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European Languages

زبانهای اروپایی

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26.01.2020

Trump: The King



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As of this writing (Thursday afternoon), the outcome of the Trump Removal trial currently underway is not entirely fixed in concrete, but the Party of Execrables, formerly known as the GOP, is hanging tight; its servile resolve to do Donald Trump's bidding seems secure as ever.

Meanwhile the Democrats' impeachment managers have been doing a more than creditable job presenting their case. Trump is so obviously, transparently, and flagrantly guilty that their arguments almost makes themselves, but even so.

If only they would tone down the ways they make Trump look almost good; in other words, if they were a tad less ardent in their dangerous and blatantly hypocritical efforts

to revive the Cold War with Russia and in their glorification of the lying liars and serial meddlers in America's "intelligence community."

This was only to be expected. Cold War revivalism has become the Democratic Party's watchword since even before Hillary Clinton needed an excuse for losing the 2016 election.

Adam Schiff has long been a conspicuously zealous advocate, but, as faithful servants of a military-industrial-national security state complex intent on having, or appearing to have, a credible enemy, all "moderate" – that is, mainstream — Democrats are dead wrong on this to at least some extent.

Indeed, of the Democrats' (i.e. the House of Representative's) impeachment managers, Schiff is hardly the worst. That title has to go to Hakeem Jeffries, former corporate lawyer and current chair of the Democratic Party caucus in the House.

Listening to him tell the story of poor Ukraine, never mentioning the American role in installing anti-Russian governments there and in other former Soviet republics, or acknowledging that the "hot war" the Ukrainian government is supposedly fighting is not actually all that hot – just as Russia's attack on the 2016 election was hardly an attack at all. Neither does he mention that the weapons withheld by Trump are needed by the Ukrainian government not to ward off Russian "invaders" but rather to combat Russian speaking separatists in the east of the country who have no love for the fascist-infested Ukrainian government in the west.

Listening to Jeffries and the others, I had to remind myself more than once, as one often must when mainstream Democrats blather on, that Trump is worse. Once the Trumpian menace is defeated, unreconstructed Clintonites in the Democratic fold should be next.

But no matter how flawed the Democrats' warmongering "narrative" on Russia and Ukraine may be, their case on abuse of power and obstruction of justice is slam dunk. In view of the conditions under which it has to be made, so far without witnesses or documents, it is about as compelling as can be.

Of course, with Fox News and other rightwing propaganda outlets going full steam ahead misinforming their viewers and listeners and dumbing down their minds, it is doubtful how much anything now going on in the Donald's impeachment trial will register with

the forty percent or so of the American public who still don't quite understand how their Feckless Leader is leading them, along with the rest of the world, to ruination.

Witnesses and documents could still make a difference, of course. But that won't happen unless four or five Republican Senators suddenly grow backbones or suffer pangs of conscience. I wouldn't hold my breath waiting for that.

It is more likely that Trump himself will do something so vile or stupid that there will be wholesale defections within the ranks of the Trump base. If that happens, even Trump Party Senators will have no choice but to take notice. But what could Trump do? Tear babies from their mothers' arms and stick them in cages? Lead the world headlong into ecological disasters? What could he do that he hasn't already done?

Perhaps talk of a Bolton for Biden deal on witnesses will come to something. That would be a good thing – getting two birds with one stone — if it works, notwithstanding the fact that the Bidens, father and hapless son, have nothing to do with the case. The chances for that, however, are almost nil.

And so, for the next few days, before Mitch McConnell — a full-fledged miscreant who has already done serious, irreversible harm by packing the federal judiciary with troglodytes and retrogrades — succeeds in getting Trump acquitted, Democrats will keep slogging on up the high road and Republicans will continue to wallow in Trumpian muck.

Perhaps some good will come of it; perhaps it will hobble Trump somewhat, keeping him from doing even more harm than he otherwise would. But even that is unlikely.

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For a moment or two last week, it felt different, less unseemly.

There was a certain majesty when the articles of impeachment were carried over to the Senate, when the Senate summoned the Chief Justice, when the Senators were sworn in as jurors, and when they were called up to sign that little book attesting to their commitment to abide by the oath they had just taken. It made even the most loathsome Republican Senators seem almost like people you wouldn't cross the street to avoid.

A few Trumpian tweets later and the mood passed. By the time he announced who would serve on his legal team, all traces of that moment were gone, vanished into a reality TV miasma.

Trump's principal lawyer, Pat Cipollone (the big onion) is a dreadful performer; and so, since Perry Mason is unavailable, the lead role in the reality TV show Trump wants to stage seems to have been assigned to Kenneth Starr. As if his past representations of noxious rightwing causes, and his relentless nipping at Bill Clinton's heels in the Whitewater-Lewinsky days, weren't bad enough, Starr has lately taken to disgracing himself even more by bringing Baylor University into disrepute. He was ousted as president, and then resigned as chancellor in the course of an investigation over mishandling allegations of sexual assaults by football players.

Starr is far from the only real piece of work on the team Trump assembled. There is, for example, Pam Bondi, a former Florida Attorney General, corrupt as they come, and accused among other things of colluding with Trump even before she started working for him officially. While serving as Florida's AG, she quietly but effectively dropped an investigation into Trump University when, as it happened, Trump, at her request, helped finance her reelection campaign through that charitable organization of his that the authorities have since shut down. Now she is cashing in on her access to the president by lobbying for Qatar. There are also allegations of connections with Scientologists.

Then there is Robert Ray, Starr's successor as independent counsel in the Whitewater investigation. Among his claims to fame is a charge of stalking an ex-girlfriend that, with a little help from his friends, seems to be going nowhere in the courts.

Watching them and the others, not just Cippolone, but also Jay Sekulo, Jane Raskin, Michael Purpura, and Patrick Philbin, is enough to make any normal person despair for the human race. They don't even have anyone clever enough to say: "if you're a nitwit, you must acquit." Of course, with acquittal a foregone conclusion, the nitwits don't need to be told.

And then there is the self-promoter Alan Dershowitz, sophist extraordinaire. Unlike philosophers who, according to Socrates, aim at the truth, sophists "make the lesser argument appear the stronger" for money or for some other nefarious reward, without concern for what actually is the case. Where Dershowitz is concerned, Socrates nailed it. Worse still, Dershowitz built up his TV reputation defending the likes of Claus von Bülow, OJ Simpson, Mike Tyson, Michael Milken, and the state of Israel.

Now we can add Trump to the list.

He will fit right in along with Dershy's good buddy, the late Jeffrey Epstein, accused procurer of underage women to notables of all descriptions, including, among the rich and heinous, some well-known, Cambridge based, academic grandees, and the Duke of Edinburgh, second son of Queen Elizabeth and Prince Philip.

One would think that Dershowitz would have recused himself from defending Epstein, but he somehow managed to blur the line between the accused and his legal eagle. Even now, with Epstein dispatched under mysterious circumstances, he has only admitted to a massage – from an elderly Russian woman, not a post-pubescent sweetie. No need to throw up on that account; he kept his underwear on the whole time.

Sophistry is not Dershowitz's only skill; he is also good at talking out of both sides of his mouth. Thus, even as he will be defending Trump, he claims not only to have voted for Clinton in 2016, but also to wish that Trump actually would be removed from office.

He is on the Trump team, he claims, because the Constitution must be respected and, from its purview, there is nothing that Trump has been charged with that, even if true, would “rise to the level” of an impeachable offense. In other words, he must save the Donald to save the republic. It is his sacred duty and, as a Democrat, his burden. Now is the time to throw up.

Is he even fooling himself? The fact that the overwhelming majority of bona fide experts in Constitutional law disagree with his account of impeachability – not just disagree but find it laughable — and that their arguments are so compelling that one could not reasonably disagree with their conclusions, doesn't faze him at all. Like his client, he knows no shame.

Neither does it concern him that his position puts him in the same camp as Federalist Society retrogressives – they call themselves “conservatives” — and authoritarian politicians, who, over the past few decades have come to the conclusion that, as Richard Nixon put it, “if the president does it, it's not wrong.” Presumably, this would include shooting somebody on Fifth Avenue, as per the currently popular trope.

There are Team Trump members who have actually opined, as has Trump himself, that a president cannot even rightfully be investigated.

No doubt were he obliged to set them out, Dershowitz's views would be a tad more nuanced than those of his rightwing colleagues. But, as they say, if it quacks like a duck, you'd better believe that is what it is.

And inasmuch as, whatever else he may be, Dershowitz isn't stupid, he would probably also want to distance himself from his fellow Trumpians over "unitary executive" doctrine, the legal theory according to which the president is, as it were, the Commander-in-Chief not only of the armed forces, but of the entire executive branch.

Buy into that and it makes perfect sense that Trump cannot be indicted or even investigated, unless he wants to be. His authority over those who would indict or investigate him is absolute.

This way of thinking bears a certain affinity with seventeenth- and eighteenth-century justifying theories of absolute monarchy, and with related absolutist – and therefore illiberal – political doctrines.

It is hard to imagine most Democrats noticing this – they are not exactly students of defunct political theories — but then it is even harder to make sense of their harping on the claim that the founders were dead set against having a king for head of state, or why they keep faulting Trump for acting as if he were a king.

Their toadies on the "liberal" cable networks are even worse. But this is nothing but anachronistic silliness; in 2020 or even 1920, kingship has nothing to do with it.

It was different in what is nowadays called the Age of Absolutism, but there is no one alive today whose great great great grandfather was alive then. Today, this side of Saudi Arabia and the Persian Gulf, kingship is not a bad thing at all. Some of the more benign governments in the world have kings; if only Trump were more like them.

Why the fixation then on forms of governance that were historically superseded centuries ago; and, for that matter, why all the fuss about what those founders of ours actually had in mind?

Could it be because while the United States is no longer populated mainly by persons of Anglo-Protestant descent, its origins in that cultural space have hardly slackened. Quite to the contrary, they have, if anything, become more secure.

Why else view the Constitution as if it were inerrant Holy Writ? In practice, it may all just be a façade, a formality that determines only how constitutional arguments must be framed.

But “originalism,” the idea that what is to be done is whatever the Constitution’s words prescribe, as best we can ascertain their eighteenth century meaning, is all the rage in legal circles nowadays.

The this-worldly asceticism that Max Weber called “the Protestant ethic” had similar theological origins; and, like originalism, it was, by no means, confined to Protestant true believers. Indeed, it flourished best only as religious faith subsided, and was taken up, early on, by Catholics and adherents of other religious traditions all over the world.

“Originalism” is an extreme version of a similar intellectual and cultural phenomenon. Thus, perhaps its best-known proponent, the late Justice Antonin Scalia, was as Catholic as they come. And now we have Dershowitz, a Jew, arguing, preposterously but nevertheless vigorously, that the House’s two articles of impeachment fail to pass muster on what are essentially originalist grounds.

I would expect that Dershowitz would reject the “originalist” label, again to maintain his liberal bona fides (as if he has any left). He is not above arguing in an originalist way, however, when circumstances make doing so opportune.

Treating the Constitution the way that low church, Protestant theologians once treated the Bible is nonsensical, of course; but it is nonsense we can live with.

Indeed, it is almost certainly wiser now to make an effort to live with it than to set off on a more sensible track – in a country in which two-fifths of the voting public cast their ballots for Trump three years ago, many of them thinking that, even if he is a conman and a scoundrel, he is also literally God’s gift to the commonweal.

The Constitution was the work of an enlightened gentry. Whatever else they were, many of its authors were gifted political theorists. No one could accuse the political class nowadays with that.

Times have changed. For all its flaws and undemocratic aspects, putting the Constitution in question now would almost certainly do more harm, probably a lot more, than good.

Still, one can only wonder how a document written in the eighteenth century, in pre-industrial times, by slave owning planters, merchants dependent on the Atlantic slave trade, and assorted colonial notables, all of them settlers or descendants of settlers of European, mainly British, origin, living on land stolen from and “ethnically cleansed” of its indigenous inhabitants, be relevant to a post-industrial, multi-racial and multi-ethnic, twenty-first century society.

The short answer is: by reading what they wrote through interpretive lenses that diminish some of its more anachronistic aspects, amending the hell out of it, and figuring out ways to read principles into it that are appropriate for modern conditions, but that do not too blatantly contradict the spirit or the letter of its words.

This isn’t easy; it can be a long and arduous process. “We, the people” of the United States have been at it since 1788, when the document took effect. The effort has become the life work of some of the best minds of many generations.

Even so, it would not have been possible unless what those founding fathers wrote was amenable to being read in adaptable ways. Their words were just vague and equivocal enough to build both structure and flexibility into the system they concocted.

We Americans venerate those founders, we have made them the gods of our civil religion. Without doubt, they do deserve high marks for producing a document that is eminently adaptable to changing times. There is no denying, however, that they also saddled us with some exceptionally undemocratic institutional arrangements.

What they wrote does more than establish basic institutional arrangements and the fundamental rules governing their operations. It also implicitly, but effectively, establishes norms that regulate public discourse. Formally, and at least to some extent substantively too, the Constitution they drafted determines how arguments about “constitutionality” must be constructed.

Within those parameters, there are plenty of positions that could plausibly be advanced that the founders could hardly have imagined. But there are also limitations and constraints that cannot be argued away.

The Electoral College is an example; no matter how disabling it may be, and how palpably undemocratic, there is no way around it, short of a Constitutional amendment or a compact that would require Electors in each signatory state to vote for the candidate

who gets the most votes at the national level, regardless the outcome in their own state, joined by enough states to assure an Electoral College victory.

Neither way is easily achievable. And so it is that a candidate with fewer votes than another in a presidential election could actually emerge victorious.

For over two hundred years, this was a theoretical problem. In the twenty-first century it has become a major practical problem as well, burdening the United States and the world with our second worst and then our very worst president ever.

The impeachment process is another example. There are lemon laws protecting buyers of automobiles and many consumer goods. However, our founders saw to it that if the people, or rather the Electoral College, elects a lemon, then it is all but impossible to correct the mistake before the next election comes around.

We are living with that problem now.

In the founders' defense, it can be said that they never anticipated the likes of a Trump; the deists and free thinkers among them especially had too much faith in humankind's essential goodness and perfectibility.

They did, however, have little faith in the wisdom of the general – largely rustic and uneducated — public. Thus the institutional arrangements they concocted – not just the Electoral College, but the Senate as well — were undemocratic by design.

Also, they took for granted that the franchise would be effectively restricted to white male property holders. Thus, they saw to it that, the demos, the people as distinct from social and economic elites, were, like the slave population and the indigenous peoples living on the lands that colonists had settled upon were excluded from the political arena altogether.

The downside was, of course, to make a mockery of “we, the people.” The upside was to increase the likelihood that the three branches of government they established would be staffed not by venal incompetents, but by persons of at least minimal ability and decency, and that their aim, and the aim of enfranchised persons generally, would be to advance the public good, not their own self-interest.

The founders' understanding too was that they would do this as individuals, without the mediation of organized political parties or factions. That prospect emerged stillborn, but it has nevertheless taken a while, and several grievously flawed judicial rulings, to turn our

electoral politics into an arena of shameless hucksterism in which money, not public reason, rules.

The founders thought they were founding something modeled on the Roman forum. However, what they bequeathed us ended up more like a carnival overrun with hucksters and mountebanks.

And so, we now have Donald Trump in the White House, and are having a hell of a hard time getting him out of there.

In his impeachment trial, the fix is in, and the chances that will change are vanishingly small. But if Democrats play their hand well, the trial and the events around it can at least help hobble the guilty party in ways that would preventing him from doing some of the harm he might otherwise do.

It would be better of course to see Trump found guilty as charged, but his removal from office, in the constitutionally prescribed way, would hardly be an unmixed blessing. Thanks, again, to those founders, were Trump to go, Mike Pence would take his place and the Trump administration would remain intact, unless and until Pence decided to make changes in it.

Instead of a blustering moral reprobate, we would be led by an insipid theocrat; an improvement certainly, but hardly one to regret not being able to live through. A Pence presidency, even were it only to last until Inauguration Day 2021, would be an unmitigated disaster too – better, of course, than the only other constitutionally permissible alternative, another year of Trump, but not good at all.

CounterPunch 24.01.2020