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Singing the Force of the Imagination: How to Wonder About the Emotional- Reportage in Immigration Advocacy

JOSHUA J. SCHROEDER*

ABSTRACT

In the years leading up to July 4, 1776, Phillis Wheatley bid the imaginations of the American Revolutionaries to spring open by shouting: “Imagination! Who can sing thy force?” Wheatley defined the imagination as the leader of the mental train, and, according to Ciceronian principles, she demonstrated that the imagination is the singular facilitator of human action. Despite numerous calls to venerate American originalism over the past several decades, the founding concept of the imagination remains an underdeveloped topic in the legal field, even while it reigns over the decision-making processes of all U.S. legislators, administrators, and judges.

*However, on September 21, 2023 the imagination properly invaded Professor Warren Binford’s multi-disciplinary symposium *Advocating for Children in Migration*, a part of the ongoing *Testimony* series at the University of Colorado, Anschutz. This event followed the publication of *Hear My Voice/Escucha Mi Voz*, a children’s book featuring statements of children held in migrant detention facilities compiled by Professor Binford for Project Amplify. In addition, Project Amplify encouraged the creation of *BorderX*, *Do You Know Where the Children Are (DYKWTC)*, 365 artworks by Andra, and *The Ghost of Abuelito* by Kristen Grainger & True North. Still more artworks were debuted at the symposium including *Fly to Heal*, *Soul Echoes*, and *Still Life Cafe*.*

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Even while these artistic bursts of inspiration began to grow, they did not easily cross over into conversations about legal and medical advocacy. Most of the lawyers and doctors at the symposium appeared to believe that the artworks at the event were a completely separate advocacy effort, though discussion about the arts as advocacy was strongly encouraged. This is to be expected in professional circles that are still trained to rely on individual rather than common reason to make strategic decisions.

Human beings, imperfect as we are, rarely start out on key, but over time we can improve. Binford's compilations, symposiums, and events could be a step toward the renewal of the American imagination in professional circles that may inspire us to innovate solutions to the immigration crisis. This article is dedicated to the observation of the stumbling starts of the American professional class toward their ultimate realization that they too are subject to the vivacious force of the imagination over the faultiness of Rationalism.

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Can *Afric*'s muse forgetful prove?
 Or can such friendship fail to move
 A tender human heart?
 Immortal *Friendship* laurel-crown'd
 The smiling *Graces* all surround
 With ev'ry heav'nly *Art*.

- Phillis Wheatley, An Hymn to Humanity. To S. P. G. Esq.; (1773)¹

INTRODUCTION: THE PROBLEM OF CHANNELING RAGE INSTEAD OF WONDER

Rage is all the rage in America,² so it was no surprise that channeling rage about political figures like Donald J. Trump became an unofficial theme of the *Advocating for Children in Migration* symposium of September 21, 2023 at the University of Colorado, Anschutz.³ The emotion of rage is a powerful force in human societies, but, as Thomas Hobbes observed, it is a form of “Madnesse” that arises, alongside “causelesse fears” and terrors, from the oxymoronic emotional state of pride and dejection.⁴ Thus, activist Valarie Kaur wisely distinguished rage from anger, because if rage hardens

1. PHILLIS WHEATLEY, *THE COLLECTED WORKS OF PHILLIS WHEATLEY* 97 (John Shields ed., 1988).

2. BOB WOODWARD, RAGE 15 (2020); The Power of Storytelling, *Nikole Hannah-Jones: What Drives Me Is Rage*, YOUTUBE (Jan. 16, 2018), <https://www.youtube.com/watch?v=zSVBR964RiY>; cf. also, e.g., Peggy Noonan, *Rage Is All The Rage, and It's Dangerous*, WALL ST. J.: OPINION (June 15, 2017, 8:03 PM), <https://www.wsj.com/articles/rage-is-all-the-rage-and-its-dangerous-1497571401>; Christina Pazzanese, *In GOP Race, Rage Is All The Rage*, HARV. GAZETTE (Feb. 29, 2016), <https://news.harvard.edu/gazette/story/2016/02/for-gop-rage-is-all-the-rage/>; Kimberly Seals Allers, *Female Rage Is All The Rage. But How Can We Harness It To Help Mothers?*, WASH. POST (Oct. 11, 2018, 6:00 AM), <https://www.washingtonpost.com/lifestyle/2018/10/11/female-rage-is-all-rage-how-can-we-harness-it-help-mothers/>.

3. *Arts and Literature Panel, moderated by Sara Jo Fischer*, YOUTUBE 13:33–13:40 (Oct. 6, 2023), <https://www.youtube.com/watch?v=AwWpIw2wT1E&t=1s> [hereinafter *Arts and Literature Panel*] (“It starts off with rage, and more rage, and then a little sprinkle of rage.”), embraced by *Law Panel Moderated by Warren Binford*, YOUTUBE 1:01:47–1:01:49 (Oct. 6, 2023), <https://www.youtube.com/watch?v=3BO65hUX6kU&t=1s> [hereinafter *Law Panel*]; cf. *id.* at 5:51–5:55 (introducing me as “a young person in this field who is taking his rage and turning it into creative productivity”).

4. THOMAS HOBBS, *LEVIATHAN* 46 (A.R. Waller ed., 1904); cf. FLANNERY O’CONNOR, *Why Do The Heathen Rage?*, in *COMPLETE STORIES* 483–85 (1971); FLANNERY O’CONNOR, *Everything That Rises Must Converge*, in *COMPLETE STORIES* 418 (1971).

in our hearts it becomes hatred, whereas justified anger is an essential defense of the beloved.⁵

Attempting to channel rage into artworks is inspired by a mistaken belief that rage-inducing figures like former President Donald J. Trump can safely be treated as an artistic muse.⁶ Akin to Hobbesian rage and terror, facilitated by pride and dejection, the *channeling* of rage into art seems to arise from the oxymoronic emotional state of despair and presumption.⁷ As defined by St. Thomas Aquinas in his *Summa Theologiae*, who lifted his imperfect virtue theory from Aristotle, these pairs of vices correspond with the mutually supportive virtues of hope, magnanimity, and humility that were said to mark a greatness of soul.⁸ However, the ultimate madness of both Aquinas and Aristotle was gleefully revealed by Hobbes as their pride in the reason of humankind, known as Rationalism, which Hobbes successfully manipulated to advocate for despotism.⁹

Today, the presumptuous belief in the rationality of humankind is disproven in history as well as science.¹⁰ For example, the First French

5. Valarie Kaur, *3 Lessons of Revolutionary Love in a Time of Rage*, TED (Nov. 2017), https://www.ted.com/talks/valarie_kaur_3_lessons_of_revolutionary_love_in_a_time_of_rage?language=en; cf. VALARIE KAUR, *SEE NO STRANGER* 103, 131–34 (2020) (interrogating the commonly held definition of rage as “the extreme, irrational, uncontrollable expression of anger,” and elucidating ways of seeing rage that allow it to pass safely into helpful or useful “containers”). On a definitional level, and in the interest of applying Kaur’s strategies to (hopefully) alleviate the dangers of Hobbesian rage and terror, in this article the definition of rage is ultimately borrowed from Thomas Hobbes with elucidations from Flannery O’Connor and, as such, rage means an unhinged form of anger that is not put into a safe container. Kaur, like myself, seems to interpret rage as an emotion that is immediately felt like a raw ore that may be refined into something more precious rather than the final consequence of lesser emotions run amok as Hobbes interpreted. These ideas are fully discussed and elucidated by Kaur in a present day context, in a time when “rage” and “anger” are often used interchangeably, and nothing in this article is intended to detract from her insights, however, some portions are presented so that her present day strategies can be applied to preexisting conceptualizations of rage, terror, hatred, fury, and wrath. *Id.*; HOBBS, *supra* note 4, at 46 (defining rage as an excess of other emotions including anger from pride, love with jealousy, excessive self-importance with envy, and vehement opinion of truth contradicted by others).

6. Abigail Cain, *How Rage Can Lead to Creative Breakthroughs*, ARTSY (Nov. 19, 2018, 2:41 PM), <https://www.artsy.net/article/artsy-editorial-rage-lead-creative-breakthroughs>; see, e.g., Drew Schwartz, *LA’s New Naked Trump Statue Envisions the President as a Killer Clown*, VICE (Aug. 17, 2018, 10:17 AM), <https://www.vice.com/en/article/594aza/naked-trump-clown-sculpture-la-billboard-indecline-vgrn>.

7. FLANNERY O’CONNOR, *A PRAYER JOURNAL* 32 (2013) [hereinafter O’CONNOR, *A PRAYER*].

8. ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE* QQ.21, 129; ARISTOTLE, *NICOMACHEAN ETHICS* 1124a 2–4.

9. HOBBS, *supra* note 4, at 18, 46 (“[H]e that would take the paines, might enrowle a legion.”).

10. *Id.* at 18, *disproven* by DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* 377 (2013), Phillis Wheatley, *Thoughts on the Works of Providence* (1773), in WHEATLEY, *supra* note 1, at 48–50 (declaring love divine and observing reason’s proper place as a worshiper of love), and Maximilien Robespierre, *First and Second Speeches at the Festival of the Supreme Being* (1794) (“Our blood flows for the cause of humanity.”); cf. MICHAEL WALZER, *REGICIDE AND*

Republic devolved into a great national suicide known as the French Reign of Terror when the *Montagnards* channeled their rage to successfully overawe the *Gironde*'s appeals to French reason.¹¹ In the years leading up to the Terror, the American poetess Mercy Otis Warren received the poetic baton from Wheatley and wisely appealed to the French imagination to inspire them to resist “new joys, mistaken for divine.”¹²

But Maximilien Robespierre upstaged Warren and Wheatley, who attested to the divinity of love over reason,¹³ when he established a horrific combination of church and state that worshipped French actresses seated on a throne in Notre Dame, to symbolize the divinity of reason over love.¹⁴ Robespierre led the French people in the loveless worship of reason while they slaughtered the very Hébertists who toppled French Christianity and established the cult of reason.¹⁵ The sanguinary rounds continued in the style of a festival with dismembered human heads marched through the streets on the ends of poles with ribbons fluttering radiantly about.¹⁶ In these patriotic festivals of terror in France women baptized their newborns in the names of Robespierre and Jean-Paul Marat instead of God and Christ,¹⁷ and Thomas Paine published his oxymoronic *Age of Reason* pamphlet while narrowly escaping the guillotine himself.¹⁸ The Terror only concluded when the French prophet of “reason” Robespierre was destroyed by the very Terror he called down on his fellows.¹⁹

REVOLUTION: SPEECHES AT THE TRIAL OF LOUIS XVI 132, 136 (1974) (noting Robespierre's appeal “to the eternal principles of reason” and his denial to anyone “the right to have a will contrary to the general will and a wisdom which differs from universal reason” to begin the Reign of Terror).

11. WALZER, *supra* note 10, at 66; see Greg Pasciuto, *The Cult of Reason: The Fate of Religion in Revolutionary France*, COLLECTOR (Nov. 22, 2022), <https://www.thecollector.com/fate-of-religion-french-revolution/>.

12. MERCY OTIS WARREN, *To A Young Gentleman, Residing in France* (1782), in POEMS, DRAMATIC AND MISCELLANEOUS 224 (1790) [hereinafter WARREN, POEMS].

13. *Id.* at 227 (commending France to exercise “[f]raternal love”); Phillis Wheatley, *Thoughts on the Works of Providence* (1773), in WHEATLEY, *supra* note 1, at 48–50.

14. Robespierre, *supra* note 10; see JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 180 (Maurice Cranston trans., 1968) (taking the combination of church and state in a civil religion from Hobbesian philosophy).

15. Robespierre, *supra* note 10; WALZER, *supra* note 10, at 132, 136; see JOACHIM VILATE, LES MYSTÈRES DE LA MÈRE DE DIEU, DÉVOILÉS 58–68 (1795) (noting how Robespierre passed himself off as God).

16. WALZER, *supra* note 10, at cover.

17. Ashley Shifflett, *The Cult of the Martyrs of Liberty: Radical Religiosity in the French Revolution*, at 40 (Master's Thesis, University of Guelph 2008), <https://atrium.lib.uoguelph.ca/server/api/core/bitstreams/d17070c6-5702-4c99-a902-8aed02c07ebe/content>.

18. THOMAS PAINE, AGE OF REASON 57 (1877).

19. *Robespierre Overthrown in France*, HISTORY (July 24, 2020), <https://www.history.com/this-day-in-history/robspierre-overthrown-in-france>.

While they were beheading themselves in bloody rounds of carnage,²⁰ the French people actually believed they were following reason.²¹ In reality, they were following their (very wild) imaginations that falsely dressed up revenge fantasies as reason, and reason as a god.²² The American Revolutionaries wisely presaged this horror by recognizing the imagination's role as the leader of the mental train and by listening to artists who inspired their imaginations to reveal magnanimous, humble, and selfless ways of action for the benefit of the whole people.²³

The problem of the imagination revealed by the French is that it is a double-edged sword.²⁴ The imagination can cause a new nation to be born out of a time of suffering if nurtured by Ciceronian artists like Phillis Wheatley, who wondrously transformed the “cumbrous shackles”²⁵ of death into a symbol of freedom, a sluffing off of this mortal coil.²⁶ However, the imagination can also lead to a Reign of Terror and a national suicide as occurred in the First Republic of France right after the United States was formed.²⁷

This reality was foretold by Mercy Otis Warren, who accompanied Wheatley's widespread observations about the imagination by sending a letter to John Adams in 1773 warning him of the dangers of the imagination.²⁸ In her poem to Adams, Warren defined the imagination as: “That airy queen who guides the helm of hope.”²⁹ She carefully warned Adams that the imagination: “Holds a false mirror to the dazzled sight / A dim perspective, a delusive light.”³⁰

Unfortunately for America, John Adams did not heed Warren's warnings.³¹ Instead, Adams proved Warren's observations about the dangers of the human imagination real when he signed the Alien & Sedition Acts into law and moved to exclude women from public life piteously citing “the

20. 2 MERCY OTIS WARREN, *HISTORY OF THE RISE, PROGRESS AND TERMINATION OF THE AMERICAN REVOLUTION* 683 (Lester H. Cohen ed., 1989) [hereinafter WARREN, HISTORY].

21. WALZER, *supra* note 10, at 132, 136; 1 WARREN, HISTORY, *supra* note 20, at 379–80; *see generally* PAINE, *supra* note 18.

22. Phillis Wheatley, *On Imagination* (1773), in WHEATLEY, *supra* note 1, at 65; *see, e.g.*, Robespierre, *supra* note 10; WALZER, *supra* note 10, at 132, 136; VILATE, *supra* note 15, at 58–68.

23. JAMES OTIS, *COLLECTED POLITICAL WRITINGS OF JAMES OTIS* 63–64 (Richard Samuelson ed., 2015); *see* 1 WARREN, HISTORY, *supra* note 20, at 76; Phillis Wheatley, *On The Death of General Wooster* (1778), in WHEATLEY, *supra* note 1, at 149–50.

24. Letter from Mercy Otis Warren to John Adams (Oct. 11, 1773).

25. Letter from Phillis Wheatley to Sir John Thornton (Mar. 29, 1774), in WHEATLEY, *supra* note 1, at 178.

26. *Id.*; *see, e.g.*, Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116; *cf.* Cicero, *De Senectute* 21.77–78, 22.79–81.

27. *See* sources cited *supra* notes 15–16, 24.

28. Letter from Mercy Otis Warren to John Adams (Oct. 11, 1773).

29. *Id.*

30. *Id.*

31. 2 WARREN, HISTORY, *supra* note 20, at 676.

Despotism of the Peticcoat [sic].”³² In the end, Warren broke off her relationship with Adams publically when she accused him of being a monarchist in republican clothing, something like an American Oliver Cromwell.³³

Adams, whose emotion-suppressing Rationalism still speaks for many in the legal profession, believed that the government was instituted to “contend[] with human Passions unbridled by morality and Religion.”³⁴ Nevertheless, even Adams appeared to believe that his controversial quasi-religious strategies for suppressing American emotions should not exist perpetually.³⁵ For example, while visiting France, Adams surveyed several marvels and wonders of art and concluded that by devoting his life to the science of government that his children’s children ought to eventually share in the French “right to study Painting, Poetry, Musick [sic], Architecture, Statuary, Tapestry, and Porcelaine [sic].”³⁶

So it was that, akin to Adams’ uncomfortable alliance with French artistry prior to the French Revolution, a mixture of rage and wonder swirled about us at the *Advocating for Children in Migration* symposium at the University of Colorado, Anschutz.³⁷ For a rare moment, the wonderers and the enraged were in the same building all at once, in a conversation among ourselves.³⁸ This article demonstrates how to wonder about the emotional-reportage in immigrant advocacy flowing in five parts: (Part I) How Hope For Immigrants Lives in Wonder Created By Artists; (Part II) How Trump Led America To Wonder About An Anti-Immigrant America; (Part III) How Anti-Immigrant Rage Became a Muse of The 1619 Project; (Part IV) How Trump Used Rage to Impede Wonder About Pro-Immigration Policy; and

32. Letter from John Adams to Abigail Adams (Apr. 14, 1776); Andrew Glass, *Congress Initiates Alien and Sedition Acts, June 18, 1798*, POLITICO (June 18, 2018, 12:00 AM), <https://www.politico.com/story/2018/06/18/this-day-in-politics-june-18-1789-647018>.

33. 2 WARREN, HISTORY, *supra* note 20, at 676; cf. Ronald G. Shafer, *The Thin-Skinned President Who Made It Illegal to Criticize His Office*, WASH. POST (Sept. 8, 2018, 7:00 AM), <https://www.washingtonpost.com/news/retropolis/wp/2018/09/08/the-thin-skinned-president-who-made-it-illegal-to-criticize-his-office/>.

34. Letter from John Adams to Massachusetts Militia (Oct. 11, 1798) (arguing that human emotions uncontrolled by the government “would break the strongest Cords of our Constitution as a Whale goes through a Net”); Daniel I. O’Neill, *John Adams Versus Mary Wollstonecraft on the French Revolution and Democracy*, 68 J. HIST. IDEAS 451, 455–56 (2007); cf. THOMAS HOBBS, A DIALOGUE BETWEEN A PHILOSOPHER AND A STUDENT OF THE COMMON LAWS OF ENGLAND 100 (Joseph Cropsey ed., 1971) (explaining how “the Passion of the Judge is to be Conquer’d”).

35. Letter from John Adams to Abigail Adams (May 12, 1780) (noting that future generations of Americans might be able to handle the trials of emotion exemplified in French art, but also that Americans could not, apparently, handle these trials of emotion in Adams’ time).

36. *Id.*

37. *Advocating for Children in Migration: Multidisciplinary Symposium*, UNIV. OF COLORADO ANSCHUTZ MED. CAMPUS: CTR. FOR BIOETHICS AND HUMANITIES, <https://cuanschutz.edu/centers/bioethicshumanities/arts-and-humanities/symposium-advocating-for-children-in-migration> (last visited Nov. 15, 2023) [hereinafter *Advocating*].

38. *Id.*

(Part V) How Loving Strangers, Our Opponents, and Ourselves Nurtures Wonder. The article concludes with an exposition of Phillis Wheatley's striking use of wonder to reverse Hobbesian despotism.

PART I: HOW HOPE FOR IMMIGRANTS LIVES IN WONDER CREATED BY ARTISTS

In Langston Hughes' poem *Harlem*, he wondered: "What happens to a dream deferred? / Does it dry up / like a raisin in the sun? . . . Or does it *explode*?"³⁹ Like the Pachucos of California whose zoot suit riots in Los Angeles went off in 1943, the same year as the riots Hughes was referring to in *Harlem*, the immigrants and children of immigrants today face similar questions about hope and dreams deferred—*will they explode*?⁴⁰ Or will they keep choosing to suffer in silence under draconian legal systems in the hope that future generations will cash in on their raisin in the sun?⁴¹ What happens if the raisin in the sun, that Benthamite deferred future interest promised by America,⁴² is taken away from legal immigrants and their descendants once again as was done in the 1930s by Secretary Doak's illegal and unconstitutional repatriation program?⁴³

As a result of the resurgence of Trump's "big dictator energy,"⁴⁴ one might be tempted to hope that at least one judge in America would be willing to cite the law as a bulwark against a possible second Mexican repatriation proposed by former Professor John C. Eastman as the apparent plenary power origin of immigration law.⁴⁵ As blithely noted by Eastman, there was no such

39. LANGSTON HUGHES, *Harlem*, in THE COLLECTED POEMS OF LANGSTON HUGHES 426 (Arnold Rampersad ed., 1997).

40. *Id.*; Christian Orozco, *Where and How the Zoot Suit Riots Swept Across L.A.*, L.A. TIMES (June 2, 2023, 5:00 AM), <https://www.latimes.com/california/list/zoot-suit-riot-timeline-sleepy-lagoon-murder-trial>; *Mayor La Guardia on Harlem Riot*, WNYC (Aug. 1, 1943), <https://www.wnyc.org/story/mayor-la-guardia-on-harlem-riot/>.

41. See generally LORRAINE HANSBERRY, A RAISIN IN THE SUN (1959).

42. JEREMY BENTHAM, DEFENCE OF USURY 102, 171 (1818) (suggesting that societies "sacrifice the present to future"); Paul Begala, *The Worst Generation: Or, How I Learned to Stop Worrying and Hate the Boomers*, ESQUIRE (Mar. 3, 2017), <https://www.esquire.com/news-politics/a1451/worst-generation-0400/> ("Why is America the greatest *sociiiiiety* in human hist'ree? The Few-chah Pref'rence. At every critical junk-chaah, we have prefuhhed the few-chah to the present. That is why immigrants left the old waaald for the new. That is why paahrents such as yours sacrifice to send their children to univehhsities like this wan. The American ideal is that the few-chah can be bettah than the paahst, and that each of us has a personal, moral obligation to make it so." (internal quotation marks omitted)).

43. FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S 74–75 (2006).

44. *Taylor Swift Named TIME Person of the Year, Trump Would Only Be a Dictator on "Day One"*, YOUTUBE 1:41–1:44 (Dec. 6, 2023), <https://www.youtube.com/watch?v=iq-uydBu00>.

45. John C. Eastman, *Some Questions for Kamala Harris About Eligibility | Opinion*, NEWSWEEK (Aug. 12, 2020, 8:30 AM), <https://www.newsweek.com/some-questions-kamala->

judge to declare Mexican repatriation illegal in the 1930s when it was happening.⁴⁶ Also, at the apparent behest of Eastman’s activism at the Supreme Court over several decades, the Court transmogrified its equitable power into a shadow docket capable of nullifying any such unruly judge who might attempt to apply the law to such potential cases of illegal repatriation.⁴⁷ Where is hope in this mess?⁴⁸ Where does our help come from?⁴⁹

Law panelist Scott Hollander answered these very questions at the *Advocating for Children in Migration* symposium by saying: “You have to recognize that there is individual advocacy on every individual child’s case that does make a difference, that does create hope.”⁵⁰ Scott continued that common legal advocates create “hope” by “treading water” in whatever individual advocacy we can do, while big boys like Lee Gelernt of the ACLU take up impact litigation on behalf of the rest of us.⁵¹ However, many immigration advocates lost hope that things might change if the right test case was raised by major nonprofits like the ACLU, because in *Ms. L. v. ICE* child separation in violation of *Flores* came and went without causing a major impact or even a minor disruption of immigration practice generally,⁵² while the previous grounds for the Supreme Court approval of *Flores* in the habeas corpus rights of migrant children was degraded almost to the point of non-existence in the calamitous due process dicta of *DHS v. Thuraissigiam*.⁵³

harris-about-eligibility-opinion-1524483 [hereinafter Eastman, *Some*] (citing the Mexican repatriation program as proof that the United States does not have birthright citizenship).

46. *Id.*; *Trump’s Plan for Deportation Mirrors 1930s Removal of Mexican Families*, CBS NEWS (Aug. 31, 2015, 8:01 AM), <https://www.cbsnews.com/news/trumps-plan-for-deportation-mirrors-1930s-removal-of-mexican-families/>; cf. John C. Eastman, *Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11*, 42 U. RICHMOND L. REV. 955, 962 (2008) [hereinafter Eastman, *Born*].

47. STEPHEN VLADECK, *THE SHADOW DOCKET* xii (2023); William Baude, *Foreword: The Supreme Court’s Shadow Docket*, 9 N.Y.U. J. L. & LIBERTY 1, 5 (2015).

48. Cf. Dahlia Lithwick, *Democrats Are Still Battling Themselves on Court Reform*, SLATE (July 20, 2021, 3:31 PM), <https://slate.com/news-and-politics/2021/07/biden-court-commission-failure.html>.

49. *Psalms* 121:1.

50. *Law Panel*, *supra* note 3, at 1:00:59–1:01:07; but see Christina Jewett & Shefali Luthra, *Immigrant Toddlers Ordered to Appear in Court Alone*, TEX. TRIB. (June 27, 2018, 9:00 PM), <https://www.texastribune.org/2018/06/27/immigrant-toddlers-ordered-appear-court-alone/>.

51. *Law Panel*, *supra* note 3, at 1:00:33–1:01:57 (presenting “this idea about where hope lives” and arguing that “I think there are sweeping changes, but we’ll hear Lee at lunch talk about *Ms. L.* and how that changed family separation” and maintaining that “hope” lives in “individual cases” that are ordinarily taken up by immigration advocates who are not willing or able to muster the resources required to effect sweeping policy changes).

52. *Ms. L. v. ICE*, 415 F. Supp. 3d 980, 997–98 (Cal. S.D. 2020) (“Plaintiffs assert Defendants have returned to systematically separating families at the border. However, the evidence before the Court does not support that assertion. . . . In the present motion, Plaintiffs invite the Court to engage in prospective oversight of Defendants’ separation decisions, but that invitation warrants caution.”).

53. *Id.*; *DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1983 (2020) (denying that the Due Process Clause requires habeas corpus review of a credible fear determination for error prior to deportation); *Reno v. Flores*, 507 U.S. 292, 314 (1993) (“There is no evidence . . . that habeas corpus is insufficient to remedy particular abuses.”).

In his keynote speech at the *Advocating for Children in Migration* symposium, Lee Gelernt, who litigated *Ms. L.* on behalf of the ACLU, elaborated on the criticism he received for not attempting to effect more sweeping changes in the immigration field with *Ms. L.*⁵⁴ Much of Gelernt's speech was dedicated to explaining the difficulties of creating and sustaining outrage that Gelernt felt might cause change in the immigration field through Congress, and so he explained his strategic reasons for distinguishing the Trump-era child separation policy from other forms of child separation that happen every day in the status quo pre-Trump immigration regime.⁵⁵ Also resisting the idea that sweeping changes to the immigration field should be initiated through the courts, Scott Hollander added his opinion that lawyerly attempts to create systemic change is a rage-induced aberration from the status quo, appearing to signal to artists like Mauricio Cordero at the symposium that in order to cause lawyers to attempt systemic changes they must channel rage into their art to encourage more and more rage as a necessary prerequisite for legal change.⁵⁶

This group-think idea, that rage energizes rather than disrupts social movements was so pervasive and is so reflected in American society generally that it was included in Professor Binford's introduction of my scholarship at the symposium.⁵⁷ Binford was correct to explain that I am an energizing force in the immigration field and that I believe that hope, freedom, immigration, and arts interacting with democracy is a part of our DNA as Americans, but she was mistaken to credit my energy for these "shining bright light[s]" to rage, as the reality is that a rageless love energizes me.⁵⁸ In order to respectfully explain how Binford misidentified the emotion that energizes my work, this part will suggest how Scott Hollander and Lee Gelernt might use the arts called forth by Binford and *Project Amplify* to find hope rather than dogmatically asserting that "hope" can be found in the common immigration lawyers that are "treading water,"⁵⁹ especially because

54. Lee Gelernt, JD, *Keynote Presentation at Advocating for Children in Migration Symposium on 9/21/23*, YOUTUBE 38:55–44:12 (Oct. 6, 2023), <https://www.youtube.com/watch?v=ewG6BmR8-sM> [hereinafter *Lee Gelernt*] ("We chose not to broaden the lens for strategic, tactical reasons. Whether that was right or wrong, I don't know.").

55. *Id.*; see *Ms. L.*, 415 F. Supp. 3d at 984 (noting persuasive arguments that the Trump administration's "practices now are no different from prior Administrations"); cf. Jewett & Luthra, *supra* note 50.

56. *Law Panel*, *supra* note 3, at 1:01:47–1:01:49, quoting *Arts and Literature Panel*, *supra* note 3, at 13:33–13:40.

57. *Law Panel*, *supra* note 3, at 5:51–5:55.

58. *Id.* at 5:51–5:55, 51:40–52:22 ("Okay, Josh, you're my hope. . . . We're looking to you to pass the baton to, with this shining bright light that hope is part of our DNA, that freedom is part of our DNA, arts interacting with democracy is part of our DNA, [and] immigration is part of our DNA.").

59. *Id.* at 1:00:33–1:01:57.

most humanitarian immigration lawyers are actually drowning in burnout and secondary trauma.⁶⁰

We are not meeting, nor are we able to meet, the needs of asylum seekers, which became a general topic of public discussion when news surfaced about how toddlers were ordered to appear in Immigration Court alone.⁶¹ As global warming, earthquakes, and extreme weather events continue driving immigration to the United States, it appears that Temporary Protected Status (“TPS”) is not enough to meet the needs of our fast changing world.⁶² Ulterior legal grounds for emergency immigration with a path to citizenship that may fall outside of the bounds of traditional applications for asylum, must be reestablished in the law without the racism that was baked into the immigration regime of yesteryear before lawyers can be rightfully seen as a hope for immigrants.⁶³ Thus, lawyers should not be cited as a symbol of hope unless or until, at the very least, the basic due process right to counsel announced in *Gideon v. Wainwright* is extended to all immigrants generally with special considerations to protect the family unity of the hundreds of thousands of immigrant parents and children subject to the unjust enforcement of eugenics-motivated U.S. immigration laws today.⁶⁴

The fact of our abject failure and inability to succeed under the mountain of injustice that stands against us, is exactly why Professor Binford called upon the artists, showcased at the *Advocating for Children in Migration*

60. Jill Family, *The Immigration Lawyers Are Not “Alright,”* JOTWELL (Dec. 15, 2022), <https://lex.jotwell.com/the-immigration-lawyers-are-not-alright/>, reviewing Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 433 (2021).

61. Jewett & Luthra, *supra* note 50; cf. Amy Goodman with Warren Binford, “*Somebody Is Going to Die*”: Lawyer Describes Chaos, Illness & Danger at Migrant Child Jail in Texas, DEMOCRACY NOW (June 24, 2019), https://www.democracynow.org/2019/6/24/somebody_is_going_to_die_lawyer; Nicole Acevedo, *Why Are Migrant Children Dying In U.S. Custody*, NBC NEWS (May 29, 2019, 1:44 PM), <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316>.

62. 8 U.S.C.S. § 1254a; see Mélodie Cerin, *Haitians Struggle to Access a New Path to the U.S.*, U.S. NEWS (June 19, 2023, 7:30 AM), <https://www.usnews.com/news/best-countries/articles/2023-06-19/amid-chaos-haitians-struggle-to-access-a-new-path-to-the-u-s> (“According to the U.N. World Food Program, 4.9 million Haitians – nearly half the country – do not have enough to eat.”).

63. Anya Howko-Johnson, *The Crisis of the Century: How the United States Can Protect Climate Migrants*, COUNCIL ON FOREIGN RELS. (Aug. 26, 2022, 3:15 PM), <https://www.cfr.org/blog/crisis-century-how-united-states-can-protect-climate-migrants>; see, e.g., *Henfield’s Case*, 11 F. Cas. 1099, 1120 (C.C.D. Penn. 1793) (No. 6,360) (“Emigration is, undoubtedly, one of the natural rights of man.”).

64. *Ms. L. v. ICE*, 415 F. Supp. 3d 980, 984 (Cal. S.D. 2020) (counting “some 524,294 parents and children” who crossed the border “in the year following issuance of the preliminary injunction,” most of whom are not covered by *Ms. L.*’s injunction); see Lugas Guttentag & Ahilan Arulanantham, *Extending the Promise of Gideon: Immigration, Deportation, and the Right to Counsel*, ABA HUMAN RIGHTS MAG. (Oct. 1, 2013), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2013_vol_39/vol_30_no_4_gideon/extending_the_promise_of_gideon/.

symposium, to amplify the voices of children trapped in an untenable immigration system.⁶⁵ Initially, artists were called into action by Binford and *Project Amplify* to counter Trump's attempt to cover up facts that led Binford and her colleagues to conclude that if something does not change migrant children will die.⁶⁶ These artworks initially existed to create an imaginative context, using actual statements made by children in detention to accompany Binford's widely reported testimony about what she saw.⁶⁷ But from reading Phillis Wheatley's revolutionary works that unflinchingly observed suffering and death in her day, it appears that the genre of artworks that Binford called forth to assist the observation of suffering might also unlock a path to hope and social change that needs to be fleshed out more clearly, especially to provide a counterpoint for those who still believe that hope lives in common immigration lawyers' grueling day-to-day work, which is a project for immigrant justice that is doomed by design.⁶⁸

Phillis Wheatley's poetry contains complex emotional maneuvering, including devout declarations of love for enemies like racist slaveholders,⁶⁹ misogynistic Puritans,⁷⁰ American loyalists,⁷¹ and British royalists⁷² that will ever be controversial especially among female and Black Americans.⁷³ And yet, through her energizing love Wheatley eventually freed herself from her masters and set the cornerstone of freedom in Massachusetts upon her seemingly impossible love that must originate in something divine.⁷⁴ At length, she demonstrated how to use the arts to travel through death and

65. *Advocating for Children in Migration: Welcoming Remarks by Matthew Wynia and Warren Binford*, YOUTUBE 9:40–10:50 (Oct. 6, 2023), <https://www.youtube.com/watch?v=8Y0T9SoPhH4&t=1s>.

66. *Id.* at 7:40–9:40.

67. *Id.*

68. Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116; *Family*, *supra* note 60; *Law Panel*, *supra* note 3, at 1:00:59–1:01:07; *Lee Gelernt*, *supra* note 54, at 3:36–4:07.

69. Phillis Wheatley, *On Being Brought From Africa to America* (1773), in WHEATLEY, *supra* note 1, at 18.

70. REGINALD A. WILBURN, *PREACHING THE GOSPEL OF BLACK REVOLT* 57 (2014); PAULA LOSCOCO, *PHILLIS WHEATLEY'S MILTONIC POETICS* 17 (2014).

71. Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116.

72. Phillis Wheatley, *To the KING's Most Excellent Majesty* (1768), in WHEATLEY, *supra* note 1, at 17.

73. See, e.g., Karla V. Zelaya, *Sweat the Technique: Visible-izing Praxis Through Mimicry in Phillis Wheatley's "On Being Brought from Africa to America"* 178–79 (2015) (Ph.D. dissertation) (available on Scholarworks of University of Massachusetts, Amherst); R. Lynn Matson, *Phillis Wheatley—Soul Sister?*, 33 *PHYLON* 222 (1972) (“Phillis Wheatley has been condemned for more than a century by whites and blacks alike for failing to espouse in any way the plight of her race.”).

74. Letter from Phillis Wheatley to David Wooster (Oct. 18, 1773), in WHEATLEY, *supra* note 1, at 170 (“Since my return to America my Master, has at the desire of my friends in England given me my freedom.”); see *Mumbet's Case* (*Brom & Bett v. Ashley*), Court Decision, Aug. 1781, reprinted in ROGER BRUNS, *AM I NOT A MAN AND A BROTHER* 468–70 (1977) [hereinafter *Mumbet's Case*, reprinted in BRUNS].

despair to find hope in the world to come, whether that be a heavenly afterlife or a new government called forth by a goddess of liberty descended to earth, to mightily defend the Americans in their tribulations caused by British oppression.⁷⁵

This kind of hope in the world that may come once the current immigration system is rightfully repealed, overruled, or otherwise properly dismantled by new laws, judgments, and orders was missing from Scott Hollander and Lee Gelernt's encomiums to hope in the status quo operations of the current immigration system.⁷⁶ Thus, it is worth observing how hope for systemic change can come through an artistic observation of death and suffering by using an example from Wheatley's oeuvre.⁷⁷ In 1773, Wheatley showed us how to reach out to fatalists with love when she wrote to the second in command of Massachusetts Bay, Lieutenant-Governor Andrew Oliver, one of the central figures opposing American rights at the time, with a careful observation of Oliver's natural temptation to cop fatalism after the death of his beloved wife:

ALL-conquering Death! By thy resistless pow'r,
Hope's tow'ring plumage falls to rise no more!
Of scenes terrestrial how the glories fly,
Forget their splendors, and submit to die!⁷⁸

In these opening lines, Wheatley observed death as the epitome of tyranny and all that is wrong with human nature itself, but then (as she did in most of her elegies) she turned away from this grief to say: "But cease thy strife with *Death*, fond *Nature*, cease: / He leads the *virtuous* to the realms of peace."⁷⁹ All at once, Wheatley transformed death from a dreadful tyrant to an agent of freedom, a bridge to new possibilities rather than a wall, a semi-colon rather than a period.⁸⁰ In recent times, Angela Davis drew upon these marvelous roots of the Black American mind to encourage border activists (considered in more depth in Part III) that "walls turned sideways are bridges."⁸¹ Likewise, many of the artworks showcased at the *Advocating for*

75. Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116; Phillis Wheatley, *To His Excellency General Washington* [1775], in WHEATLEY, *supra* note 1, at 145–46.

76. *Law Panel*, *supra* note 3, at 1:00:33–1:01:57; *Lee Gelernt*, *supra* note 54, at 3:36–4:07 ("I want to pick up on something Scott said There's a lot of talk about finding the ultimate solutions, systemic solutions, but those are hard to come by, you know, they really are. But what Scott said I think is right, is that ultimately, the hope has to come from just doing what you can in individual cases.").

77. Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116–18.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Infra* note 312 and accompanying text.

Children in Migration symposium similarly represented a potential that the children's statements they were called forth to amplify may, by their sublimation into the public consciousness through artworks, become a bridge or a doorway to new possibilities in America.⁸²

This strategy of beholding despair and demoralization to inspire new life in America was conspicuously carried forth by Valarie Kaur in her Watch Night Speech on New Year's Eve in 2016 only weeks after Donald J. Trump was declared president elect.⁸³ As a young mother, she told us that there is a moment in childbirth that feels like dying that is not death.⁸⁴ Like Octavio Paz who suspected that the cults of life and death may really be the same thing,⁸⁵ Kaur turned to the United States in one of its darkest moments to wonder if hope might shine through despair,

What if this darkness is not the darkness of the tomb, but the darkness of the womb? What if our America is not dead, but a country that is waiting to be born? What if the story of America is one long labor? What if all our grandfathers and grandmothers are standing behind us now, those who survived occupation and genocide, slavery and Jim Crow, detentions and political assault? What if they're whispering in our ear today, tonight 'you are brave'? What if this is our nation's great transition?⁸⁶

This sort of wonder is exactly what created the United States through the trials of revolution that came into being through Phillis Wheatley's inspiring call to face death and suffering and to see the night as a womb of wonder and creation, of possibilities and dreams.⁸⁷ Wheatley showed us how to contest fatalism in America by challenging even our most dreaded political opponents with an unseen knowledge of heavenly mysteries.⁸⁸ Following religious and poetic sources, she commended America to use even the most haunted nights for rest and recuperation, for sex and storytelling, and for

82. See, e.g., Juls Mendoza, *Fly to Heal* (2023), <https://www.cuanschutz.edu/centers/bioethicshumanities/arts-and-humanities/fly-to-heal-mural-by-juls-mendoza>.

83. KAUR, *supra* note 5, at xiii (quoting *Valarie Kaur @ Watch Night Service 20161231*, YOUTUBE 4:33–5:21 (Jan. 2, 2017), <https://www.youtube.com/watch?v=LCenwghelBs>).

84. Kaur, *supra* note 5.

85. OCTAVIO PAZ, *THE LABYRINTH OF SOLITUDE* 23 (Lysander Kemp trans., 1961) (“Our cult of death is also a cult of life, in the same way that love is a hunger for life and a longing for death.”).

86. KAUR, *supra* note 5, at xiii (quoting *Valarie Kaur @ Watch Night Service 20161231*, YOUTUBE 4:33–5:21 (Jan. 2, 2017), <https://www.youtube.com/watch?v=LCenwghelBs>).

87. *Id.*; Phillis Wheatley, *An Hymn to the Evening* (1773), in WHEATLEY, *supra* note 1, at 58–59 (“Let placid slumbers sooth each weary mind / At morn to wake more heav’nly, more refin’d”).

88. See, e.g., Phillis Wheatley, *To the Rev. Dr. Thomas Amory On Reading His Sermons on Daily Devotion, in Which That Duty is Recommended and Assisted* (1773), in WHEATLEY, *supra* note 1, at 90–91 (“In vain would Vice in night her works in night conceal, / For Wisdom’s eye pervades the sable veil.”).

thinking of what may be that has not yet passed.⁸⁹ And like Kaur, when the pain and suffering of death and oppression became almost too much to bear, Wheatley marvelously transformed what might have been the end into a transition, a pivot to something new.⁹⁰ Therefore, during the American Revolution what appeared to be death itself was transformed into new life on July 4, 1776, which is the date that marks America's first great transition, the first of several similar periods of transition to come later, known as periods of reconstruction.⁹¹

The prospect of deaths and births, even when sublimated by philosophers like Hannah Arendt into heady notions of natality and mortality,⁹² will ever be unattractive to anyone who delights in the status quo.⁹³ It is, therefore, natural that phoenix-like revolutionary artworks that imagine the deaths and rebirths of time tend to be accompanied by a parallel flight of artworks offered for the comfort and elevation of American audiences to sweeten the transformative marvels that may otherwise inspire fear and trepidation.⁹⁴ These works can facilitate a certain sort of detachment and psychological dissociation from painful subjects that is probably best exemplified in Joan Didion's book, *The Year of Magical Thinking*.⁹⁵ An example of dissociative art was wondrously glimpsed in Juls Mendoza's beautiful mural *Fly to Heal* at the University of Colorado, Anschutz to accompany more glaring pieces that stared at immigrant suffering in a more direct and unforgiving way.⁹⁶ A certain level of dissociation from pain can facilitate an activist's survival of death defying feats including the survival

89. Phillis Wheatley, *Thoughts on the Works of Providence* (1773), in WHEATLEY, *supra* note 1, at 47 ("Say what is sleep? And dreams how passing strange! / When action ceases, and ideas range . . . Hear in soft strains the dreaming lover sigh / To a kind fair, or rave in jealousy / On pleasure now, and now on vengeance bent, / The lab'ring passions struggle for a vent.").

90. Phillis Wheatley, *An Hymn to the Evening* (1773), in WHEATLEY, *supra* note 1, at 58–59.

91. See, e.g., Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116–18; Phillis Wheatley, *On the Death of General Wooster* (1773), in WHEATLEY, *supra* note 1, at 149 ("Permit, great power, while yet my fleeting breath / And Spirits wander to the verge of Death / Permit me yet to point fair freedom's charms / For her the Continent shines bright in arms, / By thy high will, celestial prize she came— / For her we combat on the field of fame"); THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

92. 2 HANNAH ARENDT, *LIFE OF THE MIND* 134, 217 (1978) [hereinafter ARENDT, *LIFE*].

93. See, e.g., [Jeremy Bentham,] *Sort Review of the Declaration*, in JOHN LIND, *AN ANSWER TO THE DECLARATION OF THE AMERICAN CONGRESS* 119 (1776).

94. Compare PHILIP FRENEAU, *On the Beauties of Santa Cruz* (1776), in THE POEMS OF PHILIP FRENEAU. WRITTEN CHIEFLY DURING THE LATE WAR. 133 (1786) ("In sweet delusions I deceive my mind."), with Phillis Wheatley, *To a Lady on the Death of Three Relations* (1773), in WHEATLEY, *supra* note 1, at 51 ("Awful he moves, and wide his wings are spread: Behold thy brother number'd with the dead! / From bondage freed, the exulting spirit flies / Beyond *Olympus*, and these starry skies. . . . Weep not for them, who wish thine happy mind / To rise with them, and leave the world behind.").

95. JOAN DIDION, *THE YEAR OF MAGICAL THINKING* 44 (2005).

96. Mendoza, *supra* note 82; cf. Zadie Smith, *Joan Didion and the Opposite of Magical Thinking*, *NEW YORKER* (Dec. 24, 2021), <https://www.newyorker.com/culture/postscript/joan-didion-and-the-opposite-of-magical-thinking>.

of the deaths of loved ones and loved things like old systems of government that need to pass on in order to better secure liberty, equality, and justice in the United States.⁹⁷

However, in the years after our last great transition, marked by the Civil Rights Act of 1965, the judiciary misappropriated its own prudential doctrines to binge upon the comforts of detachment and dissociation, which resulted in a broad acceptance of cost-benefit balancing tests summed up by *Mathews v. Eldridge* across constitutional subjects.⁹⁸ *Mathews*-styled cost-benefit balancing provided a rubric for individual case-by-case advocacy that was treated as the benchmark of due process for several decades,⁹⁹ which was at long last lauded by Scott Hollander as a symbol of hope at the *Advocating for Children in Migration* symposium.¹⁰⁰ But this strategy's roots in *Buck v. Bell* were recently revealed again in many glaring miscarriages of justice including *DHS v. Thuraissigiam*,¹⁰¹ *Dobbs v. Jackson Women's Health Org.*,¹⁰² and *Students for Fair Admissions Inc. v. Harvard College*¹⁰³ among other cases.¹⁰⁴

By participating in the dissociative pleasures of the delusion that individual reason (“*that unrefined reason, which only received the unaccountable consent of only one person, the judge*”) creates justice as most lawyers do,¹⁰⁵ Scott seemed to find “hope” in the scathing of individual minds with images of human suffering as represented by certain rage-inspired artworks at the *Advocating for Children in Migration* symposium.¹⁰⁶ Scott seemed to refer to these works as a proof of concept, that legal change must

97. Kathryn Levison, *Demystifying Dissociation*, DEPTH COUNSELING (Jan. 7, 2022), <https://depthcounseling.org/blog/levison-demystifying-dissociation> (describing the proper level of “dissociation as a temporary coping mechanism [that] is vital to survival”).

98. Joshua J. Schroeder, *Why Cost/Benefit Balancing Tests Don't Exist: How to Dispel a Delusion That Delays Justice for Immigrants*, 125 W. VA. L. REV. 183, 240 (2022) [hereinafter Schroeder, *Why*].

99. *Id.* at 223.

100. *Id.* at 187 (noting the *ad hoc* case-by-case nature of cost-benefit balancing tests); *Law Panel*, *supra* note 3, at 1:00:59–1:01:07.

101. *DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1982 (2020) (citing dicta stated in a *Mathews* cost-benefit balancing analysis as a holding (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982))).

102. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2264 (2022) (citing *Janus v. AFSCME*, 138 S. Ct. 2448 (2018)).

103. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2173 (2023) (balancing the interests of the state versus individual interests).

104. *See, e.g., Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2178 (2019) (citing *Janus*, 138 S. Ct. at 2448); *id.* at 2190 (Kagan, J., dissenting); *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1499 (2019) (citing *Janus*, 138 S. Ct. at 2448).

105. *See, e.g., Schroeder, Why, supra* note 98, at 220, 223 (presenting “the almost nostalgic view of cost/benefit balancing received by the Boomers”).

106. *Compare Law Panel, supra* note 3, at 1:01:47–1:01:49, quoting *Arts and Literature Panel, supra* note 3, at 13:33–13:40, with Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116–18.

be exceptional due to its dependence on rage (an exhausting emotion).¹⁰⁷ But perhaps it is those who barrage the public with rage-inducing imagery who delay legal change by exhausting and disrupting the public discourse with rage (as Trump does).¹⁰⁸ Perhaps Scott and others like him see hope in the status quo, perhaps they understand (as Trump does) that rage delays change, and it may be that this knowledge is why Scott set his idea of hope in something that causes human beings to resist change however paradoxically.¹⁰⁹ On the other hand, it may be that immigration advocates like Scott and Lee merely do not see another option, because fatalism is all that is required to falter here.¹¹⁰

It is entirely possible that Lee and Scott simply do not know of the several cycles of movements, led by American artists, to transform or

107. *Law Panel*, *supra* note 3, at 1:01:47–1:01:49, quoting *Arts and Literature Panel*, *supra* note 3, at 13:33–13:40.

108. See, e.g., Schwartz, *supra* note 6; WOODWARD, *supra* note 2, at 15.

109. See sources compared *supra* note 106; *Muralism and Performing Arts Panel*, moderated by Josina Romero O'Connell, MD, YOUTUBE 35:10–35:45 (Oct. 6, 2023), <https://www.youtube.com/watch?v=53P2gKGhKJY> [hereinafter *Muralism and Performing Arts Panel*]; *Arts and Literature Panel*, *supra* note 3, at 23:15–24:10, 27:50–29:00; cf. *Law Panel*, *supra* note 3, at 55:40–57:00 (describing Wheatley's artistic strategies that assisted the American lawyers of 1776 to found the nation).

110. Nikole Hannah-Jones, *Democracy*, in THE 1619 PROJECT: A NEW ORIGIN STORY 33 (Nikole Hannah-Jones et al. eds., 2021) [hereinafter THE 1619 PROJECT] (appearing to embrace fatalism by portraying Asian Americans as ironic traitors to the Black Americans who gave Asians their immigration rights, without checking her facts), *disputed by* Zaid Jilani, *The 1619 Project is Wrong on the 1965 Immigration Act*, AM. CONSERVATIVE (Sept. 21, 2020, 1:13 PM), <https://www.theamericanconservative.com/the-1619-project-is-wrong-on-the-1965-immigration-act/>; cf. IBRAM X. KENDI, STAMPED FROM THE BEGINNING 99 (2017) (ceding to Jefferson his estimation of Wheatley, that she and her allies failed “to alter the position of proslavery secessionists”), *ignoring or reinterpreting several sources that imply that Black Americans were not necessarily stamped from the beginning in America including Catherine Sedgwick, Slavery in New England*, in 34 BENTLEY'S MISCELLANY 421 (1853) (vindicating Mumbet's cause for freedom and for bringing about the first application of the Declaration of Independence in Massachusetts courts), W.E.B. DU BOIS, DARK WATER 173 (1920) (lionizing Mumbet, whose full name was Elizabeth Freeman, as “the ancient African mother of men, strong and black, whose very nature beat back the wilderness of oppression and contempt”), Letter from Alured Popple to William Gooch (Dec. 18, 1735) (arguing for the adoption of a “perpetual Brand upon Free-Negros & Mullatos,” because “Free-Negros” legally and actually existed in Virginia prior to the invention of the white race), JAMES BALDWIN, *On Being White. . . and Other Lies* [1984], in THE CROSS OF REDEMPTION: UNCOLLECTED WRITINGS 166–67 (Randall Kenan ed., 2010) (noting the extreme amount of energy that had to be expended to make America a white country, prior to which America was not white), Phillis Wheatley, *On Being Brought From Africa to America* (1773), in WHEATLEY, *supra* note 1, at 18 (suggesting that even those “Negros, black as Cain” were redeemable from the beginning, observing the legitimate and official creation story of Christianity that foretells the ultimate success of all humankind to upset alternative racist stories that regarded Black people being stamped as “less than” from the beginning), and 1 ALLEN D. CANDLER, THE COLONIAL RECORDS OF THE STATE OF GEORGIA 59–60 (1904) (prescribing criminal penalties including murder charges to white masters for murdering, raping, or seriously injuring their Black slaves while in Georgia, a colony that initially sought to prohibit slavery in its borders despite Virginia Colony's pro-slavery movement).

dismantle systemic injustice by soothing the rage of others until it resolves into useful anger or falls into a dreamlike wonder as Phillis Wheatley originally demonstrated in the years around 1773.¹¹¹ They may simply be unaware of the useful purposes of the publication of Sarah Josepha Hale's *Mary Had A Little Lamb* in a calculated attempt to inspire the sort of compassion that might have caused the end of the anti-Black chattel slavery system without also requiring America to suffer a Civil War.¹¹² They may not know how Katherine K. Davis's song, *The Little Drummer Boy*, still inspires the valuable gifts of even the most common child musicians in America by telling them that their gifts deserve the most generous royal acclamations,¹¹³ as we may rightly imagine was possibly bestowed upon the child migrant Phillis Wheatley on her visit to England in 1773 by none other than Queen Charlotte herself.¹¹⁴

As elucidated by Valarie Kaur in recent times, rage is a debilitating emotion that can terminate in hate-driven violence, terror, and suicide.¹¹⁵ As such, it indicates deep psychological wounds that need to be tended to, mended by, and healed with love before one can proceed to achieve any useful changes to political or legal systems, large or small.¹¹⁶ In fact, Lee himself seemed to address this problem when he closed his speech with a video clip of Representative Marjorie Taylor Greene raging at him on the

111. See, e.g., Phillis Wheatley, *On the Death of Mr. Snider Murder'd by Richardson* [1770], in WHEATLEY, *supra* note 1, at 137.

112. Brett Bannor, *Mary's Lamb and the Lesson of Kindness*, ATLANTA HIST. CENT. (Aug. 4, 2022), <https://www.atlantahistorycenter.com/blog/marys-lamb-and-the-lesson-of-kindness/>; Jon Mertz, *With Gratitude to Sarah Hale, We Have Thanksgiving*, THIN DIFFERENCE (Nov. 19, 2012), <https://www.thindifference.com/2012/11/with-gratitude-to-sarah-hale-we-have-thanksgiving/>. Hale's opinions about how slavery should end remain at least as controversial as Harriet Beecher Stowe's blockbuster anti-slavery book, *Uncle Tom's Cabin*, but her strategy (apparently unlike Stowe's) was to inspire kindness, gentleness, and compassion through art and festivals. See Beverly Peterson, *Mrs. Hale on Mrs. Stowe and Slavery*, 8 AM. PERIODICALS 30, 42 (1998) (explaining Hale's "strategy . . . where she tried to change the subject of the national debate over slavery and lead sectional factions to a peaceful resolution").

113. *Katherine K. Davis Papers, 1908–1981*, CONCORD LIBR., https://concordlibrary.org/special-collections/fin_aids/davis (last visited Dec. 11, 2023).

114. Letter from Phillis Wheatley to David Wooster (Oct. 18, 1773), in WHEATLEY, *supra* note 1, at 169–71 (explaining the several wondrous places and people Wheatley saw in England); see *Phillis Wheatley*, 2 THE ANTI-SLAVERY RECORD 7–8 (May 1836) (telling of how Wheatley impressed Colonel Fitch's daughters at tea time by telling them "how Queen Charlotte was dressed" when she saw the Queen in person, and explaining how, as a result, they eventually "forgot she had been a slave; they felt no prejudice against her because she was black, and they felt ashamed they had ever made any objections to her having a seat at the tea-table"). This strategy of convincing others to wonder about Black people by the use of royalty (and other status indicators) is still wielded by Black Americans to seize a respected place in America. See, e.g., *Queen to Be: Queen Charlotte: A Bridgerton Story* (Netflix May 4, 2023); but see Steve Rose, 'Why is Bridgerton's Race Twisting Acceptable?' *The Real Problem With the Show's Black Fantasy*, GUARDIAN (June 12, 2023, 1:00 AM), <https://www.theguardian.com/tv-and-radio/2023/jun/12/bridgerton-queen-charlotte-race-black-fantasies-king-george>.

115. KAUR, *supra* note 5, at 215–17 ("Listening to a story about mass violence is labor.").

116. Kaur, *supra* note 5; KAUR, *supra* note 5, at 103, 106–07.

open floor of Congress as a clear example of how rage can spread without regard to political irony.¹¹⁷ When a person feels rage, it tells them that something is wrong that needs to be resolved before proceeding further, and as Valarie Kaur exemplified in her work, finding this resolution of rage without clipping the wings of righteous anger is a primary province of love—especially self-love.¹¹⁸

But as Mercy Otis Warren warned John Adams in poetry, “Self Love” can be either the making or destroying of a nation, and so it is with care that we must engage with love when confronted with rage.¹¹⁹ This is why my scholarship seeks to carefully respond to the rage that is presently spreading throughout American society like a wildfire, with natural human love as defined by Bertrand Russell.¹²⁰ Like the flaming heart of Jesus Christ,¹²¹ such a love as mine does not seek to douse the life-threatening fires set ablaze by American rage, but, rather, it searches out old histories for ways that “we may discern our own picture in the figure . . . exhibited to Moses in [a] vision, [of] ‘a bush burning and not consumed.’”¹²² As noted by Paul Wise in his panel, it is only by listening to artists who explain complex emotional realities, like the relationship that love has with rage, that we might survive our encounter with love.¹²³

By taking cues from artists like Mercy Otis Warren and William Shakespeare,¹²⁴ Octavio Paz and Flannery O’Connor,¹²⁵ Phillis Wheatley and

117. *Lee Gelernt*, *supra* note 54, at 43:50–45:53 (Rep. Greene speaking: “That is outrageous. That is outrageous.”).

118. Kaur, *supra* note 5.

119. *Id.*; Letter from Mercy Otis Warren to John Adams (Oct. 11, 1773) (“Self, the sole point in which they’r both agreed, / By this Romes shackled, or by this shes Free’d, / Self Love, that simular to Noblest aim, / Bids Nero light the capital in flame.”).

120. BERTRAND RUSSELL, UNPOPULAR ESSAYS 175 (1921) (“Universal love is an emotion which many have felt and which many more could feel if the world made it less difficult.”); *see, e.g.*, Joshua J. Schroeder, *A Court of Chaos and Whimsy: On the Self-Destructive Nature of Legal Positivism*, 29 CARDOZO J. EQUAL RTS. & SOC. JUST. 663, 679 (2023).

121. YaleCourses, 3. *Flannery O’Connor, Wise Blood*, YOUTUBE 2:23–3:40 (Nov. 21, 2008), <https://www.youtube.com/watch?v=PjplQUPhES4> (explaining the reason why a depiction of the sacred heart of Jesus was used as the cover of one of the printings of O’Connor’s novel *Wise Blood*).

122. SAMUEL COOPER, A SERMON PREACHED BEFORE HIS EXCELLENCY JOHN HANCOCK, ESQ. 2–3 (1780), *image embraced and explained by* Joshua J. Schroeder, *Leviathan Goes to Washington: How to Assert the Separation of Powers in Defense of Future Generations*, 15 FLA. A&M U.L. REV. 1, 15 n.80 (2021) [hereinafter Schroeder, *Leviathan*].

123. *Medical and Behavioral Health Panel, moderated by Paul Wise, MD, MPH*, YOUTUBE 59:44–1:02:10 (Oct. 6, 2023), <https://www.youtube.com/watch?v=yoQ402smDHW> [hereinafter *Medical and Behavioral Health Panel*]; *see, e.g.*, Phillis Wheatley, *On the Death of Mr. Snider Murder’d by Richardson* [1770], in WHEATLEY, *supra* note 1, at 137 (“With Secret rage fair freedom’s foes beneath / See in thy corpse ev’n Majesty in Death.”).

124. Schroeder, *Why*, *supra* note 98, at 184.

125. Joshua J. Schroeder, *The Dark Side of Due Process: Part I, A Hard Look at Penumbral Rights and Cost/Benefit Balancing Tests*, 53 ST. MARY’S L.J. 323, 355 (2022) [hereinafter Schroeder, *The Dark*].

Sor Juana Inés de la Cruz,¹²⁶ my scholarship began to explain why individual advocacy on a case-by-case basis (that was initially lauded as “hope” by Scott and Lee) is a primary cause of injustice in immigration law.¹²⁷ For example, the Tulane Immigration Rights Clinic corroborated my art-inspired elucidations about common reason when they published a study of immigrant habeas efforts in Louisiana that demonstrated how the government uses the individual nature of case-by-case immigrant advocacy to oversee a system of “shadow wins.”¹²⁸ The systemic injustices caused by individual advocacy that avoids *stare decisis* rulings needs further explanation in legal scholarship, in part, to explain the high cost of embracing John Adams’ particular form of emotion-denying Rationalism in immigration law.¹²⁹

Like Adams (and most of America), the majority of the legal and medical professional panelists at the *Advocating for Children in Migration* symposium seemed to ascribe to Rationalism by, at their very best, trusting that an informed America would make rational choices, and at their worst, trying to develop strategies to create and sustain public outrage in order to force political solutions into being that would ultimately extend the life of an untenable immigration system.¹³⁰ As such, we generally did not address the obvious lack of a political alternative for immigration advocates ever since Biden strategically embraced Trump’s immigration policies when he announced at the start of his administration that “nothing has changed!”¹³¹

126. Schroeder, *Leviathan*, *supra* note 122, at 303 n.1575.

127. Schroeder, *Why*, *supra* note 98, at 220.

128. Schroeder, *Why*, *supra* note 98, at 184, 220 (quoting Letter from Mercy Otis Warren to John Adams (Oct. 11, 1773)); Joshua J. Schroeder, *A Candle in the Labyrinth: A Guide for Immigration Attorneys to Assert Habeas Corpus After DHS v. Thuraissigiam*, 49 HASTINGS CONST. L.Q. 237, 271 n.198 (2022) [hereinafter Schroeder, *A Candle*] (citing TULANE IMMIGRATION RIGHTS CLINIC, NO END IN SIGHT: PROLONGED AND PUNITIVE IMMIGRATION DETENTION IN LOUISIANA 13–15, 24–27 (2021)).

129. Schroeder, *Why*, *supra* note 98, at 220; Schroeder, *The Dark*, *supra* note 125, at 339; cf. O’Neill, *supra* note 34, at 455–46.

130. *Lee Gelemt*, *supra* note 54, at 32:45–33:17 (arguing in favor of using public relations strategies to create and sustain public outrage about immigration issues based upon a hope that it would create rational outcomes). They defended a Rationalist public relations strategy to the detriment of alternative legal strategies that might be taken up by common lawyers by rejecting the idea that there should be any hope of systemic change by any other means. *Id.* at 3:36–4:07, referring to *Law Panel*, *supra* note 3, at 1:01:00–1:01:07, appearing to reject my answer to the question about hope that was asked of me and answered by me at *id.* at 1:00:05–1:00:09 (paraphrasing Justice Stevens’ legal opinion that: “[N]o child should ever be put into incarceration ever.” (citing *Reno v. Flores*, 507 U.S. 292, 341 (1993) (Stevens, J., dissenting))); cf. Letter from Mercy Otis Warren to John Adams (Oct. 11, 1773) (“Is it A Wild Enthusiastick Flame, / That swells the Bosom panting after Fame / Dilates the Mind, while Ev’ry sails unfurl’d, / To Catch the plaudit of a Gazing World.”).

131. *Law Panel*, *supra* note 3, at 17:59–18:10 (defending the new *Flores* settlement as “the good outcome from a bad situation”); *id.* at 24:43–24:54 (arguing that “the biggest and most important way to create social change . . . is by winning hearts and minds, and by winning elections”); *Lee Gelemt*, *supra* note 54, at 36:00–39:00 (admitting there is no adequate political alternative presently available, but still doubling down on public relations efforts to capture public

Few legal or medical professionals at the symposium had anything to say about how the marvelous artworks bursting to life all around them might enhance their advocacy efforts, and those that did seemed to offer guesswork rather than fully formed elucidations about the overlap of artist-led immigration advocacy and the efforts of medical and legal immigration advocates.¹³² Nevertheless, as Phillis Wheatley had originally done from 1772 to the very birth of the United States on July 4, 1776, a few artists at the symposium stepped over the threshold that separates the arts from law and medicine to extend a marvelous invitation to all present to consider their artworks as a potential muse for legal and medical professionals to innovate new solutions to the immigration crisis.¹³³

The almost legendary, desert-like inhospitableness of American doctors and lawyers to the more luxuriant sights and sounds of American artists was to be expected, as medical and legal professionals do not generally learn how to engage with the arts as a part of their advocacy skills, and, as such, most of the legal and medical participants at the *Advocating for Children in Migration* symposium seemed to respectfully avoid addressing questions about the arts.¹³⁴ Nevertheless, as Paul Wise noted during his panel, it is, perhaps, ordinary for all human beings to engage the arts in their thought processes as he did when he discussed his rereading of Charles Dickens' novel *David Copperfield* as a way of reminding himself of the full humanity

opinion to influence politics as the best possible solution); *Biden On Immigration Surge At Border: 'Nothing Has Changed'*, YOUTUBE (Mar. 25, 2021), <https://www.youtube.com/watch?v=Dn1nOOZ5irw>; see, e.g., Miriam Jordan et al., *U.S. Will Build Stretch of Border Wall and Begin Deportations to Venezuela*, N.Y. TIMES (Oct. 5, 2023), <https://www.nytimes.com/2023/10/05/us/biden-border-wall-waiver.html>; *Guest Post by Joshua J. Schroeder: It Didn't Have to Go Down Like This: On the Merciless Bureaucratic Cost/Benefit Balancing Behind Biden's Failed Immigration Rollbacks*, IMMIGRATIONPROF BLOG (Mar. 20, 2022), <https://lawprofessors.typepad.com/immigration/2022/03/guest-post-by-joshua-j-schroeder-it-didnt-have-to-go-down-like-this-on-the-merciless-bureaucratic-co.html>; cf. Josh Gerstein, *That Time Jackson Shredded Trump in a Federal Court Ruling*, POLITICO (Feb. 25, 2022, 6:15 PM), <https://www.politico.com/news/2022/02/25/judge-ketanji-brown-jackson-supreme-court-donald-trump-00012026> (noting Justice Jackson's famous comparison of Trump's behavior to that of a modern king).

132. *Medical and Behavioral Health Panel*, *supra* note 123, at 1:02:45–1:06:02; *Lee Gelernt*, *supra* note 54, at 3:13–3:31 (“[T]he only way we can really push back is to combine forces. It can't just be in the courtroom, it can't just be political, the artistic community can't do it alone, and so it really, the medical community obviously, to combine it.”).

133. See, e.g., *Muralism and Performing Arts Panel*, *supra* note 109, at 35:10–35:45; *Arts and Literature Panel*, *supra* note 3, at 23:15–24:10, 27:50–29:00; cf. *Law Panel*, *supra* note 3, at 55:40–57:00 (describing Wheatley's revolutionary artistic strategies).

134. *Medical and Behavioral Health Panel*, *supra* note 123, at 59:44–1:02:10 (“I'm rereading *David Copperfield*” by Charles Dickens, which inspired Paul Wise to embrace the full humanity of the immigrant children he works with.); *id.* at 1:02:45–1:06:02 (“I'm not an artist, and I think that was why we were all hesitant to respond” to a question about art engagement in medical advocacy); see KESHA SEBERT, *Fine Line*, on GAG ORDER (Sony 2023) (“All the doctors and lawyers cut the tongue out of my mouth.”).

of the children in migration whom he serves.¹³⁵ Using the arts to engage in such mental-emotional exercises can challenge the society-wide error in the United States of isolating advocacy into separate silos and relying only on one's "individual reason" to make judgements, orders, and other strategic decisions on a case-by-case basis, wholly apart from the basic common law protections of *stare decisis*.¹³⁶

The Hobbesian tendency of human societies to abandon discursive common law strategies of thinking that can make use of the arts to refine our thought processes for the ease of individual case-by-case reasoning, is a weakness from which only the Ciceronian discourse appeared to escape.¹³⁷ This escape eventually travelled to America by way of English common law according to Phillis Wheatley's importation of copyright law into America on behalf of the entire nation.¹³⁸ Even so, Wheatley's revolutionary vindication of love over reason was degraded by American economists and philosophers for generations.¹³⁹ Nevertheless, her position that reason is properly a faithful *servant to* rather than an overbearing *dictator of* human emotion was eventually corroborated by Amos Tversky and Daniel Kahneman who reluctantly demonstrated, through rigorous scientific study, that human societies are not automatically rational, but that they could become rational through discursive processes that properly address imagination, memory, and fancy—processes that may include engaging with audio, visual, and performance art.¹⁴⁰

Judges, legislators, and administrators who do not take action to consciously avail themselves of the positive force of their own imaginations are prone to act in paradoxical ways dictated by their "madness" as defined by Thomas Hobbes and Flannery O'Connor.¹⁴¹ But it is still possible for the several artists invited by Professor Warren Binford to invade our imaginations, even without our permission.¹⁴² For freedom was not offered

135. *Medical and Behavioral Health Panel*, *supra* note 123, at 59:44–1:02:10.

136. *Law Panel*, *supra* note 3, at 1:01:00–1:01:07 (seeing hope and possibility in "individual advocacy on every individual child's case"); Schroeder, *Why*, *supra* note 98, at 220 (explaining the difference between "common reason" and "individual reason" in judicial decision making).

137. Cicero, *De Finibus* 5.22.63 (defining love by observing a theatric performance); cf. Amy H. Kastely, *Cicero's De Legibus: Law and Talking Justly Toward a Just Community*, 3 *YALE J.L. & HUMANITIES* 1, 31 (1991) (describing the operation of the Ciceronian discourse in America).

138. Schroeder, *Leviathan*, *supra* note 122, at 148–49, 248–49; see Thomas Hutchinson, C.J., et al., *To the Public*, [Oct. 1772.] in WHEATLEY, *supra* note 1, at 7; Phillis Wheatley's Registration, Sept. 10, 1773, TSC/1/E/06/09, Register of entries of copies 1746–1773.

139. Phillis Wheatley, *Thoughts on the Works of Providence* (1773), in WHEATLEY, *supra* note 1, at 48–50, *disagreed with by rationalist works such as* AYN RAND, *THE VIRTUE OF SELFISHNESS* 64 (1964).

140. Cicero, *De Finibus* 5.22.63 (defining love according to the observance of an audience reaction to a theatric performance); KAHNEMAN, *supra* note 10, at 377.

141. KAHNEMAN, *supra* note 10, at 377; O'CONNOR, *A PRAYER*, *supra* note 7, at 32; HOBBS, *supra* note 4, at 46.

142. *Advocating*, *supra* note 37; see, e.g., Elisabeth Graeme Fergusson, *The Dream* (1768, 1790), <https://commonplace.online/article/dream-1768-1790-elizabeth-graeme-fergusson/> ("A

to Black artists like Phillis Wheatley.¹⁴³ She took it without permission.¹⁴⁴ Wheatley snatched her freedom like a laurel from the head of Mæcenus,¹⁴⁵ and, in fact, she stole it from death himself, the “GRIM monarch!” of this world.¹⁴⁶

As Valarie Kaur surmised, rage gets in the way of natural human wonder and it indicates that one needs to tend to emotional wounds in oneself,¹⁴⁷ but also the spread of rage from one person to another can feed itself into a frenzy like the French Reign of Terror.¹⁴⁸ The hatred that emanates from the madness of rage can inspire mass suicides of entire societies of people.¹⁴⁹ However, wondering about rage and madness in ourselves and others and tending to the deep psychological wounds that rage ignites within us can be the foundation of a new birth, a rebirth, or a period of societal restoration.¹⁵⁰

This article is an invitation to leading immigration advocates, like Scott Hollander and Lee Gelernt, to reconsider the artworks presented at the *Advocating for Children in Migration* symposium as a possible bridge, doorway, or semi-colon.¹⁵¹ It explains how artists may lead the human mind through an observation of how suffering and death is being caused by an old, decrepit legal system in order to help us ponder new, heretofore unexplored possibilities for America that are energized by a love that can resolve or refine rage into yet more useful energy wrought by righteous or justified anger.¹⁵² As such, this article will observe and explain the hard realities of the current immigration system that indicates how it outlived its original purposes through loveless rage, such that it should be allowed to die or to be vigorously dismantled so that something new can take its place that may better secure justice as required by the U.S. Constitution’s preamble.¹⁵³ What follows is a response to the rage apparent at the *Advocating for Children in Migration*

swift Succession thro my Brain there past, / The Wand of Morpheus oer my Eyes was cast, / Sweetly invaded my exhausted Frame / Sleep soft Composer! Uninvited came!”); cf. Sor Juana, *Primer Sueno* (1692); Cicero, *Scipio’s Dream*, in *De Re Publica* 6.9.9.

143. Letter from Phillis Wheatley to Samson Occom (Feb. 11, 1774), in WHEATLEY, *supra* note 1, at 176–77.

144. Phillis Wheatley, *To Mæcenus* (1773), in WHEATLEY, *supra* note 1, at 12.

145. *Id.*

146. Phillis Wheatley, *To a Lady on the Death of Her Husband* (1773), in WHEATLEY, *supra* note 1, at 29.

147. Kaur, *supra* note 5.

148. 2 WARREN, HISTORY, *supra* note 20, at 683.

149. *Id.*; see HOBBS, *supra* note 4, at 46.

150. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); see also BERNADETTE MEYLER, THEATERS OF PARDONING 267–73 (2019).

151. Cf. *Symposium Bridges: Walls Turned Sideways*, TUFTS U. ART GALLERIES, <https://artgalleries.tufts.edu/events/51-symposium-bridges-walls-turned-sideways> (last visited Jan. 3, 2024).

152. Kaur, *supra* note 5; KAUR, *supra* note 5, at 103, 106–07; see Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116–18.

153. U.S. CONST. pmbli.; cf. 2 ARENDT, LIFE, *supra* note 92, at 16–17.

Symposium with wonder about the emotional-reportage of immigration advocates and their opponents so that love for immigrants can finally shine throughout all our immigration advocacy efforts.¹⁵⁴

PART II: HOW TRUMP LED AMERICA TO WONDER ABOUT AN ANTI-IMMIGRANT AMERICA

The fact that the United States is a nation of immigrants seems to be uncontested, except in the case of Native Americans who owned the land first.¹⁵⁵ Nevertheless, Donald J. Trump entered into the realm of his imagination to present America with an alternative reality where white people are essentially American natives and non-white people (including the actual Natives) are foreign, alien, and excludable.¹⁵⁶ The white race, and the false idea that there is more than one human race, seemed to drive Trump's imagination to a place where nations could be premised on race as indicated by the color of skin, hair, and the shape of noses, eyes, and the texture of hair.¹⁵⁷ As James Baldwin and Theodore Allen observed, the white race never existed in Europe, but was invented in America to divide the working class against itself.¹⁵⁸

154. Cf. Kaur, *supra* note 5.

155. See, e.g., Roger Sherman, *Remarks on a Pamphlet Entitled, "A Dissertation on the political Union and Constitution of the Thirteen States of NORTH-AMERICA."* 16–17, 40–42 (1784); cf. Jeremiah Dummer, *A Defence of the New-England Charters* 8 (1715). During the American Revolution the founders embraced Roger Williams' previously banished argument for Native American property rights as reasserted by Jeremiah Dummer as the basis of their title to land in America by purchase rather than by conquest or discovery. See, e.g., JOHN ADAMS, *THE REVOLUTIONARY WRITINGS OF JOHN ADAMS* 240 (2000), embracing ROGER WILLIAMS, *A JUST AND GENEROUS ASSERTION OF INDIAN RIGHTS* (1633?) (nonextant), mentioned by JOHN WINTHROP, *WINTHROP'S JOURNAL "HISTORY OF NEW ENGLAND" 1630–1649*, at 116 (James Kendall Hosmer ed., 1908).

156. Jonathan Swan, *Exclusive: Trump Targeting Birthright Citizenship With Executive Order*, AXIOS (Oct. 30, 2018), <https://www.axios.com/2018/10/30/trump-birthright-citizenship-executive-order>; cf. Eastman, *Born*, *supra* note 46, at 961; 1 THEODORE ALLEN, *THE INVENTION OF THE WHITE RACE* 47 (1993) ("If in 1884 the United States Supreme Court, citing much precedent authority, including the *Dred Scott* decision, declared that Indians were legally like immigrants, and therefore not citizens except by process of individual naturalization, so for more than four centuries, until 1613, the Irish were regarded by English law as foreigners in their own land.") (citing *Elk v. Wilkins*, 112 U.S. 94, 100–01 (1884)).

157. Seema Mehta, *Trump's Touting of 'Racehorse Theory' Tied to Eugenics and Nazis Alarms Jewish Leaders*, L.A. TIMES (Oct. 5, 2020, 11:21 AM), <https://www.latimes.com/politics/story/2020-10-05/trump-debate-white-supremacy-racehorse-theory>.

158. BALDWIN, *supra* note 110, at 166–67 ("No community can be established on so genocidal a lie."); 2 ALLEN, *supra* note 156, at 249; cf. Sir Thomas Grantham, *Account of my Transactions* [1677], in 78 SIR HENRY COVENTRY PAPERS 301–02 (quelling the working class, white and Black rebellion in Virginia with sheer lies—rebellions of this type were later quelled more quickly and easily through the invention of the White race).

Trump's alternative, racist reality is entirely imaginary, but its current and former successes, tracing back to the Immigration Act of 1924 that expanded the Chinese Exclusion Act into America's first visa system, indicates the power of the imagination over American law.¹⁵⁹ For there is no power to exclude in the U.S. Constitution, but only a power to include, i.e., the naturalization power.¹⁶⁰ This is why Pennsylvania's original constitution of 1776 as well as its updated version in 1790, drafted under the influence of the immigrant founder James Wilson, explicitly included a right to immigrate.¹⁶¹

Wilson was not done after he presided over the drafting and ratification of both the Pennsylvania Constitution of 1790 and the U.S. Constitution.¹⁶² President George Washington later nominated James Wilson to be an inaugural Justice of the U.S. Supreme Court.¹⁶³ Once on the Court, Wilson presided over *Collet v. Collet* while riding circuit, where he decided that the power to include, i.e., the naturalization power, was limited to enacting a maximum standard that was preemptive upon concurrent state powers of inclusion.¹⁶⁴

Therefore, even while the original Naturalization Act of 1790 was candidly racist, it did not limit the states from enacting non-racist bases for naturalization, because that act was a maximum rather than a minimum.¹⁶⁵ It allowed the states to enact racist naturalization procedures up to the point it defined (i.e., the states were federally required to naturalize white people), but it did *not* preclude the states from granting state citizenship to non-white people who the federal government was legally required to recognize as national citizens as well.¹⁶⁶ This concurrent (rather than plenary) power structure shared between the states and the federal government was essential to the Union defense of the legitimate immigration of Black slaves like Frederick Douglass and Harriet Tubman to the northern states as legitimate citizens.¹⁶⁷

159. Immigration Act of 1924, Pub. L. 68–139, 43 Stat. 153 (general visa system extended as modified by present day law); Chae Chan Ping v. United States, 130 U.S. 581, 602 (1889); cf. REECE JONES, NOBODY IS PROTECTED: HOW THE BORDER PATROL BECAME THE MOST DANGEROUS POLICE FORCE IN THE UNITED STATES 12–17 (2022); Julian Davis Mortenson, *Article II Vests the Executive Power, Not the Royal Prerogative*, 119 COLUM. L. REV. 1169, 1182 n.46 (2019).

160. U.S. CONST. art. I, § 8, cl. 4.

161. PENN. CONST. of 1776, Decl. of Rights art. XV (“[A]ll men have a natural inherent right to emigrate.”), *extended by* PENN. CONST. of 1790, art. IX, § 25 (“[E]migration from the state shall not be prohibited.”); 1 JAMES WILSON, COLLECTED WORKS OF JAMES WILSON 144–45 (Kermit L. Hall & Mark David Hall eds., 2007).

162. See sources cited *supra* note 161.

163. *Chisholm v. Georgia*, 2 U.S. 419, 453 (1793) (Wilson, J.).

164. *Collet v. Collet*, 2 U.S. 294, 295–96 (1792).

165. *Id.*; Naturalization Act of 1790, 1 Stat. 103 (repealed 1795).

166. *Collet*, 2 U.S. at 295–96; Naturalization Act of 1790, 1 Stat. 103.

167. *Mumbet's Case*, reprinted in BRUNS, *supra* note 74, at 468–70; LUCY STONE, WOMAN SUFFRAGE IN NEW JERSEY 12 (1867); *Lemmon v. New York*, 20 N.Y. 562, 631 (N.Y. 1860); cf.

Furthermore, the Naturalization Act of 1790 only modified the scope of inclusion in the United States by prescribing a path to citizenship—a path to inclusion.¹⁶⁸ It did not establish a visa system or any method for excluding, deporting, or turning back immigrants, and, as a result, for over a century and a half, the United States did not have a visa system or any organized way of excluding immigrants.¹⁶⁹ As racist as the 1790 naturalization law was, its racism was extremely limited and was, in practice, far more liberal than the current U.S. immigration laws built upon the patently racist 1924 law.¹⁷⁰ The first comprehensive U.S. immigration law enacted in 1924 was ultimately premised upon the Chinese Exclusion Act and Justice Story’s demonstrably erroneous Eleventh Amendment-based plenary power ideology originally embraced in *Prigg v. Pennsylvania* that, altogether, inspired Hitler to murder millions of Jewish people during World War II.¹⁷¹

The unanimous decision of the drafters of the U.S. Constitution to “open[] a wide door for emigrants” was rejected by Great Britain in the War of 1812.¹⁷² As a result, the United States suffered its Capitol’s destruction and occupation in defense of open borders in 1814.¹⁷³ The founding pro-immigrant open door policy that was twice opposed in war by the British Empire and that our ancestors sacrificed their lives and property to defend against a far stronger military force is a policy that would require a radical reformation of the current immigration system to reinstitute in the United States.¹⁷⁴ However, if Republican lawmakers are actually originalists (as they currently say) rather than conservative progressives (as they currently

generally Joshua J. Schroeder, *We Will All Be Free Or None Will Be: Why Federal Power Is Not Plenary, but Limited and Supreme*, 27 TEX. HISP. J.L. POL’Y 1 (2021) [hereinafter Schroeder, *We*].

168. Naturalization Act of 1790, 1 Stat. 103.

169. *Id.*; see KELLY LYTLE HERNÁNDEZ, *BAD MEXICANS: RACE, EMPIRE, AND REVOLUTION IN THE BORDERLANDS* 77–78 (2022).

170. Schroeder, *We*, *supra* note 167, at 49, 59 n.377 (explaining the federalization of the “power of exclusion” in the Immigration Act of 1924 when it established America’s first visa system); see Henry Pratt Fairchild, *The Immigration Law of 1924*, 38 Q.J. ECON. 653, 653–54 (1924) (“The United States has never had an immigration policy in the strict sense of the word.”).

171. HERNÁNDEZ, *supra* note 169, at 77–78; JAMES Q. WHITMAN, *HITLER’S AMERICAN MODEL* 35 (2017); Schroeder, *We*, *supra* note 167, at 59.

172. 1 WILSON, *supra* note 161, at 140 (noting that the framers were “for opening a wide door for emigrants”); THEODORE ROOSEVELT, *THE NAVAL WAR OF 1812*, at 2–6 (1882) (“The principles for which the United States contended in 1812 are now universally accepted, and those so tenaciously maintained by Great Britain find no advocates in the civilized world.”); *id.* at 37 (noting that in the United States citizenship was generally recorded by lists stating “Where Born”).

173. ROOSEVELT, *supra* note 172, at 2–6 (naming the pro-immigrant cause of the War of 1812); Matthew Ward, *The US Capitol Has Been Stormed Before – when British Troops Burned Washington in 1814*, CONVERSATION (Jan. 8, 2021, 11:09 AM), <https://theconversation.com/the-us-capitol-has-been-stormed-before-when-british-troops-burned-washington-in-1814-152843>.

174. 8 U.S.C. § 1325 (making improper border crossings a crime), *contradicting* Refugee Act of 1980, Publ. L. No. 96–112, 94 Stat. 102, Naturalization Act of 1790, 1 Stat. 103, and *Collet*, 2 U.S. at 295–96; cf. Caleb Ecarma, *How the Right’s “Open Borders” Myth Might Be Fueling the Migration Crisis*, VANITY FAIR (Mar. 24, 2023), <https://www.vanityfair.com/news/2023/03/open-borders-myth-fueling-migration-crisis>.

seem) then they should propose measures of restorative justice for immigrants in Congress according to their own political claims of originalism.¹⁷⁵

After the War of 1812 was won by the Americans,¹⁷⁶ the U.S. open borders policy was put to the test in *Holmes v. Jennison*.¹⁷⁷ Ultimately, when a murder suspect escaped from British Canada into Vermont,¹⁷⁸ the Supreme Court of Vermont (under a split decision by the Taney Court) decided that the states do not have the power to extradite immigrants to foreign governments who do not have an extradition treaty with the United States.¹⁷⁹ That is, executive agreements with foreign nations for the deportation of immigrants is not legally sufficient.¹⁸⁰ Therefore, Chief Justice Taney's opinion in *Holmes* was later cited in *The Amistad* to release former Black slaves into the United States as free people,¹⁸¹ rather than deporting them to Cuba according to the secret executive agreements of President Van Buren with a foreign monarch.¹⁸²

These pro-immigrant, anti-monarchical decisions could not coexist with Justice Story's plenary power doctrine originally adopted in *Prigg* according to the Eleventh Amendment that was scandalously extended in *Dred Scott v. Sandford*.¹⁸³ Thus, the dispute over the American imagination regarding the

175. Joshua J. Schroeder, *Conservative Progressivism in Immigrant Habeas Court: Why Boumediene v. Bush is the Baseline Constitutional Minimum*, 45 N.Y.U. REV. L. & SOC. CHANGE HARBINGER 46, 71 (2021); see David J. Bier, *The Founding Fathers Favored a Liberal Immigration System*, CATO AT LIBERTY (Mar. 27, 2018, 3:42 PM), <https://www.cato.org/blog/founding-fathers-favored-liberal-immigration-system>; Fiona Harrigan, *Free Immigration Is a Core American Value*, REASON (Feb. 20, 2023, 3:21 PM), <https://reason.com/2023/02/20/free-immigration-is-a-core-american-value/>; but see Helen Raleigh, *America's Founders Didn't Support Open Borders, And Neither Should We*, FEDERALIST (May 10, 2023), <https://thefederalist.com/2023/05/10/americas-founders-didnt-support-open-borders-and-neither-should-we/>; David Miller, *Why Liberals Should Resist the Call to Open Borders*, VOX (Sept. 6, 2016, 9:41 AM), <https://www.vox.com/2016/9/6/12805140/open-borders-immigration-liberals-deportation>.

176. *The Tornado that Stopped the Burning of Washington*, NAT'L CONS. CTR. (Aug. 25, 2015), <https://constitutioncenter.org/blog/the-tornado-that-stopped-the-burning-of-washington>.

177. *Holmes v. Jennison*, 39 U.S. 540, 541 (1840).

178. *Id.*

179. *Ex parte Holmes*, 12 Vt. 631, 641–42 (1840), extending *Holmes*, 39 U.S. at 561 (Opinion of Taney, C.J.); cf. Letter from Thomas Jefferson to William C. C. Claiborne (Feb. 3, 1807) (using the term “deportation” as synonymous with “extradition” in official letters ordering deportations).

180. *United States v. The Amistad*, 40 U.S. 518, 553 (1841) (citing *Holmes*, 39 U.S. at 569 (Opinion of Taney, C.J.)); see ARGUMENT OF JOHN QUINCY ADAMS, BEFORE THE SUPREME COURT OF THE UNITED STATES, IN THE CASE OF [THE AMISTAD] 38, 45, 66 (1841) [hereinafter QUINCY ADAMS] (“[T]he President intended to remove these people to Cuba, by force, gubernativamente, by virtue of his Executive authority.”); cf. *Biden v. Texas* 142 S. Ct. 2528, 2543 (2022) (deciding that a State cannot use the federal courts to “force the Executive to the bargaining table with Mexico, over a policy that both countries wish to terminate, and to supervise its continuing negotiations with Mexico to ensure that they are conducted ‘in good faith’”).

181. *The Amistad*, 40 U.S. at 553 (citing *Holmes*, 39 U.S. at 569 (Opinion of Taney, C.J.)).

182. QUINCY ADAMS, *supra* note 180, at 38, 45, 66.

183. *Houston v. Moore*, 18 U.S. 1, 49–50 (1818) (Story, J., dissenting) (citing U.S. CONST. amend. XI), quoted by *Prigg v. Pennsylvania*, 41 U.S. 539, 654–65 (1842) (Daniel, J., concurring),

freedom or slavery of Black Americans resulted in a bloody Civil War that finally decided the matter in favor of *Holmes* and *The Amistad* when the Fourteenth Amendment was ratified.¹⁸⁴ While Black people eventually won their citizenship right to move across state lines by virtue of their natural births in the territorial boundaries of the United States,¹⁸⁵ *Prigg* and *Dred Scott* became an inspiration for federalized immigration exclusion beginning with the exclusion of Chinese immigrants that eventually culminated in the draconian policy of general immigrant exclusion first enacted by the 1924 immigration law.¹⁸⁶

After Hitler's imagination was captured by American eugenics, symbolized by the Chinese Exclusion Act, the United States went to war with Nazi Germany.¹⁸⁷ As a result, Congress eventually recognized the U.S.-China alliance in World War II by amending the 1924 immigration law with the Magnuson Act of 1943,¹⁸⁸ and further amendments in the McCarran-Walter and Hart-Celler Acts.¹⁸⁹ Eventually, Congress also codified its treaty commitments under the U.N. Convention Against Torture in the Refugee Act of 1980 followed up by the Foreign Affairs Reform and Restructuring Act of 1998 that facilitated the legal right to seek asylum in the United States.¹⁹⁰ These laws together made the United States the increasingly diverse nation that it is today.¹⁹¹ However, these incremental reforms were also enacted in order to maintain the constitutionality of the racist 1924 visa system premised upon general exclusion of all immigrants that, while facially applying equally to all races, actually operates to drastically slow down the transition of the white population of the United States out of its current majority position.¹⁹²

extended by Dred Scott v. Sandford, 60 U.S. 393, 480 (1857) (Daniel, J., concurring), and by *id.* at 501 (Campbell, J., concurring); but see Kurt T. Lash, *A Textual-History Theory of the Ninth Amendment*, 60 STAN. L. REV. 895, 931 n.136 (2008) (claiming that Justice Story intended to say "ninth amendment" when he stated "eleventh amendment," without addressing the several cases that re-quoted his use of the Eleventh Amendment as the basis for decision in *Prigg* and beyond).

184. U.S. CONST. amend. XIV.

185. See *United States v. Guest*, 383 U.S. 745, 758 (1966).

186. *The Slaughterhouse Cases*, 83 U.S. 36, 73 (1873) (citing "the celebrated *Dred Scott* case" for its holding that the original U.S. social compact did not include Black people), *inspiring* Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153 (general visa system extended as modified by present day law), and *Eastman, Born*, *supra* note 46, at 961; see also *Henderson v. Mayor of City of New York*, 92 U.S. 259, 266 (1875) (citing *Passenger Cases*, 48 U.S. 283, 427 (1849) (Wayne, J., concurring) (citing *Prigg*, 41 U.S. at 539)).

187. WHITMAN, *supra* note 171, at 35; Decl. of War, Pub. L. No. 77-331, 55 Stat. 796 (U.S.-De. 1941).

188. Act of Dec. 17, 1943, Pub. L. No. 78-199, 57 Stat. 600.

189. Immigration and Nationality Act of 1952, Publ. L. No. 82-414, 66 Stat. 163; Act of October 3, 1965, Pub. L. No. 89-236, 79 Stat. 911.

190. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102; Foreign Affairs Reform and Restructuring Act of 1998, 112 Stat. 2681-761, 2681-822G, § 2242.

191. See *Patriot Act: Don't Ignore the Asian Vote in 2020* 19:00-19:21 (Netflix Dec. 8, 2019).

192. Jilani, *supra* note 110, *rejecting* Nikole Hannah-Jones, *Democracy*, in THE 1619 PROJECT, *supra* note 110, at 33.

Importantly, these consequential disputes over the American imagination about foreigners never defeated the birthright citizenship vindicated by *United States v. Wong Kim Ark* that was decided in 1898 and was consequently infused into all American immigration laws.¹⁹³ *Wong Kim Ark* decided that any person (including non-white people) born in the United States are U.S. citizens because of the Fourteenth Amendment.¹⁹⁴ If one looks back even further through *The Amistad*, *Holmes*, and *Collet* all the way to the clear causes of the War of 1812 and the American Revolution,¹⁹⁵ birthright citizenship under *Calvin's Case* (and the founding American correctives of the errors Great Britain made in its administration of *Calvin's Case* in its colonies) is clearly included in the American immigration and naturalization system from its very root in 1776.¹⁹⁶ The slavery system, which absurdly treated people in migration as imported property, could not coexist with these original aspirations of the American mind that extended basic common law rights into America through immigration.¹⁹⁷ And, therefore, the American immigration system eventually granted U-Visas and T-Visas to signal that migrants are never to be treated as property again.¹⁹⁸

Trump's legal advisor and coup mastermind, John C. Eastman, disagreed with the immigration law's acceptance of *Wong Kim Ark* as a legitimate precedent.¹⁹⁹ According to Eastman, natural born citizens are those born to U.S.-citizen parents rather than those born on American soil.²⁰⁰ This is the theoretical origin of Eastman's birtherism: the claim that neither President Obama, Vice President Harris, nor any similarly situated child of immigrants are eligible for the presidential office because they are possibly not legitimate U.S. citizens by virtue of their immigrant parents.²⁰¹ It is also, paradoxically, the basis of Eastman's belief that Senator Ted Cruz was natural born even though he was born in Canada to a Cuban father, and thereby eligible to run for president by virtue of his U.S. citizen mother,

193. *United States v. Wong Kim Ark*, 169 U.S. 649, 654 (1898); 8 U.S.C. § 1401; *see* Perkins v. Elg, 307 U.S. 325, 327 (1939).

194. *Wong Kim Ark*, 169 U.S. at 654 (quoting U.S. CONST. amend. XIV).

195. THE DECLARATION OF INDEPENDENCE para. 9 (U.S. 1776); ROOSEVELT, *supra* note 172, at 2–6; *see* sources and cases cited *supra* note 174–81.

196. *Calvin's Case* (1608) 7 Co. Rep. 1a, 24a (Eng.); 2 WILSON, *supra* note 161, at 1049 (observing how William Blackstone misconstrued *Calvin's Case* as a basis to illegally deny English common law rights in America); OTIS, *supra* note 23, at 147, 208, 324 (“The common law is our birth-right.”).

197. 2 WILSON, *supra* note 161, at 1049; ADAMS, *supra* note 155, at 238.

198. Victims of Trafficking and Violence Protection Act, Pub. L. No. 106–386, 114 Stat. 1464, *according to* OTIS, *supra* note 23, at 140–41.

199. Eastman, *Born*, *supra* note 46, at 963–67, *self-plagiarizing long passage from* John C. Eastman, *Politics and the Court: Did the Supreme Court Really Move Left Because of Embarrassment Over Bush v. Gore?*, 94 GEO. L.J. 1475, 1488–91 (2006) [hereinafter Eastman, *Politics*].

200. *Id.*

201. *Id.*; Eastman, *Some*, *supra* note 45.

despite his Cuban heritage and birth outside of the territorial boundaries of the United States.²⁰²

Eastman's self-contradictory birtherism does not exclude Ted Cruz or Trump himself,²⁰³ but where it does exclude it seems to implicate an absolute, descendible form of "entry fiction" that "transforms the physical border into a legal one that travels with a noncitizen [and their descendants] at the political branches' discretion, impossible to cross without authorization."²⁰⁴ The U.S. Supreme Court recently embraced a version of such an "entry fiction" in the dicta that *DHS v. Thuraissigiam* attached to a basic 12(b)(1) dismissal—a dismissal that was based entirely upon the remedy requested in the habeas writ rather than the entry status of the petitioner.²⁰⁵ If *Thuraissigiam's* "entry fiction" dicta ever became the legal basis of immigrant habeas dismissals, it might unsettle the ancient common law holding that habeas jurisdiction runs, not to the prisoner, but to the custodian.²⁰⁶ *Thuraissigiam* might also undermine the ingenious solution to the "entry fiction" that Chinese Americans innovated under the color of the law by using the legal principle extended in *Wong Kim Ark* to make paper sons and daughters.²⁰⁷ This strategy successfully thwarted the "entry fiction"

202. Eastman, *Born*, *supra* note 46, at 961; John C. Eastman, *Senator Ted Cruz Is Eligible to Be President*, NAT'L REV. (Jan. 15, 2016, 11:04 PM), <https://www.nationalreview.com/2016/01/ted-cruz-natural-born-citizenship-eligibility-president/> [hereinafter Eastman, *Senator*]; cf. Margaret Stock & Nahal Kazemi, *The Non-Controversy Over Birthright Citizenship: Defending the Original Understanding of Jus Soli Citizenship*, 24 CHAPMAN L. REV. 1, 8 (2021) (noting that Eastman's theory contradicts itself, because under it Ted Cruz might have been precluded because of his Cuban father and his own dual Canadian citizenship that he renounced in 2013).

203. Eastman, *Senator*, *supra* note 202; see Natasha Frost, *The Trump Family's Immigrant Story*, HISTORY (Sept. 14, 2023), <https://www.history.com/news/donald-trump-father-mother-ancestry> ("Of the last 10 presidents, only two—Trump and Barack Obama—have had a parent born outside of the United States.").

204. See Brandon Hallett Thomas, *Separation of Powers and Thuraissigiam: The Entry Fiction As Judicial Aggrandizement*, 136 HARV. L. REV. FORUM 226, 233, 237 (2023).

205. *Id.* at 235; *DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1968 (2020) (dismissing a habeas petition, because "[h]is petition made no mention of release from custody"); *id.* at 1982 (asserting the entry fiction as dicta to disparage ulterior Due Process Clause bases for jurisdiction that were not part of the basis for dismissal).

206. *Braden v. 30th Jud. Cir. Ct.*, 410 U.S. 484, 495 (1973); see *Boumediene v. Bush*, 553 U.S. 723, 747 (2008) ("We know that at common law a petitioner's status as an alien was not a categorical bar to habeas corpus relief." (citing *Somerset's Case* (1772) 20 How. St. Tr. 1, 80–82 (Eng.))).

207. *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) ("The claim of citizenship is thus a denial of an essential jurisdictional fact If the jurisdiction of the Department of Labor may not be tested in the courts by means of the writ of habeas corpus, when the prisoner claims citizenship and makes a showing that his claim is not frivolous, then obviously deportation of a resident may follow upon a purely executive order, whatever his race or place of birth, for, where there is jurisdiction, a finding of fact by the executive department is conclusive . . . and courts have no power to interfere unless there was either denial of a fair hearing . . . or the finding was not supported by evidence . . . or there was an application of an erroneous rule of law."), *extending Chin Yow v. United States*, 208 U.S. 8, 12–13 (1908) ("If the petitioner proves his citizenship, a longer restraint

with yet another fiction that anyone in the United States *might* be a citizen and that before banishing any person from the United States without due process the federal courts had a fundamental duty to determine whether petitioners were in fact citizens by asserting its jurisdiction to open a review on more than merely the facts underlying the citizenship question.²⁰⁸

Eastman's contradictory movement to close down even the jurisdiction necessary to determine whether a U.S. citizen is being illegally banished, or denied any other right including their right to vote, came to a head on January 6, 2021.²⁰⁹ In his ellipse speech on that day, Eastman contended that large swathes of votes taken from legally registered voters were not legitimate, because his radical plenary power based ideas about citizenship conceptually intertwined (at least in his own mind) with his plenary power theory for overturning the 2020 election.²¹⁰ His arguments followed directly from the very same untenable, self-contradictory theory of citizenship by blood to

would be illegal. If he fails, the order of deportation would remain in force.”); *cf. Paper Sons and Daughters and the Complexity of Choices During the Exclusion Era*, FACING HIST. & OURSELVES (Jan. 12, 2023), <https://www.facinghistory.org/resource-library/paper-sons-daughters-complexity-choices-during-exclusion-era>.

208. *See* cases and source cited *supra* note 207; *see* *Crowell v. Benson*, 285 U.S. 22, 46 (1932) (asserting an independent judicial power of “making its own examination and determination of facts whenever that is deemed to be necessary to enforce a constitutional right properly asserted” (citing *Ng Fung Ho*, 259 U.S. at 284–85)); *Johnson v. Eisentrager*, 339 U.S. 763, 769 (1950) (“Citizenship as a head of jurisdiction and a ground for protection was old when Paul invoked it in his appeal to Caesar.”); *Edwards v. California*, 314 U.S. 160, 182 (1941) (Jackson, J., concurring) (“The power of citizenship as a shield against oppression was widely known from the example of Paul’s Roman citizenship, which sent the centurion scurrying to his higher-ups with the message: ‘Take heed what thou doest: for this man is a Roman.’”).

209. Eastman, *Politics*, *supra* note 199, at 1484 (bizarrely citing Justice Scalia’s strong assertion of Hamdi’s citizenship to undercut federal jurisdiction over habeas corpus writs like Hamdi’s in a gambit to radically transform the election system in the United States), *severely misconstruing and undermining* *Hamdi v. Rumsfeld*, 542 U.S. 507, 554, 575–76 (2004) (Scalia, J., dissenting) (arguing that Hamdi should have been granted a common law treason trial in a federal court according to his presumed claim of U.S. citizenship, at which trial the court could inquire about the evidentiary basis of Hamdi’s claim of U.S. citizenship—traditionally, claiming alien status is a defense to allegations of treason, and the topic of citizenship as a basis for treason charges would have been an ordinary inquiry of the court); *compare* Motion to Intervene Filed by Donald J. Trump, President of the United States, at 9–10, *Texas v. Pennsylvania*, 141 S. Ct. 1200 (2020) (No. 155, ORIG.) (casting a pall over millions of legitimate votes), *with* Eastman, *Some*, *supra* note 45 (erroneously suggesting that the surreptitious, illegal, and unconstitutional repatriation of millions of U.S. citizens of Mexican ancestry in the 1930s was publically accepted as legitimate and legal, and that the subsequent failure to keep expelling such U.S. citizens resulted in mass amounts of illegitimate citizens within the United States), *and* Eastman, *Born*, *supra* note 46, at 967–68, *explained by* Stock & Kazemi, *supra* note 202, at 14.

210. *User Clip: John Eastman at January 6 Rally*, C-SPAN (Mar. 24, 2021), <https://www.c-span.org/video/?c4953961/user-clip-john-eastman-january-6-rally> [hereinafter Eastman’s Ellipse Speech]; John C. Eastman, “*We the People*” *Does Not Include Foreign Nationals*, Testimony of Dr. John C. Eastman before the United States House of Representatives Committee on Oversight and Reform 11–12 (July 20, 2020) [hereinafter Eastman, “*We*”]; *see* sources compared *supra* note 209.

desecrate the Capitol Building that originally inspired the British occupation and destruction of the first Capitol Building in the War of 1812.²¹¹

Great Britain took hold of Washington, D.C. in 1814 to vindicate their idea that English people born in America were still English subjects.²¹² Therefore, all U.S. citizens were liable to be impressed at his or her majesty's will according to Great Britain around the year 1814.²¹³ Likewise, Eastman contended that anyone born in the United States to immigrant parents were also subject to the jurisdiction of the countries their parents came from and had to naturalize alongside their parents to become citizens.²¹⁴

Nobody born in the United States naturalized in the way Eastman argued they should, because the United States does not provide a way to do so and there has never been a way to do so at any point in American history.²¹⁵ If Eastman's interpretation of the Fourteenth Amendment is ever embraced, the citizenship of millions of free born Americans (and the elections they voted in tracing back to the founding of the nation in 1776) would be drawn into question under the same legal basis cited by Great Britain to justify its occupation of Washington, D.C. in 1814.²¹⁶ According to Eastman, the mad King George III of Great Britain was apparently just as right to occupy and burn down the Capitol Building in Washington, D.C. as former President Trump was on January 6, and for the exact same reason: that most U.S. citizens are not legitimately U.S. citizens such that our democracy is a fraud.²¹⁷ In this heated debate, the immigrant founder, James Wilson, already identified that "unrestrained immigration" was the original way the founders secured "the consent of the governed" required by the Declaration of Independence.²¹⁸

President Lincoln disagreed with the principles that England attempted to impose upon America in 1814 when he called for a national rebirth at Gettysburg, and the Fourteenth Amendment was ratified to give the nation the rebirth Lincoln envisioned.²¹⁹ Thus, when *Wong Kim Ark* applied natural

211. Compare ROOSEVELT, *supra* note 172, at 2–6, with Eastman's Ellipse Speech, *supra* note 210, John C. Eastman, *Re-evaluating the Privileges or Immunities Clause*, 6 CHAPMAN L. REV. 123, 126 (2003) [hereinafter Eastman, *Re-evaluating*], and Stock & Kazemi, *supra* note 202, at 14 (noting that Eastman's citizenship theory may call into question the voting rights of "millions of Americans").

212. ROOSEVELT, *supra* note 172, at 2–6.

213. *Id.*

214. Eastman, *Born*, *supra* note 46, at 961, *contradicting* 8 U.S.C. § 1401.

215. *See* 8 U.S.C. § 1401.

216. Stock & Kazemi, *supra* note 202, at 14; ROOSEVELT, *supra* note 172, at 2–6.

217. *See* sources cited *supra* note 214.

218. 1 WILSON, *supra* note 161, at 643–44 ("Upon the whole it appears, that the right of emigration is a *right*, advantageous to the citizen, and generally useful even to the state."); *but see* Eastman, "We," *supra* note 210, at 10–11 (quoting *Reynolds v. Sims*, 377 U.S. 533, 564 n.41 (1964) (quoting 2 WILSON, *supra* note 161, at 837)).

219. U.S. CONST. amend. XIV; President Abraham Lincoln, *Address at the Dedication of the National Cemetery at Gettysburg, Pennsylvania [Gettysburg Address]*, AM. PRESIDENCY PROJECT

born citizenship to every person without regard to color of skin, it merely extended the concept of U.S. citizenship to all people that was previously reserved, at least in the South, to white people.²²⁰ There was simply no period of time from 1776 to the present day when people born anywhere in the United States were automatically considered the subjects of foreign nations by the law of the United States.²²¹

By the time *Wong Kim Ark* was decided in the Supreme Court, a Latin shorthand was given to the American basis of citizenship by the soil *jus soli* to juxtapose it with the British view of *jus sanguinis* by blood.²²² But these Latin terms were not used in 1776.²²³ Instead, the Americans authored popular slogans in the English language that unanimously indicated that all people born in the United States are born equal and free under *Calvin's Case*, because, at the time, their cause was for the freedom of the entire British Empire (including for the freedom of non-white colonists in India, Africa, Grenada, and Jamaica)—a cause that the Americans lost, though the Americans earned their separation from England as a blessing and consolation for their solidarity with the diverse inhabitants of the rest of the British Commonwealth.²²⁴

The original American rallying cries regarding birthright citizenship extended into the Jefferson administration when four U.S. Naval Officers were taken from the embattled *U.S.S. Chesapeake* as impressed slaves to serve the British Empire.²²⁵ One of the four, a white officer, was hanged.²²⁶ The other three were non-white, uniformed freemen originally born in the United States and they claimed their citizenship from their birth in the United

(Nov. 19, 1863), <https://www.presidency.ucsb.edu/documents/address-the-dedication-the-national-cemetery-gettysburg-pennsylvania-gettysburg-address>.

220. *United States v. Wong Kim Ark*, 169 U.S. 649, 654 (1898); *Perkins v. Elg*, 307 U.S. 325, 327 (1939); see, e.g., Eliza Russi Lowen McGraw, A “*Southern Bell with Her Irish Up*”: *Scarlett O’Hara and Ethnic Identity*, 65 S. ATL. REV. 123, 125–27 (2000).

221. 8 U.S.C. § 1401; see *Caignet v. Pettit*; *Caignett v. Goulbaud*, 2 U.S. 234, 235 (1795) (upholding the right to renounce foreign citizenship at will even if one “has not acquired the rights of citizenship here; nor, as it appears, in any other country”); OTIS, *supra* note 23, at 145; 1 WILSON, *supra* note 161, at 641 (“Every citizen, as soon as he is born, is under the protection of the state, and is entitled to all the advantages arising from that protection.”); ADAMS, *supra* note 155, at 121 (referring to the original charters of Massachusetts and Virginia, which stated that all born in the colonies were born in the realm of England and that they enjoy the rights and liberties of England, an idea that was transmitted to the United States).

222. *Wong Kim Ark*, 169 U.S. at 667.

223. See ADAMS, *supra* note 155, at 121.

224. OTIS, *supra* note 23, at 141 (asserting that Black people are “fellow men, born with the same right to freedom, and the sweet enjoyments of liberty and life, as their unrelenting task masters, the overseers and planters”); *id.* at 145.

225. OTIS, *supra* note 23, at 145 (recognizing the Americans as “free born”); President Thomas Jefferson, *Proclamation in Response to the Chesapeake Affair*, UVA: MILLER CTR. (July 2, 1807), <https://millercenter.org/the-presidency/presidential-speeches/july-2-1807-proclamation-response-chesapeake-affair>.

226. JOSEPH T. WILSON, *THE BLACK PHALANX* 72–76 (1994).

States, which was (however ironically since Jefferson infamously degraded the privileges of U.S. citizenship by enslaving his own children with Sally Hemings) defended upon the world's stage by then President Jefferson in his Chesapeake Proclamation.²²⁷

Jefferson's resulting trade war with Great Britain ultimately failed, and so it was left to his successor President James Madison to petition Congress to declare an actual war on Great Britain to defend the honor of U.S. citizenship by birth on American soil rather than by blood.²²⁸ Long before the Latin term *jus soli* was ascribed to it in *Wong Kim Ark*, the idea that all people born in a certain territory are automatically citizens of that territory was known by the Ciceronian term natural citizenship as opposed to legal citizenship.²²⁹ Cicero attested that all people, including the poorest Roman slaves, have a natural citizenship in the place they are born, and it is to the glory of the United States that it became the first country to extend legal citizenship to all human beings naturally born here.²³⁰

Of course, in the South the natural citizenship of enslaved Black people was violated under a hideous fiction that Black people were moveable goods rather than human beings.²³¹ Yet, this was an absurd contradiction in terms—a fiction that facilitated the untenable conclusion that Black people as chattel are not “born” at all.²³² The fiction that Black people were not people, and thereby legally unborn, contradicted the original designs of the U.S. Constitution and social compact of 1776 that was exemplified in the anti-impressment foreign policy of Jefferson and Madison.²³³ However, the unsupportable principle of race-based chattel slavery that Black people are

227. *Id.*

228. *Id.*; President James Madison, *Special Message to Congress on the Foreign Policy Crisis—War Message*, UVA: MILLER CTR. (June 1, 1812), <https://millercenter.org/the-presidency/presidential-speeches/june-1-1812-special-message-congress-foreign-policy-crisis-war> [hereinafter Madison, *War Message*].

229. Kastely, *supra* note 137, at 15.

230. *Id.*; 8 U.S.C. § 1401; see 1 WILSON, *supra* note 161, at 642 (“[E]very man being born free, a native citizen, when he arrives at the age of discretion, may examine whether it be convenient for him to join in the society, for which he has destined by his birth. If, on examination, he finds, that it will be more advantageous to him to remove into another country, he has a right to go.”).

231. *Groves v. Slaughter*, 40 U.S. 449, 506 (1841) (Opinion of McLean, J.) (“By the laws of certain states, slaves are treated as property, and the Constitution of Mississippi prohibits their being brought into that state, by citizens of other states, for sale, or as merchandise.”).

232. See QUINCY ADAMS, *supra* note 180, at 17 (“These demands are inconsistent. First, they are demanded as persons, as the subjects of Spain, to be delivered up as criminals, to be tried for their lives, and liable to be executed on the gibbet. Then they are demanded as chattels, the same as so many bogs of coffee, or bales of cotton, belonging to owners, who have a right to be indemnified for any injury to their property.”).

233. THE DECLARATION OF INDEPENDENCE paras. 2, 9 (U.S. 1776); U.S. CONST. pmb. (mandating the government to “secure the Blessings of Liberty”); compare OTIS, *supra* note 23, at 140–45, with OCTAVIA E. BUTLER, *KINDRED* 34 (1979) (imagining how “free papers” worked in the antebellum South, a visa-like system to ensure that enslaved people remained property rather than to police immigration into and out of the states).

not people appears to exclude Southern slavery law from legitimately informing the original laws of immigration and naturalization as originally set forth in *New York v. Miln*.²³⁴

For almost a century, the North maintained the South's slavery laws were illegitimate law, and yet, ever since the Civil War, the U.S. Supreme Court languished under the influence of *The Slaughterhouse Cases* and consequently lacked the backbone required to declare the South's experiments in chattel slavery illegitimate and unconstitutional from the moment they began.²³⁵ *Dred Scott* has yet to be affirmatively overruled, and *Dred Scott's* interpretation of the U.S. social compact is still considered authoritative according to *Slaughterhouse*.²³⁶ As a result, self-destructive men like Eastman continue citing *Slaughterhouse* to maintain the traitorous Confederate view that the Union was wrong on the law in order to give life to the hideous fantasy that the Confederacy was right to rebel in the name of preserving chattel slavery as the basis of their governments.²³⁷

None of this is hyperbole.²³⁸ While *Slaughterhouse* recognized that *Dred Scott* was precluded by the Fourteenth Amendment,²³⁹ it also affirmed *Dred Scott's* interpretation of the original U.S. social compact of 1776 as a compact for the exclusive benefit of rich white men.²⁴⁰ *Slaughterhouse's* white supremacist interpretation of the original U.S. social compact, dubbed its "slavery argument" by *Plessy v. Ferguson*, remains controlling on the federal courts and it was explicitly extended in recent cases including *Dobbs*

234. *Mayor, Aldermen & Commonalty of City of New York v. Miln*, 36 U.S. 102, 136–37 (1837) (“[Persons] are not the subjects of commerce; and not being imported goods [they] cannot fall within a train of reasoning founded upon the construction of a power given to Congress to regulate commerce, and the prohibition to the states from imposing a duty on imported goods.”), explained and quoted by Schroeder, *We, supra* note 167, at 44; see *Passenger Cases*, 48 U.S. 283, 401 (1849) (McLean, J., concurring) (“Is this great branch of our commerce left open to state regulation on the ground that the prohibition refers to an import, and a man is not an import?”); *Groves*, 40 U.S. at 513 (Baldwin, J., dissenting) (“It would be a strange position indeed if we were to consider slaves as persons merely, and not property, in our commercial relations with foreign nations, and yet declare them to be ‘private property,’ in our diplomatic relations with them, and in the most solemn international acts, from 1782 to 1815.”).

235. *The Slaughterhouse Cases*, 83 U.S. 36, 67–72 (1873), explained and vindicated by *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2184 (2023) (Thomas, J., concurring); *Plessy v. Ferguson*, 163 U.S. 537, 542–43 (1896) (embracing and defining the “slavery argument” from *Slaughterhouse*, 83 U.S. at 73).

236. *Slaughterhouse*, 83 U.S. at 73 (citing the anti-Black interpretation of the United States social compact of 1776 given by *Dred Scott v. Sandford*, 60 U.S. 393 (1857) as controlling law).

237. Eastman, *Born, supra* note 46, at 961; Eastman, *Re-evaluating, supra* note 211, at 126, according to *Plessy*, 163 U.S. at 542–43.

238. See, e.g., Garrett Epps, *The Dangerous Journey of John Eastman: How a Mild-Mannered Law Professor Became the Architect of a Scheme to Overturn a Presidential Election*, WASH. MONTHLY (Apr. 4, 2023), <https://washingtonmonthly.com/2023/04/04/the-dangerous-journey-of-john-eastman/>.

239. *Slaughterhouse*, 83 U.S. at 68.

240. *Id.* at 73 (speaking of *Dred Scott* in postbellum times as a “celebrated” rather than disparaged case).

*v. Jackson Women’s Health Org. and Students for Fair Admissions, Inc. v. Harvard College.*²⁴¹

Despite the fact that Eastman’s appeal to plenary power doctrine to justify January 6 was completely precluded by *Moore v. Harper*,²⁴² his views about natural born citizenship derived from *Slaughterhouse*’s slavery argument are metastasizing in the court.²⁴³ If Eastman’s attack on birthright citizenship continues to grow under *Slaughterhouse*’s “slavery argument” in the federal courts it may eventually render *Moore*’s vital holding superfluous.²⁴⁴ If the federal courts give Eastman what Eastman hoped the states would give him in 2020, Eastman may still win.²⁴⁵

Importantly, all of the law in the United States from the founding era tracing all the way to the present day (including during the slavery and eugenics eras) indicate that natural citizenship is by birth in the territorial limits of the United States.²⁴⁶ This American principle was lifted, not only from Lord Coke’s decision in *Calvin’s Case*, but ultimately from the Ciceronian discourse that took place in the ancient Roman Republic that also boasted its status as a nation of immigrants.²⁴⁷ In order to radically reform the immigration system to Eastman’s whims, he imagined that a mere president can unilaterally ignore Supreme Court precedent and congressional

241. *Plessy*, 163 U.S. at 542–43 (embracing and defining the “slavery argument” from *Slaughterhouse*, 83 U.S. at 73), *facially disparaged and objectively applied by* Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 143 S. Ct. 2141, 2159–60 (2023), *and id.* at 2184 (Thomas, J., concurring); *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022), *overruling* *Planned Parenthood v. Casey*, 505 U.S. 833, 896–97 (1992) (disparaging *Bradwell v. Illinois*, 83 U.S. 130, 139 (1873) (citing *The Slaughterhouse Cases*, 83 U.S. 36 (1873))).

242. *Moore v. Harper*, 143 S. Ct. 2065, 2080 (2023), *rejecting* Brief of Amicus Curiae The Claremont Institute’s Center for Constitutional Jurisprudence in Support of Petitioners at 10, 25, *Moore v. Harper*, 142 S. Ct. 2901 (2022) (No. 21-1271) (alleging “a plenary power granted to the *Legislatures* of the states, ‘[that] cannot be taken from them or modified by their state constitutions any more than can their power to elect senators of the United States.’” (quoting *McPherson v. Blacker*, 146 U.S. 1, 35 (1892))), *and* Motion of Donald J. Trump, President of the United States, to Intervene in His Personal Capacity as Candidate for Re-Election, Proposed Bill of Complaint in Intervention, and Brief in Support of Motion to Intervene at 8, 26, 32, 36, *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020) (No. 22O155, ORIG.) (citing *McPherson*, 146 U.S. at 35).

243. *See* cases and sources cited *supra* notes 237, 241.

244. *See* cases and sources cited *supra* notes 237, 241–42.

245. *Students for Fair Admissions, Inc.*, 143 S. Ct. at 2159–60; *id.* at 2184 (Thomas, J., concurring); *Dobbs*, 142 S. Ct. at 2284; *cf. generally* Joshua J. Schroeder, *The Imagination Unbound: On the New Anti-rights Trajectory of the U.S. Supreme Court*, 50 HASTINGS CONST. L.Q. 187 (2023) [hereinafter Schroeder, *The Imagination*].

246. 8 U.S.C. § 1401; *Perkins v. Elg*, 307 U.S. 325, 327 (1939); *Ng Fung Ho v. White*, 259 U.S. 276, 283 n.3 (1922); *United States v. Wong Kim Ark*, 169 U.S. 649, 654 (1898); *Collet v. Collet*, 2 U.S. 294, 295–96.

247. *What Can Ancient Rome Teach Us About the Migrant Crisis? Mary Beard – Newsnight*, YOUTUBE (Oct. 13, 2015), <https://www.youtube.com/watch?v=0IzTpzpayy4>; Kastely, *supra* note 137, at 15; OTIS, *supra* note 23, at 140–45.

law according to his delusion that the United States is a white supremacist nation at its core.²⁴⁸

PART III: HOW ANTI-IMMIGRANT RAGE BECAME A MUSE OF THE 1619 PROJECT

At Trump's call to rage, several liberals and progressives also began to imagine that white supremacy is the core basis of American law.²⁴⁹ Among these liberals was the Pulitzer Prize winner, Professor Nikole Hannah-Jones of The 1619 Project, who attempted to recast the year 1619 as the actual year the United States was founded according to her rage about African American slavery.²⁵⁰ But the year 1619 is merely when the Virginia law books started recording history, at the time "the first Assembly ever held in Virginia" was convened.²⁵¹ It is a basic anachronism to maintain that the entire United States was founded the year the Virginia Assembly was founded, long before the term "united States" first appeared as an official designation for the original 13 British American colonies in 1776 in the Declaration of Independence.²⁵²

Nobody contests the fact that the United States arose out of a long history of slavery, but pointing at the mere fact of slavery in 1619 says nothing about the intentions of either the American Revolutionaries or the

248. See sources and case *supra* note 237; Eastman, *Some*, *supra* note 45 (touting the illegal and unconstitutional Mexican Repatriation as an example of how the immigration system should run); cf. Alex Wagner, *America's Forgotten History of Illegal Deportations*, ATLANTIC (Mar. 6, 2017), <https://www.theatlantic.com/politics/archive/2017/03/americas-brutal-forgotten-history-of-illegal-deportations/517971/>.

249. WOODWARD, *supra* note 2, at 15 (Trump speaking: "I bring rage out. I always have. I don't know if it's an asset or a liability. But whatever it is, I do."); see, e.g., Ruth Colker, *The White Supremacist Constitution*, 2022 UTAH L. REV. 651, 659, 667.

250. The Power of Storytelling, *supra* note 2 ("I'm not going to pretend to be objective."); Nikole Hannah-Jones, *The Idea of America*, N.Y. TIMES MAG. (Aug. 18, 2019), at 16–17, *according to* Jake Silverstein, *Editor's Note*, N.Y. TIMES MAG. (Aug. 18, 2019), at 4–5 ("The goal of the 1619 Project . . . is to reframe American history by considering what it would mean to regard 1619 as our nation's birth year."); see Leslie M. Harris, *I Helped Fact-Check the 1619 Project. The Times Ignored Me.*, POLITICO (Mar. 6, 2020, 5:10 AM), <https://www.politico.com/news/magazine/2020/03/06/1619-project-new-york-times-mistake-122248>; *We Respond to the Historians Who Critiqued The 1619 Project*, N.Y. TIMES MAG. (Jan. 19, 2021), <https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html> [hereinafter *We Respond*]; but see Phillis Wheatley, *On The Death of General Wooster (1778)*, in WHEATLEY, *supra* note 1, at 149–50 (witnessing white men sacrificing their lives in the American Revolutionary War to establish the United States upon the idea that all people, Black and white, should be equal and free).

251. 1 WILLIAM WALLER HENING, *THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619*, at 119 (1809).

252. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

leaders of the British Empire in 1776.²⁵³ The basic historical reality is that, by 1776, Great Britain's mighty naval empire was established by impressment: a particularly brutal type of slavery that globally affected people of all colors of skin—Black, white, and brown.²⁵⁴ Nevertheless, Professor Hannah-Jones seemed to maintain that Lord Dunmore's proclamation of martial law in 1775 Virginia somehow made the entire British Empire "abolitionist" in some respect (rather than opportunistically defending its founding principle of feudal slavery).²⁵⁵ She also ignored the measures that some American Revolutionaries took when they issued their own radical freedom laws and proclamations resulting in thousands of manumitted Black slaves in the South according to the laws of the new American republics.²⁵⁶ And most alarming of all, she flagrantly ignored the undoubted fact that Great Britain actually maintained its Royal Navy largely by kidnapping young men and boys from other countries to raise them on ships to eventually conquest and subjugate their own peoples on the high seas.²⁵⁷

253. Compare Hannah-Jones, *supra* note 250, at 16–17, with COOPER, *supra* note 122, at 1–2 (comparing the United States to the ancient Israelites who "rose from oppression, and emerged 'from the House of Bondage'").

254. See THE CASE OF THE KING AGAINST ALEXANDER BROADFOOT 5 (1743) ("I think the Crown hath a Right to Command the Service of these People, whenever the publick Safety calls for it."); JOHN MARRANT, A NARRATIVE OF THE LORD'S WONDERFUL DEALINGS WITH JOHN MARRANT 36 (1785) ("I was pressed on board the Scorpion sloop of war.").

255. Proclamation of Earl of Dunmore (Nov. 7, 1775), PBS: AFRICANS IN AMERICA, <https://www.pbs.org/wgbh/aia/part2/2h42t.html> (last visited Oct. 16, 2023); cf. sources cited *infra* note 441.

256. LERONE BENNETT, JR., BEFORE THE MAYFLOWER 66–67 (1993); see also FOR LOVE OF LIBERTY: THE STORY OF AMERICA'S BLACK PATRIOTS 10:30 (Frank Martin 2010) (noting five all-Black units that served in the American Revolution); Virginia Manumission Law, 1782, in BRUNS, *supra* note 74, at 470–71; Ruth Bogin, "The Battle of Lexington": A Patriotic Ballad by Lemuel Haynes, 42 WM. & MARY Q. 499 (1985) ("By law an indentured servant during his nonage, he marked his coming of age and liberation from servitude in 1774 by joining the local militia."); Letter from Robert Pleasants to General William Phillips (May 14, 1781), in BRUNS, *supra* note 74, at 465–67 (responding to Lord Dunmore's proclamation by seeking to permanently manumit enslaved Black people into the United States).

257. DENVER BRUNSMAN, THE EVIL NECESSITY 1 (2013); see, e.g., MARRANT, *supra* note 254, at 36; cf. Amelia Soth, *Her Majesty's Kidnappers*, JSTOR DAILY (Dec. 17, 2020), <https://daily.jstor.org/kidnapping-for-the-queens-choir/>.



The Press Gang, by Robert Morley (1857–1941)

The American Revolutionaries loudly rejected the press gangs of Great Britain as illegal and unjust, especially because they blockaded immigrants from coming to America by branding those who jumped ship in America “deserters”—a crime punishable by brutal torture and death.²⁵⁸ This old military crime, originally prosecuted by Great Britain on a global basis against the open immigration policy of the United States, appears to be the direct predecessor of the unjust statutory crime of “entering without inspection” that directly contradicts the Refugee Act and the post-World War II treaty commitments of the United States.²⁵⁹ In fact, the criminalization of entering without inspection violates the foreign citizenship right to travel that

258. See, e.g., Franklin’s Remarks on Judge Foster’s Argument in Favor of the Right of Impressing Seamen, [before 17 September 1781], in *THE PAPERS OF BENJAMIN FRANKLIN* 491–502 (Barbara B. Oberg ed., 1999); Madison, *War Message*, *supra* note 228.

259. Compare 8 U.S.C. § 1325, with Rules for the Regulation of the Navy of the United Colonies of North-America art. 27 [Nov. 28, 1775], <https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/r/navy-regulations-17751.html>; but see Refugee Act of 1980, Pub. L. No. 96–212, 94 Stat. 102; U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, at pt. 1, art. 3 (Dec. 10, 1984), S. Treaty Doc. 100–20 (1988) (“No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”), implemented by Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), 112 Stat. 2681–761, 2681–822G, § 2242 (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”).

established the United States according to the British citizen's common law right to immigrate away from Great Britain.²⁶⁰

When the Americans fought back in the War of 1812, several Irish, Scottish, and Englishmen (who were then suffering under the injustice of British impressment) fought on the American side to vindicate their own inherent right to immigrate away from Great Britain if they chose.²⁶¹ This inherent right that was vindicated by the first American Revolutionary James Otis, included people of all colors of skin, of all religious backgrounds, and of every language spoken on earth—all of whom were then being conquered into the sprawling British Empire upon which the sun never sets.²⁶² In light of this undoubted history, Professor Hannah-Jones's estimation that most Black Americans knowingly ignored this obvious reality in 1776 and fought on the side of Great Britain to help it re-conquest America and to conquer yet more of Africa, India, China, the Middle East, and Australia (not to mention France and the rest of Europe) so as to solidify the feudal enslavement of potentially all human beings under the British crown is a farce that is particularly cruel to the memory of the Black inhabitants of the United States in 1776.²⁶³

After several leading historians contested *The 1619 Project* for failing to do justice to the year 1776, Hannah-Jones and the editors at the *New York Times* refused to admit error and instead openly acknowledged they were reporters, not historians, and that they were not trying to present actual historical facts.²⁶⁴ They went on to urge that they reported emotional truths

260. OTIS, *supra* note 23, at 126; 2 WILSON, *supra* note 161, at 1132; ADAMS, *supra* note 155, at 238; *see Saenz v. Roe*, 526 U.S. 489, 500 (1999) (interpreting the right to travel as a citizen's right that extends to "those travelers who elect to become permanent residents," meaning that if this right is extended to foreign immigrants it will be by the virtue of the rights of citizenship all human beings possess wherever they are born); *United States v. The Amistad*, 40 U.S. 518, 553 (1841) (refusing to allow a president to unilaterally deport former Black slaves to Cuba); *cf. Caignet v. Pettit*; *Caignet v. Goulbaud*, 2 U.S. 234, 235 (1795) (upholding the right to renounce foreign citizenship, which is, itself, the most fundamental right of foreign citizenship and coeval with the right to immigrate), *according to* 1 WILSON, *supra* note 161, at 641 ("[A] citizen has an unquestionable right to renounce his country, and go in quest of a settlement in some other part of the world.")

261. ROOSEVELT, *supra* note 172, at 37–42.

262. OTIS, *supra* note 23, at 126 ("Yet it is left to every man as he comes of age to chuse what society he will continue to belong to."); *cf. Henfield's Case*, 11 F. Cas. 1099, 1120 (C.C.D. Penn. 1793) (No. 6,360) ("Emigration is, undoubtedly, one of the natural rights of man.")

263. THE 1619 PROJECT, *supra* note 110, at 11, *rejecting on its face several founding sources written by free Black people including Ruth Bogin, "Liberty Further Extended": A 1776 Antislavery Manuscript by Lemuel Haynes*, 40 WM. & MARY Q. 85, 88 (1983), MARRANT, *supra* note 254, at 36, and Letter from Benjamin Banneker to Thomas Jefferson (Aug. 19, 1791).

264. THE 1619 PROJECT, *supra* note 110, at 11; *We Respond*, *supra* note 250 ("We are not historians, it is true."); Jake Silverstein, *Why We Published The 1619 Project*, N.Y. TIMES MAG. (Dec. 20, 2019), <https://www.nytimes.com/interactive/2019/12/20/magazine/1619-intro.html> (expressing a feeling that chattel slavery began in 1619); *see Harris*, *supra* note 250; Adam Serwer, *The Fight Over the 1619 Project Is Not About the Facts*, ATLANTIC (Dec. 23, 2019), <https://www.theatlantic.com/ideas/archive/2019/12/historians-clash-1619-project/604093/>.

that one basically feels in the ethos of America, such that they openly admitted to merely gut-checking that the origin of the American chattel slavery system was in 1619 even though they offered no legal or historical support for this assertion.²⁶⁵ In reality, the placement of the origins of chattel slavery in 1619 is a double-anachronism.²⁶⁶

On one hand, the existence of chattel slavery itself (which is defined as the absolute, hereditary form of slavery that denies rights of marriage, property ownership, access to courts, the right to attain literacy, and the right of newborns to be acknowledged as free by nature) arose from ancient anti-Irish oppressions in England after the Norman Conquest.²⁶⁷ On the other hand, the invention of the white race as a way of transferring the anti-Irish hatred of the English to Black people through a hideous chattel slavery system did not exist until the late 1600s, as indicated by its apparent non-existence at the time of the 1676 Black and white rebellion led by Nathaniel Bacon in Virginia.²⁶⁸ Independently of the issue of when the white race was invented, Native Americans were taken into chattel bondage by the English, as they considered themselves, prior to the invention of the white race.²⁶⁹

The 1619 Project does not add to our understanding of this history, and, rather, it appears to be an ahistorical rebrand of the civil rights movement modeled after the sort of “Trump-era pop art” christened by Taylor Swift in her image altering song *Look What You Made Me Do* in 2017.²⁷⁰ Hannah-Jones’s “look what you made me do” strategy of demeaning the Declaration of Independence as a racist document despite its embracing language “that

265. *We Respond*, *supra* note 250; Serwer, *supra* note 264. In light of *The New Yorker*’s recent takedown of Hasan Minhaj’s expert use of comedy to communicate “emotional truths” that some brown people feel in America to a mainstream (largely white) audience, it certainly appears that the only non-white truth-embellishers who are in the clear when presenting to white people are those who, like Nikole Hannah-Jones, make their audiences feel dejected, creating a strong appearance of non-white voices being policed for, not the truth, but the quality of emotion they evoke from white people. Clare Malone, *Hasan Minhaj’s “Emotional Truths”*, *NEW YORKER* (Sept. 15, 2023), <https://www.newyorker.com/news/annals-of-communications/hasan-minhaj-s-emotional-truths> (appearing to have a problem with using embellishments of the truth in comedic storytelling), *rebutted* by Hasan Minhaj, *My Response to The New Yorker Article*, *YOUTUBE* (Oct. 26, 2023), <https://www.youtube.com/watch?v=ABiHlt69M-4&t=1269s>.

266. 1 ALLEN, *supra* note 156, at 47; 2 ALLEN, *supra* note 156, at 242–44.

267. 1 ALLEN, *supra* note 156, at 47.

268. Non-race-based chattel laborers have an ancient history in the English oppression of Ireland, which inspired the Virginian elite to develop the perpetual brand upon Black people in the American South after Bacon’s Rebellion. 2 ALLEN, *supra* note 156, at 12, 14, 24, 33, 123–24, 242–44.

269. *Id.* at 36–37.

270. TAYLOR SWIFT, *Look What You Made Me Do*, on *REPUTATION* (Big Machine 2017); Mark Harris, *Taylor Swift’s ‘Look What You Made Me Do’ Is the First Pure Piece of Trump-Era Pop Art*, *VULTURE* (Aug. 30, 2017), <https://www.vulture.com/2017/08/taylor-swift-look-what-you-made-me-do-pure-trump-era-pop-art.html>; Alexis Okeowo, *Nikole Hannah-Jones Keeps Her Eyes on the Prize*, *VANITY FAIR* (Nov. 4, 2021), <https://www.vanityfair.com/news/2021/11/nikole-hannah-jones-keeps-her-eyes-on-the-prize> (“‘I was intentionally trying to be provocative,’ Hannah-Jones says.”).

all men are created equal” and “that they are endowed by their Creator with certain unalienable Rights” reveals that The 1619 Project’s actual purpose was to help mere provocateurs parade around during the Trump era as if they were legitimate civil rights leaders.²⁷¹ To make a splash on the front page of a popular magazine, The 1619 Project sold out what many consider to be America’s soul by candidly disparaging the formative contributions of Frederick Douglass,²⁷² Lucy Stone,²⁷³ Matilda Joselyn Gage,²⁷⁴ and anyone else who followed their lead to attempt to convince the United States to extend the equal rights first announced in the Declaration of Independence to all people through laws, judgments, and constitutional amendments that vindicate, rather than degrade, the original purposes of the nation.²⁷⁵

At worst, The 1619 Project veils a cherry picked history that supports the exact same reading of the Declaration of Independence given by *Dred Scott*.²⁷⁶ After the Civil War, *Dred Scott*’s interpretation of the Declaration of Independence was embraced by *The Slaughterhouse Cases*, and it was later dubbed the “slavery argument” in *Plessy* as a leading strategy for dooming and contracting the application of the Thirteenth, Fourteenth, and Fifteenth Amendments in the face of Jim Crow laws, Black codes, and

271. Okeowo, *supra* note 270; see Matthew Yglesias, *Conservatives Can’t Win the History Wars*, SLOW BORING (June 29, 2021), <https://www.slowboring.com/p/conservatives-cant-win-the-history>; cf. *The Revolutionary Dishonesty of the “1619 Project”*, AM. REVOLUTION INST. (July 16, 2020), <https://www.americanrevolutioninstitute.org/1619-project/>; Serwer, *supra* note 264.

272. FREDERICK DOUGLASS, ORATION, DELIVERED IN CORINTHIAN HALL, ROCHESTER 36 (1852) (dubbing the U.S. Constitution “a GLORIOUS LIBERTY DOCUMENT”—“Read its preamble, consider its purposes. Is slavery among them? Is it at the gateway? Or is it in the temple? It is neither.”); Hannah-Jones, *supra* note 250, at 16–17 (arguing that the way the framers of the U.S. Constitution avoided mentioning slavery was a technique to hide the actual reasons the document was drafted, without regarding the consequences that America has already lived through of that sort of purely imaginary pro-slavery interpretation of the Declaration of Independence in cases like *Dred Scott*, *Plessy*, and *Bradwell*); cf. JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1334 (“It is to the honor of America, that she *should* have set the first example of interdicting and abolishing the slave trade, in modern times.” (emphasis added)).

273. STONE, *supra* note 167, at 3–4.

274. Matilda Joslyn Gage, *The United States On Trial; Not Susan B. Anthony* (June 17, 1873), in AN ACCOUNT OF THE PROCEEDINGS ON THE TRIAL OF SUSAN B. ANTHONY 181–82 (1874); cf. DECLARATION OF SENTIMENTS para. 2 (U.S. 1848).

275. *Gray v. Sanders*, 372 U.S. 368, 381 (1963) (“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”); see, e.g., AMEND: THE FIGHT FOR AMERICA (Netflix Feb. 17, 2021); cf. Conor Friedersdorf, *1776 Honors America’s Diversity in a Way 1619 Does Not*, ATLANTIC (Jan. 6, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/inclusive-case-1776-not-1619/604435/>.

276. *Dred Scott v. Sandford*, 60 U.S. 393, 410 (1857) (interpreting the Declaration of Independence as a pro-slavery document), *implicitly extended by* THE 1619 PROJECT, *supra* note 110, at 11; but see Hannah-Jones, *supra* note 250, at 16–17 (arguing that *Dred Scott* was a bad decision, even while she appeared to vindicate its basis). It is almost as if, on a very basic level, Professor Hannah-Jones did not understand that *Dred Scott* interpreted the Declaration of Independence in precisely the way she did in order to destroy the rights of African Americans. *Id.*

unwritten lynch laws in the South.²⁷⁷ Akin to The 1619 Project, this line of cases contended that the American Revolutionaries signed the Declaration of Independence in the cause of slavery rather than freedom.²⁷⁸ And this purely imaginative belief that directly contradicts the actual text of the Declaration was recently extended in the same form as it existed in *Slaughterhouse* to destroy affirmative action in higher education admissions decisions in *Students for Fair Admissions, Inc. v. Harvard College* and to overrule *Roe v. Wade* in *Dobbs v. Jackson Women's Health Org.*²⁷⁹

Choosing the year 1619 as the founding year of the United States, because that is when racist white Southerners placed the origins of African American slavery, is an anachronism for an even more basic reason.²⁸⁰ There is strong evidence that Black people were in the British American colonies, not to mention Spanish Mexico and Florida, long before the Virginia law books started recording history in 1619.²⁸¹ As already discussed, there is also undeniable evidence that the white race, and the general idea that the color of skin denoted separate races (now refuted by genetic science),²⁸² was artificially invented by the Virginian elite to oppress the Virginian working

277. Gerard N. Magliocca, *Amnesty And Section Three Of The Fourteenth Amendment*, 36 CONST. COMM. 87, 89 (2021) (noting “the doom and contraction of the Fourteenth Amendment” after the Reconstruction era); Harris, *supra* note 250 (contesting Hannah-Jones’s unsupported claim “that the patriots fought the American Revolution in large part to preserve slavery in North America”); see *Dred Scott v. Sandford*, 60 U.S. 393, 410 (1857) (holding that no Black person was included in the equal rights mandated by the Declaration of Independence, because the Founding Fathers were white supremacists who fought the American Revolution to preserve the chattel slavery in America), *extended by* *The Slaughterhouse Cases*, 83 U.S. 36, 67–72 (1873), *extended by* *Plessy v. Ferguson*, 163 U.S. 537, 542–43 (1896) (embracing and defining the “slavery argument” from *Slaughterhouse*, 83 U.S. at 73); *but see* Thomas Hutchinson, C.J., et al., *To the Public*, [Oct. 1772.] in WHEATLEY, *supra* note 1, at 7, *explained by* Schroeder, *Leviathan*, *supra* note 122, at 161 (“Loyalist and revolutionary miraculously united to secure Phillis Wheatley a right of attribution to the works of her hands.”).

278. Compare THE 1619 PROJECT, *supra* note 110, at 11, with *Plessy*, 163 U.S. 537, 542–43, *Civil Rights Cases*, 109 U.S. 3, 36 (1883), *Bradwell v. Illinois*, 83 U.S. 130, 139 (1873), *Slaughterhouse*, 83 U.S. at 73, and *Dred Scott*, 60 U.S. at 410.

279. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2159–60 (2023); *id.* at 2184–85 (Thomas, J., concurring); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022), *overruling* *Planned Parenthood v. Casey*, 505 U.S. 833, 896–97 (1992) (disparaging *Bradwell*, 83 U.S. at 139 (citing *Slaughterhouse*, 83 U.S. 36)).

280. The claim that 1619 is the first time Black people were in Virginia is likely false, and comes from a letter cherry picked from that year that mentions twenty or so Black slaves imported into the colony that year, but not that they were the first. 3 THE RECORDS OF THE VIRGINIA COMPANY OF LONDON 243 (1906); Karen Ordahl Kupperman, *The Founding Years of Virginia: And the United States*, 104 VA. MAG. HIST. & BIO. 103, 106 (1996); 2 ALLEN, *supra* note 156, at 249.

281. Kupperman, *supra* note 280, at 106; JANE LANDERS, BLACK SOCIETY IN SPANISH FLORIDA 11–12 (1999).

282. See generally ADAM RUTHERFORD, A BRIEF HISTORY OF EVERYONE WHO EVER LIVED: THE HUMAN STORY RETOLD THROUGH OUR GENES (2017).

class and, thus, an effective way of legally distinguishing between white and Black people did not exist in America until the late 1600s.²⁸³

In fact, prior to the late 1600s several historical figures who were documented without a racial color designation may have actually been non-white people as we would consider them today.²⁸⁴ This indicates that, perhaps, the all-white depictions of Jamestown 1619 may be a result of our own racist imaginations in 2023.²⁸⁵ The original, multi-racial reality of Virginia in 1619 was actually borne out in Lerone Bennett, Jr.'s book *Before the Mayflower*, the very book that inspired Professor Hannah-Jones to start The 1619 Project, which clearly stated that the Black settlers carried to America on the *White Lion* “were not [chattel] slaves,” but were, rather, “assigned the same status—indentured servitude—as most of the first white immigrants.”²⁸⁶

The first law to legally assert a distinction between the Black and white working class was recorded in Virginia in 1705.²⁸⁷ Virginia’s artificial and unnatural legal distinction between Black and white workers did not entirely spread throughout the English colonies in the South until, at least, the moment when Reverend George Whitefield convinced Georgia to repeal its “no slavery principle” in 1751, not to mention that there was no apparent race based chattel slavery in Spanish Florida or Mexico.²⁸⁸ Thus, there was a long

283. 2 ALLEN, *supra* note 156, at 249; *see* Letter from Alured Popple to William Gooch (Dec. 18, 1735) (noting that the “perpetual Brand upon Free-Negros & Mullatos” known as chattel slavery had not yet been established); *cf.* BALDWIN, *supra* note 110, at 166–67.

284. *See* Letter from Alured Popple to William Gooch (Dec. 18, 1735) (referring to communities of “Free-Negros & Mullatos” that must have existed in Virginia as late as 1735, even while racist systems were being developed to, in time, subjugate and oppress them).

285. *See, e.g.,* *Jamestown: Episode 1* (Carnival Films, May 5, 2017); *cf.* The University of Edinburgh, *Prof Dame Mary Beard – Whiteness*, YOUTUBE (May 8, 2019), <https://www.youtube.com/watch?v=8QgP2DOKbpo>.

286. BENNETT, *supra* note 256, at 28–29, 645 (“Surviving evidence indicates that the first black settlers [of 1619] were not slaves. It appears from the record that they were assigned the same status—indentured servitude—as most of the first white immigrants.”), *simultaneously quoted and ignored by* THE 1619 PROJECT, *supra* note 110, at xix.

287. An Act Concerning Servants and Slaves, Oct. 1705, *reprinted in* 3 HENING, *supra* note 251, at 447–62 (legally inventing the white race by creating a difference in the treatment of non-Christian “negro, mulato, or Indian, Jew, Moor, Mahometan, or other infidel or such as are declared slaves by this act” and “christian white servant[s]”), *according to* 2 ALLEN, *supra* note 156, at 253, 272.

288. 2 ALLEN, *supra* note 156, at 252; LANDERS, *supra* note 281, at 156; BRUNS, *supra* note 74, at 64–68; 1 CANDLER, *supra* note 110, at 59–60 (including murder and rape as chargeable crimes against white slaveholders who abused their slaves in Georgia); Anon., *A Letter to the Negroes lately converted to Christ in America. And particularly to those, lately called out of darkness, into God’s marvelous light, at Mr. Jonathan Brayan’s in South Carolina. Or A welcome to the believing Negroes, into the household of God* [1743] (later attributed to Anne Dutton, written at Rev. George Whitefield’s behest); *cf.* Tara Leigh Babb, “Without a Few Negroes”: George Whitefield, James Habersham, and Bethesda Orphan House in the Story of Legalizing Slavery in Colonial Georgia 17–21 (2013) (Master’s thesis, University of South Carolina) (available on the University of South Carolina Scholar Commons).

epoch in the South prior to the invention of the white race when Black indentured servants worked their way out from under their oppression as white indentured servants did, purchased land, married interracially, openly petitioned the courts with their grievances, and (ironically) purchased other indentured servants.²⁸⁹

This undoubted history was revealed by the groundbreaking research presented in Theodore Allen's two volume tome *The Invention of the White Race*, a defense of the cause of the multiracial American working class.²⁹⁰ Earlier twentieth century attempts to maintain a distinction between Black "slaves" and white "indentured servants" all seem to be falling to pieces in the twenty-first century, in part, due to The 1619 Project's insistence that the Black indentured servants carried to Virginia on the *White Lion* are the origin of anti-Black chattel slavery in America.²⁹¹ By claiming that anti-Black chattel slavery began in 1619, The 1619 Project appeared to abandon Lerone Bennett, Jr.'s earlier claim that the Black Americans of the *White Lion* were *not* slaves possibly in favor of emphasizing a more useful observation that ending Black enslavement also led to the end of the oppression of white bond laborers as well.²⁹²

Ibram X. Kendi also seemed to consider the possible end of using the word "slave" to refer exclusively to Black "chattel slaves" when he explained that the root of the word "slave" is Slav.²⁹³ It appears that when the Portuguese sought to solidify Black Africans into a slave race in the 1400s they were actually associating Black Africans with "slaves" of Eastern European descent whom we would consider "white" today.²⁹⁴ The overarching point seems to be that wherever one looks in scholarship about slavery in the 2020s, all signs seem to point back to the multiracial cause of Phillis Wheatley's revolutionary proclamation that, despite its errors, America is: "The land of freedom's heaven-defended race!"—that is, a land composed of disparate members of one human race without any legitimate legal distinction based on the color of skin.²⁹⁵

When Whitefield perished in 1770, Phillis Wheatley penned an elegy for him that was so marvelous that it lifted her name into such a level of

289. 2 ALLEN, *supra* note 156, at 182–83; *see* BENNETT, *supra* note 256, at 28–29, 645 ("Surviving evidence indicates that the first black settlers [of 1619] were not slaves. It appears from the record that they were assigned the same status—indentured servitude—as most of the first white immigrants."), *simultaneously quoted and ignored by* THE 1619 PROJECT, *supra* note 110, at xix.

290. 2 ALLEN, *supra* note 156, at 182–83.

291. THE 1619 PROJECT, *supra* note 110, at 19, 33.

292. *Compare id.*, with BENNETT, *supra* note 256, at 28–29, 645.

293. KENDI, *supra* note 110, at 23 ("So many of the seized captives were 'Slavs' that the ethnic term became the root word for 'slave' in most Western European languages.")

294. *Id.*

295. Phillis Wheatley, *To His Excellency General Washington* [1775], in WHEATLEY, *supra* note 1, at 145–46; *see* RUTHERFORD, *supra* note 282, at 1 ("Despite our differences, all humans are remarkably close relatives.")

international fame that she was dubbed “the Oprah Winfrey of her time” by Harvard Professor Henry Louis Gates, Jr.²⁹⁶ As such, Wheatley gracefully mourned the deaths of her friends alongside her enemies;²⁹⁷ and she engaged American Revolutionaries for support of her anti-slavery cause alongside officers serving in the British Navy.²⁹⁸ But her overwhelming love for friend and enemy alike succeeded when Chief Justice Cushing presided over a flight of freedom suits in Massachusetts and decided that slavery was a sacrilegious breach of public trust and, thereby, held it unconstitutional under the very foundations of the new Massachusetts republic.²⁹⁹ This made Wheatley’s vindication of her own freedom a clear forerunner for Black people in her new, free American state, not as a mere exception to the overwhelming force of white supremacy imagined by Professor Hannah-Jones.³⁰⁰

Finding shelter under the shadow of Professor Hannah-Jones’s rage-propelled wings,³⁰¹ Trump and Eastman are laboring to recapture the American imagination for the side of slavery with their Make America Great Again (“MAGA”) slogan by relying on *Dred Scott’s* patent ignorance of Phillis Wheatley’s cause.³⁰² But as Wheatley herself demonstrated in the early days of the republic, the American imagination can be unleashed and

296. Phillis Wheatley, *On the Death of Rev. George Whitefield* (1770), in WHEATLEY, *supra* note 1, at 22; HENRY LOUIS GATES, JR., *THE TRIALS OF PHILLIS WHEATLEY* 33 (2003).

297. Compare Phillis Wheatley, *An Elegy Sacred to the Memory of That Great Divine, the Reverend and Learned Dr. Samuel Cooper* (1784), in WHEATLEY, *supra* note 1, at 152, with Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116.

298. Compare Phillis Wheatley, *On The Death of General Wooster* (1778), in WHEATLEY, *supra* note 1, at 149–50, with Phillis Wheatley, *To a Gentleman of the Navy* (1774), in WHEATLEY, *supra* note 1, at 140.

299. *Mumbet’s Case*, reprinted in BRUNS, *supra* note 74, at 468–70; Phillis Wheatley’s Registration, Sept. 10, 1773, TSC/1/E/06/09, Register of entries of copies 1746–1773, and Thomas Hutchinson, C.J., et al., *To the Public*, [Oct. 1772,] in WHEATLEY, *supra* note 1, at 7, implicitly followed by 2 WILSON, *supra* note 161, at 818–19.

300. THE 1619 PROJECT, *supra* note 110, at 11, 17 (asserting her own emotional detestation of dutiful, supplicant Black slaves as the basis of her idea of the American founding, which led her to embrace Lord Dunmore as a founder alongside Crispus Attucks, regardless of the purely oxymoronic nature of that position, and without noting that in the land where Crispus Attucks died the slaves were all freed in 1781, misleadingly writing a half-truth, instead, that “his own people would remain enslaved for almost another century” when, in fact, while this may have been the case in Virginia, it was not true in Massachusetts where Attucks paid the ultimate price for freedom); see Cornelia H. Dayton, *Lost Years Recovered: John Peters and Phillis Wheatley Peters in Middleton*, 94 NEW ENG. Q. 309, 310 (2021); see also JOHN QUINCY ADAMS, *THE SOCIAL COMPACT* 8 (1842) (“It has indeed been repeatedly and most righteously adjudicated, by the highest judicial tribunal of Massachusetts, that slavery cannot exist within the borders of the commonwealth, under the present Constitution. There is and can be no social compact between the master and the slave.”).

301. *The Power of Storytelling*, *supra* note 2.

302. *Dred Scott v. Sandford*, 60 U.S. 393, 410 (1857), ignoring Phillis Wheatley, *On The Death of General Wooster* (1778), in WHEATLEY, *supra* note 1, at 149–50 (witnessing white American Revolutionaries purposely putting their lives on the line, and sometimes perishing, to win the freedom of all Americans, Black and white).

the freedom of mind expanded for the good and freedom of all of us.³⁰³ The faculty of the imagination wielded by Hannah-Jones, Eastman, and Trump in a bipartisan bid to radically decimate birthright citizenship in the service of white supremacy, can also lead to a more felicitous end of the current visa system, as it still exists under the racist 1924 law, in order to open American borders more widely to immigrants and to vindicate the rights of all to secure a multicultural American future that most of us desire.³⁰⁴

Trump and Eastman walk a fine line even though it may not seem so while Hannah-Jones storms about, brazenly claiming credit on behalf of all “Black Americans” for apparently solving the anti-Asian racism baked into the immigration system after 1965.³⁰⁵ Professor Hannah-Jones mistakenly presumed that the 1965 immigration law ended systematic anti-Asian discrimination, which is patently false.³⁰⁶ The apparent reason why she irresponsibly took credit on behalf of all “Black Americans” for the obscenity that is the present day immigration system was not based on research or principle, but, rather, because she was apparently disgusted by the Asian Americans who decided to join suits that would eventually destroy affirmative action in higher education.³⁰⁷

The reality is that Black Americans were not a significant part of the groups who pulled for the 1965 law, which is lucky for them, because it is a

303. Letter from Phillis Wheatley to Samson Occom (Feb. 11, 1774), in WHEATLEY, *supra* note 1, at 176–77, *inspiring THE DECLARATION OF INDEPENDENCE* (U.S. 1776); *see also* OTIS, *supra* note 23, at 141.

304. *See* sources and case *supra* note 237.

305. THE 1619 PROJECT, *supra* note 110, at 33; *see, e.g., Immigration and Immigrant Rights, ASIAN AMS. ADVANCING JUST.*, <https://www.advancingjustice-aaajc.org/immigration-and-immigrant-rights> (last visited Oct. 17, 2023) (“Southeast Asian immigrants have been three to four times more likely to be deported for old criminal convictions compared to any other immigrant group.”); *cf.* Prashasti Bhatnagar, *Deportable Until Essential: How the Neoliberal U.S. Immigration System Furthers Racial Capitalism and Operates as a Negative Social Determinant of Health*, 36 GEO. IMMIGR. L. J. 1017, 1037 (2022); Shoba Sivaprasad Wadhia & Margaret Hu, *Decitizenizing Asian Pacific American Women*, 93 U. COLO. L. REV. 325, 351 (2022).

306. *See* sources cited *supra* note 305; Minhaj, *supra* note 265; DHS v. Thuraissigiam, 140 S. Ct. 1959, 1982 (2020) (“While respondent does not claim an entitlement to release, the Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka.”); Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273, 276, 295 (1996); *cf.* Robert Maranto, *Professors of Questionable Expertise: The Capitol Breach and ‘1619’*, THE HILL (July 7, 2021, 1:30 PM), <https://thehill.com/opinion/education/561312-professors-of-questionable-expertise-the-capitol-breach-and-1619/>.

307. THE 1619 PROJECT, *supra* note 110, at 33 (claiming that racism in the United States immigration system was already solved for Asians by Black people); *see* Charles Kamasaki, *US Immigration Policy: A Classic Unappreciated Example of Structural Racism*, BROOKINGS (Mar. 26, 2021), <https://www.brookings.edu/articles/us-immigration-policy-a-classic-unappreciated-example-of-structural-racism/>; *cf.* Emily S. Lee, *Acknowledging Intra-Minority Conflict: Anti-Asian Hate Crimes and the Intersectionality of Race and Class*, APA BLOG (June 13, 2022), <https://blog.apaonline.org/2022/06/13/acknowledging-intra-minority-conflict-anti-asian-hate-crimes-and-the-intersectionality-of-race-and-class/>.

xenophobic mess.³⁰⁸ The 1965 law itself was enacted to keep America “white,” by establishing “a family preference system intended to cement the dominance of European immigrants.”³⁰⁹ Despite the fact that one of the unintended consequences of the 1965 law was the gradual diversification of the American populace, it would be supremely ironic if Black civil rights leaders were ahistorically rebranded as the architects of the 1965 law, because it clearly failed to repeal the xenophobic policy of general exclusion first created in the patently racist 1924 law that was built directly upon the anti-immigrant slave case *Prigg v. Pennsylvania* that decimated Pennsylvania’s sanctuary law for escaped slaves according to the entirely imaginary, plenary federal power to exclude Black immigration northward.³¹⁰

Paragraph 9 of the Declaration of Independence recommended the founding system of open borders under *Collet v. Collet* and *The Amistad* that meant no visa system, and a potential path to citizenship for everybody under concurrent state laws even if the national government enacts racist naturalization laws.³¹¹ Black Americans have been hard at work reimagining these useful foundations for building bridges to America, as observed by border activist Todd Miller, for example, who drew upon Angela Davis’s iconic statement that “walls turned sideways are bridges,” when he penned

308. Tom Gjelten, *In 1965, A Conservative Tried To Keep America White. His Plan Backfired*, NPR (Oct. 3, 2015, 6:57 AM), <https://www.npr.org/2015/10/03/445339838/the-unintended-consequences-of-the-1965-immigration-act>; THE 1619 PROJECT, *supra* note 110, at 33, *inappropriately ignoring sources like* JIA LYNN YANG, ONE MIGHTY AND IRRESISTIBLE TIDE: THE EPIC STRUGGLE OVER AMERICAN IMMIGRATION, 1924–1965, at 4, 38–40, 264 (2020), *according to* Jilani, *supra* note 110; *see* Schroeder, *We*, *supra* note 167, at 42–43.

309. *Up For Discussion: Was the 1965 Immigration Act a Failure?*, ZÓCALO PUB. SQUARE (Sept. 29, 2015), <https://www.zocalopublicsquare.org/2015/09/29/was-the-1965-immigration-act-a-failure/ideas/up-for-discussion/> (noting that the 1965 law failed to preserve American whiteness “through a family preference system intended to cement the dominance of European immigrants”); Chin, *supra* note 306, at 276; Gjelten, *supra* note 308; *see* PHILIP BUMP, THE AFTERMATH: THE LAST DAYS OF THE BABY BOOM AND THE FUTURE OF POWER IN AMERICA 71–72 (2023); *cf.* Kamala Kelkar, *How a Shifting Definition of ‘White’ Helped Shape U.S. Immigration Policy*, PBS: NEWS WEEKEND (Sept. 16, 2017, 1:51 PM), <https://www.pbs.org/newshour/nation/white-u-s-immigration-policy>.

310. Schroeder, *We*, *supra* note 167, at 42–43 (“[T]he cornerstone of immigration law . . . may be traced to Story’s opinion in *Prigg*.”); *see Thuraissigiam*, 140 S. Ct. at 1982 (noting that “the power to admit or exclude aliens is a sovereign prerogative” (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982))); *see, e.g.,* Natsu Taylor Saito, *The Plenary Power Doctrine: Subverting Human Rights in the Name of Sovereignty*, 51 CATH. U. L. REV. 1115, 1135–36, 1175 (2002); Blanche Bong Cook, *Johnny Appleseed: Citizenship Transmission Laws and a White Heteropatriarchal Property Right in Philandering, Sexual Exploitation, and Rape (the “WHP”) or Johnny and the WHP*, 31 YALE J.L. & FEMINISM 57, 111 (2019).

311. THE DECLARATION OF INDEPENDENCE para. 9 (U.S. 1776); *Collet v. Collet*, 2 U.S. 294, 295–96 (1792); *United States v. The Amistad*, 40 U.S. 518, 553 (1841); *see* QUINCY ADAMS, *supra* note 180, at 93 (“We are not in the habit of using passports in this country, you may go through the country from State to State, freely, without any passport to show who and what you are and what is your business.”); *see also* Phillis Wheatley, *On Imagination* (1773), in WHEATLEY, *supra* note 1, at 65; OTIS, *supra* note 23, at 141.

his striking case for abolishing America's racist immigration system as it now exists.³¹² If activists like Miller succeed, it may rather quickly transition America into a non-white nation, in part, by giving the estimated 11 million undocumented immigrants who are already in the United States a path to citizenship.³¹³

Just as racist systems like the border wall “can be rearranged, reimagined, reconstructed,”³¹⁴ so too the movement started by Nikole Hannah-Jones can be recalibrated according to Mary Beard's research about the non-white status of the British Empire in 1619.³¹⁵ As Phillis Wheatley maintained, all people including “*Negros*, black as *Cain*” were stamped as redeemable from the beginning,³¹⁶ and so she marvelously contested the imprisonment of all impious rebels as embodied by Niobe in Ovid's *Metamorphosis*.³¹⁷ The projects led by some of the most respected Black minds of our time, including Nikole Hannah-Jones and Ibram X. Kendi, may at long last renew their origins in Wheatley's call to love those who are considered unlovable, those who Maya Angelou later recounted as “the brute, the bigot, and the batterer [who] are all children of God whether they know it or not.”³¹⁸

312. TODD MILLER, BUILD BRIDGES, NOT WALLS chapter on abolition (2021) (attempting to revive the American imagination according to Angela Davis's insistence “that ‘things can be rearranged, reimagined, reconstructed’”), reviewed by Will Meyer, *The Case for Open Borders Is Laid Out in the Book ‘Build Bridges, Not Walls,’* TEEN VOGUE (July 23, 2021), <https://www.teenvogue.com/story/case-for-open-borders-book>; see also JONES, *supra* note 159, at 12–17; cf. *Let's Build Bridges, Not Walls* | Oscar Garcia | TEDxBirmingham, YOUTUBE (May 8, 2018), <https://www.youtube.com/watch?v=vKBnMEWF0xM&t=40s>.

313. See *Profile of the Unauthorized Population: United States*, MPI, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US> (last visited Oct. 17, 2023).

314. MILLER, *supra* note 312, at chapter on abolition.

315. The University of Edinburgh, *Prof Dame Mary Beard – Whiteness*, YOUTUBE (May 8, 2019), <https://www.youtube.com/watch?v=8QgP2DOKbpo>.

316. Phillis Wheatley, *On Being Brought From Africa to America* (1773), in WHEATLEY, *supra* note 1, at 18, contradicting KENDI, *supra* note 110, at 94, 99. Not only did Kendi fail to address the content of Wheatley's poem, *On Being Brought from Africa to America*, that directly challenges the origin stories he claimed stamped Black Americans from the beginning, he characterized potentially all the white interest in Wheatley's work as a racist attempt to turn her into an “exhibit,” rather than considering whether their mass purchases of Wheatley's books were honest purchases reciprocating her assertion of her own agency as a businesswoman and artist with a direct financial, political, and moral interest in selling her artworks because the art was of high quality in its own right. *Id.* It appears that a fatalistic outlook blocked Kendi and all like him from considering whether and how Wheatley influenced the Romantic poetry movement of the 1800s and poetry in the English language writ large, because it appeared to cede to Jefferson his dogmatic view that Wheatley was not a great poet or even a poet at all. *Id.*

317. Phillis Wheatley, *Niobe in Distress for Her Children Slain by Apollo, from Ovid's Metamorphoses, Book VI. and From a View of the Painting of Mr. Richard Wilson* (1773), in WHEATLEY, *supra* note 1, at 101–13.

318. Lencha Sanchez, *Dr. Maya Angelou – I Am Human*, YOUTUBE 0:54–1:03 (Mar. 4, 2013), <https://www.youtube.com/watch?v=ePodNjrVSsk&t=1s>; cf. OTIS, *supra* note 23, at 64 (quoting Terence, *Heauton Timorumenos* I.1.25); Phillis Wheatley, *To Mæcenas* (1773), in WHEATLEY,

PART IV: HOW TRUMP USED RAGE TO IMPEDE WONDER ABOUT PRO-IMMIGRATION POLICY

Cassidy Hutchinson once explained that Trump “wants to know he’s getting a reaction, he thrives when he has an audience.”³¹⁹ She continued: “[W]hat he needs is to hear people reacting to him, and that’s when he knows in his mind that he’s been successful to something.”³²⁰ Furthermore, she suggested that giving oxygen to Trump’s antics is unwise, because it always seems to help Trump capture a nationwide audience through rage.³²¹

Trump’s strategy of using rage to provoke a reaction that spikes television ratings seems to have originated with older men like Roger Ailes and Rupert Murdoch who shaped Fox News into the propaganda arm of the Republican Party.³²² When Trump was elected in 2016 he simply fit the preordained bill of the Murdoch-Ailes media empire.³²³ Trump’s strategy of provoking rage may simply be a result of Ailes and Murdoch’s experiments in using rage to grab ratings—a skill that Trump perfected on his TV show *The Apprentice* with the catchphrase “you’re fired!”³²⁴

As noted in Part II above, Trump and his most loyal votary, Eastman, used the imagination to rework the law into an anti-immigrant stronghold through wonder.³²⁵ Thus, it is paradoxical that Trump also seeks to undermine wonder, the freedom of mind, and the capacity of the imagination generally through rage.³²⁶ He appears to want his people to wonder about all

supra note 1, at 11 (“The happier *Terence* all the choir inspir’d, / His soul replenish’d, and his bosom fir’d / But say, ye *Muses*, why this partial grace, / To one alone of *Afric*’s sable race . . . ?”).

319. *Watch Rachel Maddow Highlights: Sept. 25*, YOUTUBE 2:27–2:30 (Sept. 26, 2023), <https://www.youtube.com/watch?v=h2u-2MIOxwo>.

320. *Id.* at 2:35–2:42.

321. *Id.* at 2:46–2:48.

322. *The Loudest Voice: 1995* (Showtime June 30, 2019).

323. *The Loudest Voice: 2016* (Showtime Aug. 11, 2019).

324. Compare James Poniewozik, *Rupert Murdoch Turned Passion and Grievance Into Money and Power*, N.Y. TIMES (Sept. 21, 2023), <https://www.nytimes.com/2023/09/21/arts/television/rupert-murdoch-fox.html>, with Joel Shannon, ‘You’re Fired’: Thousands Taunt Trump With His Own Catchphrase After Election Loss, USA TODAY (Nov. 7, 2020, 5:24 PM), <https://www.usatoday.com/story/tech/2020/11/07/youre-fired-thousands-taunt-trump-apprentice-catchphrase/6207059002/>.

325. See generally Schroeder, *The Imagination*, *supra* note 245. I say most loyal, because when all others seemed to fall away on January 7, 2021, John C. Eastman kept pushing forward for Trump’s legal interests as addressed by the *January 6 Committee* here: *WATCH LIVE: Jan. 6 Committee hearings – Day 3*, YOUTUBE 3:16:29–3:17:50 (June 16, 2022), <https://www.youtube.com/watch?v=7u4ocGJ9ZXI&list=PLgawtcOBBjr-xOvmmc6y3VsbjFXqJXsfl&index=8> (including a clip of White House Attorney Eric Herschmann speaking: “The day after, Eastman . . . called me . . . and he started to ask me about something dealing with Georgia and preserving something potentially for appeal, and I said to him are you out of your effing mind.”).

326. See generally WOODWARD, *supra* note 2.

the ways the laws might work to inspire the ascension of totalitarianism, while he enrages his opponents into such a frenzy that they cannot wonder about how to oppose the totalitarianism he seeks.³²⁷

Through rage, Trump becomes his own worst enemy.³²⁸ Trump's rage often backfires on him, because he is known to enrage his own base, or else the people Trump enrages can secondarily enrage Trump or his own people.³²⁹ As Oliver Cromwell did before him, Trump is demonstrating through trial and error that his attempts to establish a totalitarian government through wonder and the imagination creates a huge mess while his efforts generally fail to thrive for very long.³³⁰

The reason why, as surmised by J.R.R. Tolkien and C.S. Lewis, is simple.³³¹ The human imagination tends to be influenced by fancy, a feeling of grandeur and awe that shows us such marvels ranging from Satan's horde in Milton's *Paradise Lost* "Hurling Defiance towards the Vault of Heaven"³³² to the Great God in Wheatley's *ISAIAH lxiii. 1—8* defending "Zion though her foes may rage."³³³ It is difficult to inspire the human imagination to focus only upon such banal topics as the unitary powers doctrine or Trump's assertion of an extra-constitutional presidential power to legislate immigration law, health law, and internet law.³³⁴ For example, when Trump tried to prevail upon Lesley Stahl's imagination by handing her his new

327. See, e.g., Amanda Robb, *Pizzagate: Anatomy of a Fake News Scandal*, ROLLING STONE (Nov. 16, 2017), <https://www.rollingstone.com/feature/anatomy-of-a-fake-news-scandal-125877/>.

328. Chris Cillizza, *How Donald Trump's 'Perfect' Phone Call Foretold His 2020 Loss*, CNN: POLITICS (Nov. 11, 2020, 11:03 AM), <https://www.cnn.com/2020/11/11/politics/donald-trump-biden-ukraine-call/index.html>; Max Boot, *Trump's Worst Enemy Is His Own Big, Lying Mouth*, FOREIGN POL'Y (Mar. 20, 2017, 4:18 PM), <https://foreignpolicy.com/2017/03/20/trumps-worst-enemy-is-his-own-big-lying-mouth/>.

329. See, e.g., Molly Ball, *Jeff Sessions Is Winning for Donald Trump. If Only He Can Keep His Job*, TIME (Mar. 29, 2018, 6:29 AM), <https://time.com/5220086/jeff-sessions-is-winning-for-donald-trump-if-only-he-can-keep-his-job/>.

330. BERTRAND RUSSELL, *A HISTORY OF WESTERN PHILOSOPHY* xxii (1972) [hereinafter RUSSELL, *A HISTORY*] (noting that Hobbesian "State worship" was "embodied practically in Cromwell"); HOBBS, *supra* note 4, at 46; see Jennifer Billingsley, *Works of Wonder, Wondering Eyes, and the Wondrous Poet: The Use of Wonder in Phillis Wheatley's Marvelous Poetics*, in *NEW ESSAYS ON PHILLIS WHEATLEY* 174 (John C. Shields & Eric D. Lamore eds., 2011).

331. Colin Duriez, *The Theology of Fantasy in Lewis and Tolkien*, 23 *THEMELIOS* 35, 39–43 (1998); see also JOHN C. SHIELDS, *PHILLIS WHEATLEY AND THE ROMANTICS* 3 (2010).

332. Letter from John Adams to Richard Cranch (Dec. 1758), <https://www.masshist.org/digitaladams/archive/doc?id=D0> (describing the thrilling transportation of the imagination through art known as "sublimity").

333. Phillis Wheatley, *ISAIAH lxiii. 1—8* (1773), in WHEATLEY, *supra* note 1, at 60; see also, e.g., Phillis Wheatley, *On Imagination* (1773), in WHEATLEY, *supra* note 1, at 65 (depicting the imagination soaring into "[t]h' empyreal palace of the thund'ring God").

334. Schroeder, *The Imagination*, *supra* note 245, at 190; Schroeder, *A Candle*, *supra* note 128, at 278.

“health plan” that he unilaterally “enacted” she laughed at him and did not take his assertions seriously.³³⁵

In order to chain the imagination to worship in the personality cults of such unattractive old men like Trump, rage is wielded to preclude more attractive alternatives.³³⁶ By enraging those who might provide an alternative to Trump, his supporters are convinced that nobody is better than Trump because all are rage, all are haters in waiting.³³⁷ By the enagement of liberals against Trump, the followers of Trump come to believe that it is either Trump’s way or societal doom, because their minds are captured by the lack of love expressed as rage by Trump’s opponents that was inspired by Trump for this purpose.³³⁸

As proven by Phillis Wheatley, freedom is the natural state of the human mind.³³⁹ It takes an extreme amount of energy constantly exerted by a king-like figure such as Trump to keep human minds captivated by objects that do not attract the fancy.³⁴⁰ A golden toilet,³⁴¹ Trump towers,³⁴² a giant wall to keep foreigners out,³⁴³ and a TV show where Trump is the billionaire real estate mogul that he is *not* in real life all exist to capture the imaginations of greedy people who want more money and do not want to share it with others.³⁴⁴

335. Lesley Stahl, *The 60 Minutes Interview that President Trump Cut Short*, CBS NEWS (Oct. 26, 2020, 8:30 AM), <https://www.cbsnews.com/news/president-trump-60-minutes-interview-lesley-stahl/>.

336. *Id.*; see sources cited *supra* notes 322–324, 334.

337. See, e.g., Scott Hennen, *Hennen: Why Do They Hate Trump So Much? Do They Fear Him?*, DICKINSON PRESS (Apr. 8, 2023, 5:41 AM), <https://www.thedickinsonpress.com/opinion/columns/hennen-why-do-they-hate-trump-so-much-do-they-fear-him>.

338. Jonathan Chait, *Do Liberals Hate Trump Because He’s a Typical American*, INTELLIGENCER (Oct. 22, 2018), <https://nymag.com/intelligencer/2018/10/do-liberals-hate-trump-because-hes-a-typical-american.html>; compare Hennen, *supra* note 337, with WOODWARD, *supra* note 2, at 15; cf. EDNA ST. VINCENT MILLAY, *Sonnet XXX*, in COLLECTED SONNETS 99 (1941) (“Yet many a man is making friends with death / Even as I speak, for lack of love alone.”).

339. Matilda, *On Reading the Poems of Phillis Wheatley* [1796] (“A PHILLIS rises, and the world no more / Denies the sacred right to mental pow’r”).

340. Cf. SHIELDS, *supra* note 331, at 10 (explaining Wheatley’s development of the term “fancy” as distinct from the “imagination” in order to describe, possibly for the first time in English speaking history, how the mind works).

341. Jonathan Jones, *Why Would Trump Turn Down a Golden Toilet? Because He Already Has One*, GUARDIAN (Jan. 26, 2018, 9:21 AM), <https://www.theguardian.com/artanddesign/2018/jan/26/why-would-trump-turn-down-golden-toilet-white-house-guggenheim-maurizio-cattelan-america>.

342. Aria Bendix, *Trump’s Former Plan to Build a Tower in Moscow is Under Scrutiny. Here Are All the Trump Towers That Have Been Built*, BUS. INSIDER (Jan. 24, 2019, 10:08 AM), <https://www.businessinsider.com/how-many-trump-towers-are-there-2019-1>.

343. *Editorial: Trump’s “Beautiful Wall” Is A Vanity Project and Nothing More. Democrats Should Treat It As Such*, L.A. TIMES (Dec. 11, 2018, 3:10 AM), <https://www.latimes.com/opinion/editorials/la-ed-shutdown-wall-funding-20181211-story.html>.

344. *The Apprentice: Meet the Billionaire* (NBC Jan. 8, 2008).

Greed is boring, but Trump proves that greedy people are captured in their greed through their own imaginations.³⁴⁵ For now, Americans remain unmoved by the soothing sight of glittering crowns, jewels, orbs, scepters, palaces, parties, and grand titles among other objects of British monarchy.³⁴⁶ Unlike Great Britain, which still supports its ancient monarchy through quasi-religious wonder,³⁴⁷ America's greatest artworks including the Statue of Liberty and the rotunda of the Capitol Building itself still outshine Trump's towers and his golden toilet—his would-be objects of American monarchism—leading the American imagination to maintain a fundamental and abiding belief that the people are, severally and individually, sovereign.³⁴⁸

Hannah Arendt theorized that evil is essentially banal, and that only good can be radical.³⁴⁹ Evil can only be extreme, she thought.³⁵⁰ But Trump's forays into wonder and his Robespierre-like stature in American society, his readiness to lead us into several rounds of terror that may ultimately undo him alongside all of us, seems to indicate that evil certainly does mix with the radical and the good.³⁵¹ As Mary surmised in her ancient song, the proud are captured by “the imagination of their hearts,”³⁵² a basic reality that Hobbes, Rousseau, and Hegel demonstrated in modern times through their political avatars Cromwell, Robespierre, and Hitler.³⁵³

These so called “*children of pride*” always knew how to appropriate the arts, and how to attack artists in ways that demoralize goodness to maximize their ascension into power for the ultimate purpose of instituting national self-destruction and suicide.³⁵⁴ For example, the swastika was not a

345. *Id.*, *paradoxically using the theme song* THE O'JAYS, *For the Love of Money*, on SHIP AHOY (Sigma Sound Studios 1973) (“Don't let money fool you . . . Save your soul.”), *referring to 1 Timothy 6:10*; *cf.* TRACY CHAPMAN, *Crossroads*, on CROSSROADS (Elektra 1989) (“All you folks think I got my price / At which I'll sell all that is mine”).

346. *See, e.g.*, Gerstein, *supra* note 132.

347. ADAMS, *supra* note 155, at 26 (“[T]he priesthood had enveloped the feudal monarch in clouds and mysteries.”).

348. I WILSON, *supra* note 161, at 445 (noting that sovereignty “has been found, as he ought to have been found, in the free and independent man”); *cf.* *Genesis 1:27* (defining “man” as “male and female”).

349. HANNAH ARENDT, *THE JEWISH WRITINGS* 471 (2007).

350. *Id.*

351. *Id.*; Will Bunch, *America Needs to Talk About the Right's 'Red Caesar' Plan for U.S. Dictatorship*, PHILA. INQUIRER (Oct. 5, 2023, 1:47 PM), <https://www.inquirer.com/opinion/red-caesar-right-american-dictatorship-20231005.html>; Ed Kilgore, *Do Evangelicals Think Trump Is Jesus?*, INTELLIGENCER (May 8, 2023), <https://nymag.com/intelligencer/2023/05/do-white-evangelicals-think-trump-is-jesus.html>; *The Family: Wolf King* (Netflix Aug. 9, 2019) [hereinafter *The Family*].

352. *Luke 1:51–53*.

353. RUSSELL, *A HISTORY*, *supra* note 330, at xxii; HANNAH ARENDT, *ON REVOLUTION* 76–79 (1990).

354. HOBBS, *supra* note 4, at 232; *see sources cited supra* note 345.

symbol of horror and terror when Hitler first used it.³⁵⁵ The swastika was originally a symbol of rebirth and continual creation.³⁵⁶ The Nazis also established the Reich Chamber of Culture (*Reichskulturkammer*) to transform the arts into propaganda by sponsoring touring art exhibits throughout Germany.³⁵⁷ Several eugenicists did the same in the United States when they used the World's Fair to market their racism as science.³⁵⁸

Artists like Franz Kafka and Flannery O'Connor eventually transformed the great *übermensch* of the Nazis into the comic horror that it is, and Octavio Paz similarly took the Mexican dictator Porfirio Díaz to task in poetry.³⁵⁹ But the successes of such writers in proving the link between comedy and horror to expose such totalitarian projects in art does not change the undoubted fact that the totalitarians successfully staged their government takeovers with art.³⁶⁰ The *übermensch* spread into Germany through Nietzsche who was then reading about the marvelous *Over Soul* of Ralph Waldo Emerson that simultaneously inspired Justice Oliver Wendell Holmes, Jr. to endorse forced sterilizations as “small sacrifices” in *Buck v. Bell*.³⁶¹

Nor were the Nazis and American eugenicists special in their appeals to poetic justices like Holmes,³⁶² as despotic takeovers from Oliver Cromwell to Napoleon Bonaparte were inspired by artists as well.³⁶³ For example, John

355. Mukti Jain Champion, *How the World Loved the Swastika – Until Hitler Stole It*, BBC NEWS (Oct. 23, 2014), <https://www.bbc.com/news/magazine-29644591>.

356. *Id.*

357. *Culture In The Third Reich: Overview*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/culture-in-the-third-reich-overview> (last visited Oct. 3, 2023).

358. *See, e.g.*, DON D. FOWLER & NANCY J. PAREZO, ANTHROPOLOGY GOES TO THE FAIR: THE 1904 LOUISIANA PURCHASE EXPOSITION 401 (2007); Andrea DenHoed, *The Forgotten Lessons of the American Eugenics Movement*, NEW YORKER (Apr. 27, 2016), <https://www.newyorker.com/books/page-turner/the-forgotten-lessons-of-the-american-eugenics-movement>; *Butt Stuff*, RADIO LAB (Nov. 11, 2022), <https://radiolab.org/podcast/butt-stuff>.

359. FRANZ KAFKA, *THE METAMORPHOSIS* 74 (Ian Johnston trans., 1999); FLANNERY, O'CONNOR, *MYSTERY & MANNERS* 167–68 (1969); FLANNERY O'CONNOR, *THE HABIT OF BEING* 367 (Sally Fitzgerald ed., 1980); PAZ, *supra* note 85, at 131; *cf.* Minhaj, *supra* note 265.

360. *See* sources cited *supra* note 359.

361. RALPH WALDO EMERSON, *The Over-Soul*, in EMERSON'S ESSAYS 146 (Arthur Hobson Quinn ed., 1920); Beniamino Soressi, *6.1 Europe In Emerson and Emerson in Europe*, in MR. EMERSON'S REVOLUTION 325 (Jean McClure Mudge ed., 2015) (“Unfortunately in Germany, Nietzsche misused central Emersonian ideas, which Hitler and the Nazis then further perverted.”); Adam H. Hines, *Ralph Waldo Emerson and Oliver Wendell Holmes, Jr.: The Subtle Rapture of Postponed Power*, 44 J. SUP. CT. HIST. 39, 43 (2019) (“Holmes reflected the Emersonian premium on self-sufficiency not only in *Buck v. Bell* but also in his personal letters.”).

362. Geoffrey Kirsch, *Poetic Justice: Oliver Wendell Holmes's Life in Law and Letters*, LARB (Aug. 27, 2019), <https://lareviewofbooks.org/article/poetic-justice-oliver-wendell-holmess-life-in-law-and-letters/>; Victoria Nourse, *Buck v. Bell: A Constitutional Tragedy from a Lost World*, 39 PEPP. L. REV. 101, 108 (2011).

363. Benjamin Ramm, *Why You Should Re-Read Paradise Lost*, BBC: CULTURE (Apr. 19, 2017), <https://www.bbc.com/culture/article/20170419-why-paradise-lost-is-one-of-the-worlds-most-important-poems>; *see also* Kinch Hoekstra, *Disarming the Prophets: Thomas Hobbes and*

Milton explicitly championed *Buck*-styled cost-benefit balancing tests to justify human sacrifice and the castration of foreigners in *Samson Agonistes*, assisting Oliver Cromwell in his bid to replace the king upon a platform of misogyny.³⁶⁴ In that time, artists were leading the English people in prayers that God batter and rape them into purity—self-hating reveries that turned God into an abuser were in abundance among the Puritans.³⁶⁵

Arendt was not wrong, however, inasmuch that by using the arts evil men manipulate sublime artworks, corrupting and transforming them into banal theocratic propaganda.³⁶⁶ Trump does not want to free the American mind, he wants to capture it or at least exhaust it.³⁶⁷ But the mere fact that evil is banal does not mean that evil's votaries, including Trump, do not know how to betray wonder, marvel, and imaginative inspiration to achieve their extremely boring ends.³⁶⁸

In fact, the romantic movement in English poetry itself seems to have begun with John Milton's *Paradise Lost*, a sublime propaganda piece for hell.³⁶⁹ But, as marvelous as Milton's *Paradise Lost* was, Milton caused such an uproar in England and he stifled the arts so drastically (and unromantically), that romanticism found a new birth in the heaven-borne works of Phillis Wheatley around a century later.³⁷⁰ The Romantic movement only found itself in the 1800s after Wheatley redeemed the errors of Milton for the side of heaven.³⁷¹

Predictive Power, 59 *REVISTA DE STORIA DELLA FILOSOFIA* 97, 109 (2004); see generally JOHN MILTON, *PARADISE LOST* (1667).

364. John Milton, *Samson Agonistes* ls. 865–68 [1671] (“The grounded maxim / So rife and celebrated in the mouths / Of wisest men; that to the public good / Private respects must yield.”), quoted by EDWARD L. BERNAYS, *THE BIOGRAPHY OF AN IDEA* epigraph (1965).

365. John Donne, *Holy Sonnet XIV* [1633] (“Batter my heart, three-person'd God . . . Take me to you, imprison me, for I, / Except you enthrall me, never shall be free, / Nor ever chaste, except you ravish me.”); John Milton, *Samson Agonistes* ls. 532–40, 1639–68 [1671] (appearing to draw an eerie comparison between a mass suicide killing as a payment of sexual violence for sexual violence with a holy act like Christ's sacrifice on the cross); ANDREW MARVELL, *To His Coy Mistress*, in *THE COMPLETE POEMS* 50–51 (Elizabeth Story Donno ed., 1987) (“[T]hen worms shall try / That long-preserved virginity.”).

366. ARENDT, *supra* note 349, at 471.

367. See generally WOODWARD, *supra* note 2; Stahl, *supra* note 335.

368. See sources cited *supra* notes 362–65; ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* 73–74, 84 (1892) (“This disposition to admire, and almost to worship, the rich and the powerful, and to despise, or, at least, to neglect, persons of poor and mean conditions, though necessary both to establish and to maintain the distinction of ranks and the order of society, is, at the same time, the great and most universal cause of the corruption of our moral sentiments.”).

369. Ramm, *supra* note 363; MILTON, *supra* note 363, at bk. II, ls. 119–473 (conspicuously dressing the rage-possessed arguments of Belial, Mammon, Beelzebub, and Lucifer “in reason's garb”).

370. SHIELDS, *supra* note 331, at 10.

371. Schroeder, *Leviathan*, *supra* note 122, at 159–60.

In this way, Wheatley proved that “grace bats last,” as Anne Lamott likes to say.³⁷² Thus, while good is radical, as Arendt surmised, it is also corruptible and it is usually corrupted before it is redeemed.³⁷³ Rarely is there a Jesus Christ among humankind that starts out good and never falters.³⁷⁴ Most of us start out badly, not only imperfect but intentionally so, and that includes most of humanity’s marvelous artists and luminaries.³⁷⁵ But the imperfection of humans does not mean that all is lost.³⁷⁶

There have always been evil men willing to spend their lives destroying their own souls by capitalizing on the corruption of good and by delaying its redemption in such artworks as Wheatley first accomplished in 1772.³⁷⁷ Puritanical perfectionism, also known by the term “legal positivism,” first developed in America in the 1600s, was only one of the ways that humanity found to stave off the redemptive possibilities of their governments.³⁷⁸ The paradox of relying upon the arts and the human capacity to wonder, while also attacking wonder with rage to demoralize all alternatives that may otherwise allure is the signifying mark of evil that we see in astonishing prevalence in the United States today.³⁷⁹

At the *Advocating for Children in Migration* symposium at the University of Colorado, Anschutz we also saw rage and wonder mingling together.³⁸⁰ But, instead of being strategically deployed by a demagogue, it was discursively engaged with by the children’s advocate Professor Warren Binford, her colleagues, and her friends.³⁸¹ We asserted our wishes for the legal system to defeat all demagogues in favor of immigrants,³⁸² but it is the hope of nations that legal strategists, including myself, stand aside to behold the exclamations of artists who might properly rise into leadership roles among us.³⁸³ At Binford’s call the artists of America began to speak, and it is for us lawyers and doctors to hear them and to modify our steps according

372. *Why Anne Lamott Still Has Hope*, SHONDALAND (Apr. 3, 2018), <https://www.shondaland.com/inspire/books/a19662490/anne-lamott-almost-everything-cover-reveal/>.

373. *Id.*; ARENDT, *supra* note 349, at 471.

374. *See generally* ANNE LAMOTT, HALLELUJAH ANYWAY (2017).

375. *See, e.g., id.*

376. *Id.*

377. Thomas Hutchinson, C.J., et al., *To the Public*, [Oct. 1772,] in WHEATLEY, *supra* note 1, at 7.

378. AUSTIN WOOLRYCH, COMMONWEALTH TO PROTECTORATE 271–73, 300 (1982); *see generally* Schroeder, *The Imagination*, *supra* note 245; *cf. generally* EVANESCENCE, *Tourniquet, on FALLEN* (Wind-Up Ent. 2003).

379. *See generally* Schroeder, *The Imagination*, *supra* note 245.

380. *Advocating*, *supra* note 37.

381. *Id.*

382. *Id.*

383. OTIS, *supra* note 23, at 64 (quoting Terence, *Heauton Timorumenos* I.1.25); Phillis Wheatley, *To Mæcenæ* (1773), in WHEATLEY, *supra* note 1, at 11 (“The happier *Terence* all the choir inspir’d, / His soul replenish’d, and his bosom fir’d / But say, ye *Muses*, why this partial grace, / To one alone of *Afric*’s sable race . . . ?”).

to their elucidations or to ignore them and continue falling short of our high pursuits of justice, liberty, and equality.³⁸⁴ Luckily, our task should be easy, because it is the comforting presence of natural human love that properly commends the lessons of art to our imaginations, and, it appears, from Shakespeare to the present day, that the mission of most artists has been to evoke natural human love in us.³⁸⁵

PART V: HOW LOVING STRANGERS, OUR OPPONENTS, AND OURSELVES NURTURES WONDER

Valarie Kaur's third lesson of revolutionary love is that all of our emotions are necessary.³⁸⁶ Kaur continued: "Joy is the gift of love, grief is the price of love, [and] anger is the force that protects it."³⁸⁷ Along with joy, grief, and anger she identified three directions to which love should be targeted simultaneously: to ourselves, to others, and to our opponents.³⁸⁸ She finally explained that failing to express love in all three directions at once results in the flaws of narcissism, self-loathing, and ineffectiveness, but also that the possibility of reconciliation and rebirth is opened by those who successfully channel love in all three directions through wonder.³⁸⁹

This article is, itself, a product of wonder about opponents, including Donald J. Trump and John C. Eastman, others including the participants at the *Advocating for Children in Migration* symposium, and myself.³⁹⁰ The point of channeling wonder is not the acquisition of knowledge about our opponents, others, and ourselves, though such knowledge can be useful and necessary.³⁹¹ Rather, the ultimate purpose of wonder may be to invite bad men like Trump and Eastman to put down their weapons and repent of the dangerous projects they are continuing to support today.³⁹²

384. *Advocating*, *supra* note 37; *see* sources cited *supra* note 383; *cf.* HEAR MY VOICE/ESCUCHA MI VOZ (Warren Binford comp., 2021) [hereinafter ESCUCHA MI VOZ].

385. WILLIAM SHAKESPEARE, *Sonnet 116*, in SHAKESPEARE'S SONNETS 63 (1907) (defining love as "an ever fixed mark"); *see* BERTRAND RUSSELL, WHAT I BELIEVE 33 (1925) ("[T]he good life consists of love guided by knowledge."); SMITH, *supra* note 368, at 236 ("Humanity does not desire to be great, but to be beloved."); *id.* at 52 ("[T]here is a satisfaction in the consciousness of being beloved, which, to a person of delicacy and sensibility, is of more importance to happiness than all the advantage which he can expect to derive from it.").

386. Kaur, *supra* note 5.

387. *Id.*

388. *Id.*

389. *Id.*

390. *Cf. id.*

391. *Id.*

392. *Id.*; *cf.* Oliver Laughland et al., 'I Forgive You': Charleston Church Victims' Families Confront Suspect, GUARDIAN (June 19, 2015, 7:02 PM), <https://www.theguardian.com/world/2015/jun/19/i-forgive-you-charleston-church-victims->

As paradoxical as Trump and Eastman are when they corrupt wonder and the imagination for the propagation of evil systems, they can also choose to repent, back down, or fade away as observed in Phillis Wheatley's *To the KING's Most Excellent Majesty*.³⁹³ It is a common human experience that once the reasons why an act of evil was carried out is heard and confessed, that, however paradoxically, regret and apologies may follow.³⁹⁴ Hearing why evil was done can allow an evildoer to reform and choose a new path.³⁹⁵

Wondering can also soothe the rage of others who feel they are being discounted so that they can begin to loosen their grip upon their political convictions.³⁹⁶ Experiencing their own political opponents genuinely wondering about their wellbeing can reveal the lies of Trump, which are merely plays on wonder to capture the imagination by specifically asserting that the opposing political side is a merciless monster, like a *Leviathan*, that would never forgive.³⁹⁷ Expressing an honest interest in the wellbeing of each other, including our opponents, can break the spell of fear that Trump holds over his base, by confirming that forgiveness and reconciliation are possible, which can unlock more felicitous vistas and realms for the human imagination to rove, informed by fancy's preference for awe and marvel over the drab and commonplace personality of Trump and his clownish minions.³⁹⁸

But nurturing the ability to wonder about strangers, our opponents, and ourselves requires us to soothe the rage we feel when men like Trump attempt to enrage us.³⁹⁹ Love is the energy that facilitates wonder.⁴⁰⁰ Love cannot be felt while rage and fury are present, and thus our capacity to wonder about others requires soothing motions that simultaneously assuage rage and fury in our hearts, while also staving off that form of extreme dejection that leads to terror.⁴⁰¹ It can take time to soothe the rage within ourselves, and the delays

families-confront-suspect; JARS OF CLAY, *Lay Your Weapons Down, on THE LONG FALL DOWN TO EARTH* (Gray Matters & Essential Records, 2009).

393. Phillis Wheatley, *To the KING's Most Excellent Majesty* (1768), in WHEATLEY, *supra* note 1, at 17 (celebrating the repeal of the Stamp Act); *but see Rep. Liz Cheney to Republican Colleagues: "Your Dishonor Will Remain."*, YOUTUBE (June 10, 2022), <https://www.youtube.com/watch?v=bpZfCQYMDZE>.

394. Kaur, *supra* note 5; *cf.* Laughland, *supra* note 392.

395. *See* sources cited *supra* note 392.

396. *See* sources cited *supra* note 392.

397. *Cf.* Mark Leibovich, *Liz Cheney, the Republican From the State of Reality*, ATLANTIC (Aug. 12, 2022), <https://www.theatlantic.com/ideas/archive/2022/08/liz-cheney-wyoming-election-gop-pariah/671111/>.

398. Letter from John Jay to Benjamin Kissam (Aug. 12, 1766) ("[R]ound this [*self*] we move in mystic measures, dancing to every tune that is loudest played by heaven or hell."); Phillis Wheatley, *On Imagination* (1773), in WHEATLEY, *supra* note 1, at 65; *see* Kaur, *supra* note 5; *cf.* Ramm, *supra* note 363.

399. Kaur, *supra* note 5.

400. *Id.*

401. *Id.*

caused by this internal process is an opportunity of its own for men like Trump to take further action to enrage and delay us.⁴⁰²

As occurred in France, if public rage is provoked frequently enough it can catch on and take a life of its own, disfiguring society forever.⁴⁰³ But also as exemplified in France, this disfiguration was not to the long-term benefit of Robespierre and it will not be for Trump if he succeeds in America.⁴⁰⁴ Soothing the enagement of society that Trump openly preaches is also a way of contending for Trump's salvation and redemption from his own attempt to self-destroy.⁴⁰⁵

The paradox of extending love to opponents is resisted by a corresponding paradox exercised by several enraged liberals who hate Trump, and yet support his enraging of U.S. society, because in it they see the prospect of societal change through the execution of their revenge fantasies.⁴⁰⁶ There are times when it feels like the entire nation is shouting either lock him or her up depending solely upon our political persuasions.⁴⁰⁷ This public rage seems to be fueled by a strange, bipartisan fatalistic-utopic belief that the only way to improve America is to break America through a vicious cycle of revenge vendettas symbolized by the idea of a "red" Caesar.⁴⁰⁸ But such a "red" Caesar might as well be considered "blue" if he only ascends by the generosity of the sort of Democrat that supported Trump's candidacy according to their basic political strategy of painting all conservatives as maniacs in order to justify potentially any blue Robespierre, like perhaps Hillary Clinton (as a Democrat's imagination may suggest), to seize power in America.⁴⁰⁹

402. *Id.*; see generally WOODWARD, *supra* note 2.

403. 2 WARREN, HISTORY, *supra* note 20, at 683.

404. See generally DAVID SHIELDS, NOBODY HATES TRUMP MORE THAN TRUMP (2018).

405. *Id.*

406. See sources cited *supra* note 1.

407. See, e.g., Byron Tau, 'Lock Her Up' Attacks on Clinton in 2016 Are Used in Case Against Trump, WALL ST. J. (June 16, 2023, 9:00 AM), <https://www.wsj.com/articles/donald-trump-indicted-hillary-clinton-3b266500>.

408. *Id.*; Bunch, *supra* note 351; Yamiche Alcindor, *Some Who Saw Change in Obama Find It Now in Donald Trump*, N.Y. TIMES (Nov. 2, 2016), <https://www.nytimes.com/2016/11/03/us/politics/obama-donald-trump-voting.html>.

409. Gabriel Debenedetti, *They Always Wanted Trump: Inside Team Clinton's Year-Long Struggle to Find a Strategy Against the Opponent They Were Most Eager to Face*, POLITICO MAG. (Nov. 7, 2016), <https://www.politico.com/magazine/story/2016/11/hillary-clinton-2016-donald-trump-214428/>; Taryn Luna, 'I Must Be Better Than Trump': Why California's Elections Chief Is Keeping the Former President on the Ballot, L.A. TIMES (Dec. 29, 2023, 3:46 PM), <https://www.latimes.com/california/story/2023-12-29/why-california-left-donald-trump-on-the-2024-ballot> ("In a rare rebuke of the lieutenant governor, Newsom criticized the assertion that Trump should be removed from the ballot."); see Katherine Stewart, *The Claremont Institute: The Anti-Democracy Think Tank*, NEW REPUBLIC (Aug. 10, 2023), <https://newrepublic.com/article/174656/claremont-institute-think-tank-trump> (noting Curtis Yarvin's false dichotomy of a blue or red Caesar, one or the other of which he prophesied America would inevitably be ruled by).

The fatalistic utopias of utilitarianism,⁴¹⁰ alongside such paradoxical movements as libertarian paternalism,⁴¹¹ are everywhere in America in 2023 and they are symbolized by Trump who is the embodiment of a weak-strong paradox.⁴¹² In America, we want a strong man to weaken the government, and that is (generally) why Trump was voted into power.⁴¹³ If he ever succeeded in overthrowing Congress and the courts, Trump may instantly lose that portion of his following who presumptuously took for granted that kings cannot be established in America, because they believe the U.S. Constitution is self-executing and needs no human to administer its terms.⁴¹⁴

But this, itself, is a play on the imagination that mixes imperceptibly with the quasi-Christian belief that the word of God executes itself whether or not people act righteously or wickedly.⁴¹⁵ It is a restatement of American Puritanism, which is the origin of American relativism (though many seem to believe that atheists are the true representatives of this school).⁴¹⁶ It is, essentially, a belief that whatever will be will be and it could not be any different regardless of what human beings choose or will.⁴¹⁷ It is both fatalism and presumption tied up into one.⁴¹⁸ It is a disbelief that human beings have a capacity to act, that is, even if human beings have a free will, they say, it is impotent, because the individual human will is necessarily controlled or swallowed up by the great Hegelian world spirit, Hobbes's *Leviathan*, or the Rousseauian general will that decides all things for human

410. See generally JEREMY BENTHAM, THE PANOPTICON WRITINGS (2011).

411. See generally RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: THE FINAL EDITION (2021).

412. *The Family*, supra note 351; Bunch, supra note 351.

413. *The Family*, supra note 351; President Ronald Reagan, *Inaugural Address* (Jan. 20, 1981), <https://www.reaganfoundation.org/ronald-reagan/reagan-quotes-speeches/inaugural-address-2/> (“Government is not the solution to our problem. Government is the problem.”); cf. ISAAC BACKUS, AN APPEAL TO THE PUBLIC FOR RELIGIOUS LIBERTY 3–4 (1773) (“[T]hose who now speak great swelling words about liberty, while they despise government, are themselves servants of corruption.”).

414. See, e.g., William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. PENN. L. REV. 1, 17 (forthcoming 2023); cf. generally Mortenson, supra note 159.

415. Tara Isabella Burton, *The Biblical Story the Christian Right Uses to Defend Trump*, VOX (Mar. 5, 2018, 9:20 AM), <https://www.vox.com/identities/2018/3/5/16796892/trump-cyrus-christian-right-bible-cbn-evangelical-propaganda>.

416. WOOLRYCH, supra note 378, at 271–73, 300; Jackson Lears, *Same Old New Atheism: On Sam Harris*, THE NATION (May 16, 2011), <https://www.thenation.com/article/archive/same-old-new-atheism-sam-harris/>; cf. Thom Brooks, *Legal Positivism and Faith in Law*, 77 MODERN L. REV. 139, 141 (2014).

417. WOOLRYCH, supra note 378, at 271–73, 300.

418. *Id.*; O’CONNOR, A PRAYER, supra note 7, at 32.

beings as if they were our destiny or doom.⁴¹⁹ The best we can do, they say, is to whimsically embrace the soothing 1950s principle of *Que Sera, Sera*.⁴²⁰

In reality, for the U.S. Constitution or any written constitution to be effective, common American people must actually choose it daily as their constitution, their spirit, their life force.⁴²¹ The moment common people deny the written constitution's existence, choose against it, or adopt, by quasi-religious fervor, a tribalism, Bernaysian propaganda, or an unofficial *Game of Thrones* as our unwritten constitution, *Buck v. Bell* may be reaffirmed, the Mexican Repatriation may be reinstated, and chattel slavery may once more become the basis of a grand, self-destroying secession.⁴²² This is so because constitutions merely refer to the life force of the people, a reality of the life of a people that all people have whether or not their constitutions are reduced into writing;⁴²³ it is coeval with their existence and it bears their social sicknesses and maladies into social realities whether or not those imperfections comport with the written word of the document they call "constitution."⁴²⁴

This reality is, perhaps, most observable in the People's Republic of China ("P.R.C.") where they also boast a written constitution and the sovereignty of the people.⁴²⁵ The P.R.C. Constitution is regarded by many as a wonderful document that grants all sorts of rights and equalities to the people including the freedom of speech and many other liberties and equalities that the U.S. Constitution does not contain.⁴²⁶ If the P.R.C. Constitution reflected the reality of life in China, then China might be the most progressive and enlightened nation on earth, leaving America languishing in the shadows of its original slavery and misogyny.⁴²⁷

419. MARY TRUMP, TOO MUCH AND NEVER ENOUGH 211 (2020); see RUSSELL, A HISTORY, *supra* note 330, at 741; GLENN ALEXANDER MAGEE, HEGEL AND THE HERMETIC TRADITION 227 (2001).

420. Doris Day, *Que Sera, Sera (Whatever Will Be, Will Be)*, in THE MAN WHO KNEW TOO MUCH (Paramount Pictures 1956).

421. LEARNED HAND, THE SPIRIT OF LIBERTY 190 (1952) ("Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to save it. While it lies there, it needs no constitution, no law, no court to save it.")

422. *Id.*; see, e.g., Eastman, *Some*, *supra* note 45.

423. See WALTER BAGEHOT, THE ENGLISH CONSTITUTION 252 (1867).

424. *Id.*; Joshua J. Schroeder, *The Boomer Interregnum: How Conservative Thought Dressed Up As Memory Will Shape an America that the Founders Never Intended*, 49 OHIO N.U. L. REV. 355, 357–58 (2023).

425. P.R.C. CONST. OF 2004, arts. 2–4, 33–50.

426. See, e.g., P.R.C. CONST. OF 2004, art. 48 ("Women in the People's Republic of China enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life."); Alex Cohen & Wilfred U. Codrington III, *The Equal Rights Amendment Explained*, BRENNAN CTR. (Jan. 23, 2020), <https://www.brennancenter.org/our-work/research-reports/equal-rights-amendment-explained>.

427. See P.R.C. CONST. OF 2004, arts. 2–4, 33–50.

However, the biggest difference between the P.R.C. Constitution and the U.S. Constitution is not in its written terms, but in its application.⁴²⁸ In the United States, the federal judiciary has over two centuries of practice applying the terms of the U.S. Constitution as a controlling law that is citable by litigants in open court.⁴²⁹ In China, citing to the P.R.C. Constitution in court is rarely an option, and even if it is cited there is no accepted judicial practice for how to implement it.⁴³⁰

Furthermore, several of the same liberal rights laid out with such assiduity in the written P.R.C. Constitution are practically administered in the United States by the accepted application of the U.S. Constitution through imaginative and novel holdings made by the U.S. Supreme Court.⁴³¹ The common law ensures that the American ideals of liberty, equality, and justice are read into the terms of the U.S. Constitution through its preamble and by reference to the U.S. social compact signified by the terms of the Declaration of Independence.⁴³² The decision of *Marbury v. Madison* secured this long tradition in America through the common law that has yet to take root in the P.R.C. to give life to the words of China's modern written constitution.⁴³³ Nevertheless, the common law idea that unconstitutional laws are void from *Dr. Bonham's Case* (extended to America in *Marbury*) might eventually be imported into mainland China from Hong Kong.⁴³⁴

In *Marbury*, the Supreme Court announced a principle that is essential to all social justice movements that “[t]he very essence of civil liberty certainly consists in the right of *every individual* to claim the protections of the laws whenever he receives an injury.”⁴³⁵ However, as experienced by the women and Black Americans of New Jersey who saw their constitutionally secured voting rights effectively repealed by a mere statute in 1807, the constitutional principle in *Marbury* was apparently not followed in some places, during certain times, and regarding certain people.⁴³⁶ On the other

428. *Marbury v. Madison*, 5 U.S. 137, 180 (1803); Brian Palmer, *Is There Freedom of Speech in China?: Only Symbolically*, SLATE (Oct. 8, 2010, 5:56 PM), <https://slate.com/news-and-politics/2010/10/is-there-freedom-of-speech-in-china.html>.

429. *Marbury*, 5 U.S. at 177, *reaffirmed in* *Moore v. Harper*, 143 S. Ct. 2065, 2080 (2023).

430. Palmer, *supra* note 428.

431. P.R.C. CONST. OF 2004, art. 4 (“All nationalities . . . are equal.”); *see, e.g.*, *United States v. Guest*, 383 U.S. 745, 758 (1966).

432. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); U.S. CONST. pmbl; *see* JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 459.

433. *See* case and source cited *supra* note 428.

434. *Dr. Bonham's Case* (1610) 8 Co. Rep. 107a, 118a (Eng.), *quoted and explained by* P. A. Keane, *Sir Edward Coke and the Common Law* 19–20 <https://www.hkcfh.hk/filemanager/speech/en/upload/2287/Sir%20Edward%20Coke%20and%20the%20Common%20Law%20-%20Final.pdf>, and Theodore F. T. Plucknett, *Bonham's Case and Judicial Review*, 40 HARV. L. REV. 30, 68 (1926); *cf. Maintaining Prosperity and Stability Under the Common Law*, HONG KONG LAWYER (Sept. 2021), <https://www.hk-lawyer.org/content/maintaining-prosperity-and-stability-under-common-law>.

435. *Marbury*, 5 U.S. at 163 (emphasis added).

436. STONE, *supra* note 167, at 12.

hand, where the successes of pro-Black, pro-woman social justice movements have been observed in America it always seems to be in conformity with the principle of *Marbury* that laws contrary to the constitution are void.⁴³⁷

Through this principle, wonder and imagination in U.S. courts gave life to more liberal holdings than the P.R.C. has ever administered for its people, but at least since its 2013 Term, the U.S. Supreme Court has undermined its *Marbury* duty to “say what the law is.”⁴³⁸ The common law principle of *stare decisis* that might keep extending these precedents to protect future generations is being degraded by the Court itself through its oxymoronic, imaginary creation of “anti-precedent precedent.”⁴³⁹ The very Republicans who took for granted that a king or emperor could never install themselves into the presidency of the United States successfully reshaped the Supreme Court into a political counsel that is presently celebrating feudal law in its decisions and dismantling the constitutional safeguards that the United States relies upon to preclude monarchy.⁴⁴⁰

When William the Bastard established his monarchy upon feudal slavery, he did so by oppressing the English people and then offering himself as the antidote to the very suffering he caused.⁴⁴¹ History is replete with examples of despots paradoxically causing the problems they later propose to solve, a strategy that was systematized by Thomas Hobbes, whose dismal view of the state of human nature inspired the Cromwellian Protectorate through wonder and marvel.⁴⁴² As such, Hobbes theorized that human beings institute societies that can explore the wonders of the arts and sciences as an escape of their natural state of absolute war and slavery.⁴⁴³ Conversely, the Americans contended that human societies are created by human nature through sexual attraction, friendship, and maternal love according to

437. See, e.g., *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (“We conclude that, in the field of public education, the doctrine of ‘separate but equal’ has no place,” because it “deprived [Black Americans] of the equal protection of the laws guaranteed by the Fourteenth Amendment.”), *implicitly extending and relying upon Marbury*, 5 U.S. at 177 (requiring laws that contradict the constitution to be invalidated by the court as void).

438. *Marbury*, 5 U.S. at 177.

439. Schroeder, *The Imagination*, *supra* note 245, at 187.

440. *Id.* at 225.

441. J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 11 (1979) (noting that the conquest of King William I was “a catastrophe which determined the whole future of English law”); see HOBBS, *supra* note 4, at 177, 522 (praising the goodness of the Norman Conquest as the origin of the modern English monarchy and the rights of the English people); see also SIR HENRY VANE THE YOUNGER, A HEALING QUESTION 5–6 (1656) (rejecting the conquest of William I as a corruption of the natural liberties and rights due to the people).

442. HOBBS, *supra* note 4, at 119; see James J. Hamilton, *Hobbes the Royalist, Hobbes the Republican*, 30 HIST. POL. THOUGHT 411, 432–33 (2009); RUSSELL, A HISTORY, *supra* note 330, at xxii.

443. HOBBS, *supra* note 4, at 5–13 (“The imaginations of them that sleep, are those we call *Dreams*.”); *id.* at 83–87 (“[I]n the nature of man, we find . . . quarrell. . . [A]nd such a warre, as is every man, against every man.”).

necessity rather than contract,⁴⁴⁴ that the original state of human nature is liberty and peace,⁴⁴⁵ and that humanity's charms and wonders originally unfolded "At [humanity's] descent to earth!"⁴⁴⁶ The wonders and charms of humanity are, therefore, coeval with human nature itself regardless of whether or not humans establish societies through express social contracts with their fellows, because human societies preexist social contracts as "[t]he few *Hermits* and *Misanthropes* that have ever existed, show that those states [of human solitude] are *unnatural*."⁴⁴⁷

Thus, Hobbes's strategy of founding governments on social contracts was completely reversed by the first American Revolutionary James Otis when he wrote: "[L]et the *origin* of government be placed where it may, the *end* of it is manifestly the good of the whole."⁴⁴⁸ In a marvelous answer to Otis's original call to resist Hobbes, the Declaration of Independence later captured the reversal of Hobbesian theory by asserting that all human governments are established to secure the preexisting natural rights of the people.⁴⁴⁹ Some governments like that of the United States have an obvious social compact,⁴⁵⁰ and others like that of the United Kingdom do not.⁴⁵¹ But all governments exist according to the necessities of human nature that require societies to adopt imperfect strategies to secure and protect preexisting natural human rights and liberties that are never surrendered, and which may be incapable of being surrendered, to the government.⁴⁵²

444. OTIS, *supra* note 23, at 123 ("[F]rom *Adam* and *Eve* to these degenerate days, the different sexes . . . sweetly attract each other, form societies of single families, of which larger bodies and communities are as naturally, mechanically, and necessarily combined, as the dew of Heaven."); Cicero, *De Officiis* 1.44.158 (noting how societies form when small families of people "fly from solitude and look for a companion in" their worldly pursuits); *see also* Cicero, *De Senectute* 21.77 ("While we are shut up in this prison of the body, we are performing a heavy task laid upon us by necessity; for the soul, of celestial birth, is forced down from its supremely high abode, and, as it were, plunged into the earth, a place uncongenial with its divine nature and eternity.").

445. Phillis Wheatley, *Liberty and Peace* [1784], in WHEATLEY, *supra* note 1, at 154; *see* 1 BARON DE MONTESQUIEU, *THE SPIRIT OF THE LAWS* 4 (Thomas Nugent trans., 1899) [1748] (refuting HOBBS, *supra* note 4, at 64–65); OTIS, *supra* note 23, at 241 (rejecting the Hobbesian state of nature).

446. Phillis Wheatley, *An Hymn to Humanity. To S.P.G. Esq; (1773)*, in WHEATLEY, *supra* note 1, at 95.

447. OTIS, *supra* note 23, at 126; Phillis Wheatley, *On Imagination* [1773], in WHEATLEY, *supra* note 1, at 65.

448. OTIS, *supra* note 23, at 125.

449. *Id.*; THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

450. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (embodying the U.S. social compact that our constitutions are ratified to carry out); *cf.* Sandra Day O'Connor, *The Judiciary Act of 1789 and the American Judicial Tradition*, 59 U. CIN. L. REV. 1, 5 (1990) (explaining the triad of founding documents).

451. BAGEHOT, *supra* note 423, at 252.

452. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776), *according to* OTIS, *supra* note 23, at 125; *but see* HOBBS, *supra* note 4, at 88 ("Right is layd aside, either by simply Renouncing it; or by Transferring it to another.").

Therefore, the most basic Hobbesian corruption is the appropriation of preexisting natural marvel and wonder to convince others that the place of wonder is, itself, a manmade artifice invented only after societies are formed by contract to lift absolute kings into power.⁴⁵³ The founding fathers and mothers of the United States lived near enough to nature to understand that humans experience wonder in nature within or without a consciously instituted society,⁴⁵⁴ and, so, when they began anew in 1776 it was simple for them to avail themselves of the wonders of Phillis Wheatley to inspire their imaginations to be unleashed.⁴⁵⁵ Yet, in 2023, the foundation of the laws of the United States in the wonders inspired by Wheatley is almost completely forgotten.⁴⁵⁶

The legal field's forgetting of the role of preexisting natural wonder and the dangers of artificial, manmade rage were on full display at the *Advocating for Children in Migration* symposium.⁴⁵⁷ Few of the legal and medical panelists addressed the arts and those who did tended to struggle to find something interesting to say about it.⁴⁵⁸ But fortunately, the artists filled in the gaps left by the professionals and there was a surprising invitation to wonder extended by them that was not fully understood by all parties present about how to observe untenable legal systems through artworks and the artists' desire to inspire something more: a novel solution discovered by their muse or a renewal of justice opening outward to save child migrants from ever being incarcerated in the name of law in the United States ever again.⁴⁵⁹

453. HOBBS, *supra* note 4, at 323 (describing how miracles can be used by rulers to trick the governed into subservience writing: “[A]ll the miracle consisteth in this, that the Enchanter has deceived a man; which is no Miracle, but a very easie matter to doe.”).

454. Mercy Otis Warren, *Simplicity* (1779), in WARREN, POEMS, *supra* note 12, at 231 (“But nearest those, who nearest nature live, / Despising all that wealth, or pow’r can give, / Or glitt’ring grandeur, whose false optics place / The *summum bonum* on the frailest base.”), *rejecting* HOBBS, *supra* note 4, at 83 (placing the basis of government on the monetization of human beings, based on an apparent theory that all human beings hate the company of other human beings “where there is no power to over-awe them all”).

455. Phillis Wheatley, *On Imagination* [1773], in WHEATLEY, *supra* note 1, at 65, *inspiring* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776), *according to* OTIS, *supra* note 23, at 125.

456. *Id.*

457. *Law Panel*, *supra* note 3, at 5:51–5:55, 1:01:47–1:01:49; *Lee Gelernt*, *supra* note 54, at 32:45–33:17 (developing public relations strategies to create, sustain, and spread public outrage about child separation).

458. *Id.* at 24:43–24:54; *Lee Gelernt*, *supra* note 54, at 36:00–39:00; *Medical and Behavioral Health Panel*, *supra* note 123, at 59:44–1:06:02.

459. *Muralism and Performing Arts Panel*, *supra* note 109, at 35:10–35:45 (explaining how doctors and lawyers who “are so chilled and horrified” by the immigration crisis “that they can’t process it” can be moved by music and the arts to “understand now how to think about this”); *Arts and Literature Panel*, *supra* note 3, at 23:15–24:10, 27:50–29:00 (explaining how the artists used their artworks as a language to help people talk about the immigration crisis so that everyone who follows the American dream to the United States will be “granted . . . help” rather than met with violence); *see, e.g.*, *Reno v. Flores*, 507 U.S. 292, 341 (1993) (Stevens, J., dissenting) (“The right at stake in this case is not the right of detained juveniles to be *released* to one particular custodian

CONCLUSION: HOW PHILLIS WHEATLEY SNATCHED THE ENGLISH CROWN WITH WONDER

Phillis Wheatley, who was a child in migration not entirely unlike the precocious “ten-dollar founding father” Alexander Hamilton,⁴⁶⁰ winsomely soothed the grief and rage of all Americans, loyalist and revolutionary alike, in the years leading up to the Revolution of 1776.⁴⁶¹ Of course, while she courageously beheld the rampant death and suffering of her American friends by encouraging them to lift themselves up off the floor despite their pain,⁴⁶² she did not invent the human practice of healing others through art.⁴⁶³ However, Wheatley may have been the first in the English speaking world to soothe others as an end in itself, rise or fall, win or lose, whether or not she personally received a lasting benefit for helping others through their suffering.⁴⁶⁴

Prior to Wheatley’s stand in 1772 where she won her right of attribution before a panel of some of the most illustrious and powerful men of Boston,⁴⁶⁵ it was Thomas Hobbes who originally soothed the cares and worries of humankind in the interest of globalized despotism.⁴⁶⁶ The Hobbesian practice of soothing the cares and worries of the English and French peoples was candidly political, for the elevation and preservation of absolute monarchies in the name of the people.⁴⁶⁷ Paradoxically, the serene monarchs of the absolute variety who Hobbes hoped would dole out public benefits to

rather than another, but the right not to be *detained* in the first place.”), *remembered by Law Panel*, *supra* note 3, at 1:00:05–1:00:20.

460. LIN-MANUEL MIRANDA, *Alexander Hamilton*, in HAMILTON (2015); Jillian Keenan, *Five Amazing Women Who Should Be on the \$10 Bill*, SLATE (June 18, 2015, 7:30 AM), <https://slate.com/human-interest/2015/06/a-woman-on-the-10-bill-some-worthy-candidates-you-may-not-have-heard-of.html> (topping the list with Wheatley).

461. See sources compared *supra* notes 297–98.

462. See, e.g., Phillis Wheatley, *To His Honour the Lieutenant-Governor, on the Death of his Lady* (1773), in WHEATLEY, *supra* note 1, at 116 (“ALL-conquering Death! By thy resistless pow’r, / Hope’s tow’ring plumage falls to rise no more!”).

463. VICTORIA SWEET, *GOD’S HOTEL* 147–51 (2012) (rediscovering the artist-physician Hildegard).

464. Phillis Wheatley, *To a GENTLEMAN and LADY on the Death of the Lady’s Brother and Sister, and a Child of the Name Avis, aged one Year* (1773), in WHEATLEY, *supra* note 1, at 84 (“On Death’s domain intent I fix my eyes, / Where human nature in vast ruin lies.”); see also, e.g., Phillis Wheatley, *To the KING’s Most Excellent Majesty* (1768), in WHEATLEY, *supra* note 1, at 17 (“YOUR subjects hope, dread Sire— / The crown upon your brows may flourish long, / And that your arm may in your God be strong!”).

465. Thomas Hutchinson, C.J., et al., *To the Public*, [Oct. 1772.] in WHEATLEY, *supra* note 1, at 7.

466. HOBBS, *supra* note 4, at 5–13, 83–87.

467. *Id.* at 119, 323; see Hamilton, *supra* note 442, at 432–33; Hoekstra, *supra* note 363, at 109; RUSSELL, *A HISTORY*, *supra* note 330, at xxii.

his favorites while culling his detractors like livestock never sustainably arose from Hobbesian philosophy.⁴⁶⁸

In practice, Hobbesian ideology inspired occasional, self-aborting reigns of terror symbolized by Cromwell and Robespierre, a true paradox especially as Hobbes took care to soothe the rage of his readers with wonders and marvels, perhaps, never before put down in a book.⁴⁶⁹ The wonders of monarchy, which are outwardly expressed with the symbols of glittering crown, scepter, orb, and jewel possessed by a man or woman seated upon a throne in a marvelous hall surrounded by lovers and benefactors of high culture, religion, and influence exist to soothe the passions of the people.⁴⁷⁰ To go without these dignified comforts of the imagination is to suffer rage and grief, and, according to the American Revolutionaries, it is part of the suffering humans feel as they wait for that kingdom of God or heaven that may come in the future.⁴⁷¹

Phillis Wheatley entered into this suffering of America to vindicate the Ciceronian basis of natural human equality through friendship (*amicitia*),⁴⁷² rather than the paradoxical Hobbesian basis of natural human equality in murder, war, and slavery.⁴⁷³ She transformed the equality that Hobbes identified as a human flaw to be cured by despots, tyrants, and kings into the ultimate basis of the U.S. republic.⁴⁷⁴ The created equality of humankind in nature,⁴⁷⁵ defended by James Otis in the name of the voting rights of women

468. HOBBS, *supra* note 4, at 83, 122 (“[H]e that dissented must now consent with the rest . . . or else be destroyed by the rest.”); see MEYLER, *supra* note 150, at 247 (noting that, despite himself, Hobbes “shifted the place of sovereignty gradually in the direction of Parliament rather than the king”).

469. HOBBS, *supra* note 4, at frontispiece; MARCHAMONT NEDHAM, THE CASE OF THE COMMON-WEALTH OF ENGLAND, STATED 108 (1650) (“If it be true, which Mr. Hobbs saith”); ROUSSEAU, *supra* note 14, at 63 (“As soon as the multitude is united thus in a single body, no one can injure any one of the members without attacking the whole, still less injure the whole without each member feeling it.”); *id.* at 180 (“Of all Christian authors, the philosopher Hobbes is the only one who saw clearly both the evil and the remedy.”); Hamilton, *supra* note 442, at 432–33; Robespierre, *supra* note 10; WALZER, *supra* note 10, at 132, 136; VILATE, *supra* note 15, at 58–68.

470. HOBBS, *supra* note 4, at frontispiece; ADAMS, *supra* note 155, at 26; BAGEHOT, *supra* note 423, at 4–5 (describing the “dignified parts” of the English constitution that “excite and preserve the reverence of the population”); see *The Crown: Scientia Potentia Est* 1:55–3:00 (Netflix Dec. 8, 2017).

471. Mercy Otis Warren, *Simplicity* (1779), in WARREN, POEMS, *supra* note 12, at 231.

472. Phillis Wheatley, *An Hymn to Humanity. To S.P.G. Esq;* (1773), in WHEATLEY, *supra* note 1, at 97; Cicero, *De Amicitia* 9.32; see also Phillis Wheatley, *On Friendship* (1769), in WHEATLEY, *supra* note 1, at 136 (writing of “Amicitia in her ample reign”); cf. Susanna Wright, *On Friendship*, in MILCAH MARTHA MOORE’S BOOK 143–45 (Catherine La Courreye Blecki & Karin A. Wulf eds., 1997).

473. HOBBS, *supra* note 4, at 82, 105.

474. Phillis Wheatley, *An Hymn to Humanity. To S.P.G. Esq;* (1773), in WHEATLEY, *supra* note 1, at 97, *refuting* HOBBS, *supra* note 4, at 82, 105, *according to* Cicero, *De Amicitia* 9.32 (observing that for a friendship to exist each friend must count themselves as an equal to each other).

475. Cicero, *De Amicitia* 9.32.

and the basic human equality of Black people,⁴⁷⁶ was soon after adopted as the social compact of the country on July 4, 1776.⁴⁷⁷

As a result, when the Americans shouted out of their churches “no king but God!” they proved that they really did not go without.⁴⁷⁸ Instead, they enjoyed the significant charms of “[t]he languid muse in low degree,” because the “pitying eye” of heaven saw her and “deigned to string [her] lyre.”⁴⁷⁹ Phillis Wheatley was the first, but not the last, American artist to fill the role of heavenly comforter in the place of the royal symbols that Hobbes used to manipulate the English people into enslaving themselves.⁴⁸⁰ Wheatley used wonder, not to crown herself a queen, but to release the American people from the bonds of monarchy and to give them a post-feudal second chance by singing of the majesty of children in migration like Christopher Snider who were imported here as property, like herself, as revolutionary sovereigns even in death.⁴⁸¹

Paradoxically, Wheatley received payment for her books even as she released them for the comfort and elevation of others, which became the origin of the author-owned U.S. copyright system.⁴⁸² Wheatley’s lived paradox of finding her life by losing her life, which is a biblical mystery,⁴⁸³ corresponds with John Milton’s vicious attempts to claim value in his books only to die a pauper with no right to profit from his own writings.⁴⁸⁴ In fact,

476. OTIS, *supra* note 23, at 63–64, 122, 140–41.

477. Phillis Wheatley, *On Imagination* (1773), in WHEATLEY, *supra* note 1, at 65, *inspiring THE DECLARATION OF INDEPENDENCE* para. 2 (U.S. 1776), *according to* OTIS, *supra* note 23, at 125.

478. WILLIAM BILLINGS, *Independence* [1778], in *THE SINGING MASTER’S ASSISTANT* 94 (1778) (“Down with this earthly king!”).

479. Phillis Wheatley, *An Hymn to Humanity. To S.P.G. Esq:* (1773), in WHEATLEY, *supra* note 1, at 96; *cf.* OTIS, *supra* note 23, at 63–64 (“[L]et us remember we are all of one Flesh and one Blood: and that the Good of the whole is closely and intimately connected with the Welfare and Prosperity of each Individual.”).

480. *Compare* HENRY WADSWORTH LONGFELLOW, *Hymn to the Night*, in *VOICES OF THE NIGHT* 3 (1839), *with* Phillis Wheatley, *Hymn to the Evening* (1773), in WHEATLEY, *supra* note 1, at 58.

481. Phillis Wheatley, *On the Death of Mr. Snider Murder’d by Richardson* [1770], in WHEATLEY, *supra* note 1, at 137 (“With Secret rage fair freedom’s foes beneath / See in thy corpse ev’n Majesty in Death.”).

482. Phillis Wheatley’s Registration, Sept. 10, 1773, TSC/1/E/06/09, Register of entries of copies 1746–1773; *see, e.g.*, Letter from Phillis Wheatley to David Wooster (Oct. 18, 1773), in WHEATLEY, *supra* note 1, at 170 (“I am to have half the sale of my books.”); *cf.* 27 *THE PARLIAMENTARY HISTORY OF ENGLAND* 977 (1813) (describing the releasing of books into the public with an author’s name printed on it as similar to releasing a hawk with bells around its neck, to signal and preserve ownership).

483. *Mathew* 16:25.

484. JOHN MILTON, *EIKONOKLASTES* 13 (2d ed., 1649) (characterizing the monarch’s stealing the property of “every author” as an illegitimate taxation), *explained by* Schroeder, *Leviathan*, *supra* note 122, at 175–76, *and* Donaldson v. Becket [1774] 17 Cobbett’s Parl. Hist. 953, 1000 (Eng.) (“When the bookseller offered Milton five pound for his *Paradise Lost*, he did not reject it, and commit his poem to the flames, nor did he accept the miserable pittance as the reward of his labour; he knew that the real price of his work was immortality, and that posterity would pay it.”).

Wheatley built her poetic strategies as a businesswoman of letters directly upon Milton's earlier cause and revolutionized them in favor of the necessary role of women in public life that would, despite Milton's candid misogyny, defend his rights to literary property as well.⁴⁸⁵

We are only now beginning to experience the benefits of the revolutions in thought that Wheatley first inspired in America by redeeming the wonderment originally propagandized by Milton and Hobbes for the benefit of kings and despots.⁴⁸⁶ As Professor Warren Binford and her colleagues at *Project Amplify* recognized in their movement to defend children in migration from harmful systems fashioned by Trumpist wonderers in their own right, there are a whole fleet of wondering artists who are ready to assert their positions in the public fray.⁴⁸⁷ For example, the former child asylee from Russia Regina Spektor recently responded to the American reaction to Russia's war in Ukraine with a call to love our enemies.⁴⁸⁸ Her new song *Loveology* is dedicated to the comfort and elevation of the American mind to the kind of incurable humanism that can make us shine like stars, as beacons of hope to foreign nations.⁴⁸⁹

Such inspiring artists easily reveal the boring, tastelessness of Trumpian art by a gentle juxtaposition with their own revolving lights of marvel, strung with the mournful longingness of blue notes repurposed from the American jazz and blues, and other striking charms.⁴⁹⁰ Or as Kesha Sebert recently concluded: *Only Love Can Save Us Now*.⁴⁹¹ Kesha demonstrated through her recent victory over Dr. Luke in the highest court in New York State that the artists of America may decide the fate of the law in the United States, and it

485. LOSCOCCO, *supra* note 70, at 17 (noting Wheatley's role founding "an American nation committed not to British conquest but to English civilization"); see Schroeder, *Leviathan*, *supra* note 122, at 150 ("The founding lawyers, thus, joined Wheatley's transformation of Milton's reveries of doom into a new song of hope.").

486. Billingsley, *supra* note 330, at 174.

487. ESCUCHA MI VOZ, *supra* note 384; see *Advocating*, *supra* note 37.

488. Regina Spektor on "Home, Before and After," and a Trip to the Boundary Waters, NEW YORKER RADIO HOUR 21:03–24–54 (July 28, 2023), <https://www.newyorker.com/podcast/the-new-yorker-radio-hour/regina-spektor-on-home-before-and-after-and-a-trip-to-the-boundary-waters> (calling us not to vilify and dehumanize the Russian people, because vilifying and dehumanizing the Russian people enables the Russian propaganda that oppresses Ukraine through the leaders that illegitimately seized power over the Russian people through deception).

489. REGINA SPEKTOR, *Loveology*, on HOME, BEFORE AND AFTER (Sire/Warner Bros. 2023) ("Oh, an incurable humanist you are.").

490. *Id.*; see, e.g., ESCUCHA MI VOZ, *supra* note 384; Mendoza, *supra* note 82; J.E. Hernandez, *ConcertiaHTX & University of Colorado presents: Soul Echoes*, YOUTUBE (Sept. 21, 2023), <https://www.youtube.com/watch?v=ihQBxwvjm5s>; cf. GARY GIDDINS & SCOTT DEVEAUX, *JAZZ 76* (2009) ("New Orleans jazz ultimately became the foundation of jazz itself. The reasons lie in the city's geographical, racial, political, cultural, and musical peculiarities.").

491. KESHA SEBERT, *Only Love Can Save Us Now*, on GAG ORDER (Sony 2023).

would behoove the legal and medical professionals still raging in their own echo chambers, to take a moment to listen to them.⁴⁹²

The vibrant artists of America, including Kristen Grainger & Dan Wetzel of True North who performed their wondrous songs *The Ghost of Abuelito* and *Still Life Cafe* at the *Advocating for Children in Migration* symposium, are casting a spell of comfort over the people in order to make the observation of injustice bearable for us.⁴⁹³ They are telling the stories of strangers and immigrants dreaming of a new life and hoping for a new beginning, a rebirth, an American renewal.⁴⁹⁴ As long as it remains possible for the artist to move the lawmaker and the physician to engage their natural capacity to feel love by wondering about the wellbeing of their fellow human neighbors, there is still hope for us all.⁴⁹⁵ By petitioning artists who have the power to fortify our wandering hearts as we risk the snares of grief and rage in pursuit of justice,⁴⁹⁶ Professor Binford is leading a new movement of legal and medical professionals to a deeper understanding of the ancient uses of art as advocacy in the *Advocating for Children in Migration* symposium as part of the *Testimony* series of events at the University of Colorado, Anschutz.⁴⁹⁷

492. *Gottwald v. Sebert*, 40 N.Y.3d 240, 260–61 (2023) (“Accordingly, in *Gottwald v. Sebert I*, the order of the Appellate Division should be reversed, with costs In *Gottwald v. Sebert II*, the order of the Appellate Division should be modified, without costs, in accordance with this decision, as so modified affirmed”), implicitly rejecting *Daly v. Smith*, 49 How. Pr. 150, 160–61 (N.Y. Sup. Ct. 1874); see Tomás Mier, *Kesha Breaks Silence Following Dr. Luke Settlement: ‘I Am So Full of Light,’* ROLLING STONE (June 27, 2023), <https://www.rollingstone.com/music/music-news/kesha-dr-luke-legal-battle-singer-breaks-silence-1234779595/>; cf. Matt Stahl, *Are Workers Musicians? Kesha Sebert, Johanna Wagner and the Gendered Commodification of Star Singers, 1853–2014*, 40 POP. MUS. 191, 192 (2021); Lea S. VanderVelde, *The Gendered Origins of the Lumley Doctrine: Binding Men’s Consciences and Women’s Fidelity*, 101 YALE L.J. 775, 800, 808 (1992).

493. *Ghost of Abuelito Kristen Grainger 2019 #amplifychildren*, YOUTUBE (Sept. 29, 2019), <https://www.youtube.com/watch?v=-AqFeZ2dtM8>; cf. KAUR, *supra* note 5, at 217 (using marvel and wonder to assist her readers to bear witness to the unprovoked, horrific mass shooting at a Gudwara in Oak Creek, Wisconsin on August 5, 2012).

494. See sources cited *supra* notes 488–93.

495. Phillis Wheatley, *An Hymn to Humanity. To S.P.G. Esq; (1773)*, in WHEATLEY, *supra* note 1, at 97; see also Phillis Wheatley, *To the Right Honourable WILLIAM, Earl of DARTMOUTH, His Majesty’s Principal Secretary of State for North America, &c. (1773)*, in WHEATLEY, *supra* note 1, at 74 (noting that her cause for freedom and the common good is “[b]y feeling hearts best understood”).

496. HOBBS, *supra* note 4, at 46, *assuaged* by Phillis Wheatley, *An Hymn to Humanity. To S.P.G. Esq; (1773)*, in WHEATLEY, *supra* note 1, at 97.

497. *Advocating*, *supra* note 37; see ESCUCHA MI VOZ, *supra* note 384.