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The Capitol Riot, Racism and the Future of American Democracy

Ryan T. Williams*

ABSTRACT

The Capitol Riot in Washington D.C. was a coup attempt intending to upend American democracy. Although the attempted coup was ultimately unsuccessful, it remains a matter of ongoing concern. The socioeconomic and political factors that lead to the coup, namely the ever-broadening gap between the rich and poor in America, along racial lines, massive unemployment leftover from a worldwide pandemic, and social unrest and discord, still exist. History has shown when these factors are present—democracies fail. This Article examines the current, precarious state of American democracy, starting with unsettling comparisons to 1930's Germany and concluding with an examination of famed historian Juan Linz's Litmus test for a healthy democracy. Alarming, America is failing this test. If American democracy is to continue, real change must happen. If not, the Capitol riots were not the culmination of angst and frustration, but merely the beginning.

Turn your cameras please and show what's really happening out here because these people are not going to take it any longer.

They're not going to take it any longer . . .

We will never give up, we will never concede. It doesn't happen.

You don't concede when there's theft involved . . .

But just remember this: You're stronger, you're smarter, you've got more going than anybody. And they try and demean everybody having to do with us. And you're the real people, you're the people that built this nation. You're not the people that tore down our nation . . .

And if you don't fight like hell, you're not going to have a country anymore...

So we're going to, we're going to walk down Pennsylvania Avenue. . .

And we're going to the Capitol . . .¹

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¹ *Transcript of Trump's Speech at Rally Before US Capitol Riot*, ASSOCIATED PRESS (Jan. 13, 2021), <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27> (This represents only a portion of the speech given by President Donald Trump on January 6, 2021 in Washington, D.C.).

President Donald Trump made those remarks to his supporters on January 6, 2021 in Washington D.C.² What happened next is widely regarded one of the worst moments in American history.³ Hundreds of people followed the command of the Commander and Chief, marched down Pennsylvania Avenue and stormed the U.S. Capitol.⁴ The ensuing riots and attack on the Capitol are well documented.⁵ What is not as well documented, is the composition of the people that were arrested for storming the Capitol. Of the 221 people that were arrested, “only about 10% of those charged have been found to have ties to organised far right militias or other right-wing extremist groups.”⁶ In other words, the vast majority of the most violent and troublesome rioters were “ordinary pro-Trump activists.”⁷ This makes it near impossible to simply dismiss the Capitol rioters as fringe, far right-wing bad apples. Instead, it underscores the bigger problem – the chasm between the haves and have nots continues to grow, largely along racial lines, and it threatens to tear America apart. The threat to American democracy is ongoing and real.

In 2015, I warned that American democracy was eroding and tried to sound the alarm.⁸ Since that time, highlighted by the attack on the Capitol, the situation has deteriorated significantly. The worldwide pandemic of COVID-19 decimated America’s economy and put

² See *id.* at 1, 4, 19.

³ See Colleen Flaherty, ‘*Far Worse Than Nixon*’, INSIDE HIGHER ED (Jan. 7, 2021), <https://www.insidehighered.com/news/2021/01/07/historians-and-political-scientists-react-wednesdays-siege-capitol> (writing that “[scholars] shared feelings of disbelief -- and of having their expectations of President Trump’s final days in office fulfilled”).

⁴ Sam Cabral & Roderick Macleod, *Capitol Riots: Five Takeaways from the Arrests*, BBC NEWS (Feb. 9, 2021), <https://www.bbc.com/news/world-us-canada-55987603>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Ryan T. Williams, *The Road Most Travel: Is the Executive’s Growing Preeminence Making America More Like the Authoritarian Regimes She Fights So Hard Against*, 6 ALA. C.R. & C.L.L. REV. 139 (2015) (predicting America will become less of a democracy and more of an authoritarian regime without Congressional and Judicial checks on the Executive Branch).

millions out of work.⁹ In addition, many people simply no longer feel safe, and not just from COVID-19, but also from the government, from the police, from protestors, from rioters, from each other.¹⁰ Police are shooting black men in the streets at alarming rates;¹¹ and when some people look outside their window they see large groups of loud and angry people marching towards them.¹² As will be explored, these co-destabilizing forces – economic inequity and civil unrest – philosophically and historically are problematic for democratic solvency. This Article focuses mostly on the historical, in an attempt to determine the threat level to American Democracy, by identifying the ways in which America is currently experiencing the same historical risk factors that often precede civil war and/or a landmark sea change in government. In so doing, the Article will also dispel the notion that American democracy is too big or too great to fail.

The Article begins with an examination of 1930s Germany, because the parallels between that democratic state and the United States today are too great to ignore. In sum, it will be explained that if America stays on its current course, it is on a path away from democracy,

⁹ See Mike Patton, *The Impact of Covid-19 On U.S. Economy And Financial Markets*, FORBES (Oct. 12, 2020), <https://www.forbes.com/sites/mikepatton/2020/10/12/the-impact-of-covid-19-on-us-economy-and-financial-markets/?sh=6239433a2d20> (reporting a 31.40% fall in real GDP growth in the second quarter of 2020, levels “not seen since the Great Depression”).

¹⁰ See *New APA Poll Shows Surge in Anxiety Among Americans Top Causes Are Safety, COVID-19, Health, Gun Violence, and the Upcoming Election*, AM. PSYCH. ASS’N (Oct. 21, 2020), <https://www.psychiatry.org/newsroom/news-releases/anxiety-poll-2020> (“62% of Americans feel more anxious than they did at this time last year... When asked what made them extremely or somewhat anxious, Americans said the top issues were: keeping themselves and their family safe (80%), COVID-19 (75%), their health (73%), gun violence (73%) and the upcoming presidential election (72%)”).

¹¹ See Ray Sanchez, *Jacob Blake's Shooting Shows America Has a Long Way to Go in its Journey Toward a Racial Reckoning*, CNN (Aug. 31, 2020), <https://www.cnn.com/2020/08/30/us/jacob-blake-shooting-one-week-later/index.html> (quoting Alexis Hoag: “Blake's shooting was another disheartening reminder of pervasive and entrenched racial violence in America”).

¹² See Victoria Albert, *St. Louis Couple Who Pulled Guns on Protesters Charged with Unlawful Use of a Weapon*, CBS NEWS (July 21, 2020), <https://www.cbsnews.com/news/mark-patricia-mccloskey-charged-unlawful-use-weapon-st-louis-protest/> (quoting Mark McCloskey: “It was like the storming of the Bastille, the gate came down and a large crowd of angry, aggressive people poured through,” he said. “I was terrified that we'd be murdered within seconds. Our house would be burned down, our pets would be killed”).

similar to Germany in the 1930s. If that scares you as a reader, it should. To better understand the threats to democracy, the Article further examines the “litmus test,” devised by famed political scientist Juan Linz describing actions by politicians that can put democracy at risk,¹³ as applied to recent events by the former Trump administration, to further demonstrate the extent of the threat to democracy.

Before one can begin to fix the problem, one has to know the extent of the problem. This Article explores the extent of the problem, in the hopes that Americans take head and begin in earnest coming together to fix it.¹⁴ On the contrary, eschewing hard conversations, ignoring uncomfortable historical parallels, avoiding the reality that democracy and the American way of life is increasingly not for everyone in America, could lead to the end of democracy in America. In the words of Jean-Jacques Rousseau, “man cannot begin to behave decently unless he has some assurance that others will not be able to ruin him.”¹⁵

I. PARALLELS TO 1930S GERMANY

Democracy as a concept is not new. But lasting democracy is relatively new, as evidenced in part by the number of failed democracies throughout history. The fall of Germany’s democracy in the 1930s, however, is particularly instructive to American democracy today. As Plato explained, “How does tyranny arise? That it comes out of democracy is fairly clear.”¹⁶

Before we start at 1930, we have to look at the circumstances surrounding the rise of the Third Reich and the foundation that lead them to come to power. Much has been written about

¹³ See Steven Levitsky & Daniel Ziblatt, *Democracy's Fate May Hang in the Balance Even if Donald Trump Loses*, VOX (Nov. 7, 2016), <https://www.vox.com/polyarchy/2016/11/7/13547642/democracy-fate-trump-loss> (citing Juan J. Linz).

¹⁴ This is not about partisanship. Whomever is in charge, Americans must come together if they want democracy to continue.

¹⁵ KENNETH WALTZ, *MAN, THE STATE, AND WAR: A THEORETICAL ANALYSIS* 6–7 (Columbia Univ. Press 1959).

¹⁶ Plato, *THE REPUBLIC* VIII 562 (Alexander Kerr trans., Charles H. Kerr & Co. 1918).

World War I, the war to end all wars,¹⁷ though for our purposes we can simply examine the aftereffects. A common narrative (and not altogether untrue) is that the Allied victors significantly punished Germany with sanctions and reparations and as a result Germany's economy languished¹⁸, until it elected a leader to turn its situation around and restore Germany to greatness. The leader, of course, was Adolf Hitler, whom history too often recalls as simply a ruthless dictator, forgetting (or consciously ignoring) the fact that he rose to power legally in a democratic Germany.¹⁹ Hindsight is 20/20 but in real time people often miss things, which is how if people are not careful, the warnings signs of a failing democracy can sneak up on them.²⁰ Looking at American history, many people thought Jimmy Carter was one of the worst President's ever,²¹ until George W. Bush came along and he was the worst,²² until Donald Trump was elected and he was the worst,²³ until finally . . . X comes along and leads America away from democracy?²⁴ Thus, there is still time before X President comes to power and ruins American

¹⁷ See generally ADAM HOCHSCHILD, *TO END ALL WARS* (First Mariner Books ed. 2012).

¹⁸ See Roger B. Myerson, *Political Economics and the Weimar Disaster*, 160 J. OF INST. AND THEORETICAL ECON 187, 189 (2004) (discussing German Chancellor Bruning's deflationary economic policies as a contributory factor of the severe German depression).

¹⁹ See *Germany 1933: From democracy to dictatorship*, THE ANNE FRANK HOUSE, <https://www.annefrank.org/en/anne-frank/go-in-depth/germany-1933-democracy-dictatorship/> (last visited Mar. 26, 2021) ("although Hitler was not elected by the German people, he still came to power in a legal way").

²⁰ *Id.*

²¹ *The Rankings*, WALL ST. J. (Sept. 12, 2005), <https://web.archive.org/web/20060207050558/http://www.opinionjournal.com/extra/?id=110007243> (reporting a Federalist Society and Wall Street Journal poll, asking 130 "prominent professors of history, law, political science and economics" to rank past U.S. Presidents on a 5-point scale. Jimmy Carter received a score of 2.24 and ranked 34/40).

²² *Experts: President Bush is a Failure Little Chance to Improve Ranking*, SIENA RSCH. INST. (May 1, 2006), (reporting that the result of an "expert opinion poll" in which 744 professors responded when asked about the Bush Presidency and 82% responded it was "below average" or a "failure").

²³ Tim Naftali, *The Worst President in History*, THE ATLANTIC (Jan. 19, 2021), <https://www.theatlantic.com/ideas/archive/2021/01/trump-worst-president-history/617730/>. Notably, George W. Bush commented on the days leading up to Trump's inauguration that he was like a "kid waiting for Christmas," because he knew he would no longer be the worst President in American history, a day he never thought he would live to see. See also Andy Borowitz, *Bush Counting Down Days Until He Is No Longer the Worst President In History*, THE NEW YORKER (Jan. 17, 2017), <https://www.newyorker.com/humor/borowitz-report/bush-counting-down-days-until-he-is-no-longer-worst-president-in-history> ("When you leave office with the nation in smoldering ruins, you sort of come to accept that you're gonna be worst for a long, long time.").

²⁴ It is the author's sincere hope not to write an article five or ten years from now with a name for X.

democracy, and noting the warning signs and learning from history, before it is too late, is of paramount importance. For these reasons, a look back at Germany after World War I is instructive.

A. *Economic Inequality*

The victorious Allies sent Germany's economy into a tailspin after 1919.²⁵ In short, "the Treaty of Versailles didn't just blame Germany for the war—it demanded financial restitution for the whole thing, to the tune of 132 billion gold marks, or about \$269 billion today."²⁶ Needless to say, Germany had trouble paying.²⁷ The roaring 1920s for the U.S. was not so for Germany. The German economy was mired in debt and massive inflation.²⁸ "By September 1920, prices were 12 times as high as they had been before the war."²⁹

As such, one common excuse for Germany's fall from democracy and embrace of the Third Reich was economic hardship. But it is more complex than that, because the German economic hardship was unequally distributed; the unemployed tended not to vote for the Nazis, but the "well-to-do burghers" did.³⁰ In Peter Fritzsche's "Hitler's First One Hundred Days," he

²⁵ See Roger B. Myerson, *Political Economics and the Weimar Disaster*, 160 J. OF INST. AND THEORETICAL ECON. 187, 189 (2004) (discussing German Chancellor Brüning's deflationary economic policies as a contributory factor of the severe German depression).

²⁶ Erin Blakemore, *Germany's World War I Debt was so Crushing it Took 92 Years to Pay Off*, HISTORY (June 27, 2019), <https://www.history.com/news/germany-world-war-i-debt-treaty-versailles>.

²⁷ It is worth noting that the inflation began before and during World War I, as Germany had borrowed to pay for it, expecting a quick and victorious result. See Matthew Boesler, *Weimar: The Truth About History's Most Infamous Hyperinflation Horror Story*, BUSINESS INSIDER (Sept. 20, 2013, 10:29 AM), <https://www.businessinsider.com/weimar-germany-hyperinflation-explained-2013-9>. Worse still, Germany used "extensive propaganda to hide the inflation from the population." *Id.* This utilization of propaganda to mislead and outright lie to the public is troublingly consistent with the precedent set by the former Trump administration.

²⁸ See Matthew Boesler, *Weimar: The Truth About History's Most Infamous Hyperinflation Horror Story*, BUSINESS INSIDER (Sept. 20, 2013, 10:29 AM), <https://www.businessinsider.com/weimar-germany-hyperinflation-explained-2013-9> (explaining that Germany owed over 500 million gold marks to France in 1922, and in eight years, the cost of some pantry staples increased over thirty times).

²⁹ *Id.*

³⁰ Jennifer Szalai, *A Sobering Look at How Quickly Hitler Transformed Germany*, N.Y. TIMES (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/books/review-hitlers-first-hundred-days-peter-fritzsche.html> (quoting PETER FRITZSCHE, *HITLER'S FIRST HUNDRED DAYS* (2020)).

chronicles the behaviors of Elisabeth Gebensleben, whose husband was a conservative deputy mayor of a town in Germany.³¹

Elisabeth's letters to her daughter, Immo, who was living in Holland, show how someone who undoubtedly saw herself as a nice, law-abiding middle-class woman could countenance the Nazi regime. Elisabeth was unnerved by the beggars and the unemployed Communists who gathered at protests, raising the specter of "civil disorder." She called Hitler's paramilitary brownshirts "a wonderful sight."³²

In the beginning, many of the middle class, non-minority German citizens wanted law and order restored. They saw that the Nazis provided for that and voted in favor of them.³³

Similarly, in 2020 and 2021 America, there was no shortage of "civil disorder," brought about in large part to economic inequality.³⁴ In 2020 COVID-19 decimated the stock market, but it rose back to an all-time high in record time.³⁵ The reason for the rise though was not based on the fiscal health of America's economy.³⁶ It was largely driven by technological stocks, presenting a false picture that the American economy was stable, when it was not.³⁷

³¹ *Id.*

³² *Id.*

³³ See Gary King et al., *Ordinary Economic Voting Behavior in the Extraordinary Election of Adolf Hitler*, 68 J. ECON. HIST. 951, 960-61 (2008) (discussing that people who were at high risk of unemployment supported the Nazis to provide economic stability).

³⁴ See Tim Campbell & Miha Hribernik, *A Dangerous New Era of Civil Unrest is Dawning in the United States and Around the World*, VERISK PERSPECTIVES (Dec. 10, 2020), <https://www.maplecroft.com/insights/analysis/a-dangerous-new-era-of-civil-unrest-is-dawning-in-the-united-states-and-around-the-world/> (explaining that food insecurity, rising unemployment, and racial discrimination has caused an increase in civil unrest in the United States).

³⁵ See Lora Jones, Daniele Palumbo & David Brown, *Coronavirus: How the Pandemic Has Changed the World Economy*, BBC (Jan. 24, 2021), <https://www.bbc.com/news/business-51706225> (discussing how by 2021, the Dow Jones rose 7.1% above what it was before the pandemic began).

³⁶ See Wharton Bus. Daily, *Why is the Stock Market so Strong when the Economy is so Weak?*, KNOWLEDGE @ WHARTON, at 02:28 (Aug. 31, 2020), <https://knowledge.wharton.upenn.edu/article/why-is-the-stock-market-so-strong-when-the-economy-is-weak/#comments> (explaining that the stimulus packages given by the Federal Reserve inflated the stock market).

³⁷ See *id.* at 02:54, (explaining that stocks like Google, Facebook, and Amazon have not been as affected by the current economic conditions and are increasing the overall standing of the stock market).

Unemployment reached the highest levels since the 1930s.³⁸ Meanwhile, sales of yachts and second homes have greatly increased.³⁹ In short, the rich got richer and the poor got poorer, to an extent not seen in nearly 100 years.⁴⁰

In addition, racial tensions in America have peaked.⁴¹ The brutal killings of George Floyd, Breana Taylor, and Jacob Blake were brutal and tragic.⁴² The Black Lives Matter movement was not new in 2020, but what was new, and what sparked an increasingly visceral response, was a recognition of the growing inequality between the haves and the have nots, along racial lines.⁴³ Even before the pandemic, the typical Black household in America had a net worth of just \$17,100; a typical Latinx household was \$20,765; a typical white household was \$171,000.⁴⁴ The COVID-19 pandemic exacerbated these underlying disparities, because people of color with less cash on hand were less able to withstand the loss of jobs and the economic emergencies created by the global pandemic. This, coupled with the increased media attention

³⁸ Greg Iacurci, *Unemployment is Nearing Great Depression Levels. Here's How the Eras are Similar — and Different*, CNBC (May 19, 2020), <https://www.cnbc.com/2020/05/19/unemployment-today-vs-the-great-depression-how-do-the-eras-compare.html> (discussing how the peak unemployment rate was May 1933 at 25.6%, and in April 2020, the unemployment rate was 14.7%).

³⁹ See Chris Woodyard, *'Everyone is Buying Boats' During the Pandemic, and it's Causing a Short Supply*, USA TODAY (Sept. 1, 2020), <https://www.usatoday.com/story/news/nation/2020/08/29/coronavirus-boat-sales-making-waves-pandemic/5639610002/>; Beckie Strum, *Second Homes Are Driving the U.S.'s Covid-19 Housing Boom*, BARRONS (Nov. 20, 2020), <https://www.barrons.com/articles/second-homes-are-driving-the-u-s-s-covid-19-housing-boom-01605885642>.

⁴⁰ See Larry Elliott, *Crash Course: What the Great Depression Reveals About Our Future*, THE GUARDIAN (Mar. 4, 2017), <https://www.theguardian.com/society/2017/mar/04/crash-1929-wall-street-what-the-great-depression-reveals-about-our-future> (discussing how in the 1920s, tax breaks for the wealthiest Americans only increased their wealth, while unemployment numbers also increased).

⁴¹ See Jimena Blanco et al., *US Named as 'High Risk' Country in New Civil Unrest Index – Protests Jump 186%*, MAPLECROFT (June 5, 2020), <https://www.maplecroft.com/insights/analysis/us-named-as-high-risk-country-in-new-civil-unrest-index---protests-jump-186/> (discussing how states like Minnesota and Georgia saw an increase in civil unrest from racial tensions by 1486% and 396%, respectively).

⁴² See Evan Hill et al., *How George Floyd was Killed in Police Custody*, N.Y. TIMES (Mar. 18, 2021), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> (explaining how Derek Chauvin, a Minneapolis Police Officer, knelt on George Floyd's neck for over seven minutes until he lost consciousness and later died).

⁴³ Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, CTR. FOR AM. PROGRESS (April 14, 2020), <https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/>.

⁴⁴ See *id.*

paid to the killing of black people by police officers, lead to massive unrest.⁴⁵ In other words, “it’s become clear it’s impossible to separate social justice from economic justice.”⁴⁶

This example is illustrative of the point. Throughout 2020, I was asked some variation of this same question countless times, by students, family members and academic colleagues alike: “I understand the peaceful protests, but I don’t like the looting and rioting. Why would they rob from and destroy buildings in their own communities? That’s the part that doesn’t make sense.”

This ignores a stark reality that many economically disadvantaged black and Latinx communities are not “theirs.” The aforementioned net worth of black and Latinx families is evidence of a lack of ownership.⁴⁷ They do not own anything in their communities.⁴⁸ They do not own the homes and apartments they reside in,⁴⁹ they do not own the stores they shop in,⁵⁰ they do not own the public buses they ride in.⁵¹ So my answer would routinely turn the question back around to the questioners – is it really your community if you do not own anything? If you are just a renter, temporary by definition, who is one or two missed paychecks away from being evicted, that may not feel like your home then, that is just a place where you are lucky enough to

⁴⁵ See Dhruvil Mehta, *National Media Coverage of Black Lives Matter Had Fallen During the Trump Era – Until Now*, FIVETHIRTYEIGHT (June 11, 2020), <https://fivethirtyeight.com/features/national-media-coverage-of-black-lives-matter-had-fallen-during-the-trump-era-until-now/> (analyzing the large spike in media attention given to police brutality after George Floyd’s killing compared to before his killing).

⁴⁶ Aaron Ross Coleman, *The Devaluing of Black Property has Led to the Devaluing of Black Lives*, VOX (June 9, 2020, 8:20 AM), <https://www.vox.com/2020/6/9/21281948/andre-perry-riot-looting-black-lives-matter-george-floyd> (quoting Andre M. Perry).

⁴⁷ Maxwell & Solomon, *supra* note 43.

⁴⁸ See Coleman, *supra* note 46 (discussing how Blacks have been historically denied housing through redline practices and are still less likely to obtain a mortgage).

⁴⁹ See Maxwell & Solomon, *supra* note 43 (“Today, 73[%] of white families own their home, compared with just 41[%] of Black families, [and] 49[%] of Latinx families. . .”).

⁵⁰ See Robert W. Fairlie, *Latino Business Ownership: Contributions and Barriers for U.S.-born and Immigrant Latino Entrepreneurs*, U.S. SMALL BUS. ADMIN. 6, 10 (Jan. 2018), <https://www.sba.gov/sites/default/files/Latino-Business-Ownership-Research-Paper.pdf> (“[R]elatively low levels of wealth among blacks and Latinos and the existence of liquidity constraints may create a substantial barrier to entry for minority entrepreneurs.”).

⁵¹ See *Consumer Expenditure Survey Data Reveal Disparate Racial Impacts Related to Auto Insurance*, CONSUMER FED’N OF AM., https://consumerfed.org/wp-content/uploads/2017/06/Auto-Insurance-Disparate-Racial-Impacts_Report.pdf (last visited Apr. 1, 2021) [hereinafter *Consumer Expenditure Survey*] (“[Twenty-seven] percent of African American households, and [seventeen] percent of Hispanic households do not own a car.”).

be living right now. Similarly, if you have to ride public transportation, or you have a high interest rate car payment lease, that is not ownership, it is not yours. And then what if every store you shop in, is somebody else's too. Viewed through that lens, it does not matter much if the local Walmart or H&M or Target burn. Nothing is yours anyway.⁵² “Widespread looting, then, may perhaps be interpreted as a kind of mass protest against our dominant conceptions of property.”⁵³ In other words, rioting and looting is often a “bid for the redistribution of property.”⁵⁴ This is a distinction many white and affluent people fail to understand. As such, the American rioting and looting and protests, were inseparably spurred on by police brutality, mixed with an underlying cause of economic inequality.

As explained earlier, a similar economic inequality and situation existed in 1930s Germany, where “millions were unemployed, thousands of small businesses had failed, homelessness and starvation were real possibilities for everyone.”⁵⁵ As a result, in the spring of 1932, Germany “with six million unemployed ... and a very uncertain future – they turned to Hitler by the millions.”⁵⁶ In other words, to help remedy this situation, Germany turned to far right-wing leaders who promised to restore law and order, to crack down on all the protesting and civil disorder.⁵⁷ Here is what Donald Trump promised in 2016 when he was running for President:

“Our convention occurs at a moment of crisis for our nation.

⁵² See Kimberly Jones, *How Can We Win*, YOUTUBE (June 9, 2020), <https://www.youtube.com/watch?v=llci8MVh8J4> (discussing that looting stores during protests is in response to the systemic economic oppression black people have faced for 450 years preventing them from being owners in their communities).

⁵³ Olga Khazan, *Why People Loot*, THE ATLANTIC (June 2, 2020), <https://www.theatlantic.com/health/archive/2020/06/why-people-loot/612577/> (citing sociologists Dynes and Quarantelli).

⁵⁴ *Id.*

⁵⁵ *The Rise of Adolf Hitler*, THE HISTORY PLACE (1996) <https://www.historyplace.com/worldwar2/riseofhitler/runs.htm>.

⁵⁶ *Id.*

⁵⁷ See *id.*

The attacks on our police, and the terrorism in our cities, threaten our very way of life. Any politician who does not grasp this danger is not fit to lead our country . . . I have a message for all of you: the crime and violence that today afflicts our nation will soon come to an end . . . There can be no prosperity without law and order.”⁵⁸

But economic inequality and the social unrest that ensued was but one factor in leading to the fall of democracy in Germany. A deliberate attempt to mislead the public and create distrust was another.

B. Propaganda

Paul Joseph Goebbels “masterminded the Nazi propaganda machine” and “played upon the German people's economic fears to create support for the National Socialist cause.”⁵⁹ When Hitler ascended to power in 1933, “Goebbels took over the Ministry for Public Enlightenment and Propaganda,” which essentially controlled the media, shutting down and discrediting any opponents in their wake.⁶⁰ Nazi propaganda was used to help stoke a general feeling of unease, or what Goebbels called *dicke Luft*, the ambient sense that “trouble is brewing.”⁶¹ Hitler also promoted the idea of Volksgemeinschaft, or “people’s community,” and appealed to a gauzy nostalgia of yesterday, when Germany was great.⁶² The right wing leader’s calls for violence and a return to yesteryear went hand in hand: “Only by purifying Germany of undesirable elements (Communists, Socialists, centrists, Jews), the Nazis declared, could they bring about the glory of the Third Reich.”⁶³

⁵⁸ *Flashback: What Trump Said About "Law and Order" During His 2016 RNC Speech*, AXIOS (Aug. 27, 2020), <https://www.axios.com/trump-2016-rnc-speech-199a4cb0-513c-40d8-a1b0-03d1fd3cc70d.html>.

⁵⁹ *The Man Behind Hitler*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/goebbels-biography/>.

⁶⁰ *Id.*

⁶¹ Szalai, *supra* note 30.

⁶² *Id.*

⁶³ *Id.*

As mentioned earlier, the parallels to the modern times are too many (and scary) to ignore. Donald Trump, in particular, utilized the media like no American President before, and made it his mission to discredit his opposition, by deeming any negative story about him as “fake news.”⁶⁴ Even though Trump was unsuccessful in his Presidential re-election bid, his campaign to discredit the media was highly successful and will likely have lasting effects for decades to come. Trump expanded on the Nazi playbook of discrediting the media, by noting that any media outlet reporting negative stories about him were disseminators of “fake news” and are not to be trusted.⁶⁵ Trump’s comments also track Nazi propaganda, stroking a general fear of unease and distrust.⁶⁶ Even his mantra “Make America Great Again,” harkening to better times of yesteryear, has its roots in Nazi Germany, where as in 1932, “making Germany great again was also a dominant theme in Nazi propaganda.”⁶⁷

In addition, the use and threat of violence was also a common theme, but not how one might surmise. The commonality is in the framing of the violence. In Nazi Germany, “violence was key, though it was presented as a defensive reaction to “intellectual instigators” and dangerous provocateurs, which allowed the Nazis to paint themselves not as cruel thugs but as servants of “justice.”⁶⁸ Similar in 2020, “Trump has sought to portray himself as tough on crime and the only person who can halt a descent into anarchy.”⁶⁹ For example, on July 30, 2020

⁶⁴ Margaret Sullivan, *What it Really Means When Trump Calls a Story ‘Fake News’*, WASH. POST (April 13, 2020), https://www.washingtonpost.com/lifestyle/media/what-it-really-means-when-trump-calls-a-story-fake-news/2020/04/13/56fbc2c0-7d8c-11ea-9040-68981f488eed_story.html.

⁶⁵ *Id.* (When the Washington Post and the New York Times reported that Trump was late in responding to the Coronavirus, it was based on “a stunning chain of emails from dozens of experts in government agencies, health organizations and universities.” These two pieces of journalism “are the real-time Pentagon Papers of this administration’s pandemic disaster,” wrote journalist James Fallows. Trump responded by Tweeting the New York Times reporting, was “fake, just like the ‘paper’ itself.”).

⁶⁶ *Flashback*, *supra* note 58.

⁶⁷ Dan Evon, *Hitler and Trump: Common Slogans*, SNOPE (Feb. 29, 2016), <https://www.snopes.com/fact-check/make-germany-great-again/>.

⁶⁸ Szalai, *supra* note 30.

⁶⁹ Ted Hesson, *Defying Critics, U.S. Security Chief Pushes Trump's Law-and-Order Message*, REUTERS (Sept. 4,

President Trump tweeted “Kate Brown, Governor of Oregon, isn’t doing her job. She must clear out, and in some cases arrest, the Anarchists & Agitators in Portland. If she can’t do it, the Federal Government will do it for her. We will not be leaving until there is safety!”⁷⁰ Moreover, in response to protests of George Floyd’s murder, Trump said local leaders “must seek ‘retribution’ for violent acts in their states and advised them not to act too gingerly.”⁷¹ With respect to the Minneapolis demonstrations and looting, Trump said it was “so bad a few nights ago that the people wouldn’t have minded an occupying force. I wish we had an occupying force in there.”⁷² These comments from America’s former Commander in Chief are reminiscent of 1930s German citizen Elisabeth, being happy seeing the Nazi “browncoats” in the streets to meet the protestors and “restore order.”⁷³

Moreover, Trump also managed to move the republican party’s stance on immigration further to right, so much so it appears similar to Hitler’s desire to get rid of the undesirables, a coded message for racism.⁷⁴ Hitler wanted to not only get rid of all the Jews, but also communists, socialists and separatists, or in other words, anyone group that disagreed with him or he felt was inferior.⁷⁵ As for Trump, he famously stated about Mexicans “when Mexico sends its people, they’re not sending their best.”⁷⁶ “They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime.

2020), <https://www.yahoo.com/news/defying-critics-u-security-chief-110442736.html>.

⁷⁰ Kevin Harden, *Trump to Portland: I’ll Send in National Guard Troops*, THE PORTLAND TRIBUNE (July 2020), <https://pamplinmedia.com/pt/9-news/475500-384299-trump-to-portland-ill-send-in-national-guard-troops>.

⁷¹ Kevin Liptak, Ryan Nobles & Sarah Westwood, *An Agitated Trump Encourages Governors to Use Aggressive Tactics on Protesters*, CNN (June 1, 2020), <https://www.cnn.com/2020/06/01/politics/donald-trump-race-police/index.html>.

⁷² *Id.* Notably, however, Trump did not actually send in a full-scale occupying force.

⁷³ Szalai, *supra* note 30.

⁷⁴ Ari Shaprio, *With Latest Nativist Rhetoric, Trump Takes America Back to Where It Came From*, NPR (July 16, 2019), <https://www.npr.org/transcripts/742000247>.

⁷⁵ Szalai, *supra* note 30.

⁷⁶ Eugene Scott, *Trump’s Most Insulting — and Violent — Language is Often Reserved for Immigrants*, WASH. POST (Oct. 2, 2019), <https://www.washingtonpost.com/politics/2019/10/02/trumps-most-insulting-violent-language-is-often-reserved-immigrants/>.

They're rapists.”⁷⁷ Trump was not only seemingly against Mexicans, but also would be terrorists, by enacting a travel ban into the U.S. Within his first week in office, Trump signed Executive Order 13769, titled Protecting the Nation from Foreign Terrorist Entry into the United States, that was politically referred to by detractors as the “Muslim ban” because of the large number of Muslim countries on the list.⁷⁸ Finally, Trump famously promised to build a wall to keep the undesirables from Mexico out of America.⁷⁹

Furthermore, “indispensable to the Nazi takeover was the radio.”⁸⁰ “More immediate and intimate than newspaper reports, the radio emitted an aura of authenticity, even if what was broadcast was a mix of theatrics, hyperbole and brazen fabrications.”⁸¹ In America, Trump used social media, and in particular, Twitter, to emit hyperbole and brazen fabrications. Below is a five-day sampling of Trump’s tweets from May 2020:

On Sunday, on Tuesday, and again on Wednesday, President Donald Trump accused the TV talk-show host Joe Scarborough of murder. On Tuesday, Wednesday, and Thursday, he attacked the integrity of America’s forthcoming “rigged” election. When he woke up on Wednesday, he alleged that the Obama Administration had “spied, in an unprecedented manner, on the Trump Campaign, and beyond, and even on the United States Senate.” By midnight Wednesday, a few hours after the number of U.S. deaths in the coronavirus pandemic officially exceeded a hundred thousand, the President of the United States retweeted a video that says, “the only good Democrat is a dead Democrat.”⁸²

⁷⁷ *Id.*

⁷⁸ *US Expands Travel Ban to Include N Korea*, BBC NEWS (Sept. 25, 2017), <https://www.bbc.com/news/world-us-canada-41382585>.

⁷⁹ Jasmine Aguilera, *At President Trump's Last Visit to the Border Wall, Here's What to Know About Its Legacy*, TIME (Jan. 12, 2021), <https://time.com/5928808/trump-border-wall-what-to-know> (Trump campaigned on a promise to build a wall along the entire 800 miles of U.S.-Mexico border during his first term in office, and have Mexico pay for it, but that did not happen. The U.S. federal government “designated \$15 billion towards constructing the wall, but only 47 miles of wall have been built where no barrier previously existed, according to U.S. Customs and Border Protection (CBP)”).

⁸⁰ Szalai, *supra* note 30.

⁸¹ Szalai, *supra* note 30.

⁸² Susan B. Glasser, *The Most Mendacious President in U.S. History*, THE NEW YORKER (May 29, 2020), <https://www.newyorker.com/news/letter-from-trumps-washington/the-most-mendacious-president-in-us-history>.

This is not the only time President Trump has tweeted baseless accusations of murder, voter fraud, and his predecessor’s “illegality and corruption.”⁸³ “So many of the things that Trump does and says are inconceivable for an American President.”⁸⁴ In short, Hitler utilized the more intimate and seemingly authentic mode of communication at the time, the radio. Trump took ahold of the more intimate and seemingly authentic Twitter. According to UCLA professor Nico Voigtländer, “in a way, Hitler's getting access to radio stations after January 1933 was akin to 'Twittering' his message.”⁸⁵

In sum, the similarities between the Nazi’s use of propaganda and Trump’s use of propaganda are numerous in scope, methodology and effect. For example, despite all of Trump’s misstatements and blatant lies and potential abuses of power, he maintains a stream of steadfast followers, even without Twitter. One wonders, then, how could so many support a leader so transparently repugnant? A look into the diary of Elisabeth, from Fritzsche’s Hitler’s First One Hundred Days, provides some insight:

Elisabeth continued to support the party, even as her own daughter in Holland hid a Jewish child during the war. Elisabeth told Immo that she had sympathy for the plight of certain individuals, while insisting that the Nazis — and by extension, she herself — were only doing what they had to do.⁸⁶

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Aristos Georgiou, *It Wasn't Hitler's Speeches That Won Elections for Nazis, Study Finds*, NEWSWEEK (Aug. 17, 2018), <https://www.newsweek.com/it-wasnt-hitlers-speeches-won-elections-nazis-study-finds-1060802> (quoting Nico Voigtländer, a professor from the UCLA Anderson School of Management, who has published numerous papers on the Nazis. It became so toxic that Twitter actually banned Donald Trump for utilizing its platform, which carries with it a host of other potential concerns); see Twitter Inc., *Permanent suspension of @realDonaldTrump*, Jan. 8, 2021 at https://blog.twitter.com/en_us/topics/company/2020/suspension.html.

⁸⁶ Szalai, *supra* note 30.

Notice the depth of rationalization that Elisabeth and undoubtedly so many Germans chose to undertake. Elisabeth considered herself an average, middle class white woman in Germany.⁸⁷ She just wanted the economy to be strong, and have law and order, safety. Thus, even though she may not have agreed with the means of the man (Hitler) implementing the policies, or his racial biases, she felt she had no choice but to support the Nazis if she wanted to achieve those needs of economic and physical, stability and safety. One does not have to look hard to see that Americans thought similarly about Trump and could about future leaders as well. After Jacob Blake was killed by police in the summer of 2020 in Kenosha Wisconsin, seventeen-year-old Kyle Rittenhouse illegally took his assault rifle and drove from Illinois to Wisconsin, to allegedly help maintain law order.⁸⁸ Kyle ended up killing a man and shooting two others.⁸⁹ The ensuing scene and drama in Kenosha was chaotic. It led to this sentiment from a local forty-one-year-old, lifelong Democrat: “[Before Kenosha] I would have said I would never vote for Trump. Now, it’s like: Maybe. I saw the city get burned down.”⁹⁰

The similarities are there. Economic unrest, social unrest, and the belief that only the right-wing leader enacting policies with racist undertones can keep the country safe, even if you hate everything else about him.⁹¹ Millions of Americans likely support him despite despising him. This is the lasting impact of Trumpism that should have Americans concerned.

⁸⁷ Szalai, *supra* note 30.

⁸⁸ Neil MacFarquhar, *Suspect in Kenosha Killings Lionized the Police*, N.Y. TIMES (Oct. 16, 2020), <https://www.nytimes.com/2020/08/27/us/kyle-rittenhouse-kenosha.html>.

⁸⁹ *Id.*

⁹⁰ Charlotte Alter, *Kenosha Is a Test of Donald Trump's 'Law-and-Order' Message. It Doesn't Seem to Be Working*, TIME (Sept. 11, 2020), <https://time.com/5887679/kenosha-donald-trump-law-and-order/>.

⁹¹ To those wondering if all this seems like just a big coincidence, perhaps it is not. Trump, though famously not an avid reader, did apparently keep one piece of reading near his bedside. His first wife Ivana Trump “told her lawyer Michael Kennedy that from time to time her husband reads a book of Hitler’s collected speeches, *My New Order*, which he keeps in a cabinet by his bed. Kennedy now guards a copy of *My New Order* in a closet at his office.” Marie Brenner, *After the Gold Rush*, VANITY FAIR (Sept. 1990), <https://archive.vanityfair.com/article/share/e515a2cd-a51b-4f83-8d61-6ebb9a104e0a>. The interview goes into more detail, including confronting Donald Trump on the topic, in which he admits receiving a book by Hitler from a

To be clear, Trump is not Hitler. That should not be the takeaway and would miss the point. The concern is that the circumstances surrounding Trump’s rise to power, coupled with the behavior of the Trump administration and the ongoing unrest in America, have set the stage for an increasingly rapid descent away from democracy. It would be foolish to believe Trump’s defeat in 2020 ended the threat;⁹² the seeds to democracy’s ruin have been sown. The 1930s German blueprint for 1) how to use violence to seemingly protect the people and manipulate the media; 2) to quash civil unrest and keep people’s attention solely focused on the economy; 3) all while keeping out the “undesirables” and not helping the growing lower class; has been working in America, more effectively than ever before. America is on a similar trajectory, and regardless of who is President, America needs to be careful, or democracy may no longer exist.

Finally, democracy in modern America is particularly vulnerable. It “lacks the heady sense that existed a century ago of vast, unfulfilled potential.”⁹³ In short, “[d]emocracy is not working well.”⁹⁴ Once Americans accept that reality, then movement towards what we want the future to look like can begin in an earnest, thoughtful way. Without such acceptance, an acceptance that democracy can actually fail, we will not be adequately prepared for what happens next, which could lead to previously unthinkable results.

friend, but he claims it was the more famous Mein Kampf; but the giver of the book denies this, and says he gave Trump the collection of Hitler’s speeches in My New Order. *Id.* In response Trump replied, on the record, “if I had these speeches, and I am not saying that I do, I would never read them.” *Id.*

⁹² In addition, someone with the last name of Trump may viably run for President in 2024, including the Donald himself. See Ed Mazza, *Mitt Romney Delivers Ominous Trump 2024 Prediction for The Republican Party*, HUFFINGTON POST (Feb. 21, 2021), <https://www.yahoo.com/huffpost/mitt-romney-donald-trump-2024-093900511.html> (quoting Senator Mitt Romney: polls show “if you put President Trump in there among Republicans, he wins in a landslide).

⁹³ DAVID RUNCIMAN, *HOW DEMOCRACY ENDS* 71 (Basic Books 2018).

⁹⁴ *Id.*

II. JUAN LINZ – LITMUS TEST FOR UNDEMOCRATIC LEADERS

The fall of democracies typically occurs in a few different ways, including military coups, or outright takeovers from one political party over another. As alluded to earlier, Juan Linz spent years researching the reasons for the tragic collapse of democracy in 1930s Europe.⁹⁵ As a result, Linz proposed a “litmus test,” a list of actions by politicians that can put democracy at risk.⁹⁶ These warning signs include a refusal to unambiguously disavow violence, a readiness to curtail rivals’ civil liberties, and the denial of the legitimacy of an elected government.⁹⁷ If two of these indicators are present, that is cause for concern. If all three are present, that is cause for alarm. Because of Trump’s immense popularity and impact, an examination of President Trump’s behavior in light of these criteria is instructive.

A. *Failure to Reject Violence Unambiguously*

Unfortunately, the Trump presidency failed to reject violence unambiguously. The number of times President Trump failed to reject violence is staggering, but before delving into some of the most egregious examples, the larger point is that Trump’s overall policy and rhetoric actually prompted violence. To have the face and voice of a major political party making decisions that provoke Americans to use violence and take matters into their own hands is a sign that democracy is failing.

An early example occurred after President Trump took office in 2017, following the issuance of Executive Order 13769, also known as the aforementioned Muslim Ban.⁹⁸ By preventing people from Muslim countries from entering the U.S., Trump was sending a message – implicitly at best, explicitly at worst – that is acceptable to openly target Muslims. Shortly

⁹⁵ Levitsky & Ziblatt, *supra* note 13.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *US Expands Travel Ban*, *supra* note 78.

thereafter, a Florida man threatened to burn down his neighbor's house because a Muslim family had just purchased it, claiming that Trump's Muslim ban made it a legitimate cause for "concern."⁹⁹ This is disturbing, but even more disturbing is that people have taken the next step, beyond threatening violence, but actually carrying out violence, as a result of Trump rhetoric and policies.

For example, at campaign rallies in 2018, President Trump repeatedly warned that America was under attack by immigrants heading for the border. "You look at what is marching up, that is an invasion!"¹⁰⁰ he declared at one rally. "That is an invasion!"¹⁰¹ Less than a year later, a twenty-one-year-old white man opened fire in a Walmart in El Paso, Texas killing 20 people and injuring dozens more after writing a manifesto railing against immigration and announcing that "this attack is a response to the Hispanic invasion of Texas."¹⁰² The manifesto reads like a conglomerate of Trump speeches. Trump did not just fail to condemn violence – his behavior actually created an environment for violence to thrive and likely emboldened people, and not just in Texas.

As mentioned briefly earlier, on August 23, 2020, a white police officer shot Jacob Blake, a black man, seven times in the back outside his home in Kenosha, Wisconsin.¹⁰³ As a result, "outrage spread quickly, rekindling the nationwide protests for racial justice that had followed the deaths of George Floyd, Elijah McClain, Breonna Taylor and other Black Americans after

⁹⁹ Fabiola Cineas, *Donald Trump is the Accelerant*, VOX (Jan. 9, 2021), <https://www.vox.com/21506029/trump-violence-tweets-racist-hate-speech>.

¹⁰⁰ Peter Baker & Michael D. Shear, *El Paso Shooting Suspect's Manifesto Echoes Trump's Language*, N.Y. TIMES (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Christina Morales, *What We Know About the Shooting of Jacob Blake*, N.Y. TIMES (Jan. 5, 2021), <https://www.nytimes.com/article/jacob-blake-shooting-kenosha.html>.

encounters with the police.”¹⁰⁴ Kyle Rittenhouse was a seventeen-year-old child who supported “Blue Lives Matter” on Facebook and attended Trump rallies.¹⁰⁵ After the shooting of Jacob Blake and subsequent protests, young Mr. Rittenhouse felt a call to arms, and drove from his home state of Illinois to Wisconsin, with his high powered rifle, which is illegal for minors to possess.¹⁰⁶ It is also illegal for minors to openly carry any firearms in Wisconsin,¹⁰⁷ but that did not stop Mr. Rittenhouse. He drove across state lines and shot three people, killing two of them.¹⁰⁸ Why was he there? Mr. Rittenhouse’s own words provide some insight: “Part of my job also is to protect people. If someone is hurt, I’m running into harm’s way. That’s why I have my rifle.”¹⁰⁹

If America’s children feel the need to drive across state lines and kill people, in some twisted notion of protecting America, that is obviously problematic. Worse still, for the fate of democracy, was the President’s reaction. The President of the United States did not reject these violent actions unambiguously. Rather, the President defended Mr. Rittenhouse’s actions. “I guess he was in very big trouble,” Trump said of Rittenhouse.¹¹⁰ “He would have been, he probably would have been killed,” had he not killed those other people first.¹¹¹ In sum, rather than denounce a child taking matters into his own hands through violence and killing people, Trump “appeared to lean into Rittenhouse’s self-defense argument.”¹¹² To be clear, whether or

¹⁰⁴ *Id.*

¹⁰⁵ MacFarquhar, *supra* note 88.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* (demonstrating Mr. Rittenhouse’s violation of state law).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* On a personal note, I had a job at seventeen as well - working the night shift at a local grocery store. Part of my job was mopping the floors at night and taking out the trash. No part of my job involved driving across state lines, with a weapon, that I was not legally allowed to possess, and killing people.

¹¹⁰ John Fritze et al., *Trump Defends Kyle Rittenhouse on Eve of Visit to Kenosha*, USA TODAY (Sept. 1, 2020, 12:15 PM), <https://www.usatoday.com/story/news/politics/2020/08/31/trump-defends-kenosha-shooter-kyle-rittenhouse-arguing-self-defense/3451006001/>.

¹¹¹ *Id.*

¹¹² *Id.*

not Mr. Rittenhouse actually acted in self-defense misses the point – he never should have been there, armed and ready to go, in the first instance. This is the underlying problem, and it does not stop with President Trump. Numerous GoFundMe pages were established to support Mr. Rittenhouse and the American people raised over two million dollars to support his legal defense.¹¹³ The #FightBack Foundation was established to raise funds for Mr. Rittenhouse and “Free Kyle” was trending on Twitter.¹¹⁴ In late 2020, a state lawmaker in Florida, Rep. Anthony Sabatini, tweeted, “KYLE RITTENHOUSE FOR CONGRESS.”¹¹⁵

Trump has emboldened the American people to resort to violence. This is a clear warning sign from Linz’s test, and troubling for the future of American democracy. In sum, Trump “has brought into the mainstream polarizing ideas and people once consigned to the fringes of American society.”¹¹⁶

When confronted with this fact, at the first Presidential debate of 2020, Trump responded incredulously. He challenged the moderator to name one white supremacist group that Trump allegedly has failed to denounce. The moderator did – he mentioned the Proud Boys. Here was Trump’s now infamous response, “Proud Boys, stand back and stand by. But I’ll tell you what: Somebody’s got to do something about Antifa and the left.”¹¹⁷

¹¹³ Samantha Michaels, *What Kyle Rittenhouse’s \$2 Million Fundraiser Reveals About the Unequal System of Justice in America*, MOTHER JONES (Nov. 22, 2020), <https://www.motherjones.com/anti-racism-police-protest/2020/11/kyle-rittenhouse-bail-sincere-pierce-sean-monterrosa/> (highlighting the disparities between popular fundraisers).

¹¹⁴ *See id.*

¹¹⁵ *Id.*

¹¹⁶ Baker & Shear, *supra* note 100.

¹¹⁷ Sarah McCammon, *From Debate Stage, Trump Declines to Denounce White Supremacy*, NPR (Sep. 30, 2020, 12:37 AM), <https://www.npr.org/2020/09/30/918483794/from-debate-stage-trump-declines-to-denounce-white-supremacy>.

In response, members of the Proud Boys rejoiced.¹¹⁸ Some emblazoned "stand back and stand by" onto the group's logos.¹¹⁹ Others "treated the President's choice of the words "stand by" as a sort of rallying cry."¹²⁰ Thus, not only has the President failed to denounce violence unambiguously, he literally has told armed and angry white supremacists to "stand by." Stand by for what, exactly? What did the President want his supporters to be ready to do? Unfortunately, America did not have to wait too long to find out.

B. January 6 Capitol Riots

For months leading up to the Presidential election of 2020, President Trump was questioning the legitimacy of the election results – if he lost.¹²¹ This in it of itself is problematic for democracy, as will be explored later in more detail, but on January 6, 2020, the day Congress was set to formally certify the President election declaring Joe Biden the winner, Trump held a rally that morning.¹²² He invited his supports to come to Washington D.C. to "stop the steal."¹²³ As noted earlier, President Trump literally instructed his supporters to march on the Capitol "and if you don't fight like hell, you're not going to have a country anymore."¹²⁴

So fight the people did, as they broke through and stormed the Capitol building.¹²⁵ It was a security breach unprecedented in American history. At the time, in 2021, most Americans still do not recognize the historical significance of this coup attempt. But that is what it was, a coup

¹¹⁸ Paul P. Murphy, *Trump's Debate Callout Bolsters Far-Right Proud Boys*, CNN (Oct. 1, 2020, 10:24 AM), <https://www.cnn.com/2020/09/30/politics/proud-boys-trump-debate-trnd/index.html>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Levitsky & Ziblatt, *supra* note 13.

¹²² Dan Barry & Sheera Frenkel, *'Be There. Will Be Wild!': Trump All but Circled the Date*, N.Y. TIMES (Jan. 8, 2021), <https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html> (revealing how President Trump's previous messages paved the way for the violence on January 6, 2021).

¹²³ Sarah Hansen, *Trump Campaign Paid \$3.5 Million To Stop The Steal Organizers, Report Finds*, FORBES (Feb. 10, 2021, 4:03 PM), <https://www.forbes.com/sites/sarahhansen/2021/02/10/trump-campaign-paid-35-million-to-stop-the-steal-organizers-report-finds/?sh=40ce647237ae>.

¹²⁴ *Transcript of Trump's Speech*, *supra* note 1.

¹²⁵ Cabral & Macleod, *supra* note 4.

attempt, an attempt to stop the Congress from certifying an election by taking over through violence, all the while spurred on by President Trump.

Thus, when Trump lost the presidential election in November 2020, that did not end the threat to democracy. To the contrary, it prompted violence and an attempted coup to end our democracy. But to hear President Trump tell it, that already happened months before January 6, when he not-ironically called his defeat an “egregious assault on our democracy.”¹²⁶ In reality, the assault was all his – and his supporters.

To be clear not all Trump supporters were in favor of the riot on the Capitol, but it is telling that the vast majority of the rioters were not far right-wing conspiracy theorists but rather ordinary Trump supporters.¹²⁷ What is also worth noting was the racial make-up of the supporters – almost universally white, many of which carried Confederate flags and symbols.¹²⁸ Herein lies more connections to 1930s Germany that (though uncomfortable) cannot be ignored. There is a racial component to this Trump inspired violence, and there was racial component to the Nazi rise to power and use violence as well. Many white Americans are tired of minorities coming into this country (immigration) and taking their jobs, or homegrown minorities given perceived preferential treatment based on race. There were even direct references from some Capitol rioters to Nazi Germany, as one protestor wore a shirt that read “Camp Auschwitz” on top, with the skull and bones symbol underneath, followed by the words “Work Brings Freedom,” which is the English translation of the German saying “arbeit macht frei,” which hung above the infamous Auschwitz death camp in Nazi-occupied Poland.¹²⁹

¹²⁶ Adam Serwer, *The Capitol Riot Was an Attack on Multiracial Democracy*, THE ATLANTIC (Jan. 7, 2021), <https://www.theatlantic.com/ideas/archive/2021/01/multiracial-democracy-55-years-old-will-it-survive/617585/>.

¹²⁷ Cabral & Macleod, *supra* note 4.

¹²⁸ See Serwer, *supra* note 126.

¹²⁹ Gabrielle Fonrouge, ‘Camp Auschwitz’ sweatshirt spotted at Capitol riot sold by NYC site, N.Y. POST (Jan. 8, 2021, 1:59 PM), <https://nypost.com/2021/01/08/camp-auschwitz-sweatshirt-seen-at-capitol-riot-sold-by-nyc-site/>.

In response to the Capitol riots, Trump “released a video half-heartedly urging his supporters to leave, while reassuring them that they were ‘very special’.”¹³⁰ In sum, by tacitly or sometimes even explicitly endorsing racists and white supremacists, President Trump has encouraged them to take violent action, which has resulted in violent action. This unequivocal failure to denounce violence - and instead promote and condone it - has primed the American public for a violent revolution.

C. Curtail Civil Liberties of Rivals

The second of Linz’s warning signs of a failing democracy is when political leaders attempt to curtail the civil liberties of their rivals.¹³¹ Attempts to curtail the civil liberties of rivals understandably is a precarious sign. In a true democracy, one would best their rival based on a more persuasive arguments for or against various policies. In short, the decision to choose one candidate over another should be merit based, as opposed to one candidate trying to win through silencing their opponent.

Yet starting in 2016, candidate Trump wasted no time in doing just that, encouraging supporters with chants of “Lock her Up” when referring to political rival Hillary Clinton for failing to turn over e-mails.¹³² Furthermore, when Trump ran for re-election in 2020, he went out of his way to tray and smear the Hunter Biden, and in so doing damage his Father and political rival Joe Biden .¹³³ But the silencing of one’s opposition reached new heights in late 2020, when there was an attempted kidnapping of Michigan governor Gretchen Whitmer.¹³⁴

¹³⁰ Serwer, *supra* note 126.

¹³¹ Levitsky & Ziblatt, *supra* note 13.

¹³² Levitsky & Ziblatt, *supra* note 13.

¹³³ Ryan Bort, Tim Dickinson & Andy Kroll, *A Few Things to Keep in Mind as Trump Attacks Hunter Biden*, ROLLING STONE (Oct. 22, 2020), <https://www.rollingstone.com/politics/politics-news/hunter-biden-business-dealings-trump-debate-attacks-1079781/>.

¹³⁴ David Knowles, *Raskin: Michigan Statehouse Siege Was a 'Dress Rehearsal' for Capitol Riot*, YAHOO NEWS (Feb. 11, 2021), https://news.yahoo.com/raskin-michigan-statehouse-siege-was-a-dress-rehearsal-for-capitol-riot-195227892.html?soc_src=community&soc_trk=ma.

Congressmen Jamie Raskin plainly laid out the case in an argument during President Trump’s second impeachment trial:

On March 17, the day after Whitmer pushed the federal government to better support the states on COVID-19, Trump criticized her handling of the pandemic, tweeting, ‘Failing Michigan governor must work harder and be much more proactive. We are pushing her to get the job done. I stand with Michigan,’” Raskin said. “On March 27 he added, ‘I love Michigan. One of the reasons we’re doing such a great job for them during this horrible pandemic, yet your governor Gretchen Half-Whitmer is way in over her head. She doesn’t have a clue, likes blaming everyone for her own ineptitude. #MAGA!’ On April 17, 2020, he tweeted, ‘LIBERATE MICHIGAN!’¹³⁵

Less than two weeks later, the F.B.I., arrested a group of 13 men who were planning to kidnap Governor Whitmer.¹³⁶ And some of them, according to recorded conversations by the F.B.I., were planning to do worse, like taking Ms. Whitmer hostage before the election in November, and moving her to a “secure location” in Wisconsin for a “trial.”¹³⁷ Another member of the group suggested they “[h]ave one person go to her house. Knock on the door and when she answers it just cap her.”¹³⁸

Though problematic on many levels, a larger problem for the continued viability of American democracy is the role played by the President. As one can see from President Trump’s above tweets, Trump encouraged this behavior, the curtailing of the civil liberties of one of his

¹³⁵ *Id.* (quoting Jamie Raskin (D-MD)).

¹³⁶ Nicholas Bogel-Burroughs, *What We Know About the Alleged Plot to Kidnap Michigan’s Governor*, N.Y. TIMES (Oct. 18, 2020), <https://www.nytimes.com/2020/10/09/us/michigan-militia-whitmer.html>.

¹³⁷ *Id.*

¹³⁸ *Id.*

most outspoken Democratic rivals. One cannot lead the horses to water and then be surprised when they drink. This fact was not lost on Governor Whitmer, who, after learning of the plot against her, noted that her would be kidnappers “heard the president’s words not as a rebuke but as a rallying cry — as a call to action.”¹³⁹ In response, merely hours later, “in multiple tweets, Mr. Trump insulted Ms. Whitmer, saying that she had “done a terrible job” as Governor.¹⁴⁰ Thus, if people were on the fence about Trump’s stance or potential views on the would be insurrection against one of his political rivals, this cleared it up. The open hostility against political rivals, insulting them, tacitly (if not openly) encouraging violence against them, all while failing to unequivocally condemn it when it almost happens, is further evidence Trump wanted to curtail the civil liberties of his Democratic rivals. Such a flashing red beacon that the nation’s democracy is in historical trouble should not be ignored.

D. Question the Legitimacy of Government

The third prong of Linz’s test is to be wary of political leaders who question the legitimacy of government.¹⁴¹ Without legitimacy, governments of all types are more prone to fail. Unfortunately, President Trump spent an inordinate amount of time while in office doing precisely this, by questioning the legitimacy of the Nov. 2020 election months before it ever took place. Countless times he commented on how the election would be “rigged” if he lost.¹⁴²

Trump also questioned the legitimacy of the election and of our government, after he lost. This has wide ranging implications, and undermines America’s democracy. As Mitt Romney noted, “[I]f autocratic nations can point to the United States, which is the birthplace of modern

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Levitsky & Ziblatt, *supra* note 13.

¹⁴² See Terrance Smith, *Trump Has Longstanding History of Calling Elections 'Rigged' if he Doesn't Like the Results*, ABC NEWS (Nov. 11, 2020), <https://abcnews.go.com/Politics/trump-longstanding-history-calling-elections-rigged-doesnt-results/story?id=74126926>.

democracy, and can say, ‘Look, they can’t even run an election there that is not fraudulent, how can you possibly run it in your country? That is, obviously, having an impact on the cause of democracy and freedom around the world.’¹⁴³

Though this fact is in itself damning, the racial undertones are equally troubling, providing another unhealthy parallel to the Nazi regime. Historically, blacks were not allowed to vote in America.¹⁴⁴ There was also the constitutional interpretation of 3/5 compromise, used by some as evidence that blacks are only 3/5 of a person and not wholly human.¹⁴⁵ Scientists and medical doctors have used science as a justification for racism since the 19th Century.¹⁴⁶ So when the Washington Post described the insurrectionists who stormed the Capitol in 2021 as “would-be saboteurs of a 244-year-old democracy” they were wrong.¹⁴⁷ In reality, true democracy in America has only been around for less than 60 years, dating to 1965, “the year the Voting Rights Act guaranteed suffrage—at least on paper—to all American citizens, regardless of race.”¹⁴⁸

It is against this backdrop that Trump questioned the polling results of certain areas – Atlanta, Detroit, and Philadelphia – all of which happen to have a very large black population. Trump exclaimed, shortly after he lost the 2020 election but before the Georgia Senate runoff

¹⁴³ Allie Brie, *Romney on Trump’s Rally Rhetoric: ‘The Election Is Over. It Was Fair.’*, POLITICO (June 27, 2021), <https://www.yahoo.com/news/romney-trumps-rally-rhetoric-election-103727186.html>.

¹⁴⁴ Sarah Pruitt, *When Did African Americans Actually Get the Right to Vote?*, HISTORY (April 15, 2021), <https://www.history.com/news/african-american-voting-right-15th-amendment>.

¹⁴⁵ See *Understanding the Three-fifths Compromise*, CONSTITUTIONAL ACCOUNTABILITY CTR. (Feb. 21, 2021), <https://www.theconstitution.org/news/understanding-the-three-fifths-compromise/>.

¹⁴⁶ See William H. Tucker, *The Ideology of Racism: Misusing Science to Justify Racial Discrimination*, UN CHRONICLE, <https://www.un.org/en/chronicle/article/ideology-racism-misusing-science-justify-racial-discrimination> (last visited Feb. 24, 2021).

¹⁴⁷ Serwer, *supra* note 126.

¹⁴⁸ Serwer, *supra* note 126.

elections “Let them steal Georgia again, you’ll never be able to look yourself in the mirror,” he told rallygoers.¹⁴⁹

That same day, Trump, still as President of the United States, inexplicably called the Secretary of State Brad Raffensperge of Georgia to pressure him to “find the votes” to overturn the Georgia election.¹⁵⁰ Trump continued with the rhetoric towards two other predominantly black cities, demanding a recount: “Detroit and Philadelphia—known as two of the most corrupt political places anywhere in our country, easily—cannot be responsible for engineering the outcome of a presidential race.”¹⁵¹ Unfortunately, “presenting the disenfranchisement of Black Americans as an exercise in good government is one of the most recognizable constants of American history.”¹⁵²

This questioning of the government, by the Commander in Chief, led to the Capitol Riot on January 6. It was an insurrection, a coup attempt, a revolt, a rebellion, and a statement that some white Americans were mad and not going to take it anymore. They wanted their leader to stay in power and believed in him when he questioned the legitimacy of the most recent government election.

In sum, all of the warning signs for the downfall of democracy manifested in American politics during the Trump presidency - and he still received over 73 million votes in his re-election bid.¹⁵³ The warning signs further manifested themselves in the January 6 Capitol Riots.

¹⁴⁹ Aamer Madhani, Ben Nadler & Zeke Miller, *Trump Challenges Vote Results While Urging Turnout in Ga.*, ASSOCIATED PRESS (Dec. 6, 2020), <https://apnews.com/article/election-2020-joe-biden-donald-trump-senate-elections-georgia-1831639d5e8ce0ad87c95a8eb76fa06a>.

¹⁵⁰ Michael D. Shear & Stephanie Saul, *Trump, in Taped Call, Pressured Georgia Official to ‘Find’ Votes to Overturn Election*, N.Y. TIMES (Jan. 5, 2021), <https://www.nytimes.com/2021/01/03/us/politics/trump-raffensperger-call-georgia.html>.

¹⁵¹ Serwer, *supra* note 126.

¹⁵² *Id.*

¹⁵³ Ford Fessenden, Lazaro Gamio & Rich Harris, *Even in Defeat, Trump Found New Voters Across the U.S.*, N.Y. TIMES (Nov. 16, 2020), <https://www.nytimes.com/interactive/2020/11/16/us/politics/election-turnout.html>.

This clear, historical evidence of democratic instability cannot be ignored. Or at least it should not be ignored, because we have seen this before. The circumstances surrounding Germany in the 1930s, sky-high unemployment and a struggling economy, that affected different communities differently, and the growing divide between the rich and the poor along racial lines, lead to protests and a right-wing takeover to keep everyone safe and return the country to glory. All those same ingredients are present in America today. We know how it turned out in Germany.

CONCLUSION

Fortunately, the American story is still being written. Trump lost in 2020 and America remains a democracy – for now. But millions of Americans support Trump’s ideas and policies, and some of those supporters stormed the Capitol in an attempt to thwart the results of a Presidential election, because the President “told them to.”¹⁵⁴ The vast majority of those rioters were not wing extremists, either.¹⁵⁵ It was your average Trump supporter.¹⁵⁶ Thus, every time President Biden claims “America is back” and stronger than ever, it is cause for concern.¹⁵⁷ This is beyond a democrat and republican problem. This is an American problem, and the U.S. is at a precarious point in its democratic history. Apathy and inertia must not be allowed to takeover. It cannot be business as usual. Trump has opened the door, and paved the way, for millions to follow a path that leads straight away from democracy.

¹⁵⁴ *Transcript of Trump's Speech*, *supra* note 1.

¹⁵⁵ Cabral & Macleod, *supra* note 4.

¹⁵⁶ *Id.*

¹⁵⁷ See David E. Sanger, Steven Erlanger & Roger Cohen, *Biden Tells Allies 'America Is Back,' but Macron and Merkel Push Back*, N.Y. TIMES (Feb. 19, 2021), <https://www.nytimes.com/2021/02/19/us/politics/biden-munich-conference.html>.

Five years ago, when I warned American democracy could be in trouble not too many people took it seriously.¹⁵⁸ My hope is that Americans no longer take democracy for granted. All of the Linz warning signs are present and the eerie commonalities to 1930s Germany continue to persist. Americans need to make a conscious effort to change their circumstances, improve the plight of minorities, legitimize the media, listen to one another on each side of the aisle and actively denounce violence, and not have its leaders tacitly or explicitly condone it. If America fails to accomplish this, someday soon there may no longer be an American way to fight for anymore. Time is running out too, because the sad reality is, for millions of black and brown Americans, that day is already here.

¹⁵⁸ See Williams, *supra* note 8.