

2023

The Boomer Interregnum: How Conservative Thought Dressed Up as Memory Will Shape an America that the Founders Never Intended

Joshua J. Schroeder

Follow this and additional works at: https://digitalcommons.onu.edu/onu_law_review



Part of the [Constitutional Law Commons](#), and the [Legal History Commons](#)

Recommended Citation

Schroeder, Joshua J. (2023) "The Boomer Interregnum: How Conservative Thought Dressed Up as Memory Will Shape an America that the Founders Never Intended," *Ohio Northern University Law Review*. Vol. 49: Iss. 2, Article 2.

Available at: https://digitalcommons.onu.edu/onu_law_review/vol49/iss2/2

This Article is brought to you for free and open access by the ONU Journals and Publications at DigitalCommons@ONU. It has been accepted for inclusion in Ohio Northern University Law Review by an authorized editor of DigitalCommons@ONU. For more information, please contact digitalcommons@onu.edu.

**The Boomer Interregnum:
How Conservative Thought Dressed Up as Memory Will Shape
an America that the Founders Never Intended**

JOSHUA J. SCHROEDER*

ABSTRACT

In his Fourth of July speech in 2019 at the Lincoln Memorial, President Trump praised the American Revolutionaries saying, “Our army manned the air, it rammed the ramparts, it took over the airports, it did everything it had to do, and at Fort McHenry, under the rockets’ red glare, it had nothing but victory.” This statement is an apt example of Scalia’s Originalism copped by Trump. It is complete in its falseness, bravado, and patriotic flair.

Over the past several decades, Scalia’s Originalism and Textualism became watchwords for a populist movement that dressed conservative thought up as founding memory. However, few, if any, of Scalia’s opinions reflected a genuine search for the intent of the founders. Scalia rather liked to dress up the founders in modern conservative thought to obscure the actual bases of the American Revolution in liberal anti-slavery, feminist ideals.

Instead of researching the founding era or relying on clear legal text as he claimed to do, Scalia preferred to blast his enemies on the bench. For example, Scalia called Justice Kennedy’s constitutional construction in *Obergefell v. Hodges* a “judicial putsch.” Most of America—Scalia’s friends and enemies alike—normalized Scalia’s mischaracterization of Kennedy as the leader of a *coup d’état* for affirming a human right.

Normalizing Scalia meant giving him the benefit of the doubt, i.e., giving space for the false legal presupposition that the founders opposed human rights. Scalia trained America to tolerate his bombast as we do our rebellious uncles and grandpas around the Thanksgiving dinner table. We do not take seriously their views on guns, race, gender, or sexual preference, because their fears of societal doom never unfold as they prophesy.

* Joshua J. Schroeder is owner and founder of SchroederLaw in Oakland, CA, where he practices immigration law, constitutional law, and intellectual property law. He holds a J.D. from Lewis & Clark Law School and is admitted to practice in the Supreme Court of the United States, the United States Court of Appeals for the Ninth Circuit, the United States District Court for the Northern District of California, United States District Court for the Southern District of California, the District of Oregon, the State Bar of California, and the Oregon State Bar.

But the idea that the bygone views of old Boomers represent what the founders intended for the nation is normalized without criticism. The way is open for all of Scalia’s students to dress up their personal agendas as founding memory, former President Donald Trump and Hon. Amy Coney Barrett included. This era as defined by its substitution of the founding ideals for conservative populism is a Boomer interregnum in the normal course of government that the nation needs to move on from as soon as possible.

TABLE OF CONTENTS

Introduction: Conservative Jiggery-Pokery and the Dead Constitution....	357
Part I – The Heralds of a Coming Winter: How to Resist Mass, Boomer Delusion	361
∴ On the 2020 Confirmation of Amy Coney Barrett	370
Part II – Justice Scalia’s Paradoxical Use of Feudal Legal Presuppositions	376
Conclusion: Realigning the Nation with its Founding Ideals.....	384
Epilogue: How Austerity Nostalgia Fueled Putin’s Invasion of Ukraine .	389

INTRODUCTION: CONSERVATIVE JIGGERY-POKERY AND THE DEAD
CONSTITUTION

For those who do not know, the dictionary definition of “jiggery-pokery” according to Dictionary.com is “1: trickery, hocus-pocus; fraud; humbug. 2: sly, underhanded action. 3: manipulation.”¹ Throughout his jurisprudence, Justice Scalia cited to (1) dictionary definitions;² (2) arcane, Anglophilic, and sometimes made-up terms of art like “jiggery-pokery,” “argle-bargle,” and “[p]ure applesauce;”³ and (3) Scalia engaged in the fraud and other nonsense that he ironically accused his fellow jurists of wielding against him.⁴

The most absurd piece of fraud peddled by Scalia was his incessant assertion that the U.S. Constitution is “dead, dead, dead.”⁵ But Scalia’s dead constitution was blatantly oxymoronic, because the dictionary definition of “constitution” includes life, health, and vitality.⁶ The word “constitution” is literally synonymous with “life force,” and the term “dead constitution”

1. *Jiggery-Pokery*, DICTIONARY.COM, <https://www.dictionary.com/browse/jiggery-pokery> (last visited Jan. 13, 2022).

2. See Antonin Scalia & Bryan A. Garner, *A Note on the Use of Dictionaries*, 16 GREEN BAG 2D 419, 422 (2013); *Antonin Scalia v. Merriam-Webster: The Time Scalia Took on the Dictionary*, WORDS MATTER BLOG, <https://www.merriam-webster.com/words-at-play/antonin-scalia-v-merriam-webster> (last visited Jan. 13, 2022).

3. *King v. Burwell*, 576 U.S. 473, 506–07 (2015) (Scalia, J., dissenting) (“jiggery-pokery” and “[p]ure applesauce”); *United States v. Windsor*, 570 U.S. 744, 799 (2013) (Scalia, J., dissenting) (“argle-bargle”); see also *Comptroller of the Treasury v. Wynne*, 575 U.S. 542, 574 (2015) (Scalia, J., dissenting) (generally defining “ad hocery” as “mak[ing] the rules up as we go along”).

4. See *Obergefell v. Hodges*, 576 U.S. 644, 718 (2015) (Scalia, J., dissenting) (accusing the Court of an unconstitutional government overthrow by scorching “the hubris reflected in today’s judicial Putsch”); *Glossip v. Gross*, 576 U.S. 863, 898 (2015) (Scalia, J., concurring) (comparing Justice Breyer to Marie Antoinette by accusing him of “let-them-eat-cake obliviousness”).

5. See Chris Gentilviso, *Scalia: Constitution Is ‘Dead, Dead, Dead’*, HUFFPOST (Jan. 29, 2013, 1:50 PM), https://www.huffpost.com/entry/scalia-constitution_n_2574902.

6. *Id.*; Bruce Allen Murphy, *Justice Antonin Scalia and the ‘Dead’ Constitution*, N.Y. TIMES (Feb. 14, 2016), <https://www.nytimes.com/2016/02/15/opinion/justice-antonin-scalia-and-the-dead-constitution.html>; *Constitution*, DICTIONARY.COM, <https://www.dictionary.com/browse/constitution?s=t> (last visited Sept. 26, 2021); WALTER BAGEHOT, *THE ENGLISH CONSTITUTION* 3–4 (1867) (expounding “the inner moving essence, the vitality of the constitution” that are “imaginative sentiments that no legislature can manufacture in any people”); *id.* at 262–63 (noting that the Americans believed they were copying England when they created a government of separated powers, when in fact they did the opposite of England, nevertheless, the word constitution was copied into the American form of government, and it means the same thing in both governments—life, vitality, strength, inner-force), *examined by The Crown: Scientia Potentia Est* 1:49–3:41 (Netflix release Nov. 4, 2016); cf. VICTORIA SWEET, *ROOTED IN EARTH, ROOTED IN SKY: HILDEGARD OF BINGEN AND PREMODERN MEDICINE* 87, 95 (2006) (speaking of constitutional diseases in medieval sources, showing that the original definition of “constitution” sprang from inner health, life, vitality); ST. HILDEGARD OF BINGEN, *THE BOOK OF DIVINE WORKS* I.4.16 (Nathaniel M. Campbell trans., 2018), http://www.hildegard-society.org/p/liber-divinorum-operum.html#start_n5 [hereinafter HILDEGARD] (stating that the “constitutions” of the “human person received a manifold similarity from God their Maker” and then giving a spiritually informed anatomy of the human body).

conjures a paradoxical state like the living dead or more straightforwardly “dead life.”⁷

Scalia seriously contended that by choosing to call the document that gave the U.S. Government form a “constitution” to embody the life force of the nation that the founders secretly meant to make the U.S. Constitution a dead letter.⁸ Scalia treated the founders’ invention of written constitutions as a Trojan horse to sneak his favored unwritten, feudal presuppositions of the law into U.S. jurisprudence.⁹ Scalia’s Originalism and Textualism were, to be sure, part of a strategy to resurrect feudalism from the grave through a written constitution that expressly and repeatedly rejected feudalism.¹⁰

One may imagine Scalia refuting the semantics presented above like Rousseau who said, “I would much rather be a man of paradoxes than a man of prejudices.”¹¹ This might be charming if it were not also the case that

7. Murphy, *supra* note 6; see *Constitution*, DICTIONARY.COM, <https://www.dictionary.com/browse/constitution?s=t> (last visited Sept. 26, 2021); *Constitution*, THESAURUS.COM, <https://www.the-saurus.com/browse/constitution?s=t> (last visited Jan. 13, 2022); BAGEHOT, *supra* note 6, at 3–4, 262–63; HILDEGARD, *supra* note 6, at I.4.16.

8. Gentilviso, *supra* note 5; Murphy, *supra* note 6.

9. See Randy E. Barnett, *The People or the State?: Chisholm v. Georgia and Popular Sovereignty*, 93 VA. L. REV. 1729, 1749–50 (2007) (“Notice Justice Scalia’s rather blithe identification of the legislature with the people themselves, an equation that was widely rejected at the founding and expressly denied by the Supreme Court in *Chisholm*.” (citing *Troxel v. Granville*, 530 U.S. 57, 91 (2000) (Scalia, J., dissenting))); see also Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, THE TANNER LECTURES ON HUM. VALUES 79, 114–15 (1995), <https://tannerlectures.utah.edu/resources/documents/a-to-z/s/scalia97.pdf> [hereinafter Scalia, *Common-Law*] (attacking the “constitutional evolutionists,” i.e., anyone who interprets the U.S. Constitution as a living document); *Glossip*, 576 U.S. at 894 (Scalia, J., concurring) (putting forth his feudal, ends-justify-the-means concept of law: “It is impossible to hold unconstitutional that which the Constitution explicitly contemplates.” (emphasis in original)); *id.* at 898 (undermining Eighth Amendment “evolving standards of decency that mark the progress of a maturing society” that Scalia identified as the foundation of the “living” constitution (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958))).

10. *Boumediene v. Bush*, 553 U.S. 723, 844–45 (2008) (Scalia, J., dissenting) (boldly applying feudal law as if it were common law (citing *Rex v. Cowle* (1759) 2 Burr. 834, 855–56 (Eng.)); U.S. CONST. art. I, § 9, cl. 8 (“No Title of Nobility shall be granted by the United States”); U.S. CONST. art. I, § 10, cl. 1 (“No State shall . . . grant any Title of Nobility.”); see, e.g., *District of Columbia v. Heller*, 554 U.S. 570, 618–621 (2008) (quoting *United States v. Cruikshank*, 92 U.S. 542, 553 (1875); *Johnson v. Tompkins*, 13 F. Cas. 840, 850, 852 (C.C.E.D. Pa. 1833) (No. 7,416) (enslaved person at issue) (characterizing the armed stealing of slaves back to the South as “peaceable . . . lawful and justifiable . . . supported by laws which no human authority could shake or question”—make no mistake: one can justify all the violence that occurred on January 6, 2021 upon this absurd and baseless rationale)); *Franchise Tax Board v. Hyatt*, 139 S. Ct. 1485, 1492 (2019) (demonstrating how Scalia, a longtime critic of *Nevada v. Hall*’s anti-feudal opinion, got his wish posthumously: “*Nevada v. Hall* is contrary to our constitutional design and the understanding of sovereign immunity shared by the States that ratified the Constitution. *Stare decisis* does not compel continued adherence to this erroneous precedent. We therefore overrule *Hall* . . .”), *overruling Nevada v. Hall*, 440 U.S. 410, 415 (1979) (“The King’s immunity rested primarily on the structure of the feudal system and secondarily on a fiction that the King could do no wrong. We must, of course, reject the fiction. It was rejected by the colonists when they declared their independence from the Crown, and the record in this case discloses an actual wrong committed by Nevada.”); Barnett, *supra* note 9, at 1749–50 (citing *Troxel*, 530 U.S. at 91 (Scalia, J., dissenting)).

11. JEAN-JACQUES ROUSSEAU, ÉMILE 58 (William H. Payne trans., 1908).

Scalia was a modern-day Rousseau.¹² Both Rousseau and Scalia copped Hobbesian maxims, however paradoxically, to drive their respective nations to ruin according to a unity of powers in the executive department.¹³

To facilitate the paradoxes of such men as Scalia and Rousseau,¹⁴ Hobbes inspired modern prophets such as William Strauss and Neil Howe to convince the Baby Boomer generation to accept Scalia's Hobbesianism as an inevitability.¹⁵ Strauss and Howe bear a strong resemblance to the Hobbesian prophetesses of the French Revolution Suzette Labrousse and Catherine

12. *Compare Glossip*, 576 U.S. at 898 (Scalia, J., concurring) (“Let the People decide . . .”), and Barnett, *supra* note 9, at 1749–50 (“Notice Justice Scalia’s rather blithe identification of the legislature with the people themselves, an equation that was widely rejected at the founding and expressly denied by the Supreme Court in *Chisholm*.” (citing *Troxel*, 530 U.S. at 91 (Scalia, J., dissenting))), with JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 2 (Rose M. Harrington trans., 1893) [hereinafter ROUSSEAU, *THE SOCIAL*] (“Man is born free, and he is everywhere in chains.”), and HANNAH ARENDT, *ON REVOLUTION* 241 (1990) (“Robespierre himself, before he became head of government, used to denounce ‘the conspiracy of the deputies of the people against the people’ and the ‘independence of its representatives’ from those they represented, which he equated with oppression. Such accusations, to be sure, came rather naturally to Rousseau’s disciples, who did not believe in representation to begin with—‘a people that is represented is not free, because the will cannot be represented’; but since Rousseau’s teachings demanded the *union sacrée*, the elimination of all differences and distinctions, including the difference between people and government, the argument, theoretically, could as well be used the other way round.”).

13. *Compare* Scalia, *Common-Law*, *supra* note 9, at 85–86 (advocating Hobbes’ “legal realism” and legal positivism rather than the common law idea of the separation of powers), *Morrison v. Olson*, 487 U.S. 654, 727 (1988) (Scalia, J., dissenting) (debuting Scalia’s unitary executive theory), *Seila Law v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2203–04 (2020) (establishing the unitary executive theory as the law), VICE News, *Inside the Capitol Hill Riots*, YOUTUBE (Jan. 9, 2021), https://www.youtube.com/watch?v=lfP_5L8epow, ProPublica, *New Parler Video Shows Tense Confrontation Between Rioters and Capitol Police Officer Eugene Goodman*, YOUTUBE (Jan. 15, 2021), <https://www.youtube.com/watch?v=SP6T9kGto0M> (rioters yelling at Capitol Policeman Eugene Goodman: “you work for us!” – “where do they count the fucking votes! [repeatedly]” – “these people have no weapons!” – “he’s one person, we’re thousands!”), and VICE News, *How Trump’s Speech Led to the Capitol Riot*, YOUTUBE (Feb. 10, 2021), <https://www.youtube.com/watch?v=TT0reXOyfng> (presenting Trump’s fraudulent statements to his constituents in order to incite the violent *coup d’état* attempt of January 6, 2021 with hopes to extend his stay in the White House by means of illegitimate Hobbesian maxims of fraud and force.), with ROUSSEAU, *THE SOCIAL*, *supra* note 12, at 5–6, 19, 34, 49, 52, 209 (Rousseau drew upon Hobbes’ *Leviathan* throughout his *Social Contract*, especially his theory that sovereignty arises from the “general will,” and his idealization of a unity rather than a separation of powers), THOMAS HOBBS, *LEVIATHAN* 113, 119, 159–60 (A. R. Waller ed., 1935) (“A Multitude of men, are made *One* Person, when they are by one man, or by one Person, Represented; . . . For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*. . . . This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS.”), and ARENDT, *supra* note 12, at 241.

14. See sources cited *supra* note 13.

15. Adele M. Stan, *Insurrectionist in Chief: How Steve Bannon Led the Vanguard of the Capitol Riots*, NEW REPUBLIC (Mar. 10, 2021), <https://newrepublic.com/article/161574/steve-bannon-capitol-riots-insurrectionist-chief>, *analyzing as a cause* WILLIAM STRAUSS & NEIL HOWE, *THE FOURTH TURNING: AN AMERICAN PROPHECY* 39, 107 (1st ed. 1997) (tracing their cyclical way of prophesying the future to Thomas Hobbes); see HOBBS, *supra* note 13, at 11 (“For the foresight of things to come, which is Providence, belongs onely to him by whose will they are to come. From him onely, and supernaturally, proceeds Prophecy.”); *id.* at 318 (arguing that prophecy comes from the earthly sovereign who wills things into being so well that his guessing might as well be prophecy, and that disbelief in the guess-work of the “Sovereign Prophet” is tantamount to treason and anti-Christianity).

Théot, as well as Hobbes' contemporaries, the fifth monarchists of the Puritan Revolution in England.¹⁶ Such prophets always seem to seize upon the religious superstitions of their eras to become, as Hobbes planned, causes of the crises they claimed to innocently foretell.¹⁷

This article responds to the posthumous prevalence of Scalia's ideologies in two parts. Part I presents the false dogma of inherent Boomer goodness as presented by Strauss and Howe in *The Fourth Turning* as a reason why the Boomers adopted Scalia's ideologies without serious criticism, and why they sought to reestablish his ideologies after he passed away through the successful 2020 nomination of Scalia's former clerk Amy Coney Barrett to the U.S. Supreme Court.¹⁸ Part II examines Justice Scalia's role in leading the Boomer generation to adopt the practice of dressing up the founding era in modern conservative thought that was eventually deployed by Trump in an attempted *coup d'état* on January 6, 2021.¹⁹ The article concludes with encouragement for Millennials to realign the nation with our founding ideals and an epilogue to briefly address Putin's February 24, 2022 invasion of Ukraine as a study regarding the dangers of Boomer nostalgia.²⁰

16. In the scope of all human history, Strauss and Howe are not unique. Compare STRAUSS & HOWE, *supra* note 15, at 21 (“explor[ing] what you and your nation can do to brace for the coming Crisis”), with HOBBS, *supra* note 13, at 11 (encouraging the millenarian prophets of his day), PROPHÉTIES DE MADemoiselle SUZETTE DE LA BROUSSE CONCERNANT LA RÉVOLUTION FRANÇOISE 13 (1790) (foretelling “la plus terrible saignée,” i.e., *the most terrible bloodletting*), LES MYSTÈRES DE LA MÈRE DE DIEU, DÉVOILÉS 58–68 (1795) (noting Théot's role in helping Robespierre pass himself off as God during the French Revolution: “il reut se faire passer pour Dieu”), WILLIAM ASPINWALL, A BRIEF DESCRIPTION OF THE FIFTH MONARCHY OR KINGDOME, THAT SHORTLY IS TO COME INTO THE WORLD 1–2 (1653), and Claire Gheeraert-Graffeuille, *Tyrants and Tyrannicide in Mid-seventeenth Century England: a Woman's Perspective?*, 15 ÉTUDES ÉPISTÉMÉ 139, 150–51 (2009); cf. CLARKE GARRETT, RESPECTABLE FOLLY: MILLENARIANS AND THE FRENCH REVOLUTION IN FRANCE AND ENGLAND 11, 77, 129 (1975); Kinch Hoekstra, *Disarming the Prophets: Thomas Hobbes and Predictive Power*, 59 RIVISTA DI STORIA DELLA FILOSOFIA 97, 129–30, 150 (2004); Pat Moloney, *Leaving the Garden of Eden: Linguistic and Political Authority in Thomas Hobbes*, 18 HIST. POL. THOUGHT 242, 246, 263–66 (1997) (explaining how Hobbes “promised political and linguistic order to a world that stood on the precipice of civil and religious chaos” with his own scriptural interpretation that “transgressed the bounds of orthodoxy,” while only pretending “deference to authority and willingness to submit,” which was always an “empty formality”).

17. HOBBS, *supra* note 13, at 11, 318 (noting that prophets are guessers whose prophecies are confirmed by willing the outcome prophesied into reality; that is, Hobbes intended prophecies to be causes of events as he appeared to believe that all prophets were false prophets, and that prophecy is simply a tool that should be used by rulers to perfect their control over the governed); see Hoekstra, *supra* note 16, at 130, 144–47, 152 (“Hobbes's particular concern is with those prophecies that produce the result they predict. . . . [Because] Hobbes's philosophy has a practical aim: his is not only a theory of what is, it is also a theory by which he aims to make something come to be.”).

18. See *infra* Part I.

19. See *infra* Part II.

20. See *infra* Conclusion, Epilogue.

PART I—THE HERALDS OF A COMING WINTER: HOW TO RESIST MASS,
BOOMER DELUSION

In 1997, a year after George R. R. Martin published his renowned book *A Game of Thrones*, William Strauss and Neil Howe (hereinafter “Strauss-Howe”) also wrote: “Yes, winter is coming, but our path through that winter is up to us.”²¹ By “us,” Strauss-Howe meant the Baby Boomers whom they prophesied would take their foreordained place as prophets or “Gray Champion[s]” to guide the nation in the coming season.²² They poetically wrote that when the winter set in: “Thus will the Gray Champion [i.e., the Boomers] ride once more.”²³

But on January 6, 2021, during one of the crises they apparently foretold, the Gray Champions tried to burn down the republic.²⁴ On the steps of the

21. STRAUSS & HOWE, *supra* note 15, at 7; see GEORGE R. R. MARTIN, *A GAME OF THRONES* 19 (2011) (1996).

22. STRAUSS & HOWE, *supra* note 15, at 325 (“As the next Gray Champion, the Boom Generation will lead at a time of maximum danger—and opportunity. . . . The continued maturation of Boomers is vital for the Crisis to end in triumph.”). Strauss-Howe defined the Boomer Generation as those “born 1943–1960,” Wikipedia defines them as “people born from 1946 to 1964,” and the reality is that there is no official or scientific generational cut offs for any generation. *Id.* at 17; *Baby boomers*, WIKIPEDIA, https://en.wikipedia.org/wiki/Baby_boomers (Apr. 13, 2023, 2:50 AM); PHILIP BUMP, *THE AFTERMATH: THE LAST DAYS OF THE BABY BOOM AND THE FUTURE OF POWER IN AMERICA* 14 (2023); *but see id.* at 11, 13 (arguing that there is a consensus among demographers that the Boomers are special in that they are, perhaps, the only generation whose generational cut-offs of people “[b]orn between 1946 and 1964” are not completely contrived). The names of the generations are also fluid as well. *Id.* at 14–15 (describing the naming and defining of generations as something like the emperor’s new clothes).

23. STRAUSS & HOWE, *supra* note 15, at 51, 285; see also *id.* at 141, 325, 329–30 (feeding the Boomer ego by naming the Boomers who will be edging toward their 80’s “old priest-warriors” and “elder expressions of the *Prophet* archetype,” and boldly writing of the unending relevance of the Boomer: “Whether we welcome him or not, the Gray Champion will command our duty and sacrifice at a moment of Crisis.”).

24. *Id.* at 6, 31 (“Sometime before the year 2025,” Strauss-Howe prophesied “[t]he nation could erupt into insurrection or civil violence, crack up geographically, or succumb to authoritarian rule.”); Stan, *supra* note 15 (explaining how Strauss-Howe caused the January 6, 2021 insurrection through its influence over key Boomers); BUMP, *supra* note 22, at 236 (quoting a message shared over social media of a 49-year old January 6, 2021 agitator who wrote: “Elders are cheering us on and believe that WE ARE GOING TO BE THE GREATEST GENERATION in their lifetime.”); William Saletan, *John Eastman’s Phony “Plenary Authority” Theory*, *BULWARK* (June 22, 2022, 12:49 PM), <https://www.thebulwark.com/john-eastmans-phony-plenary-authority-theory/> (describing Eastman’s defense of plenary power doctrine in an attempt to pressure Vice President Mike Pence to throw out legitimate electors in order to give the January 6, 2021 coup attempt a pretextual justification); Jane Mayer, *Is Ginni Thomas a Threat to the Supreme Court?*, *NEW YORKER* (Jan. 21, 2022), <https://www.newyorker.com/magazine/2022/01/31/is-ginni-thomas-a-threat-to-the-supreme-court> (“Another organizer of the January 6th uprising who has been subpoenaed by the congressional committee, Ali Alexander, also has long-standing ties to Ginni Thomas.”); Teo Armus, *A ‘Stop the Steal’ Organizer, Now Banned by Twitter, Said Three GOP Lawmakers Helped Plan His D.C. Rally*, *WASH. POST* (Jan. 13, 2021), <https://www.washingtonpost.com/nation/2021/01/13/ali-alexander-capitol-biggs-gosar/> (naming the three Reps., who are all Boomers: Andy Biggs, Mo Brooks, and Paul Gosar); Roger Sollenberger, *Two GOP Congressmen Sought Pardons for Their Connection to Capitol Attack: Report*, *SALON* (Jan. 20, 2021 6:22 PM), <https://www.salon.com/2021/01/20/two-gop-congressmen-sought-pardons-for-their-connection-to-capitol-attack-report/> (naming

Capitol Building, Strauss-Howe's hopes that Boomers might act unselfishly in a crisis for the benefit of future generations were proven naïve to such an extreme level that the grotesque nature of Strauss-Howe's sanguine prophecies were revealed.²⁵ The Gray Champions should, therefore, repudiate the lie of their inherent goodness and retire before doing more damage to the republic.²⁶

the two Reps. Paul Gosar and Andy Biggs); Paul Gosar (@DrPaulGosar), TWITTER (Jan. 6, 2021 5:04 PM), <https://twitter.com/drpaulgosar/status/1346940816514813953?lang=en> (trying to cover his tracks by spreading false information on Twitter: "This has all the hallmarks of Antifa provocation."); Daniel Funke & Bill McCarthy, *There's No Proof Antifa Stormed the Capitol. The Rumor Spread Quickly Anyway*, POLITIFACT (Jan. 7, 2021), <https://www.politifact.com/article/2021/jan/07/theres-no-proof-antifa-stormed-capitol-rumor-sprea/>. The Baby Boomer leaders of the January 6, 2021 insurrection boldly took center stage in the solicitation of the attack as commemorated by former President Donald Trump's speech on the Ellipse:

Donald Trump: Just take a look, take third world countries. Their elections are more honest than what we've been going through in this country. It's a disgrace. It's a disgrace. Even when you look at last night, they're all running around like chickens with their heads cut off with boxes. Nobody knows what the hell is going on. There's never been anything like this. We will not let them silence your voices. We're not going to let it happen. Not going to let it happen.

...
 Crowd: Fight for Trump! Fight for Trump! Fight for Trump!

...
 Donald Trump: ... [I]f you don't fight like Hell, you're not going to have a country any more. ... So we're going to, we're going to walk down Pennsylvania Avenue, I love Pennsylvania Avenue, and we're going to the Capitol and we're going to try and give ... our Republicans ... the kind of pride and boldness that they need to take back our country.

Donald Trump, Speech at the "Save America" Rally (Jan. 6, 2021), <https://www.rev.com/blog/transcripts/donald-trump-speech-save-america-rally-transcript-january-6>; see 18 U.S.C. § 373 (defining the federal crime of solicitation to commit a crime of violence).

25. Compare STRAUSS & HOWE, *supra* note 15, at 325 ("Boomers will face the unfamiliar challenge of self-restraint."), with Martin Pengelly, *'Hang Mike Pence': Twitter Stops Phrase Trending After Capitol Riot*, GUARDIAN (Jan. 10, 2021, 12:21 PM), <https://www.theguardian.com/us-news/2021/jan/10/hang-mike-pence-twitter-stops-phrase-trending-capitol-breach> ("[A] mob incited by the president attempted a putsch, roaming the halls, confronting law enforcement and, in some cases, apparently planning to kidnap lawmakers."), and Stan, *supra* note 15. The Boomer adoption of Bernaysian propaganda tactics into everyday life facilitated the events of January 6, 2021 and may preserve the movement into future generations—one of those tactics is in the title of this article and it was popularized throughout the Boomer era by Justice Scalia. See, e.g., PBS NewsHour, *There's an Ongoing Battle of Words to Describe Jan 6, 2021. Here's Why It Matters*, YOUTUBE (Jan. 9, 2021), <https://www.youtube.com/watch?v=-MJjImJsBM>, at 3:57–4:22 [hereinafter *Ongoing Battle*] ("People are grabbing at moments in the past, out of context, and using them to frame what they're doing. 'This is supremely American' 'Our Revolutionaries did it' 'We are just like them' – that's what we're doing. And on the surface, you can happily sort of nod along with that. If you actually look at the reality of what happened during the Revolution and what happened now, and what these people are doing, no, that's not an easy comparison to make.").

26. See Jeffrey J. Arnett, *The Spirit of Woodstock, 50 Years Later*, PSYCHOL. TODAY (Aug. 16, 2019), <https://www.psychologytoday.com/us/blog/adult-development-through-the-lifespan/201908/the-spirit-woodstock-50-years-later> ("The truth is, the Baby Boomers were never as revolutionary as they seemed."); Timothy Noah, *America, the Gerontocracy*, POLITICO (Sept. 3, 2019), <https://www.politico>.

In fact, the Boomers' belief in their own inherent goodness caused a lack of preparation among Boomer leadership for a known insurrection led by several angry, white Boomers on January 6, 2021.²⁷ They took the dogma of inherent Boomer goodness (originally derived from the eugenics movement that created the Baby Boom itself)²⁸ for granted as preached by Strauss-Howe

com/magazine/story/2019/09/03/america-gerontocracy-problem-politics-old-politicians-trump-biden-sanders-227986/ ("Why is America governed by old people? Maybe because it has so many elderly voters. The American electorate is older than it's been for at least a half a century."); cf. Aamer Madhani, *Birthday Time: Biden Turns 78, Will Be Oldest U.S. President*, AP NEWS (Nov. 20, 2020), <https://apnews.com/article/joe-biden-donald-trump-health-ronald-reagan-coronavirus-pandemic-b43ea0d0049ae2cd72aead6e1816f6d5>. Perhaps, Strauss-Howe was not wrong about the Boomers being the Puritans of their day. STRAUSS & HOWE, *supra* note 15, at 285 (prophesying that the Boomers will appear to us in the 2020's as "the righteous Puritan" that will help us make our "rendezvous with destiny"). However, the Strauss-Howe conclusion that the Boomer-as-Puritan is a good thing, and that the righteous Boomers should *never* retire or go away, relied upon Nathaniel Hawthorne's novel reinvention of the original Shakespearean pejorative "Puritan" as a mark of pride rather than shame. *Compare id.* at 282 ("The very word *retirement* will acquire a new negative meaning, connoting selfish consumption and cultural irrelevance. The elder goal will not be to retire, but to *replenish* or *reflect* or *pray*."), and NATHANIEL HAWTHORNE, *The Gray Champion*, in 1 TWICE-TOLD TALES 1, 3, 10–11 (1900) (reimagining Puritanism as the righteous cause of old people politically re-asserting themselves long after their relevance had passed), with STEPHEN NISSENBAUM, *THE BATTLE FOR CHRISTMAS* 3–7, 102 (1996) (explaining why the Puritans hated Christmas, including because old celebrations of Christmas included cross-dressing events known as mumming), WASHINGTON IRVING, *OLD CHRISTMAS* 102–03 (Randolph Caldecott ill., 1886) (Americanizing the old pejorative "Puritan" to describe those who previously issued "a fiery persecution of poor mince-pie throughout the land"), and WILLIAM SHAKESPEARE, *TWELFTH NIGHT* act II, sc. 2, ls. 153–69 (originally developing the term "puritan" as a pejorative term); cf. Tom Brier, *From Oliver Cromwell to Donald Trump: Here's How to Stop a Slide into Despotism*, PENNSYLVANIA CAPITAL-STAR (Sept. 2, 2020, 6:30 AM), <https://www.penncapital-star.com/commentary/from-oliver-cromwell-to-donald-trump-heres-how-to-stop-a-slide-into-despotism-tom-brier/> (noting Trump's similarities to the Puritan despot Oliver Cromwell).

27. Dareh Gregorian & Frank Thorp V, *Capitol Security Officials Blame Poor Intelligence—and One Another—for the Jan. 6 Riot*, NBC NEWS (Feb. 23, 2021, 2:30 AM), <https://www.nbcnews.com/politics/congress/key-capitol-security-officials-be-grilled-about-what-went-wrong-n1258530> (discussing the Boomer leadership in charge of Capitol security that concluded "the level of probability of acts of civil disobedience/arrests" on Jan. 6 ranged from 'remote' to 'improbable'); *compare* STRAUSS & HOWE, *supra* note 15, at 282 (expressing robust admiration for their own generation based upon an overestimation of the Boomer ability to do good in their twilight years: "Aging Boomers . . . will establish standards of taste while making definitive films of great literature, biography, and history."), with BUMP, *supra* note 22, at xii (defining MAGA as a movement to "[b]ring back the America we used to have, the one the boomers grew up with"), *id.* at 236 ("The baby boomer-powered movement that cohered into the Tea Party and expanded into MAGA has metastasized."), and sources cited *supra* note 24.

28. WENDY KLINE, *BUILDING A BETTER RACE: GENDER, SEXUALITY, AND EUGENICS FROM THE TURN OF THE CENTURY TO THE BABY BOOM* 156 (2001) ("[T]he impetus behind the move to suburbia and the new emphasis on baby-boom family culture stemmed in part from the influential promotion of procreation by eugenicists."); HARRY HAMILTON LAUGHLIN, *EUGENICAL STERILIZATION IN THE UNITED STATES* 348 (1922) ("Birth control become then, in a sense, an anti-baby strike. Whereas eugenics favors the restriction of reproduction by the hereditarily less able mental, moral and physical parents, but demands a higher birth rate by those parents possessing the soundest hereditary traits."); *Buck v. Bell*, 274 U.S. 200, 207 (1927) ("Three generations of imbeciles are enough."). The Boomer belief in their own, incorruptible goodness—incessantly re-marketed by Strauss-Howe to the Boomers-as-Gray-Champions—came from their parents' lies that the Boomers were essentially *Übermenschen* or Supermen, premised upon the eugenic policies the so-called Greatest Generation cruelly instituted on themselves to make the Boomers

that when winter comes the “Aging Boomers will be drawn to . . . [the] preservation of values that will increasingly seem antiquated to others.”²⁹ The Boomer support of prophecies that contradict the obvious fact that Boomers are *not* inherently good (i.e., they are not superior in any way to other human beings),³⁰ is the result of mass Boomer psychoses of denial, cognitive dissonance, and madness.³¹

The origin of the Strauss-Howe prophecy is the preexisting, mass Boomer fantasy that they are all Gray Champions or prophets destined to

artificially more white, more Protestant Christian, more English speaking, and more genetically pure than any other generation. CNN, *Kenosha County Sheriff Said Some People ‘Aren’t Worth Saving’ After 2018 Shoplifting Case*, WSVN NEWS (Aug. 28, 2020), <https://wsvn.com/news/us-world/kenosha-county-sheriff-said-some-people-arent-worth-saving-after-2018-shoplifting-case/> (presenting a Boomer perspective); BUMP, *supra* note 22, at 72–73 (“The baby boom grew up on the Whitest, most native-origin population in U.S. history,” a circumstance that was largely caused by the eugenics-based Immigration Act of 1924 that “aimed in part at preserving the racial homogeneity of immigrants.” (citing Immigration Act of 1924, 43 Stat. 153)); *cf.* Gesetz zur Verhütung erbkranken Nachwuchses [Law on the Prevention of Offspring with Hereditary Diseases], v. 14.7.1933, RGBI. I 1933, 529; ADAM COHEN, IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK 302 (2016) (noting that “the United States had ‘pioneered’ eugenic sterilization for the rest of the world,” including for the Nazis); *Law for the Prevention of Hereditarily Diseased Offspring*, WIKIPEDIA, https://en.wikipedia.org/wiki/Law_for_the_Prevention_of_Hereditarily_Diseased_Offspring (Apr. 13, 2023, 6:23 AM) (explaining that the German “Sterilisation Law,” among others leading to the Final Solution, was modelled closely after Harry Hamilton Laughlin’s Model Eugenical Sterilization Law).

29. STRAUSS & HOWE, *supra* note 15, at 282; see Jeremy W. Peters, *They Predicted ‘The Crisis of 2020’ . . . in 1991. So How Does This End?*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/us/politics/coronavirus-republicans-trump.html> (“Their conclusions about the way each generation develops its own characteristics and leadership qualities influenced a wide range of political leaders, from liberals like Bill Clinton and Al Gore to pro-Trump conservatives like Newt Gingrich and Stephen K. Bannon.”).

30. See LULU MILLER, WHY FISH DON’T EXIST: A STORY OF LOSS, LOVE, AND THE HIDDEN ORDER OF LIFE 133 (2020) (“What does Darwin say is the best way of building a strong species . . . ? Variation. Variation in genes, and hence in behavior and physical traits. Homogeneity is a death sentence. To rid a species of its mutants and outliers is to make that species dangerously vulnerable to the elements.”); BUMP, *supra* note 22, at 72–73 (noting that the Boomer generation is the most homogenous generation in U.S. history).

31. Compare STRAUSS & HOWE, *supra* note 15, at 282 (“Boomers will become part professor and part spiritual guide. . . . Boomers will rail against pop culture detritus . . . violent films, shopping malls, convenience stores, packaged throwaways. . . . Old travelers will seek self-discovery and wisdom, preferring monastic retreats over cheery cruises, tai chi over shuffleboard. Elder enclaves will resemble Sedona more than Sun City, rural hamlets more than condo minicities.” None of these sanguine prophecies about the good old Boomers came to be, and yet Boomers collectively think of themselves as if they fulfilled Strauss-Howe prophecy.), with JOAN DIDION, THE WHITE ALBUM 208 (1979) [hereinafter DIDION, THE WHITE ALBUM] (observing that after the Sixties passed away, many Boomers struggled against a deep seated fatalism, as one person Didion recalled, “attempted suicide in Mexico and then, in a recovery which seemed in many ways a more advanced derangement, came home and joined the Bank of America’s three-year executive-training program”), JOAN DIDION, SLOUCHING TOWARDS BETHLEHEM 130–32 (1981) [hereinafter DIDION, SLOUCHING] (offering witness to what the Boomers’ heyday really looked like), BRUCE CANNON GIBNEY, A GENERATION OF SOCIOPATHS: HOW THE BABY BOOMERS BETRAYED AMERICA xxv (2017), and Mark Harris, *The Flowering of the Hippies*, THE ATLANTIC (Sept. 1967), <https://www.theatlantic.com/magazine/archive/1967/09/the-flowering-of-the-hippies/306619/>.

benefit rather than degrade their children.³² Along with mischaracterizing the Boomers as a good generation, Strauss-Howe also underestimated the Millennials by predicting that if Boomers choose badly, “the young Millennials will follow the Gray Champion off a cliff.”³³ But the Boomers have repeatedly chosen badly, and the Millennials have not followed them as Strauss-Howe prophesied.³⁴

For example, the Millennials earned the ire of their parents for making responsible choices in the face of, not one, but two pandemics caused by the Boomers.³⁵ After the HIV/AIDS outbreak arose from the hypersexualized,

32. Compare STRAUSS & HOWE, *supra* note 15, at 280 (presenting what Boomers will think they are like in the 2020’s: “Clues of what old Boomers *will* be like can be glimpsed in the ‘conscious aging’ movement. Cutting-edge books like *From Age-ing to Sage-ing* speak of new ‘spiritual eldering institutes’ teaching people to engage in ‘vision quests.’ These new ‘elders of the tribe’ see themselves as ‘wisdom keepers’ who must apply ‘their dormant powers of intuition . . . [to] become seers who feed wisdom back into society and who guide the long-term reclamation project of healing our beleaguered planet.’”), with JILL FILIPOVIC, OK BOOMER, LET’S TALK: HOW MY GENERATION GOT LEFT BEHIND 13–15 (2020) [hereinafter FILIPOVIC: OK BOOMER] (“Boomers on the left and the right cast their early adult years as a period of idealism and progress. They think of themselves as having improved the world. A few Boomers certainly did, but overall, the Boomer generation brought us a rapid national shift away from the ideals of gender equality, racial justice, and pacifism. Perhaps this generation-wide self-delusion helps explain why Boomers have such a casual relationship with the truth. . . . Here’s a smattering of what Fox News viewers and readers of FoxNews.com have heard from anchors, contributors, and guests” Here, Filipovic listed headlines that characterized Millennials as everything from the laughable “[e]asily offended cocoon-dwellers” to asking “Are Millennials to blame for all the world’s problems?” to stating flatly “In 2017, the average terrorist is a Millennial.”).

33. STRAUSS & HOWE, *supra* note 15, at 285, 325.

34. Compare *id.* at 285 (prophesying that the Millennials and Gen-Z would follow the Boomers like sheep: “The very other-worldliness that Boomers will regard so highly in themselves will strike younger generations as evidence of incompetence. . . . Yet regardless what youth think of these old messengers, they will respect their message and march to their banner.”), with Taylor Lorenz, ‘OK Boomer’ Marks the End of Friendly Generational Relations, N.Y. TIMES, (Oct. 29, 2019), <https://www.nytimes.com/2019/10/29/style/ok-boomer.html> (reporting that the phrase OK Boomer means that Millennials and Gen-Z do not respect or revere the Boomers), and Gene Marks, *Be Careful, Millennials: Saying ‘OK Boomer’ Could Get You In Trouble*, ENTREPRENEUR MAG. (Nov. 26, 2019), <https://www.entrepreneur.com/article/343026> (threatening Millennials with lawsuits if they do not stop saying “OK Boomer”); cf. Jessica Z. Rothenberg & Daniel S. Gardner, *Protecting Older Workers: The Failure of the Age Discrimination in Employment Act of 1967*, 38 J. SOC. & SOC. WELFARE 9, 19 (2011) (explaining that the Boomers were largely not held accountable for age discrimination against their elders); Rebecca Bradley, Comment to *Baby Boomers and ‘Their’ 1960s Woodstock Culture*, U.S. NEWS (Aug. 18, 2009, 4:01 PM), <https://www.usnews.com/opinion/blogs/letters-to-the-editor/2009/08/18/baby-boomers-and-their-1960s-woodstock-culture> (“Other generations are not trying to ‘re-create’ the 1960s.”).

35. See Michael Schulman, *Convincing Boomer Parents to Take the Coronavirus Seriously*, NEW YORKER (Mar. 16, 2020), <https://www.newyorker.com/culture/culture-desk/convincing-boomer-parents-to-take-the-coronavirus-seriously>; Abigail Tracy, *How Trump Gutted Obama’s Pandemic-Preparedness Systems*, VANITY FAIR (May 1, 2020), <https://www.vanityfair.com/news/2020/05/trump-obama-coronavirus-pandemic-response>; DALLAS BUYERS CLUB (Focus Features 2013) (covering the history of the Reagan years scandal regarding the AZT drugs that did not work, and how the general lack of care among the Boomers for people infected with HIV caused the disease to spike); cf. Georgina Lawton, *Millennials Are Having Less Sex – But Only Because We’ve Raised Our Standards*, INDEPENDENT (May 13, 2019), <https://www.independent.co.uk/voices/millennials-less-sex-education-relationships-bmj-gender-equality-oloni-a8910291.html>; LIBERATED: THE NEW SEXUAL REVOLUTION (Netflix 2017) (presenting sex positive Millennials as exemplars of their generation).

disco-dancing, orgy-loving Boomers, they actually made fun of Millennials, their own children, for not being looser about sex.³⁶ We were not silent amidst our parents' bad decisions; most of us have responded along these lines: "I love my dad and I love my mom. I certainly have no vendetta against them I think they made mistakes in this process and they certainly did things differently than I would have done them."³⁷

Millennials are capable of shame; we believe in personal responsibility and tend to blame ourselves when things do not work out for us, rather than blaming our parents.³⁸ The greatest insult we are capable of lobbing at the Boomer generation is to tell them that they are okay.³⁹ To be fair, there are a few Millennials (and more than a few Gen-Xers and Zoomers) that have willingly become Boomer proxies for pay,⁴⁰ and a handful of Millennials

36. See Malcolm Harris, *When it Comes to Sex, Baby Boomers Aren't Normal*, PACIFIC STANDARD (Aug. 15, 2016), <https://psmag.com/news/when-it-comes-to-sex-baby-boomers-arent-normal> ("[C]ommentators aren't lauding Millennials for their responsible choices. Instead, like stereotype jock dads, they're asking: 'What's wrong with you?'"); cf. STUDIO 54 (2018).

37. Miles Parks, *GOP Candidate's Son Says He Warned of Potential Illegal Activity in N.C. Election*, NPR (Feb. 20, 2019, 2:00 PM), <https://www.npr.org/2019/02/20/695996806/in-north-carolina-election-investigation-hearing-focus-turns-to-gop-candidate>; see also Leigh Ann Caldwell, *Republican Candidate's Son Shakes Up North Carolina Hearing with Surprise Testimony*, NBC NEWS (Feb. 20, 2019, 8:21 PM), <https://www.nbcnews.com/politics/elections/republican-candidate-s-son-shakes-north-carolina-hearing-surprise-testimony-n973836>; cf. Josh Weaver, *Daniel Radcliffe Responds to J.K. Rowling's Tweets on Gender Identity*, TREVOR PROJECT (June 8, 2020), <https://www.thetrevorproject.org/blog/daniel-radcliffe-responds-to-j-k-rowlings-tweets-on-gender-identity/>.

38. FILIPOVIC: OK BOOMER, *supra* note 32, at 147 ("[M]ost [Millennials] were almost apologetic for suggesting that their pain might matter."); see, e.g., Connie Wang, *The "Grateful To Be Here" Generation Has Some Apologizing To Do*, REFINERY29 (June 22, 2020, 10:25 AM), <https://www.refinery29.com/en-us/2020/06/9867469/working-in-toxic-media-industry-diversity-movement>; *Search Party: The Inferno* 23:32–23:57 (HBO release January 28, 2021) (summing up the self-effacing humor of the Millennial generation: Portia: "I'm so exhausted trying to find my fucking power! Please just tell me who I am. I don't know who I am." Elliot: "Or any of us, okay? We're all so fucking lost. We're like a lost generation." Drew: "It's like we just have to make a mockery of all our lives."); TAYLOR SWIFT, *Anti-Hero*, in MIDNIGHTS (Republic Records 2022).

39. See Aja Romano, *"OK Boomer" Isn't Just About the Past. It's About Our Apocalyptic Future.*, VOX (Nov. 19, 2019, 10:00 AM), <https://www.vox.com/2019/11/19/20963757/what-is-ok-boomer-meme-about-meaning-gen-z-millennials> ("[M]illennials who mocked the instant trendiness of OK boomer were drowned out by the meme's intended targets: boomers."); cf. Bob Lonsberry (@BobLonsberry), TWITTER (Nov. 4, 2019, 2:16 AM) (comparing "Boomer" to "the n-word"); Sara M. Moniuszko, *Radio Host Schooled After Comparing 'Boomer' to N-word; Dictionary.com, More on Twitter React*, USA TODAY (Nov. 5, 2019, 7:26 AM), <https://www.usatoday.com/story/entertainment/2019/11/05/radio-host-bob-lonsberry-criticized-after-comparing-boomer-n-word/4163037002/>.

40. See, e.g., JEAN M. TWENGE, GENERATIONS 18–19 (2023) [hereinafter TWENGE, GENERATIONS] ("Strauss and Howe were correct that American history goes through somewhat predictable cycles of stability followed by conflict."), *endorsing and extending* WILLIAM STRAUSS & NEIL HOWE, GENERATIONS 15, 356 (1991) (predicting a "Crisis of 2020"); see also, e.g., Sean Illing, *Stephen Miller Explained*, VOX (Oct. 7, 2020, 11:50 AM), <https://www.vox.com/policy-and-politics/21363270/stephen-miller-covid-trump-white-house-hatemonger>; Graig Graziosi, *Controversial Congresswoman Lauren Boebert Poses for Photo at Trump Farewell as GOP Hierarchy Snub Him*, INDEPENDENT (Jan. 20, 2021, 5:47 PM), <https://www.independent.co.uk/news/world/americas/us-politics/lauren-boebert-trump-farewell-gop-snub-b1790185.html>; Ally Mutnick, *Trump 'Golden Boy' No Shoo-In for Red North Carolina*

have tried (and failed) to beat the Boomers at their own game.⁴¹ But on the whole, Millennials do not follow the Boomers, and they remain more than able to resist the worst the Boomers have to offer.⁴²

Boomer proxies among the Millennial cohort, like Matt Gaetz, Lauren Boebert, and Stephen Miller, have no idea what they are doing, because if the Boomers came clean even their staunchest Millennial allies would probably desert them.⁴³ The unavoidable fact is that when Millennials came of age, the

Seat, POLITICO (Nov. 1, 2020, 6:50 AM), <https://www.politico.com/news/2020/11/01/madison-cawthorn-republican-aoc-433777>; Michael Tarm, *Amy Coney Barrett, Supreme Court Nominee, is Scalia's Heir*, AP NEWS (Sept. 26, 2020), <https://apnews.com/article/election-2020-ruth-bader-ginsburg-chicago-us-supreme-court-courts-547b7de5b6ebabedee46b08b5bb37141>; *but cf.* Elizabeth Nolan Brown, *Ignore The Bullshit: iPhones Are Not Destroying Teenagers*, BUZZFEED NEWS (Aug. 20, 2017, 6:48 AM), <https://www.buzzfeednews.com/article/elizabethnolanbrown/iphones-are-not-destroying-a-generation>.

41. The strategies the Boomers used do not seem to work out so well for Millennials. *See, e.g.*, Jonathan Kim, *Elizabeth Holmes and the Ghost of Steve Jobs*, MEDIUM (Mar. 26, 2019), <https://medium.com/rethink-reviews/elizabeth-holmes-and-the-ghost-of-steve-jobs-b4c7c5ac4b61> (“Jobs was neither a computer engineer, a programmer, a student of computer science, [n]or a hardware designer. However, he was fascinated with computers, recognized their revolutionary potential, and could lead, cajole, and intimidate his employees into carrying out his vision. . . . Holmes clearly shared many of these qualities.”); *compare* Jessica Pressler, *Maybe She Had So Much Money She Just Lost Track of It*, THE CUT (Feb. 8, 2022), <https://www.thecut.com/article/how-anna-delvey-tricked-new-york.html> (explaining how Anna Sorokin almost succeeded at creating the Anna Delvey Foundation by convincing major New York City banks to lend her the money to make huge real estate deals in Manhattan), *with* HYPERNORMALISATION 11:55–12:00 (BBC 2016) (explaining how Donald Trump actually succeeded at getting huge amounts of money from New York City banks in the 1970s with arguably *less* of a reputation and *less* talent for business than Anna Delvey).

42. The Millennials did not start a war with their parents, nor could we have in our infancy, but we will probably have to finish one hobbled by the blitzkrieg public relations war the Boomers launched at us as early as the mid-2000’s to cover up their many mistakes. *See, e.g.*, Venessa Wong & Scott Pham, *We Can Finally End The Myth Of The Lazy Millennial*, BUZZFEED NEWS (Nov. 11, 2019, 11:02 AM), <https://www.buzzfeednews.com/article/venessawong/millennials-parents-stereotypes-boomers-data> (“Of all the noxious, insulting stereotypes millennials have to endure about their generation . . . none merits rioting in the streets like the fetid narrative that millennials are useless parasites leeching off their *far* more industrious, *far* more successful, endlessly *responsible* parents. Especially because it’s not true. . . . Data proves it. In fact, just as many American millennials have been quietly supporting their parents as boomers who have been supporting their adult children. . . . All the headlines, and the jokes, all the (mis)representations about America’s deliciously hateable young adults, they’re fucking fake, folks! A tale spread by a group of grumpy (and probably well-off) boomers that took on a life of its own, sapping a generation—their *own children’s* generation—of its dignity. Millennials are surely not the first generation to support their parents (Gen X is doing a lot of heavy lifting right now). People have done this forever—because we love our parents, and parents need help sometimes too. But millennials get close to no credit for their efforts because they’ve been dragged by an unfair stigma for more than a decade, and it’s time to correct this error.”).

43. VALARIE KAUR, *SEE NO STRANGER: A MEMOIR AND MANIFESTO OF REVOLUTIONARY LOVE* 194 (2020) (“We had inherited Guantánamo. In fact, we had inherited *Guantánamos*.”). Millennials are ignorant of nearly all of the old battle lines drawn up by Boomers in the 1960’s and 70’s that they are still fighting today. FILIPOVIC: OK BOOMER, *supra* note 32, at 33, 165. For example, Stephen Miller’s *1776 Report* released by the Trump White House on January 18, 2021, was largely plagiarized from an article published in 2008 by Boomer Thomas K. Lindsay, because Millennials (even the bad ones) do not know what Boomers think. Tina Nguyen, *A Big Chunk of Trump’s 1776 Report Appears Lifted from an Author’s Prior Work*, POLITICO (Jan. 19, 2021, 4:47 PM), <https://www.politico.com/news/2021/01/19/trump-1776-report-plagiarism-460464>. In fact, Millennials were being labeled the Me Me Me Generation as if we

Boomers surveyed the Millennials and decided that they “must look for people who are not good, and use them, and dishonor them.”⁴⁴ This Machiavellian strategy was taught to the Boomers by their elders, chiefly Michael Walzer (who was inspired by the propaganda campaigns of Winston Churchill and whose strategies probably ultimately traced back to Edward Bernays), but the Boomers proved their superior wickedness by perfecting Machiavellian and Bernaysian propaganda strategies on their own children.⁴⁵

The Boomers have a storied history of child abuse, drug abuse, derangement, delusion, and madness.⁴⁶ Their generational flaws, as Mary

were basic remakes of the Boomer generation before we could possibly know that our parents were known as the original Me Generation. JEAN M. TWENGE, *GENERATION ME: REVISED AND UPDATED* 4 (2014) (2006) [hereinafter TWENGE, *GENERATION ME*] (dubbing Millennials “Generation Me,” when the youngest Millennials were only ten years old); see Elspeth Reeve, *Every Every Every Generation Has Been the Me Me Me Generation*, *THE ATLANTIC* (May 9, 2013), <https://www.theatlantic.com/national/archive/2013/05/me-generation-time/315151/> (criticizing Joel Stein of Time Magazine for embracing of Dr. Twenge’s headline grabbing pseudo-psychological mass-diagnoses of Millennials-as-narcissists as proof that Millennials stand out from other generations as especially selfish); cf. Pete Seat, *Coronavirus Unmasks the Global War on Millennials*, *NEWSWEEK* (May 26, 2020, 12:14 PM), <https://www.newsweek.com/coronavirus-unmasks-global-war-millennials-opinion-1506560> (noting that Boomers are sink or swim realists, while Millennials and Xers are not).

44. MICHAEL WALZER, *JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS* 325 (1977); KAUR, *supra* note 43, at 194; see, e.g., *The Loudest Voice: 2009* (Showtime television broadcast July 21, 2019) (giving an extremely creepy account of Joe Lindsley’s experience being burnt by Roger Ailes after Ailes used Lindsley up); Eliana Johnson, *‘I Want to Explode’—A Roger Ailes Protégé Bares His Soul*, *POLITICO* (Sept. 17, 2017), <https://www.politico.com/magazine/story/2017/09/17/roger-ailes-protége-fox-news-215612/>. Bernays helped companies learn how to turn and burn the Boomers, who later perfected Bernaysian propaganda strategies on their own children. Allan M. Brandt, *Recruiting Women Smokers: The Engineering of Consent*, 51 *J. AM. MED. WOMEN’S ASS’N* 63, 65 (1996) (“In a publicity stunt of genuine historical significance, Bernays recruited debutantes to march in the 1929 New York City Easter parade brandishing their ‘torches of freedom.’”); Edward Bernays, *The Engineering of Consent*, 250 *ANNALS AM. ACAD. POL. & SOC. SCI.* 113, 114 (1947) (“Any person or organization depends ultimately on public approval and is therefore faced with the problem of engineering the public’s consent to a program or goal.”).

45. WALZER, *supra* note 44, at 325 (noting how this strategy was adopted as the central point of Walzer’s just war theory by quoting Machiavelli’s *Discourses*); see JEFFREY B. ABRAMSON, *MINERVA’S OWL: THE TRADITION OF WESTERN POLITICAL THOUGHT* 167 (2009) (letting us know that Walzer taught him this strategy from Machiavelli); cf. EDWARD BERNAYS, *BIOGRAPHY OF AN IDEA: MEMOIRS OF PUBLIC RELATIONS COUNSEL* 652 (1965) (“Goebbels, said Wiegand, was using my book *Crystallizing Public Opinion* as a basis for his destructive campaign against the Jews of Germany.”); *The Century of the Self: Part 2 – The Engineering of Consent* (BBC television broadcast Mar. 24, 2002); 1 ROBERT SOUTH, *SERMONS PREACHED UPON SEVERAL OCCASIONS* 247 (1823) (“[N]othing being more usual, than for these unchristian fishers of men to be fatally caught in their own nets: for does not the text expressly say, that *God taketh the wise in their own craftiness?*” (quoting *Job* 5:13; 1 *Corinthians* 3:19)).

46. During the summer of love in 1967, the Boomers fed their five-year-olds acid, attempted to levitate the Pentagon, accepted the white supremacist Charles Manson among their ranks, and largely avoided joining the parallel occurring freedom summer led by Dr. King. DIDION, *THE WHITE ALBUM*, *supra* note 31, at 42, 47 (“Many people I know in Los Angeles believe that the Sixties ended abruptly on August 9, 1969, ended at the exact moment when word of the murders on Cielo Drive traveled like brushfire through the community, and in a sense this is true. The tension broke that day. The paranoia was fulfilled.” Didion wrote of the day the news of the Tate murders broke: “I remember all of the day’s misinformation very clearly, and I also remember this, and wish I did not: *I remember that no one was*

Trump described by making a character example of her uncle, may originate from the abuse and mistakes of their parents.⁴⁷ But there is nothing from previous generations quite like the Boomers' present project of asserting dead hand control over the future using proxies, such as Amy Coney Barrett, in official positions to represent their collective legacy after they are gone.⁴⁸

Millennial comics recently explored this unique intergenerational phenomenon of Boomer proxy-making in shows like *Hacks* and *Search Party*,⁴⁹ but in cases of extreme cruelty Millennial jokes fall short.⁵⁰ There are days like January 6, 2021 when we should drop the "doubtful amulets" of our good humor and highly developed sense of irony,⁵¹ and take up "the

surprised."); *id.* at 206–08 (describing how after the Sixties passed away, many struggled against a deep seated fatalism, as one person Didion recalled, "attempted suicide in Mexico and then, in a recovery which seemed in many ways a more advanced derangement, came home and joined the Bank of America's three-year executive-training program."); DIDION, SLOUCHING, *supra* note 31, at 131–32 (noticing Boomers feeding acid to their babies); Peter Manseau, *Fifty Years Ago, a Rag-Tag Group of Acid-Dropping Activists Tried to "Levitate" the Pentagon*, SMITHSONIAN MAG. (Oct. 20, 2017), <https://www.smithsonianmag.com/smithsonian-institution/how-rag-tag-group-acid-dropping-activists-tried-levitate-pentagon-180965338/>; see Daniel Kreps, *How a Stolen Beach Boys Song Helped Lead to Charles Manson's Murderous Path*, ROLLING STONE (Mar. 17, 2017), <https://www.rollingstone.com/tv/tv-news/how-a-stolen-beach-boys-song-helped-lead-to-charles-mansons-murderous-path-117577/> (talking about how the Beach Boys recorded one of Manson's super creepy songs about enslaving and possibly murdering women originally titled *Cease to Exist*); *American Experience: Freedom Summer* (PBS television broadcast Jan. 17, 2014).

47. MARY L. TRUMP, TOO MUCH AND NEVER ENOUGH: HOW MY FAMILY CREATED THE WORLD'S MOST DANGEROUS MAN 101–02 (2020) ("Ironically, the defenses . . . [Donald Trump] had developed as a young child to protect himself against the indifference, fear, and neglect that had defined his early years, along with his being forced to watch the abuse of Freddy, primed him to develop what his older brother clearly lacked: the ability to be the 'killer' and proxy his father required."). Responding to the similar argument that Trump was haplessly deluded by John C. Eastman and his other advisors on January 6, 2021, Rep. Liz Cheney wisely stated: "President Trump is a 76-year-old man. He is not an impressionable child. Just like everyone else in our country, he is responsible for his own actions and his own choices." *Liz Cheney Says President Trump Responsible for Own Actions and Choices*, C-SPAN (July 12, 2022), <https://www.c-span.org/video/?c5023258/liz-cheney-president-trump-responsible-actions-choices>.

48. The closest thing may be yesteryear's racist eugenic policies, which sought to control future outcomes. See KLINE, *supra* note 28, at 156 ("[T]he new emphasis on baby-boom family culture stemmed in part from the influential promotion of procreation by eugenicists."); see, e.g., Seema Mehta, *Trump's Touting of 'Racehorse Theory' Tied to Eugenics and Nazis Alarms Jewish Leaders*, L.A. TIMES (Oct. 5, 2020, 11:21 AM), <https://www.latimes.com/politics/story/2020-10-05/trump-debate-white-supremacy-racehorse-theory>.

49. *Hacks: The One, the Only* 31:22–31:32 (HBO release June 2, 2022) (depicting Deborah Vance firing her thoroughly abused Gen-Z assistant Ava, which was possibly the kindest thing Vance did for Ava in the entire show: "I told you, you're just like me. Get your own mountain to climb."); *Search Party: A Dangerous Union* 9:30–10:08 (HBO release June 25, 2020) (William: "But are you smart enough to have registered your business as a 603 D4 Non-Profit?" Chantal: "Yes. Of course. I already have." William: "Now that's interesting because that doesn't exist. I made it up." Chantal: "Oh. Um . . . oops?" William: "No, no. It's fine. I like that about you." Chantal: "Oh!" William: "Now, here is my business card. I'm gonna look forward to your call. Let's make billions.").

50. See, e.g., Michael Hobbes, *FML: Why Millennials Are Facing the Scariest Financial Future of Any Generation Since the Great Depression*, HUFFPOST: HIGHLIGHT, <https://highline.huffingtonpost.com/articles/en/poor-millennials/> (last visited Apr. 17, 2023).

51. Joan Didion, *On Self-Respect: Joan Didion's 1961 Essay from the Pages of Vogue*, VOGUE (Dec. 23, 2021), <https://www.vogue.com/article/joan-didion-self-respect-essay-1961> [hereinafter Didion,

singular power of self-respect” embodied by Millennial superstar Lizzo.⁵² Because right now, Gen-X appears to be stuck between Strauss-Howe inspired prophecies that excused Boomer-led intergenerational oppression by mass-diagnosing defenseless Millennial and Gen-Z children with serious mental issues,⁵³ and legitimate demographic models that account for the small, but loud, sub-culture of Boomer proxies who followed their Gray Champion Donald J. Trump when he called upon them to desecrate the Capitol Building according to the Trumpian rationalization “that This Is What the Founders Wanted.”⁵⁴

∴ *On the 2020 Confirmation of Amy Coney Barrett*

The 2020 confirmation of Amy Coney Barrett was controversial because it was pushed through by the Republicans only eight days before the 2020 election after the same Republicans in 2016 vowed never to rush through confirmation hearings in an election year.⁵⁵ The reason why the Republicans were willing to break their own solemn vows made in regard to Obama’s nomination of Merrick Garland only four years earlier was Barrett’s commitment to adhering to Scalia’s ideologies.⁵⁶ She was not nominated for

On Self-Respect] (naming her era’s surface-level marks of self-respect as “doubtful amulets”); see, e.g., Rachel Thompson, *Millennials Destroyed the Rules of Written English – and Created Something Better*, MASHABLE (Apr. 2, 2018), <https://mashable.com/article/millennials-written-english> (explaining Millennial expression online, which is probably our most cherished doubtful amulet of self-respect).

52. Didion, *On Self-Respect*, *supra* note 51, embodied by LIZZO, SPECIAL (Atlantic Records 2022).

53. See, e.g., TWENGE, GENERATIONS, *supra* note 40, at 18–19 (adopting Strauss-Howe’s theory from their book *Generations* as a model for her new, similarly titled 2023 book *Generations*); *id.* at 243, 250–54 (mass diagnosing Millennials with narcissism); *id.* at 400–02 (mass diagnosing Gen-Z with depression); Jean M. Twenge, *Have Smartphones Destroyed a Generation?*, THE ATLANTIC (Sept. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/has-the-smartphone-destroyed-a-generation/534198/> (presenting her book *iGen* that mass-diagnosed Gen-Z with mental problems when the youngest members of Gen-Z were still around 5 years old); TWENGE, GENERATION ME, *supra* note 43, at 96 (mass diagnosing Millennials as narcissists in 2006, when the youngest Millennial was about 10 years old); *id.* at 145–46 (arguing that Millennials are more likely to be psychopaths than Boomers in 2006), cited by Joel Stein, *The Me Me Me Generation*, TIME MAG. (May 9, 2013, 4:40 PM), <https://time.com/247/millennials-the-me-me-me-generation/>; Jean M. Twenge et al., *Birth Cohort Increases in Psychopathology Among Young Americans, 1938–2007: A Cross-Temporal Meta-Analysis of the MMPI*, 30 CLINICAL PSYCH. REV. 145, 153 (2010); but see Kali H. Trzesniewski et al., *Do Today’s Young People Really Think They Are So Extraordinary?: An Examination of Secular Trends in Narcissism and Self-Enhancement*, 19 ASSOC. PSYCH. SCI. 181, 185–87 (2008) (strongly disputing the methods Dr. Twenge used to mass diagnose Millennials as a generation of narcissists).

54. BUMP, *supra* note 22, at 236–37; see also Stan, *supra* note 15.

55. See Jill Filipovic, *Amy Coney Barrett’s Day One Hearing was Rank Hypocrisy from Start to Finish*, GUARDIAN (Oct. 13, 2020, 6:29 AM), <https://www.theguardian.com/commentisfree/2020/oct/13/amy-coney-barrett-hearing-us-supreme-court> [hereinafter Filipovic, *Amy*].

56. See Amy Coney Barrett, *Originalism and Stare Decisis*, 92 NOTRE DAME L. REV. 1921, 1921–22 (2017) (drawing upon Justice Scalia’s idea of Originalism as a legal authority to characterize *stare decisis* and judicial precedent a “problem,” which is a radical departure from the original theories the founders of the United States believed); *id.* at 1932 n.52 (noting that Justice Scalia “repeatedly urged the

her mind or accomplishments—oh no, Barrett is expected to be Scalia’s dead-hand viceroy on the bench for the rest of her life.⁵⁷

In addition to having clerked for Justice Scalia, Barrett is the third Justice on the bench that personally worked on Bush’s team in *Bush v. Gore* to advocate deciding elections through judicial activism rather than ensuring the fidelity of state election processes with the popular vote.⁵⁸ The same day Trump rammed Amy Coney Barrett through her confirmation to the U.S. Supreme Court, he happily retweeted news that the U.S. Supreme Court blocked a one-week extension previously granted to Wisconsin to accept votes through the mail during the COVID-19 crisis.⁵⁹ In this decision, Justice Kavanaugh wrote a concurrence strikingly similar to Justice Scalia’s concurrence granting a stay in *Bush v. Gore*.⁶⁰

overruling of *Roe v. Wade*”); Soo Youn, *‘I’m Saving Her for Ginsburg’: Who is Amy Coney Barrett, Trump’s Likely Supreme Court Pick?*, GUARDIAN (Sept. 21, 2020), <https://www.theguardian.com/law/2020/sep/21/amy-coney-barrett-ruth-bader-ginsburg-supreme-court-trump> (“In Barrett, 48, conservatives see a young . . . jurist in the mold of Antonin Scalia, the conservative justice . . . for whom Barrett clerked.”); cf. Dan Mangan, *Trump: I’ll Appoint Supreme Court Justices to Overturn Roe v. Wade Abortion Case*, CNBC (Oct. 19, 2016, 9:31 PM), <https://www.cnbc.com/2016/10/19/trump-ill-appoint-supreme-court-justices-to-overturn-roe-v-wade-abortion-case.html>.

57. See Barrett, *supra* note 56, at 1921–22, 1932 n.52; Remarks: Donald Trump Announces Amy Coney Barrett as Supreme Court Nominee – September 26, 2020, YOUTUBE (Sept. 26, 2020), <https://www.youtube.com/watch?v=OM8J1vZAMVM> (remarks of Hon. Amy Coney Barrett: “I was lucky enough to clerk for Justice Scalia, and given his incalculable influence on my life, I am very moved to have members of the Scalia family here today. . . . I clerked for Justice Scalia more than twenty years ago, but the lessons I learned still resonate. His judicial philosophy is mine too.”); see Emma Newburger, *Amy Coney Barrett Pays Homage to Conservative Mentor Antonin Scalia—His Judicial Philosophy is Mine Too*, CNBC (Sept. 26, 2020, 6:12 PM), <https://www.cnbc.com/2020/09/26/amy-coney-barrett-pays-homage-to-mentor-antonin-scalia.html> (noting that when she was nominated, Barrett sent “a clear signal that she will take a conservative approach to the law in the same vein as Justice Antonin Scalia”); Filipovic, *Amy*, *supra* note 55.

58. Joan Biskupic, *Supreme Court is About to Have 3 Bush v. Gore Alumni Sitting on the Bench*, CNN (Oct. 17, 2020, 8:07 AM), <https://www.cnn.com/2020/10/17/politics/bush-v-gore-barrett-kavanaugh-roberts-supreme-court/index.html> (the other two are Roberts and Kavanaugh).

59. Democratic Nat’l Comm. v. Wis. State Legislature, 141 S. Ct. 28, 28 (2020); RT @DianneG: Democrats in Wisconsin Had Asked the Court to Allow the Counting of Ballots that Arrive Up to Six Days After Election Day If T . . . , DID TRUMP TWEET IT? (Oct. 27, 2020), <http://didtrumptweetit.com/1321043460938412032-2>; Gerhard Peters & John Wooley, *Donald J. Trump, 45th President of the United States: 2017–2021: Tweets of October 27, 2020*, AM. PRESIDENCY PROJECT (Oct. 27, 2020), <https://www.presidency.ucsb.edu/documents/tweets-october-27-2020> (revealing the context of Trump’s retweet amidst other tweets of Amy Coney Barrett’s successful confirmation and noting his presence in Wisconsin at the time); cf. Charlotte Klein, *Trump Cheers Wisconsin Court Ruling As Governor Warns of “Chaos”*, VANITY FAIR (May 14, 2020), <https://www.vanityfair.com/news/2020/05/trump-cheers-wisconsin-court-ruling-as-governor-warns-of-chaos> (demonstrating Trump’s sanguine attitude towards the courts striking down COVID restrictions in Wisconsin—a state Trump needed to win in the 2020 election).

60. *Compare Democratic Nat’l Comm.*, 141 S. Ct. at 33 (Kavanaugh, J., concurring) (“Those States [that require ballots to be received by election day] want to avoid the chaos and suspicions of impropriety that can ensue if thousands of absentee ballots flow in after election day and potentially flip the results of an election.”), with *Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (mem.) (Scalia, J., concurring) (“The counting of votes that are of questionable legality does in my view threaten irreparable harm to petitioner [Bush], and to the country, by casting a cloud upon what he claims to be the legitimacy of his election.”);

Barrett's commitment to Justice Scalia's ideologies is a commitment to conservative thought dressed up as founding memory that the founders never thought or intended.⁶¹ Hers is a commitment to the abandonment of *stare decisis* and other staples imported with the common law into America by the founders for the arbitrary agenda of Justice Scalia.⁶² No Senate Democrat was able to expose Barrett's Scalian preference for a unity of powers, nor did any of them fathom Barrett's spirit of Catholic rebellion.⁶³

The Senate did not force Professor Barrett to defend her claim of Catholic piety.⁶⁴ Instead, Senator Diane Feinstein boomed cryptically at the judicial nominee, "[t]he dogma lives loudly within you."⁶⁵ What dogma? Surely not Catholic dogma, which now ostensibly requires Barrett to uphold *Obergefell* and *Windsor*, and to repudiate her new colleagues' recent licenses to kill granted to the Executive Branch in *Barr v. Lee*, without proper judicial process.⁶⁶

The Catholic Church is officially pro-gay rights, pro-immigrant, pro-environmental justice, anti-death penalty, and it even holds a position of mercy rather than punishment for those who have abortions.⁶⁷ These

cf. Devan Cole, *Here's What Brett Kavanaugh Said on CNN About Bush v. Gore in 2000*, CNN (Oct. 27, 2020, 6:20 PM), <https://www.cnn.com/2020/10/27/politics/bush-gore-cnn-interview-brett-kavanaugh/index.html> (reporting that Kavanaugh gave Scalia's Textualism credit for the decision in *Bush v. Gore*).

61. See Barrett, *supra* note 56, at 1921–22 (characterizing the common law, including its doctrine of *stare decisis*, as an exception to Scalia's Originalism), with Henfield's Case, 11 F. Cas. 1099, 1107 (C.C.D. Pa. 1793) (No. 6,360) (claiming that common law was the foundation of the original U.S. Constitution: "The common law, says my Lord Coke (Calvin's Case, 7 Coke, 1), is a social system of jurisprudence. She receives other laws and systems into a friendly correspondence; and associates to herself those who can give her information, or advice, or assistance.").

62. See Barrett, *supra* note 56, at 1922; see, e.g., *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) (Justice Barrett was one of the five that decided: "We hold that *Roe* and *Casey* must be overruled."). Had Barrett not been confirmed, *Roe v. Wade* might still be the law of the land. *Id.*

63. See sources cited *supra* note 13; Barrett, *supra* note 56, at 1943 ("I, for one, find it impossible to say that Justice Scalia did his job badly."); Mary Clare Jalonick & Elana Schor, *No 'Dogma': Democrats Walk Tightrope on Barrett's Faith*, AP NEWS (Oct. 10, 2020), <https://apnews.com/article/donald-trump-ruth-bader-ginsburg-amy-coney-barrett-dianne-feinstein-judiciary-2aaf6821079ac0c5c6fe50699ad745ba>.

64. Jalonick & Schor, *supra* note 63.

65. James Crump, *The Dogma Lives Loudly in You: Dianne Feinstein's Grilling of Trump SCOTUS Frontrunner for Her Devout Catholicism Goes Viral*, INDEPENDENT, (Sept. 22, 2020, 3:56 AM), <https://www.independent.co.uk/news/world/americas/us-politics/amy-coney-barrett-supreme-court-dianne-feinstein-ruth-bader-ginsburg-b512741.html>.

66. *Barr v. Lee*, 140 S. Ct. 2590, 2951–52 (2020) (per curiam); see CNA Staff, *Pope Francis Calls for Civil Union Law for Same-Sex Couples, in Shift from Vatican Stance*, CATH. NEWS AGENCY (Oct. 21, 2020, 5:35 AM), <https://www.catholicnewsagency.com/news/46295/pope-francis-calls-for-civil-union-law-for-same-sex-couples-in-shift-from-vatican-stance>; John H. Garvey & Amy Coney Barrett, *Catholic Judges in Capital Cases*, 81 MARQ. L. REV. 303, 333–35 (1998) (sentencing criminals to death is "something the observant Catholic judge should not do").

67. CNA Staff, *supra* note 66; Katherine Lackey, *Where Pope Francis Stands on 10 Major Issues*, USA TODAY (Sept. 1, 2015, 2:43 PM), <https://www.usatoday.com/story/news/world/2015/09/01/pope-francis-social-issues-abortion-gay-rights-climate-change/71520372/>; Elisabetta Povoledo & Laurie Goodstein, *Pope Francis Declares Death Penalty Unacceptable in All Cases*, N.Y. TIMES (Aug. 2, 2018),

positions were made absolutely clear in recent years by Pope Francis himself, putting Barrett and other conservative Catholic judges in a series of binds.⁶⁸ The latest of these positions was clarified after Barrett's confirmation hearings, when the Pope issued the Church's first endorsement of the inclusion of gay sexual relationships within the Church.⁶⁹

Barrett was not pressed by the Senate about her likely alliances with other rebellious Catholics along the lines of her controversial publications.⁷⁰ She was not asked about her thoughts on Steve Bannon, who is starting a school to teach populist fascism in Italy to challenge the Pope, the American Cardinal Burke, who also openly opposes the Pope and supported Bannon, or other figures that may cause ruptures in the global Catholic Church.⁷¹ Like Scalia, Barrett's rebellious character was normalized as if the dogma lived loudly in her—but it does not.⁷² Rebellion to Catholic leadership from within the Catholic Church lives loudly in Barrett and her ascension to the bench without a question on this topic made her religious rebellion the Court's majority view with absolutely no Senate scrutiny.⁷³

The nomination and confirmation of Justice Amy Coney Barrett on the U.S. Supreme Court solidified a conservative Catholic majority at a time

<https://www.nytimes.com/2018/08/02/world/europe/pope-death-penalty.html>; Philip Pulella, *Pope Says Migrants' Rights Should Override National Security Concerns*, REUTERS (Aug. 21, 2017, 11:06 AM), <https://www.reuters.com/article/us-migrants-pope/pope-says-migrants-rights-should-override-national-security-concerns-idUSKCN1B11RX>.

68. Lackey, *supra* note 67; Povoledo & Goodstein, *supra* note 67; Pulella, *supra* note 67; Garvey & Barrett, *supra* note 66, at 303–06, 350 (“[W]e believe that Catholic judges (if they are faithful to the teaching of their church) are morally precluded from enforcing the death penalty.”). Justice Amy Coney Barrett believed moral and religious duties were problems that should be overcome and thus she set forth a plan to help these judges abstain from enforcing the death penalty while also ensuring that other judges enforce it; she and her coauthor John H. Garvey, who later became the President of Catholic University of America, did not suggest that the moral position of the Catholic Church should help judges shape or interpret the law. *See id.*

69. CNA Staff, *supra* note 66 (the Pope's comments were aired on Oct. 21, 2020); Dierdre Walsh, *Takeaways From Amy Coney Barrett's Judiciary Confirmation Hearings*, NPR (Oct. 15, 2020, 5:01 AM), <https://www.npr.org/2020/10/15/923637375/takeaways-from-amy-coney-barretts-judiciary-confirmation-hearings> (ACB's confirmation hearings occurred on Oct. 15, 2020).

70. Jalonick & Schor, *supra* note 63; *see generally* Garvey & Barrett, *supra* note 66, at 333–35 (characterizing the sentencing of criminals to death as “something the observant Catholic judge should not do. . . . There is no way the judge can do his job and obey his conscience. The judge's conscience tells him to impose a life sentence; federal law directs him to impose death. . . . It seems to us, then, that the proper approach to this kind of case—morally and legally—is for the observant Catholic judge to recuse himself after trial and before the sentencing hearing.”).

71. *See* Jalonick & Schor, *supra* note 63; *see also* Christopher Lamb, *Bannon and Burke: The End of an Unholy Alliance*, THE TABLET (July 4, 2019), <https://www.thetablet.co.uk/features/2/16323/bannon-and-burke-the-end-of-an-unholy-alliance>.

72. *See* Crump, *supra* note 65.

73. *See* sources cited *supra* notes 65–66; Burgess Everett & John Bresnahan, *Barrett Emerges as the Anti-Kavanaugh*, POLITICO (Oct. 14, 2020, 06:28 PM), <https://www.politico.com/news/2020/10/14/barrett-emerges-as-anti-kavanaugh-429481>.

when major, era defining cases will be heard by the bench.⁷⁴ The conservative Catholic majority includes Roberts, Alito, Thomas, Kavanaugh, and Barrett, with Gorsuch (a lapsed Catholic) in the wings.⁷⁵ As a direct result, “a new and bare majority of this Court—acting at practically the first moment possible—overrule[d]” *Roe v. Wade* and *Casey v. Planned Parenthood of Southeast Pa.* in *Dobbs v. Jackson Women’s Health Org.*,⁷⁶ in the first decision ever in U.S. history to destroy a judicially protected, popular, and widely relied upon right.⁷⁷

It is undebatable that the Boomer gerontocracy chose Barrett because she convinced them that she would stand for Scalia’s ideologies on the U.S. Supreme Court.⁷⁸ However, when the Republicans under Nixon reshaped the Courts, what they got was *Roe v. Wade*.⁷⁹ So too, the conservatives of future decades may come to regret the decisions that Barrett makes on their behalf—including her vote in *Dobbs* that established what will surely be a chaotic, anti-*stare-decisis*-era that appears to exist solely to ensure that the Boomers can take every right that they enjoyed in their younger years to the grave, without passing them down to future generations.⁸⁰

74. Nancy Cook & Gabby Orr, *Trump Taps Barrett, Launching Brawl Over Supreme Court’s Future*, POLITICO (Sept. 26, 2020, 7:00 AM), <https://www.politico.com/news/2020/09/26/trump-scotus-coney-barrett-easy-choice-422019>.

75. Charlotte Allen, *Op-Ed: Barrett’s Confirmation Would Seal A Catholic Court Supermajority. It’s All About Timing*, L.A. TIMES (Oct. 23, 2020, 3:00 AM), <https://www.latimes.com/opinion/story/2020-10-23/amy-coney-barrett-supreme-court-catholic-majority>.

76. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2350 (2022) (Breyer, Sotomayor, & Kagan, JJ., dissenting).

77. *Id.* at 2347 (Breyer, Sotomayor, & Kagan, JJ., dissenting) (“Rescinding an individual right in its entirety and conferring it on the State, an action the Court takes today for **the first time in history**, affects all who have relied on our constitutional system of government and its structure of individual liberties protected from state oversight.” (emphasis added)).

78. See Joan Biskupic, *Antonin Scalia’s Legacy Looms Over the Amy Coney Barrett Hearings*, CNN (Oct. 13, 2020, 9:51 AM), <https://www.cnn.com/2020/10/12/politics/scalia-barrett-supreme-court-hearing/index.html> (telling the Senate Judiciary Committee: “[I]t was the content of Justice Scalia’s reasoning that shaped me.”); cf. Brief of Amicus Curiae the Claremont Inst.’s Ctr. for Const. Juris. in Support of Petitioners at 11–13, *Dobbs v. Jackson Women’s Health Org.*, 141 S. Ct. 2619 (2021) (No. 19–1392) [hereinafter, Eastman’s Amicus Brief in *Dobbs*] (this is a brief written by the known architect of the January 6 insurrection, John C. Eastman, expressing Scalia’s stated opinions about how *Roe* should be overruled).

79. *Roe v. Wade*, 410 U.S. 113, 115, 153 (1973) (“This right of privacy . . . is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”). The *Roe* majority included Chief Justice Burger and Justices Blackmun and Powell, each of whom were nominated by President Nixon and were essential in forming the majority in *Roe*. *REVERSING ROE* (Netflix 2018) (explaining the irony of a Republican President appointing the judges who decided *Roe*).

80. *Dobbs*, 142 S. Ct. at 2301 (Thomas, J., concurring) (As one of the five votes necessary to overrule *Roe*, Thomas explained his understanding of the majority’s reasoning: “Because the Due Process Clause does not secure *any* substantive rights, it does not secure a right to abortion. . . . For that reason, in future cases, we should reconsider all of this Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*.”), referring to *Dobbs*, 142 S. Ct. at 2265, 2281 (majority opinion) (noting that the five factors applied in *Dobbs* should be applied to “[e]ach precedent” separately, one-by-

As uniquely erroneous as *Dobbs* is, it was also the logical consequence of *Janus v. AFSCME*.⁸¹ One person who commended the *Janus* approach to the Supreme Court in *Dobbs* was none other than the January 6 *coup d'état* architect John C. Eastman.⁸² After urging the violent overthrow of Congress,⁸³ leading Trump's pressure campaign against Vice President Mike

one to re-determine whether *stare decisis* should apply to previous cases). Some of the rights that could be overruled by *Dobbs*' approach include **the right not to be sterilized without consent**: *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) ("The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear."), *discussed by Dobbs*, 142 S. Ct. at 2332 (Breyer, Sotomayor, & Kagan, JJ., dissenting); **the right to travel over state lines**: *Edwards v. California*, 314 U.S. 160, 173 (1941) (striking down state laws that precluded the migration of indigent persons across state lines, because they "impose[d] an unconstitutional burden upon interstate commerce"); *id.* at 177 (Douglas, J., concurring) ("I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines."); **the right to marry interracially**: *Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." (quoting *Skinner*, 316 U.S. at 541)), *discussed by Dobbs*, 142 S. Ct. at 2332; **the right to know about, access, and use contraceptives**: *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965) ("We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system."), *discussed by Dobbs*, 142 S. Ct. at 2332; **the right to have sex how you like and with who you like in the privacy of your home**: *Lawrence v. Texas*, 539 U.S. 558, 579 (2003) (noting that the founders "knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress"), *discussed by Dobbs*, 142 S. Ct. at 2332; **and the right of gay men to marry**: *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015) (noting that the petitioners "ask for equal dignity in the eyes of the law. The Constitution grants them that right."), *discussed by Dobbs*, 142 S. Ct. at 2332.

81. *Janus v. AFSCME*, 138 S. Ct. 2448, 2478–79 (2018) (overruling *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977)), *extended by Dobbs*, 142 S. Ct. at 2278 (finding that "traditional *stare decisis* factors [taken from *Janus*] do not weigh in favor of retaining *Roe* or *Casey*"—a tradition that apparently began in 2018 and no earlier); *see, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2434 (2022) (Sotomayor, J., dissenting) ("Today's decision goes beyond merely misreading the record. The Court overrules *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and calls into question decades of subsequent precedents that it deems 'offshoot[s]' of that decision."); *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2497, 2505 (2022) ("[T]he *Worcester*-era understanding of Indian country as separate from the State was abandoned later in the 1800s."); *id.* at 2505 (Gorsuch, J., dissenting) (noting that the majority unsettled "a foundational rule that would persist for over 200 years"), *unsettling McGirt v. Oklahoma*, 140 S. Ct. 2452, 2477 (2020) (quoting *Worcester v. Georgia*, 31 U.S. 515, 557 (1832)); *cf.* Joshua J. Schroeder, *America's Written Constitution: Remembering the Judicial Duty to Say What the Law Is*, 43 *CAP. U. L. REV.* 833, 862 (2019) [hereinafter Schroeder, *America's*] (observing the lead-up to *Janus*, in *Bay Mills* and *Harris*, where the Court already subverted *stare decisis* prior to overruling *Abood* when it "haphazardly redefined *stare decisis* as ad hoc rulemaking in order to fray its own precedent without any meaningful . . . explanation").

82. Eastman's Amicus Brief in *Dobbs*, *supra* note 78, at 10 ("The Court's recent decision in *Janus* provides some guidance for when *stare decisis* should not bind future courts."); *see Jan. 6 Committee: John Eastman Plead the Fifth 100 Times After Not Getting Pardon*, C-SPAN (June 16, 2022), <https://www.c-span.org/video/?c5020147/jan-6-committee-john-eastman-plead-100-times-pardon>.

83. *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1198 (C.D. Cal. 2022) ("Dr. Eastman and President Trump launched a campaign to overturn a democratic election, an action unprecedented in American history. Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory. The plan spurred violent attacks on the seat of our nation's government, led to the deaths of several law enforcement officers, and deepened public distrust in our political process.").

Pence to throw out slates of legitimate electors,⁸⁴ and authoring the plenary power strategy of the infamous kraken lawsuits,⁸⁵ John C. Eastman proudly heralded a coming winter in America by arguing that *Roe v. Wade* made the judiciary “just . . . one more political branch—one without democratic legitimacy.”⁸⁶ Eastman, who was devoutly inspired by Scalia’s populism, may yet succeed in establishing his vision of a Hobbesian despotism through the courts beginning with *Moore v. Harper* in 2023, because one of the substantive rights threatened by *Dobbs* is *Gray v. Sanders*’ principle of “one person, one vote.”⁸⁷

PART II – JUSTICE SCALIA’S PARADOXICAL USE OF FEUDAL LEGAL PRESUPPOSITIONS

The reason why Scalia opposed the living constitution was that he misconceived the role of the Declaration of Independence, or perhaps he

84. *Id.* at 1195 (“Dr. Eastman opened the meeting on January 5 bluntly: ‘I’m here asking you to reject the electors.’ Eastman also ‘gave his own speech [on January 6] at the Ellipse ‘demanding’ the Vice President ‘stand up’ and enact his plan.’”).

85. Motion of Donald J. Trump, President of the United States, to Intervene in his Personal Capacity as Candidate for Re-Election, Proposed Bill of Complaint in Intervention, and Brief in Support of Motion to Intervene at 26, *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020) (No. 22O155) [hereinafter Eastman’s *Texas v. Pennsylvania* Motion] (claiming the states have “plenary power for determining the ‘manner’ of choosing presidential electors”); *id.* at 1 (listing “John C. Eastman [as] *Counsel of Record*”); Saletan, *supra* note 24.

86. Eastman’s Amicus Brief in *Dobbs*, *supra* note 78, at 12; *see also* Brief of Amicus Curiae the Claremont Inst.’s Ctr. for Const. Juris. in Support of Petitioners at 5, *N.Y. Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022) (No. 20–843) (quoting HOBBS, *supra* note 13, at 94); *cf. Bruen*, 142 S. Ct. at 2131; PBS NewsHour, *WATCH: Many Trump Supporters Carried Firearms on Jan. 6, Police Transmissions Reveal*, YOUTUBE (June 28, 2022), <https://www.youtube.com/watch?v=Uj0R9QedwG4> (police spotted “AR-15s at 14th and Independence”); Reuters, *Hutchinson: Trump Didn’t ‘Care’ Jan. 6 Rioters Were Armed*, YOUTUBE (June 28, 2022), <https://www.youtube.com/watch?v=oQ1Wztu5qVc> (noting that Trump wanted the armed insurrectionists to march with him to the Capitol Building).

87. *Gray v. Sanders*, 372 U.S. 368, 381 (1963); Brief of Amicus Curiae the Claremont Inst.’s Ctr. for Const. Juris. in Support of Petitioners at 23–25, *Moore v. Harper*, 142 S. Ct. 2901 (2022) (No. 21–1271) (describing that sending electors back to the states means to send them back to the sheer politics of state legislatures without regard to any express limit imposed by the state constitutions through the state courts); Eastman’s Amicus Brief in *Dobbs*, *supra* note 78, at 13 (“[L]et them decide, State by State, whether this practice should be allowed.”) (quoting *Stenberg v. Carhart*, 530 U.S. 914, 956 (2000) (Scalia, J., dissenting)); *id.* at 9 (quoting John C. Eastman, *Stare Decisis: Conservatism’s One-Way Ratchet Problem*, in *COURTS AND THE CULTURE WARS* 133 (Bradley Watson ed., 2002)); *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2243 (2022) (following Eastman’s advice: “It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”); *id.* at 2332 (Breyer, Sotomayor, & Kagan, JJ., dissenting) (disagreeing with Eastman by saying “logic and principle are not one-way ratchets”); *cf. Eastman*, 594 F. Supp. 3d at 1171 (noting Eastman and Trump’s similar plan in 2020 to get Vice President Pence to “send them [the Electors] back to the States”); Eastman’s *Texas v. Pennsylvania* Motion, *supra* note 85, at 17–18 (asking the U.S. Supreme Court to return the power to decide the 2020 election to the States).

failed to conceive of the Declaration at all.⁸⁸ The Declaration set forth the terms of legitimacy for our governments; terms referenced by the Ninth Amendment and many state constitutions against which our laws should constantly be tested.⁸⁹ But for Scalia all that mattered was power, and so like a modern-day Hobbes or Rousseau, he asserted populism, presumed government legitimacy, and waged a PR campaign to sell us the false idea that respect for human rights does not matter to establish the underlying legitimacy of laws, because the ends justify the means.⁹⁰

Indeed, much of Scalia's jurisprudence did what should be impossible; it resurrected old, dead laws from the grave and unleashed them upon U.S.

88. HARRY JAFFA, *THE REDISCOVERY OF AMERICA: ESSAYS BY HARRY V. JAFFA ON THE NEW BIRTH OF POLITICS* 265, 272 (Edward Erler & Ken Masugi eds., 2019) (“Justice Scalia, like all legal positivists, denies to the Declaration of Independence any constitutional status whatever.”); Margaret Talbot, *Supreme Confidence: The Jurisprudence of Justice Antonin Scalia*, *NEW YORKER*, (Mar. 28, 2005), <https://www.newyorker.com/magazine/2005/03/28/supreme-confidence> (“Thus, when he is asked in public appearances about the Declaration of Independence, and its promises of life, liberty, and the pursuit of happiness, he describes it as an aspirational document that has no relevance for the judiciary.”); *see, e.g.*, *Troxel v. Granville*, 530 U.S. 57, 91 (2000) (Scalia, J., dissenting) (“The Declaration of Independence, however, is not a legal prescription conferring powers upon the courts; and the Constitution’s refusal to ‘deny or disparage’ other rights is far removed from affirming any one of them, and even farther removed from authorizing judges to identify what they might be, and to enforce the judges’ list against laws duly enacted by the people.”); *cf.* JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* §§ 210–17 (preempting Scalia’s ideology: “The Declaration of Independence has accordingly always been treated, as an act of paramount and sovereign authority, complete and perfect *per se.*”); Barnett, *supra* note 9, at 1749–50 (addressing and correcting Scalia’s fundamental misconception of the Declaration and sovereignty in *Troxel*).

89. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (establishing preexisting, natural human rights and the consent of the governed as the pole stars of the nation); Sandra Day O’Connor, *The Judiciary Act of 1789 and the American Judicial Tradition*, 59 U. CIN. L. REV. 1, 3 (1990) (recognizing the Declaration as the first in “the triad of founding documents”); U.S. CONST. amend. IX. Many of the original state constitutions contained declarations of rights, sometimes styled as bills of rights, that were inspired by the Declaration of Independence, and the original Massachusetts Constitution continues to be the current constitution in that state: *see, e.g.*, VA. CONST. of 1776 §§ 1–16; PENN. CONST. of 1776 arts. I–XVI; MASS. CONST. of 1780 pt. 1, arts. I–XXX. Subsequently established state constitutions retained these guarantees of rights in the same style that were originally established by the first state constitutions that were obviously inspired by the Declaration of Independence: *see, e.g.*, CAL. CONST. art. I, §§ 1–32; OR. CONST. art. I, §§ 1–47; WASH. CONST. art. I, §§ 1–35.

90. *Glossip v. Gross*, 576 U.S. 863, 894 (2015) (Scalia, J., concurring) (putting forth his feudal, ends-justify-the-means concept of law: “It is impossible to hold unconstitutional that which the Constitution explicitly *contemplates.*” (emphasis in original)); *Troxel*, 530 U.S. at 91–92 (Scalia, J., dissenting); HOBBS, *supra* note 13, at 122–23 (“[H]e that dissented must now consent with the rest . . . or else justly be destroyed by the rest. . . . [B]ecause the End of this Institution, is the Defence of them all; and whosoever has the right to the End, has the right to the Means.”); *see* Gentilviso, *supra* note 5; Barnett, *supra* note 9, at 1750; *cf.* JEREMIAH DUMMER, *A DEFENCE OF THE NEW-ENGLAND CHARTERS* 85 (1715) (“[T]he question here is not about *power*, but *right: and shall not the Supreme legislature of all the nation do right?* One may say, that what the parliament can’t do justly, they can’t do at all.” (emphasis in original)); *Ollman v. Evans*, 750 F.2d 970, 995 (D.C. Cir. 1984) (Bork, J., concurring) (“Judge Scalia’s dissent implies that the idea of evolving constitutional doctrine should be anathema to judges who adhere to a philosophy of judicial restraint. But most doctrine is merely the judge-made superstructure that implements basic constitutional principles.”); George Will, *Where Justice Scalia Was Wrong*, *NAT’L REV.* (Feb. 1, 2017, 10:44 PM), <https://www.nationalreview.com/2017/02/antonin-scalia-natural-rights-error-neil-gorsuch-supreme-court-nomination/>.

society like zombies.⁹¹ So successful were Scalia's gambits to resurrect the unjust laws of yesteryear, that numerous liberal outfits like the 1619 Project unwittingly ceded to Scalia his position.⁹² Cynicism that undercuts the ideals of the founding pervades our society and feeds Scalia's ideologies.⁹³

For example, Hillary Clinton tweeted in response to Amy Coney Barrett's defense of Scalia's Originalism that, "At the time the Constitution was ratified, women couldn't vote, much less be judges."⁹⁴ But this was not entirely true.⁹⁵ Suffragette Lucy Stone's legal analysis on the original 1776 Constitution of New Jersey revealed that it expressly gave women and black people the right to vote, and in its first election laws "the words 'he or she' are applied to voters."⁹⁶

Those rights, which existed in New Jersey for decades as a reflection of the ideals of 1776, were scandalously repealed by a mere law in 1807, without constitutional amendment.⁹⁷ The New Jersey Legislature violated the fundamental presupposition of American governments established by written constitutions, as captured by the seminal case *Marbury v. Madison*, to demolish the constitutionally protected rights of women.⁹⁸ New Jersey

91. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570, 592–93, 610–11 (2008) (resurrecting "the famous fugitive-slave case of *Johnson v. Tompkins*, 13 F. Cas. 840, 850, 852 ([C.C.E.D.] Pa. 1833)" (quoting *United States v. Cruikshank*, 92 U.S. 542, 553 (1875))); cf. Adam Serwer, *The Supreme Court Is Headed Back to the 19th Century*, THE ATLANTIC (Sept. 4, 2018), <https://www.theatlantic.com/ideas/archive/2018/09/redemption-court/566963/> ("This decision, in *United States v. Cruikshank*, the legal historian Lawrence Goldstone argues, provided a guide for the campaign of racist terrorism that would suppress the black vote and enshrine a white man's government for generations.").

92. Robby Soave, *Yes, the 1619 Project Actually Suggests That Year Was America's True Founding, and Nikole Hannah-Jones Admits It*, REASON (Sept. 23, 2020, 12:00 PM), <https://reason.com/2020/09/23/1619-project-nikole-hannah-jones-1776-founding-race-new-york-times/> ("Editors recently removed (without explanation or acknowledgement) the provocative statement that the project 'aim[s] to reframe the country's history, understanding 1619 as our true founding' from the article series' online introduction."); Vice News, *Voter Suppression: It's the American Way*, YOUTUBE (Oct. 29, 2020), <https://www.youtube.com/watch?v=F8Ot8IFLgw>, at 0:42–0:51 ("Back in the day when they started this 'new world' they decided it should be ruled by the people, but they weren't talking about black people, or women."); but see Conor Friederstorff, *1776 Honors America's Diversity in a Way 1619 Does Not*, THE ATLANTIC (Jan. 6, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/inclusive-case-1776-not-1619/604435/>; Ruth Bogin, "Liberty Further Extended": *A 1776 Antislavery Manuscript by Lemuel Haynes*, 40 WM. & MARY Q. 85, 94–95 (1983) ("Liberty is a Jewel which was handed Down to man from the cabinet of heaven, and is Coeval [sic] with his Existence. . . . Therefore we may reasonably Conclude, that Liberty is Equally as pre[c]ious to a Black man, as it is to a white one . . .").

93. See generally Talbot, *supra* note 88 (providing examples of Scalia's application of Originalism).

94. Hillary Clinton (@HillaryClinton), TWITTER (Oct. 14, 2020, 11:54 AM), <https://twitter.com/hillaryclinton/status/1316407020740722688>.

95. LUCY STONE, *WOMAN SUFFRAGE IN NEW JERSEY* 12 (1975) (1867) ("In New Jersey, women and negroes voted from 1776 to 1807, a period of thirty-one years.").

96. *Id.* at 12–13 (quoting the 1790 New Jersey election law).

97. *Id.*

98. *Id.* at 14; *Marbury v. Madison*, 5 U.S. 137, 180 (1803) ("Thus, the particular phraseology of the *constitution* of the United States confirms and strengthens the principle, supposed to be essential to all

women lost their rights under the false, feudal presupposition preferred by Scalia that the founders hated women with uniformity and that it was not possible that there was an exception to this hatred in New Jersey.⁹⁹

Boomer women, including Secretary Clinton, pathetically surrendered this feudal presupposition to Scalia.¹⁰⁰ They did not contend as Lucy Stone and her intrepid allies Susan B. Anthony and Matilda Joselyn Gage once did—that the women founders were tricked out of their rights by a series of scandalous betrayals.¹⁰¹ None of the Boomers are prepared to defend the successes of founding women like the nanny Elizabeth Freeman, the poetess Phillis Wheatley, the spy and wax sculptor Patience Wright, or the historian Mercy Otis Warren, as founders in their own right, the way the Suffragettes had done.¹⁰² Nor are they cognizant of James Otis’s revolutionary defense of the voting rights of “apple women and orange girls” that successfully set the stage for the American Revolution.¹⁰³

If Scalia’s feudal presuppositions hold, then women can have their constitutionally protected voting rights stolen from them by a mere law as

written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.”).

99. Ruthann Robson, *Justice Scalia’s Legacy on Gender Equality: No Need to “Remember the Ladies,”* OXFORD HUM. RTS. HUB (Mar. 21, 2016), <https://ohrh.law.ox.ac.uk/justice-scalias-legacy-on-gender-equality-no-need-to-remember-the-ladies/>; see STONE, *supra* note 95, at 12; see generally Scalia, *Common-Law, supra* note 9, at 114 (discussing Scalia’s belief that the constitution is unchanging, and unchangeable).

100. See Clinton, *supra* note 94; William Baude, *The Supreme Court After Scalia*, CHI. TRIB. (Feb. 15, 2016, 2:06 PM), <https://www.chicagotribune.com/opinion/commentary/ct-scalia-supreme-court-originalism-constitution-perspec-0216-jm-20160215-story.html> (“[N]ow-Supreme Court Justice Elena Kagan explained that ‘we are all originalists now.’”); but see *100 Years Ago This Week, House Passes Bill Advancing 19th Amendment* (NPR broadcast May 22, 2019), <https://www.npr.org/2019/05/22/725610789/100-years-ago-this-week-house-passes-bill-advancing-19th-amendment> (featuring late Silent Generation author Cokie Roberts attempting to correct the record, albeit unsuccessfully).

101. See STONE, *supra* note 95, at 14–15; Matilda Joslyn Gage, *The United States on Trial; Not Susan B. Anthony*, in AN ACCOUNT OF THE PROCEEDINGS ON THE TRIAL OF SUSAN B. ANTHONY 179, 190 (1874) (“The framers of this government, the men and the women who voted at that early day had never until then, exercised their natural rights of self-government; when they chose, they took them up.”); WILLIAM TUDOR, *THE LIFE OF JAMES OTIS, OF MASSACHUSETTS* 341 (1823) (“It is at epochs like that of the American revolution, when the opinions of women, . . . become of importance to a cause . . . Their conduct shewed, that their country and themselves were worth defending; their national sympathy gave a glow to all the charities of kindred, stimulated patriotism by its applause, and rewarded it with their affection.”).

102. See generally *Brom & Bett v. Ashley (Mumbet Case)*, Court Decision, Aug. 1781, *reprinted in* ROGER BRUNS, *AM I NOT A MAN AND A BROTHER: THE ANTI-SLAVERY CRUSADE OF REVOLUTIONARY AMERICA 1688–1788*, at 468–70 (1977); PHILLIS WHEATLEY, *POEMS ON VARIOUS SUBJECTS, RELIGIOUS AND MORAL* (1773); Letter from Patience Wright to Benjamin Franklin (Mar. 7, 1777); 1–3 MERCY OTIS WARREN, *HISTORY OF THE RISE, PROGRESS AND TERMINATION OF THE AMERICAN REVOLUTION* (1805).

103. JAMES OTIS, *The Rights of the British Colonies*, in COLLECTED POLITICAL WRITINGS OF JAMES OTIS 122 (Richard Samuelson ed., 2015) (“[H]ad not apple women and orange girls as good a right to give their respectful suffrages for a new king as the philosopher, courtier, petit maitre and politician?”).

New Jersey demonstrated.¹⁰⁴ Scalia's presuppositions were ceded by Boomer liberals that failed to call Scalia out on the carpet for rewriting our history so that the "consent of the governed" is not inherent to the legitimacy of our election laws.¹⁰⁵ For Scalia, the feudal presupposition that constitutions invent rights rather than honor preexisting rights—including voting rights—was a focal point of his thoroughly British view.¹⁰⁶

This feudal presupposition took center stage in *Dastar Corp. v. Twentieth Century Fox Film Corp.*¹⁰⁷ Before *Dastar* was taken up for review by the U.S. Supreme Court, trademark law implicitly protected artists' attribution rights.¹⁰⁸ Meanwhile, Congress enacted the Visual Artists Rights Act ("VARA"), which extended new protections for the attribution rights of fine artists, but only upon narrow circumstances.¹⁰⁹ There was no negative in VARA to repeal previously existing trademark law attribution rights, and thus the common law counseled the Court to include both under its preference against implied repeals.¹¹⁰

But Justice Scalia applied his own presupposition, that a law not expressly including must be read to exclude, and thus he used *Dastar* to inexplicably repeal the attribution rights of artists from the bench.¹¹¹ He absurdly interpreted a law that was enacted by Congress to secure additional artist rights to implicitly repeal previously existing artist rights.¹¹² The travesty of *Dastar* consists in its ignorance of the founder Phillis Wheatley's trial of 1772, in which she secured a preexisting common law right of attribution to which she fashioned the basis of copyright law in America upon the very rights Scalia impliedly excluded without basis.¹¹³

104. See *Lawrence v. Texas*, 539 U.S. 558, 602 (2003) (Scalia, J., dissenting); Max Fisher, *Scalia Says Constitution Doesn't Protect Women from Gender Discrimination*, THE ATLANTIC (Jan. 4, 2011), <https://www.theatlantic.com/politics/archive/2011/01/scalia-says-constitution-doesn-t-protect-women-from-gender-discrimination/342789/>.

105. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); see, e.g., Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 279 (2015) (pretending *Shelby County* did not ruin such preclearance cases).

106. See Ala. Legis. Black Caucus, 575 U.S. at 282 (Scalia, J., dissenting).

107. *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 25 (2003).

108. See *id.* at 30 n.4 (citing Lanham Act, 15 U.S.C. § 1125(a)(1)).

109. *Id.* at 34–35 (citing Visual Artists Rights Act of 1990, 17 U.S.C. § 106A(a)(1)(A)).

110. 17 U.S.C. § 106A (lacking a repealing clause or any express negative language referring to any other law that should be repealed by this law); see *Dr. Foster's Case* (1614) 6 Co. Rep. 56, 63–64 (Eng.) (giving the common law preference against implied repeals).

111. *Dastar*, 539 U.S. at 34–38.

112. *Id.*

113. See *id.*; WHEATLEY, *supra* note 102, at 7; Phillis Wheatley's Registration of her book for Archibald Bell, Stationers Company Registrar, Sept. 10, 1773, TSC/1/E/06/09; cf. Joshua J. Schroeder, *Leviathan Goes to Washington: How to Assert the Separation of Powers in Defense of Future Generations*, 15 FLA. A&M U. L. REV. 1, 166 (2021) [hereinafter Schroeder, *Leviathan*] ("With courageous humility, Phillis Wheatley marked out the basis of every legitimate copyright and patent thereafter upon the right of attribution to the works of her hands.").

Scalia reserved his most cutting statements of sheer bluster for his conservative colleagues, preferring to sport his friendship with Justice Ginsburg as a token of liberality.¹¹⁴ Perhaps his most vicious rebukes were trained on Justice Kennedy, with whom Scalia maintained an acrimonious relationship.¹¹⁵ In *Obergefell*, Scalia accused Kennedy of overthrowing the government and he characterized Kennedy's *Windsor* decision as nonsense—he ironically labeled Kennedy illegitimate wherever Kennedy followed the founders' ideas of legitimacy.¹¹⁶

Also, in retaliation to Kennedy's opinion in *Boumediene v. Bush*, Scalia claimed *Rex v. Cowle* (a feudal, anti-American opinion that was lambasted by John Adams in the press) as legitimate U.S. common law.¹¹⁷ As Scalia boldly dissented, citing to *Rex v. Cowle*, “at English common law, the writ of habeas corpus did not extend beyond the sovereign territory of the Crown.”¹¹⁸ The American founders explicitly and unanimously rejected the feudalism that Scalia advocated in *Boumediene*, symbolized by the ancient Latin maxim given to us by Virgil, “*divisos toto orbe Britannos*.”¹¹⁹ Founder James Wilson helped repurpose this ancient maxim into a foundation for the independence of U.S. common law, distinct from the common law of Great Britain that was choked by the weeds of feudalism ever since William the Bastard enslaved the English people by conquest.¹²⁰

114. See Eugene Scalia, *What We Can Learn from Ginsburg's Friendship with My Father*, Antonin Scalia, WASH. POST (Sept. 19, 2020, 5:39 PM), https://www.washingtonpost.com/opinions/eugene-scalia-rbg-friendship-oped/2020/09/19/35f7580c-faaa-11ea-a275-1a2c2d36e1f1_story.html. Scalia compared Justice Breyer to Marie Antoinette before she had her head chopped off by a mob addressing themselves as “the People”—so while Scalia was usually more gentle toward the liberals we cannot say he was especially kind to them either. *Gossip v. Gross*, 576 U.S. 863, 898 (2015) (Scalia, J., concurring) (accusing Breyer of “let-them-eat-cake obliviousness”).

115. *Obergefell v. Hodges*, 576 U.S. 644, 719 n.22 (2015) (Scalia, J., dissenting) (insulting Justice Kennedy).

116. *Id.* at 717–19 (Scalia, J., dissenting); *United States v. Windsor*, 570 U.S. 744, 799 (2013) (Scalia, J., dissenting).

117. See *Boumediene v. Bush*, 553 U.S. 723, 844–45 (2008) (Scalia, J., dissenting) (citing *Rex v. Cowle* (1759) 2 Burr. 834, 855–56 (Eng.)); Letter from Novanglus to the Inhabitants of the Colony of Massachusetts Bay (Apr. 10, 1775) (citing *Cowle*, 2 Burr. at 835).

118. *Boumediene*, 553 U.S. at 844 (Scalia, J., dissenting) (citing *Cowle*, 2 Burr. at 855–56).

119. 2 JAMES WILSON, COLLECTED WORKS OF JAMES WILSON 1050–51 (Mark David Hall & Kermit L. Hall eds., 2007) (responding to the British view, Wilson retorted: “What a very different spirit animates and pervades her American sons!”) (quoting Virgil, *The Eclogues* I.67; 1 WILLIAM ROBERTSON, THE HISTORY OF AMERICA 249–52 (1797)).

120. 2 WILSON, *supra* note 119, at 1050–51; see also *id.* at 767–69 (quoting to a “very interesting” passage from William Blackstone's *Commentaries* about how the English common law “was disfigured under the Norman government . . . and why we should not receive it in its disfigured state” (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *411–13)); cf. HENRY VANE THE YOUNGER, A HEALING QUESTION 4 (1656) (speaking of English feudal law: “The root and bottom upon which it stood, was not publique interest, but the private lust and will of the Conqueror, who by force of armes did at first detain the right and freedom which was, and is, due to the whole body of the people.”). The “Conqueror” Vane referred to was William the Bastard. *Id.*

In *Boumediene*, Scalia relied upon statements of Lord Mansfield, advocate of the unwritten British Constitution during the American Revolution, to define the written U.S. Constitution that was drafted and ratified by those who resisted Mansfield's feudalism in open battle.¹²¹ Scalia did not acknowledge that Lord Mansfield's American ally, the loyalist Governor Thomas Hutchinson of Massachusetts, petitioned Lord Mansfield to unconstitutionally abridge American rights—a request that Mansfield scandalously granted in *Campbell v. Hall*.¹²² Mansfield was a counterrevolutionary, as many Englishmen were at that time, and this should have informed Scalia's *Boumediene* dissent—but it did not.¹²³

The American Revolutionaries fundamentally distinguished *Rex v. Cowle* and *Campbell v. Hall* and expressly rejected Lord Mansfield's geographic limitations on human rights by extending habeas corpus to all the U.S. territories then existing.¹²⁴ In fact, the feudal opinions of *Cowle* and *Campbell* dressed up by royalists as English common law are the opinions that caused the Revolutionary War.¹²⁵ Two days after *Campbell* was decided, the king appealed to his loyal subjects to crush Massachusetts as a people with no rights, but hearing the call of *Join or Die* the original 13 Colonies united with Massachusetts under the Declaration of 1776 instead.¹²⁶

121. *Boumediene*, 553 U.S. at 846–47 (Scalia, J., dissenting).

122. Letter from Novanglus to the Inhabitants of the Colony of Massachusetts Bay (Apr. 10, 1775) (“[M]y lord Mansfield, and my lord North, together with their little friends Bernard and Hutchinson, have ‘conceived the great design of annexing’ all North-America ‘to the realm of England,’ and ‘the better to effectuate this idea, they all maintain, that North-America is holden of the crown . . . and they are all very eagerly desirous of treating the Americans as rebellious vassals, to subdue them and take possession of their country.” (citing *Cowle*, 2 Burr. at 835)); *Campbell v. Hall* (1774) 1 Cowp. 204, 213 (Eng.); see THOMAS HUTCHINSON & ANDREW OLIVER, COPY OF LETTERS SENT TO GREAT-BRITAIN 16 (1773).

123. *Boumediene*, 553 U.S. at 846–47 (Scalia, J., dissenting); cf. ERNEST B. LOWRIE, LORD CHIEF JUSTICE MANSFIELD: DARK HORSE OF THE AMERICAN REVOLUTION 417 (2016) (noting that Mansfield “had gambled and lost America”); *id.* at 101, 356–58, 374–75 (noting the important counterrevolutionary role of Lord Mansfield's opinions in *Rex v. Cowle* and *Campbell v. Hall*).

124. *Boumediene*, 553 U.S. at 755–56 (citing Act of Aug. 7, 1789, 1 Stat. 52); see *Henfield's Case*, 11 F. Cas. 1099, 1120 (C.C.D. Pa. 1793) (No. 6,360) (“Emigration is, undoubtedly, one of the natural rights of man.”); *Campbell v. Hall* (1774) 1 Cowp. 204, 208, 211–12 (Eng.) (“An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives.”); *Cowle*, 2 Burr. at 850–51 (“The consequence of this doctrine was, that, by the feudal law, supreme jurisdiction resulted to him, in right of his Crown, as Sovereign Lord, in many cases[,] which he might lay hold of; and when the said territories should come into his hands and possession, they would come back as parcel of the realm of England, from which, (by fiction of law at least,) they had been originally severed.” (emphasis added)).

125. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); LOWRIE, *supra* note 123, at 101, 356–58, 374–75.

126. King George III, The King's Speech to Both Houses of Parliament (Nov. 30, 1774), <https://www.loc.gov/item/rbpe.03704100/>; *Campbell v. Hall* (1774) 20 How. St. Tr. 239, 320 (Eng.) (confirming that judgment was delivered on Nov. 28, 1774); see also Diary Entries from Thomas Hutchinson (Nov. 28–30, 1774), in 1 THOMAS HUTCHINSON, THE DIARY AND LETTERS OF HIS EXCELLENCY THOMAS HUTCHINSON 307–10 (Peter Orlando Hutchinson ed., 1883) (confirming that the King's Speech of Nov. 30, 1774 followed two days after the ruling of *Campbell v. Hall*).

In 2008, the same year *Boumediene* was decided, the English House of Lords affirmed *Campbell v. Hall* in *Ex parte Bancoult*, signifying that the United States is still in open disagreement with English feudalism and imperial policies.¹²⁷ This should have informed Justice Scalia's analysis of *Cowle*, but it did not—for applying the law as written (according to Scalia) meant that the law should be applied with Scalia's presuppositions rather than those required by our founding documents.¹²⁸ Perhaps the most dangerous of Scalia's feudal, Hobbesian presuppositions was his populist theory of the unitary executive now made law by the 2020 U.S. Supreme Court in *Seila Law LLC v. CFPB*.¹²⁹

Educating oneself about *Ex parte Bancoult* and the fate of the Chagossian people at the hands of the unitary powers of the Queen of England is necessary if one wants a picture of what the United States will become if Scalia's ideologies are roundly affirmed.¹³⁰ Unlike England, however, which has a long preference of preferring liberty for those within its borders, if *Bancoult* is used here it will be used everywhere.¹³¹ For we have no limiting

127. *R. v. Sec'y of State for Foreign and Commonwealth Affs., Ex parte Bancoult* [2008] UKHL 61, paras. 32, 36, 81–84, 87, 125, 146–49 (Eng.) (affirming *Campbell v. Hall* (1774) 1 Cowp. 204, 208, 211–12 (Eng.)); *Campbell v. Hall* (1774) 20 How. St. Tr. 239, 270 (Eng.) (“I am yet further satisfied that I proceed upon solid ground, as I find the result of my enquiries to quadrate with the opinion of the Court, delivered in the case of the king and Cowle.” (citing *Cowle*, 2 Burr. at 834)); *Boumediene*, 553 U.S. at 748 (distinguishing *Cowle*, 2 Burr. at 834).

128. *Compare* *Troxel v. Granville*, 530 U.S. 57, 91 (2000) (Scalia, J., dissenting) (arguing that “[t]he Declaration of Independence, however, is not a legal prescription conferring powers upon the courts,” a perspective that opened the door back to applying *Cowle* and *Campbell* as legitimate common law even though they directly conflict with the Declaration), with JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES §§ 210–17 (preempting Scalia's claims: “The Declaration of Independence has accordingly always been treated, as an act of paramount and sovereign authority, complete and perfect *per se*.”), and *THE CASE OF ELIZABETH RUTGERS VERSUS JOSHUA WADDINGTON* 28 (Charles Kirkland ed., 1866) (Opinion of James Duane, J.) (preempting Scalia by noting the “very great force . . . arising from the federal compact,” i.e., from the Declaration of Independence, gave the court the power to apply federal law with supremacy prior to the existence of the Supremacy Clause of the U.S. Constitution), and *Barnett*, *supra* note 9, at 1750 (noting Scalia's inconsistency with the founders' decision in *Chisholm v. Georgia* regarding the legal application of founding texts). *But cf. Boumediene*, 553 U.S. at 846–47 (Scalia, J., dissenting) (falsely stating that the *Boumediene* majority relied upon *Cowle* and Lord Mansfield rather than the U.S. Constitution).

129. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2203 (2020) (extending *sub silentio* Scalia's dissenting opinion of *Morrison v. Olson*, 487 U.S. 654, 727 (1988) (Scalia, J., dissenting)).

130. *Id.*; *STEALING A NATION* (Granada Television 2004) (explaining who the Chagossians are and the feudal law that was scandalously adopted in *Ex parte Bancoult* to justify the Crown's theft of their land).

131. 2 WILSON, *supra* note 119, at 1050–51; *R. v. Sec'y of State for Foreign and Commonwealth Affs., Ex parte Bancoult* [2008] UKHL 61, paras. 32, 36, 81–84, 87, 125, 146–49 (Eng.) (affirming *Campbell v. Hall* (1774) 1 Cowp. 204, 208, 211–12 (Eng.)); see *Somerset v. Stewart* (1772) 98 ER 499, 510 (Eng.) (finding that black slaves had access to habeas corpus if they were imprisoned *within* England, but that outside of the borders of England they may have no common law right to dispute their enslavement), extended by *Prigg v. Pennsylvania*, 41 U.S. 539, 611–12 (1842) (enslaved people at issue) (imposing the fugitive slave laws of the South upon the anti-slavery states in the North), and *Dred Scott*

law or principle based on borders like kingdoms run by feudal vassals and crowns, because America is not a small island where we can hold ourselves apart; we are the former colonies and such a feudal law as used in *Bancoult* may spell the end of the republic, which is the beginning of despotism.¹³²

CONCLUSION: REALIGNING THE NATION WITH ITS FOUNDING IDEALS

On January 6, 2021, the strategy of dressing up the founding ideals as modern conservative thought was so familiar to Trump's mob that they pitched their attempted *coup d'état* as patriotic—revolutionary—a real 1776 moment.¹³³ So did Timothy McVeigh when he bombed the Oklahoma City Federal Building; so did John Wilkes Booth when he assassinated Abraham Lincoln.¹³⁴ Though Scalia popularized this strategy among the Boomers in an attempt to initiate radical change, the strategy was not new to him nor was it likely to die with him.¹³⁵

Amy Coney Barrett and other straight-faced advocates of Scalia's Originalism, contend that the abandonment of *stare decisis* for a faithful adherence to Scalia's dissenting views is more in keeping with the founders' intent.¹³⁶ They will feign humility and bow with reverence to the dead judge's mind (rather than to precedent) as if it were the disembodied head of François

v. Sandford, 60 U.S. 393, 485–86 (1856) (Daniel, J., concurring) (enslaved party) (noting that *Somerset's Case* “has done as much perhaps to extend the reign of slavery as all the world besides,” because it “goes no farther than to determine that, *within the realm of England*, there was no authority to justify the detention of an individual in private bondage” (emphasis in original)).

132. 2 WILSON, *supra* note 119, at 1050–51 (noting that our independence and departure from the small island politics of England was required to validate U.S. principles of government); *Ex parte* Milligan, 71 U.S. 2, 124–25 (1866) (“Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the ‘military independent of and superior to the civil power’—the attempt to do which by the King of Great Britain was deemed by our fathers such an offence, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish.” (quoting THE DECLARATION OF INDEPENDENCE para. 14 (1776))); *cf. generally* ANDREA LEVY, SMALL ISLAND (2004).

133. *Ongoing Battle*, *supra* note 25 (“I’m thinking of tweets that we saw . . . of ‘Revolutionaries inside the Capitol’ – ‘Patriots taking back the people’s house.’”); Brian Slodysko, *GOP’s McConnell Blasts ‘Loony Lies’ by Ga. Rep. Greene*, AP NEWS (Feb. 1, 2021), <https://apnews.com/article/mcconnell-greene-cancer-republican-party-d0622c86db9d67dff60a5d9511801795> (“It’s our 1776 moment!” she posted on the conservative-friendly social media platform Parler.”).

134. Andrew Cohen, *Tyranny, From Tim McVeigh to Ginny Thomas*, THE ATLANTIC (Mar. 18, 2010), <https://www.theatlantic.com/national/archive/2010/03/tyranny-from-tim-mcveigh-to-ginny-thom-as/37637/> (“Among other items of evidence seized from Timothy McVeigh’s car when he was arrested 15 years ago next month outside of Oklahoma City was a papered quote from Samuel Adams.”); David S. Reynolds, *John Wilkes Booth and the Higher Law*, THE ATLANTIC (Apr. 12, 2015), <https://www.theatlantic.com/politics/archive/2015/04/john-wilkes-booth-and-the-higher-law/385461/> (“Lincoln, Booth declared, was . . . intent on ‘overturning this blind Republic and making himself a king.’”).

135. *Compare* Gentilviso, *supra* note 5 (explaining how Scalia advocated that the Constitution is “dead, dead, dead”), *with* President Donald J. Trump, Fourth of July Speech at the Lincoln Memorial (July 4, 2019) (saying that revolutionary soldiers “took over the airports”).

136. Barrett, *supra* note 56, at 1940–41.

Alcasan in C.S. Lewis's *That Hideous Strength*.¹³⁷ The only way to counter their absurdity is to endure their fragile, blustering egos in order to actually research what the founders thought, to show that Scalia and the Boomers lied incessantly to feed their personal agendas.¹³⁸

For Justice Scalia was no founder.¹³⁹ He was, to be sure, a student of the French Revolution; a Rousseau of our times; a conspicuous *Terroriste* who knew how far to push unrest and populism to achieve his private ends.¹⁴⁰ Like the Girondist Thomas Paine, he ironically sold out the rights of future generations so he could eat his beloved cannoli in peace.¹⁴¹ His unitary executive theory is a repeat of Turgot and Condorcet's claims that a unity of powers would best serve France—like Marchamont Nedham's government in England that gave way to the infamous despotism of Oliver Cromwell.¹⁴²

137. C.S. LEWIS, *THAT HIDEOUS STRENGTH: A MODERN FAIRY-TALE FOR GROWN UPS* 216, 315–16 (1945); cf. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2200–03 (2020) (establishing the unitary executive theory as legal precedent by extending Scalia's dissent from *Morrison v. Olson* as if it were a legitimate, ulterior majority opinion, without addressing the prior majority view), extending *Morrison v. Olson*, 487 U.S. 654, 727 (1988) (Scalia, J., dissenting). In my prior work, I referred to the Court's recent behavior of extending dissents and other ulterior viewpoints as if they were majority opinions without addressing the prior majority view as fraying precedent. See, e.g., Schroeder, *America's*, *supra* note 81, at 864–65.

138. See, e.g., Barnett, *supra* note 9, at 1750; Laura K. Donohue, *The Original Fourth Amendment*, 83 U. CHI. L. REV. 1181, 1327–28 (2016).

139. See Scalia, *Common-Law*, *supra* note 9, at 42, 85–86 (advocating Hobbesian ideologies).

140. See sources cited *supra* note 12.

141. Talbot, *supra* note 88 (“Scalia used to bring cannoli from a Cambridge bakery to the office, and eat them hunched over his desk.”); Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1176 (1989) [hereinafter Scalia, *The Rule*] (quoting THOMAS PAINE, *COMMON SENSE* 3, 32 (1953)); Jill Lepore, *The Sharpened Quill*, *NEW YORKER* (Oct. 8, 2006), <https://www.newyorker.com/magazine/2006/10/16/the-sharpened-quill> (noting that Paine was a drunk who let himself go in France); Associated Press, *Scalia's Death Probably Linked to Obesity, Diabetes and Coronary Artery Disease*, *Physician Says*, *L.A. TIMES* (Feb. 23, 2016, 3:06 PM), <https://www.latimes.com/nation/nationnow/la-na-scalia-death-cause-20160223-story.html> (discouraging conspiracy theories about Scalia's death with a letter from the attending physician, which “listed more than half a dozen ailments, including sleep apnea, degenerative joint disease, chronic obstructive pulmonary disease and high blood pressure. Scalia also was a smoker, the letter said.”); cf. JAMES CHEETHAM, *THE LIFE OF THOMAS PAINE 188–89, 228–29, 274–75, 301* (1809) (noting that Paine's character for drunkenness continued throughout his life, and that common Americans never adopted his folly published in the *Age of Reason*: “In France, after he was elected to a seat in the Convention, by whose committee he was immured, his intemperance seems to have increased with the increase of French violence. . . . The putrescent state of . . . [Paine's] body while in prison, was brought on by drinking before his imprisonment. His habits were sordid, his thirst for liquor had been great, and to quench it, he had associated with the meanest company in Paris for months before his incarceration.”); Letter from Thomas Paine to President George Washington (July 30, 1796) (ironically accusing John Adams of “an attempt to take away the rights of all the minors living at that time, and of all succeeding generations,” when Paine was on the French National Assembly that erected the Guillotine).

142. JOHN ADAMS, *DISCOURSES ON DAVILA* 82 (1805) (criticizing Condorcet for supporting a government without a separation of powers, “which was accordingly adopted, and ruined France”); JAMES MUNSON BARNARD, *A SKETCH OF ANNE ROBERT JACQUES TURGOT WITH A TRANSLATION OF HIS LETTER TO DOCTOR PRICE* 49, 53 (Hellen Billings Morris trans., 1899) (advocating for a unity of powers); 3 JOHN ADAMS, *A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA* 213 (1794) (“Turgot's idea of a commonwealth, in which all authority is to be collected into one centre . . . is

Robespierre and Cromwell ruined France and England because of these unitary theories of executive power, and Scalia's followers in the Boomer cohort are poised to do the same in America.¹⁴³ Like Scalia, Turgot was also dead by the time his ideologies helped ruin France.¹⁴⁴ Trump had a vested interest in lifting Scalia's votaries, like Amy Coney Barrett, onto the bench, because he knew they would help him, if not secure a despotism in America, to avoid any consequences for trying to topple American democracy.¹⁴⁵

Even with all the evidence that this is so, most Americans cannot believe that the Boomers might be a cause of, rather than a cure for, the proverbial winter that approaches.¹⁴⁶ So, the Capitol Building was left unsecured, even

supposed to be precisely the project of Marchamont Nedham, and probably derived from his book . . . 'The Excellency of a Free State' . . . [which encapsulates] the popular idea of a republic both in France and England . . .").

143. Eastman's Amicus Brief in *Dobbs*, *supra* note 78, at 13 ("[L]et them decide, State by State, whether this practice should be allowed." (quoting *Stenberg v. Carhart*, 530 U.S. 914, 956 (2000) (Scalia, J., dissenting))); *Dobbs v. Jackson Women's Health Org.*, 141 S. Ct. 2619, 2243 (2022) (following Eastman's advice: "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives."); *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1198 (C.D. Cal. 2022) (noting Eastman and Trump's plan to get then Vice President Pence to "send them [the Electors] back to the States"); Eastman's *Texas v. Pennsylvania* Motion, *supra* note 85, at 17–18 (asking the U.S. Supreme Court to return the power to decide the 2020 election to the States); *see generally* *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2203 (2020) (establishing Scalia's unitary executive theory as legal precedent in order to facilitate then President Trump's unitary powers); Tarm, *supra* note 40.

144. *See* Letter from John Adams to Thomas Boylston Adams (Apr. 7, 1796) (describing how Turgot's unicameralism, inspired by the Cromwellian "Rascal" Marchamont Nedham, ruined France writing: "It has cost many hundreds of thousands of Lives to cure France of their Idolatry to it."); BARNARD, *supra* note 142, at 14, 40 (noting Turgot's death in 1781, before the French Revolution that infamously devolved into a Reign of Terror); *but see id.* at 25 (attempting to absolve Turgot of his responsibility for causing "the horrors of the [French] Revolution").

145. *See* Barrett, *supra* note 56, at 1922. Trump was highly motivated, because his failure to retain power may yet result in a similar fate to that of the Ukrainian traitor Viktor Yanukovich who was forced by the people of Ukraine to flee to Russia. WINTER ON FIRE: UKRAINE'S FIGHT FOR FREEDOM (Netflix 2015); Moises Mendez II, *Fake Heiress Anna Sorokin Penned a Letter to Donald Trump in Anticipation of His Legal Battles*, INSIDER (Jan. 25, 2021, 8:20 PM), <https://www.insider.com/anna-sorokin-delvey-fake-heiress-pens-letter-to-donald-trump-2021-1>; *cf.* Mark Savage, *Under Attack, Ukraine's Musicians Become War Reporters and Military Fundraisers*, BBC NEWS (Mar. 3, 2022), <https://www.bbc.com/news/entertainment-arts-60586817>.

146. *See* Stan, *supra* note 15 ("Liberals have long made the error of viewing the Republican Party as a stable entity, when in truth it has been anything but for the last 60 years. . . . 'History is seasonal,' said Neil Howe, co-author of *The Fourth Turning*, in *Generation Zero*, a film written and directed by Bannon. 'Winter is coming,' he added, ominously."); Will Bunch, *Boomer Fantasies of World Peace Die in Ukraine*, PHILADELPHIA INQUIRER (Feb. 22, 2022), <https://www.inquirer.com/columnists/attytood/ukraine-russia-putin-world-war-20220222.html> ("We've spent most of our lives in a dream world, watching our chance for a lasting world peace slowly slip away. . . . We've had 77 years since the last world war to build the world where that could never happen again, and we blew it. For the post-war baby boomers of America and the world, how we let this happen is the question of a lifetime."); 1 ROBERT S. MUELLER, III, U.S. DEP'T OF JUST., REP. ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 132–40 (2019) (explaining how Paul Manafort, who was chairman of Trump's 2016 campaign, led Victor Yanukovich's treasonous 2010 Presidential campaign in the Ukraine, and also explaining how Yanukovich, who was discovered to be a Russian plant with no loyalty to the Ukrainian people, was ousted during the 2014 Ukrainian Revolution and he now lives in exile in Russia); *see generally* *Game of Thrones: Winter is Coming* (HBO television broadcast Apr. 17, 2011).

while the president publicly organized and incited an insurrection through Twitter.¹⁴⁷ While standing in the wreckage of the crime scene of a failed *coup d'état*,¹⁴⁸ most Republicans in Congress blamed the *impeachment* for causing disunity.¹⁴⁹

If we actually succumb to Scalia's fatalism and despair—if we finally give in to the Hobbesian temptations he cultivated in our hearts—then, as

147. Logan Jaffe et al., *Capitol Rioters Planned for Weeks in Plain Sight. The Police Weren't Ready.*, PBS FRONTLINE (Jan. 7, 2021), <https://www.pbs.org/wgbh/frontline/article/capitol-rioters-planned-for-weeks-in-plain-sight-the-police-werent-ready/> (“The invasion of the U.S. Capitol on Wednesday was stoked in plain sight.”); Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 5, 2021, 10:43 PM), <https://media-cdn.factba.se/realdonaldtrump-twitter/1346588064026685443.jpg> (“I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early—doors open at 7AM Eastern. BIG CROWDS!” This tweet included an invitation that included a map of where to show up and the title “Join President Donald J. Trump at the Save America March.”); Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 4, 2021, 10:45 AM), <https://media-cdn.factba.se/realdonaldtrump-twitter/1346120645613150208.jpg> (“The ‘Surrender Caucus’ within the Republican Party will go down in infamy as weak and ineffective ‘guardians’ of our Nation, who were willing to accept the certification of fraudulent presidential numbers!”); Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 3, 2021, 3:27 PM), <https://media-cdn.factba.se/realdonaldtrump-twitter/1345753534168506370.jpg> (retweeting an invitation to “BE A PART OF HISTORY!” on Jan. 6, to which Trump stated: “I will be there. Historic day!”); Jennifer Lynn Lawrence (@JenLawrence21), TWITTER (Jan. 3, 2021, 12:17 AM), <https://mobile.twitter.com/jenlawrence21/status/1345600194826686464?lang=en> (retweeting an invitation from Donald J. Trump for the “March for Trump” and pledging to “bring it to DC on Jan 6 and PROUDLY stand beside you!”); see Amy Kremer (@AmyKemer), TWITTER (Jan. 2, 2021, 11:06 PM), <https://twitter.com/amykremer/status/1345582212847194112?lang=en> (“The #MarchForTrump bus has gone to more states than Joe Biden has supporters!”); Amy Kremer (@AmyKemer), TWITTER (Jan. 2, 2021, 2:58 PM), <https://twitter.com/amykremer/status/1345459488107749386?lang=en> (“We are excited to announce the site of our January 6th event.”).

148. Article of Impeachment, H.R. Res. 24, 117th Cong. (as passed by House on Jan. 13, 2021).

149. Brian Naylor, *Opposing Remarks: Pelosi and Jordan Give Their Parties' Opening Statements*, NPR (Jan. 13, 2021, 2:24 PM), <https://www.npr.org/sections/trump-impeachment-effort-live-updates/2021/01/13/956462352/opposing-remarks-pelosi-and-jordan-give-their-parties-opening-statements> (“‘They want to cancel the president.’ . . . ‘Do you have a First Amendment when the cancel culture only allows one side to talk? When you can’t even have a debate in this country, this great country, the greatest country ever?’”); Ebony Bowden, *GOP Leader McCarthy Calls for Unity During Trump Impeachment Debate*, N.Y. POST (Jan. 13, 2021), <https://nypost.com/2021/01/13/kevin-mccarthy-calls-for-unity-during-trump-impeachment-debate/> (Rep. McCarthy argued: “A vote to impeach would further divide this nation.”); Walt Zwirko, *Texoma House Members Reject Impeachment Resolution*, ABC KTEN (Jan. 13, 2021, 5:28 PM), <https://www.kten.com/story/43170632/texoma-house-members-reject-impeachment-resolution> (reporting numerous statements from House Republicans including from Rep. Markwayne Mullin, Rep. Tom Cole, Rep. Van Taylor, Rep. Pat Fallon, Rep. Ronny Jackson, Rep. Beth Van Duyne, Rep. Michael Burgess, and others that rejected the second impeachment of Donald Trump on false bases including the idea that unity can exist without accountability); cf. Jonathan Chait, *McConnell: It Was Too Soon to Impeach Trump, Now It's Too Late*, INTELLIGENCER (Jan. 26, 2021), <https://nymag.com/intelligencer/2021/01/mcconnell-trump-impeachment-insurrection-senate-trial-dismiss-former.html>; but see Barbara Sprunt, *Cheney Will Vote To Impeach: There Has Never Been A Greater Betrayal By A President*, NPR (Jan. 12, 2021, 6:39 PM), <https://www.npr.org/sections/trump-impeachment-effort-live-updates/2021/01/12/956192433/cheney-will-vote-to-impeach-there-has-never-been-a-greater-betrayal-by-a-president>; Brittany Bernstein, *McCarthy Says He Has 'Concerns' Over Cheney's Vote to Impeach*, NAT'L REV. (Jan. 23, 2021), <https://www.nationalreview.com/news/mccarthy-says-he-has-concerns-over-cheney-vote-to-impeach/> (explaining that instead of voting out any of their members that participated in Trump's coup attempt, the Republicans were mulling over how to punish those that voted with the Democrats to bring Trump to account).

Judge Hand predicted, the nation will end in the chaos of alt-right populism caused by the “savage few” that is still breaking out across the nation.¹⁵⁰ Donald Trump is all too willing to become our Napoleon or Cromwell or whatever he thinks he is.¹⁵¹ However, if Millennials reveal the students of Scalia as the frauds they are, there may still be time to turn the page on the Boomer interregnum; to send Trump packing, like Victor Yanukovych, to live under the protection of Vladimir Putin in Moscow.¹⁵²

The Boomers in power wholesale departed from even the most basic of founding presuppositions about natural human rights for the siren call of Scalia’s unitary executive theory.¹⁵³ They caused ruptures in society that never should have occurred by trading out the American ideals for the central, unwritten ideologies of England.¹⁵⁴ If Boomers or their proxies remain in power, their interregnum will continue to wreak havoc, but the sooner they transition out of power the sooner younger generations may begin to bring the nation back into alignment with its founding ideals; to dispel the mass propaganda that undergirds Scalia’s anti-American ideologies; and to otherwise heal the nation.¹⁵⁵

150. LEARNED HAND, *The Spirit of Liberty*, in *THE SPIRIT OF LIBERTY: PAPERS & ADDRESSES OF LEARNED HAND 189–90* (Irving Dillard ed., 1974) (“Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it A society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only a savage few; as we have learned to our sorrow.”); see, e.g., Shannon Pettypiece, *Marjorie Taylor Greene Calls for a ‘National Divorce’ Between Liberal and Conservative States*, NBC NEWS (Feb. 20, 2023, 9:49 AM), <https://www.nbcnews.com/politics/congress/marjorie-taylor-greene-calls-national-divorce-liberal-conservative-sta-rcna71464>.

151. See Harry Litman, *President Trump Thinks He Is a King*, N.Y. TIMES (June 3, 2018), <https://www.nytimes.com/2018/06/03/opinion/mueller-trump-executive-power.html>.

152. Simon Shuster, *How Paul Manafort Helped Elect Russia’s Man in Ukraine*, TIME (Oct. 31, 2017, 1:36 PM), <https://time.com/5003623/paul-manafort-mueller-indictment-ukraine-russia/>; see, e.g., Donohue, *supra* note 138, at 1327–28 (demonstrating how one may apply the actual original ideas of the founding that Scalia failed to understand, much less represent).

153. See THE REPORT (Amazon Studios 2019); VICE (Annapurna Pictures 2018); Frances Bridges, *Why Millennials Should Be Worried About Supreme Court Nominee Neil Gorsuch’s Originalism*, FORBES (Feb. 26, 2017, 5:55 PM), <https://www.forbes.com/sites/francesbridges/2017/02/26/why-millennials-should-be-worried-about-supreme-court-nominee-neil-gorsuchs-originalism/?sh=4a36105f5d70>.

154. See *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 140 S. Ct. 2082, 2086–87 (2020) (referring to *Boumediene* as if Scalia’s dissent that relied on feudal law was the majority opinion); *Nat’l Lab. Rel. Bd. v. Noel Canning*, 573 U.S. 513, 549 (2014) (instituting a new tradition of issuing advisory statements from the bench under America’s so-called unwritten constitution (citing AKHIL AMAR, *AMERICA’S UNWRITTEN CONSTITUTION* 576–77 n.16 (2012) (inspired by the British unwritten constitution))).

155. See The Intercept, *A Message from the Future with Alexandria Ocasio-Cortez*, YOUTUBE (Apr. 17, 2019), https://www.youtube.com/watch?v=d9uTH0iprVQ&feature=emb_logo.

EPILOGUE: HOW AUSTERITY NOSTALGIA FUELED PUTIN'S INVASION OF UKRAINE

The Boomer Interregnum was originally written prior to the January 6, 2021 insurrection, and was updated accordingly.¹⁵⁶ Then, as this article neared publication, Putin invaded Ukraine on February 24, 2022, as the world watched.¹⁵⁷ From a generational perspective, there were several striking things about the invasion, including how young the President of Ukraine Volodymyr Zelenskyy was, 44, and how old the former KGB spy Vladimir Putin was, almost 70.¹⁵⁸ This at least *looked* like a Boomer-initiated ground war in Europe.¹⁵⁹

Other things stood out as well, like how Trump was impeached for trying to extort the young, new democratically elected President Zelenskyy in his first few weeks in office.¹⁶⁰ As president, Trump attempted to use U.S. taxpayer money to extort Zelenskyy into investigating his political rival, now President Joe Biden.¹⁶¹ All the while, the U.S. intelligence community warned that Trump was acting on Russian propaganda.¹⁶²

Trump's friendliness with Russia, and specifically with Russian enemies of Zelenskyy, were cataloged in the Mueller Report as well.¹⁶³ As the Report states, Trump's 2016 campaign manager Paul Manafort helped install the Russian plant Viktor Yanukovich as President of Ukraine, who was ousted

156. See *supra* notes 1–155 and accompanying text.

157. Jen Kirby & Jonathan Guyer, *Russia's War in Ukraine, explained*, VOX (Mar. 6, 2022, 10:20 AM), <https://www.vox.com/2022/2/23/22948534/russia-ukraine-war-putin-explosions-invasion-explain-ed>.

158. Annalisa Merelli, *The Redefinition of Masculinity is Playing Out in the Fight Between Zelenskyy and Putin*, QUARTZ (Mar. 1, 2022), <https://qz.com/2135829/why-the-world-likes-volodymyr-zelenskyy/> (“Putin is 69. Zelenskyy is comparatively young 44.”).

159. Cf. RACHEL MADDOW, *BLOWOUT: CORRUPTED DEMOCRACY, ROGUE STATE RUSSIA, AND THE RICHEST, MOST DESTRUCTIVE INDUSTRY ON EARTH 164–74* (2019) (explaining how oil interests directly connect Russia and the U.S., focusing on Rex Tillerson's relationship with Putin); *id.* at xiii–xxi (giving an extremely interesting snapshot of Putin opening a gas station in the United States in 2003: “President Putin was there at the gas station in 2003 to convince all New Yorkers, and all Americans, that Russia could deliver stability and reliability at a time when America really needed that, or at least craved it.”); *but see* HELEN ANDREWS, *BOOMERS: THE MEN AND WOMEN WHO PROMISED FREEDOM AND DELIVERED DISASTER 2* (2021) (perhaps speaking too soon: “The boomers have started no world wars, conscripted no soldiers, launched no breadlines. There is nothing in their record [so far] to compare with the pile of corpses at Passchendaele.”).

160. James Pindell, *With Ukraine Under Attack, Trump's First Impeachment is Suddenly Much More Relevant*, BOSTON GLOBE (Mar. 7, 2022, 5:35 PM), <https://www.bostonglobe.com/2022/03/07/nation/with-ukraine-under-attack-suddenly-trumps-first-impeachment-is-much-more-relevant/>.

161. *Id.*

162. Shane Harris et al., *White House Was Warned Giuliani Was Target of Russian Intelligence Operation to Feed Misinformation to Trump*, WASH. POST (Oct. 15, 2020, 7:15 PM), https://www.washingtonpost.com/national-security/giuliani-biden-ukraine-russian-disinformation/2020/10/15/43158900-0ef5-11eb-b1e8-16b59b92b36d_story.html; Jeremy Stahl, *Zelenskyy's "Perfect Phone Call" With Trump in 2019 Explains a Lot Right Now*, SLATE (Mar. 2, 2022, 2:32 PM), <https://slate.com/news-and-politics/2022/03/volodymyr-zelenskyy-trump-putin-ukraine-resistance.html>.

163. 1 MUELLER, *supra* note 146, at 16, 67–68, 111, 130–40.

in the Ukrainian Revolution after his pro-Russian stance became clear.¹⁶⁴ Then, as now, Ukrainians want to integrate with the European Union, not Russia.¹⁶⁵

Just after the overthrow of Yanukovich, Netflix aired *Winter on Fire* about the Ukrainian Revolution that eventually led to Zelenskyy's democratically elected, anti-Russian, pro-EU government.¹⁶⁶ The will of the Ukrainian people, at least since the Orange Revolution, has been tested and was found both obvious, and consistent—they do not want Russia.¹⁶⁷ It is worth remembering, Chernobyl is *in* Ukraine, which was the site of a nuclear disaster that helped lead to the end of the U.S.S.R. as depicted in the award-winning HBO series *Chernobyl*.¹⁶⁸

Nevertheless, ignoring all the evidence to the contrary, Putin invaded the country.¹⁶⁹ Putin was actually taken off guard when his younger opponent, democratically elected President Volodymyr Zelenskyy of Ukraine, did not surrender at the first sight of Russian soldiers.¹⁷⁰ This is likely because, for most of Zelenskyy's life, Russia was a mere figurehead of a humiliated former world power.¹⁷¹

Answering the question about *why* Putin would risk his own destruction in an invasion that seems doomed to failure, Anne Applebaum wrote for *The*

164. *Id.* at 132 (“Manafort became a close and trusted political advisor to Yanukovich during his time as President of Ukraine. Yanukovich served in that role until 2014, when he fled to Russia amidst popular protests.”).

165. *Id.* at 132; Jan Strupczewski et al., *EU Snubs Ukraine's Quest to Join, Braces for Long Stand-Off With Russia*, NAT'L POST (Mar. 10, 2022), <https://nationalpost.com/pmn/news-pmn/eu-snubs-ukraines-quest-to-join-braces-for-long-stand-off-with-russia>; Michael Rose et al., *European Union Dashes Ukraine's Hopes of Quick Membership*, REUTERS (Mar. 10, 2022, 6:14 PM), <https://www.reuters.com/markets/europe/eu-phase-out-russian-energy-offer-ukraine-support-no-fast-track-membership-2022-03-10/>.

166. WINTER ON FIRE: UKRAINE'S FIGHT FOR FREEDOM (Netflix 2015).

167. *Id.*; Oleg Karpyak, *Ukraine's Two Different Revolutions*, BBC (Dec. 3, 2013), <https://www.bbc.com/news/world-europe-25210230>; 1 MUELLER, *supra* note 146, at 132.

168. *Chernobyl: 1:23:45* (HBO television broadcast May 6, 2019); cf. Onuka, *ONUKA – 19 86*, YOUTUBE (Apr. 26, 2016), <https://www.youtube.com/watch?v=2dWkLNXXgWc>.

169. Holly Ellyatt, *Russian Forces Invade Ukraine*, CNBC (Feb. 24, 2022, 11:38 AM), <https://www.cnbc.com/2022/02/24/russian-forces-invade-ukraine.html>; Anne Applebaum, *The Reason Putin Would Risk War*, THE ATLANTIC (Feb. 3, 2022), <https://www.theatlantic.com/ideas/archive/2022/02/putin-ukraine-democracy/621465/>.

170. Daniel Villarreal, *'Blank You, Putin': Ukrainian MP Says His Government Won't Surrender*, NEWSWEEK (Mar. 7, 2022, 7:58 PM), <https://www.newsweek.com/blank-you-putin-ukrainian-mp-says-his-government-wont-surrender-1685729>; Kateryna Shvedenko, as told to Anastasiia Carrier, *'Putin Miscalculated': Ukrainians Are Literally Lining Up to Fight Back*, POLITICO MAG. (Mar. 5, 2022, 12:00 AM), <https://www.politico.com/news/magazine/2022/03/05/kyiv-ukraine-resistance-first-person-00014338>.

171. James Nixey, *Is Russia Still a Key World Power?*, BBC (Dec. 21, 2015), <https://www.bbc.com/news/world-europe-34857908> (Russia is merely “one of 15 successor states to the USSR, which broke up in 1991”); Adam Staten, *It Costs About 4,500 Rubles to Fill a Gas Tank After Russia Sanctions*, NEWSWEEK (Feb. 28, 2022, 12:42 PM), <https://www.newsweek.com/it-costs-about-4500-rubles-fill-gas-tank-after-russia-sanctions-1683257>.

Atlantic that Putin is an “imperial nostalgist.”¹⁷² Applebaum continued, “Putin profoundly misunderstood Ukraine, imagining that Russian-speaking Ukrainians would share his Soviet imperial nostalgia.”¹⁷³ This keen observation seems to trace back to a term developed by British author Owen Hatherley known as “austerity nostalgia.”¹⁷⁴

Austerity nostalgia can explain the *why* behind, not only Putin’s war in Ukraine, but also Scalia’s strategy discussed above.¹⁷⁵ The austerity nostalgia for racism and misogyny that made *Mad Men* a hit,¹⁷⁶ also lifted Trump into power with promises to *Make America Great Again* (“MAGA”).¹⁷⁷ Putin’s attempt to resurrect the U.S.S.R. by sheer Boomer nostalgia is so absurd it ought to be laughable—but the Boomers still hold power, and they are living in a past haunted by the red scare, fallout shelters, and poodle skirts.¹⁷⁸

As anyone with the stomach to watch *Them* knows, the past the Boomers feel nostalgia for is both unjust and austere.¹⁷⁹ And yet, in it, Boomers see the reemergence of a new “Camelot.”¹⁸⁰ In coming years, Putin, 70, and Trump, 76, will double down on Boomer nostalgia projects, but Millennials,

172. Applebaum, *supra* note 169.

173. *Id.*

174. OWEN HATHERLEY, THE MINISTRY OF NOSTALGIA 14, 21 (2017) (defining “austerity nostalgia” as “a nostalgia for the state of being repressed” (emphasis in original)).

175. Compare HATHERLEY, *supra* note 174, at 14, 21, with Applebaum, *supra* note 169, and *supra* notes 61, 133 and accompanying text.

176. ALEX BEVAN, THE AESTHETICS OF NOSTALGIA TV: PRODUCTION DESIGN AND THE BOOMER ERA 2 (2019) (“*Mad Men* is an obvious example of the popular infatuation with the aesthetics of the boomer period.”); see Tim Mulkern, *Mad Men: Justifying Sexism and Gender Roles Through Nostalgia*, GLOB. CRITICAL MEDIA LITERACY PROJECT (Mar. 24, 2019), <https://gcml.org/mad-men-justifying-sexism-and-gender-roles-through-nostalgia/>; Rodney Taveira, *Why Mad Men’s Treatment of Black Americans is a Problem*, THE CONVERSATION (May 25, 2014, 4:14 PM), <https://theconversation.com/why-mad-mens-treatment-of-black-americans-is-a-problem-27102>.

177. Randy Blaser, *Column: Among Baby Boomer Presidents, Trump Offers Nostalgia*, CHI. TRIB. (Nov. 21, 2017, 11:39 AM), <https://www.chicagotribune.com/suburbs/ct-ppn-column-blaser-tl-1130-20171121-story.html> (noting that Trump was “a Boomer [who] brushed aside all the faults of his generation by harkening back to a beautiful time that Boomers can only remember from their childhood”); cf. BUMP, *supra* note 22, at 236.

178. Joseph Weisberg, *The Cold War is Over. Why Do We Still Treat Russia Like the Evil Empire?*, WASH. POST (Dec. 17, 2021, 10:00 AM), <https://www.washingtonpost.com/outlook/2021/12/17/russia-united-states-cold-war/> (“[W]e seem to be collectively stuck in the past.”); Joseph Weisberg, *Is America’s View of ‘Evil’ Russia Merely Projection?*, SCHEERPOST (Oct. 9, 2021), <https://scheerpost.com/2021/10/09/joseph-weisberg-is-americas-view-of-evil-russia-merely-projection/> (reviewing Weisberg’s book *Russia Upside Down: An Exit Strategy for the Second Cold War*); cf. BUMP, *supra* note 22, at 153–54 (explaining how Millennials got caught up in “baby boomer nostalgia . . . that let bands like the Rolling Stones continue to sell out concert venues even with Mick Jagger pushing 80”).

179. Catherine Bennett, *Nostalgic for the 50s? Let Me Give You a History Lesson*, GUARDIAN (Feb. 25, 2012, 7:12 PM), <https://www.theguardian.com/commentisfree/2012/feb/26/catherine-bennett-50s-nostalgia> (“[I]ncurably wistful baby-boomers are circulating an email in which they *Downtonise* another bygone age: their childhoods.”); see generally *Them: Day 10* (Amazon Prime release Apr. 9, 2021) (primarily set in a white Los Angeles neighborhood in 1953).

180. Compare Blaser, *supra* note 177, with Krystine I. Batcho, *Camelot: Remembered or Imagined*, PSYCHOLOGY TODAY (Nov. 15, 2013), <https://www.psychologytoday.com/us/blog/longing-nostalgia/2013/11/camelot-remembered-or-imagined>.

27–42, may find a way to contend for the good of younger generations; to move past the Boomer interregnum and into a brighter future for everyone.¹⁸¹

181. See, e.g., Schroeder, *Leviathan*, *supra* note 113, at 303–04; cf. Maria Snegovaya et al., *What It Would Take for Russia's Millennials to Topple Putin*, FOREIGN POLICY (Oct. 6, 2020, 12:58 PM), <https://foreignpolicy.com/2020/10/06/russian-millennial-putin-regime-dissatisfied-apolitical-reform/>; Philip Elliot, *Basically Everybody Under 40 Hates Washington*, TIME (Jan. 25, 2022, 5:10 PM), <https://time.com/6142138/young-voters-unhappy-washington/>; Jon King, *Russian Millennials 'Freaking Out' as Putin's Unwanted War Sees Them Lose Social Media*, EXPRESS (Mar. 5, 2022, 2:56 PM), <https://www.express.co.uk/news/world/1576139/russia-ukraine-war-millennials-social-media-paypal-twitter-facebook>.