

MAGA Turns Against The Constitution

By David French Opinion Columnist

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You May Not Know This, But The United States In The Grips Of Another Crisis — Perhaps Its Greatest Crisis Of All. In Addition To Confronting A Recession, A Collapsing Stock Market, Unemployment Rates At A 50-Year High And Skyrocketing Crime, The Constitution Itself Is Now Essentially Dead. It's Broken. It Failed, And Unless There Is Revolutionary Change, The Nation We Love Is Lost Forever.

Welcome To Joe Biden's America.

Sharp Readers Will Recognize Immediately THAT NOTHING I SAID ABOVE IS TRUE. The Economy Is Growing, The Stock Market Is At Historic Highs And The Unemployment Rate Is Near A **50-Year Low**. That Doesn't Mean The Economy Is Perfect. Inflation And Higher Interest Rates Have Caused Real Economic Pain, But The American Economy Is Still, As The EconForecaster Economist James Smith Recently Said, The "Envy Of The World."

Crime In America Is Too High, Especially Compared With The Rest Of The Developed World. But Crime Rates Have Dropped After Pandemic-Era Increases, And Overall Crime Rates Are Substantially Lower Than They Were In The Relatively Recent Past: Violent Crimes And Property Crimes Are Occurring At Less Than Half The Rates They Were In

The Early 1990s.

Yet Countless Millions Of Americans Simply Don't Know Any Of These Facts. According To A Recent Harris Poll, 55 Percent Of Americans Believe The Economy Is Shrinking, 56 Percent Believe That The United States Is In A Recession, 49 Percent Think The S&P 500 Stock Index Is Down For The Year And 49 Percent Believe — Incredibly Enough — That Unemployment Is At A 50-Year High. An Overwhelming Majority Of Americans (77 Percent) Believe That Crime Is Rising — One Of The Most Pessimistic Assessments In A Generation.

If You're A Democratic Strategist, The Perception Gap Between Opinion And Reality Is A Profound Political Problem. It Is Hard For A Presidential Incumbent To Win Re-Election When So Many Americans Are So Deeply Discontent, And These Same Strategists Are Confronting A Political Party That Has Every Incentive To Magnify American Problems. Republicans Want A Stink Of Failure To Surround The Biden Administration.

But The Problem Of Public Ignorance And Fake Crises Transcends Politics. Profound Pessimism About The State Of The Nation Is Empowering The Radical, Revolutionary Politics That Fuels Extremists On The Right And Left. In Fact, Absent Catastrophic Alarmism, The MAGA Movement Would Never Have Come Close To Power.

The Fundamental Argument On The Trump Right Since 2015 Has Gone Something Like This: If America Isn't A Failed State, It's At Least A Failing State. It's An Economic And Military Paper Tiger That Has Rejected God, Can't Tell Male From Female, And Is Lapsing

Into A State Of Chaos That Only A Strong Leader Can Confront. He, Alone, Can Fix It.

But MAGA Is Frustrated. The Constitution Blocks Trump From Doing What Must Be Done. It Blocks Him From Seizing The Level Of Control That The Far Right Believes The Moment Requires. And So Now, For Parts Of MAGA, The Constitution Itself Is Part Of The Crises. If It Doesn't Permit Trump To Take Control, Then It Must Be Swept Aside.

Elements Of This Argument Are Bubbling Up Across The Reactionary, Populist Right. Catholic Post-Liberals Believe That Liberal Democracy Itself Is Problematic. According To Their Critique, The Constitution's Emphasis On Individual Liberty "Atomizes" American Life And Degrades The Traditional Institutions Of Church And Family That Sustain Human Flourishing.

Protestant Christian Nationalists Tend to Have A Higher Regard For The American Founding, But They Believe It's Been Corrupted. They Claim That The 1787 Constitution Is Essentially Dead, Replaced By Progressive Power Politics That Have Destroyed Constitutional Government.

Still Others Believe That The Advent Of Civil Rights Laws Created, In Essence, A Second Constitution Entirely, One That Privileges Group Identity Over Individual Liberty.

The Argument That The Constitution Is Failing Is Just As Mistaken As The Argument That The Economy Is Failing, But It's Politically And Culturally More Dangerous. Reversing A Crime Doesn't Require Us To Abandon The Bill Of Rights. Achieving Economic

Prosperity Doesn't Require AUTHORITARIANISM. But If Your Ultimate Aim Is The Destruction Of Your Political Enemies, Then The Constitution Does Indeed Stand in Your Way.

Right-Wing Constitutional Critics Do Get One Thing Right: The 1787 Constitution Is Mostly Gone, And America's Constitutional Structure Is Substantially Different From The Way It Was At The Founding. But That's a Good Thing, And The Actual Written Constitution That Exists Today, The Document That's Been Formally Amended 27 Times, Is Very Much Alive, And IT'S GUARDRAILS AGAINST TYRANNY REMAIN VITAL AND RELEVANT TODAY.

The Original Constitution And Bill Of Rights, While a Tremendous Advance From The Articles Of Confederation, Suffered From A Singular, Near-Fatal Flaw. They Protected Americans From Federal Tyranny, But They Also Left States Free To Oppress American Citizens In The Most Horrific Ways. The Original Constitution Permitted Slavery, Of Course, And The Bill Of Rights, Which Includes Protections For Religious Liberty, Free Speech And Due Process, Restricted Only The Federal Government, Not The States.

Individual States Ratified Their Own Constitutions That Often Purported To Protect Individual Liberty, At Least For Some Citizens, But States Were Also Often Violently Repressive And Fundamentally Authoritarian. Through Much Of American History, Various American States Protected Slavery, Enforced Jim Crow, Suppressed Voting Rights, Blocked Free Speech, And Established State Churches.

As A Result, If You Were Traditionally Part Of The Local Ruling Class — A White Protestant In The South, Like Me — You Experienced Much Of American History As A Kind Of Golden Era Of Power And Control.

The Civil War Amendments Changed Everything. The Combination Of The 13th, 14th, And 15th Amendments Ended Slavery Once And For All, Extended The Reach Of The Bill Of Rights To Protect Against Government Actions At Every Level, And Expanded Voting Rights.

But All Of This Took Time. The End Of Reconstruction And The South's "Massive Resistance" To Desegregation Delayed The Quest For Justice. It Took The 19th Amendment To Grant Women The Right To Vote, But Decades Of Litigation, Activism And Political Reform Have Yielded A Reality In Which Contemporary Americans Enjoy Greater Protection For The Most Fundamental Civil Liberties Than Any Generation That Came Before.

All Those Who Believe That The Civil Rights Movement Impaired Individual Liberty Have To Reckon With The Truth That Americans Enjoy Greater Freedom From Both Discrimination And Censorship Than They Did Before The Movement Began.

So Why Are Parts Of The Right So Discontent? The Answer Lies In The Difference Between Power And Liberty. One Of The Most Important Stories Of The Last Century — From The Moment The Supreme Court Applied The First Amendment To State Power In 1925, Until The Present Day — Is The Way In Which White Protestants Lost

Power But Gained Liberty. Many Millions Are Unhappy With The Exchange.

Consider The State Of The Law A Century Ago. Until The Expansion Of The Bill Of Rights (Called “Incorporation”) To Apply To The States, If You Controlled Your State And Wanted To Destroy Your Enemies, You Could Oppress Them To A Remarkable Degree. You Could Deprive Them Of Free Speech, You Could Deprive Them Of Due Process, You Could Force Them To Pray And Read State-Approved Versions Of The Bible.

The Criminal Justice System Could Be Its Own Special Form Of Hell. Indigent Criminal Defendants Lacked Lawyers, Prison Conditions Were Often Brutal At A Level That Would Shock The Modern Conscience, And Local Law Enforcement Officers Had No Real Constitutional Constraints On Their Ability To Search American Citizens And Seize Their Property.

Powerful People Often Experience Their Power As A Kind Of Freedom. A King Can Feel Perfectly Free To Do What He Wants, For Example, But That’s Not The Same Thing As Liberty. Looked At Properly, Liberty Is The Doctrine That Defies Power. It’s Liberty That Enables Us To Exercise Our Rights. Think Of The Difference Between Power And Liberty Like This — Power Gives The Powerful Freedom Of Action. Liberty, By Contrast, Protects Your Freedom Of Action From The Powerful.

At Their Core, Right-Wing Attacks On The Modern Constitution Are An Attack On Liberty For The Sake Of Power. An Entire Class Of Americans Looks Back At Decades Past And Has No Memory (Or Pretends To Have No Memory) — Of Marginalization

And Oppression. They Could Do What They Wanted, When They Wanted And To Whom They Wanted.

Now They Don't Have That Same Control. It's Not Just That Catholics And Protestants Have Equal Rights (A Relatively Recent Development), It's That Muslims, Sikhs, Jews, Buddhists And Atheists All Approach The Public Square With The Same Liberties. Drag Queens Have The Same Free Speech Rights As Pastors, AND MANY AMERICANS ARE LIVID AS A RESULT.

That's Not To Say That The Constitution Is In Perfect Health. I've Long Been Alarmed At The Rise In Presidential Power. The Growth Of The Administrative State Undercuts Congress's Constitutional Role In American Democracy, And I Have My Problems With A Number Of Supreme Court Doctrines, But I Don't For A Moment Think The Constitution Is Dead Or Fundamentally Broken, And I Certainly Don't Think The Answer To Any Of Our Problems Is Recreating Anything Like The Constitution Of 1787, Which Permitted So Much Human Suffering.

The Topic Of Disinformation Has Rightly Dominated Much Of Our Public Discourse, But If Anything The Focus Has Been Too Narrow. Yes, Vaccine Conspiracy Theories Are Deeply Destructive. So Are Election Conspiracies. But When A Movement Starts To Believe That America Is In A State Of Economic Crisis, Criminal Chaos And Constitutional Collapse, Then You Can Start To See The Seeds For Revolutionary Violence And Profound Political Instability. THEY BELIEVE WE LIVE IN DESPERATE TIMES, AND THEY TURN TO DESPERATE MEASURES.

I'm Reminded Of One Of The Most Famous Admonitions Of Scripture — “You Shall Know The Truth, And The Truth Shall Set You Free.” So Much American Angst And Anger Right Now Is **ROOTED IN FALSEHOODS**. But The Truth Can Indeed Set Us Free From The Rage That **TEMPTS AMERICAN HEARTS TOWARD TYRANNY**.

Some Other Things I Did

On The Day Of The Trump Guilty Verdict, I Joined My Colleagues Michelle Goldberg And Patrick Healy For A Special Edition Of The Matter Of Opinion Podcast. We Discussed Both The Legal And Political Aspects Of Trump's Conviction. I'd Encourage You To Listen To The Whole Thing, But In Particular I Found Myself Expressing My Concerns About What Happens If Trump Wins The Election. If You Thought You'd Seen MAGA Devotion To Trump Before, Well, You Ain't Seen Nothing Yet:

He's Been Found Liable For Fraud. He's Been Found Liable For Sex Abuse. He's Been Found Liable For Defamation. Now He's Been Convicted As A Felon.

If He Wins Anyway, The Religious Zeal Around Donald Trump Will Be Something To See. If We Think That There Has Been A Trump Cult Already, If He Wins In Spite Of All Of This, The Trump Cult Will Be — We Will Have Seen Nothing Yet, Is What I Would Say. And The Level At Which He Would Feel Empowered To Execute His Objectives Of Vengeance — It Would Get Truly Scary, Truly Scary.

On Sunday, I Took A Break From Trump Conviction Commentary To Focus On the First Amendment. The American Civil Liberties Union Represented The National Rifle Association In A Case Contesting Democratic Censorship, And Justice Sotomayor Wrote An Opinion For A Unanimous Court Supporting The Free Speech Rights Of The NRA. The Consistent Defense Of Civil Liberties Can Make For Some Strange Bedfellows Indeed:

I'm A Gun Owner, But I'm Not A Member Of The NRA. Whatever It Once Was, It Is Now Thoroughly Radicalized And Strikingly Corrupt. But No Matter How Much Any Person May Despise The NRA, I'm Reminded Of The Dialogue Between William Roper, A Young Lawyer, And Sir Thomas More, The English Chancellor Who Was Executed For Defying Henry VIII, In Robert Bolt's "A Man For All Seasons."

More And Roper Are Arguing Over Whether The Devil Himself Gets The Benefit Of The Law. Roper Says He'd "Cut Down Every Law In England" To Pursue Satan. "Oh?" More Replies. "And When The Last Law Was Down, And The Devil Turned 'Round On You, Where Would You Hide, Roper, The Laws All Being Flat?"

The Bill Of Rights Was Ratified More Than Two Centuries After More's Death, But It's the Legal Answer To More's Concern. If You Diminish The First Amendment To Destroy Your Political Opponents, Then When Your Opponents Gain Power (And They Will), You'll Have Nowhere To Hide.

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