

The American system of democracy has crashed

Once upon a time in America, there was a tyrant. And Congress rejected him totally.

The tyrant, of course, was King George III, the target of the Declaration of Independence. We take it for granted now, but the Declaration was an enormous political innovation – in it, the country that became the United States of America laid claim to certain “unalienable” rights, rights that took precedence over any king or crown.

To protect those rights, our Founders declared that the People were allowed to “alter” or “abolish” the government – in this case, British rule over the American colonies.

The idea that ‘the People’ have ‘unalienable rights’ became so standard that it slipped into cliché

The point of the famous preamble to the Declaration – “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness” – is that the government should exist to protect our rights, a radical proposition in an era when governments mostly existed on the basis that one guy was descended from another guy. Over time, the idea that “the People” have “unalienable rights” became so standard that it slipped into cliché, the stuff of car commercials. But this was not a throwaway line. These rights are repeated throughout the founding documents of the United States. Life and liberty aren’t just there for decoration – they are essential to the spec. They are the reason why the entire American system has

been designed the way it has.

The Declaration pronounces these rights to be so important that it's worth overthrowing a government over them. But one should not undertake revolution against a tyrannical government lightly, the Declaration says, going on to provide a massive litany of complaints as justification. In modern times, the full list was considered to be the boring part of this document, lacking the vim and vigor of "we hold these truths to be self-evident" and other such bars from the preamble. But this year, it's become a... *bracing* read.

Listed among the reasons to boot the British monarch are:

"Transporting us beyond Seas to be tried for pretended offences" really hits different now, huh? Trump's secret police have been kidnapping people, and in some cases, sending them to random countries they're not even from, including to Centro de Confinamiento del Terrorismo (CECOT), a notorious prison in El Salvador. The abductees need not have done anything wrong; having tattoos or the word of a corrupt cop is enough. American citizens, including children, can also be seized and ejected, even by mistake – and the long-term Republican goal is to do this on purpose.

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From the beginning, this has all been profoundly un-American, and it wasn't surprising when the Trump administration ran into some legal problems. A district court judge issued an injunction against the Department of Homeland Security, requiring it to add a fairly basic form of due process to its deportation machine. Detainees set to be deported must be told where they are going, so they can have the chance to explain that being sent to that specific country may result in their torture or death. "This small modicum of process is mandated by the Constitution of the United States," the judge wrote.

"Small" is too fucking right; giving someone the opportunity

to pipe up before being shipped off to a place that might kill them is not exactly a radical affirmation of human rights. But this is where we are as a country: the right-wing justices of the Supreme Court stayed the injunction. So the DHS can now go right back to shipping people off to CECOT – or somewhere even worse – without telling them where they are going or hearing out why they should not go.

The pause on the lower court's injunction happened via what is known as "the shadow docket." By temporarily blocking or declining to block a lower court's order, SCOTUS makes a decision without officially making a decision, and can do so without bothering to explain its reasoning.

Even though there is no written opinion for the ruling, there is a dissent from the three liberal justices. "The Government has made clear in word and deed that it feels itself unconstrained by law, free to deport anyone anywhere without notice or an opportunity to be heard," wrote Justice Sonia Sotomayor. She concluded that the majority is "rewarding lawlessness." When the lady is right, she's right.

President Trump has always been explicit about his desire to seize as much power for himself as possible, and he's now surrounded by people who share his urge for total control. Trump has told his followers they "won't have to vote anymore" if he is elected. The Trump Organization's official merch store sells a "Trump 2028" hat; the last time he lost an election, he incited an armed insurrection against Congress while it was certifying the results. After coming back into power, he ordered a dictator-chic military parade to celebrate his birthday. He took over the troops of the California National Guard – bypassing the California governor – to deploy them against Californians protesting against his immigration raids. He has formally directed criminal investigations into people who opposed him. Most recently, he has casually threatened to arrest Zohran Mamdani, the Democratic nominee for New York mayor, over his pledge to fight back against ICE;

his underlings have done one better and threatened to strip him of citizenship and deport him.

Trump has mostly issued executive order after executive order to enact his agenda, because Congress doesn't have the votes to pass such unpopular laws. He's also used executive orders to defang the laws Congress *has* passed, like the TikTok ban, which has now led directly to Congress passing unpopular laws on the promise that Trump will simply override the provisions he doesn't like. Congress is meant to be the most powerful part of the federal government, but the Republican Congress under Trump has receded into a group of weak-willed simpletons, content to sell out their constituents for little more than signed merch.

Not content with usurping Congressional authority, Trump's executive orders have barged straight into reinterpreting and rewriting the Constitution itself – for example, by purporting to end birthright citizenship, a cornerstone of the US as we know it.

In theory, there is one last important check on a power-mad president

Now, in theory, there is one last important check on a power-mad president, one whose contempt for the laws of the land knows no bounds. That check is the Supreme Court, a body of jurists who serve life terms, and who can strike down illegal actions at will.

Last week, the court issued a ruling in a lawsuit over the birthright citizenship executive order. As it does so often these days it made an enormously consequential decision without actually making a decision. While declining to actually consider whether or not Trump's EO is unconstitutional, SCOTUS ruled that lower courts cannot issue a nationwide injunction against that order. But the de facto result is that citizenship is a privilege, and not secured by

birth in the 28 states that haven't sued to challenge one of Donald Trump's executive orders.

It is an odd decision, not least because birthright citizenship is guaranteed by the 14th Amendment to the Constitution, the first sentence of which reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

To be clear, SCOTUS didn't override the 14th Amendment, it just pretended that it would be some kind of a horrible overreach to tell the executive branch that the 14th Amendment is real.

This is alarming for a lot of reasons, but the 14th Amendment in particular – a Reconstruction Amendment enacted after the Civil War of 1861 – is the cornerstone of modern-day constitutional law.

Before the Civil War and Reconstruction, the Bill of Rights didn't apply to state governments: New York could abridge its citizens' right to free speech, even if the federal government couldn't. The 14th Amendment guarantees that states cannot deprive Americans of "life, liberty, or property, without due process of law," words that already appeared verbatim in the 5th Amendment (which had previously only applied to the federal government).

The People have rights against the powerful. That is what America is about

It's notable that these words keep getting repeated – almost like those "unalienable" rights of "life, liberty, and pursuit of happiness" are really important. The Reconstruction Amendments – the 13th, 14th, and 15th – weave together the threads of the Constitution, the Bill of Rights, and the Declaration of Independence. They were a critical update, you might say, one that patched the Founders' system-destroying

error of perpetuating slavery while simultaneously declaring all men to be created equal. The 14th acknowledges that states, too, can be tyrants. Whether it is George III, the feds, or the slave-holding antebellum states, the People have rights against the powerful. That is what America is about.

Over the next 150 years, the Supreme Court began to grapple with the admittedly broad categories of life, liberty, and property (and/or pursuit of happiness). The problem is that you can't just look up "life" and "liberty" in a dictionary and get a bulleted list of what Americans can or cannot do. But by the mid-20th century, the Supreme Court was asserting that Americans have the fundamental right to contraception.

Since condoms aren't mentioned in the Constitution, the legalese version gets a little complicated. In short, the "penumbra" of rights created by the 1st, 3rd, 4th, 5th, and 9th Amendments, applied to the states via the 14th, imply a constitutional right to privacy.

It turned out that Americans really liked not going to jail for not getting pregnant

This seems like a lot of technical steps to get to "the state of Connecticut can't arrest Mrs. Griswold for handing out diaphragms to women who want to have sex without getting pregnant." But it turned out that Americans really liked not going to jail for not getting pregnant, almost as much as states loved trying to force people to give birth. Twelve years later, the court handed down *Roe v. Wade* – the now-overturned precedent that established the right to abortion – relying on the *Griswold v. Connecticut* right of privacy.

In the decades since, right-wing jurists (who were, *completely coincidentally*, Catholics subscribing to strong religious proscriptions against contraception and abortion) pushed back. This whole penumbras thing was far too vibes-based, they argued. Right-wing legal theory can be mostly summarized as a

backlash against vibes-based jurisprudence. It's why you get textualism (what really matters is the words as written down) and originalism (what really matters is what the founding fathers thought).

Weirdly, these objections stuck. "We're all textualists now," said liberal Justice Elena Kagan in 2015, referring to how common it had become to use Justice Antonin Scalia's textualist methods in assessing laws. Meanwhile, Justice Clarence Thomas keeps a mocking sign in his office that reads, "Please don't emanate in the penumbras."

Sometimes it takes a non-legal brain to see through the absolute bullshit that has taken root in the intellectual heart of American courts – bullshit so deep that judges are now turning to AI to tell them what words *really* mean. The founding fathers had some highly specific issues with George III, to be sure, but the very core tenets of *life, liberty, and the pursuit of happiness* (and/or property) are pretty vibes-based stuff. These are vibes turned up to eleven in the Declaration of 1776, enshrined in the Bill of Rights in 1791, and repeated and reiterated in the Reconstruction Amendments of 1868.

The Republican legal mind nickels and dimes the People on their rights, and then goes, "Is this what the Founders wanted?" Conveniently, and *completely coincidentally*, this thinking often works against women, racial minorities, immigrants, and other undesirables. Meanwhile, when the birthright citizenship EO contradicts the plain text of the Constitution, the textualists are nowhere to be found. Kinda gives the whole game away, doesn't it?

The true objective became clear: to allow the most powerful people in the country to do whatever they wanted

As a result of Donald Trump's first term in office, the right wing of the Supreme Court gained a supermajority, one it will

have for the foreseeable future. The moment this happened, the fig leaf of textualism and respect for the law fell away, and the true objective became clear: to allow the most powerful people in the country to do whatever they wanted.

When the Founding Fathers replaced their king with a new system of government, they were keen on preventing the fledgling nation from reverting back to monarchy. They did this by spreading power around as much as possible. Their first attempt mostly just distributed power among the states; this turned out not to work so well. The second attempt – the one that we presently live under – consolidated more power at the federal level, but diced it up into a tripartite system of government: Congress, the courts, and the president. The idea was that these three branches would all compete for power, keeping any one of them from becoming too powerful.

The court claimed to reshuffle the balance of power last year by overturning the long-standing doctrine of Chevron deference in *Loper Bright Enterprises v. Raimondo*, apparently believing that federal agencies under the executive branch – like the guys who make sure your water is clean or the guys who make it so your gym has to let you cancel your membership – had become too powerful. Knocking down Chevron deference essentially meant it was now open season on these regulatory agencies, because now it's easier than ever to challenge their rule-making. More opportunities to pipe up and complain, you might say. Meanwhile, if the federal government is to regulate air, water, and click-to-cancel, it would be better if the legislative branch wrote actual laws.

But how do you square reducing the power of the executive branch with how Trump's secret police are assaulting and detaining Democratic lawmakers? Representative LaMonica McIver was indicted for "forcibly impeding and interfering with federal officers" as they arrested Newark Mayor Ras Baraka for attempting to enter a Newark detention center. Senator Alex Padilla was wrestled to the ground and handcuffed for

attempting to ask a question of Homeland Security Secretary Kristi Noem during a press conference. New York City comptroller Brad Lander was arrested at immigration court for accompanying a migrant. The Supreme Court promised us a kneecapped administrative state. When do we get to kneecap ICE?

Forget lawyer-brain for a minute. There's no need to overthink this supposed tension. The Republican majority of the Supreme Court of the United States has a perfectly coherent worldview: the strong get to trample the weak.

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Fossil fuel companies, the crypto industry, and nationwide internet service providers deserve process; the asylum-seeker imprisoned at CECOT does not. A neighborhood wrecked by a hurricane, the gambling addict at rock-bottom, the principle of net neutrality itself – these victims of the war on the administrative state simply do not matter. The text doesn't matter. Constitutional balance doesn't matter. Only power matters. (In *West Virginia v. EPA*, the 2021 case that led to *Loper Bright*, Kagan ruefully called back to her previous "we're all textualists" remark, writing in her dissent, "It seems I was wrong. The current Court is textualist only when being so suits it.")

The right-wing Supreme Court's hypocrisy is not the only thing to blame for our present state of affairs. The founding fathers' tripartite system of government was mostly working out until all three branches succumbed to some kind of contagious monarchism.

But it's clear the Founders' anti-king protocol is now failing. The executive is an egomaniac who simply does not believe in life, liberty, or due process. Congress, in the

firm grip of naked ideologues and flaccid cowards, has flopped as a constitutional counterbalance, incapable of punishing Donald Trump for an actual armed insurrection on January 6th, 2021. The Supreme Court, on the other hand, hasn't failed – it has actively accelerated the conflagration, even ruling that Trump has absolute immunity for acts on January 6th. This is what makes the court's Republican supermajority so dangerous, so profoundly immoral. Congress might be too short-sighted, deadlocked, and weak in character to pump the brakes. But SCOTUS, an institution designed to step back and think about the big picture, knows exactly what it's doing, and is chillingly enthusiastic.

The current Republican Supreme Court is unlike anything the Founders could have ever possibly envisioned – a partisan instrument of a destructive political force, neither a check nor a balance on an executive that is threatening to strip citizenship from opposition politicians and is commandeering the state national guard against a state's people over the objections of their governor. It is a root-access attack on the system itself, a virus with the ability to overwrite the founding documents of the nation.

'Conservative' has never been more of a misnomer

You can call it a lot of things: right-wing radicalism, dictator envy, anti-democratic theocracy. But one thing's clear. "Conservative" has never been more of a misnomer. The Republicans are conserving nothing: not due process, not precedent, and certainly not the truth.

In 2006, when he was nominated to the Supreme Court, Samuel Alito told the Senate that *Roe v. Wade*, the case that once enshrined the right to abortion, had been decided and was "an important precedent." Sixteen years later, he penned the majority opinion overturning *Roe*. Justice Alito may have been cagy in the lead up to his confirmation, but his fellow justices were less so – Neil Gorsuch called *Roe v. Wade* "the

law of the land” in his 2017 Senate confirmation hearings; Brett Kavanaugh supposedly told Senator Susan Collins in a private meeting in 2018 that *Roe* was “settled law.” Both justices joined the opinion overturning *Roe*, which calls that decision “egregiously wrong from the start.”

Fair play and forthrightness are, apparently, not things we expect while *appointing a judge to sit atop of the entire American legal system for the rest of their life*. But setting that aside, it’s baffling that the right-wing legal establishment is seen as *patient* and *strategic* while Trump is a force of nature that might not pass the Turing Test.

As Donald Trump’s imperial presidency rolls forward across the wreckage of Congress on tank treads greased by the Supreme Court, there’s scant evidence of a legal movement for limited government or states’ rights. Trump is not the useful tool of an aggressive right-wing movement. Why look for complex explanations when there is a very simple one at hand? He is the king they serve enthusiastically, a leader whose lies and lawlessness they both enable and mirror.

Two-thirds of the country oppose the fall of *Roe*; about as many reject the total presidential immunity given by *Trump v. US*. (You see, the Supreme Court is perfectly capable of rocking the boat: when it lets Trump do what he wants to do, it is because this is the America that the Republican justices believe in.)

What’s a red-blooded American to do when their government becomes destructive to life, liberty and the pursuit of happiness? The Declaration of Independence has some notes about “the Right of the People to alter or to abolish” its existing government “and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

But that was another time, right? Surely nobody wants to take the Founding Fathers' original words *literally*. Their original meaning and original intent can't just be superimposed on American life today, not when American values are very different from the values of 1776. In Trump's America, the national ethos is simply a boot on your neck, forever.

Happy Independence Day!

<https://www.theverge.com/policy/697301/trump-supreme-court-founding-fathers-july-4>