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Where are the lawyers while Trump attacks democratic institutions?

Amsterdam Law School

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President Donald Trump is wasting no time in his second term to dismantle independent democratic institutions. ‘The situation is at its most critical point’, says Scott Cummings. He joined the Amsterdam Law School in April as a distinguished visiting professor of Legal Ethics. According to Cummings, lawyers are at the forefront of the fight for democracy. ‘If they stop being complicit, it could slow the project down.’



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As a professor of Legal Ethics at the University of California in Los Angeles, Scott Cummings has a front-row seat to the Trump 2.0 administration. It leaves him deeply concerned about the direction of his country. ‘We are witnessing a systematic, coordinated attack on independent democratic institutions. This is unprecedented in America.’

What do these attacks on democratic institutions look like?

‘There are attacks on the courts, free press, and universities. Harvard University, for one, is in the crossfire. To its credit, Harvard refused to give Trump power over their hiring process and courses. Now the administration is threatening to revoke Harvard’s charitable status, which would make it harder for the university to receive donations. Because I study the legal profession, I focus specifically on how

Trump prevents lawyers from fighting back. There have already been 7 executive orders discouraging law firms from representing interests that don't align with the administration's agenda. They are also currently targeting lawyers who are advising immigrants.'

What happens when these attacks on democratic institutions are successful?

'We are watching democratic backsliding unfold in the United States. That means that the institutions designed to limit the executive branch's power are undermined and ultimately controlled. Democracy gives way to autocracy when the executive branch holds absolute power. We are currently seeing this process accelerating in the United States.'



“ The most effective way to destroy democracy is not by force but through law ”

How is it possible that this is happening in a democracy?

'The most effective way to destroy democracy is not by force but through law. Trump is seeking to capture the legal institutions to shift away from democracy. It's important to appear to be following the law, so it's about finding loopholes. Trump is using gaps in the federal system and legal power to go after democratic institutions. This makes law a central tool in the autocratic playbook. Lawyers play an essential role because they know how law works. That's why lawyers are at the forefront of this fight. If lawyers stop being complicit, the project could be slowed down.'

How exactly are lawyers involved?

'Lawyers are both the architects and the targets of autocracy. Some are helping the Trump administration undermine the rule of law by finding loopholes. These are the architects. Others are being targeted because they represent interests opposed to the Trump administration. Law firms really are the only legal actors with the resources to litigate against deep pocket government lawyers targeting political enemies. Trump knows that; that's why he's going after the firms.'

“ The legal profession has always had a complicated relationship with democracy. They have consistently served power ”



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Scott Cummings is a Professor of Law and holds the inaugural Robert Henigson Chair in Legal Ethics at the UCLA School of Law. As a distinguished visiting professor, he joins the Amsterdam Centre on the Legal Professions and Access to Justice (<https://aclpa.uva.nl/en>) (ACLPA). His most recent article, Lawyers in Backsliding Democracy (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4321943), won the 2024 Fred C. Zarcharias Prize in Legal Ethics (<https://law.ucla.edu/news/scott-cummings-earns-honor-his-legal-ethics-scholarship>).

What makes some lawyers not prioritize upholding the rule of law?

‘This is the existential question. Fundamentally, the answer is power. The legal profession has always had a complicated relationship with democracy. They’ve consistently served power. Lawyers serve the government and economic power. So, it’s not a very big step for some to align themselves with Trump now that he is seizing more power in his second term. The real question is what happens when some elements of the legal profession get radicalized and begin to undermine the rule of law.’

This might be naïve, but aren't lawyers supposed to serve the people?

'That is the ideal, but in reality, that ideal is an aspiration. Lawyers have never fully lived up to that promise. Providing access to the justice system has always been very important. Big firms have pro bono programmes to provide free aid to people who otherwise couldn't afford it. It has always been a fundamental value. Seeing big law firms walking away from that idea has been shocking. In the blink of an eye, it can all disappear because the government is forcing law firms to shift their pro bono policies to clients that Trump prefers. The naïve legal promise of serving the people was never fully accurate, but at least there has always been a striving toward that goal. Now even that has fundamentally been destabilized.'



“ The Trump team has researched how democracy has died in other countries, like Hungary, and are implementing the worst practices ”

Is it too late to turn the tide?

'The situation is quite dire — more than many Americans want to believe. We want to believe it can't happen in our country. The idea is that institutions will endure — but I'm not sure that's true. This attack is well-executed and researched. The Trump team has researched how democracy has died in other countries, like Hungary, and are implementing the worst practices. We're at a critical juncture. I'm very worried. The opposition might already be too little too late. But we are still at a point where it can go in 2 different directions. It's important to remain optimistic. Research shows that democracy dies when you lose hope. We have to make sure that the law firms are fighting back so they can build a broader resistance. I still believe that's possible.'

“ We need to start thinking like autocrats. Think about what an autocratically minded Trump could do to attack our democratic institutions ”

How do you fight back?

'We need to start thinking like autocrats. Think about what an autocratically minded Trump could do to attack our democratic institutions. How do we close the loopholes now to at least make it harder for leaders to exploit the law? Government lawyers are essential to execute the plans of autocrats. We need to make sure that these lawyers can't just do whatever they want to help autocratic leaders and discard the public interest. If there is no restriction on government lawyers, how do we ensure they fulfill their ethical duties? I'm not saying this a solution by any stretch, but you need to have as many barriers as possible when you're under attack.'

What role do you have as an academic?

‘Caving is not a good strategy. I’m working on mobilizing resistance. Academics can use their expertise and credibility to make the public understand what is happening. This is not just about immigration policy or LGBTQ-policy; it is about the bigger picture. If you’re not on the Trump team, you’re at risk. I’m also encouraging law students in the US to think critically about where they want to work. Students can withhold their talent. Boycotting, resisting, and supporting legal actors who are fighting back can make a difference. We need a collective speaking out for democracy to stand a chance.’

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