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EVER IN CONVERSATION: HEALTHY LIBERAL DIVIDES

TOWARD A RECONCILED VIEW OF AMERICAN HISTORY

Christian Alejandro Gonzalez

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The radicals will always be among us. But radicals become a serious problem when they are placed in the driver's seat. For that reason, we are always looking to promote a vital center in our political communities. No matter which party is in power, we hope that our constitutional democracy is secure moving forward.

This liberal center, however, includes a wide range of disagreement about politics, even if it features a shared commitment to constitutional democracy, the rule of law, and respect for our fellow citizens. We have decided to call this issue "Ever in Conversation: Healthy Liberal Divides." Within its pages are various perspectives, some "right-coded," others "left-coded," and some that might even be called pugnacious. Nonetheless, they all represent healthy disagreements within a liberal center. We even welcome quality responses to these articles in our next issue.

Thank you, as always, for reading.

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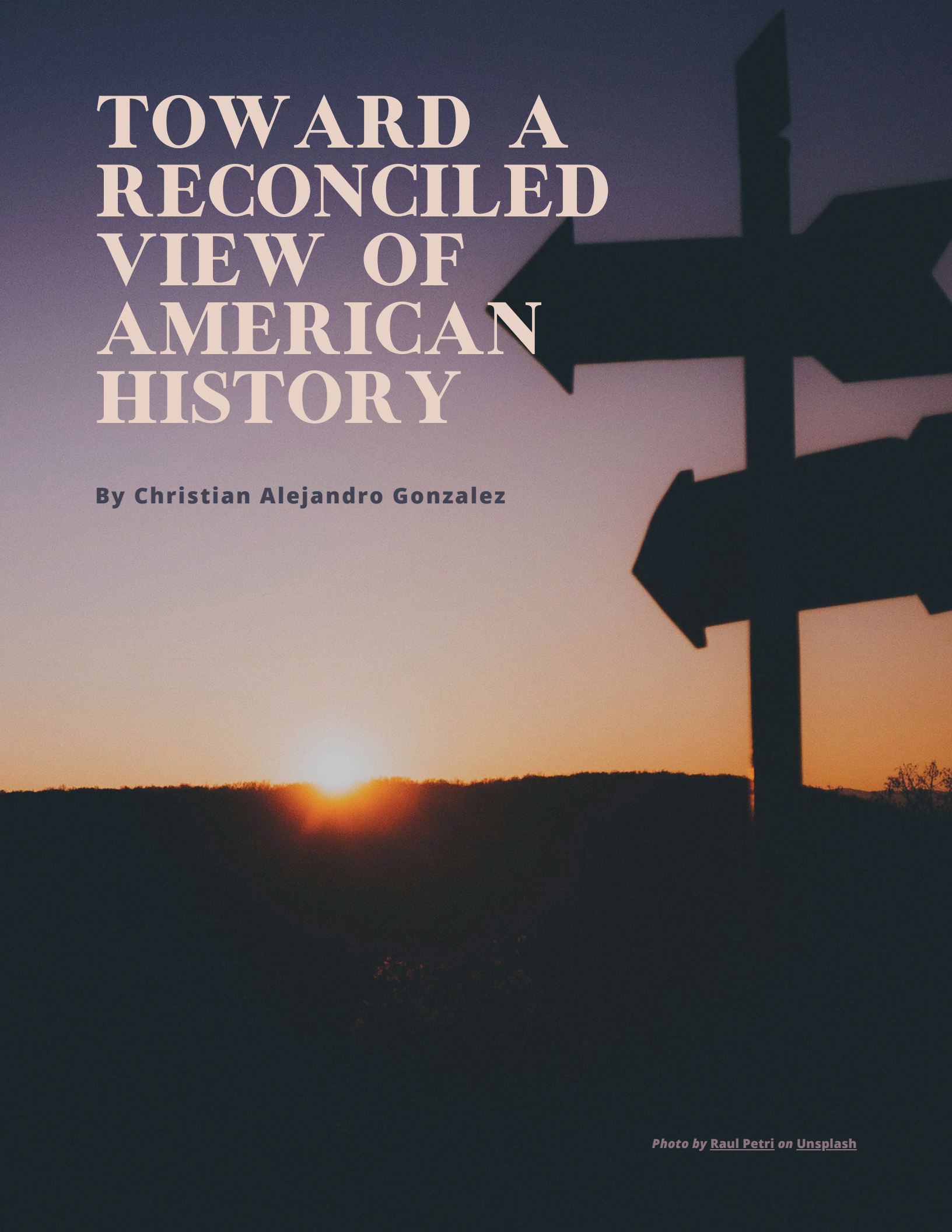
TOWARD A RECONCILED VIEW OF AMERICAN HISTORY

By Christian Alejandro Gonzalez



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In contemporary America, two interpretations of history battle for dominance. One view—call it the progressive view—sees the American past as a long tale of violence and oppression, focusing on the unjust treatment minorities have suffered at the hands of American society. It asserts that racist violence was central to the creation of this nation, that the liberty-loving rhetoric of the Founding Fathers was merely that, and that the sins of the past continue to exert a pernicious influence on the present. The other view—call it the conservative view—sees the national past in a positive light. It says that while America is not perfect, it still has much to be proud of. America was founded on high ideals whose implementation has, over time, made the world a better place: freer, richer, more equal, and more fair. Accordingly, the conservative view stresses instances of America's contribution to moral and political progress, pointing to moments like the Declaration of Independence, the abolition of slavery, and the defeat of fascism and communism in the 20th century.

The two positions seem completely at odds with each other. In these debates about the national past, conservatives often feel that progressives are unpatriotic and unfair to the past, and progressives think that conservatives want to whitewash history and ignore its crimes. Yet a closer look at these historical narratives reveals that what the two sides say about the past is not entirely incompatible. There may be a way of reconciling the strengths of each side into what we may call the reconciled view of American history. Adopting the reconciled position would allow us all to turn our focus and attention to the places where deeper disagreement remains, namely, in our judgments about the present state of society and the direction it should take.

To synthesize the conservative and progressive readings of American history, we first need to examine what each side gets right and then establish that the rational insights of each camp are not incompatible with each other.

The concern here is not with what each side gets right *empirically*; the dispute between conservatives and progressives is not in the last instance about who has a more accurate grip on the historical facts. Insofar as either side makes empirical mistakes, or tells straightforward lies, those need to be criticized and corrected. The project of finding a shared interpretation of the past has to bring together what's true about the *moral* or *normative* beliefs and attitudes motivating the competing accounts of history (with "normative" construed broadly to refer to all our commitments about how human beings should treat each other). No interpretation of history—whether the progressive, the conservative, or the reconciled one that I am trying to develop here—can tolerate empirical falsehoods, that is, basic errors of fact.

So let's start with the left. The progressive view of history takes itself to be issuing a corrective. If it centers the black experience, that is because many of the dominant traditions of historical interpretation in the United States neglected it for a long time. If it insists on the suffering and injustice suffered by minorities, that again is because many of the dominant interpretations of American history downplayed that injustice, when they acknowledged it at all.

> *There may be a way of reconciling the strengths of each side into what we may call the reconciled view of American history.*

Conservatives tend to be skeptical of progressive claims that a certain minority group has been airbrushed from historical narratives or from the mainstream culture. Yet progressives, in this case at least, are on firm ground when they say that the black experience was often neglected or ignored by the American historical consciousness. Black Americans received little attention from white historians after the Civil War, and most white historians in the early to mid-twentieth century focused on the role of class conflict in American history and little to say about race. It wasn't until the New Left entered the historical profession in the 1960s that mainstream historians started taking such topics more seriously.

The progressive view of history wants to impress upon Americans not just that injustice has occurred, but also the *depth* of that injustice: how terrible,

bloodthirsty, and cruel white supremacy has often been. Progressive authors therefore tend to provide detailed and graphic accounts of specific instances of violence or subjugation; the purpose of such accounts is to shock people into realizing just how brutally America has treated its victims. Much of Ta-Nehisi Coates' famous essay, "The Case for Reparations," involves accounts of this kind, that is, accounts of black people suffering awful injustices. Here is how the historian Edward Baptist describes the whipping of an enslaved woman named Lydia in *The Half Has Never Been Told: Slavery and the Making of American Capitalism*:

> In Virginia and Maryland, white people used cat-o'-nine-tails, short leather whips with multiple thongs. These were dangerous weapons, and Chesapeake enslavers were creative in developing a repertoire of torment to force people to do what they wanted. But this southwestern whip was far worse. In expert hands it ripped open the air with a sonic boom, tearing gashes through skin and flesh. As the overseer beat Lydia, she screamed and writhed. Her flesh shook. Blood rolled off her back and percolated into the packed, dark soil of the yard.

Conservatives sometimes dismiss this point about the savagery of slavery, or try to blunt the force of it, by saying that Americans today are already aware of the evils of the institution. It is true that Americans for the most part accept the abstract judgment that slavery was very unjust. But it is one thing to think that a particular institution was wrong, and another thing to have concrete knowledge of the violence and suffering that the institution inflicted. The latter produces a particular kind of effect on the soul, a unique sort of ripple on it. You only begin to grasp and internalize the evil of slavery when you read about the beatings, the whippings, the rapes—in a word the torture—that it entailed; and it is to the credit of progressive historical writers that they insist on keeping this feature of slavery firmly in the public consciousness.

The progressive view of history aims to reshape Americans' understanding of their own national identity. Mainstream understandings of what it means to be American typically make reference to the American Dream, to the promise of social mobility and advancement, to freedom, justice, and equality, to a sense of basic fairness. It is not clear whether progressive historical writers think this is all bunk, though they do think it is incomplete. If many Americans historically cared about freedom, equality, and the rest, many were also committed to preserving a system of racial supremacy. They thought that being a full American required you to have white skin.

Nikkole Hannah-Jones, one of the most prominent recent proponents of the progressive theory of history, argues that "origin stories function, to a degree, as myths designed to create a shared sense of history and purpose. Nations simplify these narratives in order to unify and glorify, and these origin stories serve to illuminate how a society wants to see itself—and how it doesn't." In other words, origin stories generate certain understandings of nationhood. Progressive authors provide an origin story that centers the history of racism so as to get Americans to grasp that racism has been a significant part of the American DNA.

Sometimes progressive authors write as if they thought American identity should be *entirely reduced* to racism. They go too far. But there is an important observation to salvage here, namely that racism, too, is a part of who we Americans have been. American national identity thus needs to take on board a significant element of self-criticism.

THE CONSERVATIVE VIEW

What about the conservatives? What aspect of the truth are they tracking?

While conservatives usually concede that American history has involved plenty of injustice, they are inclined not to blame the *individual actors* behind those injustices. They grant that slavery and the theft of native American land were unjust, but they are unwilling to paint the agents behind those institutions and policies as monsters. They hate the sin without hating the sinner. The 1776 Report, a document published by the Trump administration in 2021 that put forth a patriotic understanding of American history, states that "the most common charge levelled against the founders, and hence against our country itself, is that they were hypocrites who didn't believe in their stated principles, and therefore the country they built rests on a lie. This charge is untrue, and has done enormous damage, especially in recent years, with a devastating effect on our civic unity and social fabric."

Progressives often roll their eyes when they hear the excuse that people like the Founders were "men of their times" and thus not culpable for their participation in injustices such as slavery and native land theft. Yet there is a point here that needs to be taken seriously. As progressives themselves often stress in different contexts, human beings are to some significant degree products of the environments we are raised in. We do not completely choose, in a free and unrestricted way, the beliefs we hold or the manner in which we behave. The fact that not all of our behavior is voluntary, that some of it is determined by causes outside our control, should at least mitigate the judgments we make of people raised in circumstances that weren't conducive to moral virtue.

Conservatives hold that the progressive position is too judgmental of America as a whole, in part because it judges America's historical crimes in a vacuum—as though American were the only nation with a checkered history. Progressive authors often point out that America was built on the backs of enslaved Africans and atop the stolen land of native Americans, and use these facts to render an overall negative judgment of American history; against this, conservatives point out that slavery and empire were historically ubiquitous practices, and that America is relatively unique not for having slavery but for abolishing it. "The unfortunate fact," wrote the 1776 Report, "is that the institution of slavery has been more the rule than the exception throughout human history." Once this is taken into account, our moral judgments of American history as a whole should be considerably softened.

Conservatives adduce another reason in defense of their positive judgments of American history. America, in their view, has often been at the cutting edge of world-historical movements for freedom and equality—and deserves credit for it. Commenting on the achievements of the American Revolution, Gordon Wood wrote,

> To focus, as we are today apt to do, on what the Revolution did not accomplish—highlighting and lamenting its failure to abolish slavery and change fundamentally the lot of women—is to miss the great significance of what it did accomplish; indeed, the Revolution made possible the anti-slavery and women's rights movements of the nineteenth century and in fact all our current egalitarian thinking. The Revolution not only

Thomas Jefferson's home in Monticello. "Progressives often roll their eyes when they hear the excuse that people like the Founders were 'men of their times' and thus not culpable for their participation in injustices such as slavery and native land theft. Yet there is a point here that needs to be taken seriously." (Photo by Richard Hedrick on Unsplash)

> radically changed the personal and social relationships of people, including the position of women, but also destroyed aristocracy as it had been understood in the Western world for at least two millennia […] Most important, it made the interests and prosperity of ordinary people—their pursuits of happiness—the goal of society and government.

Conservatives want, then, to counteract some of the overly harsh moral judgments of progressives. They think the individuals of the past should not be blamed so harshly even when they were complicit with injustice; and they think American history, placed in proper context, is more praiseworthy than the progressive view allows.

There is a tendency among some conservatives to push this exculpating impulse too far. Some conservatives are radically unwilling to grant the validity of any criticism of the American past (or present, for that matter). That is a mistake. Just because many of the people of the past weren't always moral monsters doesn't mean that they were never blameworthy for the evils they committed. Just because America has much to recommend it when placed into the proper context of world history doesn't mean that it *never* committed genuinely unjustifiable crimes for which it too should be held morally responsible.

Both the conservative and progressive views can alienate us from our history. The former can prevent us from finding anything valuable in it, while the latter may lead us to minimize or ignore its troubling features.

Even though the conservative view sometimes shades into an unthinking, unreflexive apologia for anything and everything American—into a sort of hagiography for the nation—we should still embrace the reasonable insights motivating the view. Sometimes we really can be unfair in our judgments of our ancestors or of the national past as a whole.

Conservatives often resent how the progressive view seems to slip into the promotion of a sort of national self-hatred or self-abasement. And progressive authors sometimes do write with quite unrestrained rage, even hatred, against some feature of the national past. (Writing of the American Revolution, Nikkole Hannah-Jones asked sardonically, "How do you romanticize a revolution made possible by the forced labor of your ancestors, one that built white freedom on a black slavery?") They also say that this national past forms part of who we are and were. Couple the two propositions, and you get the result that we Americans should hate a core part of who we are.

Against this, the conservative position reasonably suggests that a wholly critical view of ourselves and our history is incompatible with national pride, unity, and self-respect. "That doesn't mean ignoring the faults in our past," as the 1776 Report put it, "but rather viewing our history clearly and wholly, with reverence and love." The conservative view leaves room for self-criticism about past mistakes but rules out self-hatred, which seems like a healthier attitude both for persons and nations to take.

THE RECONCILED VIEW

I said earlier that while the two positions seem incompatible, breaking down the specific judgments of the two positions reveals that they aren't—at least not entirely. The progressive position seeks to weave minorities into the mainstream understanding of American history, to impress upon people just how horrifically the institutions and practices of the past treated their victims, and to introduce a significant element of self-criticism into the American national identity. The conservative position seeks to protect the individuals of the past from unfair aspersions of blame, to insist on America's contributions to the progress of freedom and equality in history, to place America's crimes into a broader historical context that makes America seem less unique in its evils, and to reject the idea of national self-hatred.

All these pieces of the puzzle can be fit together into a new conception of American history: the reconciled position. This position works on a higher plane, takes a greater field of view, than either the conservative or the progressive ones on their own.

The reconciled view effects a double reconciliation. First, it reconciles two competing accounts of history, conservative and progressive, by doing justice to the rational insights of both. Second, it reconciles the present generation to its past by coming to judgments that are fair to the moral reality of the past in all its complexity. For there is a sense in which both the conservative and progressive views can alienate us from our history. The former can prevent us from finding anything valuable in it, while the latter may lead us to minimize or ignore its troubling features. By putting everything in its proper (moral) place, the reconciled view helps us be at peace with our past.

Some of the pieces of the reconciled position may fit somewhat awkwardly at first. The reconciled view says that many of the institutions of the past were awful, but that the agents who upheld them were not necessarily monsters; that America deserves criticism for its unjustifiable crimes and praise for its contributions to historical progress; that Americans should be cognizant of their deep national faults without succumbing to self-hatred. Despite the awkwardness, the pieces fit together—and it's a good thing they do, because all of them are independently true.

If the reconciled view of American history does justice to conservative and progressive insights, it also asks both sides to make certain sacrifices. Conservatives could no longer go on with a purely celebratory account of the American past or with a conception of national identity that was entirely uncritical. Progressives would have to check their impulse to harshly judge the individuals of the past and would have to make some greater concessions to the positive features of the national story.

That's all easier said than done. The conservative can protest—I am already aware that American history is not all roses and rainbows! The progressive can protest—I do not have a solely negative conception of America! But these are abstract and theoretical concessions, extracted with great difficulty. It is rare in practice to see a progressive author speak of America's merits or a conservative one speak of its faults. The impulse of the former is virtually always to judge severely, of the latter, to praise without much qualification. A sincere assimilation of the reconciled position would require substantial movements in the natural inclinations of both sides. The conservative would have to confront America in its depravity, and the progressive would have to recognize what's redeeming and enduring in the American story. The reconciled position provides a solution that everybody involved should be able to live with, even if they are not completely satisfied.

HISTORY AS POLITICAL PHILOSOPHY?

There is a loose end that needs to be tied up. I have argued, on the one hand, that there is a way of synthesizing what's best in the specific judgments of the contemporary conservative and progressive views of history; and, on the other hand, that there remains deep disagreement between the two camps about (1) the state of society today and (2) the direction it should go in moving forward. That leaves open the question of whether the reconciled position of history can also reconcile these competing visions of present and future.

The answer is no. The reconciled view of history is an attempt to synthesize two ways of looking at the past; it has nothing to say directly about the present or future.

The reconciled view does rule out some uncomplicated judgments of the national past as a whole. Nobody with the reconciled position could say that the national past is wholly good or wholly bad, or even mostly good or mostly bad. It is a mix of the two. Beyond this, it has nothing to say about what attitude we should take toward the existing order of society today.

In fact, the conservative and progressive political programs are both compatible with the reconciled account of history—and this is a virtue, not a fault, of the account. The reconciled view "merely" seeks to establish harmony in Americans' judgments of their national past. (Merely—as if this task were easy!)

We spend too much time waging proxy battles in the past as a roundabout way of arguing about the present. Arguments about the past and future need to have more daylight, more separation, between them. When we argue about the past, we should remember that we are arguing about *the past*, and the reconciled position offers us one way—the most plausible way, in my view—of judging the national past. It is common to see both conservatives and progressives labor under the assumption that if their view of history prevailed, their view of how the future ought to be would prevail as well. That is not the case. Even if we reached similar judgments about the past, the future would remain open to dispute.

Indeed, debates about the future involve all sorts of considerations that have little to do with our judgments of the past. Our judgments about the direction society should take depend among other things on prior judgments about the nature of justice, about how society today works (and not merely about how it worked in the past), and about what political action could plausibly accomplish in the present. These sorts of judgments can be separated to a significant enough degree from our historical judgments.

The reconciled conception of history is not, on its own, meant to tell us how to live. It is meant to provide an acceptable moral account of the past, on the assumption that having one would let us devote more attention to the one thing we can actually change—the future. ■

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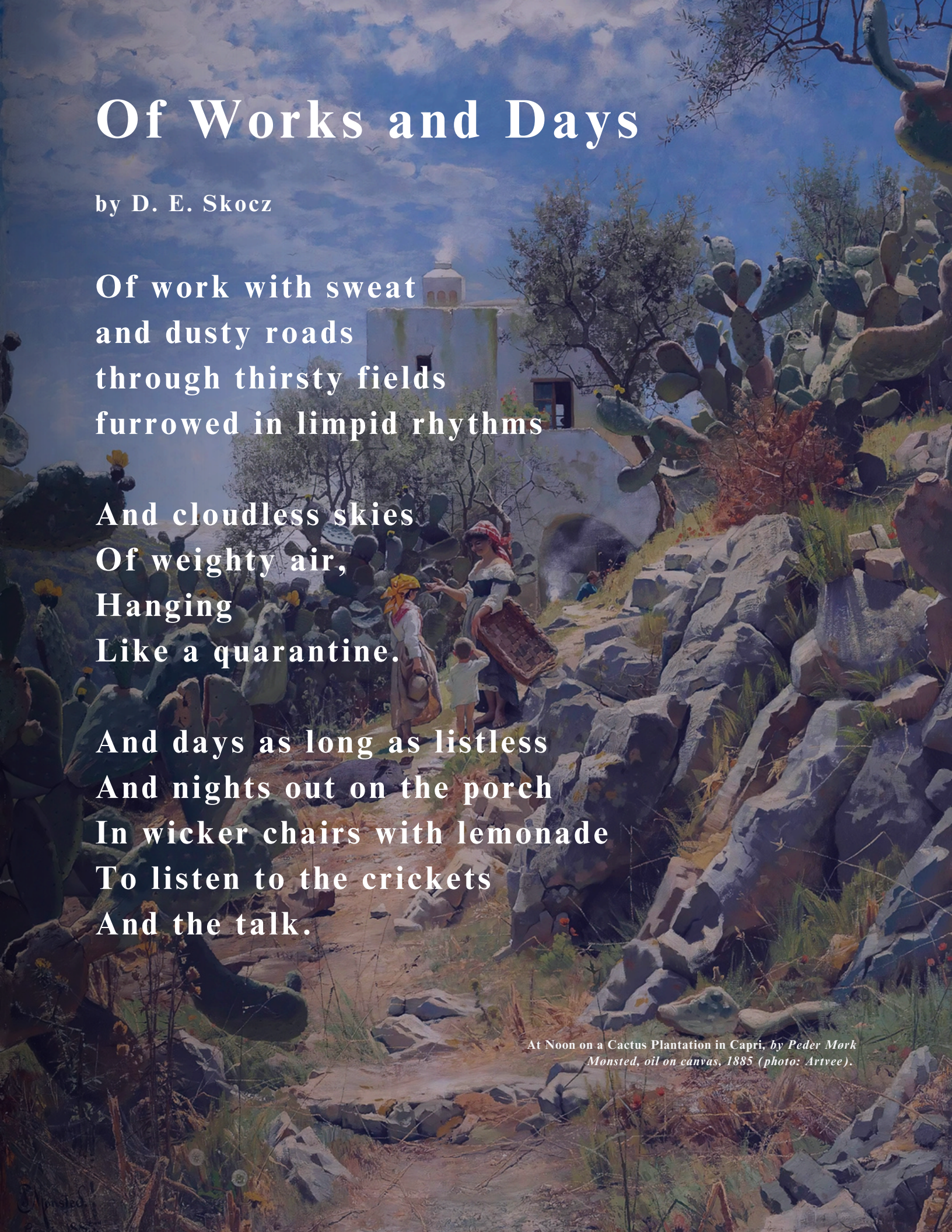
Of Works and Days

by D. E. Skocz

Of work with sweat
and dusty roads
through thirsty fields
furrowed in limpid rhythms

And cloudless skies
Of weighty air,
Hanging
Like a quarantine.

And days as long as listless
And nights out on the porch
In wicker chairs with lemonade
To listen to the crickets
And the talk.



At Noon on a Cactus Plantation in Capri, *by Peder Mørk Mønsted, oil on canvas, 1885 (photo: Artvee).*

MATER SI, BUCKLEY NO: THE JESUIT WHO TOOK ON *NATIONAL REVIEW*'S "COMPARTMENTALIZED CATHOLICS"

By Dawn Eden Goldstein

Photo courtesy the Louisiana Digital Library - Loyola Collection

On February 16, 1960, *National Review* editor William F. Buckley Jr., who took pride in his Jesuit prep-school education, wrote to the Jesuits' New Orleans Province Institute of Social Order to request a copy of its newsletter, *Christ's Blueprint for the South*.

Blueprint editor Father Louis J. Twomey, S.J., must have done a double-take when Buckley's letter arrived on his desk at Loyola University New Orleans. In 1948, a year after founding Loyola's labor school, the Institute of Industrial Relations, he had started the newsletter to facilitate a frank discussion among his fellow members of the Society of Jesus on how best to promote the social teachings of the Catholic Church. Since Twomey often used his editorial platform to call out the Society's failures to practice what the popes were preaching on social justice, the newsletter's circulation was limited to Jesuits—officially, at least.

Privately, the fifty-four-year-old Twomey, who had been active in civil rights since the late 1940s, occasionally made an exception to the *Blueprint*'s in-house restriction and shared it with non-Jesuits who wished to learn about the Church's social teaching—most notably his friend Martin Luther King Jr. But there was no way he could make an exception for Buckley, given the *National Review* editor's penchant for deriding Catholics who denied the tenets of libertarian conservatism. Twomey's office sent Buckley a polite note informing him that the newsletter was for Jesuits only.

Buckley may have learned of the *Blueprint* from the lone Jesuit *National Review* contributor at that time, future *McLaughlin Group* host John J. McLaughlin, S.J., who was then a scholastic (Jesuit lingo for seminarian). If that was the case, McLaughlin likely told him that the *Blueprint* frequently criticized *National Review*'s promotion of what would today be called cafeteria Catholicism, which Twomey termed "compartmentalized Catholicism."

Twomey had in fact been criticizing compartmentalized Catholicism since before *National Review*'s inception in November 1955. In the May 1955 *Blueprint*, he condemned the hypocrisy of US Catholics who professed to hold the true faith while "[allowing] themselves to be bracketed with the middle class and [failing] to 'go to the workingman' in the manner prescribed by every pope from Leo XIII" (see Pius XI, *Divini Redemptoris* §61). He then proceeded to list positions held by such compartmentalized Catholics—each of which would come to be held by *National Review*:

> We not only do not oppose but oftentimes promote laws to restrict immigration (cf. the many Catholics favoring the McCarran-Walter Act); to deprive unions of legitimate security measures (cf. the many Catholics favoring "Right to Work" bills); to allow the state to reach into the nature of the marriage contract and arbitrarily to declare it void as in the laws against miscegenation; to enforce segregation in schools and in other aspects of political, economic, and social life, etc.

By the December 1959 *Blueprint*, when *National Review*'s circulation had quadrupled from 7,500 at its inception to 30,000, Twomey was no longer content merely to call out policy positions that contradicted Catholic teaching. He was now naming names: "There are many Catholics who seem much readier to follow

Twomey often used his editorial platform to call out the Society's failures to practice what the popes were preaching on social justice.

the leadership of *The National Review*, the Manion Forum Network, Fulton Lewis, Westbrook Pegler, Father Richard Ginder, etc., in their views on the United Nations and world government, etc., than those of the popes."

Like the trained rhetorician that he was, Twomey did not let his point rest with a critique. Against compartmentalized Catholicism, he proposed a positive counter, which he called "integral Catholicism, Catholicism as an all-pervading way of life." By integral Catholicism, Twomey did not mean integralism, but rather what today would be called the consistent life ethic. He held the Church's priests and teachers responsible for educating the faithful in Catholic social teaching so they could give a full-bodied witness to the faith. "Catholic men and women […] should be able to agree on at least the essentials," he wrote. "And one of the essentials is that the Church has 'the

right and the duty to pronounce with supreme authority upon social and economic matters' [Pius XI, *Quadragesimo anno* §41]."

Whether or not Buckley was aware that the *Blueprint* was criticizing *National Review*'s editorial stance, he refrained from responding at the time. But he could not remain silent when Twomey took his criticisms into a public forum, at the height of the controversy that would go down in media history as "*Mater si, magistra no*."

A MERE *MATER* OF OPINION? *NATIONAL REVIEW* VS. JOHN XXIII

Pope John XXIII's Encyclical Letter *Mater et magistra*, which was signed on May 15, 1961 and promulgated on July 15, 1961, took its title from its first sentence, which calls the Catholic Church the "Mother and Teacher of all nations" (*Mater et magistra* §1). But when Buckley acknowledged it in a July 29th National Review editorial, he made it clear that he was an unwilling student.

Buckley professed perplexity at John XXIII's priorities in writing the encyclical, claiming "it must strike many as a venture in triviality coming at this particular time in history." He complained that the pope made "scant mention" of the communist threat and took "insufficient notice" of "the extraordinary material well-being that such free economic systems as Japan's, West Germany's, and [America's] own" were producing.

Between the lines, however, it was clear that Buckley was more disturbed by what the encyclical included than by what it omitted. Tellingly, he likened it to Pius IX's *Syllabus of Errors*, suggesting that, like the *Syllabus*, John's encyclical might in future "become the source of embarrassed explanations." Indeed, Buckley could well have imagined that the Pope wrote the encyclical with a copy of *National Review* before him, for parts of it read like a syllabus of American libertarian-conservative errors.

Against *National Review*'s sneering attitude towards the United Nations, John praised the UN's International Labor Organization as well as its Food and Agriculture Organization. Against *National Review*'s insistence that unbridled free-market economic policies were essential to the survival of Christendom, John wrote that Christendom was morally bound to order itself around the "complete synthesis of social principles" in Leo XIII's *Rerum novarum* (*MM* §15). And against *National Review*'s placing the right of private property above more fundamental human rights, such as the right of African-Americans to be served in restaurants, John called private property "a right which must be exercised not only for one's own personal benefit but also for the benefit of others" (*MM* §19).

For those reasons and many more, Buckley and his fellow *National Review* editors wanted their readers to know that they had no use for the encyclical, despite the widespread acclaim it was receiving from Catholic, Protestant, and Jewish leaders the world over. The magazine's following issue, with the cover date of August 12, carried the unsigned quip, "Going the rounds in Catholic conservative circles: '*Mater si, Magistra no*.' "

Buckley proved to be unprepared for the level of outrage that his magazine's ridicule of the pope's encyclical, and especially its play on the title, provoked in the Catholic press. Particularly distressing to him was the response from America, which accused *National Review* of slandering Catholic conservatives by projecting upon them its own disloyalty. He hit back with "The Strange Behavior of *America*," in which he complained that the Jesuit magazine's editors had committed a "disrespectful" misconstrual of a mere "flippancy."

Despite Buckley's attempt to excuse the magazine's comments, however, *National Review*'s Catholic contributors' public dissent from the Church's social teaching went well beyond flippant remarks. In the very same issue that stated, "*Mater si, Magistra no*," the magazine featured an essay by Buckley's brother-in-law, contributing editor L. Brent Bozell Jr., on "The Strange Drift of Liberal Catholicism." ("Strange" was one of *National Review*'s favored euphemisms for "un-American.")

Although the article purported to critique "the kind of thing that [was] preached under Catholic auspices" in *America* and *Commonweal*, Bozell's true target was those who sought to place moral conditions upon the fight against communism. He mocked what he called "the familiar theme […] that the West must, forthwith, cleanse itself of certain internal contaminations, e.g., racial inequality; otherwise, it not only cannot, but does not deserve to win."

Bozell may have had in mind a widely circulated essay that William Faulkner wrote for United Press in September 1955 after the lynching of Black teenager

Emmett Till in which the Southern novelist wrote, "If we in America have reached that point in our desperate culture where we must murder children, no matter for what reason or what color, we don't deserve to survive, and probably won't." He also may have seen news reports about the many speeches Father Twomey had given where he repeated Faulkner's warning, including his addresses that very summer to students attending the touring Summer School of Catholic Action.

The "key ingredient" of the "familiar theme" sounded by liberal Catholics, Bozell wrote, was "an apocalyptic sense of urgency." "Apocalyptic" was another of *National Review*'s terms of art. Its writers used the word in much the same way they used Erich Voegelin's critique of modern-day "gnosticism": to dismiss efforts to change society in ways they deemed unacceptable.

Bozell proceeded to provide examples of such alleged apocalypticism: "On Southern schools: they must be opened to Negroes *now*. On segregation generally: nothing must stand in the way of immediate and complete abolition of racial barriers. Any compromise is a compromise with *evil*. Any delay of full success till tomorrow is a denial, today, of *social justice*." Never mind that seven years had passed since the Supreme Court ruled in Brown v. Board of Education. To Bozell, integrationists were naïve post-millennialists seeking to immanentize the eschaton.

It was "materialist," that is, unspiritual and thus un-Christian, to argue that "we must address ourselves to the elimination of human misery throughout the world with the same zeal and single-mindedness that the communists lay claim to," Bozell wrote.

"The truth, of course, […] is that the stakes are much higher," Bozell continued. "Yes, God is involved in the Cold War; but more to the point: God's civilization is involved. The West makes this claim over against the rest of the world: *that it has been vouchsafed the truth about the nature of man and his relationship to the universe, and has been commissioned to construct and preserve an earthly city based on this truth*" (emphasis in original).

Although Bozell made no mention of *Mater et magistra*, his logic—positing the "apocalyptic" proponents of integration against Westerners engaged in a (truly apocalyptic) battle to preserve "God's civilization"—contrasted sharply with that of John XXIII's

Left: Twomey publicity photo, 1950 (photo courtesy St. Mary's University Canada Archive); right: Twomey with unidentified students (photo by Russell J. Cresson, courtesy Louisiana Digital Library).

encyclical.

To Bozell, individual human rights were secondary to the rights of the divinely ordained Christian state. But to John XXIII, who sought to transmit anew the teachings of Leo XIII and Pius XI, Catholic social teaching "[rested] on one basic principle: individual human beings are the foundation, the cause, and the end of every social institution (*MM* §219, §220)." That was why John could write that "true Christians cannot help feeling obliged to improve their own temporal institutions and environment [and] do all they can to prevent these institutions from doing violence to human dignity." Although he would not explicitly condemn racial discrimination until 1963's *Pacem in terris*, with *Mater et magistra* he gave every indication that it was the integrationists, and not those attacking their zeal, who were the true representatives of the kingdom of God.

TWOMEY: "COMMUNISM IS ON THE CONSCIENCE OF THE WEST"

National Review's mockery of the pope and "Liberal Catholics" weighed upon Father Twomey as he prepared to address the Christian Family Movement's national convention at the University of Notre Dame on August 26, 1961, on "Communism and Catholic Social Responsibility."

Twomey had been speaking on the topic since the late 1940s, arguing that Catholics seeking to fight communism abroad should begin by pursuing social justice at home. A key text he employed to make his point was *Quadragesimo anno* §62: "Unless utmost efforts are made without delay to put [Christian social principles] into effect, let no one persuade himself that public order, peace, and the tranquility of human society can be effectively defended against agitators of revolution." In speaking before the CFM's members, who sought to integrate their faith with their social and civic life, he could be confident of a receptive audience.

But if his topic was familiar, Twomey approached it with renewed intensity. He knew that, despite the CFM's progressive leanings, its nearly all-white membership endured the same intra-Catholic disputes as the rest of the US Church on questions of civil rights and how best to combat communism. The entire country, in fact, was at an inflection point on those issues. Membership in the segregationist John Birch Society was at or near its height, white mobs were attacking Freedom Riders, and, in the midst of the trial of Holocaust perpetrator Adolf Eichmann, American Nazi Party founder George Lincoln Rockwell was teaming up with Nation of Islam leader Elijah Muhammad to denounce Jews.

In his address at the convention, Father Twomey appealed to his audience's desire to know how, in fighting communism, they could "most effectively contribute to the final victory of peace with justice and charity in the struggle in which all of us have an equal stake."

To answer that question, Twomey told his audience of about seven hundred married couples and three hundred priests, "In the first place, we must recognize communism for what it is." He observed that many people put their energy into "[attacking] communism for what it is not": "By directing their energies at mistaken targets, they not only miss the real target, but oftentimes utterly confuse themselves and others as to what the real target is."

In case there was any doubt as to whom he meant, Twomey went off-script to cite the John Birch Society as a group that "violated not only the principles of Americanism but the principles, more importantly, of Christianity." It took courage for a Catholic priest to say such a thing at a time when the Catholic hierarchy's only public comment on the Birchers was Richard Cardinal Cushing's fulsome praise of the society's founder. When Twomey offered similar remarks in a homily the previous May, he made national headlines.

Although Twomey's prepared text did not name names, not only Birchers but also *National Review* editors would have recognized their own objectives among those of the anti-communists he criticized—particularly when he called out those who insisted "the segregation issue be handled as a state rather than as a federal problem."

After listing the policy goals common to the John Birch Society and their allies, Twomey said, "If by some unforeseen tragedy, any or all of these goals could be attained, it is difficult to conceive how more devastatingly the cause of communism could be served." Although such groups were sincere in opposing communism, they were "tragically misguided" in their means, Twomey added: "For communism is an effect and not a cause. It is rushing in to fill the voids created in men's material as well as spiritual nature by our failures—the failures, namely, of Western man to fulfill his commitment to the Judeo-

> *Buckley could well have imagined that the Pope wrote the encyclical with a copy of* National Review *before him, for parts of it read like a syllabus of American libertarian-conservative errors.*

-Christian philosophy of human living."

Of all the things Father Twomey said in his public talks, his calling the West to account for its sins against human dignity was most offensive for listeners accustomed to conservative talking points. By his lights, the Western civilization that *National Review* deemed unimpeachable was guilty of "gross violations of justice and charity here and abroad," as he said to the audience at Notre Dame.

"It is these violations," Twomey added, "which give deceptive plausibility to the psuedo-messianic appeal of communism to hundreds of millions of underfed, underhoused and underclothed victims of Western white man's arrogant belief that his is the anointed race to be served by all lesser men."

The language was not new for Twomey; he had made similar comments at least as far back as 1956. Nonetheless, had he been consciously seeking to undo Bozell's boast that the West was "God's civilization," he could not have been more direct.

But Twomey wasn't finished. Recommending to his audience Bishop Fulton J. Sheen's 1948 book, *Communism and the Conscience of the West*, he noted that the title was accurate: "Communism is on the conscience of the West. […] We are responsible for communism! And we will not rid ourselves of the guilt by shouting, however long and loud, for communism to go to hell. Nor will we solve our problems by joining anti-Communist organizations whose ends and the means employed to reach these ends are often at variance with the clear teachings of the Church."

The only way for Catholics to clear their conscience, Twomey said, was by receiving fully John XXIII's message in *Mater et magistra*: "We must reaffirm most strongly that this Catholic social doctrine is an integral part of the Christian conception of life" (*MM* §222).

Twomey spent the remainder of his address calling out the political positions of libertarian "compartmentalized Catholics," much as he had done in the *Blueprint* for years, demonstrating how each position was refuted by the social teachings of the popes. William F. Buckley Jr. was not present to hear the Jesuit's remarks. But in time they would reach him, and when they did, he would make his feelings felt.

BUCKLEY STRIKES BACK: "MORAL SEX APPEAL" IS USELESS AGAINST COMMUNISM

For a time, after *America* expressed outrage over *National Review*'s dismissal of *Mater et magistra*, Buckley was fearful that the heresy charges might stick. (He would later claim, without evidence, that the Jesuit magazine's editors had tried to get him excommunicated.) Intent upon defending himself, he wrote a lengthy open letter to *America*, which he copied to other editors of Catholic magazines that had criticized him. When none of those publications chose to run it, he published it himself. But he continued to wait for an opportunity to defend himself in a Catholic forum, while monitoring articles by Catholics countering his stance on John XXIII's encyclical. Apart from *America*'s commentary, the article that appears to have disturbed him the most was the published version of Twomey's address at the Christian Family Movement convention. It appeared in the October edition of the movement's official magazine, *Act*, edited by prominent Catholic layman Donald J. Thorman.

A few weeks after Twomey's article ran, Buckley was reading another magazine helmed by Thorman, *Ave Maria*, when he was intrigued to see the editor offer an olive branch to conservative culture warriors.

"The fact does remain that Catholic conservatives and liberals are often conducting a sometimes unhealthy, often unchristian and totally unnecessary internecine feud," Thorman wrote. He proposed that "members of both camps" seek to "work out Christian ground rules for debate and to decide on a basic, minimal program for a united fight against

communism and for the promotion of justice and charity in our society."

Buckley saw his chance. He wrote to Thorman, ostensibly seeking to take him up on the offer: could he respond in the form of an essay to be published in *Ave Maria*? Thorman was pleased to assent. But when the *National Review* editor submitted his essay, Thorman was aghast to discover that Buckley devoted much of it to antagonizing Father Louis J. Twomey, S.J., for his address to the CFM gathering.

In "Conservatives and Anti-Communism" (later an-thologized as "Catholic Liberals, Catholic Conservatives, and the Requirements of Unity"), published in *Ave Maria*'s issue of April 7, 1962, Buckley ridiculed Twomey's assertion that "we are responsible for communism." To Buckley, the idea that "the Communists have advanced […] because of 'our supreme unconcern with gross violations of justice and charity here and abroad' " was "nonsensical." He framed his argument in bluntly utilitarian terms: "The distinction is not between 'just' and 'unjust' acts in relation to fighting communism, but between relevant and irrelevant means of fighting communism."

To drive home his point that implementing principles of Catholic social teaching would be totally ineffectual against the spread of communism, Buckley indulged in a *reductio ad absurdum* that surely qualifies as one of the more bizarre statements in his voluminous canon: "The communists could not care less whether there is segregation in the South. […] If every white Southerner were to miscegenate tomorrow, the Communist Party would not be set back by five minutes."

Rhetorical flourishes aside, the greatest contrast that Buckley drew between his position and that of the "Liberal" as represented by Father Twomey (who himself never identified as a liberal, conservative, or anything other than a Catholic priest) was in the area of methodology. Whereas Twomey preached that persons and nations should treat one another with justice and charity, Buckley insisted, like an anachronistic Bizarro World conflation of Brent Bozell with Malcolm X, that the Western world defeat communism by almost any means necessary.

"In our time, and in respect of world forces which are insurgent against civilization itself, it is I think desperately clear that the West must survive, or we shall have entered the longest and bitterest night in human history," Buckley wrote. "To effect that survival, I am prepared to do almost anything. And as a Catholic conservative, I wish to seek out that program which is relevant to diminishing communist power, not necessarily that program which has the highest moral sex appeal."

When Buckley's article appeared, Thorman wrote Father Twomey inviting him to reply. The Jesuit, after consulting with Loyola New Orleans President Andrew C. Smith, S.J. (who had his own experience standing against segregationists), politely declined, unwilling to find himself bogged down in "an unending series of articles and counter-articles."

In his way, however, Father Louis J. Twomey, S.J., did have the last word against William F. Buckley Jr. —and not only because Buckley eventually repented of his racist and segregationist views. Twomey had the last word through continuing, until his final illness in 1969, to call Catholic laity, clergy, and institutions to end racial discrimination and "build a society in which the dignity of every man is acknowledged, respected, and protected." ■

Dawn Eden Goldstein *is currently writing* A Priest in Good Trouble: Father Louis J. Twomey, S.J.'s Battle for Human Dignity with MLK in the Deep South*, to be published by Notre Dame Press. She is currently running a Kickstarter crowdfunding campaign to gain the support necessary to complete the project.*

IF THERE IS NO REBOUND:

AN EMERGENCY OPTION FOR BIDEN AND HARRIS

By Dakota S. Rudesill

President Joe Biden greets Vice President Kamala Harris upon his arrival to deliver the State of the Union address on Tuesday, February 7, 2023, on the House floor of the US Capitol in Washington, D.C. (Official White House Photo by Adam Schultz)

This endnoted and lightly edited piece was originally published online on July 25th, three days after President Biden withdrew from the presidential race.

President Joseph R. Biden's legacy now boasts three historic acts of service to the republic. The first was to evict from power President Donald Trump—the first and only American chief executive to try to overturn a free and fair election. The second was Biden's selfless decision on July 21st to withdraw from the presidential race because his chances of defeating Trump again had become slim. Biden's third came minutes later: his endorsement of Vice President Kamala Harris, which paved the way for the first major party nomination for a woman of color.

This is a great American moment. It deserves celebration. The outpouring of endorsements, funding,

> *In this context, it is completely reasonable to conclude that the fate of the rule of law in America may rest on Trump's electoral defeat.*

and enthusiasm for Harris in recent days has been truly inspiring. I hope it continues and that she rolls to a big, uncontestable victory in November.

We also have to remember that when Biden withdrew because the ticket's numbers were so grim, the person he endorsed was the other person on that ticket. Biden's faltering debate performance and obvious aging are particular problems for him. But even before the debate, Trump looked on track for victory, despite majority public disapproval dating to the start of his presidency and accumulation of further negatives at his term's end and thereafter. Trump has only been the favorite for 2024 because approval ratings for Biden and Harris slipped underwater during the first year of their term and have sometimes been even lower than Trump's. By some estimates, the Biden and Harris numbers have at many moments been at or below those of all one-term presidents since the advent of modern polling.[1] Reportedly, further collapse in Biden's numbers in swing states after the June 28 presidential debate finally convinced him to drop out.[2]

No one knows what a second Trump term would hold, but as former House Select Jan. 6 Committee Co-Chair and former US Rep. Liz Cheney (R-WY) and many others have made clear, there is abundant reason to be deeply worried for the Constitution.[3] Contempt for the rule of law is unquestionably reflected in Trump's participation in the multi-part effort to overturn the free and fair 2020 election, thoroughly documented by the bipartisan Jan. 6 Committee.[4] It is also evident in many other acts and statements over the years that are straight out of the authoritarian playbook (accusing courts of bias and corruption without evidence, discrediting the free press as the "enemy of the people," using "blood poison" language and other racialized language reminiscent of Nazi rhetoric, writing that his [stolen election] big lie justifies "termination of all rules" and articles of the Constitution, encouraging violence at rallies, telling the militia that later attacked the Capitol on his behalf on Jan. 6 to "stand back and stand by," refusing to accept elections he does not win, and the list goes on).[5] Disrespect for the rule of law is also abundantly apparent in the extensive evidence of criminality presented in pending indictments in federal and state court for the election schemes, his conviction in May on thirty-four felony criminal charges for a financial conspiracy, as well as court findings of legal liability in recent years for massive financial fraud, repeated contempt of court, and sexual assault. Trump has used the term "dictator" in connection with his potential second term.[6] Recently, he chose a running mate who has explicitly recommended that if reelected Trump should knowingly order illegal actions and ignore contrary court decisions.[7] The most obvious implication here is presidential rule unconstrainted by law—a prospect fundamentally inconsistent with our Constitution of limited government, separated federal powers, and individual rights.

In this context, it is completely reasonable to conclude that the fate of the rule of law in America may rest on Trump's electoral defeat. Every American, of whatever political persuasion in normal times, should therefore hope that Harris quickly turns things around. If Biden and his aging were indeed the problem with the Biden-Harris ticket, then one would expect to see a clear upward trajectory for Harris after Biden's withdrawal.

If, however, swing-state polls for Harris have not recovered by the time the Democratic Convention approaches in late August, the Democrats and indeed the entire nation will face a slate of bad options. Re-inserting Biden would probably be impossible and in any event would likely only hurt him, in the same way that third party candidate Ross Perot only hurt his numbers by quitting the 1992 presidential campaign that July and then later rejoining it. The Democratic Party plans on a virtual roll call vote for Harris in early August, so having Harris compete in an open convention as a way of juicing excitement and her exposure would be similarly senseless. Staying the course would be anxiety inducing at that point, hoping against hope that Harris just needs more time to be fully introduced to voters, that her coronation at the August 19–22 convention in Chicago will help, and that thereafter she would eventually catch and edge out Trump. Antacid-grabbing as stay-the-course sounds, that is logically the best bad option because there are no other alternatives.

Or are there? As Star Trek's Mr. Spock liked to observe, there are always possibilities. One for Biden, Harris, and other top strategists to contemplate, and perhaps even now prepare just in case three weeks from now the ticket's current swing state deficits are stable or worsening, involves President Biden reentering the political fray to make a fourth great, selfless act of service to the republic.

A GRAND BARGAIN

What I have in mind is a grand bargain between Biden and Harris that opens the door to a fresh ticket at the convention. Biden would resign and make Harris president. In return, Harris would decline the nomination, and devote the remainder of the presidential term to orchestrating an orderly convention that generates a completely new ticket and shepherding the nation through the stressful election season.

A second summer swap at the top of the ticket would not be easy. It could turn off some voters the campaign needs to persuade. The desperation of the move would be obvious, too. And, the opposition would surely have a field day, at least for a while (our culture's attention span seems to shrink by the minute).

Even so, if there appeared no viable path to victory for a Harris-led ticket, then the party would have nothing to lose in trying to capture the grand bargain's multiple potential benefits.

First are the deal's immediate gifts. The deal would end public worry about whether their president is physically and cognitively up to the demands of the world's hardest job. It would give the country a younger president who, after four years as vice president, could not be more up-to-date on current issues, decision processes, and global threats. Biden would also give the nation its long-overdue first female and first Asian-American President. That would be a very welcome moment of national celebration.

Then there are the majoritarian and centrism benefits. Harris would join Biden in being responsive to the overwhelming public desire—nearly three-fourths of the electorate—for new candidates (even though polls typically have polled Trump versus Biden, Harris has been implicated to some extent because everyone has expected her to be Biden's running mate).[8] She would be acknowledging the realities of years of underwater approval ratings. She would be recognizing that (I think somewhat unfairly) the voters, and especially the "double-haters" who are perhaps this election's most powerful center swing

Ross Perot at a 1992 Presidential Debate with George H. W. Bush and Bill Clinton. (Photo credit: Wikimedia Commons)

voters, will likely hold her responsible for (now reduced) pandemic-era inflation, and for the chaotic, bipartisan, multi-decade embarrassment that is border and immigration policy.[9] She would be recognizing that a significant and important part of the electorate remains embittered over the inability of the Biden-Harris administration to craft a response to the Gaza War that seemed to fairly balance moral principle and national security interests.

Most obvious are the grand bargain's election process and civic benefits. It would spare the nation a non-competitive but still assuredly stressful presidential election. Through her stewardship of the convention, Harris would resolve questions about whether and how the Democratic Party can provide the electorate—including frustrated swing voters—an entirely fresh ticket and viable alternative to Trump. Such a new team also holds the promise of avoiding deep losses in the Congress that in a second Trump term would have a Constitution-protection role.

An open Democratic convention that is well-managed by President Harris could be exactly the opposite of "damaging" and "chaotic," as the convention is so often depicted by anxious Democrats.[10] An orderly convention where delegates respectfully debate and evaluate an exciting array of new candidates is well precedented—presidential tickets have been picked at conventions many times in American history, although admittedly not since 1976.[11] Renewing this tradition would take some doing but would surely capture the nation's attention. I expect that it would considerably revive national confidence in our democracy's ability to renew itself. Trump would look so small in comparison to this grand moment—and would be pushed from the headlines. The circumstances of national emergency, underscored by Harris becoming president at this time, would give her massive moral authority to remind Democrats to put aside personal ambitions and factional interests in favor of an orderly process and a fresh ticket with potential—in this time of strong majority desire for change—to beat Trump soundly.

THE OPPORTUNITY TO GO BIG

Soundly beating Trump is an especially important prospect. To date, the Biden-Harris theory of victory has boiled down to a fourth-quarter surge that results in a razor-thin victory in several swing states—a now-unlikely repeat of narrow victories by Trump in 2016 and Biden-Harris in 2020. But a narrow Harris victory could prove a nightmare second only to a Trump win. Trump, the Heritage Foundation, and others have already again rejected democracy's requirement that partisans respect losses, by repeating false claims of election fraud and declaring that they will only respect an election Trump wins. We all watched, and people died, during the 2020 season of this horrifying reality show.[12] A close Trump loss means unsubstantiated conspiracy theories, lies, violence, and terrible damage to worldwide regard for the United States and the global cause of democracy.

A fresh ticket would have inherent national majoritarian and electoral college "big win" potential thanks to strong majority desire for change, and it could readily be assembled under President Harris's guidance at the convention. She could also ensure that the new ticket, drawing on the Democratic Party's deep bench, reflects our nation's wonderful diversity. A sizable cadre of viable Democratic candidates is younger than Biden and Trump, and well qualified for high office. They are not so readily tied to the outgoing administration's record on inflation, Gaza, and the border, and have nothing like Trump's long list of negatives and long-baked majority disapproval. A couple example tickets with majoritarian potential are Sen. Mark Kelly (D-AZ) and Sen. Tammy Duckworth (D-IL), and Gov. Gretchen Whitmer (D-MI) and Sen. Corey Booker (D-NJ). The papers these days are full of mention of other good candidates, too, offering an exciting array of potential combinations.[13]

AN ADD-ON TO THE GRAND BARGAIN: A REPUBLICAN VP FOR PRESIDENT HARRIS

An additional element of the Biden-Harris deal could be for Harris's short-term successor as vice president to be a Republican.

Under the Constitution, when a vacancy opens in the vice presidency, the President nominates and the Senate confirms. President Harris and Majority Leader Chuck Schumer could use this process to create a national unity team in a time of clear national emergency. This move would recall Republican Abraham Lincoln's choice of a Democrat as his running mate in the Civil War election year of 1864.[14]

The new Vice President would be one of the many brave Republicans who have made clear by word and deed that Trump's obvious threat to the rule of law matters more than party or personal agendas. The new

Veep would commit in advance to the nation-protecting spirit of the arrangement, and not to advance any other agenda. Candidates to be approached include former Rep. Liz Cheney (R-WY), former Ohio Gov. John Kasich, former Rep. Adam Kinzinger (R-IN), and Sen. Mitt Romney (R-UT). In speaking the truth to colleagues and voters who embraced or acquiesced to Trump's lies and playbook authoritarian moves, each of these patriots has already shown true courage in placing the Constitution ahead of their policy preferences and political fortunes.

AN EMERGENCY MEASURE THAT WOULD MATCH THE MOMENT

Is the Biden-Harris deal I propose (with or without this VP element) unlikely? Sure. Would the convention be challenging to orchestrate, and would a new ticket require intensive introduction to the electorate in short order? Absolutely.

But selection of new candidates even later in the campaign season is well precedented. It has happened many times at the state and local levels when candidates have abruptly withdrawn or died. For example, US Sen. Paul Wellstone (D-MN) died in a plane crash less than two weeks before election day 2002, and yet a new candidate was quickly chosen by the Democratic party and voted on by the state's electorate.[15] If this year one of the presidential tickets similarly perished in a plane crash months or weeks before the election, there is no question that their party would quickly provide a replacement. Neither party would just give up. If state ballot listing laws were an issue, there would surely be well-organized write-in campaigns where necessary, which we know can win close elections. Just ask US Sen. Lisa Murkowski (R-AK), who won reelection in 2010 by write-in after she lost the Republican primary.[16] Our country can do hard things.

Of course, even in the mid-August scenario I envision, where Harris's fortunes are flat or declining, staying the course will likely seem the least bad or only option. But if the issue for swing voters is simply that the Biden-Harris administration presided over years they found difficult, and Harris on her own cannot escape the center's concerns with their stewardship, then Biden, Harris, and others may appreciate knowing that there is this grand-bargain emergency escape hatch. Obviously, it is a late substitution and hurry-up offense ("Hail Mary"?) option. But big plays late in the game, just like Trump's unlikely last-second surge after trailing badly in mid-October 2016, sometimes win the day.

The Biden-Harris grand bargain is also the kind of big historic move that matches this perilous moment and recalls the enormous risks taken by the republic's Founders. The selflessness on the part of Biden and Harris that would be involved in this deal, aimed at defeating a chaos candidate, plus its responsiveness to majority public sentiment, would reflect the best of what the Founding Generation termed "republican virtue." That is, courage and subordination of personal or factional interest to protect the common national interest. In times like these, as Cheney, Kinzinger, and other brave Republicans have so powerfully articulated and practiced, civic virtue of this kind must take priority over the transactional politics of normal times in which people vote their immediate interests or preferences.[17]

In times like these, as Cheney, Kinzinger, and other brave Republicans have so powerfully articulated and practiced, civic virtue of this kind must take priority over the transactional politics of normal times in which people vote their immediate interests or preferences.

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Kamala Harris is an inspiring, capable, and honorable public servant and candidate. I fervently hope she gets a quick, big bounce. By mid-August I hope that there are unmistakable indications that her trajectory is upward and that the ticket has a good shot at victory in November.

If not, however, this Biden-Harris grand bargain, plus the late August convention, provides an emergency path to a fresh ticket. The deal would take a lot of effort and luck to implement, but the high stakes and

potential benefits could make it the best of bad options. It may well cement the status of Biden and Harris as statespersons of the highest rank in American history. It would honor Harris for her selflessness with induction into the ranks of US Presidents. It could inspire and reassure an anxious nation. And, ideally, it would open the way for a big victory that could not be reasonably contested by the majoritarian, Constitution-respecting president the country needs. ■

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President Joe Biden and Vice President Kamala Harris greet guests at the White House Independence Day celebration. (Photo: Wikimedia Commons)

WHAT THE SECOND AMENDMENT REALLY DOES MEAN

By Judd Baroff

Photograph of The Minute Man*, a statue by Daniel Chester French, erected in 1875 in Concord, Massachusetts, and situated in Minute Man National Historical Park.*
From http://www.nps.gov/mima/education.htm.

There is a time to argue for confiscating all guns in America, but this is not that time. There is a time to argue that widespread gun ownership is the only bulwark against autocracy, but this is not that time. Those are second-order debates. The first-order debate is over what the law *is* and why we know what it is. If we wish to avoid fighting against each other, we must learn to talk to each other, and to talk to each other, we must understand the terms of the debate. The Second Amendment protects an individual's right to keep and bear arms. This is the only reasonable reading of the text, and only once we agree what the law is can we debate what the law ought to be.

Our first step is to look at what the Second Amendment says. It reads, in full: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." But what does that mean? There are, roughly, two alternative readings.

The first is what I call the "Individual Right" position. This is the Supreme Court's current interpretation of the Constitution as articulated in *The District of Columbia v. Heller*. It holds that while "the Second Amendment right is not unlimited," it does "protect […] an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense." It should not have been a close decision. It is the unambiguously, unimpeachably, incontestably correct one, based not just on the history of the Amendment, but its placement in the Constitution, its language, and even its grammar.

The second position is what I call the "Corporate Right" position. Its proponents argue that the Second Amendment protects nothing more than the forming and arming of militias. Specifically, quoting the dissent in *Heller*, "Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms. Specifically, there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution." Or as Dorothy Samuels writes in her *The Nation* article, "The Second Amendment Was Never Meant to Protect an Individual's Right to a Gun," "The National Rifle Association [waged] an intense 30-year campaign to secure an individual's constitutional right to keep and bear arms." Neither the dissent nor Samuels is alone in making this argument, as anyone with an ear open to this debate knows (but see also, here, here, here, here, and here). Samuels continues, "the decision declared, *for the first time*, that the Second Amendment protects an individual right to a gun" (my emphasis).

This is simply wrong. Courts throughout our history have written that the Second Amendment secures an individual right to keep and bear arms, and every commentary from before the modern era recognized as much. Worse, the very language, grammar, and placement within the Bill of Rights demands an individual right reading of the Second Amendment. As I am as sure the Second Amendment protects an individual right to keep and bear arms as I am that grass is green and the sky is blue, I thought it useful to create a comprehensive (though not complete, that would take a book) list of reasons why. I hope this will help those who believe it is an individual right to express themselves better, and I hope it will correct the misunderstandings and suspicions of those who believe it is a corporate right.

Let us start with the words of the Amendment.

THE LANGUAGE

The corporate right position is straightforward. They say that, because the first clause references the militia, the right enumerated in the second clause must constrain the keeping and bearing of arms to only "a military purpose." Ms. Samuels writes, "To find in that wording an individual right to possess a firearm untethered to any militia purpose, the majority performed an epic feat of jurisprudential magic: It made the pesky initial clause about the necessity of a 'well regulated Militia' disappear."

This is not exactly what happened. The *Heller* Court simply read the language not as a writer of *The Nation* Anno Domini 2015 might but as a farmer, printer, or lawyer in America circa 1790 would have. For in the near quarter-millennium that have passed since the Amendment's passage, many words have had their meanings obscured or altered altogether.

Let us start with the phrase "the right of the people." Almost identical language can be found in the Ninth Amendment, which reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Likewise, the Tenth Amendment, "reserve[s]" to "the States" or "the people" any power not explicitly delegated to the federal government.

What rights to what corporate body—for example, a militia—is the Ninth Amendment meant to protect and the Tenth Amendment meant to reserve? There are none. They are reserved to individuals. That is because "the people" here means all the citizens individually, as it does in the preamble, "We the People of the United States." There is no one I have read who believes "We the people" means those who drafted the Constitution alone. (See also *United States v. Verdugo-Urquidez* [1990], holding that "the people" was an eighteenth-century term of art for members of the political community.)

The final place in our Constitution where "the people" shows up is in Article 1, Sec. 2, which provides, "the House of Representatives shall be composed of Members chosen every second Year by the People of the several States." And while voting, even for the House, was originally restricted to men of property, this may not be the restriction on the right the *Heller* dissent and those who agree with them were hoping to impose, nor (happily) is it the one supported by language or history.

> *The Heller Court simply read the language not as a writer of* The Nation *Anno Domini 2015 might but as a farmer, printer, or lawyer in America circa 1790 would have.*

Let us look next at the phrase to "keep arms." The phrase is rare, but to the extent it shows up, it points toward an individual right. For example, William Blackstone was an eighteenth-century legal historian whose *Commentaries* were superbly influential and are reflected in the writings of not just every lawyer to attend the Continental Congress and the United States Congress but many of the non-lawyers (more on Blackstone in the section on history). In his *Commentaries* he wrote, to quote *Heller*, "Catholics convicted of not attending service in the Church of England suffered certain penalties, one of which was that they were not permitted to *keep arms* in their houses" (internal quotation marks omitted, my emphasis). This alone seems, to me, to create what in law we call a "rebuttable presumption" of its truth.

Yet to this rebuttable presumption, the two dissents brought little contemporaneous evidence about the text of the Constitution, and none that was not refuted in turn by the Court. Instead, the dissents relied on twentieth-century cases, contemporary to them law review articles, and several statutes written before either state or federal constitutions, which regulated some firearms (even though the majority explicitly affirmed that some regulations were permissible). But none of it proves what they tried to prove. In the words of the Court, to argue that "'keep Arms' has a militia-related connotation […] is rather like saying that, since there are many statutes that authorize aggrieved employees to 'file complaints' with federal agencies, the phrase 'file complaints' has an employment-related connotation. 'Keep arms' was simply a common way of referring to possessing arms, for militiamen and *everyone else*." I cannot improve on this response to a rebuttal not even fully made.

The dissent tried substantially the same trick when arguing about the meaning of "bear arms," concluding it meant carrying them only for "military purposes." This will not do. We have too many sentences like in Timothy Cunningham's 1771 *Law Dictionary*, "Servants and labourers shall use bows and arrows on *Sundays*, &c. and not bear other arms." Presumably these "Servants and labourers" were not going off to war, on Sundays or any other. To the extent the phrase "to bear arms" meant to bear arms for "military purposes," it was universally in the phrase "to bear arms *against*." For example, the Declaration of Independence says, "He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country." But to otherwise constrain the meaning of "bear arms" contradicts not just history (as we shall see) but dictionaries and plain sense.

So we have covered "the rights of the people," and both "to keep and bear arms," but what is almost funny is that even "well regulated" does not mean what we twenty-first-century people tend to think. This is important, for often "well regulated" is emphasized, as if by using a word we now associate with legislation, we mean that the right discussed must be practiced only when subject to that legislation. Yet "well regulated" in eighteenth-century parlance meant little more than *well organized*, *well maintained*, or *in proper*

working order.

Looking back at Cunningham's *Law Dictionary*, we read, "All *well-regulated* governments have laid down and fettled certain rules of propagation, as necessary to the very being of human society" (my emphasis). Presumably those arguing for a corporate right would not read that sentence as saying that these governments must, to function, be first subject to rules they have not yet promulgated. But, if so, they should observe *The Rule and Exercises of Holy Living and Dying* (1838) in which Jeremy Taylor wrote, "If zeal be in the beginning of our spiritual birth […] or come upon any cause but after a long growth of a temperate and *well-regulated love*, it is to be suspected for passion and forwardness" (my emphasis). Likewise, a 1783 translation of Charles Gobinet's 1655 work, *Instuction de la jeunesse en la piété* (trans., *The Instruction of Youth in Christian Piety*), says, "So that […] if you have a wife and *well-regulated mind*, it will appear by the modesty of your exterior behaviour" (my emphasis). Presumably again, neither Mr. Taylor's zeal nor M. Gobinet's mind were suspected of being subject to government legislation.

But if discussions of well-regulated institutions elsewhere in life do not satisfy, then we can look to William Rawle's 1825 *A View of the Constitution of the United States*. There he discusses the two parts of the Second Amendment. Of the explanatory or prefatory clause (more on this in a moment), he writes, "That [the Militia] should be well regulated, is judiciously added. A *disorderly* militia is disgraceful to itself, and dangerous not to the enemy, but to its own country" (my emphasis). He does not say "lawless" nor does he give any indication these militia would be creatures even of the state governments, much less the federal one.

And finally, even "militia" meant (and indeed, still means) something quite different from the national guards about which we are accustomed to think. "Militia" meant at the time nothing more or less than all able-bodied men under arms. So, for example, Webster's Dictionary of 1828 calls the militia "the able bodied men organized into companies." Or Madison in Federalist 46 tries to assuage fears of an overweening government by noting how useless it would be for the American government to field a standing army against "a militia amounting to near half a million of citizens with arms in their hands." Half-a-million was roughly the able-bodied (white) male population of the United States at the time. Or take it up with Thomas Jefferson, who wrote on January 26, 1811 to Destutt de Tracy, "the militia of the State, that is to say, of every man in it able to bear arms." While I do not think it necessary to restrict the right to keep and bear arms to able-bodied men given the grammar of the article (more on this in just one paragraph), that is what we would have to do if we read "the militia" as an American of the eighteenth-century would have.

Indeed, even if it were permissible to look to modern definitions to find what founding-era documents meant, this would not help those in favor of a corporate right quite as much as they suspect. For according to 10 U.S.C. §246, "The militia of the United States consists of all able-bodied males at least 17 years of age and […] under 45 years of age who are […] citizens of the United States." So unless we wish to exile from the protections of the Second Amendment half of the fathers of underage children and all women except those "who are members of the National Guard," those who propound the corporate right theory may not wish to be too strenuous in the belief that only those in the "militia" retain the right.

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In short, once we learn what eighteenth-century men meant by their words, we see that the Second Amendment could be rendered in modern English as something like, *A citizenry with properly maintained arms, being necessary to the security of a free State, the right of the voting public to keep and carry with them Arms, shall not be infringed*. And that is if we assume that

the clause, "the right of the people to keep and bear Arms, shall not be infringed," is limited by the clause, "[a] well regulated Militia, being necessary to the security of a free State." But the thing is, it is not permissible to restrict that second clause (the operative clause, the "shall not be infringed" clause) by any meaning of the first clause. To explain that, we must look at the grammar.

GRAMMAR

"A well regulated militia, being necessary for the security of a free State" is what grammarians call an explanatory, introductory, or (in *Heller*'s words) "prefatory" clause, and, specifically, it is called a "nominative absolute." Now a relatively obscure construction, it is common in Latin and therefore was common to the English of those (like the Founders) who had been schooled in Latin classics. While the name "nominative absolute" is almost unknown outside of those nerds who geek out about Latin grammar (guilty), we still use the construction in everyday speech. I hope discussing the construction in non-controversial sentences will explain how it works and what it means for the Second Amendment.

Merriam-Webster gives a modern-day English example in, "*he being absent*, no business was transacted." If we were to drop the first clause and keep just "no business was transacted," no native English-speaker would think vital information had been withheld. If we said for a while only the "operative clause," "No business was transacted," and then later started adding the "prefatory clause," "*he being absent*," no one would think we had changed our tune. Yet that is what those arguing for a corporate right would have us believe, that the fairly straightforward operative clause, "the right of the people to keep and bear Arms, shall not be infringed," is somehow changed, changed utterly by the introduction of the prefatory clause, "A well regulated Militia, being necessary to the security of a free State."

To make this clear, let us look at some more sentences. "*It being a holiday*, the store is closed," "*John being sick*, the Does aren't coming for dinner," "*Being exhausted from caring for her newborn*, Emily forgot to turn off the stove." No one would think that if Emily just bought a coffee on the road, her stove would magically turn off; no one would think that if the State announced that the holiday were ended, the store would magically reopen. As the *Heller* Court said, "apart from [serving a] clarifying function, a prefatory clause does not limit or expand the scope of the clause." This may be clearest of all if we alter the first clause with a "because" and use a finite verb: "Because it is a holiday, the store is closed," "Because

Rotunda for the Charters of Freedom at the National Archives building in Washington, D.C., where the Declaration of Independence, Bill of Rights, and US Constitution are on display (photo by Kelvin Kay via Wikimedia Commons).

John is sick, the Does aren't coming for dinner," "Because she was exhausted from caring for her newborn, Emily forgot to turn off the stove." Look back at the original sentences and these; we see there is no daylight between their meanings.

If we alter the Second Amendment in this way, we get, "Because a well regulated militia is necessary to the security of a free state, the right to keep and bear arms shall not be infringed." That is all the Amendment means, all it has ever meant, and we strangle in its crib the real conversation about what our laws ought to be by pretending otherwise.

If this is not evidence enough, we have both the Amendment's placement in the Constitution and considerable history to guide us. Let us look at the placement first.

PLACEMENT AND STRUCTURE

The structural arguments are often overlooked. Let us ask the question, *if a law were meant to protect the right of states to organize militias, where might we expect to find this right written?* We might answer, *presumably in the part of the Constitution which sets out the relationship of the federal to the state governments, especially if that part of the Constitution deals with the militia explicitly*. There is such a clause, but that is not where we find the Second Amendment.

Known as the "Militia Clause," Article I, Section 8, Clause 16 of the Constitution enumerates the role of Congress and the states in organization, arming, officering, and drilling the state militias. Congress has power "to provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States" and yet "reserv[es] to the States respectively, [the power of] the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." If a corporate right to keep and bear arms was meant to preserve State militias from federal interference, would it not make sense to place that right where the Constitution separates out federal from state responsibilities under the title "Organizing Militias"?

Instead, the Second Amendment sits in the Bill of Rights. As we all know, the First Congress of the United States passed the first ten amendments in exchange for the Anti-Federalists accepting the new Constitution. What most of us do not know is that James Madison originally proposed nineteen amendments, seventeen of which the House passed, from which the Senate consolidated twelve before a Joint Conference Committee edited the language of each.

Of those "original twelve amendments," ten received enough votes to pass and became the Bill of Rights we know. The states did not pass the "original first" or the "original second" amendments, though the *original second* amendment would finally be ratified on May 5, 1992, and become our Twenty-Seventh Amendment. It says that Congress may pass no law that increases their compensation before the next election of representatives. The "original first" spoke to how many people a Representative could represent, giving an absolute cap of 50,000 people to one Representative. If we operated under that amendment now, the House of Representatives would (as of the 2020 Census) have roughly 6,700 members. I am getting to why this matters, and it has to do with the heading—structure. The amendments originally proposed as first and second were about the relationship between Congress and the people. They placed limits on Congressional action and power.

Meanwhile, if we turn our attention back to the Ninth and Tenth Amendments, which we discussed in the *Language* section, we may remember that they deal with reserving rights to the people and power to the states and the people together. That is, these Amendments speak to the breadth of the power of the citizens. And so if we look at the whole structure of the original twelve amendments passed by the joint committee in the First Congress, we see that the first two deal with the powers and organization of Congress, and the last two preserve unenumerated rights and powers to the states and to the people.

The middle eight, then, deal with specific rights protected, such as the right to "the free exercise" of religion, or to be free from Double Jeopardy, or from "cruel and unusual punishment." If we are to accept that the First, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Amendments all protect individual rights held by the people, it would be whimsical at best to assume that the Second just so happens to protect a corporate right held by their respective states, especially since, as we have seen, there is not only a Militia Clause that deals with that exact issue but the Tenth Amendment concerns itself with reserving power from the Federal to the State Governments.

We have so far seen that the language of the Second Amendment suggests it protects an individual right. Additionally, the grammar of the Amendment all but

demands such a reading. Now, on top of all that, the very structure and placement of the Second Amendment is identical to seven other rights no one disputes are individual. I shall say it again: this creates a rebuttable presumption that the Second Amendment protects an individual right to keep and bear arms. There would have to be manifold historical evidence that the Founders, early courts, and contemporary legal theorists thought it protected only a corporate right, but what we find is the exact reverse. So our next step is to look to what that history says.

HISTORY

I would paraphrase the last argument of those who believe in a corporate right to keep and bear arms as, *I see how you get there linguistically, grammatically, and structurally, but that is not what anyone during the Founding Era thought*. For a version of this argument, I point back to Ms. Samuels in *The Nation*: "The National Rifle Association [waged] an intense 30-year campaign to secure an individual's constitutional right to keep and bear arms," and "the decision declared, *for the first time*, that the Second Amendment protects an individual right to a gun" (my emphasis). Likewise, the dissent in *Heller* wrote, "there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution."

This is almost the perfect inverse of the truth. No one seems to have contemplated that the Second Amendment could be a corporate right until fifty years after its drafting, and until well after the nineteenth-century, every commentary and court decision held it to be an individual right. Let us now take a look at them.

Ten of the original thirteen states protected the right to keep and bear arms in their own Constitutions before there was a Federal Constitution. The language was varied but the effect remained the same, and surely that intended effect, binding as these Constitutions are on the states alone, was not to reserve the right to field a militia to the States. The Pennsylvania Constitution (1776) establishes "that the people have a right bear arms for the defence of themselves and the state" while the Connecticut Constitution (1776) says, "Every citizen has a right to bear arms in defence of himself and the state." Meanwhile the Virginia Constitution (1776) establishes "that a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State," and the Massachusetts Constitution (1780) says, "The people have a right to keep and to bear arms for the common defence." Notice that neither Virginia's nor Massachusetts's Constitutions mention an individual right specifically. We would be mistaken to conclude from this that they meant thereby to exclude an individual right. Here is Chief Justice Isaac Parker, writing for the Massachusetts Supreme Judicial Court in 1825: "The liberty of the press was to be unrestricted, but he who used it was to be responsible in case of its abuse; like *the right to keep fire arms*, which does not protect him who uses them for annoyance or destruction" (my emphasis). The same was true for Virginia courts, as we shall see. If the Framers wished to protect less, they might have said more.

Of the forty-five States that have an explicit protection of the right to keep and bear arms, only Alaska and Hawaii have the Second Amendment in their Constitutions verbatim. What we do see is a general trend towards more explicit protections of the right. So, for example, the Kansas Constitution (1859) says, "A person has the right to keep and bear arms for the defense of self, family, home and state, for lawful hunting and recreational use, and for any other lawful purpose." This rise in specificity accompanies (though I have no direct evidence it is a consequence of) legislative attempts at regulation. Indeed, to protect against overreach, multiple pre-Civil War state courts had to correct their legislatures on the fact that "bear arms" meant for personal defense. See, for example, here, here, here, here, here, and here, and contrast this with the dissent's claim that "had the Framers wished to expand the meaning of the phrase 'bear arms' to encompass civilian possession and use, they could have done so by the addition of phrases such as 'for the defense of themselves.' " Congress thought it did not need to; later legislatures learnt otherwise.

This understanding of the right was not confined to state courts. In 1876, the Supreme Court in *United States v. Cruikshank* wrote that "[t]he very idea of a government republican in form implies a right on the part of its citizens […] The right there specified [in the Second Amendment] is that of 'bearing arms for a lawful purpose.' This is not a right granted by the Constitution. Neither is it in any manner dependent upon [the Constitution] for its existence. The second amendment declares that it shall not be infringed." Not only was *Cruikshank* decided in 1876—about 130

years before *District of Columbia v. Heller*, which "decision [apparently] declared, for the first time, that the Second Amendment protects an individual right to a gun," but the idea from *Cruikshank* that the right to keep and bear arms is not one granted but merely protected by the Constitution, seems to strike at the roots of Justice Stevens's assertion in the dissent that "there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution."

Courts often confirmed the individual nature of the right even when it would have been convenient for them to hold otherwise. For example, in a Virginia case in 1824, the court held that Constitutional protections did not apply to free blacks the same way they did to whites. "We will only instance the restriction upon the migration of free blacks into this State, and upon their right to bear arms." Unless one wants to argue that 1824 Virginia included black Americans in its militia, what the Virginia court is saying is that the Virginia Constitution, which was one of those Constitutions which did not explicitly mention self-defense as Justice Stevens seems to think it ought, nonetheless protects an individual right to keep and bear arms (See also *Dred Scott v. Sandford* [1857]).

Let us now turn back to Mr. Rawle's *A View of the Constitution of the United States of America*, which we met up in the *Language* section. Mr. Rawle wrote his treatise in 1825. He had been a successful lawyer in Philadelphia, had prosecuted the leaders in the Whiskey Rebellion, had revised the civil code of Pennsylvania, and had been appointed Attorney General by George Washington, a position he refused. He not only writes that "well regulated" means "well organized" in the prefatory clause, he has this to say about the operative clause: "The prohibition is general. No clause in the Constitution should by any rule of construction be conceived to give to congress a power to disarm the people. Such a flagitious attempt could only be made under some general pretense by a state legislature. But if in any blind pursuit of inordinate power, either should attempt it, this amendment may be appealed to as a restraint on both."

What is so remarkable to me about this passage is that Mr. Rawle wrote it in 1825, exactly one-hundred years before the Supreme Court held that the Fourteenth Amendment incorporated any portion of the Bill of Rights against the States. The First Amendment, incorporated against the States, is what prohibits Montana or Massachusetts from establishing a State Church. And yet, *eight years before* Massachusetts did, in fact, abolish the Church it had established since its days as a colony, Mr. Rawle argued that the Second Amendment would restrain even a state government from disarming the people.

If Mr. Rawle's account is not to taste, we can turn to Joseph Story, a Supreme Court justice from 1812 to 1845, who wrote his *Commentaries on the Constitution of the United States* in 1833. He writes, "The importance of [the Second Amendment] will scarcely be doubted by any persons, who have duly reflected upon the subject." And though he confines his commentary to the usefulness of armed men organized into a militia, Justice Story offers a worry and some ill-disguised scorn that may illuminate the meaning of the Amendment. First, noticing that "the American people [are] growing indifference to any system of militia discipline," he wonders, "how it [will be] practicable to keep the people duly armed without some organization, it is difficult to see." It is again directly inverse of what the proponents of the corporate right reading argue. They say the Second Amendment needed some people armed to maintain the militia; Justice Story worried that without the militia, we would not be able to keep the people armed.

In the next section of his commentary, Justice Story notes that our Second Amendment comes from "a similar provision in favour of protestants (for to them it is confined)" in England's "bill of right of 1688." There the individual right may be unambiguous even to a modern reader, for it states, "that the subjects, which are protestants, may have arms for their defense suitable to their condition, and as allowed by law." Justice Story wryly notes that "under various pretenses" the subjects of England have all but lost that right, it being "at present in England more nominal than real, as a defensive privilege." Another strike against Justice Stevens's assertion that "there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution."

These common law rights are our inheritance from English law. The great compendium of that law was published in 1765 by William Blackstone. Called *Commentaries on the Laws of England*, Blackstone's influence on the American colonies is almost impossible to overstate. Edmund Burke is said to have commented that as many Commentaries circulated in America as in England, and today Blackstone is still the most cited authority in the Supreme Court. Justice

One of the five auxiliary rights of private property was "that of having arms for [a citizen's] defence," which was part of "the natural right of resistance and self-preservation."

Breyer, who joined Justice Stevens's dissent (and wrote his own) in *Heller*, has written elsewhere that Blackstone's "influence on the founding generation was the most profound."

In Blackstone's first chapter of the *Commentaries* (called "Of the Absolute Rights of Individuals"), he writes that one of the five auxiliary rights of private property was "that of having arms for [a citizen's] defence," which was part of "the natural right of resistance and self-preservation, when the sanctions of society are found insufficient to restrain the violence of oppression."

Now, by "auxiliary rights," Blackstone did not mean they were minor, as we might now. Rather he meant they were necessary to the preservation of those "sacred and inviolable rights of private property." Indeed, he writes that though the rights of private property are "the principal absolute rights which appertain to every Englishmen […] in vain would these rights be declared, ascertained, and protected by the dead letter of the laws, if the constitution had provided no other method to secure their actual enjoyment." Thus the "auxiliary" rights, like the right of limiting the king's power, the right of equal access to the courts, and (yes!) the right to keep and bear arms. The American colonies knew it too. As one *New York Journal* article in 1769 had it, "It is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defence." As Justice Breyer says, this profoundly influenced the founding generation.

Few were influenced more so than St. George Tucker. Tucker had smuggled goods into the States during the American Revolution, and after the war wrote pamphlets encouraging the emancipation of slaves. In 1803, he published an American Edition of Blackstone's *Commentaries*. In an appendix, he wrote an essay titled "View of the Constitution of the United States" which said,

> This may be considered as the true palladium of liberty […] The right of self defense is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction. In England, the people have been disarmed, generally, under the specious pretext of preserving the game.

This understanding persisted into the latter half of the nineteenth century. For example, in Senator Charles Sumner's 1856 "A Crime against Kansas" speech,

> The rifle has ever been the companion of the pioneer, and […] never was this efficient weapon more needed in just *self defense*, than now in Kansas, and *at least one article in our National Constitution must be blotted out*, before the complete right to it can in any way be impeached. And yet such is the madness of the hour, that, *in defiance of the solemn guaranty, embodied in the Amendments to the Constitution, that "the right of the people to keep and bear arms shall not be infringed," the people of Kansas have been arraigned for keeping and bearing them, and the Senator from South Carolina has had the face to say openly, on this floor, that they should be disarmed*." (my emphasis)

Is there anything left of Justice Steven's assertion that "there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution"? Is there anything left of Ms. Samuels's complaint that the *Heller* "decision declared, for the first time, that the Second Amendment protects an individual right to a gun"?

If so, let us take some more whacks at it. After the Civil War, a report of the Commission of the

Freedmen's Bureau tells us, "the civil law [of Kentucky] prohibits the colored man from bearing arms […] Thus, the right of the people to keep and bear arms as provided in the Constitution is infringed." A Joint Commission on Reconstruction reported, "In some parts of [South Carolina,] armed parties are, without proper authority, engaged in seizing all firearms found in the hands of the freedmen. Such conduct is in plain and direct violation of their personal rights as guaranteed by the Constitution." The Freedmen's Bureau Act on July 16, 1866 assured freedmen "the right […] to have full and equal benefit of all laws and proceedings concerning personal liberty […] including the constitutional right to bear arms." This was understood by proponents as well as opponents of the measure, and was discussed both during the passage of the Fourteenth Amendment and the Civil Rights Act of 1871 (see here).

Indeed, a Representative Nye thought the Fourteenth Amendment unnecessary for the same reason Senator Sumner was so irate in his "A Crime against Kansas" speech, because (quoting Nye) "as citizens of the United States, [blacks] have equal rights to protection, and to keep and bear arms for self-defense." So too did Mr. Rawle back in his 1825 treatise, as we already discussed. With luck, we will see by now that this interpretation was not just partisan Republicans making hay during Reconstruction but the traditional understanding of a right both "sacred and undeniable" to quote Jefferson's paraphrase of Blackstone in the rough draft of the Declaration of Independence.

This understanding persisted through the end of the nineteenth century. Thomas Cooley was one-time Chief Justice of the Michigan Supreme Court, Dean of University of Michigan Law School, and the man after whom Thomas Cooley Law School is named. He also wrote what Lawrence Solum, then at Georgetown and now at the University of Virginia, calls "the most influential treatise of constitutional law in the second half of the nineteenth century" (the Heller court said the same in its decision, and so have others). In this treatise, Cooley lists those "fundamental rights of the citizen." Among them are the right to property, the free exercise of religion, and the right that "every man may bear arms for the defense of himself and of the State." Like the Second Amendment in the Bill of Rights itself, Cooley does not tag this right on to the end of his list where we might invent an excuse to believe he had moved from individual to corporate rights. The very next right listed is "of the people to be secure in their persons, houses, papers, and effects" and next after that is that the people may be free from having "soldiers […] quartered upon citizens in time of peace."

Later, in a book he wrote in 1880 called *General Principles of Constitutional Law*, Mr. Cooley even addresses the exact issue of this essay. After drawing the connection between the English Bill of Rights and the Second Amendment (as if Justice Stevens's assertion needed more killing), Cooley writes,

> It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent […] The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose.

Now, we have seen why the phraseology does not, in fact, suggest the operative clause is limited by its prefatory clause, but it is useful to mark that by 1880 that interpretation had wide enough circulation to be refuted.

Around the same time Mr. Cooley wrote, John Norton Pomeroy wrote more emphatically of the Amendment's meaning in *An Introduction to Constitutional Law* (1868), "The object of this clause is to secure a well-armed militia […] To preserve this privilege, and to secure to the people the ability to oppose themselves in military force against the usurpations of government, as well as against enemies from without,

The Freedmen's Bureau Act on July 16, 1866 assured freedmen "the right […] to have full and equal benefit of all laws and proceedings concerning personal liberty […] including the constitutional right to bear arms."

that government is forbidden by any law or proceeding to invade or destroy the right to keep and bear arms." And John Ordronaux was even more emphatic yet. In his 1891 *Constitutional Legislation in the United States*, Ordronaux wrote, "The right to bear arms has always been the distinctive privilege of freemen. Aside from any necessity of self-protection to the person, it represents among all nations power coupled with the exercise of a certain jurisdiction. From time immemorial the sword has been the sceptre of military sovereignty […] Therefore, it was not necessary that the right to bear arms should be granted in the Constitution, for it had always existed."

So it is no surprise that the Court in *Heller* could only find one commentator, Benjamin Oliver, arguing in 1838, that the Amendment "was probably intended to apply to the right of the people to bear arms [in the militia] only." Yet in the very next sentence Oliver admits that the general view of the Amendment in his time was to the contrary, that it protected an individual right; "It is a common practice in some parts of the United States, for individuals to carry concealed about their persons, some deadly weapon." That it was not until Mr. Cooley's treatise in 1880 that Oliver's argument was given enough attention to be refuted shows us this argument did not grow easy in American soil.

The dissent relies most heavily upon *United States v. Miller* (1939), but the case cannot support the reading the dissent would thrust upon it. The *Miller* Court held that the federal government could prohibit the keeping and bearing of sawed-off shotguns, that "[i]n the absence of any evidence tending to show that possession or use of a [sawed-off shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." Far from proving, as Justice Stevens would have it, that a man may keep and bear arms only for "a military purpose," the holding all but demands (as the *Heller* Court points out) that the right to keep and bear arms is an individual right, albeit one restricted to those weapons which have "a military purpose" (thus, I would note, exploding arguments that the Second Amendment was not meant to protect a right to "military-style assault weapons"—not that those are legal anyway).

Concluding their section on the history of the right to keep and bear arms, the *Heller* Court wrote, "The historical narrative that [those proposing a corporate right] must endorse would thus treat the Federal Second Amendment as an odd outlier, protecting a right unknown in state constitutions or at English common law, based on little more than an over-reading of the prefatory clause." To that I can only add that they would also have to assume our Founders wrote the Second Amendment with twenty-first-century definitions in mind. For even if the prefatory clause controlled the amendment, it would, at most, only limit the right to bear arms to able-bodied men.

CONCLUSION

No matter if we read the language of the Amendment as an eighteenth-century man would have, "Militia" as meaning the whole body of the people, "well regulated" as meaning well organized and maintained, "bear arms" as meaning for any lawful purpose, no matter if we look at the Amendment's placement within the Bill of Rights, or at how it is not placed near the Militia Clause, no matter if we see how the grammar of a nominative absolute makes the prefatory clause an explanation for the Amendment and leaves its "shall not be infringed" clause unaltered, no matter if we check what the founding generation wrote, or what the next generation wrote, or what the Civil War generation wrote, or what the generation over one hundred fifty years after the Constitution wrote, no matter, indeed, if we consult anything but the dissent in *Heller* and angry articles written in our nation's magazines by those who do not know what they are talking about, no matter what we do we cannot fail to see that the right was meant to be individual. And the *Heller* Court correctly decided that it was.

For those who still want to confine the right to keep and bear arms to those serving in the militia (and, if you are still reading this even now, God bless you), I write nothing in this essay to try and dissuade you. That is not its point. If you look at Switzerland or Canada or Japan and admire their gun laws, keep arguing for them. But we must be serious about what our laws mean if we are going to have real conversations in this country and not argue past each other.

A corporate right to keep and bear arms might be good policy, but it is bad law. The Second Amendment meant to protect and has been read for the bulk of American history as protecting an individual right to keep and bear arms. It still does, and it will until we amend our Constitution. So let us make the case

on moral and practical principles to amend it, but let us not rely on vain hopes of a *reinterpretation* that has no support in the Amendment's language, its grammar, its placement and structure, or its history. Let us all read well and have better arguments. ■

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THE MORAL FAILURE AND RATIONAL POLITICS OF "ENHANCED INTERROGATION TECHNIQUES"

By Sam Raus

Image adapted from a photo of the “Torture, never again” monument in Recife, Brasil. (Original photo by Thombr via Wikimedia Commons)

Despite prior warnings in the President's Daily Briefing on August 6, 2001, the White House failed to prevent the most horrific terrorist attack in United States history. On September 11, 2001, Al Qaeda terrorists hijacked four commercial airplanes and crashed them into New York's Twin Towers, the Pentagon, and a field in rural Pennsylvania. Killing 2,977 people and injuring thousands, including firefighters and police officers who rushed into the burning skyscrapers in Manhattan, 9/11 sparked a seismic shift in American foreign policy and national security strategy. In response to the unforgivable assault on American lives and domestic tranquility, President George W. Bush initiated the "War on Terror" to eliminate terrorist groups that employ Islamic jihad extremism to target and harm Western democracy. As Bush sought to uphold homeland security and root out future threats to Americans' safety, the White House explored new means of intelligence gathering. Ultimately, the Central Intelligence Agency (CIA) outlined a proposal to pursue "enhanced interrogation techniques" (EIT) reverse-engineered from the training provided to US military personnel in the Survival, Evasion, Resistance, and Escape (SERE) program. The techniques proposed included severe sleep deprivation, stress positions, confinement inside boxes with insects, and waterboarding.

The CIA pursued the review and use of EITs after a covert memo from President Bush on September 17, 2001 authorized Director George Tenet to "undertake operations designed to capture and detain persons who pose a continuing, serious threat of violence or death to U.S. persons and interests or who are planning terrorist activities." Following the capture of multiple members of Al Qaeda, the Bush administration sought to extract any knowledge they may hold of future terrorist operations against the US. As a result, the CIA began using EITs in secret detention centers created to hold enemy combatants, known as "black sites." At these prisons, the CIA exploited EITs and subjected prisoners to forced nudity and repeated waterboarding most notably waterboarding Abu Zubaydah a total of 83 times.

Originally outlined as an effective policy based on prior research of US military training, the CIA practices devolved into an immoral and legally dubious use of torture. The Bush administration's decision to use EIT stained American history and undermined the foundation of Bush's foreign policy in the War on Terror: upholding the legitimacy of US intervention abroad to defend democracy and human rights. With the evaluation of EITs' success remaining inconclusive and circumstantial, the US must recommit the CIA to upholding the moral high ground of just warfare and not employ the use of EITs. Amid ongoing conflicts in Israel and Ukraine, American leaders may feel inclined to pursue any means necessary to decisively quash Hamas terrorists or a Russian invasion. But to do so would erode America's commitment to basic Western values.

In pursuing the use of EITs, the Bush administration leaned into the national security threat of terrorism and public fear following the 9/11 attacks. The President defended the CIA's practices as militarily necessary to extract intelligence by invoking an open interpretation of what "necessity" may constitute and the discretion afforded to the presidency to preserve American security interests. In a 2002 memo by Attorney General Alberto Gonzalez, the administration specifically outlined the goal of using EITs to "quickly obtain information from captured terrorists" in order "to avoid further atrocities against American civilians," directly challenging the Geneva Convention's guidelines on the treatment of prisoners. In the infamous leaked "Torture Memos" by Justice Department lawyer John Yoo, the White House aimed to limit the interpretation of what constituted "torture" to only acts equated to organ failure, severe bodily harm, or death. Emphasizing the President's authority and America's pressing security needs, the American public grew in support of the War on Terror in 2002, and later, even after the Senate Intelligence report on EITs, a majority still supported the use of such tactics in some circumstances. A frequent defense of employing EITs or torture, both in US public discourse and around the world, relies upon the "ticking time bomb" scenario. The hypothetical dilemma defends the tactic of torturing prisoners in cases when doing so could extract life-saving information to diffuse a bomb. While the Bush administration did not directly appeal to the "ticking time bomb" scenario, various defenders of EITs—including prominent lawyer Alan Dershowitz in his analysis of American and Israeli interrogation practices—invoked the moral imperative of preventing such catastrophe by any means necessary.

Given the ambiguous intersection of federal and international law, however, the exceptions argued by the Bush Administration against the prohibition of torture were legally dubious. As defined by the 1948

United Nations Convention Against Torture (CAT), "torture" is the "cruel, inhumane, or degrading infliction of severe pain or suffering, physical or mental, on a prisoner to obtain information or a confession, or to mete out a punishment for a suspected crime." As a result of the Supreme Court case *Filartiga v. Pena-Irala*, the US follows the CAT definition of torture. In turn, the "enhanced techniques" used by the CIA under Bush were strictly in violation of a ratified US treaty previously upheld by the Supreme Court. The White House sought to suspend CAT standards by redefining who the convention applies to and when. Specifically, the Bush administration categorized Al Qaeda, the Taliban, and other terrorists as unlawful "enemy combatants," denying them equal rights under CAT or the Geneva Convention. An effort to recategorize the situation also defined "failed states" like Afghanistan, which were not ensured rights by the CAT or the Geneva Convention. The executive branch also lobbied for wartime exceptions to these treaties, even though the UN convention does not afford an exception in the case of war or national emergency. Legal arguments in defense of EIT fundamentally rested on the Bush administration's publicly articulated rationales of presidential authority and circumstantial discretion to minimize concerns about abuse and misuse.

Yet the covert operations of the CIA inhibited public challenges to military "necessity" determinations and the verification of victims' accusations of excess punishment. Rather, allowing the CIA to use EITs grants permission for abuse and misuse of various practices with little potential for accountability. By the Bush Administration creating a new "parallel justice system" for the military to deal with terrorists, and with the Pentagon already laser-focused on obtaining "results" from interrogations, the president built a system of unchecked power and deficient justice. Moreover, the Justice Department offered a rebuttal to the claim that EITs were being used based on cost-benefit analysis while failing to provide a tangible metric that could be consistently applied to assess the need and value of EITs. Disregarding the techniques' blatant violation of various US treaties, the Eighth Amendment, and even the 1899 Hague Convention, the Bush administration backed up the continued use of EITs as necessary to prevent future attacks on America and to root out terrorism in the Middle East. Yet, in attempting to extend the Bush Doctrine to a more robust, asserted national security strategy, the use of EITs contradicted the moral underpinnings of defending democracy through foreign intervention.

In addition to degrading the credibility of the US as a beacon of human rights, the use of EITs represents a blatant contradiction of American values and is ethically reprehensible. It represents an abhorrent pursuit of political expediency and ruthlessness over moral consistency. Enhanced interrogation, more frequently described as torture, violated various civil liberties afforded under the US Constitution including the right to not self-incriminate and protections against cruel and unusual punishment. Furthermore, the use of EITs goes against numerous basic principles of humanity. The exhaustive, degrading, and violent interrogations violate the agency and autonomy of detainees through the use of force on the defenseless. In turn, the CIA breached the principle of non-combatant immunity and the traditions of just war. The Bush administration's use of EITs in the War on Terror resulted in over 200 estimated deaths and many more serious injuries in custody due to the unhealthy, unregulated practices at black sites. As the Senate Report on the CIA Detention Interrogation Program publicly revealed, the CIA's use of EITs included repeated use of waterboarding and other methods for several months while failing to invoke a confession from detainees. Unsafe conditions, including severe temperatures, inadequate diet and ventilation, and a failure to treat illnesses, ended in detainees dying before revealing any valuable intelligence. Costing the US critical assets, the use of EITs also violated

> *American leaders may feel inclined to pursue any means necessary to decisively quash Hamas terrorists or a Russian invasion. But to do so would erode America's commitment to basic Western values.*

unalienable rights under the pretenses of national security and emergency. The Bush administration provided faulty legal justifications and invoked a time of war argument to defend EITs, which countered the original ideals of the American founding. Paramount to civil liberties in the US is always the guarantee of certain natural rights and protections, without the government being able to suspend them.

Central to the justification of EITs lies the supposed effectiveness of aggressive interrogation to produce intelligence needed to subvert future terrorist attacks and pinpoint the activity of terrorist organizations. By and large, however, the jury remains out on the efficacy of torture. The Senate Intelligence Committee's findings on the CIA's use of EITs found a serious gap between the proclaimed success of the techniques and the tangible intelligence results obtained. Psychological studies and reports by military interrogators and intelligence experts corroborate the Intelligence Committee's report, showing traditional interrogation techniques as far more effective than "torture." Although the secretive nature of EIT and ethics of zero-harm research leaves little direct study into their results, research shows that methods vastly less coercive than EIT frequently produce false con-

Detainees sit in a holding area under the supervision of Military Police at Camp X-Ray, Guantanamo Bay, Cuba, during intake procedures at the temporary detention facility on January 11, 2002.

-fessions. For example, the CIA originally cited the waterboarding of Khalid Sheikh Mohammed as the source leading to the capture of Osama Bin Laden's courier. But the Senate report details that this was a false attribution and the intelligence derived from electronic signals data.

Nevertheless, defenders of the Bush administration refuted critiques of EITs' effectiveness, arguing that the critiques lacked credible sourcing from within the CIA and were factually wrong about the valuable intelligence collected. Supporters of the president's policy attribute EITs to preventing any major terrorist attacks on American soil by foreign Islamic militant groups since 9/11. The Senate report refutes that claim, finding no strong evidence that enhanced interrogation techniques helped gather intelligence to thwart terrorist attacks. With additional information on the effectiveness of EITs remaining redacted and classified, specific operational details in particular, the published Senate Report, and various Bush administration memos provide the most comprehensive publicly available information challenging the claimed value of EIT. Regardless of the policy's effectiveness or the rampant security fears after the 9/11 attacks, the Bush administration's decision to use enhanced interrogation techniques was a mistake and eroded America's moral credibility on a global stage.

Following the release of the bombastic Senate report on EITs, Congress passed the "McCain-Feinstein Amendment"—named after Senator John McCain, who was brutally tortured as a prisoner of war in the Vietnam War, and after Senate Intelligence Committee Chairwoman Senator Dianne Feinstein—which codified rules on interrogation outlined in the Army Field Manual (AFM) in an effective ban on EIT "torture." While the Obama administration ended the use of EITs and closed black sites in his first term, the amendment further extended transparency by mandating access to US detainee facilities for the International Community of the Red Cross. Nevertheless, throughout the 2016 election cycle, Donald Trump pledged to undo Obama's executive order and the McCain-Feinstein amendment, offering the outright defense that "torture works" in order to revive the use of EIT tactics. Yet, Trump's plans did not come to fruition during his turbulent presidency, failing to reverse the codification of the AFM guidelines and reopen CIA black sites. Since then the Biden administration has abided by the same principles as those instated by Obama, releasing a public statement in

recognition of International Day in Support of Victims of Torture and describing torture as "an ineffective method for gaining reliable intelligence."

Yet Trump's promise of sweeping administrative reform, should he return to the White House, might extend to the intelligence community, including a revived attempt to employ EITs. As the United States and Western allies face a new terrorist threat from attacks by Houthi rebels in the Red Sea, Trump and allies may invoke EITs as a critical element of his "strongman" diplomatic posturing. But a second Trump administration's counterterrorism and intelligence strategy using EIT would depend upon Congressional support to overturn the McCain-Feinstein amendment and other laws. The haunting memories of the Senate report still hang over members of Congress, as seen by Republican Senator John Thune's insistence that EITs and black sites are "a debate we've had already." Likewise, the growing influence of the "restraint and realism" movement—those seeking to limit America's role in international affairs—poses an internal challenge to Trump's push to expand intelligence efforts using EITs. Overall, any revitalization efforts by Trump appear unlikely barring severe national security threats or attacks on American soil.

Today's efforts to defend the US and American troops abroad cannot rely on the use of EITs and other inhumane means of intelligence gathering. Lawmakers and bureaucrats must remember the moral failure of the War on Terror techniques and invest in research on interrogation practices. Ultimately, the last line of defense for using EITs often looks back at the "ticking time bomb" scenario offered by Dershowitz. While pulling on the emotional heartstrings of decision-makers, most likely the president, this hypothetical fails on two fronts. First and foremost, all declassified intelligence shows that such a "do-or-die" situation has not come to fruition. But more importantly, such extreme hypotheticals should not dictate the USA's moral judgment and application of the law.

The fundamental principles of basic human rights and civil liberties, including due process and justice, must always be guaranteed in America. The US government, in particular the presidency and intelligence agencies, must retain the moral high ground in combating the extremism of terrorists, authoritarian dictators, and other enemies of democracy. By sanctioning tactics like waterboarding and prolonged sleep deprivation, the United States abandoned its ethical standing. Ceding such clarity gives groups like Al Qaeda a permission structure to inflict equal damage on captured American soldiers. Any American who finds the torture of US soldiers unacceptable should apply the same principles to the operations of US intelligence. The incoming Congress, should Trump return to the White House, needs to recount the enduring legacy of Feinstein's report and McCain's service in Vietnam when discussing the means of CIA interrogation. Additional legislation must consider the value of transparency and oversight to prevent future abuses of power by CIA operatives. This could include the creation of an independent inspector general role to oversee the review of intelligence methods to ensure adherence to the AFM. Regardless of the threats posed to the next generation, America should not repeat its past mistakes. By learning from history—even history as recent as the Bush administration just two decades ago—Washington can find moral clarity and avoid further damage to America's credibility and values. ■

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NINETEENTH-CENTURY FRENCH CATHOLICS' CHALLENGE TO INTEGRALISM

By Jennifer Conner

Two peasants bow their heads in prayer at the end of their workday in Jean-François Millet's L'Angélus. *Photo: Wikimedia Commons*

In 2019, Sohrab Ahmari and David French engaged in an infamous debate that culminated in a discussion of drag queen story hours. Both men agreed that exposing children to drag queens is immoral; however, while French argued that the First Amendment protects drag queen story hours, Ahmari argued that such activities are harmful to society and ought to be suppressed by the government. Whatever your opinion about the morality of drag queen story hours, the Ahmari-French debate reveals a major disagreement in conservatism about the very definition of freedom. Does freedom necessitate tolerance for wrongdoing?

Legal scholar Adrian Vermeule lands firmly on the side of "no." A Catholic convert (like Ahmari), Vermeule argues that religion and liberalism are inherently opposed to each other, and that the government should only permit individual freedom insofar as it will facilitate actions deemed righteous by religious authority figures. To support his theory of the necessary antagonism between liberalism and the Catholic Church, Vermeule appeals to numerous historical sources, including nineteenth-century French Catholic Joseph de Maistre. But is it true that liberalism and Catholicism are inherently opposed to each other? It turns out that de Maistre was not the only French Catholic of the nineteenth century, nor should his views be considered representative of all Catholic thought on the matter. In fact, in an age when religion was in decline due to both a loss of faith on the individual level and institutional interference (sound familiar?) some Catholics latched onto liberalism as a lifeboat for the Church itself.

> *Many Catholics of the nineteenth century saw in liberalism and tolerance not only a tolerable circumstance but a positive good for the Church and its mission.*

Here we should pause and acknowledge that the word liberal has immensely varied meanings. Broadly speaking, *liberal* as applied to political regimes emerged in the nineteenth century as a way to describe the rights-based republics sprouting up during and after the French Revolution. For the purposes of this essay, it is fair to say that at a basic level, Vermeule's issue with liberalism seems to be its emphasis on tolerance. In a 2017 article in *First Things* entitled "A Christian Strategy," Vermeule outlined an argument that runs like this: liberalism is founded on tolerance, tolerance permits undesirable behavior, and at the same time forbids anyone from publicly objecting to that undesirable behavior, becoming more and more restrictive and intolerant in its efforts to quash those objections. In the end, according to Vermeule, "liberal intolerance represents not the self-undermining of liberalism, but a fulfillment of its essential nature."

Vermeule argues that this liberal intolerance inevitably targets the Church. In that same *First Things* article, Vermeule wrote that "both politically and theoretically, hostility to the Church was encoded within liberalism from its birth." He even assigns this conflict Biblical dimensions by equating liberalism with the serpent in Genesis 3:15 and the dragon in Revelation 12:1–9. It is true that the Church found itself at odds with one version of liberal tolerance in the last years of the eighteenth century and during the entry to the nineteenth. The history here is complex, but it is true that revolutionary France turned to convent-burning and altar-desecrating within a decade.

It is also true that the popes condemned various liberal regimes throughout the nineteenth century. But was all of this baked into the cake of liberalism from the beginning?

Once again, as is usually the case in history (though not always in political theory), the contingencies are complex. It should be noted, however, that the way we understand *tolerance* today (you go to your church, I'll go to mine, and we won't kill each other or try and stop each other), was *de jure* for Catholics and Protestants in France after the Edict of Nantes in 1598. The nineteenth-century Church was not critical of this kind of tolerance. The Church was, however, critical of "religious indifferentism," the claim that a people cannot be free as long as religion holds sway over their minds. In the words of Diderot, "the people can never be free until the last king is strangled with the entrails of the last priest." It seems to me, at least, that at the time of the Founding, American liberal tolerance was much more like the former than the latter.

But where are we today? Is Vermeule correct that we have inevitably drifted toward that more extreme

form of "liberal intolerance"? Do Americans seek the total destruction of religion? I do not think it's as bad as all that. But if it ever gets to the point that the government is taking steps to suppress religion entirely—as happens in many places around the world, including the notable bastions of *illiberalism* Venezuela and China—why must we conclude this is the necessary consequence of, rather than the perversion of, a more legitimate form of tolerance? Historical correlation (between the Edict of Nantes and the Terror, separated by three hundred years) is not causation.

There are good reasons to think the causation does not exist; for one thing, many Catholics of the nineteenth century saw in liberalism and tolerance not only a tolerable circumstance but a positive good for the Church and its mission. At the same time de Maistre was penning his treatise against liberalism, three other French Catholics were pioneering a new paper called *L'Avenir*, "The Future." Félicité Lamennais, Charles de Montalembert, and Henri Lacordaire were three devout French Catholic liberals, who had no desire to return to the Old Regime. But if de Maistre and Vermeule are correct and liberalism is inherently antagonistic to religion, why did these three Catholics not only accept liberalism but fervently defend it?

In 1815, the French Revolution was over and Napoleon had finally been banished to a remote island. The first generation of Frenchmen who had no direct memory of the Revolution was just beginning to come of age and faced the immense task of picking up the pieces of a society in the midst of an identity crisis. A Bourbon king was back on the throne, which was shocking enough for a country that had symbolically executed his brother only a few decades earlier. King Louis XVIII tried to ease the transition by allowing several revolutionary-era reforms to remain in place, including the limits of a constitution and a parliament.

For many Catholics, the mere thought of a king on the throne seemed like a huge victory. Many of these Catholics had witnessed the atrocities committed by revolutionaries in the name of religious indifferentism in the Vendée, including retributive mass drownings of civilians. But some conservative Catholics wanted to push even further and strike at the liberal reforms that limited Louis XVIII's power. In his *Essay on the Generative Principle of Constitutions*, de Maistre argued that the only proper form of government is one in which a king may suspend written law for the sake of the common good. In other words, the common good must take precedence over written laws that admit toleration of undesirable behavior. The Church and the king should work closely together to know exactly what laws ought to be suspended and when. Though he may prefer a religious oligarchy rather than a monarch, Vermeule agrees with de Maistre and claims that, two hundred years later, de Maistre's work presents a "sharp blow to the liberal vision […] that was never successfully parried."

But not all nineteenth-century Catholics felt that liberalism, and the tolerance it brought with it, was getting in the way of the common good. For these Catholics, liberal policies were the guarantors of the Church's freedom, and a free Church ultimately brought about the common good. Freedom of the Church was a major concern in restoration France. The Concordat signed by Napoleon was still in effect, making Church officials salaried employees of the state and obliging clergy to swear an oath of loyalty to the French state. Historic Church lands were still in the possession of the state, and the state monopolized education. The Church and state seemed to be wor-

***Plundering of a Church during the French Revolution of 1793* by Victor-Henri Juglar, oil on canvas, ca. 1885. (Photo credit: Wikimedia Commons)**

-king closely together, but it was hindering the Church.

In the newspaper *L'Avenir*, Henri Lacordaire argued that the Church needed "to rid itself of all solidarity with a power [the French state] that was not animated by [the Church's] spirit, and to seek the exercise of the freedoms promised to every citizen."[1] Lacordaire argued that the French state was not acting in consonance with the Church's best interests. Critically, his proposed solution is not immediately conforming the state to serve the Church's interests but rather granting proper freedoms for every citizen. In his view, the state ought to allow the Church to function freely and fulfill its mission. This approach hearkens back to Augustine's claims in *City of God* that the task of the state is to maintain peace so that the Church can function. This is very different from Vermeule's integralist model. Rather than an elite religious group enforcing very particular moral standards from the top of the government, the state would promote tolerance and allow the Church to educate the citizenry and care for their souls. Only then would the people be virtuous, and when their virtuous interests were represented by their government, the laws would in turn become more virtuous and serve the common good.

In Lacordaire's view, as long as the state had, in principle, the power to suppress individual rights for the purposes of promoting Catholic ends, it also had the power to oppress the Church. The French state seemed to benefit the Church by bankrolling its officials, but the salaries came with strings attached, including state interference in Catholic education. Lacordaire took umbrage with this particular infringement and, with the help of Lamennais and Montalembert, opened an unsanctioned Catholic school for boys in Paris. Shortly after its opening, state officials came to close the school and seize the building. Lacordaire was forced to send the boys home and he only barely retained the building by claiming it as his residence and pointing to his sleeping mat in the corner of the classroom.[2]

The solution, for Lacordaire, was not a return to an integrated Catholic monarchy, but to free the Church from the state. The Church, he argued, "always had the words reason and liberty on her lips when the inalienable rights of the human race were threatened."[3] Lacordaire might have been inclined to agree with Joseph Ratzinger's later explanation of liberty as "having to do with being given a home." It was through the Church that an individual could reach his true home and true liberty, and in order to fully participate in the Church—to receive a Catholic education, for example—the state ought to adopt a policy of tolerance. Thus there are two kinds of "liberty" at play here: the one is the theological liberty of membership in the Church, and the other is a sort of political tolerance, or willingness to allow a political regime to remain agnostic on certain questions, at least temporarily.

Crucially—*here Lacordaire's liberalism differs from a kind of libertarianism which admits no vision of a common good*—the separation of Church and state does not mean that religious values must always remain absent from the law. Ultimately, once individual souls have been gathered into the Church, their moral interests will be represented in popular government and therefore the positive laws of the state will accord more closely with morality. This is a process to be undertaken, and it relies upon the conversion of souls; it is not a top-down fix predicated upon an all-knowing religious elite at the top of government foisting their views upon the *hoi polloi*.

When Lacordaire took Alexander de Tocqueville's vacant seat in the Académie Francaise, an American reporter remarked that it was strange to see "a man so thoroughly imbued with the worship of the Catholic religion defend, before the world […] liberty and equality."[4] As Lacordaire took the seat dressed in full Dominican habit—he had helped refound the Order of Preachers in France after its abolition during the Revolution—he saw no contradiction. At his induction, he delivered a powerful address affirming the consistency of sincere faith with tolerance, proclaiming his wish to "die a repentant religious and an unrepentant liberal."

The conflict in nineteenth-century France brings to mind the Investiture Controversy. The Investiture Controversy centered around whether the state ought to act as an intermediary between the people and the Church. The triumph of Gregory VII under the banner of *libertas ecclesiae* set a precedent for a separation of church and state for the Church's particular benefit. Debates may be had whether this move was historically beneficial for Christendom. However you land on that side of the debate, we no longer live in medieval Christendom. A state as the intermediary of the Church—particularly in a place as religiously diverse as the United States—would necessarily lead to unprecedented levels of coercion. This was as true

in the nineteenth century as it is today. Lacordaire's point seems to be that such coercion violates the very liberty that the Church seeks to give every person as a matter of dignity. Rather than political coercion, the state should back out of the way, give the Church room to function, and thereby educate the citizens to craft their own righteous laws.

The points raised by Lacordaire and the writers of *L'Avenir* highlight a trend of Catholic thought that does not view liberalism and Catholicism as inherently antagonistic. The story of the reception of their ideas in the hierarchy of the Church is a complicated story for another time. Fundamentally, Lacordaire and the writers of *L'Avenir* believed that the separation of Church and state, and yes, even political tolerance, would provide the room necessary for the Church to lead her people to true liberty and then lead the representatives of that virtuous people to craft virtuous laws. The integration of Church and state and other methods of undermining tolerance would be a practical hindrance to such efforts by giving the state too much authority over the Church as well as an illegitimate spiritual shortcut; rather than converting real individual, immortal souls, such an approach would rely on pure coercion that would win no souls for Christ and would risk incredible scandal. Liberalism, then, insofar as it describes religious tolerance, is not inherently anti-Church, and in fact, because of its appreciation for individual dignity and the otherworldly character of the Church, is a genuine fruit of the Church itself.

So is liberalism powerless to stop drag queen story hours? Must freedom necessitate tolerance for wrongdoing? The answer to both of these questions, based on the work of these nineteenth century Catholics, is no. A liberal society, if it so chose, could in fact stop drag queen story hours. Such a move would follow a *process* of moral education that would be reflected in the laws crafted by the members of society. Insofar as such laws conformed to true morality, that society, which already possesses "liberty" in the sense of tolerance, would also gain the more fundamental form of liberty that comes not only with moral actions but also with a moral character. In an integralist, top-down model, neither form of liberty would materialize, since there would be no tolerance and there would be no individual character development.

Vermeule's integralism proves so tempting because it means the state will enforce communal "salvation" without any of the discomfort of reformation on the individual level. It teaches that you can stop drag queen story hour without ever having to get to know a drag queen yourself, how convenient! Convenient, perhaps, but a deeply un-Christian attitude. As the Catholic Church has taught, century after century, we must embrace the great "both, and" of individual salvation and communal salvation; to pursue the communal aspect without the individual would render both null. ■

This essay was previously published in The Hillsdale Forum.

ENDNOTES:

[1] Gabriel Ledos, *Lacordaire* (Paris: Libraire des Saints-Pères, 1902), 80. All quotations from Ledos are my translation.

[2] Carol E. Harrison, *Romantic Catholics: France's Postrevolutionary Generation in Search of a Modern Faith* (Ithaca: Cornell University Press, 2014), 127–28.

[3] Henri-Dominique Lacordaire, "Letters to Young Men," quoted in Carol E. Harrison, *Romantic Catholics: France's Postrevolutionary Generation in Search of a Modern Faith* (Ithaca: Cornell University Press, 2014), 27.

[4] "Our Foreign Correspondence: From Paris. American Topics in the French Journals Father Lacordaire and the French Academy M. Guizet The Bonaparte-Patterson Trial No Agents for South Carolina," *The New York Times* (February 19, 1861).

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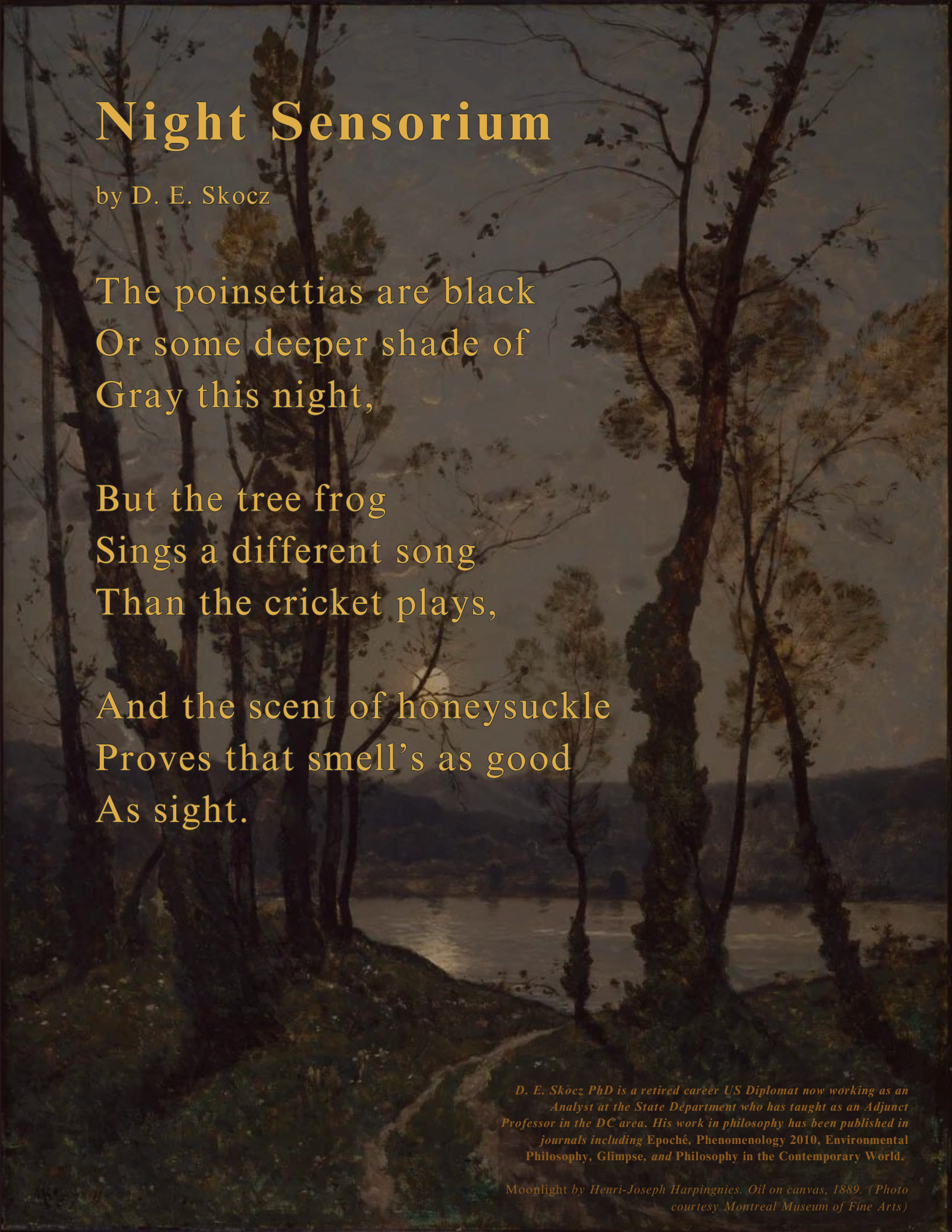
Night Sensorium

by D. E. Skocz

The poinsettias are black
Or some deeper shade of
Gray this night,

But the tree frog
Sings a different song
Than the cricket plays,

And the scent of honeysuckle
Proves that smell's as good
As sight.



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Moonlight *by Henri-Joseph Harpingnies. Oil on canvas, 1889. (Photo courtesy Montreal Museum of Fine Arts)*

Cover photo: Reagan has lunch with House Speaker Tip O'Neill in Oval Office, March 7, 1985 (Photo credit: Wikimedia Commons)