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THE TRUMP COURT
How the 45th president has unleashed a swarm of conservative judges.
ELIE MYSTAL
In Defense of Aesthetes

I found James McAuley’s analysis of Renaud Camus [“Killer Kitsch,” July 1/8] broadly persuasive, but I think he’s mistaken to claim “the aesthete is a natural reactionary.” Certain species of aesthete—e.g., the fussy period fetishist Camus seems to be—do tend that way, and many examples come to mind (Céline, Pound, Riefenstahl, and Marinetti, all of whom McAuley mentions). But if an aesthete is someone who takes questions of beauty and representation seriously, who meditates as deeply as one can on the means and ends of art, who sees the pursuit of art as braided inextricably with life itself—and, for me, that is what an aesthete is—there is nothing natural at all about the association of the aesthetic with political reaction.

There are a great many aesthetes committed to transformative politics and justice. Consider Bertolt Brecht, Charles Olson, W.H. Auden, Pablo Picasso, John Cage, Martha Rosler, and Alice Notley. I could keep going, but let’s just cut to the aesthete’s aesthete, Oscar Wilde, and his “Soul of Man Under Socialism.” Scorn not the aesthete!

Scott Stanfield
Lincoln, Neb.

The Imperfect vs. the Irredeemable

Joe Biden is a flawed candidate with a long list of political liabilities. He would not be my first (or even fifth) choice for the Democratic nomination. But suppose Biden wins it and stands as the candidate best positioned to reunite the party’s black and white working-class bases? Reading Jonathan Kozol’s expert deconstruction “Biden and Segregation” [July 1/8], based partly on an interview from 1975, one can preview the disgust as purists flee to next year’s Ralph Nader or Jill Stein.

For better or worse, we have binary elections in this country. Next year’s will be existential—a choice, perhaps, between the imperfect and the irredeemable. Today’s Republicans may be irredeemably corrupt, but they grasp one essential political reality: solidarity above all. I am not suggesting that we go easy on our candidates, but any one of them would be Lincolnesque compared with the current president.

The Democratic primary field will sort itself out. But let us not hand the enemy an ax. The alternative is four more years of white supremacy, climate denial, nuclear brinkmanship, rampant corruption, Constitution trampling, immigrant trashing, and much more.

Peter McRobbie
South Orange, N.J.
The Supreme Court’s recent decision refusing to interfere with extreme partisan gerrymandering not only seriously undermines our already fragile democracy; it also brings to mind the court’s acquiescence more than a century ago in laws that denied the right to vote to millions of black Southerners.

In particular, it is reminiscent of the court’s 1903 ruling in *Giles v. Harris*, a largely forgotten case in which the justices, as today, claimed they were not authorized to adjudicate “political” matters.

In that case, Jackson W. Giles, the president of the Colored Men’s Suffrage Association, sued to overturn voting requirements openly designed to disenfranchise black voters in Alabama after Reconstruction. The state’s Constitution of 1901 allowed registrars to bar from voting those who lacked “good character” or did not understand “the duties and obligations of citizenship.” The result was that almost every black voter was eliminated from the rolls, despite the fact that the 15th Amendment, ratified in 1870, prohibited states from denying the right to vote because of race. To work around that amendment, Alabama’s requirements did not explicitly mention race. But it was clear, as Giles’s complaint argued, that the state’s entire registration system was racially biased.

Oliver Wendell Holmes, recently appointed to the court by Theodore Roosevelt, wrote the opinion for the majority after a 6-3 vote. Like Chief Justice John Roberts today, Holmes threw up his hands and described the Supreme Court as impotent. If “the great mass of the white population intends to keep the blacks from voting,” he wrote, there was nothing the justices could do about it. The courts were not permitted to get involved in politics. “Relief from a great political wrong” could come only from the “people of a state” through their elected officials or from Congress. He ignored the fact that the definition of the “people” of Alabama was precisely the point at issue. Holmes would go on to have a distinguished judicial career. *Giles v. Harris*, one scholar wrote, “is—or should be—the most prominent stain” on his reputation. Roberts, take note.

Like Republicans today, the white Southern press in 1903 hailed the ruling as an indication that the Supreme Court would not interfere with “a sovereign state’s regulation of its elections.” Some signs of discontent appeared in the North. “Is the Constitution non-enforceable?” asked the Springfield, Massachusetts, *Republican*. “We are brought face to face with the consideration that the Constitution may be violated with impunity.”

The idea that the Supreme Court does not have the authority to get involved in political matters would be laughable if the results of this decision were not so damaging. Was not *Baker v. Carr*, the one-man-one-vote decision of the 1960s, political? What about *Bush v. Gore* (2000), which decided the outcome of a presidential election? Roberts claims that the founders, by leaving the drawing of district lines to state legislatures, anticipated political involvement in the process. But the founders did not expect or desire the rise of political parties that sought to warp the electoral process to their advantage. As Richard Hofstadter demonstrated many years ago in *The Idea of a Party System*, the founders thought political parties were divisive institutions indifferent or hostile to the common good. They would have been appalled to see a political party use its control of districting to override the will of a state’s voters.

Supreme Court decisions have practical consequences, which justices too often blithely ignore. It took well over half a century for the right to vote to be restored to black citizens of the Southern states, via the Voting Rights Act of 1965. During those years the country experienced profound social and economic changes, which the disenfranchised millions in the South had no voice in shaping. Needless to say, the right to vote is still being fought out in numerous states at this very moment. What is the difference between being denied access to the ballot box and living in a district designed so that your
On Not Looking Away

To combat complicity, we must confront tragedy.

"I can’t get the image out of my mind." I received this text from my wife hours after seeing the photo of Óscar Alberto Martínez Ramírez and his 23-month-old daughter, Angie Valeria, drowned in the Rio Grande. For the next 48 hours, the devastating photo was everywhere we looked.

When my wife says she can’t handle looking at such awful images, I know how she feels. As the creative adviser at Independent Diplomat—a nonprofit that supports democratic groups and opposition movements fighting oppression—I’ve spent years working with images coming out of Syria, trying to draw the public’s attention to the tragedy that has been unfolding there. And I am the father of a 21-month-old, so I am understandably affected by what I see: photographs and videos of children pulled from the rubble after indiscriminate barrel-bomb attacks. Babies struggling for their last breath after chemical-weapon strikes. Images of victims from the regime’s torture chambers, their eyes and genitals gouged out. Horrific things done to the human body that I did not think possible.

I wasn’t always aware of such horrors myself. Until 9/11, I was a struggling figurative painter working security at the Metropolitan Museum in New York. I had no interest in anything outside my bubble until I saw images of people making the impossible choice and jumping to their deaths. Those images, which were later censored, shook me awake. I switched careers, and in my new role I was one of the first people to see the Caesar photos—evidence of war atrocities committed by the Syrian regime that the world has so far paid little attention to.

When my wife and others ask how I deal with viewing atrocities and abuses in Syria, I respond that it is difficult when those others are tangled up in your history and you are tangled up in theirs.

We see this clearly in the photos we choose of refugees: always the victims, lost at sea, in orange life jackets, imprisoned, caged. Passive. While it’s important to show the tragedy, we also need to show refugees not merely as victims but as people with agency and volition. This is a demand made by the refugees I’ve worked for. The Network for Refugee Voices and the Global Refugee-led Network, for example, are two coalitions demanding to have their voices heard on matters that affect their community. To have control over their own stories.

These activists, journalists, and storytellers share everything: not just the stories and images that corroborate their accounts of the crimes committed against them but also evidence of their humanity and positive contributions to our societies. Their lives look just like ours.

I no longer work on Syria, but the images still flood my timeline, a WhatsApp group still ping several times daily as the regime and Russia bomb civilians in Idlib.

The world does not seem to be interested in these images—or rather, these lives. The victims of such atrocities are at a loss to comprehend not only that such awful crimes are being committed against them and that the evidence of such crimes exists but also that we are choosing to ignore this evidence, to look away.

In the West, we have created a media environment that protects us from the graphic realities of our world. But sometimes we are forced to look.

In 2015 the heartbreaking photo of 3-year-old Alan Kurdi, his tiny corpse washed up on a Mediterranean shore, made global headlines. Now the image of a drowned man and his daughter, their bodies an indictment of us all, filters through our algorithms again and shakes us awake for a day or so—until the discussion devolves into the question of whether or not we should look.

How do we deal with images that affect us so deeply? What is our responsibility to those shown in them? Do we have an obligation to look? These are questions that photographers and editors grapple with daily. The Guardian’s Roger Tooth writes about the struggle of choosing which pictures he will use and his responsibility to the viewers and the victims. These are questions I’ve wrestled with while trying to raise the alarm about atrocities and abuses in Syria.

At the start of his essay Tooth writes, “We wanted to show the readers the reality of life—and death—in Gaza but we didn’t want to shock or unnecessarily upset them.” How do you convey a shocking reality without shocking the viewer? You can’t. We shouldn’t. To do so forsakes our own humanity as well as theirs. When we turn away, we find ourselves siding with the perpetrator.

According to psychiatrist Judith Lewis Herman, society is set up to conspire with the perpetrator, to ignore their crimes and pretend they didn’t happen, because otherwise, we have to do something—which is a bigger inconvenience. If we won’t even look, how can an un-

Eric Foner
informed public demand action? “All the perpetrator asks is that the bystander do nothing,” Herman writes. “He appeals to the universal desire to see, hear, and speak no evil. The victim, on the contrary, asks the bystander to share the burden of pain. The victim demands action, engagement, and remembering.”

As bystanders in the media, we can no longer make it our job to attempt to filter the conversation, to be the arbiter of images. As Tooth says, “It’s all out there on the internet or on your timeline.” Even when we try to censor, the images still exist, on Twitter, on Reddit, on WhatsApp.

We need to face these images, and listen to the stories they tell. And to share.

ARRAN SKINNER
Arran Skinner is a multimedia specialist working in international communications on issues including the refugee crisis and the conflicts in Syria, Yemen, and Western Sahara.
F or the first time in decades, the question of corporate power has become central to the US presidential campaign. Senators Elizabeth Warren, Cory Booker, and Bernie Sanders have all emphasized the threat that monopolies pose to our politics and our economy. Still, there’s a basic fact that the public has yet to fully internalize: US industries are far more concentrated than they were 20 years ago, and the economy may even be as concentrated as it was during the middle of the 20th century.

Consider the metaphors we use to understand how our economy works now compared with how it worked in the past. For many, the period from the 1940s to the 1970s was one of Big Business and large conglomerates. We think of the TV show Mad Men, with men in gray flannel suits who work for large corporations. In contrast, we often picture today as an era of plucky start-ups and leaner, smaller businesses—think Silicon Valley.

In recent decades, the premium for working at a large firm has declined substantially.

But a wave of recent research has pushed back against this notion. In 2017 the economists Gustavo Grullon, Yelena Larkin, and Roni Michaely authored a groundbreaking study, “Are US Industries Becoming More Concentrated?” The definitive answer, they found, is yes. In the past two decades, more than 75 percent of industries have become more concentrated.

In the industries with the highest corporate concentration, businesses have seen the highest spikes in their profit margins. Other research, most notably from the economists Thomas Philippon and Germán Gutiérrez, found that concentration and short-term pressures by shareholders drive down how much these firms invest. This is all occurring in a period of low interest rates, and in a healthy economy, this should be impossible. You shouldn’t be able to have low investment, high profits, and low interest rates. Competitors should fight over those profits, and incumbent firms should expand investment to sell more in a market that is highly profitable.

There’s significant debate about the consequences of these findings. Economists and lawyers who don’t think this is a problem argue this concentration is necessary in a globalized world. Yet if this were the case, we shouldn’t be seeing high profits and low investment. But what’s not up for debate is that this is a massive change from just two decades ago.

One interesting question is how far back this trend goes. Is the economy more concentrated now than in the 1970s? This is surprisingly difficult to answer. We know a lot about publicly traded companies since the 1930s, especially after the New Deal required formalized reporting. But there are a lot of private firms as well, and data on them is harder to come by. There’s also the problem of how to standardize classifications of industries and profits so that we can compare them over generations.

Yet we can make out a few trends. The first is that people today are more likely to work for a large firm with over 10,000 people than they were in 1977. In addition, among publicly traded companies, concentration is higher today than it was in the 1970s. That tells us only so much, but we can combine it with other information. A measure of how much market power a firm has, the Lerner index, is slightly higher today than it was in the 1970s for publicly traded companies. If private firms were able to be more competitive and therefore take up more of the economy, we’d expect to see that profitability decline instead of increase in today’s economy. Though it is tough to see farther into the past than that, there’s little reason to think that the 1950s were more concentrated than the 1970s.

This affects our political imagination. Some view the mass prosperity of the midcentury period as possible only because businesses were so large and profitable. Workers could form unions because there was less competition and thus could share in the wealth of this high-profit environment. Unfortunately, we don’t see this today. New evidence shows that in recent decades, the premium for working at a large firm has declined substantially. While workers today must compete relentlessly to secure the basics in our society, large corporations don’t face the same pressure. With every year, industries get more concentrated, and businesses have to do less to reap ever higher profits.

The Economy Is Not What You Think

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—Dana S., Texas

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Remember 2017? Those were the days. In Trump's first year, we marched and demonstrated constantly, for women's rights, for immigrants, for science, for the planet, and for the release of his tax returns. We jammed the airports to protest the Muslim travel ban, subscribed to civic action sites like 5 Calls, and made phoning and postcarding part of our daily routines. We confronted Republican lawmakers at their town halls and even picketed the homes of Democrats like Senator Chuck Schumer, who seemed too eager to compromise with Trump.

Inevitably—and rightly—protest turned into politics and the patient, sometimes frustrating local organizing that electing new leaders requires. We took back the House and made important progress in the states, including Virginia, New Mexico, New York, and Maine. Black voters mobilized, and so did the Democratic Socialists of America, Indivisible, and VoteRunLead. On the ground, going door-to-door, the mostly suburban, mostly white women of the resistance (mocked by a self-described dirtbag leftist as middle-aged hysterics) sought to outmobilize the 52 percent of white women who voted for Trump in the first place. These efforts achieved wonders, including the election of the charismatic Alexandria Ocasio-Cortez and victories for black House candidates in mostly white districts, such as Lucy McBath, Lauren Underwood, Jahana Hayes, and Antonio Delgado.

Among the many local progressive triumphs, Chicago elected Lori Lightfoot as its first openly gay, black mayor. There are now no fewer than six DSA members on the 50-member Chicago City Council.

All this is crucial. But what happened to the fierce urgency that barely 24 months ago sent us pouring into the streets at a moment's notice? Two and a half years into his term, Trump has not moved an inch. He is the same cruel and ignorant liar, bigot, and bully he has been since his youth. He has learned nothing in office: He still lacks a grasp of the basic civics and government that we were taught in eighth grade, such as what tariffs actually do. He just keeps pushing the limits, always on the attack and holding his ridiculous rallies, sending out his bizarre and misspelled spiteful tweets, blaming the Democrats for things he himself is responsible for, and appointing weirdos and randos to important positions. (His chief of protocol, Sean Lawler, just resigned in the wake of reports that he intimidated staffers and carried a whip in the office.)

None of it makes a dent. As I write, a Washington Post/ABC News poll puts Trump’s approval rating at a record-high 44 percent—amid the children in cages, the restrictions on abortion and birth control, huge tax cuts for the rich, an erratic foreign policy that may get us into war with Iran, and somewhere between 16 and 24 women accusing him of sexual assault or misconduct, including, per E. Jean Carroll’s remarkable essay in New York magazine, outright rape.

In France the Yellow Vests have come to Paris for 34 consecutive Saturdays to protest an increase in gas taxes, rally against a lowered speed limit on country roads, and ask for a raise in the minimum wage, to name just a few issues. They won on all those demands. In Hong Kong one in seven residents took to the streets over a law permitting extradition to mainland China. The bill has been shelved, and Carrie Lam, the territory’s chief executive, apologized.

Why isn’t anything like that happening here? There are activists who inspire awe with their dedication and courage, like the volunteers who risk arrest in the Arizona desert to provide migrants with water, food and shelter. There are wonderful organizations like RAICES that provide them with legal aid and other help. There’s #MeToo, which, far from having run out of steam, gets a new life every time a case of assault or rape makes headlines. (Carroll wrote that it inspired her to come forward after more than 20 years.)

But protests just aren’t what they used to be. In May, I went to a rally in downtown Manhattan against the abortion bans sweeping Republican-controlled states. There might have been 300 people there—or far from the thousands you’d expect, given the circumstances. And how many were out in the streets of Atlanta, St. Louis, and Birmingham, Alabama, where virtual abortion bans may soon be in effect? Then on July 2, I demonstrated at Representative Rosa DeLauro’s office in New Haven as part of a nationwide movement against the government’s atrocious treatment of immigrants and asylum seekers. Maybe 200 people showed.

Why is that? Maybe people have their eye on the long game and the next election is already absorbing our attention, but it feels as if a certain energy is gone. My daughter thinks it’s Trump fatigue, that we’ve been beaten down by the sheer weight of what’s gone wrong, from the mountain of lies and scandals to the dismantling of regulatory measures and the packing of the courts with energetic reactionaries.

I’d go further: We’ve internalized a tiny Trump who lives in our heads and jeers at our puny efforts, our letters, our clever memes, and our belief that facts are stubborn things. After all, everyone knows facts are just “fake news.” But this is no time to go quiet—or to argue about language, as so many have over Ocasio-Cortez’s use of the words “concentration camps” to describe migrant detention facilities. The term is controversial because it compares America to Hitler’s Germany, when we’re still far from it. But perhaps the message is less about Hitler than about those millions of “good Germans” who didn’t do much to stop him. The Nazis controlled society from the ground up and were violent to the point that leafleting could get you executed. We have far less to fear, and absolutely no reason to resign ourselves to Trump’s cruelties. What are we waiting for?
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— Don W., Sherman, TX

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From January to May of this year, approximately 3,000 journalists in the US were laid off or offered a buyout. The industry hasn’t seen a job market this bad since the height of the recession in 2009, and so far this summer, the news about the news hasn’t been getting any better. The only local paper in Youngstown, Ohio, The Vindicator, will close in August, and 144 full-time jobs will be lost. The Center for American Progress, a think tank aligned with the Democratic Party, is trying to off-load its news site, ThinkProgress, which faces a $3 million deficit this year, according to The Daily Beast. First Look Media announced it would shutter Topic, an award-winning online magazine, and stop funding The Nib, a progressive political cartoon site.

The crisis in journalism is bad not only for journalists but also for the communities they serve. A town losing its newspaper means no reporters keeping an eye on the courts, city hall, or the police. A 2018 study from Notre Dame’s Mendoza College of Business found that when local papers shut down, governments become more inefficient and costly. For all the Trump administration’s griping about fake news, democracy hinges on the strength of its journalism. And right now, the media is shrinking, allowing corruption to go unchecked and preventing important voices from being heard. Even more worrying, this is happening in a relatively strong economy. What happens during the next recession?

—Celisa Calacal

THE MEDIA

Breaking the News

AI’s Persona Problem

How will we behave when we know someone’s watching?

In a recent New York Times editorial titled “Why We Should Stop Fetishizing Privacy,” entrepreneur Heidi Messer posited the ultimate list of techno-optimist clichés. Tech companies drive the economy, bringing health, wealth, jobs, and truth. Those who caution against a host of risks such as monopoly, hubris, and shortsightedness should be dismissed as ignorant “privacy evangelists.” Public regulation is bad because tech companies have “the talent and resources” to protect us against cyberwarfare and “foreign and criminal intrusion.” We should follow the example of “digital natives,” who “start with an awareness that their data isn’t private.” According to Messer, public oversight would only gum up the workings of all the utopian delights of this shiny new world. Given such blessings, why would we want to break up big tech companies?

There is much to unpack in Messer’s breezy dismissal of both unchecked monopoly power and the invasive apparatus of totalistic technological surveillance. For present purposes, however, I would like to think about how the concept of the self is affected by the widening use of algorithms to translate more and more bits of ourselves into numerical representations. Artist Trevor Paglen gives a succinct example: When people upload pictures of their kids, algorithms reading those photos feed invisible data sets in ways that may eventually influence something as apparently unrelated as those children’s health insurance. Similarly, if a teenager uploads a picture of herself having a beer, her underage drinking may be marked as information that can be sold, utilized by police departments whose scrutiny “will be guided by your ‘pattern of life’ signature,” warns Paglen. “When you put an image on Facebook or other social media, you’re feeding an array of immensely powerful artificial systems information about how to identify people and how to recognize places and objects, habits and preferences, race, class, and gender identifications, economic statuses, and much more.”

Recently, a 10-year-old in Maryland shared clearly marked play money with classmates while riding on his school bus. The driver contacted his supervisor. Police were called, and finally, the Secret Service—all to investigate the child for counterfeiting. While this is absurd on its face (and yes, the child was black), what’s more invisibly sad is that each time a person enters a database for having had contact with police, it will affect all sorts of other life chances, including risk assessments for employment, credit, and child custody.

That’s largely because artificial intelligence dispenses predictive computations based only on what it is trained—by humans—to see. Many universities now use Canvas, a course management platform on which students can discuss material or share lecture notes while their instructor is talking. When I was being trained to use the program, I noticed that the IT department had a screen on which the entire faculty was numerically ranked based on who generated the most comments during lectures. I was told that it would help us know what parts of a lecture stirred interest, but to me, it seemed only a whisker away from a Kim Kardashian standard of generated buzz as professorial achievement—a test I surely fail because I often tell my students to close their laptops.

Nevertheless, that kind of scoring is becoming a more important metric in all walks of life, particularly on social media. Are you getting hits? Are you being seen?

The system incentivizes me to be splashy—in the eyes of a machine.

Are you getting hits? Are you being seen?

The system incentivizes me to be splashy—
in the eyes of a machine.
calculations of whether to like or not like someone, to grow close or pull back, to rescue, forgive, or let die.

AI also threatens an important aspect of democratic identity: the right of self-invention. The word “persona” means “mask,” as in ancient theater. It is something through which one presents oneself to the world. In jurisprudence, the persona is both the protection of one’s inner privacy (or freedom to think without censor) and the right to invent oneself outwardly. We present ourselves differently at the opera than the pool hall. We code-switch between accents and languages when speaking to our babies as opposed to our bosses. We seek amnesty for our misdeeds. But we lose that ability to compose ourselves fluidly and situationally if we are eternally confined by our last worst moment—if our weakest and most foolish acts are always fresh and foremost in the unnuanced mechanical brain of deep data.

W.E.B. Du Bois and Frantz Fanon described the stress of double consciousness experienced by black people living in white worlds—the phenomenon of always having to be aware of who’s watching. Life under these conditions is no longer one’s own creative, whimsical, and enjoyable construction. It becomes about a constant fear of offending. That kind of disembodying quality can be hard to bear, even when it’s praising you—just think of the obsessive gaze focused on celebrities like Princess Diana or John Lennon, who were ultimately adored to death. Yet it’s what tech giants like Google and Facebook seem intent on normalizing. Internalizing the panopticon has always been an extraordinary stress on marginalized populations like migrants and people of color. If this is the new norm for everybody, we will see those kinds of stresses magnified, stretching us ultimately to the breaking point. A merciful society gives us room to breathe.

SNAPSHOT / GLEB GARANICH
Growing Pride
Police officers flank participants in the Equality March in Kiev, Ukraine, on June 23, organized by the city’s LGBTQ community. With thousands of marchers taking part, the event was Ukraine’s largest-ever gay pride parade.

APPROVAL RATING
Calvin Trillin
Deadline Poet
“Trump’s approval rating has risen to the highest point in his presidency...according to a Washington Post–ABC News poll.”
—front page, The Washington Post
“Accounts from a child detention complex in Texas are the stuff of nightmares.”
—front page, The New York Times (same day)

A way to pump the ratings up?
Trump found one that is for the ages:
You separate folks from their kids,
And cram the kids in squalid cages.
DONALD TRUMP WILL NOT BE PRESIDENT OF THE UNITED STATES FOREVER. HE WILL LOSE HIS RENELECTION BID IN 2020 OR BE TERM-LIMITED OUT OF OFFICE IN 2024. OR PERHAPS THE INEVITABLE RESULT OF HUMAN frailty will do its work and put an end to Trump's ongoing illegal reign. Most people now living will outlast his presidency and be left to pick up the pieces of the shattered nation he will leave behind.

But Trump's Court—the collection of judges and justices now swarming our judicial system, nominated and confirmed to lifetime appointments on his recommendation—will linger, like an infected wound poisoning the body politic even after the initial injury has scabbed over. As of this writing, the Trump administration has had 123 federal judges confirmed, including 41 to the federal courts of appeal—the circuit courts just one rung below the Supreme Court. By comparison, at this point in his presidency, Barack Obama had pushed only 19 circuit-court judges through to confirmation. Trump's appointees now account for some 14 percent of the federal judiciary and more than 22 percent of the judges on the nation's courts of appeal—and he has been in office for just two and a half years. Many of Trump's other offenses could be overturned by a new president with the stroke of a pen. Trump's Court will remain as his legacy.

The characteristics of these new Trump judges are not limited to their hostility toward a woman's right to choose. Trump promised anti-choice judges, and he has made good on that threat. But while tapping judges who can be trusted to oppose the Supreme Court precedent of Roe v. Wade, he has also dredged up those who share a nasty disrespect for any individual rights that don’t flow from God or the barrel of a gun.

Trump judges are dismissive of LGBTQ rights and protections—in some cases, to the point of open bigotry. They're hostile to minority voting rights and claims of racial or gender discrimination. They’re largely young and inexperienced, and an unsettling number have earned their stripes as partisan think-tank writers, op-ed columnists, or even bloggers. They believe in deregulation to the point of corporate anarchy, meaning that significant climate-change proposals might have to wait until they can be enacted over these judges’ literal dead bodies. And they don’t much resemble the rest of the country: 78 percent are male, and 87 percent are white. Appealing to Trump's Court is like letting the board of governors at your local yacht club—or Proud Boys chapter—decide your fate.

The Trump Court, of course, is not actually Trump’s idea; he probably wouldn’t be able to tell you the difference between Chief Justice John Roberts and Judge Wapner. But Trump has been all too happy to play along with the game orchestrated by Senate majority leader Mitch McConnell and his coterie of Senate enablers because—

...such a deal, see? Trump delivers the judges, helping fulfill the conservative movement's long-cherished dream of remaking the judiciary, and his base remains content.

For McConnell, this moment has been a long time in the making. Even before he blocked Merrick Garland, who was nominated by Obama for the Supreme Court after the death of Antonin Scalia, McConnell had been busy systematically stymieing the previous president's judicial appointments. This years-long campaign of obstruction left an astonishing 106 judicial vacancies at the end of Obama's second term and is a prime reason that Trump has been able to fill seats at such a brisk pace. The senator was playing a very long game.

Still, McConnell and Trump would not have been able to capitalize on this obstruction if they hadn’t had help from a network of far-right legal arsonists who have spent the better part of the last decades working to change the federal courts from the protectors of last resort for minority rights to the enforcement arm of the Republican Party. These include organizations like the Heritage Foundation, the Alliance Defending Freedom, the Judicial Crisis Network, and above all the Federalist Society. When Trump MAGA’d his way to the White House, the Federalist Society was ready with a raft of archconservative nominees that it had been incubating to unleash on the country.

Funded by powerful right-wing donors—including Charles and David Koch, Robert and Rebekah Mercer,
and the Scaife foundations—the Federalist Society has become the de facto Department of Judicial Appointments in the Trump administration. It’s the Federalist Society, not the White House, that does the serious vetting of many potential nominees. A significant number of Trump’s appointees have come with some sort of approval from Leonard Leo, the Federalist Society’s leader. For Supreme Court appointments, Leo and McConnell give Trump a list. When it comes to lower-court appointments, I'd be shocked if Trump knew anything more than the names of most of the people he’s nominating.

The Federalist Society and McConnell want the same thing: the supremacy of the Republican political agenda. And now they’ve almost won. We stand on the brink of a precipice. In March, Trump finally flipped the critical Third Circuit Court of Appeals (which covers New Jersey, Pennsylvania, and Delaware), achieving a majority of judges appointed by Republicans instead of Democrats. In other regions, he’s made the GOP-controlled circuit courts even more conservative.

The Republicans, of course, already control the Supreme Court. If Trump wins a second term, conservatives will likely be able to complete this right-wing takeover of the lower federal courts. And these courts are incredibly important. The Supreme Court heard only about 70 cases during its 2018–19 term, out of nearly 7,000 that are filed annually for potential review. For all the cases that are not taken up by the Supreme Court—the vast majority—these lower courts serve as the final arbiter.

Nothing can reasonably be done to remove the people on Trump’s Court from their current positions. The damage they’ll do for the rest of their lives is our collective punishment for not caring or voting on the basis of court appointments sooner. But we should know who these new judges are, and we should understand what they’re up to.

Institutions like the Alliance for Justice have done a thorough job of tracking the men and women who make up the Trump Court, and their reports make for illuminating, if terrifying, reading. However, since no one has time to read over 100 profiles of judges who think the Second Amendment protects your right to own a tank, The Nation has come up with a list of seven who exemplify what Trump and McConnell are up to. Let’s call them the Seven Injustices. They are old-school originalists and newfangled activists. They are torture advocates, LGBTQ antagonists, rape apologists, Islamophobes, and Confederate-monument defenders. They are anti-abortion fundamentalists. And they are remaking the law. Some of these people will end up on Supreme Court short lists; others will simply continue to choke off your rights, quietly but relentlessly, for the rest of their lives. We’d better be ready for them.

Don R. Willett

The First Injustice

Position: Fifth Circuit Court of Appeals
Age: 53
Hostile to: Civil rights, federal laws, gun regulations

It makes sense that our ‘Twitter president would nominate a Twitter judge. Nearly every story about Texas Judge Don Willett mentions his Twitter feed, mainly because he has one and it’s exceedingly rare for a judge to have any kind of presence on social media. Unlike Trump, Willett has tended to cop an “aww, shucks” Twitter persona, praising his mother and presenting himself as an affable, God-loving family man.

Hidden among the dad jokes and puppy pictures, however, you’ll find a meaner streak that exemplifies his judicial opinions. In one tweet, Willett, a fierce opponent of marriage equality, joked that he could “support recognizing a constitutional right to marry bacon.” In another, he called a transgender woman allowed to play on a girls’ softball team “A-Rod.” Apparently, he’s another cis-dude bro who thinks the transgender-equality movement is just another ruse for people who want to cheat at high school sports.

Since Willett was confirmed to the Fifth Circuit in 2017, his Twitter feed has fallen silent, and we have only his record and his decisions to go on. That record is anything but kind. He previously served on the Texas Supreme Court, and none other than religious-right leader James Dobson of Focus on the Family called Willett the “most conservative” judge on the court—a claim he proudly repeated in a campaign ad.

Touting yourself as the most conservative judge on a court in Texas is like boasting about being the most violent member of your street gang. It’s a terrifying thing to be proud of, even to other members of the gang. But Willett wasn’t fronting; in decision after decision, he backed up his boast.

Prior to the Supreme Court’s decision protecting same-sex marriage in Obergefell v. Hodges, Willett refused to extend full faith and credit to same-sex marriages performed in other states. He dissented from an opinion that allowed a same-sex couple to be divorced in Texas. After Obergefell, he did everything he could to delay the implementation of same-sex marriage in Texas by lodging purely procedural objections. He ruled, again post-Obergefell, that the spouses of public workers in same-sex marriages can’t receive employment benefits through their partner.

Even before Willett became a Texas judge, his personal agenda was well documented. He worked for George W. Bush when Bush was governor of Texas. As director of research and special projects, Willett wrote a memo about a proclamation that Bush was set to issue honoring the Texas Federation of Business and Professional Women. That memo leaked. In it, Willett wrote in part:

I resist the proclamation’s talk of “glass ceilings,” pay equity (an allegation that some studies debunk), the need to place kids in the care of rented strangers, sexual discrimination/harassment, and the need generally for better “working conditions” for women (read: more government).

Yes, the man who puts the mention of glass ceilings and better working conditions for women in scare quotes is now a federal judge who may strike down federal laws that seek to ameliorate inequities he thinks have been debunked. And he might someday be a Supreme Court justice. Willett’s name was floated by some hard-core
conservatives as a possible nominee when Justice Anthony Kennedy retired. Willett never made the short list for the spot, which eventually went to Brett Kavanaugh, possibly because that old Twitter feed of his included a few disparaging remarks about Trump. (Willett, like many of the GOP faithful, was against Trump before he was for him.)

But on the Fifth Circuit, Willett has done what he could to stay in Trump’s good graces. He wrote a blistering dissent in a Second Amendment case, lamenting that the amendment was “scorned as fringe.” If Willett considered the number of bodies annually sacrificed to the Moloch that is the Second Amendment, he might see why others hold his position in such scorn. But gunmongering is a position that gets the Trump people riled up.

Most important for Trump, Willett was one of two judges behind a controversial ruling in Collins v. Mnuchin for the Fifth Circuit holding that the president could fire the head of the Federal Housing Finance Agency. The FHFA is a minor agency, but the way Willett and his fellow judge described the agency made it sound as if the FHFA were similar in structure to the Federal Reserve. By creating this connection, the decision could some day provide a useful precedent for Trump to dismiss the head of the Federal Reserve if the country’s central bank doesn’t do what Trump wants on interest rates.

Explaining the ruling, ThinkProgress justice editor Ian Millhiser wrote that the Collins decision “is a potential recipe for economic and political disaster—a central banking system subject to the whims of Trump’s reelection campaign.”

That’s the kind of decision the people who read Trump his bedtime stories will notice.

Most people are better humans in real life than they appear to be on Twitter. Willett is the opposite. Twitter is where he went to appear friendly and reasonable. His judicial opinions are where he trolls to own the libs.

**Chad Andrew Readler**

**The Child Cager**

*Position:* Sixth Circuit Court of Appeals

*Age:* 46

*Hostile to:* Children, health care, immigrants, lung health

Chad Readler is what happens when Democrats refuse to make judicial appointments a key factor in campaigns for the US Senate. Readler was nominated by Trump to fill a seat on the Sixth Circuit Court of Appeals before the end of the 115th Congress, when Republicans held just a one-vote majority in the chamber. His nomination was quietly sent back to Trump without the candidate receiving an up-or-down vote.

Emboldened by the 2018 midterm results, which saw Republicans gaining seats in the Senate, Trump renominated Readler and 50 other unsuccessful Trump nominees in front of the current 116th Congress. This time, Readler squeaked by, 52-47, despite the decision by Republican Senator Susan Collins of Maine to break ranks with her party and vote against the nominee.

You see what happens? I hope some of the interchange-able centrist white guys running for the Democratic presidential nomination remember how important it is that Democrats take back the Senate and return to their home states to help in that effort.

Before his elevation to the Sixth Circuit, Readler was serving as then–Attorney General Jeff Sessions’s right-hand man in the civil division of the Department of Justice. There he was the lead defender of Trump’s and Sessions’s most sadistic policies. When Texas (and other states) sued to prevent the Affordable Care Act from mandating coverage of preexisting conditions, Readler filed the Justice Department’s brief in support of that effort.

The Department of Justice is supposed to defend federal programs like the Affordable Care Act from lawsuits. Sessions’s decision to abandon the ACA was an act of sabotage. Readler didn’t have to go along with it. In fact, three other career DOJ officials refused to take part; one even resigned. Readler’s decision to lead the fight at the DOJ is an indication that he will continue the fight against Obamacare from the bench.

That’s probably what cost him Collins’s vote. For the rest of us, Readler’s unabashed defense of the Trump administration’s cruel child-separation policies for migrant families should earn him a place in every attack ad funded by any Democrat running for Senate. This is from Readler’s brief in response to the ACLU’s lawsuit aimed at ending child separation:

Plaintiffs persist in ignoring the fact that the separation of a purported family unit is a Government action or decision that does not occur in a vacuum, but rather occurs as an incident of lawful immigration and criminal enforcement, and thus it does not violate Plaintiffs’ rights under the Fifth Amendment or the Administrative Procedure Act.

Remember that some of these kids who were separated will never see their “purported family unit” again.

Readler seems to have a particularly cruel streak when it comes to nonwhite children. At the Justice Department, he defended ending the Deferred Action for Childhood Arrivals program. He defended the Muslim ban. He defended withholding funds from sanctuary cities. Readler also asked for a departure from the Flores Agreement, which requires humane conditions for immigrant children held in detention—think access to blankets and toothbrushes—as well as their prompt release.

But Readler doesn’t just threaten children because it’s his job. He once wrote an op-ed in the Los Angeles Daily Journal titled “Make Death Penalty for Youth Available Widely.”

Before Sessions picked Readler to help carry out human rights violations, he was a partner at the law firm Jones Day. He got his start as a Big Tobacco lawyer, which is a nice way of saying he went to finishing school for henchmen. (Jones Day has acted like a farm team for
Trump's judicial appointments, sending 17 lawyers to his administration, including former White House counsel Don McGahn and two federal judges: Readler and DC Circuit Court abomination Gregory Katsas.) At Jones Day, Readler represented RJ Reynolds as it challenged an ordinance in Buffalo, New York, that prohibited tobacco ads from appearing within 1,000 feet of (wait for it) schools, playgrounds, and day-care centers.

It's critical that Democrats make Readler a campaign issue. Some Trump judges hide their retrograde views in legalese, but with Readler the inhumane policy agenda is in plain view, for all to see.

Republican senators voted for a guy who would rather give migrant children a pack of cigarettes than a tube of toothpaste. Put that on a bumper sticker.

James C. Ho
The Torture Whisperer

Position: Fifth Circuit Court of Appeals
Age: 46
Hostile to: Human rights, dignity, campaign-finance regulation

as one of the worst things about Donald Trump is that he's made some people forget what a truly terrible president George W. Bush was. When it comes to judicial appointments, we have to remember that many of the judges appointed by Trump would have also been appointed under George Bush, Jeb Bush, or even the sycophantic Billy Bush. We have to remember that all Republicans, including the never-Trumpers, have been complicit in this conservative takeover of the federal judiciary.

James Ho is the terrifying amalgam of 30 years of post-Reagan conservative legal malpractice. He somehow combines all of the old-school conservative nightmarishness with being a new-school Trump warrior doused in inexperience, partisan hackery, and naked ambition.

Most people have heard of Jay S. Bybee and John Yoo. As assistant and deputy assistant attorneys general in the Justice Department’s Office of Legal Counsel, they were among the principal authors of the so-called torture memos, which informed the Bush administration that “enhanced interrogation techniques” did not violate the Geneva Conventions.

But who assisted them with this research? That would be Ho, whose (still unpublished) work was cited in a torture memo that tried to distinguish torture from “other acts of cruel, inhuman, or degrading treatment or punishment.” If Abu Ghraib and the Law were a course you wanted to take, Ho could probably teach it.

And it’s not as if Ho were just some young lawyer merely following orders to justify torture. He went on to write a law-review article with Yoo that argued that Al Qaeda and Taliban fighters were not “lawful combatants” and thus not entitled to protection under the Geneva Conventions.

Ho is one of the clear bad guys in our country’s shameful treatment of prisoners in Iraq and Afghanistan. Naturally, that means he spent the post-Bush years making hundreds of thousands of dollars at megafirm Gibson, Dunn & Crutcher, helping lead its constitutional law division. Now Trump has plucked him out of his law firm and put him straight on the Fifth Circuit.

As a judge, Ho has wasted no time putting his terrible positions into practice. His first opinion was to invalidate a campaign-finance restriction, a pet project of his. His ruling was no surprise; in a Federalist Society publication, he argued for abolishing “all restrictions on campaign finance.” But as Slate’s legal analyst and Supreme Court correspondent Mark Joseph Stern noted, “What was startling was the petulant partisan tone of his opinion.” Ho wrote, “If you don’t like big money in politics, then you should oppose big government in our lives. Because the former is a necessary consequence of the latter. When government grows larger, when regulators pick more and more economic winners and losers, participation in the political process ceases to be merely a citizen’s prerogative—it becomes a human necessity.”

To call this circular logic is an insult to circles. Ho seems to believe that citizens should cede the public sphere to the monied interests so that those interests can reduce the size of government to a point that citizens don’t have to worry about it. Which is great as long as you don’t need the government to maintain roads and bridges on your way to work or reduce warming on the planet so your children don’t have to sprout gills in order to visit you in Miami.

Ho has argued in support of the death penalty and against same-sex marriage, which seems to be a requirement to get a judicial appointment in the Trump era. Since he’s been on the bench, he has embraced his inner anti-LGBTQ streak, arguing in one recent opinion—in a case in which a transgender woman brought a sex-discrimination claim against her employer—that the protections of the 1964 Civil Rights Act should not apply to LGBTQ people. “For four decades,” Ho wrote, “it has been the uniform law of the land, affirmed in eleven circuits, that Title VII of the 1964 Civil Rights Act prohibits sex discrimination—not sexual orientation or transgender discrimination. But that uniformity no longer exists today.”

For what it’s worth, that opening statement is not entirely correct. While there has been no definitive ruling formalizing Title VII protections for the LGBTQ community, federal courts have been expanding the definition of sexual discrimination since at least 1989 to include people discriminated against because of their sexual stereotype. Next year the Supreme Court will likely settle the issue of whether LGBTQ workers are protected by the Civil Rights Act, and given the makeup of the court, they will likely decide the issue wrongly. But that doesn’t mean Ho is on solid legal ground. His argument about the limits of Title VII might well apply to the next four decades, but it has not applied to the last few.

James Ho is what you’d get if Dick Cheney and Mike Pence had a baby who was raised by a political action committee.
of this fetid moment; they’re the extremist offspring of more than three decades of conservative thought.

Mark Norris

Mega MAGA Man

Position: District Court for the Western District of Tennessee
Age: 64
Hostile to: Islam, voting rights, reproductive justice, gay rights, evolution

The US Supreme Court is, for the most part, an appellate court. So are the various circuit courts of appeals. The distinction between an appellate court and a trial court—or a district court, as they’re known in the federal system—can sometimes seem like legal mumbo-jumbo to nonlawyers, but it’s important to understand what these various courts do.

An appellate court can only make rulings based on the law, while a district court is the finder of facts. Technically, when making rulings, appellate courts are almost always bound by the facts as defined by district courts, giving them crucial power to shape how legal cases proceed. (Granted, the higher courts reverse district courts on essentially factual grounds all the time, but they’re not supposed to.) Moreover, only a small fraction of civil cases get appealed after district courts’ decisions. In most cases, their rulings are final.

It’s hard to pick the actual worst district-court appointment in the Trump era, but for pure cartoonish villainy, you wouldn’t be wrong to pick Tennessee Judge Mark Norris.

Before he was named to the district court, Norris was the majority leader of the Republican-controlled Tennessee State Senate. Prior to Trump, it was rare to nominate judges whose experience was purely in partisan politics. Operatives are not impartial—which judges are supposed to be (or at least to appear). But under Trump, partisan bias isn’t a bug; it’s a feature that Trump and McConnell seem to be looking for in judicial nominees.

Unfortunately, the word “bias” doesn’t do justice to Norris’s open bigotry. He’s anti-Muslim, plain and simple. As majority leader, he pressured Tennessee into filing a first-of-its-kind lawsuit opposing the resettlement of Syrian refugees in the state, without the approval of Tennessee’s Republican governor and Republican attorney general. Part of his stated opposition to the refugees was that too few Syrian Christians were included.

As he was pursuing that lawsuit, Norris led an online campaign to oppose refugee resettlement, posting one ad that read, “Keep Terrorists OUT OF Tennessee”; another showed a line of people carrying their belongings juxtaposed with a picture of a man holding what appears to be an ISIS flag under the headline “Refugees or Terrorists?” It was the kind of bigoted imagery you shouldn’t tolerate from your uncle when he shares it on social media, yet Trump expects us to tolerate it from a federal judge.

Norris also supported an anti-Sharia bill that effectively sought to criminalize Islam. The Council on American-Islamic Relations said the bill would have essentially made it “illegal to be a Muslim in the state of Tennessee.”

In the service of his political agenda, Norris hasn’t hesitated to disregard Supreme Court rulings—an unusual trait in a judge. He supported legislation that would have directly conflicted with the Supreme Court’s ruling in Obergefell v. Hodges by compelling courts to follow Justice Antonin Scalia’s dissent rather than the majority opinion. Making this guy a judge is like making a guy who argues “the speed limit is for wimps” a driver’s-education instructor.

Speaking of driving: Norris supported legislation that would have made the state’s driver’s-license exam available only in English. And, of course, Norris supported Tennessee’s restrictive voter-ID laws, even trying to include an amendment that would have allowed election officials to selectively demand proof of citizenship from people registering to vote. If you “look like” a citizen, you’re good, but if you don’t look the part, Norris wants to see your papers.

The list could go on and on. Norris cosponsored a bill that prohibits the removal of Confederate monuments in Tennessee. He wants creationism—but not climate science—taught in classrooms. He cosponsored a successful amendment to the state Constitution that reads, “Nothing in this Constitution secures or protects a right to abortion,” and explicitly makes no exception in cases of rape, incest, or danger to the life or health of the mother.

This guy’s a federal judge now. For the rest of his life, he gets to take first cut at the facts brought before his court. The only saving grace is that Norris is already 64 and there are limits to what modern medical science can achieve.

Neomi Rao

The Deregulator

Position: DC Court of Appeals
Age: 46
Hostile to: Consent, women’s rights, regulation, disability rights, health care

It wasn’t enough for Republicans to put an alleged attempted rapist on the Supreme Court. They had to double down by confirming a rape apologist to fill Brett Kavanaugh’s seat on the DC Circuit. Neomi Rao’s history of retrograde views on rape, sexual assault, and violence against women should disqualify her from a seat in the Game of Thrones writers’ room, much less a position as a powerful federal judge. That all the Republican senators saw fit to confirm Rao is an indictment of their entire party.

As an undergraduate at Yale University, Rao was a conservative hot-taker. Here’s her view on date rape: “Although I am certainly not arguing that date rape victims ask for it, when playing the modern dating game
women have to understand and accept the consequences of their sexuality. Some feminists chant that women should be free to wear short skirts or bright lipstick, but true sexual signals lie beyond these blatant signs. Misunderstandings occur from subtle glances, ambiguous words.”

In another writing, Rao said that women who are too intoxicated to give informed consent have, by drinking to excess, made a kind of “choice.” And on the issue of race, she wrote that her college “drops its standards only for a few minorities.” She also accused “multiculturalists” of trying to “undermine American culture.”

Some have argued that bringing up a judge’s college writings is unfair. I say that when you’re confirming someone to a lifetime appointment on the DC Circuit, which is widely regarded as the second most important court in the country (behind only the Supreme Court), everything is fair game.

In 2019, during the heat of her confirmation process, Rao finally “apologized” for her college remarks, writing that she regretted the “insensitivity” she displayed earlier. But even in a world where we’re supposed to believe that conservative judges magically realize the error of their ways when under direct questioning from United States senators, Rao’s “evolution” came late in the game. As recently as 2018, she passed off her previous hot takes as merely “participating in the debates of that time.”

Luckily, we don’t just have to look at what Rao said; we can also look at what she did. Her writings are intellectually consistent with her career.

After college and law school, Rao clerked for Supreme Court Justice Clarence Thomas. (While the justice is famously silent when it comes to questioning lawyers during oral arguments, he found plenty of voice to call up senators and campaign for her confirmation.) She also interned at the Institute for Justice, which is a “libertarian” nonprofit law firm founded with the help of the Koch brothers’ cash. She served in the White House Counsel’s Office under President George W. Bush and eventually landed a teaching gig at George Mason Law School. Besides founding the Center for the Study of the Administrative State—essentially a think tank for the kind of deregulatory anarchy preferred by former key Trump strategist Steve Bannon—Rao’s most notable contribution at George Mason was helping make the law school change its name to the Antonin Scalia School of Law after it received a grant from the Charles Koch Foundation.

As a law professor, not a college student, Rao called the Violence Against Women Act “grandstanding.” She wrote two law-review articles defending dwarf-tossing. This adult woman actually defended the practice of throwing little people for sport and money.

In 2017 she was confirmed as the head of the Office of Information and Regulatory Affairs in Trump’s Office of Management and Budget. In that position, she oversaw intense regulatory rollbacks, including a proposal for a domestic gag rule that would prohibit Title X doctors from referring patients to abortion clinics. One of her very first acts was to remove the Obama-era regulations that required employers to report pay along racial and gender lines. And she found time to roll back Environmental Protection Agency regulations regarding how often oil companies have to check their oil and gas wells for methane leaks.

By the way, it is Rao’s thirst for deregulation that really makes conservatives at The Wall Street Journal excited. All of her victim-bashing is a nice dessert, but her regulatory rollbacks at OIRA are the main course. It’s important to understand that the DC Circuit, because it’s based in the nation’s capital, usually gets first crack at cases involving the government’s regulatory authority. If you have a problem with the EPA blocking you from building a wall across a floodplain or the Department of Energy telling you to stop dumping mercury near an elementary school, the DC Circuit is the likely place for your case to end up.

Usually, college students who believe dumb things are educated by life as they mature. But Rao was coddled and sheltered by the entire conservative movement. Now she’s all grown up and tossing around a gavel on the nation’s second most powerful court.

Stuart Kyle Duncan

Judge Good Old Days

Position: Fifth Circuit Court of Appeals
Age: 47
Hostile to: LGBTQ rights, women’s rights

For conservatives, it’s no longer enough to nominate judges who merely won’t protect women, the LGBTQ community, and people of color from discrimination; now they want judges who have been on the front lines of the culture wars, firing off rounds and hurling grenades.

Kyle Duncan is that kind of culture warrior. Prior to being elevated to the Fifth Circuit, he spent time as Texas’s assistant solicitor general and worked for the Louisiana attorney general. Those are fairly standard positions for a conservative appointment. But in 2012, Duncan joined the Becket Fund for Religious Liberty, which was called “God’s Rottweilers” by Politico. The Becket Fund is a nonprofit religious legal organization that seeks out cases through which it can harm gay rights and women’s rights under the guise of “religious liberty.”

People might not know of the Becket Fund, but they know of the group’s most famous success: Burwell v. Hobby Lobby Stores Inc., the case that allowed businesses to block women’s access to basic health care if the employer has a religious objection to birth control. Duncan was the lead counsel for Hobby Lobby in that case.

After his work with the Becket Fund, Duncan started his own law firm. There he again took cases that illustrated his ideological antipathy toward the LGBTQ community. Remember Gavin Grimm, the transgender child who was trying to use the boys’ bathroom at his school? Duncan was lead counsel opposing Grimm and his right to use the bathroom of his choice. Duncan’s brief featured all of the “gender fraud” tropes tradition-
ally deployed against transgender individuals, illustrating the common right-wing belief that they are just trying to sneak a titillating peek into the wrong locker room.

Also at his firm, Duncan was lead counsel in Carcano v. McCrory, the North Carolina “bathroom bill” case in which the state sought to outlaw its municipalities, like Charlotte, from extending LGBTQ antidiscrimination protections to those using public bathrooms. In the case, Duncan introduced “expert” testimony suggesting that transgender individuals are mentally ill. “What is missing is sound science to show that gender identity discordance is not a delusional state,” one of these “experts” argued. Another opined:

In psychiatry, a delusion is defined as a fixed, false belief which is held despite clear evidence to the contrary. In psychiatric practice, patients with the common diagnosis of anorexia nervosa have the false belief that they are overweight (“fat”) in spite of overwhelming evidence of their cachexia. Similarly, those who are gender incongruent believe they are of the opposite sex despite clear and overwhelming evidence to the contrary.

We have been here before—in the previous century. It wasn’t until 1973 that the American Psychiatric Association removed homosexuality from its list of mental illnesses. Duncan’s attempt to drag us back to those times suggests not a purely legal objection but rather a seething anti-LGBTQ bias that he is all too ready to indulge. While working for the Louisiana attorney general, he filed an amicus brief opposing same-sex marriage, and when the Supreme Court’s decision in Obergefell came down, Duncan suggested that the decision “raises a question about the legitimacy of the Court.” He has also been counsel in cases opposing the right of same-sex couples to adopt children. And he’s tried to get courts to uphold discriminatory “defense of marriage” statutes.

If you’re a member of the LGBTQ community, you couldn’t trust Duncan to give you an impartial hearing on your parking ticket, much less a neutral adjudication of your civil rights.

Speaking of civil rights: Duncan still finds time to argue against nonwhite minorities. At his private firm he represented North Carolina, helping the state defend its discriminatory gerrymandering. (In June the Supreme Court allowed the state’s discriminatory maps to remain in place.) And while he hasn’t been given major opinions in his brief time on the Fifth Circuit, he joined a three-judge per curiam opinion (in which the judge who wrote it goes unidentified) upholding a Mississippi city’s right to fly Confederate flags over public buildings.

Duncan is here to take us backward. He lusts for a time when minorities knew their place, women did not have control over their own bodies, and LGBTQ people were treated as mentally disturbed deviants. You know—the time when America was allegedly great.

Amy Coney Barrett

The Handmaiden

**Position:** Seventh Circuit Court of Appeals

**Age:** 47

**Hostile to:** Reproductive rights, judicial precedent

If Trump wins a second term and Justice Ruth Bad-
er Ginsburg turns out to be mortal, then Seventh Circuit Judge Amy Coney Barrett could be on the Supreme Court. As reported by Axios, the presi-
dent has told members of his inner circle, “I’m saving her for Ginsburg.”

It’s a prospect that makes the right wing positively giddy. The hard right wanted Barrett to replace Anthony Kennedy when his seat came open last year. At the time, New York Times columnist Ross Douthat tweeted that Barrett would “trigger the libs.” National Review’s Da-
vid French argued that only someone like Trump could nominate her, writing, “Would another Republican have the guts to put forward a nominee who would so clearly inflame the culture wars?”

Barrett elicits such excitement not just because she’s a hard-core religious conservative but also because she’s a hard-core religious conservative woman whose writings, statements, and judicial opinions suggest she could be open to imposing her theology upon the law. Conserva-
tives think she can smuggle anti-woman views onto the court, in her purse, because their way of playing identity politics is to get a member of the oppressed group to join in the oppression. (See Clarence Thomas’s entire career.)

Judges are welcome to believe in whatever they want, of course. Five of our current Supreme Court justices are Catholic, and a sixth, Neil Gorsuch, who now attends an Episcopal church, was raised Catholic, as I was. So was Barrett’s mentor Antonin Scalia. The problem with Bar-
rett is that her faith appears to be deeply and unabashedly tied to her judicial philosophy. Shortly after graduating from law school at Notre Dame, she cowrote an article in the Marquette Law Review about Catholic judges and the death penalty. The piece quoted Justice William Bren-
nan’s promise to be governed by “the Constitution and the laws of the United States,” as opposed to his faith, and concluded that his position was not the “proper response for a Catholic judge to take with respect to abortion or the death penalty.”

Barrett claimed in her confirmation hearing for the Seventh Circuit that she would “never impose my personal convictions upon the law.” In the article in which she disagreed with Brennan’s position, she also wrote that judges shouldn’t try to “align” the law with the Catholic Church’s moral teachings when they diverge. But you’ll have to take her promised secularism on faith, because her earthly record leaves something to be desired.

Barrett is skeptical of a bedrock principle of secular law: the application of precedent. She has theorized that the “rigid” application of precedent might “deprive” litiga-

tents of their due-process rights to have a hearing based

(continued on page 26)
Bernie’s Challenge to American Exceptionalism

His call for social and economic rights is the only thing that can break up the ideological cohesion of the modern right.

by GREG GRANDIN

Let’s be clear: Bernie Sanders’s heresy, what sets him apart from every Democrat running to unseat Donald Trump, is not simply that he calls himself a socialist in a country long proudly identified as capitalist. Those two labels, socialist and capitalist, are open to too many interpretations and represent too many historical examples (everything from Norway to the United States, Stalin’s Soviet Union to Hitler’s Nazi Germany) to pin down. Rather, a more precise way to define the historic nature of Sanders’s campaign would be to focus on his promotion of social or economic rights and how they relate to the individual or political rights found in the US Constitution.

Sanders, by waging practically a one-person crusade to legitimize social rights, is striking at the core cultural belief that holds the modern conservative movement together: an individual-rights absolutism that has, today, little to do with economics or political philosophy but rather forms the essential, cultish element of right-wing identity politics.

First, some definitions: Individual or political rights are aimed at restraining government power. They presume that virtue is rooted in the individual and that the public good, or general welfare, of a society stems from allowing individuals to pursue their interests—to possess, to assemble, to believe, to speak, and so on—to the greatest degree possible. A legitimate state is a state that restrains itself, that limits its role to protecting the realm in which individuals pursue their rights. Economic or social rights presume that in a complex, industrial society, with its imbalances of power and often extreme concentrations of wealth, the state has a much more active role to play in nurturing virtue through the redistribution of wealth in the form of education, health, child care, pensions, housing, and other common needs.

Sanders made the distinction between these two sets of rights the centerpiece of his historic June 12 speech at George Washington University, in which he defended democratic socialism as the country’s only possible redemption, not just from Trump but also from the rotten system that produced Trumpism. Calling for a 21st-century bill of economic rights, one modeled on Franklin Roosevelt’s 1944 proposal for a Second Bill of Rights, Sanders said, “We are proud that our Constitution guarantees freedom,” but now “we must take the next step forward and guarantee every man, woman, and child in our country basic economic rights—the right to quality health care, the right to a good job that pays a living wage, the right to affordable housing, the right to a secure retirement, and the right to live in a clean environment.”

Most countries of the world—including
“Equality in the pursuit of happiness”: Franklin Roosevelt proposed the Second Bill of Rights during his State of the Union address in January 1944.

“The next step forward”: In a June speech, Sanders said we should “guarantee every man, woman, and child in our country basic economic rights.”
those Scandinavian countries that Sanders often mentions—understand individual and social rights not to be in conflict but rather to be mutually sustaining. They find no functional discord between, say, running a national health service and guaranteeing due process or between providing public education and allowing freedom of speech. “Democracy, political as well as social and economic,” wrote Hernán Santa Cruz, the Chilean UN delegate who in the 1940s helped Eleanor Roosevelt draft the Universal Declaration of Human Rights, “comprises, in my mind, an inseparable whole.” Individual rights need social rights because, as FDR liked to say, succinctly, “necessitous men are not free.”

In contrast, many in the United States pit these two kinds of rights against each other, understanding them to be fundamentally antagonistic. Conservatives take it as bedrock truth that the pursuit of social rights will destroy individual rights. There are many different elements to what is called American exceptionalism, but for many on the right, an individual-rights exclusivism, defined in opposition to social rights, is that ideology’s foundation.

For instance, FDR wasn’t the only president last century to propose a second bill of rights. Ronald Reagan did, too, in July 1987, intending to ensure that FDR’s social rights version would never come into being. Complaining that the original Constitution didn’t protect the right to private property as explicitly as it did political freedom, Reagan proposed 10 amendments—including a balanced budget amendment—that would put “economic freedom under the protection of the law.” The adoption of social rights would be “foolish,” the Heritage Foundation wrote a few years later, since “abundant health care, housing, and food are byproducts of wealth created by private individuals pursuing a profit”—not by a redistributive state confiscating the fruits of individually produced wealth.

T
cass sunstein, in his 2004 book The Second Bill of Rights: FDR’s Unfinished Revolution, identifies two moments when the United States might have adopted social rights: in the 1930s, under FDR’s New Deal, and in the 1960s, under Lyndon Johnson’s Great Society program. Yet neither period, Sunstein writes, saw any “serious debate about constitutional amendments. There was no significant discussion of adding social and economic rights to the American Constitution.”

This statement is true, but Sunstein misses the ideological intensity with which those committed to individual rights despise the very concept of social rights—and have waged a ceaseless war to keep them at bay. That war, as wars often do, has become total, producing a siege mentality—a cultural identity—that shapes the way the right views the world and helps explain the intractability of race and racism in the nation’s political discourse.

In fact, one could write the history of the United States centered on this war, going at least as far back as Andrew Jackson, running through the Civil War and the New Deal to Reagan and onward to today.

Let’s start with a story about Jackson, one that is fairly well known among historians but rarely read for its revelation of the racism at the center of American individualism. In 1811, Jackson, then a Nashville lawyer and slave trader, still years before he would become president, was transporting a group of enslaved people along the Natchez Trace—an ancient Indian road that ran alongside the Mississippi—when he was stopped by a federal agent. The trail passed through Chickasaw and Choctaw lands, nominally protected by federal treaty, and government agents were charged with inspecting the passports and papers of travelers, both to check for escaped slaves and to enforce the growing number of federal laws attempting to regulate slavery.

Asked by the agent for his papers, Jackson flew into a rage, revealing an all too familiar truculence, passed down the years from one white man to another, “Yes, sir, I always carry mine with me,” he answered, pulling out the US Constitution (another version of the story has him pulling out his pistols), which he said was “sufficient passport to take me where ever my business leads me.” Jackson was waved through, after which he launched an obsessive letter campaign to remove the offending agent from his position, even threatening him with vigilante justice.

This incident crisply illustrates Jackson’s commitment to individual rights—to travel, to trade, to enslave without hindrance—and how those rights, in US history, were defined by racial domination. “My God, is it come to this?” he asked in another petition. “Are we freemen or are we slaves? Is this real or is it a dream?” (Emphases in the original transcription.) Jackson here was hallucinating despotism, taking the mere request by the federal government for documents proving his ownership of slaves to be akin to slavery itself.

In 1828 he was elected the seventh president of the United States, leading a movement that defended slavery with an increasingly extreme commitment to the ideal of minimal government, as historian Manisha Sinha shows in The Counterrevolution of Slavery. The federal government, Jackson said at the height of Indian removal, as chattel slavery was expanding at a rapid pace, should be run with “primitive simplicity and purity” and “limited to a general superintending power,” prohibited from passing laws restricting “human liberty” and used only to “enforce human rights”—rights that he understood to include the one to own other human beings as property.

It was during the age of Jackson that individual rights absolutism seeped deep into white political culture. Land stolen during Indian removal and the labor stolen under chattel slavery (and, as Roosevelt’s Secretary of Labor Frances Perkins argued, under patriarchy) created not just unparalleled wealth but also an unparalleled distribution of wealth among the general populace. Never before in history could so many white men consider themselves so free.
As early as 1748, Montesquieu, the French philosopher who influenced James Madison and other founders of the United States, gave a sense of what a republic organized around something other than defense of property rights might owe its citizens: “a certain subsistence, a proper nourishment, convenient clothing, and a kind of life not incompatible with health.”

“A kind of life not incompatible with health” is a nice phrase, but it’s an ideal that would have required a government far more interventionist than the one in place in the antebellum United States. The Civil War was almost a turning point.

In other countries, the kind of brutality the United States experienced in the fight to abolish chattel slavery led to rapid advances in the idea of social rights, especially those related to health care, pensions, refugee care, and burials. A direct confrontation with the physicality of war—with having to dispose of severed limbs and rotting corpses, settle and feed uprooted refugees, tend to dysenteric fevers, care for widows and orphans, and calm shell-shocked veterans—expanded social consciousness. As Harvard’s Adam Gaffney, the president of Physicians for a National Health Program, notes, the barbarism of 19th-century war and revolution transformed the first premise of liberalism—that people have a right to life—into a new and socialized right to health and care.

Not in the United States. The signature program of Reconstruction, the Bureau of Refugees, Freedmen, and Abandoned Lands, was the closest this country came in the 1800s to such a transformation in consciousness. Just before his assassination in 1865, Abraham Lincoln signed the bill establishing the bureau as a branch of the War Department. With thousands of agents across the South and hundreds of offices, the agency distributed basic necessities, including food, medicine, and clothing. It also founded thousands of schools, colleges, and hospitals, resettled refugees (white and black), administered confiscated properties, passed and enforced ad hoc laws, regulated labor relations and minimum wages, and levied taxes. It was, in potential and practice, the antithesis to Jacksonianism, an instrument of potentially awesome power, the “most extraordinary and far-reaching institution of social uplift that America has ever attempted,” wrote W.E.B. Du Bois in the early 20th century.

But the triumphant backlash to the bureau and to Reconstruction more broadly empowered a new, postbellum generation of race hustlers. Chief among them was Lincoln’s successor Andrew Johnson, who updated all the old Jacksonian tropes to intensify demonization of the federal bureaucracy, associating all social problems—corruption, dependency, poverty, unemployment, and crime—with black skin. He sharpened the Jacksonian opposition of free men fighting federal “enslavement,” describing the Freedmen’s Bureau as an “agency to keep the negro in idleness” and create a culture of dependency through the “lavish issuance of rations.”

The phrase “social rights” hadn’t yet come into its current usage, but the contours of the racially charged opposition to it—in which “individual rights” would represent whiteness and “social rights” blackness—was coming into view. As portrayed by Johnson and others, the Freedmen’s Bureau, along with other civil rights efforts, was unnatural in its interventionism and its effort to use political power to impinge on economic activity and to extend political equality into the social realm, or in the words of Missouri Republican Representative James Blair, “to force the negroes into social equality.”

For the next half century, the United States soared across the continent and out into the world. Then it came crashing down. During the Great Depression, New Dealers started to hitch the adjective “social” to any word it would stick to: Progressive educators started a journal called The Social Frontier. “Non-social individualism,” one sociologist wrote, is “detrimental to our further progress; non-social should therefore give place to social individualism.” Henry Wallace, Roosevelt’s agriculture secretary, who would go on to serve as his vice president, said in 1934, “New frontiers beckon with meaningful adventure…. We must invent, build, and put to work new social machinery.” And of course there was a social surplus to be distributed by the social republic as a social wage, through programs like Social Security. “We are each and all of us, whether we like it or not, parts of a social civilization.”

Sunstein might be right that there was no serious effort to amend the Constitution to include social rights. But many New Dealers didn’t think an amendment or textual revision was needed. The words “life” and “property,” to them, implied social relations, which meant, they argued, that the Constitution as written could serve as the basis of a social democracy. “We need now,” wrote Wallace in 1934, “to re-define property rights in a way that will fairly meet the realities of today.” In 1912, Walter Weyl, who would soon become the editor of The New Republic, said that the “soul of our new democracy is not the unalienable rights, negatively and individualistically interpreted, but those same rights, ‘life, liberty, and the pursuit of happiness,’ extended and given a social interpretation.”
As World War II drew to a close, this social interpretation of US law and society seemed to be underway. Victory over fascism had to be about more than restoring an ideal of freedom as freedom from restraint. “We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence,” Roosevelt said in his 1944 proposal for a bill of social rights. But, similar to the reaction that took place after the Civil War, the social republic was not to be.

During Sanders’s first run for the presidency, against Hillary Clinton for the Democratic nomination, public commentary often opposed race and class as two distinct categories. Critics of Sanders, in their postmortem of that campaign, argued that too much of a focus on economics blinded him and his supporters to other forms of cultural, racial, and sexual oppression and to the vicious racial and misogynistic animus that drives many Trump voters.

But the ongoing backlash against the promise of equality, as it emerged from World War II, suggests that an either/or debate—were backlashes motivated by racial hatred or by a desire to defend the economic hierarchy?—doesn’t hold up. The United States came out of the war with unprecedented global power, which meant that the line separating domestic from foreign policy became ever more blurred. Conservatives, both in Congress and the legal profession, became particularly alert to the threat of international treaties and regional alliances, many of which condemned racism and affirmed social rights.

Fearing that the federal government would cite such international pacts to advance desegregation and social rights, those opposed to one or the other (and many were opposed to both, since they understood racial and economic equality as indistinguishable evils, as two edges of the same subversive sword) mobilized against foreign treaties they considered suspect, including the Treaty of San Francisco, the Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights. As the “darker nations” took up the fight to legitimize social and economic rights, the opposition intensified, with individual rights embodying whiteness and social rights exemplifying blackness—used by many, not just movement conservatives, to define what Du Bois earlier famously called “the color line.”

One fight, involving Puerto Rico, a possession of the United States since 1898, is especially illustrative of the hold that individual-rights exclusivism had on US politics. The island’s residents were considered citizens by the 1950s, but its status remained unclear. Some residents fought for independence, while others wanted to keep a relationship with the United States, either as a quasi-autonomous commonwealth or through admittance into the Union as a state. Wherever one might stand on that question, a vast majority of Puerto Ricans wanted social democracy: In 1952 residents voted overwhelmingly to approve a new Constitution that recognized “the right of every person to obtain work” and the right of “social protection in the event of unemployment, sickness, old age, or disability.” But since the island was a US possession, Washington had veto rights over its Constitution.

Upon seeing a draft of the charter, Republicans and Southern Democrats—the same congressional alliance that opposed civil rights—acted as if they had just read a proposal to resurrect the Freedmen’s Bureau. “This is evil and will ultimately render null and void other protections granted to individuals,” said one House member; “if we approve this, it will be one of the greatest blows ever struck against the freedom of men. It means the citizens will be wards of the government.” Indiana Representative Charles Halleck said it was “as different from our Bill of Rights as day from night.” The line separating foreign and domestic policy may have been indistinct, but with Puerto Rico it was especially murky. Halleck feared that inclusion of social rights guarantees in the charter of a neocolonial possession could bind the nation as a whole to its promises.

Summoned to appear before Congress, the document’s drafters were asked if they believed the inclusion of social rights in their text imposed “any possible obligation upon the United States of America to provide any of these benefits.” Puerto Rico’s representatives hedged. The idea, they said, was to create a set of cultural expectations that no one in a free society should starve or go without work or die from lack of health care. But such expectations were the last thing those legislators wanted to create. Congress eventually approved the charter, but not before stripping out all references to social rights.

The fight went on. In the 1970s, after Vietnam and Watergate, with confidence in US-style capitalism at an all-time low and with Third World countries making a strong push for a more robust acceptance of economic rights, policy-makers and intellectuals in the new conservative movement clustering around Reagan fought back, putting forward an ethical defense of American power centered on the ideal of individual rights. William Clark, a deputy secretary of state for Reagan, worked to return the concept of human rights to its purer “American” understanding, pared down to align with individual rights. Richard Allen, Reagan’s national security adviser, agreed, saying that “the notion of economic and social rights is a dilution and distortion of the original meaning of human rights.” The only universal rights, Allen said, were to “life, liberty, property.” Not to health care, education, or housing. This narrow understanding of human rights, aligned...
with the New Right’s rehabilitation of the Jacksonian minima, was reinforced by the emerging human rights establishment, with documents like Charter 77 and organizations such as Helsinki Watch and Human Rights Watch putting forth what people like Allen would say was a more properly American version of human rights, defined exclusively as political rights.

Like “freedom,” the idea of “individual rights” could be deployed both as universal appeal (on behalf of people trampled by tyranny) and as racist dog whistle. It is impossible to extricate individual rights—to possess and to bear arms and to call on the power of the state to protect those rights—from the bloody history that gave rise to those rights, from the entitlements that settlers and slaves wrested from people of color as they moved across the land. “Individual rights,” as Mississippi Representative Trent Lott let slip in 1984, “are things that Jefferson Davis and his people believed in.”

Both Franklin Roosevelt and Ronald Reagan—the respective leaders of last century’s two great political coalitions, the New Deal and the New Right—called for a second bill of rights. FDR did so to codify what he hoped would be a permanent change in the country’s ideal of citizenship, one based on mutual obligation and social solidarity. Reagan did so as part of a program to roll back that ideal.

And now Bernie Sanders is calling for a “21st-century bill of rights,” one that he says would complete FDR’s “unfinished business”—by which he means recognition that the political freedom enshrined in the Constitution requires social equality, or at least guaranteed social security. In so doing, Sanders, often tagged as a class reductionist, is laying out a theory of culture, power, and history that goes far beyond class reductionism. Other candidates running for the Democratic nomination also have good, progressive, redistributive proposals for any given problem. And all understand the commonweal as consisting of something more than individualism unbound. They talk about community, obligation, and caring. But only Sanders is leading a frontal assault on the enemy’s strongest ideological point: individual-rights exclusivism.

A creedal adherence to individual rights defined in opposition to social rights is the structuring tension of all the many wings of the modern conservative movement, a good/evil, white/black distinction that helps make sense of the world and helps explain away crises caused by the movement’s success, by decades of social service cuts, union busting, austerity, market fundamentalism, concentration of wealth, environmental degradation, militarized policing, criminalization of migrant labor, and growing inequality. Social democracy may not be what advocates for reparations mean when they say that the federal government has an obligation to make financial restitution for slavery. But it’s what the right understands it to mean, as it habitually racializes not just social democracy but even the mildest redistributionist policies. “Obama’s entire program is reparations!” Rush Limbaugh said in 2009.

Individual-rights absolutism is the flywheel that keeps all the cruel constituencies of the modern right spinning, uniting the various wings—fringe and what’s called mainstream—of the Republican Party, joining Ayn Rand libertarians, free market wonks, climate change denialists, Second Amendment fundamentalists, nativists (especially since most Latin American migrants come from countries with strong social rights traditions), corporate Prometheans, misogynists, and of course, white supremacists.

Break that wheel, and you break the movement.

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on the particular merits of their case, which is a whackadoodle theory so out there, she might as well be saying, “Gravity offends my natural right to fly, so I’m going to ignore it as I jump off this roof.” Elsewhere she wrote, “I tend to agree with those who say that a justice’s duty is to the Constitution and that it is thus more legitimate for her to enforce her best understanding of the Constitution rather than a precedent she thinks clearly in conflict with it.” That’s basically Judge Dredd’s formulation “I am the law,” dressed up with legalese.

Barrett does not advance these theories simply so people like me can dunk on her. She does it, her critics argue, in the service of killing _Roe v. Wade_. She wrote in the _Marquette Law Review_ article that abortion is “always immoral”; more recently she argued that _Roe_ created a framework of “abortion on demand,” one that recognizes “no state interest in the life of the fetus.” The right has become so casual with this “life of the fetus” rhetoric that it might be easy to forget that it’s a religious belief, not a scientific one. Nor is it a legal one—unless we continue to allow conservatives to slide their theocracy into the law.

The overturning of a woman’s right to choose is where Barrett’s judicial philosophy, religiosity, and ability to inflame the culture wars all coalesce to make her the preferred conservative candidate to dismantle Ginsburg’s legacy. Conservative pundit and _National Review_ editor Ramesh Ponnuru straight up said the quiet part loud: “The main reason I favor Barrett, though, is the obvious one: She’s a woman…. If _Roe v. Wade_ is ever overturned—as I certainly hope it will be, as it is an unjust decision with no plausible basis in the Constitution—it would be better if it were not done by only male justices, with every female justice in dissent.”

Since she’s been on the Seventh Circuit, Barrett hasn’t yet had an opportunity to rule on a woman’s right to choose. But she has put her moral fervor on display in a Second Amendment case. She dissented on originalist grounds from a ruling that Wisconsin could bar felons from owning guns—while noting there was a “founding-era” basis to take away voting rights. She wrote, “Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons. Nor have the parties introduced any evidence that founding-era legislatures imposed virtue-based restrictions on the right; such restrictions applied to civic rights like voting and jury service, not to individual rights like the right to possess a gun.”

In other words, if you’re a felon who would like your voting rights back, Barrett says there are “virtue-based” reasons to deny you those rights.

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On May 30, 1878, the Abraham Lincoln Post No. 13 of the veterans of the Grand Army of the Republic invited Frederick Douglass to speak at its annual Memorial Day celebration in New York. Douglass took the occasion to reflect on the previous decade’s civil war, particularly in light of the recent attempts by leading secessionists to whitewash the cause for which they’d fought by erasing slavery from their memoirs and history books. Southern writers were already asserting that they had fought nobly and heroically, if in vain, for the “lost cause” of states’ rights and limited government. But Douglass was having none of it. The bloody struggle between the North and the South, he insisted, was “a war between the old and new, slavery and freedom, barbarism and civilization.” The sentimental urge to honor the courage of the men who fought on both sides was all well and good, he said, but remember:

There was a right side and a wrong side in the late war, which no sentiment ought cause us to forget, and while today we should have malice toward none and charity for all, it is no part of our duty to confound right with wrong, or loyalty with treason.

Elizabeth R. Varon quotes Douglass’s speech in the introduction to her 2008 book *Disunion! The Coming of the American Civil War*, and she quotes it again in the conclusion to her latest one, *Armies of Deliverance: A New History of the Civil War*. By bookending her two-volume history of the war with the same quotation, Varon makes her point effectively.
but without fanfare: This was a momentous struggle over slavery, and in that struggle the South was on the wrong side. But what about the right side, presumably the North? If the wrong side stood for the preservation of slavery, what did the right side stand for?

Varon goes about answering this question in a distinctive way. Taking her cue from the British intellectual historian Raymond Williams, she chooses a pair of keywords to tell the two halves of her story. For the origins of the war, the word is “disunion,” the multiple meanings of which she traces over time until, by the 1850s, it had come to mean “secession.” For the war itself, the word is “deliverance,” and she tracks how different Americans used the word in their distinct ways to explain the conflict. For Confederates, it meant deliverance from the Yankee invaders; for antislavery Northerners, it meant deliverance from the “Slave Power”; and for slaves, it meant deliverance from 250 years of bondage.

Varon does not want to confuse rhetoric with reality. Again, she quotes Douglass: “Union and Disunion are but words—the thing is slavery.” But she is vague about precisely how slavery proved so divisive that Americans ended up going to war with one another. Above all, she cannot explain why hundreds of thousands of enslaved blacks, nonslaveholding Southerners, Northern Democrats, and antislavery Republicans came together to defeat the slaveholders’ rebellion. This coalition made the Civil War, in large measure, a conflict between slaveholders and nonslaveholders.

Arms of Deliverance is a compelling rendition of a familiar tale. Chapter by chapter, Varon takes us through the most important events of the war, from the First Battle of Bull Run in the summer of 1861 to the assassination of Abraham Lincoln and the beginnings of Reconstruction almost four years later. Her accounts of the major battles are admirably crisp and efficient. Without getting bogged down in arcane scholarly debates, she succinctly informs readers of the controversies that divide military historians before offering her own invariably sensible judgments. Her former colleague the late Russell Weigley once noted the “chronic indecisiveness” of a war’s battles, and following his lead, Varon is not inclined to overstate the military significance of any single engagement; she even doubts whether Gettysburg was the turning point that other historians make it out to be. What mattered, she insists, was the cumulative effect of four years of fighting that steadily wore down the Confederate Army until, in the end, Robert E. Lee had no choice but to surrender to his Union counterpart, Ulysses S. Grant, at Appomattox.

The battle scenes are skillfully interspersed between accounts of the political events and social history of the war. The Union defeat at the First Battle of Bull Run, for example, leads into a discussion of the earliest stirrings of federal emancipation policy. George B. McClellan’s failure during the Peninsula Campaign prompts Union leaders to shift to a policy of hard war, which includes a more aggressive attack on slavery. The battle at Antietam spurs Lincoln to announce the Emancipation Proclamation. The Union victories at Gettysburg and Vicksburg in the summer of 1863 happen as the first regiments of the United States Colored Troops are taking the field. News of the impressive performance of black troops at Port Hudson and Milliken’s Bend discredits the simultaneous outburst of antiwar violence that culminates in New York City’s horrific draft riots. The Overland Campaign—the long and brutal slugfest between Grant and Lee in the spring of 1864—generates a wave of war weariness that threatens Lincoln’s chances for reelection.

Varon does a fine job of showing how deeply the fortunes of war influenced the fortunes of politics. By August 1864, it looked as though the Democrats might succeed in replacing the Republican Lincoln with George McClellan, an anti-emancipation general running on an anti-war platform. Yet by September, news came that Sherman had routed Atlanta, Farragut had captured Mobile Bay, and Sheridan had routed the Confederates in the Shenandoah Valley. Lincoln and the Republicans were reelected, and within months they succeeded in getting the 13th Amendment through Congress. By the time Lee surrendered and Lincoln was assassinated, the abolition of slavery was all but certain.

In the hands of a less skillful writer, these numerous shifts from the battlefront to emancipation policy to politics could easily seem bumpy and disjointed, but Varon’s transitions are always smooth and effective. What makes her account even more impressive is the way she uses major battles to introduce important aspects of the war’s social history. Her account of the Battle of Shiloh, for example, opens out into the history of Civil War hospitals, the work of the Sanitary Commission, and the role of women, especially nurses.

Varon is determined to tell as much of the story as possible through the voices of the men and women who experienced it. No other general history of the war so lavishly quotes from the letters of soldiers, the diaries of women, the self-serving excuses of incompetent generals, the editorials of partisans, the denunciations of critics, and the speeches of politicians. The highest ideals held by the combatants come through as clearly as the most repellent outbursts of racist demagoguery. Through these voices, readers can get a feeling for the ground-level, tactile experience of the war as well as the dramatic debates in the halls of Congress. The myriad horrors of battle are vividly rendered, and so is the 1864 presidential election.

Indeed, sometimes there is too much of a good thing. Varon quotes a dozen soldiers when two or three will do. There is also a bit too much reaction-shot history: An event is described, often briefly, and then is followed by page after page of responses to it, often culled from old newspapers that are now readily available in digitized form. For example, her characteristically lucid account of Lincoln’s Proclamation of Amnesty and Reconstruction—in which he spelled out his generous plan for reincorporating the seceded states into the Union—is followed by a long series of entirely predictable reactions. The Republicans said this, the Democrats said that, and the radicals and the conservatives said other things.

That Varon’s new book includes so many voices matters, in part, because of the choices she had to make about what not to include in her 400-page history. Military historians will wonder why there’s so little discussion of strategy and tactics. Logistics are reduced to a brief (if fascinating) account of how City Point, Virginia, became the base for supplying Grant’s army during the siege of Petersburg. There’s not much diplomatic or legal history, either, and important developments in economic policy get short shrift.
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(SOUND FAMILIAR?)

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The creation of a federal monetary union through the Legal Tender Act is relegated to a footnote. There’s virtually no account of how the North and the South financed their wars. And there’s no political economy at all. Varon does not explain the extraordinary capacity of the North’s free-labor economy to flourish even as it paid the staggering price of fighting a war, nor does she contrast that with the collapse of the South’s economy and the startling inability of an agricultural society to feed itself.

G
iven the Confederacy’s obvious significance to any history of the Civil War, it is surprising how little space Varon devotes to it. This may be because her organizing device, the keyword “deliverance,” works better for the North than the South. Confederate generals who embarked on invasions of the Union sometimes made blustery announcements that they had come to Kentucky or Maryland to deliver the oppressed citizenry from the scourge of Yankee tyrants, but for the most part, the rhetoric of deliverance was used by the North.

The Republicans did believe they were going to help deliver the mass of Southerners from the clutches of an overbearing Slave Power, but Varon repeatedly describes the Slave Power as a “conspiracy theory.” It was no such thing. The Slave Power was the name antislavery Northerners gave to something most historians recognize as very real—the disproportionate power exercised by the slaveholders over every branch of the federal government. From 1790 to 1860, nearly every president was either a slaveholder or a proslavery Northerner. The Supreme Court was dominated by proslavery justices. The House of Representatives and the Electoral College were skewed by the Constitution’s three-fifths clause, which enhanced Southern political influence over Congress and the presidency. The foreign-policy apparatus was dominated by imperially-minded slaveholders and their allies. This was the Slave Power, and its opponents had clear and convincing explanations for the source of its strength and compelling reasons for wanting to destroy it.

Similarly, Varon claims the Northern war effort was driven by the misapprehension that the Southern masses were “deluded” into supporting the Confederacy. There are two problems with what she calls the Republicans’ “deluded masses theory.” First, although some Northerners spoke of white Southerners that way, especially during the second year of the war, they were far more likely to describe Southern whites as oppressed. These are two very different things. Varon even acknowledges the brutal lengths Confederate authorities went to in their determined effort to silence Southern Unionists, who were prosecuted, harassed, threatened, driven from their homes, beaten into submission, or murdered.

This suggests the second problem with the “deluded masses theory.” Varon claims that Southern whites, far from being deluded, were genuinely united in support of the Confederacy, whereas her own evidence shows they were seriously divided. During the secession crisis, for example, nonslaveholders were considerably more hostile to disunion than were slaveholders, and in three of the states where they held considerable power—Kentucky, Maryland, and Missouri—they prevented their states from seceding. In the largest slave state, Virginia, nonslaveholders in the west seceded from the slaveholder-dominated counties to the east and created the state of West Virginia. After secession, too, there remained considerable Unionist enclaves in eastern Tennessee and western North Carolina, which the Confederacy went to great lengths to suppress. In the end, some 300,000 Southern whites fought for the Union. These were staggering losses for the Confederacy, and they suggest why Northerners had good reason to believe that white Southerners were not unified in support of the slaveholders’ rebellion.

“Deliverance” offers some insights into how many in the North viewed the Union’s efforts, but as an organizing theme, its usefulness is limited. The “deluded masses theory” is even less useful; at best it explains the thinking of some Northerners about some Southerners. Certainly by 1862 no one in the North could seriously entertain the proposition that 4 million black slaves had somehow been “deluded” into supporting the Confederacy. The slaves made their Unionist sympathies clear from the start, and Republicans were counting on that sympathy all along.

If we demote the significance of the deliverance theme, there is another way to organize the impressive evidence that Varon has accumulated. The Civil War was an explosive example of the one thing that American mythology says this country never has: class conflict—or, at least, class politics—in this case pitting slaveholders against nonslaveholders. Start with Varon’s observation that most of the Unionist sentiment in the South was antislaveholder rather than antislavery. She makes a similar point about the War Democrats in the North, who had no interest in emancipating the enslaved but had been infuriated by the treason of the Southern slaveholders. If antislaveholder and antislavery sentiment could be united in defense of the Union, the Slave Power could be defeated.

Lincoln and the Republicans understood this. To be sure, they never separated their determination to suppress the Slave Power from their hatred of slavery itself. They went to war to uphold what they believed was an antislavery Constitution and to restore the antislavery union that the founders intended to create. They made it clear that they would put down the slaveholders’ rebellion at all costs, and they could do so because in 1861 they had taken control of the presidency and (thanks to the secession of 11 slave states) both houses of Congress.

But to win the war, they needed more than congressional majorities; they needed allies, and their natural allies in the struggle against the Slave Power were the nonslaveholders in the South as well as the North. “A privileged class has existed in this country from an early period of its settlement,” New York Senator William Seward declared in 1855. “The slaveholders constitute that class.” The irrepressible conflict over slavery was best understood as a “conflict between the privileged and the unprivileged classes of this republic.”

The rallying cry for the coalition of the unprivileged classes was “Union.” Lincoln went to great lengths to hold the Northern War Democrats in the coalition, even as they recoiled from the Emancipation Proclamation, by appealing to their Unionism. In the summer of 1863, in the aftermath of the Draft Riots, Lincoln made it clear that opponents of emancipation still had good reason to support the war. “You say you will not fight to free negroes,” he wrote in an open letter to War Democrats. “Some of them seem willing to fight for you; but, no matter. Fight you, then, exclusively to save the Union.” By the end of the war, hundreds of thousands of War Democrats, unwilling to “fight to free negroes,” nevertheless fought and died to suppress the slaveholders’ rebellion.

The same can be said of those Southern whites who remained loyal to the Union. The pages of antebellum Southern history are crammed with conflicts between the Black Belt slaveholders and the up-country yeomen. Those nonslaveholders brought decades of political hostility toward the planters with them into the Civil War, and hundreds of thousands joined the Union
Army. When they went into battle, their bullets were as important in undoing slavery as those of the most ardent antislavery soldiers in their ranks.

Then, of course, there were the millions of enslaved people who constituted the Confederacy’s greatest internal enemy. As soon as the war began, slaves ran to the Union lines first by the hundreds, then by the thousands, then by the tens of thousands. (Half a million were inside Union lines by the time the war ended.) Slaves fed the Union Army critical intelligence on the whereabouts of Confederate troops and supplies. At home, they disrupted the routine on plantations whenever the masters and their sons went to war.

By late 1861, Republicans commonly referred to these enslaved people as the most reliably loyal Unionists in the South. Over 100,000 of those who reached Union lines donned Yankee uniforms, marched into battle, and aimed their rifles at the Confederates who were fighting to keep their parents, siblings, wives, and children in slavery. It was the greatest social revolution in American history.

No single element of this coalition—the antislavery Republicans, the War Democrats, the Southern Unionists, the self-emancipated slaves—could have succeeded by itself in destroying the largest, wealthiest slave society on earth, and yet each was indispensable to the success of the broader coalition. By naming a common enemy—the privileged class of slaveholders—the Republican Party was able to build and then steer a coalition of whites and blacks, racists and anti-racists, toward the systematic destruction of slavery. When the nonslaveholders of western Virginia petitioned for admission to the Union as a separate state, the Republicans in Congress required them to formally abolish slavery first. The hundreds of thousands of Southern whites and Northern Democrats who fought only to restore the Union were directed by their superiors to emancipate slaves as they marched through the South, whether they supported the idea or not. When slaves ran to the Union lines, the soldiers they encountered were under orders to admit them.

As with any such coalition, there were internal tensions. Some soldiers—mostly War Democrats—turned escaping slaves away, especially in the early months of the war. But in 1862, the Republican-controlled Congress made it a crime for soldiers to do so. Union soldiers from slave states openly resisted the policy of emancipation until the very end, yet pressure from slaves below and policy-makers above ultimately overwhelmed their opposition. Lincoln and the Republicans had organized an army of 2 million nonslaveholders who would eventually wipe out the South’s privileged class and liberate 4 million slaves.

The history of the Civil War is, in large measure, the history of this coalition as it evolved over four years of fighting. Although the Union Army was at first composed almost exclusively of Yankees, there was tension between those (mostly Democrats) motivated solely by the desire to save the Union and others (mostly Republicans) who believed that to save the Union it was necessary to undermine slavery. The policy of military emancipation adopted by the Republicans in the first months of the war was designed to weaken but not destroy slavery. Then with the Emancipation Proclamation of January 1, 1863, the war became a revolution, even as the scope of the coalition widened. It was no longer enough to undermine slavery; from that point on, Lincoln and the Republicans determined that the restoration of the Union required slavery’s complete destruction. As more and more black and white Southerners filled the ranks of the Union Army, the internal conflict between antislavery and antislaveholder troops intensified. In Kentucky, white Southern-born troops sometimes fell into open fighting with Northern-born soldiers over the treatment of black enlistees and their families. But Union authorities doubled down, silencing, jailing, court-martialing, and dishonorably discharging soldiers who openly opposed emancipation. Despite internal divisions, the Union and the coalition that emerged to protect it survived.

The same could not be said for the South. The Confederate Army that surrendered at Appomattox had been depleted by the mass desertion of nonslaveholders from its ranks. The Union Army, by contrast, had been replenished by nearly 180,000 African-American soldiers, allied with tens of thousands of Southern whites, War Democrats, and resolutely antislavery Republicans. In the presidential election of 1864, 80 percent of soldiers cast their ballots, matching the highest turnouts in American history, and as many as 75 percent of their votes went to Lincoln. In the end, destroying slavery and suppressing the Slave Power amounted to the same thing.

You can’t see this if you start from the assumption that the Slave Power was simply a conspiracy theory. In Varon’s account, the Republicans went to war driven by the assumption that the Southern masses were divided. Her secessionists, on the other hand, went to war driven by the delusion that the Republicans hated slavery and were determined to do what Lincoln said they would do: put slavery “on a course of ultimate extinction.” This puts Varon perilously close to the long-discredited revisionist historians who attributed the Civil War to a blundering generation of politicians who, addled by their own propaganda, hurled the country into a needless conflict. Varon doesn’t believe that, but her own reasoning implies it, and it detracts from what is otherwise an outstanding book—one of the best accounts of the Civil War we have. She is at her best when she reminds us, as Frederick Douglass did long ago, that there was a right side and a wrong side in that war.
Does the discovery of a lost writer change our understanding of the past, or does it shape our experience of the present? If the playwright, author, and filmmaker Kathleen Collins had received more recognition during her lifetime, would her work have changed the way we think about and create American—especially African-American—film and fiction today?

These are the questions raised by the posthumous publication of two collections of Collins’s writing: *Whatever Happened to Interracial Love?* a collection of 16 short stories, and *Notes From a Black Woman’s Diary*, which includes short stories, plays, and screenplays, excerpts from an unpublished novel, and a selection of letters, as well as the titular notes. Both volumes have been edited by Collins’s daughter, Nina Lorez Collins, who in the weeks following her mother’s death from breast cancer in 1988 at the age of 46 filled a steamer trunk full of her unpublished writings. Some 20 years later, the younger Collins went through the trunk’s contents, and we’re now the beneficiaries of some of the works she discovered there.

During her lifetime, Kathleen Collins saw one of her screenplays become a movie—*Losing Ground* (1982), which she also directed—and one story and one play published. But she never achieved critical acclaim, and with the exception of a small group of aficionados on the film-festival circuit, few people saw her movie. Had these newly published works been available in her lifetime, she would have joined an emerging group of black women writers in the 1970s and 80s that included Alice Walker, Toni Cade Bambara, and Toni Morrison. As a filmmaker, Collins shared more with independent directors like Charles Burnett,
whose films present a quiet but steady focus on quotidian black life, than Spike Lee, but *Losing Ground* helped pave the way for the latter’s work too, as well as for films like Julie Dash’s *Daughters of the Dust* (1991), which was the first feature film directed by an African-American woman to be distributed in the United States.

The titles of the two volumes are compelling, if somewhat misleading. They call attention to an issue that Collins’s work rarely centers on: race. Collins doesn’t deny its existence or significance; her writing and films are not set in some post-racial utopia. In fact, in the brilliant title story of *Whatever Happened to Interracial Love?* she reminisces about a moment when idealistic young activists tried to live beyond race, only to remind us how entrenched we are in a world in which inequalities are often shaped by it. Even though race is a subject in her writing, her work is not driven by its drama. The stories of *Interracial Love* are more likely to engage race than are those of *Notes*, but they do so in indirect and subtle ways. “I could have occupied myself with race all these years,” Collins explains in one diary entry. “The climate was certainly ripe for me to have done so. I could have explored myself within the context of a young black life gropping its way into maturity across the rising tide of racial affirmation. I could have done that. After all, I’m a colored lady….. But I didn’t do that. No, I turned far inside, where there was only me and love to deal with….. Instead of dealing with race I went in search of love.”

For the most part, Collins’s characters are artists and bohemians, almost always black or, if white, then involved in inter-racial relationships—romantic, erotic, platonic. Race informs their existence but does not define it. In the screenplay for the unproduced film *A Summer Diary*, Lilliane, the widow of a sculptor and former merchant mariner named Giles, who recently killed himself, says of her husband’s depression, “I used to think it just had to do with race, that he hated the humiliation, but now I think it went further than that, there was something in him that found life ridiculous, a joke of some kind.” The humiliation of race is a given, but it cannot explain by itself our more existential struggle with the absurdity of life.

Here is the brilliance of Collins’s work in all of its quietude: its turn within, its placement of the interior and subjective in the context of the social and political. Collins recognizes the power of those structures that remake everyday life, for better and worse, but she chooses instead to shine a light on the inner workings of complex souls. First person is her preferred mode of narration; there is little dialogue between her characters and little to no evidence of racial strife or economic struggle. Her stories are just as likely to be set in rented summer homes in small towns along the Hudson River as they are in Harlem or Greenwich Village. The difficulties of relationships, the longing for love and recognition, the experience of fraught sexual encounters and betrayals, and the compulsive drive toward creativity—these are the engines that drive both her fiction and nonfiction forward. Like her diary entries and essays, her stories are peopled by figures who write, paint, design, read. Sometimes they are in conversation with each other, but most often we find them alone with their own thoughts.

Writer Danielle Evans, who provides the foreword to *Notes*, is right to call Collins “a magician in her use of interiority.” Across multiple genres, Collins makes it her project to explore the inner lives of her characters. As she writes in the diary entry cited earlier, instead of race, she turned “far inside.” And in so doing, she accomplished something quite revolutionary: She gave us black characters—particularly black women—with rich, complicated interior lives. In this way, and even in her settings, she is more akin to Virginia Woolf than to many of her contemporaries, such as Walker and Morrison. Walker wrote fiction that is more explicitly feminist, with a clearer sense of politics, while Morrison’s rich and complex novels are most often historical in nature.

The desire to explore and represent interiority may account for Collins’s long-standing interest in film. Through the placement of the camera, the point of view, and the voice-over, film provides multidimensional access to a character’s inner thoughts. Take Sara, the protagonist of *Losing Ground*, the screenplay for which is published in *Notes*. She is a black woman, a philosophy professor. The film opens with her in a university classroom, lecturing to a group of young male students on the existentialists, war, chaos, and philosophy. Played by the luminous Seret Scott, Sara is married to Victor, a successful abstract painter whom she envies for his ability to reach states of personal satisfaction through the practice of his art.

Sara is in the midst of researching and writing a philosophical treatise on “ecstatic experience,” and through it she hopes to discover her own private forms of pleasure and happiness. Seated in a library, Sara “is reading with such intensity that the words seem to spill forth,” Collins tells us. A man who has been observing her approaches her and says, “I have rarely seen anyone read with such intense concentration.” When he asks what she’s researching, Sara replies that she’s writing an essay and explains her thesis: “That the religious boundaries around ecstasy are too narrow, that if, as the Christians define it, ecstasy is an immediate apprehension of the divine, then the divine is energy…amorphous energy. Artists, for example, have frequent ecstatic experiences.”

Sara is one of the rare representations of a black woman intellectual, a thinker, in film and literature. At the center of the story is not her struggle with a racist coworker or sexist lover; instead, she struggles with her ideas and creative aspirations within the context of her marriage. Indeed, she is such an intellectual that though she longs to experience the ecstatic, she chooses instead to theorize about it. Much of the film concerns her journey away from her hypercritical mind and into a more creative expression of herself through acting. As such, Sara is a singular figure in American cinema, one that we have not seen before, or since, *Losing Ground*.

Reading Collins’s diaries, we find that she often mined her own interiority for her fictional work. The section in *Notes From a Black Woman’s Diary* taken directly from her journal includes a kind of meta commentary. “When I re-read parts of it, a feeling of solidity takes hold of me. If it is also well written and manages to go to the heart of the moment as I lived it, leaving me free, now, to recall it with all its contours intact, then I feel great satisfaction.”

The excerpts give insight into her process, her longing, and the bits and pieces that reappear in the narrative context of her fiction. In the stories, plays, and screenplays, characters repeat lines from the diary
verbatim; as Collins explains, “Writing had given her the experience an autonomous existence...existing in a place that has a larger meaning.” The privacy of the diary also allows her to write about the difference between her black and white lovers: White men are less emotionally available, she says. With black men, “while the behavior may be complex, contradictory, often inexplicable, the emotional core is extremely accessible.” And then she confesses, “All the men I have cared deeply about seem to share one thing in common, regardless of race: A remarkable masculine self-possession before which I do nothing but yield.”

Such honesty may not have been well received during the time she wrote these words, when we wanted unyielding feminist heroines. But in her diaries, Collins offers us a portrait of a self wrestling with its different impulses. She willingly surrenders before a form of confident masculinity, but at the same time she laments that “men become themselves out of a refusal of certain kinds of limitations, women out of an acceptance of them. Women are bound.... We are in bondage to life. A woman's life is a terrible thing.... I believe in liberation, but I don't believe it is at all the thing we think it is.” Her diaries are a place for questioning, for contradiction, for exploration. And herein lie the makings of her art.

Yet for all of Collins’s attention to the interior, to the quiet moments of reflection, she is not apolitical. As a college student at Skidmore, against the wishes of her conservative, middle-class parents, she traveled south to join the Student Nonviolent Coordinating Committee and take part in a voter registration drive in Albany, Georgia. She documents this time in a set of letters collected in Notes, which provided the source material for a number of the stories in Whatever Happened to Interracial Love, including the one that gives the collection its name.

In one of these letters, dated August 3, 1962, and written to her sister Francine, Collins asserts, “For one must move upon the things that one is committed to.... I wanted with all my soul to go south and I wanted to go to jail—because I wanted to pray that right would triumph. I wanted to pray on the steps of city hall in Albany. To confront all of those policemen and city officials with the moral issue—the fact that they have made us dogs—but I wanted to force them to see me and others as human beings who feel pain and frustration, who, too, can cry and be hurt.”

When Collins returns to this period of her life to fictionalize it, she does so with the distance of time and the wisdom of hindsight. In the story “Whatever Happened to Interracial Love,” the protagonist recalls a brief time when she, a black woman engaged to a white freedom fighter, and her elite white roommate, involved with a black “Umbra poet,” share an apartment on Manhattan’s Upper West Side. They welcome a bevy of artists and activists and are committed to the vision of the world for which they’re fighting: one beyond race, beyond color. But the story is narrated from a later date, when that dream has clearly faded, brought to its demise by the failure of the Democratic National Convention to seat the Mississippi Freedom Democratic Party in 1964, by the calls for Black Power (an unnamed Stokely Carmichael and Bob Moses make cameos), and by the inadequate commitment of those who professed devotion to a post-racial future but did little to realize it. And the story is told through the lens of an interracial relationship that could not survive these harsh realities.

The stories of Whatever Happened to Interracial Love reveal a gifted writer who excels at the form. Her subjects are smart, daring young women, the daughters of “prominent black families,” who escape the tight confines of the respectable futures planned for them in ways that only economically and educationally privileged daughters can. At times, Collins turns her eye to the society that produced these women, but more often than not she focuses on their struggles to maintain a sense of dignity and self-worth in a still-segregated society.

Set in the decades between the Supreme Court’s 1954 Brown v. Board of Education decision and the early 1980s, the works fall into no established literary categories. They are akin neither to Ralph Ellison and James Baldwin nor to the Black Arts Movement writers. In many ways, these works take the mantle of one of Collins’s literary idols, Lorraine Hansberry—not the Hansberry of A Raisin in the Sun but the Hansberry of The Sign in Sidney Brustein’s Window, in which we encounter an interracial group of Greenwich Village bohemian intellectuals as they navigate relationships fraught with racial and sexual tension. How ironic that, like Hansberry, who died at the age of 34, Collins also died far too young, leaving us to wonder what kind of work a longer life might have yielded.

It is not clear that the critics and readers of her time would have been ready for a black woman author who wrote so explicitly about sex and sexuality or so unapologetically about the relationships (sexual and otherwise) between black women and white men. However, had the work been available, it would certainly have expanded our sense of the possible for black women as artists, thinkers, and subjects. In many ways, the times in which we live seem ripe for the stories that Collins tells and ready for a black woman polymath. A moment that has produced a variety of black literary voices, filmmakers, and playwrights seems ready, finally, for the gifts that Collins has to offer.

It is a testament to her writing that we leave these volumes wanting more: more writing by her and more information about the works we do have. The stories do not need explanation and analysis; they do, however, call for more contextualization, which will be the work of a new generation of scholars, critics, and artists who discover Collins as a result of these collections. This is truer of the selections in Notes From a Black Woman’s Diary, and thus why Phyllis Rauch Klotman’s introduction to Losing Ground and the occasional editorial commentary are welcome. But the commentaries are only a beginning. We still want and need more from and about this remarkable writer.
Armando Iannucci is happy, he assures us, that he stopped making Veep when he did. The Scottish filmmaker left the show he created after its fourth season, in April 2015, citing the strain of commuting between Baltimore and London. A month later, Donald Trump announced his presidential candidacy. “I’m so glad I don’t do Veep anymore because I don’t know how I’d respond to the situation in America now,” Iannucci said during a Q&A in Sydney in 2017. He confessed to IndieWire that he was “kind of relieved” to have handed Veep off to a new showrunner, David Mandel, just before the Trump era began. “What can you do and say that hasn’t already been said and done by him?” Iannucci asked. “Personally, I just find it difficult to be funny about him. I can only be frustrated and flabbergasted by him. Outraged.”

This might surprise those who love Veep for highlighting the same qualities that Iannucci finds so horrifying in the US president—compulsive lying; a cringing, childish need for approval; a lack of discernible ideology; cover-ups that are worse than the crimes—in order to mock the emptiness at their center. The “situation in America,” it seems, is in closer harmony than ever with the worldview of Veep’s main character, Vice President (and eventual president) Selina Meyer (Julia Louis-Dreyfus). The seventh and final season, which concluded in May, has a plotline that features foreign election interference, FBI investigations, nonprofit grifters, and a man at a political rally who punctuates any mention of a woman’s name by shouting, “Kill her!”

Because these things more or less happened in real life, the notion that the Trump era should also be the golden age of Veep has the ring of intuitive truth. There is so much to work with. If satire is like a fun-house mirror—something that skews but also reflects reality—a dark, absurd time should be the ideal conditions for dark, absurd comedy. But looking back at the show’s seven-season run, I find that I agree with Iannucci: After Trump’s election, something changed; the jokes just didn’t land quite right. In the beginning, Veep’s cynicism cut against the zeitgeist of the Obama years, but now it’s hard to see what else its brand of satire can show us.

Before Veep began filming in 2011, its writers and cast interviewed dozens of politicians—Al Gore, Joe Biden, John McCain, Amy Klobuchar, and Mitt Romney among them. But perhaps the most useful fact-finding mission took place in 2009, when Iannucci and his 22-year-old assistant managed to sneak into the offices of the State Department in Washington while researching his Iraq War satire, In the Loop. A journalist friend had directed him to walk up to the entry, flash his BBC pass, and bluff that he was there for a 12:30 meeting. Inside, when he was caught taking photos for his art department, Iannucci invoked “the 12:30” to explain himself—and once again, the ruse worked. “Yeah, it’s just down there,” said the State Department employee who had stopped him. Iannucci described the incident as “probably international espionage.”

Veep is the product of episodes like this—stories of the gaps and failures in the workings of the world’s largest government. “Washington is architecturally gorgeous…but you go inside and there are like four people in an office designed for one, sitting on dingy chairs eating their lunch at their desk,” writer Simon Blackwell told The Independent. “We wanted to show that side of American politics rather than the reverential West Wing version.” Former New York Times columnist Frank Rich, an executive producer on the show, summed up the city’s burnout culture this way: “Washington is
Solvitur Ambulando

After the impossibility of the movement of any object through time was raised in light of the fact that, in time’s smallest unit, no motion can take place (which is to say, that any given object in it is at rest, or if it isn’t, then the unit isn’t actually the smallest, because it can still be divided further, specifically: into a time when the object was in one place, and then the time just after, when it’s in another, and insofar as any length of time is composed of a finite number of such smallest units during which, by definition, no motion can take place, it follows that no motion can take place in any aggregate of these units either—which is to say, the flying arrow is motionless, a paradox one might be inclined to dismiss with other oddities that don’t immediately fit our sense of what is real, or what it profits us to take seriously, especially in the face of what we have to face) the need to commit to a new kind of take on what it means to be composed, and of how the properties of the collective won’t by necessity reflect those of its constituents, paradoxically arose—the way no atom in my brain tonight feels on its own capable of wanting to walk out into the street to see the stars, but together, they still want to, and it feels miraculous.

TIMOTHY DONNELLY

not glamorous.... It is shabby, people are slobs, nobody cleans anything, detritus stays around for weeks if not months, and everyone dresses ten years behind the times.”

In the show’s research phase, Iannucci and his cast also collected insults with the reverent discernment of a sommelier. Cast members took young DC staffers out for drinks to absorb their affectations and unguarded shit talk. (“He might be my boss, but he’s a fucking idiot,” a Joe Lieberman staffer gossiped to Reid Scott, who plays Selina’s unctuous, ambitious communications director, Dan Egan.) Iannucci hired someone he referred to as a “swearing consultant” for his writing staff, and he did his own research on the cursing endemic to different executive departments. “The State Department doesn’t swear that much, but at the Pentagon they swear like dockers,” he said. “Really foul, unpleasant swearing.”

The portrait of Washington that emerges is thus made up almost entirely of minutiae: slights, mistakes, backbiting, gaffes. There are no lofty ideological debates; Selina’s party affiliation is unspecified, though Iannucci has called her a “soft centrist,” a deliciously hollow pavlova of a political identifier. Any private moral convictions she may have once held have been smoothed away by decades in public office, and all that remains is a quest for power, hamstrung by dysfunction. In the show’s third season, as Selina rehearses for a primary debate, she declares, “My position has always been clear on immigration”—and then stops to ask her aides to remind her what her position on immigration is. “As far as I’m concerned, America owes me an eight-year stay in the White House,” she riffs in an impromptu speechwriting session in the show’s final season. “And this time, I want a war.”

In the absence of some public-minded goal, Selina’s team runs on its collective lizard brain. At least twice, she hires or fires the wrong people because she’s misremembered their names—Leslie Kerr at the State Department for Leanne Carr, “that bitch from Energy,” and campaign manager Keith Quinn (Andy Daly) for a similarly blond, bespectacled political operative who ends up on a rival team—and then viciously chews out her staff for her own mistake. “It is not my job to know what Keith Quinn does or does not look like!” she shouts at her chief of staff, Amy Brookheimer (Anna Chlumsky), slamming her palms on a conference table.

At first, the beauty of Veep’s comedy of errors was its ability to puncture the Panglossian tone of the Obama era: It re-
minded us that many politicians, left and right, are narcissists working to preserve their own power, with varying levels of success. By having its characters act solely out of expediency and self-interest, Veep showed the absurdity of a political worldview that wouldn’t admit to either. Former officials cheerfully lobbying against the progressive legislation they created would be inconceivable in what Simon Blackwell called the “reverential West Wing version” of DC. But in Veep and in real life, it happened, and the officials turned lobbyists wound up back where they’d started: getting chewed out in the halls of Congress. (In Veep, the subject was the unpopular Families First bill; in real life, a former Obama intellectual-property expert, now the president of a software trade group, was criticized for tech-industry data mining.)

Veep’s basic building block is the gaffe, the smallest visible unit of political conflict. Selina has her high-stakes, awful fuck-ups—stealing private medical data, rigging elections, and, to clinch the presidential nomination, banning gay marriage—but most episodes hinge on petty mistakes, their significance inflated by the press and miffed allies. Selina upsets European diplomats with a louche comedic song performed at a charity dinner. She wears a pair of Louboutins that squeak like chicken pox across central Pennsylvania. (In a brilliantly perverse arc, Jonah also made entirely of dead dicks,” sticks to his anti-vaxxer platform even after spreading chicken pox across central Pennsylvania.)

Gaffes are the key to understanding why Veep lands differently in the Trump era. Selina is, in many ways, a Trump-like figure. She loves seeing pictures of herself and is a “giant misogynist,” according to showrunner Mandel. But there is one huge way in which she differs from Trump: Selina has not proved to be impervious to gaffes. Unlike scandals or crises, gaffes have no inherent significance; they require a certain amount of public buy-in to make them real. Gaffes are effectively a device embraced by politicians and certain segments of the media to fill broadcast minutes and make one’s opponents look stupid, based on the theory that a small error can usefully metonymize the flaws in the person as a whole.

Donald Trump misidentifying Apple CEO Tim Cook to his face as “Tim Apple” is a textbook gaffe. On Veep, a similar error would fill an entire episode; perhaps it would end Selina’s quid pro quo arrangement with Clovis, the smug, cultlike tech company she visits during her third presidential campaign, and in turn threaten a piece of legislation. But in real life, nothing much happened. Trump was mocked, as he usually is, and the American Workforce Policy Advisory Board—the group that brought Cook to the White House, co-chaired by Ivanka Trump and Commerce Secretary Wilbur Ross—went on issuing bland, toothless policy recommendations and setting up visits to Lockheed Martin plants.

Of course, gaffes do indicate something about a person—for Selina, they reveal a breathtakingly complete lack of interest in other people—but the humor of Veep is that, although every gaffe has consequences, no one changes. If anything, they get worse. Jonah Ryan (Timothy Simons), the ganglely White House staffer turned presidential candidate who was once described as “Frankenstein’s monster, if his monster was made entirely of dead dicks,” sticks to his anti-vaxxer platform even after spreading chicken pox across central Pennsylvania. (In a brilliantly perverse arc, Jonah also marries his stepsister, who turns out to be a blood relative.) Political success, for the characters in Veep, is almost entirely a measure of one’s ability to avoid petty errors, hide them, or steer doggedly through the shitstorm they produce.

“Veep has never been a ripped-from-the-headlines show,” Scott told The Hollywood Reporter. “If anything, it’s been this weird crystal ball. We’d do something absolutely bonkers, and then two months later, it happens.” Veep’s comedy of errors developed at a time when the outcry surrounding gaffes could pass as a series of morality plays in miniature, case studies in politicians and their weaknesses. A newspaper reader in 2007 could be forgiven for thinking, for example, that Barack Obama hurt his chances with white working-class voters when he asked a group of them in Iowa, “Anybody gone into Whole Foods lately? See what they charge for arugula?” And the fact that he went on to win the Hawkeye State by eight percentage points in the Democratic primaries indicates the efficacy of “arugula-gate” in imparting its lesson about small-town American values.

The silliness of this idea—that anecdotes show you more about a person than what they actually do with power—was Veep’s fixation. Its standard punch line had the public unable to see the forest of its title character’s sociopathy for the trees of her myriad failed photo ops. (My favorite: Selina, recently infected with a stomach bug, arrives ashen-faced and hours late to a frozen-yogurt shop and chokes down a spoonful of room-temperature vanilla sludge; then she soils herself on the way back to her motorcade.) These days, the punch line doesn’t land because the underlying metonymy no longer works. We don’t need Trump calling a black supporter at a rally “my African American” to know he’s a racist, and analyzing the former as new evidence of the latter can feel futile.

Political satire is at its best when it digs into whatever the American ruling class is trying to hide from us—in Veep’s early years, the clashes of ego, the rage fits, the mix-ups, and the infighting beneath a veneer of decorum. The Trump administration isn’t concealing any of that; it’s right there on the surface, and there is nothing interesting or subversive about pointing it out. Satire needs a moderately stable system to mock, and when that system is in flux, perhaps satire itself doesn’t function nearly as well.

Maybe that’s why political humor has either taken a journalistic turn (John Oliver’s Last Week Tonight) or become trenchantly activist (“Senator Says the Only Acceptable Way to Kill a Fetus Is With a Gun,” reads a Reductress headline published shortly after Alabama’s abortion ban). In the show’s finale, after Selina wins the presidency by sacrificing her last atom of humanity, she sits in the Oval Office, alone. In Louis-Dreyfus’s virtuosic performance, we watch a cloud of forlorn lucidity crossing her face. Then she snaps out of it to call the Israeli prime minister about a Palestinian food riot. It’s not funny, just sad. Selina, in her private moments, feels the weight of her decisions, but she doesn’t change course. Discussing his decision to give Selina her prize—the presidency, at all costs—Mandel, in an interview with The Hollywood Reporter, asked, “Why is Selina Meyer in the year 2020 the only politician paying the price for being not a great person?”
Puzzle No. 3504

JOSHUA KOSMAN AND HENRI PICCIOTTO

SOLUTION TO PUZZLE NO. 3503

ACROSS

1 Carol and Lily mended in confusion, which is how we clued the other Across clues (6-8)
9 Circle around in the morning, crashing into… (7)
10 …line in colorless trim (7)
11 Down with networks and nerds (6)
12 Sib replacing bacterium’s energy in vegetable (8)
14 Retro poet’s contraction, made better, arose again (10)
15 Dog returning what I threw? (4)
18 Nourish government agent (4)
19 Spy on (stare at) wasteful endeavor (10)
22 Steals cattle with no evidence of neglect (8)
24 Reach those with expertise (6)
26 Storm engulfs Long Island, where Jesus once walked (7)
27 Rambo getting drunk in a saloon (7)
28 Farm animal swallowing bug—a sign for some female politicians (14)

DOWN

1 One taking major steps gutted significant additional clause (7)
2 The greatest group of nine almost adopting earth tone (6,3)
3 Relaxed call? (4-4)
4 Mounting a precious stone that’s huge (4)
5 City in the South: Salerno? (3,7)
6 Lombardi, after end of game show (6)
7 Free time put into building toy (3,2)
8 Kind of angel I mistreated (6)
13 A collection of stars or athletes from Detroit, shifting 50 into a wager (6,4)
16 Fishing bait is lame, wrong, messed-up (9)
17 Baseball Hall of Famer traveled west, taking an automobile (3,5)
18 Search for maturity (6)
20 Photography pioneer adjusted a steam nozzle’s opening (7)
21 Zigzag look in pan (6)
23 Colossal volley contents! (5)
25 We hear second son is competent (4)

The Nation (ISSN 0027-8378) is published 34 times a year (four issues in March, April, and October; three issues in January, February, July, and November; and two issues in May, June, August, September, and December) by The Nation Company, LLC © 2019 in the USA by The Nation Company, LLC, 520 Eighth Avenue, New York, NY 10018; (212) 209-5400. Periodicals postage paid at New York, NY, and additional mailing offices. Subscription orders, changes of address, and all subscription inquiries: The Nation, PO Box 8505 Big Sandy, TX 75755-8505, or call 1-800-333-8536. Return undeliverable Canadian addresses to Bleuchip International, PO Box 25542, London, ON N6C 6B2. Canada Post: Publications Mail Agreement No. 40612608. When ordering a subscription, please allow four to six weeks for receipt of first issue and for all subscription transactions. Basic annual subscription price: $69 for one year. Back issues, $6 prepaid ($8 foreign) from: The Nation, 520 Eighth Avenue, New York, NY 10018. If the Post Office alerts us that your magazine is undeliverable, we have no further obligation unless we receive a corrected address within one year. The Nation is available on microfilm from: University Microfilms, 300 North Zeeb Road, Ann Arbor, MI 48106. Member, Alliance for Audited Media. POSTMASTER: Send address changes to The Nation, PO Box 8505 Big Sandy, TX 75755-8505. Printed in the USA.
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