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The Coup Already Underway



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This might be a good time for Americans to stop masochistically worshipping at the feet of their nation's authoritarian Constitution. A proto-fascistic genocidal racist maniac and anti-science eco-extremist determined to kill two million more Americans with COVID-19 sits in the White House thanks in no small part due to the absurdly venerated 1788 United States Constitution.

How the Founders Put Trump In

For the fifth time in American history, a candidate who lost the national popular vote became president. Thank the holy charter's Electoral College, which selects the president on the basis an archaic formula that vastly over-represents the nation's most rural, white, and reactionary regions and reduces serious presidential campaigning to a relatively small handful of states where the winner-take-all Electoral College slates are contested.

In nearly every state, the candidate who receives the most votes statewide is entitled to the vote of all the state's electors. If President Donald Trump receives 47.5 % of the vote in

Ohio, and that former Vice President Joe Biden receives 47.4% of the vote there, all of Ohio's 18 electoral votes would be allocated to Trump.

Americans do not elect "their" president – absurdly described as "our commander-in-chief" by talking heads liberal and conservative – on the basis of one person, one vote.

Simon, I mean "our" holy 18th century charter says.

(Try to explain the Electoral College to someone from another country, some day. It's an entertaining exercise.)

The Democratic Party might have run a candidate who would have won enough votes in 2016's contested states to get past the Electoral College hurdle to keep the child-separating, climate-denying, pandemic-spreading lunatic Trump out of the White House. But they didn't, thanks largely to the shockingly unlimited role that concentrated wealth plays in the Americans candidate selection process. That plutocratic role has been as the law of the certified in two key U.S. Supreme Court decisions – *Buckley v. Valeo* (1976) and *Citizens United* (2010).

Public office is up for private sale, the Supreme Court says. Most of the populace hates this, naturally, but the high court has the final say. Simon, I mean Holy Charter, Says.

The Founders' Absurd High Court

On campaign finance and on numerous other matters, the U.S. Supreme Court stands well to the starboard side of the majority progressive populace. It's about to get even more extremely to the right of public opinion with the highly unpopular Trump's soon-to-be-successful appointment of a deeply reactionary jurist, Amy Coney Barrett, a near certain candidate to cast highly unpopular votes to abrogate women's abortion rights, to push millions of Americans off the health insurance rolls in the middle or wake of a great pandemic, and to validate the privatization of Social Security.

Ms. Coney-Barrett couldn't tell her Senate confirmation committee last Tuesday that she will oppose Trump refusing to leave office if he loses the 2020 election (Electoral College count). She couldn't express an opinion for or against the president suspending the election. She could not declare that the president doesn't have the power to deny voting rights to women or to minorities. She could not express an opinion on the reality of climate change.

All of this and more in Barrett's record and world view stand far to the extreme right of the U.S. citizenry. But so what if the nation's reactionary high court is dangerously out of step with the views of the citizenry and about to get more that way? The Constitution mandates that Supreme Court justice are appointed for life by presidents and confirmed by the U.S. Senate.

Holy Charter says.

The Founders' Absurd Senate

The president and the Supreme Court are far to the right of the people but his absurd and dangerous presence in the White House is fully constitutional.

The same goes for the U.S. Senate, the body that is about (as I write on Thursday, October 15th) to approve the Christian fascist Coney-Barrett. It stands well to the starboard side of the populace because the Constitution allots two U.S. Senators to each state regardless of each state's total population. Giant, liberal, diverse, and progressive California has more than 39 million people and two U.S. Senators. Small, disproportionately white, rural, and conservative Wyoming has just over half a million people and two U.S. Senators. How pathetic.

This is a blatant violation of the core democratic principle of one person, one vote.

But “that’s the way it is” (to use longtime beloved U.S. news anchor Walter Cronkite’s famous sign-off) under the sacred 18th Century parchment, adopted when Louis XVI still reigned over France and members of the U.S. Constitutional Convention rode in horse-drawn buggies

It’s absurd from a democratic perspective, but Holy Charter Says.

The Absurd Difficulty of Removing “The Most Dangerous Criminal in Human History”

At least eight months into the first year of Trump’s presidency, around the time of Charlottesville, a decent and functioning democracy would have gotten rid of the sick fascistic ogre Trump through new elections or legal proceedings for removal. Nothing doing under the Holy Charter. The absurdly venerated 18th Century Constitution mandates savagely and strictly time-staggered presidential elections once every four years. The bar for removal through the impeachment clause is so extremely high that it has been properly deployed only once in American presidential history chock full of sociopathic criminality (Richard Nixon only avoided full removal by impeachment because he resigned before the votes could be cast). A two-thirds vote in the Senate is required for removal, an almost hopelessly unattainable benchmark.

Removal is close to impossible under the Constitution’s 25th Amendment, which any decent Vice President and cabinet would have activated by now against the demented fascist oligarch Donald Trump, who richly deserves [Noam Chomsky’s description](#) of him as “the most dangerous criminal in human history.” [1]

Holy Charter Simon Says removing a sitting president between elections is damn-near legally impossible.

The All-Too Constitutional Rolling Coup Already Underway

Which brings us to the current election. The Trump administration and the Republican Party’s multi-level assault on the American electoral process is already underway. It is being carried out because the Trump-Pence-Miller-Barr regime is an arch-authoritarian far-right formation that seeks unchallenged dominance, lacks support from a majority of voters, and has a long list of declared enemies and groups in its crosshairs.

“The President of the United States is Actively Subverting Our Electoral System”

The principle mechanisms of this developing anti-election strategy are at least five-fold: racist and partisan voter suppression in key battleground states, replete with the sending of armed “poll-watchers” into minority precincts; attacking the legitimacy of the mail-in ballots that are required by the pandemic Trump spread across the nation; preparing an army of lawyers to contest the election in states that go for Biden, with the expectation that a 6-3 right-wing Supreme Court will side with Trump; preparing violent fascist and white supremacist mobs to go into the streets to intimidate voters, protesters, and policymakers; preparing to declare martial law and putting in the streets paramilitary forces (from the Department of Homeland Security, especially ICE and Border Patrol), accountable only to the president.

Don’t take it from a “radical Left” Marxist like me, [An open letter to the country’s highest ranking military officer](#), Chairman of the Joint Chiefs General Mark Milley, from two esteemed and retired military commanders, Lt. Colonels John Nagl and Paul Yingling warns: *“The president of the United States is actively subverting our electoral system, threatening to remain in office in defiance of our Constitution. In a few months’ time, you may have to choose between defying a lawless president or betraying your Constitutional oath”* to defend the republic “against all enemies foreign and domestic.”

The enemy today is domestic: a “lawless president,” Nagl and Yingling continue, who “is assembling a private army capable of thwarting not only the will of the electorate but also the capacities of ordinary law enforcement. When these forces collide on January 20, 2021, the U.S. military will be the only institution capable of upholding our Constitutional order.”

With the Republican Party “reduced to supplicant status,” totally subordinate to Dear Leader Trump, Chairman Milley should be ready to send Pentagon forces to scatter Trump’s “little green men...” Should you remain silent, Nagl and Yingling write, “you will be complicit in a coup d’état.”

Truth is stranger than dystopian political science fiction.

Much of The Subversion is Constitutional

Much of the ongoing rolling coup is extra-constitutional, but much of it isn’t. Most of the voter suppression is technically legal, legislative, and “constitutional,” like the state-level voter ID laws that discriminate against Black people and college students and the recent federal court ruling upholding de facto felony voter disenfranchisement in Florida.

There’s nothing “unconstitutional” about Trump using his bully pulpit to try to discredit mail-in ballots or even to rally right-wing vote intimidators. If battleground election states don’t vote his way, as polling indicates, expect Trump to double- and triple-down on his claims of illegitimacy, adding the charge of “Chinese interference” and invoking emergency powers to direct his compliant Justice Department to investigate alleged “Chinese election hacking” in those states. Trump possesses those emergency powers under the Constitution. His insane claims about Beijing’s “rigging” of the election will be fully constitutional free speech.

It is fully constitutional, of course, for Trump's lawyers to work with the Republicans who control both houses of state legislatures in numerous contested states to contest popularly elected state-level Electoral College slates that support Biden. And much to the surprise of some Americans, there's nothing in the Constitution compelling state governments to send Elector slates that reflect the popular vote in their jurisdictions. The Trump team and its Republican allies will certainly challenge state Electoral slates that don't go their way. It will be fully "constitutional" for them to do so.

Under one distinctly possible scenario, the contestation of slates (with Democratic state governors backing the popularly elected slate and Republican state legislatures backing an alternative assigned slate) before the Supreme Court could deny either candidate the necessary 270 Electoral College votes. The high court would then throw the election into the U.S. House of Representatives, where, under the Constitution's 1804 Twelfth Amendment, Trump would prevail since the House's decision would be based not on which party has the most total members (non on one representative, one vote) but instead on which party holds a majority in the most state-level House delegations.

That is an absurd violation of one person, one vote (Democrats significantly out-number Republicans in the House), but so what? Holy Charter Simon Says that's just how it goes.

The Republicans currently control 26 of the nation's 50 state-level House delegations. That could change, however, if the Democrats flip one congressional seat in each of Pennsylvania, Florida, and Montana in November. The new Congress is seated on January 3, 17 days before the presidential inauguration and three days before it votes to accept or reject Electoral College votes.

But winning a majority of the House delegate majorities means overcoming the savage state-level partisan and racist gerrymandering of U.S. House district lines, something that is sadly all too "constitutional." While there are ongoing 14th Amendment challenges to gerrymandering, nothing in the Constitution forbids the anti-democratic gerrymandering of state districts and the current right-wing Supreme Court backs Republican gerrymandering.

The Supreme Court could alternately respond to contested Elector slates by citing the bizarre 1887 Electoral Count Act (ECA), which says that both houses of Congress would determine which Electoral slates are accepted. There is a major *caveat* to this rule, however. If the two houses of Congress (the House and the Senate) cannot agree on which slates to accept, the decision goes back to state governors in the contested states under the ECA. That would likely favor Biden since the Democratic House and the Republican Senate will certainly not agree on which slates to accept and 5 of the nation's 8 contested states (Michigan, Minnesota, North Carolina, Pennsylvania, and Wisconsin) have Democratic governors. Those 5 states account for a total of 72 Electoral College votes whereas the 3 contested states with Republican governors (Arizona, Florida, and Georgia) account for a total of 56 Electoral College votes.

So, don't look for the right-wing U.S. Supreme Court to opt for sending the coming contested election to both houses of Congress – really to contested state governors – under the terms of the 1887 ECA.

Even if a new, more completely Democratic House rules in Biden's favor, we should expect Trump and his personal white nationalist attorney general to contest the election in the Supreme Court, which can be expected to decide the election in his favor. Trump obviously has the fully constitutional right to work with his right-wing authoritarian allies in the highly unrepresentative U.S. Senate to quickly install a far-right Supreme Court justice who will vote his way, giving final say ala *Bush v. Gore* to his theft of the election. Trump has openly acknowledged that this why he is moving to have Coney-Barrett installed as soon as possible. If all this sounds absurdly complicated, that's because it is, on purpose, in ways that are simply not going to be grasped by the populace. Only 4 in 10 Americans can correctly name the three branches of U.S. government under the U.S. Constitution.

The Coming Absurd Trump v. Biden Decision?

And let us not naively assume that the soon-to-be super-majority (6-3) right-wing Supreme Court will be bound by constitutional principles in making a final determination before next January 20th. Expect it to rule in accord with raw right-wing power calculations to grant the fascist Trump-Barr-Miller-Pence-Hannity-Carlson administration a second term (how about a third?). We should recall that *Bush v. Gore* threw out all constitutional precedent and declared itself a non-precedent-setting decision in order to bluntly halt the re-counting of ballots in Florida and just install the popular vote loser George W. Bush as president on a partisan basis. Bush would have lost Florida and the Electoral College if the Florida re-count had not been stopped. It was an openly and explicitly authoritarian and partisan decision, a raw power move.

There's every reason to expect another absurd, openly despotic, authoritarian, and nonsensical decision titled *Trump v. Biden* this January. The current reigning White House regime and its Trumpified party are white-nationalist and neofascist, defined among other things by lawlessness in the name of "law and order." They will gladly dispense with logically consistent legal argument if necessary, to stay in power and jam their combined white-identitarian Amerikaner and corporate-oligarchic agenda down the throats of a pulverized and divided citizenry. Like the nation's aristo-republican Founders, they do not remotely believe in democracy and are ready to use means both constitutional and extra-constitutional to keep it at bay.

Beyond "Parchment Barriers"

We the People cannot rely on the absurdly venerated 18th Century Constitution and its holy high court to rid ourselves of the fascist Trump nightmare. As [Chomsky recently wrote](#): "James Madison once said that liberty is not protected by 'parchment barriers' — words on paper. Rather, constitutional orders presuppose good faith and some commitment, however

limited, to the common good. When that is gone, we've moved to a different sociopolitical world."

It's a world where we can't rely on "parchment barriers" to authoritarian rule – especially "parchment barriers" from a national charter that was designed with the explicit goal of keeping democracy at bay. We will have to undertake mass protests and civil disobedience in order to convince the powers that be, including (wild as this sounds to say) the military command, that Trump has go at least by January 20th of next year (sooner would be better given the lunatic's power to wreak unimaginable havoc). In doing so, we should expect a confrontation with Trumps' all-too-constitutional authority to invoke emergency powers under the Insurrection Act of 1807 to call up the U.S. military against domestic protesters. His constitutional Darth Vader William Barr has already insanely and menacingly threatened to charge "Sedition" is Americans protest on Election Night.

By all means vote (it takes five minutes once every 1,460 days), but do not be fooled into thinking that the electoral process and the Constitution will save us from the Trump nightmare. We the people will have to make it clear in the streets, workplaces, and public squares that the nation will become permanently ungovernable (and unprofitable) unless and until the government, including its military, agrees to remove "the most dangerous criminal in human history" from the world's most powerful office. Then we must mobilize and stay in the streets and public squares to undertake what Dr. Martin Luther King, Jr., called "the real issue to be faced" – "the radical reconstruction of society itself." And in the United States, it is too rarely noted, that project includes drafting and passing a new national charter, one that honors and implements the principle of popular sovereignty, something that the nation's slave-owning and merchant capitalists Founders saw as their ultimate nightmare — with no small reason.

This would be a revolution, the first one in American History, long overdue.

Endnote

1. Chomsky [last February](#): "Are the [UkraineGate] crimes discussed a basis for impeachment? Seems so to me. Has Trump committed vastly more serious crimes? That is hardly debatable. What might be debatable is whether he is indeed the most dangerous criminal in human history (which happens to be my personal view). Hitler had been perhaps the leading candidate for this honor. His goal was to rid the German-run world of Jews, Roma, homosexuals and other 'deviants,' along with tens of millions of Slav' 'Untermenschen.' But *Hitler was not dedicated with fervor to destroying the prospects of organized human life on Earth in the not-distant future (along with millions of other species). Trump is.* And those who think he doesn't know what he's doing haven't been looking closely." And of course, as Chomsky surely knows as well as anyone, the Third Reich even at its peak power had nothing like the global military capacity to end all life on Earth that is currently possessed by the American Empire.

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Paul Street's new book is [The Passive Resistance: Obama, Trump, and Politics of Appeasement](#).

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