good Bye, Liberal-Legal Democracy!

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STEVEN LEVITSKY and DANIEL ZIBBLAT. *How Democracies Die*. New York: Crown, 2018.

JAVIER CORRALES. "The Authoritarian Resurgence: Autocratic Legalism in Venezuela." *Journal of Democracy* 26, no. 1 (2015): 37–51.

KIM LANE SCHEPPELE. "Autocratic Legalism." *University of Chicago Law Review* 85, no. 1 (2018): 545–84.

TOM GINSBURG and AZIZ Z. HUQ. *How to Save a Constitutional Democracy*. Chicago: University of Chicago Press, 2019.

MICHAEL MCCANN and FILIZ KAHRAMAN. "On the Interdependence of Liberal and Illiberal/Authoritarian Legal Forms in Racial Capitalist Regimes: The Case of the United States." *Annual Review of Law and Social Science* 17 (2021): 483–503.

Verfassung und Recht in Übersee/World Comparative Law, Special Issue on Autocratic Legalism 55, no. 4 (forthcoming).

OSCAR VILHENA VIEIRA, RAQUEL DE MATTOS PIMENTA, FABIO DE SA E SILVA, and MARTA RODRIGUEZ DE ASSIS MACHADO, eds. *Estado de Direito e Populismo Autoritário: Erosão e e Resistência institucional no Brasil (2018–2022)*. São Paulo: FGV University Press, forthcoming.

Every other day, books and articles are published that examine the withering of democracy across multiple national contexts, perhaps best summarized by Steven Levitsky and Daniel Zibblat's How Democracies Die. *The law has not been ignored in this burgeoning literature. Telling examples are the studies on autocratic legalism by Javier Corrales and Kim Lane Scheppele; Tom Ginsburg and Aziz Huq's book* How to Save a Constitutional Democracy; *a recent review essay by Michael McCann and Filiz Kahraman on the "interdependence of liberal and illiberal legal orders … in the United States"; and two forthcoming works from the Project on Autocratic Legalism: a special issue in the* Verfassung und Recht in Übersee/World Comparative Law *journal and a book on Brazil edited by Oscar Vilhena Vieira and colleagues. In this review essay, I focus on three critical issues arising from these and other sources. First, they show that a backlash against liberal democracies is happening in both the global South and the global North. Second, they show that law is no longer thought of as an intrinsic bulwark against assaults on liberal democracy—on the contrary, rising autocrats, many of whom are trained lawyers, often use the law as a tool to consolidate power, sideline minorities and political adversaries, and rule unconstrained. Finally, while earlier analyses*

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Thanks to my Project on Autocratic Legalism (PAL) peers and my PAL cast interviewees, especially David Trubek, Kim Lane Scheppele, Tom Ginsburg, Rick Abel, Michael McCann, Raquel Pimenta, Marta Machado, Dee Smythe, and Mohsin Alam Bhat, to whom I owe many of the thoughts and analysis conveyed herein. Thanks also to Thomas Keck for his comments to earlier versions of this review essay and for our exchange motivated by the good coincidence that our articles are being published in this same journal issue. Failures and imprecisions in the essay, of course, remain my sole responsibility.

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https://doi.org/10.1017/lsi.2022.106 Published online by Cambridge University Press

of this phenomenon have tended to emphasize legislative change that reconfigured governance at its highest levels (the Presidency or Prime Minister's Office, Congress, and High Courts), new studies are revealing—and are helping constitute—an empirically broader field of inquiry.

INTRODUCTION

In 2003, a film titled "Good Bye, Lenin!" directed by Wolfgang Becker, was released. In this film, Christiane Kerner, a loyal socialist based in East Germany, suffers a cardiac arrest and goes into a coma for about eight months. During this eventful time frame, the Berlin Wall is brought down, and life in the former Soviet countries is entirely shaken up. Christiane eventually wakes up, but her health remains very fragile, and the doctor tells her son, Alex, that she cannot be exposed to any major source of distress. Alex then decides to create a fantasy world for his mother, in which the Berlin Wall is still standing and her dear socialist government is in power. With help from his work mates, family members, and former socialist comrades, he spends months fabricating news sources on the glories of an otherwise dead German Democratic Republic and supplying his mother with a lifestyle that, for everyone else, now belonged to a distant past.

Almost twenty years after Christiane's story was first aired, we may find ourselves in a similar tragicomedy as she was. Radical political change is happening at a fast pace, and it may be not only difficult but also hurtful to catch up with the terms of the new reality that is emerging. The V-DEM democracy report for 2022 registers that the number of liberal democracies around the globe is down to the lowest levels in over twenty-five years: only thirty-four countries, housing a mere 13 percent of the world population, still fit that category (Boese et al. 2022).[1] Moreover, while the modal regime type, according to V-DEM analysts, is "electoral autocracies"—that is, countries where elections still happen but may not be entirely free and fair due to fraud or power abuses of the incumbents—even classic *coups d'état* seem to be making a comeback: 2021 had five military and one self-coup, five times more than the average of 1.2 coups per year previously registered by the project.[2]

As these changes unfold, it may be tempting to play Christiane and cling to life as we have known it. But just as it must have happened with the fall of the Soviet regime, it has become almost impossible to insulate oneself from an outside world that is being deeply reconfigured. If we are lucky enough to not be personally affected by the collapse

1. The V-DEM project (an acronym for "Varieties of Democracy") is headquartered at the University of Gothenburg in Sweden. V-DEM uses a multidimensional approach to measure democracy. The project considers various democratic principles (electoral, liberal, majoritarian, consensual, participatory, deliberative, and egalitarian) and produces one specific index for each principle. Each principle is broken down into separate components (for example, free and fair elections, civil liberties, judicial independence, executive constraints, gender equality, media freedom, and civil society) measured separately and through specific indicators. The entire V-DEM dataset has over 450 indicators for all countries in the world since 1789. For details, see V-DEM Project, https://www.v-dem.net/project.html.

2. In 2021, military coups happened in Chad, Guinea, Mali, Myanmar, and Burkina Faso, and a self-coup happened in Tunisia. See Boese et al. (2022, 30–31); "Arrested Dictatorship," https://www.arresteddictatorship.com/global-instances-of-coups.html for details.

https://doi.org/10.1017/lsi.2022.106 Published online by Cambridge University Press

of liberal democracies (academics have a relatively privileged life but are among the first to suffer from cutbacks in individual freedoms), there is no shortage of sources bringing this trend to light. On the contrary, books and articles are published every other day that document and try to explain "how democracies die" across multiple national contexts. The law has not been ignored in this burgeoning literature. Scholars from various disciplines and traditions of inquiry have paid great attention to the role that legal norms, institutions, and mobilization can play in enabling or constraining the erosion and death of liberal democracies.

In this review essay, I focus on three critical issues arising from these multiple and disparate studies. First, these studies show that the backlash against liberal democracies is happening in both the global South and the global North. In other words, the backlash is not exclusive to countries where democracy is recent and the "rule of law, not men [*sic*]" is a work in progress; rather, it has been recognized even where democracy and the rule of law have been largely taken for granted—namely, the United States. Second, these studies show a remarkably pessimistic turn in understandings of the relationship between law and liberal democracy. Contrary to the idealistic tone that has predominated since the 1990s, law is no longer thought of as an intrinsic bulwark against assaults on liberal democracy. Quite the opposite, rising autocrats, many of whom are trained lawyers—like Russia's Vladimir Putin and Hungary's Viktor Orbán (Scheppele 2019b)—often use the law as a tool to consolidate power, sideline minorities and political adversaries, and rule unconstrained.[3] Finally, while earlier analyses of this phenomenon tended to emphasize legislative change that reconfigured governance at its highest levels (the Presidency or Prime Minister's Office, Congress, and High Courts), new studies are revealing—and are helping constitute—an empirically broader field of inquiry.

My argument is grounded in a few key sources, which I selected to illustrate, more than to exhaust, the issues for which I account. The first source is Steven Levitsky and Daniel Zibblat's (2018) popular book *How Democracies Die*. This book reflects the assumption, core to current studies of democratic backsliding, that liberal democracy now more typically dies "at the hands not of generals but of elected leaders—presidents or prime ministers who subvert the very process that brought them to power" (Levitsky and Zibblat 2018, 9). However, the authors help shift the debate about these processes in an important, though less often noted, direction. They use insights from democratic collapses in young and transitional democracies to take account of the United States under former president Donald J. Trump, thus breaking with a reigning divide in mainstream analyses of political development between the United States and the rest of the world.

3. Following Zakaria's (1997) conceptualization, in this review essay I often call these moves illiberal and illiberalism. In doing so, I admittedly emphasize a single dimension of processes of democratic backsliding, i.e., attacks on political liberalism (accountability institutions, political freedoms and protection of oppositions and political minorities) perpetrated by would-be autocrats. I fully recognize, however, that: 1) illiberalism involves attacks on other scripts of the liberal project (economic, cultural, geopolitical, civilizational) besides political liberalism (Laruelle 2022), and 2) in democratic backsliding, the political change at hand can encompass more than just the weakening of political liberalism. It can also include, for example, socioeconomic and cultural change (de Sa e Silva, forthcoming; Bhat, Suresh, and Das Acevedo, 2022).

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The other sources look more closely and explicitly at the role of law in processes of democratic backsliding. These texts include the seminal articles on autocratic legalism (law-centered tactics used by rising autocrats to concentrate power) by Javier Corrales (2015) and Kim Lane Scheppele (2018) and emerging studies of Brazil, India, South Africa, Hungary, and the United States (Ginsburg and Huq 2018; McCann and Kahraman 2021; *Verfassung und Recht in Übersee/World Comparative Law*, forthcoming; Vieira et al., forthcoming). These works present different perspectives and insights, but here I focus on two of their main contributions to the literature analyzed in this essay. First, they share much skepticism toward the law, which is now seen as a tool, used with great effectiveness by illiberal leaders, to rule and entrench themselves into power. Second, they demonstrate the many ways in which this ability has been exercised within and across national contexts.

This review essay proceeds in five sections. The next section examines the discussions of law, democracy, and (il)liberalism in historical perspective. As I note, the course of these discussions has shifted over time, but, after the 1990s, a new consensus was reached. Central to this consensus are the ideas that law has a key role in furthering and strengthening liberal democracy and that legal models derived from (or sponsored by) the United States ought to be embraced as benchmarks for assessments on legal and political development globally. The following three sections lay out my argument that backlash against liberal democracies is being documented in both the global South and the global North; that scholars now look at the relationship between law and liberal democracy in a much more pessimistic way; and that the scope of research of this relationship is being considerably broadened in recent studies. The final section presents concluding thoughts.

LAW AND LIBERAL DEMOCRACY: CHANGES AND CONTINUITIES IN A FIELD OF RESEARCH AND ACTION

Research and activism on law and liberal democracy date back to at least the mid-twentieth century when very few democracies could, in fact, be counted throughout the world. The reigning approach was then informed by "modernization theory" (Gilman 2003) and what came to be known as the "law and development movement" (Trubek 1972b). Scholars shared the premise that law could be a tool for broad societal engineering. In other words, if "third world" countries adopted the right laws and legal institutions, they would overcome their "backwardness" (Trubek 1972a). While the main concern of these scholars was with legal changes intended to generate prosperous market societies, they also were hopeful that this could trigger political changes consistent with the tenets of liberal democracies (Lipset 1960; Rostow 1971). The reasoning was twofold. For one, prosperous market societies would create conditions that favor liberal democracy, such as a sizeable middle class with the propensity to support liberal-democratic values (Huntington 1991). For another, the kinds of legal changes conducive to prosperous market societies for which these scholars advocated would also favor liberal democracy—property rights and capital markets, for example, would create multiple centers of power outside of the state and the hands of state officials (Trubek 1971), thus posing obstacles to the formation of autocracies

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or even of bureaucratic authoritarian governments like the ones observed in Latin America (O'Donnell 1988). The legal profession was a major target of the changes envisioned by these "law and development" scholars. They were critical of the largely formalist training and practicing style of lawyers in the "third world," which they saw as an obstacle to economic change. This led to remarkable attempts to reform legal education and foster a new cadre of lawyers driven by a more pragmatic and purposive thinking, who could properly help design and enforce new laws, reflective of the tenets of market (and democratic) societies (Bartie and Sandomierski 2021; Garth and Shaffer 2022).

The enthusiasm generated by this movement was relatively short-lived. Reforms in law and legal education intended by the law and development scholars took place, but they led neither to prosperous market societies nor to liberal democracy. The new laws they pushed for were adapted or manipulated by local agents to reproduce the status quo, while the new cadre of lawyers schooled in "first world" law used the sociocultural capital accumulated through those training programs to rise in the ranks of state power or the profession, without necessarily challenging the powers that be (Gardner 1980; Trubek 2012). Eventually, law and development scholars entered a mode of self-estrangement and critique, questioning the premises and methods of their own work (Trubek and Galanter 1974; Kennedy 2021).

The failure of the law and development movement left a few important lessons to research on law and democracy. To begin with, it challenged the (rather romantic) belief that law and legal institutions, especially when transplanted, can be effective tools to promote liberal democracy. In addition, and even more troubling, it showed that law and legal institutions that are "in principle" consistent with liberal democracy can, "in practice," work in the opposite direction due to all sorts of unanticipated reasons. As such, it indicated the need for much caution and self-reflection by legal or socio-legal scholars when drawing propositions and engaging in real-world interventions in polities around the world. But just as the scholarly community was beginning to digest these lessons, the global political landscape went through sweeping change. In 1974, the same year as two lead law and development scholars publicly stated their malaise with the movement (Trubek and Galanter 1974), Portuguese military officers staged a coup (the "Carnation Revolution") that overthrew the authoritarian government of Marcello Caetano, inaugurating what Samuel Huntington (1991, 3) termed the "third wave of democratization." In the years that followed, several other countries crossed the line between authoritarianism and democracy, opening an optimistic future for enthusiasts of liberal democracy. Even more importantly, in 1989, the Berlin Wall fell, foreclosing the main alternative to the economic and political models that reigned in the West: "real socialism" as experienced in the Soviet Union.

These developments had a great impact on studies of law and politics. To begin with, free markets and liberal democracy were heralded as the "end of history" in economics and politics (Fukuyama 1992); democracy, in particular, was deemed "the only game in town" (Linz and Stepan 1996). At the same time, an entire "industry" grew to support a legal updating or *aggiornamento* (Dezalay and Garth 2014) in the vast sea of countries transitioning to democracy (Gordon 2010; Garth 2014). Much of this industry operated just like its predecessors in the law and development movement. It carried out or facilitated legal transplants or provided emerging political leaders with

https://doi.org/10.1017/lsi.2022.106 Published online by Cambridge University Press

technical support to draft new constitutions and bills of rights, internalize a growing body of international human rights norms in areas such as torture prevention (de Sa e Silva 2020), set up and equip independent courts and bar associations, and monitor the progress of countries in institutionalizing the "rule of law" through indicators (Merry 2011, 2016). Interestingly, although not surprisingly, these transplants and benchmarking efforts followed a global geopolitical hierarchy that had the United States at the top. Not only were many of the organizations in this industry based in the United States and supported by its private donors and foreign aid funds, but the very models being exported reflected institutions and practices established in North America. Lastly, a renewed sense of optimism regarding law's role in promoting liberal democracy took hold, though with a few dissenting voices (Dezalay and Garth 2002, 2005, 2010).

Various pieces of the literature are helpful to demonstrate how these trends manifested. Political scientists noted that a "global expansion of the judicial power" (Tate and Vallinder 1995, 11) was in order, usually emphasizing how independent courts could be key to break with entrenched interests, promote political accountability, and stage "rights revolutions" in newly democratic countries (Epp 2008). In the law and society community, scholars examining the legal profession shared the same optimism. For example, some looked at the rise of a public interest bar (Cummings and Trubek 2008; de Sa e Silva 2018) or the institutionalization of pro bono work in the developing world (Cummings, de Sa e Silva, and Trubek 2022), recognizing the role of global sources in providing templates and legitimacy to local entrepreneurs seeking to reconfigure law practice in those countries. These scholars generally assumed that the new actors emerging from these processes, such as non-governmental organizations (NGOs) devoted to impact litigation and corporate lawyers in big firms donating their time to represent those in need, could further processes of democratization—once again, by realizing and expanding rights and holding the powerful to account. Scholars in "political lawyering" took the boldest stance on this issue. They claimed that the "legal complex" (a collective actor that brings together private lawyers, judges, public prosecutors, and legal scholars) had been a major force behind liberal political revolutions in the seventeenth and eighteenth centuries in Western history. Writing contrary to traditional accounts on the legal profession, which treated lawyers as self-interested agents seeking to maintain their professional monopoly and status, these scholars suggested that lawyers share broader political commitments and a somewhat inherent disposition to "fight for political freedoms" (Halliday, Karpik, and Feeley 2007, 2012).

Then again, just as this consensus on the role of law (of a certain kind) and lawyers in promoting liberal democracy was taking hold in the legal and socio-legal domains, life on the ground became more confusing. As some scholars were noticing, not only was liberal democracy having a hard time consolidating in many transitional countries, but the weak link in the chain was largely in "rule-of-law" institutions. Guillermo O'Donnell (1999) was one of the first to make this point. Examining the transition to democracy in Latin America, he concluded that countries in the region had proven capable of preventing "reversals" in the process, safeguarding elections as the sole means through which rulers were chosen. However, he deemed the Latin American democratic transition "incomplete" for Latin American countries still lacked robust "rule-of-law" systems that could ensure full equality before the law. In the long run,

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this could severely compromise the consolidation of democracy in the region. Elections could not be competitive, while the interests of many could not be reflected in elected governments, inspiring mistrust in democratic regimes and fostering authoritarian nostalgia. Steven Levitsky and Lucan Way (2002) added to the concern. They found that many countries around the world were stuck between an authoritarian past and a hopeful democratic future, developing "hybrid systems" with features from both these regime types.

More specifically, they noted that the leaders in these countries were being selected by formally democratic means—that is, elections—but that the incumbents were abusing their powers so often and extensively that an unlevel playing field was created between the government and the opposition. These cases of "competitive authoritarianism," as Levitsky and Way term them, create some room for contestation, including independent courts with the power to block the plans and actions of incumbents. But this does not necessarily lead to democracy, and it creates instability, which can lead incumbents to crack down further. Thomas Carothers (2002) also noted that most countries that had entered the "third wave" of democratization were in a "gray zone" and not fully democratic (Huntington 1991). He thus called scholars, aid practitioners, and policy makers to abandon the "transition paradigm"—that is, the idea that countries moving away from authoritarianism were necessarily transitioning to democracy; that this process follows the steps of "opening, breakthrough, and consolidation"; that elections will deepen participation and accountability; and that no preconditions are needed for consolidation to be attained.

A particularly insightful intervention in these debates was made by Fareed Zakaria (1997). In an often-cited article, he joined the growing tide of scholars who were identifying the emergence of "hybrid" regimes or countries stuck somewhere between authoritarianism and liberal democracy. However, and very importantly, he contended that democracy ought to be thought of in relative separation from political liberalism. Democracy is a regime in which rulers are selected based on elections; political liberalism requires broader systems of individual freedoms, political accountability, and the protection of minorities. While democracy and political liberalism grew and took hold in synergy in what became known as consolidated democracies like the United States, the former could conceivably exist without the latter. In fact, this is what happened with many of the countries transitioning to democracy in Huntington's "third wave." They successfully established electoral systems, but, after these elections, the incumbents routinely abused their powers and crushed their oppositions, thereby ensuring their endless perpetuation in power. Zakaria termed these cases "illiberal democracies," warning that they could be very difficult to challenge since their leaders could ultimately derive international legitimacy from the fact that their countries were, after all democratic!

Despite their limited influence in legal and socio-legal scholarship at the time, the analyses by O'Donnell, Levitsky and Way, Carothers, and Zakaria brought an incredible contribution to studies of law and liberal democracy. However, they were still grounded in some key premises of the "rule-of-law" consensus produced in the 1990s. By and large, they had much faith in liberal legality as an intrinsic bulwark against persistent authoritarian threats and hoped that solid legal institutions and powerful legal professionals could serve as vectors of democratic consolidation.

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Zakaria (1997) stands out: given the divorce between democracy and political liberalism that he documents, he argued that, instead of pushing for countries to adopt elections, it might be more strategic for democratizers to invest in the strengthening of US-type accountability institutions, with an emphasis on independent courts. Furthermore, these authors still tended to locate their phenomena of interest in transitioning and developing countries, where the transition had been "incomplete" and accountability institutions were weak or dysfunctional. Carothers (2002) provides a great example: he urged his readers to abandon the transition paradigm but never considered the possibility that consolidated democracies could suffer from the same "political syndromes" observed among countries in the "grey zone" between authoritarianism and liberal democracy. Consolidated democracies, at the top of which was the United States, seemed immune to authoritarian turns: to (mis)quote from the title of a famous North American book, the shared assumption was "it can't happen here" (Lewis 1935). Until it did.

IT CAN HAPPEN ANYWHERE: VIRAL ILLIBERAL TURNS AND THE DECLINING RELEVANCE OF THE NORTH/SOUTH DIVIDE

By the 2010s, a new phenomenon began to draw attention from political scientists, which was eventually termed "democratic backsliding" (Bermeo 2016; Waldner and Lust 2018). Examples have become commonplace; I will consider three of the most recurrent. In 1998, Venezuelans elected Hugo Chávez, a former military officer who advocated for progressive social change on behalf of marginalized sectors of the population. To advance this agenda, Chávez called for broad constitutional reform. The reform, secured in 1999, eliminated the Senate and reformed the Constitutional Court. Chávez also adopted important policy changes intended, for example, to increase public participation in governance and democratize the Venezuelan media system. But these changes created tools that he subsequently used to bypass local authorities and accountability mechanisms as well as to asphyxiate independent media sources (Corrales 2015). In 2002, the Venezuelan elite that opposed Chavez tried to remove him through a coup. Chavez survived the coup and, with greater power and weakened institutions of accountability, was reelected for various terms until 2013, when he died (the very possibility of so many reelections was obtained through legal change). Chávez was replaced with his former Cabinet member, Nicolás Maduro, who did not back off in the use of those autocratic tools. Meanwhile, the state of Venezuelan democracy declined severely. In 1998, the Venezuelan score in the V-DEM liberal democracy index was 0.59; in 2021, it was 0.07.

Similarly, in 2003, Turkish voters elected Recep Tayyip Erdoğan as their prime minister. Erdoğan was a founder and leader of the Justice and Development Party and espoused socially conservative policies. In the beginning of his term, he liberalized the Turkish economy and started negotiations for Turkey to enter the European Union, which led many to consider him a liberal democrat. With the passing of time, he supported various referenda to reform the Constitution, which increased the number of seats in the Supreme Court—giving him the opportunity to pack the court—and reconfigured a presidency that, as of 2014, he would come to occupy. In 2017, after

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enduring a failed military coup and cracking down on opponents and dissenters, Erdoğan supported a new referendum, which transformed Turkey into a presidential system—eliminating the prime minister's office—and increased the powers of the president, for example, by expanding the situations under which he could rule by decree (Scheppele 2018). In this process, he also took a populist turn, attacking "the media," "civil society," and "the West" and increasing his appeals to religious and traditional values (Yilmaz 2021).

Lastly, in 2010, Hungarians gave a parliamentary majority to a political alliance involving Fidesz (the Hungarian Civic Alliance) and the Christian Democratic People's Party (KDNP). As a result, the Fidesz leader, Viktor Orbán, once again became the Hungarian prime minister (he had previously served in this role when he ruled as a democratic leader). The number of seats attained by the Fidesz–KDNP bloc in Congress was high enough for Orbán to rewrite the Constitution, with changes that included support to religious, conservative, and ethno-nationalist values. The new Constitution was just the first step in a more sweeping transformation of the Hungarian state that made Hungary an "archetypal case" of democratic backsliding (Scheppele 2018). Orbán changed election laws that facilitated his victory in 2014, and, like Erdoğan, he increased the number of seats in the Supreme Court, which his party could fill, thus packing the Court. He also stood out for his interference in several other accountability institutions (or referees), like the Tax Commission, the Electoral Commission, and the Public Prosecutor's Office; for curtailing the rights of the opposition in Congress; and for cracking down on independent media sources, NGOs, and even universities (Scheppele 2018). Eventually, Orbán became open about being a dissenter of the liberal-democratic consensus: in a famous 2014 speech, he defined his regime as "illiberal democracy" (Tóth 2014), and, in 2019, he went further and declared Hungary to be a "Christian illiberal democracy" (*Reuters* 2019).

Democratic backsliding differed from the "reversals" in democratization processes that concerned analysts and policy makers in the previous decades (Huntington 1991): it now involved countries that, according to all the indicators developed to measure democratization following the "third wave," had already reached the status of consolidated democracies. In these countries, rulers were being routinely selected through free and fair elections, and a basic system of political freedoms (for example, freedom of the press, freedom of association, freedom of speech, and the right to protest) and accountability mechanisms (for example, congressional oversight, judicial review, access to information) had been institutionalized. Yet after the elections, winners were actively investing against those very foundations of the liberal-democratic regimes that had enabled their rise to power. In some cases, this action had resulted in democratic breakdowns—that is, the transformation of what used to be considered a full liberal democracy into a full autocracy. At the very least, it resulted in "hybrid regimes" like those previously identified in unsuccessful or incomplete transitions to democracy (Zakaria 1997; O'Donnell 1999; Carothers 2002). In other words, the quality of an existing democratic regime had become seriously compromised: rulers might still be selected through the vote; however, political freedoms were increasingly abridged; accountability mechanisms suffocated; and elections could no longer be deemed free and fair. In fact, sometimes elections were grossly manipulated or even rigged to fully secure the perpetuation of incumbents in power.

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In 2018, the literature on democratic backsliding took an even more interesting turn, symbolized by the publication of *How Democracies Die* by Levitsky and Ziblatt (2018). The book begins by stating the puzzle—or drama—of democratic backsliding. Liberal democracy, the authors contend, no longer dies necessarily through overnight coups, staged by those who are close to, but still outside of, political power. Rather, it often dies through the hands of a leader who comes to power following the rules of the liberal democratic game and then actively undermines these very rules leading to a "politics without guardrails." Levitsky and Ziblatt elaborate on the tactics used by the leader as well as on the factors that enable him (it is always a "he"!) to use these tactics, some of which will be further explored in this essay. But their motivation and approach, which are often overlooked by their audience, are just as meaningful as their substantive contributions. As it becomes clear from the first few pages, what led them to write the book was Trump's election to the US presidency. Throughout the book, they document striking similarities in the style and methods used by Trump and by autocrats elsewhere, fearing—if not predicting—that the United States could also follow the path previously charted by Venezuela under Chávez, Turkey under Erdoğan, or Hungary under Orbán. As such, they depart from the tradition of North American "comparative politics," which focuses on countries other than the United States and treats those as incommensurate with the United States' "exceptional" model of political organization.

Time has proven that Levitsky and Ziblatt were correct. Although the Trump presidency ended with the 2020 elections, North Americans did not see a peaceful transfer of power, which is one of the indicators of consolidated liberal democracies. Rather, many of them were shocked by the January 6 Capitol attacks (Leatherby et al. 2021; Woodward 2021), which, as subsequent congressional investigations have demonstrated, were a textbook example of an attempted "self-coup," a term originally from comparative politics that ironically became appropriate to describe North American politics (Hill 2021; Rao 2022). And, even without Trump, Trumpism will likely remain around for a while: it lives, for instance, in extremist civil society groups like the Proud Boys (Campbell 2022),[4] in state executives and legislatures controlled by Grand Old Party (GOP) officers identified with the Make America Great Again movement (Wolf 2022), and even in what, under the liberal-democratic consensus, may have been thought of as a key guardian of liberal democracy: the courts.

NOT THE SOLUTION; MAYBE PART OF THE PROBLEM: THE PESSIMISTIC TURN REGARDING LAW AND ITS ROLE IN SUSTAINING LIBERAL DEMOCRACY

Also remarkable in the emerging literature on law and illiberalism is a more skeptical understanding of the relationship between law, democracy (a government that reflects the will of majorities) and political liberalism (limitations to executive power and the protection of minorities). For about three centuries but especially after the "rule-of-law" consensus from the 1990s, law was broadly thought of as a cement linking

4. "Proud Boys," *Southern Poverty Law Center*, https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys.

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democracy to political liberalism through, for example, separation of powers, basic civil and political rights, and judicial review. As I write this essay, political scientists and constitutional law scholars investigating democratic backsliding are growingly intrigued by how law became central to the toolkit used by leaders with illiberal or autocratic dispositions to undermine liberal democracy from within. Old-fashioned authoritarian regimes have also used law for illiberal purposes (Barreto 2021; de Sa e Silva 2022), but this happened to a lesser extent and with less sophistication than in present-day backsliding democracies. In the latter, law has become a routine tool used to operationalize, mask, legitimize, and institutionalize attacks on accountability institutions, oppositions, and minorities.[5]

Javier Corrales was quick to notice this in his studies of Venezuela under Chávez. In a 2015 essay, he identified three tactics used by Chávez to consolidate power that were centered around the use, abuse, and non-use of the law. According to Corrales (2015), Chávez used the law by passing statutory and constitutional changes that supported his autocratic plans, abused the law by reinterpreting existing statutory or constitutional commands in ways that favored his moves, and non-used the law by denying enforcement to legal norms that could present obstacles to his aggregation of power. Corrales termed this set of tactics "autocratic legalism."

Kim Lane Scheppele (2018) built on these insights in studies that included a broader set of cases besides Venezuela—Russia under Putin, Hungary under Orbán, Turkey under Erdoğan, Ecuador under Correa. She placed greater emphasis on high-level statutory and constitutional change that, using congressional supermajorities or direct appeals to "the people," leaders in those countries managed to pass. In principle and in isolation from one another, she noted, these changes did not seem inconsistent with liberal democracy (oftentimes, they were promoted in the name of perfecting liberal democracy). In practice and in the aggregate, however, the changes enabled leaders to concentrate power and avoid accountability bodies in ways that looked perfectly "legal" and, therefore, were difficult for citizens to notice and resist. Telling examples include court-packing moves undertaken by Orbán and Erdoğan. Both began by expanding the jurisdiction of courts so that they could try more cases, including human rights cases, which, in principle, seemed an iteration of the liberal script; both then used this broader mandate of courts as an excuse to appoint more judges that they or their parties could handpick. In a similar direction, Rosalind Dixon and David Landau wrote extensively on how constitutional amendments and replacements, judicial review, and constitutional rights have been "abusively borrowed" to undermine the "democratic minimum core," which is defined as "free and fair elections, with a minimum set of independent checks and balances on the elected government" (Dixon and Landau 2021, 23; see also Landau 2013; Landau and Dixon 2020).

This more routine and sophisticated use of law for illiberal purposes is obviously not restricted to young or transitional democracies. Rather, and as noted earlier, it has also been envisioned in what was thought to be more mature liberal democracies like

5. Ironically, this need of current illiberal or authoritarian leaders to use law to mask and legitimize their moves can be linked to the success of political liberalism and the "rule of law." Because liberal legal democracy "is now widely seen as the only legitimate form of government, autocratic leaders have to cloak their authoritarian moves in liberal legal forms in ways that earlier generations of autocratic leaders didn't have to bother with." Thomas M. Keck, personal communication, 2022; see also Dixon and Landau 2021.

https://doi.org/10.1017/lsi.2022.106 Published online by Cambridge University Press

the United States. In their book *How to Save a Constitutional Democracy*, Tom Ginsburg and Aziz Huq (2018) analyze the US constitutional system and find gaps and ambiguities that could make the United States vulnerable to "decay" under Trump or someone governing in that spirit. For example, they note that, in the United States, (1) a party with sustained control over the executive and the legislature can radically reshape courts since federal judges and Supreme Court justices are politically appointed and vetted and no substantial screening criteria apply to their selection; (2) the federal bureaucracy has no solid legal protections, which makes it easy to hyper-politicize the executive; and (3) federalism can work to both constrain federal power and to entrench and expand despotism. Corrales (2020) and Scheppele (2020) have expressed some of these same concerns. In op-eds and interviews, they have highlighted (1) that Trump used the Justice Department to both target his enemies (for example, the former deputy Federal Bureau of Investigation director Andrew G. McCabe, whom Trump disliked for investigating Russia's role in the 2016 elections) and protect his allies (for example, Roger Stone); (2) that Trump tried to weaponize the US Postal Service to suppress mailed votes; (3) that Trump packed federal courts with Republican loyalists; and (4) that Republicans were rewriting laws and changing the electoral administration at the subnational level to reduce the electoral potency of the Democrats.

Scheppele played a lead role in drawing the attention of law and society scholars to this phenomenon globally. Her 2018 essay "Autocratic Legalism" became widely read and cited within the law and society community, and her presidential address at the 2019 Annual Meeting of the Law and Society Association led several attendees, including myself, to put together a Project on Autocratic Legalism (PAL). PAL promotes comparative and transnational studies of law and democratic backsliding.[6] The project initially focused on Brazil, India, and South Africa, but it is expanding toward several other countries, including the United States, and paying further attention to resistance and the transnational aspects of the phenomenon.[7]

PAL and PAL-like studies have followed four main approaches, though these may overlap in individual works. Some focus on how existing norms and architectures of political power may enable or constrain the routine and sophisticated use of law to undermine liberal democracy that we now must confront. As noted, Ginsburg and Huq (2018) identify gaps in the US legal system that make this country vulnerable to democratic decay, while Oscar Vieira, Rubens Glezer, and Ana Laura Barbosa (forthcoming) argue that the Brazilian Constitution, which adopts a presidential and

6. In 2020, PAL became a Law and Society Association (LSA) International Research Collaborative, and, in 2021, it was recognized as a Pilot Topical Laboratory in the LSA's Global Collaboration Program. PAL also developed a Podcast (PALcast) in which some of the scholars featured in this essay were interviewed. Project outputs already include an essay in the *Annual Review of Law and the Social Science* (de Sa e Silva 2022), proceedings of a roundtable on India in the *Jindal Global Law Review* (Das Acevedo 2022), a book with in-depth analyses on Brazil (Vieira et al., forthcoming), and a special issue with studies on Brazil, India, South Africa, Hungary, and the United States (*Verfassung und Recht in Übersee/World Comparative Law*, forthcoming).

7. Here, I refer to the Global Resistance to Authoritarian Diffusion (GRAD) project, a spin-off of the PAL project launched in 2022 and based at the King's College London's Transnational Law Institute. See "Transnational Law Institute Launches Global Project on Transnationalism," https://www.kcl.ac.uk/news/transnational-law-institute-launches-global-project-on-authoritarianism.

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multiparty system, made Brazil more resilient to Bolsonaro's autocratic intentions. In their account, this system forces chief executives to negotiate with diverse political factions and build a congressional coalition with which they can rule. Since Bolsonaro was unwilling or unable to negotiate with Congress, he could not pass any major constitutional amendment or statutory reform to entrench himself in power. Scholars who embrace this approach often engage in prescriptive analysis, suggesting formal changes in laws and political institutions to strengthen the liberal core of legal orders by fragmenting and distributing power or bolstering accountability and monitoring institutions. For example, drawing from their vast expertise in comparative constitutional design, Ginsburg and Huq (2018) propose changes in US legal texts and jurisprudence that could close the gaps they identify. Vieira and colleagues (forthcoming) suggest legal reforms that could prevent, for example, the capture of the Public Prosecutor's Office in Brazil by the executive, which was one of the main triumphs accomplished by Bolsonaro that allowed him to rule with fewer constraints.

Other scholars focus on how liberal legality is structurally contingent and manipulable. In an article prepared as a contribution to the PAL project, I identified four factors that allow liberal law to be "hollowed out" or "repurposed" to meet illiberal goals: (1) institutional and organization loopholes, which illiberal leaders exploit to create or expand gaps between "law in books" and "law in action"; (2) heterogeneity in the legal profession, which illiberal leaders use to coopt lawyers who can manipulate a liberal legal order for illiberal purposes, while providing illiberal practices with a cover of legal legitimacy; (3) law's indeterminacy, which enables illiberal leaders and their legal operatives to play with the meaning of statutory and constitutional provisions and claim that what they are doing is consistent with liberal legality; and (4) the cultural character of law, by which leaders come to manipulate liberal legality in a more indirect way, altering the symbolic fabric against which citizens and institutions give meaning to the "rule of law" (de Sa e Silva 2022).

Thomas Keck (2022), in this same journal issue, takes this approach in an interesting direction. Building on Dixon and Landau's critique of abusive constitutional borrowing, he examines Trump's manipulation of free speech rights to attack the foundations of the US liberal-democratic order. There is hardly any doubt that Trump was an inciter of the January 6 attacks on the capitol (Zengerle, Cowan, and Chiacu 2022), yet he can always postulate that he was merely exercising his free speech rights. Trump even filed a lawsuit against his permanent ban from Twitter, claiming violations of his First Amendment rights. The claim was unsuccessful because, among other things, the First Amendment does not apply to private entities; Trump and his followers, however, continue to call his ban an act of public "censorship." Keck (2022) argues that, given this evident abuse of free speech protections by Trump and his followers, North Americans should contemplate the European tradition of "militant democracy" and consider curtailing those rights to protect political freedoms more broadly. Readers may have different opinions about his prescriptions, but his diagnosis of the problem is spot on. Liberal legal rights like the right to free speech—which would appear in any established set of indicators with which liberal democracy is measured globally—are being widely deployed to suppress the very political freedoms they are supposed to protect. The reason why this works is because political liberalism is deeply tied to individualism and absolute interpretations of notions like liberty and property. Just as this

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can empower individuals against despots, it can also enable other forms of despotism. Conservatives seem to have learned this lesson better than progressives. From campaign finance, to abortion, to gun control, to the war against "critical race theory" and "school indoctrination," the main disputes that they have carried out in both courts of law and courts of public opinion openly draw from "rights talk" and the language of liberal legal rights, even if their purpose is to subvert the liberal legal order. From this viewpoint, one could say that, adapting from Karl Marx, liberal legalism may "contain the seeds of its own destruction."

Still other researchers look at how past developments specific to each country can provide illiberal leaders with easy opportunities to use law against liberal democracy. Michael McCann and Filiz Kahraman (2021) provide a useful example. They contend that the United States evolved as a "semi-dual state," in which liberal and illiberal legal orders coexist, constitute one another, and exclude large populational sectors based on race, class, and gender. They argue that it is important to recognize these pre-existing illiberal legal traditions, which can be "tapped and exploited further by rogue populist leaders [like Trump] and their anxious party followers" (McCann and Kahraman 2021, 497). Marta Machado and Raquel Pimenta (2022) make a similar argument for Brazil, identifying the "zones of authoritarianism" that Bolsonaro taps on and expands as by-products of Brazil's "incomplete transition" to democracy. Jacob Zuma's new governance model in South Africa studied by Dennis Davis, Michelle Le Roux, and Dee Smythe (2022) was similarly built on the repurposing of colonial and apartheid laws that had designated "tribes" and "tribal authorities." In all these cases, current uses of law against democracy are best understood when considered amid historical continuities or discontinuities.

Lastly, some scholars look at law's link to politics and power. In his studies of the United States' war on terror, Richard Abel (2018a, 2018b) observes that: (1) responses to rights violations (torture, electronic surveillance, secret prisons, extraordinary rendition, targeted killing, and civilian battlefield casualties) has depended on which party controlled the White House and Congress, just as (2) judicial decisions on surveillance, *habeas corpus* petitions, civil damages actions, and civil liberties has correlated strongly with the party of the president who nominated the judges at hand. Hence, Abel identifies "a paradox: the fate of the rule of law—whose raison d'être is to restrain the state from abusing its power—itself depends on politics"; "defenders of the rule of law [thus] *must* engage in politics, including the electoral process" (Abel 2020, 27; emphasis in original).

Similarly, but outside of party politics, some have looked at current attacks on liberal democracy through law, considering how these connect to social divisions and hierarchies based on class, gender/sexuality, race/ethnicity, religion, and the intersectionalities among them. It is clear in the literature, for example, that Narendra Modi's regime advances a Hindu nationalist project; that Trump's rule favored a white Christian nationalist project while, in general, protecting business interests and their primacy over environment sustainability (Darian-Smith 2022); that Orbán's fertility plans bring together his ethno-nationalist appeals, homegrown approach to economic development, and traditional vision on gender roles; and that Bolsonaro's attacks on "socialism" target not only distributive economic policies but also affirmative action, Indigenous rights, women's rights, gender identity, and sexual orientation rights. It is

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also clear that these leaders use law to entrench these hierarchies as much as—if not more than—they use it to entrench themselves into power. Going forward, scholars can bring these links more to the forefront and illuminate the codependence between illiberal uses of law and the social structure at large.

IT'S NOT A SMALL WORLD: EMPIRICAL DIRECTIONS IN RESEARCH ON LAW AND ILLIBERALISM

PAL and PAL-like works are also revealing—and are helping constitute—an empirically broad field of study. Initial PAL and PAL-like works, usually carried out by political scientists and constitutional scholars in countries where the chief executive enjoys a supermajority in Congress, have focused on legislative reforms that reconfigure governance and bolster executive power at the expense of Congress, the courts, and other accountability bodies (Corrales 2015; Scheppele 2018). Though these reforms can be wholesale (for example, through wholly new constitutions), this is rarely the case. More common are piecemeal changes that make national legal orders internally inconsistent—in Scheppele's (2013, 2018) words, creating a "Frankenstate"—and more susceptible to manipulation. Subsequent studies are expanding beyond this empirical domain in at least three, often overlapping, directions.

First, new studies are documenting uses of law against liberal democracy that do not require legislative action. There are substantial legal powers and prerogatives in the hands of presidents, prime ministers, and even bureaucratic agencies that these can use to control, or weaponize against, political opponents, minorities, and other accountability institutions.[8] As noted, Bolsonaro was unable to pass major constitutional and statutory reform to entrench himself in power. Yet he and others that he appointed made copious use of executive and regulatory orders to routinely bypass congressional oversight (Vieira, Glezer, and Barbosa, forthcoming; Vieira et al., forthcoming).

Moreover, implementation processes provide a wealth of opportunities for rulers—or loyalist judges that rulers are able to appoint—to bend the law to serve illiberal purposes. These rulers or judges can enforce existing laws and regulations in inconsistent and biased manners. In his account of Venezuela under Chávez, Corrales (2015, 42) notes that the state harasses "many independent newspapers, imposing legal fines based on allegations of corruption or violation of the media law, or arbitrarily denying access to foreign exchange, which is necessary to buy paper," yet "if a newspaper's editorial line changes, the government will forgive the fines and grant it foreign exchange." They can also give new interpretations to old legal texts or

8. Evaluating when abuse has occurred is not necessarily straightforward. For example, Republicans are currently accusing US President Joe Biden of bypassing Congress in matters like student loan forgiveness, and the US Supreme Court has ruled in *West Virginia v. Environmental Protection Agency*, 597 U.S. ___, that the US Environmental Protection Agency was usurping congressional powers in its attempt to regulate carbon emissions. Scholars must distinguish between legitimate and abusive uses of executive power and prerogatives. Some works reviewed in this essay suggest potential criteria for this distinction. For example, Steven Levitsky and Daniel Zibblat (2018) would look for (in)consistency between the exercise of executive power and prerogatives and institutionalized political customs ("unwritten rules"); Rosalind Dixon and David Landau (2021) would ask what the damage a decree or order at hand caused to the "minimum core" of liberal democratic governance.

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principles. For instance, in India, Modi and the BJP came up with an ingenious solution to bypass congressional oversight. The Indian Constitution grants the leader of the opposition the power to appoint several positions in accountability bodies. The BJP's speaker of the house did not recognize the leader of the opposition, which caused those seats to remain vacant and the accountability bodies to become inoperative. The BJP-appointed Attorney General claimed that this did not violate the law as "there is no law that obliges the Speaker to recognize a Leader of the Opposition if no opposition party's numerical strength is at least equal to the quorum of the House (i.e., one tenth of its membership, or 55 seats)" (Khaitan 2020, 64).

Legal systems can also have norms on the books that are antithetical to liberal democracy and that incumbents can simply activate or mobilize further. Das Acevedo (2022) make this case for India, stating that, in that country, illiberal elements are "baked into ostensibly liberal-constitutional and legal texts." The Indian Constitution authorizes preventive detention, grants the state substantial emergency powers, and grants the state impunity. Similarly, countries may have adopted liberal laws, but these coexist with institutionalized illiberal practices, which incumbents can bolster and expand. This is again the case in India, where a liberal Constitution was admittedly "imposed upon a society riven by hierarchies of religion, caste, class, and gender" (Bhat, Suresh, and Das Acevedo, 2022) and, in Brazil, where, as Machado and Pimenta (2022) note, deficits in the rule of law's consolidation, despite the successful adoption of elections, left open persistent "zones of authoritarianism," which Bolsonaro could tap into and expand.

Lastly, the literal implementation of liberal laws can yield illiberal results. For the liberal spirit of key legal norms to be upheld, unwritten rules of political conduct must be observed, and incumbents may decide to ignore or overtly break them. A dramatic example recently emerged in the struggles over Supreme Court seats in the United States, which is another issue discussed by Keck (2022) in this same journal issue. In 2016, Republican senators refused to hold a confirmation hearing for Barack Obama's Supreme Court nominee, Merrick Garland. There are no written laws that force the Senate to hold this hearing immediately following the nomination, but, according to Levitsky and Zibblat (2018, 80), this had been a "tradition" since 1866. The Senate thus acted in accordance—or at least not in contradiction—with written laws, but it broke an unwritten rule that had underpinned the US liberal-democratic experience. This became even more visible when, in 2020, the Senate held a hearing for Trump's nominee under the same conditions that it had denied for Obama's nominee. These two moves combined to produce a solid conservative majority on the Court, whose results can be seen in key cases like *Dobbs*[9] or *Kennedy*.[10]

Second, new studies are documenting the uses of law against democracy in multiple areas of law and policy. Constitutional law, which features issues of separation of powers and individual freedoms more explicitly, is naturally at the heart of many studies, but much can be done to curtail political liberalism through activity carried

9. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. __ (2022). This case reversed *Roe v. Wade*, 410 U.S. 113 (1973), denying a right to abortion under the US Constitution.

10. *Kennedy v. Bremerton School District*, 597 U.S. __ (2022). In this case, the court ruled that the Bremerton School District violated the free exercise and free speech rights of a high school football coach when it disciplined him for praying in the center of the field after games.

https://doi.org/10.1017/lsi.2022.106 Published online by Cambridge University Press

out in other legal domains. In McCann and Kahraman's (2021) account, the United States' illiberal legal order is built through an integration of criminal, civil, and administrative law in a host of sectors. For example, they argue that "federal and state urban development, highway construction, and zoning policies starting in the 1940s that systematically expanded safe, affordable housing for white people in the suburbs while systematically moving people of color (especially black and brown people) out of integrated neighborhoods and into increasingly marginal, jobless, poor, and violence-plagued slums and ghettoes" (496). Studies of this kind can help illuminate how the denial of certain social, economic, cultural, and environmental rights can affect the political participation of disadvantaged groups, allowing for richer conceptualizations of "democratic backsliding" and the nature of the "regime change" at stake in these processes, in which cutbacks on political liberalism coexist with, and constitute, something much broader (de Sa e Silva, forthcoming).

Third and finally, new studies are documenting uses of law against democracy at multiple levels of governance. The seminal studies in the field tended to focus on central governments and their high-level institutions (the Presidency or Prime Minister's Office; Congress; High Courts). New studies are paying closer attention to activity at the state and local levels. In South Africa, as noted by Davis, Le Roux, and Smythe (2022), Zuma put together a new governance structure by transferring important accountability functions from Congress and the courts to local "traditional councils" packed with regime loyalists. In the United States, subnational entities now play a lead role in entrenching the GOP into power: GOP-controlled state legislatures have passed laws that have the effect of suppressing Latinx and African American votes (Cineas 2022; Rakich 2022) and of undermining political freedoms —for example, by prohibiting the teaching of "divisive subjects" or "critical race theory" in public schools and universities (Kearse 2021; Brownstein 2022). If US states were once seen and heralded as "laboratories of democracy," they are now being considered by many as "laboratories against democracy" (Grumbach 2022) or even "laboratories of autocracy" (Pepper 2021).

Uses of law against democracy are being documented above the national sphere as well. No illiberal international organization has yet been set up, but scholars like Scheppele (2018, 2019a) have traced the diffusion of illiberal legal tactics around the globe, while Ginsburg (2021) warns about the potential emergence of an authoritarian international legal order. Going forward, it is worth studying these processes further while asking whether recourse to international law and transnational advocacy networks can slow down or prevent illiberal turns.

FINAL REMARKS

In the film mentioned at the opening of this article, the main character, Christiane Kerner, dies before she can learn about the fall of the Soviet Union. In one of the last scenes, her son Alex celebrates that he was able to keep her away from the changes in the real world until her last breath. He says he believes that "it was better that she never came in contact with the truth; she died happy." Having come this far in this essay, I—and readers—do not have the same luxury. We know that the old days of

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liberal-legal democracy are over. Coming to this realization has made me think what Christiane would do if she had been told the truth. Two plots then came to my mind. She would either turn into a cynical individual who dismisses any concerns with social transformation, or she would regroup with comrades, engage in endless reflections about what went wrong with the project to which she devoted her life, and keep up the fight for a better world—call it socialism or not—until her last day.

To readers who choose the latter plot for their own stories, I hope this essay also provides a rough map of where to go forward. There is much to be done so we can fully understand the current collapse of liberal democracies and the role law has played in it. But this will require that we strive for a more nuanced scrutiny of what binds law, democracy, and (il)liberalism together or sets them apart; that we moderate (if not that we entirely abandon!) long-standing ideas of US exceptionalism; and that we continue to study the links between law, democracy, and (il)liberalism from multiple angles and based on multiple forms of expertise. Political science and constitutional law knowledge, which was behind much of the field's original development, will continue to be needed. But there is room and need for much more (de Sa e Silva, forthcoming). To name a few examples, administrative law, sociology, and anthropology can help illuminate law-implementation processes involving executive agencies; political economy can help link these legalistic tactics to broader social hierarchies; history can help clarify whether the rise of illiberal legality must be best understood as continuity or discontinuity; comparative approaches can explain similarities and differences across distinctive socio-legal-political "experiences" (Dann, Riegner, and Bönnemann 2020); and international studies can help illuminate the link between local and supranational processes. Going forward, these and other approaches and contributions will not only be welcome but also needed in this nascent, yet already vibrant, field.

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