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Is the United States an Illiberal Democracy?

By | 2024: Vol. 23, No. 3

“Protect our democracy” has been the clarion call for those opposed to another Trump presidency and a warning for those who remain on the fence. Not without good reason. During his presidential term and in the four years that followed, Trump has shown a disregard or active hostility to the institutions and procedures meant to sustain a democratic politics and political culture, and he has vowed to erect an autocratic regime if he gains re-election in November. He has hurdled constitutional guardrails, envisioned detention camps and mass deportations for undocumented immigrants, threatened retribution against his many enemies in public life, promised to upend the federal bureaucracy and appoint thousands of loyalists ready to bend to his political will, and assume dictatorial powers on “day one.” In 2016, observers chafed at his many violations of “liberal democratic norms”; eight years and one presidential term later, Trump is regarded as a lethal threat to the entire edifice of American democracy.

Artist: Pedro Camargo

The problem for the moment and for going forward is that such a perspective tends to be historically short-sighted. There is often a sense that our democracy and related political norms were comfortably in place until Trump and his MAGA movement came along and that we can return to them once these noxious forces are defeated. Easily forgotten is the perilous state in which American democracy found itself well before Trump emerged on the scene – and which made Trump's ascendancy possible – and the illiberal currents that have long run close to the surface of American political life, ready to burst through. Illiberalism, that is, with its scorn for equality and universal rights, its narrow view of democratic practice, its desire for cultural conformity, its contempt for internal as well as external enemies, its acceptance of violence as a means of achieving and maintaining power, and its celebration of the will of the community over the rule of law has been far more a feature of our social and political history that we have been prepared to recognize.[1]

The apparent shock at Donald Trump's violations of liberal democratic norms during the 2016 presidential campaign was, in fact, registered years after those "norms" had already come under concerted attack. Beginning in the late 1980s, the neo-Nazi and Ku Klux Klansman David Duke won election to the Louisiana state legislature and subsequently received about 60 percent of the white Louisiana vote in his quest to become, first, the state's governor and, then, the state's senator. The Republican party paid heed to what Duke had achieved and started its lurch toward white nationalism and America Firstism with Pat Buchanan in the lead. Far-right domestic terrorists had been growing in number and one of them carried out a deadly attack on a federal building in Oklahoma City. Bill Clinton's administration happily supported and signed a highly punitive crime bill accelerating mass incarceration, the effective expulsion and disfranchisement of hundreds of thousands of Americans, most of them people of color. And the election of 1996 had the lowest turnout of eligible voters since the 1920s.[2]

In the new century, the Supreme Court further weakened the foundation of political democracy

by intervening in a contested presidential election in 2000, opening the spigots of big money for election contributions (*Citizens United* v. *Federal Elections Commission*)), and gutting the 1965 Voting Rights Act (*Shelby County* v. *Holder*) which had previously won bipartisan support and protected the political rights and access to power for those who lived in parts of the country with very deep histories of racial discrimination. Many states there then took matters into their own hands, erecting barriers to voting and gerrymandering districts that had previously supported minority candidates for office. Wildly unbalanced – to the advantage of right-wing Republicans — state legislatures and congressional delegations followed.

These illiberal eruptions were already anticipated in the 1970s when Richard Nixon used the power and institutions of the presidency to harass his political enemies, steal from his political opponents, and undermine the electoral process while waging war against the Vietnamese abroad and crime at home. His "southern strategy," promotion of the "silent" white majority, and distaste for civil rights helped fan popular rebellions against desegregation and feminism, not to mention the persecution and assassination of Black militants by the FBI and local law enforcement. Indeed, the militarization of the police was well underway by the time Nixon became president and, in the wake of urban rebellions during the 1960s, the counter-insurgency tactics developed in colonial wars were imported to train law enforcement officers facing social and political unrest.[3]

Developments such as these suggest important illiberal connections between the 1960s and 1970s, and although we generally think of the 1960s as the salad days of modern liberalism – the Civil Rights Movement, the Great Society, the War on Poverty, the Civil Rights and Voting Rights Acts – we need to recognize very different political currents moving across the decade. Barry Goldwater led a sunbelt-based right-wing seizure of the Republican party in 1964, and while his thumping defeat convinced many observers to pronounce an epitaph for conservatism, Goldwater opened a door to the political future far more presciently than his successful rival Lyndon Johnson. Weaving threads of anti-communism, anti-statism, vigilantism, localism, and racism, the Goldwater campaign energized the political right from the John Birch Society to the Young Americans for Freedom, and left important organizational footholds from southern California to the Carolinas.[4]

No one was a less likely beneficiary of bubbling sixties illiberalism than George C. Wallace. Elected governor of Alabama in 1962, Wallace gained notoriety for promising segregation forever and then attempting to block the federally enforced integration of the University of Alabama. After explosive demonstrations in Birmingham and the murderous bombing of a Black-church there, Martin Luther King could describe Wallace as "perhaps the most dangerous racist in America today," apparently a pariah on the national scene. Yet, remarkably, Wallace soon set out on an extended tour of college campuses in the Northeast, Midwest, and West, and, rather than talking race and segregation, he spoke about state rights, constitutional limits, and the dangers of unbridled federal power while bantering with hecklers, responding courteously to critics, and injecting humor into his address.[5]

Many of the college students were bewildered by what they saw and heard as Wallace was

honing a new language of grievance in which race was veiled by ringing defenses of local control and individual freedom coupled with attacks on federal overreach, especially in the area of civil rights. The early fruits of this of this strategy became evident in March 1964 when Wallace declared (not in Alabama but in the Wisconsin hometown of Joseph McCarthy) his candidacy for the Democratic presidential nomination and quickly won one-third of the vote in the Wisconsin, Indiana, and Maryland primaries before pulling out of the race. Four years later, Wallace set out as an independent, aided at the grassroots by the John Birch Society, the Ku Klux Klan, the White Citizens Council, and a raft of other far-right groups, and at one point in the 1968 presidential race was polling at over 20 percent and threatening to leave the election's outcome in the hands of the House of Representatives. Although Richard Nixon's emphasis on "law and order" and some Wallace missteps helped secure the presidency for Nixon that year, together Nixon and Wallace received nearly 60 percent of the popular vote, and Wallace clearly tapped into deep illiberal sensibilities among white voters North and West as well as South. At one packed Wallace rally, a correspondent from *The New Republic* remarked on the "menace in the blood shout of the crowd" reminiscent of "Berlin in the 1930s." That rally was held in New York's Madison Square Garden; 20,000 attended.[6]

Wallace and the following he built – with a rhetoric of domestic enemies, Black and white, liberal and left, to be crushed – have generally been ignored as political antecedents of Donald Trump and the MAGA movement. That is a serious mistake. Wallace recognized the flags of opportunity unfurling in the post-World War II era around Cold War anti-communism and racialized housing issues, intensified by the war-related migration of African Americans into northern and western cities: indeed, how white privilege (GI Bill, federally backed suburbanization) fueled rather than diminished racism in white ethnic communities. In this, Wallace was feeding off a much deeper history of racially and politically charged mobilizations advanced by the federal persecution of radicals during and immediately after the First World War, the lethal anti-Black riots that tore through East St. Louis, Chicago, Philadelphia, Washington D.C. and other cities between 1917 and 1919, and the dramatic rise to political influence and power of the Ku Klux Klan.[7]

The reactionary 1920s often seem an odd fit between the modern liberalisms of the New Deal in the 1930s and the Progressive period of the 1900s and 1910s. But this ignores both the illiberal pulses in Progressivism and the impact of world-wide reaction in the 1920s and 1930s. Across their political spectrum, Progressives mounted an attack on the atomized individualism, unbridled competition, and neoclassical economics that had marked the Gilded Age. Instead, they argued that society was composed of groups pursuing their interests and that the state could play an important role in administering the marketplace and forging partnerships with capital and labor. But the cultural and political dispositions of many Progressives were more in the direction of modernizing illiberalism than in modernizing liberalism. Embracing perspectives of science and rationality, they were enlivened by the notion of social engineering – carried out by the private sector and the state – to effectively reconstruct a culturally complex and conflict-ridden social order. They mostly believed that the corporation represented the economic way forward, that politics should be the province of trained experts who grasped the "national purpose," that the grassroots democracy of the nineteenth century resulted in both

corruption and inefficiency, and that a better society could be produced by scientific breeding, soon known as "eugenics."[8]

Not surprisingly, the ethnic and racial hierarchies that eugenics embodied found powerful expression both in the rise of Jim Crow in the South and the thirst for imperial conquest nationally. Many Progressives doubted the wisdom of a democracy that included the uneducated and the poor, had no problem with segregation as a rational solution to racial conflict, and saw the United States as an international agent of civilization for peoples thought unable to govern themselves.[9]

In some ways, the statist, anti-democratic, politically repressive, racist, and imperialist currents of Progressivism anticipated European fascism of the next decades and help us understand the widespread admiration for Mussolini's regime in Italy, for the harassment of labor leaders and socialists by fascist squads, and for the eugenics research that linked scientists in the United States and Nazi Germany. Prohibition, immigration restriction, 100% Americanism, Christian fundamentalism, anti-Semitism, anti-Catholicism, and anti-unionism – pushed for and often enforced by the Klan – won support through the highest reaches of the state, and left a legacy that would bedevil the New Deal as well as the prospects for social democracy thereafter.[10]

Progressives like Herbert Croly – architect of Theodore Roosevelt's "New Nationalism" and founder of *The New Republic* – may have sneered at the grassroots "Jeffersonian" democracy of the nineteenth century, yet, in truth, from the time of the early republic, that democracy was already highly illiberal in its exclusions, expulsions, and often its violent character. By the late 1830s, most states had eliminated property qualifications for voting and holding office, but everywhere the political citizen was white and male even though the labor force in the most dynamic sectors – cotton and textiles – was chiefly made up of women, children, and the enslaved, none of whom were politically and civilly enfranchised. So much for the United States standing alone in industrializing with an enfranchised working class. What's more, the democratic reforms of the 1820s and 1830s were accompanied by a level of expulsive violence against African Americans, Catholics, Mormons, abolitionists, and Native peoples that deeply worried the young Abraham Lincoln – who denounced widespread mob violence in his 1838 Lyceum address — fearing as he did that the visions of the founders would be destroyed.[11]

The democratizations of the 1820s and 1830s took place at a moment when most Euro-Americans were Protestant and relatively few were economically dependent wage laborers. All that would change with the massive influx of Irish Catholics in the 1840s which provoked a nativist movement – designed at least to politically disempower them – which found great success in the Northeast and Middle Atlantic and threatened to replace the Whigs as the second of the major political parties (after the Democrats). Even so, nativism proved to be a force in the new Republican party and for the next century laced itself through American political life and culture. Needless to say, the deepening conflict over the future of slavery in the United States demonstrated quite clearly that our political institutions could not handle such fundamental divisions; violence erupted in the halls of Congress and state legislatures and

on the plains of Kansas even before the guns were fired at Fort Sumter beginning the second bloodiest war of the entire nineteenth century world.[12]

No moment in the history of American democracy compares to the abolition of slavery and the extension of citizenship to all Black people and political rights to Black men. An interracial democracy seemed possible, Black men and women showed their commitment to democratic politics, and Black votes kept the Republican party in power in the crucial early years of Reconstruction. But the counter-revolution quickly erupted. White paramilitary squads murdered Black organizers and officers as well as their white supporters, drove Black elected officials from office in local coups, and eventually toppled Black and Republican power across the former Confederate South. And their success would have been impossible without a national abandonment of African Americans – consigning them to the "tender mercies" of their former enslavers – and a growing distaste for the active participation of Blacks and immigrants in the political process across the country.[13]

Popular movements of urban and rural producers during the Gilded Age were crushed by local elites, often with the assistance of the state and federal governments and the courts. The disfranchisement of African-American men in the 1890s and 1900s was only the most extreme version of the attack on popular democracy during the Progressive era – European immigrants faced literacy tests and residency requirements – which the Supreme Court validated in *Plessy v. Ferguson* (1996), *Williams v. Mississippi* (1898), and the *Insular Cases* which determined that men and women under American imperial rule were not entitled to constitutional rights. When all was done, turnout of eligible voters in local and national elections began to drop precipitously – even after the advent of woman's suffrage – and, along with further registration requirements, established the basis for political participation to this day.[14]

To argue that American democracy and society had strong illiberal features throughout our history is not to say that illiberalism cleared the board of opposition. Far from it. The eruption of illiberal movements, policies, and sensibilities often occurred in the face of significant social changes and especially popular mobilizations demanding the expansion of civil and political rights and the broadening of democracy itself. In some cases, these mobilizations were liberal in their projects and goals. Yet, in many cases they fed off other political currents – sometimes trans-Atlantic in nature – such as producerism, cooperativism, radical abolitionism, populism, social democracy, and socialism. Liberalism and illiberalism, while extremely powerful, took their places aside other political ideologies and sensibilities and were often contested by them.

Taking illiberalism seriously, recognizing the illiberal influences on our democracy, understanding that illiberalism is not just a rageful backlash but a deeply laid political and cultural experience – in effect de-centering liberalism as our main political tradition –both helps us see the how varied and complex our political culture is and has been and helps us reckon with what American democracy has long been up against.

[1] For an extended discussion of this argument see my recent book, *Illiberal America: A History* (New York, 2004).

[2] See, for example, Lawrence N. Powell, *Troubled Memory: Anne Levy, the Holocaust, and David Duke's Louisiana* (Chapel Hill, 2000); Nicole Hemmer, *Partisans: The Conservative Revolutionaries Who Remade American Politics in the 1990s* (New York, 2022); Julian Zelizer and Kevin Kruse, *Fault Lines: A History of the United States Since 1974* (New York, 2020); Katherine Belew, *Bring the War Home: The White Power Movemnebnt and Paramilitary America* (Cambridge MA, 2018); Gary Gerstle, *The Rise and Fall of the Neoliberal Order* (Princeton NJ, 2022).

[3] Rick Perlstein, *Nixonland: The Rise of a President and the Fracturing of America* (New York, 2008); Elizabeth Hinton, *America on Fire: The Untold Story of Police Violence and Black Rebellion Since the 1960s* (New York, 2021); Stuart Schrader, *Badges without Borders: How Global Counterinsurgency Transformed American Policing* (Berkelely, 2019); Radley Balko, *The Rise of the Warrior Cop: The Militarization of America's Police Forces* (New York, 2014).

[4] David Farber and Jeff Roche, eds., *The Conservative Sixties* (New York, 2003); Lisa McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton, 2002), Kirkpatrick Sale, *Power Shift: The Rise of the Sunbelt and Its Challenge to the Easter Establishment* (New York, 1975); Matthew Dallek, *Birchers: How the John Birch Society Radicalized the American Right* (New York, 2023).

[5] Easily the best treatment of Wallace is Dan T. Carter, *The Politics of Rage: The Origiuns of the New Conservatism and the Transformation of American Politics* (New York, 1995). But also see, Ben Hubing, *George Wallace in Wisconsin: The Divisive Campaigns that Shaped a Civil Rights Legacy* (Charleston SC, 2022), and Stephen Lesher, *George Wallace: American Populist* (Cambridge MA 19984).

[6] Carter, *Politics of Rage*, 364-67; Lesher, *Wallace,* 400-23.

[7] Thomas Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, 1996); Linda Gordon, *The Second Coming of the Ku Klux Klan: The Ku Klux Klan of the 1920s and the American Political Tradition* (New York, 1917); Adam Hochschild, *American Midnight: The Great War, A Violent Peace, and Democracy's Forgotten Crisis* (New York, 2022).

[8] Thomas C. Leonard, *Illiberal Reformers: Race, Eugenics, and American Economics in the Progressive Era* (Princeton, 2016); Martin Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916* (New York, 1988); Herbert Croly, *The Promise of American Life* (New York, 1909); Michael McGirr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870-1920* (New York, 2003).

[9] C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge, 1951); Julie Greene, *The Canal Builders: Making America's Empire at the Panama Canal* (New York, 2009); Paul A. Kramer, *The Blood of Government: Race, Empire, the United States, and the Philippines* (Chapel Hill, 2006); Amy Kaplan, *The Anarchy of Empire in the Making of American Culture* (Cambridge MA, 20092).

[10] John P. Diggins, *Mussolini and Fascism: The View from America* (Princeton, 1972); James Q. Whitman, *Hitler's American Model: The United States and the Making of Nazi Race Law* (Princeton, 2017); Katy Hull, *The Machine Has a Soul: American Sympathy with Italian Fascism* (Princeton, 2021); Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (New York, 2013).

[11] Leonard Richards, *"Gentlemen of Property and Standing": Anti-Abolition Mobs in Jacksonian America* (New York, 1970): Claudio Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory* (New York, 2020); Samantha Seeley, *Race, Removal, and the Right to Remain: Migration and the Making of the United States* (Chapel Hill, 2021); Benjamin E. Park, *The Kingdom of Nauvoo: The Rise and Fall of a Religious Empire on the American Frontier* (New York, 2020); Maura Jane Farrelly, *Anti-Catholicism in America, 1820-1860* (New York, 2018); Abraham Lincoln, "The Perpetuation of Our Political Institutions," 27 January 1838, in Roy P. Basler, ed., *Abraham Lincoln: His Speeches and Writings* (New York, 1946), 76-85.

[12] Tyler, Anbinder, *Nativism and Slavery: The Northern Known Nothings and the Politics of the 1850s* (New York, 1992); Joanne Freeman, *The Field of Blood: Violence in Congress and the Road to Civil War* (New York, 2019).

[13] See, for example, Steven Hahn, *A Nation under Our Feet: Black Political Struggle in the Rural South from Slavery to the Great Migration* (Cambridge MA, 2003); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York, 1988).

[14] Steven Hahn, *A Nation without Borders: The United States and Its World in an Age of Civil Wars, 1830-1910* (New York, 2016), 401-500; Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York, 2000), 116-74; Walter Dean Burnham, *Critical Elections and the Mainsprings of American Politics* (New York, 1970).

When Voting is a Crime

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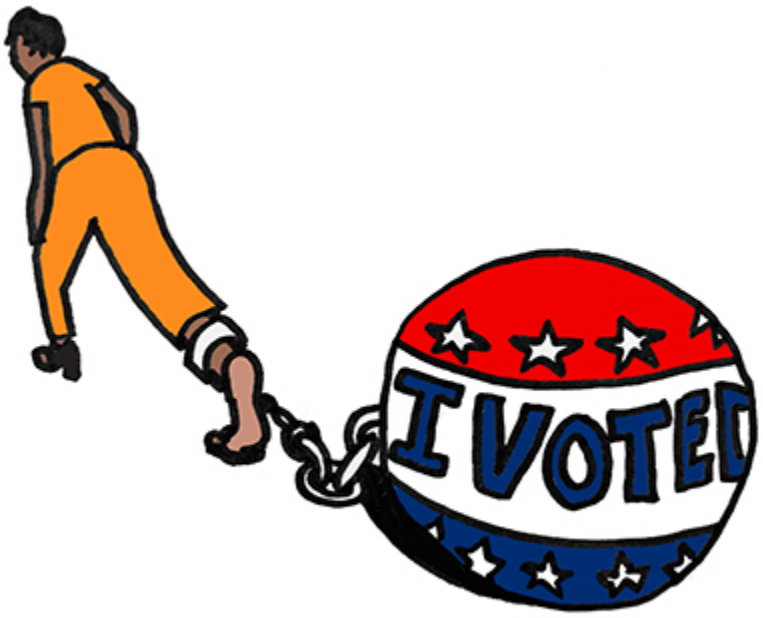
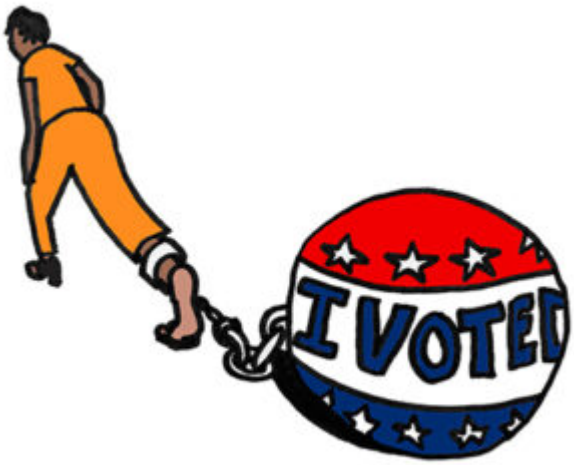


Federal law mandates that when a voter is turned away because her name cannot be found on the voter rolls, she must be offered the opportunity to cast a 'provisional ballot.'[i] That ballot is set aside and later counted if election officials can verify the voter's eligibility. The idea is that no eligible citizen should be denied the right to vote because of a clerical error.

The invention of the provisional ballot and its codification in federal law was one of several half-measures adopted by the U.S. Congress in 2002, to distract attention from the other more serious problems of the 2000 presidential election. That was the election that the U.S. Supreme Court, in full public view, handed the presidency to the loser of the popular vote, George W. Bush. The long-term consequences of the Court overriding democratic norms and waving away routine state vote counting procedures and prerogatives it disdained have been staggering. According to the Costs of War project at Brown University, America's 20-year failed war on terror, a calamity launched by President George W. Bush in response to the 9/11 terrorist attacks, has cost the nation an estimated $8 trillion, and killed nearly a million people.[ii]

Another grave consequence of the Court's manipulation of the Constitution to stop the vote counting in Florida is the institution of the Court itself. If George W. Bush had lost the Electoral College in 2000, it is unlikely that he would have been president in 2005, when he

nominated two jurists who have been key to the drift of an anti-democratic Court away from respect for the separation of powers and toward a policy agenda championed by the political far Right: John Roberts to succeed William Rehnquist as Chief Justice of the Supreme Court, and Samuel Alito, to replace the retiring Sandra Day O'Connor.



Artist: Drew Martin

Thus, the Supreme Court's unprecedented interference in the 2000 election, along with the structural distortions in democratic representation of the Electoral College, notched the political Right a win they would build upon in the years to come. The immediate response of the Congress to the Court's election interference was the enfeebled Help America Vote Act of 2002, which answered the call to 'do something' about conditions under which the popular vote loser could win the election by inventing the provisional ballot and other tinkering election administration reforms.

The tragic irony today is that even some of those modest efforts to modernize the nation's electoral apparatus and to protect voters from losing their votes to administrative mistakes and snafus are being turned on their head. The new landscape for vote suppression has come fully into view, enlivened once again by a Supreme Court jettisoning respect for precedent, this time to neuter the Voting Rights Act of 1965. The Court's plurality ruling in *Shelby County v. Holder***[iii]** in 2013, invalidated a key provision of the Voting Rights Act that determined which state and local jurisdictions would be subject to pre-clearance, a federal oversight procedure that was the heart and guts of the Act. What millions of ordinary Americans, and especially the most despised and subordinated groups in the society fought and died for for over a century, and won – the right to vote free of racial and gender discrimination – was not the bedrock right that the struggle should have ensured after all.

In the decade since the Court dismantled the preclearance regulatory regime (known as 'Section 5'), states controlled by Republicans have enacted a series of changes that

undoubtedly would have been blocked had the Voting Rights Act's pre-clearance provisions remained in place.[iv] For example, in anticipation of the hobbling of Section 5, one third of the states fully covered by preclearance enacted photo identification laws either just prior to or immediately after the *Shelby County* decision. Those laws did not take effect until after the fall of Section 5.[v]

Since then, more states under Republican control have rushed to adopt restrictive identification requirements, and voting rules aimed at increasing turnout, such as early voting and absentee or mail balloting laws, have been curbed, polling stations reduced or moved around, and voter assistance practices outlawed. The current obsession of the vote deniers is the non-existent scourge of migrants coming across the border to allegedly vote for Democrats. The deniers use this unfounded, bizarre claim to sue states for not purging their voter rolls fast enough and for not requiring documentary proof-of-citizenship to register to vote. According to the Brennan Center for Justice at New York University School of Law, by the end of 2023, as the nation hurtled toward another sure-to-be momentous presidential election year, voters in 27 states faced barriers to registration and voting that they have never encountered before in a presidential election.[vi]

Which brings us back to the vulnerability of safeguards adopted in the wake of the Supreme Court's intervention into the 2000 presidential election. How effective are they in the post-Voting Rights Act world the Court helped birth into being? We now live in a world turned upside down and perverted by a foul-mouthed, racist billionaire, former president and his MAGA movement, determined to subvert democracy. The January 6th insurrection showed how far this movement may be willing to go.

The Court, too, continues to flex its anti-democratic muscles. In a shocking development, it granted the president near blanket immunity for criminal acts, as long as they are "official acts" related to presidential "core powers" established by the Constitution.[vii] The Court has also weakened the use of a law against obstructing government proceedings that has resulted in the dropping of some of the charges against some of the hundreds of participants storming the Capitol on that fateful day.[viii] The coup may have failed, but important to our story, the death-by-a-thousand-cuts strategy of eroding access to the ballot carries on, aided and abetted by the U.S. Supreme Court.

But there is something more. The stench of fascism is seeping from beneath the surface of America's long and ugly history of voter suppression. There is a woman in Texas who understands the threat that stench signals all too well. In 2016, this woman, whose name is Crystal Mason, walked into the church that was her Tarrant County polling place to cast her ballot in the presidential election. She had been released under supervision from federal prison months before after serving four years of a five-year sentence for inflating tax refunds for the clients she worked for as a tax preparer. She had acknowledged her crime and pled guilty, and at the age of 41, was hoping for a new start after being reunited with her children. She drove to the Tabernacle Baptist Church polling place after work at her new job at a bank, not because she was so committed to voting, but rather to quiet the persistent urging of her

mother who believes in voting as a civic duty.[ix] She got there just before the voting closed down.[x]

There was a problem, however, with Crystal Mason's registration records. Her name could not be found on the voting registry, even though she had voted in that same polling place five years before. As she was about to walk away, a volunteer poll clerk did what federal law requires be done: offer Mason the opportunity to cast a provisional ballot to preserve her right to vote until election officials could sort out the registration problem. "'What's that?'," she remembered she asked. "And they said, 'Well, if we're at the right location, it'll count. If you're not, it won't.'"[xi] Like 4,462 other voters in Tarrant County that day,[xii] Mason, with the help of an election worker filled out the provisional ballot and went home.[xiii] Donald Trump easily carried Tarrant County and won the state of Texas by a comfortable margin, and Mason went on with her life.

Three months later, Crystal Mason was handcuffed at the federal courthouse in Dallas during a routine visit with her supervised release office. She was arrested under Texas' illegal voting statute, which made it a crime to vote or attempt to vote when the voter knows that she is ineligible.[xiv] After the polls had closed, the 16-year volunteer poll clerk, Jarrod Streibich, remembered that Mason had recently been released from prison and might still be on supervised release for a felony conviction.[xv] He knew this because he was her neighbor. He later told the election judge who was also a neighbor of Mason's, and the judge, a local Republican Party official named Karl Diederich, passed the information on to the Tarrant County District Attorney, Sharen Wilson.[xvi] No matter that Texas' apparent criminalization of federal provisional balloting procedures was not contemplated in the federal law creating those procedures;[xvii] Crystal Mason was indicted for illegal voting.[xviii]

The D.A. offered Mason a deal: ten years' probation instead of likely conviction. But the deal would not have kept Crystal Mason out of jail because it required an admission of guilt which would have violated the terms of her supervised release from the federal tax felony conviction and sent her back to serve the last ten months of her federal prison sentence.[xix] "It was overwhelming," she told a reporter in 2019. "I felt sick, I felt confused, all I kept saying was 'Please don't let me go back to jail.' I didn't want to go back inside, I told myself I'd never do anything to risk that."[xx]

At her trial, Jarrod Streibich, the juvenile volunteer who had turned her in, testified that he witnessed Mason carefully reading the provisional ballot form, which she then signed, falsely attesting to her eligibility to vote as duly registered. He said he was sure she read the part of the form that says being under supervision for a felony conviction was disqualifying because he watched her move her fingers across the lines on the page.[xxi] Mason denied reading the form carefully because Streibich, she said, was helping her with it. She said she was focused on providing the information the form required like her driver's license number, and going home on that cold and rainy night. She knew the chief election judge, Dietrich, because he lived across the street from her. She said she never saw him at the polling place, and was shocked when he turned up as one of the state's star witnesses against her.[xxii]

In her defense, Mason's lawyers called her supervisory release officer to the stand. He testified that he never informed her that she was ineligible to vote while on supervisory release. "That's just not something that we do," he said.[xxiii] Crystal Mason never received notices mailed to her home informing her that her registration had been revoked because she was in prison at the time. And prosecutors failed to provide a motive for her alleged crime. "They said I tried to circumvent the system," she later told a reporter. "And for what? For a ['I Voted!'] sticker?"[xxiv]

The judge was unconvinced. Crystal Mason was convicted and sentenced to five years in prison. An appeals court denied her appeal and found that the state did not have to prove she knew she was committing a crime when she voted, only that she knew she was a felon.[xxv] This newly invented standard appeared to conflict with what Texas appeals courts found when they reversed the conviction for money laundering corporate contributions into political campaigns of former Republican majority leader of the U.S. House of Representatives, Tom DeLay.[xxvi] The highest criminal appeals court in Texas overturned the lower appeals court in Crystal Mason's case and sent it back down to the lower court for further review.[xxvii]

In March of this year, that lower appeals court reversed itself and vacated Crystal Mason's conviction.[xxviii] But the D.A.'s office, which had admitted at the time that their prosecution of Crystal Mason was meant to "send a message,"[xxix] was not done with her. They have appealed her legal vindication, continuing what amounts to nearly eight years of torture of this woman for having cast a provisional ballot that was not counted in a Texas county that voted heavily for Donald Trump.[xxx] The new Republican Tarrant County District Attorney made sure the public understood that the purpose of the state's pursuit of Crystal Mason was, again, to send a message. It has little to do with any problem with voter fraud. Not one of the 3,990 other people whose provisional ballots were rejected in Tarrant County that election has been prosecuted for illegal voting.

At a public hearing before the Tarrant County Commission in May, D.A. Phil Sorrells defended his decision, stating "I want would-be illegal voters to know that we're watching…And that we'll follow the law and we will prosecute illegal voting."[xxxi] By one account, Texas has spent over $100,000 on Crystal Mason's incarceration alone, with attorneys' fees on both sides described as "incalculable" by a Dallas former career prosecutor.[xxxii]

Over these last eight years, Mason has suffered emotionally and financially under the cloud of the state's relentless persecution of her. When she was indicted, her eldest child who had just gone off to college on a football scholarship decided to give up the scholarship to return home to support his mother and family.[xxxiii] After her conviction, she was sent back to federal prison for ten months, missing her daughter's prom. She has lost numerous jobs because of the notoriety of her case and almost lost her house. She has three children, nine grandchildren and raised her brother's four children, mostly on her own, all of them at one time or another living in her house in an overwhelmingly White suburb on the outskirts of Fort Worth. The stress has tormented but not broken Crystal Mason. Her story has received national media attention as an egregious case of racially discriminatory voter suppression, which it is.

But her story is also is a signifier of an emerging trend that is at least as troubling for democracy, and that is abuse of legal procedure for political ends. Building on the post-war work of the exiled German Jewish legal scholar and political sociologist Otto Kirchheimer,[xxxiv] the criminologist W. William Minor defines this abuse as

…the discriminatory application of the machinery of criminal justice to the disadvantage of specific individuals or groups because they are perceived as threatening to the power of the established regime. The 'machinery of criminal justice' includes lawmaking, police practices, bail setting imprisonment, parole procedures, and all other activities of the criminal justice system, not just the criminal trial.[xxxv]

He emphasizes that politicized justice is what is meted out by the state when state actors feel threatened, and that, "…the perception of threat by those in power is a more salient variable than the actual danger posed by the dissidents."[xxxvi]

To analyze whether the criminal prosecution of Crystal Mason was an aberrant miscarriage of justice or evidence of a more systematic abuse of legal procedure for political ends, I first re-examined data on voter fraud crime, relying on a database of cases of "proven cases of election fraud" collected by the Heritage Foundation.[xxxvii] I found that over the last eight years, beginning with Donald Trump's election in 2016, when he claimed he lost the popular vote to Hillary Clinton by three million fraudulent votes cast by undocumented immigrants, there have been approximately 220 voters convicted of some form of illegal registration or voting out of hundreds of millions of votes cast in federal elections. Eight of these convictions were in Texas.

At the same time, since the defeat of Donald Trump by Joe Biden in 2020, half the state legislatures have enacted more than 70 laws criminalizing or banning various activities associated with the voting process. The scale and nature of these highly partisan laws is unprecedented in the modern era. Only three of the 24 states in which Republicans had 'trifectas' controlling both houses of the legislature and the governor's office, passed no laws criminalizing voting since 2020. Five other states with Republican majorities in both houses of the state legislature, but Democratic governors, passed laws criminalizing voting by skirting gubernatorial vetoes one way or another. Only one state controlled by Democrats, Hawaii, passed one law that fits the definition, but this law was meant to clarify an existing statute that prohibits double voting to include casting a second ballot *outside the state of Hawaii*.

Laws criminalizing voting can be sorted into two basic categories I call 'first-order criminalization' and 'second-order criminalization.' Criminalization of voting in the first-order includes laws that create new crimes, increase penalties for existing crimes, or re-enact existing crimes, as if to simply make a point. Laws of the 'second-order' are those that criminalize or otherwise prohibit activities conducted by others, for example in the registration of voters or in the administration of elections themselves. These include laws that prohibit formerly permitted activities that assist voters in getting registered and casting ballots; other restrictions on third-party voter registration organizations; over-regulation of election

administration and election workers, creating in some cases crimes for violating new rules; the tightening up of voter requirements (i.e., no longer accepting student ID's for voting); the creation of new election crime investigatory agencies or the transfer of investigatory authority from civil to criminal investigators; laws that prohibit the enactment of reforms that increase turnout and election fairness and integrity; the expansion of the rights and authorities of poll observers (inviting voter intimidation); and laws putting proposals to amend state constitutions to prohibit acts already prohibited by statute, such as voting by non-citizens, on the ballot.

Not all of these laws have been implemented, as several are being challenged in the courts. Taken together, however, they push the old game of racist voter suppression into new territory. They are driving vote suppression efforts toward criminal penalties for procedural violations as electoral procedures only grow in complexity. Moreover, they represent a performative style of politics in the age of Trumpism. They turn the manipulation of electoral legal procedure into a drama where bill supporters get to play election cop to the applause of one party's voter base, no matter the devastation the political theater inflicts on the lives of individuals entrapped in the mess. The surge in laws aimed at 'stopping voter fraud' or 'ensuring electoral integrity' is not about reducing election crime, since there is very little of that. It's about 'sending a message' about whose votes are worthy and whose should be thrown in the trash. In Crystal Mason's case, the provisional ballot was not a failsafe,[xxxviii] it was a trap.

The criminalization of voting threatens to use state power to not simply obfuscate electoral rules in making it harder for some people to vote, as in the past, but to proactively criminally prosecute people like Crystal Mason for making a mistake when they become entangled in those rules. If same-day registration helps to expand access to voter registration, it can be shut down before it is enacted; if rank-choice voting provides fairer representation, it too can be thwarted before it is adopted; if a city or town decides it wants legal permanent residents to vote in its local elections; they can be barred by a state constitutional amendment. All of these reforms are now prohibited by law in many Republican-controlled states.

Crystal Mason is a person, a mother, and a grandmother. She works, and managed to keep her house, which is regularly filled with family members she tries to take care of. As her son Sanford told a reporter, "She's the boss of the company…She provides all of the kids with the things they need."[xxxix] As a consequence of her ordeal, she has remarkably found the courage and fortitude to become a voting rights advocate, founding a nonprofit organization called 'Crystal Mason, The Fight Against Voter Suppression' or just 'The Fight' (donations can be made to her organization here: https://www.crystalmasonthefight.org/). But Crystal Mason is also that canary in the coal mine of American democracy that Black people have embodied since the end of Reconstruction more than a century ago.[xl] We should heed the canary's song.

Notes

[i] 52 U.S.C. § 21082 (2024).

[ii] The Cost of War project's reports on the financial and budgetary cost of the global war on terror may be accessed here: https://watson.brown.edu/costsofwar/figures/2021/BudgetaryCosts; their calculations on the human cost in terms of loss of life, may be found here: https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll.

[iii] 570 U.S. 529 (2013); see: https://www.oyez.org/cases/2012/12-96.

[iv] Jasleen Singh and Sara Carter, "Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago," Brennan Center for Justice at New York University School of Law, June 23, 2023; access October 19, 2024, https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights.

[v] Liz Avore, "10 Years Since *Shelby County v. Holder*: Where We Are and Where We're Heading," Voting Rights Lab, June 27, 2023; accessed October 19, 2024, https://votingrightslab.org/2023/06/27/10-years-since-shelby-v-holder-where-we-are-and-where-were-heading/.

[vi] Brennan Center for Justice at New York University School of Law, "Voting Laws Roundup: 2023 in Review," January 18, 2024; accessed October 19, 2024, https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review; see the Brennan Center's update of this report, "Voting Laws Roundup: September 2024," September 26, 2024; accessed October 19, 2024, https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-september-2024.

[vii] *Trump v. United States*, Dckt. #23-939 (2024); see https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf.

[viii] *Fischer v. United States*, Dckt. #23-5572 (2024). The case concerns the application of a federal obstruction of justice statute, 18 U.S.C. 1512(c)(2), which makes it a crime to corruptly obstruct an official proceeding by altering, destroying, mutilating, or concealing a record, document, or other object with the intent to impair the object's integrity or availability for use in an official proceeding; by "otherwise" obstructing, influencing, or impeding an official proceeding. The Supreme Court, in a 6-3 decision, concludes that to find a violation of this statute, "…the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or . . . other things used in the proceeding, or attempted to do so." According to legal analysts, about a quarter of January 6th defendants were charged with violating 1512(c)(2). Within that group, over 60 percent have been found guilty of one or more felonies; of the remaining defendants, all were charged with other felony crimes. Only 26 defendants pleaded guilty exclusively to 1512(c)(2) crimes, and some number of others may be able to get their sentences reduced. See Ryan

Goodman, Mary B. McCord and Andrew Weissman, "The Limited Effects of Fischer: DOJ Data Reveals Supreme Court's Narrowing of Jan. 6th Obstruction Charges Will Have Minimal Impact," *Just Security Blog*, June 28, 2024; accessed October 19, 2024, https://www.justsecurity.org/96493/supreme-court-obstruction-january-6th/.

[ix] Sam Levine, "Texas Made an Example Out of Crystal Mason – For Trying To Vote," *HuffPost*, July 29, 2019; accessed October 10, 2024, https://www.huffpost.com/entry/crystal-mason-prison-sentence_n_5d3b04e8e4b0c31569e9fb94.

[x] Vann R. Newkirk II, "When the Myth for Voter Fraud Comes For You," *Atlantic*, (January/February 2022); accessed October 19, 2024, https://www.theatlantic.com/magazine/archive/2022/01/voter-fraud-myth-election-lie/620846/.

[xi] *Ibid*.

[xii] According to the American Civil Liberties Union Foundation of Texas, which began representing Crystal Mason in 2018, 3,990 of the 4,463 provisional ballots cast in Tarrant County in the 2016 presidential election (89 percent) were rejected, the vast majority (3,942) because the voters were not registered in the relevant precinct. At the state level, 54,850 provisional ballots were rejected out of 67,273 cast (82 percent), with 80 percent of the rejected ballots (44,046) trashed because the voters were at the wrong precinct (citing data from the U.S. Election Assistance Commission; see: Letter from Thomas Buser-Clancy, *et al*. Director of the ACLU Foundation of Texas, Inc. to Ms. Debra Spisak, Clerk of the Court for the Texas Second District Court of Appeals, received September 26, 2019; accessed October 19, 2024, https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=a5a65af2-d887-4300-896c-00781618919c&coa=coa02&DT=Other&MediaID=caed7f9d-b597-4cd9-b636-a815001943d7).

[xiii] Sam Levine, "Crystal Mason Was One of Thousands Who Cast a Provisional Ballot; She Was the Only One Prosecuted for A Crime," *Huffpost*, August 21, 2019; accessed October 19, 2024, https://www.huffpost.com/entry/crystal-mason-provisional-ballot_n_5d5c5f88e4b0d1e113695972.

[xiv] Tex. Elec. Code § 64.012 (2017). In 2021, due to the national media coverage and the notoriety of Crystal Mason's conviction, the Texas legislature revised and amended the Illegal Voting statute in ways that would have prevented her from being prosecuted for having made a mistake in casting a provisional ballot. What was called the 'Mason Amendment' was added to the law. It states, "A person may not be convicted solely upon the fact that the person signed a provisional ballot affidavit under Section 63.011 unless corroborated by other evidence that the person knowingly committed the offense." See, Tex. Elec. Code § 64.012(c) (2017). Lawmakers also clarified the *mens rea* ambiguity issues regarding the statutory construction of § 64.012(a), and *reduced* the penalty for illegal voting from a second degree felony to a Class A misdemeanor.

[xv] Streibich told *Huffpost* in 2019, "I knew for a fact that she was just recently let out of prison and that she was a felon." He also said he knew felons couldn't vote while on supervised release. See, Sam Levine, "Texas Made an Example," July 29, 2019.

[xvi] Sam Levine, "She Was Sentenced to Prison for Voting; Her Story Is Part of A Republican Effort to Intimidate Others," *Guardian*, June 10, 2024; accessed October 19, 2024, https://www.theguardian.com/us-news/ng-interactive/2024/jun/10/crystal-mason-voting-intimidation.

[xvii] Mason's lawyers made this argument in their appeal of her conviction, but the Texas Court of Criminal Appeals rejected it, finding that the federal Help America Vote Act's provisional ballot rules do not preempt Texas' criminal illegal voting statute. *Mason v. State* 663 S.W.3d 621 (Tex Crim. App. 2022).

[xviii] There are conflicting accounts of what, exactly, took place inside the Tabernacle Baptist Church polling place, who was there, who did what, and the sequence of events. The narrative here hews most closely to Crystal Mason's perspective. For example, she has suggested that she never saw Mr. Diederich at the polling place when she attempted to vote; the State's brief in Mason's initial appeal claims it was Diederich, and not Streibich who helped Mason vote the provisional ballot. *Mason v. State*, No 02-18-00138-CR (Tex. App. 2020).

[xix] Sue Halpern, "How Crystal Mason Became the Face of Voter Suppression in America," *New Yorker*, December 18, 2019; accessed October 20, 2024, https://www.newyorker.com/news/news-desk/how-crystal-mason-became-the-face-of-voter-suppression-in-america. According to Ms. Halpern, Mason believed that the federal judge who ordered her back to prison before she could a ruling on her appeal could have given her home confinement instead. "But they were so adamant to send me back to prison," she told Halpern. "They were so adamant for me to lose my job."

[xx] Michael Barajas, "The Casualties of Texas' War on Voter Fraud," *Texas Tribune,* September 9, 2019; accessed October 19, 2024, https://www.texasobserver.org/the-casualties-of-texas-war-on-voter-fraud/.

[xxi] Karen Brooks Harper, "Texas Appeals Court Overturns Crystal Mason's Conviction, 5-Year Sentence for Illegal Voting," Texas Tribune, March 28, 2024; accessed October 19, 2024, https://www.texastribune.org/2024/03/28/texas-illegal-voting-conviction-crystal-mason/.

[xxii] Michael Murney, "Years of Harassment Led Up to Neighbors Reporting Crystal Mason for Illegal Voting, She Says," *Dallas Observer*, Oct. 5, 2021; accessed October 19, 2024, https://perma.cc/FM92-ZS2R.

[xxiii] *Mason v. State* 598 S. W.3d 755 (Tex. App. 2020).

[xxiv] Newkirk, "When the Myth of Voter Fraud Comes to You," January/February 2022.

[xxv] *Mason v. State* 598 S. W.3d 755 (Tex. App. 2020). The court held that Mason's unawareness of her ineligibility to vote "was irrelevant to her prosecution."

[xxvi] *Delay v. State* 465 S. W.3d 232 (Tex. Crim. App. 2014).

[xxvii] *Mason v. State* 663 S. W.3d 621 (Tex. Crim. App. 2022).

[xxviii] *Mason v. State*, No. 02-18-00138-CR (Tex. App. –Fort Worth 2024).

[xxix] Prosecutor Matthew Smid stated during Mason's sentencing hearing that, "The voting system in America is second to none. It is sacred to Americans, and she has violated the sanctity of the process…We respectfully request that this court send a message to illegal voters that if you're going to violate the sanctity of this system, it will not be tolerated and [you] will pay the consequences." See, Levine, "She Was Sentenced to Prison," June 10, 2024.

[xxx] Sam Levine, "Texas to Reconsider Case of Black Woman Sentenced to Five Years for Trying to Vote," Guardian, August 21, 2024; accessed October 19, 2024, https://www.theguardian.com/us-news/article/2024/aug/21/crystal-mason-texas-voting-court-case.

[xxxi] Keenan Willard, "Tarrant DA Defends Decision to Pursue Re-conviction of Crystal Mason, Acquitted of Illegal Voting after 8 Years," NBC 5, May 7, 2024; accessed October 19, 2024, https://www.nbcdfw.com/news/local/tarrant-da-defends-decision-to-pursue-re-conviction-of-crystal-mason-acquitted-of-illegal-voting-after-8-years/3535638/. See the State's Petition for Discretionary Review submitted to the Texas Court of Criminal Appeals here: https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=3813c658-09e9-4885-8427-b201d09410c4&coa=coscca&DT=PETITION&MediaID=6022489b-7f14-4b78-a300-58437efb47cd.

[xxxii] See Facebook post by Cindy Stormer, former Conviction Integrity Attorney for the Dallas District Attorney's Office, and a career prosecutor, dated May 12, 2024 ("This was a wrongful conviction…I estimate that the incarceration alone of this mother and grandmother cost taxpayers over $100,000.00. The attorneys' fees (paid for by taxpayers on both sides) may be incalculable."); accessed October 19, 2024, https://www.facebook.com/CrystalMasonTheFight/?locale=fi_FI&_rdr.

[xxxiii] Halpern, "How Crystal Mason," December 18, 2019.

[xxxiv] Otto Kirchheimer, *Political Justice: The Uses of Legal Procedure for Political Ends* (Princeton, N.J.: Princeton University Press, 1961).

[xxxv] W. William Minor, "Political Crime, Political Justice, and Political Prisoners," *Criminology 12*, No. 4 (1975): 385-398, 393.

[xxxvi] *Ibid*.

[xxxvii] The Heritage Foundation database is not a perfect source of information about voter fraud cases. It casts a wider net by including cases of public corruption, for example, and at the same time is likely under-inclusive of actual instances of voter fraud, though in my experience, not by much. I treat it here as a benchmarking tool, and assume the numbers of cases of prosecuted voter fraud are slightly higher than what the organization tracks.

[xxxviii] The section of the Help America Vote Act of 2002 that establishes that "an individual who desires to vote in person, but who does not present a current and valid photo identification, or other non-photo identification may cast a provisional ballot…" is titled 'Fail-Safe Voting.'

[xxxix] Levine, "She Was Sentenced to Prison," June 10, 2024.

[xl] Lani Guinier and Gerald Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (Cambridge, Mass.: Harvard University Press, 2003).

Can the Constitution and Democracy Survive the Roberts Court?

By | 2024: Vol. 23, No. 3

The United States Constitution is and has been the cornerstone of American democracy. For more than a century, Americans have revered our governing document. But it was not always that way.

In an 1854 speech at an Anti-Slavery Society rally in Boston, abolitionist William Lloyd Garrison called the Constitution “a covenant with death and an agreement with Hell.” With these words, he lit a match to the document and, as flames engulfed the Constitution of the United States, cried, “So perish all compromises with tyranny!” Today, are we reaching another constitutional crisis because of the Roberts Court?

The Constitution changed after the Civil War; while it continues to outline and bind the promise of liberty that defines America, it now accomplishes that purpose in a way that more completely defines the roles of the states and the federal government. While Abraham Lincoln believed that the Emancipation Proclamation was “the central act of my administration and the great event of the nineteenth century,” and he stated if he were to be remembered for anything it would be the Emancipation Proclamation, but it was Lincoln’s understanding of liberty that became his greatest legacy.

Artist: Drew Martin

Political philosophy involves an analysis of "positive" and "negative" liberty. Nearly a century before Isaiah Berlin brought that concept into political discourse in 1958, Lincoln knew all about negative and positive liberty. In 1864, near the end of the Civil War, Lincoln spoke to a group in Baltimore about differing notions of freedom. "The world has never had a good definition of the word liberty, and the American people just now are much in want of one**.**" As was his custom, he told a simple story, "The shepherd drives the wolf from the sheep's throat, for which the sheep thanks the shepherd as a liberator, while the wolf denounces him for the same act as the destroyer of liberty." Explicitly making clear to whom this new definition of liberty applied, he explained "especially as the sheep was a black one. Plainly the sheep and the wolf are not agreed upon a definition of the word liberty".

Lincoln was thankful that "the wolf's dictionary has been repudiated." But actually, that repudiation is a never-ending story and is being argued over today in our Supreme Court. Lincoln professed that freedom meant aiming for equality. In his Gettysburg Address in 1863, midway through the war, he promised "a new birth of freedom" for a nation "conceived in liberty and dedicated to the proposition that all men are created equal." The words "all men are created equal" were only in the Declaration of Independence; if freedom were to have a new birth, the US Constitution would have to be brought into line. The decade following the war witnessed freedom for Black Americans and a redefinition of the role of the national government as a protector of freedom and liberty.

Basically, Lincoln inserted our mission statement, the Declaration of Independence, into our rule book, the US Constitution, creating a new relationship between the states and the federal government, a relationship outlined in the Reconstruction Amendments where Congress was clothed with the power to enforce the new provisions in the Constitution and the enforcement acts that followed.

At our centennials, Americans celebrated the Declaration of Independence but not the Constitution. As Supreme Court justices began to rule on the Constitution and interpret laws as to their constitutionality and in line with what the majority of the people believed to be right, our generation, especially from the midtwentieth century came to believe that the Constitution as interpreted by the Supreme Court was fundamental to our democracy.

Since the Progressive Era and World War I, most Americans have trusted our Constitution. Through most of our history there was also faith in the Supreme Court, who supposedly interpreted the Constitution, protected it and decided if any legislation or laws were unconstitutional. That process worked until recently.

The US Constitution, ratified in 1789, is the world's oldest still in use. Norway's constitution, implemented in 1814, is the second oldest still in use. Out of more than nine hundred constitutions written since ours, only fourteen have made it to age one hundred. For all constitutions over the period, the average predicted age at death is nineteen years. While most countries have amended their constitutions over the years or have amended their original many times, ours has been amended only twenty-seven times; since the beginning of WWI, the Constitution has been am ended eight times. The United States is unique because it has one federal constitution that governs the entire country, and each state has its own constitution. States extensively revise theirs, as they are far easier to change than the US Constitution. The US Constitution is only amendable by acts of Congress (or two-thirds of the states in a convention for the purpose) and ratification by three-fourths of the states. This system permits a balance where the states govern themselves under the US Constitution. [1]

The United States Supreme Court supposedly does not write constitutional law but interprets the document. The Court is intended to be nonpartisan, and lifetime appointees are tp ensure impartiality. Yet, the Supreme Court for the last half-century is heavily skewed toward conservatism. The court's shocking overturning of the fifty-year-old *Roe v. Wade* in 2022, its granting previously unknown immunity to a president, changing federal regulations on clean air and water, and its voting decisions have eroded much of the American public's confidence in the Court to make impartial decisions. Some see the partisan court as politicians dressed in black robes.

How can the Constitution be trusted if the Court twists and turns it to make partisan, unprecedented, life-changing decisions for the American public? Not since the Civil War era has the Supreme Court been out of step with this large a proportion of the population, and probably for the first time in American history with a majority of American citizens. Why and how did the Court get this way? Although it was once trusted as the last hope for justice, it is now perceived in low regard by many in the populace as political and partisan, and by some as corrupt and ethically compromised.

This Is Not What the Founders Intended

This is not how our founding fathers intended the Supreme Court to function. They parceled

out the power of the new national government among three separate branches. Articles I and II created legislative and executive branches, and Article III created a judicial branch, headed by the Supreme Court and including such lower federal courts as Congress chose to establish. Congress first set the number of justices at six, which fluctuated in the nineteenth century to accommodate the growing number of states. It settled on nine in 1869, where it has stayed, although some tumultuous times have resulted in extreme temporary measures.

In 1788 Alexander Hamilton wrote in Federalist Paper No. 78 that the "judiciary is beyond comparison the weakest of the three departments of power" and added that it would "always be the least dangerous." Within a few years, however, the Supreme Court asserted the authority to decide whether laws or other actions of other branches of the national government or the states were consistent with the Constitution—that is, whether such actions are "constitutional" or "unconstitutional." No clause of the Constitution gave the Supreme Court this power. With the authority to act as the arbiter of constitutionality, the power of the judiciary has changed beyond Hamilton's imagination, though it overturned few acts of congress in the nineteenth century. In the early twentieth century, future Chief Justice Charles Evans Hughes expressed the reality: "We are under a Constitution but the Constitution is what the judges say it is." By 2015 the Supreme Court had held federal laws unconstitutional 182 times and state and local law unconstitutional 1,094 times. Today the Court is viewed by many as more powerful than ever, with a partisan congressional stalemate the Supreme Court is basically assuming the legislative role and making laws.

Artist: Pedro Camargo

The overall dynamic of the court has changed over the years because people are living longer, healthier lives and justices thus retain their seats for decades longer. For the first 180 years, justices served an average of fifteen years. In the 1970s, that time inflated to an average of twenty-six years, equating to between six and seven presidential terms. A justice who is appointed around fifty—which is most of them—could serve as long as thirty-five years. As of

this writing, sitting justices now range from age fifty-two (Amy Coney Barrett) to seventy-six (Clarence Thomas), with three in their seventies and two (Elena Kagan and John Roberts) in their sixties. Donald Trump's three appointments (Neil Gorsuch, Brett Kavanaugh and Barrett) and Joe Biden's appointment (Ketanji Brown Jackson) are all in their fifties. As the average retirement age continues to climb, while the average age of appointment keeps dropping, justices are likely to serve even longer, leaving a substantially greater imprint on the country and the law than their predecessors did. Today's thirty-year-old US citizen probably sees only ten new justices; sixty years ago, a person would have seen twice that many.

No other major democracy in the world today gives lifetime seats to judges who sit on constitutional courts.

The Reconstruction Amendments

The decisions of the Court have taken a meandering course since well before the Civil War. The notorious *Dred Scott* decision in 1857 is universally condemned for its extreme pro-slavery dogma, for twisting the Constitution to incorporate that dogma, and for thereby aggravating sectional divisions and hastening the Civil War. The Missouri lower court, however, began by recognizing that previous cases had ruled in favor of freedom for those whose masters held them in slavery in territories or states in which the institution was prohibited. Then, suddenly, the Court changed direction and abandoned precedent simply in response to antislavery sentiment elsewhere: "Times are not now as they were when the former decisions on this subject were made." The Court thus overturned its previous cases and removed this path to freedom.

Chief Justice Roger Taney's decision ignored evidence, especially that in at least five states, African Americans voted at the time of the US Constitution and in the slave state of North Carolina; until after the Nat Turner rebellion, free Black citizens voted on the same basis as white citizens. Taney's ruling that African Americans could not be citizens and had no rights to be respected by whites had to be addressed in amendments to the Constitution.

The Civil War and the Reconstruction Amendments redefined personal freedom and protection in the United States. The amendments outlawed slavery (Thirteenth), equal protection of the law thus banning racial discrimination (Fourteenth), and guaranteed the right to vote (Fifteenth). All three amendments added clauses specifying that "Congress shall have the power to enforce." Congress was thus clothed with the power to make real the rights and privileges conferred by the amendments. This alteration in the constitutional role of the states and the national government transformed a core American belief in the need to limit federal governmental power.

Congress also adopted new federal laws designed for enforcement of the Thirteenth, Fourteenth, and Fifteenth Amendments. The Enforcement Act of 1870 guaranteed the right to vote in all elections, without racial discrimination. (This only affected African American men; white and Black women alike would have to wait until 1920 before they received the same

right.) The Ku Klux Act of 1871 was enacted as a result of extensive hearings about murders and outrages across the South. The expanded sections of the 1870 and 1871 legislation were intended to give the broadest protection possible. President Grant used the Ku Klux Act in a series of prosecutions that broke the back of the Klan. The Civil Rights Act of 1875 banned racial discrimination on juries, on trains and steamboats, in inns and theaters and other "places of public accommodation" and "places of public amusement."

The Reconstruction Amendments became part of the Constitution—the fundamental law of the land—to overcome our country's original sin. They were carefully crafted to build a wall of protections, and to ensure African Americans had a vote and a seat at the table, to be in the room where it was happening, to protect their rights. But this "second founding," a reversal of the original federalism of the constitution was a transformation that many, including some in the judiciary and many justices on the Supreme Court, were unwilling to accept or understand. Thus followed decades in which the Court made rulings that took nearly all the power out of these amendments.[2]

The courts took out one stone at a time until the wall of protection crumbled. For example, a federal court convicted white murderers after the Colfax Massacre of 1873, but the case was overturned in March 1876 by the Supreme Court in *United States v. Cruikshank.* The Court found that unless the murderers were representatives of the state, such as militia or sheriffs, the federal government could not prosecute. This was a galvanizing moment for white supremacists in the former Confederacy. The Supreme Court essentially opened the door to killing African Americans.

Two particular cases marked the end of the Reconstruction Era legal protections for Black citizens. The first started when Homer Plessy decided to take a ride on a train. Though African American, seven of Plessy's eight great-grandparents were white and he could easily pass for white. He challenged his arrest in the Louisiana Supreme Court and lost. The US Supreme Court rejected Plessy's claims and ignored their own 1872 *Brown* decision, which had ruled segregated cars unconstitutional. The African American press soundly derided the decision, with one Kansas paper saying the Supreme Court had so "wantonly disgraced itself" that it was "time to put an end to the existence of this infernal, infamous body." Some of today's citizens echo this sentiment.

Two years later, in 1898, in *Williams v. Mississippi*, the Supreme Court ruled that as long as laws were race-neutral, in wording such as a poll tax, white primary, grandfather clause, literacy test, understanding clause, mass challenge laws, etc. although the effect was to disenfranchise Black citizens or exclude minorities from juries, these laws were constitutional, such as the 1890 and 1895 Mississippi and South Carolina constitutions.

That trend continued for decades, until *de jure* segregation finally ended for good as a result of the rediscovery of the Fourteenth Amendment in *Briggs v. Elliott/Brown v. Board of Education* in 1954, in the earliest days of the Earl Warren Court, and led to the 1964 Civil Rights Act.

Before Warren, however, President William Howard Taft. appointed Charles Evans Hughes. Previously the progressive Republican governor of New York, Hughes served as associate justice from 1910 until he resigned in 1916 for an unsuccessful challenge to President Woodrow Wilson's reelection. In 1930 President Herbert Hoover return Hughes to the Court as chief justice.

Hughes, for the first time, made the Supreme Court reckon with facts and evidence in racial justice and voting cases.

He was sworn in on October 10, 1910, just in time to hear arguments for a debt peonage case, *Bailey v. Alabama*(1911), that would begin the Supreme Court's long, slow turnaround on racial justice issues. Bailey was awarded a ringing victory, written by Justice Hughes, with language that was an affirmation of the Thirteenth Amendment, which for decades had been ignored by the Court. The opinion charted a new course for the Supreme Court because of one sentence: "What the state may not do directly, it may not do indirectly."

In 1935, Chief Justice Hughes wrote another opinion that would have long-term impacts in *Norris v. Alabama*. He began with a crucial procedural principle: that the Supreme Court was obligated to question not only the state court's legal rulings but also its factual findings. Without this searching examination, Hughes wrote, "review by this court would fail its purpose in safeguarding constitutional rights."

The Court's obligation to look at the facts for itself was a familiar one in prior Supreme Court cases on general topics, but had been ignored in the Court's all-white jury cases. Hughes then proceeded to a withering examination of the evidence, which left no doubt that county jury officials in both Jackson and Morgan (Alabama) counties had systematically excluded African Americans for years, had lied in court to cover their misdeeds, and had even gone back and unskillfully cooked the jury books to make it look as if six African Americans had been on the jury roll, which they were not. Hughes made it clear that highly respected state leaders habitually lied.

Hughes' opinion found for the first time in more than fifty years that African Americans had been systematically excluded from juries—and the first time in history that the Court's decision was based on controverted evidence rather than a state's concession. With this case and others, in twelve short years the Supreme Court had a new doctrinal framework encompassing the right to counsel, the racial makeup of juries, and oversight of state court procedural rules.

Hughes made clear that laws do not matter if they are not enforced.

The Legacy of the Modern Court

The legacy of the modern court, beginning at a stumbling walk with the Warren Burger Court (1969-1986), picking up speed in the William Rehnquist Court (1986-2005), and extending into an all-out gallop with Donald Trump's three appointments to the John Roberts Court (2005-present), has been a steady undermining of the underpinnings of democracy, including

environmental protection, gun control affirmative action and especially voting rights.

Liberal icon William Brennan, an Eisenhower appointee who had served for thirty-four years, retired in 1990. President George H.W. Bush appointed David Souter to replace him. To many people, Souter was an unknown quantity, now a rarity in these days of increasing research on any nominee. Justice Souter soon began voting with the Court's more liberal wing. After that, great care has been taken to vet judges appointed to the Supreme Court. The Federalist Society has played a major role in that selection effort.

The organization's stated objectives are "checking federal power, protecting individual liberty and interpreting the Constitution according to its original meaning." The Federalist Society has become a training ground for right-wing attorneys who aspire to federal judgeships under Republican presidents and has effectively functioned to shift the country's judiciary to the right. It vetted President Donald Trump's list of potential U.S. Supreme Court nominees; in March 2020, forty-three out of fifty-one of Trump's appellate court nominees were current or former members of the society. Six of the current nine Supreme Court justices (Roberts, Alito, Gorsuch, Kavanaugh, Thomas, and Barrett) are or have been members.

Affirmative Action. In two landmark 2023 cases (*Students for Fair Admissions v. President and Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina at Chapel Hill*) the Court held that race-based affirmative action programs in college admissions processes violate the Equal Protection Clause of the Fourteenth Amendment. In these rulings, the Court ignored the core of affirmative action as it was dealt with in the Fourteenth Amendment, which was to address the historical injustices to Black people, particularly those who had been enslaved. Since some justices proclaim to be originalists or textualists, it is perplexing to understand their misreading of the clear intent of the court's first ruling, ie the original intent of the meaning of the Fourteenth Amendment from *Slaughterhouse* (1873) to elevate a race and protect the members of that race. *Slaughterhouse* explicitly explains **"**It is true that only the Fifteenth Amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the fifteenth.**"** Also, the Fourteenth Amendment was supposed to further the Thirteenth Amendment, which ended slavery everywhere in the United States and—which was interpreted and ruled by judges to end "badges of the bondsmen degradation," still relevant today as we still see the remnants of badges of slavery.

Gun Control. In six cases since 1995, the Court has turned the Second Amendment from a protection of responsible gun use into a rallying cry for extremists and a free ticket for assault weapons. The Constitution authorizes Congress to organize and arm a militia, and the Second Amendment backs that up by providing that "a well-regulated Militia being necessary to the security of a free state, the right of the people to keep and bear Arms shall not be impinged." For almost all our country's history, courts have understood that the amendment creates no personal right, only a right to bear arms in connection with state protection. As the unanimous Supreme Court said in *United States v. Miller*, a 1939 case involving a sawed-off shotgun, the

"obvious purpose" of the Second Amendment was to ensure the effectiveness of the militia, and the Amendment "must be interpreted and applied with that end in view."

In the late twentieth century, a new Supreme Court took a radical turn. Beginning in 1995, a 5-4 majority threw out all or parts of three modest federal laws in five years: Gun-Free School Zones Act in 1995, Brady Handgun Violence Prevention Act in 1997, and Violence Against Women Act in 2000. The Court's new tack energized gun zealots and the gun lobby. Gun extremism became a rallying cry, and if gun restraint had been difficult before, it became well-nigh impossible by the early 2000s.

In 2008, the Court took the next step. In *District of Columbia v. Heller*, a 5-4 majority simply rewrote the Second Amendment. These justices announced that only the words in the second half of the Amendment—"the right of the people to keep and bear arms shall not be infringed"—meant anything, while the first half of the Amendment—"A well-regulated militia being necessary to the security of a free state"—all carefully crafted by James Madison and other Founding Fathers, meant nothing at all. The irony that the whole point of the militia clause was to protect state rights, which the Supreme Court overrode. Five justices said the first half of the Second Amendment was simply a "prologue," and "prologues," they said, do not count! They repeated the word "prologue" ten times. Thus, the first dozen words of the Second Amendment just disappeared. Its guiding principle—"the security of a free State"—also disappeared from the Supreme Court's view.

These cases all dealt with federal law. But these justices, who say they favor states' rights, soon applied their new-found constitutional theory to dismantle widely popular state gun laws. In 2010, in *McDonald v. Chicago*, the Supreme Court began throwing out gun laws passed by the states; in 2022 in New *York Rifle Association v. Bruen*, the majority threw out a New York state law that had been on the books for nearly 150 years. The dissenting opinion in the New York case cited gun violence statistics, but Justice Alito complained that statistics were not relevant. Once again the Court ignored the importance of evidence and facts (including amicus briefs by expert historians). Yet, statistics about rising gun violence show that the Second Amendment's purpose—"the security of a free state"—is getting farther and farther away. A dozen states and hundreds of counties, calling themselves "Second Amendment Sanctuaries," have now resolved not to endorse any gun laws.

The Supreme Court's thirty-year string of ruling for guns and its invention of false doctrine—the "prologue" theory—has endangered the security of a free state—just the opposite of the Second Amendment's command. The Supreme Court has helped normalize the use and misuse of guns, bringing high-powered weapons from movie screens to our streets and schools, and every public and private place where security, not danger, should abide.

Separation of Church and State. Faith used to be the story of how God helps us be better people, but in the Supreme Court's hands, it has become a tool for mistreating other people. The Hobby Lobby Corporation, a nationwide chain of more than five hundred stores, complained that it should have the religious freedom to reject contraceptive services in its

employee health plan. The Supreme Court loved the theory that the company could ride on the religious coattails of its owners and deny contraceptives to its 13,000 employees. The owners' religious beliefs, however, did not stop them from being involved in a huge scheme to steal artifacts and smuggle them into the country, culminating in a multi-million dollar fine.

Thus the Roberts Court originalists, textualists, and conservatives elect to read the First and Second amendments as broadly as they can but inconsistently read the Thirteenth, Fourteenth, and Fifteenth amendments as narrowly as they can.

Environmental Protection. The Supreme Court has made several recent rulings that have limited the Environmental Protection Agency's (EPA) authority to regulate the environment. In an upcoming case the Court will revisit a doctrine about Congress's ability to hand off power to executive agencies. These past and future cases mean a huge shift in federal environmental policy. The case came to the Court through its emergency appeals (also known as its "shadow") docket. It stems from how the EPA interprets a provision of the Clean Air Act known as the "good neighbor" provision, which requires states "upwind" to reduce emissions that affect air quality downwind. Justice Neil Gorsuch wrote the opinion, saying the plan's emissions standards could cause harm to half the states. He was joined by Chief Justice Roberts and justices Thomas, Alito, and Kavanaugh.

Other recent decisions concerned carbon monoxide emissions in 2022, in which the Court limited the EPA's ability to regulate carbon dioxide emissions from power plants that contribute to global warming, and further weakened the Clean Water Act by limiting the EPA's oversight of wetlands. In *Sackett v. EPA*, the court ruled that the CWA's use of the word "waters" refers to "streams, oceans, rivers, and lakes" and adjacent wetlands that are "indistinguishable" from those bodies of water.

John Roberts' Handprints on Trump Decisions

In a *New York Times* investigation published on September 15, 2024, Jodi Kantor and Adam Liptak reported on behind-the-scenes emails and maneuvers by which Chief Justice Roberts took control over key decisions and ultimately controlled the outcomes of three cases related to January 6, 2021. The most consequential of the three declared Donald Trump immune to prosecution for past actions. Roberts wrote the opinions on all three, including an unsigned one in March 2024 that decided in favor of Trump remaining on the ballot in Colorado. Another case involved a switch in which the case (concerning whether prosecutors had gone too far in bringing obstruction charges against some Capitol rioters) was originally assigned to Justice Samuel A. Alito, but Roberts took it over and, as in the pre-Charles Evans Hughes days, ignored evidence including amicus briefs by expert historians who studied these issues and also ignored precedent to change the rule of law and a core American belief that had been part of the United States since its beginning that no one was above the rule of law.

The Vital Importance of the Senate and the Bench

Powermongers use the US Senate to stack the benches of the courts. If Republicans take the

Senate, they can not only block all popular Democratic legislation, as they did with gun reform after the Sandy Hook massacre, but they can also continue to control the judicial system. As long as conservatives have a majority of judges in place to make law from the bench, it does not matter what the majority of Americans want.

This slithering around behind the scenes has been going on since the Reagan administration. In 1986, when it was clear that most Americans did not support the policies put in place by the Reagan Republicans, the Reagan appointees at the Justice Department broke tradition to ensure that candidates for judgeships shared their partisanship. Their goal was to keep the tenets of the Reagan revolution going so it could not be set aside, whatever the outcome of future presidential elections.

That principle continued when Mitch McConnell became Senate minority leader in 2007. Federal judgeships depend on Senate confirmation, and McConnell worked to make sure Democrats could not put their own appointees onto the bench. He held up so many Obama nominees that Democratic Senate majority leader Harry Reid began prohibiting filibusters on selected nominees. McConnell, however, weaponized the filibuster so that nothing could become law without sixty votes in the Senate.

McConnell became Senate majority leader in 2015, and his power increased. McConnell refused even to hold hearings for Obama nominee Merrick Garland when Supreme Court Justice Antonin Scalia died in February 2016, saying that the nomination was too close to an election, even though it was nine months away, and the new president should make that nomination. Trump won in 2016, and Republicans got control of the Senate. In 2017, McConnell killed the filibuster for Supreme Court nominees when Democrats tried to filibuster Trump's nomination of Neil Gorsuch, and Brett Kavanaugh was confirmed with fifty votes and Amy Coney Barrett with fifty-two. At the time Barrett was confirmed, it was in late October 2020 and voting for the next president—who turned out to be Joe Biden—was already under way. The ploy—which shows McConnell's blatant hypocrisy in the face of his decision four years before—worked, because those justices' votes were critical in successfully and comfortably overturning *Roe v. Wade* in 2022, which Donald Trump had long maintained was a major goal. He openly and aggressively stacked the court with judges to overturn *Roe*.

Roe V Wade. Some justices, led by Justice Alito, had been longing to overturn *Roe* for years. The decision to overturn rested largely on the definition of "liberty" in the Constitution. To come up with the Court's definition, Alito relied on Sir Matthew Hale, a seventeenth-century English judge noted for trying and hanging women for witchcraft. "Liberty" for women under our Constitution did not really begin until a series of early 1970s Supreme Court cases. Before then, it was perfectly constitutional for federal and state governments to discriminate openly against women, but post-1970 cases across all fronts—from marital status and inheritance laws to education and even alcohol consumption—recognized new dimensions of liberty for women. Therefore, when *Roe v. Wade* was decided in 1973 and repeatedly reaffirmed, "liberty" had a new constitutional meaning. Rejecting that in favor of a witchcraft-era definition of "liberty" was a gross misreading of the Constitution. The court again ignored evidentiary based amicus

briefs by expert historians.

The Voting Rights Act. Democracy has always been about the vote, The federal right to vote, created in the mid-nineteenth century, and continued in the 1950s and 1960s was a structure formed of both constitutional and statutory protections for both voters in general and minority voters in particular. Decisions of the Roberts Court since 2005 have taken aim at every part of that structure.

The 1965 Voting Rights Act the most successful civil rights law in American history—has been central in ending Jim Crow voting and had overwhelming bipartisan support in Congress. The most-used section of the Act was Section 5—the preclearance mechanism. Preclearance blocked a thousand large and small voting changes by the early 2000s, each one the equivalent of a successful lawsuit. It applied only in the states with the worst record of voting discrimination, and provided that any new voting law or rule in those states was blocked unless it was proven to be nondiscriminatory.

John Roberts had been gunning for the Act long before he joined the Supreme Court. As a special assistant to William French Smith, the attorney general in the Reagan administration, Roberts wrote memoranda opposing key parts of the VRA, especially Section 2. He was also skeptical of Section 5, in spite of a huge amount of testimony and evidence presented to Congress that showed the continuing need for Section 5 coverage in the South. When the Act came before the Court, Roberts invented a doctrine called "equal sovereignty" that is not in the Constitution but was pieced together using bits of other rulings. Such a doctrine had been argued in the original Voting Rights Act case, *South Carolina v. Katzenbach* (1966), but had been explicitly rejected by the Warren Court. Now, in a ruling on *Northwest Austin Municipal Utility District v. Holder* (2011), Chief Justice Roberts's opinion resurrected the doctrine and quoted selected words from the *Katzenbach* opinion that made the earlier case seem as though it supported the "equal sovereignty" doctrine, but omitted twenty-two crucial words that showed *South Carolina v. Katzenbach* held exactly the opposite. Printed here on the left is the paragraph as it appeared in *South Carolina v. Katzenbach*, and on the right as it was rendered in *Northwest Austin*:[3]

Katzenbach	Northwest Austin
"The doctrine of the equality of States, invoked by South Carolina, does not bar this approach, for that doctrine applies only to the terms upon which States are admitted to the Union, and not to the remedies for local evils which have subsequently appeared."	"The doctrine of the equality of States, . . . , does not bar . . . remedies for local evils which have subsequently appeared."

Four years later in 2013 *Shelby County, Alabama v. Holder*, *Shelby County* cited *Northwest Austin* more than twenty times, repeatedly wielding the words "equal sovereignty" with a vengeance. The grievous misquotation from *South Carolina v. Katzenbach* was not repeated,

but its damaging work had been done. A 5-4 opinion by Chief Justice Roberts treated "equal sovereignty" as a settled constitutional principle, supported by no authority other than *Northwest Austin* with its misbegotten heritage. As a coup de gras, the linchpin of the majority opinion was that "40-year-old facts" about voter discrimination have "no logical relation to the present day," which echoes *Dred Scott*.[1]

In dissent, Justice Ruth Bader Ginsberg had a pithy rejoinder to the majority's notion that voting problems were all but wrapped up: "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."

Roberts explained gutting Section 5 by echoing the lower court in Dred Scott that things were not what they were in 1965 and argued that there were still Section 2 claims. But Judge Alito had his eye on Section 2 as well. Again echoing the words of the lower court judge in Dred Scott and Roberts in *Shelby County*, Alito said "things are not as they were in 1982" when the VRA was renewed and expanded. Ironically, Alito was right. What states are doing today is worse than what they did in 1982. By 1982, twenty-two years after passage of the VRA, states had accepted the right of minorities to participate in elections and the states' efforts were how to dilute the impact of minority citizens' vote. But today is much more like 1898 and *Williams v. Mississippi*, as states try not only to dilute the impact of minority voters but also to keep them from voting by crafting neutral-sounding laws that effectively disenfranchise one group of people. Especially important now are incomplete or some minor mistake by a voter, particularly in absentee voting or using dropboxes. The courts have used the precedent of the intent of the voter since *Bush v Gore* in 2000 and hanging chads till the Roberts Court's partisan rulings, including allowing mass challenges of registered voters and making it more difficult for minorities to register and to vote..

Section 2 remains on the books, but the provision emerges in a severely weakened state, and is not out of danger. Over the last ten years, the Roberts Court has taken a newly renewed VRA that was on the march and left it an anemic tool whose future is uncertain.

Corporate Campaign Funding

Although not explicitly about voting rights laws, a 2010 case has arguably had more impact on the influence of voting. The Supreme Court handed down *Citizens United v. Federal Election Commission* decision, declaring that corporations and other outside groups could spend as much money as they wanted on elections, calling it a function of their freedom of speech. Moreover, they could be anonymous, making dark money available. Corporate political contributions had been a federal crime for a hundred years, since the Tillman Act of 1907, which was the first campaign finance law in the United States. the Tillman Act stood firm while Chief Justice Rehnquist and Justice Sandra Day-O'Connor were on the Court.. Since they were replaced by justices Roberts and Alito, the Court has never affirmed a campaign finance restriction. *Citizens United* allowed corporations and billionaires to financially support candidates for seats in legislative bodies, and in the 2010 midterm elections. Republicans won

majority legislatures in time to be in charge of redistricting their states after the 2010 census. Republicans controlled the key states of Florida, Wisconsin, North Carolina, Ohio, and Michigan, as well as other, smaller states, and used precise computer models to win previously Democratic House seats after the election.

Lobbyist groups, such as the American Legislative Exchange Council (ALEC), are in the business of getting those dollars and legislative wins for their clients. ALEC's website claims it is "America's largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism."[1] Its critics say it is a group of corporate lobbyists who meet behind closed doors and push dangerous, far-right legislation. As CommonCause.org explains, "ALEC creates 'model bills' that undermine our rights, then has state lawmakers introduce them almost word-for-word as real legislation that often becomes law, weakening our democracy and enriching ALEC's corporate donors at our expense."

Money talks. In 2012, Democrats won the White House decisively, the Senate easily, and a majority of 1.4 million votes for House candidates. Yet Republicans came away with a thirty-three-seat majority in the House of Representatives.

A parade of new procedures, laws and rules followed, each seemingly unrelated but together depicting a Court that disparages voters and values financial contributors. Examples are voter suppression laws, such as in-person photo ID laws, and other laws that seem designed specifically to disenfranchise minority voters in urban areas that vote Democratic.

In 2019 the Court ruled that "partisan gerrymandering claims present political questions beyond the reach of the federal courts" , in *Rucho v. Common Cause*. Roberts delivered the majority opinion and made clear that political gerrymandering can be distasteful and unjust, but that states and Congress have the ability to pass laws to curb excessive partisan gerrymandering. Justice Elena Kagan's dissenting opinion criticized the majority. "Of all times to abandon the Court's duty to declare the law, this was not the one. The practices challenged in these cases imperil our system of government. Part of the Court's role in that system is to defend its foundations. None is more important than free and fair elections. With respect but deep sadness, I dissent."

The country is still experiencing a deluge of new state laws rolling back voter access. In a slew of other cases, the Court has eviscerated other key protections in federal law and made it harder for Americans to get relief from discrimination, gerrymandering, and burdens on their freedom to vote. In the first decade after *Shelby County*, at least twenty-nine states had passed ninety-four restrictive laws to manipulate election processes and subvert election outcomes. They have pursued partisan efforts to disempower other elected offices and sought to undermine the ability of the people to exercise their power through direct democracy. And, as in North Carolina and Texas, they have drawn extreme partisan gerrymanders that prevent fair representation.

The Electoral College

In a country of fifty states and Washington, DC— more than 330 million people—presidential elections are decided in just a handful of states, and it is possible, even likely, for someone who loses the popular vote to become president. We got to this place thanks to the Electoral College, and to two major changes made to it since the ratification of the Constitution.[4]

Each state has a number of electors that is the total of two senators and however many representatives it has in Congress. A small state has at least three electors. A large state has fewer than its share, as the representatives cover much more populated areas. Thus, gerrymandering and redistricting are essential in shaping who can be electors and, thus, who can be president. The president appoints all Supreme Court justices and federal court justices for life. The United States is not a parliamentary form of government; the presidency is a winner-take-all election, and the consequences are extraordinary on our Court system and hence on our constitutional laws since the president makes those appointments and other regulatory appointments as well as a number of other federal appointments that directly affect elections and the lives of all citizens.

The drama began in 1796. John Adams won, but Thomas Jefferson saw that if he had won all of Virginia's electoral votes, rather than a portion of them, he would have won. He persuaded his native Virginia to switch the system, and in 1800 he received all of Virginia's electoral votes. Massachusetts, which favored native son Adams, then switched their system to winner-take-all so Adams could get their votes. By 1836, every state except South Carolina (where state legislators chose electors until 1860) had switched to winner-take-all.

James Madison, "Father of the Constitution," was horrified by the early changes. He wrote in 1823 that voting by district, rather than winner-take-all, "was mostly, if not exclusively in view when the Constitution was framed and adopted." He proposed a constitutional amendment to end winner-take-all. Today, only Maine and Nebraska use congressional district methods rather than winner-take-all. They allocate one vote per congressional district and award the final two votes to the state winner.

In 1824 the Electoral College split the votes among four candidates, and no one had the majority. The House of Representatives gave the election to John Quincy Adams instead of the highest popular vote, Andrew Jackson. Jackson won the next election, and he asked for a constitutional amendment to elect the president by a popular vote instead of Electoral College votes. The North was outgrowing the South in population, and the South had an advantage in the Electoral College because enslaved persons who had no vote were counted as three-fifths of a person for purposes of the census, which was all-important in determining Congressional representation and, thus, the number of Electoral College votes.

In our history, four presidents—all Republicans—have lost the popular vote and won the White House through the Electoral College. These were Rutherford B. Hayes in 1876, Benjamin Harrison in 1888, (and in 1876 and 1888 most Black men were prevented from voting or did

not have their vote counted in the South), George W. Bush in 2000, and Donald Trump in 2016. Trump's 2024 campaign strategy appears to be able to do it again, or to create such chaos that the election goes to the House of Representatives, where there will likely be more gerrymandered Republican-dominated delegations than Democratic ones.

A new wrinkle in 2024 makes that single vote even more important. The Constitution's framers agreed on a census every ten years so that representation in Congress could be reapportioned according to demographic changes. As usual, the 2020 census shifted representation, and so the pathway to 270 electoral votes shifted slightly. Those shifts mean that it is possible the 2024 election will come down to one electoral vote. Awarding Trump the one electoral vote Nebraska is expected to deliver to Harris could be enough to keep her from becoming president.

Senator Lindsey Graham (R-SC), who had been reported as trying to influence the decision in Georgia after it went for Democrat Joe Biden in 2020, went to Nebraska in 2024 in an eleventh-hour desperation attempt to try and convince the Republican-dominated legislature to change the Republican-heavy state to change to a winner-take-all method, hence denying the Democrats a critical vote.

If no one reaches 270 votes, the election would be decided by the House of Representatives, where careful planning and gerrymandering would likely deliver the election to Trump. And if not, Trump will almost certainly fight the election outcome and will go to any lengths necessary to win, as he proved in 2020. On December 3, 2020, he posted on Truth Social: "A Massive Fraud of this type and magnitude allows for the termination of all rules, regulations and articles, even those found in the Constitution. Our great Founders did not want, and would not condone, False and Fraudulent Elections!" He later said his words were twisted but did not delete the post.

How Do We Get Out of This Mess?

Benjamin Franklin was in the last day of the Constitutional Convention in 1787. At eighty-one, he was weary of the fight for signatures on the Constitution. *Almost* everyone signed, and the document's fate was then in the hands of the states to ratify. According to notes in the journal of Maryland delegate James McHenry, Elizabeth Willing Powel of Philadelphia asked Franklin, "Well, Doctor, what have we got, a republic or a monarchy?" Franklin replied, "A republic, if you can keep it.'" The question remains an issue with which we continually have to grapple, as the Constitution is a living, breathing thing for whose principles we have to fight.

The Enormous Impact of Unexpected Change

History is contingent and we cannot predict change. The Court's history is honeycombed with small changes and contingent moments that have made large differences, and which give us hope for other unexpected changes,

That history goes back to the earliest days of our Republic. In 1800, Thomas Jefferson's

Republican Party won a clean sweep of the White House and both houses of Congress. It was the end of the Federalists as a national party—except at the Supreme Court, where lame duck officials achieved a different outcome. *After* the election, Chief Justice Oliver Ellsworth resigned, and already-defeated President John Adams nominated John Marshall, a strong Nationalist, to be chief justice. The lame duck Senate confirmed the nomination. All of this took place after Jefferson was elected but before he was sworn in. Marshall went on to dominate the Supreme Court for thirty-five years while Jefferson and four more presidents watched in fuming frustration.

The Court had several brushes with unexpected change and contingency during the Great Depression of the 1930s. A reactionary 5-4 majority of the Court repeatedly blocked New Deal efforts to combat the country's economic disaster, prompting President Roosevelt to propose a plan to create additional Supreme Court seats that he could fill. Amid the uproar over this plan, Justice Owen Roberts, one of the five justices who had consistently voted to strike down the New Deal measures, shocked the nation by suddenly reversing his position and voting to uphold all the New Deal measures. This single change, which ended the Court's greatest constitutional crisis, has been called "The Switch in Time that Saved Nine."

In 1953, with the *Briggs v. Elliott et al.* segregation cases at the Supreme Court, the Chief Justice was Fred Vinson, one of four justices from the South or border states. Vinson believed in fairness but was widely seen as not ready to end segregation and certainly not about to lead the Court to that result. In September 1953, just four weeks before the school segregation cases were scheduled for argument, Vinson died of a sudden heart attack at age sixty-three. President Dwight Eisenhower's choice to replace Vinson was Earl Warren, who led the Court to a unanimous decision ending segregation (*Briggs v. Elliott/Brown v. Board of Education*) and went on to a storied tenure as chief justice. One of the other justices, when he heard of Vinson's sudden death, said, "This is the first proof I have ever had of the existence of God."

The end of the Warren Court was almost as sudden as its beginning. In 1968, the Warren-led Court was the most liberal in history. As Warren got ready to retire, President Lyndon Johnson nominated Associate Justice Abe Fortas, another strong liberal, to become chief justice and chose another liberal, a lower court judge, to take Fortas's seat. When Johnson tried to elevate him, however, the nomination faced a filibuster and was withdrawn. Fortas later resigned from the Court after a controversy about accepting $20,000 from a financier who was being investigated for insider trading (which pales when compared to the blatant conflicts of interest of Roberts, Alito, and Thomas). Richard Nixon was elected president, and he chose conservative Warren Burger as chief justice. Fortas returned to private practice, and suddenly the most liberal Court in history was gone.

The Court grew ever more conservative, and the conservative trend has now been almost unbroken for more than a half-century, during which there was one moment when the direction might have been stopped or reversed—with a single change.

That moment was the 1991 retirement of Justice Thurgood Marshall. For years he said he had a

lifetime appointment and expected to serve out his term, often joking, “I expect to die at the age of a hundred and ten, shot by a jealous husband.” But his health deteriorated and, with everyone expecting President George H.W. Bush to be reelected handily in 1992, Marshall retired in 1991 and was replaced by Clarence Thomas. Bush lost to Bill Clinton, and Marshall lived to see Clinton’s inauguration. If Marshall had been able to endure or ignore his health issues and stayed on the Court, his successor would have been a Clinton appointee.

Speculating about history is always hazardous but think of the possible domino effect if a Clinton appointee succeeded Marshall. A different 5-4 majority, with a Clinton justice instead of Justice Thomas, might have rejected George W. Bush’s request to overrule the Florida courts in the Supreme Court’s 2000 case of *Bush v. Gore*. That might have changed who was sworn in as president in 2001. Would we have gone to war in Iraq in 2003? And who would have been elected president in 2004, in a position to name the replacements for Chief Justice Rehnquist and Justice O’Connor, who both left in 2005? Their replacements, Chief Justice Roberts and Justice Alito, remain on the Supreme Court today. In the years after those 2005 appointments, the Court has rendered momentous decisions on gun rights, campaign spending, reproductive freedom, the Voting Rights Act, and affirmative action—all by 5-4 votes. All of this is speculation, of course, but it shows how huge consequences can flow from a single small change and contingent moments.

Since Donald Trump appointed Justice Barret, 6-3 decisions are common, with justices appointed by a Republican president voting one way and justices appointed by Democratic presidents voting another. More and more citizens believe the Court is becoming just another political branch—it is not making rulings according to the law or precedence or evidence; it is making them because of politics. President Biden is now making calls for changes in term limits and ethics, which might focus people’s attention on the court itself and how change could be made. Do not bet against change.

The Importance of Evidence

We all need to reckon with the history and the historical evidence. Henry Adams, son of Charles Francis Adams who was ambassador to England during the Civil War proclaimed in *The Education of Henry Adams* that the American mind “stood alone in history for the ignorance of its past.” His great grandfather, our second president, who also stood alone among the early presidents, along with his son John Quincy Adams as an opponent of enslavement. They are the only two of the first twelve US presidents who did not own enslaved people at some point in their lives. John Adams said, “Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.” As Charles Evans Hughes demonstrated courts must have fact based evidence for fair and just decisions. We must continue to construct a record for evidence, if for no other reason than to build a record of dissent. Historians today celebrate dissenters who called for the honesty and the evidence. the very evidence that would have led to a different ruling in *Dred Scott* or *Plessy v Ferguson* or *Williams v. Mississippi*, and all of the laws that ruled against equal justice under the law. Those are the people that historians now study and

hold up as the heroes, the people who tried to do the decent, honest, and right thing. It will not be Chief Justice Roberts or Justice Alito, or Justice Thomas but it will be the great modern dissenters—Justices Sonia Sotomayor, Ruth Bader Ginsburg, Elena Kagan, Ketanji Jackson—who will be celebrated as those who are trying to save the basis of our democracy.

Faith Based Justice. "Hate evil and love good, and establish justice in the gate" Amos 5:15a

Some Justices serve as examples of how their faith influenced them to support justice. John Marshall Harlan, a Kentucky native who served on the Court from 1877 until his death in 1911, is often called "The Great Dissenter" because of his dissents in civil liberties cases. He was not afraid to be alone in his dissents, as evidenced in the Civil Rights cases (1883) and *Plessy* (1896). He grew up in a family who owned enslaved people; he opposed the Emancipation Proclamation but fought for the Union. Harlan was largely forgotten in the decades after his death, but many scholars now consider him to be one of the greatest Supreme Court justices of his era. Some of his views would become the Court's official view beginning with the Warren Court. Harlan was a devout Presbyterian elder who taught Sunday school, and his faith influenced his decisions, even though a white supremist he championed equal rights for Black people under a color blind constitution. Charles Evans Hughes was a corporation lawyer but took the American Baptist faith of his missionary immigrant father and practiced it deeply, which led him to read the law fairly and justly. When the Court moved into its new building in 1935, a guard rejected African Americans who had tried to enter the restaurant. The progressive historian Woodrow Wilson had segregated the federal government, so Black people were not allowed. Hughes took the guard outside and asked him to read the words over the entrance to the new Supreme Court building: "equal justice under the law." Hughes told the guard that if he could not uphold that, he should get another job. After that, the restaurant in the Supreme Court building was open to all people. Several justices, including some appointed by Donald Trump, claim to be devout in their faith. We would never question anyone's faith and we have hope that their faith will lead them to consider Amos' pleading in the impactful decisions they make. We believe faith is powerful and have seen in history where it makes a difference. It is our hope that as justices study the evidence, like Harlan and Hughes did, their faith will make a difference as they try to follow the evidence in the rule of law.

Yesterday and Today

The precarious moment in which we find ourselves is reminiscent of the difficult choices and perils the Civil War and Reconstruction generations faced such as the 1836 gag order in Congress that John C. Calhoun engineered to silence discussions regarding slavery and also of the rise of authoritarian leaders who opposed Reconstruction. Today there is political backlash comparable to the counterrevolution after Reconstruction.

We recognize similarities between the Civil War era and our own. The Confederacy was much more in line with the rest of the world than was the United States. The world was moving away from democracy toward authoritarian and monarchy regimes. Citizens' ability to govern themselves were questioned and republics like France and Mexico became monarchies again.

Lincoln meant it when he said the United States was the “last best hope” for democracy, where meritocracy, as imperfect as it was could still have an opportunity to work. We too must be willing to fight to preserve that last best hope, as did Lincoln. How might this be done? Is it a mistake to bring up the unpleasantness of past discrimination with fact based evidence I a time of Donald Trump’s alternative fact universe? Should we ignore rather than dwell upon past lynching, segregation, and indignities? Does it not just rile emotions? Is it better to “get over it” and move on? Robert Penn Warren warned, “if you could accept the past you might hope for the future, for only out of the past can you make the future.” Minimizing historical atrocities, sweeping “unpleasantries” under the rug, only creates issues we keep tripping over.

It is not accidental that the Civil Rights Movement is called the Second Reconstruction. Today we are still stumbling over issues of Reconstruction—citizenship and the Fourteenth Amendment, refugees, immigration, racist campaign rhetoric, violence, women’s rights, who can use guns and for what purposes, terrorism, poll taxes and vote restriction laws, law enforcement and policing, incarceration, demagoguery, scapegoating, Nativism, and the rise of authoritarianism. In that regard, the first and second Reconstructions are still playing out in American history, and we need to give the public alternative role models beyond the heroes with feet of clay who are now in office and on the bench.

As Martin Luther King Jr. challenged us in his Nobel Peace Prize acceptance speech, “I refuse to accept the idea that the “‘isness’ of man’s present makes him morally incapable of reaching up for the eternal ‘oughtness’ that forever confronts him.” In a 1988 speech at the Democratic National Convention, South Carolinian and King disciple Jesse Jackson called on us to “keep hope alive. It may look grim, but we must keep on keeping on. Onward!” Abraham Lincoln wrote in a speech in the US House of Representatives in 1848: “Determine that the thing can and shall be done, and then we shall find the way.”

We take inspiration from the young people who will be writing the next chapter. In 2019–2020 Amanda Gorman (who was then the US Youth Poet Laureate), gave readings around the country of a poem she had been commissioned to write for Independence Day. Echoing Lincoln’s two greatest speeches The Gettysburg Address and his second inaugural where he spoke of our “unfinished work,” in her performance at the American Academy of Arts and Sciences, Gorman, an African American woman from Los Angeles who was then a student at Harvard, explained that she sees American democracy not as “something that’s broken,” but as “something that’s unfinished.” Rather than falling prey to discouragement, she speaks of being “audacious” in “taking up the mantle” of our founders and playing her role in finishing their work. In her poem “Believers’ Hymn for the Republic,” she declares, “Every day we write the future together.” We have faith in the young people of America who believe in liberty, freedom, democracy, fairness, and equality. It is a lot to ask, but young people with their better values and fewer prejudices can hopefully save us from the Roberts Court. Often attributed to Abraham Lincoln, who probably said something similar, actually it was Justice Robert H. Jackson who understood and explained in 1949 that “the Constitution is not a suicide pact”; and now we today cannot allow the Supreme Court to destroy American democracy.

*The authors appreciate the help of research assistant Matthew Girardeau.

[1] . Two of these—New Zealand and Canada—are anomalous cases of former British colonies in which the "constitution" consists of multiple documents and might be seen as distinct species. Great Britain itself still functions without a concisely written constitution. Of the 27amendments to our constitution, there have been no substantial amendments since 1971; in 110 years the constitution has only been amended 8 times in 110 years, including two amendments, 18 and 21 that cancelled each other, Leaving aside the Bill of Rights, our constitution has been. Amended 17 times in 235 years.

[2] For details on the amendments, enactments, and the undermining see Orville Vernon Burton, The Creation and Destruction of the Fourteenth Amendment During the Long Civil War," *Louisiana Law Review*, Vol. 79 (Fall 2018): 189-239 and "Tempering Society's Looking Glass: Correcting Misconceptions About the Voting Rights Act of 1965 and Securing American Democracy" *Louisiana Law Review* Vol. 76:1 (2015): 1-42.

[3] This critical omission of words by Roberts was first pointed out in Orville Vernon Burton and Armand Derfner, *Justice Deferred: Race and the Supreme Court*, The Belknap Press of Harvard University Press, 2021; and elaborated on in Armand Derfner, "Can Our Democracy Survive This Supreme Court?" University of Chicago Press, *The Supreme Court Review*, Vol. 2023, issue 1, pp. 345-395.

[4] For a more detailed history of the electoral college see Heather Cox Richardson, Letters from an American, September 20, 2024.

Democracy in America Now

By | 2024: Vol. 23, No. 3

If democracy is government “of the people, by the people, for the people,” then there exists, to this day, a residuum of democracy in America.

It is found mainly at the local level, in towns and smaller cities, and even up to the scale of some of the smaller states. Even at these levels it is a democracy dominated, as democracies usually are, by money and land. Yet at these levels, it remains possible for citizens to be heard, to get the attention of public officials, to organize or litigate with effect on some issues, to win or lose on a referendum or a bond issue, and even to contest for public office with a chance of success. The amazing complexity of the typical American ballot – with page after page of offices to fill and decisions to make – is evidence of the relative openness of American life, at the local level, to democratic serendipity.

Artist: Pedro Camargo

In the larger states and cities, the forms of democracy are, generally speaking, placed in the service of oligarchy, lobbies, campaign finance, political dynasty, and party organization. Organized interests, though not entirely uncontested, dominate, frame the issues, and guide the policies. The media – increasingly monopolized at the level of the metropolitan media market – plays the role of minstrel to the local ruling class. Citizen engagement declines; access to the corridors of power is narrowed.

At the federal level, democratic practice is mostly symbolic. Only twice in living memory – the Civil Rights movement and the Vietnam war protests of the 1960s – have large-scale and sustained popular movements shaken the United States on a major public issue. Only once – in 1972 – has an insurgent candidate won the presidential nomination of the Democratic Party. On all subsequent occasions except one, the contest for the highest federal office has been stage-managed successfully by funders, consultants, and power elites. And this is increasingly if not yet comprehensively true of elections to Congress, where candidate selection and funding have become, to a large degree, the province of national party organizations rather than something to be left to the locals.

The corruptions and concentration of power wrought by money are well-known, but they are not the full story. Money can jump-start a democratic movement, as $250,000 from the GM heir Stewart Mott did for George McGovern in 1971[1]. (Similarly in 2024, Nicole Shanahan's money kept Robert F. Kennedy jr. in the race for a time.) Nor is money necessarily decisive. Donald Trump notoriously prevailed in 2016 over candidates far better funded than he.

The decisive changes are in the structures of concentrated money and in the scope for contested ideas. To a degree not seen since Cotton was King[2], financial and therefore political power in America is now held by a handful of oligarchs – in finance, real estate, technology, entertainment, energy, pharmaceuticals and "defense" – who are now openly

described as the "donor class."[3] Elected officials spend their time courting this class, and bending their scruples, if they had them, to meet its desires. Power centers in the Congress – the "financial services committees" are a case-in-point – have grown in membership over the years, precisely so that their members can bring in contributions from the supposedly-regulated sectors.

The historical counterweights to the donor class – an organized industrial working class, an independent intelligentsia, the lawyers – have largely passed from the political scene, as the agrarian voices of late 19th century America – the original Populists – did before them[4]. Trade unions have declined in numbers and influence with the deindustrialization of the country. Big-city political machines, once powerful at the national level as Mayor Daley's Chicago once was, have largely disappeared. The professorate – especially in economics, which is where politics and academics most intersect – now tends to use policy jobs to burnish resumes rather than, say, to conquer poverty. Retired diplomats seem largely to disappear; retired general officers go to work for military contractors and become part of the moneyed elite.[5]

Alongside the concentration of financial power, the oligarchy has moved to lock down control of the media – including social media, reflecting the effective privatization of the Internet. In television, a pseudo-diversity prevails, catering to different slices of the political demography with sharp differences on secondary topics – the identity and culture wars. The leading newspapers vector state propaganda, many of the others have faded or disappeared. "Democracy Dies in Darkness" – so reads the masthead of *The Washington Post,* a paper owned by an oligarch with deep ties to the information-security state, and whose pages sport multiple mouthpieces for the "communities" – as they are called – of the Pentagon and the CIA. *The New York Times* still uses "All the News that's Fit to Print" on its masthead – another proof that irony died with democracy in America. Having at one point cooperated with Julian Assange to expose war crimes committed by American forces in Iraq – and numerous other matters of less gravity – the major media outlets were largely silent as he festered, for years, in an English prison on espionage charges.

On social media, aggressive and excessively popular expression of unwanted views can get you banned, or "shadow-banned." The US government actively lobbies (read: directs) X (formerly Twitter), Facebook, Youtube and others to delete unwanted content, and the Supreme Court has upheld their "right" to comply. A medium that cannot be controlled by such pressure (Tik-Tok) can be banned or subject to forced sale to a more amenable oligarch.

A result is that on at least two crucial *national* issues – foreign military policy and monetary policy – effective means of dissent have vanished.

It is telling, for instance, that in the House of Representatives only one voice – Rashida Tlaib (D-MI) – speaks effectively for Palestine. And that only one – Marjorie Taylor Greene (R-GA), God help us – can be heard against the drive toward war with Russia over Ukraine[6]. If there is even one challenger to a policy of aggressive confrontation with the Peoples' Republic of China, I'm unaware of who it might be. On monetary policy, what started as congressional

oversight back in 1975 – in which I was closely involved as a young staff economist for the House Banking Committee – has become the Federal Reserve's own platform for its views, reliably in the service of the banks and the global dollar. The last congressional dissent on that issue faded out with Ron Paul (R-TX).

In consequence of the narrow range of discourse, it became possible to obscure (for a time) President Biden's decreasing mental capacity, to treat protesters against genocide in Gaza as anti-Semites, to maintain that Vladimir Putin determined the outcome of the 2016 election, and, more recently, to pretend for two years that Ukraine was heading toward military victory over Russia. As that last pretense unravels, it becomes increasingly evident that univocal control of narrative has led the United States into a dead end with catastrophic potential – to a choice between strategic defeat and nuclear war. It is precisely against such dangers, that democratic discourse is supposed to protect.

On a seemingly more innocent note, but one affecting the lives and livelihoods of millions, the idea that the money power should be kept far away from democratic politics has been a staple of mainstream economics for decades. The media therefore reports, by conditioned reflex, that the Federal Reserve serves public purpose ("fighting inflation") while raising interest rates. The fact that this action directs interest payments to major banks on their vast holdings of liquid reserves[7]and to other holders of Treasury bills, goes largely unremarked. The banks, their owners, and other major holders of US debt do not complain. Meanwhile, high interest rates freeze the housing market, squeeze small and medium businesses, and price American exports out of world markets, thus undermining the objectives of energy and industrial policy, decided by Congress. Democracy be damned, where money rules.

In this context, the rise, fall and rise again of Donald Trump becomes easier to understand. Trump is a showman, a hotel and casino guy. He is prone to big talk and simple promises. In his first term his administration was hijacked by whichever faction (John Bolton, Mike Pompeo…) got close to him at any given time, though with a few professionals (notably in the military) narrowly keeping disaster at bay. But Trump is spontaneous, occasionally self-aware, and the horror he inspires in detested elites plainly incites admiration in the land. Otherwise, he would hardly have endured. Trump may well be a "threat to democracy," but the notion is deeply laughable in the mouths of his political opponents who have worked for their entire careers, with great success, to consolidate their own power and destroy the remnants of democracy on crucial questions at the federal level in America.

There is – on the contrary – an undeniable element of genuine democracy behind Trump. His support has a strong element of resistance to the rule of oligarchs and entitled elites.The problem is that it is inconsistent, mean and even vicious in key respects; it is a democracy of the repressed and frustrated. It is not an organized movement of ordinary people. And Trumpian democracy, such as it is, is also unlikely to prevail, even if Trump is elected[8] – over the entrenched and permanent powers of money, the foreign policy complex, and information

control. Instead the next Trump term will be an amalgam of the oligarchs who have taken his side (Elon Musk, Peter Thiel, Miriam Adelson…) and whatever establishment forces they come to terms with, once elected.

Still, despite the prevailing media view, Trump is the symptom, not the cause, of democracy's decline in America. He is the outlet for an otherwise-squelched shout of protest, by people who perhaps do not know what they want, or if they did, how to achieve it. One cannot be happy with this state of affairs – but it's not that difficult to understand. Democracy dies when small factions divert vast resources to narrow, petty, fruitless and deadly goals. It dies when genuine experiments, reforms, and visible improvements cease, and one is told that, sad to say, nothing can be done. Democracy dies when there is only one permitted way to think.

[1] This fact was known among McGovern staffers, including myself, at the time, and confirmed to me again by Senator McGovern on a visit to Austin in the early 1990s.

[2] For a reminder of how things were in the antebellum United States, see Matthew Karp, *This Vast Southern Empire,* Cambridge: Harvard University Press, 2018.

[3] The classic account of money and power in America is Thomas Ferguson, *Golden Rule: The Investment Theory of Party Competition and the Logic of Money-Driven Political Systems.* Chicago, University of Chicago Press, 1995.

[4] An excellent account of the Populists is Thomas Frank, *The People, No.* Metropolitan Books, 2020.

[5] In any event, it has been several generations since the United States military last prevailed in a major war, and there are (for better or worse) no retired senior military officers with the stature and credibility of an Eisenhower, a MacArthur, or others of that era.

[6] To be fair, J.D. Vance (R-OH) in the Senate, now the Republican candidate for Vice President, has also spoken out on occasion on this issue. So far as I'm aware, not a single Democrat – apart from the now-defected-to-Trump former Representative Tulsi Gabbard (D-HI) – has offered any words of caution against the drift toward war with Russia. Not even Bernie Sanders, ostensibly an independent. In a party whose heritage includes John F. Kennedy, Eugene McCarthy and George McGovern, this is astonishing.

[7] See my short essay, "Inflation Shamanism," in *Project Syndicate,* at https://www.project-syndicate.org/commentary/federal-reserve-interest-rate-hikes-did-not-control-inflation-by-james-k-galbraith-2024-09#.

[8] At present writing in late October 2024 the election outcome is still highly uncertain.

Project 2025: Trumpism and the New Conservatism

By | 2024: Vol. 23, No. 3

The Heritage Foundation's Project 2025 proposes hard-right policies aligned closely with former President Trump's "America First" agenda and is designed to eliminate the guardrails that stemmed his authoritarian tendencies in his first term. Project 2025 advocates and plans an unparalleled concentration of presidential power in a Trump second term. It reflects major shifts at Heritage and in the Republican Party away from Reagan to Bush era neoliberalism. Heritage began working on Project 2025 shortly after Kevin D. Roberts became its president in 2021. He reshaped the Heritage mission and originated Project 2025 to institutionalize Trumpism. Trump enthusiastically endorsed the effort. In a 2022 Heritage speech, he stated, "This is a great group and they're going to lay the groundwork and detail plans for exactly what our movement will do and what your movement will do when the American people give us a colossal mandate to save America" (Kroll & Surgey, 2024). However, Trump later declared that he "knew nothing about Project 2025" and had "no idea who was behind it" (Contorno, 2024). His disavowal came after Democrats drew public attention to the project and made it a major campaign issue by midyear 2024. The attacks on the proposed Trumpian policy regime resonated with fears of many voters.

Artist: Drew Martin

Trumpism's nativist, isolationist, racist tendencies are deeply rooted in American culture and history and manifested prominently in the "white Christian nationalist" segment of Trump's loyal base. Recent European New-Right "national conservative" movements have also shaped Trumpism. Heritage President Roberts (2023) describes their convergent politics, which he embraces, as "One-Nation Burkeanism" and often has referred to the Trumpian effort to make it our governing philosophy as a "Second American Revolution." National conservatives contend that globalization, undocumented immigrants, excessive overall immigration, and left-liberal policies have eroded national sovereignty, cultural coherence, collective identity, and the character, loyalty, and obedience of citizenry. In their view, preserving global cultural diversity requires solidaristic nations with hard borders. They advocate a hierarchical ethos with a populist thrust critical of global elites and transnational institutions. National conservatives embrace right-leaning communitarian culture based on state religion and traditionalist family values and favor authoritarian leaders that seek to concentrate state power to realize their political and sociocultural ends. They advocate free enterprise counterbalanced by protectionist economic policies. A spearhead of national conservatism and architect of Hungary's so-called "illiberal democracy," Prime Minister Viktor Orbán has long supported Trump, who considers the Hungarian leader the model "strongman" we all need, and the former president aspires to be.

Trump usually rambles in speeches and interviews – they are rife with falsehoods and non-sequiturs, and do not express a coherent political vision. Besides assertions about closing the border and expelling forcefully undocumented immigrants, Trump seldom addresses and appears to have little interest in concrete policy matters. However, his illiberal, authoritarian tendencies and manner of expression, which resonate powerfully with his base, have affinity for and facilitate the political ends and ideological program of his more intellectual, informed advisors, supporters, and fellow travelers. Consequently, Trumpism may have a life after the

former president leaves the scene. Heritage President Roberts, former Director of Project 2025, Paul Dans, and many other prominent Republicans embrace the Trumpian variant of national conservativism (e.g., Senators Vance, Scott, Hawley, Johnson, Lee, Marshall, and Schmitt; Russell Vought, Ken Cuccinelli, Mark Meadows, Stephen Miller, Christoper Rufo, Peter Thiel, Vivek Ramaswamy, John Eastman, Julie Kelly, Paul Gottfried, John Yoo, Roger Kimball, Rod Dreher, Charlie Kirk, Balázs Orbán, and Tucker Carlson have spoken at national conservative meetings or signed its statement of principles [National Conservatism, 2024]). They advocate concentrated executive power capable of dismantling the left-liberal "Deep State" and creating a lasting hegemonic, Trumpian policy regime and culture. Project 2025 provides a detailed vision of the new national conservative order and governance mechanisms needed to bring it into being.

Project 2025 has "four pillars" – the "Presidential Personnel Database" of potential political appointees vetted for loyalty to Trump; online "Presidential Administration Academy" designed to prepare aspiring Trump political appointees for public service; a "180-Day Playbook" that drafts strategies to bring the new policy regime rapidly into being when Trump returns to power; and, most importantly, a 922 page, *Mandate for Leadership* (Dans & Groves, 2023) that details a raft of policy proposals and major organizational changes for government offices in a Trump second term. The *Mandate* often refers to the "next conservative president" but is framed explicitly for Trump. Heritage has formulated similar policy frameworks for other Republican presidential candidates since Reagan and contends that Trump embraced most of their first-term proposals. Plotting a much more radical transformation than earlier versions, Heritage designed the *Mandate* to avert political blockages to Trump's strongman aspirations. Trump neither had a direct hand in creation of Project 2025 nor has he embraced the entire "wish list" of proposals, which were drafted by Heritage in collaboration with 110 other hard-right organizations. Yet, his influence is transparent. Trump agrees with many of the *Mandate's* positions, some of which he has long held or has mentioned on the 2024 campaign trail and in his collection of policy plans, *Agenda47*. Trump and the *Mandate* both stress amassing presential power via executive orders. A CNN inquiry found that about 240 people had ties to Project 2025 and Trump. At least 140 former Trump Administration officials contributed directly to the project, including its Directors Paul Dans and Spencer Chretien. Twenty-eight of the *Mandate's* 38 authors worked in the earlier Trump regime – six were former Cabinet secretaries; four were ambassador nominees; and others enforced his immigration restrictions (Contorno 2024).

Neoconservative, Brookings senior scholar, Robert Kagan's (2023) *Washington Post* op-ed about the inevitability of dictatorship in a Trump second term stirred intense discussion about the Trumpian authoritarian drift, and opened way for later Democratic Party warnings about the threats to democracy posed by Project 2025 and Trumpism per se. A core policy goal stressed in the *Mandate* advocates dismantling the allegedly left-leaning U.S. civil service bureaucracy or "Deep State." A decisive means designed to achieve this end, the *Mandate* proposes reviving the "Schedule F" executive order that Trump made in late October 2020 shortly before election day and Biden rescinded early in his presidency. The *Mandate* holds that several generations of progressive civil servants, sharing strong employment protections

and lucrative benefit packages, hardened the New Deal era, left-liberal political culture of the federal bureaucracy into the Deep State, averting legislative control, weakening fatally executive power, and undercutting the collective will of the citizenry, who elect legislators and presidents to formulate policy and govern. Schedule F would have allowed Trump to remove up to an estimated 50,000 nonpartisan civil servants, construed to advocate, develop, or make public policy, and replace them with his loyalist political appointees. The *Mandate* advises that a second Trump regime must reinstate Schedule F to restore executive power able to forge, surveil, and bolster enforcement of the new conservative policy regime and ultimately "Save America." The Project 2025 Presidential Personnel Database lists potential Schedule F employees who have been vetted for loyalty to Trumpism and are prepared for appointment immediately after the former president's second inauguration. The *Mandate* advises close executive supervision of Schedule F employees to ensure they comply with Trump's political agenda. The July 1, 2024, Supreme Court (SCOTUS) "immunity decision," providing the president with extensive protection from prosecution, intensified fears that restoration of Schedule F would facilitate realization of the *Mandate's* plan to concentrate executive power and ultimately usher in a Trumpian dictatorship.

Artist: Drew Martin

The *Mandate* argues that an "unaccountable" liberal-left bureaucratic managerial class captured the Department of Justice (DOJ) and treats Trumpian proposals as potential violations of federal law. It claims that the Biden DOJ's "radical liberal agenda" – instituting and enforcing diversity, equality, and inclusion (DEI) rules and laws throughout government and wider society– is discriminatory and undercuts focus on the office's primary constitutional duties to protect public safety and insure rule of law. The Biden Administration, it claims, "weaponized" the DOJ and Federal Bureau of Investigation (FBI) to sabotage Trump's electoral chances and propagate Democratic Party lies about his supposed Russia collusion, deflect revelations about Hunter Biden's laptop, weaken enforcement of immigration law, and limit

free speech by monitoring alleged misinformation and disinformation and fake foreign influences in the social media.

The *Mandate* asserts that, in a second term, Trump must scuttle the DOJ Civil Rights Division DEI rules, transform the office so that it operates in accord with its constitutional duties, and institute firm executive control and supervision to ensure that it upholds the president's political agenda. The *Mandate's* impoverished vision of the DOJ mission diminishes the office's post-World War II role in defending civil rights and extending full citizenship to vulnerable minorities. Claims about the liberal bias and discriminatory practices of DEI offices and personnel appear throughout the *Mandate*, which advocates their elimination in every branch of government. Trump has declared on the 2024 campaign trail that he would use DOJ in a second term to jail his political enemies, election officials he believes cheated him, former staff, political appointees, and lawyers he deems disloyal, and even Google for displaying unflattering Trump stories. Trumps frequent comments about his intent to weaponize DOJ stoked fears about the *Mandate*plan to bind the office tightly to him and his political purposes in a second term.

Trump has stressed repeatedly and emphatically threats posed by the alleged pervasive criminality of undocumented immigrants and that he would employ militaristic methods to locate and deport up to 15 to 20 million of them in a second term. He declared on the campaign trail that nearly 14 thousand "illegal immigrant" murderers were "on the loose" in the U.S. The *Mandate* also advises mass deportation of undocumented immigrants. Trump proposed shifting funds from Homeland Security (DHS) to U.S. Immigration and Customs Enforcement (ICE) when he was president. The *Mandate* contends that that Left "wokeness" and Biden Administration laxity has allowed DHS to abandon a most vital facet of its mission – ensuring border security and repelling illegal immigration. The *Mandate* calls for completing the border wall, enforcing much more strictly immigration law, and improving related surveilling and policing methods. It also proposes revoking benefits given to unaccompanied, undocumented immigrant children and raising standards for asylum claims. The HMS secretary is already a presidential appointee, but the *Mandate* adds that the office should be bolstered by a large team of political appointees vetted by the Office of Presidential Personnel to ensure compliance with the executive agenda to drastically reduce the flow of undocumented immigrants. These recommendations are in tune with the *Mandate's* broader themes of centralizing executive power and eradicating DEI culture.

Echoing Trump's assertions that most environmental policy is a "scam," and that climate change is a "hoax," the *Mandate* holds that the related science, legislation, and management has been shaped by the "woke" left. Parallel to the DEI proposals, the *Mandate* advises eliminating or radically shifting the goals and practices of environmental protection and climate change policy offices, personnel, and regulations in all government agencies. The 2022 Inflation Reduction Act (IRA) provided billions for reducing greenhouse gas (GHG) emissions. The Biden Administration also passed wide ranging environmental regulatory rules and supported major facets of the Green New Deal, which the *Mandate* contends erodes rule of law and ensures extension of Deep State size, reach, and power. The *Mandate* asserts repeatedly

that the next conservative president must end Biden's "war on fossil fuel" and reinstate Trump's first term "energy dominance agenda," stressing nearly unlimited drilling on federal lands and maximal fossil fuel production and usage. It holds that ensuring provision of "inexpensive," "abundant," "reliable" fossil fuel will accelerate economic growth, improve the American quality of life, and foster U.S. geopolitical dominance. Trump has asserted repeatedly that "drill, baby, drill" and "energy dominance" are top priorities. He told potential doner oil and gas industry executives at a Mar-a-Lago dinner that he would treat their industry much better than Biden has and he would basically give them what they want. He asked the executives for a billion dollars in campaign contributions to help him win the 2024 presidential election and thereby ensure friendly fossil fuel industry government policies (Joselow & Dawsey, 2024). The *Mandate* details them.

The Trumpian energy dominance agenda proposed by the *Mandate* advises the opposite of the massive reduction of fossil fuel production and usage called for in the United Nations Framework on Convention on Climate Change (UNFCCC) brokered "Paris Agreement," which detailed policies to keep global surface temperatures from rising more than 2° Celsius (C) (3.6°Fahrenheit) above preindustrial levels to avert the most severe, irreversible impacts of climate change, and, if possible, no more than 1.5°C (2.7°F) to protect low-lying coastal regions and small island nations. Most climate scientists hold that continuing the current level of fossil fuel usage will exceed these targets and cause ecological catastrophe. A survey of top climate scientists by the journal *Nature* found over 60% of those interviewed said we would reach 3°C or more this century; 88% said the climate crisis has already begun; and nearly as many said they would experience catastrophic impacts in their lifetimes (Tolleffson, 2021). Current U.S. climate policies are not nearly sufficient to stem the escalating crisis – the U.S. under Biden has produced more oil annually than any country ever. Trump's energy dominance dgenda stresses raising fossil fuel production and usage far above today's levels, maximizing its export, and rescinding Biden Administration policies and subsidies aimed to reduce GHGs. The *Mandate's* plan to revive it would propel us on a nearly certain pathway to irreversible "Hothouse Earth."

A report by Heritage analysts holds that U.S. elimination of GHGs will have miniscule effect on global temperatures this century, and pursuit of the U.N. targets would devastate domestic manufacturing, result in huge employment losses, shrink incomes, and cause electricity costs to soar (Dayaratina, Tubb, & Kreutzer 2022). The *Mandate* does not engage climate science theories or research – it simply presumes that, if climate change is occurring, its effects are minor and manageable and will remain that way in the future. It asserts that current climate policy is a "fanatical" left-wing political agenda. The *Mandate* urges U.S. withdrawal from the UNFCCC and Paris Agreement. It also advises the next Trump Administration to erase Biden's climate change rules and guidelines from all government manuals, documents, and agendas.

The *Mandate* holds that the left has made the Environmental Protection Agency (EPA) into an all-powerful regulator, unresponsive to local needs. It contends that the EPA's coercive imposition of rarefied standards requiring a shift from oil, coal, and natural gas to "unreliable renewables" kills jobs and economic growth and expands and empowers Deep State

bureaucracy. Climate activists that dominate the EPA, the *Mandate* asserts, increase bureaucratic interference throughout the economy, without congressional support. The *Mandate* contends that exaggerated claims about climate change impacts and consequent regulatory overreach erode property rights and increase prices across-the-board. It advises the next Trump Administration to eliminate the Offices of Enforcement and Compliance Assistance, Environmental Justice and External Civil Rights, and Public Engagement and Environmental Education. It also advises that Trump should issue a "Day 1" executive order to assess, reorganize, and downsize the EPA: the overhaul must be executed by loyal political appointees identified, vetted, and ready to serve before Trump takes office. The *Mandate* holds that EPA reportage rules and regulation of GHGs and other types of pollution are far too stringent and are based on politically manipulated junk science.

The *Mandate* contends that Biden Administration fuel economy standards are so strict that they cannot be met by internal-combustion engine (ICE) vehicles. It argues that these EPA policies were designed to force U.S. consumers to shift to electronic vehicles (EVs), even though they prefer ICE vehicles. The *Mandate* asserts that Biden made the transition to EVs a primary goal of the Department of Transportation and supported it with huge government subsidies. The *Mandate* claims that the proposed transition and consequent policies undercut ICE production – the foundation of the US industrial base, enormous job provider, and driver of general economic growth – and thereby restrict consumer choices, increase unemployment, and incentivize consumers to keep lower priced, old, unsafe, polluting cars on the road. The *Mandate* also states that the proposed shift would increase dependence on Chinese rare earth minerals needed for EV batteries. The *Mandate* concludes that fuel economy limits and EV transition would not lower global temperatures. It advises a second Trump administration to increase vehicle milage limits and eliminate subsidies for a transition to EVs. Trump asserts that he would stop the phase out of ICEs and subsidies for the EV transition and impose a 200% tariff on cheap Chinese EV impots.

A Trumpian Department of Interior would cut restrictions on lease sales for both onshore and offshore oil production the *Mandate* argues. It calls for removing burdensome limits on mining in coal producing states, eliminating restrictive rules for Bureau of Land Management waste management, and opening much more Alaska public land to oil and gas production. The *Mandate* advises removing restrictive Endangered Species Act habitat exclusions and ceasing employment of species specialists to research, advise, and enforce the various facets of this act, because their ideological biases and self-interest favor species that they study. It also asserts that the next Trump Administration must rescind the Biden Administration "30×30" initiative, which calls for reserving at least 30% of U.S. lands and waters for conservation. The *Mandate* calls for revival of Trump's efforts to downsize protected areas of National Monuments and for repeal of the 1906 Antiquities Act that allows presidents to provide emergency protections for scenic rivers, wilderness, endangered species, and unique natural places. It proposes scaling back the National Environmental Policy Act, which requires federal agencies to assess environmental and socioeconomic impacts of projects on federal lands or publicly owned facilities before issuing permits. The *Mandate* advises more antienvironmental moves than can be summarized here, but this relatively detailed discussion offers insight into

draconian measures suffusing the document.

Project 2025 proposes a radical transformation of government, concentrating executive power, altering substantially or reversing department missions, reducing resources of offices or shutting them down, and ensuring appointee lockstep. Its proposals about religion, family, education, and gender manifest the same convergence of Trumpism and national conservatism as the topics discussed above in this essay. The *Mandate* does not engage environmental science, equates it with left-wing ideology, and says nothing about current scientifically supported, highly publicized ecological damages due largely to climate change (e.g., worsening heat waves, accelerating sea level rise, and increasingly severe floods and forest fires). This insouciant approach to enormously dangerous problems illuminates a postfactual sensibility expressed throughout the *Mandate*. Overcoming the so-called Deep State's regulatory regime and substituting religiously justified strongman decision for the practices of civil servants and experts overrule and preclude the sober inquiry about factual matters needed for informed democratic deliberation. Enormously reckless and transparent in the case of climate change, this "post-truth" attitude shapes what Yale historian Tim Snyder (2021) describes as a "prefascist" climate in which substituting pertinent facts with misinformation and spectacle open way for rule by authoritarian strongmen and concentrated wealth. Project 2025 maps a path toward inward-oriented, nationalist capitalism sans liberal democracy, which could eventuate in, if our former "post-truth president" is elected again, the type of illiberal, corrupt, nepotistic, crony capitalist regime that has emerged under Orbán's rule in Hungrary or possibly even something worse.

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Triumph of the Vanguard

By | 2024: Vol. 23, No. 3

Not often is an author forced to reevaluate the conclusions of his own book days after its final submission, yet that is exactly what happened to me in the winter of 2021.

My book, *Far-Right Vanguard: The Radical Roots of Modern Conservatism*, came out in October of that year, but I had completed the writing nearly a year beforehand. I turned in the final copy to my editor, the brilliant Bob Lockhart, on January 4, 2021. As a first time author, hitting send on that email was both exhilarating and exhausting. The project I had worked on for years was now out of my hands.

Two days later was January 6, the planned date of a "big protest" that Donald Trump had promised his Twitter followers would "be wild!" I remember glancing at my phone, seeing the images flooding Twitter, and sprinting up the stairs to grab my wife, "There's a mob storming the Capitol!" We spent the next few hours glued to the television, watching an attempted coup unfold before our eyes. Harrowing images and videos emerged in the following hours and days. An erected gallows. Chants of "Hang Mike Pence" puncturing the winter air. Crowds bludgeoning police officers with ad-hoc weaponry. The presence of numerous right-wing paramilitary organizations. It was, without a doubt, one of America's darkest moments since the Civil War.

Even with all of this happening, or perhaps *especially* because all of this was happening, I kept thinking about the last line of my book: "Whether or not America's illiberal turn is an ephemeral shock or a sign of dark times ahead, one thing is certain: the mid-century far right laid the foundation for the acerbic conservatism coursing throughout the country today." When I wrote those words, it felt right to leave the book on a bit of a cliffhanger. America, perched at a fork in the road.

In the years since January 6, the dark times feel close enough to touch. Democracy appears even more imperiled. The Republican Party has been fully subsumed by Donald Trump's cult of personality. Trump acolytes and allies line the halls of Congress, broadcast on news stations and podcasts, and control powerful social media networks. Despite the efforts of establishment Republicans to maintain a grip on the party, Trump's particular brand of populist authoritarianism still energizes the conservative base. At this point, even if Trump loses in 2024, the illiberal fever on the right shows no signs of breaking.

* * *

In the years since *Far-Right Vanguard* came out, the literature on the far right has exploded. Scholars have repeatedly found that the radicalism bubbling up in our modern era stems from a deep historical reservoir. As historian Steven Hahn recently wrote, "[O]ur present-day reckoning with the rise of a militant and illiberal set of movements has lengthy and constantly ramifying roots." Trump is not an aberration, but a culmination.

The United States was built upon an edifice of minoritarian rule, and many of those illiberal structures persist. The Electoral College and intense gerrymandering, especially in GOP-led states, ensure that Republican politicians have a built-in electoral advantage. The Senate's equal representation means less populated, rural states have equal, if not more, power than larger, more populated states. The Supreme Court remains essentially untouchable–no justice has ever been removed from office–even in the face of open corruption. The infamous Citizens United case allowed a deluge of money to flood American elections, putting a giant money bag on the electoral scale in favor of the wealthy and powerful. And, to add insult to injury, the Supreme Court gutted key portions of the 1965 Votings Rights Act, which has allowed individual states to further restrict access to the ballot.

Taking advantage of these illiberal structures, conservatives are attempting to set up a nationwide electoral apartheid. Numerous GOP-led states, especially in the South, have implemented a variety of policies to suppress voting rights. It's a very Calhounian idea – preserve the status quo by keeping the wrong people from accessing the levers of power. When conservatives shout, "We're a republic, not a democracy," this is the logical conclusion: they believe some votes should just count more than others. In effect, conservatives are trying to stretch the illiberal authoritarianism of the Jim Crow South across the entire nation.

Trump has eagerly exploited America's illiberal governing structures. Even before the mob stormed the Capitol on January 6, Trump's team executed multiple strategies to subvert

democracy. His campaign filed numerous lawsuits alleging, in various ways, that the election had been stolen. There were claims of faulty voting machines, fraudulent votes, and outright bribery. Dozens of lawsuits, in all. These cases were each shot down, in one court after another. On January 2, Trump telephoned Brad Raffensperger, who was then serving as Georgia's Secretary of State. He pressured Raffensperger to "find 11,780 votes," hoping to tip the Peach State into Trump's electoral column. Trump would later describe this phone call, a brazen attempt at electoral interference, as "perfect." As the electoral vote count neared, attorney John Eastman, the former director of the far-right Claremont Institute's Center for Constitutional Jurisprudence, developed a scheme to replace Joe Biden electors with fabricated slates of Trump electors. Mike Pence, to his credit, refused to go along with the plan and instead rightfully certified the election in Biden's favor.

For a brief, shining moment in the days after January 6, it looked like the Republican Party might do the right thing. A tangible bipartisan urgency to impeach and remove Donald Trump from office coalesced. The House of Representatives voted in favor of impeachment, 222-197, with ten Republicans joining their Democratic colleagues. The Senate, however, failed to reach the supermajority required to remove Trump from office, yet another example of minoritarian rule preventing justice from being served. A handful of Republican Senators voted in favor of removal, making themselves targets for Trump's ire. Mitch McConnell, the Republican stalwart and Senate Minority Leader, had only days earlier blamed Trump for the January 6 riot. He voted against removal anyway.

Artist: Drew Martin

The whole episode was a travesty of leadership and a remarkable revelation of cowardice within Republican ranks. If parties are the gatekeepers of political normalcy, GOP leaders abandoned their post years ago. The message was clear: anti-democratic actions are permissible so long as they further conservative ends.

The Republican Party is now in the clutches of Trump's MAGA movement. After a few years of internecine warfare, the far right emerged triumphant. Trump-skeptical conservatives got bullied out of the Party (see: Ryan, Paul), found themselves facing far-right primary challengers, or kept their mouths shut to save their political careers. America's asymmetrical political polarization means the Republicans are ever more reliant upon turning out their hardcore supporters, and thus sitting GOP politicians pander to the base and reject extremism at their own peril.

We are hurtling toward another election, and the fragility of American democracy is already on display. Even before a single vote is cast in the 2024 election, Trump's team has been busy filing a barrage of lawsuits in key swing states, laying the legal groundwork for challenging the outcome of the election. Many of these lawsuits are based on conspiracies about voter fraud or faulty voting machines, and sure, the Democrats will fight them in the courts, but recent evidence shows that Supreme Court Chief Justice John Roberts put his thumb on the scale for Trump once already. A scenario exists where the Roberts court Bush-v-Gores Trump right back into the Oval Office. A redux of 2016 is also possible, where Trump loses the popular vote by a wide margin while squeaking out a slim Electoral College victory, perhaps aided by the electioneering at the state level. America's democratic fabric is brittle, indeed.

* * *

If there's a relative consensus on the far right's importance to the conservative movement, one issue remains contentious: What, exactly, do we call Donald Trump? While arguing about appropriate definitions might seem like an act of academic navel gazing, words have power.

There are many labels one can apply to Trump. Before the election of 2016, historian George H. Nash described Trump as a "nationalist-populist," though this phrasing avoided Trump's obvious authoritarian inclinations. Recent definitional debates have obsessed over a particular question: is Trump a fascist? Some scholars argued that using the word fascist risked framing Trump as a scapegoat, an anomaly, rather than a product of American political culture. After all, as Samuel Moyn pointed out, right-wing authoritarianism has a deep history in the United States, and Trump was relatively constrained by America's governing structures.

However, January 6 altered the calculus for many scholars, myself included. While watching the mob storm the Capitol, I sent a single-line text to my uncle: "The fascists are trying to take over." Five days later, Robert Paxton, an emeritus professor at Columbia and noted fascism expert, wrote, "[Trump's] open encouragement of civic violence to overturn an election crosses a red line. The label now seems not just acceptable but necessary." Similarly, Yale University professor Timothy Snyder took to the pages of the *New York Times* to declare, "Trump is a fascist." In this telling, the history of fascist and reactionary nativist movements within the United States underscores, rather than dismisses, Trump's fascist bona fides. "In the end," wrote scholar Sarah Churchwell, "it matters very little if Trump is a fascist in his heart if he's a fascist in his actions."

A tone of authoritarian illiberalism permeates Trump's rhetoric. Recall that Trump proclaimed, "I alone can fix it," at the 2016 Republican National Convention. More recently, at a Turning Point Action rally, Trump said, if he wins in 2024, "We'll have it fixed so good, you're not gonna have to vote." This is an idea he has trotted out again and again. In the most charitable interpretation, Trump means he will achieve everything that his supporters desire within a second term. But the other, arguably more likely interpretation given Trump's statements and actions, is that Trump and the Republican Party would dismantle democratic institutions until but a vestige remained. After all, this is the same man who claimed he had "every right" to interfere with the election and called for the "termination of all rules, regulations, and articles, even those found in the Constitution." Even the country's foundational documents and institutions are not safe from the wrath of Trump scorned.

Which begs the question: what exactly are conservatives conserving? After all, David Azerrad, a professor at Hillsdale College who once held a leadership position at the Heritage Foundation, proudly told listeners on *The Federalist* podcast, "We're not in the business of conserving. We're in the business of mounting a counter-revolution." This statement gets to the core of the conservative political culture. In the conservative mind, there is a constant Manichean battle for the soul of America. It is not just about defending pre-existing hierarchies, although that remains a critical component. At its core, modern conservatism contains a spirit of revanchism, a desire to reclaim America from a perceived culture of decadence and decay.

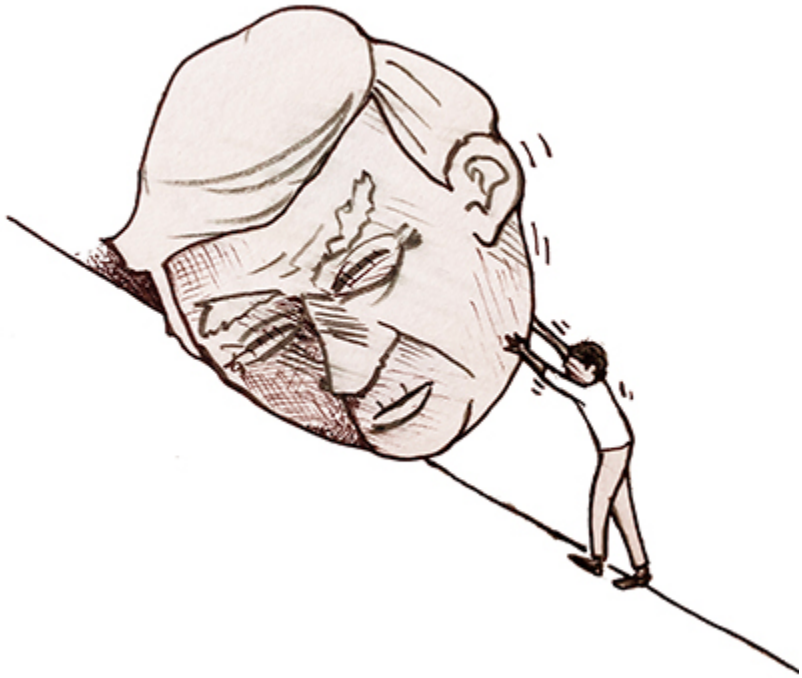
In many ways, the definitional debate revolves around the particular political *culture* Trump represents. Trump lacks firm ideological coherence in a traditional sense. He is not sitting at home dutifully reading Hayek and Friedman or poring over the latest edition of *National Review*. He runs on carnival-barker instinct. If a bit fails to energize the crowd, he pivots to the red meat of aggrievement, conspiracies, and violence. At a rally in Claremont, New Hampshire, Trump proclaimed, "2024 is our final battle . . . We will root out the communists, Marxists, fascists, and the radical-left thugs that live like vermin within the confines of our country." It is not a stretch to say that this sort of linguistic violence, once confined to the pages of far-right magazines and brochures, has never been uttered by a presidential nominee in the modern era. Yet it is one of Trump's defining characteristics.

In Trump's world, there is always an "other" to blame. He encouraged "Lock Her Up" chants against Hillary Clinton in 2016, threatened Biden with the possibility of future indictments, and even said people should be jailed for criticizing the Supreme Court. Just recently Trump suggested that unleashing state violence upon the civilian population during "one really violent day" would end property crime. The last suggestion, it is worth noting, is remarkably similar to Senator Tom Cotton's call to "send in the troops" and violently put down Black Lives Matter protests. This is a key part of Trump's appeal to his base: a culture of vengeance. Put Trump in power, and he will enact violence upon your enemies. "I am your warrior, I am your justice" Trump told rally goers in Waco, Texas, of all places. "For those who have been wronged and betrayed . . . I am your retribution."

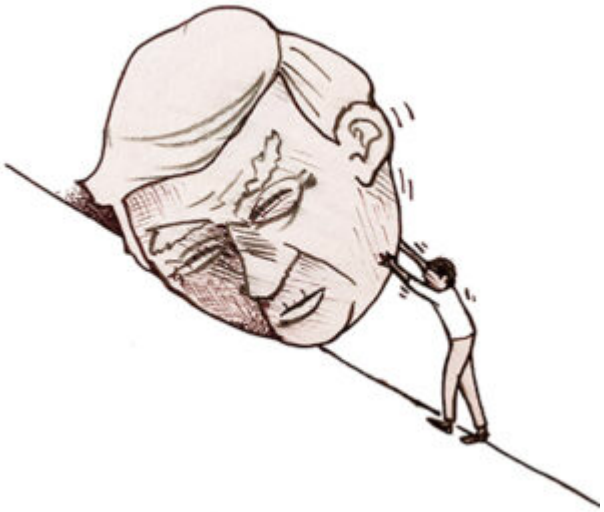
Back in 2018, David Frum wrote, “If conservatives become convinced that they cannot win democratically, they will not abandon conservatism, they will reject democracy.” Frum is correct, but what he failed to note is that the illiberalism of our present moment emerged from deep roots that permeate the entire conservative movement. A culture of conspiracy, violence, white nationalism, and authoritarianism–such is the natural end point for right-wing populism. If I were to rewrite my conclusion today, I would argue that Trump is not an ephemeral shock, but a culmination. The far-right vanguard emerged triumphant, and the darkness creeping on the horizon edges ever closer.

My Trump

By | 2024: Vol. 23, No. 3



I grew up in New Jersey and working in NYC, then I move to NY-Long Island with my wife to raise our kids. This was in the eighties and early nineties. Depending on whether I used a bus or the train, I had to go through terminals. I also walked through subway stations, in NYC, where there are kiosks at every station as well. To my dismay I realized that Trump has been in the horizon of my consciousness since I was very young. Every time I walked through Penn Station, Grand Central or the Port Authority, his face was on rag, a tabloid. Most prominent was the *National Enquirer* [sic], which was everywhere in NYC. I never bought any of these salacious and bombastic tabloids. I understood the difference between sensationalism and journalism. So, I would stop over at my favorite vendor at Penn Station and pick up Harper's or even the New Yorker. Occasionally, I would buy the *New York Times*, although I had a budget. In any event, I have known Trump, or about him, since I was young. His picture and name were ubiquitous. I guess we aged together. From what I gather at the time is that he was a Mr. Gigolo and allegedly a very, very, wealthy real state grifter. I never read the tabloids, and thus, I did not know what the exposure and urgency was about. None of the credible sources I read at the time mentioned him. Yet, I had to see his face every day, practically. Now that we know about Trump's deal with the editor of the *National Enquirer*, I come to understand why he was in my face all the time as I was going to school or work. Trump's face and his antics and so on sold the tabloids. This is now evidenced in his NYC trial.



Artist: Drew Martin

This weighs heavy on my mind. Why has this awful person been in my life for now close to forty years? I was fortunate to move to Europe for a year and then to California, where we didn't have the tabloid culture, or none that I paid attention too. I was too busy raising a family and trying to be a good citizen. In what follows I want to address three issues that haunt me because of this phantasm that has haunted my life: First, I want discuss Trump, the person; second, I want to discuss the more important question why him, or rather the whereof of Trumpism, in this section I will address the issue of MAGANISM, and then, finally I want to briefly discuss how the new media enabled Trump and Trumpism.

Trump the Person

Trump to the chagrin of some is a person, and a citizen in and of the US. He is vile, but I will not demonize him. Nor should we. Still, from all the evidence, confessions from former employees, most of them, in fact, he is an awful person. But awful persons are still persons. In a publish interview with philosopher George Yancy of Emory University, I made the remark that Trump has, or his name, has exhausted the adjective for awfulness. Michael Cohen captured him well, because he was his "handler" and went to prison for crimes he committed on behalf of Trump. Trump is narcissistic, malicious, vindictive, uncurious, homophobic, anti-immigrant, anti-Latinos, etc., and everything one can be anti, he has been anti. Let me be clear. Anti-rhetoric (anti-LGTB, anti-Immigrants, anti-Women's reproductive freedom, and so on. It is too sad to list everything that is on the chopping block) sells lucratively well in the US, and evidently got him elected. Trump is mendacious. He is a fabricator. He will say anything, the more outrageous the better, to get attention, and widen the press bandwidth. Trump is a relentless self-promoter. He is intoxicated with his image, and press image. One has to speculate whether he has a self or a subjective sense of self, that is not simply a calculation on how he can remain on the covers of magazines, tabloids, or on the web, and be on yahoo.com everyday (Yuk).

At some point Trump used to be handsome, in that kind of white blandness. I must confess I don't have any animus towards his background, or anyone's. After all, I am an immigrant. In one of my many conference trips, after I moved to California, late at night I could not sleep, so I began to flip through channels. Then I came upon the *Apprentice* haphazardly. I watched it briefly because I recognized Trump. My takeaway from the few minutes I watched was that he reveled in yelling "You are fired." I gathered that entrepreneurs set out to build a business, which failed. And that the panel was to give them "constructive" feedback. I was baffled by the "You are Fired" Dismissal. This was humiliation and not educational or constructive. I wondered what this form of intellectual and emotional torture was about. I think Trump learned from the *Apprentice* the power of derision, derogation and insultation. Saying for a long time: You are fired! Must go to your head. So, he was on the New York City tabloids every day, or week. Then he was on TV, and then he was on the radio all over the stations. This is before Fox. I hazard to speculate that he was intoxicated, by now, in the nineties, with this Potemkin Media projection of himself, which he assiduously cultivated. Let me be clear, as he manipulated the media.

Before I turn to the question and challenges of Trumpism, I want to discuss Trump's rhetorical and bodily, or embodied, presence. My nascent political consciousness grew under: Carter, Reagan, Bush Sr. Clinton, Bush Jr. Barack Obama, and then there was the speed bump of Trump. WTF! I remember Carter's gentle and folksy accent and his generous demeanor. Although I dislike Reagan's policies, and I did not have an aversion to him as either a president or a person, he achieved a lot, and not all for the good (Central America, if anyone remembers, and the Contras). But he was not on our media all the time. Besides, he was handsome and knew how to deliver a great speech. Bush Sr. is a mist. But he had an amicable voice and he always looked calmed, as CIA agents or directors must project. He was reassuring in those times of turmoil. Now, Clinton was the master rhetorician. He had a pleasant face, always smiled, and got things done. His affair with one of his aids did not diminish my appreciation for what he had accomplished, although, for sure, I can't make sense of it, namely why have sex with one of his, i.e. US, employees. Now, Bush Jr. was interesting to me. He had no qualifications. Every president I lived under up to that point had been a governor, or senator, or some sort of public servant. Yet, he was pleasant. He had a funny voice. When he gave press conferences it seemed as though he did not know what he was supposed to say. Then, we get to Obama. Here we faced a gorgeous, athletic, and tall young black man who was articulate and had spent his life working for Chicagoans. He is extremely articulate. His voice is both soothing and urging. His speeches, which now I have in my library and many which I heard and read are historic speeches in American English. They are at the level of the speeches of J.F. Kennedy and Abe Lincoln. I have this book in my library titled *Great Presidential Speeches*, and the last speech in the book is from Obama. I speculate or wager than in future editions of this book there will be speeches by Biden, but none from Trump. Let me just flag a contrast between Obama's speech on the killing of Bin Laden, and Trump's speech on the killing of Abu Bakr al-Baghdadi. Obama's speech was about how our intelligence and covert forces had infiltrate and located Bin Laden's hideout. Here was an avowed enemy of the US taken care off, an euphemism, by our military forces and intelligence community. Trumps speech on Abu Bakr al-Baghdadi, was one of the worst and most crass things I have heard from any president. I will

not meme his awful speech, which is a disgrace to the rule of law doctrine that our military lives and operates under. There is no speech by Trump that will be remembered or included in future editions of such a book. Why? I will return to that question at the end.

The ancients had a science called physiognomy; Aristotle wrote a treatise on it, titled *Physiognomics*. This "science" was eventually challenged when it morphed into craniology (see Stephen Jay Gould's amazing book on this transformation). Craniology was one of the pseudo sciences of Western biological racism. Still, without endorsing the racial biologistic aims of the pseudo-science, I think there is some truth to what it was trying to point at, namely that a face is a window into the soul. Recently I wrote a long poem titled "Face" and it opens this way:

> It has been said that eyes are windows into the soul
>
> The face is a portrait of a personality
>
> Dorian Gray's Portrait haunts me
>
> Someone who sells his soul to remain
>
> As his portrait, forever young.
>
> Faces are the geology of a life
>
> A road map through a history
>
> A voyage into a unique life path

The drift of this digression is that I want us to think about Trump's face, body, and gestures. Since I am writing about "My Trump," I want to underscore his transformation from an affable gigolo and bon vivant, into a mean, vengeful, petulant, angry child. His face is the least attractive of any of our presidents. It would be interesting to put together a collage of pictures of our presidents. There is something visceral and violent about the way Trump grimaces and talks. He does not talk. He yells. He is incessantly gesticulating with his "small hands." He points at people as though he is shooting them or saying: "you are in trouble," or some other act of unchecked plenopotency. His face is always a grimace. He opens his mouth wide. He bares his teeth, bleached white, clearly, always. He contorts his face, always into a scowl. It projects anger, disdain, derision, and contempt. This is not a comforting face, but a war face. His face reminds me of an angry bear or an angry lion. When I lived in Europe people would say: "You Americans are always smiling. You all seem to have amazing dental care." We do, in fact. But Trump's face is not the face of America that the world learned to appreciate and trust.

As someone who aspires to be a good citizen, I educated myself to detect charlatans, grifters, or what the Europeans call "apariticks." (???), which in my translation means "conduit of power and control." Part of my autodidactic education into grifter and potential dictators was to read: Victor Klemperer, William Shirer, Albert Speer, Primo Levi, and many more. Klemperer was

lighting from the skies of truth. He wrote his diaries judiciously about what Hitler and Hitlerianism was doing to Germany from within. He also wrote an amazing book titled "LTI: Lingua Terti Emperi," which I hazard to translate as "The Language (Lingo) of the Third Empire." Why read Speer? His *Spandau Diaries* are some of the most moving things I have read. He is brutally honest about how he fell for Hitler. He confesses to his, Speer's, narcissism. He wanted to be known as the next great architect. I admire his lucidity and self-assessment. The grand architectural visions he had were authoritarian and oppressive. Reading his diaries is deeply moving and morally pedagogical, coming from the so-called "Hitler's architect." However, Klemperer has been my Socrates. He was a historian turned linguist of totalitarian language. One major take away of Klemperer's LTI is that autocrats and would be authoritarians denuded language, boil it down to slogans, one slogan: MAGA. I am not being hyperbolic. Trump and Trumpism is the most monosyllabical political language to emerge since McCarthy.

The first sentence of the next stanza in the poem I quoted above, reads:" A face is a tectonic plate." The US has no face, or rather it has many faces, all very different. It is beautiful to gaze upon those faces. Now, I would say a "language is a tectonic plate." More important than the face. A language, the tone of the language, the semantics and phonetics of a language are seismographs of a nation, a people. This is why we have accents. An accent is the sound of a people, the prosody of a rhythm of collective life. When you are yelling you don't have an accent. When you are yelling you are turning our language into a projectile. Yelling is indeed a form of language. But it does not communicate meaning, only anger or pure affect. Trumps' accent is viciousness and revenge. He does not communicate. He is a Molotov cocktail of affect. It demeans and infantilizes.

Trumpism

The narcissism, crudeness, and vileness of one may be partially explained as a personality disorder of that individual. However, when we begin to ask about Trumpism as a national phenomenon, we must think harder and deeper. In this section I want to address what I take to be key elements, currents and aspects of US politics that synergized with Trump, or rather, that Trump tapped into those wells of anger, resentment, and vulgarity. I want to lay out six elements and currents of US politics; but I am sure there are more.

First. There is what I would call anti-Government politics. This goes back to Reagan, but probably Nixon. This is the politics that says: "the problem with government is government" (Thatcher), echoed by Reagan. The refrain of this form of politics is to get the government "off my back." Here, the assumption is that the government is the enemy of the people. Another refrain of this type of politics loves the other slogan: "drain the swamp." This is a reference to Washington DC, which in fact used to be a swamp, before it was drained by Lincoln (check), so that the majestic Mall would be built over the years. The swamp is a metonym for our government. One can note two important aspects of this anti-Government politics. First, that it is an anti-Government Government politics. While it despises government, it nonetheless wants to have the reins of government. In the last few years, we have seen plenty of this. For

instance, in the theatrics about not approving the Federal Budget, while these anti-Government politicians angle to get some of that money for their districts. The other is that our well-financed and stocked government can respond to the many disasters that befall our citizens: floods, mud-slides, tornadoes, draughts. It is government that has made this a great nation. Have you ever driven across the US from New York to California? We have an incredible highway system, which was built by government. What about vaccines? What about student loans, and so on. I filed my taxes in March, but by early April I had a tax return check. That is the power of government working. Government has always worked on behalf of all Americans.

Second. Related to the prior point, there is what I call the "idolatry" of guns. Anti-government politics goes with the fetishism of guns. You better be ready to defend yourself against the government. It says: "Don't tread on me," I think is the expression. We have a nation armed to the teeth, compared with other democratic and civilized nations. We are also the nation with the most mass shootings because we have such lax gun laws. There are gun shows around where I live, because I suspect, it is mostly rural. I can go to one of those shows and buy a gun. I have not tried to do that. I have been around guns, big machines guns and rifles, and machetes. I sometimes think that I would want to own a small gun; maybe a revolver, and then I feel a revulsion. Would I ever use it? No, of course not. The thought of having a gun in my house revolts me. Guns are an ideology that makes money and promotes the idea that we need to be ready to defend ourselves from the government.

Third. The anti-government politics of Trumpism is permeated by resentment and grudge. This type of politics cultivates the art of resentment; namely someone has done you or the nation wrong. Trump, and Trumpists, manipulate this unique type of emotion, which is based on the idea that someone has done some alleged harm, very adroitly. The idea is to resent big government, the democrats, the Blacks, the Latinos the Muslims, the gays and LGTB people, and so on. Someone else has allegedly done you some bad. From there, holding a grudge is just a step away. But mind the gap. A grudge is when you resent someone so deeply that you will harbor a deep animus towards and against them. According to the Oxford English Dictionary, grudge is both a noun and a transitive verb. As a verb, it means not to "give, grant, or allow." That is, not to give forgiveness, to grant grace, to allow repair. Even Achilles, seeing his friends and troops suffer and be decimated by the Trojans, lets go of his grudge against Agamemnon. He fought valiantly against Hector and the Trojans. And died with his heart light and full of glory.

Fourth. A related aspect of Trumpism is what I call the ideology of "someone unworthy is getting my pie, or my piece of the pie." Now, this is a racist, sexist, and ethnocentric ideology because it presupposes that there are the worthy and the unworthy, those who earned it and those that are free riders. People have used those words with me in conversations in bars. The unworthy are people on welfare, Medicare, disabled peoples, Native Americans, refugees, and above all Latinos and Latin American immigrants, mostly Mexicans. I grew up on welfare, which I did not realize at the time. My mother would take us once a month to do a shopping and she used bills that looked very different. I think they were called food coupons. We also used to get a cube of cheese, a two-pound piece of cheddar cheese once a month. Recently I

found that this was due to Carter (check), who wanted to help American dairy farmers by encouraging them to produce more milk. He provided huge subsidies. The consequence was that there so much milk that some of it had to be turned into cheese and store in caves, large enough to hold all those cubes of cheese. A politics that agitates about the worthy and the unworthy is prolegomena to a politics of detention camps, expulsions, and extraditions.

Fifth. Trumpism trades is the most phantasmagoric politics, the politics of nostalgia. This is not politics, but antipolitics for politics is about what we can create, and thus it is prospective, not regressive, or retroactive. The slogan of MAGA is so outrageous as to be non-sensical: when was the US great? And most importantly for whom? This type of politics invites us to inhabit a memory that most of us can't share. Does it mean: when the US was mired in apartheid, Vietnam, Central America, when Black American were lynched, and there were signs that said: "Whites only," and "No dogs and Mexican allowed," when gay men were beaten and dragged by pick-up trucks? I, for one, I am glad that America is gone and gone for good. I have read that nostalgia can turn into a psychic malady. This is a major trope of European fiction: the nostalgic, who is unable to inhabit the present. Nonetheless, nostalgia is important for our moral and mental well-being. It reminds us of those times when we had the sun was shining on our faces and someone loved us or did something gratuitous and generous. Nostalgia reminds us of a past. But for a nation, to inhabit a past, (which past and whose?), is probably not conducive to a healthy and effective politics. Only in Norman Rockwell paintings does MAGA exist.

Sixth. And perhaps for the moment, Trumpism promotes what I will call "pugilist politics." This is a politics as confrontation. It is a politics of the Roman colosseum, i.e. who can inflict the most damage and shame. The colosseum was a theater of cruelty, ferocity, and death. This type of politics thinks of politics as a spectacle of anger, might and violence. This means it is also a politics of entertainment. It is not a politics of governance, which involves compromise, mutual respect and planning together. Above all, I wager, it is a politics that infantilizes and renders citizens passive, just as a "Three Stooges" episode makes one wonder how and why? It deprives us, citizens, of a language of deliberation, compromise, and mutual respect. This type of politics has been potentiated by the transformation of media, the emergence of talk show hosts, targeted channels, websites, and then we don't have a public sphere of public deliberation, but a myriad of media microspheres all trying to be as outrageous as they can, to get the "viewers" and "likes." I am not trying to suggest that "pugilist politics" is a phenomenon of the new social media. This would be a form of technological determinism. All technology is multi-stable, i.e. we do not know what it may become. Many years ago, more than three decades ago, when I lived in San Francisco, where my children were born, I went to an Arts Cinema to watch a movie. The title was "The Gods must be Crazy" (1980). It involved an African and his tribe having to deal with things falling from the sky: TVS, radios, bottles, etc. When I first saw it, I reacted negatively, because it implied Africans do not know what those gadgets are. They are so primitive they don't know what a bottle is, was the message. Then, I began to think about the deeper meaning of the movie: careful what falls from the skies in your backyard, or your desk, or your purse, or back pocket.

The Apotheosis of Donald Trump

By | 2024: Vol. 23, No. 3

It might seem curious that Trump spent a valuable Sunday of campaign time before the election at a rally the middle of a city and a state that he has no chance of winning. MAGA Republicanism has never been about building out a broad coalition so much solidifying a hard kernel of passionate anger and devotion. But in an election this close, which will likely be decided by hair-thin margins in a handful of states, a foray into New York City might seem like a waste of a precious time. The Trump campaign has in fact spent comparatively little time or money persuading undecided voters to support him or prevailing on hesitant Republicans to back the party's candidate, let alone making sure that voters to get to the polls. Rather, they have invited the MAGA faithful into an alternate world where Trump has already won, and that it is only the deceitful machinations of the Democratic Party that stand between him and the Oval Office.

Artist: Pedro Camargo

In some ways the sensory power of patriots looking out from their seats seeing themselves in each other across the enormous venue bathed in soft red, white, and blue lighting, losing the sound of their own voices in the collective roar in "The World's Most Famous Arena" told the story of their hero's challenges and certain triumph as much as any words could. A number of commentators have drawn a parallel to the infamous American Nazi Party rally held there in 1939, or to George Wallace's third-party presidential campaign event on the eve of the 1968 election. But we could also look back to 1874, when the venue was first leased to P.T. Barnum, who built a career promoting hoaxes and providing circus entertainment. Or we could look forward to 1985 when the Garden was host to the first Wrestlemania, a staged celebrity combat event sold not just on the suspension of disbelief, but the thrilling pleasure of make-believe.

Thrilling make-believe stories are the very stuff of Trumpism. And this seems to be exactly what the campaign is betting on should their candidate come up short in the election. It has already long laid the groundwork for discrediting election results both in the courts and on the streets.

The story of Trump as an outsider who prevails against the forces of corruption arrayed against him has long been part of his political persona. What better way to make this point than to return to the city where he has been indicted, convicted, sued, silenced, and fined. After all, as it says right there in the $80 Holy Bibles Trump he is hawking, prophets are never honored in their own hometowns. And to be sure, many people at the rally itself were not denizens of New York City anyway. A great number of red-hatted devotees who had come from New Jersey, Long Island and other parts of the region. Organized groups were bussed in or flew from as far away as Los Angeles. Nevertheless, they cheered wildly when As Don Jr strode to the podium to the heavy guitar strains of Ted Nugent's *Stranglehold* to yell "The King of New York is back to reclaim the city that he built!"

Along the racist and misogynist jokes, lurid descriptions of immigrant violence and murder, and literal castration complex driven by fears of a dark trans agenda; the main speakers of the day were there to attest to the mythic trials of their hero and his miraculous overcoming at every turn. Rudy Giuliani came to the stage early in the day, his visage now a permanent bulldog's scowl, and shouted that Trump "answered the question of who can lead us without a doubt out of this morass of socialism, fascism, and communism," because "on July 13th of this year, after he came this close to death . . . within seconds he got up. Did he run away? Did he hide? Did he crawl? Did he appease the people who were attacking him?" "No!" screamed the audience in response to each rhetorical query. "He stood up and he thought about you, and me. And then when we saw him say 'Fight!'" And thousands of voices in the arena joined him in the chant, "Fight! Fight! Fight! Fight!' That's the man to lead us back to the America we love!"

Later in the day Eric Trump took up the theme, albeit expanding its dynastic reach. "This isn't politics. This is a family," he said. "This is so much more than a political movement. This is the greatest family in the world." Then, like Giuliani, he recounted the familiar legend: "They tried to impeach him twice. They went after his Supreme Court nominees. They threw him off of Facebook. They threw him off of Twitter. They threw him off of Instagram. They tried to take away his First Amendment right . . . They weaponized every DA and every AG in this country to take down my father . . . they tried to subdue the vote of literally hundreds of millions of Americans who absolutely adore the guy, he said. "And then somebody tried to kill him. And despite that he stands up every single time and says (here the crowd joins in again) 'Fight! Fight! Fight!" Finally, JD Vance brought his own speech to a close the same way he has been wrapping it up on the campaign trail in recent weeks : "When they couldn't beat him, they tried to bankrupt him. When that didn't work they tried to impeach him. When that didn't work they tried to put him in federal prison and when that didn't work they even tried to kill him. But as sure as the American flag still waves, Donald Trump still stands. Ready to fight! Ready to win! And ready to make America great again!"

Since Trump's former chief of staff General John Kelly finally agreed to tell the *New York Times* on record that his former boss met the definition of a fascist, there has been lively public discussion about how to describe the candidate. Scholars have long debated the issue, with some insisting that Trump is better understood as an authoritarian populist. The language of outsiders and elites conspiring to subvert the will of the nation is indeed classic populist rhetoric. And the recounting of attacks on the leader dramatically affirms his credibility of the people's representative. In Trump's words, emblazoned across the campaign webpage, "THEY'RE NOT AFTER ME, THEY'RE AFTER YOU…I'M JUST STANDING IN THE WAY!"

But particularly since he became the Martyr of Butler County, Trump has undergone a kind of apotheosis. He is now described in almost superhuman terms as indestructible, as always rising. The qualities projected onto Trump are politically formidable precisely because they enact the story of national renewal captured by the phrase "Make America Great Again." The air of inevitable triumph, of Trumpist victory as a sacred Telos, moves us somewhere closer to fascism. The image of Trump rising from the floor of the stage after his shooting, blood-spattered, fist clenched, urging his people on to battle is burned into the collective psyche of

his followers. He isn't Lincoln, nor JFK. He's far better. Those losers were down for the count. You didn't see anybody in the Ford Theater or in Dealey Plaza getting to chant "Fight! Fight! Fight!" along with their resurrected messiah. For his people, Trump is both the essence of national vitality, and a perfect instrument of God's will. Indeed, it didn't matter that Trump spent 70 minutes meandering through his speech, seeming to make up stories on the fly as he went along (for example, FEMA didn't have money for hurricane relief in North Carolina because they spent all its money on "big beautiful airplanes" to fly migrants into the U.S.). He has moved from candidate to pure myth and symbol. This phenomenon already carries a strong whiff of fascism, even before we get to direct reference to race or gender.

And as it happens though, the campaign's depictions of the expected Democratic malfeasance at the polls turn precisely on direct reference to race and gender. In MAGA depictions, Harris as a Black woman could not possibly be a candidate with popular backing in the electorate. She is merely a tool to be used by nefarious forces. The vile businessman Grant Cardone put it this way: "Her and her pimp handlers will destroy the country." Tucker Carlson went further though, using eugenic racism to argue for the utter impossibility of a Harris victory: "Ten days from now it's going to be pretty tough for them to look in the eye of America with a straight face and say . . . 'You know what? Kamala Harris got 85 million votes because she's just so impressive. As the first Samoan-Malaysian, low IQ former California prosecutor ever to be elected President, it was just a groundswell of popular support!' At this stage of the game after nine years of listening to their lies and finding every single one of them totally false, no it's not safe and effective . . . it's very hard for me to believe the rest of us are going to say, 'You know what, Joe Scarborough, you're right, she won fair and square because she's just so impressive!' I don't think so. And for me that's liberation. It's the freedom to say what's obviously true as a free man and not a slave." In Tucker Carlson's funhouse of Trumpism at Madison Square Garden, the grotesque mirrored reflections turned authoritarianism into liberation, and slavery into freedom.

Should Harris eke out a victory the inevitable weeks of election challenges in the courts and in the streets will likely come to nothing, although of course there is no guarantee. Ultimately though, all of it is evidence that the instruments of liberal democracy are not built to withstand the wide-spread growth of a 21st century fascist movement in this country both as a social and political formation. Opposition to Trumpism, which is to say antifascism, will ultimately have to confront this phenomenon at all levels with a social movement committed to confronting forms of both public and private tyranny that have been hollowing out whatever aspects of political and social equality remain after a half century of neoliberalism. It will have to generate alternatives that look nothing like Kamala Harris's commitments to U.S. global military hegemony, to Wall Street, to the fossil fuel industry, and to genocidal regimes abroad. It must, in other words, be committed to democracy, egalitarianism, and to a survivable future. Otherwise, we can expect to see more Americans seek out comfort in the nationalist fantasies of MAGA in hopes of being the punishers, not the punished. And we can expect many more to feel ambivalent, if not to say enervated, by the prospect of having to be conscripted four years from now into trying once again to snatch an increasingly irrelevant liberal democracy from the jaws of the fascists.

The Urgency of Now: Was Democracy Really Useful in the Caribbean?

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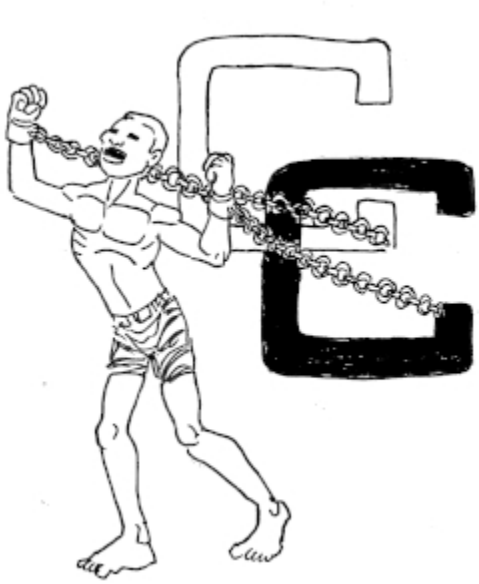
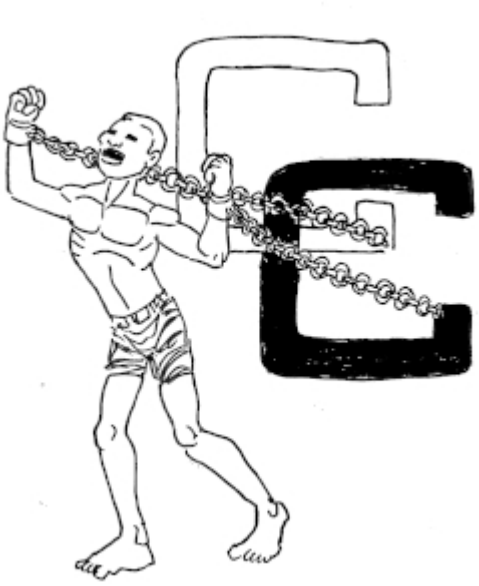


This article is not the first that has used urgency as the basis of its importance. Like every time before, perhaps I hope that the outcome of the article will somehow add to a commitment of action for a different and better world. With war and political unrest ravaging so much of the world – Palestine, Lebanon, Ayiti, countries in Africa – just to name a few and the ever-present changes in our climate and the ecosystems that sustain our life, it feels like there is a huge existential urgency to find the critical answers. In looking for the answers to the way forward we have to be willing to define things differently and to stop thinking the bare minimum of functioning is acceptable.



Artist: Pedro Camargo

Where do we start with building new ways? How do we get the issues that the majority are concerned about on national agendas? It appears at national and international levels people are powerless to affect political agendas. Democracy has been touted as the best system to create a connection between the ruled and the rulers. Yet increasingly, across the world thousands if not millions of people feel disempowered to have their issues be priorities for leaders. For instance, there have been sustained and substantial marches in solidarity with Palestine and expressed disagreement with the ongoing genocide but the result is that we watch helplessly the continued senseless loss of innocent life. It makes the question, is democracy working in the contemporary moment if it has ever worked at all?

I answer this question from my locus as a Commonwealth Caribbean (CC) citizen. The Islands and territories that make up an archipelago roughly between Jamaica in the North and Guyana on the South American continent is an important but also undermentioned area in the construction of modernity. The CC was the seat of financial might that converted the first world from feudalism to 'developed societies'. The region's reward for building the rest of the world is relegation to global south status. The CC and the broader Caribbean region are perpetually placed as an economic extraction zone, underdeveloped and loathsome.

Even as we underline that fact, I think we have been less successful at underlining that the extraction has not stopped at product and wealth. The Caribbean has contributed to the colonizing world through its large Diaspora of people, culture and intellectual traditions. In terms of the intellectual current that drove liberation organizing after the 1930s, the Caribbean- both the Commonwealth Caribbean and the larger littoral – have given a disproportionate number of thinkers – C.L.R James, Frantz Fanon, Aime Cesaire, Walter Rodney. The Caribbean is not a peripheral site in the modernity project – it is the centre.

I therefore believe that contemplating the Caribbean political project, in its current state but

also some of the precursors that result in present day outcomes, can be a true test of the usefulness of democracy. In such analysis we can uncover ideological challenges that remain as colonial relics- the bits that stand between us the citizenry and the changes that get us closer to a less patriarchal/hierarchal/ableist/capitalist, exclusionary world. Rinaldo Walcott in *The Long Emancipation* argues that the legal end of slavery, emancipation, did not result in freedom for the former kidnapped Africans forced into slavery. The 1930s uprising across the CC fueled by the desire of the descendants of kidnapped Africans to have fair wages for work, access to education, clean water and other infrastructure necessary for survival is a tangible example that emancipation was a legal remedy while what the people wanted was justice.

As I noted before the 1930s period offered the intellectual mooring for Black liberation that guided not just the Caribbean but its Diaspora in centres such as Canada, The United States and Britain. The political parties that emerged in the CC were inextricably tied to the labour movement and the desire to create post-colonial societies that were guided by socialist agendas. The socialist agendas were supposed to disrupt the plantocratic patriarchal culture that had embedded itself in the Caribbean as a framework necessary to undergird plantation society. This change i would not have changed the Caribbean alone, it would have left the rest of the world, including the United States of America without the cheap labour of the Caribbean and dependent economies with rich lands and resources that could be appropriated.

Instead of allowing the Caribbean revolutionary process to organically grow and reach conclusion the United States and other first world interests ran interference in the various territories including most notably Grenada, Jamacia and Guyana. The interference was integral to the CC achieving ‘democracy’ when the region ‘gained’ independence throughout the 1960s and 1970s. While at the time the democracy and independence movements seemed to hold all the answers to the questions of unequal distribution of resources, hindsight has given us a vision of how the introduction of democracy in the CC did nothing to disrupt the framework and system of plantation.

Take the current leadership of Barbados. Mia Mottley created a winning campaign in 2018 that incorporated elements which kept the dream of a functioning Caribbean democracy with identity politics to make her bid for the government of Barbados. Shortly after her win she the resorted to what I believe to be one of the most significant and also misunderstood elements of plantation – veneer portrayals. How plantation is understood is and always has been a function of the positionality one held on the plantation.

For people invited to the lavish Great House with its succulent food and cooling Caribbean winds the plantation was a glorious place but for those who lived in squalour and without full personal agency and autonomy – strategically out of the view of the Great House – plantation was hell. Veeneer portrayals also hold valuable lessons about who is seen as human and deserving of having a political system and agenda that serves them and who does not.

Mia Mottley and her leadership of Barbados as a wider metaphor of leadership in the CC is an example of abject failure. When Carole Boyce Davies comes to a different conclusion in her book *Black Women's Rights: Leadership and the Circularities of Power* it is because she is interpreting the plantation society of Barbados only from the perspective of the Great House. She has not employed the **two hand reading** that I suggest is necessary to interpret plantation societies correctly. At the time Boyce Davies was reading the triumph in Mia's performances on the global stage between 2018 and 2020, Mia Mottley was deafeningly silent about the atrocities being uncovered at the still running government residential school in Barbados which criminalizes minors for needing care and protection.

While Mia Mottley continues to tour the world and presents an image of herself as a progressive feminist leader of the global south (her latest speech being at the UN General assembly September 2024) she has no solutions for the problems causing a majority of users of the national water system to receive discoloured water in the rural parish of St. Lucy, Barbados. Put another way, human rights can be a topic of speechifying for aggrandizement in the Great House/global public but when it comes to ensuring human rights for the masses not connected to the Great House/ordinary citizens of Barbados, nothing happens.

Whichever aspect of failed democracy in the Caribbean we hold up to two hand reading, the conclusion is the same. Democracy is a neoliberal tactic that has protected the interest of plantation, capital and foreign interests in the CC political system. Democracy has not ruptured the frameworks that enabled plantations society – it repackaged them. Specifically in relation to Kamala Harris' bid for the White House, I think analysis of CC politics and particularly Mia Mottley's stewardship is instructive.

First of all I do not believe that women should invest in voting for a leader just by virtue of her being a woman. Most women politicians operate in the context of a wider political system that is patriarchal and capitalist. Mia Mottley is a patriarch- women can be patriarchs. When we elect non-male patriarchs what we do is provide the patriarchy with the perfect argument. Women are now equal. They appear in roles of power. The project of equality is complete there is nothing more to achieve. We actually disempower ourselves more as women when we

support women patriarchs in seats of power. Women allow themselves to be used when they vote for political figure heads like Mia Mottley who use women and their agenda as a gateway in politics only to then dismiss that very agenda, like fellow patriarchs before them, as trivial and unimportant.

We also put the lives of our children at risk. Capital abhors categories of people that are not seen as useful or productive. These 'burdens' can be incarcerated/killed at worst and demonetized at best for maximal return on investment. Again, two-hand reading of Mia Mottley's political positioning finds her telling the attorney general of Barbados that her major solution to the issue of escalated crime in Barbados is to fine young Black men for having tints on their cars because 'she wants money'.

Nonpayment of the fines usually result in brushes with the carceral system or at least records that diminish the actualization potential of young men. Again, this is not the message she delivers on the world stage. This is the message for the fringe of society – the message for those who live behind (and away from) the Great House.

Although I focus on Mia Mottley almost exclusively in the examples I offer in this article, Barbados and Mia Mottley are metaphors that can be replaced by St. Vincent and Ralph Gonsalves or Trinidad and Tobago and Keith Rowley or Dominica and Roosevelt Skerrit. While the latter two examples may not see the leaders clamour for space in the international spotlight in the same way as the former two, Great House conversations that do not protect the rights of the masses of the Caribbean are still a feature of democracy everywhere in the CC. Indeed although I focus on the CC, I must mention the mother of Black liberation in the Caribbean, Ayiti where the colonial mechanism and its interference is also clearly seen.

It is not by accident that in most cases outlined above the malfunction of democracy results in figure heads that have been able to thwart first-past-the-post systems to become entrenched oligarchs of the politourgeosie. The longer they stay in power there is a wider gap between them caring about or serving the needs of the citizenry.

Whether we are voting in the upcoming US presidential election or the elections due across the CC archipelago in 2025 and 2026, we should vote with a sense that while democracy continues to serve the interests of the politocracy of the world it is of little use to us the citizenry fighting to protect our livelihoods and climate and reconfigure unequal power relations that cause discrimination and oppression.

Even as we try to figure out next steps toward a political system that works and is effective, the CC becomes important to us its Diaspora living in the first world. We must be in the vanguard of ensuring that the crises, like the water distribution issues in St. Lucy, Barbados, are not blown out of proportion and then used to dispossess Barbadians of their land. We must make sure through our two-hand reading of politics and social situations that we do not create heroes that are not loyal to us and our causes.

We must ensure that we are a part of the educational and resistance processes that are needed

to return power and agenda to the global masses. Any where in the world that we have so called democratic systems that uphold the loss of innocent life and the destruction of hope and well being we must call it out as colonialism and capitalism in thinly veiled disguise. We must not allow ourselves to believe that a man-made system that has failed us again and again is the only option to organize and govern ourselves. We must know that while we continue to agitate and move beyond flawed governmental systems that our place is also inside systems made by us for us and where our agenda is the one that drives decisions and actions. We need change now – urgently. I don't know if we have as much time left ad those who used that as a clarion call in past times.

The War for Jewish Supremacy

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In the past year, I've been trying to decipher what happened to most Israeli Jews. What clouded their minds and hardened their hearts to what the IDF is doing in their name to Palestinians and Lebanese? By answering these questions I do not intend to justify Israel's war crimes, but rather to portray the Israeli mindset and suggest its political ramifications.

Of course, Israel's severe mortal and material losses, the war crimes committed by Hamas and Hezbollah forces along with those carried out by Gaza Strip residents that in October 7 followed Hamas forces, play a part, as does the unprecedented occupation and evacuation of Israeli settlements and towns. These have created a traumatized and insecure society that believes its very existence is undermined. Fearing a sudden attack from Hamas, many central Israel citizens carry weapons. But, in my view, these are only partial explanations.

Artist: Pedro Camargo

Most Israelis don't remember the hope that the Oslo Accords aroused in 1993 or the overall collective shock hearing in 1995 about Rabin's assassination. For present Israelis, these are distant historical events that do not shape their consciousness. After all, they occurred more than a generation ago. Since 2001, the right wing has ruled Israel. If we don't fall for their political rhetoric but examine their actions, we see that the Sharon, Olmert, and Bennett-Lapid governments were not left-wing governments. Indeed, they were a more polite and restrained right-wing than the current coalition, but still right-wing with the short exception of the dead-on-arrival Olmert – Abbas peace talks in 2008. Compared to Netanyahu, their terms as prime ministers did not last long. Even outside Israel, many Jews seem to believe that without a right-wing government in general and Netanyahu leadership in particular, Israel would fall into the hands of its enemies.

We must acknowledge that up to October 7 right wing governments had succeeded in suppressing the Palestinians and removing them from Israel's consciousness and public sphere. Most Jews saw Palestinian political activity and the terrorism that occasionally accompanied it as a minor nuisance that could be managed while living wonderful, prosperous lives, as sweet as an Israeli cherry tomato. Human rights organizations and left-wing NGOs failed to bring the severity of the Palestinians' situation to Israeli public awareness. The reports they sent to Western capitals filled folders in foreign ministry cabinets but did not initiate effective political pressure on Israel. In the UN, Abu Mazen achieved an upgrade to the Palestinian delegation status, and the number of countries that recognized Palestine as a state or whose parliaments called on their governments to do so, increased. But Palestinian independence and the end of Israel's *de facto* annexation did not come any closer. On the contrary, it moved farther away. The achievements of the BDS movement are also modest though it succeeded to raise Western awareness to the Israeli occupation and annexation. A new regime emerged. From 2001-2002, right-wing governments created a single regime spreading all over historic Palestine from the

Jordan River to the Mediterranean Sea. It captures Palestinians within it at various levels of detention and discrimination. I suggest defining this regime as one of Jewish supremacy.

The Jewish supremacy regime did not create itself nor is it a different version of Zionist militarism. It gradually developed from the Zionist militaristic identity that since 1948 constructed the states' main identity. Indeed, both regimes value force and violence (what Israeli Jews call security measures) not only as necessary means but also as definitions of collective identity. However, Zionist militarism offered an alternative identity to Orthodox Judaism[1], even if it didn't disown it as one of its sources. While Zionist militarism was ethnocentric, for the purpose of obtaining Israeli citizenship it greatly stretched the definition of who is a Jew beyond the Jewish orthodox law limits. In contrast, the present Jewish supremacist coalition works to reshape Israel along an orthodox ethno-nationalistic doctrine. Already before the current Gaza war, schools teach pro-settler religious nationalism[2] Since October 2023 it succeeded not least due to the psychological shock that the Hamas attack caused. Jewish supremacism is much more violent towards Palestinians than its predecessor[3]and considers its Jewish opponents as traitors.[4] Finely, its tendency towards an authoritarian regime is much sharper than that of Zionist militarism.[5]

In the last four years, the two identity groups managed a cold civil war over Netanyahu's government judicial reform legislation, ultra-orthodox men's exemption from army service, and the Prime Minister's corruption trial. Even before the current Gaza war, Zionist militarism had lost large parts of its base. Jewish supremacy took control of the police, grossly encroaching on the justice system, government bureaucracy, mainstream media, the army, security services, and academia. Some of these institutions surrendered quickly, some willingly, and some out of weakness. Others were conquered after a struggle. As Jewish supremacy becomes more established in power, resistance to it weakens.

Zionist militarism put the 1948 war with its internationally recognized borders at the center of its ethos. For it, the settlements beyond that border are temporary or do not constitute an obstacle to a two-state solution. Thus, Zionist militarism insistently denies the reality that prevails in the West Bank and Gaza Strip, despite having a founding share in the *de-facto* annexation project. In the struggle that Zionist militarism waged in the last four years against the Jewish supremacy coalition, it failed to identify the essential link between the government's judicial reform legislation, the privileges enjoyed by the ultra-Orthodox; and the reality Israel has constituted in the Palestinian territories. What's the connection, it asked in bewilderment, between equality in the burden of military service and the expansion of settlements, and between Netanyahu's corruption cases and having no peace process with the non-existent partner? Zionist militarism too, in its own way, did not count the Palestinians. Apartheid? What nonsense! It's just a temporary occupation. Meanwhile, Jewish supremacy was good at seeing that half the population it rules between the Jordan River and the Mediterranean Sea is not Jewish. For it, Jewish supremacy is an existential imperative.

The October 7 attack created a sharp dissonance among Israeli Jews from which they have not recovered to this day. The attack exposed a huge gap between their imagined absolute power

and Hamas' capacity to inflict casualties. The complacency that Israelis had enjoyed was completely shaken. Instinctively, they turned to brutal force to restore the Jewish supremacist imperative shattered by the attack. Dehumanization of Palestinians, killing and destruction made on an industrial scale, uprooting over a million Gaza Strip civilians from their homes, and the systematic destruction of Palestinian community institutions in the Gaza Strip became common war practices.[6] Recently Israel has also employed them in Lebanon for the same cause.[7]

The war completed the defeat of Zionist militarism. Zionist militarism had a substantial weakness. It's militaristic. It can not resist war. The war in Gaza and even more so the special operations against Hezbollah followed by the war in Lebanon brought Zionist militarism to stand behind the government and use it to establish Jewish supremacy. Thus, Zionist militarism is dissipating. Its place is being taken by Jewish militarism. Part of it is messianic and part fascist, a merger that threatens taking Israel to a dark future.

The Palestinian public is divided between those living in the diaspora and those living under the Israeli regime. The Palestinian diaspora, especially the young educated elite within it, are more radical in their political objectives and discourse than their compatriots in the homeland. The latter are mostly more sober, understanding that victory will not be achieved through military means but by forcing their collective existence and right to self-determination on Israel. Young Palestinians who choose armed resistance do so out of despair or with the aim of exacting a price from the oppressor. The oppressor and the oppressed are choking each other to death.

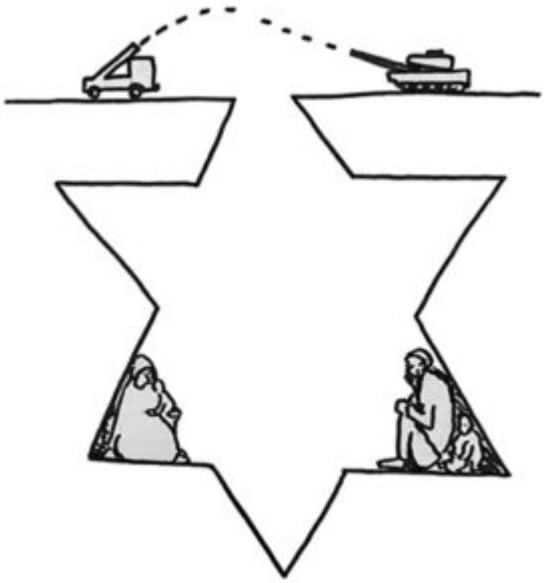
As far as can be estimated, there is no way back to managing the Israeli – Palestinian conflict as was done prior to October 7. From the perspective of the Jewish supremacist regime, only harsher and more violent enforcement of Jewish lordship can ensure its survival. It offers Palestinians no model of collective existence alongside or within a Jewish state. It demands that they surrender or expect expulsion. Therefore, for Palestinians too, this is an existential war. For many of them, it is a struggle for physical survival, and for all of them, a war for collective existence. Even before October 7, they experienced firsthand how cruel and harsh Israel is, after that day they learned how far it was willing to go.

Jewish supremacy was formed to respond Palestinian demographic and political challenges. As the war developed without effective international or domestic limitations, Israel's ambitions expanded. Driven by its successful intelligence operations against Hezbollah leaders and functionaries, Israel expanded its war from Gaza Strip to Lebanon. Unrestrained, Israel implements in its north front similar aerial and ground destructive war methods it uses in her south front with Gaza. Thus, Israel signals that it seeks to impose Jewish superiority beyond the Palestinian arena and determine South Lebanon's future and Hezbollah's military and political power. Moreover, it aims to limit Iran's regional power if not to overcome it. Israel debates with the US over measures and targets in Iran, but not on strategy. Both Israel and the US wish to strike Iran – Hezbollah – Hamas "Axis of Evil". Within this cooperation, the Jewish supremacist regime aspires to lead the regional counter Axis of Evil coalition bypassing the

Saudi Arabian that till now has led the anti-Iranian alliance.

The Jewish supremacist regime must fall before a Palestinian – Israeli political settlement can be established and the region moves toward a better place. The end of Jewish Supremacism would also decrease worldwide antisemitism. Obviously, Israel's war crimes do not justify antisemitic attacks. However, Israel's leaders should not escape from their indirect responsibility for the rise of verbal and physical anti-Jewish attacks by combining Jewish identity with Israel's actions as well as by expecting every Jew to express loyalty and commitment to both the right of the self-determination of the Jewish people and the specific political and military practices that the Jewish state employes. Antisemitism is also a consequence of this "you are either with us or against us" rhetoric.

The Jewish supremacist regime is a result of interconnected current and events: Jewish militarism, the judicial reform that the current rightwing coalition gradually promotes to take Israel away from its few liberal-democratic foundations, and Netanyahu's personal and political in escaping conviction and establishing an authoritarian rule. Moreover, the current coalition shares different sectorial and factional interests, especially based in Jewish orthodoxy, along with middle and lower class identities and socio-economic policy preferences. The Jewish supremacist regime carefully nurtures those classes.



Artist: Drew Martin

In the international arena, Israel does not face real pressure to halt its killing and destruction machine. On the contrary, it cooperates with the United States against a Chinese – Iranian – Hezbollah axis. Israel also enjoys financial reserves and international prestige which it accumulated during years of prosperity. However , as Israel continues fighting those reserves will run dry. Domestically, Jewish superiority deters Palestinian citizens of Israel from expressing their anti-war voice, violates their citizenship rights and de-legitimizes any cross-ethnic Jewish-Arab political cooperation.

It’s hard to predict which bricks will fall first and when a serious collapse will occur. But without a collapse, without internal upheaval that may be accompanied by external pressure, there will be no better future for the residents living from the river to the sea. This future needs to be prepared for now. Against the horrific regime of Jewish supremacy, proposals for Jewish-Arab partnership must be prepared. It can take different forms. But each and every one of them must oppose the current reality.

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Kant in the 21st Century: On Work, Precarity, and Citizenship in the A.I. Era

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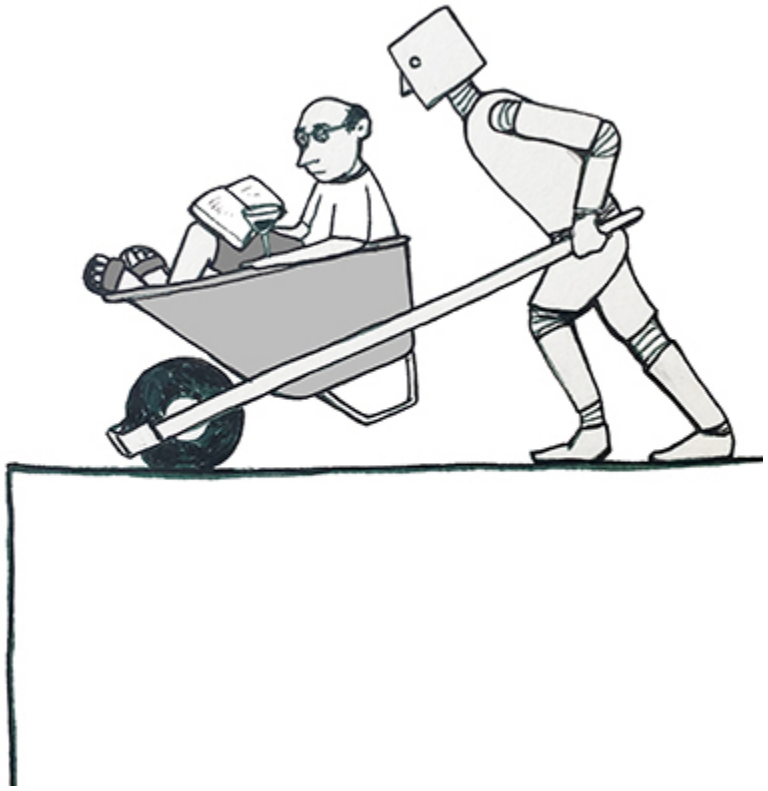
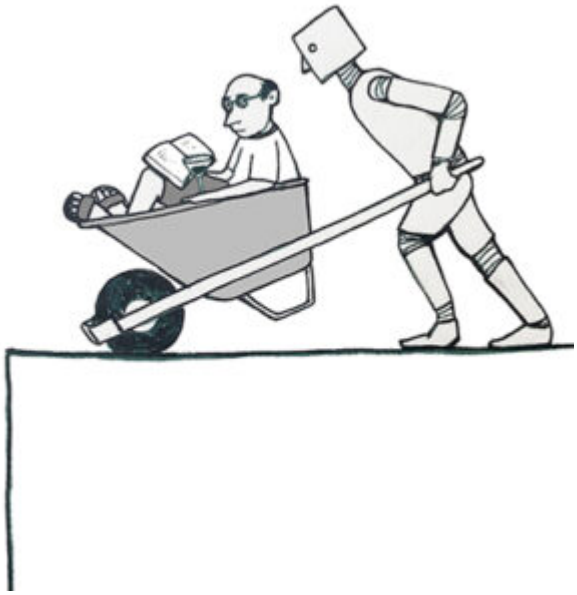


We are living in a time of upheaval, as A.I. – and other overlapping crises – are rapidly changing how we work, how we think, and how we learn. One thing we scholars like to do in times of upheaval is to turn to thinkers from other time for insights on our own. So, for example, those working on A.I. have long turned to familiar philosophical toolsets, like Utilitarianism and Kantianism, to solve pesky problems like the ethics of self-driving cars and the potential for A.I. autonomy.

In this essay, I'm going to make the case that Kant's philosophy – in particular, his political and historical thinking about what it means to live and work in a rapidly changing moment – provides resources for thinking about A.I.'s potential to transform our lives. This is because Kant was an important but underappreciated theorist of labor, and in thinking about the nature of work, he was responding to emergent social and economic changes in his own era. This makes his thinking on work, and their place in his broader philosophical system, particularly valuable resources for our current moment – both, I'll argue, because of what he got right, and because of what he got wrong.



Artist: Drew Martin

Kant was writing during a social revolution that reshaped employment practices in ways that resemble our current A.I.-related upheaval. In the 1770s and 1780s, as Kant was teaching his political philosophy courses and refining his thoughts about the relationship between labor, freedom, and political standing, a famine, revolts, and subsequent legal reforms in Prussia and across Central Europe were dismantling the serf economy, disrupting centuries-long patterns of dependency.[1] Former serfs were suddenly made "free" laborers, working on contract in agricultural contexts and flooding cities like Konigsberg with newly untethered workers. At the same time, the size of the household was shrinking, as the bourgeois household replaced the feudal one; serfs and servants were rapidly becoming contract employees and "day laborers", precarious 18th century gig workers who could no longer depend on landlords or heads of household to be "fed and protected" (6:315).[2] In many ways, this moment resembled the post-bellum period in the American south, as former slaves found themselves transformed into sharecroppers and day-laborers, and those who could fled the south for Northern cities. In both contexts a rapid shift in the organization of work led to a new class of precarious workers, and new questions about the legal standing and protections to which those workers were entitled. In Kant's time, these questions would be pressed by the French Revolution, which asserted the importance of recognizing the peasant and working class as free citizens. Accordingly, Kant thought deeply about the relationship between work and freedom, about how legal and economic shifts produced novel forms of precarity, and about what duties the state has to workers. All these insights may be valuable to us as we consider how A.I. is changing the nature of work.

A.I. is automating some kinds of work, making others redundant, and performing others at speeds and scales humans can't hope to emulate. Some people think that A.I. is about to revolutionize the nature of work, moving us towards a "post-work" society in which we will have to drastically reimagine both our economic practices and the very question of what sorts

of activities and commitments make us human. This is a place where Kant can be useful, because Kant thought in systematic ways about work, including how work shapes freedom and organizes our social and political standing, producing predictable patterns of inequality and precarity. To mine Kantian resources for thinking about the future of work, we can examine both his normative arguments – that is, his account of how work should be organized in a just society – and the assumptions that underpin and undercut these arguments. Doing so might help us think in uncertain times and provide us with resources for recognizing how emergent patterns of injustice reflect longstanding practices of inequality.

Work and Freedom

One of the reasons that philosophers still value Kant's philosophy so highly is because of the systematic ways that he thought about freedom. Kant understood freedom as our central "innate right", and he conceptualized this freedom across his philosophical system, integrating accounts of moral, political, aesthetic, and epistemic freedom. So, it should perhaps come as no surprise that freedom was at the heart of how Kant thought about work.

From his earliest lectures on political philosophy, Kant described work as an expression of freedom: when we make something, he argues, it is the product of labor and freedom (27:1342).[3] Work is a process that harnesses two kinds of freedom: the freedom of determining a concept – "the thing I have in mind" (27:1342) – or setting the end of my work, and the freedom involved in the production of the thing. He would refine this argument in the 1790s, examining what made work valuable, both intrinsically and instrumentally. Tyler Re has shown how Kant's claim, the 1791 *Critique of The Power of Judgment*, that art is "production through freedom" (5:303), develops a normative account of meaningful work as allowing for distinctively human practices of choice, creativity, and judgment.[4] Kant recognizes two distinct conceptions of freedom that operate in work: practical freedom (or the freedom to decide what your projects are) and technical freedom (or the freedom to decide *how* to do those projects you've taken on).

This distinction is particularly valuable for thinking about the varied incursions of A.I. Do A.I. have practical freedom, in that they can choose their own projects and set their own ends? Or do they have technical freedom, or the capacity to decide *how to* fulfill the ends that are set for it? Technical freedom might also be useful to thinking about the kinds of work we *ought* to outsource to A.I., to make all work more meaningful. It could help us to identify the kinds of work, or the kinds of tasks, that really are mindless drudgery – like certain administrative tasks, or telemarketing — and to envision outsourcing these tasks to A.I. in ways that made more work more creative. Or, it could help workers to articulate the ways that they find meaning in work that others perceive as drudgery. After all, if work is an expression of freedom, then work is a valuable part of what it is to be human.

Kant also thought work was instrumentally valuable: it allows us to make a living, of course, but paradoxically, Kant also thought it makes leisure possible. Kant thought that "the greatest sensuous enjoyment, which is not accompanied by any admixture of loathing at all, is resting

after work' (7: 276).[5] Without work, there is no leisure.[6]Leisure is "the highest physical good" (7:276) in Kant's estimation, but also supports both creative endeavors and participation in public reason and the state – all important expressions of freedom.

One of Kant's most important political innovations was arguing that one's ability to control the context of one's labor – to labor "independently" or in ways that are consistent with self-sufficiency and access to leisure – was a prerequisite for political participation. Anyone who "depends on another for their preservation in existence" (6:314) wasn't independent enough to vote, because their vote could be influenced by this dependency. So, for Kant, it was labor, rather than property, that granted one status as a citizen – and this shaped a meritocratic vision of the state that remains with us to this day. This argument reflects the shifts in labor practices in Kant's own time, as the dismantling of the landlord system made property less politically determinative, and a new class of free but dependent laborers flooded into Königsberg. It is also a practical argument: to participate fully in the state, citizens would need the time (leisure) and independence (non-dependent labor) to give "public" reasons and participate in shaping collective visions of justice (8:38).[7] Being a citizen meant working in ways that ensured material independence and sufficient leisure time for participation.

But access to leisure was not equally distributed: Kant insisted while the household was the site of leisure for men, it was the site of labor for women; men's leisure dependent on the labor of women and servants (25:703).[8] This piece of the puzzle is important, because it begins to provide us with tools for situating Kant's account of work and leisure in his broader philosophical system: a system that included not just reflections on freedom, citizenship, artistic creation and the exercise of reason, but also a social theory about relationships, the infrastructure of everyday life, and the capacities and potential of different kinds of humans, from his reflections on women to his theorization of a hierarchical theory of race. Kant's thinking about leisure isn't a mere anthropological observation, but a claim central to understanding his vision of the state – and the role of work within it. Citizens are those with access to the leisure necessary to participate in public reason and the state – but this leisure is made possible by outsourcing certain kinds of labor to others, who then cannot qualify as citizens. In such a system, independence is really a form of *inter*dependence – but if independence is the criteria for citizenship, universal suffrage is impossible.

Employment and Citizenship

If this picture – in which independent citizens outsource certain forms of labor to others so that they can maintain their independence – sounds troublingly inconsistent with the famous Kantian requirement that we never treat others "as a means only", you're not wrong. However, it is consistent with Kant's emphasis on work as a structure that organizes access to public goods. In an era when work itself is under threat, the logic of this argument is worth interrogating.

Kant goes to great lengths in his political philosophy to assure us that organizing political standing in light of the inequalities that shape labour is "rightful" because everyone agrees to

them, and therefore, no one is a means "only." But these patterns of outsourcing track both particular forms of labor – especially caregiving and service labor – as well as certain features of Kant's anthropological and social theories. These include his assumption that women will do these sorts of labor and thus fail to qualify as "independent," (6:314) and his claims that non-whites are too "lazy" to work independently (8:176) or lack the "capacities" to set ends for themselves. By embedding these inequalities as "rightful" in his vision of the state, Kant builds a normative theory that embeds hierarchical inequalities and then presents these inequalities as an inevitable feature of a meritocracy in which those who are unequal have somehow consented to their condition.

Most contemporary Kantians respond to this problem by asserting that Kant got something wrong here. Axel Honneth articulates this by arguing that Kant gets the diagnostic picture right – it is in fact the case that patterns of work and material conditions will make some less equal than others – but the normative picture wrong: Kant's solution is not to insist on universal suffrage, but to formalize this inequality in his "rightful" state, thus heaping formal inequality on top of material inequality.[9] If Kant had solved the problem in the other direction – insisting on universal suffrage and access to public reason – then material or social inequality would not be a justification for political inequality. Ensuring universal access to suffrage and public reason might instead shift the terms of public debate, ensuring that the needs of the materially and socially disadvantaged – and those who do the most denigrated and unappreciated work — become essential features of our conceptions of justice.

Kant's normative error here is an egregious one, with important implications for his political philosophy. But his error is nevertheless instructive for thinking about both historical and contemporary dilemmas about work, outsourcing, dependency, and equality. We've seen that, by linking material inequality and dependency to suffrage and public reason, Kant argued that it is the kind of work one does – rather than, say, the kind of property one owns – that determines one's political and public standing. There is a particular kind of meritocracy baked into this argument that still haunts us today: the assumption that certain kinds of dependency produce an inequality which is "rightful." Often, the emphasis is on private dependency: for example, the argument that women didn't need the vote because their dependence on their husbands or fathers is somehow "rightful." Contemporary variations tend to emphasize public dependency: see, for example, the ongoing project of welfare reform and "welfare to work" programs in the U.S., which rely on the idea that those who don't work, or who don't do the right "kind" of work (because caregiving, even if unpaid, is work) deserve less access to the goods that ensure freedom.

Kant isn't completely hopeless here: he may not defend universal suffrage, but he does argue for a universal right to poverty relief and provides justifications for public welfare systems.[10] But Kant's defense of *public* welfare is premised on lack of access to *private* dependency: his welfare arguments is aimed at cases like "orphans and widows" (6:326) – those who lack access to the private support of a household (or husband) who ought to support them. As I've argued elsewhere, this argument mirrors debates over reparations during American reconstruction, as Congress situated slavery as a form of *private* dependency that did not, therefore, place any

claims for public welfare on the state.[11] We see variations of this logic in contemporary policy that insists upon the prioritization of private remedies to dependency problems over public ones: that one's employer, for example, should provide access to health insurance, retirement benefits, sick leaves, and childcare services, rather than the state. According to this logic, these are goods that should accrue to people as *workers*, rather than as citizens. This idea that employment renders people dependent on private employers rather than the state for their "preservation in existence" (6:315), and that such dependency ought to limit access to public standing and public goods, is a Kantian argument – and it's one we should be particularly attendant to as A.I. reshapes the terrain of work.

Kant and the "Post-Work Economy"

Our current moment of employment upheaval is, like the one unfolding as Kant was writing, characterized by global shifts that are upending long-standing patterns of dependency, entitlement, and stability: old-school full-time employment is increasingly replaced by "gig" work, while A.I. is automating both blue- and white-collar jobs. Both trends threaten (a) the logics of private dependency that organize access to public goods and (b) the role that work plays in organizing our standing as citizens and our expression of our freedom through meaningful contributions. If the proliferation of A.I. moves us towards a "post-work" economy, what happens to these assumptions?

One possibility – which A.I. developers like Sam Altman have long advocated – is a shift to a universal basic income, in which citizens are guaranteed a basic income by the state. Kantians, too, have explored the promise of a UBI model, arguing that if a universal income allows all citizens to gain economic independence, then it does the work of instantiating political equality and thus, by Kantian lights, justifying equal political standing for all.[12] Kant's argument hinges on the claim that it is *independence* (or self-sufficiency) that is necessary for full, active citizenship: we can achieve this through certain modes of work, through wealth, and through *dependence on the state* (which does not make us dependent on the private will of another). Citizens dependent on a UBI would thus be self-sufficient on a Kantian account – and thus, the argument goes, access to such a UBI would ensure that employment-based and domestic dependencies would cease to produce politically disabling forms of dependency.

Arguments for UBI work on one "piece" of the Kantian argument about labor: they provide a mechanism for making all citizens "independent" per Kant's own technical definition.[13] But they tend to elide the ways that such independence is premised on *someone else* doing the dependent labor one is therefore giving up: if a UBI frees "us" up to choose our employment, who then takes on the "dirty work" of cleaning up nuclear waste and caring for those who can't care for themselves? As Martin Sticker has argued, the "us" here is important, and unless a UBI is truly, globally *universal*, any given UBI scheme is likely to just produce patterns of outsourcing (much like those Kant theorized).[14]A.I. idealists imagine that A.I. can fix this problem by building robots capable of taking on all of this "dirty work", so that outsourcing can occur without placing persons in positions of (economically coerced) dependency. If this were possible – and experts agree, we are a long way from it – would it solve the problem?

Kant gives us two toolsets to think about this question. On the one hand, insofar as work is a barrier to independence and the time and space to make use of one's reason – publicly or otherwise – the A.I./UBI revolution is promising: it imagines a world in which we are all dependent on the state – and thus *independent* – and free to make use of our reason in whatever ways we choose, imaginatively inventing new ways to be human, as Kathi Weeks would have it (2011). I suspect that Kant the man – who was *very* happy to have a servant make his tea every morning so that he did not have to do it – would yearn for this kind of world. At the same time, Kant also thought of work as an expression of our freedom, a mechanism through which we express our will in the world. This is true whether we work for others, or for ourselves – but putting the arguments together, it's probably a better expression of our freedom when we work for ourselves: when we have practical freedom, as well as technical freedom. Insofar as the A.I. revolution promises a future world in which we're all free to drink robot-made, state-supported tea and use our reason to express our freedom and participate in public reason, I think Kant (like many academics) would be all for it.

But I think we also have good Kantian reasons for thinking that this "thin" vision of independence isn't enough, and that this will haunt us in a "post-work" society. When we conceptualize freedom in a familiarly negative way, in terms of setting our own ends, being free from being bound by others, or choosing the ways in which we will fulfill our projects, we can tend to miss the ways that relationships and collective projects give meaning and shape to our projects, making them both possible and valuable. After all, if freedom is, as Kant puts it, "independence from being bound by others to more than one can in turn bind them (6:237), then it is still a condition in which one is bound. This binding might take the form of expressing our freedom through collective projects and relational practices of care.

This begins to get us to the other way of thinking about the state, and the role of work within it. If, on Kant's account, we can participate fully in the state when we are independent, we *need* the state because we are interdependent, and the state is the only mechanism that can provide the rightful infrastructure for such interdependence. Admittedly, Kant got a lot about that infrastructure wrong, because he mapped it onto his own social theory, which assumed that the dependence of women and the inequality of non-whites were structural features that justified limiting public aid, relying on privatized domestic and service labor, and calling all of this "rightful" inequality. (And if this seems unexceptional, it's because it's so familiar to us – still – that we have a hard time seeing it as a *system*, and not just as the "way things are."[15])

But we can think about the infrastructure that supports freedom differently. This might involve a UBI in a post-work economy, but it would also certainly involve state-supported health care, childcare, sick leave, poverty relief, education, and so on. We might decide that if work is an expression of freedom, people *need* the opportunity to do meaningful work and contribute to their conditions of interdependence – and we might envision a state that ensures a right to meaningful work and civic contributions, even in the face of an A.I. dystopia. And, of course, we might, like Kant, get this very wrong, by relying on background theories that assume that only *certain sorts* of people need to express their freedom through meaningful work, and building structures premised on these assumptions.

Kant's thinking on work reflected a huge social and economic upheaval which is not, in many ways, so different from ours. He got a lot about this upheaval wrong – but he got some of it right, too. If Kant's arguments are relevant for us, in the 21st century, I think it should be *both* because of what he got wrong, and what he got right. This means thinking about Kant's arguments in light of our own questions – and those that informed his own thinking, in his own time. When we do this, we can see Kant as a thinker poised in a moment like our own, aiming to conceive of an infrastructure of freedom in a rapidly changing world – and we can learn from both his innovations and from his mistakes.

Notes

[1] Berdahl, R. M. (2014). *The politics of the Prussian nobility: The development of a conservative ideology, 1770-1848* (Vol. 944). Princeton University Press.

[2] In this article, I refer to Kant's works by <volume number>:<page number> in the standard Academy edition. Citations from volume 6 is the *Metaphysics of Morals* (1797). Translated and Edited by Mary Gregor. Cambridge University Press: 1996.

[3] Citations for volume 27 are from Feyerabend's lecture notes on Kant's 1784 Political Philosophy course. In *Lectures and Drafts on Political Philosophy.* Edited by Frederick Rauscher. Cambridge: Cambridge University Press, 2016.

[4] Citations for volume 5 are from *Critique of the Power of Judgement*. Edited by Paul Guyer. Cambridge: Cambridge University Press, 2000.

[5] For those familiar with Kant's account of sex – and the heavy "admixture of loathing" he inserts there – please have a little giggle at his description of the "highest sensuous pleasure" here. Citations for volume 7 are for the Anthropology from a Pragmatic Point of View (1798). In *Anthropology, History and Education.* Edited by Günter Zöller and Robert Louden. Cambridge: Cambridge University Press, 2007.

[6] Kant would reinforce this claim with his insistence that when non-white people rest, it is not leisure but laziness, since they do nothing that "one could properly call labour" (8:174 n). For discussion of this passage and its relationship to Kant's account of work, see Pascoe, J. 2022, *Kant's Theory of Labour*, Cambridge University Press, 26-28. See also Lu Adler, H. (2021). (2021). Kant on Lazy Savagery, Racialized. *Journal of the History of Philosophy*.

[7] Citations to Volume 8 refer to Kant's political and historical essays of the 1780s. In *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*. Edited by Pauline Kleingeld. Yale University Press, 2006.

[8] See, too, the passage about non-whites in the last footnote: Kant consistently claimed that non-whites (especially Africans and Americans) were constitutionally too lazy to work, and therefore, that when they rested this was laziness, not leisure (2: 438; 8:176). These are claims not just about work, but about qualifications for political standing. References for Volume 25

refer to Kant's anthropology lectures, in *Lectures on Anthropology.* Edited by Allen Wood and Robert Louden. Cambridge: Cambridge University Press, 2012.

[9] Celikates, R., Honneth, A., & Jaeggi, R. (2023). The working sovereign: A conversation with Axel Honneth. *Journal of Classical Sociology*, *23*(3), 318-338.

[10] Varden, H. (2014). Patriotism, poverty, and global justice: A Kantian engagement with Pauline Kleingeld's Kant and Cosmopolitanism. *Kantian Review*, *19*(2), 251-266; Holtman, S. (2018). *Kant on Civil Society and Welfare*. Cambridge University Press.

[11] Hartman, S. (1997). *Scenes of subjection: Terror, slavery, and self-making in nineteenth-century America*. Oxford University Press, p. 119. See Pascoe (2022) p. 44 for discussion.

[12] Pinzani, A. (2023). Towards a Kantian Argument for a Universal Basic Income. *Ethical Theory and Moral Practice*, *26*(2), 225-236; Sticker, M. (2024). Working Oneself Up and Universal Basic Income. *Kantian Review*, 1-9.

[13] Pascoe, J. (2024). Response to Critics: Kant's Theory of Labour. *Kantian Review*, 1-10.

[14] Sticker, Martin. "A Merely National 'Universal' Basic Income and Global Justice." *Journal of Political Philosophy*, 2022.

[15] Dotson, K. (2014). Conceptualizing epistemic oppression. *Social Epistemology*, *28*(2), 115-138.

The Monsters are Here

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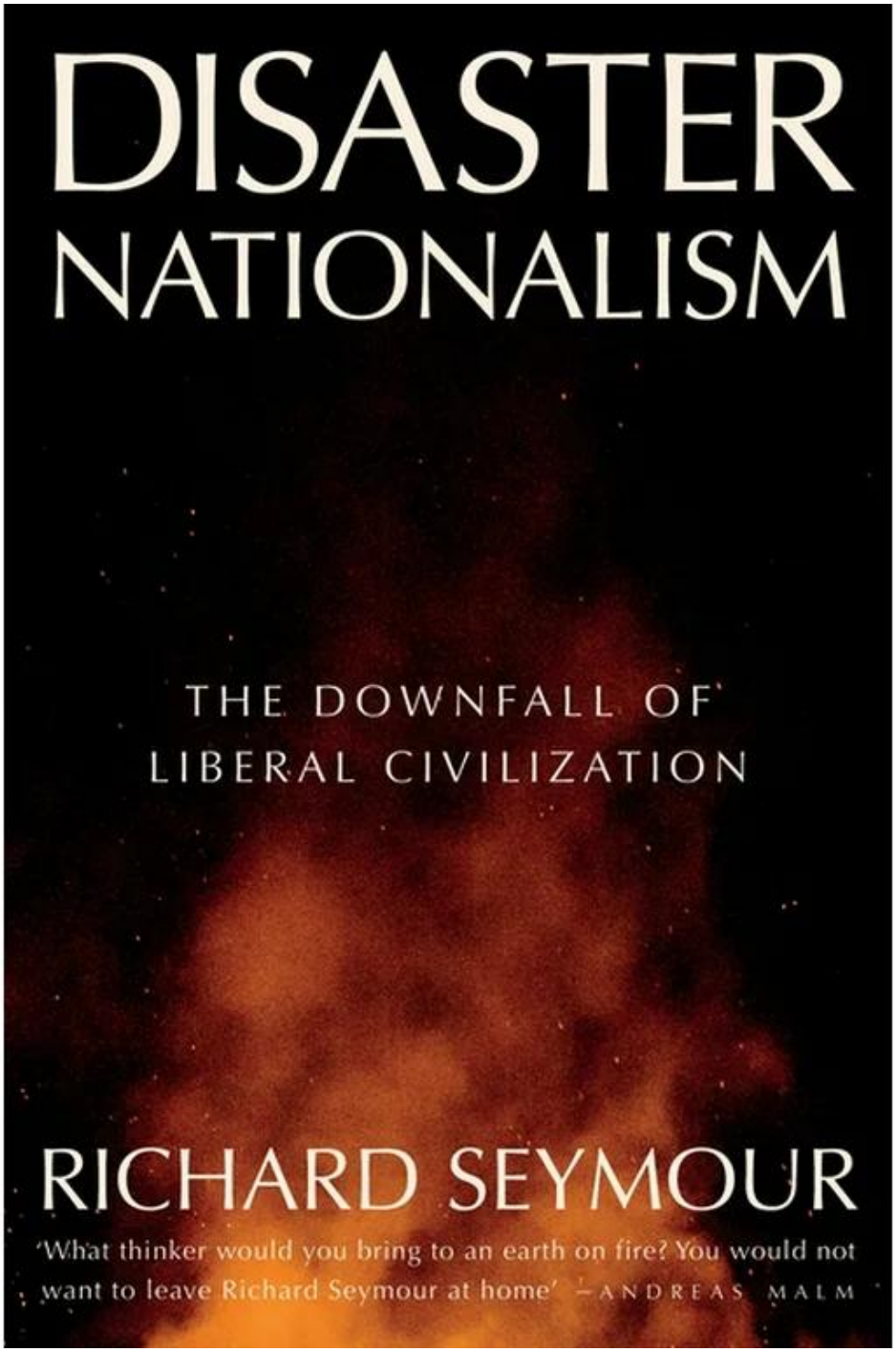
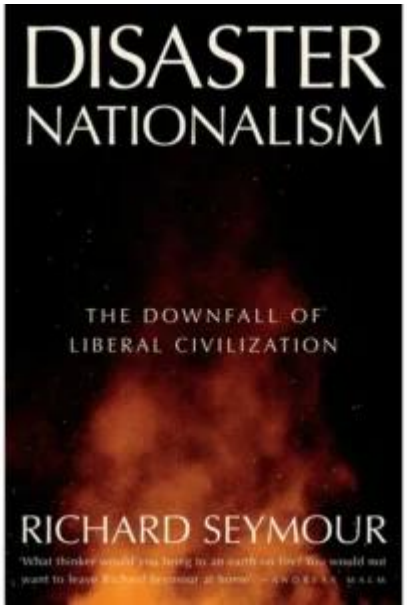


Works Discussed:

Richard Seymour, *Disaster Nationalism: The Downfall of Liberal Civilization*

Siddhartha Deb, *Twilight Prisoners: The Rise of the Hindu Right and the Fall of India*

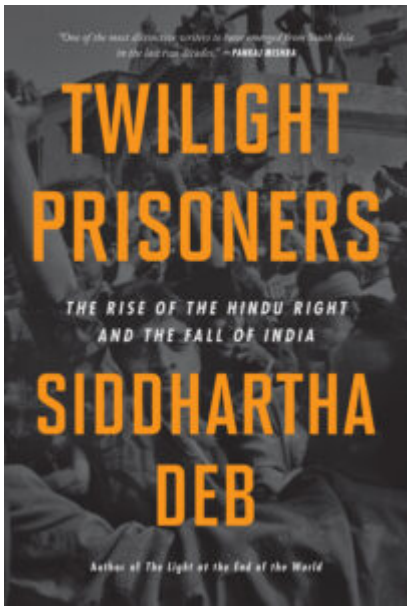
Over 2,000 people, overwhelmingly Muslim, were slaughtered in the 2002 riots that swept through the western Indian state of Gujarat. As detailed by Richard Seymour in *Disaster Nationalism: The Downfall of Liberal Civilization*, mobs of Hindus swarmed Muslim neighborhoods in Ahmedabad, setting fire to homes, throwing acid on women's faces. "Children were force-fed patrol and set on fire," Seymour writes (126). Policemen stood by and watched, the situation reminiscent of Jim Crow, when it was white southerners looting and burning to ash entire black neighborhoods, with the sheriffs puffing on cigarettes while peoples' worlds were erased in a matter of moments, leaving behind human and political debris.



When the riots did occur in Gujarat, they occurred under the administration of Narendra Modi, one of the Hindu right's most cunning soldiers in a war for the so-called preservation of Hindu civilization. Elements of the international community had condemned Modi, rightly connecting the mobs to him and his party's active encouragement of their most fascist desires of eliminating the Other. It was Modi and his team of sycophants who connected what was an accidental fire that consumed Hindu pilgrims on a train to it being an intentional act of anti-Hindu violence perpetrated by a lawless and ungrateful Muslim minority. However, the anxieties swirling around such criminal acts quickly turned to vapor, as India became an essential global "partner" for the U.S. in Asia, and in the developing world, just as China was in global ascension.[i] After riding the wave of anti-Muslim bigotry to secure the position as India's next Prime Minister, Modi would find himself wined and dined in Obama's White House, the same man whose supporters label the India mainstream press as traitors, whose supporters had silenced generations of Muslims over several days of politically motivated mayhem.

Siddhartha Deb, journalist and author, had attended one of the very first rallies Modi held in the U.S., at Madison Square Garden in early 2016. Not only had Obama penned a glowing tribute to Modi in *Time*, a cross-section of U.S. political and economic elites was in attendance, eager to speak highly of a man who was making India "great again." In his collection of essays detailing India's descent into Hindu fanaticism over a decade, *Twilight Prisoners: The Rise of*

the Hindu Right and the Fall of India, Deb writes about the lurid event, "There was a revolving stage, a speed portrait painter, and a bipartisan coterie of American politicians, including senators Chuck Schumer and Robert Menendez, and South Carolina governor Nikki Haley who is of Indian descent" (14-15).



Since Modi's political rise, there has been a coterie of hard-right leaders emerging in the world, those who are forcing existing institutions to contend with their explicit egregiousness, and to even learn to placate. This includes Trump, of course, but also, Orban in Hungary, Duterte in the Philippines, and Netanyahu in the settler colonial state known as Greater Israel. Both *Twilight Prisoners* and *Disaster Nationalism*, apart from reminding us of the gory details of their rise and the complicity of the liberal bourgeois order to their brutality, offer us sober analysis of the political agendas and machinations that such movements and faces exemplify and drag into what's considered the "mainstream", like a US marine carrying a corpse into the middle of an American airbase. Both Deb and Seymour follow in the intellectual tradition that to defeat the enemy, one must be able to understand them, to peer through the overwhelming chaos such forces indulge in.

Broader than Deb, whose analysis solely focuses on Modi's India and the various constituencies the BJP has allowed to fester, Seymour tackles the connections between Modi, Trump, Orban, Duterte, among others who've been so swift in their division the world into "patriots" and the deceiving Other. Typical of his style, as a political theorist who's grappled with such heady topics like climate doomerism and the persistence of austerity politics despite NOT providing the financial stability it so claims, Seymour is not one who easily throws down sloganeering in lieu of analysis.[ii] For instance, Seymour rightly says from the beginning that the issue with what he deems as "disaster nationalism", the nationalism of Trump and Modi among others, is not necessarily because they're full of "resentment" or that they motivate people against the status quo. Resentment, not to mention anger, are critical components of the left as well, or should be. We do believe in an "us" and them, that of the capitalists and their minions versus the rest of us trying desperately to rid the world of oppression and its stink. How can one not

be soaked with anger when enduring a life under capitalist and U.S. hegemony? Not to be angry, indeed, is more alarming to witness in someone staring into the political abyss, surrounded by the mass slaughter of people in Gaza to the waters rising each and every day. “It is a coherent and moral way of thinking and of acting on the world,” Seymour explains, although astutely adding that when it is not channeled in a more meaningful way of creation, it can lend itself to being a simply a force of destruction and violence against those without any real power, an Other that such figures, like a Trump, learn to demonize, whether that’s Haitian migrants, or people who are trans and just trying to lead their lives in dignity (29).

A critical ingredient of said “disaster nationalism”, according to Seymour, is its insistence on funneling people’s rage into unadulterated spite. Some of it still is directed at the political and some portion of the economic elite, but for their supposed allegiance to helping marginalized peoples that are deemed as “undeserving”. It’s a retread of Reagan’s dog-whistle tactics of suggesting that welfare is being taken advantage of people in the “inner cities”, except with far more vitriol behind it, a willingness for it to be unleashed beyond the bounds of purely electoral politics, as demonstrated by the riots in Gujarat as well as the far-right protests in Charlottesville.

Disaster nationalism “offers the balm of vengeance, the promise of self-love and the cure of restoring society to a promise of national self-love and the cure of restoring society to a more pristine, harmoniously hierarchical state through condign violence” (42).

Some of this is revealed too in Deb’s own pursuit of why India, once known for being secular and nominally socialist-aligned, has become such a hotbed of craven Hindu right mythology and rising anti-Muslim anti-modernity sentiment, among segments of the “people” to cable-news shows pumping such poison into audience’s ears and brains. Although Deb does not use the phrase “disaster nationalism”, and most of his writing is less through political theory and more so reliant on-the-ground journalist work of interviewing people on all sides of the political divide in India, he clearly sees a similar issue of how at the core of Hindutva is spite and rage, not at India’s elite, but at India’s elite for elevating the “undesirables”, particularly Muslim Indians.

“They should have their voting rights and any state benefits taken away,” a BJP activist confides to Deb, a fascist heart lurking beneath an office dress shirt and a soft voice (136). One is reminded, through Deb’s reporting and something that Seymour does touch upon in his own assessment, that hard-right supporters can still be “normal” people, all the while very much capable of doing and believing horrible and deadly beliefs. Beliefs that such people do want to project onto the “undesirable,” to kill and maim us. This brings to mind the incidents of the “normal” person here in the U.S., who can go from being someone’s friend to killing that same person, hopped up on ideas of white supremacy and us, the brown Other, supposedly ready to exact “revenge” on them. It’s a psychosis cultivated by the rightwing.

This compulsion to whip up such anger and vitriol is rooted to the reality that in fact, for most disaster nationalist or hard-right leaders, there’s not much, politically speaking, they truly offer

in terms of an alternative. For Orban, aside from some policies directed at keeping Hungarian nuclear Christian families "together", his policies are as neoliberal as anyone in the Hungarian establishment prior to his takeover of the country's mainstream. With the fall of the Berlin Wall itself, much of Eastern Europe has swiftly transformed into breeding ground for rightwing nationalists, very eager to spout hate speech on the front steps of their parliaments, at the same time, shaking hands with foreign investors day-in and day-out.[iii]

Trump's politics are increasingly paper-thin on the issue of labor, as he promotes himself as the "working man's" voice, all the while currying favor with economic elites like Elon Musk, a rabid anti-union loon.[iv] During his first and hopefully, only stint as the nation's Grand Wizard in the White House, the Trump administration was very much against such basic things as lifting the federal minimum wage and appointing anti-union officials to the National Relations Labor Board.[v]

"What disaster nationalism offers, instead of transcendence, is muscular national capitalism," Seymour clarifies for us, "It promises, as Donald Trump suggests, to make capitalism 'work', but in a way that is very different way to what we've been accustomed to" (47).

What this does is certainly the creation of a rabid and dedicated base of supporters, some of whom are blue-collar and uneducated. But the base of support for Trump, given his own antipathy towards labor and basic political freedoms and rights, is oftentimes precarious and as thin skinned as him and his contemporaries, like Bolsonaro in Brazil, whose own rightwing base of support can run quickly run dry, revealing the most diluted left behind. It's fair to remember that Bolsonaro himself was trailing significantly social democrat Lula de Silva in the 2018 elections, before trumped-up charges of "corruption", a mercurial accusation, took Lula out of the political equation.[vi]

"In most cases, excepting India, a major weakness for the new far right is that its projection of political influence far exceeds its real social depth," Seymour explains (200).

But even in the case of India, there are political parties on the left, especially the Communist Party of India-Marxist (CPI-M), that still reigns over crucial parts of the country, like Kerala.[vii] There are a multitude of trade unions, and lately, activists very much confronting directly the power and influence of the BJP. When ruminating on the success of the hard right, one must remember that it has more to do with their movement's willingness to wield power rather than anything to do with rampant popularity. Even in the context of India, the issue of rightwing power is certainly more of a broader level of support than one would find in the U.S. or Brazil for the rightwing, but it is very much related to their takeover of basic institutions and political infrastructure at the expense of the left-wing. This is demonstrated in the arrest of a group of left-wing activists known as the BK16, which includes those in their late eighties, taken away in handcuffs. Though there is evidence that incriminating information "discovered" on the laptops of such activists, linking them with a supposed plot to harm Modi, was "planted" there, not much has changed in terms of how such activists are being treated, and of how others are still being rounded up, and disappeared.

“Neither the Pegasus findings nor the global outcry after Swamy’s death has done anything to change the intimidation, surveillance, and fear of entrapment experienced by the BK16 or their supporters,” Debs highlights (188).

One could trace such conclusions to another important lesson for the left, one rooted in the singular recognition of the usefulness of state power and of the need to actively seize such power. “When our turn comes, we shall not make excuses for the terror” is apt here.[viii]

Disaster nationalism is, ultimately, a product of classic liberal bourgeois pretensions, as much as it represents a far more horrific version of what many people have already been enduring under forms of capitalism, settler colonialist politics, and white supremacy. It was Reagan who expanded the so-called war on drugs, more so a war on the poor, which allowed police to wield battering rams to knock down peoples’ doors in mainly blue-collar and lower-income black and brown neighborhoods.[ix] It was Reagan too whose administration supported some of the most heinous forces on the planet, such as the anti-communist Contras in Nicaragua known for their terroristic methods against most of the people simply wanting to overthrow decades of a one-family dynasty supported and backed by U.S. imperial might.[x]

One of the clearest examples of this is Israel, the apartheid state doubling as the U.S. colonial outpost in the Middle East. In his chapter titled “Genocide,” Seymour focuses mainly on the ways in which the existing Israel war on the Palestinian people, which some reports estimate close to 186,000 Palestinians having been killed, is both a continuation of previous contradictions within Israeli society, and of course, its escalation.[xi] “The Zionist movement, from its inception, embodied a mass of contradictions,” Seymour details, “A movement seeking a ‘land without a people for a people without a land,’ though ever land it considered was already copiously peopled” (169). Labour governments inside Israel were less explicitly violent as compared to Likud now, a party whose officials have no shame in their public disgust of Palestinian life. Still, every Israeli administration was predicated on taking land from the Palestinians. Every administration relied on more and more extremist “settlers” to patrol its formal borders against the Palestinians. Very much like the GOP and the rightwing elements of the Democrat party cultivating the constituency that would later on prop up Trump and other extremist weirdos, the Israeli establishment paved the way for Netanyahu and his ilk to find a support base eager for the extermination of the Palestinian state.

Unlike most liberal scholars who would suggest that somehow, Trump is “un-american” or unique, and the same with Orban, or Netanyahu, Seymour identifies how the past and present collide and melt together. Even the recent attacks on trans people, and identifying them as an internal enemy, reflect standard U.S. politics. Trump is an American as its genocide against indigenous peoples, and its obsession over dropping bombs on populous cities. Seymour writes, “During the Cold War, communism was thought indistinguishable from subversive sexuality. ‘If you want to be against McCarthy, boys,’ said Senator Joseph McCarthy, ‘you’ve got to be either a Communist or a cocksucker’” (95). As another scholar, Charisse Burden-Stelly has said, the religion of America, especially white people, is “anti-communism”, which carries over decade after decade, unless challenged by the left.[xii]

Prior to the brutal Gujarat riots, there was the 1984 anti-Sikh mass killings perpetrated across India, which led to thousands of Sikh Indians being murdered by Hindus.[xiii] This was done under a Congress-led administration, not the BJP.

There are portions of *Twilight Prisoners* and *Disaster Nationalism* that could have been strengthened. In the case of Deb's work, it would've been beneficial to have included essays or have written a new one that spoke on collective resistance against the BJP. Some of this is mentioned, and of course, the emphasis here is on detailing the rise of the rightwing and the complicity of the Indian social order. But there is a general void here. The very last essay included in this collection was Deb's conversation with Arundhati Roy, which is valuable in its own right, but once more frames this struggle as mainly an intellectual one of brave individuals speaking truth to power. A solution here is the organization of everyone targeted by the BJP, pulled together by a left-wing front.

Seymour does relay some conversation of what could or should be done to confront this rising rightwing threat globally, and his response is far more holistic and realistic than simply someone arguing that all we need is a social democratic spirit. Seymour himself notes that in some instances, those who've given their souls to the rightwing, usually whites in America, usually more middle class, are not necessarily searching for a real alternative. They desire their right to dominate and feel secure as they once were, or felt they were, willing to carry on their solemn duty to surveil and police the rest of us. To appeal to such groups would necessitate conceding critical social democratic demands since such demands can be tied to our successes, and white resentment is a force to be reckoned with in this regard, able to twist what are obvious connections of lifting all boats to sources of panic and paranoia over us "taking over". But, Seymour does raise the importance of social movements creating an ecosystem in which working people can fight for their most immediate needs, like a wage increase, but also, gain from such movements a sense of community and wellness, and humanity. "But if workers are drawn into struggle by a combination of need and hope, pulled into the rhythms and contradictions of the historical process with its volatile upturns and downtowns, conceive of themselves as part of that history and form the radical need for community and universality, then they are to that extent inoculated against the paranoid, anti-social and vengeful passions of disaster nationalism," he states (205). This too would indeed benefit those of us who haven't yet become fodder for the far-right, but who feel alienated, understandably, from a mainstream political system that perpetuates colonialist and capitalist exploitation and harm.

However, there could've been more historical examples incorporated into the final chapter, to truly exemplify what it is Seymour is referring to. We have a faint idea of this as he does mention labor unions broadly having successfully, in the past, created not just campaigns for struggles on critical issues, but an ecosystem of caring and community. But more specific examples could've been helpful here, considering the level of detail we do read about the heinous elements of the far-right, past and present.

Nonetheless, one comes away with a far more astute view of the forces arrayed against us

when reviewing the work of Seymour and Deb. Some of it is very frustrating and horrifying to read. But the rightwing and the forces of oppression are not going away any time soon, and it's pertinent to us to learn how they crawl and move if we have any chance of defeating them and tossing them into the pit. Seymour and Debs help elucidate, to some degree, how we should do that, and what to expect moving forward. The overwhelming nature of a world gradually dominated by the excesses of liberal bourgeois politics is assessed and contained with very real lessons for us to carry ahead.

The monsters are here, have been lurking for decades. It's about time we see them for what they are.

Notes

[i] Kaush Arha and Samir Saran, "The US needs a new paradigm for India: 'Great Power Partnership'", *Atlantic Council*, April 1, 2024, https://www.atlanticcouncil.org/blogs/new-atlanticist/the-us-needs-a-new-paradigm-for-india-great-power-partnership/

[ii] Timothy Snyder. 2017. *On Tyranny: Twenty Lessons from the Twentieth Century* (New York: Crown).

[iii] "Europe and right-wing nationalism: A country-by-country guide," BBC News, Nov. 13, 2019, https://www.bbc.com/news/world-europe-36130006

[iv] Jacob Gallagher, "Elon Musk's Giant Leap," *New York Times*, Oct. 7, 2024, https://www.nytimes.com/2024/10/07/style/elon-musk-donald-trump-campaign-rally.html

[v] Celine McNicholas, Margaret Poydock, and Lynn Rhinehart, "Unprecedented: The Trump NLRB's attack on workers' rights," *Economic Policy Institute*, Oct. 16, 2019, https://www.epi.org/publication/unprecedented-the-trump-nlrbs-attack-on-workers-rights/

[vi] Shasta Darlington and Taylor Barnes, "Brazil's former President Lula released from prison," *CNN*, Nov. 8, 2019, https://www.cnn.com/2019/11/08/americas/brazil-lula-da-silva-released-prison-intl/index.html

[vii] Ashique Ali T & Angshuman Sarma, "Kerala's Communists Are Showing India a Path Out of Poverty," *Jacobin*, Nov. 1, 2021, https://jacobin.com/2021/11/kerala-india-communist-party-farmers-cooperatives-bds-wayanad

[viii] "Suppression of the Neue Rheinische Zeitung," Marxist archive, https://www.marxists.org/archive/marx/works/1849/05/19c.htm

[ix] Andrew Glass, "Reagan declares 'War on Drugs,' October 14, 1982," *Politico*, Oct. 14, 2010, https://www.politico.com/story/2010/10/reagan-declares-war-on-drugs-october-14-1982-043552

[x] “President Reagan gives CIA authority to establish the Contras,” *History*, https://www.history.com/this-day-in-history/reagan-gives-cia-authority-to-establish-the-contras

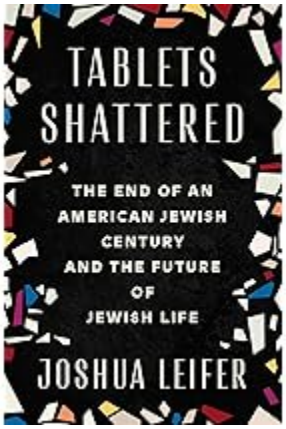
[xi] Rasha Khatib, Martin McKee & Salim Yusuf, “Counting the dead in Gaza: difficult but essential,” *The Lancet*, July, 10, 2024, https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(24)01169-3/fulltext

[xii] Charisse Burden-Stelly. 2023. *Black Scare/Red Scare: Theorizing Capitalist Racism in the United States* (Chicago: University of Chicago Press).

[xiii] “India: Prosecute Those Responsible for 1984 Massacre of Sikhs,” *Human Rights Watch*, https://www.hrw.org/news/2009/11/02/india-prosecute-those-responsible-1984-massacre-sikhs?gad_source=1&gclid=CjwKCAjw9p24BhB_EiwA8ID5BrGcSHtcNWWoXlbgzJJXkqiaUBr9akpBxSKvlC8XIn_MIukusSOTGhoCDvkQAvD_BwE

The Future of Judaism in America: On Joshua Leifer's Tablets Shattered

By | 2024: Vol. 23, No. 3



The war between Israel and Hamas, Hezbollah, the expansion of hostilities into Lebanon and the missile assault on Israel by Iran have thrust the Jewish state foremost into the headlines. It has also sown new divisions in the American social and political fabric, further exacerbating tensions and hatred in what is already a deeply divided nation. America's military support of Israel and the accompanying loss of civilian life in Gaza, now exceeding 42,000 dead, the majority innocent women and children, has occasioned fervent demonstrations in support of the Palestinians on college campuses and in the streets. Passions have been aroused on many sides. Those supporting Israel have also been on the barricades.

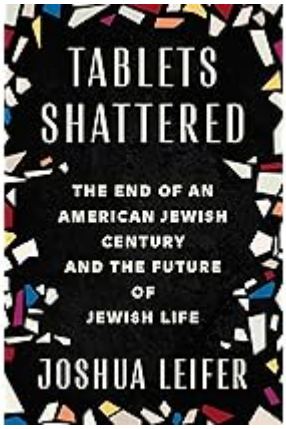
Zionism, which has long evoked opprobrium, not only among Arab and Muslim populations, but among developing nations, has become a dirty word, equatable with unqualified evil. Zionism was the political movement that brought Israel into existence and created the Jewish state. Those who support Israel will interpret Zionism as the expression of the national self-determination of the Jewish people, long a fundamental precept of universal human rights. For many on the Left, in line with a post-colonial ideology that has become academically fashionable, Israel is excoriated as a "settler colonialist" entity whose very existence is construed as illegitimate.

The rise of pro-Palestinian fervor has spilled over into a resurgence of antisemitism which is unprecedented in the United States at least since the Second World War. Jews have long felt secure and have prospered in America. Current events have shaken that security and have raised the question among many Jews as to whether beneath the veneers of safety and extraordinary accomplishment, Jews in America will re-experience their historical status as the perpetual outsider. Though latent and for the most part muted for decades, antisemitism has become manifest again. Jews now feel vulnerable.

I began this essay on October 7th, the anniversary of the unprecedented and vicious slaughter of 1,200 Israelis by Hamas terrorists, often cited as the greatest murder of Jews since the Holocaust. Israel is experiencing collective trauma, and many American Jews share in the agony of ongoing hostilities.

These events, taking place far away, have raised many painful questions as to the place of Jews with regard to the larger society. It has also raised questions within the American Jewish community as to the place of Israel as a major component of Jewish identity. These questions are by no means new, but they have taken on much greater urgency given the volatility of current events, painful as they are.

It is also a factor, among many others, that figures into current dynamics of what it means to be a Jew in America, and raises concerns and apprehensions about the future of American Judaism. These questions, though brought into stark relief in the moment, bear a long and extremely complex history.



The future of Judaism in America is the subject of recently published *Tablets Shattered* by journalist Joshua Leifer. This timely book, thoroughly researched and nuanced, is written in a polished, high-minded, and sophisticated style. This is not merely an academic study of American Jewry. Woven through his narrative is a deeply personal and honest exposition of Leifer's identity as a Jew and the evolution of the American Jewish community in the 20th century.

Leifer identifies himself as a "mainline affiliated" Jew, an identity to which he is inextricably attached. But Leifer's Jewish commitments are by no means without their vicissitudes. He is admirably honest and realistic about his changing viewpoints, his angst, and his ambivalences which feed into his conclusions as to where Judaism is heading in America. *Tablets Shattered* provides an assessment of the rising success of the Jewish community, and leads to the conclusion that it is "cracking and crumbling." His approach is historical, sociological and political, but it is also a memoir, a personal cri de coeur. Leifer is clearly pessimistic about the American Jewish future, a conclusion for which he provides exhaustive evidence.

I was gripped by Leifer's study. Though he is less than half my age, his struggles with Jewish identity are parallel to my own. While I was educated in an Orthodox synagogue and had an

Orthodox bar-mitzvah, and mine was a Jewish home, Jewish practice was minimal. Leifer's commitment to Judaism has run much deeper and has been continuous. Leifer spent his early education in a Jewish day school and as a youth there were multiple stays in Israel. Mine was not a Zionist home. I didn't develop an interest in Israel, or view it as a component of my identity until after the 1967 war, as Leifer notes, many Jews did. After my bar-mitzvah, I moved away from Judaic belief and found meaning in a humanistic world view and a career in the Ethical Culture movement. Though Ethical Culture was excoriated in some Jewish circles as an escape for Jews from their Jewish identity and a fast track toward assimilation, my motives for joining Ethical Culture emerged as a fulfillment of my Jewish values and not in defiance of them. From childhood I always valued my ethics as emerging from my Judaism. My being Jewish comprises my interiority at its deepest levels. There is an adage in Yiddish, "Az ihr hot nicht kein rachmones, vos macht ihr a Yid?" "If you don't have compassion, what makes you a Jew?" Such insight has been a source of personal meaning and pride.

It is that identification that also generates searing personal conflict in light of where Israel has moved politically and ethically, namely solidly to the right. The wanton destruction of innocent life in Gaza brings that conflict into stark relief. In an earlier essay I noted that on a trip to Israel last February, despite the national trauma caused by the unprecedented assault of October 7th, I encountered not a single Israeli, many with whom I ostensibly shared common values, who expressed a word of compassion for the disproportionate killing of innocent lives in Gaza. It is an ethical absence expressed by too many American Jews as well, and I have found it painful in light of what I have always considered central to being Jewish in any justifiable sense.

Both Joshua Leifer and I are leftists, which generates further conflict and distress as pro-Palestinian demonstrations have too readily morphed into a yen for Israel's very destruction, and even beyond, have been an outlet for antisemitism.

But Zionism comprises just one aspect of a much broader thesis. Leifer traces the trajectory of Judaism in America with reference to the evolution of his family through generations. The years from 1881 to 1924 saw the emigration to America of more than two million Jews from Eastern Europe. They were fleeing not only czarist pogroms, but also, in many cases, rabbinic establishments in the search of freedom and new opportunities. In the move across the Atlantic, the new arrivals, who were born into folk Orthodoxy, quickly shed their religion as they sought to assimilate to America and its values. Such was the case with Leifer's family and my own. In my case, my maternal grandparents arrived from Eastern Poland around 1900 and lived in the Lower East Side before moving to the Bronx. Though they lived in the United States for 70 years, they never learned English. Their seven children related to their Old-World parents with muted disdain and became radically secular, one becoming a Stalinist and younger brother a radical Trotskyist. There was an annual Passover Seder, which was formally correct, but devoid of underlying belief or reverence. The only exception was my mother, who was the youngest and who retained some vestige of religious practice within the context of upwardly mobile middle-class aspirations.

As such, sustaining Jewish identity, as Leifer makes clear, involved deliberate effort in light of the blandishments of consumerism and the opportunity for social climbing that America provided. Leifer identifies three pillars around which Jewish identity has been centered that began at the turn of the century and solidified after World War II.

The first was Americanism. America provided promise and the promise was fulfilled. American freedom and opportunity provided a powerful counterweight to the Jewish history of persecution. Jews, as never before, flourished in the new land. But, as Leifer notes, success came at a very severe cost:

"…while Americanism gave much to American Jews, it also exacted a significant and ultimately devastating cost. The theorist of cultural pluralism might have hoped otherwise, but, in practice, fully joining the American project entailed the suppression and surrender of what had been the dominant forms of Eastern European Jewishness: traditionalist Orthodoxy and left-wing radicalism. These were the roots of eastern European Jewry; making it in America required that they be severed."

In short, in the move to a new and open society, Jews had to create Judaism anew with new institutions fitted to the American environment. It is these institutions and Jewish affiliation that are shredding and now fading away.

The second pillar was Zionism, especially after Israel's founding in 1948 and then again after Israel's dramatic victory in the 1967 war. Israel, as a locus of Jewish identity, as Leifer notes, emerged at mid- century at a time of "embourgeoisement and suburban anomie, when a cultural and religious crisis appeared imminent." But making Israel and Zionism central to Jewish identity was problematic in that it too was attained as a substitute for religious practice. As Leifer asserts:

"If meaning could not be found in liturgy or in synagogue, it could now be found in fundraising for the United Jewish Appeal, the American Jewish Committee, and the American Israel Public Affairs Committee (AIPAC). American Jews imagined Israel as a moral beacon and Zionism as the secular fulfillment of the religious faith in which they could no longer really believe."

While Israel, born out of the ashes of the Holocaust, could inspire great pride in American Jews, it has not come without intrinsic problems for American Jewish identity. As implied, while support for Israel became a centerpiece of Jewish identity, nationalism is not a religion. Moreover, Zionist ideology promoted the notion that the authentic Jewish life could only be lived within the Jewish state. Hence many American Zionists found themselves fervently supporting Israel with their passion and their financial generosity while Israel collectively has construed those in the diaspora to be second class Jews.

But with Israel's victory in the 1967 war, and the occupation and settlement of the West Bank and control of Gaza, the politics of supporting Israel dramatically and painfully changed. American military support for Israel grew tremendously and Israeli society and its government moved steadily to the right. American organizations such as AIPAC, the Zionist Organization of

America (ZOA), and the Presidents of Major Jewish Organizations, along with their self-appointed leaders, staunchly supported Israeli nationalism and maintained the position, with few exceptions, that Israel could do no wrong. Sustained by, and catering to super-wealthy donors, they postured themselves as speaking for a constituency they did not and do not represent, given that the overriding majority of American Jews remain liberal. Such groups actively have worked to shut down any criticism of Israel, and have actively destroyed those Jewish movements that have lodged dissent, particularly regarding Israeli occupation and settlement of Palestinian lands.

Indeed liberalism is the third pillar of Leifer's framework defining the basis of American Jewish life. It was natural for Jews to support liberal causes. Identification with the oppressed came readily, and Jews were actively supportive of the Civil Rights Movement and the feminist movement, and in the 1960s found themselves in the forefront of the New Left and in opposition to the war in Vietnam. Jews supported progressive education and the labor movement. Jewish attorneys championed civil liberties and the separation of church and state, among other progressive initiatives. And Jews have reliably supported the Democratic Party, even, as often noted, when Democratic policy has run against their economic interests. The American Jewish population has been reflexively liberal.

But the embrace of liberalism, as Leifer makes clear, has led to the undoing of American Judaism and points to the central dynamic that has been its cause, often unnoticed or underappreciated. It is a conclusion he often repeats:

"But it soon turned out that what worked for liberal America could not work for Judaism. The idea of obligation-the meaning of mitzvah, the core of Jewish life-fell out of fashion in liberal capitalist culture that sacralizes individual self-expression and self-gratification. The logic of the market reduced all aspects of life to fungible value, and religious practice became, like Pilates or yoga, just another consumer good. In a world of limitless choice and limitless growth, the kind of commitment and restraint required to sustain community increasingly appeared as an unjustifiable and palatable anachronism. By the late twentieth century, American Jews have become such good liberals that they could no longer give themselves compelling reasons for why they should live Jewish lives in terms other than those American liberalism furnished for them."

A fourth pillar I would add and that Leifer discusses, but I consider weightier, is the significance of the Holocaust. The salience of the Holocaust in Jewish discourse did not emerge until several decades after the War, perhaps owing to its enormity and associative trauma. But once it did, Holocaust memory and its significance for Jewish identity became central to Jewish consciousness and worked its way into Jewish culture at large. Holocaust museums, memorial events, school curricula and the portrayal of the Holocaust in popular culture became widespread and commonplace.

Yet as Leifer maintains, these pillars have run their course and are unraveling. Americanism and liberalism have winnowed away at the religious core that has defined Judaism as Leifer

understands it. Religious obligation and practice, and the communal bonds that reinforce them, have been subsumed by the dynamics comprising modern American life. Zionism, which was a benevolent cause for older generations that fostered pride and was a source of identity, for many younger progressive Jews signifies support for an ethno-nationalist militarized state, committed to the oppression and humiliation of seven million Palestinians seemingly without end. It's been noted by some that memorializing the Holocaust sacralizes victimization and bears no relation to active religious practice. And in a few years, with the passing of the last survivors, the Holocaust will move from lived history to memory, and with this shift, its significance and centrality to Jewish identity will most likely grow weaker.

The thinning of the Jewish community is most evident in the increased pace of intermarriage. I was taught early on that marrying out was strictly forbidden and Orthodoxy requires that one's child who weds a Gentile be disowned if not declared dead by one's family. In the 1950s perhaps no more than eight percent of Jews outmarried. Today, if we bracket the Orthodox sector, more than 70 percent of Jews marry someone of a different faith. The shift has been a source of high anxiety in the organized Jewish community, occasioning flurries of studies seeking to pin down with precision the population of Jewish Americans. In earlier decades, Conservative Judaism had been the largest of the three major denominations, followed by Reform. Despite greater visibility, Orthodoxy compromises no more than ten percent of the organized Jewish community. Both Conservative and Reform have greatly declined, though Conservative, which I have long construed as a way station for the immigrant population, more so.

Despite large endowments, libraries, archives and synagogues, the decline is shocking. Leifer cites the following:

"Disaffiliation is a top-down as well as bottom up phenomenon. Enrollment at the existing Reform and Conservative seminaries has dropped in tandem with synagogue membership. The numbers can appear shocking. Across its Los Angeles and New York campuses, the 2022-2023 Hebrew Union College rabbinical student class had only fourteen students. At the Conservative JTS (Jewish Theological Seminary) in New York, the same year's first-year rabbinical class had only seven."

"At mid-century, the Reform and Conservative movements were mammoth organizations and, like the mammoths seem headed toward extinction- not tomorrow, but inevitably…The once vast suburban architecture of liberal Jewish life is becoming a mausoleum to a religious civilization that has now passed."

What has been the cause of this decline and what, if anything, can be done to reverse it?

American society has dramatically changed in the past half century and with this change has come the advance of pluralism, women's equality and the movement of gays into mainstream society. It was inevitable that the non-Orthodox streams of Judaism, as has been the case with mainline Protestant churches, would be compelled to adjust to these changes. The effects of

postmodernism on society at-large have given rise to post-denominational- and post-God-movements within Judaism and new forms of Jewish expressions to keep pace with cultural changes. The ordination of women as rabbis was a long-standing issue of debate and contention within the Reform movement and then in Conservative Judaism. What of gay marriage? Gay and lesbian rabbis? With the explosive reality of intermarriage, Reform especially has wrestled with the issue of placing the non-Jewish spouse in the synagogue. Can he or she be a member of the temple? Hold office? Participate in religious rituals? Traditional Judaism is matrilineal. If a child's mother is Jewish, so is the child and the father is irrelevant in this regard. Reform elected to alter this millennial doctrine so that a child of a Jewish father and non-Jewish mother could be construed as a Jew as long as there was a stated pledge to raise the child as such.

In general, the pressures of society have resulted in liberal Judaism opting for greater inclusion, and as a result, liberalizing still further. But have such efforts to be *relevant*to the times been propitious for Judaism's future, or have they been a cause of the decline? I recall a conversation with an older friend, a retired Reform rabbi, who stated his discomfort when walking through the corridors of the temple where he had long served hearing the sound of Christmas carols sung by the congregation's choir. At what point does Judaism lose its defining character? Leifer notes that there are those who conclude that the decline of Jewish commitment and affiliation can be attributed to the very accommodations social changes have wrought.

But these changes have also brought new and creative expressions of Judaism, as Leifer states, along the periphery. There are experimental forms, many brought by gay and lesbian Jews, that involve the reinvention of ritual and liturgy inclusive of music, storytelling, theater and more, much reflective of current political and social sensibilities. There is borrowing from avant-garde trends, even the syncretistic inclusion of practices from other traditions.

Clearly Leifer is admiring of the creativity. Yet even here, in an effort to transform Judaism in tune with current values and political movements, he remains uncertain and discomforted, and his misgivings go to the heart of his thesis.

The problem with contemporary Judaism is not its appropriation of new forms. The dynamics run much deeper and reach far beyond internal Jewish issues. The problem is the primacy of individualism that defines American life. It is a reality that Leifer often repeats:

"…for most of Judaism's existence, being Jewish meant recognizing Judaism's binding framework, even if one struggles with, bristled at, or neglected, whether with guilt or relish, its stipulations. Contemporary Jewish life, by contrast, appears to rest on a roughly opposite axiom. While most American Jews describe themselves as proud to be Jewish, they also seem to believe that such a declaration exists independent of any set of obligations-that it requires no adherence, let alone knowledge, of Jewish law. Jewishness today has become more of an identity to be possessed than a coherent set of practices. Self -gratification and individual preference have supplanted commandedness and commitment to community."

“It is the liberal-individualist mentality-not queer inclusion or gender egalitarianism-that is responsible for mainline affiliated Judaism’s demise.”

Leifer has gotten it exactly right. It is as if Robert Putnam and his thesis proffered in *Bowling Alone* is looking over Leifer’ shoulder. In my view, American society is characterized by hyper-individualism that has led to the breakdown of organizational and institutional affiliation of all types, including religious ones. Leifer does reference the meteoric decline of Protestant churches, noting that some scholars estimate that 6,000 to 10,000 churches close down every year. Sociologically, synagogues are subject to precisely the same forces.

While Leifer is clearly intrigued with the creativity of new expressions of Judaism he has his doubts in a way that reveals the internal nature of his own Jewish commitments and what he believes Judaism needs to be. He closes his book with a sentiment which I understand and with which, in a broader sense, I completely concur. In a manner that is admirably revealing, Leifer notes as follows:

“Most of all, I have become convinced of the radical potential of traditional Judaism…I believe that a life centered on the commandments, on mitzvot, is a good life in and of itself. In our current moment, it is also a profoundly and radically countercultural one…Judaism is a religion of limits and obligation- two concepts utterly opposed to the dominant currents of contemporary life. Our liberal capitalist culture celebrates boundless growth, infinite choice, and instant gratification. Traditional Judaism, by contrast, teaches the merits of long term commit, patience and restraint, and commitment with one’s lot.

Whereas liberal capitalism glorifies the individual while condemning him to an atomized and isolated existence, traditional Judaism requires that life be lived with and for others-in obligated community.”

“Especially in times like ours, I understand that these may seem like conservative values. In a sense, they are. But I have arrived to them through my left-wing convictions, not despite them.”

“To be clear, I don’t think embracing tradition means relinquishing important progressive commitments such as feminism, anti-racism, or opposition to the occupation of the West Bank and Gaza. It simply means realizing these commitments differently.”

Here I completely agree. There can be no freedom without restraint. There can be no freedom for oneself without obligation and responsibility to others and to higher, more enduring, values. There can be no individual without community. It is such commitments that deepen life’s meaning. And so, Joshua Leifer has not headed for the exit. He has chosen to recommit himself to his Judaism, its practices and obligations,and to Israel, and fight whatever battles that need to be fought from the inside. Whether he will find others like him in sufficient numbers to ensure the Jewish future, he has left us with many reasons to doubt.

Leifer’s treatment of Orthodox Judaism is relegated to a single chapter. It deals primarily with

the Haredi community in Lakewood, New Jersey, from which his wife comes. He is admiring of the Haredi devotion to transcendent values, to community and family. But clearly he refutes the parochialism and conservatism that are constitutive of what he finds in Lakewood. Oddly a major omission in Leifer's study is a discussion of modern Orthodoxy, which in many places is vibrant and thriving. My childhood synagogue was the Queens Jewish Center in Forest Hills. It was the first of what is now a row of a dozen Orthodox synagogues and yeshivas that line 108th street in my old neighborhood. The suburb of Teaneck, New Jersey, where I worked for 50 years, is home to perhaps 15 Orthodox shuls. It is one of several communities in the New York area where modern Orthodoxy is growing.

As noted, Leifer views American Judaism through a sociological and historical lens. He does not deal with the philosophical and metaphysical underpinning of Jewish belief. Conventionally, Judaism is seen primarily as dealing with behavior, the living out of the *mitzvot*. But belief cannot be fully discounted. At a minimum, Judaic commitment requires at least a belief that something not of this world occurred on Sinai. Jewish liturgy is inextricably theocentric, and metaphorical reinterpretation can only be applied so far. For me, belief in God, or rather the absence of it, has raised radical questions as to how I construe and construct my Jewish identity. Leifer does not engage issues of belief and, in my view, his work would be more complete if he had.

Despite these omissions, *Tablets Shattered* will generate extensive discussion within the Jewish community. It is worthy of much attention. And rightly so. It could not be more relevant to the contemporary Jewish experience in America. It is written with sophistication and in a powerful style. It is erudite but personal and admirably honest. Leifer is committed to speaking the truth as he sees it and without reservation. And given our fraught times and the volatility of the moment, Leifer's thesis also partakes of courage.