How We Lost Constitutional Democracy

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Dateline: Washington, DC, November 2024. For the second time in three election cycles, a populist billionaire has won an Electoral College majority to become President of the United States. Drawing a cue from her recent predecessors, she has campaigned in fiery tones, demonizing liberals, threatening to shut down the universities that shelter then, and to lock up the ghetto thugs and radical Islamic terrorists they defend. She promises to restore American pride and power, and take back our country from radical ruination. After a feckless four years of divided government, in which crime upticked, the economy stagnated, and America's place in the world seemed to decline, the country's citizens respond to the President-elect's unequivocal promise of law and order. And as she happened to own the largest media conglomerate in the country, that message found its way to many ears.

Upon taking office, the new President seizes a moment of unified government to systematically consolidate power over other branches and civil society. Unlike her predecessors, she does not antagonize the courts. Instead, she handpicks allies for key judicial vacancies, and looses an army of Ivy League-trained lawyers to draft each executive order, and to explain how her innovations are consistent with the Framers' original understandings. Judges in response double down on existing doctrines that command deference to the executive's policy choices, enable the use of coercion, and that impede scrutiny of the motives behind such action. A cottage industry of legal scholarship mushrooms celebrating the "efficiency" and "optimality" of this new judicial restraint.

As her party in Congress bickers, substantive legislation continues to be rare, and executive orders have become the modal form of new law. Even when constitutionally commanded, the congressional role has withered. The appropriations and budgeting processes are largely driven by the president's agenda. On the regulation front, Congress enacts an umbrella statute known as the "Authorization of Regulatory Force and Adjustment" (affectionately known as "ARFA") that delegates to the President the power

to “take all necessary and appropriate steps he or she deems necessary” to streamline regulations “notwithstanding any prior laws passed by Congress”. Citing the White House’s unique democratic mandate and credentials, the Supreme Court upholds this delegation.

Using its newfound regulatory power, the Executive consolidated many government functions into the White House, creating a system of policy “czars,” including a gaggle of so-called “princelings,” who are close friends and family to the President herself. Congress repeals the Hatch Act and enacts the Holman Rule into law. The latter, formerly a 1876 House budget rule that allowed federal employees’ salaries to be reduced to $1, is aggressively used to purge non-loyalists from the bureaucracy. Citing theories of the “unitary executive” and “presidential administration,” the president claims the same power as a matter of inherent authority, and soon federal agencies are almost exclusively populated by those personally loyal to the new Commander in Chief.

On another front, the President urges her congressional majority to change the terms of the Federal Elections Campaign Act so that members of the two major parties alternate years serving as chair of the Federal Elections Commission, such that the President’s party holds the chair during even years. Coincidentally, all national elections were held in even years. Meanwhile, the Internal Revenue Service stepped up audits of media companies that competed with the President’s company, along with not-for-profits providing legal services to regime opponents. Periodically, the national security agencies anonymously leaks transcripts of opposition politicians’ compromising communications—often containing salacious details of extramarital affairs or sexual peccadillos.

Outside of government, the President’s media empire also turned on individual civil servants and the residual few federal judges not aligned with the White House. Those who resisted her policies, or her growing cult of personality, were flagged in a nightly twitter blast about the “Enemies of the People.” A sympathetic judiciary relaxes First Amendment constraints on libel and slander awards, and also permits punitive damages in such cases. Two national newspapers on the east coast are forced into bankruptcy by litigation costs and awards of damages.

Three years later, a lone terrorist commits a suicide attack at an NFL game. On the evening of the attack, the President stands in the stadium's still-smoldering entranceway to announce a new raft of restrictions on social media and "un-American" religious associations. She further explains that she will seek a constitutional amendment repealing the 22nd Amendment, which limits the president to two terms in office. State-level gerrymandering has given her a comfortable 2/3 majority in both houses of Congress. Privately, some members of her party are dismayed, but are too intimidated by the President's power and media empire to openly resist. The amendment sails through the otherwise demanding ratification process. A year later the President joins Franklin Delano Roosevelt as the only persons to serve more than two terms in office, sworn in on a bible held by her princeling son-in-law and presumptive heir.

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Dystopian fictions of the kind we have just sketched have their guilty pleasures. We squirm with recognition at Offred's plight or quiver in admiration of Winston's resistance. But dystopian fictions, like their utopian counterparts, have a serious end: Just as Margaret Atwood, in writing *The Handmaid's Tale*, sought to rely solely on repressive measures she had culled from human history, our less eloquent exercise has relied on legal and institutional changes that can be observed in one or another national context in which some backsliding away from democratic values has already occurred. Indeed, the real reason we begin with this unhappy tale is to ask what it is, precisely, that prevents the same steps from unfolding in the United States? And would what we have described amount to a failure of democracy?

Two years ago, many might have responded that the scenario we have sketched was too far-fetched to be imaginable. The United States has the world's oldest democratic constitution still in force. Beyond the relatively thin text of the document, there were norms of political practice, settled conventions within federal institutions, and robustly independent courts that would inhibit any attempt to permanently consolidate power. Despite the Civil War, two world wars, countless economic and security emergencies, national elections have never been postponed. Britain, by contrast, canceled elections during World War II. To be sure, there have been dark moments. President Abraham Lincoln unilaterally suspended the writ of habeas corpus in May 1861, as war

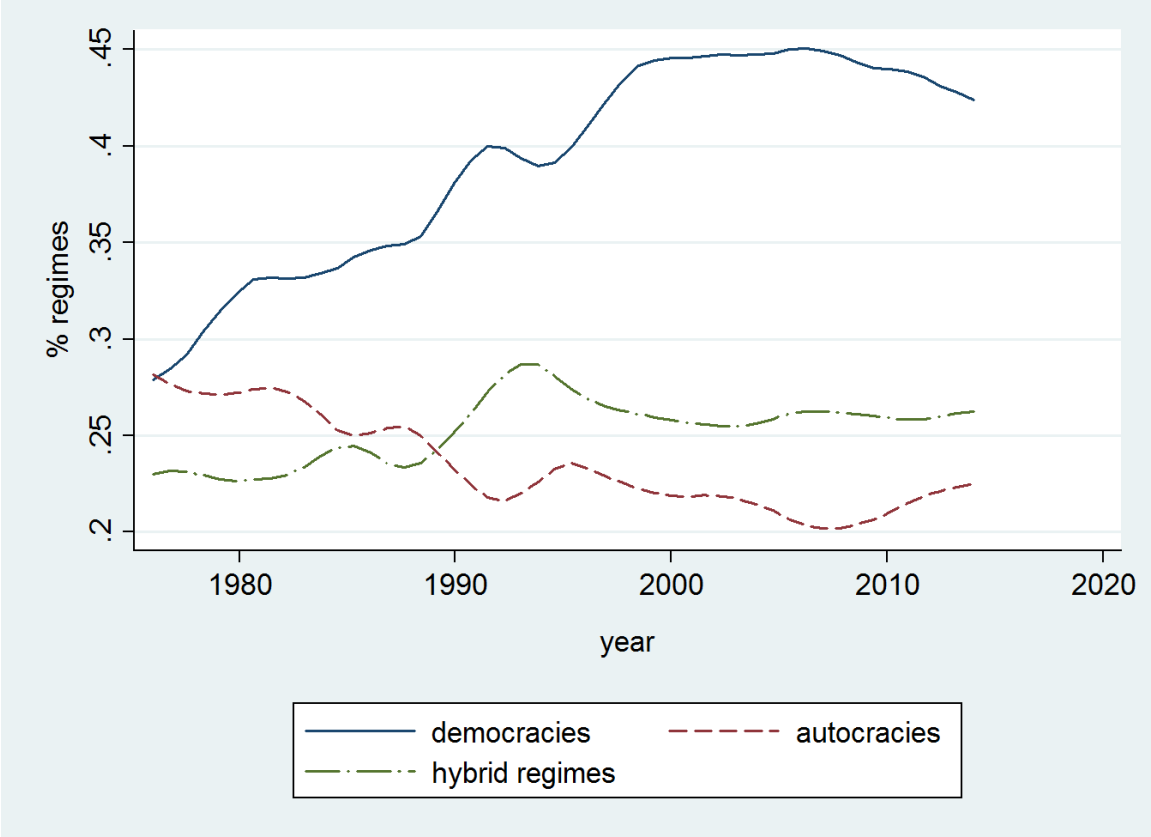
with the South, was beginning. As Geoffrey Stone's magisterial history of the First Amendment documents, anti-war activism was effectively criminalized in World War I, changing the parameters of the political sphere in important ways. Human and civil rights have been violated during many other crises, and we have a dismayingly long history of disenfranchising, excluding, and subordinating racial minorities. However, despite all this, we lack a history of *wholesale* corrosion of the three main pillars of our democratic institutions — elections, the rule of law, and freedoms of speech and association. As a result, we lack the historical experience needed to evaluate the current risk to key national institutions.

One reaction to this history would be to ascribe the U.S. Constitution with a measure of prophylactic power. The thesis would be that democracy has thrived in the United States because of the distinctively effective design of the Constitution in buffering that practice from external and internal threat. The argument would gain strength from observing that the rest of the world has not been so lucky. In the past decade, an increasing number of seemingly stable, reasonably wealthy democracies have retreated from previously robust democratic regimes toward autocracy. These states are literally all over the globe. They range from Eastern Europe (Hungary and Poland) to the Mediterranean (Turkey) to Latin America (Bolivia and Venezuela). Once-anticipated democratic gains in Russia and China have failed to materialize. Meanwhile, a hoped-for "fourth wave" of democracy in the Arab Spring's wake has dissipated into bitter civil war or charismatic authoritarianism.

Democratic backsliding is far less rare than political scientists used to believe. In recent scholarship, we have identified 37 instances in 25 different countries in the postwar period in which democratic quality declined significantly, even though a fully authoritarian regime didn't emerge. That is, roughly one out of eight countries experienced measurable decay in the quality of their democratic institutions — without fully collapsing into dictatorship. Scholars used to argue that democracy, once attained in a fairly wealthy state, would become a permanent fixture. As the late Juan Linz put it, democracy would become "the only game in town." That prediction turned out to be merely an aspiration, rather than a reality.

As a result, the global trajectory for democracies — as opposed to partial or complete autocracies — does not look positive, as the following chart shows. Although we are not yet at a moment in which democracies are rare, as in the 1970s, it is quite possible that what Samuel Huntington called the "Third Wave" of democratization has peaked. The recent de-democratization trend is worrisome.

Regime types in the Third Wave



Source: Adapted from Freedom House data 2016

Of course, we should not take for granted the assumption that experiences in other parts of the world matter for the United States. At least the time of Alexis de Tocqueville, commentators have argued that our country has a distinct and robust democratic tradition and our people a uniquely democratic temperament. Indeed, the phrase "American exceptionalism" was used in U.S. communist circles in the 1920s in the course of efforts to explain the apparent immunity of U.S. democracy to the lure of proletarian revolution.

In the wake of World War II. American exceptionalism has since become something of national credo, in the fashion of the earlier notion of manifest destiny. It is hence all but obligatory, at least in the context of public political debate, to say that the founders created a marvelous system of checks and balances that would defeat any attempt at a power grab.

But a careful study of other countries' experiences, in light of the legal resources contained in our own Constitution, suggests that such complacency is unwise. The United States is not exceptional. It is instead vulnerable to the most prevalent form of democratic backsliding: the slow and tortuous descent toward partial autocracy.

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In one regard, those who worry about an overreaction to Trump are correct. A sudden and dramatic end to democracy in the United States, for example through a military coup, is highly unlikely. Coups, of course, still happen. In May 2014, for example, the Thai military suspended that country's constitution and ended democratic rule. A year earlier, the Egyptian military ousted then-president Mohamed Morsi in favor of General Abdel Fattah el-Sisi. By contrast, an attempted coup against Turkish President Recep Tayyip Erdogan in 2016 failed, although it did paradoxically precipitate an acceleration of that country's rush toward autocratic consolidation.

But despite these high-profile examples, coups are in fact increasingly rare. A 2011 study of democratic backsliding identified 53 historical cases of democratic decline.[1] Out of those, only five involved coups or other sudden collapses into authoritarianism. What's more, since the 1950s coups have become increasingly infrequent.[2] And they usually take place in a context quite different from the American situation. Full-on democratic collapse tends to occur in recently established, relatively impoverished democracies, in which civilian control of the military is tenuous. None of those conditions apply in the US (despite economic problems such as rising inequality).

An alternative to the military coup is the rapid asphyxiation of democracy using emergency powers. Deployment of such powers is not uncommon. From 1985 to 2004,

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[1] Gero Erdmann, *Decline of Democracy: Loss of Quality, Hybridisation and Breakdown of Democracy*, *in* DECLINE OF DEMOCRACY 26 (Gerd Erdmann & Marianne Kneuer, eds. 2011)

[2] Jonathan M. Powell & Clayton L. Thynne, *Global Instances of Coup from 1950 to 2010: A New Dataset*, 48 J. PEACE RES. 249, 249 (2011).

137 countries invoked state-of-emergency procedures at least once. Commentators who worry about President Trump's behavior after a terrorist attack have something like this in mind. It is certainly true that the Constitution lacks the careful restrictions on emergency powers of the sort that other countries' constitutions employ.[3] The latter typically place crisp constraints on the length and scope of extra-constitutional behavior, and they name the constitutional actors who must sign off on the emergency measures. Contrary to the arguments of Carl Schmitt and his legatees, these exceptional powers have not necessarily proved unworkable or inimical to ordinary politics.

But the U.S. Constitution contains no such provisions. Instead, American presidents and judges have inferred vague emergency powers into many of the Constitution's key clauses and phrases — such as Article II"s reference to the president "Commander in Chief." The latter—which might have been understood principally as a means of assuring civilian control of the military—is also understood as a basis for the President's power to respond to "sudden" attacks, but also as a more diffuse authority to act unilaterally on national security or foreign policy grounds. Similarly, the president's power to "take Care" that the laws are enforced has experienced a kudzu-like creep as both Democrats and Republicans invoke it to justify expansive executive power outside the emergency context. Coupled to these constitutional claims are broad statutory delegations such as that under the 2001 and 2012 Authorizations for the Use of Military Force. These provide subconstitutional foundations for aggressive claims of presidential power in the United States and beyond, and have become ingrained in our law. It is simply a contingent matter of judicial doctrine that more specific language is required in the domestic realm.

Paradoxically, what seems like a drafting failure in the Constitution may also work to democracy's advantage. The very fact that government has a great deal of legal discretion in responding to perceived crisis — often to the detriment of important liberty and dignity interests — means that there is far less plausible justification for calling off the regular processes of elections in order to deal with a crisis. But one of the lessons of

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[3] Christian Bjørnskov and Stefan Voigt, The Determinants of Emergency Constitutions, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2697144

recent comparative experience is that the *quality* of democracy can decline precipitously even as formal elections continue to be held.

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The most important reason that the sudden collapse of democracy is rare — and a key reason it is unlikely in the US — is that a sudden derogation of democracy *simply isn't necessary*. Would-be autocrats have a cheaper option to hand, one that is far less likely to catalyze opposition and resistance: the slow, insidious curtailment of democratic institutions and traditions.

One reason we expect that democracy will end by way of a "crisis," or a sudden turning point, is because we are quick to assume that the narrative of political life will track the arc of fictional accounts of political upheaval. Fiction is dominated by dramatic moments of clarification and revelations, victories and defeats. But real life is not like "House of Cards." There need not be sharp inflexion points. Indeed, it is worth reflecting on the fact that democracy—even in its thinnest sense of mere competitive elections—relies on transparency, legality, impartiality, and constraint. These are promoted by a range of different laws, norms, institutions, and individual loyalties. All of these rarely vanish all at once. Their slow evaporation may be ineffable and easily missed.

To understand this form of democratic backsliding, it's important to understand the essential components of a democracy. First, there must be elections, which must be both free and fair. Elections by themselves are not enough: both Russia and China, after all, have elections that formally reflect the choice of the people, but allow only limited choices. Second, democracy needs liberal rights of speech and association so those with alternative views can challenge government on its policies, hold it accountable, and propose alternatives. Finally, democracy can't work if the ruling party has the courts and bureaucracy firmly in its pocket. The rule of law—not just the rule of the powerful and influential—is essential. Take away but one of these attributes, and democracy might wobble. Sap all three, and the meaningful possibility of democratic competition recedes from view.

It is here that comparative experience proves salient. It is possible to example the experience of other policies that have experienced various forms of democratic backsliding to understand the specific legal mechanisms and institutional changes that are

employed to unravel democratic practice. By comparing the resulting toolkit of anti-democratic devices to the institutional safeguards of democracy contained in the U.S. Constitution that we obtain some traction on the question whether our organic document has indeed served an effectual prophylactic purpose.

That comparative experience shows that would-be autocrats find it critical first to control the public narrative, often by directly attacking or intimidating the press. Libel suits — Vladimir Putin, for example, recriminalized libel, after it had been decriminalized in 2011 under Dimitry Medvedev — drummed-up prosecutions, and vise-like media regulation accomplish the same ends. A mogul who controls powerful media, such as Italy's Silvio Berlusconi, has an extra advantage of being able to crowd out other voices from the national stage. Contrary to hopes expressed in the early days of the internet's development, new forms of social media may have made it easier rather than more difficult to obtain a practical hegemony over the terms of national debate.

Conjuring or overemphasizing a national security threat creates a sense of crisis, allowing would-be autocrats to malign critics as weak-willed or unpatriotic. The underlying crisis can be more or less real, and may or may not impact the jurisdiction in tangible ways to affect the tenor of domestic politics. In Hungary, for example, Viktor Orbán has carefully invoked the Islamist terrorism and the migration crises to cement his popular standing, notwithstanding the fact that Hungary is not in the crosshairs of either crisis. There are other common rhetorical moves that can be loosely characterized as "populist" in character. Leaders who wish to roll back democratic institutions, for example, tend to depict those institutions' defenders as representatives of a tired, insulated elite engaged in self-dealing to the detriment of the people. In contrast, such leaders portray themselves as embodying the uniquely authentic voice of the people. Here, Trump is illustrative, and we cannot resist citing a claim he made in a May 2016 political rally that captures the core of this logic: "The only thing that matters," he said, "is the unification of the people—because the other people don't mean anything."

A second element of democratic backsliding is a systematic effect to dismantle the plurality of national institutions. In particular institutions tasked with maintaining the rule of law, or that provide a foothold for oppositional politicians, are targeted quickly. Comparative experience suggests that an independent judiciary and institutional checks

such as legislative oversight of administrative activity can prove significant barriers to democratic backsliding. Hence, we often see would-be autocrats trying to pack the courts or intimidate judges into getting with the program. When the state bureaucracy insists on rule-of-law norms, they too must be bullied into submission. Weakening civil-service tenure protections is an underappreciated way to accomplish this. When government workers hired on the basis of merit are elbowed out, and replaced by loyal partisans, this not only removes one potential source of opposition to the executive branch; it enables a would-be autocrat to direct formidable prosecutorial and investigative apparatuses against political foes. The recent fraud conviction of Putin opponent Sergei Navalny shows how such tools can be used against an opponent who threatens to amass power through electoral popularity.

Finally, political competition must be stanched, even if elections proceed in some form as a way of enabling leaders to claim a mantle of legitimacy. Modifying presidential term limits is a common move, but so too are changes to the ground rules of elections in order to permanently lock in temporary majorities.

To witness the full panoply of these measures being deployed against democracy, there are no better contemporary case studies than Hungary and Poland. In s startlingly short time frame, populist governments in both countries have straitjacketed independent courts; dismantled independent checks on political power; used regulation to muzzle the media or stack it with cronies; and conjured supposed security threats from immigrants and minorities as a justification for centralizing power and dismantling checks. In Hungary, the Fidesz government used constitutional amendments to entrench its slim (53 percent) majority beyond easy electoral challenge by changing the composition and operation of a previously independent electoral commission. The result was that in 2014, it won two-thirds of the parliamentary seats with 45 percent of the vote. Fidesz also changed the composition of the Constitutional Court, and created a new National Judicial Office. It also strengthened the prime minister's control of supervisory bodies such as the Electoral Commission, Budget Commission, Media Board, and Ombudsman offices. Incumbent officials were removed to make way for Fidesz loyalists, who have facilitated the rise of what Orbán calls – intending the description as praise — "illiberal" or "non-liberal" democracy.

In 2015, the Polish Law and Justice Party ("PiS") elected in October 2015, began its tenure by selecting five new judges for the Constitutional Court, while refusing to swear in three other judges who had been properly appointed by the previous government. Two months later, the PiS-controlled parliament enacted an amendment to the Constitutional Tribunal Act requiring a two-third majority on the court in order for its decisions to be binding. In the same month, the parliament also enacted a new media law dismissing the boards of all public-service broadcasters and vesting the treasury minister with authority to replace them with pro-PiS leadership. That new leadership subsequently purged journalists who were insufficiently enthusiastic about the government's agenda.

Hungary and Poland are hardly unique. In Turkey, President Erdogan leveraged the 2016 coup attempt to deepen his massive purge of almost every state institution, leaving regime loyalists firmly in control. As of this writing, more than 135,000 soldiers, judges, police, university deans, and teachers have lost their jobs, in some cases without due process. While some of these dismissals may have been formally legal, they appear to have extended far beyond the ranks of actual opponents of the regime. Erdogan's AK party has also suspended and manipulated media licenses, and arrested journalists on national-security grounds, and adopted a new Constitution in which he will serve as the center of the entire political system, with minimal accountability.

In Venezuela, the Chavez regime has notoriously aggregated executive power, limited political opposition, attacked academia, and stifled independent media – a classic example of "de-democratization" under the color of law. Some moves have been especially creative. When a political opponent won at the municipal level, the Chávez regime responded by gutting the powers wielded by the new mayor and granting them to a new alternative institution.

A hallmark of these examples of democratic backsliding is that many of the power grabs are legal in and of themselves. Central among these legal measures is the early disabling of internal monitors of governmental illegality by the aggressive exercise of (legal) personnel powers. Often, there are related changes to the designs of institutions, which might be brought about through legislation. Ironically, the law is deployed to undermine legality and the rule of law more generally. Relatedly, it is quite telling that many of the new breed of populist autocrats are lawyers by training. This includes Lech

Kaczyńsk (Poland), Viktor Orbán, and Vladimir Putin. All have teams of (often American-trained) lawyers, willing and able to further their entrenchment in power.

The cumulative effect of many small weakening steps is to dismantle the possibility of democratic competition, leaving only its façade. It is a death by a thousand cuts, rather than the clean slice of the coup maker. This is what makes the slow road from democracy so alluring to seekers of power, and so dangerous for the rest of us. Because it can be masked with a veneer of legality, it can be cloaked with plausible deniability. It is always possible to justify each incremental step.

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So could it happen here? Looking to these recent examples suggests that the US Constitution may be good at checking coups or the anti-democratic deployment of emergency powers, but it is not well suited to stall the slow decay of democracy. Our eighteenth-century Constitution singularly lacks the provisions necessary to slow down a would-be autocrat bent on the slow dismantling of democracy.

To be sure, the cumbersome process of constitutional amendment makes it difficult for a president who wishes to amass more formal power. But other much-cited checks and balances have been profoundly overstated. The institutional checks on national political power rest on theoretical assumptions that have proved in practice rather fragile. James Madison thought that the divergent "ambitions" of the legislative and executive branches would cause those institutions to balance one another. But he failed to anticipate the rise of a two-party political system at the national level. The national party system has reshaped incentives. Congressmen today may have little reason to investigate or otherwise rein in an aggressive president of their own party. That today's Republicans are not eager to investigate President Trump's financial dealings, or his contacts with Russia, is entirely predictable, from an institutional standpoint. And this tendency would be even more pronounced in a world in which individual legislators owed their seats to the President, which might be the case were a billionaire to throw around campaign cash—or accusations of disloyalty--liberally.

Other constitutions give minority parties rights to demand information and make inquiries, but the US Constitution does not. Too many of our election rules depend on

the good faith of the party in power. [4] As the omnipresence of gerrymandering shows, good faith may not be enough. After the 2010 redistricting in Wisconsin, the Republican Party was able to win 60 of 99 seats in the state legislature, despite winning less than half of the statewide vote. Meanwhile, North Carolina Republicans tried a strategy that was straight out of Hugo Chavez' playbook when their party's candidate lost the governor's race**.** They cut the governor's staff by 80 percent, eliminated his ability to name trustees of the state university, and required that cabinet appointees be approved by the legislature. They also restructured the elections board so that they would hold the chairmanship during all statewide elections. Although these moves were rejected by the courts, there is no reason to expect that they would be invoked again in other states, perhaps to greater success.

As the North Carolina example shows, the federal courts are critical in upholding the rule of law and defending democracy. But there is a growing acceptance in American jurisprudence of "deference" to the political branches. That ideology, in combination with aggressively partisan appointments -- Trump is in a position to fill 112 federal judicial vacancies, out of 870 seats — could erode public confidence in judges' ability to stand up to government over-reach, and thus lead to democratic retrogression. Certainly, after a period of eight or more years with one party in the White House, it is hard to see how the courts could be much of a check on democratic backsliding.

Moreover, the notional independence of even the Supreme Court is more dependent upon "norms," than constitutional rules such as tenure protection and salary guarantees. And norms can change. In a less polarized time, the U.S. Senate would have held confirmation hearings for Merrick Garland, President Obama's last Supreme Court nominee. Yet by playing hardball, Republicans may end up reshaping how laws are interpreted for decades to come. One implication is that the nomination and confirmation process are likely to be more politicized, with more partisan candidates being proposed and appointed, and the federal courts becoming corresponding less legalistic, more disparaging of interests other than those of the dominant coalition, and more heedless of the risk of democratic backsliding.

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[4] David Pozen, *Constitutional Bad Faith*, 129 HARV. L. REV. 885, 907 (2016).

Other nations, unlike the United States, place judicial appointments beyond political control. Whether such judges are more independent or robust as defenders of democracy is an empirical question, but at a minimum, such systems reduce the ease with which politicians can tinker with personnel.

Similarly, in the United States, the civil service—which scholars understand as a bulwark against autocracy—is protected largely by tradition, in lieu of constitutional rules. That is why the Republican move to lay off federal workers and reduce the benefits of those who remain is so significant, as is a gratuitous revival of the Holman rule in 2017. In addition, US Attorneys also serve "at the pleasure" of the president, and it is largely restraint – not always exercised -- that prevents presidents from punishing them or rewarding them for partisan legal attacks. Other constitutions, moreover, create independent ombudsmen's offices to monitor corruption or human-rights compliance as supplements to the judiciary that make up for the latter's institutional weaknesses. Not so ours. Instead, institutions such as the Office of Government Ethics are staffed by the president, and ultimately vulnerable to capture or marginalization.

What of constitutional rights? While the First Amendment (currently) limits the misuse of libel law, it does not hedge the risk of partisan media regulation by the FCC or other agencies. Media companies seeking to keep regulators' favor have now lots of reasons to trim the sails of their political coverage. And the First Amendment, for good or ill, arguably protects sources of outright propaganda – sites spreading lies about politicians, for example — which could in tandem with presidential attacks on the media lead citizens to distrust all news sources.

There is, in short, nothing particularly exceptional about the American Constitution—at least in any positive sense. Because of its age, the Constitution doesn't reflect the learning from recent generations of constitutional designers. If anything, it is more vulnerable to backsliding than the regimes that failed in Poland, Hungary, Venezuela, Turkey and elsewhere. As a result, whether or not the United States moves away from its best democratic traditions doesn't rest on the Constitution or on simple fidelity to constitutional rules. Those will quite plainly not be enough. Not will it be enough to belabor the technical legal merits or demerits of specific executive actions, or their opponents' responses. To do so misses the forest for the trees. In particular, those

who insist on formal legality at the expense of considering the motives and immediate effects of an executive action do the republic a great disservice.

Rather, the degree to which democratic norms and practices are lost in the United States over the next four years will depend on how both politicians and citizens react. The quality of our democracy will depend on what happens on the streets, what happens in legislative backrooms (especially on the Republican side), and most importantly what happens at the polls. But it won't depend, in any simple way, on the Constitution. And at least in this regard, there is nothing exceptional about our current predicament. The quality of our democracy is entire contingent—on the personnel in the courts, the configuration in Congress, and on the willingness of our public to exercise independent judgment in a bitter media environment. One hopes these forces will remain robust over the next decade, but it is not hard to imagine a scenario in which they do not. We would, in short, do well to reject feel-good talk about American exceptionalism and embrace some of the founders' bracing and necessary trepidation about the future.