

Opinion: We the People, Establishing Rule of Law



US Constitution - Preamble

Civilization itself is the product of rule of law - respect for life, equality of individuals, protection of the weak from the strong - that separates us from the alternative, the so-called "law" of the jungle that is merely complete absence of law. An absolute monarch or dictator "whose word is law" exercises naked power where "might makes right" in the absence of law. By definition, rule of law is the principle that law is superior to the will or whim of any individual.

In our society we have come to expect rule of law. This does not mean, of course, that we do not also expect some law-breaking, but we understand it as deviation from the norm. What has the potential to truly destroy the world as we know it is if law-breaking and disregard for the law become the new normal.

Disabusing our overconfidence that classical liberal ideals valuing individual freedom and liberty had become irreversibly ascendant everywhere, we have instead been shocked by backsliding of entire nations toward authoritarianism. Turkey has degenerated under Recep Tayyip Erdoğan from secular multiparty democracy to Islamist dictatorship, imprisoning thousands for alleged treason. Hungary has gone under Viktor Orbán from an emerging democracy escaping communist oppression to a sham democracy where cronies use government cash to buy up industrial concerns and opposition press. The Philippines under Rodrigo Duterte is engaging in (apparently politically popular) extra-judicial murders of accused criminals without trial. Venezuela under Hugo Chávez and successor Nicolás Maduro continues to pursue ruinous socialist policies that cause mass starvation and economic devastation. Even Israel, a liberal democracy where such a thing would have been unthinkable a few years ago, is about to hold an election where Benjamin Netanyahu, the incumbent prime minister, may still win despite facing criminal indictment for corruption. Russia under Vladimir Putin reversed its liberalizing course after the end of the Cold War and instead has returned to outright fascism where political opponents, including journalists, are openly assassinated. Perhaps most disturbing of all overseas, Xi Jinping of China has consolidated power in a way not seen since Mao Zedong, explicitly expressing hostility to principles of liberalism and pluralism that have always been understood in the West as prerequisite to a modern economy, insisting upon an alternative model of political theory that has been officially termed "Xi Jinping Thought."

Yet it has been Western democracies, and the United States specifically, that have for centuries been the leading exponents and advocates for rule of law. The Founders in the American constitutional era frequently referenced the historical Roman Republic whose traditions of law were so strong that even when it finally collapsed into the Roman Empire, Augustus was compelled to officially deny his imperial status as oligarch and claim instead that he was only "princeps civitatis" or "primus inter pares" - "first

citizen” or “first among equals” - which was utterly untrue. Indicative of the hypocrisy, the Latin word he chose to deny royal status, “*princeps*,” eventually became the root of the word “*prince*,” a royal title.

In the United States, we have fallen into the habit of exceptionalism, pretending that we have a magical exemption from the lessons of history. We don't. At the close of the Constitutional Convention in 1787, Benjamin Franklin was asked what kind of government had been decided, and he famously answered, “A republic, if you can keep it.” I reiterated that point myself a week before the 2016 election: “Once surrendered, freedom is very hard to get back.” (motifri.com/decency “Donald Trump: At Long Last, Have You No Sense of Decency?”, Nov 2, 2016).

As much as George Washington made it his priority to establish and preserve rule of law, Donald Trump makes it his priority to undermine rule of law. Trump has very different motivations from his supporters, to say the least, but they share one overriding thing in common: They have lost confidence in the rule of law, if they ever had any. In my opinion, one of the most profound and insightful analyses of Trump supporters is *Strangers in Their Own Land* by Arlie Russell Hochschild, a Berkeley professor who spent years studying the Tea Party movement sparked by the election of Barack Obama to the presidency in 2008. A few months before the 2016 election, she described the perception of Trump voters:

“You are patiently standing in the middle of a long line stretching toward the horizon, where the American Dream awaits. But as you wait, you see people cutting in line ahead of you. Many of these line-cutters are black — beneficiaries of affirmative action or welfare. Some are career-driven women pushing into jobs they never had before. Then you see immigrants, Mexicans, Somalis, the Syrian refugees yet to come. As you wait in this unmoving line, you're being asked to feel sorry for them all. You have a good heart. But who is deciding who you should feel compassion for? Then you see President Barack Hussein Obama waving the line-cutters forward. He's on their side. In fact, isn't he a line-cutter too? How did this fatherless black guy pay for Harvard?”

The fact that none of this perception is true does not mean it should be ignored; it is a classic example of what historian Richard Hofstadter in 1964 called “The Paranoid Style in American Politics.” Hofstadter cites the example of McCarthyism and the anti-communist witch hunts of the 1950s as an example, and McCarthy's deputy, Roy Cohn, would become a mentor and lawyer to Donald Trump when the family real estate business was caught in the 1970s discriminating against black rental applicants by marking their forms with the letter “C” for “colored.” Hochschild notes that 66% of Trump supporters falsely believe Obama is Muslim. Trump spent five years actively promoting “birtherism,” the lie that Obama was born outside the US and therefore ineligible to serve as president. While there is an element of racism in this, the racism is a consequence of and an excuse to justify the paranoia.

Trump lacks real ideology, but he does have an existential belief that he should do whatever he can get away with. He benefited in the 1990s from tax evasion by his father in connection with the transfer of almost half a billion dollars from father to son, and then repeatedly lied about it. He appointed family members with no qualifications as senior advisers and overrode regulations to get them security clearances. Over 350 Trump appointees were lobbyists, of whom 50 work directly in the Executive Office of the President and 200 were appointed to regulate the industry for which they lobbied. He has been accused of sexual assault by at least 20 different women.

The record-setting turnover among cabinet-level officials in the Trump administration subsumes many scandals: National Security Advisor Michael Flynn who lied about meeting with Russians and was later

criminally charged; Staff Secretary Rob Porter whose two ex-wives said he physically abused them; Secretary of Health and Human Services Tom Price who used government-paid private charter and military aircraft for unofficial travel; Secretary of Veterans Affairs David Shulkin who took private trips with his wife at government expense; Environmental Protection Agency Administrator Scott Pruitt who was under at least 14 separate investigations for spending habits, conflicts of interests, unnecessary secrecy, and inappropriate management practices; Secretary of the Interior Ryan Zinke whose expenditures and ethical problems were referred to the Justice Department for possible prosecution.

Trump appealed to voters who lost faith and confidence in the American Dream, who believed that they followed all of the rules and still were treated unfairly. Rather than try to restore faith and confidence in rule of law - to literally Make America Great Again - Trump shared and exploited that lack of faith and confidence, ushering in a cynical kleptocracy. Many people intuit that by doing this Trump is playing with fire, but few appreciate how big the conflagration could grow.

In ancient Greece, Aristotle in *Politics* wrote, "It is more proper that law should govern than any one of the citizens... if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only... servants of the laws." For Aristotle, equality before the law reflects the natural state of society: "It is unnatural that one man should have the entire rule over his fellow-citizens when the state consists of equals."

Historian Timothy Snyder cited exactly this in an interview with *Salon*: "The Greeks understood that democracy is likely to produce oligarchy because if you don't have some mechanism to get inequality under control then people with the most money will likely take full control. With Trump, one sees the new variant of this where a candidate can run by saying, 'Look, we all know - wink, wink, nudge, nudge - that this isn't really a democracy anymore.' He doesn't use the words but basically says, 'We all know this is really an oligarchy, so let me be your oligarch.'"

Snyder in 2015 published *Black Earth: The Holocaust as History and Warning*, in which he makes the radical assertion that the conscious goal of Adolf Hitler and Nazism was to destroy civilization to unleash a struggle for survival of the fittest. According to Snyder, Hitler wanted to abolish all nations and their institutions, returning humankind to an anarchic state of nature where the rule of the jungle would purify the world and its population through continual combat and contest. "There is in fact no way of thinking about the world, says Hitler, which allows us to see human beings as human beings... And so for people to be people, for people to return to their essence, for them to represent their race, as Hitler sees things, you have to strip away all those ideas," Snyder told *The Atlantic* in an interview.

I am not saying that Trump is a Nazi, and I am especially not saying that any significant numbers of Trump supporters are Nazis, but I am saying that what ultimately stops America, like everywhere else, from a risk of backsliding into fascism is rule of law and a social consensus that maintains faith and confidence in it.