

# Trump's Straussian Shyster

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2022-03-15T16:20:29

Faced with the terrible events in Ukraine, readers of this blog can be forgiven for having missed a key development in the US House of Representatives' investigations into the January 6, 2021 attack on the Capitol. Emails now available to congressional investigators suggest that John C. Eastman, the Trump lawyer behind the failed attempt to overturn the presidential election results, knew that his activities violated the US Electoral Count Act, the most important statute regulating the final tallying of electoral votes in presidential elections. Eastman's activities shed light on ideological traits of Trumpism that have received little attention from legal scholars. He and other hardcore Trump disciples have relied on a highly selective interpretation of the ideas of Leo Strauss (1899-1973), the German Jewish refugee political thinker, to justify Trump's authoritarian proclivities. Their ideological brew continues to threaten constitutional government in the United States.

## Leo Strauss and his followers

Eastman's admission that his acts were illegal bolster the House committee's case that he and other Trump intimates [defrauded and obstructed Congress](#). In a shocking memo, [Eastman advised Pence to declare Trump president, despite his clear electoral defeat by Joe Biden](#). After Pence failed to follow his lousy legal advice, Eastman even had the gumption to blame Pence, but not his own boss Trump, for the violent right-wing riots on January 6<sup>th</sup>. Many legal scholars, including this author, [have turned to Carl Schmitt to make sense of Trump's authoritarianism](#). Unfortunately, we have neglected [Trump's close ties to right-wing followers of Leo Strauss](#). Strauss was a complicated figure who has had a huge impact among conservative US political theorists. As a young scholar in Germany, Strauss favored an authoritarian resolution of Weimar's final political crises.<sup>1)</sup> Nicholas Xenos, *Cloaked in Virtue: Unveiling Leo Strauss and the Rhetoric of American Foreign Policy* (New York: Routledge, 2008). Not surprisingly, Strauss was traumatized by Weimar's collapse, which he partly attributed to moral relativism and German intellectuals' failures to embrace the political wisdom of classical antiquity, as most impressively found in Plato and classical natural law. Predictably, one of Strauss' regular targets was the liberal democrat and legal positivist Hans Kelsen, whose rejection of moral absolutism Strauss viewed as complicit in interwar Germany's pathologies. Such absolutes, Strauss countered, were indispensable to sound politics and could only be grounded on the basis of classical natural right.

Strauss ultimately made his peace with liberal democracy in the United States, where he thrived professionally and became a professor at the prestigious University of Chicago. Given his premodern and antidemocratic normative preferences, that peace was unavoidably uneasy and fragile, a fact recently corroborated by the sharply diverging responses among his disciples to Trump's authoritarianism.

Prominent Straussians like William Kristol and Harvey C. Mansfield, Jr. have spoken out eloquently against Trump. Other Straussians, mostly affiliated with the right-wing Claremont Institute (at California's Claremont-McKenna College), have embraced Trump. They interpreted Trump's call to "make America great again" as consistent with the Claremont Institute's self-proclaimed mission to restore the original "[principles of the American founding to their rightful, preeminent authority in our national life.](#)" Eastman, who earned a PhD at Claremont Graduate School and remains a Claremont Institute affiliate, belongs to this second camp.

## The Claremonsters' cold civil war

As one of Eastman's Claremont colleagues, Glenn Ellmers, has recently bragged, the self-described "Claremonsters" immediately "gave intellectual legitimacy" to Trump's "populist revolt against the politically correct contempt of the ruling class," a revolt they supported by fervently buttressing his cause.<sup>2)</sup> Glenn Ellmers, *The Soul of Politics: Harry v. Jaffa and the Fight for America* (New York: Encounter, 2021), p. 291. [The Claremonsters early on endorsed Trump's presidential bid.](#) They transformed the Institute's core publications, *The Claremont Review of Books* and *The American Mind*, into pro-Trump ideological organs and subsequently served in official and semi-official capacities for Trump in Washington D.C. *Claremont Review*, for example, published an incendiary, [widely discussed endorsement of Trump's 2016 candidacy by Michael Anton](#), a Claremont graduate who later went on to work for Trump on the National Security Council. A Claremont senior fellow, Director of its Center for Constitutional Jurisprudence, and former clerk to Supreme Court Justice Clarence Thomas, Eastman is the most prominent lawyer among the Claremonsters. He and his Claremont colleagues have reworked Strauss' legacy into a crude pro-Trump apology.

A vivid statement of their constitutional thinking can be found in *Crisis of the Two Constitutions* (2021), the most recent book by Charles Kesler, the Claremont Institute's leading intellectual figure, editor of *Claremont Review*, and a member of Trump's ill-fated 1776 Commission, a controversial body tasked with opposing leftist views of US history supposedly widespread among teachers and scholars.<sup>3)</sup> Glenn Ellmers, *The Soul of Politics: Harry v. Jaffa and the Fight for America* (New York: Encounter, 2021). Strauss' preoccupation with Weimar looms large among the Claremonsters. Kesler ominously warns that "[e]very republic eventually faces what might be called the Weimar problem. Has the national culture, popular and elite, deteriorated so much that the virtues necessary to sustain republican government are no longer viable?"<sup>4)</sup> Kesler, *Crisis of the Two Constitutions: The Rise, Decline, and Recovery of American Greatness* (New York: Encounter, 2021), p. 376. Reminiscent of crisis-plagued Weimar, the US is undergoing a "cold civil war," with two diametrically opposed visions of the constitutional order engaged in a life-or-death struggle. The first, superior original constitutional order has roots in classical natural right and the unsurpassed wisdom of its eternal moral verities; a second pathological constitutional order represents an assault on natural right. According to Kesler, Americans mistakenly assumed that revolutionary challenges to their republic came to an end with the Soviet Union's demise. In reality, liberals and progressives

at home have been waging a war to supplant the founders' original constitutional vision, firmly rooted in unchanging natural right, with a novel left-leaning system whose ascent would mean victory for moral relativism and nihilism. Even the mild-mannered Joe Biden represents a revolutionary figure actively cooperating with "woke" mobs that have occupied streets and are bent on transforming America's cold into a "hot" civil war.

Despite Trump's efforts to overturn the election results, Kessler still praises the former president's "courage in defense of one's own" (p. 396). By mobilizing a mass movement to uphold the framers' original constitutional model, Trump could have succeeded where previous Republican presidents foundered. Kesler not only views the US founding as resting on elements of classical natural right, but he also hopes that heroic presidential leadership might successfully "revive the founders' wise principles and fortify them again with prudent statesmanship" (p. xvii). Trump's opportunity to revitalize the republic stemmed from his leadership of a popular movement that opposed the consolidation and expansion of liberalism and progressivism, forces that even Ronald Reagan had failed to thwart by acquiescing in the administrative and welfare state's cancerous growth. "Perhaps only a genuine outsider could have smashed it" (p. 395). Trump, it seems, fit the bill.

Astonishingly, Trump's disdain for longstanding political mores, institutional norms, and the rule of law is simply ignored. Why? For Kesler, "[t]here is an old distinction – between constitutional law and the law of the Constitution – that might be repurposed here" (p. xv). Trump stood valiantly on the side of the latter and against the former, which has been polluted by poisonous liberal and progressive public policies and reforms. Judicial precedents that impeded Trump merely represent diseased products of the second, liberal-progressive constitutional system, and thus "are not of interest to us" (p. xv).

## **The danger of constitutional reactionism**

It takes little imagination to see how this constitutional interpretation opened the door to the Claremonsters' Trumpism. Nor is it difficult to see how it produced a shyster like Eastman. If the US already finds itself in a "cold" civil war, why worry about condoning illegalities to protect the republic from its existential enemies? If Trump represents the guardian of the constitutional order's superior original core, joining forces with him against its enemies makes sense. Why let the legal technicalities of the US Electoral Count Act impede the resurrection of the framers' original constitutional vision, based in eternal moral truths? Not surprisingly, the Claremonsters have expressed [little if any remorse for their role in Trump's presidency or his illegal attempt to stay in power](#).

A familiar Schmittian disdain for legality amid an existential crisis remains crucial to this narrative. Echoes of Schmitt's view of authoritarian presidentialism as the main guardian of the constitutional order's fundamentals, interpreted in a suitably right-wing fashion, also make an appearance here. [Those who have highlighted Trump's Schmittian instincts](#) are right to do so.

Yet it would be a mistake to miss how Schmittian instincts have been repackaged in a reactionary constitutional originalism that invites an authoritarian rollback of decades of political progress. It was Strauss, not Schmitt, who called for a revival of the illiberal and antidemocratic natural law of classical antiquity. The fact that none other than the buffoonish Donald Trump is tasked with guarding the wisdom of both the founding “fathers” and classical natural law speaks volumes about the bankruptcy of the Claremonsters’ political vision. That vision’s many intellectual weaknesses hardly make it any less dangerous to a beleaguered American democracy.

## References

- Nicholas Xenos, *Cloaked in Virtue: Unveiling Leo Strauss and the Rhetoric of American Foreign Policy* (New York: Routledge, 2008).
- Glenn Ellmers, *The Soul of Politics: Harry v. Jaffa and the Fight for America* (New York: Encounter, 2021), p. 291.
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