

THE VITAL CENTER

VOL. 1

ISSUE 1, FALL 2023

THE MODERN STATE AND LIBERAL FOUNDATIONS

THE POLITICAL MORALITY OF FREEDOM

Martin Rhonheimer

CATHOLIC SCHOLASTICISM AT THE THRESHOLD OF CONSTITUTIONALISM

Thomas Howes

THE INEVITABLE PARADOX OF STATE COERCION

Sam Routley

FEATURING

In Defense of
Decadent Europe
Alexis Carré

The Unlearned Lessons
of January 6th
Joseph Stieb

Keeping the Republic
J. Tyler Syck



Letter from the Editor

By Thomas D. Howes

FOUNDING EDITOR

JEFFERY TYLER SYCK

EDITOR-IN-CHIEF

THOMAS D. HOWES

CONTRIBUTING EDITORS

JAKE KROESEN
ANDRÉ BÉLIVEAU
JONATHAN F. DEAN
NECO DONOHUE
MICAH ERFAN
GRIFFIN FILL
DANIEL N. GULLOTTA
RANDAL HENDRICKSON
MICHAEL J. HOUT
NICOLE PENN
SHAL MARIOTT
JACOB NESTLE
MICHAEL SHINDLER
JOSEPH STIEB
HENRY T. QUILLEN
GABE WHITBREAD
JACKSON WOLFORD

DESIGN AND LAYOUT

KIRA HOWES

It was the vision of our founding editor, Jeffrey Tyler Syck, to unite center-left and center-right perspectives in support of the liberal tradition, a tradition under attack by political radicals on both sides. With little to compare it to, it is easy to dismiss the accomplishments of this tradition. We therefore saw fit to focus on its historical foundations. The three featured essays all relate in some way to this theme.

We begin with a translation of an essay by the philosopher Martin Rhonheimer; in it, he swims against the current of the classical liberal tradition he embraces to defend the legacy of the French Revolution, distinguishing its essential elements from the aberrations long associated with it. In the process, he articulates the path from the Middle Ages to the modern state, leading to modern constitutional democracy.

Arguing instead from what has been called the “realist” tradition, Sam Routley examines coercion and power in the modern world, drawing from the thought of Charles Tilly. He emphasizes the need for a strong, democratically overseen liberal state to direct coercion and power, which he sees as inevitable, toward socially beneficial outcomes.

The third essay highlights the often-overlooked contributions to modern democratic thought of early-modern Spanish scholastics. These thinkers played a crucial role in shaping seventeenth-century English political debates and provided conceptual tools that proved useful for the transition to modern democratic constitutionalism.

The thematic essays are followed by various thought-provoking reflections on contemporary topics, as well as some rather insightful book reviews. Finally, this inaugural issue closes with a poem by D.E. Skocz.

We hope you enjoy it!

CONTENTS

VOLUME 1
ISSUE 1

Theme Essays

- The Political Morality of Freedom** 4
The Liberal Legacy of the French Revolution
Martin Rhonheimer
- The Inevitable Paradox of State Coercion** 21
The Late Charles Tilly Provides an Important
Lesson to Today's State Builders
Sam Routley
- Catholic Scholasticism at the Threshold
of Constitutionalism** 26
Thomas D. Howes

Reflections

- In Defense of Decadent Europe** 33
Alexis Carré
- Keeping the Republic** 45
Jeffery Tyler Syck
- The Unlearned Lessons of January 6th** 50
Joseph Stieb
- Bogalusa and the Banality of Evil** 59
Matthew Crowe
- Restoring Emerson's Liberal Home** 64
John Kaufman

Reviews

- Beyond Left and Right** 70
Stephen Tootle
- Histories of Fear** 74
Ming Kit Wong
- Liberty Then and Now** 77
Baird Johnson
- Regime Change** 83
Unpacking Patrick Deneen's Critique of Liberalism
Garion Frankel
- What Counts*** 86
D. E. Skocz



THE POLITICAL MORALITY OF FREEDOM

The Liberal Legacy of the French Revolution

By Martin Rhonheimer

Every year for the French national holiday on July 14, the anniversary of the storming of the Bastille, news reports and articles about the French Revolution appear in the media. But what became the image of the Revolution and what the French celebrate on July 14—the storming of the French monarchy’s (at the time almost empty) prison—is merely a symbol that has since become a myth, but by no means the main event of a revolution that not only changed a nation but stands for the beginning of modern Europe.

Even less than the storming of the Bastille do the guillotine and Jacobin terror stand for what the French Revolution was in its essence or its lasting legacy—despite its trials and tribulations,

up to and including the bloody revolutionary wars. Not even critics of the Revolution such as Edmund Burke started here. Rather, they criticized the rationalist-constructivist attempt to create something radically new from scratch, as it were, disregarding the continuity of what had grown up historically. This criticism indeed hit a sore spot but ultimately missed the crucial point.

For unlike the development in Great Britain, which took place on the basis of the Anglo-Saxon legal tradition, and as its continuous evolution, there was no path of continuity in France to lead the country out of the impasse and save it from political and financial bankruptcy. Rather, what was needed was a constitutional and political break with the past. Burke had not understood this, despite his ultimately liberal intentions. And so, this freedom-loving “Old Whig” was then reinterpreted in a tendentious manner as an advocate of the Restoration, even in the German-speaking world by his translator, the Metternich advisor Friedrich von Gentz. Thus he (wrongly) became an apologist for the *ancien régime* for all legitimists and conservatives who continued to support the pre-revolutionary monarchies. But not for long, for very soon the spirit of the Revolution was to reshape the European continent as well.

Against Absolutism: Freedom as a Prerequisite for Peace

The French Revolution did not fall abruptly from the sky. It was part of a secular process, indeed part of a long-lasting “crisis of European consciousness” (Paul Hazard). There was a seething among European intellectuals and politically influential legal scholars and philosophers. The bitter experiences with the absolute state and its claims of undivided and (as was all too soon realized) uncontrolled and arbitrary sovereignty led to the demand for freedom as a condition and prerequisite for citizens to live together in peace and security. This was

especially the case in France, where—in contrast to Prussia, for example—absolutism was by no means “enlightened absolutism” even in the Age of Enlightenment, but corrupt and economically inefficient.

An additional ferment were the “encyclopedists,” who with their *Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers* (published from 1751 to 1780 in 35 volumes and with contributions from 142 authors) not only claimed to summarize the entire knowledge of their time and make it

“*Unlike the development in Great Britain, there was no path of continuity in France to lead the country out of the impasse and save it from political and financial bankruptcy.*”

accessible to all, but also struck a thoroughly critical note toward the ruling authorities, including the Church and the dogmas of the Christian faith. This also prepared the more educated strata of the bourgeoisie and more than a few representatives of the nobility, many of whom collaborated on the encyclopedia, to accept the ideas of the Revolution. It is interesting to note that the Encyclopedia’s thrust was thoroughly Anglophile: in the spirit of its occasional collaborator Voltaire and his *Lettres Anglaises*, it was directed against Descartes and spread Newtonian physics against Cartesian physics, and spread empiricist philosophy, especially that of John Locke, against Cartesian rationalism.

England, on the other hand, was already anti-absolutist from its tradition going back to the Middle Ages and, of course, also empiricist in orientation. The attempt of the Catholicizing James II of the House of Stuart to introduce an absolutist regime in England and to re-Catholicize the crown led to the “Glorious Revolution” in 1688. This represented a restoration of continuity, above all of the rule of parliamentarism and of parliamentary limitation and control of royal power. And this was all in the name of Protestantism and marked by opposition to Catholic France and an increasing, almost hysterical fear of papal influence over the fate of Great Britain. The Whig Edmund Burke (an Anglican Irishman) also celebrated this Glorious Revolution as a triumph of liberty and parliament over the crown, because the events of 1688 restored the anti-absolutist tradition (king-in-parliament) and thus the continuity of law.

The political ethos of freedom, as it developed in the course of the seventeenth and eighteenth centuries against absolutism, can admittedly also be understood as a mere extension of the political morality of peace as it had been articulated in reaction to the bloody confessional civil wars of the sixteenth and seventeenth centuries—especially in the form of the doctrine of sovereignty of the French jurist Jean Bodin and that of the English philosopher Thomas Hobbes. These two held that what was needed first was a strong, internally sovereign ruler who would establish peace between opposing parties by leaving aside contentious ideological and religious matters. But the anti-absolutism of the seventeenth and eighteenth centuries went far beyond such formulas of peace, while, like Hobbes and Bodin, regarding civil war as the highest of all evils.

In real-world absolutist etatism, there were no citizens, only subjects. Power was unchecked and subjects had no rights. Freedom was subordinated to peace, and property was unsecured. Free expression of opinion or even criticism of the rulers was

frowned upon, and economic life was organized from above—at least according to French understanding. In France, the monarch surrounded himself with a “noblesse de robe”: upstarts, opportunists, and sycophants who enriched themselves at the expense of most of the poor population and gradually ruined the country.

The Powerlessness of the Philosophers: The Rule of Law

Intellectuals objected to this, but to no avail. The Dutch optical lens grinder and philosopher Baruch Spinoza, for example, wrote that where there was no freedom (of expression, of religion, of the search for truth), there could be no peace. Spinoza was indeed inclined toward Hobbes’ doctrine of sovereignty and its absolutist ethos of peace, but he wanted to overcome its freedom-jeopardizing one-sidedness. Therefore, according to Spinoza, the state, precisely as a guarantor of peace, is above all the protector of human freedom (Spinoza, *Theological-Political Treatise*, Preface). Yes, Spinoza formulated programmatically, “the purpose of the state is freedom,” and a state that suppresses it has no legitimacy (Spinoza, chap. 20). This was new: peace requires not only efficient sovereign rule, but the freedom of the citizen. Without freedom, no peace.

Spinoza’s compromise between sovereignty and freedom, however, remained a mere philosophical appeal. That such appeals could sometimes acquire historical or real substance was not the work of philosophers. This was also true of the liberal philosopher John Locke, for whom no state could be the owner of society or of the individual. All governmental power, he says, is at the service of society, and society must make possible the free development of the individual person. Those who govern are only trustees of society; government is a “trust,” that is, it acts in trust on behalf of and in the service of the individuals who join to form society. Society, as a “community”

of individuals, can therefore recall any government when necessary and replace it with a new one.

This was spoken into a concrete historical situation: into the situation of English parliamentarism, which was gaining strength at the beginning of the eighteenth century in the wake of the Glorious Revolution of 1688. Locke, for his part, had come to England from the Netherlands as a naval surgeon with the invasion fleet of the new English king, William of Orange—William III (cf. Kluxen, 1983). Locke was thus not writing in a vacuum or in a philosophical ivory tower; he was a participant in and witness to a thoroughly revolutionary political process.

The newly strengthened English parliamentarism was the fruit of a long development that had ultimately begun in the Middle Ages. It acknowledges as its founding document the Magna Carta written in 1215, the first and, as it were, embryonic form of English constitutional law. In the centuries that followed, it was not only the evolution of the parliament that was gaining more and more power vis-à-vis the crown, but also the emergence of an independent legal profession, the typically Anglo-Saxon

development of common law, which grew through judge-made law, and the growth in understanding of the rule of law that resulted from both. The rule of law and the laws enacted by parliament on this basis competed with the claims to power and political arbitrariness of the crown. One only has to think of the “Petition of Right” of 1628 as well as the Bill of Rights of 1688–1689, influenced by the ideas of Locke, in which the principle of “No taxation without representation” (i.e., the prohibition of the Crown from levying taxes without the consent of Parliament) was laid down in law for the first time. This then became the revolutionary battle cry of the colonies against the British Crown in the American War of Independence (1775–1783)!

“Rule of Law” as a Political Institution

It was thus institutional developments and circumstances, above all the existence of legal institutions and the typical English legal consciousness, that made the literary and thus the political success of a John Locke possible in the first place. English liberty consciousness was first and foremost legal consciousness. And as such it became

William of Orange and the Dutch army land in Brixham. Painted by Jan Hoyneck van Papendrecht.



the mainstay of the liberal political ethos of modernity.

This only partially contradicted the positions of a Jean Bodin, the French theorist of the sovereign state, as an instance of peace having priority over confessional parties. For Bodin, after all, recognized as unquestionable the natural law. This contrasted with Thomas Hobbes, whose concern was indeed aimed in the same direction—absolutist lawmaking competence of the sovereign as a price to pay for peace—but this with means that were directed primarily against the tradition of common law as “historically evolved reason”(called “artificial reason” by Edward Coke) in the place of which Hobbes set the arbitrary law of the sovereign.

As an integral part of the steadily developing common law, the English tradition of the Rule of Law established an authentic constitutional law. This was already asserted against Hobbes by Chief Justice Sir Matthew Hale (who died in 1676). Hobbes—inspired by Francis Bacon, whose secretary he had been for a time—tried to discredit the common law in order to limit, as mentioned, existing law to statute law, that is, positive statutory law (Rhonheimer, 2012, pp. 157–60).

A rule of law meant that, both against the crown and against parliament, there was the possibility of suing for liberties before an independent judge, and that the sovereignty of the crown was understood as both established and bound by law (Henry de Bracton’s principle *rex infra legem*, “the king is under the law,” from the later thirteenth century as expressed in Bracton’s *De legibus & consuetudinibus Angliæ*). The *Magna Carta Libertatum* of 1215 set this development in motion, even if it was still entirely rooted in the ideas of feudal times. But from the very beginning, the English constitutional development clearly contradicted the basic principle of continental absolutism grounded in Roman public law: *Quod principi placuit legis habet vigorem* (what pleases the ruler has the force of law; see Rhonheimer 2012, 107).

The Magna Carta was the source of the “original fundamental right” (“Urgrund-recht”: Kriele, 2003), called habeas corpus: the right of every “free man” to be arrested only based on a judicial order. A “free man” in 1215 was, of course, only the small minority of barons. The Magna Carta is still feudal law, but from its spirit there gradually developed a general law of liberty.

In the Petition of Right (1628) formulated by Chief Justice Edward Coke (and which is also still English constitutional law today), the explicit, almost mythical reference to the document of 1215 and the adoption of a reformulation that had already taken place in the fourteenth century that instead of “no free man,” which meant only the barons, there is now only “no man, of whatever estate or condition he may be.” The right to be deprived of one’s liberty only by a judge’s decision—that is, within the framework of due process—now applied to everyone, at least on paper.

Locke, Montesquieu, and the “English Constitution”

The independence of judges (they were irremovable) and the division of power between Parliament, the Crown, and the judiciary, provided the material for the famous sixth chapter of the eleventh book of Montesquieu’s *The Spirit of the Laws*. It is no coincidence that it is titled “On the Constitution of England,” although there was no such constitution in the modern sense (and there still is not). Montesquieu did not invent the separation of powers, as one learns in school, but merely described to the French, admittedly in an idealized way, this “splendid system” of the English, which was “found in the forests.”

Since that time, Montesquieu has been regarded as the “inventor” of the separation of powers—not entirely without reason since he provided the theory for it based on the English constitutional reality. However, also worth mentioning is the English constitutio-

-nal theorist William Blackstone, whose description of parliamentarism in his *Commentaries on the Laws of England* (published between 1765 and 1769) called it a system of “checks and balances.” Montesquieu nonetheless wrongly believed that the English had inherited the idea of their form of government from the ancient Germanic tribes (this was what was meant by the allusion to the “forests” quoted above). This is demonstrably untrue, because Germanic law was cooperative law and was to assert its influence only later. And there was no “English constitution” at all, and it does not exist in codified form even today; rather, it exists as legal norms of common law and as parliamentary acts whose constitutional significance is, again to this very day, recognized.

Even before Montesquieu, however, John Locke had translated English constitutional reality into political philosophy. However, Locke’s thinking was not “constitutionalist” in the strict sense. The core of his political doctrine did not aim to protect fundamental rights of individuals from political powers by independent judges, but to promote the goals of individuals by a government acting on their behalf, and therefore responsible to them. Locke’s sovereign community, the bourgeois society formed by social contract, does not establish a constitution at all, but directly establishes a parliamentary government (parliament is the government in Locke; the modern cabinet, as a kind of parliamentary committee, emerged only over the course of the eighteenth century).

As can be seen from chapter 13 of the *Second Treatise on Government*, Locke was thus still a theorist of sovereignty, but now one of the sovereignty of the community and its trustee, parliament. According to the German constitutional lawyer Martin Kriele, Locke’s influence in England was not to promote individual liberties, but rather to strengthen parliamentary sovereignty (Kriele, 2003), which manifested itself, among other things, in the almost unheard of fact of a temporary suspension by parliament at the

beginning of the nineteenth century of the right of habeas corpus—that is, the fundamental right par excellence.

This was the price to pay for not having a written constitution, although there were English constitutional theorists, such as William Blackstone and, much later, Walter Bagehot. It was not until the American colonies, influenced by Montesquieu’s theory of the English constitution, that Locke was read in a constitutionalist lens, which then led to various civil rights declarations, the most famous of which is the Virginia Declaration of Rights (1776) written by George Mason, with significant revisions by James Madison and two others. What every child learns in school today (especially in the Anglo-Saxon countries), namely, that John Locke was the “discoverer” of human rights, is not true.

American Constitutionalism and the French Revolution

The constitutionalist transformation of Locke’s ideas can be attributed to the influence of Montesquieu—who, of course, had also read Locke—but American constitutionalism also stems from the typically Anglo-Saxon political-legal spirit that continued to live in the American colonies and was able to develop in the struggle against the English mother country. In addition, there was a second, equally democratic ferment in America: the pronounced sense of community of Presbyterian Calvinism, which goes back to the Pilgrim Fathers. These were a group of so-called nonconformists who moved from England to America in 1620 on the sailing ship the “Mayflower” with the desire for the free practice of their religion. They arrived in today’s Plymouth, Massachusetts.

A historically unique symbiosis of diverse ideological roots with a political sense of reality finally led the American colonies to proclaim human rights as positive rights, that is, as rights of the individual that could be claimed in court. Moreover, it led them to

constitute themselves as a federal state on the basis of a written constitution, which from the very beginning saw itself as a government by the people and for the people, that is, as a democracy—albeit with the initial stain of slavery in the southern states that they inherited from the British colonial era.

The basic idea, already dominant in the Virginia Declaration of Rights of 1776, was to subject political power, and the people who exercise it, to law and institutional control, thus guaranteeing the freedom and free development of the individual. The demand for legal protection of individual freedom, which originated in America, crossed the Atlantic in no time and demonstrably became the basis of the ideas of the French Revolution. To be sure, this “Atlantic” view is by no means widespread, let alone popular, in France itself, since it is part of the self-image of the French to consider themselves the inventors of human rights (cf. the discussion between Georg Jellinek and Émile Boutmy, Boutmy, [1964](#)). However, the Atlanticist view, which sees the American and French Revolutions as interdependent events in their intellectual foundations, most probably corresponds largely to historical truth and also helps to correct an often-one-sided picture of the French Revolution.

Indeed, the Virginia Declaration of Rights found its imitation in the French Declaration of the Rights of Man and of the Citizen of 1789, which, partly because of the influence of Abbé Sieyès (Emmanuel Joseph Sieyès) was formulated in the way of philosophical principles and considered an integral part of the new Constitution of 1791 then drafted by the Constitutional Convention. In essence, however, the Declaration of 1789 was drafted by Lafayette (Marquis de La Fayette, fellow combatant in the American War of Independence and friend of George Washington) with editorial help from Thomas Jefferson. The latter was staying in Paris at the time as ambassador of the United States of America, which had been

founded shortly before (see Palmer, [1959](#); Schnur [ed.] [1964](#); Bobbio [1991](#)). Lafayette then also delivered as a gift to his friend Washington the key to the Bastille, which hung in Washington’s Mount Vernon country residence until President George Bush (Sr.) “gave it back” to French President Mitterand in the anniversary year of 1989.

The birth of modern constitutionalism was the fruit of a long development of legal institutions and legal consciousness—the formation of institutions, in other words, designed and realized by personalities with a pronounced legal sense of reality. This is precisely why political history cannot be limited to the history of political ideas or to the literary history of philosophical texts. Equally important is the institutional history and the thinking of those who were protagonists in this development in England, for example, Chief Justice Sir Edward Coke (see Beauté, [1975](#)), and in the American colonies people like Alexander Hamilton, James Madison, and John Jay, the authors of the Federalist Papers. Nevertheless, this was not the creation of a state system from scratch, but rather a remolding of what was a long development that held together many components and yet was by no means designed on the drawing board. Instead, it was the fruit of a political, legal, and social process that was unintended in its final form and in its totality.

The Federalist Papers were originally a series of articles that successfully argued for the creation of an American federal state along the lines of the draft Constitution of 1787. The authors, who initially published their articles under the pseudonym Publius in various New York newspapers, were not theorists: Hamilton was a lawyer, politician, economist, and financier; Madison was also a politician and became the fourth president of the United States; Jay was a lawyer and politician and later became the first Chief Justice of the Supreme Court.

The Ideas of 1789: Imported from the USA?

This shows how deep the very common misunderstanding of the French Revolution is, which sees it in light of Jean-Jacques Rousseau's writings or even interprets its outbreak as a consequence of Rousseau's ideas. The French Revolution is in fact a complex and convoluted historical event that dragged on for years, if not decades; some leading historians of the French Revolution, such as François Furet, think it never really ended until after 1870, the founding of the Third Republic. In a sense, at least, its first stage did not come to a preliminary conclusion until the promulgation of the *Code Napoléon* (1804), the civil code enacted

“

In absolutist statism, there were no citizens, only subjects. Free expression of opinion or even criticism of the rulers was frowned upon, and economic life was organized from above.

by Napoleon. The latter no longer contained a right for the subjects of a monarch and the privileged status of the aristocracy, but rather establishes a right of free citizens that applies equally to all, thereby establishing the egalitarian thrust of the Revolution.

It was thus in this body of law that the French Revolution concluded. Like the earlier Prussian Land Law and the Austrian General Civil Code, the Napoleonic Code exhaled a liberal spirit of the Enlightenment and civic emancipation. It was thus very different from the totalitarian spirit of the Jacobins, who set the tone only briefly but became the symbol of the aberrations of an overthrow that at times got out of hand.

Even if Jacobin terror and its ideological aberrations are part of the French Revolution, it would be a gross mistake to interpret the Revolution and its liberal, bourgeois-egalitarian intention and achievement, only in the light of the Jacobin phase. However, the totalitarian mischief of the Jacobins (the program of public coercion to virtue) continues to flourish and has remained in modern European history as an antithesis to everything liberal and to the spirit of bourgeois freedom. Jacobins, by the way, have always liked to invoke Rousseau—rightly or wrongly.

Rousseau, however, is a complex, in-herently contradictory, and actually nostalgic thinker. He is modern and, at the same time, downright ancient in his Platonic search for the ideal legislator. Perhaps for this very reason, and because the mixture is impracticable and illusory, his thinking is full of explosive power. This becomes clear in Rousseau's later admission, which is full of resignation, that his idealistic concept of a “pure” rule of laws, in which all egoism of particular interests is eliminated and there is a full identity of the governing and the governed, has proved to be impracticable. Therefore, in fact, only the naked despotism of the de facto ruler is still possible.[1] Marxist utopian ideals, in particular, rely on the concept of equating the governing with the governed, and thus attempts to put it into practice often result in the emergence of despotism and oppression.

The Revolution Proper: The “National Assembly”

In terms of its concrete political dynamics, it is true that the French Revolution—quite unlike the events in the American colonies—sprang from the injustices of a system that privileges the nobility and higher clergy at the expense of the great mass of citizens and peasants. This was combined with a dysfunctional system of government and a financial and food crisis caused by the interplay of these factors. As should be

reiterated, however, the intellectual foundations of the Revolution were more complex and, above all, not purely French.

They sprang from a mixture of Anglo-Saxon constitutionalism or parliamentarism and French doctrinaire rationalism, represented above all by the best-known journalistic activist of the revolutionary period (and an ordained Catholic priest), the aforementioned Abbé Sieyès, who identified one opponent above all: the nobility and its privileges. Sieyès's 1788 *Essai sur les privilèges* was only a prelude to his most famous writing, published a year later, *Qu'est-ce que le Tiers-État?* ("What is the Third Estate?") in which he equated the Third Estate (the bourgeoisie and the lower clergy) with the nation—an explosive and momentous statement, as we shall see soon.

Precisely for this reason, the politically and legally decisive event, indeed the actual revolution in the precise sense of a radical break in legal continuity with the *ancien régime*, was not the storming of the Bastille and the violent "revolutionary" events associated with it. Rather, it was a decision made earlier by the so-called *Estates General*, the assembly (after decades of being practical nonexistence), namely, of the three status groups convened under pressure by the king in 1789. These consisted of the Nobility, the (higher) clergy (especially bishops, as they too were consistently nobles), and the aforementioned "Third Estate." These consisted of the bourgeoisie, urban workmen and wage laborers, the rural population, and the lower clergy—all together about 98 percent of the population!

Traditionally, each estate had collectively one vote, which amounted to a steady 2:1 voting majority of nobles and higher clergy over the Third Estate—although the latter numerically provided many more representatives in the assembly. In June 1789, this voting system was overturned by Abbé Sieyès, who argued that the representatives of the Third Estate (about 98 percent of the votes) represented practically the entire French population and were thus

identical with the nation. Thereupon the assembly of the *Estates General*, against the resistance of the king, but in the end with his forced consent, declared itself to be the *Assemblée nationale*, or National Assembly! This was the real revolution. The nobility and the higher clergy were stripped of their power, and from then on, the king had to cooperate with the bourgeoisie. The name of the French parliament is still *Assemblée Nationale* to this day.

Therefore, the French Revolution was by no means anti-monarchical in its origins, but anti-aristocratic. And it advocated parliamentary representation of the entire nation, to which representatives of the First and Second Estates were allowed to join, and which in some cases they did (Mirabeau, one of the leading figures of the National Assembly, comes to mind). Following the English model of the king-in-parliament, the king would also have to abide by this body's decisions. The fact that a little later Louis XVI, who was popular in his own right, prepared restoration plans together with the monarchs of Europe and behind the backs of the revolutionaries, led the revolution to turn away from the monarchy and toward popular anger, and last but not least, to the rise of the Jacobins and their reign of terror. Their first victim, following an unsuccessful escape, was the king himself.

But back to Sieyès and Thomas Jefferson, who was US. ambassador to Paris at the time of the Revolution: they were supporters of an Anglo-Saxon-style parliamentary representative constitution (in combination with a catalog of fundamental rights on the same level of constitutional law). This was exactly the opposite of the ideas of Rousseau, who rejected any representation as contradictory to popular sovereignty and in whose conception there is no room for civil "fundamental rights," but instead duties of the citizen.

However, the French implemented the system of parliamentary representation in the first constitution (that of 1791) in the most unfortunate way: because of census

suffrage and, of course, the exclusion of women from politics, the National Assembly represented the nation only very imperfectly; the Jacobins were then able to exploit this for propaganda purposes a little later in their agitation against the Constitution. The census suffrage was practically the inversion of the principle of “no taxation without representation,” that is, it was “no representation without taxation”: whoever did not pay taxes—and, since there were only property taxes, this meant in practice whoever did not own property or landed property—had no right to represent the nation. Needless to say, this also excluded the peasant rural population from political participation.

Second, the Constitution of 1791 did not contain any provisions for a possible constitutional revision and the procedure to be followed for it. This meant that the constitution could only be suspended by a new revolution, which was carried out by the Jacobins in 1793. The consequence was the pure opposite: a plebiscitary “democracy” that trampled on the idea of representation and, of course, of basic civil rights, and ultimately led to terror. It is not even appropriate to associate this with Rousseau.

The rationalist-constructivist attempt of the French constitutional theorists, above all Sieyès, to establish a state system in no way rooted in the French constitutional tradition and history (as it were from intellectual resources foreign to tradition) was criticized by Edmund Burke with some justification, though also, as said above, with some misunderstanding. Would there have been an alternative to the radical new beginning? The total blockade by the crown and the nobility, and their lack of understanding for the needs of the people, indeed the sheer egoism of the “noblesse de robe,” as well as the constitutional impossibility of a re-organization of the state system based on the existing, and the downright screaming incompetence of the king and his entourage, left hardly any other option than the revolutionary one. One can argue that things

could have been much worse, particularly if help from the United States and its models such as the Virginia Declaration of Rights had been lacking and France’s politicians and jurists had been left without the intellectual support and fertilization of the Americans in 1789. But how history would have continued without the Revolution—better? worse?—nobody can know, and it is an idle question.

Rousseau as the Antipode of the French Revolution

Neither the American Founding Fathers nor the early French revolutionaries (such as Abbé Sieyès or Mirabeau) adhered to Rousseau’s ideas. As already stated, the latter’s idea of popular sovereignty—a kind of “absolutism of the people”—was hardly compatible with the idea of human rights as positive, constitutionally guaranteed fundamental rights of the human individual and citizen—and thus with the idea of a subordination of sovereignty and governmental power to the rule of law. Likewise, Rousseau’s ideas were not compatible with the idea of government through parliamentary representation, because Rousseau rejected the idea of representation as a relic of feudalism in favor of the aforementioned identity of the governing and the governed.

The American Founding Fathers, on the other hand, were staunch supporters of the idea of government by representation. This is even more true of Sieyès. As the classic research of Karl Loewenstein (1990) has shown, the ideas of the French constituent National Assembly of 1789 contrasted considerably with those of Rousseau, whose ideas had much less influence on the French Revolution than is commonly assumed (Fetscher, 1975, 258–304).

The fathers of modern, ultimately Anglo-Saxon constitutionalism (even if there had been other forms of constitutionalism in Europe since the Middle Ages, for instance in Aragon and in France) did not dream of

popular sovereignty and grassroots democracy; rather, they wanted to teach humanity, “enough with the sovereigns!” Every sovereignty, even that of the people or the “nation,” must be subordinated to law—ultimately to the true and inalienable rights of man and citizen. Without respecting these rights, there can be no legitimate governmental power. Therefore, the people have the power to get rid of a regime that disregards these rights.

Liberal constitutionalism (the combination of Locke, Montesquieu, and Anglo-Saxon rule of law), is closely related to the tradition of the right of resistance, which dates back to the Middle Ages (see Kern, 1980). Indeed, constitutionalism is the modern form of the right of resistance integrated into a political institutional ethics of peace. Unlike the medieval right of resistance, the constitutionalist variant is not anarchic, but is itself a constitutionally ordered legal institution.

Because of his fundamental rejection of the idea of the right of resistance, Kant cannot unreservedly be counted among the founding fathers of the political ethos of modernity. The idea of the *Rechtsstaat*—which is specifically German and co-founded by Kant—must be distinguished from the Anglo-Saxon idea of the “rule of law” that underpins constitutional forms of government (“constitutional State,” in German *Verfassungsstaat*). *Rechtsstaat* merely meant state sovereignty, governmental power, public life, and the relationship between the state and the individual as shaped according to principles of law. But it did not yet mean that the sovereign—the supreme legislative and governmental power—is also under the law and bound by it.

Accordingly, every modern constitutional state is also a *Rechtsstaat*; but not every *Rechtsstaat* is necessarily a constitutional state in which the rule of law applies, that is, in which there is no sovereign power above the law. This can now be elaborated further based on a groundbreaking distinction, still relevant in constitutional law today, which

we owe to none other than Sieyès: the distinction between *pouvoir constituant* (constituent power) and *pouvoir constitué* (constituted power)—(For this and what follows, see also Kriele, 2003).

Sieyès’ Contribution: Constituent and Constituted Power

A *Rechtsstaat* can, as for instance German history shows, also be a monarchical autocracy in which there is a sovereign who stands above the law and is “subject” to it only insofar as he subjects himself to it. To repeat, however, “rule of law” ultimately means the nonexistence of a sovereign who is above the law and who can, as it were, rule and reign in a lawless space and thus, as in the so-called constitutional monarchies of the eighteenth century, simply abolish a constitution at his own discretion—just as it had been put into force at the monarch’s pleasure.

In the liberal constitutional state, such a sovereign exists formally only in the form of the constituent power—the *pouvoir constituant*—but no longer as constituted government power—the *pouvoir constitué*. The latter, and thus all governmental power, is subject to the constitution and to judicial control. By contrast, the monarchs of the eighteenth century—even if they also call themselves “constitutional” monarchs—were constituted and constituent power in a single person. The *pouvoir constituant* did not precede them and was not superior to them, but they were themselves this power, which decided on the existence or nonexistence of the constitution and ultimately also on its content.

It is precisely this subordination of each constituted power to a constituent power distinct from it that is the decisive feature of the liberal constitutional state.[2] This distinction (still fundamental in today’s constitutional law) between a constituent power, which is unbound, “can do anything,” and creates the constitution; and a constituted power, which is bound by a

valid constitution and the legal institutions established in it, comes, as said, from Sieyès. As long as the constitution is in force, there is no person or authority that can override it or is above it. Only the rules of constitutional amendment, or even complete revision through the election of a new constituent body (a *constituante*), grounded in the constitution itself, can pave the way—in a legal, non-revolutionary manner—for a new constitution. In this case, the final say is usually, but not necessarily, given to the people, who decide on the adoption of a new constitution and are thus (if the rules for the creation of the new constitution allow), the actual sovereign or constituent power.

Inalienable Human Rights and Natural Law

According to the ideas of 1789, strictly speaking, not even the *pouvoir constituant* is absolute and sovereign. In material respects it is just not. If there is such a thing as inalienable human rights, which is precisely what the thinkers of the French Revolution claimed, these must necessarily also be recognized by the constituent power. They therefore have, as it were, the force of natural law. The constitution-making power is therefore not faced with a normative nothing, as the Austrian constitutional lawyer Hans Kelsen and with him legal positivism maintain. A constitution that did not respect these rights would not be legitimate based on the criteria of the French Revolution.

In other words, no sovereignty that conceives of itself as absolutely boundless can have legitimacy in its exercise. Its limits are the fundamental rights of man and citizen. Every sovereign state power, as a political power, must submit to that which justifies every political power in the first place. Even if—according to the words of Sieyès—the constituent power “can do anything,” this only means that it cannot be put in its place by any other institution in

terms of formal law and power politics, because it acts, so to speak, in a positive-law vacuum. But this does not mean that this legally-institutionally “omnipotent” power is not bound to certain contents in terms of legal ethics—that is, in the perspective of political morality. The fathers of the French Revolution recognized this by declaring the catalog of human and civil rights to be a preamble and part of the constitution.

However, these human and civil rights must also be codified in some way, and there is often no agreement on this. The problem of the original creation of rights cannot therefore be solved with geometric precision and without ambiguity. Ultimately, what is written is valid because otherwise there would be no legal certainty. Thomas Aquinas held the opinion that a judge may base his judgment solely on written law. This is the true core of legal positivism. But this positively valid law is always subject to the possibility of legal-ethical criticism based on principles of natural law, which, even if there is no agreement about them, still remain as a horizon and criterion of legal-ethical foundation. This demand is also a legacy of 1789.

In short, the *pouvoir constituant* is, in the political sense, an original law-creating power—and in this sense “sovereign” and “omnipotent”—but this is understood solely in terms of its function of creating positive law. By recognizing inalienable human rights, the *pouvoir constituant* also declares that it is not legitimized to do anything and everything; thus, if it wants to preserve its legitimacy, it submits to limits imposed by natural law. Thus, it cannot create law according to the maxim “law is what pleases the sovereign,” but must also recognize already existing law as a constitutional power. At the very least, it must search for this law and elevate it as far as possible to positive law; that is, it must codify it, and thus also make it legally enforceable—like the constitutionally binding Declaration of the Rights of Man and of the Citizen in 1789.

By linking constitutionalism back to the idea of human rights, there is thus not only room to speak of illegitimate governance, but also illegitimate constitutional and legal orders, and under certain circumstances it also makes sense to speak of an “illegitimate state.” All this corresponds to the classical spirit of the right of resistance.[3]

Immanuel Kant: Not a Liberal Constitutional Theorist

Many consider the aforementioned Immanuel Kant to be the prototype of a liberal constitutional theorist. But this is a misunderstanding. Certainly, Kant’s legal philosophy breathes liberal spirit, but this is not true of his constitutional theory, which ultimately falls short of the basic characteristics of liberal constitutionalism—in the sense of the Anglo-Saxon Rule of Law—and is rather close to what is called typical German *Obrigkeitsdenken* (authoritarianism).

After all, Kant (and in this the difference to the spirit of a John Locke or Montesquieu becomes apparent) explicitly rejected any right of resistance (*Über den Gemeinspruch*, A 249–60; *Metaphysik der Sitten*, B 203ff.). His arguments are indebted to the doctrine of sovereignty of Hobbes, who saw in the right to resist the very source of strife and civil war, the avoidance of which is for Hobbes the highest political good par excellence. In fact, again for Hobbes, the worst legacy of the Middle Ages was the legitimization of “tyrannicide.” He believes that the evil of tyrannicide, moreover, is that one or a few thereby arrogate to themselves a judgment of what is just and unjust—a competence that, for the sake of peace and to avoid of civil war, the sovereign alone possesses.

Kant agreed with this in principle. Much like Spinoza mentioned at the beginning, Kant disagreed with Hobbes on only one point: the subject, ultimately the philosopher, was to be granted the “freedom of the pen,” or the freedom of public criticism. The “liberal way of thinking of the subjects,” Kant said, is “the only palladium

of the people’s rights” (*Gemeinspruch*, A 265). Hobbes had believed criticism must not be expressed publicly, indeed that the peace-loving subject must renounce it in the interest of the stability of the polity and may harbor reservations solely within himself,



German postage stamp bearing the likeness of Immanuel Kant

but must not let them escape his lips, let alone discuss them publicly.

The philosopher of Königsberg, on the other hand, trusted the “freedom of the pen” and often used it in courageous ways. Kant, however, failed to recognize the necessity of legal-institutional control of government; rather, he trusted in the course of history, the power of enlightened consciousness, which, he was convinced, would prevail on its own. Even though Kant advocated a “republican” form of government based on the separation of powers, he was opposed to a democratic constitution, instead advocating a monarchical-autocratic “constitution” in which sovereignty remained undivided.

This was also the position of another great Enlightenment thinker—and co-editor

of the Encyclopedia—Denis Diderot, and his “enlightened despotism.” According to this idea, one trusted in the power of the ideas of the Enlightenment and tried to defend them to those in power—in Diderot’s case, the Russian Tsarina Catherine the Great. But there was no demand that rulers be subjected to the institutions of law or the rule of law.

Even today, Enlightenment pathos is often the flip side to a lack of a sense of reality. Kant thought that law would of itself “obtain supreme power” through the “irresistible will of nature” (*Zum ewigen Frieden*, B 62). It was the position of a philosophy professor ultimately alienated from politics. And so it was to remain for a long time in Germany, the “belated nation” (Plessner, 1974). The “liberal way of thinking of the subjects” was under the arbitrary control of the sovereign, and despite the liberal Stein-Hardenberg reforms in Prussia (1807–1815), it was ultimately not law that gained supremacy in the German Empire but the power of a nationalistic militarism. Those in charge used the *Rechtsstaat* as a smoothly functioning, purely formal mechanism, finally perverting it into the Nazi state during the Weimar Republic. And this was done with the support of the German legal profession, for instance, Carl Schmitt (“The Führer protects the law”).

Of course, Kant cannot be blamed for all this; his liberal attitude and legal sensibility is beyond any doubt. But Kant does stand for that German tradition which—in contrast to the Anglo-Saxon one—underestimated, even ignored, the practical-institutional necessity of legal control of political power. Here, the French were clearly several lengths ahead of the Germans![4]

Liberal Constitutionalism and Democracy: The Ethos of Freedom

“Liberal constitutionalism” did not mean a return to the pre-absolutist state (such a state had never actually existed as a “state”) but rather a transformation of the modern, sovereign territorial state, which had

initially been born as an absolutely governed and mostly large-scale administrative unit. And it was a transformation based on the recovery and activation of pre-absolutist republican traditions as well as the medieval idea of the right of resistance. Without the formation of centralized state bureaucracies in late medieval and early modern times (this is true even for the American colonial administration), there would certainly never have been such a thing as a “state” that could have been constitutionally tamed (on this, see Friedrich, 1951). But the task of subjecting it to legal and then also democratic control and support was yet to be accomplished.

In his famous 1856 treatise *The Old Regime and the Revolution*, Alexis de Tocqueville demonstrated that there was unbroken continuity between the pre-revolutionary state of the *ancien régime* and the modern French post-Napoleonic state with respect to its backbone: the state administration or state bureaucracy. The same is true for all modern states. There is also unbroken continuity between the administration of the Wilhelmine empire, the Weimar Republic, the Nazi state, and the Bonn or Berlin Federal Republic of Germany.

However, Johannes Althusius’ classical understanding of human society as *consociatio* and his doctrine of the “corporate” unity of society and sovereign state power, as well as Spanish Baroque scholasticism (Vitoria, Suárez), also played a mediating role in the aforementioned return to pre-absolutist traditions. Likewise, the influence on John Locke of the Anglican theologian Thomas Hooker, who followed Thomas Aquinas’ Aristotelianism, should not be underestimated (see Rosenthal, 2008). Locke speaks of the “judicious Hooker” and cites him as a key witness against the patriarchal absolutism of a Sir Robert Filmer. And again, Puritan-Calvinist covenant theology (an “ecclesiology” turned to the political) was everywhere anti-absolutist ferment where it appeared. But

this already belongs to the modern history of democracy. Liberal constitutionalism alone, however, is not yet democracy.

Liberal constitutionalism, one could say somewhat simplistically, means first the institutionalization of the political-ethical substance of the right of resistance within the framework of a specifically modern political culture of peace. This would not have been possible without the emergence of the modern territorial state and would probably not have been necessary in this form. The key words here are “rule of law,” the backbone of which is an independent judiciary, and “limited government,” government power efficiently limited by law. In this way, fundamental rights of freedom are transformed into positive law, which can be claimed by individuals before independent judges, as can be seen in the American Bill of Rights.

Thus—in favor of individual freedom—the exercise of political power is subjected to legal control. Powers are shared so that they form a system of checks and balances. “Ambition must be made to counteract ambition” (James Madison, Federalist 51, Nov. 22, 1787). Distrust of human exercise of power and safeguarding of freedom are the key words—just the opposite of that “enlightened despotism” of Didérot, who put all his trust in the absolute power of the ruler enlightened (by philosophers), or Kant’s mere “freedom of the pen” to bring the powerful to insight and thus to steer the course of history in the right direction.

From Liberal Constitutionalism to Liberal Democracy

Left to itself, however, the freedom of the legally based constitutional form of government did not by itself already tend to become freedom for all. Until the mid-nineteenth century, the English Parliament was largely in the hands of an aristocratic and urban oligarchy. The French liberals of the Restoration period (Benjamin Constant, Adolphe Thiers, and others) were convinced

that “democracy”—universal suffrage—was no good: people without education and property could not be entrusted with political power. A severely restrictive census suffrage was initially a general demand of the liberals—as they were now gradually called—not without a certain sense of realism. And even the first French Revolutionary Constitution, as already mentioned, restricted the right to vote to such a small number of “active citizens” that the majority of the people did not feel represented, a flaw that the Jacobins then knew how to exploit in a demagogic manner for their own legitimization.

The democratization of the constitutional state, which the American federal government had inherited from the beginning (allowing discretion to the states,



English freedom consciousness was first and foremost legal consciousness. And as such it became the mainstay of the liberal political ethos of modernity.

who gradually expanded suffrage), became the main demand of the so-called radicals of the nineteenth century. This was also a consequence of the unique process of the Industrial Revolution. The latter not only assigned a completely new function to the bourgeoisie, but it also generated masses of industrial workers, pushing them “upward,” as it were, and urging them to demand political representation. The experience, formulated classically by John Stuart Mill, was that a parliament in which the “working class” is not directly represented will not deal with any question “with the eyes of a working man” (*Considerations on Representative Government*, III).

Representation of interests presupposes direct representation, and that means universal suffrage. J. S. Mill is one of the first liberals for whom representation and universal suffrage went together as a matter of course. The modern constitutional state, bound in the tradition of representative parliamentarism, had to become a democratic constitutional state if it was not to lose its legitimacy. In the process, however, the very principle of “representation” was re-interpreted: While in the English tradition it was understood as the “virtual” representation of the interests of all by a few, people now began to demand the effective representation of interests. And this was already the case in the American War of Independence, directed against the British mother country. But that is another story.

In any case, the rule of law, parliamentarism, and the principle of representation alone do not constitute democracy in today’s sense. But—and this is the crucially important point that must be repeatedly emphasized against the Jacobins of every epoch—there can be no liberal democracy that is not characterized at the same time by the rule of law, by parliamentarism, and by the principle of representation; that is, there can be no liberal democracy without bodies in which a few legitimately make binding decisions for the totality of citizens, and in a legally regulated and thus also clearly limited manner. The democratic constitutional state must also be characterized by the rule of law and what the Anglo-Saxons call “limited government” if it does not want to become a tyranny of the majority.

Liberal Democracy: Not Simple “Rule by the Majority”

Whoever rejects this in favor of an identity-based conception of democracy, which starts from the fiction of the identity of the governing and the governed, claims a homogeneity of interests and declares war on particular interests; and whoever unilaterally plays off direct democracy against the

principle of parliamentary or congressional representation and sees in it an irreconcilable opposition, is in the tradition of Rousseau and the Jacobins. It bears repeating that the latter do not represent the spirit of the French Revolution, but only one of its transitory phases—one that would not be ultimately successful.

Majority suffrage or “rule by the majority” alone does not constitute democracy in the contemporary Western sense. Critics of democracy, for example from the libertarian-anarcho-capitalist and conservative camps (such as Hans-Hermann Hoppe or Erik von Kuehnelt-Leddihn), usually reduce democracy (polemically but improperly) to mere “majority suffrage” or “rule of the majority.” This is a caricature and both factually and historically incorrect. “Liberal democracy” is the liberal constitutional state as it springs from the Anglo-Saxon tradition—that is, rule of law, separation of powers, independence of the judiciary, parliamentary or congressional representation, etc.—but in its democratized form with universal suffrage. Majority rule plays a decisive procedural role but does not determine in the last instance what is politically and legally possible (on this, see also Dahl, [1991](#)).

Majority decisions are subject to the rule of law in a liberal democracy; they must in any case be constitutional and respect human and civil rights. It is therefore always important to protect minorities and their constitutional rights. It is not a Jacobin “rule of the majority” that is the lasting legacy of the French Revolution, but rather the liberal, constitutional component, even if it has to be extracted, as it were, from the abundantly confused history of revolutionary events.

Endnotes

[1] In a letter dated July 26, 1767 (eleven years before his death) to the elder Marquis de Mirabeau, the Physiocrat, Rousseau confessed that his ideas of realizing the

classical idea of the rule of law over man were indeed like “squaring the circle” and hardly feasible. Therefore, Hobbes’ solution of placing man above the law in the sense of a *despotisme arbitraire* was to be given justice. But now—a new squaring of the circle—a rule of succession had to be found for this despotism that was based neither on heredity nor on choice, a rule “par laquelle on s’assure, autant qu’il est possible, de n’avoir ni des Tibère, ni des Néron.” Never, however, would he, Rousseau, probably have the misfortune to have to deal with this *folle idée* (text in Mayer-Tasch, 1976, 127–30).

[2] The direct democracy of the Swiss type is a historically unique exception, namely, a combination of Rousseau’s ideas—rejecting the idea of representation—with those of the Anglo-Saxon parliamentarism of the US-American type (a bicameral system). For in Swiss direct democracy, the “sovereign”—the people—can theoretically become constitutionally active at any time, namely, through its right to ultimately take a binding vote on constitutional initiatives submitted by itself; moreover, the people can bring decisions of parliament, that is, the “constituted power”—which represents this people in the ordinary legislative process—before a referendum and thus become directly legislative. However, there are also hurdles and brakes here, such as the so-called *Ständemehr* (majority of the cantons). For constitutional amendments, the simple majority of votes of all “voters” is not sufficient, but the majority of the *Stände* (cantons) is also necessary. The votes of the less populous cantons have the exact same weight as those of the more populous cantons: each has one vote.

[3] The American Constitution recognized from the beginning—although only explicitly in its Ninth Amendment of 1791—that also the rights not mentioned in the Constitution

remained with the people. Thus, rights are not identical with positive rights. This was also why many constitutional Fathers were fundamentally opposed to including a catalog of human rights in the Constitution. They feared that this might give rise to the opinion that rights that were not explicitly in the Constitution, but that were recognized as such in individual states, would then no longer be valid as such at the federal level.

[4] Of course, jurists or judges themselves have no political power to enforce their decisions. But as part of a constitutional system of government based on separation of powers and checks and balances, and integrated into procedural rules of (democratic) government—the observance of which can itself be enforced by means of the state’s monopoly on the use of force—judicial decisions possess precisely the enforcement capacity necessary for effective “rule of law.”

This is a translation of an article originally published in German as “Politische Moral der Freiheit: Das liberale Vermächtnis der Französischen Revolution in „atlantischer“ Perspektive,” Austrian Institute Paper Nr. 45 (2023).

Martin Rhonheimer was born in 1950 in Zürich, Switzerland. From 1990 to 2020, he was Professor of Ethics and Political Philosophy at the Faculty of Philosophy of the Pontifical University of the Holy Cross in Rome. He remains associated with the University as a visiting professor. In 2014, he co-founded the Vienna-based Austrian Institute of Economics and Social Philosophy of which he is the president. He lives in Vienna.

THE INEVITABLE PARADOX OF STATE COERCION

The Late Charles Tilly Provides an Important Lesson to Today's State Builders

By Sam Routley

The neoliberal epoch is over. Most liberals—particularly those of the right-leaning or conservative form—have realized that their prior goals of minimal state interference in the economic market, about individual discretion, and about reliance on personal morality are both unattainable and undesirable. It has become apparent that, in contrast to stated political goals, the state has not actually gotten all that much smaller. Contemporary voices on the right, therefore, are increasingly coming to see the state as more than just a necessary evil and to challenge the claim that it can ever really be neutral; that it is not just a practical tool for advancing a limited set of collective goods but something that ought to be approached as a component part of a virtuous social order. These shifts point to a need to reengage with the state as a real-world structure, as more than something that just ought to be tolerated. The state, for better or worse, needs to be seen for what it is: as an institution that originates and continues to source its power from a dynamic of social violence. This entails that, when it comes to examining the ideal use of state power, the pressing question is not about whether coercion can be removed, so much as about how it can be best used and managed.

Modern Liberal Democracy not only emerged as a response to the state's growing power but is in large part a project that aims

to redirect these coercive mechanisms toward more productive and socially empowering ends. And, while flawed, it remains the most effective and historically successful means at our disposal for securing a stable and equal set of state institutions. Nevertheless, to better refine a useful liberal model for the proper role of the state, we need to move past the abstract and bloodless approach of most contemporary liberal theory, and better incorporate the far more complex and contested way the state has developed and operated in practice as a product of history.

If the nation-state monopolizes the “legitimate” use of violence over a given territory, then what is it really *for*? Many overlook the fact that it is a very recent form of political organization. In contrast to the decentralized empires and city-states of most human history, it emerged from early modern Europe to make several political innovations: it has come close to effectively monopolizing the use of systematic violence within its territory, it has attached individuals to its institutions through its “imagined communities,” and it has—to borrow James C. Scott's words—made society legible. The state possesses both the enormous capacity and knowledge of on-the-ground conditions necessary to order social and economic life toward its ends.

Several have argued that the primacy of the state was bound to be eclipsed by some other form, whether global capital, world government, or the universal, homogenous condition. But these have all been premature

because, despite a more crowded global space, international governmental organizations and corporations have failed to gather the same level of knowledge and underlying coercive capacity. Our collective experience of the pandemic made that much clearer. And the continual expression of seemingly powerless states to contest international economic trends is, rather than indicating a larger role for corporations, instead better attributed to the continual dominance of the world's most powerful states in active collaboration with capital—advancing their own interests over those of their weaker peers, just as they always have done.

Still, the abstract and normative approach of most of today's discourse around the state provides a sterilized, ahistorical, and bloodless simulacrum of political contestation. It insists that a state's behavior can be controlled through the intentional design of its internal machinery, whether constitutional outlines, principles of judicial interpretation, bureaucratic capacity, or the quality of those elected to its office. This overlooks the fact that, historically, the state has been shaped just as much by repression, naked self-interest, and perennial contestation. Many of the characteristics of the contemporary state have not been secured through effective institutional organization but have been won through violence.

Given this, the late sociologist Charles Tilly's provocative approach is particularly useful for understanding exactly what the state is. Comparing them to criminal rackets, he argued that states are in the business of "protection" from threats both genuine and manufactured. While the organization has pursued several ends over time, state authority functions on its ability to coerce, to disproportionately influence the behavior of agents by hurting those who dissent. "War making and state making" says Tilly, "qualify as our largest example of organized crime."

Tilly provides a more realistic framework for engagement that should be heeded by

today's political entrepreneurs. It manages to get to the roots: the bare, elemental material that the state uses to advance a set of objectives. His claim that "war made the state, and states make war" remains an analytical locus by which to emphasize the central point that the basic orientation of the state is power, coercion, and exploitation (Tilly, "War Making and State Making as Organized Crime"). War is its

“

Tilly's claim that "war made the state, and states make war" remains an analytical locus by which to emphasize the central point that the basic orientation of the state is power, coercion, and exploitation.

main business; in doing this business, it has and will continue to both coopt the interests of the dominant economic class and placate territorial populations through benefits in exchange for revenue. It also exposes the staying power of the modern state: that, although grounded in violence, it has proved to be an indispensable agent of considerable social empowerment.

Tilly focuses on the "central, tragic fact" of coercion; that it "works" because "those who apply substantial force to their fellows get compliance, and from that compliance draw the multiple advantages of money, goods, deference, access to pleasures" ("War Making and State Making," 70). Power is compelled through violence, with ideas of legitimacy or endowment constructed *after* the fact, as populations are either "bought off" with economic wellbeing and security or "persuaded" through more norm-based

appeals. Models of the Social Contract, market logic, or impact of shared norms do not suffice as an explanation of real historical and contemporary scenarios. Instead, the struggle over instruments of coercion is what matters. All political organizations with any real sense of authority—whether tribal warlords, military dictators, monarchs, or elected presidents—are the same; power belongs to whomever takes it and can defend it. The state exists today because it is a winner, as global history is littered with the remains of the losers of this process—the countless warlords, princes, rebels, and city-states that no longer exist.



Fifteenth-century miniature of the Battle of Agincourt, during the Hundred Years' War.

This is not an entirely novel insight per se; indeed, it is that of Machiavelli and Hobbes. But Tilly draws important insights from his own historical analysis of how the nation-state and its ever-increasing set of functions emerged from Europe through a highly contingent process (*Coercion, Capital, and European States*). His basic claim is that the essentially contested nature of coercion motivated ever escalating warfare over control, which in the European experience, motivated a technological, administrative, and militaristic competitive edge: while the losers quite literally ceased to exist, the

winner were, in the aggregate, left with greater internal and external control over their areas of domain.

What marks the state as a distinctive form of political organization is its ability to draw a rigid distinction between the “internal” and “external” spheres of political power (“War Making and State Making”). It can secure and maintain exclusive control and administration over a territory while also establishing a clear, defensible territorial border of that authority. This is a break from the past. Previously, the expense of administration entailed that coercive political power of any substantial size had to be indirectly operated through independent interlocutors. This included both large-scale empires that, while centered around urban areas, governed most of the then-rural populations through local powerholders, and city-states that developed ad-hoc and fragmented coalitions when necessary. Even the Romans, for all their administrative prowess, had to rely on local magnates and faced barbarian incursions over their porous borders.

The modern state, in contrast, emerged from the moment that rulers were able to establish direct control by assimilating interlocutors directly into its organization. It allowed for increasing “invasions of small-scale social life” that have, with ebbs and flows over time, continued into the contemporary period (“War Making and State Making,” 25). This development, says Tilly, is the product of war. What matters for the emergence of the state as a unique form of political organization is the question of resource extraction: exactly how rulers were able to finance ever more expensive warfare. States learned how to establish direct control because they had to do so to survive.

This effective distinction between external and internal politics, as defined through a ruler’s direct control over coercive and extractive instruments, was simply the cost of doing business: a means extracting more resources from subject populations to

finance military confrontations with competitors. The alternative was to perish, entailing that rulers were in the position to grant any concessions necessary to co-opt or placate their populations into this extractive process. Anything else, including a role for the state beyond coercion, war making, and the ruler's personal interest, was unintentional.

The costs of direct oversight required most rulers to turn to the cooptation of economic elites—loosely understood as those who control capital—into a larger process. This underlines, for insight into contemporary statecraft, the necessary interconnectedness of political coercion, economic production, and the power of mutual political-capital interest. Safety has its benefits and associated incentives, not only in terms of personal security, but the way in which it can organize the extraction, transformation, distribution, and consumption of objects in nature.

Nonetheless, Tilly argues that other social segments outside of the elite were eventually coopted into the life of the state as, in return for providing their resources, they got concessions. Effectively, it meant that the state's continual oversight over lives—while originally meant for more private ends—was redirected toward more positive and mutually-enriching goals. In fact, it meant that the broader status apparatus, its personnel, and the society it coopted, eventually came to win control from the initial rulers themselves.

Even in the medieval period, Europe contained an assortment of constitutional orders as monarchs received pushback from nobles, capitalists, and municipalities that called for political rights and representation. But later movements, proceeding throughout the Reformation and Enlightenment, included much more violent contestation and displacement. And, while some managed to work out stable social settlements, it was also common to see continual instability—between ideologies, individuals, or social segments—over control of the state's machinery.

The state is enduringly flexible, because it was through this process of contestation that the organization came to be seen as something beyond the dictates of a particular ruler. The great ideologies of the last centuries—nationalism, liberalism, communism, and fascism—did not create the modern state, as much as they developed as responses to it. They sought to determine the extent to which the organization can transcend its basis in coercion and be used for some broader social or philosophical good. And, to this end, they have had mixed successes. Although totalitarianism was a threat, no one can deny the inextricable role that the state has played in making the average person's life more secure and comfortable, even under neoliberalism.

But it cannot be said that the state has managed to somehow transcend its nature of coercion and violence, in addition to the competitive process that shapes its growth and behavior. War has not declined as much as it has taken on new dimensions within the broader state system. In particular, the continuing growth of particularly successful states has transitioned global politics from one of anarchy to superpowers that can now actively interfere in the internal lives of others. This allowed for both colonialism and the imposition of largely inappropriate political forms over other global regions.

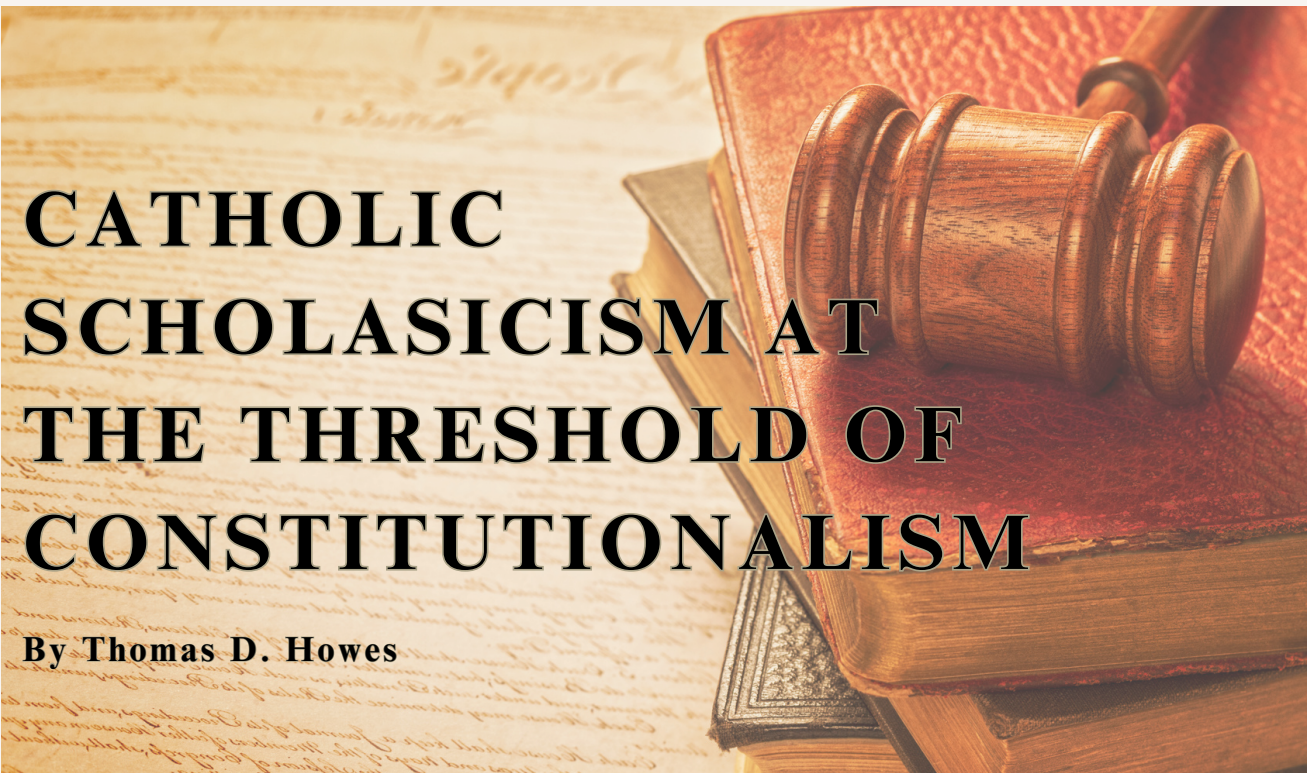
“Failed” or otherwise weak states, for instance, continue to exist because the existential threat of external competition is now much less severe: internal organizations and dominant powers for the most part enforce (in some case arbitrary) borders and prevent state death. In this way, the incentive for many local political elites, rather than increasing the territorial, administrative, economic, and symbolic capacity of their organizations, is to remain “predatory” and exploit the short-term awards of their positions. Political stability either operates through extensive patronage networks or is unable (even unwilling) to contain localized “warlords” that rely on external support networks.

Tilly's account is empirical, and it reveals how the state operates in practice regardless of our normative preferences. Coercion is unavoidable: political power is the question of how it is best managed or oriented toward more positive and socially empowering ends, avoiding the influence of more negative actors. The state is clearly better than mobsters, or bandits, or corporate overlords. Both the empowering and repressive elements of the state are embedded in an enduring tension.

This does not mean that just institutions and norms are unattainable, but it does say that they must be continually fought for: the tendency of the state to slide toward

coercion, collusion with economic elites, and expansive war making need to be resisted. If any one individual or group could take and maintain absolute control of the state, they would. Can politics ever rise above self-interest and triviality? The answer, it seems, is not on this side of heaven. Management, or careful use of, coercion is key to a stable, functioning, and socially empowering state. Not because it is ideal, but because there is no other way.

Sam Routley is a PhD candidate in Political Science at the University of Western Ontario in London, Canada.



CATHOLIC SCHOLASICISM AT THE THRESHOLD OF CONSTITUTIONALISM

By **Thomas D. Howes**

Young people tend toward radicalism. For young serious Catholics, that radicalism is not usually Marxism but instead an excessive form of anti-modernism. You might have heard the narrative: there was the golden age of Christendom and its Catholic kings obedient to the authority of popes. Then came the decadent hyper-individualism of modernity, the first seeds of which were planted by Ockham, Luther, or Hobbes—depending on who you ask. Manichean narratives like this can be dangerous because they lead to reactionary, simplistic dismissals of anything modern, even modern things that are, from the standpoint of morality and human flourishing, rather important. Much of the problem is that the “canon” of great authors that forms a foundation of our education excludes transitional figures whose thought contains important modern ideas. To construct large historical narratives based solely on canonical authors, therefore, leads us to miss that these ideas are firmly rooted in older traditions.

One group of these forgotten figures are the great scholars of sixteenth- and seventeenth-century Catholic scholasticism,

who made important contributions to modern politics through their discussion of human rights, social contract, and economic theory. My focus will be on their political theory, particularly that of Francisco Suárez, whose thought on these matters effectively summarizes the developments in political theory among Catholic scholastics from the first half of the sixteenth century to the turn of the seventeenth century. Anglican cleric Richard Hooker, moreover, would draw on the same Catholic scholastics, transmitting ideas that would have an important yet often forgotten role in the development of modern constitutionalism. After all, the natural law political theory they advocated, with its recognition of human rights, the limits of political sovereignty, and even a right of resistance, was in tension with the ideological absolutism of the era defended by Hobbes and Filmer—even if these scholastics never drew out all its implications. Through people like Hooker, these scholastic ideas found a natural home alongside British political traditions that reached back to the Middle Ages, and which favored a more genuine rule of law, separation of powers,

and checks and balances: traditions that provided more effective resistance to absolutism than anything the scholastics proposed. All of this shows that the gap between the Catholic natural law tradition and modern legal and political theories is much smaller, and its relationship much more complex, than the dualistic narrative implies. And to convince young radical Catholics that not all modern ideas are bad, this is an important place to start.

Political Authority Arising from Natural Equals

What is so surprising about Suárez and other Catholic scholastics of that time is that most of them endorse a kind of social contract theory, even using thought experiments about a “state of nature” (a term used by the Spanish Jesuit, Luis de Molina). Sometimes they would speculate about actual historical pacts made in the past, but they were more concerned with understanding the tacit “pact” implied in ordinary everyday political communities. Because it is lesser known and easily misunderstood, it is worthwhile to examine this theory further. Properly understood, and with some refinements, it is rather compelling. It also helps us see how blurred the lines are between late scholasticism and early constitutionalist thought.

For Suárez, prior to political communities, leaders of households all stand in relation to one another as equals with no authority over each other. As he says in his *Tractatus de legibus ac Deo legislatore* (III, 2), “the reason [political authority does not naturally reside in individuals] is that all men are born naturally free. Therefore, none of them has political jurisdiction—or dominion—over the other.” Political authority, moreover, is a result of an “express or tacit pact” whereby persons unite for mutual benefit and a common good under a political authority (*In opera sex dierum*, V.7.3). This should sound familiar. It is true that human beings are for Suárez, as for Aristotle,



Francisco Suárez, 1548 – 1617

naturally political. But just as Catholic tradition views matrimony as both the object of a natural inclination and the result of positive consent, political society can also be said to be both the result of a natural human inclination while still requiring some sort of (corporate) consent on the part of the community.

Suárez is offering a normative, not a descriptive, account. It in no way denies that political leadership has usually been established by usurpation (for Suárez, see *De Legibus*, III, 1, 11). But, while usurpation creates an illegitimate situation, the community can come to freely consent to the new effective authority over time (Suárez, III, 4, 4), and presumably not only out of fear that revolting will cause more harm than good. Suárez has good reason to claim that community consent still matters, or else we would have to call legitimate a usurper’s effective violation of the established constitutional principles of a community. But that does not seem right. It is more plausible

to say that while it may compel the reason of individuals to obey the new usurping power, because it would do more harm than good to resist, the rule can still be considered illegitimate violence against the community until the latter comes to freely embrace it. After all, the usurping power has no more claim to authority than anyone else in the political community and is thus taking an unequal claim to the community's governance that it does not have by nature.

On these matters, it is important to realize that by appealing to the corporate consent of the community, these scholastics were not primarily concerned with justifying the moral obligation to follow political authority. They were instead positing a necessary but insufficient condition for the moral authorization of laws and political leaders who promulgate, enforce, and adjudicate them. Only with the corporate consent of the political community does this or that person, or these or those laws, have any special claim to authority over others. Although the political community is for Suárez a moral or mystical union of wills (*In opera sex dierum*, V.7.3) and is thus constituted by the consent of its members—and it is from this emergent corporate consent that its constitution, along with its leaders and laws, is authorized—individual consent plays a limited role in explaining obligation.

As far as the rationale for forming and entering into a political community goes, Suárez points to the inconveniences of a pre-political state of nature, which would not be solitary, because sociality is prior to politics, but it would still be, as Hobbes says, “poor, nasty, brutish, and short” (for Suárez, see *De Legibus* III, 1, 3). And this is because, citing Thomas Aquinas, a body cannot survive without a “principle whose function is to serve and seek the common good” (*De Legibus* III, 1, 4–5). It is a short move from recognizing the obvious need for political authority to justifying political obligation even for those without explicit consent—but it is a move whose justification these scholastics could stand to elucidate further.

For instance, this account would perhaps benefit from further analysis of how, given the practical impossibility of perfect consensus regarding those determinations that are necessary to solve coordination problems that affect the common good (e.g., a single decision must be made about the guilt or innocence of this person, about what side of the road people will drive on, and so forth), the community's non-unanimous consent is therefore necessary. Considering that the common good is a shared goal that we wish for others to uphold, it follows, as a demand of general justice, that we ought to contribute to its preservation; moreover, considering that the common good requires some kind of authority to make unique determinations, and given that complete unanimity is an impossible ideal, we owe it to one another to respect in most cases the functional consensus of the community on these matters. This is what more recent natural law theorists Yves Simon and John Finnis argue, and unlike them, I see it as a consistent elucidation to what scholastic social contract theorists already hold. Implied in all these defenses of political obligation, moreover, is that it is not limitless.

Finally, the implications of these ideas for the right of resistance are clear but have often been downplayed by commentators because in more well-known places, Suárez sounds as conservative as Thomas Hobbes. In other places, however, Suárez's position is clearly distinct from that of Hobbes:

The [political community or civitas] [...] may rise in revolt against such a tyrant [a sovereign who rules tyrannically]; and this uprising would not be a case of sedition in the strict sense, since the word is commonly employed with a connotation of evil. The reason for this distinction is that under the circumstances described the [political community], as a whole, is superior to the king, for the [political community], when it granted him his power, is held to have granted it upon these conditions:

that he should govern in accord with the public weal, and not tyrannically; and that, if he did not govern thus, he might be deposed from that position of power.

We see that narratives about modern political decline, from a politics of natural law to a politics of social contract, become more complex and debatable when one is aware of these transitional figures, and that is so even without considering the presence of subjective natural-rights talk among the scholastics.

A Forgotten Influence

At the turn of the seventeenth century, scholars and students of theology in Britain were reading Catholic scholastics, and the Anglican cleric Richard Hooker likely did as



Catholic scholastics developed a social contract theory in conjunction with their account of natural law and a desacralized account of the political community, which naturally drew attention to the limits of governmental authority and to the legitimacy of resistance when those limits are surpassed.

well. In fact, Anglican archbishop Whitgift wrote to the Vice-Chancellor of Cambridge in 1594 to complain about the influence of Catholic authors at Cambridge:

That in these times instead of Godly and sound writers, among their stationers, the new writers were very rarely bought: and that there were no books more ordinarily bought and sold then Popish writers [...] that upon the search that had been made by his Grace's appointment, many Divines' studies being searched, there were found in divers studies many Friar's, schoolmen's and Jesuit's writings, and of Protestants either few or none.

Alexander S. Rosenthal cites this passage and elsewhere notes many similarities

between the writings of Hooker and Suárez, with the latter's thoughts on politics and law reflecting themes in Spanish scholasticism that go back to its founder, Francisco de Vitoria. It is not unreasonable to assume that these similarities reflect common influences, probably the Catholic scholastics who preceded them both. Moreover, the English cleric was able to combine these ideas with important virtues of the English political tradition, such as its stronger emphasis on institutional checks on power. In fact, we see in Richard Hooker's *The Laws of Ecclesiastical Polity* a state-of-nature thought experiment, the need for people to consent to political community and the need for a political authority which is established by a sort of pact. "Two foundations there are which bear up public societies—the one, a natural inclination, whereby all men desire sociable life

and fellowship; the other, an order *expressly or secretly agreed upon*, touching the manner of their union in living together" (emphasis mine). Familiar ideas once again. These ideas would circulate throughout the seventeenth century in the English-speaking world. For example, in 1638, when John Locke was still a child, Thomas Hooker—a possible relative of Richard—preached a sermon that inspired the Fundamental Orders of Connecticut, stating therein, "the foundation of authority is laid firstly in the free consent of people."

Later Robert Filmer, the foremost seventeenth-century defender of the theory of the divine right of kings, would lament in his *Patriarcha* about the Catholic and Calvinist sources of the doctrine of consent:

Since the time that *School-Divinity* began to flourish, there hath been a common Opinion maintained, as well by Divines as by divers other learned Men, which affirms, *Mankind is naturally endowed and born with Freedom from all Subjection, and at liberty to chose what Form of Government it please: And that the Power which any one Man hath over others, was at first bestowed according to the discretion of the Multitude. This Tenent was first hatched in the Schools, and hath been fostered by all succeeding Papists for good Divinity [...]* Yet upon the ground of this Doctrine both Jesuites, and some other zealous favourers of the Geneva Discipline, have built a perillous Conclusion, which is, *That the People or Multitude have Power to punish, or deprive the Prince, if he transgress the Laws of the Kingdom.*

The author Filmer singled out was the Italian Jesuit cardinal Robert Bellarmine, who, in his *de Laicis*, made many claims similar to the Spanish scholastics, arguing, for instance, that human beings are social by nature, that political society is necessary due to the inconveniences of nature, and that political authority was needed to govern that same political society toward the common good. Moreover:

In the absence of positive law, there is no good reason why, in a *multitude of equals*, one rather than another should dominate [...]. It depends on the consent of the people to decide whether kings, or consuls, or other magistrates are to be established in authority over them; and, if there be legitimate cause, the people can change a kingdom into an aristocracy, or an aristocracy into a democracy, and vice versa.

Bellarmino and the Spanish scholastics were, in fact, in many ways papalist intermediaries of the conciliarist writers of the fourteenth, fifteenth, and sixteenth centuries, with the conciliarists instead applying these ideas to the Church's governance. See, for instance,

Nicholas of Cusa in the mid-fifteenth century: "For if by nature men are equally powerful and equally free, the valid and ordained power of one man equal in power with the others cannot naturally be established" (translation by Francis Oakley). Bellarmine and the Spanish scholastics, starting with Francisco de Vitoria (who on this point followed the Italian Thomist, Cajetan), were all opponents of conciliarism as a theological doctrine. Nonetheless, and this marks perhaps their greatest significance for political theory, they separated the wheat from the chaff and genuinely affirmed these ideas as applied to secular political authority. It is thus understandable that, with these ideas floating around so early, Thomas Jefferson considered as common opinions all his famous claims in the preamble of the Declaration of Independence about the natural equality of persons and a government by the consent of the governed. Therefore, these are not, as many claim, "enlightenment" innovations. They are firmly rooted in the tradition of Catholic political thought.

Although some of these ideas can be found floating around Britain as early as the fourteenth century, their renewed interest at the turn of the seventeenth century, through mostly Catholic and Calvinist defenders of resistance, was significant because, as I note above, the Anglosphere had a political tradition with a stronger emphasis on institutional checks on power. Scholastic political thought, with its account of natural rights, the limits of sovereignty, and defense of the right of resistance, was naturally in tension with modern absolutism. But working within the political traditions also informed by Roman law—which, despite its emphasis on natural law, still had absolutist tendencies, often softened in its reception by Christian Europe—they had fewer resources for promoting a political structure with sustainable resistance to tyranny. This is apparent in the Spanish Jesuit scholastic, Juan de Mariana, whose controversial tract,

De rege et regis institutione, presents extralegal resistance or even tyrannicide as a short-term solution for tyranny, whereas his long-term solution is to strengthen the older competing powers, the nobility and Church, and to ensure better education for monarchs to bind themselves to the law—hardly viable solutions in hindsight.

This is why Anglican cleric Richard Hooker is so significant for this story. Although downplaying resistance, he emphasizes rule by consent along with a rule of law. He thus combines the political framework of Catholic scholasticism with British political ideals, manifest in seminal form in the Magna Carta, and in the writings of the common law tradition such as those by Henry of Bracton, John Fortescue, Edward Coke, etc. In the latter half of the seventeenth century, Tories and Whigs fought over whose side better represented Hooker's ideas, with the Whigs, and their emphasis on institutional constraints on the king, ultimately winning out. This contributed to the unprecedented constitutional theorizing of the eighteenth

century in Montesquieu, Blackstone, the Scottish enlightenment, and the Federalist Papers.

It is true that some of the scholastics, like Suárez, promoted some kind of mixed regime, just as Aquinas did. But they never fully escaped the model of what Martin Rhonheimer calls a sovereign's "rule by law," rather than the "rule of law" present in modern constitutionalism, the essence of which is, as Rhonheimer puts it, the "institutionalization of the right of resistance." If later Catholic authorities, like Pope Leo XIII, could then downplay the right of resistance, it was because, as German natural law theorist Heinrich Rommen notes, its "political functions [...] were taken over by modern constitutionalism." And if Jesuits no longer needed to give detailed—bordering on scandalous—defenses of tyrannicide, that was because real institutional progress had been made.

Catholic scholastics thus contributed to modern democratic constitutionalism. They developed a social contract theory in conjunction with their account of natural law and a desacralized account of the political community, which naturally drew attention to the limits of governmental authority and to the legitimacy of resistance when those limits are surpassed. And all of this gave additional support to Anglo-American ideals of limits on the sovereign power and to Anglo-American institutions that progressively evolved in the direction of a rule of law, separation of powers, and checks and balances. These scholastics also promoted, as we see above, important democratic elements which, though not necessarily translating to democratic institutions with free elections, have a natural tendency to do so.

Regarding the issue of religious liberty, however, it was a long road from the writings of these scholastics to the American Bill of Rights, and an even longer road to the Second Vatican Council's Declaration on religious freedom, *Dignitatis Humanae*. Most, if not all, of the scholastics were in fact what we would today call integralists, believing

Richard Hooker, 1554 – 1600



that the Pope's indirect temporal power legitimized state coercion in religious matters. But as Pope Benedict XVI and many others have noted, it was ultimately the success of the United States of America that convinced many faithful Catholics that one could support legal rights of religious freedom without at the same time supporting secularism or religious indifference (before this, civil peace was a primary concern). But for that American experiment to happen, there was a long history of contributions,

among which were those made by Catholic scholastics. And this, I am convinced, is a story young Catholics need to hear.

Thomas D. Howes is editor-in of the The Vital Center, a research fellow at the Austrian Institute, and a Lecturer at Princeton University. He has completed a book manuscript called Natural Law & Constitutional Democracy, which is a defense of modern constitutional democracy informed by the natural law tradition.



IN DEFENSE OF DECADENT EUROPE

By Alexis Carré

Many observers saw reason for hope in the West's display of unity following Russia's invasion of Ukraine. French president Emmanuel Macron, who had pronounced NATO "braindead" back in 2019, declared recently at the GLOBSEC conference in Bratislava that Vladimir Putin had jolted the alliance awake. While this hope should not be overstated, there is no reason to completely brush aside the political significance of the Western reaction to Russia's aggression. But no awakening of any sort is going to bear long-term fruits if it does not allow us to rethink the foundations of the alliance and the reasons it failed to prevent the war in the first place.

In the last twenty years, Europe and the United States have grown apart in important ways. Already brewing in the 1990s, the first obvious manifestation of that increasing gap was the divide over the Iraq War, both between Europe and the United States, and within Europe. The refusal of France and Germany to come on board, and the willingness of the UK and Eastern European countries to do so, led to the impression that both sides had lost any common conception

of the end of political activity and the means to achieve it. It also showed that Europe could no longer agree on what it meant to be part of the Western alliance. But this trend goes far beyond politics and can be observed in journalism, economics, and academia. Americans, whether progressive or conservative, often give the impression nowadays that they no longer have anything to learn from Europeans, who themselves tend to adopt the habits of intellectual provincialism—that is, of blindly embracing or rejecting everything American.

A sad symbol of that trend lies in the fact that, although critical theory was born on our shores (mainly in France and Germany), it only gained the political traction it now has in Europe after it was given the allure of an American import. Even to its European proponents, such a paradox should give pause. And far from being solely the concern of the "Old Continent," this alienation should deeply worry our American allies, as its political implications weaken the very foundation and purpose of the Western alliance. Not accounting for Ukraine's stern resistance, Putin was yet confident that the very nature of our relations, while offering Europeans protection, had made us incapable of answering in kind to a frontal aggression at our border if the United States, distracted

by increasing tensions in the Pacific and at home, was unwilling to expose itself in that theater. In Africa, the Middle East, and elsewhere others are drawing similar conclusions. The long-ranging consequences of that situation are only starting to unfold and will soon be beyond repair if we do not undertake an urgent effort to understand and overcome this paralysis.

Mars and Venus

It would be tempting to see this as another instance of the rise and decline of global powers, merely asking Europeans to acknowledge their relative decline, swallow their pride and adapt, so as to make the best of their present situation. And many did. On the contrary, we contend that this shift in Euro-Atlantic relations teaches us something about the nature of our regime and the problems it has increasingly faced in the last two decades.

It is true that a big part of that story starts with Europe's political weakness. How can a continent that cannot act on its own claim the right to think on its own? Americans have long been frustrated with Europe's perceived, and often real, lack of commitment to international security. To varying degrees, Europeans are understandably said to have abused the benefits of American protection since the Cold War and have sought to enjoy, at no cost to themselves, the dividends of a peace they refuse to enforce.

Back in 2002, Robert Kagan summarized this view in the clearest way possible. Acknowledging that Europe and the United States diverged so much on the nature of the international order and the means to shape it (first and foremost on the legitimacy of the use of force), he argued that attempts to bridge that gap were futile and demanded a more unilateral and robust American foreign policy.

Kagan's tone was not simply accusatory and was not entirely unfair. In a foreign policy context in which memories of the

Balkan crisis were still fresh, as well as the widespread perception that Europe had failed to rise to the task, he admitted that it was entirely natural for weaker powers to view the world in a different way than did stronger ones. Therefore, he merely asked American leadership to reckon with that fact. Shortly after World War II (think of Suez or Indochina), it became increasingly clear that the smaller nations of Europe could no longer hope to match continental states like Russia or the United States, and compete successfully with them, as they had in the last centuries, for global significance. For Kagan, it was the consciousness of their own weakness that prompted Europeans to be averse to violence and to favor compromise or rule-based solutions to armed conflicts. This consciousness was reinforced by their certainty that a pacified Europe showed the way to the "paradise" of a post-political world that did away with the need for force. It was therefore pointless to ask people from "Venus" to take risks and wage wars.

Long before Kagan, French political philosopher Raymond Aron admitted in the early 1960s that the material and military out-scaling of the traditional nation-state in the face of superpowers would be the "obsessing question of our time," but drew from that fact the opposite conclusion of Kagan.

Liberal Democracy and Its Dependence on the Nation

A fierce defender of liberal democracy, Aron understood that public discussion, and liberal institutions in general, are not by themselves conducive to self-government, sovereignty, and rational decision making unless they are supported by a sentiment of shared fate and political friendship. Indeed, in order to formulate collective decisions, we need to publicly discuss what should be done, and we will likely disagree at first and in the long run on a number of topics. But the presupposition that such disagreements

should lead us to try to convince people with whom we disagree is credible only if we do not want to be separated from them. And the very need to convince them derives from the fact that collective decisions that are compelling for everyone are constantly required to preserve and foster the desired unity. The diversity of interests and ideas that leads to the formation of what used to be called factions can only produce its intended and beneficial effects if it counters the force that leads to the formation of, and the need for, majorities. In other words, the efficiency of the political innovations that had led to the emergence of liberal democracy depended on political realities it could not produce.

In Europe, and although widely shared, the responsibility to preserve such realities, and make people aware of their worth, had usually been upheld by conservatives, not as an alternative basis to liberalism, but as an essential element of it. That such a burden should fall on them was not entirely due to chance. The fact that social, economic, and ideological divisions could produce in us the desire to convince others to adopt a certain course of action—rather than civil strife or retreat from the public space—depended on the quality of the relations that bind us beyond those divisions, on cultural realities and mediations that cannot be decreed by law but can at best be *preserved* by it. Whether through ineffectual policies, rhetorical posturing, or outright abandonment of that responsibility, European conservatives have overall failed in their mission. And it is even unclear whether those who pretend to take up that task today fully understand what is at stake in the defense of the nation.

For Aron, nations were not essentially communities of mere existence, tribal tokens of self-complacent belonging (“us against them,” or “my country right or wrong”), but communities of projects oriented toward action. Rather than merely seeking to perpetuate themselves, they were aimed at the pursuit of certain goods one cannot enjoy

outside of political life. Nations were good and worthy of our attachment because they were the reality that allowed the practical questions through which we seek directions in our lives to become actual deliberations leading to action. It was the membership in such a collectivity, the spectacle of its own functioning, that made such a life, and our personal participation in it, appealing.

But, regardless of the quality of our sense of shared fate, how can collective

“

There is no reason to brush aside the political significance of the Western reaction to Russia’s aggression. But no awakening is going to bear long-term fruits if it does not allow us to rethink the foundations of the alliance and the reasons it failed to prevent the war in the first place.

decisions be convincing to the very people who make them if the communities they form no longer have the power to make them effective? The issue of the weakening of the nation obsessed Aron because it bound the crisis of liberal democracy as a regime to the crisis of nations and the West as historical entities.

The Crisis of the Nation and the Temptation of Globalization

Placed in a situation where they lack the means to fully pursue their goals on their own and must depend on the protection of the United States to do so, Europeans faced the question of whether the political form that had given shape and meaning to their

practical deliberation (the nation-state) still had a purpose. Political leaders, adopting the vocabulary of political science, now congratulate themselves (or pretend to do so) on the capacity of European nations to project power and influence, holding it as evidence against those who say they are in decline. In the same way that a diversity of objects combines the effects of gravitational forces into a single outcome—that is, a system to which these objects contribute according to their mass—they understand political agency as that capacity nations still surely possess to weigh to some extent on outward forces and trends in order to maximize their share of their cumulated effects. But in so doing they fail to consider those situations that do not arise out of a system and its constantly adjusting interactions, situations where a motive is set forth and pursued, indeed not in ignorance of, but independently of external factors, situations where one commands and others may follow or resist—namely, political situations. As a great European once remarked, there is a qualitative difference between declaring what one wants and is going to do and being allowed to plead one's case when the decision is, in fact, out of one's hands.

Of course, nations still compete in, say, international trade, and some do it better or worse than others, but all are compelled to adopt the understanding of politics on which the international division of labor is predicated. One may say they still exercise their sovereignty in drawing their own conclusions from these predicates—for example, by deciding what policies are most susceptible to increase their competitiveness—but accepting those predicates makes them at the same time and to some extent blind to obvious political facts. While the tools we have at our disposal are surprisingly apt at predicting the consequences of a given trade agreement on our growth rate, we seem to have become strangely indifferent to the nature and the intentions of the regime of the countries it might make us depend on in the future. Recent events should provide the

demonstration, however, that a world of diminishing economic uncertainty cannot be conflated with a world of diminishing political threats, and, conversely, that the facts we are best at predicting are not necessarily the most relevant to guide our action. The farmer finds little solace in the astronomers' perfect predictions of solar eclipses if what he needs to know is tomorrow's weather, or who is stealing his cattle. In that context, the contention that inaction in the face of hostility should be preferred, because it least upsets the predictable economic processes we are engaged in, turns social science into political superstition. What is unthinkable according to the parameters of the global economy because it cannot be deduced from its predicates (*The Great Illusion*) is not impossible so long as our enemies want it, however foolish it might appear to us. The expectation that dissenters will be punished by the economic consequences of their own action is equally naïve. Political motion does not always stop on its own, if sustained by sufficient motives. It sometimes needs to be defeated.

Another concrete consequence that derives from this flawed understanding of agency is in fact especially visible at the military level (although it applies to many others), where the organization of many European and NATO armies is now premised on US logistical and technical support. Such armies surely weigh in proportion to their strategic location, equipment, and manpower—Greece is more important than Belgium, or Turkey than Portugal. They all have a place in the system. But ultimately, most of them would be incapable of carrying out a major operation on their own even if they needed to. Many do not see this as a cause for concern, because they believe in the pacifying power of commerce and the international division of labor; in other words, they believe in the disappearance of major wars that it is supposed to lead to—“Why care about sovereignty in the age of global governance?” Others are not concerned, because they see American and

European interests as essentially aligned and therefore view dependence as a trivial matter (“no discussion is needed”). But regardless of whether this is true, what is more worrying is that the very imbalance at the heart of the Western alliance has affected, beyond our foreign policy, the inner working of our political regime.

Out-scaled in all the metrics by which we measure power, nation-states are surely still the main forum of our public conversation, where we care to make a point, but such a conversation no longer seems to set goals whose realization depends on us. This seemingly systemic weakness of the nation, nowhere more visible than in Europe, goes far beyond mere issues of foreign policy. In fact, by widening the gap between the level at which decisions are made and the level at



What seems to have made us more peaceful and tolerant has also numbed us to genuine political concern.

which meaningful civic engagement is possible, we have unraveled the relationship of public discourse, political representation, and sovereignty that had been the trademark of liberal democracy since its inception.

One may even argue that much of today’s populist malaise can be traced back to a rising awareness of that unraveling, paradoxically often shared by large segments of the very governing elites it decries. It has created the pervasive suspicion that national politics is no longer a public deliberation on what to do as a politically independent community, but a somewhat rhetorical and top-down exercise on the part of a largely passive governing class, tasked with convincing people to accept necessities imposed from the outside (international

competition, climate change, European integration, compliance with human rights, etc.). In their own way, Brexit and the promotion of a rule-based international order, or its particular instantiation in the EU, are born out of the same creeping awareness of the nation-state’s vanishing sovereignty. Both are attempts by European nations to overcome the anxiety caused by this process: one by bringing back decision making at the level of meaningful public conversation, the other by upscaling institutions at the level of impactful action. The first attempt can probably be blamed for brushing off the concrete weakness of European nations (that is, for its imprudence and its recklessness); however, the second one, by applying liberal institutions to an undifferentiated humanity instead of the communities of shared fate on which the practical meaning of these institutions was premised, effected a radical regime change, under the guise of enlargement.

But, as events have shown, none of the political alternatives has convincingly addressed the decisive issue: the interaction of political freedom and power relations within the West. For that, more is needed than a reflection on our regime and the political form to which it gives agency. We need an explicit appreciation of the concrete relations that bind democratic nations together.

The Unintended Effects of American Unilateralism on Europe

A perspective on the nature of political life is often implicit in our conception of how things should be discussed or negotiated within the Western alliance. If we consider power to be its own end, if we consider politics to be the struggle for or preservation of power, then of course it is a matter of indifference for the members of the alliance to deliberate on what ends power may serve: on their respective goals, their perception of the international situation, and the course of action they dictate. The course of the whole

is determined by its biggest player, or by the aggregate of all national interests of which that player is the main factor.

Yet, because their capacity to act on their own is increasingly limited, European nations know that they need friends, that is, countries that might share their motives and are willing to carry out common endeavors with them. This is why much anti-American sentiment has been fueled by the idea that Americans have not been listening to them or treating them as equals. It is somewhat tempting for Americans to brush aside these complaints as ridiculously out of touch with political reality and go their own way without scruples. Why would they treat as equals countries that obviously aren't? But precisely because of the diminishing power of their arms, the European nations have increasingly seen their sovereignty take the form of effective counsel or deliberation—success in convincing other nations to act, or not to act, in a certain way. By its unwillingness to navigate the possibility of dialogue on an equal footing, the United States has paradoxically aggravated the political paralysis it blames on Europe's self-inflicted passivity. How could European nations take their own sovereignty seriously while being constantly reminded of their own incapacity to weigh in, in a meaningful way, at the supranational level at which political action is now frequently situated?

More than that, the Americans' show of force has not achieved its goals. If anything, the two decades since Kagan wrote his seminal article have taught us that if weaker countries need friends, material superiority does not protect stronger ones from humiliating defeats, even at the hands of remarkably smaller adversaries. Powerful countries too may benefit from the deliberation of others, especially when it leads to the kind of unwelcome advice one can take only from an independent but friendly ally. For such advice cannot be expected from nations whose relation is born out of pure considerations of power. By frowning upon expressions of healthy

independence as a threat to the cohesion of the alliance, the United States, far from promoting its national interest, has recruited allies who are more willing to please and bargain than to be useful.

A quick look at Europe's situation since 2003, when a National Security Advisor allegedly declared her country's intention to "punish France, ignore Germany, and forgive Russia," makes one wonder what those three verbs have achieved except harming a well-intentioned ally while failing to obtain the honest cooperation of Germany or the gratitude of Russia. And it is doubtful that the failure to act on the red line in Syria, the catastrophic withdrawal from Afghanistan, or the signature of the AUKUS agreement, were any more successful at securing American interests and leadership. All confirmed indeed that the United States could act unilaterally without fear of real repercussions on the part of their allies. It also confirmed that European nations had reasons to fear such repercussions for merely voicing opposition to American policies they could not effectively oppose in most cases. But we contend that, by discouraging countries that are already undergoing a crisis of confidence, this imbalance has been detrimental to the United States itself, as should be clear from a quick look at the Europe it has shaped.

Europe's Lost Decades and the German "Miracle"

To a large extent, the political void created during this period has been filled by a new European order that progressively saw the rise of Germany, more specifically of a narrow and short-sighted understanding of its economic interests, and the political and material decline of France. While the two countries were relatively on par in the late 1990s, many perceived this change as a positive development. Germany was showing the way and was presented as a model both in terms of budgetary policy and economic

development. One was responsibly integrating itself in the global economy by becoming one of its best competitors, and the other was rightly sanctioned for clinging to its dreams of imperial grandeur or for its more benign nostalgia for post-war welfare policies.

Cheap energy, coming from Russia; cheap labor, coming from eastern European countries; and the Euro along with the common market allowed Germany, still “the sick man” of Europe in 1999 according to *The Economist*, to become the continent’s industrial powerhouse. Socialist Chancellor Gerhard Schröder, who went on to work for Gazprom, introduced the ambitious reforms of the labor market that were credited with saving the German economy, and whose benefits would then be skillfully administered by Angela Merkel for the next 16 years—making her the most powerful and longstanding political leader in Europe.

For many analysts, all its neighbors could have taken part in Germany’s success story provided they had followed suit with German reforms. But this all-too-common narrative is deeply misleading. In fact, Germany’s takeoff greatly benefited from the depletion of its competitors’ industrial sectors. In 2013, in the middle of the European debt crisis, economist Michael Pettis showed how European institutions and the German reforms of the early 2000’s had created the conditions of an economic imbalance that was causing in other countries the very difficulties their governments were mistakenly asked to solve by following the German model:

To insist that the Spanish crisis is the consequence of venality, stupidity, greed, moral obtuseness and/or political shortsightedness, which has become the preferred explanation of moralizers across Europe begs the question as to why these unflattering qualities only manifested themselves after Spain joined the euro. Were the Spanish people notably more virtuous in the 20th century than in the 21st? It also begs the question

as to why vice suddenly trumped virtue in every one of the countries that entered the euro with a history of relatively higher inflation, while those eastern European countries with a history of relatively higher inflation that did not join the euro managed to remain virtuous.

For Pettis, the positive account of the German “miracle” did not stand the test of reality. The common narrative, by conflating household savings and national savings, held that Germans were entitled to dictate reforms because they had been virtuous and thrifty, and that the failing economies of the Southern European block had to listen because they had not, despite having been given the choice to do so. The political conclusion of that narrative was that the reforms they would not implement out of their own will would have to be forced on them, for their own good, through EU institutions.

What happened in reality was a completely different macroeconomic mechanism. Pettis says that by keeping wages down, the German labor market reforms had lowered household incomes, as a share of the German GDP. In so doing, it made households’ savings (German “virtue”), by definition a fraction of those incomes, increasingly irrelevant to understand the diverging trajectories of European economies. Indeed, as the share of household incomes dropped so did consumption, which, combined with strict budgetary policies meant that public spending was not making up for the decrease in private consumption (as it had in the 1930s, under somewhat similar deflationary policies, through rearmament). In simple terms, institutional and legal constraints, a political choice, not a change in culture or in the conduct of economic agents, now meant that Germany was producing more than it could consume (as incomes dropped as a share of GDP) and saving more than it could invest (as consumption dropped, the national savings rate mechanically increased

faster than companies could absorb through investments).

What it means concretely is that money was transferred, not through spontaneous market mechanisms but out of political will, from households to corporations (the extent of German growth and German low unemployment should have meant rising wages, which it did not because of the reforms); from lenders to borrowers (this surge in capital surplus meant low interest rates, households were getting less from their savings than they should have); and from corporations that provided services and goods to German people, to the ones that did not (basically export-oriented companies). Call it a giant hidden subsidy to these companies. This resulted in what economists call a current account surplus. But since German surpluses were not caused by German households' thriftiness or the superiority of German engineering—all things that, if true, already existed when Germany was running large current account deficits—but by a political mechanism meant to shrink the share of consumption, imports did not rise, or not as fast, in order to correct that imbalance. That influx of capital that Germany did not absorb, as a result of its own policies, through private consumption, public spending, or investment thus had to be exported abroad: "Of course, the rest of the world had to [...] run the current account deficits that corresponded to Germany's surpluses. This was always likely to be those eurozone countries that joined the monetary union with a history of higher inflation and currency depreciation than Germany" (Pettis, "Excess German Savings, Not Thrift, Caused the European Crisis").

As a consequence of German goods surpluses, industries elsewhere in Europe were faltering, and, because of German capital surpluses, these countries were financing the fall through debt towards German lenders. It meant financing their growth through an overflow of capital towards non-export-oriented corporations,

namely, corporations servicing private consumption in those countries (services and real estate), leading to an artificial surge in the share of those sectors and the value of those assets, rising unemployment, or both (both equating to a decrease of their national savings rate). And since the amount of capital to be absorbed was so disproportionate (due to the amplitude of the German surpluses and the size of its economy relative to those smaller countries), it was bound to fuel massive inflationary effects and mislocated investments. German economic policies, not southern laziness, was the cause of those difficulties. And far from being a solution to the said difficulties, Germany's successes were predicated on them.

In other words, the German economic policy could only have had the success it had in Germany *because* it found an outlet to absorb the ensuing surplus of capital and goods it produced. And it could only do so because it had the very detrimental effects on its partners' economies, which commentators were blaming on their political irresponsibility when, in fact, political responsibility was precisely what was being taken from them as they were asked to comply with the rules of a game that was harming them.

In that regard, the Euro and EU regulations were not really enforcing pure and perfect competition in Europe, but on the contrary, shielding Germany from the consequences of running such a current account surplus for such an extended period of time. Its currency was protected from appreciation by being shared with its borrowers and their rising debt, while EU regulations were preventing the said borrowers from using the traditional tools at their disposal to correct such imbalances (Pettis mentions "interest rates, trade interventions and currency depreciation").

German surpluses did not need to mean rising German wages or public spending, because they could be absorbed by the rising debts of its European partners. The market

mechanisms that, without the common currency, would have restored the balance of its exchanges with the rest of the world were in this context externalized to the rest of Europe. The price of German houses did not rise, but the price of Spanish and French ones did. The negative consequences of its current account surplus, instead of affecting the German economy, were so to speak outsourced and translated in the diverging trajectories of other European economies, especially the most exposed ones.

Far from increasing competition, the common market and the common currency were slowly creating the conditions, if not of a monopoly, at least of an economic hegemony of Germany over its partners. While the rest of Europe was deindustrializing, Germany was able to use its economic superiority to become a key trading partner with China and reap the benefits of the latter's integration into global markets. This scissor effect also meant that the same things that were benefiting Germany (e.g., mass immigration or trade agreements) were aggravating the difficulties facing its partners, making them even more incapable of competing with it.

The most charitable interpretation is that

Germany played by the rules of the game it was given and secured the best position it could reach within the limits of that system. And, true, some of it was due to courageous, energetic, and ambitious reforms other countries might have been well advised to undertake in one form or another. But all of it was premised on an evaluation of the situation of Europe that proved in the last two years to have been profoundly and irresponsibly flawed. The problem was not that Germany was leading Europe, but that it was doing so thanks to the authority of successes measured by the metrics of a system that could only claim to replace political reality but in the minds of economists.

Its growth, if we isolate Europe from the rest of the world, could admittedly be construed as a success, if a selfish one. But it was based on a system on whose predicates outside of Europe it had little control over and that made Germany, and the rest of continent with it, more dependent on a certain state of international affairs: one where Europe saw the world as a mere, or at a least delayed extension of itself, and whose inner working spontaneously aligned with our altruism and interests through rule-based

“Expressing frustration at a homeland that no longer seems to have use for their virtues and talents, a lot of young Europeans have expressed their discouragement in a silent but steady emigration. Are Europeans condemned to collective apathy and powerless isolation?”



and mutually beneficial cooperation. But this extension was largely imaginary, and by letting it provide us with the rules of our action, we now realize hostile countries have the capacity to use our dependence on that system through their power to disrupt it. The grave difficulties that the German economy is now facing should demonstrate how fragile it was in the first place, and the fact that it is allowing other European economies to breathe once again shows that it was indeed creating difficulties for Europe as a whole. But this should not be cause for joy. Neither Germany nor Europe as a whole benefited from pretending that the country had become the model it never was. But Europe has nothing to gain from a collapse of Germany that would come as much at the expense of its partners as its hegemony did.

But so long as that hegemony stands, the result is the absence of a robust industrial and technological defense base for the continent; low defense budgets, made even lower by the necessity to comply with EU budgetary rules; and a disproportionate concentration of industries in a single country rendered politically weak by its debilitating dependence on Russia and China and by the pressing need to keep its economy growing as it had in the previous two decades.

And the hope that the war in Ukraine would force the governing elites in Berlin to reassess their priorities should be met with great caution given what has effectively happened since February 2022. If anything, the task might be made harder for a political class challenged by the rise of AfD to convince a society that now thinks it has so much to lose from abandoning the status quo of the need for change. Yet, while Germany has become too powerful for its own good, no country, especially after Brexit, seems to be in a position to take up the task of proposing an alternative leadership.

In that regard, there is no doubt that the political decline of France is also due to internal causes that have little to do with Germany or the United States. But, precisely

because of that, its recovery, if unlikely, remains achievable provided that the governing class takes responsibility for it. Such a conversation has yet to take place. But in whatever way we consider this likely to occur, and regardless of whether France will play a role in the renewal of Europe, no change will happen without questioning the current state of Transatlantic relations. Beyond its own faults, France continuously failed to build a coalition for change in Europe, because most countries in whose interest it would have been to join such a coalition repeatedly got credible hints that doing so would damage their relationship with the US, which they deemed more urgent and vital.

To take but one example, Poland, which is set to become a major military actor on the continent, is unlikely to participate consistently in European armament programs every time it believes it could deteriorate its military partnership with the United States. And what is true of Poland and its military is true of most Eastern European countries in many other respects. While all these countries—even the most heterodox ones, such as Hungary—acknowledge the economic benefits they draw from their membership in the Union, two things have prevented them from participating in the reshaping of Europe with a view to restoring its political agency. One is the all-too-often real infringement on their sovereignty that has been carried out through the Union’s regulatory bodies in Brussels and Strasbourg; the other is their perception that the approval of Washington is more important to their security than anything else. Though counterintuitive—“why empower allies to disagree with us?”—American support for reform may be the only course of action that can make Europe the ally it needs it to be. First, because the United States has nothing to fear from Europe in terms of foreign policy. Second, because the diplomatic tranquility and the few economic gains it has secured against an apathetic Europe are not worth what it has lost and may lose in the

future because of European nations made politically unstable and more vulnerable to the pressure of powers deeply hostile to the United States.

However uncomfortable such a process might prove to be for the Americans (as more issues will arise where disagreements may once again prove consequential for both parties), they have very little to gain from maintaining the status quo. And whether they realize it or not, a new leadership in Europe is unlikely to emerge without their consent and their help.

The Political and Diplomatic Meaning of Friendship

The end of the Cold War had obscured what was clear then: that the United States cannot be neutral and indifferent towards the fate of Europe and view it as one competitor among others over whom it should wish to gain every possible advantage. But taking seriously the idea of a liberal and democratic West means reckoning with the possibility that friends of the United States may sometimes be right in opposing its action despite the undeniable fact that they lack the material means to prevent it. For what is to be considered when one has to act is not only capacity and will, but whether it is wise to pursue a given goal in a certain way. Wise decisions are not the product of blind metrics but of conscious deliberation. In other words, they depend more on our political regime and the quality of the public conversation it shapes than on material factors and sheer force.

Indeed, only in Europe has the relative weakening of nation-states led to the dream of a post-national order. In the words of Pierre Manent, a student of Aron, in a [recent interview](#), “Our idea of expansion, our idea of a thing greater than we were, took hold again of our mind and heart. But it was no longer our empire, it was the European Union, and we felt that we could expand through Europe.” Such an expansion without force required Europeans to leave behind the

straitjacket of their old nations—because they could not agree on much in terms of substantial political obligations—for the sake of ever-increasing individual rights within an increasingly pacified and open world. Living under the same rules, enforced from afar, Europeans had slipped out of their traditional form of political friendship without ever entering a new, larger one that would give them the desire to lend life to the institutions that now organized so many aspects of their lives. What has come of it?

The idea that nations are imaginary communities of no intrinsic value was probably intended to broaden our mind, but it has instead narrowed the scope of actions we can collectively conceive. What it has gained for democracy as an idea—and we certainly think much of ourselves in that respect—it has lost for democracy as a collective project. By seeing the source of our political friendship as fictional, it has weakened the desire that prevents us from becoming strangers to one another. We like to congratulate ourselves on the positive side of it. Seeing what binds us together as a figment of our imagination means we will not fight as much over it. But what seems to have made us more peaceful and tolerant has also numbed us to genuine political concern.

Strangers may coexist with each other, but they have very little to deliberate about; they do not really need or seek to formulate a common good, but merely want to be entitled to their own conception of it. Yet, without such a desire to live together, political disagreements do not disappear. Rather, entrenched interest groups made indifferent to the fate of one another only find frustration in their mutual dependence. The inevitable realization of that dependence, finding no support in the willing desire for collective decisions, results in pointless quarrels and institutional paralysis. It then becomes tempting for members of the same political community to long for a catastrophic separation or a more discrete but equally depressing internal withdrawal from public life. Expressing frustration at a

homeland that no longer seems to have use for their virtues and talents, a lot of young Europeans have expressed their discouragement in a silent but steady emigration. Are Europeans condemned to collective apathy and powerless isolation?


For the same reason that material superiority is no guarantee of success, our political regime can survive the material weakness of the nation only if it retains its long but all too easily forgotten memory of, and devotion to, self-government. The division of the West into politically sovereign units need not be a weakness or a source of exclusion. On the contrary, a political culture that mobilizes the desire not to be separated, the desire to be one people, allows citizens to discuss more things they disagree on, more things they need to be convinced of by one another, and it broadens the political horizon of what we see ourselves capable of achieving collectively.

Indeed, depoliticization would be without consequence if the world itself could provide us with the rule of an action we no longer trust to find in our own judgement. But it should be clear by now that our failure to confront the question of what should motivate our action has not made room for a globalization that spontaneously aligns with our interests, peacefulness, and altruism. The discomfort of justifying our choices to one another should not blind us to the fact that an unstable international order will ask a lot more from us than what constitutes the narrow scope of our current political life of polarization, dull governance, and civic enmity. And our present situation means that Western nations will not be able to deliver on these promises without each other. If Americans expect as much from us in the future, they must be able to accept the consequences of political independence. We cannot afford to be estranged or feel threatened by our disagreements.

Of course, it is tempting for the United States to evade such complications, as it still has the sense that it possesses the means to act on its own. But if the nations of the “Old Continent” have nothing to discuss and offer but the sentiment of their newfound weakness, it is unlikely that they will deal with the challenges ahead with the proper resolve. As politically apathetic countries we may become comfortable partners, and consenting preys to benign competition, but, for the same reasons, we will become unreliable allies. If it cares more about having us stand at its side than signing arms deals and gaining market shares, the United States should welcome European political and strategic autonomy as a happy development rather than a threat. And if it wants to remain the champion of liberal democracy as the most humane form of political freedom, then the United States, as a global power, has a role to play in empowering those nations. The first step, if not the last, is to let them know that it can listen to them.

I would like to thank the James Madison Program at Princeton University. Our weekly discussions on current issues with European and American colleagues greatly contributed to the present article.

Alexis Carré is a postdoctoral research fellow at the Program on Constitutional Government at Harvard University. His work deals with war and liberal democracy. He was awarded the 2021 Raymond Aron prize for research for his dissertation, completed at the École Normale Supérieure in Paris, entitled War and Law: The Refounding of Liberalism Against the Conservative Revolution in Leo Strauss and Raymond Aron.



KEEPING THE REPUBLIC

By Jeffery Tyler Syck

In our modern age where everything is filmed, or streamed, or at the very least closely monitored by reporters, it is hard to imagine the most consequential political debates taking place in private. Yet this was exactly how the constitutional convention was conducted. For five months the country's greatest statesmen and intellectuals sat cloistered away in Independence Hall, crafting a new constitution for our freshly birthed nation. On the last day as the convention was breaking apart, a collection of concerned citizens gathered outside the door. Amongst the throng was an older woman who boldly asked the convention's eldest delegate, Benjamin Franklin, what sort of constitution they just finished writing. He replied with a warning: A republic if you can keep it.

It is common for historically minded Americans to quibble when others call the United States a democracy. This is an understandable impulse, most of us whether intentionally or not have taken Dr. Franklin's challenge to heart. I do, however,

wonder how many of us really understand the difference between these two regimes and the history of those terms in the United States.

Defining the Terms

Despite the prevalence of contradictory and competing definitions of democracy in the modern day, the meaning of the term has been fairly stable throughout history until recently. Democracy simply means the rule of the majority, and a democratic government is one that can best reflect the wishes of the greatest number of citizens. The heart of a democratic society—for regimes are defined not just by their politics but also by their culture—is the idea of equality. It is society in which there is little or no social hierarchy and everyone is treated roughly the same.

Contrasting with this, the aim of a republican regime is to create harmony—both political and social—by cultivating a consensus between classes and individuals. A

republican society aims for a culture in which humans live harmoniously, each fulfilling his chosen role and deferring to those who are chosen to lead. In the age of Greece and Rome, the path to the republican regime was thought to be through nurturing virtue among the citizens of the republic. As the English poet Thomas Addison once put it: “A Roman soul is bent on higher views: To civilize the rude, unpolished world [...]; To make man mild, and sociable to man; To cultivate the wild, licentious savage with wisdom, discipline, and liberal arts.”

Republicanism in America

The collapse of the Roman Republic and the brutal governments that followed in its wake seemed to quash this very possibility, which is why the American founders—like most modern republicans—rejected the classical emphasis on virtue as the foundation for a republican government. Their solution instead was a more institutional one. Assuming that men are not angels, and never will be, they set out to create a structure of government that would prevent the selfish human passions from ever dominating the regime. They intended not to create an inspiring arrangement but rather a practical one. The founders sought not to end selfishness but deploy and restrain it. This is the most obvious arrangement of our federal

consensus but instead as a path to enacting institutions. The American system is designed to channel vicious passion through the general structure of its government. Each of the three branches of government is engineered to compete with the others for power, which explains why the branches so often share powers with one another in ways that encourage political clashes. Further, there is a more human element to the system of checks and balances. Madison frankly states in Federalist 51 that one of the best ways to ensure that each branch keeps its fellows in check is not just through power sharing but also through the “personal motives” of the officeholders using ambition to counteract ambition. The framers knew that each officeholder would have a personal stake in the success of his branch, and this would ensure that the branches maintained a healthy level of political competition.

Despite this carefully planned institutional structure, things began to go downhill rather quickly. In true republican fashion, the founders organized the regime to try and restrain majority tyranny. But almost from the moment of ratification, the American people tired of being lectured about democratic despotism by the wealthy and educated political classes.

John Quincy Adams witnessed this dangerous trend, and he insisted the republican order needed to stimulate selfless virtue

Ruins of the Roman Forum.



amongst the populace through strong moral education. He argued that no republic—perhaps no regime—could survive without some effort to inspire humans to rise above their own selfishness. In the last year of his presidency, Adams articulated his classical republican vision with startling clarity. He argued that the constitution of the United States had three stages until it would achieve political perfection.

The first was the separation from England and the formation of a regime dedicated to natural rights. The second stage arrived by uniting the various states under one national government and constitution, thus bringing order to the otherwise chaotic principle of popular sovereignty. These first steps accomplished, Adams argued that it was time to look forward to the third stage of America’s constitutional development. He declared that Americans must work to “adapt the powers, physical, moral, and intellectual of this whole union, to the improvement of its own condition: of its moral and political condition” (*Speech at Groundbreaking of the Chesapeake and Ohio Canal*, July 4, 1828). In short, he argued that the Constitution had established the primacy of natural rights and created institutions that would protect those rights, but now it must work to improve the virtue of the nation’s citizens.

The Rise of Democracy in America

In the end, Adams proved unable to stem the tide. Beginning with the triumph of Andrew Jackson in the election of 1828, America began its ongoing transition to such a regime. Jackson spoke for the American people when he declared that “democracy shows not only its power in reforming governments but in regenerating a race of men and this is the greatest blessing of free government.”

So if we are honest with ourselves, we have not much kept the republic as Dr. Franklin hoped we might. Americans now see our institutions not as a means to create the wishes of the greatest number of voters.

Any institution that stands in the way of the majority is now threatened. Almost all state and local officials, from the soil inspector to the judges, are elected. Senators and party nominees are likewise chosen by popular vote. Those republican institutions that remain are constantly criticized. Calls for the abolition of the Electoral College have been unceasing since Jackson himself first proposed the idea, and in recent years the Senate has even come under fire.

Given the incredibly divided nature of our times, institutions that prevent majority tyranny and encourage political harmony seem more vital than ever. We should stand up for them, and we should strengthen them. We are increasingly a democracy, but our republican institutions serve an important role worth preserving.

It seems unlikely, though, that America could ever return to its more republican past. Democracy is a hard thing to roll back, and the nostalgia that I imagine many of us feel for the glittering age of Washington and Jefferson is not always that helpful in addressing the ills of the present. But I do not want us to despair too much. For all the issues with democratic institutions, the democratic society that created them has a lot going for it. The French political thinker and astute scholar of American society, Alexis De Tocqueville, shared our concern. In his famous work, *Democracy in America*, however, he went to great pains to show the joy that a less hierarchical society can bring with it.

Tocqueville shows this most clearly in his chapter on the family. He first describes the aristocratic family. In such families, the father exercises near total control over the children: both imparting his wisdom and arranging the future direction of their lives. The result is that when the children do begin to shape their own lives, it tends to be an act of rebellion that separates the children from their parents.

In a democratic society, Tocqueville observes the father only possesses significant control over the children when they are too

young to do much for themselves. As soon as children reach the age of reason, however, they are free to live their life as they wish. Tocqueville frankly admits that this loosely structured arrangement bears very little resemblance to the family as it has been understood in previous centuries, though he makes equally clear that the freedom innate in the democratic family makes possible a more intimate and loving relationship between parents and children. The sweetness of this close and egalitarian family “is so great that even partisans of aristocracy allow themselves to be taken by it, and after tasting it for some time, they are not tempted to return to the respectful and cold forms of” the previous ages.

“

Perhaps the greatest way we can revive republican virtue has nothing to do with politics, but instead with our private lives. Work diligently and constantly to be as selfless as possible. Banish resentment and political anger from your disposition.

Tocqueville declares that this is the nature of a democratic society. It often destroys or obscures old social conventions, but those which survive are based far more fully upon genuine affection between individuals. This is because if the formality of the old customs are stripped away, then humans are left to be truly themselves and we allow the possibility of a society that is built upon affection for humans as they are, rather than a society structured by rules and conventions. In the final analysis, Tocqueville did not see how any man could deny the tender wholesomeness of such a foundation for civilization.

A Virtuous Democracy

Of course, Tocqueville did not think this vision of democratic society was automatic. It required not just equality but freedom. This is what sets a liberal democracy apart from a democracy simply: the concern for human liberty. For Tocqueville freedom had a unique meaning. It was neither aristocratic privilege nor a lack of external restraint upon the individual but instead the ability to govern oneself. By this, he did not just mean politically, but also the ability to control our own passions and achieve great things. In short, for Tocqueville freedom requires virtue.

Here we return to John Quincy Adams’ insight. America is now more or less a democracy. But to ensure that it is a democracy worth living in requires that it maintain republican elements. As I said earlier, this of course means protecting republican institutions, but perhaps more important is encouraging republican virtue—which is itself a trickier business. As much as we may wish, the law can only do so much to cultivate human virtue.

John Quincy Adams often liked to quote his hero Cicero to argue that virtue is only genuine if it is freely learned and maintained. So, from a policy perspective, there are things we can do to create the conditions in which virtue might flourish even if we cannot mandate goodness.

First, we must ensure widespread liberal arts education. No education is complete without a serious study of history, literature, mathematics, science, philosophy, or religion. All these subjects in their own way, and when taught correctly, instruct students in the permanent things—the things that have been true in all ages and upon which mankind can build a solid moral outlook.

Second, we must guard against ardent secularity. I do not mean to imply here that we should have a state religion or that religion itself should play a much greater role in the shaping of public policy than it

already does. What I mean is that there are moves in the social sphere to banish religion very carefully from any public space, and these must be discouraged. Whether we are believers or not, religion can provide a strong foundation for local communities and republican virtue. So we should encourage religious charter schools, advocate for school prayer in our public schools, and ensure that people are allowed to live according to their religious convictions as much as possible.

Third, we must address the problem of poverty. Studies show that poverty makes likely the collapse of the family than any other factor. Too often, crippling poverty leads to a collapse of virtue and inevitably separates the poor from the civic life of the nation. Not out of any failing on the part of poor people themselves, but out of the tragic economic situation they find themselves in. How we solve this issue is a matter I will leave to the economists, but it clearly should be at the forefront of our minds.

Perhaps the greatest way we can revive republican virtue has nothing to do with politics, but instead with our private lives.

For virtue is better encouraged and cultivated in the private sphere, and here we can all play a part. Be active in your community, work to improve the lives of those around you, and perhaps most importantly seek to be virtuous yourself. Work diligently and constantly to be as selfless as possible. Banish resentment and political anger from your disposition.

In short, work day and night to build a more virtuous core to our democratic society. Through education, religion, and culture we must inspire the American people and ourselves to rise above the all-consuming passion for equality. To infuse our democratic society with republican virtue, and live up, even if just a little, to the challenge Benjamin Franklin gave us so many Septembers ago.

Jeffery Tyler Syck is the founding editor of The Vital Center and an Assistant Professor of Political Science at the University of Pikeville in his native Kentucky.

THE UNLEARNED LESSONS OF JANUARY 6TH

By Joseph Stieb

John F. Kennedy once quipped, “Domestic policy can only defeat us; foreign policy can kill us.” If Kennedy was ever right about this, and I have my doubts, he is dead wrong today.

For reasons that will soon become clear, Donald Trump’s attempt to subvert the 2020 election, culminating in the January 6 insurrection at the Capitol, posed a greater threat to the constitutional order than anything Russia or China could muster. This is an alarm bell to which Americans must pay more attention.

Important legal steps have been taken to punish the lawyers who devised Trump’s scheme to overturn the election as well as the hundreds of actual violent insurrectionists. There remain in place, however, key political conditions for an attempt to subvert future elections. For one, Trump remains at the head of the 2024 GOP primary field, polling over 40 points ahead of his nearest rival, Ron DeSantis. And DeSantis has not only refused to condemn the riot but said that he might pardon January 6 insurrectionists, including

Trump himself. Trump remains unapologetic about his actions and continues to claim that only fraud prevented him from winning in 2020.

The GOP has taken to whitewashing if not lionizing the insurrection. Its leadership failed to hold Trump accountable for orchestrating the insurrection in January 2021, when it could have permanently barred him from holding office. Instead, the party has censured and exiled those, like Liz Cheney and Adam Kinzinger, who told the truth about January 6 and tried to hold Trump accountable. Polls tell a dismal story: 27 percent of Republican primary voters outright approve of the riot, 54 percent think it was a form of “legitimate political discourse,” and 61 percent believe Biden did not win the 2020 election legitimately. The failure to take January 6 seriously is not confined to the right. Polling from last summer suggests that the January 6 hearings barely shifted public opinion on the insurrection. Trump’s approval ratings consistently outmatch Biden’s; there are many reasons to criticize

Biden’s presidency, but he does not threaten the constitutional order itself. Fewer than half of Americans believe Trump bears “a lot” of responsibility for January 6, and 44 percent believe the country is making too much of January 6 and needs to move on.

This last data point shows a fundamental misunderstanding of this event. The January 6 Report and other excellent books show that without Trump’s words and actions, the seizure of the Capitol almost certainly would not have happened. This same report documents, moreover, how the far-right militia members and conspiracy theorists who led the insurrection responded directly to his tweet on December 19 calling supporters to Washington D.C. for January 6. Extensive grassroots efforts to organize mass protests on that date began only after Trump’s prompting (*Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 404–32). His top Cabinet officials did not urge Trump to launch this campaign nor did they involve themselves closely in it, although figures like Secretary of State Mike Pompeo reinforced his baseless claims of fraud in public. The impetus for January 6, in short, came from the top.

Many Americans, not just Trump’s supporters, appear to view January 6 as a single, isolated incident, when it was in fact the culmination of a systematic effort to

overturn the election that started immediately after Biden’s victory. As Greg Jacob, a legal advisor to Mike Pence, stated, “The reason the Capitol was assaulted was that the people who were breaching the capital believed that [...] the election had not yet been determined, and, instead, there was some action that was supposed to take place in Washington, D.C., to determine it” (*Final Report*, 396). No one was more essential in creating that false belief than President Trump.

By looking at January 6 not as an event but the climax of a months-long campaign of fraud, arm-twisting, and provocation, this article pinpoints several close calls between November and January of 2020–2021 that, had they taken different directions, could have led to a full-blown constitutional crisis. In doing so, it highlights key vulnerabilities in the American political system that leave the door open to future coup attempts.

The Department of Justice Joins Trump’s Coup

Trump’s attempt to overturn the election was not merely about spreading disinformation and hoping events turned his way. Instead, he sought to use federal and state actors and bureaucracies to support his efforts. The Department of Justice was one such battleground. To his credit, Attorney

The US Capitol: The epicenter of former President Trump’s bid to overturn the 2020 presidential election.



General Bill Barr repeatedly told Trump in November and December 2020 that the Department of Justice had found no credible evidence for his claims of electoral fraud. Trump grew “irate” at Barr, who resigned on December 14 (*Final Report*, 326–30).

Jeffrey Rosen then became Acting Attorney General, and Trump immediately pressed him to investigate dubious accusations of fraud. Trump told Rosen, “just say the election was corrupt and leave the rest to me and the Republican Congressmen.” This was a reference to Trump’s plan, devised by his lawyer John Eastman, to have the states send false electoral slates to Congress, enabling the vice president on January 6 to declare that the election’s results were contested. This would kick the election to the House of Representatives for a vote by state delegation, where the GOP had a 26-24 edge (*Final Report*, 338).

Rosen resisted this pressure, but unscrupulous opportunists sought to seize the moment and enlist the DOJ in Trump’s campaign. Republican Congressman Scott Perry introduced Trump to Jeffrey Clark, then the Acting Head of the Environmental and Natural Resources Division. Despite Clark’s lack of expertise in election law, he told the president that if he was appointed Attorney General, he could get the DOJ to support the president’s claim that the election was stolen.

On December 28, Clark drafted a letter he hoped to send to officials in contested swing states saying that the DOJ was “investigating electoral irregularities,” including foreign interference, and that these states should hold special sessions to consider evidence of fraud (*Final Report*, 342). This might lead, he and Trump hoped, to those states changing their electoral votes for Biden or sending competing slates of electors. The January 6 Report notes that Trump and acolytes like Rudy Giuliani had been pressuring state officials to do the same for weeks, but the imprimatur of the neutral, upstanding DOJ would carry much more weight (p. 343).

Such a letter, the Report’s authors note, could have “provoked a constitutional crisis” in which state legislatures attempted to decertify their own electoral results. Fortunately, Rosen and his Deputy Richard Donoghue refused to support this letter, which Donoghue said “would be a grave step for the Department to take” that could have “tremendous Constitutional, political, and social ramifications” (p. 344). Rosen continued to resist Trump’s dangerous proposals, including a request for the DOJ to seize voting machines from the states. A stymied Trump then offered the accommodating Jeffrey Clark the position of Acting Attorney General. Rosen and Donoghue confronted Clark, who said that he would decline this offer if they agreed to sign his dubious letter to the states (pp. 348–49). They refused, but Clark decided to accept the president’s offer anyway.

This showdown culminated in a 3-hour meeting with Trump, Rosen, Clark, Donoghue, and other lawyers in the Oval Office on January 3. Every lawyer in the room besides Clark, along with a roster of assistant attorneys general, said that they would resign en masse if Trump replaced Rosen with Clark. This threat sufficed to deter Trump, keeping Rosen in office and preventing Clark from enlisting the DOJ as an arm of Trump’s campaign to overthrow the election (*Final Report*, 350–52).

As Rosen later testified, Trump wanted the DOJ to take a host of actions that could have thrust the United States into constitutional crisis: appointing a special prosecutor, sending letters to states disputing the election’s outcome, publicly stating that the election was corrupt, and filing cases in the Supreme Court on behalf of the Trump campaign (p. 355).

That the DOJ did none of these things, however, should prompt no sighs of relief. The professionalism and integrity of Barr, Rosen, Donoghue, and many other DOJ lawyers prevented Trump from using this agency to overturn the election. They were all Trump appointees, and they could have

acted otherwise in order to save their careers or bolster their conservative bona fides. Trump himself could have easily called their bluff, appointed Clark as Attorney General, and weaponized the DOJ. A compliant GOP and right-wing media, which parroted his lies through the transition period, would have most likely backed this move and run interference for Clark and Trump.

Indeed, Trump and his most fanatical henchmen tried to purge his administration of anyone willing to contest his abuses. Cybersecurity and Infrastructure Security Chief Chris Krebs, for example, tweeted that claims of electoral malfeasance in Antrim County, Michigan, were not valid, and Trump fired him the same day (*Final Report*,

“

Donald Trump’s attempt to subvert the 2020 election posed a greater threat to the constitutional order than anything Russia or China could muster.

242). Trump relied on Johnny McEntee, the 29-year-old Director of the Presidential Personnel Office, to monitor and purge members of the White House Staff who showed the slightest disapproval of Trump. In this position, McEntee was responsible for vetting ambassadors, cabinet secretaries, and top intelligence officials.

McEntee’s team identified high-ranking officials, including Defense Secretary Mark Esper, for termination because of their shaky loyalty to Trump. Wholeheartedly embracing the “Stop the Steal” conspiracy, he drafted dubious legal memos arguing that Pence had the authority to simply declare Trump the winner of the election.

In May 2023, McEntee joined Project 2025, the Heritage Foundation’s Presidential

Transition Project for “the next conservative presidential administration,” presumably a Trump administration. In this role, he will help collect resumes and vet political applicants. He describes Project 2025 as “the flagship effort to take back our country” and “confront the Deep State.”

A key lesson of Trump’s near-miss failure to use the DOJ to subvert the election is that a future Trump administration (or that of someone seeking to emulate him) will likely be filled with loyalists and fanatics, more Clarks and McEntees than Rosens and Donoghues. This makes it all the more probable that an attempt to use the DOJ or another federal agency such as the Defense Department to overturn an election will succeed where this one faltered.

Swing State Legislatures Send Fraudulent Electoral Slates

A key part of Trump’s effort to overturn the 2020 election was his pressure on state legislators and election officials to endorse his claims of fraud and overturn their states’ results. The notorious January 2 phone call to Georgia Secretary of State Brad Raffensperger, in which Trump asked him to “find 11,780 votes,” was the tip of the iceberg.

After a state certifies its election results and announces a winner, it issues a certificate of ascertainment featuring the names of the duly chosen state electors. All fifty states have decided by law that the popular vote will determine their electors (*Final Report*, 261).

Trump’s team embraced the incorrect theory that because state legislatures had the constitutional authority to decide how electoral college electors are chosen *before* the election took place, they could simply choose Trump/Pence electors after the election results came in, based on false accusations of fraud. John Eastmann, once again, devised this theory in a memo entitled “The Constitutional Theory of State Legislatures to Choose Electors” (pp. 262–64).

Following this dubious theory, the Trump team “engaged in at least 200 apparent acts of public or private outreach, pressure, or condemnation” directed at state legislators or election officials (*Final Report*, 267). They tried to get state legislators to ignore vote counts and hold special legislative sessions to appoint Trump electors to vote in the electoral college. This could lead to either false or competing slates of electors being sent to Washington, D.C. On November 25, he called into a meeting of GOP state legislators in Pennsylvania to tell them “this election has to be turned around [...] certainly overturn it in your state” (p. 273). Trump and Giuliani called Arizona House Speaker Russell Bowers and Georgia Governor Brian Kemp to pressure them to publicly endorse claims of fraud and hold a vote to decertify their states’ election outcomes (pp. 284–85). According to a Trump campaign staffer’s spreadsheet, the campaign tried to contact over 190 Republican state legislators in Arizona, Georgia, and Michigan (p. 277).

The Trump team also applied direct pressure to election officials, even at the local level. In one instance in Michigan, two Republican members of the Wayne County Board of Canvassers first voted to block certification of the election, then flipped their votes. Within twenty minutes, they received a phone call from Trump and Republican National Committee Chair Ronna McDaniel. While the contents of this call are unknown, the following evening these officials issued affidavits, now legally meaningless, saying that the election should be de-certified (*Final Report*, 270).

Trump openly accused a number of officials and legislators of fraud, and his attacks prompted threats against these individuals. Pennsylvania Senate Majority Leader Mike Shirkey received over four thousand hostile text messages after Trump tweeted his personal cell number on January 3 (p. 279).

On December 14, individual state legislators in seven states met to produce

fake electoral slates, falsely claiming to be “duly elected and qualified Elector.” This was the same day certified electors met to cast their electoral votes for the candidate who won their state’s popular vote (*Final Report*, 317).

Nonetheless, this effort to disenfranchise millions of Americans and illegally reverse electoral results failed for several reasons. For one, these efforts came too late, as state legislators could not go back and de-certify already established electoral results. They were also procedurally illegitimate, as their statements had not received certificates of ascertainment and, in most relevant states, only the governor could convene a special legislative session to revisit election results (p. 317).

Once again, the integrity of many state and local lawmakers and officials, including numerous Republicans, was crucial to preventing this scheme from gaining ground and possibly contributing to a constitutional crisis. No state legislature or governor agreed to the president’s demands to appoint a pro-Trump slate (*Final Report*, 306). But they could have chosen, as people like Pennsylvania State Senator Doug Mastriano did, to embrace Trump’s scheme, parrot claims of fraud, and try to hold special legislative sessions to approve “alternative” slates of electors. Such confusion would have further undermined public trust in the electoral system and possibly given the vice president an opening to refuse to certify the election’s results on January 6.

Since then, the GOP has sought to root out principled public servants and sow the electoral system with ideological loyalists. These efforts have met with mixed successes but are still concerning. The Center for American Progress assessed that although three hundred election deniers appeared on local, state, and national ballots around the country in the 2022 midterms, voters in key battleground states “ultimately shunned election denialism when voting for offices with a responsibility to administer or oversee elections.” Brad Raffensperger defeated a

Trump ally and retained his position in the 2022 midterms, and prominent election deniers like Mastriano and Kari Lake lost their respective elections.

However, other candidates who embraced election fraud claims have won races for local electoral offices or been appointed to such offices, particularly on county canvassing boards charged with certifying electoral results. Right-wing groups, with the GOP's support, are recruiting tens of thousands of people into poll-watching operations that are poised to harass officials and voters while spreading disinformation. The Michigan GOP has developed a formal plan to insert partisan poll workers who will be linked to attorneys who can intervene instantly to challenge ostensible irregularities. Steve Bannon, a former advisor to Trump, summarizes these efforts as the "precinct strategy."

Meanwhile, Republican-controlled state legislatures are pursuing greater authority over the conduct of elections. This includes extensive efforts to restrict access to voting and legislation that empowers partisan officials to challenge or reject election results. Georgia, for instance, passed a law that removes the Secretary of State as the chairman and voting member of the State Election Board, which investigates potential fraud and now has three Republicans and one Democrat. A GOP bill in Arizona, which died in committee, would have given the state legislature the authority to change the certification of presidential electors by a simple majority vote, a proposal that would have written the Trump team's fantastical theories into state law.

Jeff Timmer, the former chair of the Michigan Republican Party, stated that "the officials who fulfilled their legal duty after the last election are now being replaced by people who are pledging to throw a wrench in the gears of the next election." This movement to corrupt the electoral system has not just bubbled up from the base but trickled down from the federal level. Nothing illustrates this more than the 139 House

Republicans who formally objected, on no evidentiary grounds, to the certification of Arizona and Pennsylvania's electoral results on January 6 (eighty-two Republicans voted to certify).

The news on this front is not all bad. Overall, the GOP's embrace of election denialism appears to have alienated many moderate voters. Many Republicans believe that election conspiracism is hurting the party and that a shift to other issues is warranted. In Michigan, sixteen Republican



The pressure campaign on Pence, and the reckless legal theory behind it, showed another weakness in our electoral system.

state legislators have been charged with felonies such as forgery for falsely portraying themselves as legitimate electors in order to help Trump. Moreover, in the 2023 case *Moore v. Harper*, the Supreme Court negated the "independent state legislature" theory, which holds that state legislatures had broad, uncontestable authority to regulate federal elections. State legislatures, the Court ruled, are subject to judicial review of the laws and regulations they pass regarding elections. As David French argues, this decision "strips away the foundation of GOP arguments that the [2020] election was legally problematic because of state court interventions."

Nonetheless, the 2020 election demonstrated that there is ample room for state officials and legislators to spread disinformation and insert chaos into our electoral system. This remains a vulnerability as future elections loom.

Pence's Refusal to Play Along

As the Trump team pushed forward in its

attempt to subvert the 2020 election, they increasingly centered on the role of the Vice President certifying the election. The Constitution states that the Vice President will “open all the certificates and the votes shall then be counted.” This has long been interpreted as a merely ceremonial role for the Vice President as President of the Senate.

Eastmann, Kenneth Chesebro, and other Trump lawyers, however, argued that the Constitution empowered the Vice President “not just to open the votes, but to count them—including making judgments about what to do if there are conflicting votes” (*Final Report*, 308). If Pence received competing slates of electors on January 6, Trump’s lawyers posited that he could require the states to reconsider their votes after further investigations, kick the election to the House to decide, or even simply declare Trump the winner (p. 320, 363). As Eastman audaciously argued, Pence was “the ultimate arbiter” who could actually throw out the electoral college votes of seven states that Biden won. “Pence then gavel[s] President Trump as re-elected,” he wrote (pp. 361–62, 375).

This was hardly a serious legal argument, as Eastmann himself had rejected it before the 2020 election (p. 362). Still, it provided a pretext for Trump to pressure Pence in the weeks before January 6, including numerous tweets and heated meetings on January 4 and

6 in which he harangued Pence, even calling him a “p----” for refusing to do so (p. 374, 386–88).

It is crucial to connect this pressure campaign to the violence on January 6. Trump called for a rally precisely on the date that his Vice President would be certifying the vote and incited a mob to march on the Capitol. He added criticism of Pence, which speechwriters had left out, to drafts of his speech to the Stop the Steal rally on the morning of the 6th (*Final Report*, 449–51). As the rioters descended upon Capitol Police and forced the evacuation of Pence and the Congressional leadership, Trump not only refused to protect Congress but tweeted that “Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones.”

On the ground, numerous leaders of the insurrection understood themselves to be pressuring Pence specifically to reject the election’s results. Three Percenter Lucas Denney, for example, wrote on Facebook on December 30 that “Trump has called for this himself. For everyone to come. It’s the day the electoral college is supposed to be certified by Congress to officially elect Biden. But, Pence is in charge of this and he’s going to throw out all the votes from States that were proved to have fraud”

An angry mob challenges the nation’s authority: A tax collector ridden out of town on a rail amid the Whiskey Rebellion.



FAMOUS WHISKEY INSURRECTION IN PENNSYLVANIA.

(p. 424).

While Pence had defended Trump doggedly for years, in this case he stood up to the president and refused to decertify the election. He and his advisors recognized that this was not within his constitutional authorities and that it would undermine popular faith in the electoral system and possibly lead to violence (*Final Report*, 379–81). He released a statement on January 6 reaffirming that “I do not believe that the Founders of our country intended to invest the Vice President with unilateral authority to decide which electoral votes should be counted [...] and no Vice President in American History has ever asserted such authority” (p. 392).

It may be harder in future elections to execute a coup via the Vice Presidency, as Trump sought to do in 2020. Congress in 2022 reformed the Electoral Count Act to specify that the Vice President’s role in electoral proceedings is completely ceremonial. These reforms also identify the state-level officials who will submit the electoral slates, provide for expedited judicial review of claims about a state’s electoral certificates, and raise the threshold to object to electors to one fifth of the House and Senate rather than a single member being able to raise objections.

Nonetheless, the pressure campaign on Pence, and the reckless legal theory behind it, showed another weakness in our electoral system that we did not even know we had. Seemingly ceremonial duties can be targeted for politicization, potentially sowing chaos in the transition of power. Had Pence wavered under the pressure of Trump and the mob or had less principled advisors, he could have sparked a constitutional crisis by declaring Trump the victor or kicking the election over to the House or the states. This was not a far-fetched scenario. While the January 6 Report portrays Pence as never wavering from his constitutional duty, Bob Woodward reported that Pence called former Vice President Dan Quayle and “asked if there was anything he could do,” telling

Quayle, “you don’t know the position I’m in.” Quayle fortunately confirmed that Pence had no wiggle room on his role for January 6, and Pence stuck to that position. As the GOP isolates principled moderates and promotes fanatical loyalists, the possibility of a sitting Vice President going along with presidential plotting becomes increasingly concerning. Mike Pence did his duty on January 6, 2020, but could we trust Vice President Kari Lake to do the same in January of 2028 following a Trump victory in 2024?

Trump Joins the Rioters

Most of the dark scenarios outlined above depend on the manipulation of complex electoral law and the promulgation of unfounded legal theories. This is not so for one additional close call, one which we now know was a distinct possibility: What if Trump had gotten his way and marched to the Capitol to support the insurrection?

Thanks to the courageous testimony of Cassidy Hutchinson and others, we know that Trump wanted to drive to the Capitol in support of the crowds flocking there. He was seated in his motorcade vehicle at 1:17 pm, and he argued with aides and Secret Service members who told him it was too dangerous to go to the Capitol. A Secret Service agent testified that Trump was “animated and irritated” at not being able to join his supporters (*Final Report*, 454–60).

Once again, responsible adults held the line against Trump’s worst impulses, although numerous aides failed for three hours to get him to tell the rioters to go home. Again, things could have been different. Aides could have caved to his desires, or Trump just could have pushed ahead with moving to the Capitol. This would have raised the spectacle of Trump joining an insurrectionary mob as they assaulted a co-equal branch of government in the process of executing its constitutional responsibility. An image of Trump wading through the mob and egging them on in

person truly baffles the mind, and it easily could have escalated the violence of January 6 to unprecedented degrees.

Conclusion

The January 6 Report nearly exhausts its reader with the relentless single-mindedness of Trump's campaign to subvert the 2020 election. Trump signaled that he would do this in advance of the election, kickstarted the effort as soon as Biden was declared the winner, persisted despite losing dozens of court cases, ignored more reasonable advisors who told him the claims of fraud were untrue, switched to more mendacious advisors and courtiers, and pursued a multi-pronged attempt to subvert the will of the American people.

In the course of this campaign, he stomped on a host of norms that have undergirded our constitutional system for centuries. The most consequential of these were the orderly transfer of power between political rivals and the system of checks and balances that prevents undue concentrations of power. That he would try something like this was absolutely foreseeable, given his low character, ignorance, and willingness to trample any norm that stood in his way.

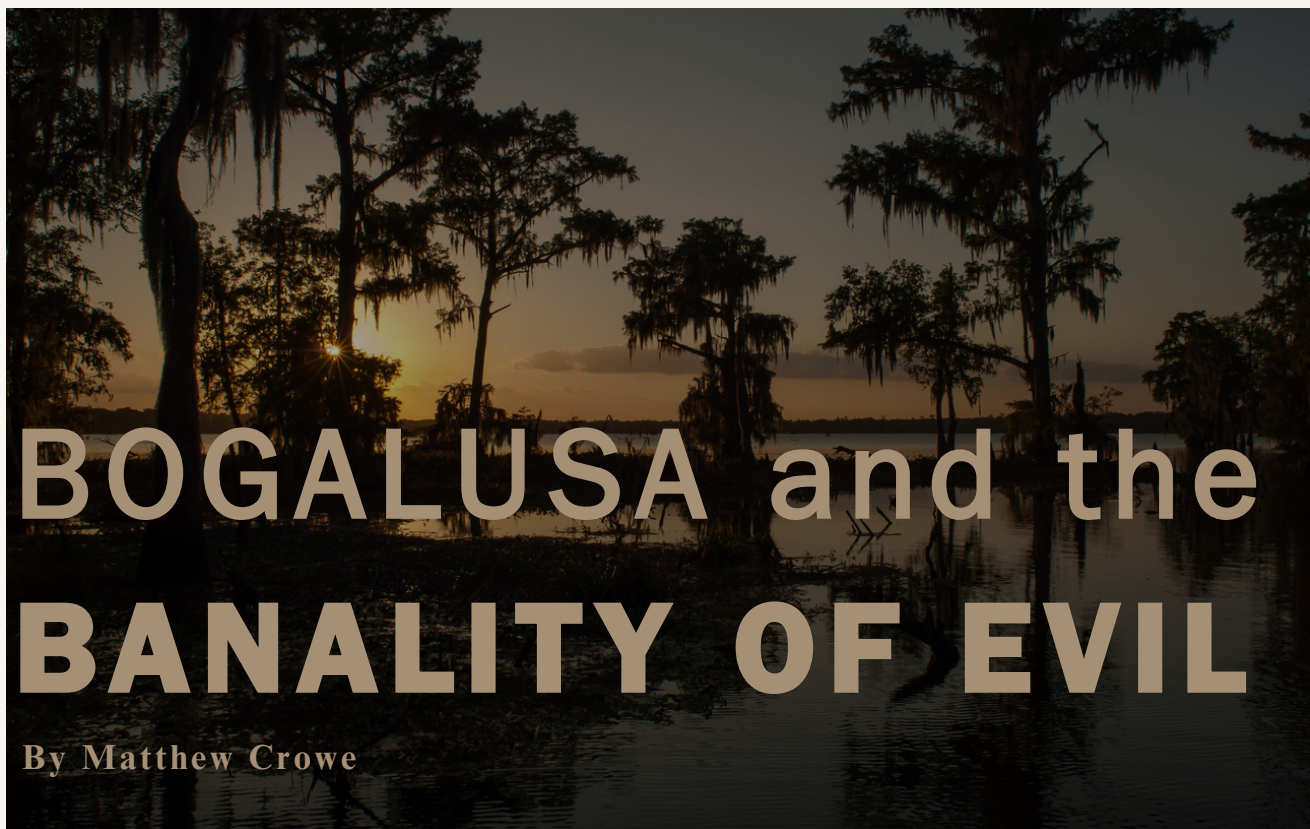
The Framers of the Constitution understood that legal structures alone could not save the republic from extremist political movements. In Federalist 48, James Madison noted that "a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard

against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands." In a democracy, the legislature's "impetuous vortex" threatened to undercut the other branches, whereas in monarchies the executive was the true menace. The larger point, though, was that laws were mere "parchment barriers" if the human beings who operate the government acted in direct contradiction to the spirit of the law or failed to exercise proper restraints against the encroachments of other branches.

There are many possible legal and technical fixes that can help prevent a future January 6, but the focus on structural flaws can only do so much. The Founders understood that the only permanent barrier to tyranny was an engaged and virtuous citizenry devoted to a constitutional system that restrains power and ensures its peaceful transition between political foes. That the January 6 Report landed with little more than a ripple in our politics suggested that this bulwark is faltering as well. If the January 6 campaign proves to be a mere prelude to something far worse, we cannot say we weren't warned.

Joseph Stieb is an Assistant Professor of National Security Affairs at the United States Naval War College and the Foreign Affairs Editor of The Vital Center.

The views expressed in this article are those of the author, not necessarily his employer.



My paternal family can trace its roots to Washington Parish, Louisiana, dating as far back as the 1820s, shortly after the Louisiana Purchase. The county seat and only major settlement of Washington Parish is Bogalusa, named after the Choctaw word for “dark water.” Bogalusa provides a powerful yet challenging lesson to adherents of the liberal tradition, especially those who identify deeply with the idea of localism and subsidiarity. Bogalusa’s history of segregation and White supremacy, however, and the violence and terrorism used to maintain these systems, provides a window into how societies devolve to accept as an everyday facet of life what I will call “banal evil.” For indeed, the ease with which evil unfolded with a relatively slight push and series of threats from the federal government is simply astounding and difficult to square with some elements of the liberal tradition.

Bogalusa was founded in 1914 as a company town for the Great Southern Lumber Company. The town grew up as a

virtual dictatorship under William H. Sullivan, who was also the manager for Great Southern Sawmill. Sullivan, a northern transplant, explicitly portrayed himself in the paternalistic tradition of the southern gentlemen hosting elaborate ceremonies and events for ordinary workers, creating racially segregated parks and places of recreation, and holding racially segregated competitions for the beautification of homes and streets. Deep racism permeated Bogalusa from the beginning, with Great Southern only hiring Black workers for the lowest-paid jobs and only allowing them to work as subcontractors for White contractors. A history of the town written in 1950 takes great pride in “six fine new grammar schools, accommodating 2200 white pupils and having 52 white teachers” and at no point even mentions if there was a school for Black pupils.

As early as 1919, tensions in Bogalusa over race and corporate control erupted

when sawmill workers attempted to unionize. Tensions increased after a Black veteran and union man, Lucius McCarthy, was lynched by a White mob who proceeded to shoot his body with bullets over one thousand times. To the terror of Great Southern, several White union men rallied behind the leadership of Black organizer Sol Dacus, who marched into town protected by several (armed) White union men after a warrant for his arrest was issued. In what one historian has called "the most dramatic display of interracial labor solidarity in the Deep South in the first half of the twentieth century," the White strikers provided cover from a mob attack, and four of them died while Dacus escaped.

By 1964, Bogalusa, which was approximately 35 to 40 percent Black, was known as "Klantown USA" because it had one of the largest populations of White male adults who were members of the Ku Klux Klan. After the passage of the Civil Rights Act of 1964, not a single business in Bogalusa integrated, due to threats and intimidation from the Klan. In early 1965, the Congress of Racial Equality (CORE) began direct organizing after the failure of talks over integration between Crown Zellerbach (which had acquired the sawmill and turned it into a paper mill), Mayor Jesse Cutrer, and the Black leaders. Crown Zellerbach reluctantly integrated the paper mill on orders from headquarters in San Francisco. The city attorney was a known Klansman, and the police chief was a known sympathizer. Over five hundred employees had been laid off at the paper mill by 1965 due to increased mechanization, creating a large mass of angry unemployed citizens.

Two White CORE organizers, Bill Yates and Steve Miller, began to mobilize Black youth in Bogalusa in January 1965. Black chapters of labor unions, which were required to be racially segregated by Louisiana law, provided a physical space to organize in the union hall and played a vital role in organizing local Black workers. On February 3rd, a mob of Klansmen attempted

to lynch Yates and Miller, who were staying at the home of Black organizer Robert Hicks. Fifteen armed Black men appeared to defend the house after police refused to intervene, and the Klansmen retreated. The Klan began a campaign of intimidation and cross-burnings in the front yards of Black organizers, known White sympathizers, and Jewish residents of the town. Every single business that had begun to integrate in January reversed course.

National media outlets then began to cover Bogalusa as "Klantown USA." A CBS report noted that "The Mayor and the police seem to feel that the way to avoid violence and maintain law and order is for the Negro citizens not to seek to exercise their constitutional rights." On February 21, a chapter of the Deacons for Defense & Justice was created in Bogalusa after Yates reached out to their Jonesboro chapter. The Deacons had in their fundamental mission to fight back against the Klan's terrorism—with lethal self-defense if necessary. Mayor Cutrer banned all pickets and demonstrations as an excuse to arrest pro-civil rights protestors. By April, there were gun battles between the Klan and the Deacons. In April, five hundred mostly Black protestors marched to city hall and were savagely beaten by the Klansmen while the police looked on; many White doctors refused to treat Black victims because they were afraid of retaliation. A group of Berkeley students volunteering with CORE over spring break described the Police presence during the march:

"Protected us? They terrorize us!" They explain to him that the police yell insults and hurl as much obscene language at picketers as the hecklers; they feel free to swing their billy clubs at youthful picketers; and it pleases them to stand by and laugh while rocks, lighted cigarettes, insecticide, and snakes are thrown into the picket lines and marches. An effort was made to get badge numbers of these police officers; however, the effort was

frustrated when both State Troopers and City Police began covering their badges with metallic tape to hide the numbers.

While protest and violence consumed Bogalusa, Washington Parish Sheriff Dorman Crowe, under heavy pressure, agreed to hire the parish's first Black deputies O'Neil Moore and David "Creed" Rogers. Moore was shot while on patrol on June 2nd. Ray McEveven, a local Klansman was arrested but never brought to trial. Decades later the FBI concludes it was a targeted hit by the Klan. The state ruled Moore's widow ineligible for a pension on a technicality.

Shortly after the aftermath of the march in April, Mayor Cutrer agreed to technically integrate local parks. A group of Klansmen attacked the first Black children with clubs and leather belts found at a newly integrated playground. When the police arrived, they set dogs on a Black teenager, who was injured. The mayor then ordered all parks closed until further notice. Throughout June and July "Bloody Bogalusa" saw constant violence. President Johnson was briefed on events in Bogalusa and deployed one hundred FBI agents to the town. The DOJ began to pursue charges against local businesses for violation of civil rights. A federal judge found the chief of police and commissioner of public safety in contempt of court, and 35 Klansmen were ordered to stand down from violence by federal courts. Almost overnight, the Klan ceased its campaign of terror, and the town began to integrate. My father was in first grade in 1966 as the first in his family to attend an integrated school. Robert Hicks recalls how sudden the events were: "Overnight, Washington crushed the White supremacist coup in Bogalusa and forced local authorities to uphold the law. In retrospect, what is remarkable was how little was required to destroy the Klan and force local authorities to protect citizens' rights and liberties. The federal government did nothing more than threaten city officials with modest fines and light jail sentences."

The Klan never fully left Bogalusa. In 1976, the mayor insisted on attending the

opening ceremony of a new physical chapter for the Klan, which included a cross-burning. In 2008, a mentally ill twenty-year-old woman was killed in what appeared to be a Klan hazing ritual. Due to changes in the global economy and the downsizing of the papermill, Bogalusa entered a period of rapid demographic decline starting in the



1970s. From a height of around twenty-one thousand in 1960, the town today has only around ten thousand residents.

A few general considerations stand out to me. First, Bogalusa is an interesting case study of the history of a southern town in the era of Jim Crow. Both the extent of White supremacist violence and the extent of real interracial collaboration for a more just future stand out. I also think the history of Bogalusa shows the extent to which popular perceptions of segregation and the civil rights movement have been whitewashed. Today's portrayal of both does not account for the level of overt and usually state-backed violence and terror used to enforce and maintain segregation in the South. In many ways, the era of the civil rights movement in the Deep South is almost more like the Troubles in Northern Ireland in terms of violence, paramilitary activity, and terrorism than the more peaceful perception most Americans today have of this period.

Second, worth mentioning are the dangers of corporate control and the importance of allowing voluntary associations for labor and other causes. Bogalusa has always been economically dominated by a single firm and then declined with that firm. More importantly, the over-dominating influence of a single employer hampered the individual liberties of all citizens and helped create an atmosphere of racial hatred that was rare even in the segregated south. The ability to unionize after the New Deal, with Louisiana being far more friendly to labor than most of the rest of the Jim Crow South, created a vital social structure for Black citizens to organize for their broader political and social rights. Although many right liberals are skeptical of organized labor writ large, its ability to often create positive and deeply needed reform at various periods is a phenomenon worthy of reflection. Indeed, the ability to engage in voluntary organization generally is vital to creating a society in which progress can be pursued.

Third, the need for intervention by higher or even the highest authority in the land stands out. As Robert Hicks noted, the Federal Government was able to do with very little effort what a great amount of the blood, sweat, and tears of activists and the decent people of Bogalusa had failed to do. Proponents of the liberal tradition are rightly often skeptical of centralized power and authority, but I think the lesson of both Bogalusa and Jim Crow more broadly is that we should not accept devolution on the most fundamental questions of individual liberty or human dignity.

Finally, and most profoundly in my opinion, the ease with which the forces of evil unfolded is another demonstration of the banality of evil observed by Hannah Arendt. Arendt coined the term “the banality of evil” while in Jerusalem for the trial of Adolf Eichmann, a primary organizer of the Holocaust. Arendt observed that to Eichmann, his profoundly evil actions were justified and muddled in an endless soup of jargon and cliché. In the end she concluded

that Eichmann was no fanatic or sociopath but rather motivated by surprisingly banal reasons of seeking promotion and personal success. The Klansmen were willing to beat up children on a playground with clubs and leather belts. They were willing to threaten doctors who treated an injured Black youth. That is when they had the protection of the

“

The era of the civil rights movement in the Deep South is almost more like the Troubles in Northern Ireland in terms of violence, paramilitary activity, and terrorism than the more peaceful perception most Americans today have of this period.

local police and the de facto if not de jure support of the force of the law. Yet the instant it became clear they had lost the implicit support of legal authorities, they simply retreated and allowed integration. Just like Eichmann in Jerusalem, the forces motivating the evils of the Klan in Bogalusa seem surprisingly banal when the mere threats of a fine or imprisonment were enough to send them back into the shadows. Just as Arendt observed that Nazis like Eichman were motivated by the banal rather than phenomenal, it appears that those who fought to preserve segregation in Bogalusa were also not especially ideological. Take for instance Altman Crowe, a local 26-year-old man who punched a Black protestor as part of mob attacking protesters during the events of “Bloody Bogalusa.” Deacon Henry Austan shot Crowe in self-defense. Crowe was taken to the hospital and upon recovery, and years later, he would note that he had

no hard feelings towards Austan: “We are in a different day and time now than we were back then, and I don't think the same way I thought back then, so things are a lot different now.” What motivated Crowe, a married father of five children, to be willing to engage in violence one day and then years later see his own actions as simply a “product of the time”? Further investigation of the towns and characters of the Jim Crow

South, as well as other societies that have fallen into patterns of “banal evil,” will hopefully help fortify the liberal tradition against these dangers.

Matthew Crowe graduated with a Master of Arts in Public Affairs from Xavier University in 2020 and currently works as a Defense Contractor.



A snapshot of the author's visit to Emerson's home in Concord, MA

Restoring Emerson's Liberal Home

By John Kaufman

*When the Church is social worth,
When the state-house is the hearth,
Then the perfect State is come,
The republican at home.*

—from “Politics” by Emerson

A few years ago, traveling through New England on a summer trip, my family and I stopped at Ralph Waldo Emerson's house in Concord, Massachusetts. There was no parking lot, no crowds of devoted fans as I found at novelist Louisa May Alcott's childhood domain down the street. Emerson's stately yet subdued clapboard and shuttered

house bore only a small bronze plaque on the front façade announcing the historical and literary significance of the place. When my wife, daughter, and I knocked on the front door, hoping for at least a look around, a woman opened the door and told us that no tours were offered at the moment, but we were welcome to step into the great man’s study if we cared to.

In we went. Emerson’s study, right off the main entrance, is not a large room, but it is still furnished in a comfortable nineteenth-century style: an oval-shaped wooden table centered in the middle, a dark-mantled fireplace, and a well-stocked bookshelf taking up an entire wall. On the opposite wall between the windows sits a small desk. I think I recall a patterned rug of some sort on the floor. Four windows let in significant light and views of trees and lawn. It was thrilling to be in Emerson’s house, in the very room where he almost single-handedly created a transcendent American philosophy—spiritual and political—grounded in allegiance to nature and a democratic tossing-off of illiberal traditions.

There is a photograph of Emerson in his study in October of 1879, which he posed for when he was 76 years old. Emerson is seated in a rocking chair beside the oval table, ignoring the photographer, his old gray head bent down over a big book, light from the side windows illuminating his upper body in the dark room. Out the front windows behind him can be seen what looks like a gate post and a few significant trees, likely in autumn color which the photography of the time could not capture. There are many other photographs of Emerson in more self-conscious and striking poses, but I think this one captures best the essentially domestic, contemplative quality of his philosophy, including his thoughts on politics.

Emerson was no activist like Thoreau and others in his Concord community; he did, however, take public, political stands against slavery and war. But if we Americans are searching for a liberal, democratic present and future that are free of “neoliberalism”

and “post-liberalism” and “progressive theology” and various socialist schemes, we can look again at Emerson’s self-reliant liberty, rather than to forced-commune Marx, for a buoyant and well-balanced sense of what a restored liberal democracy can do for our nation and the world.



There is nothing inherently tyrannical about liberalism. As Emerson points out, it is nature that is the real despot, and one role of human politics and government is to ease the harsh rule of nature.

In Emerson’s essay “Self-Reliance,” he sets clear limits on what personal responsibility to the abstract “common good” can accomplish:

do not tell me, as a good man did to-day, of my obligation to put all poor men in good situations. Are they my poor? I tell thee, thou foolish philanthropist, that I grudge the dollar, the dime, the cent, I give to such men as do not belong to me and to whom I do not belong. There is a class of persons to whom by all spiritual affinity I am bought and sold; for them I will go to prison, if need be; but your miscellaneous popular charities; the education at college of fools; the building of meeting-houses to the vain end to which many now stand; alms to sots; and the thousandfold Relief Societies;—though I confess with shame I sometimes succumb and give the dollar, it is a wicked dollar which by and by I shall have the manhood to withhold.

Well, there is not much Christian charity or typical Great Society sentiment in these sentences. Here Emerson sounds more like a cranky libertarian than a bleeding-heart liberal. Emerson believed that a truly liberal individual is careful not to join too tightly with any mob or sect or party or state. For Emersonian liberals, charity can begin and end at home in his or her local sphere of influence where virtue and friendship must play a role. Government is necessary but is best when governs least, as his radical friend Thoreau put it.

Yet individual self-reliance should not be confused with what's known today as "identity politics" or what I like to call the Autocracies of Self-Regard: everyone a king or queen by proclamation, a royal minority with the right to censor any dissent. Meanwhile, various "post-liberals" are fond of accusing liberalism of too much self-reliance, claiming it lacks a sense of truth because it is broadly secular and welcoming rather than sectarian and theologically exclusive. But in Emerson's idea of liberal self-reliance, there is plenty of room for "God" and community and transcendental truth. Virtue is indeed a liberal quality, but it is not dogmatic because it springs not primarily from any holy book or religious tradition but from the source of all things—nature and the soul:

For the sense of being which in calm hours rises, we know not how, in the soul, is not diverse from things, from space, from light, from time, from man, but one with them, and proceeds obviously from the same source whence their life and being also proceed. We first share the life by which things exist, and afterwards see them as appearances in nature, and forget that we have shared their cause. Here is the fountain of action and of thought. Here are the lungs of that inspiration which giveth man wisdom, and which cannot be denied without impiety and atheism. We lie in the lap of immense intelligence, which makes us receivers of its truth and organs

of its activity. When we discern justice, when we discern truth, we do nothing of ourselves, but allow a passage to its beams. If we ask whence this comes, if we seek to pry into the soul that causes, all philosophy is at fault. Its presence or its absence is all we can affirm.

Those with more doctrinaire or conventionally religious minds will not find Emerson's intuitive transcendentalism very satisfying, of course. Conservatives dismiss such "pantheism" as pagan, and Emerson's poetic, agnostic refusal to accept the divinity of Christ was a heresy for which he was effectively kicked out of the rather liberal Unitarian Church. Religious formalists tend to be political "conservatives" who used to pledge more allegiance to Church than State. But a new breed of political formalist (the "post-liberal" type) prefers to join the Church and State into one powerful entity that leaves little room for much democratic dissent.

If liberalism has created a decadent and elitist culture, what can save us—say the post-liberals like Patrick Deneen, author of *Why Liberalism Failed*—is a return to a traditional religious obedience enforced by Church and State. Deneen sees the "despotism of progress" in everything everywhere (even J. S. Mill was infected by it, Deneen claims), much as Wisconsin Senator Joe McCarthy could spy a Communist in every classroom and bedroom and boardroom. To replace supposedly despotic liberalism, the "post-liberals" would install a religious conservative elite, as has happened in Hungary and Poland.

Our post-liberals would have us believe that religion, especially Christianity, has played little part in the formation or ongoing character of American liberalism: as if black slaves and abolitionists were not consoled or instructed by the Bible; as if Martin Luther King Jr. learned nothing from the nonviolent example of Jesus; as if there are no Christians among Democrats and any liberal religious faith is heresy. Christianity certainly played a part in the education and

writing of Ralph Waldo Emerson as well as the liberal worldview of the Founders before him. Here is Emerson preaching gently in “[Spiritual Laws](#)”:

Belief and love,—a believing love will relieve us of a vast load of care. O my brothers, God exists. There is a soul at the centre of nature, and over the will of every man, so that none of us can wrong the universe. It has so infused its strong enchantment into nature, that we prosper when we accept its advice, and when we struggle to wound its creatures, our hands are glued to our sides, or they beat our own breasts. The whole course of things goes to teach us faith. We need only obey.



The answer to corruption, according to Emerson, is not to turn to an enforced program of virtue or religious authority. To prevent and correct corruption, the State must educate wisely to help create wise, virtuous people.

Many conservatives, especially the religious formalists among us, have grown bolder in demanding that, despite what the Constitution makes clear, the United States ought to be a formally Christian nation. [Such “Christian Nationalism”](#) demands obedience to a white Christian “America First” sort of patriotism, a desire that Donald Trump exploited to get himself elected president.

To be liberal, of course, is to be a defender of liberty and democracy and a supporter of human rights around the world. The American Constitution is a liberal document and it remains the law of the land.

It is not a perfect constitution, of course, but it has served us reasonably well so far. Has liberalism failed politically? Well, Social Security and Medicare are currently very popular programs, as are many other liberal reforms that have happened over the years. It was a good idea to abolish slavery and a good idea to allow women to vote. The federal government is not banning books. Religious freedom remains intact; worship as you see fit, as long as it doesn’t infringe on the unalienable rights of Americans who do not share your religious faith. Yes, we still suffer from war and poverty and pollution. But liberalism has not failed in America, despite the four-year travesty of the Trump administration. It was a liberal rebellion that ultimately sent him packing—a packing that included hoarding of classified documents.

So there is nothing inherently tyrannical about liberalism: its foundation is liberty after all. As Emerson points out in his essay simply titled “[Politics](#),” it is nature that is the real despot, and one role of human politics and government is to ease the harsh rule of nature, to help make the humane and liberating society we can on this Earth:

What the tender poetic youth dreams, and prays, and paints today, but shuns the ridicule of saying aloud, shall presently be the resolutions of public bodies, then shall be carried as grievance and bill of rights through conflict and war, and then shall be triumphant law and establishment for a hundred years, until it gives place, in turn, to new prayers and pictures. The history of the State sketches in coarse outline the progress of thought, and follows at a distance the delicacy of culture and of aspiration.

Thus we ended slavery and segregation and wrote into law the civil rights of minorities. This “progress of thought” is a liberal movement, as are the various ways we have tried to regulate the economy to help those who lack the benefits of family wealth and inherited property. Not all progress in

thought and politics is wise and beneficial, however. One can take the idea of personal liberty to an extreme that ignores responsibility and reality and harms both the individual and the greater good. Some traditions should be preserved; some new technologies and thoughts should be spurned. And that is what cultural debate is for, and cultural debate is best when all may speak and act freely within legal bounds and the liberal rule of law.

What corrupts democracy and political parties, according to Emerson, is the corrupt “personality” of leaders: “They reap the rewards of the docility and zeal of the masses which they direct.” The rise to power of Donald Trump is a fine example of such corruption, but the answer, according to Emerson, is not to turn to an enforced program of virtue or religious authority. To prevent and correct corruption, the State must educate wisely to help create wise, virtuous people. Emerson again in “Politics”:

To educate the wise man, the State exists; and with the appearance of the wise man, the State expires. The appearance of character makes the State unnecessary. The wise man is the State. He needs no army, fort, or navy,—he loves men too well; no bribe, or feast, or palace, to draw friends to him; no vantage ground, no favorable circumstance. He needs no library, for he has not done thinking; no church, for he is a prophet; no statute book, for he has the lawgiver; no money, for he is value; no road, for he is at home where he is; no experience, for the life of the creator shoots through him, and looks from his eyes.

Emerson does, admittedly, get poetically carried away here in his defense of self-government in “Politics,” but however much he comes across as an anarcho-libertarian, he really does not stray from a fundamental belief in a social foundation that can only be described as politically liberal:

The tendencies of the times favor the idea of self-government, and leave the individual, for all code, to the rewards and penalties of his own constitution, which work with more energy than we believe, whilst we depend on artificial restraints. The movement in this direction has been very marked in modern history. [...] It separates the individual from all party, and unites him, at the same time, to the race. It promises a recognition of higher rights than those of personal freedom, or the security of property. A man has a right to be employed, to be trusted, to be loved, to be revered. The power of love, as the basis of a State, has never been tried. We must not imagine that all things are lapsing into confusion, if every tender protestant be not compelled to bear his part in certain social conventions: nor doubt that roads can be built, letters carried, and the fruit of labor secured when the government of force is at an end.

“The power of love, as the basis of a State, has never been tried.” Nor has it been tried as the basis of an anti-war strategy for national defense. But Martin Luther King Jr. and other liberal activists have made use of the power of love, or nonviolent resistance, to generate sympathy and support for civil rights on a national level. And, generally speaking, we can say that the liberal tradition of culture and politics is the gradual “recognition of higher rights” for all, which are nothing more than what Thomas Jefferson called the “unalienable rights” we are all born with. A truly Christian or religious nation is a nation that would in fact trust in the power of transcendental love to be the primary power behind and beneath democracy. A government without laws would, of course, put too much power in the hands of greedy, ignorant, unloving individuals. But a government that tries to mandate or force people into any dogmatic or despotic sort of community by undermining their human

rights is what Emerson calls a “bad State”: “there never was in any man sufficient faith in the power of rectitude, to inspire him with the broad design of renovating the State on the principle of right and love. All those who have pretended this design, have been partial reformers, and have admitted in some manner the supremacy of the bad State.”

A new liberalism for the twenty-first century will seek to put an end to the “bad State” not by adopting any one religious tradition, joining Church and State, or by worshipping in cults of political personality or by “cancelling” books or people. The strength of liberal democracy is that it can find wisdom in many places and make a virtue, like nature does, of diversity for the

sake of the health of all. But liberal virtues and human flourishing must start, as Emerson suggests, at home and in local communities; the best government governs locally through the democratic church of “social worth” and the statehouse of the hearth. Liberal government, says Emerson, need not be “Big Government” but it does need to be good and moral government in the service of the “progress of thought.”

John Kaufman is a poet, essayist and Adjunct English Instructor at Carroll University in Wisconsin. His work has appeared in The Progressive, Education Week, Milwaukee Magazine, Long Island Quarterly, and elsewhere.



BEYOND LEFT AND RIGHT

By Stephen Tootle

Any political model that puts Adolf Hitler and Milton Friedman on the “same side” is absurd. Yet this is exactly what the left-right political spectrum does. In *The Myth of Left and Right*, historian Hyrum Lewis and political scientist Verlan Lewis surveyed contemporary political science data, applied the data to American political history, and in the end reveal just how outdated this dichotomy has become. They argue that although institutional and cultural incentives may drive people to keep perpetuating these myths, we should reflect upon our beliefs and alter our practices when something is both harmful and untrue. Their thesis is bold, plain, and clear: what we perceive as left-right ideologies are nothing more than unrelated bundles of tribal political positions.

In one hundred tightly argued and heavily annotated pages, Lewis and Lewis do not deny that Americans have political beliefs and that those beliefs once clustered into ideologies. Instead, the authors deny that those ideologies currently reflect an essence that exists within a left-right spectrum. Now, when put to the test, Americans

change their views based on social cues rather than on ideologies. Some contemporary social science even suggests that clinging to an ideological label correlates with the abandonment of political principles. These ideologically committed Americans condone violence and sometimes practice it. As the use of violence makes politics impossible, this growing threat makes an ideological nation-state such as the United States particularly vulnerable. Commitment to a left-right model turns people into violent, America-destroying hypocrites. As Jonah Goldberg likes to say, “Big if true.”

The brothers first turn their attention to outlining the history of the terms left and right. They show that this now ubiquitous expression emerged during the French Revolution, and the usage spread across Europe throughout the nineteenth century. By the time of the Bolshevik Revolution in Russia, egalitarian revolutionaries regularly identified with the leftists of the French Revolution. Americans rarely used the terms and never thought of themselves as being on any kind of political spectrum. Only after

the Russian Revolution did some identifiable grouping of Americans regularly identify as belonging to the “left.” At that time, the term had a clear and specific meaning. In 1919, the terms “left” and “right” described only the various forms of socialism.

Throughout the 1920s, progressive historians and a handful of politicians began applying the terms “liberal” and “conservative” to people in the American past. What began with academics, activists, and intellectuals in the 1920s took hold during the 1930s. Support for the New Deal became associated with the Democrats, the left, and liberals. Opposition to the New Deal came from the Republicans, the right, and conservatives. Intellectuals such as Willmore Kendall and Russell Kirk helped William F. Buckley, Jr. create a narrative to match the one created by their opponents. During this time, the political spectrum made a certain amount of sense. It somewhat reflected reality from the 1930s through the middle of the 1950s.

Between the middle of the 1950s and the 1970s, political realities put an end to the usefulness of a model based on a left-right spectrum. The Cold War, anti-communism, civil rights, Vietnam, court decisions, and a host of other issues added dimensions to American politics that a left-right spectrum could not account for. Describing policy positions or politicians as being on the left or the right became absurd. From the 1980s to the present day, the model has been neither descriptive nor predictive. As the Lewis brothers recount the major political events and movements of the recent past, it is hard to find flaws in their logic. The model has been wrong and useless for almost a half-century.

They anticipated the criticism that they were not describing the “authentic” left and right by recounting the most common modern descriptions of the left-right dichotomy and refuting each one. Of course, to attempt to knock down every attempted descriptor of the “real” left and right would require (in their words), “a never-ending

game of whack-a-mole, since new [political] essences pop up every day.” Instead, they examined the most popular attempts to describe the authentic political ideas behind the left-right models and find that they all fall apart pretty quickly. Intellectuals were inconsistent. Some correlations were irrelevant. Other correlations had a strong causal relationship to a single issue, but not to a bundle of traits that one would call an “authentic” left or right. With no meaningful political ideals underlying the model, one might expect that the model itself would collapse. But it was not so.

The stories we have told ourselves about politics have utility, incentives, and social rewards. According to the Lewis brothers, the left-right model makes us feel good. It is simple. It hides our tribal identities and feeds our egos. Scapegoats, satisfying stories, and moral superiority free us from complex dilemmas or thinking about long-term consequences. In practical terms, our two-party structure has firmly embedded and incentivized the left-right model in political culture and law. Of course, choosing to satisfy our desires rather than face reality on its own terms has some long-term downsides that we already see.

They sketched out some of the most important problems with building a political culture on a faulty model. Believing in false ideologies deludes us, introduces powerful biases, hides important truths, and prevents social and political progress. We have become intellectually rigid and less humble, and we are better advocates for illusions and falsehoods. Under these circumstances, the application of our skills leaves us morally debauched. We have become political bigots engaged in destroying the political institutions we claim to love. Anyone who finds those consequences unacceptable might grasp solutions.

Lewis and Lewis gave straightforward advice about what we would need to do to turn things around: admit that currently the left and right are nothing more than tribes; test assertions, instead of rushing to defend

them; insist on more specific and meaningful political questions; stop describing people as being on the left or right; seek identity in things other than ideological labels; and cherish and nurture intellectual diversity. Modern social science research reaffirms time and again that the best results come from honest and authentic disagreement from people seeking honest answers. If we choose to do these things, they think we will start moving in the right direction. Abandoning the geocentric model of the universe is a good indication that we are at least capable of dropping the fantasies of scientists—political or otherwise.

“

Pluralism is a long-forgotten ideological framework that suited Americans just fine before politically motivated ideologues successfully wiped it from our elite institutions.

The *Myth of Left and Right* should provoke thoughtful responses, launch a thousand dissertations, and give writers, editors, and commentators pause about deploying terms and models that harm America. In some cases, the arguments of the Lewis brothers are bracing and bold, yet they may not go far enough.

In addition to the suggestions they made in their concluding chapters, some other paths are available to us. We could learn history. Pluralism is a long-forgotten ideological framework that suited Americans just fine before politically motivated ideologues successfully wiped it from our elite institutions. From the founding through the 1990s, patriotic Americans understood that our system protects many rights. Human beings care about many

things. We could all care about the same rights and merely prioritize them differently. In that sense, America did have (and could potentially recover) meaningful political traditions. But the founders created systems of political contests between points of emphasis that do not require the wholesale rejection of rights. Americans created the United States as an ideological nation-state opposed to a monarchy that embraces universal individual liberty. In other words, a conservative who wishes to preserve the ideals of the founding would reject both “right” and “left.”

Lewis and Lewis are also a little too skeptical of the idea of Americans having discernable ideological differences within the pluralistic framework outlined by the founders. One could trace a through line from the 1770s to the 1970s and find politicians and thinkers who argued for the rejection of fixed truths, generational redefinitions of the American purpose, a government acting as a broker between interest groups, a majoritarian ethos over the preservation of individual liberty, and the use of politics to change the culture. Until recently, we would call that person a Jeffersonian, a Jacksonian, a Democrat, or a liberal. We could find another group of Americans connecting ideas present in the political thoughts of George Washington and George W. Bush. Washington and Bush agreed that the flaws of humanity are eternal, governments should secure rights, the practicing of positive liberties at the local level, opportunity over equality of condition, America’s example to the world, slow progress, and that politics should reflect culture. These ideals are not on a left-right spectrum, but they exist nonetheless.

Or to use another example, Americans may have important clusters of ideological differences that are not necessarily opposed to one another. We might find one group of people who call themselves conservatives because they primarily care about issues of governance out of a commitment to the

founding principles; another group of people might care about achieving specific results. We seem to have difficulty in describing opposing viewpoints that are not necessarily reactionary positions. People can have different reasons why they disagree.

We could also advocate for returning “left” and “right” to something closer to their original meanings. Writers and thinkers could again use them as a shorthand for people who want to destroy the United States. A modern-day fascist or monarchist who would destroy our system in the service of a leader or a mythical natural law paradise is on the “right.” Someone who would deny individual liberty and welcome the destruction of our Constitution out of a belief in social rights is on the “left.” Someone who loves the liberties outlined in the Declaration as enshrined in the Constitution is a patriot. Simple.

The Lewis brothers will fail in the short term. The use of the terms “left” and “right” will persist for the same reason that sarcasm works; instead of describing complicated concepts in plain language, one can claim a moral and intellectual victory and imply that the opposite of an assertion is true. The use of left-right terms provides a double benefit. The speaker need not advocate anything specific and can claim victory over an opponent.

Nonetheless, we should join the Lewis brothers in their project knowing that we will all fail together. Their big idea is correct.

They value truth, America, and the perpetuation of free institutions in the world. Prioritizing our fleeting feelings, money, social approval, or all of these, is a fool’s errand. The Lewis brothers are right because Calvin Coolidge was right: “truth and freedom are inseparable.” Building a society upon lies, “has always been the method of privilege, the method of class and caste, the method of master and slave.” It can be no other way.

French Premier Georges Clemenceau once said of Woodrow Wilson, “God gave us the Ten Commandments and we broke them. Wilson gives us the Fourteen Points. We shall see.” Hyrum and Verlan Lewis have given us a densely argued book on political theory asking us to abandon how we have discussed politics for over a half-century. We shall see.

This essay is a review of The Myth of Left and Right: How the Political Spectrum Misleads and Harms America by Verlan Lewis and Hyrum Lewis. You can purchase the book for yourself [here](#).

Stephen Tootle is Professor of History at the College of the Sequoias and Honored Visiting Graduate Faculty at Ashland University. His reviews, articles, and essays have appeared in National Review, the Claremont Review of Books, Presidential Studies Quarterly, the Journal of the Gilded Age and Progressive Era, and the Sun-Gazette.



HISTORIES OF FEAR

By Ming Kit Wong

Since the 1970s, psychologists have defended a theory of what they call “basic emotions,” according to which certain emotions are universally experienced because they have helped human beings to cope with the perennial tasks of life over the course of our evolutionary past. It suggests, for instance, that the emotion of fear has better enabled our ancestors to respond to immediate dangers and to motivate the achievement of their goals, thereby improving life chances. As Thomas Dixon explains, this theory thus posits “a universalist view of emotions as hardwired mental states, which originally evolved for specific purposes in ancestral humans.”

Historians of emotions including Dixon have largely rejected such a universalist conception. Instead, they have long recognized that our emotional experiences are significantly informed by prevailing cultural and intellectual circumstances and that these experiences have fundamentally changed throughout human history. As Joanna Bourke has demonstrated, the objects of our fears as well as the nature of

how these fears are felt have shifted dramatically even within the last two centuries alone. In his 2004 work, *Fear: The History of a Political Idea*, Corey Robin has also drawn attention to the political dimension of fear and the changes in how this emotion has been interpreted. According to him, while pre-modern thinkers such as Hobbes regarded fear as an expression of our moral beliefs that is actively cultivated through one’s political education, laws, and institutions, we now see it as neither a reflection of our moral judgments nor the result of politics. Rather, we tend to believe, with the “basic emotions” theorists, that fear is merely a primal reaction to impending threats or situations of uncertainty such as war or social revolution.

Writing in the aftermath of 9/11 and the declaration of the “War on Terror,” Robin has observed that this depoliticized understanding of fear has led many to argue that fear is “a source of political vitality” insofar as it inculcates in us all the value of institutions such as the rule of law and liberal democracy for warding off dangers. In his view, political theorists and philosophers such as Judith Shklar and Richard Rorty adopted this position when

they affirmed liberal principles on the basis of the avoidance of fear (of cruelty), since they believed that fear “possessed an easy intelligibility which made for quick and universal agreement about principles.” For Robin, however, Shklar and Rorty’s “liberalism of fear” not only obscured the politics of fear and hence the contested nature of liberalism, but it also failed to recognize that political freedom cannot be founded on negative experiences of fear. Following Michael Walzer, he has insisted that politics first requires “some answering vision of positive justice, some ideologically grounded hope for radical change,” which “enjoin[s] us to envision and strive for a life with less fear.”

The recent works by Robert Peckham and Alan S. Kahan challenge Robin’s assumption that fear could not be foundational to political life. In his wide-ranging survey of historical episodes of fear, beginning with the Black Death of the fourteenth century and concluding with the COVID-19 pandemic, Peckham shows that fear, in all of its various forms, has helped to disrupt the status quo and force emancipatory social change as much as it has been appropriated by authoritarian political regimes to maintain power. Indeed, he contends that fear has played “a crucial role in securing modern freedoms, given that it has been central to ‘the creation of political rights and liberties.’” While therefore agreeing with Robin’s emphasis on its deeply political nature, Peckham argues, against the former, that “fear isn’t always inimical to freedom but may be its corollary, an integral facet of empowerment,” and that the fear of loss in particular “is inseparable from the hope that must drive any commitment to social justice.” Accordingly, as Peckham says of Thomas More’s *Utopia*, a utopian social order is not established through a state of fearlessness but instead “relies on the right sort of fear being balanced with the right kind of fearlessness.”

Like Peckham, Kahan denies that politics cannot be grounded on the experience of

fear, for he contends that the identification of fears is in fact the chief motivator of the liberal tradition. This is illustrated by his historical account of liberalism, according to which the latter emerged in the nineteenth century out of a fear of revolution, before second-wave liberals prioritized debates over the fear of poverty. Following the First World War, a third wave of liberalism developed that focused on the fear of



Hope and fear represent two sides of the same coin. Both emphasize that the experience of fear is not purely negative but intimately connected with the hope for a better world.

totalitarianism; finally, in our present century, “Liberalism 4.0” is chiefly confronted with the fear of populism. In short, “Each new form of liberalism is the result of a new fear that has called for a new response.” Yet Kahan also departs from Peckham in claiming that political freedom is incompatible with fear. Indeed, the former argues that at the heart of the liberal project is the attempt to secure a society that enjoys “the most basic freedom,” namely, “freedom from fear.” For Kahan, it is this hope of “a world without fear” that has always animated liberalism—a hope that remains “utopian” because liberal fears are unlikely to be dispelled without generating additional sources of fear. It was for this reason that the liberalism of fear “limited its utopianism to the seemingly modest aim of limiting cruelty,” as opposed to committing itself to the impossible task of eliminating cruelty altogether. Still, in Kahan’s view, this limitation serves only to underline the utopian character of liberal aspirations.

When faced with contemporary fears or anxieties, historians have often looked to the

past to understand what exactly it is that they are experiencing, and in this respect Peckham and Kahan are no exceptions. It is precisely in response to the recent surge of authoritarian and populist movements across the globe that they seek to historicize the politics of fear, so as to comprehend its implications for today. For Peckham and Kahan, hope and fear represent two sides of the same coin. Both emphasize that the experience of fear is not purely negative but intimately connected with the hope for a better world, and hence that it harbors a utopian impulse that we can recover. Their works thus represent important historical correctives to the assumption that fear is an emotion that is politically empty for liberal democracy.

At the same time, however, what is at risk of being lost in Peckham and Kahan's respective narratives is the initial historiographical insight that emotions are not reducible to their adaptive value for coping with existential problems. Although Peckham acknowledges that fear has a "social and cultural dimension" that is historically contingent and recognizes that the emotion is not merely a pre-reflective mental state but also a cognitive product of how our brains categorize our past experiences, he nevertheless defines it trans-historically as "a survival mechanism" that "shield[s] us from harm." Similarly, while Kahan argues that the principal object of our fears has changed over the centuries, he assumes that our inclination to avoid that of which we are afraid has always informed liberal theory and practice, enabling individuals to identify and attempt to secure the conditions necessary for social and political freedom. Yet, regardless of whether it is conceived in primordial terms or as a form of politics, surely there is more to the history of fear than a teleologic-

-al account of how it has served human purposes.

For Shklar, at least, the significance of fear rested on not so much the notion that it could act as an effective means of motivating political change or an uncontroversial guiding principle of liberalism as the fact that it made political life more difficult, not less. While she acknowledged that it was precisely a fear of concentrated political power that informed the theory of constitutional government elaborated by Montesquieu and subsequently the American Founding Fathers, Shklar also rejected the Machiavellian attempt to instrumentalize fear for political ends, sympathizing with Montaigne's claim that "politics were far too chaotic and uncertain to be managed according to any plan." Shklar insisted, moreover, that prioritizing the fear of cruelty as the basis of liberal politics "makes political action difficult beyond endurance, may cloud our judgment, and may reduce us to a debilitating misanthropy." To this extent, the liberalism she defended could succeed only in spite of the political and psychological costs of fear.

This essay is a review of Fear: An Alternative History of the World by Robert Peckham and Freedom from Fear: An Incomplete History of Liberalism by Alan S. Kahan.

Ming Kit Wong is a DPhil student in Politics at Magdalen College, Oxford focusing on postwar anti-utopian liberal thought. He holds an MSc in Political Theory Research from the University of Oxford and an MPhil in Political Thought and Intellectual History from the University of Cambridge, where he first read History as an undergraduate.

LIBERTY THEN AND NOW

By Baird Johnson



Ideas of freedom and liberty have been central to the idea of the United States since its conception. Unfortunately, what exactly we mean (and have meant) by these terms is not always clear.

In *Freedom: An Unruly History* Annelien De Dijn makes the provocative claim that the current American conception of liberty and freedom (used interchangeably by her) is an extremely modern phenomenon. She describes this modern liberty as “the possession of inalienable individual rights, rights that demarcate a private sphere no government may infringe on,” and as one that “depends on the limitation of state power.” She suggests that this modern freedom is “centered on the notion of natural rights.” The ancient liberty she contrasts with this newer concept is a “democratic” notion based on “exercising control over the way one is governed.” In this conception, people are free when they exercise self-rule: “For over 2,000 years, then, liberty was equated with popular self-government.”

De Dijn goes on to claim that leaders

and thinkers on both sides of the Atlantic began to challenge ancient liberty (in order to replace it with the modern concept) only in the nineteenth and twentieth centuries. In America, in fact, it emerged forcefully only after the Civil War. The new concept “displaced” the former. Her argument extends even further. She attributes this change to a conscious anti-democratic backlash to the age of revolutions. In so doing, she makes even clearer her view that these obviously distinct conceptions of liberty are not merely different but directly in conflict with one another (De Dijn, *Freedom*, 1–3). These arguments offer a helpful corrective to claims about the dominance of freedom from interference in the Western tradition and anachronistic descriptions of the American revolutionaries as libertarians. The story of developing conceptions of freedom, however, is more complicated than De Dijn allows. The distinction between ancient and modern ideas about freedom is not nearly so stark.

De Dijn identifies French statesman Benjamin Constant as one of the men who

led this transition. He “agreed wholeheartedly with conservatives [...] that democracy was not only very different from freedom but also potentially harmful to it.” While she is probably correct in this assessment (her expertise is in French political thought around his time), I would temper attributing too much anti-democratic sentiment to a man who unironically, in his latter more conservative years, described the French Revolution as “our happy revolution.”

Constant helpfully addressed the issue directly in an 1819 essay entitled “The Liberty of Ancients Compared with That of Moderns.” In this essay he juxtaposed what an “Englishman, a French-man, and a citizen of the United States of America understand today by the word ‘liberty’” with the type of liberty that those in ancient “free” societies enjoyed. He defined modern liberty as follows:

it is the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals. It is the right of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for their motives or undertakings. It is everyone’s right to associate with other individuals, either to discuss their interests, or to profess the religion which they and their associates prefer, or even simply to occupy their days or hours in a way which is most compatible with their inclinations or whims. Finally it is everyone’s right to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed.

And then he defined the ancients: “exercising collectively, but directly, several parts

of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws, in pronouncing judgments; in examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing, condemning or absolving them” (Constant, “The Liberty of Ancients”).

The similarity between Constant’s and De Dijn’s definitions of ancient liberty is striking. De Dijn merely leaves unenumerated the various functions of government the people exercise in “free” societies that Constant chose to list and is more accommodating of representative rather than direct democracy. Their main dispute lies in the liberty of the moderns. All of the qualities that De Dijn allows the modern perception of liberty (a private or personal sphere removed from government intervention and a notion of natural rights) are present in Constant’s definition. There is, however, much more. Both the beginning and end of Constant’s passage on modern liberty add a great deal to the merely individual-rights-obsessed version De Dijn describes. To the limitations of government power, Constant adds first a freedom from “the arbitrary will of one or more individuals” and later the right to influence government by either elections or petitions to which the government is “more or less compelled to pay heed.” In Constant’s definition, there is an intersection of the two (at least according to De Dijn) competing liberties. His liberty of the moderns (modern, of course, in the early nineteenth century) contains both liberty as understood as self-rule and liberty as understood as a limited sphere of government action. It is this more comprehensive liberty, not merely the ancient kind as De Dijn insists, that dominated the eighteenth century and, I would argue, remains in place today.

While my case does not rest entirely on Constant’s analysis, it is worth addressing the issues it poses for both me and De Dijn.

De Dijn identifies Constant as a thinker who led the charge to convert the Atlantic world from the ancient form of liberty to the modern one. Because of this, it is possible that Constant was writing more hopefully than observantly. Perhaps, contrary to my argument, Constant was attempting to write into existence a concern for individual rights in addition to self-rule rather than accurately describing such a concern on both sides of the Atlantic.

If Constant was indeed describing a difference between the liberty of his era and that of the ancients, however, his piece poses serious issues for De Dijn's timeline. He observed the difference between the two conceptions in 1819, implying liberty of the moderns was observable at some point before that. This is particularly problematic for her argument that such an idea of liberty took strong hold in the United States only after the Civil War. He also suggested that both conceptions existed during the French Revolution and that a failure to properly make the distinction between *existing* conceptions of liberty led to many of the French Revolution's failures. If true, this would place the existence of modern liberty prior to the turn of the century.

Before dealing more thoroughly with the historical question of whether those in the eighteenth century, particularly eighteenth-century Americans (De Dijn's argument is more compelling when applied to Europe), conceived of liberty as both self-government and individual freedoms protected from the action of even a legitimate government, it is worth briefly addressing the relationship between ancient and modern liberty. De Dijn, of course, presents them as antagonistic not only as a matter of theory but also because the second was created in order to erode the first. This is not entirely true. While the right of temporary majorities to exercise their will in all cases pertaining to individuals can conflict with individual rights, these values needn't be eternally in conflict.

Harvard historian James Kloppenberg

would certainly not think so, as his conception of democracy depends on the majority's toleration of a number of extremely important differences, most notably those over religion. Indeed, although De Dijn dismisses concerns about religious minorities as less significant than economic motivations for those in favor of modern liberty, the religious wars that shook Europe for centuries following the reformation (and the tradition of religious dissent contested in New England and the



Popular governments seemed a safe repository for power unlikely to infringe upon the liberties of the people and each of them. It was only after self-government triumphed and rule of the people proved imperfect that Americans turned their eyes toward modern liberty.

Middle Colonies) contributed greatly to the idea that the state, no matter how legitimately based on the people, should not interfere with matters of conscience (De Dijn, *Freedom*, 4).

Another modern (late twentieth century) thinker, John Rawls, did see these liberties as "contending traditions." Importantly though, contending does not mean irreconcilable. Indeed, a key project of his political philosophy was to reconcile them. It is also important that Rawls (drawing vocabulary from Constant's essay) associated the tradition of liberty of the ancients with Rousseau and liberty of the moderns with Locke (*Political Liberalism*, 4–5). Locke is not, especially given De Dijn's timeline,

especially modern [1].

Still, Rawls cannot be expected to be an authority on the eighteenth century. It will be fruitful to turn to the historical actors themselves. The sources cited in De Dijn's book are helpful. She invokes a host of seventeenth- and eighteenth-century figures to demonstrate a central point: one cannot be free unless one lives in a society with self-government. Algernon Sydney announced that "a people could only be free if it was ruled by 'laws of its own making.'" The First Continental Congress proclaimed that "the foundation of 'all free government' [...] is 'a right in the people to participate in their legislative council.'" Dutchman Pieter Vreede concurred: "you cannot be said to be free if you do not govern yourself, your property, and your happiness." Richard Price similarly stated that a state could be free only if guided by its own will whether through the people or assembly (De Dijn, *Freedom*, 2, 188–90).

What all of this evidence has in common is robust support for the claim that *one can be free only if one exercises self-government*. This, of course, is a different statement from, *if one exercises self-government, one is free*. In the first (and supported) statement, self-government is a necessary but potentially insufficient condition for liberty. I wholeheartedly agree with De Dijn that eighteenth-century revolutionaries saw the world

this way. She, however, maintains the more extreme point. She contends not that liberty merely required self-government but instead that liberty was self-government. Other evidence from her book demonstrates the error of this position.

De Dijn cites the economic redistributionism of the post-revolution States as evidence of the revolutionaries' dedication to the economic equality necessary for liberty as self-rule. She quotes Thomas Jefferson celebrating the abolition of entail and primogeniture "a foundation laid for a government truly republican," [...] in enforcing them 'no violence was necessary, no deprivation of natural right.'" She uses a Delaware statute for similar ends: "it is the duty and policy of every republican government to preserve equality amongst its citizens, by maintaining the balance of property as far as it is consistent with the rights of individuals." There is a related reference to natural rights just earlier in the book: "And while the revolutionaries also talked a lot about their desire to reassert man's natural rights, this meant, first and foremost, the right to popular sovereignty" (De Dijn, *Freedom*, 188, 190–91).

Each of these excerpts is enlightening. All three lend themselves to the point that liberty requires self-government. The first two demonstrate a willingness to enact egalitarian economic measures to preserve

Mural of the First Continental Congress, found in the US Capitol.



that liberty. All also contain another aspect—a reference to a properly limited sphere of even democratic governments. Jefferson’s law was just not only because it was meant to promote self-rule (although that was the primary function); it was just because it accomplished that goal without “deprivation of natural right.” Similarly, the Delaware law recognized that the efforts of an already legitimate government based on self-rule were limited to those measures “consistent with the rights of individuals.” It could be true (indeed, I would argue it is) that in each example self-government was the “first and foremost” consideration in promoting liberty. “First and foremost” does not mean *only*.

The most convincing evidence to this end is Richard Price’s elaboration of liberty’s possibility. Liberty could, in his view, be allowed in a despotic government in times of “indulgence or connivance derived from the spirit of the times, or from an accidental mildness in the administration.” He maintained, though, that secure exercise of liberty depends on self-rule. It is clear that the liberty he is discussing is not exclusively self-government. Self-government, rather, is a means to a liberty far more similar to modern liberty. De Dijn recognizes that he did not believe “the act of governing in and of itself set one free,” yet she seemingly ignores the implications of this fact (*Freedom*, 190). Liberty was more than who ruled.

It is in this context that much of the critical period (1783–1789), especially the conduct of James Madison, begins to make sense. His constant struggle to protect minority rights while maintaining democratic integrity and a government based on the people was a result of these coexisting liberties. His proposition (unfortunately rejected by the Senate and thus delayed for a century) to extend protections in the Bill of Rights to all levels of government is a perfect example. Even governments of the people must be restricted.

Whereas De Dijn believes that liberty in

the eighteenth century concerned who governed and liberty thereafter concerns the extent to which one is governed, I contend that liberty in both time periods depends on both who governs and to what extent they do so. Ancient liberty is a prerequisite for modern liberty in a way that is not reciprocal. Especially to those in the Anglican world, popular governments seemed a safe repository for power unlikely to infringe upon the liberties of the people and each of them. This is not because *liberty* cannot be infringed upon by a government of the people, but instead because, as Locke wrote, a violation of rights (in this case property rights) “is not much to be feared in governments where the legislative consists wholly or in part in assemblies which are variable, whose members upon the dissolution of the assembly are subjects under the common laws of their country, equally with the rest” [2]. Of course not. To fear temporary assemblies of the people would have flown in the face of a history in which monarchs, aristocrats, and permanent assemblies had poorly used the people. Especially in Britain, the Commons were the traditional guardians of the people.

It is for this reason that the American revolutionaries rarely concerned themselves with liberty of the moderns during their struggle with Britain and their earliest years of self-government. Not because they neglected it, but because, for lack of precedent, they thought it was relatively safe. It was only after self-government triumphed and rule of the people proved imperfect that Americans turned their eyes toward modern liberty. Thus, this transition of focus was not a backlash to democracy but a necessary consequence of its victory. The first and most important condition of liberty was established through who ruled. The second condition was established by limiting even the best constituted government.

This is also why I believe the ancient conception continues to exist today. The triumph of self-government over arbitrary power is now sufficiently far in the past that

modern Americans no longer have to worry about the first condition. As a result, we do not. We instead focus on limiting the already legitimate government. I would, however, suggest that if arbitrary rule were attempted, there would be tremendous backlash. I hope this prediction remains untested.

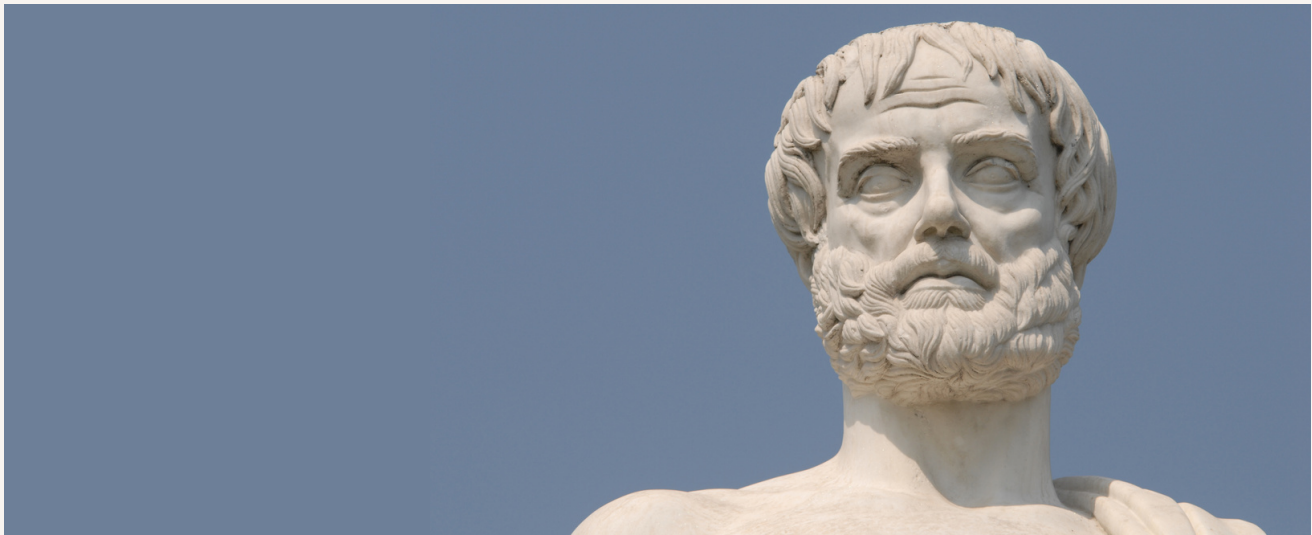
Endnotes

[1] Locke's views on the subject are sufficiently ambiguous to render them a poor point for either side of the debate. His liberty consists mainly in the right to act and dispose of property according to reason

without restraint other than the liberties of others. This could be seen both as liberty as non-interference and liberty as freedom from arbitrary government because most of his discussion of liberty pertains to the state of nature, and in the state of nature all outside interference (that encroaches on liberty) is arbitrary power.

[2] John Locke, *The Second Treatise of Government* (New York: Barnes & Noble, 2004), 77.

Baird Johnson is studying history at Stanford University.



REGIME CHANGE

Unpacking Patrick Deneen's Critique of Liberalism

By Garion Frankel

In *Regime Change: Towards a Postliberal Future*, his follow-up to *Why Liberalism Failed*, Notre Dame professor Patrick Deneen offers his alternative to liberalism's "soft, pervasive, and invasive progressive tyranny." Deneen begins elucidating this alternative only on the 151st page (more than two-thirds into the book)—an "Aristo-populist," multi-racial alliance of working-class Americans (and friendly elites) working toward the common good, which Deneen defines as "[Christian] piety, truth, equitable prosperity, and good government." In other words, Deneen seeks "Machiavellian means for Aristotelian ends."

The work has already received ample commentary. *Reason's* Stephanie Slade attacked Deneen's ideological incoherence; Damon Linker, writing for *Quillette*, noted that Deneen's work travels far beyond his mentors' and influencers' arguments; and the *New York Times's* Jennifer Szalai labels Deneen's work as overzealous, overconfi-

-dent, and infuriatingly vague. Concerns about Deneen the man—his personal history, his ideas, and his relationship with the so-called "New Right"—are a consistent theme throughout these reviews.

Despite these negative reactions, Deneen offers a potent critique of liberal neutrality, as understood by John Rawls and those who follow him. Rawls attempted to isolate liberalism from the good life. More simply, Rawlsian liberalism sees politics as politics and makes no judgment about what is right or good in the world.

Deneen correctly notes that without "universal appeals to justice," toxic ideologies such as identity politics will unravel the threads of truth that bind our civilization together, and replace them with "an individual or group's perception of offense." Moreover, Deneen adds that a liberal, Western method of education is impossible without a shared conception of the good. As someone whose research prog-

-ram involves reintegrating the humanities into public education, I tend to agree.

Whether or not you agree with Deneen, however, *Regime Change* is not a very good work of scholarship. As a successor to *Why Liberalism Failed*, it fails to break any new ground, and as an original work of political theory, it is nonsensical.

Deneen's better points are overshadowed by *Regime Change*'s slovenly academic scholarship. Indeed, Deneen butchers the work of the theorists he claims as influences on his Aristopopulism.

For example, Deneen argues that the Greek historian Polybius supported executive kingship in the form of the Roman emperor. Polybius died nearly a century before there even was a Roman emperor. Deneen fondly cites Alexis de Tocqueville without any recognition that the Frenchman self-identified as a liberal. (There is considerable debate regarding Tocqueville's true ideology, but Deneen makes no mention of this before lumping him in with pre-liberal thinkers.) Edmund Burke is given similar treatment, though Deneen acknowledges that Burke was a devoted Whig. Even Karl Marx is not given proper care.

Deneen treats Aristotle most egregiously. If a reader were to pick up *Regime Change* prior to reading Aristotle, Deneen would have that reader believe that Aristotle was a democrat. It is basic political theory that Aristotle opposed democracy, accepted a polity of the middle class as the most stable form of government out of sheer necessity, and asserted that only a select few men with the requisite leisure would become virtuous. That said, in *Politics* III.11, Aristotle suggested that a large legislative body may combine the few virtues of the many while simultaneously filtering out their vices.

Deneen, however, treats this off-hand remark as an expression of Aristotle's truth. He writes that "Aristotle acknowledged that there was a strong claim to be made on behalf of democracy—rule by the many." A hypothetical—a mere possibility—is not a "strong claim to be made on behalf of dem-

-ocracy." In fact, Aristotle's arguments against democracy were quite similar to those of Plato, who argued that Athenian democracy was akin to anarchy, yet Deneen derides Plato and praises Aristotle.

In his sloppiness, Deneen also neglects certain ideas and figures who merit more attention. The Founding Fathers are only



Deneen's better points are overshadowed by Regime Change's slovenly academic scholarship. Indeed, Deneen butchers the work of the theorists he claims as influences on his Aristopopulism.

occasionally mentioned (and Thomas Paine is not mentioned at all). The word "rights" appears on only two pages in the whole book, and one of those pages only references rights in relation to Edmund Burke's conception of inherited rights. Legitimate disputes between "classical liberals" and "progressive liberals" are portrayed as mirages or dismissed entirely.

One cannot properly engage with American liberalism without referencing individual rights, nor can one use liberal or liberal-adjacent thinkers (like Tocqueville and Burke) to critique other liberal thinkers (like Locke, Mill, and Rawls) and then proclaim that all liberalism is dead.

Liberalism deserves better critics. *Regime Change* fundamentally misconstrues liberal ideas, butchers the thinkers it claims to incorporate, and makes obvious errors in the history of political thought. Frankly, it is surprising that these mistakes made it past an editor.

In sum, if you already agree with Deneen and are seeking intellectual validation, then *Regime Change* is for you. But if you are a liberal looking for someone to challenge your ideas and outlook on the world, you should look elsewhere. And if you are someone looking to learn about postliberalism, then please read [Alasdair MacIntyre](#) instead.

This essay is a review of Regime Change: Towards A Postliberal Future by Patrick Deenen. You can purchase the book for yourself [here](#).

Garion Frankel is a PhD student in PK-12 Education Administration at Texas A&M University, from which he also has a Master of Public Administration. He is a Young Voices contributor and was previously an education reporter for Chalkboard Review.

What Counts

**Keeper of an old faith,
A votive candle burning in a long
starless night,
Believing in what matters, in
words that cut the silence of a cold
universe.**

**A gun-metal daze hangs over the
land.
The earth curls on itself, reserved.**

**These things count.
The record of our misdeeds,
a droplet of water that wends its
way over the surface of a window
pane.**

**Traffic-flows across a bridge seen
from a window 15 floors up,
the social-machine and
Me and Anita at 10 and 5,
Kodak Brownie moments.**

**These things count.
A cluster of cells destined for
birth, rebirth, and resurrection.
All the pasts past recollection.**

**Soliloquies among the trees and
sounds outside earshot.
Moths who make lightbulbs
accomplices in their suicide-dance,
the dance of bees,
Dancing with wolves.**

**Scenes out of sight,
songs out of season. Closets of
shoeboxes of snapshots of faces of
friends whose names escape us.**

**Forgotten heroes
and nobodies nobody remembers
and each of the billion prayers that
batter the ears of God.**

D. E. Skocz, PhD is a retired career US Diplomat now working as an Analyst at the State Department who has taught as an Adjunct Professor in the DC area. His work in philosophy has been published in journals including Epoché, Phenomenology 2010, Environmental Philosophy, Glimpse, and Philosophy in the Contemporary World. His first book, On Dwelling: Poetry, Place, and Politics, is forthcoming this November from Lexington Books.

D. E. Skocz

Italian Landscape with Draughtsman by Jan Both, oil on canvas, ca. 1650