

The Quiet Reworking of Power: Democratic Backsliding Through Policy and the Rule of Law

Reviewed by Tremar Caleb Smith*

Michelle Morais de Sá e Silva and Alexandre de Ávila Gomide, eds., *Public Policy in Democratic Backsliding: How Illiberal Populists Engage with the Policy Process* (Cham: Palgrave Macmillan, 2024).

I. Introduction

Democratic backsliding is often described in political terms: elections, executive overreach, constitutional stress, institutional conflict. What *Public Policy in Democratic Backsliding*, edited by Michelle Morais de Sá e Silva and Alexandre de Ávila Gomide, does especially well is shift that focus. Across thirteen chapters, the volume shows that backsliding is not only something that happens at the top. It also unfolds through policy design, administrative systems, bureaucratic behavior, and the ordinary work of governance. Democratic erosion, in other words, is not just political. It is operational.

The chapters offer a detailed picture of how democratic systems can be weakened from within. Policies can be dismantled without being formally repealed. Institutions can be hollowed out without being abolished. Administrative structures can be redirected or stripped of capacity while still appearing intact. These are rarely dramatic breaks; they are cumulative shifts that alter how governance works over time. That is where the volume is at its strongest: it shows that what is at stake in democratic backsliding is not only leadership, ideology, or electoral process, but the day-to-day conditions under which public power is exercised. At the same time, many of the book's strongest insights point to a deeper transformation that the volume never fully names — a shift in how authority is justified, constrained, and made durable through law and policy.

This is where a rule-of-law lens becomes useful. The rule of law is not merely the existence of legal rules or formal procedures. As Martin Krygier has argued, its point is the reduction of arbitrariness: a condition in which public power is exercised through known, stable, publicly justified, and consistently applied rules, and in which those who govern are constrained by the same legal order they claim to act through.¹ Under rule of law, law constrains power. Under rule

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¹ Martin Krygier, "The Rule of Law: Pasts, Presents, and Two Possible Futures," *Annual Review of Law and Social Science* 12 (2016): 199–229.

by law, law becomes an instrument of power, used selectively and strategically to control rather than restrain. The volume does not use this distinction as an analytical framework. The rule of law appears explicitly only in Jolanta Itrich-Drabarek and Danuta Plecka's chapter on Poland (Chapter 4), and there it figures as a casualty, something populist governments dismantle, rather than as a lens for reading the policy process itself.² Yet that is precisely the reading many of the book's most compelling chapters invite.³

This review argues that the volume's central contributions are not only about democratic backsliding in general, but about how governance moves away from constraint and toward instrumentality. Read through a rule-of-law lens, the book shows that what is at risk is not only policy direction, but whether public power remains constrained by law at all — or whether law becomes increasingly shaped around the needs of power.

II. Backsliding Through Policy and Administration

One of the volume's clearest contributions is its insistence that democratic backsliding is not limited to constitutional rupture or electoral manipulation. Several chapters instead show how it unfolds through the policy process itself — through design, implementation, coordination, and attrition. Backsliding operates not only through what governments say, but through what they do, and just as importantly, what they choose not to do.

The editors' framing chapter organizes this insight around the concept of “institutional hardball”: tactics that stay within the letter of formal legality while working against its spirit.⁴ It is worth pausing there, because hardball is a rule-of-law concept in everything but name. Hardball only makes sense as a category if legality has a spirit that can be violated while its forms are observed — which is another way of saying that legal form and lawful governance can come apart. Morais de Sá e Silva and Gomide leave that premise untheorized, and the framework is thinner for it. Without that distinction, hardball risks being read as merely tactical, a repertoire of clever moves, rather than as a transformation in how law itself operates. Zsolt Boda's chapter on “political governance” in Hungary comes closest to naming it, showing how loyalty and political discretion displace legal-rational justification as the operating logic of the state.⁵

² Jolanta Itrich-Drabarek and Danuta Plecka, Chapter 4, 93–96.

³ See especially M. Kerem Coban, Chapter 5, 114–19; Natália Massaco Koga et al., Chapter 7, 160–70; Carolina Milhorance et al., Chapter 9, 234–41; Carolina Stange Azevedo Moulin, Chapter 10, 260–63; Gabriela Lotta et al., Chapter 11, 287–90; Michael W. Bauer, Chapter 13, 335–39.

⁴ Michelle Morais de Sá e Silva and Alexandre de Ávila Gomide, Chapter 1, 10–17.

⁵ Zsolt Boda, Chapter 3, 70–77.

Across the volume, policy change often appears incremental rather than abrupt. Formal laws may remain in place, but their force is altered through administrative action. Capacity is reduced, priorities are shifted, and enforcement is weakened. Policies that once carried institutional weight begin to lose effect without ever being openly repealed. Coban's chapter on Turkey (Chapter 5) shows how deliberate this can be. He demonstrates how policy “non-design” emerges not simply as absence, but as a politically conditioned refusal to define and connect goals to instruments in ways that would address the policy problem. Crisis response becomes haphazard, incoherent, and politically useful, while organizational and systemic policy capacity erode in the process.⁶

The point pushes us beyond a narrow understanding of backsliding as legal rollback: governance is reshaped through decisions that look technical or administrative but are deeply political in their effect. Koga and colleagues (Chapter 7) make this even clearer by showing how analytical capacity itself can be mobilized, demobilized, or redirected as part of policy dismantling. The issue is not only whether evidence exists, but who gets to recognize it, acquire it, translate it, and apply it.⁷ Once those capacities are weakened or selectively activated, legality no longer operates on balanced terms.

A rule-of-law lens adds more than vocabulary here. It clarifies that the issue is not merely whether policy changes, but whether the conditions that make lawful governance possible remain intact. Laws that cannot be effectively implemented, monitored, interpreted, or enforced do not disappear, but they begin to function differently. Bauer captures this pattern in Chapter 13, observing that backsliders manage to change public policies “by fiddling with bureaucratic capacities” and thereby “circumventing time-consuming revisions of undesired legislation in parliament.”⁸ Formal law stays on the books while the administrative conditions that give it force are steadily weakened. From a rule-of-law perspective, that is not a side effect. That is the point: governance can move from rule of law toward rule by law without ever requiring open legal rupture.

III. The Hollowing of Institutions: Capacity, Enforcement, and Selective Legality

If the earlier chapters show how backsliding works through policy and administration, other parts of the volume show what those changes produce over time: the hollowing out of institutions. This process does not require repealing legal frameworks or abolishing agencies; it works by weakening institutions' ability to carry out their functions consistently, reliably, and accountably.

⁶ Coban, Chapter 5, 115–19, 129–31.

⁷ Koga et al., Chapter 7, 161–70, 181–83.

⁸ Bauer, Chapter 13, 338. Bauer is summarizing findings from Michelle Morais de Sá e Silva, “Once Upon a Time in Brazil: Federal Human Rights Policy Under Bolsonaro” (2020), cited therein.

Moulin's account of the Brazilian Institute of Environment and Renewable Natural Resources (Ibama) in Chapter 10 is the volume's most revealing case. She shows that capacity-building in environmental enforcement relied on more than formal mandate. It also depended on authority tools and nodality tools — the agency's ability not only to sanction but to communicate, coordinate, and make deterrence visible.⁹ Former President Bolsonaro's government did not need to erase environmental law to weaken it. It could neutralize the institutional mechanisms that made enforcement credible.

Precision matters here, because those mechanisms were not simply budget cuts. Conciliation hearings were a legal procedure, introduced by regulation, that stalled sanctions indefinitely. The de facto prohibition on destroying seized equipment was an administrative interpretation that disarmed the agency's most effective deterrent. Disciplinary procedures, instruments of administrative law, were turned against inspectors and whistleblowers who did their jobs too well, while censorship and digital erasure dismantled the agency's communicative power.¹⁰ This is what rule by law looks like in practice: legal and administrative instruments deployed to disable law's constraining function. Enforcement was not abolished. It was made selective, and selectivity is precisely what separates law as a limit on power from law as a tool in its hands.

The broader lesson: a rule-of-law system is not defined by whether rules exist, but by whether they are applied consistently and whether institutions retain the practical capacity to carry them out. That capacity is infrastructure — and like infrastructure, it fails quietly before it fails visibly. When enforcement capacity is reduced or politically redirected, the result reshapes who is constrained by law, when law matters, and how legality is experienced on the ground. The erosion of capacity is not merely administrative decline; it is a transformation in the meaning of legality itself. And none of this remains abstract. When enforcement goes quiet in the Amazon, when school meal programs lose their budgets, when a water committee stops meeting, the people who depend on them do not experience “democratic backsliding.” They experience a state that stopped showing up — and rules that still bind them but no longer bind the powerful.

Milhorance and colleagues (Chapter 9) and Guedes-Neto (Chapter 12) reinforce this point from different angles. Milhorance and her co-authors show that dismantling in Brazil often worked through the reduction of participatory bodies, the exclusion of civil society, centralization of decision-making, and the disengagement of implementing partners, all while formal structures often remained partially in place.¹¹ Guedes-Neto shows that budget cuts under President Trump had consequences beyond service delivery: they undermined bureaucrats' intrinsic motivation

⁹ Moulin, Chapter 10, 262–63.

¹⁰ Moulin, Chapter 10, 269–80.

¹¹ Milhorance et al., Chapter 9, 235–41.

because they signaled that their work, and by extension their institutional role, was politically devalued.¹² That matters for the rule of law because institutional integrity depends not only on formal competence, but on the capacity and willingness of administrative actors to sustain lawful governance.

These changes unfold gradually, through cumulative shifts in staffing, budgets, oversight, procedural design, communicative power, and professional autonomy. Each move may appear limited; collectively they reconfigure the terms on which governance operates. Agencies may continue to function and decisions may still be made, but the persistence of outcomes should not be mistaken for the preservation of institutional integrity.

One telling detail marks the boundary of the volume's account. Moulin opens her chapter with the Brazilian Supreme Court's ruling in ADPF 760, which recognized an “unconstitutional state of affairs” produced not by legislation but by administrative paralysis.¹³ The defense of legality had migrated from the agencies to the courts. Yet the judiciary otherwise appears only at the margins of this book. That is a defensible boundary for a volume about policy and administration, but it points to a question the volume never asks: whether courts can meaningfully compensate for administrative erosion, or whether legality becomes reactive rather than operational — affirmed in judgments only after it has stopped working in practice.

IV. Resilience, Informality, and Bureaucratic Reaction

The volume does not present backsliding as a one-way path toward collapse. Several chapters show that systems respond under pressure. Public action continues, through informal coordination, bureaucratic reaction, and networks that preserve policy commitments even as formal institutions weaken. This is the book at its best, it shows erosion without overstating collapse.

Still, the book is right to take resilience seriously — which is exactly why a rule-of-law perspective must ask the harder question: what exactly is being preserved?

Chapter 9 makes the tension concrete. Milhorance and colleagues persuasively show that democratic public action in Brazil's food and water sectors survived through policy networks, trust-based relationships, coalition-building, and flexible collaboration between state and non-state actors.¹⁴ But this is also where the limits of resilience come into view. Informal coordination may

¹² João V. Guedes-Neto, Chapter 12, 313–18, 326–29.

¹³ Moulin, Chapter 10, 259–60 (Federal Supreme Court, ADPF 760, 2022).

¹⁴ Milhorance et al., Chapter 9, 241–50.

preserve outcomes, but it does not necessarily preserve the legal and institutional conditions that make those outcomes accountable, reviewable, and durable.

The concern sharpens when read alongside Chapter 8. Saguin and Medina-Guce show that in the Philippines, democratic backsliding did not produce straightforward policy removal. Dismantling and accumulation occurred together, with some participatory institutions weakened while others were reconstituted or expanded.¹⁵ Their use of public service bargains explains why pockets of backsliding and pockets of democratic growth can coexist. But again, a rule-of-law lens asks whether these pockets of survival reflect robust legality or merely adaptive governance under stress.

Lotta and colleagues (Chapter 11) deepen this concern by showing that bureaucratic reaction itself is dynamic. Politicians learn how to control, intimidate, and punish; bureaucrats learn how to document disagreement, slow implementation, work through unions or courts, leak information, sabotage, self-censor, or exit.¹⁶ Over time, the costs of reaction increase and fear becomes institutionalized. Some actors leave, others lower their profile, and some continue resisting under more constrained conditions.¹⁷ Resilience, in other words, is not static. It is relational, fought over, and can weaken even while visible forms of bureaucratic action remain, which raises the question of how long it can persist without institutional support.

Here the volume opens one of its most important insights without fully pressing it. Democratic resilience, bureaucratic resilience, and rule-of-law resilience are not the same thing. Governance may continue. Networks may adapt. Bureaucrats may react. But the persistence of public action alone is not enough. The harder question is whether authority continues to be exercised through stable rules, transparent procedures, and institutions capable of acting impartially and consistently. When informal practices stop being temporary responses and begin functioning as substitutes for institutions, a line has been crossed: what is being sustained is no longer the institution but a workaround bearing its name. The volume points to that shift, but does not fully confront its implications.

V. Administrative Responsibility and the Rule of Law

The volume ultimately turns to a question that sits at the center of both public administration and rule-of-law theory: what responsibility do bureaucrats hold when the systems they serve begin to change in anti-democratic ways? Chapter 13 addresses this directly, and rightly so. Bauer frames administrative responsibility as more than compliance, arguing that civil servants must confront

¹⁵ Kidjie Saguin and Czarina Medina-Guce, Chapter 8, 193–214.

¹⁶ Lotta et al., Chapter 11, 293–306.

¹⁷ Lotta et al., Chapter 11, 292–305.

the possibility that their traditional role as faithful servants of the government of the day may come into tension with the preservation of democratic order itself.¹⁸

It is the book's most important intervention. Under traditional models of public administration, bureaucratic responsibility is tied to neutrality, expertise, hierarchy, and obedience to lawful authority. Bauer shows why that becomes inadequate in “dark times.” When governments themselves become vehicles of backsliding, neutrality may no longer function as protection. It may become complicity.¹⁹

The rule-of-law lens is especially useful here. If the rule of law depends not only on legal form but on the consistent, impartial, and constrained exercise of public authority, then bureaucrats are not merely implementers. They are among the actors through whom legality becomes real in practice. They help determine whether rules are applied evenly, whether decisions are reviewable, whether institutions function with integrity, and whether the state remains bound by the order it claims to act through.

Read this way, Chapter 13 does not stand apart from the empirical chapters. It crystallizes tensions already visible in Chapters 9, 10, and 11. Moulin shows dismantling through disabled enforcement even where formal law remains; Lotta and colleagues show bureaucrats reacting within changing conditions of fear and retaliation; Milhorance and colleagues show public action surviving, but not always in ways that preserve institutional integrity. Bauer's intervention ties these threads together by making explicit what the other chapters leave implicit: administrative responsibility becomes a rule-of-law question when the lawful character of governance itself is at stake.

At the same time, Bauer is careful not to overstate the answer. He offers no clean formula for when bureaucrats should resist or what resistance should require, and that caution is appropriate. The boundaries between professional judgment, ethical responsibility, and political action are not simple. But the unresolved tension is itself revealing. It shows that the problem is not just whether bureaucrats act, but how we understand administrative responsibility once backsliding moves into the everyday practice of the state and it suggests that bureaucratic responsibility cannot be understood in purely instrumental terms when the instruments themselves are being used to deform the conditions of legality.

If the volume has a structural limit, it is its center of gravity. Brazil anchors four of the nine empirical chapters, and the framework travels mostly among presidential systems with sizable professional bureaucracies. That matters analytically: the forms of bureaucratic resistance the book documents presuppose a civil service with enough insulation, tenure protection, and professional

¹⁸ Bauer, Chapter 13, 335–36, 344–57.

¹⁹ Bauer, Chapter 13, 353–57.

identity to resist at all. How transferable these dynamics are to systems with weaker bureaucratic insulation or different administrative traditions is a question the volume leaves open.

VI. Conclusion

Public Policy in Democratic Backsliding offers a detailed and compelling account of how democratic erosion unfolds within governance itself. Rather than treating backsliding as a matter of leaders, elections, or constitutions alone, the volume shows how it takes shape through policy design, administrative capacity, implementation choices, and bureaucratic struggle. In doing so, it pushes the conversation into a space where democratic decline is often less visible, but no less consequential.

This review has argued that those dynamics come into sharper focus through a rule-of-law lens. The volume names the rule of law only as a casualty; read more closely, its strongest chapters are fundamentally concerned with how power is exercised and constrained in practice — and with the quiet techniques by which law is converted from a limit on power into one of its instruments. That reframing carries a practical implication the volume stops short of drawing. If backsliding works through budgets, staffing, procedure, and enforcement practice, then administrative capacity is not governance plumbing. It is rule-of-law infrastructure, and those who promote, measure, and defend the rule of law should treat it as part of their terrain — watching dockets and budgets as closely as constitutions.

That is the volume's strength, and also its opportunity. It does not simply document democratic backsliding; it shows where to look for it. That matters beyond a lecture room: most people will never read a constitutional judgment or track a budget line. They meet the rule of law — or its absence — in whether the inspector shows up, whether the benefit arrives, whether the same rules bind the powerful as bind everyone else. Once that is understood, the question is no longer only how backsliding occurs, but how it is confronted — and by whom, and at what cost.