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Politicians the Founders Warned You About

NEIL FULTON*

ABSTRACT

Many articles have explored the Founders' intentions regarding the constitutional text. Much less attention has focused on the Founders' ideas regarding the traits needed of the leaders in a constitutional republic. The Constitution focuses on governing structures, many of which relate to the electoral process. The Constitution does not spell out the ideal traits of the leaders elected pursuant to those processes. Nonetheless, the Founders possessed clear views about the virtues and qualifications that ideal political leaders required. Indeed, the Founders issued warnings about certain archetypal political figures who, because of their flagrant disregard of the ideal virtues and qualifications, threatened the nation's political health. This article examines the warnings issued by the Founders about four types of political figures who threatened the integrity of our republic: partisans, demagogues, ambitious, and tyrants. After exploring the Founders' warnings about these dangerous leadership traits, this article looks at contemporary political culture and actors to consider how those very archetypes are manifesting. Finally, the article turns to a consideration of how ignoring the Founders' warnings to allow these dangerous archetypes to take root can undermine the health of the American republic.

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INTRODUCTION

The Founders stand tall in the American political imagination. Electoral candidates readily and regularly invoke them.¹ Academics vigorously debate the Founders' vision and how it should influence, even definitively resolve, current political debates.² The enduring impact of the American Founders and the continuity of their work stands apart among the organic political charters in the world.³ Given the continuing endurance of the

1. See Senate Republican Leader Mitch McConnell, *The "Transparently Partisan" House Process Is Over; "The Senate's Time Is At Hand,"* YOUTUBE (Jan. 16, 2020), <https://www.youtube.com/watch?v=5D3Af3CyMK4> (expressing how the Founders knew that our nation may sometimes fall victim to dangerous factionalism); Deirdre Walsh, *Schumer Says Trump Not Acting Like An Innocent Man, 'Dead Wrong' On Pardoning Himself*, NPR (June 4, 2018), <https://www.npr.org/2018/06/04/616957985/schumer-says-trump-not-acting-like-an-innocent-man-dead-wrong-on-pardoning-himse> (explaining how "the Founding Fathers did not want a king"); Sen. John Thune, Opinion Editorial, *Founding Fathers' Spirit of Patriotism Lives on in Americans*, JOHN THUNE U.S. SENATOR FOR SOUTH DAKOTA (June 25, 2021) <https://www.thune.senate.gov/public/index.cfm/op-eds?ID=2856D964-4FFD-4CCE-B265-4C998A87407C> (asserting that the Founders believed in "the right of the people to change their government").

2. See Susan Henderson-Utis, *What Would the Founding Fathers Do? The Rise of Religious Programs in the United States Prison System*, 52 HOW. L.J. 459, 460 (2009) (arguing how religion's growing influence in the U.S. prison system would be criticized by the Founders); Steven T. Voigt, *The General Welfare Clause: An Exploration of Original Intent and Constitutional Limits Pertaining to the Rapidly Expanding Federal Budget*, 43 CREIGHTON L. REV. 543, 545 (2010) (exploring the Founders' intent for the General Welfare Clause and federal power); Roger Roots, *The Framers' Fourth Amendment Exclusionary Rule: The Mounting Evidence*, 15 NEV. L.J. 42, 47–48 (2014) (demonstrating how the Founding Fathers supported the exclusionary rule through their writings); Steven G. Calabresi, *The President, the Supreme Court, and the Founding Fathers: A Reply to Professor Ackerman*, 73 U. CHI. L. REV. 469, 479 (2006) (critiquing Professor Bruce Ackerman's assertion that the Founders in 1787 intended the Presidency to be a weak office).

3. See Jake Berry, *The United States has "the Longest Surviving Constitution"*, POLITIFACT (Aug. 8, 2011), <https://www.politifact.com/factchecks/2011/aug/08/jon-huntsman/oldest->

United States Constitution, the work of the Founders is alive in the modern world and undeniably continues to significantly shape American politics, arguably more than any other source of influence.

It therefore makes sense to evaluate the thoughts of the Founders to the extent that they may provide insight into current political issues and political leaders. Many politicians claim the mantle of the Founders and criticize their political opponents for failing to adhere to the ideals of that historic era. “What would the Founders do?” remains a common benchmark to evaluate today’s political actors and actions. This article seeks to do exactly that. Specifically, it seeks to identify certain political archetypes that the Founders warned about and how those archetypes are manifesting in current American politics.

It is important to note at the outset that referring generically to “the Founders” can overlook disagreements both profound and subtle. The general categorization of Federalists and Anti-Federalists captures fundamental divides over the proper allocation of governmental authority between state and national governments. Even within these categories, there were thoughtful and significant differences on central issues of implementing the nascent government created by the Constitution.⁴ Because of this, modern reference to “the Founders” can suggest a unity of thought that simply did not exist.⁵

However, some ideas can meaningfully be considered as the thoughts of the Founders as a whole. The founding generation was collectively very

surviving-one-document-text/ (explaining that “America’s governing document is broadly considered the world’s longest surviving constitution, according to Dr. Steven Frank, the [National] Constitution Center’s chief historian”); see also The Honorable Margaret H. Marshall, “*Wise Parents Do Not Hesitate to Learn From Their Children*”: *Interpreting State Constitutions in an Age of Global Jurisprudence*, 79 N.Y.U. L. REV. 1633, 1640 (2004) (expressing how the United States Constitution has stood in “splendid isolation” for over two hundred years).

4. David McGowan, *Ethos in Law and History: Alexander Hamilton, The Federalist, and the Supreme Court*, 85 MINN. L. REV. 755, 772–73 (2001) (describing how Hamilton and Madison “‘reasoned in opposite directions’ from similar premises”); H. Jefferson Powell, *Consensus and Objectivity in Early Constitutional Interpretation: An Unproven Thesis*, 65 TEX. L. REV. 859, 865–66 (1987) (describing disagreement between Jefferson and Madison and one had and Hamilton on the other about a national bank as actually being a more fundamental disagreement about the scope of power possessed by the national government).

5. J. Michael Martinez, William D. Richardson, *The Federalist Papers and Legal Interpretation*, 45 S.D. L. REV. 307, 315–17 (2000) (noting key differences in Federalist and Anti-Federalist thought as well as the general preeminence of The Federalist Papers as the most authoritative outside source of what “the Founders” thought). One sound critique is that we should not so heavily rely upon the Federalist Papers because that overstates their influence on ratification of the Constitution. Gregory E. Maggs, *A Concise Guide to the Federalist Papers as a Source of the Original Meaning of the United States Constitution*, 87 B.U. L. REV. 801, 804 (2007). However, the distinctions and critiques are irrelevant for assessing warnings about politically dangerous archetypes. All these sources provide insight, much more consistent than described herein, about what “the Founders” thought.

concerned with liberty and how to preserve it.⁶ They were committed to structuring government as an instrument to sustain, not erode, citizen liberty.⁷ For many Founders, preserving liberty and cultivating civic virtue were the central purposes of government.⁸ Others noted that any form of government could and would collapse into tyranny only when the people allowed it.⁹ They also uniformly recognized that sustaining democratic values through government structure required careful thought about the nature of the political enterprise and political actors.

Amongst the most prominent thoughts of the Founders, the character and conduct of political leaders were necessarily a priority.¹⁰ The Founders were also careful observers of human nature. Those observations informed the thoughts of many Founders about the role and structure of government as a whole. While they acknowledged human fallibility, the Founders believed that government could be structured to absorb the worst human failings and channel them into perpetuation of an enduring and effective government.¹¹ Discussion of human nature among the Founders extended to all citizens, but focused on how character traits of leaders specifically would manifest. Classical ideals of virtue were influential pillars of personal and

6. Charles McC. Mathias, Jr., *Ordered Liberty: The Original Intent of the Constitution*, 47 MD. L. REV. 174, 177–79 (1987).

7. THE FEDERALIST NO. 45 (James Madison) (discussing the purpose of the Revolution, creation of a national government, and the structure of the Constitution that “the people of America should enjoy peace, liberty, and safety” rather than to guarantee states have any particular level of power and autonomy). Their focus may have been considerably more on creating government structures that advanced communal liberty over individual liberty, however. Raoul Berger, *Liberty and the Constitution*, 29 GA. L. REV. 585, 589–90 (1995).

8. Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L. J. 1539, 1560–62 (1988); Christian G. Fritz, *Recovering the Lost Worlds of America’s Written Constitutions*, 68 ALA. L. REV. 261, 271 (2005).

9. Benjamin Franklin, “*I agree to this Constitution with all its faults*,” 17 September 1787, in THE PENGUIN BOOK OF HISTORIC SPEECHES, 100–01 (Brian MacArthur eds., Penguin Books 1996).

10. As with many things, Washington provided the initial model. George Washington observed and emulated the Roman leader Cincinnatus in renouncing power and retiring to private life. Bruce P. Frohnen, *Law’s Culture: Conservatism and the American Constitutional Order*, 27 HARV. J.L. & PUB. POL’Y 459, 469 (2004); Vicki C. Jackson, *Comparative Constitutionalism, Legal Education, and Civic Attitudes: Reflections in Response to Professors Krotosynski and Law*, 66 ALA. L. REV. 155, 165 n.40 (2014). The Founders thought carefully and cared deeply about the character and public reputation of leaders. Robert N. Bellah, *The Meaning of Reputation in American Society*, 74 CALIF. L. REV. 743, 745 (1986).

11. Perhaps the most famous statement of political realism among the Founders came from James Madison in Federalist 51 with the observation that, “[i]f men were angels, no government would be necessary.” THE FEDERALIST NO. 51 (James Madison). Human nature being what it is, Madison observed the Founders must structure our government to restrain negative impulses and harness positive ones. *Id.*

professional conduct.¹² The Founders recognized that all citizens needed to possess civic virtue, but leaders especially so. The conduct and character of leaders mattered to the Founders, and they planned accordingly. They carefully constructed the Constitution to promote positive conduct among leaders and to stifle what they considered to be bad. They also thoughtfully and explicitly communicated the traits of leaders to be cultivated and to be avoided.¹³

“The vision of the Founders” can be meaningfully contemplated as to the virtues and vices of political leaders. Given the ongoing fascination with and citation of the Founders by modern politicians, the Founders’ ideals of political leadership can be compared with the actual conduct of modern politicians. Alas, in today’s political climate, it is disturbingly easy to identify instances in which the current reality falls short of the Founders’ ideals.

The Founders identified and warned about specific traits of flawed and dangerous leaders. The Founders focused their attention on political pathologies and how to structure government to avoid their carriers during the debates about the framing and ratification of the Constitution and in the earliest days of its government.¹⁴ They spoke clearly about what leaders should and should not do and how the constitutional structure could promote political virtue and check political vice.

As close observers of politics may recognize, current political culture has brought to the fore plentiful political actors manifesting many of the negative character traits that the Founders warned against. Individuals with these political vices seem to be elected increasingly frequently and with ease.¹⁵ Citizen expectations and preferences may even be warping as, in some quarters, the types feared by the Founders are becoming the types favored by the modern electorate.

12. Major Kyle D. Murray, *Revolutionary Characters: What Made the Founders Different*, 2007 AUG. ARMY L. 72, 73–74 (2007); Martin S. Flaherty, *History “Lite” in American Constitutionalism*, 95 COLUM. L. REV. 523, 569–71 (1995) (describing influence of the concept of “civic virtue” on the thinking and lives of the Founders).

13. David A. Armstrong, *Ethical Leadership*, 14 INTERCULTURAL HUM. RTS. L. REV. 13, 24–26 (2019); John O. McGinnis, *The Human Constitution and Constitutive Law: A Prolegomenon*, 8 J. CONTEMP. LEGAL ISSUES 211, 231–32 (1997).

14. See, e.g., Larry D. Kramer, *Madison’s Audience*, 112 HARV. L. REV. 611, 612 (1999) (describing how James Madison underscored the importance of organizing “the republic’s sphere to include a greater number of parties and territory” while also encouraging a diverse society to “provide a margin of safety by, in effect, disabling any group from capturing or controlling government”).

15. KATHERINE M. GEHL & MICHAEL E. PORTER, *THE POLITICS INDUSTRY: HOW POLITICAL INNOVATION CAN BREAK PARTISAN GRIDLOCK AND SAVE OUR DEMOCRACY* 48–49 (2020); LEE DRUTMAN, *BREAKING THE TWO-PARTY DOOM LOOP: THE CASE FOR MULTIPARTY DEMOCRACY IN AMERICA* 99 (2020).

This article will identify four political archetypes that the Founders warned about. It will then compare them with conduct among the modern political generation. In doing so, it will demonstrate that at least four political archetypes the Founders warned of are becoming alarmingly ubiquitous.

This list of dangerous archetypes does not aspire to be exhaustive. Other political pathologies exist beyond those discussed here. A deep discussion of solutions is also beyond the scope of this article.¹⁶ Instead, this essay begins with the premise that recognition of at least some problems is a necessary place to begin our political introspection. That is the task that this article undertakes—to point a spotlight on some of the dangerous political types that the Founders warned us about.

I. LEADERSHIP VISIONS FROM THE FOUNDERS: *FOUR POLITICAL ARCHETYPES THAT THE FOUNDERS WARNED ABOUT*

This article will consider four political archetypes: the partisan, the demagogue, the ambitious, and the tyrant. The Founders warned forcefully against each. It is useful at the start to have a brief definition of each.

The partisan is the first political archetype that the Founders warned of. For purposes of discussion in this article, partisans are not simply those affiliated with a political party or social group. Rather, the partisan is the persistent promoter of faction, the purposeful practitioner of political division over unity, and the thoughtless and shameless adherent to their selected group. Partisans, as seen through the eyes of the Founders and discussed in this article, place group advancement and adherence over all other values and will seemingly engage any tool necessary to advance their group.

Second comes the demagogue. Conveniently, a common desk dictionary defines the demagogue as a “political agitator appealing to mob instincts.”¹⁷ Beyond politics, American citizens recognize the demagogue in names and forms like the “snake oil salesman” or The Music Man. The demagogue is a political actor who manipulates and harnesses popular sentiment to their own ends, commonly through rhetorical manipulation. This can include misrepresentation and manipulation of the truth.

The ambitious is the third negative archetype to be discussed. Many might think it comical to have a subset of politicians identified as “ambitious.” Afterall, the trait is common (if not necessary) among electoral

16. I have discussed possible solutions to or decline from failure to address issues like these warned of by the Founders in another article. See, e.g., Neil Fulton, *What Comes Next*, 62 WASHBURN L.J. 189, 192 (2023) (positing four potential political futures for the United States and what might drive each); GEORGE PACKER, *LAST BEST HOPE: AMERICA IN CRISIS AND RENEWAL* (2021) (generally describing four competing views of the United States and how we might transcend them).

17. THE OXFORD DESK DICTIONARY 151 (Laurence Urdang ed., 1995).

politicians. However, for the purposes of this article, it will mean something more insidious than common ambition. It will instead describe those politicians who place personal desires or benefits above the public good, principle, or even the law. The ambitious politicians discussed herein will be those for whom personal ends consistently define and dictate the public means.

Lastly, the tyrant will be discussed. Tyrant is another term for which a common dictionary provides a useful definition as an “oppressive or cruel ruler,” or a “person exercising power arbitrarily or cruelly.”¹⁸ For discussion here, the tyrant is a politician who abuses or seeks to abuse their power to unduly restrain liberty, punish or harm others, or cement their own power.

Greater depth for each definition and how it manifests will come within. This article now turns to a substantive discussion of each archetype, how the Founders warned of them, and their manifestation in the current American political environment.

A. The Partisan

Any consideration of political archetypes that the Founders warned of must begin with the partisan. The Founders commonly described the phenomenon of division into groups as “faction.”¹⁹ Current discussions also commonly refer to it as “tribalism.”²⁰ By any name, it is the phenomenon whereby citizens fracture into separate groups around ideas like religion, geography, party, or other interests to the detriment of national unity. For the Founders, the preservation of unity was paramount.²¹ Alexander Hamilton argued that, “[a] firm Union will be of the utmost moment to the peace and liberty of the States as a barrier against domestic faction and insurrection.”²² James Madison went so far as to say that, “[a]mong the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction.”²³ Not surprisingly, perhaps the most prominent warning about faction came from the most prominent Founder, George Washington, in his Farewell Address:

It serves always to distract the Public Councils and enfeeble the Public administration. It agitates the Community with ill-founded jealousies and

18. *Id.* at 624.

19. See THE FEDERALIST NO. 10 (James Madison).

20. Amy Chua & Jed Rubenfeld, *The Threat of Tribalism*, THE ATLANTIC (Oct. 2018), <https://www.theatlantic.com/magazine/archive/2018/10/the-threat-of-tribalism/568342>; Neil Fulton, *Fake News on Trial: The Jury Trial as a Guard Against Social Entropy*, 52 TEX. TECH L. REV. 745, 745–50 (2020).

21. George Washington, Farewell Address, in WRITINGS 965–66 (Library of America ed., 1997).

22. THE FEDERALIST NO. 9 (Alexander Hamilton).

23. THE FEDERALIST NO. 10 (James Madison).

false alarms, kindles the animosity of one part against another, fomenters occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passions. Thus, the policy and the will of one country, are subjected to the policy and will of another.²⁴

Washington aptly and presciently warned that faction weakens the republic from within. Ironically, the pathology of faction forcefully manifested during his own administration.²⁵

The Founders warned of the existential peril of faction-aligning individuals around shared interests to the exclusion of the common good.²⁶ Strong affiliation with limited issues or identities carries the risk of becoming permanent and exclusionary.²⁷ Madison saw the probable “excesses” of a majority faction as among the most dangerous political pathologies, at least as dangerous as the undue ambition of elected officials.²⁸ Anti-Federalist thinkers agreed with that assessment.²⁹

The Founders were so concerned with faction and sounded clear warnings against it because of their opinion that it was inherent to human nature.³⁰ Madison saw the development of faction as an inevitability.³¹ He warned that the real question was how to check it rather than how to avoid it.³² He warned that only two means existed to control faction: remove its causes or control its effects.³³ Removing causes could be done by destroying the underlying liberty that gives rise to faction (an excessive cost to the Founders’ core goals) or giving all citizens “the same opinions, the same passions, and the same interests” (an unrealistic aspiration).³⁴ Controlling the effects of

24. Washington, *supra* note 21, at 969–70.

25. JAMES THOMAS FLEXNER, WASHINGTON: THE INDISPENSABLE MAN 349–50 (1969); DAVID McCULLOUGH, JOHN ADAMS 435–37 (2001). The Founders often identified factionalism as a weakening influence on the Union, which in turn undermined its international status. Our current discussions about foreign affairs reflect this concern. Many politicians debate these issues not simply through different policy approaches but through strictly partisan lenses. However, as the Founders may have foreseen, factional engagement with foreign affairs subjects the union to manipulation by foreign agents.

26. THE FEDERALIST NO. 10 (James Madison).

27. *Id.*

28. JACK N. RAKOVE, ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION 50 (1996).

29. HERBERT J. STORING, WHAT THE ANTI-FEDERALISTS WERE FOR 39 (1981).

30. RAKOVE, *supra* note 28, at 49–50.

31. RAKOVE, *supra* note 28, at 49.

32. THE FEDERALIST NO. 10 (James Madison).

33. *Id.*

34. *Id.*

faction through government structure was thus the step Madison counseled to be necessary.³⁵

The Founders accepted the warning of philosopher, David Hume, that there were at least two forms of faction: familial and real.³⁶ Familial factions were alignments based on personal connection; “real” faction, on the other hand, would coalesce around differences in policy or geography.³⁷ While the Founders had differing views of which form of factional division posed the greatest danger, they had a consensus that faction presents significant danger to political stability.³⁸

The Founders further warned that the danger of faction was particularly acute within Republican governments specifically.³⁹ As the size of government grows, so too does the danger of faction.⁴⁰ While small New England towns could often achieve unanimity, that prospect was highly unlikely for a national government with ambitions that were Continental in scope.⁴¹ The imperative to warn of faction was thus concomitant to the ambition of the nation the Founders hoped to build. The Founders accordingly debated what role the division of power between the states and national governments could play in checking faction.⁴² While that question drove much of the debate about the structure of the Constitution, it did not produce full agreement.⁴³

The Founders cautioned that the seeds of faction were found in many aspects of human nature such as religion, social and economic standing, geography, political orientation, and hunger for power.⁴⁴ Pairing religion and political faction was a common cause of warning by the Founders.⁴⁵ They feared that combining them would inevitably destroy both religion and personal liberty.⁴⁶

Political parties drew the most forceful warnings of the Founders. Washington excoriated what he described as “the baneful effects of the Spirit

35. THE FEDERALIST NO. 51 (James Madison).

36. FORREST McDONALD, *NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION* 162–63 (1985).

37. *Id.*

38. *Id.* at 163.

39. *Id.* at 163; STORING, *supra* note 29, at 39.

40. McDONALD, *supra* note 36, at 162.

41. *Id.*

42. RAKOVE, *supra* note 28, at 51–52.

43. *Id.*; CAROL BERKIN, *A BRILLIANT SOLUTION: INVENTING THE AMERICAN CONSTITUTION* 99–100 (2002).

44. THE FEDERALIST NO. 10 (James Madison).

45. JON MECHAM, *AMERICAN GOSPEL: GOD, THE FOUNDING FATHERS, AND THE MAKING OF A NATION* 12 (2007).

46. *Id.*; THE FEDERALIST NO. 10 (James Madison).

of Party.”⁴⁷ Hamilton opined that “nothing could be more ill-judged than that intolerant spirit which has at all times characterized political parties.”⁴⁸ Despite their impassioned warnings, the Constitution the Founders produced ultimately created a path for the formation of national parties through the structure of presidential selection and governance.⁴⁹

The Founders foresaw many ways in which the force of faction could undermine the republic, and they sought to structure the government to control it. They issued forceful warnings against it. However, current political circumstances demonstrate that the structures the Founders created have not fully controlled faction and their warnings have not always been heeded.

Faction now commonly manifests through political partisanship. Partisan politicians demonstrate more concern with party victory than with positive outcomes for their country.⁵⁰ Partisans describe politics in militaristic terms of “battle” or “war” and other parties as enemies to be destroyed.⁵¹ It is partisan victory that is the measure of success, not sustainable compromise

47. Washington, *supra* note 21, at 969. Ironically, Washington’s own presidency gave rise to much of the national political party system. FLEXNER, *supra* note 25, at 349–50; MCCULLOUGH, *supra* note 25, at 435–37.

48. THE FEDERALIST NO. 1 (Hamilton).

49. RAKOVE, *supra* note 28, at 268.

50. See Glenn Kessler, *When did Mitch McConnell say he wanted to make Obama a one-term president?*, WASH. POST (Jan. 11, 2017), <https://www.washingtonpost.com/news/fact-checker/wp/2017/01/11/when-did-mitch-mcconnell-say-he-wanted-to-make-obama-a-one-term-president/> (describing how, on October 23, 2010, Senator Mitch McConnell declared that the “single most important thing we want to achieve is for President Obama to be a one-term president”); see also Carl Hulse, *Republicans Barely Won the House. Now Can They Run It?*, N.Y. TIMES (Nov. 16, 2022), <https://www.nytimes.com/2022/11/16/us/politics/republicans-house-majority-mccarthy.html> (explaining how Representative Steve Scalise, the number two House Republican, proclaimed that “we need to shine a bright light on the actions and policy failures of this administration” in a letter to his House colleagues); Alexandra Hutzler, *McCarthy expected to keep 3 Democrats off House committees*, ABC NEWS (Jan. 10, 2023), <https://abcnews.go.com/Politics/mccarthy-expected-3-democrats-off-house-committees/story?id=96344389> (stating House Speaker Kevin McCarthy’s intent to strip three House Democrats from their committee assignments as retaliation for the previous House’s similar actions).

51. See Sahil Kapur and Jane C. Timm, *‘An inflection point’: Congress prepares for battle over massive voting rights bill*, NBC NEWS (Mar. 28, 2021), <https://www.nbcnews.com/politics/congress/inflection-point-congress-prepares-battle-over-massive-voting-rights-bill-n1262172> (quoting Senator John Cornyn (R-Tx.) with regard to potential voting rights legislation: “If they want a fight, they’re going to get a fight”); Burgess Everett, *‘You’ve gotta have a war every five or 10 years’*, POLITICO (Nov. 18, 2022), <https://www.politico.com/news/2022/11/18/war-senate-gop-00069286> (explaining how Senator John Kennedy (R-La.) characterizes the political atmosphere within his own party as “war”); See also Julia Manchester, *GOP eager to take on Sherrod Brown for Ohio Senate seat*, THE HILL (Jan. 19, 2023), <https://thehill.com/homenews/campaign/3818593-gop-eager-to-take-on-sherrod-brown-for-ohio-senate-seat/> (illustrating how Senator Brown (D-OH) is “battle-tested and has a proven record of winning tough elections”).

or the common good.⁵² In fact, some partisans regularly assess the value of a policy exclusively by its partisan source, even reversing their ideological position because of the adoption of a shared idea by a political opponent.⁵³ Extreme partisanship produces short-term thinking and leads to any means justifying a partisan end; the modern partisan considers the next election – certainly not the next generation.

Partisanship has driven a breakdown of “normality” in politics.⁵⁴ It undermines shared commitments to enduring values and processes among citizens.⁵⁵ In their place has come pressure for every partisan advantage, a rejection of ideas and outcomes favored by other factions, and a lack of any common ground upon which to build.⁵⁶ Partisans will sometimes refuse to allow opposing factions to engage in basic government activity.⁵⁷ Failure to heed the Founders’ warnings against faction in the form of political parties has produced a political environment in which it is extremely difficult, if not impossible, to coexist.

52. Thomas Edsall, *No Hate Left Behind*, N.Y. TIMES (Mar. 13, 2019), <https://www.ny-times.com/2019/03/13/opinion/hate-politics.html> (descriptions of members of opposing parties as “downright evil” and therefore worthy of violent suppression); Yoni Appelbaum, *How America Ends*, 324 THE ATLANTIC MONTHLY (Dec. 2019), at 46–47 (political partisans describing their opponents as “like animals” and lacking in basic human traits).

53. See Jessica Taylor, *Mitt Romney Finally Takes Credit For Obamacare*, NPR (Oct. 23, 2015), <https://www.npr.org/sections/itsallpolitics/2015/10/23/451200436/mitt-romney-finally-takes-credit-for-obamacare> (noting how Obamacare was grounded primarily on Mitt Romney’s health care plan as governor of Massachusetts, but was ultimately passed by Congress without a single Republican vote).

54. E.J. Dionne, *There’s a war raging. It’s against normal politics.*, WASH. POST (May 7, 2023), <https://www.washingtonpost.com/opinions/2023/05/07/politics-republicans-war-on-normal/>.

55. *Id.*

56. *Id.*

57. Laurie Roberts, *Arizona senators chased away Gov. Hobbs’ best and brightest—and sabotaged the state*, AZCENTRAL.COM (Aug. 8, 2023), <https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2023/08/08/katie-hobbs-health-director-theresa-cullen-sabotaged/70551698007/>.

Extreme partisanship has largely paralyzed the legislative process.⁵⁸ Legislation is often approached in a fully partisan fashion.⁵⁹ As legislative chambers across the United States are increasingly controlled by one faction, the legislative agenda has swung more powerfully away from compromise and instead toward the poles of partisan preference.⁶⁰ Geographic sorting along partisan lines tends to exacerbate the problem.⁶¹ The ability of the deliberative legislative process to produce a consensus and reduce partisan sorting is lost, or even affirmatively rejected.

Legislative processes can become engines to cement partisanship beyond the context of partisan policy preferences. Some legislatures dominated by one party have taken aggressive steps to punish or impede elected officials or members of the minority party.⁶² Targeting local jurisdictions controlled by an opposing party, expelling members of the minority party, and creating alternative governing structures controlled by the majority party are all tricks put in place to cement partisan advantage.⁶³ Partisan politicians

58. See Andrea Castillo, *'I Can't Keep Fighting the System': DACA Recipients Are Leaving the U.S., Disheartened by Years of Instability*, L.A. TIMES (Nov. 12, 2022, 5:00 AM), <https://www.latimes.com/politics/story/2022-11-12/daca-recipients-disheartened-by-instability-are-leaving-the-u-s> [<https://perma.cc/885X-AH7M>]; Hope Yen, *US Infrastructure Gets C- from Engineers as Roads Stagnate*, AP NEWS (Mar. 3, 2021), <https://apnews.com/article/us-infrastructure-report-card-c-minus-roads-water-systems-3e61cbec8dc1da69c21577d740545fd1> [<https://perma.cc/XL2J-YG6C>]; Walter Pavlo, *Our Criminal Justice System is Just Unethical and the Numbers Tell the Story*, FORBES (May 13, 2021), <https://www.forbes.com/sites/walterpavlo/2021/05/13/our-criminal-justice-system-is-just-unethical-and-the-numbers-tell-the-story/?sh=606604363157> [<https://perma.cc/D3BU-VRFA>].

58. See John Wagner & Mariana Alfaro, *House Passes Stopgap Funding Bill, Last Major Action Before Elections*, WASH. POST (Sept. 30, 2022), <https://www.washingtonpost.com/politics/2022/09/30/congress-continuing-resolution-jackson-investiture/> [<https://perma.cc/QC97-M4LN>]; Pete Kasperowicz, *Monday: Government Shutdown Enters Second Week*, HILL (Oct. 7, 2013, 12:34 PM), <https://thehill.com/blogs/floor-action/house/184638-monday-government-shutdown-enters-second-week/> [<https://perma.cc/F7EW-FDRX>].

59. Mitch Smith, *In a Contentious Lawmaking Season, Red States Got Redder and Blue Ones Bluer*, N.Y. TIMES (June 4, 2023), <https://www.nytimes.com/2023/06/04/us/state-legislatures-opposite-agendas.html?smid=nytcore-ios-share&referringSource=articleShare>.

60. *Id.*; Danny Westneat, *Political Paralysis is New Normal*, SEATTLE TIMES (Mar. 3, 2015, 9:34 PM), <https://www.seattletimes.com/seattle-news/political-paralysis-is-new-normal/> [<https://perma.cc/4WMR-8473>]; see Mark Weisbrot, *The US Today: Economic Stagnation, Political Paralysis*, GUARDIAN (Oct. 7, 2011, 18:03), <https://www.theguardian.com/commentisfree/ci-famerica/2011/oct/07/usemployment-useconomy> [<https://perma.cc/B2XV-W9LN>].

61. Tara Westover, *Left Behind: The Real Routs of the Urban/Rural Divide*, THE ATLANTIC, December 2019 at 53-54; BILL BISHOP, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART* 225-27 (2008).

62. Smith, *supra* note 59.

63. *Id.*

beget partisan policy in a vicious cycle, and the voice of the average American citizen will be lost.⁶⁴

Partisan adherence has even led to strategic attacks on democratic processes and the results themselves to advance the partisan's agenda. Partisan political actors have mounted preemptory assaults on unfavorable electoral results.⁶⁵ Fraudulent manipulation of the public discussion of electoral processes and outcomes in service of partisan advancement allows unscrupulous political actors to advance their partisan advantage.⁶⁶ Partisan actors seek to manipulate electoral processes to instill distrust in the electoral system, undermining the true purpose of elections – to facilitate political participation by citizens and achieve accurate results.⁶⁷ Changing electoral structures to obtain partisan advantage leads to policy polarization which in turn further intensifies partisanship.⁶⁸

Partisan politicians attempt to stack the electoral deck in a variety of ways. These include drawing ideologically safe and imbalanced legislative districts.⁶⁹ Other jurisdictions have seen partisans implement restrictions on voting intended to exclude or minimize the impact of voters from opposing political factions.⁷⁰ The efficacy of such efforts is currently debatable, but it

64. For example, partisans debate voting access through the language of partisan advantage and are unseen as questions of integrity, access, fairness, and civic duty. The Founders' fear of the partisan was rooted significantly in this reality that the partisan sees everything through partisan purpose, with systems and processes serving no greater good and therefore beyond partisan manipulation. Because the partisan favors party over purpose or nation, the Founders sought to impose structures to check the partisan impulse. However, partisans have successfully eroded those structures in the modern day. As Hamilton noted in Federalist 22, the Founders feared localized faction interests interfering with collective action geared to the common good. Moreover, according to Hamilton, the excessive power given to the individual states under the articles of Confederation presented a concrete example of how local concerns could improperly inhibit collective action.

65. Jill Lepore, *The American Beast*, THE NEW YORKER, Jan. 16, 2023, at 64.

66. David Folkenflik, *Off the air, FOX News stars blasted the election fraud claims they peddled*, NPR (Feb. 16, 2023), <https://www.npr.org/2023/02/16/1157558299/fox-news-stars-false-claims-trump-election-2020> (describing private conversations of FOX News commentators that recognized that claims the 2020 election was fraudulent or "stolen" were baseless, while actively promoting them on air because they drove ratings and revenue).

67. See, e.g., Nick Corasanti, *Facing Tough Senate Race, Montana G.O.P. Looks to Change the Rules*, N.Y. TIMES (Apr. 14, 2023), <https://www.nytimes.com/2023/04/14/us/politics/montana-election-bill-senate-tester.html?smid=nytcore-ios-share&referringSource=articleShare> (describing efforts in Montana Legislature to set election rules applicable only to a United States Senate race that would advantage a majority party candidate).

68. Thomas B. Edsall, *The Republican Strategists Who Have Carefully Planned All of This*, N.Y. TIMES (Apr. 12, 2023), <https://www.nytimes.com/2023/04/12/opinion/republican-party-intrusive-government.html?smid=nytcore-ios-share&referringSource=articleShare>.

69. DRUTMAN, *supra* note 15, at 99–100.

70. Louis Menand, *Drawing Lines*, THE NEW YORKER, Aug. 22, 2022, at 65; *id.* at 67; *Heads We Win, Tails You Cheated: The Battle over Voting Laws*, THE ECONOMIST, Mar. 13, 2021, at 23; *How the 2020 census may help Republicans regain power in Washington*, THE ECONOMIST, Mar. 13, 2021, at 25.

certainly marks the lengths to which partisans seek to advance their faction goals.⁷¹

Partisan division has also manifested in how citizens view each other. Practitioners of partisan “dark arts” regularly cite, in fact often promote, division among partisan factions.⁷² Such tactics fundamentally attack the trust necessary to work collaboratively toward the common good; it instead promotes the zero-sum calculation that partisans depend upon. Partisans further exploit these divisions by promoting the belief that only their party possesses and speaks the *real* truth.⁷³ Reasoned debates on policy become questions of epistemology; members of other parties, even members of the partisan’s own party who are judged to be insufficiently adherent, are attacked as liars.⁷⁴ Partisan media outlets and the viewers’ dedicated consumption further exacerbate the epistemological problem that partisanship has created.⁷⁵

71. Thomas B. Edsall, *This is One Republican Strategy That Isn’t Paying Off*, N.Y. TIMES (July 12, 2013), <https://www.nytimes.com/2013/07/12/opinion/republicans-democrats-voters-elections.html?smid=nytcore-ios-share&referringSource=articleShare>. Edsall notes that while initial empirical study suggests limited if any outcome determinative effects, many scholars argue that partisan initiatives targeting voter suppression have a corrosive effect on democratic process. *Id.* In the context of the partisan, the problem with efforts to structure electoral processes to achieve partisan advantage may be the motive more than the outcome. Partisans who do so abandon the commitment to fairness that political leaders should aspire to in favor of a commitment to win at all costs partisanship. Such a systemic shift is highly problematic in itself.

72. See, e.g., Nicole Gaudiano, *NH GOP Gov. Chris Sununu Says Republicans Were ‘Rude’ During Biden’s State of the Union Address: ‘My Mother Taught Me Manners First’*, BUS. INSIDER (Feb. 9, 2023), <https://www.businessinsider.com/chris-sununu-republicans-were-rude-biden-sotu-address-2023-2> (describing how President Biden was “booed and heckled by Republicans and even called a liar” during his State of the Union address. Governor Chris Sununu (D-NH) later called this behavior by the Republicans “rude.”); Ed Mazza, *Sarah Huckabee Sanders’ ‘Normal Or Crazy’ Challenge Backfires Spectacularly*, HUFFPOST (Feb. 8, 2023), <https://www.huffpost.com/entry/sarah-huckabee-sanders-normal-or-crazy> (specifying how, during her response to President Biden’s State of the Union Address, Governor Sarah Huckabee Sanders (R-AR) remarked how “[t]he choice is no longer between right or left,” but is instead “[t]he choice is between normal and crazy”).

73. See Martin Pengelly, *Pelosi Says She ‘Fears for Democracy’ if Republicans Retake Congress*, THE GUARDIAN (Mar. 29, 2022), <https://www.theguardian.com/us-news/2022/mar/29/nancy-pelosi-democracy-republicans-congress> (quoting then-Democratic Speaker Pelosi: “I fear for our democracy if the Republicans were ever to get the gavel. We can’t let that happen. Democracy is on the ballot in November.”); Caelan Elliot, *Sen. Cotton: We Are Seeing ‘The Greatest Assault on the Rule of Law in Modern Times’*, THE AMERICAN SPECTATOR (June 28, 2021), <https://spectator.org/senator-cotton-biden-crime/> (denouncing “Democrat’s soft approach on crime”).

74. George Orwell noted that, “[t]he truth, it is felt, becomes untruth when your enemy utters it.” George Orwell, *Looking Back on the Spanish War*, contained in THE COLLECTED ESSAYS, JOURNALISM, AND LETTERS OF GEORGE ORWELL: VOL. 2: MY COUNTRY RIGHT OR LEFT, 1940–1943, 249 (Sonia Orwell and Ian Angus eds., 2019).

75. LEE C. MCINTYRE, POST-TRUTH 73 (2018); DAN RATHER & ELLIOT KIRSCHNER, WHAT UNITES US: REFLECTIONS ON PATRIOTISM, 57–59 (2019); David French, *How to End Trump’s Conspiracies*, TIME, Nov. 30, 2020, at 35–36.

Likewise largely unheeded is the Founders' warning against pairing politics and religion.⁷⁶ Despite that warning, the pairing of religion and political faction has since become ubiquitous.⁷⁷ Partisan intertwining of religion and political faction eats away at both, causing political activity to be infused with the zealous commitment of religion and for religion to be infected with the utilitarian opportunism of politics.⁷⁸ The corrosive effects on both provide a stark reminder of why the Founders warned against this pairing and the costs of ignoring that warning.⁷⁹ The Founders warned loud and long against sources and practitioners of faction in many forms. They justly feared those figures who sought only to achieve the greatest advantage for their faction. Those warnings are too often ignored today by political actors for whom the common good is irrelevant, civic virtue an inconvenience, and forbearance unthinkable. All that matters to the partisan is that their faction prevails. The many costs of that mindset victimize the average American citizen, leaving their voices unheard and their needs ignored.

B. The Demagogue

A second archetypal public figure that the Founders warned against is the demagogue.⁸⁰ Although derived from a Greek word meaning simply a leader of the people, "demagogue" has come to mean the type of politician who assembles power by manipulating the emotions of the masses, particularly by stoking fear and hatred of targeted groups.⁸¹ If the partisan undermines healthy political engagement through the division of the populace, the demagogue does so by separating the populace from reason and patience.⁸² Demagogues initially win the people through emotional appeal; in the longer term, they can manipulate those emotions to undermine lasting values and destroy democratic structures.⁸³

76. MECHAM, *supra* note 45, at 12.

77. David French, *Tucker Carlson's Dark and Malign Influence Over the Christian Right*, N.Y. TIMES (May 7, 2023), <https://www.nytimes.com/2023/05/07/opinion/tucker-carlson-christian-right.html?smid=nytcore-ios-share&referringSource=articleShare>.

78. *Id.*

79. See, e.g., Deborah K. Hepler, *The Constitutional Challenge to American Civil Religion*, 5-WTR KAN. J.L. & PUB. POL'Y 93, 94–95 (Winter 1996) (describing the intermingling of politics and religion in a "civil religion as watering down genuine religious belief while effectively requiring obeisance to the "civil religion" as part of civic participation).

80. THE ANTI-FEDERALIST PAPERS NO. 57.

81. J. Justin Gustainis, *Demagoguery and Political Rhetoric: A Review of the Literature*, 20 RHETORIC SOC'Y Q. 2, 155 (Spring 1990).

82. Emily Pears, *Demagoguery in America*, NATIONAL AFFAIRS (Fall 2022), <https://www.nationalaffairs.com/publications/detail/demagoguery-in-america>.

83. *Id.*; Eli Merritt, *Civics 101: Keep Demagogues Out of Democracy*, THE VANDERBILT PROJECT ON UNITY & AMERICAN DEMOCRACY (Apr. 7, 2021),

The Founders recognized and feared demagogues.⁸⁴ Their concern was so great as to be characterized as an “obsession.”⁸⁵ George Washington himself saw the prospect of demagoguery as a foremost risk to the young nation and cited it as his primary reason to participate in what later became known as the Constitutional Convention.⁸⁶ Debates during the Constitutional Convention frequently cited demagogues as the paramount danger to democracy that must be controlled through the governmental structures outlined in the document being developed.⁸⁷ While Alexander Hamilton and James Madison disagreed about a great deal, they shared a fear of demagogues and a goal to structure the Constitution to control them.⁸⁸ Hamilton forcefully cautioned in the first Federalist paper that, “of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people, commencing demagogues and ending tyrants.”⁸⁹

The Founders had witnessed the rise of demagogues within state governments during the operation of the Articles of Confederation.⁹⁰ Their focus in drafting the Constitution thus reflected the goal to promote the selection of leaders, “who possess the most attractive merit and the most diffusive and established characters.”⁹¹ Madison observed that doing so could, “refine and enlarge the public views” rather than simply succumbing to the emotions of the moment, which were vulnerable to manipulation by demagogues.⁹² Fear of demagogues was widespread among the Founders. They accordingly issued several forms of warnings against them.

The Founders warned against the most obvious form of the demagogue: the manipulative orator, able to sway crowds through overwrought and

<https://www.vanderbilt.edu/unity/2021/04/07/civics-101-keep-demagogues-out-of-democracy/>. Surrender to demagogues can arise from and perpetuate the idea of “Constitutional rot.” Jack M. Balkin, *The Recent Unpleasantness: Understanding the Cycles of Constitutional Time*, 94 IND. L.J. 253, 289–90 (2019).

84. Christopher A. Duggan, *Has the Experiment Failed?*, 28 VOIR DIRE 1 (Spring/Summer 2021) (citing Elbridge Gerry, Panel Discussion at The Federal Convention of 1787, Notes of Robert Yates (June 26, 1787), in A PROJECT OF LIBERTY FUND, INC., *The Records of the Federal Convention of 1787*, vol. 1, 332 (Max Farrand ed., 1911) <http://oll.libertyfund.org/title/1057> (reporting on Elbridge Gerry’s June 26 address to the Committee of the Whole). Elbridge Gerry said that, “[d]emagogues are the great pests of our government and have occasioned most of our distresses.” *Id.*

85. Paul F. Campos, *A Constitution for the Age of Demagogues: Using the Twenty-Fifth Amendment to Remove an Unfit President*, 97 DEN. L. REV. 85, 111 (2019).

86. Merritt, *supra* note 83.

87. *Id.*

88. *Id.*

89. THE FEDERALIST NO. 1 (Hamilton).

90. McDONALD, *supra* note 36, at 164–65.

91. *Id.*

92. *Id.*

under-reasoned rhetoric.⁹³ Such manipulators of the public pose a danger of crowding out more virtuous, if also more placid, political leaders.⁹⁴ The demagogue rides emotion to electoral office, while the Founders saw the ideal public figures as those, “who possess most wisdom to discern, and most virtue to pursue the common good of the society. . .”⁹⁵ The Founders thus warned that demagogues would erode civic virtue by excluding leaders inclined to the form of public deliberation that advanced it.

The Founders also warned of the demagogue’s focus on values other than the public good. They cautioned against the tendency of demagogues to present themselves as champions of “the people” and their liberties.⁹⁶ Yet, demagogues use these mantras to build political power for themselves, not to truly protect and build up the populace.⁹⁷ The Founders further cautioned that demagogues value their own ability to gain and maintain power over democracy itself.⁹⁸ They explicitly warned that demagogues readily become tyrants.⁹⁹ The danger of demagogues becoming tyrants was so well-known and alarming to the Founders that they warned of it in both the first and last entry in *The Federalist Papers*.¹⁰⁰

The Founders also warned that the connection of demagogues to public passions promotes division rather than unity. To the Founders, a crucial vice of demagogues is their tendency to exacerbate faction.¹⁰¹ The Founders recognized that the political pathologies they identified would interlock and feed each other—the presence of one often betokened the presence of others. In the case of demagogues, the focus on manipulating base emotion rather than cultivating reasoned civic virtue intensifies a host of ills. Democracy is profoundly vulnerable to demagogues.¹⁰² American democracy is particularly so.

The large geographic space and corresponding multiplicity of local political communities in the United States provide fertile ground for the growth of demagogues, and demagogues are especially adroit at manipulating the passions of local interests. The Founders warned against the dangers of this

93. THE FEDERALIST NO. 58 (Madison).

94. THE FEDERALIST NO. 57 (Madison).

95. *Id.*

96. THE FEDERALIST NO. 1 (Alexander Hamilton).

97. *Id.*

98. Merritt, *supra* note 83.

99. THE FEDERALIST NO. 1 (Alexander Hamilton).

100. Sanford Levinson & Jack M. Balkin, *Democracy and Dysfunction: An Exchange*, 50 IND. L. REV. 281, 333 (2016).

101. John Avlon, *George Washington’s Farewell Warning*, POLITICO (Jan. 10, 2017), <https://www.politico.com/magazine/story/2017/01/washingtons-farewell-address-warned-us-about-hyper-partisanship-214616/>.

102. Merritt, *supra* note 83.

type of populism.¹⁰³ Local demagogues seek to advance themselves by harnessing “cabal, intrigue, and corruption.”¹⁰⁴ The Founders feared that this style of “leadership” was ill-suited to the national stage but would nonetheless allow demagogues to advance themselves.¹⁰⁵ They therefore argued for mediating political structures to identify leaders of real talent and virtue fitted to national, not merely local, office.¹⁰⁶ Both Federalists and Anti-Federalists warned of local demagogues, ill-schooled in the larger issues facing the national government, rising to positions of leadership beyond their abilities or impulses.¹⁰⁷ The Founders hoped that a national assembly would attract and develop a higher caliber of leader than the “petty demagogues” of state assemblies.¹⁰⁸

The Founders further warned about the proliferation of opportunities for such demagogues to arise. A large political community like the United States ultimately requires a correspondingly large number of political representatives. The Founders warned that as the number of political representatives increased, the risk of demagoguery likewise increased.¹⁰⁹

The Founders saw the risk of demagogues, warned about them, and sought to build governing structures to immunize the nation against them. Such risks are not passing, such warnings are not inescapable, and such structures are not self-perpetuating, however. Demagogues of various types are increasingly ubiquitous in current political discourse in the United States.¹¹⁰ One of the most pressing political questions is whether the warnings of the Founders are heeded before demagogues successfully implement permanent damage to the republic the Founders created.

In today’s political environment, a common form of demagogue is the populist. Modern populists purposefully manipulate public sentiment. They blame undefined “elites” for the challenges faced by the general public.¹¹¹

103. THE FEDERALIST NO. 68 (Alexander Hamilton).

104. *Id.*

105. *Id.*

106. *Id.*

107. STORING, *supra* note 29, at 44.

108. RAKOVE, *supra* note 28, at 52.

109. THE FEDERALIST NO. 58 (James Madison).

110. See Tom Mockaitis, *Contemporary America is modeling the worst of Depression-era Germany*, THE HILL (Mar. 3, 2023), <https://thehill.com/opinion/civil-rights/3905112-contemporary-america-is-modeling-the-worst-of-depression-era-germany/> (describing the expansion of populist demagoguery among political leaders across the United States).

111. See Jocelyn Grzeszczak, *Bernie Sanders Says Democratic Party Has Become a ‘Party of Coastal Elites’*, NEWSWEEK (Oct. 30, 2020), <https://www.newsweek.com/bernie-sanders-says-democratic-party-has-become-party-coastal-elites-1543532> (describing how Bernie Sanders claimed that the Democratic Party has become a “party of coastal elites”); Cathleen Decker, *Analysis: Trump’s War Against Elites and Expertise*, L.A. TIMES (July 27, 2017),

Populists portray themselves as allies of the common people, even if their personal circumstances and policy positions do not align with the interests of the public at large.¹¹² Populists concern themselves with reasons more than results, outlooks more than outcomes, and sentiments more than circumstances because manipulation of public sentiment, rather than public policy, is their goal. Riding the emotive wind of populism can render governing nigh unworkable, however, because the need to constantly tack political sails to the whims of the public can preclude the deliberation and compromise necessary to effectively govern.¹¹³

Today, populists do not inhabit only one portion of the political ecosystem, rather, populists stake out both liberal and conservative territory. Liberal populists decry the influence of corporations, inequality of financial outcomes, and inadequacy of government services.¹¹⁴ While such policies certainly merit vigorous debate, the liberal populist often fails to pair these policies with a corresponding discussion of their financial cost that would make the debate more honest. Conservative populists also attack corporate influence, though typically through a cultural, not financial, lens, and heavily

<https://www.latimes.com/politics/la-na-pol-trump-elites-20170725-story.html> (explaining how then-President Trump carried out a “war on elites”); Cassie Aylward, *Who Exactly Are the ‘Elites’ Rich Populist Politicians Are Complaining About?*, VICE (Nov. 24, 2016), <https://www.vice.com/en/article/8ge3ap/who-exactly-are-the-elites-rich-populist-politicians-are-complaining-about> (stating how “‘elites’ is a recent favourite [sic] of populist candidates. On the right, Donald Trump used it, Rob Ford used it, Brexit leader Nigel Farage used it, and on the left, Bernie Sanders used it. Now Kellie Leitch, the alleged frontrunner for the leadership of the Conservative Party of Canada, seems to use it more than almost any other word.”).

112. See Uri Friedman, *What is a Populist?*, THE ATLANTIC (Feb. 27, 2017), <https://www.theatlantic.com/international/archive/2017/02/what-is-populist-trump/516525/> (“The moral dimension of populism explains why someone like Donald Trump, who clearly is not a commoner, can nevertheless pretend to be the voice of the people”); Fredreka Schouten, *Elizabeth Warren is Still Worth Millions, Presidential Financial Disclosure Shows*, CNN (Feb. 5, 2019), <https://www.cnn.com/2019/02/05/politics/elizabeth-warren-financial-disclosure/index.html> (describing Elizabeth Warren’s campaign message as one of “economic populism,” but also stating that Warren is “still worth millions”).

113. See George F. Will, *DeSantis’s dour, odd, pratfalling campaign does have one useful quality*, WASH. POST (July 31, 2023), <https://www.washingtonpost.com/opinions/2023/07/31/de-santis-campaign-struggles-george-will/> (analyzing how the Protean positions of Governor Ron DeSantis on the presidential campaign trail demonstrate the limits of emotive populist appeals).

114. See Christina Zhao, *NY Rep. Alexandria Ocasio-Cortez Says ‘Capitalism is Irredeemable’*, NEWSWEEK (Mar. 10, 2019), <https://www.newsweek.com/alexandria-ocasio-cortez-says-capitalism-irredeemable-1357720> (quoting Representative Ocasio-Cortez as saying “corporations have taken over our government”); Matt Egan, *Elizabeth Warren Accuses the Fed of Working for ‘Big, Rich Banks’*, CNN (Feb. 29, 2016), <https://www.cnn.com/2019/02/26/business/elizabeth-warren-fed-powell-bank-mergers/index.html> (“Senator Elizabeth Warren believes the regulatory system is rigged in favor of ‘big, rich banks.’”); Steven Greenhouse, *Bernie Sanders says Democrats are Failing: ‘The Party Has Turned its Back on the Working Class’*, THE GUARDIAN (Jan. 10, 2022), <https://www.theguardian.com/us-news/2022/jan/10/bernie-sanders-democrats-failing-working-class-interview> (quoting Senator Bernie Sanders: “The party has turned its back on the working class”).

critique the destruction of social values by commercial or other influences.¹¹⁵ Conservative fiscal criticism tends to argue that certain citizens are not “pulling their weight” and diminish the achievements of mainstream society by exerting a political influence motivated by improper virtues.¹¹⁶

Using divisive demagogic rhetoric such as bullying, coercive, and shallow public talk to advance political ends has become routine and accepted, even at the highest levels of the American government.¹¹⁷ These blunt tools are often wielded with destructive intent and have the effect of making public dialogue angry and uncontrolled.¹¹⁸ Their use of political insult is deployed in service of a paranoid worldview of conspiracy and enemy cabal.¹¹⁹ While president, Donald Trump represented the paradigm of the populist problem with his repeated assertions of wild conspiracies against purported enemies from both major political parties.¹²⁰

115. See Gary Fineout, *DeSantis Targets Disney's Self-Governing Status in Escalation Over 'Don't Say Gay'*, POLITICO (Apr. 19, 2022, 12:01 PM), <https://www.politico.com/news/2022/04/19/desantis-florida-disney-00026217> (“Gov. Ron DeSantis and Republicans in Florida are escalating their battle with the Walt Disney Co. amid fallout over a bill that banned classroom teaching of gender identity and sexual orientation in kindergarten through third grade.”); Lee Strubinger, *Noem Criticizes Target for Donation to Native Nonprofit*, SDPB RADIO (June 8, 2023), <https://listen.sdpb.org/politics/2023-06-08/noem-criticizes-target-for-donation-to-native-nonprofit> (reporting that South Dakota Governor Noem called for boycotts against Target for donating to a Native American non-profit organization); see also Charlie Nash, *Iowa Republican Dinner Features Chance For Guests To Take Out Anger on Bud Light*, MEDIAITE (July 28, 2023), <https://www.mediaite.com/politics/iowa-republican-dinner-features-chance-for-guests-to-take-out-anger-on-bud-light/> (“The conservative boycott against Bud Light over a short-lived marketing partnership with transgender TikTok entertainer Dylan Mulvaney is about to enter its fifth month and shows no signs of slowing down.”).

116. See Brendan Cole, *Ted Cruz Tells Americans Who've Lost Benefits 'Get a Job'*, NEWSWEEK (Sept. 7, 2021), <https://www.newsweek.com/ted-cruz-texas-senator-benefits-labor-day-get-job-1626684> (explaining how Senator Ted Cruz advised Americans who lost access to their unemployment benefits to “get a job”); see also Timothy Noah, *Why Republicans Hate It When Poor People Have Food to Eat*, THE SOAPBOX (Apr. 27, 2023), <https://newrepublic.com/article/172242/republicans-hate-poor-people-food-eat> (outlining President Regan’s assault on food stamps).

117. Rand Richards Cooper, *The Mourning After*, COMMONWEAL MAGAZINE (Jan. 21, 2021) <https://www.commonwealmagazine.org/mourning-after>.

118. *Id.*, at 10 (describing Trump rally-goers echoing chants of “lock her up” about Hillary Clinton and the President himself unsubtly bragging about the size of his penis); Jonathan Chait, *Ted Cruz Loses Last Scrap of Dignity, Writes Time Tribute to His Bully, Donald Trump*, N.Y.MAG. (Apr. 18, 2019), <https://nymag.com/intelligencer/2018/04/ted-cruz-praises-donald-trump-who-bullied-his-family.html>; Amy Davidson Sorkin, *Bad Choices*, THE NEW YORKER (Mar. 27, 2016) <https://www.newyorker.com/magazine/2016/04/04/trump-and-cruz-the-demagogues-of-the-g-o-p>; Dana Milbank, *Bernie Sanders has emerged as the Trump of the left*, WASH. POST (Apr. 2, 2019), https://www.washingtonpost.com/opinions/bernie-sanders-has-emerged-as-the-donald-trump-of-the-left/2019/04/02/66a516f4-5576-11e9-8ef3-fbd41a2ce4d5_story.html.

119. Cooper, *supra* note 117, at 10–11.

120. *Id.* at 11. The unifying factor of “enemy” status was simply being someone who opposed, inadequately aggrandized, or otherwise aggrieved him. He aligned demagoguery with the tools

Engagement in charged political rhetoric would be bad enough on its own. However, the common practice of combining demagogic rhetoric with other political pathologies creates an even more dangerous political landscape. Using language to brand others as “enemies” and call for action against ambiguous “conspiracies” can provide the foundation for authoritarianism.¹²¹ This phenomenon has been seen throughout history and in the current conditions of other nations.¹²² While objectionable political rhetoric is nothing new to American politics, its pace and pungency have only continued to increase. The presidency of Donald Trump presented an alarming series of new highs in going low, as he favored spreading insults and threats far and wide against his “enemies” great and small, foreign, and domestic.¹²³ Other candidates, such as Florida Governor Ron DeSantis, engage in outright religious bigotry in grandiose demagogic efforts to motivate the electorate.¹²⁴

While Trump himself was a relatively inartful practitioner of these dark arts, his behavior normalized blatant demagoguery in current politics, leaving it primed for use by more skilled practitioners.¹²⁵ There is certainly no shortage of hopeful successors who stand ready to pick up these

available in a modern media environment, having “mastered the arts of the tabloid press and the narrative techniques of reality television.” Balkin, *supra* note 83, at 293. Using these tools allowed him to accelerate and intensify the emotions that demagogues rely on. *Id.*

121. Cooper, *supra* note 117, at 11–12; TIMOTHY SNYDER, ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY 34–35 (2017).

122. Cooper, *supra* note 117, at 11–12.

123. See Aidan Quigley, *The 23 people, places and things Donald Trump has attacked on Twitter as president*, POLITICO (Feb. 4, 2017), <https://www.politico.com/story/2017/02/trump-twitter-attacks-president-234620> (cataloguing social media attacks launched in the first two weeks as president against U.S. Senators in his own party, the New York Times, various private citizens, and others); Kristine Phillips, *All the times Trump personally attacked judges—and why his tirades are ‘worse than wrong,’*, WASH. POST (Apr. 26, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/04/26/all-the-times-trump-personally-attacked-judges-and-why-his-tirades-are-worse-than-wrong/> (describing attacks on judges who the President disagreed with); Katie Van Sycle, *Five Years, Thousands of Insults: Tracking Trump’s Invective*, N.Y. TIMES (Jan. 26, 2021), <https://www.nytimes.com/2021/01/26/insider/Trump-twitter-insults-list.html> (categorizing the, depending on how they are grouped, between 6,000 and 10,000 attacks and insults Trump issued on Twitter between 2015 and early 2021).

124. Jonathan Swan, Shane Goldmacher & Maggie Haberman, *Ramaswamy’s Faith Singled Out in DeSantis Super PAC Memo*, N.Y. TIMES (Aug. 17, 2023), <https://www.nytimes.com/2023/08/17/us/politics/vivek-ramaswamy-desantis-documents.html?smid=nytcore-ios-share&referringSource=articleShare> [hereinafter Haberman, *DeSantis Super PAC Memo*] (describing the strategy memo of a DeSantis aligned super PAC that encouraged attacks against fellow Republican presidential primary candidate Vivek Ramaswamy based on tenets of his Hindu faith). For his part, Ramaswamy’s campaign felt obligated to respond that he, “‘shares and lives by the same Judeo-Christian values that this nation was founded on,’” perhaps proving the demagogic concept of religious division. *Id.* Ramaswamy’s response suggests that not professing a mainline Christian faith is itself a liability, hardly advancing an inclusive political environment.

125. Cooper, *supra* note 117, at 12.

manipulative weapons and deploy them to their own political advantage.¹²⁶ It is not an idle concern that demagoguery, a deep fear of the Founders, will become the predominant and accepted means of political communication.¹²⁷ Current leading candidates for the American presidency freely acknowledge their focus on inflammatory rhetoric because it will grab coveted headlines, leaving substantive discussions of policy at the sidelines.¹²⁸

Demagogues have also attacked on the validity of the American electoral system. Partisan demagogues have suggested that an opposing faction is seeking to manipulate electoral processes or results against the true will of the people.¹²⁹ These allegations have been launched by prominent members of both major political parties in the United States, regardless of being blatantly false.¹³⁰ These attacks powerfully demonstrate the danger of demagoguery paired with partisanship and ambition to undermine foundational principles and structures of democracy in the United States. The current

126. See Catie Edmonson, *Hawley Faces Blowback for Role in Challenging Election Results*, N.Y. TIMES (Jan. 8, 2021), <https://www.nytimes.com/2021/01/08/us/politics/josh-hawley-capitol-riot.html> (reporting that members of Senator Hawley's own party characterized Hawley's rejection of the 2020 election results as "a stunt" and that he was "[l]ying to the American people" for "political advantage"); Candace Ortiz, *Ted Cruz Makes Wild Accusation that Joe Biden Supports 'Modern Day Slavery' Through His Border Policies*, MSN NEWS (Jan. 20, 2023), <https://www.msn.com/en-us/news/politics/ted-cruz-makes-wild-accusation-that-joe-biden-supports-modern-day-slavery-through-his-border-policies/ar-AA16zthG> (describing how Senator Ted Cruz asserted President Biden is "responsible for funding the slave traders and for their murder and torture and suffering" at the U.S.'s southern border due to his border policies); see also Katie Reilly, *Read Hillary Clinton's 'Basket of Deplorables' Remarks About Donald Trump Supporters*, TIME (Sept. 10, 2016), <https://time.com/4486502/hillary-clinton-basket-of-deplorables-transcript/> (explaining how Hillary Clinton, at a presidential campaign fundraiser, stated that half of her opponent's supporters belong in a "basket of deplorables").

127. The 2006 dystopian farce movie, *'Idiocracy'*, presented a world in which being profoundly and proudly stupid was a mark of "excellence." Julie Hinds, *'Idiocracy' goes from cult classic to election statement*, THE DETROIT FREE PRESS (Sept. 2, 2016, 2:49 PM), <https://www.freep.com/story/entertainment/movies/julie-hinds/2016/09/02/idiocracy-mike-judge-shepard-fairey-detroit-/89728738/>. Some the absurd conduct of the movie's fictional United States President Dwayne Elizondo Mountain Dew Herbert Camacho, set 500 years in the future, has come to seem less absurd or distant. *Id.*; Neetzan Zimmerman, *'Idiocracy' writer: I never expected my movie "to become a documentary,"* THE HILL (Feb. 24, 2016), <https://thehill.com/blogs/in-the-know/in-the-know/270642-idiocracy-writer-i-never-expected-my-movie-to-become-a/>; *We Have Become an Idiocracy*, TIME (May 12, 2016), <https://time.com/4327424/idiocracy/>.

128. Jonathan Swan, Shane Goldmacher & Maggie Haberman, *Ramaswamy's Defend Trump and 'Hammer' Ramaswamy: DeSantis Allies Reveal Debate Strategy*, N.Y. TIMES (Aug. 17, 2023), <https://www.nytimes.com/2023/08/17/us/politics/desantis-debate-strategy.html?smid=nytcore-ios-share&referringSource=articleShare> (discussing omission of any policy discussion in a debate strategy memo for presidential candidate Ron DeSantis because it "won't get him headlines.").

129. See Jill Lepore, *The American Beast*, THE NEW YORKER, Jan. 16, 2023, at 64 (describing claims by prominent politicians that elections were being "rigged").

130. *Id.* (noting claims that others were "buying" or "rigging" the election from both Republican Newt Gingrich and Democratic candidate Bernie Sanders).

political environment illustrates the reasons the Founders warned about politicians who would say whatever they could to get what they aspired.

The ability of modern demagogues to communicate directly with the people *en masse* exacerbates the nefarious impacts that the Founders foretold. The mediating forces of reliable gatekeepers have eroded.¹³¹ With that erosion has come the breakdown of any shared narrative or basis of facts that most citizens yearn for from in their engagement with public policy.¹³² In such an environment, the capacity of modern demagogues to manipulate public opinion and discourse dramatically increases.

Modern demagogues sometimes outright reject fact-based discourse.¹³³ Politicians increasingly reject the bounds of facts in their public statements, debates, and actions. This appears to reflect an almost post-modernist belief that power defines facts.¹³⁴ Modern demagogues will sometimes assert their statement is truth simply based on the fact that the statement emanates from their position of authority.¹³⁵

Modern demagogues also harness factional beliefs that those “with us” speak the truth, while those “against us” do not.¹³⁶ Highly sorted channels of media and association rapidly facilitate this manipulation. Citizens increasingly get their news from, and surround themselves with, those who share their beliefs.¹³⁷ Because of this, the claims of demagogues often never encounter competing claims and instead become more firmly believed with

131. STANLEY FISH, *THE FIRST: HOW TO THINK ABOUT HATE SPEECH, CAMPUS SPEECH, RELIGIOUS SPEECH, FAKE NEWS, POST-TRUTH, AND DONALD TRUMP*, 161 (2019).

132. Ari Ezra Waldman, *The Marketplace of Fake News*, 20 U. PA. J. CONST. L. 845, 869 (2018) (expressing concern that dissemination of unreliable information can undermine democracy).

133. Cooper, *supra* note 117; LEE C. MCINTYRE, *POST-TRUTH* 3–4 (2018); SNYDER, *supra* note 121, at 66–67.

134. Cooper, *supra* note 117, at 11 (describing the statements of Karl Rove that American imperial power allowed the nation to define facts, not simply live with them); Cade Metz, *Internet Companies Prepare to Fight the ‘Deepfake’ Future*, N.Y. TIMES (Nov. 24, 2019), <https://www.nytimes.com/2019/11/24/technology/tech-companies-deepfakes.html> (describing effort to use AI technology to identify videos which have been manipulated from the original and true form). There is also the very real danger that advances in technology are simply making harder to know what is true and what is manufactured. Ian Sample, *What are deepfakes—and how can you spot them?*, THE GUARDIAN (Jan. 13, 2020), <https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them>; Donie O’Sullivan, *When seeing is no longer believing*, CNN BUS. (2016), <https://www.cnn.com/interactive/2019/01/business/pentagons-race-against-deepfakes/> (last visited Apr. 20, 2024).

135. In doing so, demagogues persuade their followers to live within an “alternate reality” that excludes those not affiliated with their cause. ANNE APPLEBAUM, *TWILIGHT OF DEMOCRACY: THE SEDUCTIVE LURE OF AUTHORITARIANISM*, 38 (2020).

136. DAN RATHER & ELLIOT KIRSCHNER, *WHAT UNITES US: REFLECTIONS ON PATRIOTISM* 11–12 (2019).

137. Tara Westover, *Left Behind: The Real Roots of the Urban/Rural Divide*, THE ATLANTIC, Dec. 2019, at 53–54.

time. Citizens will often engage their natural tendencies to seek confirming information in an information-rich environment, doing much of the demagogue's work for them.¹³⁸ Adapting Newton's First Law to politics, a policy set in motion by the demagogue will tend to continue that motion absent some countervailing external force.¹³⁹

Modern demagogues can also manipulate public perception through a commitment to only the immediate moment, saying what is expedient at the moment without concern for history, future implications, or consistency.¹⁴⁰ Stanley Fish has labeled this approach as "principled irresponsibility."¹⁴¹ Its demagogic practitioners simply do not care about prior statements, consistency, or compliance with political norms or politesse; instead, they say the best thing at the moment and repeat the process, confident that in an information-saturated environment, their accountability statements are gone with the moment.¹⁴² This approach can also be described as "flooding the zone," simply putting out so much information (regardless of truth or consistency) that few, if any, citizens can reliably process it all. Modern demagogues pair their commitment to volume and lack of concern with accuracy in a technique that has been labeled as "bullshit."¹⁴³

Citizens drawn to a partisan worldview and willingness to allow the forces of demagoguery have become disconnected from reality and other citizens.¹⁴⁴ The partisan often relies on mountains of misinformation to manipulate nuggets of truth.¹⁴⁵ This archetype divides the world into polarized camps of sycophants and enemies through the conduct of the demagogue and the reception of their supporters, leaving engagement across the resulting divide improbable or downright impossible.¹⁴⁶

138. Neil Fulton, *What Comes Next?*, 62 WASHBURN L.J. 189, 213–14 (2023) (describing ways in which human brains seek confirming information and utilize heuristics to shorten the decisional process).

139. ENCYC. BRITANNICA, *Newton's laws of motion* (last visited Apr. 20, 2024), <https://www.britannica.com/science/Newtons-laws-of-motion/Newtons-second-law-F-ma> (summarizing Newton's laws, including the first law of motion that bodies at rest remain at rest and bodies in motion remain in consistent motion absent application of some additional force).

140. FISH, *supra* note 131, at 186–87.

141. *Id.* at 187.

142. *Id.*, at 185–87.

143. *Id.* at 161 (quoting HARRY G. FRANKFURT, *ON BULLSHIT* (Princeton University Press 2005)). Frankfurt distinguishes the lack of concern with truth of the bullshitter from the outright rejection of it by the liar. *Id.* That latter is a frontal assault on truth, the former its more silent and insidious erosion by neglect.

144. David French, *To Watch a Trump Town Hall on Fox Is to Enter an Entirely Different World*, N.Y. TIMES (June 2, 2023), <https://www.nytimes.com/2023/06/02/opinion/trump-hannity-fox-town-hall.html?smid=nytcore-ios-share&referringSource=articleShare>.

145. *Id.*

146. *Id.*

In many ways, modern demagogues have increasingly applied their manipulative skills to the American electorate to achieve their individual goals. The warning of the Founders about the demagogues' actions and dangerous impact is profound and timely.

C. The Ambitious

Along with the public peril of demagoguery, the Founders warned of personal vice as well. Few personal vices were more prominent in the mind of the Founders than excessive ambition, when unchallenged and unchecked.¹⁴⁷ They recognized ambition and service of self-interest as often inherent in political actors and their actions.¹⁴⁸ Perhaps no warning of human fallibility and the need for government to check that fallibility is as famous as Madison's observation that, "what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary."¹⁴⁹ The Founders hoped that the low moral qualities of human nature could be mediated by the development of popular virtue.¹⁵⁰ Yet, they were realistic about the need to assume that most humans are "knaves," and that government must be structured to protect the common good despite "insatiable avarice and ambition."¹⁵¹

In their warnings, the Founders distinguished different forms of ambition. Low ambition drove dreams of personal advancement, while noble ambition for glory drew leaders of merit and virtue to public service.¹⁵² While high ambition was necessary, the danger of low ambition was always present. Anti-federalist writers cautioned that public office would readily attract bad men emboldened to act upon their worst impulses to harness government for their own benefit.¹⁵³ Such politicians would try to aggregate their power, which only makes this ambitious intent all the more dangerous.¹⁵⁴ Because

147. THE FEDERALIST NO. 72 (Alexander Hamilton).

148. Sunstein, *supra*, note 8, at 1558 (noting John Adams expressed skepticism that any other force could drive political action).

149. THE FEDERALIST NO. 51 (James Madison).

150. McDONALD, *supra* note 36, at 124–25.

151. *Id.* at 188–91. The need to guard against the base aspects of human nature was always top of mind for both Federalist and Anti-Federalist writers. STORING, *supra*, note 29, at 29.

152. John Stevens, Jr., *On Montesquieu, A System Monger Without Philosophic Precision, and More on the Errors of "Cato,"* in THE DEBATE ON THE CONSTITUTION: FEDERALIST AND ANTIFEDERALIST SPEECHES, ARTICLES, AND LETTERS DURING THE STRUGGLE OVER RATIFICATION (PART ONE), 487 (Bernard Bailyn ed., 1993); *id.* at 489–90.

153. STORING, *supra*, note 29, at 52.

154. *If You Adopt it...Posterity Will Execrate Your Memory*, in THE DEBATE ON THE CONSTITUTION, *supra* note 152, at 164; *id.* at 174–75.

of the frequent association of ambition and demagoguery, the danger grows dramatically when we allow those traits to exist.¹⁵⁵

The Founders consistently cautioned that low ambition would drive attempts to aggregate power. Washington himself warned of this danger in his Farewell Address that it promoted a “spirit of encroachment” that would encourage ambitious politicians to transgress the separation of powers in the Constitution.¹⁵⁶ He saw this tendency arising from the, “love of power, and proneness to abuse it, which predominates in the human heart. . .”¹⁵⁷ The answer, as Washington and many Founders saw it, was the Constitutional separation of powers and intentionally structured checks and balances.¹⁵⁸

Ambition was a profound fear within the classical republican tradition that had influenced the Founders.¹⁵⁹ Many Founders had an initial vision to solve the problem by simply asking politicians to subordinate their personal will to the promotion of the common good.¹⁶⁰ Madison, on the other hand, led an evolution of thought by insisting that it was necessary to structure government itself to pit competing interests against themselves, thus checking the low and dangerous ambitions of all.¹⁶¹ Pitting one’s ambition against another’s was a central theme of the system of checks and balances.¹⁶² Anti-Federalists, too, acknowledged this proposed goal of the Constitution’s structure and its likely benefit.¹⁶³ Madison authored perhaps the most famous defense of this structure, and warned against unchecked ambition by extension, in his statement that “[a]mbition must be made to counteract ambition.”¹⁶⁴

While ambition properly channeled and placed in opposition to other balancing ambitions could be salutary, the Founders continued to warn that public figures would turn their ambition from achieving glory in service of the common good towards personal avarice and vanity, using public service to personal advantage.¹⁶⁵ While low ambition can manifest in many ways, the unifying feature of the pathologic ambition the Founders warned against

155. *A Revolution Effected by Good Sense and Deliberation*, in THE DEBATE ON THE CONSTITUTION, *supra* note 152, at 12–13 (1993).

156. WASHINGTON, *supra* note 21, at 970–71.

157. *Id.*

158. *Id.*

159. Elvin L. Lim, *The Federalist Provenance of the Principle of Privacy*, 75 MD. L. REV. 415, 431 (2015).

160. *Id.*

161. *Id.*

162. RAKOVE, *supra* note 28, at 282–83.

163. STORING, *supra*, note 29, at 52.

164. THE FEDERALIST NO. 51 (Madison).

165. THE FEDERALIST NO. 72 (Hamilton).

was that political figures would place their personal interests ahead of the public good.

The pathology of low ambition infects the modern American body of politics in several ways. First, financial ambition and avarice can lead political actors to leverage public service to personal financial advantage; this often includes using the “revolving door” between government service and private lobbying work or media punditry.¹⁶⁶ Political figures moving between public service and private sector jobs that build off that service are not inherently unethical or illegal; however, it may create perverse incentives and undermine public confidence by driving public figures to cultivate cozy connections, adjust or temper policy positions, or otherwise structure their public conduct to facilitate opportunities for future financial gain. The Founders warned of the risks that such conflicting incentives and concerns present.¹⁶⁷ They also proposed limits on the duration of executive service to avoid officials building platforms of personal financial advantage.¹⁶⁸

Financial ambition can also manifest more explicitly—and does. Political actors have too frequently been caught engaging in outright financial corruption. Some figures have been stolen directly from public funds.¹⁶⁹ Others have engaged in *quid pro quo*, trading access or policy for financial favors.¹⁷⁰ This presents a particularly significant concern in the context of foreign affairs. The Founders strongly cautioned against the danger of

166. Former Members, *Revolving Door*, OPEN SECRETS, <https://www.opensecrets.org/revolving/top.php?display=Z> (last visited Jan. 23, 2023) (“Dick Armey. Tom Daschle. Tom Foley. Trent Lott. Once, these politicos ranked among Congress’s most powerful members. Today, they share another distinction: They’re lobbyists (or ‘senior advisors’ performing very similar work). And they’re hardly alone. Dozens of former members of Congress now receive handsome compensation from corporations and special interests as they attempt to influence the very federal government in which they used to serve.”).

167. THE FEDERALIST NOS. 72, 75 (Alexander Hamilton).

168. THE FEDERALIST NO. 72 (Alexander Hamilton).

169. E.g. Alison Durkee, *Sen. Bob Menendez Under Federal Investigation—Again*, FORBES (Oct. 26, 2022, 4:10 PM), <https://www.forbes.com/sites/alisondurkee/2022/10/26/sen-bob-menendez-under-federal-investigation-again/?sh=539bd15440a6> (describing how Senator Bob Menendez (D-N.J.) was under federal investigation seven years after being indicted for alleged bribery and corruption); David Schaper & Michele Norris, *Former Ill. Gov. Blagojevich Indicted*, NPR (Apr. 2, 2009, 6:30 PM), <https://www.npr.org/templates/story/story.php?storyId=102681201> (reporting on former Illinois governor Blagojevich’s charges of running a “scheme [to] deprive the people of Illinois of honest government”).

170. See Liam Stack & Aimee Ortiz, *What Is a Quid Pro Quo?*, N.Y. TIMES (Oct. 18, 2019), <https://www.nytimes.com/2019/11/20/us/politics/quid-pro-quo.html> (describing how then-President Trump asked the Ukrainian president for investigations into then-Presidential candidate Biden’s son in return for the release of military aid); Alex Ebert, *Ohio’s Historic Corruption Case Tests Limits of Citizens United*, BLOOMBERG LAW (Jan. 20, 2023, 2:15 AM), <https://news.bloomberglaw.com/white-collar-and-criminal-law/ohios-historic-corruption-case-tests-limits-of-citizens-united> (describing how federal prosecutors are alleging “a \$60 million pay-to-play scheme against former Republican Ohio House Speaker Larry Householder and former GOP Chairman Matthew Borges”).

foreign intrigue and access built on financial ambition.¹⁷¹ Avaricious political figures have often found themselves as prey to foreign attempts at access or influence.¹⁷² The Founders' warning on this front remains no less relevant, even if it is no longer heeded.

Financial ambition also manifests in accumulating petty personal privileges and providing advantages to friends and family. Many public figures have been exposed as taking advantage of their positions to obtain improper perquisites.¹⁷³ Others have steered government sinecures to friends and family, or provided advantageous treatment by government officials.¹⁷⁴ Some have simply indulged in the temptations of the famous and powerful by participating in sexual intrigue, self-promotion, and lavish lifestyles.¹⁷⁵ While

171. THE FEDERALIST NOS. 72, 75 (Alexander Hamilton).

172. See James Kitfield, *Jared Kushner's 'Art of the Deal'*, THE HILL (June 6, 2022, 12:00 PM), <https://thehill.com/opinion/white-house/3528113-jared-kushners-art-of-the-deal/> (explaining Jared Kushner's "unusual bromance with Saudi Crown Prince Mohammed bin Salman" and how only months after leaving the white house, "Kushner's fledgling private equity firm Affinity Partners received a \$2 billion investment from the Saudi sovereign wealth fund" with bin Salman as a member of the board); FEDERAL BUREAU OF INVESTIGATION, *Famous Cases and Criminals: ABSCAM*, <https://www.fbi.gov/history/famous-cases/abscam> (last visited Jan. 24, 2023) (describing how in the 1970s and early 1980s, one U.S. senator and six congressman were caught in an undercover sting after providing political favors in return for bribes from a fictitious Arabian company).

173. Chris D'Angelo, *Watchdog Finds Trump Interior Boss Ryan Zinke Violated Ethics Rules, Misused Office*, HUFFPOST (Feb. 16, 2022, 12:01 PM), https://www.huffpost.com/entry/ryan-zinke-violation-ethics-rules-real-estate-project_n_620d2854e4b012513085aede (illustrating how Ryan Zinke, then-President Trump's first Secretary of the Interior, misused his office and violated ethical rules); Evan Halper, *Embattled EPA chief Scott Pruitt resigns amid scandals*, L.A. TIMES (July 5, 2018, 3:00 PM), <https://www.latimes.com/politics/la-na-pol-pruitt-leaves-20180705-story.html> (reporting on Scott Pruitt, then-President Trump's first EPA chief, and how he was linked to "lavish spending of taxpayer money and the use of his position to enrich his family"); Josh Lederman, et al., *Pompeo's Elite Taxpayer-Funded Dinners Raise New Concerns*, NBC NEWS (May 19, 2020, 7:05 PM), <https://www.nbcnews.com/politics/politics-news/pompeo-s-elite-taxpayer-funded-dinners-raise-new-concerns-n1210746> (describing how then-President Trump's Secretary of State, Mike Pompeo, would regularly host elaborate dinners "in the historic Diplomatic Reception Rooms" hosting "[b]illionaire CEOs, Supreme Court justices, political heavyweights and ambassadors" "on the government's dime").

174. See Joe Sneve, *State Plane, Nepotism Complaints Against South Dakota Gov. Kristi Noem to be Heard in May*, ARGUS LEADER (Apr. 19, 2022, 11:05 AM), <https://www.argusleader.com/story/news/2022/04/19/whats-next-state-plane-misuse-nepotism-complaints-against-noem/7367257001/> (expressing how South Dakota Governor Noem allegedly "interfered in a state certification program her daughter was enrolled in" for her daughter's benefit); see also Peter Overby, *Jared Kushner Is In The Spotlight. But Is He In the Tradition Of American Nepotism?*, NPR (July 30, 2017, 8:00 AM), <https://www.npr.org/2017/07/30/540092228/jared-kushner-is-in-the-spotlight-but-is-he-in-the-tradition-of-american-nepotism> (examining the history of nepotism in American government, specifically concerning former Presidents Roosevelt, Kennedy, and Trump).

175. See Charles McGrath, *No End of the Affair*, N.Y. TIMES (Apr. 20, 2008), <https://www.nytimes.com/2008/04/20/weekinreview/20mcgrath.html> (detailing President Franklin Roosevelt's

perhaps more trivial, these too are examples of modern figures placing their personal desires over the public good as the Founders explicitly cautioned against. While lesser forms of personal aggrandizement may be trivial when compared to illegal acts or true corruption, they still undermine the credibility and character of the officeholder and the office itself. In this sense, personal ambition erodes the professional credibility of the office and government more generally. The Founders justly cautioned that vanity and a focus on personal financial success would undercut the attachment to public good necessary for a virtuous leader.¹⁷⁶

Low ambition also drives politicians to place personal advancement over principle. These figures ride the winds of public opinion, often public grievance, in whatever direction they blow to maintain their current office or to rise to higher office.¹⁷⁷ Rather than principled actors who engage in virtuous deliberation in service of the public good, ambitious politicians become Protean figures willing to align their priorities and positions with whatever they believe will advance them, not what they actually believe.¹⁷⁸ What matters in resolving questions of public policy or political action devolves into simply whatever advances that politician's career and public profile. Perhaps more problematically, many pathologically ambitious politicians are willing to project outward facades of principle while possessing an inward willingness to abandon or reshape any idea, violate any allegiance, or remake any personal trait to serve their ambition and advancement.¹⁷⁹

extramarital affair with Lucy Mercer); Olivia B. Waxman & Merrill Fabry, *From an Anonymous Tip to an Impeachment: A Timeline of Key Moments in the Clinton-Lewinsky Scandal*, TIME (May 4, 2018, 12:00 PM), <https://time.com/5120561/bill-clinton-monica-lewinsky-timeline/> (describing President Clinton's extramarital affair with Monica Lewinsky); Michel Martin, *Scrutiny of Palin's 'Shopping Spree' Unfair?*, NPR (Oct. 27, 2008, 12:00 PM), <https://www.npr.org/templates/story/story.php?storyId=96177392> (observing then-Vice Presidential candidate Sarah Palin's \$150,000 shopping spree).

176. McDONALD, *supra* note 36, at 88–89.

177. See, e.g., Nicholas Confessore, *The Invention of Elise Stefanik*, N.Y. TIMES (Dec. 31, 2022), <https://www.nytimes.com/2022/12/31/us/politics/elise-stefanik.html?smid=url-share> (describing the dramatic shifts in position and demeanor that facilitated the political advancement of Representative Elise Stefanik).

178. Ruth Marcus, *Kevin McCarthy and the price of power for its own sake*, WASH. POST (Jan. 6, 2023, 1:41 PM), <https://www.washingtonpost.com/opinions/2023/01/05/mccarthy-speaker-ambition-congress/> (describing Representative Kevin McCarthy's alteration of positions and abandonment of principle in service of the ambition to become Speaker of the House).

179. Elaina Plott Calabro, *Why is She Like This?*, THE ATLANTIC (Dec. 5, 2022), https://www.theatlantic.com/magazine/archive/2023/01/marjorie-taylor-greene-congress-georgia-election-background/672229/?utm_source=copy-link&utm_medium=social&utm_campaign=share (describing Representative Marjorie Taylor Greene's greater focus having something political to say that what that something was); Confessore, *supra*, note 177 (describing Representative Stefanik's description of candidate Donald Trump as a “whack job” before closely aligning with him while President).

Former South Carolina Governor Nikki Haley exemplifies how ambition can drive the unfortunate abandonment of principle. When Donald Trump entered the Republican presidential primary, Haley publicly denounced him as a candidate, citing many of his negative personality traits and policy positions.¹⁸⁰ She nonetheless joined his cabinet and remained a vocal supporter of him even after leaving office.¹⁸¹ In 2023, Haley herself announced a bid for the presidency, seeking to tack back to more moderate positions almost immediately.¹⁸² That effort seemed destined to be only minimally successful, however, because Haley's status as a messenger of moderation was compromised and her party had shifted away from her earlier positions.¹⁸³ She struggled to chart a successful course of balanced opposition and allegiance to the former president that voters would find compelling.¹⁸⁴ She was not the only 2024 Republican presidential primary contestant to shamelessly laud and attack Donald Trump as best served their ambitions, prioritizing polling numbers over principles.¹⁸⁵ Haley's arc demonstrates the risks of ambitious politicians sacrificing principle—when moments for principled stands then present themselves, Protean political actors lack the inclination or ability to successfully assert principle.¹⁸⁶ As a result, political discourse is eroded.

180. Tom Nichols, *The Pointless Nikki Haley Campaign*, THE ATLANTIC (Feb. 15, 2023), <https://www.theatlantic.com/newsletters/archive/2023/02/nikki-haley-campaign-trump/673077/>. Haley was far from alone in flipping her opposition of Trump to vociferous support; Jodi Enda, *These Republicans didn't like Trump at first. They do now*, CNN (Feb. 21, 2017), <https://www.cnn.com/2017/02/21/politics/donald-trump-republican-support/index.html>; *Many in the GOP were wary of Trump. They're coming around.*, WASH. POST (June 3, 2016), <https://www.washingtonpost.com/graphics/politics/2016-election/changing-republican-views-on-trump/>. Some more successfully turned from being members of his administration to opponents than Haley; Maegan Vazquez, *The long list of Trump administration officials turned critics*, CNN (June 5, 2020), <https://www.cnn.com/2020/06/04/politics/officials-who-criticized-donald-trump/index.html>.

181. *Id.*; Stuart Stevens, *Nikki Haley Threw It All Away*, N.Y. TIMES (Feb. 13, 2023), www.nytimes.com/2023/02/13/opinion/nikki-haley-republican-party.html?searchResultPosition=1.

182. Maya King, *Nikki Haley Makes Her Pitch in New Hampshire. It's Unclear Whether Voters Will Swing*, N.Y. TIMES (July 9, 2023), <https://www.nytimes.com/2023/07/09/us/politics/nikki-haley-2024-new-hampshire-primary.html>; Nichols, *supra* note 180.

183. Nichols, *supra* note 180.

184. Jazmine Uloa, *Nikki Haley Fights to Stay Competitive in a One-Sided GOP Primary*, N.Y. TIMES (Aug. 7, 2023), <https://www.nytimes.com/2023/08/07/us/politics/nikki-haley-president-2024.html?smid=nytcore-ios-share&referringSource=articleShare>.

185. See Haberman, *DeSantis Super PAC Memo*, *supra* note 124 (noting the effort of Florida Governor Ron DeSantis to defend Trump from other candidates' attacks while himself attacking when useful).

186. See Thomas L. Friedman, *The Fox Newsification of Nikki Haley*, N.Y. TIMES (Feb. 21, 2023), <https://www.nytimes.com/2023/02/21/opinion/nikki-haley-republicans.html> (arguing that Haley had surrendered to the capacity to present an alternative vision of Republican policies in hopes of winning a current base of primary voters). Haley was far from alone in finding herself

A final form of dangerous ambition is the politician who simply wants to rise: the person who craves higher office not as a means to serve, but as a means to be relevant and feel important. Through direct election of senators, pledged electors, direct public appeals, and other means, modern politics has come to lack the necessary mediating power of elites that the Founders promoted.¹⁸⁷ This fuels the movement of smaller community politicians into the broader public eye without greater testing and proving of competence, commitment, and virtue that the Founders thought necessary.¹⁸⁸ It has also facilitated the rise of the “celebrity politician” who seeks to achieve electoral success based on fame or wealth without a formation in the skills and complex issues that face a national leader.¹⁸⁹ The Founders greatly feared individuals with perceived local influence who could advance through “cabal, intrigue, and corruption.”¹⁹⁰ The fear was that individuals of low conduct and capacity could advance through their small scale populism and that this style of “leadership” was ill-suited to the national stage.¹⁹¹ Absent mediating systems that the Founders envisioned, ambitious but unqualified individuals can advance through ill-informed and self-aggrandizing populism. Ambition is necessary, while ability is seemingly optional.

Low personal ambition puts personal advancement of many types before the merit of public service and the common good. The Founders sounded forceful warnings against ambition as a result. Yet excessive ambition is on broad display among America’s political class, and the warnings against ambition that the Founders issued have seemingly been forgotten.

somewhat trapped by a popular and demagogic figure who prevented mounting a real challenge for the meaning and beliefs of the party but may render it destined for electoral failure; Bret Stephens, *The ‘Never Again Trumper’ Sham*, N.Y. TIMES (Aug. 8, 2023), <https://www.nytimes.com/2023/08/08/opinion/trump-republican-primary-2024.html?smid=nytcore-ios-share&referrerSource=articleShare>.

187. RAKOVE, *supra* note 28, at 52.

188. THE FEDERALIST NO. 68 (Alexander Hamilton).

189. See George F. Will, *Vivek Ramaswamy runs on the unlimited optimism of the inexperienced*, WASH. POST (June 14, 2023, 7:00 AM), <https://www.washingtonpost.com/opinions/2023/06/14/republican-vivek-ramaswamy-ambitious-inexperience/> (describing several issues with which the candidate for president proposes seemingly unrealistic and uninformed views); Edward Helmore, *Kanye West announces 2024 presidential bid amid far-right ties*, THE GUARDIAN (Nov. 25, 2022, 10:40 AM), <https://www.theguardian.com/music/2022/nov/25/kanye-west-presidential-run-2024> (describing rap artist Kanye West’s plan to run for president); Stuart Rothenberg, *From Schwarzenegger to Oz, GOP celebrities in politics*, ROLL CALL (Apr. 5, 2022, 6:00 AM), <https://rollcall.com/2022/04/05/from-schwarzenegger-to-oz-gop-celebrities-in-politics/> (analyzing celebrity candidates from both major political parties and their mixed record of electoral success).

190. THE FEDERALIST NO. 68 (Alexander Hamilton).

191. STORING, *supra*, note 29, at 44; RAKOVE, *supra* note 28, at 52.

D. The Tyrant

Tyranny was a political pathology the Founders deeply feared—perhaps more than any other.¹⁹² They had excoriated British tyranny.¹⁹³ The American Revolution had been fought to break free of it.¹⁹⁴ Public debate in the Founding era focused on preserving liberty.¹⁹⁵ Framing the Constitution focused on how to create governmental structures that protected liberty by checking tyranny.¹⁹⁶ The Founders sought a framework to give the government sufficient power to prevent anarchy while simultaneously imposing sufficient limits to prevent tyranny.¹⁹⁷

The Founders were profoundly concerned that leaders could become tyrants to the detriment of citizens.¹⁹⁸ Designing a government to avoid the rise of tyrants was a fundamental purpose of the Constitution. While Federalist and Anti-Federalist writers were frequently divided on *how* to prevent the rise of tyranny (including whether the Constitution did so), they believed that the structure of government must do so.¹⁹⁹ As a result, they warned of several ways by which tyranny might take root and how we might check them.

A foremost warning of the Founders was that tyrants could consolidate power over the people. A public statement of what constituted tyranny demonstrated that concern:

But what is tyranny? Or how can a free people be deprived of their liberties? Tyranny is the exercise of some power over a man, which is not warranted by law, or necessary for the public safety. A people can never be deprived of their liberties, while they retain in their own hands, a power superior to any other power in the state.²⁰⁰

The Founders saw the need for political leaders to remain accountable to the people to prevent tyranny from flourishing. They advocated setting

192. Marci A. Hamilton, *The First Amendment's Challenge Function and the Confusion in the Supreme Court's Contemporary Free Exercise Jurisprudence*, 29 GA. L. REV. 81, 85 (1994).

193. McDONALD, *supra* note 36, at 6; Thomas Jefferson, *A Summary View of the Rights of British America*, in WRITINGS, 105 (Merrill D. Peterson ed., Library of America 1984); *id.* at 110.

194. Noah A. Rosenblum, *Doctrine and Democratic Deconsolidation: On David Driesen's Specter of Dictatorship*, 72 SYRACUSE L. REV. 1433, 1438–39 (2022).

195. McDONALD, *supra* note 36, at 10; Mathias, *supra* note 6.

196. David Landau, Hannah J. Wiseman, Samuel R. Wiseman, *Federalism for the Worst Case*, 105 IOWA L. REV. 1187, 1208–10 (2020); Bijal Shah, *Deploying the Internal Separation of Powers Against Racial Tyranny*, 116 NW. L. REV. 244, 245–47 (2021).

197. THE FEDERALIST NO. 9 (Alexander Hamilton).

198. STORING, *supra* note 29, at 51 (noting Anti-Federalist concern that undue faith in the virtue of leaders could produce tyranny); THE FEDERALIST NO. 51 (James Madison) (containing Madison's famous observation that if “men were Angels” government would be unnecessary).

199. See sources cited *supra* notes 6–9.

200. Noah Webster, *A Citizen of America*, in DEBATE ON THE CONSTITUTION: *supra* note 152, at 129; *id.* at 154.

the structure and frequency of elections in organic law to retain political accountability.²⁰¹ Allowing political figures to obtain power independent of the people was a path to tyranny that the Founders counseled and intentionally structured against.

Conversely, they likewise warned of excessive entanglement with the people without mediating structures. The Founders warned that paeans to “the people” by populist politicians could descend into tyranny.²⁰² Differing camps among the Founders took different approaches to whether it was necessary to limit or enrich the powers of government to provide a check, but the underlying concern was mutual.

The clearest and most consistent warning the Founders sounded about tyranny was against the excessive consolidation of power in one person or branch of government. James Madison labeled a unity of legislative, executive, and judicial power as the, “very essence of tyranny.”²⁰³ Anti-Federalists generally concurred that mixing powers was a bad idea that allowed tyranny to take root.²⁰⁴ Federalists and Anti-Federalists again proffered different answers as to how, but nevertheless had a consensus about the need to divide governmental powers to avoid tyranny.²⁰⁵

The Founders generally warned of two necessary means of dividing power: between the national and state governments, and among branches. Hamilton opined that the federal structure made the national and state governments check each other, protecting liberty from undue encroachment by either.²⁰⁶ Anti-Federalists often had greater concern about a robust national government becoming a path to tyranny, but acknowledged that the weak Articles of Confederation had largely failed.²⁰⁷ They, too, settled on creative tension between the levels of government as the best answer.²⁰⁸

The Founders also warned of the need to divide power between coordinate branches. The Constitution was structured to separate government power and to create tension among branches that prevented any one branch or figure from gaining dominance over another.²⁰⁹ The call for separation of powers along with checks and balances came from both Federalists and Anti-

201. THE FEDERALIST NO. 53 (James Madison).

202. THE FEDERALIST NO. 1 (Alexander Hamilton). This concern traces its roots to Aristotle who cautioned that the negative form of monarchy was tyranny while the negative form of democracy was ochlocracy—essentially a lawless mob rule. MCDONALD, *supra* note 36, at 80.

203. THE FEDERALIST NO. 47 (James Madison).

204. STORING, *supra* note 29, at 48–49.

205. THE FEDERALIST NO. 47 (James Madison).

206. THE FEDERALIST NO. 28 (Alexander Hamilton).

207. STORING, *supra* note 29, at 33.

208. *Id.*

209. THE FEDERALIST NO. 48 (James Madison).

Federalists.²¹⁰ Separating powers among the coordinate branches of government was crucial in the mind of the Founders to provide adequate energy to the government while not giving it excess power.²¹¹ They accordingly structured the Constitution as a response to their ongoing warning.²¹²

Sadly, we seemed to have ignored the Founders' warning against the tyrant. Current political figures often engage in the exact conduct that the Founders warned about including efforts to avoid accountability, leverage public sentiment, and consolidate power. Given the vigor of the Founders' warning, it is not surprising that efforts at consolidation of power are common. The allure of tyrannic power comes from many quarters and in many forms, and is a recurrent temptation for elected leaders.

Consolidation occurs most commonly through the encroachment of one branch onto the power of another. The political tension built into a system of checks and balances make some encroachment almost inevitable.²¹³ Beyond these instances when the Founders' warning against consolidation is violated indirectly, reluctantly, or accidentally are increasingly common efforts to purposefully consolidate power and avoid systemic checks and balances.

A prominent, recurrent, and controversial example is the attempt of executive branch officials to use executive orders in lieu of legislation through Congress.²¹⁴ A recent instance featured dueling executive orders in response to COVID-19, with President Biden using executive agency guidance to impose vaccine requirements and state governors issuing executive orders to prohibit the same.²¹⁵ The history of controversial executive orders goes back more than a century, and to even more controversial acts like the internment of Japanese-Americans in World War II and the suspension of *habeas corpus*

210. *Id.*; THE FEDERALIST NO. 52 (James Madison); STORING, *supra* note 29, at 48–49; *id.* at 55–56.

211. THE FEDERALIST NO. 47 (James Madison).

212. Martin S. Flaherty, *The Most Dangerous Branch*, 105 YALE L.J. 1725, 1729–30 (1996).

213. LINDA D. JELLUM, *MASTERING LEGISLATION, REGULATION, AND STATUTORY INTERPRETATION* 62–64 (Carolina Academic Press 3d ed., 2020) (describing the distinction between formalist and functionalist analysis of separation of powers questions and the overlap of function between branches). While the existence of overlap seems generally accepted, the degree provokes vigorous disagreement. Stephen L. Carter, *Constitutional Improprieties: Reflections on Mistretta, Morrison, and Administrative Government*, 57 U. CHI. L. REV. 357, 397–98 (1990).

214. Christopher Caldwell, *Americans Are Getting Too Used to This Form of Rule*, N.Y. TIMES (Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/opinion/student-debt-relief-forgiveness.html?smid=nytcore-ios-share&referringSource=articleShare>.

215. Sander J. Morehead, James E. Moore & Chesney M. Arend, *Trapped Between Sovereigns: What's an Ethical Lawyer to Do When Federal, State, or Local Criminal Laws Conflict?*, 67 S.D. L. REV. 514, 527 (2022).

during the Civil War.²¹⁶ Implementing action without legislation can dangerously aggregate the executive power to carry out the law with the separate legislative power to make it. Members of the public increasingly demand the use of executive orders in the face of ineffective legislative inaction.²¹⁷ This concentration of power in a single branch of government creates a dangerous intersection of tyranny and demagoguery as politicians disregard the warnings of the Founders on separation of powers and populism in one fell swoop.

The executive branch is not alone in attempting to appropriate and consolidate powers, however. Both executive and legislative branch actors seek control over the judiciary and their decisions.²¹⁸ Legislators seek to retain control of executive action.²¹⁹ Scholars put forward a picture of the executive as quote “unitary” and thus possessed of generalized, near boundless, authority and power.²²⁰ These and other attempts to aggregate power are attempts to embrace the path the Founders counseled against and specifically structured the constitutional government to avoid.

The Founders’ warnings against manipulating public will and avoiding accountability come together in another disturbing trend in American politics: *punishing* political enemies. Politicians have increasingly begun to use the power of their offices to punish, or attempt to do so, those who disagree with their positions on issues.

Examples found across the spectrum encompass actions against other elected officials, corporations, and private citizens. President Trump famously denied Democratic party members access to government resources, legally threatened social media companies that he declared opposed to him, and sought to punish private critics similarly through means ranging from denying access to government information all the way to threats of

216. *Id.* at 523 n.63; Tara L. Branum, *President or King? The Use and Abuse of Executive Orders in Modern-Day America*, 28 J. LEGIS. 1, 37–44 (2002) (cataloguing an increased use of executive orders on topics grand and mundane).

217. Branum, *supra* note 199, at 56–57.

218. Harold J. Krent, *Separating the Strands in Separation of Powers Controversies*, 74 VA. L. REV. 1253, 1265 (1988) (describing checks on encroachment of judicial action).

219. See 1 Sutherland Statutory Construction, § 3:19 (7th ed.) Legislative Veto, (describing efforts by various legislative bodies to retain control over executive agency actions).

220. David M. Driesen, *The Unitary Executive Theory in Context*, 72 HASTINGS L.J. 1, 7–8 (2020); Steven G. Calabresi & Saikrishna B. Prakash, *The President’s Power to Execute the Laws*, 104 YALE L.J. 541, 550–56 (1994). Seeking a return to the White House, those in the former president’s orbit have indicated an intent to move more aggressively against career government officials to have more personal control. Jonathan Swan, Charlie Savage, & Maggie Haberman, *Trump and Allies Forge Plans to Increase Presidential Power in 2025*, N.Y. TIMES (July 18, 2023), <https://www.nytimes.com/2023/07/17/us/politics/trump-plans-2025.html?smid=nytcore-ios-share&referringSource=articleShare>.

prosecution.²²¹ While president, he also sought to eradicate civil service protections for non-political federal employees and replace that system with “political loyalty tests.”²²² Elsewhere, political leaders from both parties have brought government power to bear on private companies that they deem out of compliance with that leader’s views or, in other words, their “enemies.”²²³ Florida Governor Ron DeSantis launched a legal battle against the Walt Disney Company after it publicly opposed a controversial bill regarding classroom discussion of sexual orientation and gender identity.²²⁴ California Governor Gavin Newsom canceled state contracts with the pharmacy retail chain Walgreens because of its reluctance to sell abortifacients after the reversal of *Roe v. Wade*.²²⁵ South Dakota Governor Kristi Noem canceled a state contract to connect transgender individuals with mental and physical health resources; Joan Adam, her respected secretary of health, retired immediately thereafter in a “coincidence” that strains plausibility.²²⁶

221. Toluse Olorunnipa, *Governing by grievance, Trump wields official powers against enemies*, WASH. POST (Aug. 15, 2019), https://www.washingtonpost.com/politics/governing-by-grievance-trump-wields-official-powers-against-political-enemies/2019/08/15/797c7576-bf78-11e9-b873-63ace636af08_story.html.

222. Jason Linkins, *The Republican Plot to Weaponize the Government Against Political Enemies*, THE NEW REPUBLIC (Sept. 22, 2022), <https://newrepublic.com/post/167842/schedule-f-civil-service-trump-republican-plot>. Former President Trump and his allies have made little secret of even more ambitious plans to seize unchecked executive power in a second term. Bess Levin, *Donald Trump Isn't Even Trying to Hide His Authoritarian Plans for a Second Term*, VANITY FAIR (July 17, 2023), <https://www.vanityfair.com/news/2023/07/donald-trump-isnt-even-trying-to-hide-his-authoritarian-plans-for-a-second-term>; Jonathan Swan, *Trump's Revenge*, AXIOS (July 23, 2022), <https://www.axios.com/2022/07/23/donald-trump-news-schedule-f-executive-order>.

223. Labeling outside groups as “enemies” or similarly is a dangerously authoritarian move. SNYDER, *supra* note 115, at 99–102; MADELEINE ALBRIGHT, *FASCISM: A WARNING*, 9 (2018).

224. Jesus Jimenez and Giulia Heyward, *What We Know About the DeSantis-Disney Rift*, N.Y. TIMES (Feb. 27, 2023), <https://www.nytimes.com/article/disney-florida-desantis.html>; Brooks Barnes, *DeSantis Declares Victory as Disney is Stripped of Some 56-Year-Old Perks*, N.Y. TIMES (Feb. 10, 2023), <https://www.nytimes.com/2023/02/10/business/disney-world-florida-tax-board.html>.

225. Katie Robertson, *Walgreens Loses Contract with California Over Stance on Abortion Pill*, N.Y. TIMES (Mar. 8, 2023), <https://www.nytimes.com/2023/03/08/business/walgreens-california-abortion.html>; Christopher Rowland, *Walgreens drew a line on abortion pill access and is paying a price*, WASH. POST (Mar. 8, 2023), <https://www.washingtonpost.com/business/2023/03/08/abortion-pills-walgreens-boycott/>.

226. Morgan Matzen, *Gov. Kristi Noem appoints new DOH secretary after Joan Adam's retirement*, THE ARGUS LEADER (Dec. 22, 2022), <https://www.argusleader.com/story/news/2022/12/22/melissa-magstadt-appointed-as-new-south-dakota-health-secretary/69752364007/>; Jazzmine Jackson, *South Dakota Department of Health Secretary announces retirement after 9 months in role*, KELOLAND.COM (Dec. 20, 2022), <https://www.keloland.com/keloland-com-original/south-dakota-department-of-health-secretary-announces-retirement-after-9-months-in-role/>. Governor Noem’s press staff publicly stated that the contract was terminated based on failure to provide required reporting, but significant political pressure was contemporaneously afoot by the legislative Freedom Caucus because of their opposition to

While serving as Governor of New Jersey, Chris Christie infamously closed a vital bridge connecting New York and New Jersey during peak traffic in retribution against local officials who had not supported him for election.²²⁷ Modern political figures have grown increasingly comfortable sacrificing citizen liberties to bolster their political vanities.²²⁸

Attempts to attack democratic participation to support the pathway to tyranny have also begun to become prevalent. Partisan efforts to advantageously structure electoral processes have become the tool of choice for tyrannical preservation of power at the potential cost of valid democratic participation.²²⁹ Partisanship has driven proto-tyrannical efforts to disempower officials at other levels of government who advance policies contrary to the preferences of a majority faction.²³⁰

Perhaps the most profound example of the modern impulse to tyranny came in the form of outgoing President Donald Trump's violent refusal to accept the results of the 2020 election.²³¹ Like many elections before it, the

transgender advocacy and Governor Noem herself noted opposition to the organization's values and actions. Dominik Dausch, *Transformation Project sues South Dakota over canceled health worker contract*, THE ARGUS LEADER (Feb. 10, 2023), <https://www.argusleader.com/story/news/2023/02/09/transformation-project-files-lawsuit-against-noem-doh-secretary/69890380007/>; Makenzie Huber, *Transformation Project calls termination of state contract 'unwarranted'*, S.D. SEARCHLIGHT, <https://southdakotasearchlight.com/2022/12/20/transformation-project-contests-termination-of-state-contract-as-unwarranted/>.

227. See Aaliyah Fruman, *Bridgegate: Two Former Aides to Chris Christie Convicted in Lane-Closure Scandal*, NBC NEWS (Nov. 4, 2016), <https://www.nbcnews.com/news/us-news/bridgegate-two-former-aides-chris-christie-convicted-lane-closure-scandal-n678016> (reporting that former Governor "Christie reiterated that he didn't know about the plot, even as several witnesses said during the trial that he was aware of the plan before, during and after"); Nina Burleigh, *'Bridgegate' Case: Why Was Chris Christie Not Charged?*, NEWSWEEK (Sept. 20, 2016), <https://www.newsweek.com/bridgegate-question-why-chris-christie-not-charged-500650> (discussing how former Governor Christie likely had general knowledge of "Bridgegate," but because he did not know all the details, it was not enough to hold him criminally responsible).

228. See David French, *Don't Let the Culture War Degrade the Constitution*, N.Y. TIMES (Mar. 12, 2023), <https://www.nytimes.com/2023/03/12/opinion/newsom-desantis-walgreens-constitution.html> (discussing the tendency of politicians of both major parties to compromise civil liberties to advance political goals). Three of these politicians were major party candidates for president in 2024; one perhaps aspired to be. Steven Shepard, *The 2024 GOP field: how they win, how they lose*, POLITICO (June 27, 2023, 4:30 AM), <https://www.politico.com/news/2023/06/27/how-the-2024-gop-field-got-so-big-00103711>.

229. See Corasanti, *supra* note 67 (describing efforts by Montana Legislature's majority party to rig election processes to advantage their candidate for United States Senate).

230. Edsall, *supra* note 68; Saul Elbein, *GOP legislatures battle for power with Democratic cities: Three flashpoints*, THE HILL (APR. 7, 2023, 6:00 AM), <https://thehill.com/homenews/state-watch/3937969-3-flashpoints-in-the-power-struggle-between-gop-led-state-legislatures-and-democratic-cities/>.

231. E.g., Mara Liasson, *Why President Trump Refuses to Concede and What it Might Mean for the Country*, NPR (Nov. 18, 2020), <https://www.npr.org/2020/11/18/936342902/why-president-trump-refuses-to-concede-and-what-it-might-mean-for-the-country> (asserting that "Joe Biden

2020 election was vigorously contested.²³² Its results were unambiguous and were not meaningfully contested, however.²³³ Nonetheless, President Trump decided, in advance, that he would not accept a loss.²³⁴ He and some of his political allies engaged in increasingly far-fetched efforts to set those results aside.²³⁵ Those steps began with simply asserting that he had won and announcing that the election was rigged despite providing no evidence to support that claim.²³⁶ Trump and his allies progressed through a spate of legal challenges that were consistently rejected.²³⁷ Their tyrannical efforts

won the election, but President Trump continues to claim he won and challenge the results in court”).

232. See Robert Speel, *A History of Contested Presidential Elections, from Samuel Tilden to Al Gore*, THE CONVERSATION (Nov. 3, 2020), <https://theconversation.com/a-history-of-contested-presidential-elections-from-samuel-tilden-to-al-gore-149414>.

233. See FED. ELECTION COMMITTEE, OFFICIAL 2020 PRESIDENTIAL GENERAL ELECTION RESULTS 1 (Jan. 28, 2021), <https://www.fec.gov/resources/cms-content/documents/2020presgere-sults.pdf> (listing the 2020 Presidential election results—Biden: 306 electoral votes; Trump: 232 electoral votes).

234. See Kevin Liptak, *A List of the Times Trump has said he Won't Accept the Election Results or Leave Office if he Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

235. See *Trump Allies Take Frantic Steps to Overturn Biden Victory*, AP NEWS (Nov. 18, 2020), <https://apnews.com/article/trump-allies-try-overturn-biden-victory-29da6aac9cc41e47f3095855e7af7031> (describing how Trump, “[a]mong other last-ditch tactics[,] personally call[ed] local election officials who are trying to rescind their certification votes in Michigan, suggest[ed] in a legal challenge that Pennsylvania set aside the popular vote there[,] and pressur[ed] county officials in Arizona to delay certifying vote tallies”); see also Kyle Cheney & Nicholas Wu, *GOP Lawmakers Were Deeply Involved in Trump Plans to Overturn Election*, NEW EVIDENCE SUGGESTS, POLITICO (Apr. 23, 2022), <https://www.politico.com/news/2022/04/22/gop-lawmakers-deeply-involved-in-trump-plans-to-overturn-election-new-evidence-suggests-00027340> (“The new evidence underscores the expansive cast of elected Republicans who had ultimately enlisted themselves in Trump’s last-ditch effort to cling to power.”). Even some of the closest allies to then-president Trump saw the illegitimacy of these claims, treating them as laughable behind closed doors. Josh Dawsey, Carol D. Leonning, and Jacqueline Alemany, *Before Jan. 6, Mark Meadows joked about Trump’s election claims*, WASH. POST (July 22, 2023, 6:00 AM), <https://www.washingtonpost.com/national-security/2023/07/22/mark-meadows-georgia-election-results-2020-fraud-claims/>.

236. Henry Austin et al., *Trump Seems to Suggest Bid ‘Won’ but Later Says he’s not Conceding*, NBC NEWS (Nov. 16, 2020), <https://www.nbcnews.com/politics/politics-news/trump-suggests-biden-won-falsely-claims-election-rigged-n1247856> (“[Biden] won because the Election was Rigged,” Trump wrote before falsely claiming that no watchers or observers had been allowed.” Further, “[t]op government and industry officials have said that the 2020 election was ‘the most secure in American history’ and that there was ‘no evidence that any voting system deleted or lost votes, changed votes or was in any way compromised.’”).

237. See Louis Jacobson & Amy Sherman, *Donald Trump has Lost Dozens of Election Lawsuits. Here’s Why*, POLITIFACT (Dec. 10, 2020), <https://www.politifact.com/article/2020/dec/10/donald-trump-has-lost-dozens-election-lawsuits-her/> (stating that “judges across the nation have repeatedly rejected lawsuits filed on his behalf in an unsuccessful effort to overturn Joe Biden’s victory in the presidential race. At latest count, at least several dozen cases have been rejected in court or withdrawn.”); see also Alana Wise, *Judge Sanctions Trump Allies and Orders*

culminated in the attempted use of government mechanisms to reject the results and, with that effort failing, resort to a violent attack on the seat of government.²³⁸

False claims, sham elections, and putsches are not foreign pictures to the modern eye.²³⁹ They would have been entirely so in the early years of the United States, however. They would have been abhorrent to the Founders who warned vigorously against tyranny. Yet, an obvious effort to reject democracy and assert tyranny has taken place before the modern American eye, with many of those eyes not even blinking.²⁴⁰ It isn't hard to contemplate what the Founders would have made of a public figure so inimical to their expectations and a public so heedless of one of their central warnings. Acceptance of conduct that the Founders would have abhorred is suddenly and shockingly widespread in American politics. This failure to heed the Founders' warning places the future of American democracy at grave risk.

Legal Education for Failed Election Lawsuit, NPR (Aug. 26, 2021), <https://www.npr.org/2021/08/25/1031127113/judge-sanctions-trump-allies-and-orders-legal-education-for-failed-election-laws> (quoting U.S. district court judge Linda Parker: "This lawsuit represents a historic and profound abuse of the judicial process ... it is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election, [i]t is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated. This is what happened here.").

238. See, e.g., Alison Durkee, *Here Are All of The Legal Issues Trump Faces for Trying to Overthrow The Election*, FORBES (Apr. 14, 2022), <https://www.forbes.com/sites/alison-durkee/2022/03/03/here-are-all-of-the-legal-issues-trump-faces-for-trying-to-overthrow-the-election/?sh=4f96f7ad2b84> (confirming that a "federal district judge ruled in February [2022] that three lawsuits blaming Trump for the January 6 attack can move forward, finding Trump's behavior leading up to the riot could constitute 'plausible conspiracy'").

239. See Shane Croucher, *Russia: Five Reasons Why Putin's Election Is a Sham*, NEWSWEEK (Mar. 19, 2018), <https://www.newsweek.com/russia-5-reasons-why-putins-election-sham-850996> (explaining why Russia's 2018 "election" was a sham); Nathan A. Thompson, *Cambodia's Election Condemned as a 'Sham'*, CNN (July 29, 2018), <https://www.cnn.com/2018/07/27/asia/cambodia-election-intl/index.html> (noting how Cambodia's 2018 election was a "sham"); Joshua Goodman, *Ex-Green Beret led failed attempt to oust Venezuela's Maduro*, AP NEWS (May 1, 2020), <https://apnews.com/article/miami-us-news-ap-top-news-venezuela-south-america-79346b4e428676424c0e5669c80fc310> (describing the 2020 failed coup attempt in Venezuela); Daniel Sandford, *Moscow Coup 1991: With Boris Yeltsin on the Tank*, BBC NEWS (Aug. 20, 2011), <https://www.bbc.com/news/world-europe-14589691> (recounting Boris Yeltsin's 1991 failed coup attempt in Russia).

240. David Siders, *The State Where the GOP Would Rather Lose Than Change*, POLITICO (Feb. 3, 2023), <https://www.politico.com/news/magazine/2023/02/03/arizona-republican-party-election-denialism-lae-00080615> (describing how the 2022 midterm elections are proof of how American citizens are growing tired of the "stolen elections" and "the whole system's corrupt" rhetoric promulgated by, for example, Donald Trump and Kari Lake); Scott Bauer, *Trump Campaign Staff on 2020 Election Lies: 'Fan the Flame'*, AP NEWS (Feb. 3, 2023), <https://apnews.com/article/biden-politics-2022-midterm-elections-donald-trump-madison-166e3f52e42cc45cff8f28b75dd23cfc> ("even as [the Trump campaign] acknowledged defeat, they pivoted to allegations of widespread fraud that were ultimately debunked — repeatedly — by elections officials and the courts.").

II. IMPLICATIONS OF THE WARNINGS OF THE FOUNDERS FOR CURRENT POLITICS

The Founders had clear concerns about political archetypes that posed a danger to the nascent republic. They issued explicit warnings against them and incorporated intentional checks and balances to these pathologic impulses through the structure of the Constitution. Nonetheless, they are present in modern politics in common and increasingly dangerous ways. It is beyond the scope of this article to fully explore how to respond to them.²⁴¹ However, certain implications are readily apparent and can be briefly considered here.

First, the dangerous political archetypes that the Founders warned of are more connected than divided. In many instances, these types overlap and feed each other. The development of one often connects with and fuels the development of another.

For example, a politician of low ambition will readily embrace demagoguery. Factionalism and demagoguery are likewise readily connected and reinforcing. The Founders saw clearly and warned explicitly that demagoguery readily translated to tyranny.

Politicians inclined to tyranny frequently harness the tools of faction and demagoguery to their advantage. Creating division between “us” and “them” is central to the partisan playbook. It can then provide the foundation for tyranny as the politician engages in demagogic demonization of their “enemies” to create public support and provide a foundation to suppress those who disagree with them.

The four archetypes that the Founders warned of are so interconnected that they present a discernable pattern. In other words, there is a predictable way in which they develop and political conduct declines.

The pernicious personal ambition that the Founders counseled against provides an unfortunate foundation; it drives politicians to engage the other pathologies to advance themselves over their nation. Faction then provides support as ambitious politicians exploit deep social and political factions to present themselves as the champion of one faction and the committed opponent of others. Factions allow the low and local politicians the Founders so feared to develop followings and profiles that provided a means to ascend to higher office, rising not because of their virtue but the vitriol of their supporters. This popular support is perpetuated by heavy reliance on demagoguery. The rhetoric of us versus them, shadowy threat, and martial political action all provide fuel to the machinery of faction. Driving the rise of ambitious politicians as it does, they cannot fail to keep the machine fully fueled.

241. Means for citizens to remove the toxin from modern politics are discussed elsewhere. Fulton, *supra* note 16, at 192.

The negative cycle culminates with politicians who succumb to tyrannical impulses. Politicians of low ambition place their personal benefit over the common good and do what is necessary to keep power. The factional politician will readily suppress the views and freedoms of other factions. The demagogue will avoid commitment to truth and decorum in political discourse in favor of whatever rhetoric advances their goals. All these become the tools of the tyrant.

This cycle demonstrates the first unavoidable implication of the Founders' warnings: interconnection. These archetypes must be considered as an interconnected whole, not merely four dangerous individual forms. Their connection makes each more dangerous, easier to engage, and more difficult to resist. The implication of their connection must not be missed.

Second, the presence of these archetypes implies the need to truly take seriously loyalty to the vision of the Founders. For a nation obsessed with them, ignoring the Founders' warnings about these political archetypes could not be less faithful to the values and vision of the Founders. The Founders expressed a definite vision of political structure and political actors. They believed that proper structures could produce virtuous actors and that virtuous actors could sustain proper structures. They argued in favor of the Constitution based on its ability to create and sustain this virtuous political cycle. Tolerance, even embrace, of the very political archetypes that the Founders warned would undermine that virtuous cycle is a rejection of their vision. It is a deeply ironic stance for a nation whose politics remains deeply infused with professed allegiance to the Founders.

A clear implication of the Founders' warnings is that true faith in their vision requires awareness of and rejection of those archetypes. Making the vision of the Founders central to modern politics requires being alert and resistant to those forms of political actors inconsistent with that vision. The Founders astutely diagnosed forms of political pathology that have been common across the ages. While they sought to build a constitutional structure to check them, the Founders also sought to educate citizens about their existence and engage the citizenry in resisting their rise. Being loyal to the vision of the Founders means more than simply making passing references to them or vague appeals to "freedom." Instead, it means carefully and consistently holding to their vision of harnessing these negative impulses against themselves and refining the structure of government to hold that line. A lazy loyalty of empty rhetoric is no loyalty at all. Loyalty to the Founders must be active and evolving.

Third, the Founders issued warnings that reflected timeless truths but were attuned to their time. An additional implication is that political leadership and structure must be attuned to the times.

The modern world is not that of the Founders. Political processes and structures have dramatically changed. Amendments to the Constitution and

the proliferation of media have made the electoral process more democratic and less republican than the Founders envisioned. Faction has been accelerated by societal trends, social media, and the unavoidable psychological impulses of humans. In short, both the world the Founders faced and the system they created have changed. Nonetheless, many call to make no updates to the system presented by the Founders, even despite many changes that have arguably undermined the checks and balances that they envisioned.

The means of creating political health and checking political pathology that the Founders envisioned may no longer be aligned with the moment. Despite this, the willingness to revisit the structure of the Constitution is limited and often focused on entrenching factional advantage. Loyalty to “untouchable” constitutional structures from another political time and place is hollow loyalty to the product of the Founders over their purpose. As the Preamble compellingly stated, the purpose of the Founders and their work was “to form a more perfect Union.”²⁴² The phrasing notably characterizes the work as perpetually incomplete and aspirational. It is a well-struck balance of practical reminders that a perfect Union is an impossible and aspirational exhortation to perpetually continue the work of improvement. Treating what politically was as what must be, as many politicians do, is to reject what the Founders actually created.

The Founders issued clear warnings about dangerous political types. Those warnings retain tremendous relevance and present significant implications for modern political activity. It is imperative to remain cognizant of the interconnection of the dangerous archetypes as they are more dangerous collectively than individually. Constant vigilance against the archetypes the Founders warned of is necessary to maintain true faith in the Founders. Modification of the system created by the Founders may be necessary when current politicians and circumstances begin to circumvent the limits they sought to impose.

A clear implication is that the work of the Founders is not complete. Their warnings retain currency. Citizens must remain on guard lest the dangers the Founders counseled of become commonplace and take the steps necessary to resist them. The fundamental implication of the warnings of the Founders is that the dangers they warned of are never truly passed.

CONCLUSION

The thoughts of the Founders remain vital in American political discourse, arguably more than any other intellectual tradition.²⁴³ Jurists and scholars regularly continue to look for guidance from the Founders on the

242. U.S. CONST. Pmbi.

243. See sources cited *supra* notes 1–3.

meaning of the Constitution. Politicians continue to claim the purported preferences of the Founders in support of their policy positions. For many, the acronym “WWFD” (What Would the Founders Do) remains the seminal question. Despite the collective focus on the Founders’ thinking, their advice on the personal attributes of political leaders has drawn less attention than it deserves. The Founders thought carefully and cared deeply about the virtues and vices of citizens at large and especially of political leaders. As a result, they issued clear and consistent warnings about dangerous political archetypes. As this article has demonstrated, those warnings too often go unheeded in current political discourse. To close, what can we take away from the warnings of the Founders and their impact (or lack thereof) today?

First, in the wise words of the Talking Heads, “same as it ever was.”²⁴⁴ The pathologies of political leadership that the Founders warned of were not unique to their time, nor are their current manifestations somehow new to the current world. They are pathologies largely innate to human nature. They are temptations inherent to the seeking and possession of power. Modern technology, changes to political processes and structures, and other developments may intensify these trends or change the terms of their manifestation, but they do not create them. The Founders may have warned of them, but they could not eliminate them; nor can the current generation. It is imperative to recognize these perennial threats to a healthy political process. The Founders saw this reality and included it in many of their warnings. It is important that modern political thinkers and citizens likewise recognize that these archetypes are eternally present dangers.

Second, the Founders focused on structure to constrain and control these native and base impulses. The modern impulse is often to personalize responses to political conduct. In other words, managing or removing individual people from the process, or whole groups in an exacerbation of the partisan impulse, is prioritized over building and maintaining structures to check these pathologies. Political population not political architecture is often the focus. The Founders counseled largely the opposite approach. They emphasized the need to build political structures to control these archetypes (a realistic if challenging endeavor) instead of policing the people possessed of them (a less effective one). A restored focus on preserving and improving political structures rather than merely placing messianic hope on individual political actors would be a wise observation of the Founders’ warnings.

244. A song that is particularly apropos to the discussion, as it can be read as a meditation and warning about mindless complacency. See Tom Taylor, *The Story Behind the Song: Talking Heads’ abstract pop classic ‘Once in a Lifetime’*, FAR OUT (Feb. 2, 2021, 4:00 PM), <https://faroutmagazine.co.uk/talking-heads-david-byrne-once-in-a-lifetime-story-behind/> (describing the musical style and lyrical meaning of the song).

Lastly, all citizens must accept that the warnings of the Founders were issued to them. The Founders believed in the influence of elite and virtuous leaders. Their influence has changed significantly since the era of the Founders, however. Political participation, media access, and social engagement have all been significantly democratized since that time. While the power of elites possessed of money and power remains unquestionable, the ability of rank-and-file citizens to shape their world has significantly increased. All citizens should accept their ability to recognize and heed the warning of the Founders as a result. Each can make a difference with their political action. All citizens should recognize that the Founders' warnings were guides to living a virtuous life. If each individual heeds those warnings to structure their political soul and live their public life accordingly, current American political life can positively transform.

The warnings of the Founders are clear. To effect positive political transformation, all citizens must accept that we have only to collectively heed them.