



# Office Obligation as Civil Virtue: The Crisis of American Democracy, November 3, 2020–January 6, 2021, and After

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## Abstract

This essay develops a new theoretical and empirical understanding of the contemporary crisis of American democracy. Between November 3, 2020, and January 7, 2021, President Donald Trump battled to overturn the results of the American presidential election, launching myriad lawsuits and pressuring hundreds of electoral officials. Confronting this antidemocratic assault was a resilient civil sphere that sustained “office,” an institution that, in a democratic society, inspires faith in the Constitution and loyalty to “we the people.” After investigating how this civil institution empowered electoral and legal officials to fight off Trumpian pressures, I focus on Georgia Secretary of State Brad Raffensperger and US Vice President Mike Pence, examining how they emerged as widely admired icons of civil courage. After Trump’s defeat, the televised hearings of the January 6th Commission created a “civic ritual” in the midst of which Wyoming Congresswoman Liz Cheney became another icon, symbolizing the renewal of a “civil conservatism.” A new, if still precarious, vital center emerged, allowing Democratic prosecutors finally to launch criminal proceedings against Trump. Yet, the Republican Party remains unreconstructed and, for this reason, the future of American democracy is still in doubt.

**Keywords** Democracy · Donald Trump · Presidential election · Civil sphere · Office · January 6 riots

On January 6, 2021, thousands of embittered and enraged supporters of President Donald Trump, many of them armed, marched to the US Capitol, breaching the police perimeter and storming the iconic building. The intruders had been convinced that the 2020 Presidential election was fraudulent, and they now aimed at preventing its final certification. In the hours-long mayhem that ensued, Congressional offices were looted and occupied, police officers violently assaulted and elected officials chased into hiding, and desperate efforts were made to hunt down, kidnap, and possibly murder leading officials.

The display of unbridled aggression and violence unfolded in vivid color and sound across tens of millions of television and computer screens. It shocked the collective consciousness of the civil sphere. Nothing remotely like it had happened before. In 1814, the Capitol had been sacked and burned, but by British soldiers, not American citizens.

The assault on the Capitol has been construed as a nadir for American democracy. This interpretation, while rhetorically compelling, is, in social-theoretical terms, deeply misleading. The usurpers desecrated venerated material things, but they did not destroy the civil ideals that these iconic structures symbolized. Indeed, it was the very resilience of these ideals, and the institutions they sustained, that had *triggered* the violent spasms. That, at least, is the claim I will make in what follows. By January 6th, Trump’s months-long campaign to overturn the Presidential elections had failed. The demagogue at the helm of the American government knew he was being compelled to relinquish control of the ship of state.

Even if the mob had succeeded in demolishing the Capitol building, even if it had been able to kidnap and murder, not only high Congressional officials but the Vice President, America’s civil institutions would have endured. Because they already had. From the election on November 3rd to the assault on January 6th, they had withstood a test of fire. During these 61 days, the institutions of an energized civil sphere had mobilized to fend off the grasping lunge of an antidemocratic demagogue, allowing a political figure more closely aligned with the civil sphere to take his place.

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# The Theory: Elections, Office, and Civil Sphere

## Solidarity and Polarization

The civil sphere is an imagined solidarity that intertwines individual autonomy with feelings for others. Extending beyond primary groups and primordial attachments of kin and creed, race and class, ethnicity and gender, this solidarity connects us with others whom we will never meet but can only symbolize—as worthy and honorable fellow citizens, as folks who are not essentially different from ourselves. The civil sphere is a world of ideals and institutions. Its discourse defines the nature of civil and uncivil motives and relationships, and its institutions, both communicative and regulative, crystallize these collective meanings in the practices of everyday social life, connecting the metalanguage of signifiers to the signifieds of social actors and groups, sacralizing and polluting them amidst the shifting everyday worlds of space and time.<sup>1</sup>

In real rather than ideal civil spheres, the fullness of civil solidarity is experienced, and visible, only intermittently, in liminal moments of civil repair (Alexander 2003 [1987]), in outbursts of societalization (Alexander 2019), in the triumph of social movements for justice (Alexander 2017a), in ceremonial celebrations of democratic promise and achievement (Bellah 1970). In everyday social life, the experience of a civil sphere is often mundane, more Goffmanian “civil indifference” than Durkheimian collective effervescence (Horgan forthcoming). In regard to the controversial issues of the day, moreover, the reach and symbolic content of civil solidarity is frequently fragmented and polarized. The breadth of solidarity—what it looks like and feels like, what it means to be civil—is refracted via the self-understandings of subcultures and groups.

Who’s more central to the civil sphere and who’s less is always and everywhere a matter of urgent concern. Teasing out the civil and anti-civil implications of the tangible and intangible meanings of our collective social life is a thread that runs through communicative institutions—factual and fictional media, group associations, public opinion and its polling. These mediating symbolic institutions interpret the civil and anti-civil significance of everything from income disparities, race relations, gender, and generation gaps to sports, food, fashion, film, literature, historiography, and celebrity. Such fleeting signifying crystallizations are “materialized” by regulative institutions. Office, law, elections, and political parties are where the rubber meets the road; they back up civil and anti-civil significations with sanctions and rewards, and periodically put those deemed civil into control

of the state. Such moments of political decision-making focus a spotlight on the officials administering elections, on the leaders and staffs of political parties, on judges and courts.

Party-political efforts to win the right to represent the civil sphere in the state are highly partisan. Left and right enter into intense struggle, each side seeing itself as more civil than the other. In the midst of tense and highly polarized political campaigns, devoted partisans construct their opponents as less than fully civil and deserving, often as dishonorable, sometimes even as dangerously antidemocratic (Alexander 2010, Mast 2012).

## The Alchemy of Elections

Elections are a strangely double-facing civil institution.

Campaigns for votes play on fragmentation and intensify polarization. They become stages for extraordinary performances of the sacred civil virtues of one’s one party and the repressive and polluted qualities of the other’s. Each side in this civil morality play appeals to the same generalized discourse (Alexander 2010). On election day, the curtain falls, and the citizen-audience expresses their final judgment about the felicity of each side’s performance of civic ideals, and the outcome of the election becomes the law of the land.

This is where alchemy comes into play. Voting has the effect of transforming partisan division into a collective representation of the civil sphere as a “whole.” The “people have spoken”; the “will of the people” is now clear; the “nation has a new leadership.” On the literal level of realism, the divisively theatrical campaign has made it abundantly evident that the civil whole is only putative, that, far from a united people, there are ideological factions and fissures. The appearance of division is intensified by the closeness of most general elections; reversion to the mean narrows voting disparities, along with the logic of forced choice and, in parliamentary systems, the enlargement of contending coalitions.

On the figurative level of symbolization, things are different. In the wake of voting, the idealized civil whole “replaces” the reality of partisan division and social complexity. The disparate elements that formed a mixture seem, almost magically, to have now become a compound. This is how, in November, 2018, an unknown Republican named Brad Raffensperger interpreted the meaning of voting to his fellow Georgians, during his first campaign for Secretary of State.

It is through voting that we actually live the proposition that we are all equal. Every registered voter gets one vote. Bill Gates gets one vote. The nineteen-year-old college student gets one vote. And thus we reaffirm, as regularly and as often as every election season, the idea that makes us one. We are all equal before the law. We all count. We all have a voice. (Raffensperger 2021: p. 48)

<sup>1</sup> For representative theorizing about the civil sphere, see Alexander (2006), Kivisto and Sciortino (2015, 2021, 2023), Alexander et al. (2020), and Alexander et al. (2021).

Voting is more than a numerical measure of who wins the competition. It is a civil rite. Traditionally, the ritual opens at the crack of dawn on voting day and closes with the announcement of the winners and losers, followed by gracious speeches of wrenching concession and heartfelt, if often hubristic, declarations of victory. These intense performances of triumph, defeat, and deference to expansive solidarity are projected via the communicative institutions of the civil sphere.

## Frontlash and Backlash

Intertwining agonistic competition for power with performative displays of generalized solidarity is tricky. The fierceness of the fight and the weight and significance of what is at stake—materially, ideationally, emotionally—make it agonizingly difficult to play by the rules, to be gracious, to acknowledge, even grudgingly, the other team's right to live to fight another day. In organized sporting contests, rules are continually violated, and fights sometimes break out among players and fans. Why would electoral contests for political power be so different?

At the level of the individual, Piaget (1954) highlighted how game playing requires generalized levels of cognitive and moral development. One must be able to express antagonism, but, at the same time, acknowledge binding regulations, violation of which is determined not by the players but by third parties. At the level of society, however, much more than developmental capability is involved. In party competition, the sense of sharing in a broader civil solidarity is precarious. It waxes and wanes in response to the intensity of social pressures for change. Civil repairs generated by leftwing movements are deeply unsettling. They trigger backlashes out of which radical right-wing movements are born, in response to which new frontlash movements emerge in turn (Alexander 2018).

The paradox of the binary discourse of civil society is that, even as it sustains a universalizing civil solidarity, it encourages its opposite, one that is more narrow and severe. Each side frames its own ideology as a variation of the sacred virtues of civility, as rational, truthful, and honest, and the other side's ideology as primordial and particularistic. Frontlash and backlash both express themselves in the binary metalanguage of the civil, as respectful, transparent, cooperative, trustworthy, and inclusive—as the very embodiment of democracy. Each side pollutes the other's ideology as irrational, unfair, enslaving, immoral, dishonest, aggressive, and exclusive—dark anti-virtues that endanger democracy's very existence. Feminism/patriarchy; gay/straight; multicultural/monocultural; immigrant/native; indigenous/settler; environmental/industrial; socialism/capitalism—these are not only denotations pointing to substantive ideologies

but connotations; they are *signifieds*, referents for continuously shifting symbolic *signifiers* of what is civil and what is not.

Movements of (leftist) frontlash and (rightist) backlash often seem outrageous and deeply offensive to centrist core groups, as well as to those on the other side. Radical rhetoric swinging from one side to the other is intrinsic to the dynamics of “actually existing” civil spheres. Yet, there are always moments of danger, when fears arise that the pendulum will not be allowed to swing back again to the other side. Radical ideology can become essentialized. If left or right is seen as ineradicably democratic or antidemocratic, the side in power is tempted to undermine the independence of civil institutions. When radical populists become convinced that it is only they who represent “the people,” then defeat seems incomprehensible and immoral. They feel compelled, not only to play the game, but to make certain that they win it, now and forever. Staying permanently in power can be achieved, however, only if the independence of communicative and regulative institutions is suppressed<sup>2</sup>.

<sup>2</sup> In an article headlined “The 2024 Election Is a Fight Over America's Way of Life,” the *Wall Street Journal* reported precisely this kind of electoral polarization: “The animating force in the Republican presidential primary, many voters and policy leaders say, is a feeling that American society—the government, the media, Hollywood, academia and big business—has been corrupted by liberal ideas about race, gender, and other social matters. Democrats, in turn, feel that conservatives have used their political power in red states and in building a Supreme Court majority to undermine abortion rights and threaten decades of work to broaden equal rights for minority groups. That has turned the next race for the White House into an existential election, with voters on both sides fearing not just a loss of political influence but also the destruction of their way of life. ‘My biggest fear is about advancing that far-right agenda,’ said Laurie Spezzano, 68, a Democrat and insurance agent in Louisville, KY, who believes one of her own senators, Republican Mitch McConnell, subverted the legitimacy of the Supreme Court by using his leadership post to block a Democratic nominee to the court and to advance GOP nominees. ‘Abortion rights have been diminished,’ she said, ‘and gay rights in employment and marriage are at risk.’ Joan Jones calls herself an extreme conservative and is frustrated by what she sees as liberal values adopted by schools. Laurie Spezzano is a Democrat who believes Mitch McConnell subverted the legitimacy of the Supreme Court. ‘I’ve never been against all Republicans, but it’s gotten to where they’re really scary now,’ she said. Republican Julie Duggan, by contrast, sees conservative values and traditional gender roles under attack amid social change that is moving too quickly. ‘It’s like half the country has lost their minds. People don’t even know what gender they are,’ said Duggan, 31, a public safety worker in Chicago. If Republicans lose again, ‘it’s going to be the downfall of our society.’ The Heritage Foundation, the conservative policy institute, has brought together 60 right-of-center organizations to compile a 900-page document of policy specifics to guide the next Republican president. But the group’s president, Kevin Roberts, says those specifics take a back seat to a broader goal. The next election, he says, ‘may be our last, best chance to rescue the nation from the woke, Socialist left’” (Zitner and Levien 2023).

## Populist Demagogues in Power

When radical populists win elections, they gain access to powerful means of symbolic expression and to levers that control state monopolies over violence. Not only do they have the largest megaphone, but they also exercise material power. They appoint judges and election officials and, in principle, control the army and national police. They have come to power, moreover, as leaders of a triumphant political party whose ideology portrays the defeated as unworthy of civil recognition. Parties demand compliance, loyalty, and deference. Democracies demand autonomy, criticism, and deliberation. The two do not easily combine<sup>3</sup>.

To the degree that there is democracy, the temptations of those who exercise populist power—both ideological and instrumental—must contend with a civil sphere that is relatively independent of the state. The populist demagogue is continuously confronted with the cultural power of utopian ideals that demand ever more civil solidarity. The demagogic president faces angry and demonstrative civil associations, damaging public opinion polling, and critical journalism that constructs an oppositional social reality. They must also contend with the material and ideal authority of independent legal institutions and with the imminent, ineluctable reality of elections. At the heart of both is the institution of office.

## Office as Civil Institution

To the degree the civil sphere has autonomy, office transforms state power into civil authority (Alexander 2006: pp. 132–150). It demands that those who wield power act, not personally, but on behalf of others, even when they are inside the putative iron cage of organization, whether corporate, religious, or state. In a democratic society, this means that officials are expected to wield power, not only vertically, on behalf of the executive, but also on behalf of the civil sphere. Office allows the normative expectations of the civil sphere to reach into and regulate the state. It is revealing that, upon taking up their positions, public officials in democratic societies are required to publicly perform heartfelt oaths to legal norms and the civil sphere that sustains them; such oaths are not only legally binding, but symbolically sacred. There is a religious quality to the ritual of oath-taking; whether secular or laced with divine metaphysics, these rites always speak of

faith. Here, for example, is the oath taken by every member of the US Congress.

I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter; so help me God.

Scandals break out, not because power holders have failed to competently perform their bureaucratic tasks, but because they are accused of having “violated their oath of office.” In doing so, they have not only committed a legal crime but have become morally degraded, condemned as polluting a sacred order, always the secular-civic, sometimes also the divine<sup>4</sup>.

Office is central to the institution of elections. Voting is a complex bureaucratic and technical process, but it is also a process that depends on faithful obligations to the civil sphere. For voting outcomes to be considered legitimate, the process must be organized in an efficient but also “civil”

<sup>4</sup> In conceptualizing office not only as a neutral, technical position but as an institution that may impose moral obligations of a democratic kind, civil sphere theory challenges the principal thrust of Weber's approach to organization, which conceptualizes office in terms of the efficiency it contributes to the creation of modern bureaucracy and rationalized power. In terms of his historical and comparative interests, Weber was certainly right to insist that office neutrality was critical for breaking through the debilitating structure of patrimonialism-prebendalism, which prevented central power—China being the type case—from becoming fully independent vis-à-vis local interests (Weber 1968). Focusing simply on the historical achievement of neutrality, however, neglects the equally significant development, in Western societies, of the democratic dimension of office. For Weber, office is a modern (Western) invention that allows steely vertical control. For civil sphere theory, office is also a democratic invention that allows horizontal control, making an office holder responsive not only to state power but to the normative discourse of civil society. Because of Weber's preoccupation with modern systems of domination, as well as his conspicuous inattention to secular political thought and discourse, he gave short shrift to the historical development of democracy, ignoring not only the liberal democratic tradition that emerged in the nineteenth century but the 2500 year history of republican thought and practice. In Weber's shadow, social scientists have underemphasized the democratic possibilities of organization, making it difficult for even critical examinations of bureaucracy (e.g., Kucinskas and Zylan 2023) to get beyond Weber's emphasis on the deference of officials to executive power. It is possible, of course, to construct a more democratically oriented line in Weber's work, stretching from the critical capacities of Hebrew prophets (Weber 1967) to the Puritans' anti-authoritarian, transcendently rooted “calling” (Weber 1927) to the ethic of responsibility in “Politics as a Vocation” (Weber 1946). Unfortunately, this line of thinking remains merely a faintly visible thread in Weber's sociology, failing almost entirely to enter into the historical and comparative sociology of domination upon which his theory of bureaucracy was based.

<sup>3</sup> It is a mistake to equate populism with antidemocratic movements *tout court*. It should, instead, be conceptualized as a continuum, as a potentially democratizing movement that becomes dangerously anti-democratic only at the extremes. When populism moves “too far” to the right or left, its critical constructions of opponents as anti-civil become essentialized and its leadership becomes highly personal and “Caesarist” (Alexander 2021; cf., Welch 2023).

manner. When they are organized by technically competent and faithful office holders, elections function as circuit breakers vis-à-vis the dangerous short-circuiting of partisan division. When this circuit breaker works, civil power is translated into legitimate state power. This can happen only if the officials running voting stations and counting votes are neutral. Election officials perform technical and routine tasks, but they are more than workers and technicians. They are expected to put their ideological beliefs aside and act on behalf of every voting citizen. They must resist bribery and pressure, the offer of rewards, and the pressure of punishments.

High election officials take an “oath of office,” publicly performing their commitment to higher democratic ideals, promising to act on behalf of the civil sphere as such. Here is the oath taken by the aforementioned Republican politician Brad Raffensperger, after winning his campaign to become Secretary of State, Georgia’s highest election official.

I do solemnly swear that I will faithfully execute the office of Secretary of the State of Georgia and will, to the best of my ability, preserve, protect, and defend the Constitution thereof and the Constitution of the United States. (2021: p. 13)

The autonomy of electoral officials is rooted, not only in such generalized cultural commitments, but also in legal codes, which specify civil expectations in a manner that is undergirded by material, criminal sanctions. In Article II, Section 1, the US Constitution stipulates there should be a “vote by Ballot for two Persons” and that “the person having the greatest Number of Votes shall be the President.” The Electoral Count Act of 1877 specifies that, when the “certificates of the electoral votes” are “opened by the President of the Senate,” that official “shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons ... elected President and Vice President of the United States.”<sup>5</sup> State law clarifies how national elections are carried out at the local level. In 1937, for example, Pennsylvania enacted Section 1501 of its Election Code, stipulating how the state’s Presidential “electors” would be chosen<sup>6</sup>.

At the general election to be held in the year 1940, and every fourth year thereafter, there shall be elected by the qualified [individual] electors of the Common-

wealth, persons to be known as electors of President and Vice-President of the United States and referred to in this act as presidential electors, equal in number to the whole number of senators and representatives to which this State may be entitled in the Congress of the United States.

Election laws are only as good as the judges that rule on challenges leveled against them. To ensure “free and fair” elections, judges must see to it that relevant laws are followed by each side. Amidst the frantic push and pull of partisan campaigns, the integrity of elections often faces legal challenge. The legal order depends on the institution of office as well. Judges are not only state officials but citizens with partisan ideologies, gaining their position via appointment or election. Yet, justice is expected to be “blind.” Judges are administered an oath of office, and, when they take up their position, they are expected to put partisanship aside. 28 US Code 453 delineates “Oaths of justices and judges.”

Each justice or judge of the United states shall take the following oath or affirmation before performing the duties of office: “I, \_\_\_\_\_, do solemnly swear (or affirm) that I will administer justice without respect to person, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as \_\_\_\_\_ under the Constitution and laws of the United States. So help me God.”

## The Empirical Case: Defending the 2020 Presidential Election Against Threats to Overturn It

In the second part of this paper, I will explore how the institution of office anchored the resistance to Donald Trump’s determined efforts to overturn the 2020 Presidential Election in the USA, efforts that extended from November 3rd through January 6, 2021.

### Trump as Backlash

Donald Trump was schooled in the cut and thrust business of New York real estate. A rapacious capitalist fighting for profit and market domination, Trump was a streetfighter who deployed truth as a signifier while playing fast and loose with whatever he wished it to signify. He violated rules, reneged on debts, sued to settle out of court, and inveterately lied about his assets, making them larger and smaller as the deal demanded. “The only thing that matters is winning,” as he once put it to a trusted adviser (Remnick 2022: p. viii). Born wealthy, Trump was out for more than material profit. Unlike Fred Trump, the paternal progenitor who eschewed publicity,

<sup>5</sup> The U.S. Constitution stipulates that the office of President of the Senate will be performed by the sitting Vice President.

<sup>6</sup> Formally, individual citizens vote for a small group of “electors” to a body eponymously called the Electoral College, and it is the votes of the latter that are counted in the US Congress on January 6th in the year following the November vote, which occurs on the Tuesday after the first Monday of November every 4 years.

Trump-the-son sought public celebrity. He achieved local fame as a wealthy playboy in the tabloid politics of New York City, at the very moment when second wave feminism was making the phallic hero obsolete. Trump later moved to the national stage, starring in *The Apprentice*, a popular, long-running reality TV show. When he converted his celebrity into political power, Trump branded himself as crusading against the progressive movements of the age. Fred Trump had been a member of the Ku Klux Klan, the infamously racist white terrorist group. His son Donald followed in his path. Displaying the frothing resentments of white male ethnics in an increasingly multicultural world, he “emerg[ed] from the worlds of New York real estate and reality television by declaring that Barack Obama, the first Black President, had been born in Kenya, not Hawaii, and was, therefore, ineligible to hold office” (Remnick 2022: p. xix).

How this flamboyantly self-centered celebrity went directly from the world of private prurience to highest public office is a tragic-comic tale of ambition, contingency, and finely honed performative talent. The man who would become the most dangerously right-wing President in American history was never the choice of even a majority of Republican primary voters, themselves a small fraction of the US electorate. Trump’s Republican opponents together outpolled him, but blind ambition made each unwilling to step aside for their party’s greater good; dividing their collective share of the primary vote, they gave Trump the plurality each time. Trump stood out among his Republican contestants for his smoothly performed arrogance, his aggressive primordiality, and his studied lack of interest in the very idea of democracy. In the general election campaign, Trump was fortunate as well, facing a Democratic opponent, Hillary Clinton, who, while highly competent, suffered from a performance-deficit disorder. Playing the feminist role in an elitist manner, Clinton patronized the unenlightened masses as “a basket of deplorables,” losing to a nationalistic populist who championed the working man, whiteness, and evangelical Christianity.

## Confronting Civil Institutions and Losing the Center

Once elected, Trump bent himself to the task of ensuring that he would remain in power. He evoked a nasty, narrowly primordial version of the discourse of civil society and spoke *sotto voce* about repression and violence, leaving little to the imagination in his efforts to undermine the autonomy of civil sphere institutions.

Civil associations organized protests against Trump from day one, like the Women’s March on Washington, a 500,000 person protest that unfolded in the nation’s capitol the day after the President’s inauguration, on January 21, 2017. Trump ignored them. For 4 years, journalists from the key national newspapers—the *New York Times*, *Washington Post*, and *Wall Street Journal*—reported the President’s actions in

a manner that explicitly highlighted and implicitly criticized the provocative and combustible version of his civil discourse. Dismissing such journalism as “lame-stream” and (anti-civil) “fake news,” Trump championed the increasingly right-wing populist “network propaganda” of Fox News, Rupert Murdoch’s nationally powerful television channel (Benkler et al., 2018)<sup>7</sup>. Judges at state and national levels frequently blocked Trump’s most radical right-wing initiatives, such as preventing Muslims from legally entering the country. The President polluted the judges as out-of-touch and dangerously anti-civil.

Before and after becoming President, Trump fought a ferocious war against the neutrality of elections, trying to demolish the bridge between state and civil sphere. In 2012, when it looked like Republican Presidential candidate Mitt Romney had won the popular vote while still losing the Electoral College, Trump tweeted: “This election is a total sham ... We should march on Washington and stop this travesty ... Let’s fight like hell and stop this great and disgusting injustice! We are not a democracy!” (Raffensperger 2021: p. 65). When Trump polled behind Hillary Clinton in the weeks leading up to the 2016 election, he proclaimed to those assembled at an Ohio rally: “I’m afraid this election is going to be rigged, I’m going to be honest” (ibid., p. 66).

Over the course of his 4 years in office, Trump’s prospects for being legitimately re-elected narrowed. Centrist Americans supported abortion rights; were appalled when children of unauthorized immigrants were taken from parents and put into cages; were inspired by the #MeToo and BLM protests; and wished to be protected from COVID contamination. Trump talked the talk, engaging in threatening and often anti-civil populist rhetoric, but he could not walk the walk. He proved an inattentive, disorganized, and flailing administrative leader. The famous border wall was never built, and civil repairs were never rolled back. #MeToo unfolded on Trump’s watch, so did the second wave of BLM. Against the first of these, the misogynist President was impotently silent. Against the second, he was voluble and issued empty threats. Then, there were the President’s know-nothing performances and shirking incompetence during the pandemic.

## Preemptively Undermining the 2020 Election

These failures of felicity and effectiveness cost Trump support from right-center voters who, in 2016, had supported him over Hillary Clinton. To a significant slice of right-leaning Independents and moderate Republicans, the President appeared increasingly anti-civil, irrational, aggressive, dishonest, and impulsive, his actions seeming fake and performative rather

<sup>7</sup> Despite Murdoch’s ownership of the *Wall Street Journal*, its news pages—as compared to its editorials—broadly adhered to the norms of independent professional journalism, which constitutes a central communicative institution of the civil sphere.

than authentic and fused. Widely tracked in polling, the growing alienation of the civil center first registered electorally in the 2018 midterms, when Republicans lost control of the House of Representatives. In the 2016 Presidential election, Trump had won 1% more Independent voters than Biden; in the 2018 midterms, Biden won 15% more Independents than Trump (Balz 2021; cf. Igielnik et al. 2021).

Unable successfully to appeal to the moderate center, Trump's electoral defeat in 2020 was foretold. Which is why he feared most the Democratic candidacy of Joe Biden. A moderate Catholic and champion of middle-America, Biden was as pro-military and pro-business—"I'm a capitalist" (Philips 2021)—as pro-trade union. Because it was difficult to pollute Biden as a frontlash leader, as leftist and radical, Trump sought to prevent him from becoming the Democratic candidate. Secretly threatening to block military assistance to Ukraine, Trump pressured President Zelensky to dig up compromising dirt about the business dealings of Biden's son Hunter. The failed effort triggered Trump's first impeachment after Democrats took control of Congress.

By the time Biden had become the Democratic candidate for President in August 2020, Trump's secret campaign to sabotage the electoral machinery had taken shape. Because the pandemic had endangered made in-person voting, election officials across the USA had made voting-by-mail widely accessible. In April 2020, the President began publicly polluting this process as antidemocratic.

Mail ballots are a very dangerous thing for this country, because they're [Democrats] cheaters. They go and collect them. They're fraudulent in many cases ... You get thousands and thousands of people sitting in somebody's living room, signing ballots all over the place. (Bowden and Teague 2022: p. 2)

In May, Trump tweeted, "it will be the greatest rigged Election [sic] in history" (*The January 6th Report* 2021, hereafter *J6R*). By late October, just days before the election, Trump was claiming, to a rally in Pennsylvania, "the only way we can lose, in my opinion, is massive fraud" (Bowden and Teague 2022: p. 3).

To prevent themselves from being voted out of power, the Trump campaign team put into place a multipronged strategy to intervene in the election, beginning with the creation of a "Red Mirage" on election night (*J6R*: pp. 197–198)<sup>8</sup>. Because of Trump's inflammatory attacks on mail voting,

Republican voters had largely eschewed it, voting mostly in person. While such walk-in votes could be tallied immediately after polls closed, mail-in ballots took more time to count, often not fully tallied until well into the next day. The effect of this asymmetry was that, as election eve stretched into the early morning hours, what had at first seemed Trump's margin of victory rapidly narrowed. At 11:20 p.m. on November 3rd, the Fox News decision desk chief called Arizona for Biden, a stunning reversal from 2016; in the words of the January 6th Commission, "President Trump's apparently early lead in other key States --- States he needed to win -- [also] steadily shrank. Soon, he would not be in the lead at all -- he'd be losing" (*J6R*: p. 195). At 2:21 a.m. on the morning of November 4th, Trump called a press conference to denounce the 2020 election as "a fraud on the American public" (*ibid.*). Declaring, "we were getting ready to win this election," he emphatically asserted, "frankly, we did win this election. We did win this election" (*ibid.*). Yet, later that day, the President's loss was widely confirmed by official vote counts of election officials. Biden was victorious in the "battleground states" of Arizona, Georgia, Wisconsin, Michigan, and Pennsylvania. Trump had won all of them in 2016; Biden won them all in 2020.

In the 61 days that followed the Republican electoral loss, remnants of the Trump campaign, and experts newly brought onboard, worked both publicly and stealthily to prevent the vote's official certification by the Electoral College, an outdated and arcane process that would conclude with the Vice President's ceremonial opening of Electors' votes on January 6th. If Trump and his team had succeeded in blocking this process, they would have prevented the American civil sphere from controlling the American state.

### Attacking and Defending the Civil Integrity of Judges

Amidst the President's continuous rhetorical attacks on the integrity of the election—via tweets, media interviews, and in-person rallies—the Trump campaign launched 62 lawsuits alleging the fraudulent nature of the vote and the corruption of the election officials conducting it. To most observers across the political spectrum, it was undeniable that the elections had been fairly conducted and that election laws were not violated. The question was whether courts would see things in the same way. Would conservative judges apply settled law in an even-handed manner, or would they cave to Republic party pressure, giving way to ideology and political loyalty? What was at stake was precisely this: Could the integrity of office sustain the independence of the civil sphere's legal institutions?

Lawsuits were lodged in the battleground states, before judges at municipal, state and federal levels. Many of these judges were publicly identified as Republican, elected via

<sup>8</sup> The January 6th Commission, in addition to its highly significant public performative dimension (see below), was also a vast fact-finding investigation that brought to the surface heretofore unknown empirical knowledge about Trump's campaign to overturn the 2020 election. Among its findings was that the "Red Mirage" strategy was premeditated; indeed, bits and pieces of that strategy were publicly revealed in the days preceding the November 3rd election, by such Trumpian stalwart as Steven Bannon, Roger Stone, and Rudy Giuliani (*J6R*: p. 195ff).

partisan contest, appointed by Republican governors or presidents, or evaluated as Republican-leaning by independent organizations in the civil sphere. Many had been appointed to their positions by Trump himself—22 judges at the Federal Appellate level alone (*J6R*: p. 221).

It is remarkably revealing of the independence of the civil sphere's legal institutions that 61 of these 62 lawsuits failed<sup>9</sup>. Whatever their partisan appointment or ideological conviction, judges averred in public that to rule favorably on Trump's lawsuits would have been to abrogate their duties as legal officials. Ruling against these numerous court challenges, often even refusing them legal "standing,"<sup>10</sup> judges refused to undermine the office obligations of municipal and state officials who, they said, had conscientiously administered the Presidential election. Whatever their own ideologies and party commitments, judges presented themselves as stewards of a civil sphere whose Constitution they had sworn an oath to uphold. Evoking the discourse of civil society, judges declared they would faithfully adhere, not only to the letter, but also to the spirit of election laws.

In *Burke v Ducey*, Arizona's Republican-dominated Supreme Court evoked the binary rational versus irrational, explaining it was "constrained by reason and authority to uphold" the state's election results, suggesting the plaintiffs had unjustly decided to challenge voting procedures only after learning of their party's defeat. While "appellant" had claimed such issues of timing mere technicalities, the court ruled "these technicalities are the laws that govern election counts." In the same swing state, a democratically appointed Federal District judge ruled, in *Bower v Ducey*, that the court could not simply "set aside results of a general election." Highlighting the autonomy of electoral institutions, he defended independence vis-à-vis domination, arguing there was "no greater intrusion of sovereignty than when a federal court instructs state officials." Evoking the civil binary of truth versus lies, the judge warned, "allegations that find favor in the public sphere of gossip and innuendo cannot ... substitute for earnest pleadings ... in court."

<sup>9</sup> The one exception involved an incidental issue without material consequence.

<sup>10</sup> The "standing" requirement arises from Article III of the US Constitution, which provides that federal courts may exercise judicial power only in certain cases and controversies. If a court denies standing, it will not rule on the merits of the case before deciding to dismiss a lawsuit. Standing requires a plaintiff to show that (1) they have suffered an injury in fact that is "concrete and particularized" and "actual or imminent"; (2) the injury is "fairly ... trace[able] to the challenged action of the defendant"; and (3) it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision" (*Lujan v. Defs. of Wildlife*, 504 US 559 [1992] at pp. 560–562).

In Wisconsin, in *Trump v. Wisconsin Election Commissioners*, a Trump-appointed US District Court observed that the plaintiff "seeks to set aside the results of the ... popular vote" on the grounds that "the election was a failure" for his own party. Pointing to voting procedures put into place by the Wisconsin Election Commission, the Court emphasized the Commission's "bi-partisan"—solidaristic and civil—composition, along with its technical diligence, noting how the Commission had, in good faith, "published more than 175 messages to county and municipal election officials in anticipation of the November 2020 general election." If the plaintiff's case were ruled valid, it would vitiate the rules by which the civil sphere regulates the electoral game—"any disappointed loser in a Presidential election able to hire a team of clever lawyers [who] could [then] cast doubt on election results," a situation "contrary to the plain meaning of the Constitution and common sense."

In *Trump v. Biden*, Wisconsin's majority Republican Supreme Court, evoking the binary rational/irrational, ruled that the plaintiff's effort "to invalidate the ballots .... of more than 220,000 Wisconsin voters" had "no basis in reason or law" and was "meritless on its face"; that the "Trump Campaign's delay in raising these issues" until after the elections was "unreasonable in the extreme"; and that deciding on behalf of plaintiffs would result in "prejudice to the election officials" that was both "obvious and immense." At stake, the Court declared, were the principles upon which the civil sphere was based: "To strike the ballots would violate every notion of equity that undergirds our electoral system [and] would be unfair to nearly everyone involved in the election process, especially the voters."

In another Wisconsin case, *Feehan v Wisconsin*, this one presided over by an Obama-appointed judge, a District Court reminded the Republican plaintiffs that members of the civil sphere, not judges and lawyers, choose who may occupy the White House. "People have strong, deep feelings about the right to vote and the freedom and opportunity to vote and the value of their vote," the judge wrote, adding "they should," for "federal judges do not appoint the President in this country." To rule otherwise would be to violate the civic obligations of office: "Granting the relief the plaintiff requests would take the court far ... outside of its oath to uphold and defend [sic] the Constitution."

In Michigan, in *Trump v Whitmer*, an Obama-appointed District judge, ruling against the plaintiff, cited the "right to vote" as deeply rooted "amongst the most sacred rights of our democracy," a right "cherished throughout our country's history." Emphasizing the civil motives and character of voters, the judge declared that "if granted, the relief would disenfranchise the votes of 5.5 millions of citizens who, with dignity, hope, and a promise of a voice, participated in the 2020 General Election."

In Georgia, in *Wood v. Raffensperger*, a Republican-appointed Appellate judge archly reminded plaintiffs that "the Secretary of State is the chief election official" and that "the Constitution makes clear that Federal Courts [have]

limited jurisdiction.” In Pennsylvania, a Trump-appointed District judge highlighted the seriousness of the plaintiff’s “charges of unfairness.” Pointing to the civil significance of voting—“free, fair elections are the lifeblood of our democracy”—he reprimanded the President: “Voters, not lawyers, choose the President. Ballots, not briefs, decide elections.”

Some of these cases were appealed all the way up to the Republican-dominated US Supreme Court. According to the conservative business magazine *Forbes*, “Trump and the GOP had publicly pinned their long-shot legal strategy on the assumption that the 6-3 conservative court would side with them” (Durkee 2021). Trump had managed to appoint three new Justices, and the Court had demonstrated few partisan qualms about issuing precedent-disrupting, ideologically informed decisions about campaign financing, abortion, redistricting, and affirmative action. Yet, during the post-election crisis, these Justices denied every appeal, demonstrating, in *Forbes*’ words, “broad disregard” for Trump appeals (*ibid.*). True to their oaths of office, they upheld the autonomy of the civil sphere’s regulatory institutions.

Outside the domain of the courts, critical resistance to violating the moral obligations of legal officials was also manifest inside the Executive branch itself. When it became clear that Trump’s legal efforts to overturn the election had failed, John Eastman, a right-wing law professor newly added to the Trump team, laid out a different road to victory (*J6R*: p. 428, and pp. 427–434 *passim*). Eastman suggested that on January 6th, when the President of the Senate was called upon to tally Electoral votes, it would be legal for him to exercise this power in a substantive rather than merely formal and ceremonial way. Vice President Pence should simply announce that, because of voter fraud, he would not recognize the designated Electoral votes from the battleground states but, instead, recognize slates of alternative Electors<sup>11</sup>. At that point, Trump would either be declared the victor or the outcome would be decided by a vote of the House of Representatives, which would produce the same result<sup>12</sup>. The success of this strategy depended, in Eastman’s

words, on ensuring that such Vice Presidential action be “non-judicial,” i.e., not subject to legal review (*J6R*: p. 433). Pence would have to keep his intentions secret beforehand, Eastman warned, because the judiciary had demonstrated it could not be trusted. Conservative justices had made evident that they considered themselves to be constrained by civil office obligations, eschewing party loyalty and political ideology.

At a January 3rd White House meeting, the President announced to a group of leading Department of Justice officials that he was going to hand pick a new Acting Attorney General to carry out the Eastman plan (*J6R*: pp. 400–403). The officials declared their determined opposition to such an appointment, insisting that the Vice President should be neither encouraged nor allowed to vitiate his constitutional obligations. They threatened to resign and predicted that hundreds of other Department of Justice officials, including every Assistant Attorney General, would do the same. In the face of this threat, Trump backed down, although the extra-legal roadmap for victory remained on the table. Indeed, on January 4th, the President and Eastman met with Vice President Pence to pressure him directly (*J6R*: p. 428).

### Attacking and Defending the Civil Integrity of Election Officials

Amidst these challenges to the civil integrity of legal office, the President and his associates pressured, threatened, and implicitly bribed leading election officials in the battleground states—the secretaries of states, governors, state legislators, and commissioners responsible for organizing, counting, and reporting the vote (*J6R*: pp. 263–338). They phoned, texted, and zoomed with some 300 of these officials, inviting small groups to meet with the President in the White House. If these efforts mostly passed under the public radar screen—“much of it unseen by and unknown to the general public” (*J6R*: p. 264)—political insiders were well aware they were taking place. On November 19th, Senator Mitt Romney, the Republican party’s 2012 candidate for President, tweeted that, “having failed to make even a plausible case of widespread fraud or conspiracy before a court of law, the President has now resorted to overt pressure on state and local officials to subvert the will of the people and overturn the election” (*J6R*: p. 270). Calling out such Presidential efforts, the Utah Senator issued a harsh condemnation: “It is difficult to imagine a worse, more undemocratic action by a sitting American President” (*ibid.*).

While Romney’s criticism was a marked exception among national Republican figures, election officials in the battleground states broadly pushed back against efforts to undermine the independent authority of their office, evoking faith, oath, and constitution. In Pennsylvania, just 2 weeks before the election, on October 19th, Republican leaders of the state

<sup>11</sup> This plan was later to be rhetorically constructed, during the January 6th Commission, as the “fake elector scheme,” an integral part of Trump’s campaign to overturn the election: “Allies of Mr. Trump pushed to convene slates of fake electors in [the] swing states that Mr. Biden won. The plan was to create the illusion of a dispute over which slates – the fake Trump ones or the real Biden ones -- were legitimate, and to have members of Congress and Vice President Mike Pence certify the fake Trump slates, thus handling the election to Mr. Trump in defiance of the will of voters” (Hakim et al., 2023).

<sup>12</sup> In such a balloting in the House of Representatives, the Constitution states that each state is given a single vote, which must be cast for the party holding the majority of that state’s Congressional seats. In 2020, Republicans held the majority of seats in the Congressional delegations of a majority of states, despite the fact that Democrats had a majority of seats in the Congress as a whole.

legislature preemptively published an op-ed warning about the “misrepresentations” that “will be part of the rhetoric” of “the most politically charged [election] of our lifetime.” They called upon their fellow Pennsylvania officials to maintain civil moderation—“We need to rise above that [rhetoric] and not fall victim to outside influences that are trying to stir emotion.” Only in this manner would state officials be able to sustain their oaths of office: “The General Assembly has a sworn duty to follow the Constitution and the Election Code, which does not involve the legislature in the process of choosing electors.” One month after the election, facing the onslaught they had been bracing for, Pennsylvania’s Republican legislative leaders issued a follow-up warning, warning that “to overturn the popular vote and appoint our own state of electors ... would violate our Election Code and Constitution” (*J6R*: p. 286).

In Michigan, on November 21st, facing intense public and private pressure from the President, the Republican Senate Majority Leader underscored the civil sphere’s independence from the state, tweeting “our election process MUST be free of intimidation and threats” and that “it’s inappropriate for anyone to exert pressure on [it]” (*J6R*: p. 300). Three weeks later, after Michigan had certified Biden’s victory amidst continuing pressure from Trump, the state’s Republican leaders attested to the breadth of civil solidarity over partisanship. They declared that “Michigan’s Democratic slate of electors should be able to proceed with their duty, free from threats of violence and intimidation,” insisting “it is our responsibility as leaders to follow the law” (*J6R*: p. 301).

Indignantly responding to a late November call from President Trump and Rudy Giuliani, Arizona’s Republican House speaker declared, “you are asking me to do something against my oath, and I will not break my oath.” Explaining, “it is a tenet of my faith that the Constitution is divinely inspired,” the official added “so for me to do that because somebody just asked me to is foreign to my very being,” repeating “I will not do it.”<sup>13</sup> On November 30th, after Arizona’s Republican governor had officially certified Biden electors, President Trump retweeted a post claiming “Gov Ducey has betrayed the People of Arizona” (*J6R*: p. 275); the Republican Governor responded, “that’s the law. I’ve sworn an oath to uphold it, and I take my responsibility seriously” (*J6R*: p. 76).

Facing pressure from Trump to convene a special legislation session to elect alternative electors, Georgia’s

Republican Governor Brian Kemp warned incoming state legislators that this tactic was not an option: “You all will be taking an oath to uphold the laws and constitution of our state, and now more than ever, it is important to remember that thousands of brave men and women have paid the ultimate sacrifice for those laws, that constitution and all that they protect” (Brimmer 2020).

### The Emergence of Civil Icons (1): Georgia Secretary of State Brad Raffensperger

Among such sturdy defenses of civil office, the courageous stand of Georgia Secretary of State Brad Raffensperger exploded into public consciousness just days before January 6th<sup>14</sup>. A God-fearing, conservative, small business owner from a small town in the southern state, Raffensperger’s political career began when he was elected to the local school board, after which he ascended to Speaker of the state assembly before rising to leadership as Secretary of State. After officially certifying the vote count for Biden in late November, Raffensperger was subject to a Trumpian torrent of “offensive” vituperation (Raffensperger 2021: p. 130). In one of his almost daily post-election news conferences, the Secretary of State responded by emphasizing civil ideals over party-political obligations and insisting on the transition from civil sphere to state.

I supported and voted for the president, and I am sorely disappointed in the outcome like millions and millions of other Americans. But we have over 200 years of transitions of power in our nation, regardless of personality, regardless of party. In the past few weeks, partisans have asked that I choose party above the law.

<sup>14</sup> In examining these civil icons, I am not suggesting that American democracy was saved by the civic virtue of these two individual officials, though each courageously displayed it. Over the course of the 9-week post-election crisis, many dozens of other public officials evidenced virtuous responses as well. Rather than a “great man” theory along the lines of such nineteenth century thinkers as Carlyle and Emerson, I conceptualize figures like Raffensperger (and Pence and Cheney, see below) as being motivated by institutional forces that instill a sense of moral obligation to the civil sphere, which is conceived as loyalty to Constitutional law and “the people” and understood within the interpretive categories provided by a deeply internalized civil discourse. Their civil behavior, in other words, illustrates what Roger Friedland calls “institutional subjectivity,” which he describes as being dependent on cultural “identification and internalization, which is both a critical anchor and source of agency” (Friedland 2012: p. 586). I describe Raffensperger, Pence, and Cheney as “civic icons,” not because of the individual qualities they possessed but because of the collective social qualities they came to represent. For large segments of the American public, they embodied—in their material persons, as it were—highly esteemed moral qualities. As collective symbolic representations of sacralized moral qualities, they became iconic (cf., Alexander 2020).

<sup>13</sup> These quotations are from Russell “Rusty” Bowers public testimony to the January 6th Commission on June 21, 2021. On July, 2023, the Washington DC Bar’s committee on legal ethics recommended that Rudy Giuliani be disbarred for “his ‘unparalleled’ attempts ‘to undermine the integrity’ of the ‘election [which] had helped destabilize our democracy’ and done ‘lasting damage to the oath to support the U.S Constitution that he had sworn when he was admitted to the bar’” (Feuer 2023).

That's not going to happen. My loyalty is to God, our Constitution, and our nation. (Raffensperger 2021: p. 154)

During his pressurizing campaign, Trump had sent his Chief of Staff to personally lobby the Georgian Secretary of State, and the President himself engaged in 18 futile attempts to telephone him. On January 2, 2021, Raffensperger finally answered, but only after he had arranged for the call to be recorded. Over the course of a rambling back and forth conversation, Trump demanded that the Georgia Secretary of state find a way to change the vote.

It's a disaster. It's a disaster. Look. Here's the problem .... You've taken a state that's a Republican state, and you've made it almost impossible for a Republican to win .... You're letting it happen ... So look. All I want to do is this. I just want to find 11,780 votes ... I have to find [those] votes .... Look, ultimately, I win, okay? (Raffensperger 2021: pp. 191–197)

In his memoir, *Integrity Counts*, Raffensperger described his inner thoughts and feelings as the hour-long conversation unfolded. It was David against Goliath, rebellious citizen against imperious king.

The President had been talking for 20 minutes – I had to stand up to him.  
I cannot be persuaded to report anything but the facts.  
Not by Trump. Not by anybody.  
[Trump] assumed we would blindly roll over, [but]  
I had the strength to stand up resolutely against the onslaught.  
I chose to tell the truth<sup>15</sup>.

What was at stake was general principle, not just the facts of Georgia's vote count but, in Raffensperger's words, the nation's "civic culture." Trump had "challenged the integrity of American's core democratic institutions," and Raffensperger refused to accede: "I am the duly elected Secretary of State. One of my duties involves helping to run elections for all Georgia voters. I have taken that oath and I will execute that duty and follow Georgia law."<sup>16</sup>

Raffensperger began his ascension to the status of democratic icon 1 day after his stand-off with the President, with the publication by the *Washington Post* of the transcript of the phone call. Trump's prurience and self-dealing were comically, almost cruelly, made evident, alongside the state official's short and concentrated responses, parrying accusations and stating facts. Yet, it was in the very banality

of such repetitious detail that the Secretary of State's civil sense of office obligation was fully on display. The legend that was being spun around Raffensperger became more urgent after the violence that shook the civil consciousness on January 6th. Every Sunday evening for half a century, millions of Americans had been tuning into the hour-long feature-news-interview TV show *60 Minutes*. On January 12th, the focus of *60 Minutes* was Georgia's Secretary of State, introduced to the American people as a standup hero of their civil sphere: "Raffensperger is a lifelong Republican, who voted for Mr. Trump and contributed to his campaign. But facing the president's wrath, he would not choose loyalty over duty."

In the finale of the *60 Minutes* profile, the interviewer observed that, "when the president was making his speech on Wednesday, inciting the mob in Washington, he complained about weak and pathetic Republicans," and then suggested pointedly, "he was talking about you" (Raffensperger 2021: p. 222). Remonstrating, "I think actually I showed that I had some courage," Raffensperger averred, "I had some gumption" (ibid.). While defending the technical achievements of his performance as Secretary of State—"I actually ... do my job"—he intertwined them with his moral performance of civil integrity: "The ones that kowtow to him [Trump], that just bent over and did his bidding, and not looking into the facts, I think that's weakness" (ibid.). The last words in the segment were his own, morally elevated and emotional. Characterizing Trump's attack on the election as "an affront to the people that founded this nation," Raffensperger gestured to the nation's "great founders" as embodying the "high ideal that we all should elevate ourselves to be, noble people of high character, and patriotic, [who] love our country" (ibid.).

Ten months after his widely hailed, star-making appearance on *60 Minutes*, Raffensperger's memoir *Integrity Counts* hit the bookstands and digital spaces of a democracy still reeling from its near-death experience. Raffensperger's account of his telephone ordeal took pride of place, the penultimate, 40-page chapter entitled simply "The Call." In the chapters leading up to it, Raffensperger plants the roots of his strong sense of civil obligations in the depth and breadth of American civil solidarity. He testifies that his childhood heroes were the Democratic President John F. Kennedy and the Black civil rights leader Martin Luther King, who became canonized as martyrs to the civil cause. He cites Kennedy's Pulitzer Prize winning book *Profiles in Courage* (Kennedy 1956) as a model for the civil courage that he later was to exhibit himself. For the book's epigraph, he chooses a quotation from the memoir of Sam Houston, the Texan war hero turned US Senator whose 1854 vote against the expansion of slavery triggered the end of his political career: "This book will lose me some friends. But if it lost me all and gained me none,

<sup>15</sup> These quotations are, respectively, from Raffensperger 2021: pp. 175, 16, 21, 19, 23.

<sup>16</sup> These quotations are, respectively, from Raffensperger 2021: pp. 13, 15, 105.

in God's name, as I am a free man, I would publish it." On the back cover of the memoir, Arnold Schwarzenegger, celebrity body-builder, movie star, and former Republican Governor of California, praises the Georgian as a civil hero cut from the same mold.

Brad Raffensperger put public service above party service, and for that he is a true democracy action hero, and he is also my hero. His book serves as a reminder that American democracy is bigger than any individual candidate or election.

### The Emergence of Civil Icons (2): US Vice President Mike Pence

After Trump's failure to force state officials into submission, the only path to victory was the "non-judicial," extra-Constitutional workaround that the right-wing jurist John Eastman had presented to the White House. Instead of ceremonially "reporting" the votes of state-certified electors at the Congressional meeting on January 6th, as stipulated by the Electoral Act of 1877, Pence would refuse to recognize electors from the battleground states. "The main thing here," Eastman emphasized in a memo to the President, "is that Pence should do this without asking for permission, either from a vote of the joint session or from the Court" (J6R: pp. 431–432). For the tactic to work, it was vital to avoid regulation via the legal institutions of the civil sphere. Who actually had won the November election would not be a matter for the civil sphere, but, rather, as Eastman had put it, a "non-judicial *political* question" (J6R: p. 433, italics added). There would then be no referee watching over the party-political fight. The Eastman memo concludes, we are "no longer playing by Queensbury Rules" (J6R: p. 444). In response, White House attorney Eric Herschmann decided to meet with Eastman, confronting him face-to-face about the frighteningly antidemocratic implications of his proposal.

I said to him, hold on a second ... You're saying you believe the Vice President ... can be the sole decision-maker as to ... who becomes the next P of the US. And he said, yes. And I said, are you out of your F'ing mind [and] you're completely crazy. You're going to ... tell 78 million people in their country that ... you're going to invalidate their votes? I said, they're not going to tolerate that. I said, you're going to cause riots in the streets. (J6R: p. 434)

For weeks, President Trump had been "relentlessly harassing Vice President Pence both in public and in private" (J6R: p. 429), imploring, threatening, and effectively bribing him to follow the "non-judicial political" plan that Eastman laid out.

"It would be the coolest thing you could do, otherwise you're just another RINO [Republican in Name Only]." (J6R: p. 435)

"You play a big role." (J6R: p. 441)

"If it gives you the power, why would you oppose it?" (J6R: p. 446)

"You're too honest, hundreds of thousands are gonna hate your guts ... and people are gonna [sic] think you're stupid" (ibid.)

"You can be a historical figure, but if you wimp out, you're just another somebody." (J6R: p. 448)

In the memoir Pence published about his grueling confrontation with presidential power, *So Help Me God*, he emphasized the high stakes of that moment and his own awareness that not only the country's fate but his own political career was on the line. "It was becoming clear that there would be the real cost to me politically" (J6R: p. 442). Raised in the American heartland, Pence had started as a radio jockey in Indianapolis, moving up to mayor of his hometown and then to governor of his state, Indiana. A conservative evangelical Christian, rolling back abortion rights had been Pence's most pressing concern. Being chosen as Trump's Vice President in 2016 had given him leverage on this and other backlash issues, and a springboard to the presidency as well.

Pence knew that, if he carried out the duties of his office, he would be legitimating an electoral vote that would take away his power, ejecting him from his position atop the American state. Against this material interest, Pence felt weighed down by the "ideal" interests of an official whose sworn duty was to uphold the civil sphere. "I was determined to stop thinking about what it could mean to me and my future, and just do the right thing" (Pence 2022: p. 442). On the one side was loyalty, both personal and political: "I had always been loyal to President Donald Trump. He was my president, and he was my friend. Over the past four years we had forged a close working relationship, spending hours together nearly every day in the Oval Office" (Pence 2022: p. 1), and on the other side, the impersonal, higher duties to office, sacralized by the oath he had taken to the Constitution and God.

My first loyalty was to the Constitution of the United States. I had taken an oath here at the Capitol nearly four years ago to support and defend the Constitution, which ended with a prayer, "so help me God." This morning, I told the president one final time that I believed my oath required me to preside over this joint session of Congress and certify the results of the 2020 presidential election -- the election we had lost. (ibid.)

Democracy was very different than personal rule. It was the will of the civil sphere that determined control of the state. For Pence, as for Raffensperger, it was king versus people, personal authority versus civil control.

There was no way the founders of this country intended to give any one person the authority to decide an election ... Our forefathers had fought a war to win independence from a king. The last thing the framers of the Constitution would have intended would be to confer unchecked authority on one individual. The presidency belongs to the American people and the American people alone. Frankly there is no idea more un-American than the notion that any one person could choose the president. (Pence 2022: p. 434)

And so it came to be that on Jan 6, 2021, at 2:00 in the afternoon, Vice President Mike Pence stood before 100 Senators in the capitol Chamber, preparing to carry out his Constitutional duty to report the Electoral Count. Recalling his feelings on that day, Pence sensed he was placed at the very heart of the civil sphere: “This is democracy’s sacred ground – not because of its occupants, current or past, but because whenever the American people demanded we live up to the Constitution[,] it ultimately happened here, under this dome ... It was here that the people’s will was honored” (Pence 2022: p. 2). When Pence rose to perform his action, he began with this note of civil obligation: “Today I want to assure the American people that I will keep the oath I made to them” (Pence 2022: p. 50). At that very moment, however, the angry protestors had breached the building. The Vice President’s Secret Service detail moved him to another room and, shortly later, requested that he and his family exit the Capitol building altogether. Pence refused, citing his civil duty. “I would not leave my post,” he recounted, maintaining that, rather than being afraid, he was angry, filled with “simmering indignation” at how the mob had “desecrated the seat of our democracy” (Pence 2022: p. 3).

Fourteen hours later, at 2:00 on the morning of January 7th, the attackers had been cleared from the building. Speaking from the still beating heart of the American civil sphere, Pence restarted the ceremonial certification of the electoral votes. “Today was a dark day in the history of the United States,” he began, giving thanks that “the violence was quelled” (Pence 2022: p. 469). The Trump-inspired mob had been bent on violence, the most heinously anti-civil form of action, but the civil sphere won. “To those who wreaked havoc in our Capitol today,” Pence declared, “you did not win,” insisting “violence never wins” (ibid). The response of the audience to this Vice Presidential performance demonstrated, for Pence, that a broadly civil solidarity had been restored: “The usually reserved Senate burst into applause, and Republicans and Democrats together rose to their feet in a standing ovation, not for me but in celebration of our democracy and all who had defended it that day” (Pence 2022: p. 470).

Pence reported these proud and anxious moments of civil solidarity in the final pages of *So Help Me God*, which concertedly documented how such a widely inclusive civil sphere

had formed the foundations for his political life. He had grown up a proud Democrat whose heroes, like Raffensperger’s, were John Kennedy and Martin Luther King (Pence 2022: p. 12). While in high school, he had viewed the Constitution as an “operating manual for government,” but later, in college, he had come to understand the “principles underlying” it (Pence 2022: p. 25). He had been a devoted campaigner for the Democrat Jimmy Carter before coming an enthusiastic Reaganite during the Republican President’s first term. Describing the “the spirit that animated our nation’s capital” after the September 11th terrorist attacks in 2001, Pence celebrates how “party lines vanished,” how “there were no Democrats or Republicans ... only Americans” (Pence 2022: p. 69). Only 9 months earlier, Pence had arrived in the Capitol to begin his Congressional career. The Supreme Court had just ruled that Florida’s electoral votes were to go to Republican George Bush, awarding him the presidency and ending the fiercely contested 2000 election. On January 5, 2001, Pence had watched from a seat in the “sparsely populated House Chamber” as Democrat “Vice President Gore certified the results of the election [with] little fanfare or drama.” Pence recalls his admiration for how “the vice president discharged his duty that day despite the fact that many in his party believed he had won the election,” testifying to the “indelible impression” it left regarding “the resilience of our institutions when our leaders are willing to keep faith with the Constitution” (Pence 2022: p. 64). The message Pence wishes to convey to his readers is clear. Al Gore had fought against Bush as a fiercely partisan Democrat; he had conceded to Bush as a fiercely unpartisan democrat, an action that had demonstrated the resilience of civil institutions<sup>17</sup>.

### “January 6th” as Punctum

The assault on the Capitol that threatened Pence’s life played out much differently than Trump had intended. It moved the relation between Trump and violence from metaphor to metonymy, making vivid to a wide public—materially and visibly—what until that moment had been discursive and implied, winked at, and whispered in secret. For most though not all Americans, the blood-curdling aggression and crashing violence of the assault indelibly clarified the anti-civil danger that Trump represented. During the 3 hours of mayhem, the President’s friends, family, and Fox News stars

<sup>17</sup> Conflating civic virtue with progressive ideology, left intellectuals often seem to have difficulty crediting the pivotal role Pence played on January 6th and the courage it required. “Things have come to a bad pass,” Fintan O’Toole writes in the *New York Review of Books*, “when not quite overthrowing American democracy is the definition of republican virtue,” suggesting that “Pence’s claim to be the hero who stood in the gap of danger and held off the barbarian hordes is laughable” (O’Toole 2023). It is not.

desperately texted and telephoned Trump, imploring him to call the rampage off, not necessarily because they opposed the violence, but because they realized, as the raging and aggrieved demagogue did not, that it would be framed as a strikingly dark and polluting stain on the ideals of the civil sphere and on the legacy of the President himself.

January 6th became a turning point, not because of what it was but because of what was made of it in the hours, days, months, and years that followed. It functioned as a punctum, in Roland Barthes' sense (Barthes 1981), a wounding, evocative, pricking plot point in a collective narrative about Trump as a dangerous, impulsive, deeply antidemocratic leader, one who would resort to violence if he didn't get his way, a demagogue who had no respect for the rules of the game, and, for that reason, should not be allowed to play it. The left had long signified Trump this way. What was new about the symbolization of "January 6" and its symbolic afterlife was that it persuaded a widening slice of centrist and conservative citizens of the same opinion<sup>18</sup>.

### Crystallizing a Civil-Conservative Center: the January 6th Commission and Its Afterlife

The "January 6th Commission" powerfully shaped how January 6th was remembered. Formally "The U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol," the Commission came into existence 6 months after the violent eruption, on June 30, 2021, after Republicans had blocked an attempt to create a similar body in the Senate. While the nine-member House committee had only two Republicans, it performed a determinedly non-partisan position. The narrative frame was put into place by conservative Wyoming Republican Liz Cheney, nominally vice-chair but effectively the

Commission's leader<sup>19</sup>. Most of its televised cast of witnesses were Republicans, whose seemingly authentic, sincerely regretful, and often harrowing revelations set the tone for the proceedings, which became a kind of conservative confessional. There were the videos of Bill Barr, the Republican former Attorney General who had been Trump's Machiavelli, throwing up his hands in disgust at the "stupidity" of the President's strategies, and calling them "bullshit" (*J6R*: pp. 214, 219, 378). There were the tense participant testimonies exposing the January 3rd White House confrontation between Trump and would-be Acting Attorney General Tom Clark, on one side, and the White House lawyers, on the other, during which the attorneys had threatened mass resignation (*J6R*: p. 216ff). There was the striking testimony of the visibly aged J. Michael Luttwig, the conservative former Federal Appeals judge, recounting his stealth conversations with Pence and how, during the dark of night, his son had helped him tweet out the antidemocratic dangers of the Eastman plan (*J6R*: p. 451).

What unfolded over the months of televised meetings was a frequently riveting and news breaking, widely watched, highly choreographed public performance. If its political-cum-moral framing was Cheney's, its aesthetic presentation was the work of James Goldstone, the recently retired President of ABC News who had produced "Good Morning America" and "Nightline," hugely popular mainstream news-oriented entertainments. Goldstone understood that, in a post-ritual age of audience diffusion, the Commission could not follow the *mis-en-scene* of the pre-cable television age, when the televised Senate Watergate Hearings had been able to capture undivided American attention for 2 months in the summer of 1973, despite long hours of meandering witnesses questioned by obscure Congressmen and Senators. "We live in an era where, no matter how important the subject, it's competing for attention," Goldstone explained to an interviewer. "People are distracted, people have got a lot going on," he observed, adding that only by "bringing new techniques to this format" would it be possible to "engage people in a way that perhaps they wouldn't otherwise have been" (Remnick 2022: p. xiv). *New Yorker* editor David Remnick elaborated on this performative challenge in his "Preface" to January 6th Commission's 724-page report.

They needed to produce discrete, well-produced, briskly paced multimedia "episodes" [...] In an age of peak TV, they needed to present a kind of series, one that was dramatic, accessible, accurate, evidence-rich, and convincing ... They needed to produce the hearings in a way that

<sup>18</sup> By the early morning of January 4th, the violent events of the evening before had demonstrably affected a deeply conservative US Senator, who had planned to challenge the ceremonial counting of Electoral College votes. When the certification of the Presidential vote resumed in the Capitol, Kelly Loeffler, one of Georgia's two US senators, objected to a challenge leveled by her own state Congressional delegation: "When I arrived in Washington this morning [i.e., the morning of January 6th] I fully intended to object to the certification of the electoral votes. However, the events that have transpired today [i.e., yesterday] have forced me to reconsider ... The violence, the lawlessness and siege of the halls of Congress are abhorrent and stand as a direct attack on the very institution my objection was intended to protect, the sanctity of the American democratic process ... There is no excuse for the events that took place in these chambers today. And I pray that America never suffers such a dark day again" (*Integrity Counts*: pp. 218–219).

<sup>19</sup> Cheney was the daughter of the conservative Wyoming Republican Dick Cheney, who, as Vice President during the administration of President George W. Bush, had been among the primary engineers of the Iraq invasion and doggedly supported it in the years afterward. Cheney also served at the highest levels in the two previous Republican administrations. His behind-the-scenes support for his daughter's leadership of the Commission was widely known, as was the support of former President George H. Bush.

could also be transmitted effectively in bits on social media and go viral. They needed memorable moments and characters. In the worlds of one staffer, “we need to bring things to life.” (Remnick 2022: pp. xiii–xiv)<sup>20</sup>

The Commission’s performance lasted 7 months, and it fused with influential segments of the American citizen-audience, its primetime viewing frequently matching the eighteen-million person audience for NBC’s “Sunday Night Football” (Remnick 2022: p. xiv). Five months after the hearings were completed, a *New York Times* retrospective described a broad effect, reporting how they had “reorient[ed] the country’s attention” to just “how bad Jan. 6 really was” and had succeeded in “building consensus about recent history” (Miller 2023). While this emerging consensus about January 6th did not extend to the far-right of the ideological spectrum, it crystallized an increasingly visible and politically significant strain of a “civil conservatism” (Alexander 2021: p. 8) that allowed anti-Trump sentiment to become less party-political and more generalized, representing itself as criticism focusing on the rules of the game rather than on the ideologies of those competing inside it<sup>21</sup>.

Liz Cheney, the plain spoken, strikingly somber conservative from Wyoming, emerged as the unlikely hero of this civil

drama. In November 2022, after the work of the hearings had finished, Cheney would lose her Congressional seat to a Trumpian election-denier, a defeat that was clearly foretold, looming as dark imminence throughout the hearings. Like Vice President Ruffensperger and Pence before her, Cheney became etched in the collective consciousness as a “profile in courage,” an official who sacrificed her political future in defense of the greater good. “Our institutions are only strong when those who hold office are faithful to our Constitution,” Cheney wrote in her “Forward” to *The January 6th Report* (Cheney 2022: p. xvi). Reflecting on the moral of the story her Commission had projected to the national citizen-audience, Cheney described the plot as clear, simple, and morally heightened. “Elected officials, election workers, and public servants,” she attested, “stood against Donald Trump’s corrupt pressure” (Cheney 2022: p. xvii). The fructifying experience, she believed, had bequeathed a lesson for the ages: “The history of our time will show that the bravery of a handful of Americans, doing their duty, saved us from [a] grave Constitutional crisis” (ibid.)<sup>22</sup>.

Only with this emerging, precariously bi-partisan consensus did city, state, and national public prosecutors gain confidence that a majority of the American public would not equate prosecuting “January 6” perpetrators with partisan defense of the Democratic party. Even as radical populists controlling the Republican party apparatus remained loyal to Trump, the silhouette of a “civil center” separated from its party-political background became clear<sup>23</sup>. In the immediate wake of the January 6 attacks, the lame duck Democratic House Congress had impeached Trump for a second time, but the incoming Biden administration eschewed a partisan for a more civil track. Criminal investigation into Trump and his confederates was deferred; whatever its success might have been in a court of law, it would have failed to generate wide legitimacy in the court of public opinion. There was not yet a sufficiently widespread sense of civil grievance.

Two years later, after the cultural work of the January 6th Commission, conditions had changed. In the November 2022 mid-term, the much ballyhooed “Red Wave” had failed to materialize; the Democrats upended historical precedent

<sup>20</sup> This contrast between the “good old days,” when it was easier for television to connect with audiences, and contemporary television’s difficulties in reaching diffuse audiences—while helping Goldston frame the rationale for new *mises-en-scènes*—is an oversimplified binary. Connecting with audiences has always been an extraordinary challenge for dramatic performance, even when audiences are face-to-face with live actors in the intimate space of a darkened theater. Audiences are the so-called fourth wall that theatrical artists must try to find some way of breaking through, so that their performances can fuse with the emotions and moral understandings of those looking on. This very effort, indeed, has defined the theatrical avant-garde from the beginning of the modern period (Alexander 2017b).

<sup>21</sup> Amidst the summer televised hearings of the January 6th Commission, a report entitled *LOST, NOT STOLEN: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election* (Danforth et al. 2022) was published digitally by leading members of the emerging civil-conservative political elite, who write in their preamble: “We are political conservatives who have spent most of our adult lives working to support the Constitution and the conservative principles upon which it is based: limited government, liberty, equality of opportunity, freedom of religion, a strong national defense and the rule of law. We have become deeply troubled by efforts to overturn or discredit the results of the 2020 Presidential Election. There is no principle of our Republic more fundamental than the right of the People to elect our leaders and for their votes to be counted accurately. Efforts to thwart the People’s choice are deeply undemocratic and unpatriotic.” The report and the motives for issuing it received extensive coverage from communicative institutions, e.g., CNN: “A group of conservatives, including prominent lawyers and retired federal judges, issued a 72-page report on Thursday categorically rebutting each of the claims made in court by former President Donald Trump and his supporters over the 2020 election results .... The report warns that it’s ‘wrong, and bad for our country for people to propagate baseless claims that President Biden’s election was not legitimate’” (Rokus and Stracqualursi 2022).

<sup>22</sup> As a public morality play, the performance of the January 6th Commission bears striking resemblance to the Senate Watergate hearings that had so focused the attention of the American citizen-audience when televised during the summer of 1973. In those earlier hearings, the generalized, extra-political spotlight on the civil—as compared with the political-ideological—depended on the same kind of careful plotting and *mise-en-scène*; on a similar assembling of a cast of political actors who were anti-Nixon but also conservative; and on highlighting the star turns of confessional Republican insiders, like John Dean.

<sup>23</sup> On the importance of establishing a visible “vital center” in the midst of polarizing political crisis, see Alexander (2016) and Luengo and Ihlebaek (2020), building out from an idea first developed by Schlesinger Jr. (1949), a leading liberal public intellectual of the mid-century period.

by managing to retain control of the Senate and only very narrowly ceding control of the House. As a national pollster observed, Trump-backed candidates had become much “less palatable to independents” (Miller 2023). Indeed, every “election-denier” running for state level office—as secretary of state, attorney general, or governor—was defeated. According to one non-partisan election monitoring group, election-denying Republicans suffered a 2.3–3.7 point electoral “penalty” compared with Republican candidates acknowledging the legitimacy of Trump’s 2020 defeat (Corasaniti 2023), a substantial margin in a closely fought election.

For the first 2 years of Biden’s presidency, Democratic attorneys heading the US Department of Justice had investigated only the little fish in the January 6th rebellion, prosecuting more than 1000 participants, convicting almost 600 of them, and gaining “seditious conspiracy” convictions against leaders of the violent militia Proud Boys and Oath Keepers. It was only after the performances of the January 6th Commission, when polling indicated that a comfortable 60% of Americans now favored prosecuting the former President, a figure which included significant portions of independents and moderate Republicans, that government attorneys moved to indict the former President. Only in April 2023, after months of prevarication, did New York District Attorney Alvin Bragg, a Democrat, announce a 34-count felony charge against Trump for paying hush money to a porn star, a secret payoff that had quieted an explosive sex scandal threatening his election in 2016. Only in November 2022, after nearly 2 years of delay, did US Attorney General Merrick Garland name veteran counsel Jack Smith as a “Special Counsel” to investigate the former President’s possible criminal activities before and after the 2020 election<sup>24</sup>. In June 2023, Smith issued the first indictment of a former President in American history, for illegally secreting top security documents after leaving office, and soon after issued a second one, on August 1, focused on Trump’s efforts to overturn the 2020 election. In July, Michigan’s Attorney General announced felony charges against 16 state Republicans for participating in the “fake elections” scheme. Late in the evening on August 14, Fulton County DA Fanny Willis charged Trump with criminally conspiring to overturn the Presidential vote in Georgia.

## Conclusion: The Still Precarious Present

In the 9 weeks between November 3, 2020, and January 6, 2021, President Trump organized a massive effort to overturn the results of the Presidential election, a campaign that presented the most serious threat to American democracy since the Civil War. That effort failed, and, in the preceding pages, I have pointed to the resiliency of the American civil sphere to explain why.

During the 4 years of Trump’s presidency, mainstream communicative institutions of the civil sphere created withering interpretations of Trump as an anti-civil danger. Public opinion shifted against him, journalists published critical exposes, and civil associations mobilized massive public protest. The civil sphere’s regulative institutions connected these polluting interpretations with sanctions on the ground. Courts blocked Trump’s most egregiously anti-civil actions, and, in 2018, voters in the civil sphere put a halt to Trump’s legislative agenda, returning the House of Representatives to Democratic control. When civil sphere voices spoke again, 2 years later, it was to eject Trump from office. In the face of Trump’s determined resistance to defer to this electoral judgment, another regulative institution of the civil sphere—office—stood in the breach. Key electoral and legal officials refused to abrogate their sacred oaths of office, oaths that bound them to democratic laws and to “we, the people,” their fellow civil sphere members whose solidarity underlay the Constitution’s legal force<sup>25</sup>.

There is one regulative institution of the civil sphere, however, that did not stand in the breach—the political party—and its failure to do so might still bring American democracy to its knees. Like the regulative institutions of office, law, and elections, political parties mediate the relation between civil sphere and the state, but they do so in a distinctively less solidarizing way (Alexander 2006: pp. 123–132). Mobilizing ideological refractions of binary civil discourse, parties crystallize partisan public opinion and organize political campaigns to send loyalists from their own side into the state. While the Democratic Party remains a big tent coalition, the Republican Party has increasingly narrowed its ideological focus to radical right populism. Beginning with the “Southern strategy” Richard Nixon created 50 years ago to harness anti-Black resistance, the Republican Party has become an ever more virulent vehicle for channeling backlash sentiment in the USA<sup>26</sup>.

Even as public commitment to generalized civil principles has become increasingly visible, Trump’s continuing symbolic power has pushed Republican loyalists in the other direction, sustaining sentiments of division over solidarity. By a two-to-one margin, Republicans tell pollsters that Trump,

<sup>25</sup> “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America” [sic]—so reads the first sentence of the Preamble to the US Constitution.

<sup>26</sup> Jason Mast (2023) has skillfully reconstructed the intricate process by which right-wing backlash captured the Republican Party. The long march depended, in Mast’s view, on far-right “interpretive entrepreneurs” like Rush Limbaugh, who first articulated a dangerously primordial version of civil discourse that laid the foundations for the anti-professional, distorting journalism of Fox News and continues to provide the interpretive grid through which a substantial minority of Americans understand ongoing events in the present day.

<sup>24</sup> At the time of his appointment, Smith was the chief prosecutor at the International Court in the Hague, charged with investigating war criminals.

not Biden, was the legitimate winner of the 2020 election, and slightly more than half of self-described conservatives subscribe to the proposition that January 6th should be construed as “legitimate discourse” rather than “violent insurrection” (Draper 2023). A relatively small minority in statistical terms, this unreconstructed Republican group accounts for less than 20% of the American electorate (Economist/YouGov 2023)<sup>27</sup>. Yet, fueled and shaped by Trump’s charisma and ideology, its swirling resentments have sustained a “January 6 counter-narrative” (Draper 2023) that makes the violent insurgents into heroes and the public officials who protected the electoral vote—figures like Raffensperger, Pence, and Cheney—into archvillains. These diehard Republicans were repelled by the civil performance of the January 6 Commission. Constructing a “through-the-looking-glass alternative to the damning case against former President Donald J. Trump presented ... by the Jan. 6 committee” (ibid), this “far-right ecosystem of true believers” (ibid.) resolutely refuses the sheltering embrace of civil conservatism.

It is hardly surprising that, as of late summer 2023, despite facing multiple criminal indictments, Trump remains 30 points ahead of his Republican competitors in the primary campaign for the Republican Presidential nomination, voting for which begins in February 2024 (Goldmacher and Halberman, 2023). If he were to become the Republican Party candidate, Trump would promote not only backlash policies, but a broadly antidemocratic counter-narrative about “January 6”<sup>28</sup>. The argument developed in this essay suggests such a strategy would undermine Trump’s chance for victory. “There is no path to the White House for Republicans with Mr. Trump,” the conservative former jurist Michael Luttwig wrote in a widely noted, June Op-Ed for the *New York Times*: “He would need every single Republican and independent vote, and there are untold numbers of Republicans and independents who will never vote for him [because] he has corrupted America’s democracy and is now attempting to corrupt the country’s rule of law” (Luttwig 2023). Still,

the winner and loser of a political contest cannot be determined in advance. Campaigns are highly contingent, their outcomes dependent on the performativity of actions, day to day political tactics, and the continuously reconstructed narrative arcs generated by each side<sup>29</sup>.

The civil sphere is not something objective and external, but a social organization that rests on a foundation of subjectivity and value. It is not a machine, something material that gets wound up and runs by itself. It is a project, a self-willed, all too human effort to intertwine autonomy and mutual obligation, to sustain criticism and mutual recognition, and to inspire hope for a more democratic life. In sharply polarized democracies, the discourses and institutions of the civil sphere can sustain feelings of solidarity that bind partisans to fellow citizens beyond their circumscribed groups. They can, but they may not. It is a matter for history to decide.

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<sup>27</sup> In the aftermath of the Watergate crisis, a similar grouping of right-wing Americans had remained unpersuaded by the civil pollution of Richard Nixon: “Between 18 and 20 of Americans did not find President Nixon guilty, either of a legal crime or of moral turpitude. These Americans ... did not participate in the generalization of opinion that drove Nixon from office. They interpreted the Watergate process, rather, as stimulated by [the] political vengeance [of] Nixon’s enemies ... What .. distinguish[ed] this group was their political values. They held a rigid and narrow idea of political loyalty [and] reacted much more negatively than other Americans to the left-wing social movements of the 1960s” (Alexander 2003 [1988]: p. 169).

<sup>28</sup> Here is Trump at a Republican rally in Michigan in mid-July 2023: “We will demolish the deep state [and] we will expel the warmongers from our government. We will drive out the globalists. We will cast out the Communists, Marxists and fascists. And we will throw off the sick political class that hates our country” (Swan et al. 2023).

<sup>29</sup> With the exception of Mike Pence (Gabriel 2023), Trump’s major rivals for the Republican nomination have so far refrained from polluting his efforts to overturn the 2020 election. Doing so would be interpreted by Republican primary voters—typically the more ideologically committed party members who dominate voting in party primaries—as repudiating their pro-January 6th identity. Yet, beneath this churning surface, powerful anti-Trump sentiment is growing among Republican elites and moderately right independents, fueled not only by pragmatic fears of another Republican defeat but by the emergence of civil conservatism. For example, the Koch brothers’ conservative “Americans for Prosperity” political action committee decided to contribute, for the first time, to Republican primary candidates and not only to Republicans in the general election. In announcing its plan to leverage \$70 million to influence the outcome of the Republican presidential primaries, Americans for Prosperity declared its ambition “to have a president in 2025 who represents a new chapter” (ibid.) (Haberman et al., 2023).

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