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Notes from editor (not for publication):

Lines 71–81: In wondering why the strong reaction came 16 years later, I got a little bit more context and added it. The letter to Abigail Adams was in 1804, obviously preceding previous quote by years, not coming on its heels. I transposed the quotes and edited (I hope) thoughtfully.



HEADLINE ELEMENTS:

####BEGIN HED####

1 The coup’s court

####END HED####

####BEGIN SUBHED####

2 The Supreme Court has been a co-conspirator in the
3 demise of democracy

####END SUBHED####

4 TEXT BODY:

####BEGIN TEXT####

5 THE TRUMP-REPUBLICAN coup d’etat is mutating into a
6 more virulent and pervasive form of authoritarianism.

7 In the previous nine years in and out of power, the
8 regime has made wise use of its experiences to advance its
9 anticonstitutional agenda. The emergent characteristics are self-

10 evident and menacing, the welding of the political and economic
11 state, hypernationalism, militarism, cult of personality, and
12 subjugation of the legislative and the judicial branches.

13 In his influential book *[How Fascism Works: The Politics](#)*
14 *[of Us and Them](#)*, Jason Stanley accentuates the need for a fascist
15 regime to destroy the independent judiciary and replace it with a
16 legal facade subservient to the autocrat's will. Classically, then,
17 the leaders becomes the state.

18 Given that Trump is intellectually, ethically, and
19 emotionally ill-equipped for his job, he requires constant care
20 and feeding. Consequently, this empty vessel — or, more
21 accurately, colander — needs others to do his thinking for him.

22 Once this vessel is full, Trump is converted to a cipher,
23 transmitting ideas to the public arena. His brain trust and
24 choreographers — toadies like Stephen Miller, Russell Vought,
25 Susie Wiles, Elon Musk, and Steve Bannon — are quite well
26 known.

27 Behind the curtain lurks an *éminence grise*, a ghost from
28 Nazi Germany: Carl Schmitt, an influential judicial theorist and
29 propagandist in Hitler's regime.

30 Dormant for decades, Schmitt's ideas have been
31 resuscitated and drafted into service by Trump's masterminds, in
32 particular Miller and Bannon.

33 * * *

34 THIS SILENT PARTNER in the demise of democracy, Schmitt,
35 believed an all-powerful head of state is the ultimate source of
36 authority and law, with the judiciary expected to align with and
37 satisfy the regime's political cravings.

38 In Schmitt's view, all the leader's discretionary powers
39 should prevail over all other functions of government.

40 In such a world, the U.S. constitutional principles of
41 checks and balances, popular sovereignty, and consent of the
42 governed are turned downside up. The leader should not be
43 subject to the will of the unreliable *volk* or to the rule of law;

44 rather, the people should embrace the autocrat's infinite wisdom
45 and benevolent guidance.

46 Schmitt was especially enamored of Article 48 of the
47 German constitution that gave the ruler the power to declare
48 "emergencies," enabling him to override or ignore acts of
49 parliament.

50 Contrary to the principles of John Locke and James
51 Madison embedded in the U.S. Constitution, Schmitt opines that
52 if the ultimate legitimate source of power resides with the head of
53 state and not with the people, it logically follows that the other
54 key elements of government, the legislative and judicial
55 branches, must also be subservient to the executive.

56 The history of the Trump regime's relationship with the
57 judiciary conforms seamlessly to Schmitt's legal philosophy and
58 theories of governing.

59 * * *

60 THOMAS JEFFERSON raised concerns about the judicial
61 branch's potential for exercising too much power.

62 In the 1803 landmark [Marbury v. Madison](#) case, Chief
63 Justice John Marshall unilaterally contrived the legalism "judicial
64 review," giving the high court the sole authority to declare a law
65 unconstitutional.

66 Such power, Jefferson averred, would give this unelected
67 branch unanswerable command over an elected branch. Such a
68 disruption of checks and balances would hobble or outright
69 exclude the power of citizens in the legislative process.

70 In 1804, Jefferson [wrote](#) to Abigail Adams that Marshall's
71 ruling had so intruded into the legislature's and executive
72 branch's respective spheres that it "would make the judiciary a
73 despotic branch."

74 After seeing the consequences of this ruling on
75 subsequent cases, in 1819 Jefferson wrote to a colleague, Judge
76 Spencer Roane. The former president minced no words. "If this
77 [the Marbury decision] be sound, then indeed is our Constitution
78 a complete *felo de se* [suicide pact]. [...] The Constitution on this

79 hypothesis is a mere thing of wax in the hands of the judiciary,
80 which they may twist and shape into any form they please.”

81 To Jefferson, it was the citizens through their elected
82 representatives who should retain the right to determine a law’s
83 constitutionality. To that end, the high court did not exercise
84 judicial review for the next 50 years, until the infamous Dred
85 Scott decision of 1857, which accelerated the coming of the Civil
86 War.

87 * * *

88 IN THE MID-20TH CENTURY, the Supreme Court charted a
89 liberal detour from its conservative traditions. From 1954 to the
90 early 1970s, Chief Justice Earl Warren navigated the court
91 through a turbulent expansion of voting, civil liberties, women’s
92 rights, and civil rights.

93 A predictable conservative backlash ensued — one that
94 has survived to this day — with Richard Nixon’s presidency and
95 his appointment of four justices to the Supreme Court, including
96 influential ultraconservatives William Rehnquist and Lewis F.
97 Powell Jr.

98 Not by coincidence, in 1971, two months before Powell
99 was appointed, he [authored](#), at the behest of the U.S. Chamber of
100 Commerce, a call to arms for corporate America to reassert its
101 rightful leadership role in the political economy.

102 The “Powell Memo” (titled “Attack on American Free
103 Enterprise System”) outlined, in breathless terms, how liberals
104 were destroying the country with their relentless attacks on the
105 free enterprise system. Powell’s call included a grand blueprint
106 imploring capitalists to fund and organize long-term campaigns
107 — public relations, think tanks, lobbying, and educational
108 networks to defend and promote corporate prerogatives.

109 Powell emphasized that controlling the ideological
110 complexion of the high court would be essential. This concept
111 would become a crucial inflection point for the later
112 development of the Trump-Republican coup’s targeting of the
113 judicial system.

114 If Jefferson’s fears and Schmitt’s desires were valid, the
115 courts would need to be transformed.

116 To validate the rebranding of the Supreme Court, the
117 coup’s overseers needed to glaze over their intentions with a
118 patina of legal theory. Thus, the “unitary executive theory” was
119 advanced. This judicial supposition, of questionable validity, long
120 remained lifeless until the Antonin Scalia joined the court in
121 1986 and then John Roberts joined him in 2005.

122 This theory asserts the executive is a coequal to the other
123 branches as an interpreter of the Constitution because the
124 president is obliged under Article II, Section 3 to “faithfully
125 execute” the laws. The theory holds that any office or agency
126 within the Executive Branch must be deferential to the will of the
127 president, fundamentally conflicting with the spirit of checks and
128 balances.

129 One can detect a whiff of Carl Schmitt here.

130 * * *

131 THE NEXT ESSENTIAL TACTIC in this consolidation of power
132 is the augmentation of executive authority by manufacturing a
133 supermajority on the Supreme Court.

134 Genuflecting to the Powell Memo, the Federalist Society,
135 a powerful right-wing organization, used one of its front groups,
136 the Judicial Crisis Network to implement a long-term strategy.

137 Leonard Leo, the founding director, concocted a highly
138 complex funding, recruiting, and training matrix to flood the
139 court system with ultraconservative — now labelled “MAGA” —
140 jurists.

141 Using millions in unaccountable “[dark money](#)” in a
142 financial spider web of disguised contributions, Leo deployed
143 funds, estimated of up to \$580 million between 2014 and 2020
144 to recruit, groom, and lobby their candidates to the federal
145 bench.

146 As a result, some 5,000 of Leo’s lemmings are in the
147 national judicial system. Glaring successes are the blocking of
148 Obama Supreme Court nominee Merrick Garland’s Senate

149 confirmation hearing and the anointment of Trump nominees
150 Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett to the
151 Supreme Court.

152 This is all well known. What is not well known is the
153 actual admission fee paid to play.

154 * * *

155 AFTER 20 YEARS, Chief Justice John Roberts continues to
156 wield a Republican majority and since Trump's first term a 6-3
157 supermajority. He has engineered one of the most reactionary
158 judicial records in U.S. history, arguably exceeding even the
159 Lochner era court of the 1890s-1930s, so renowned for its
160 unabashed pro-business, laissez-faire, antiregulatory posture.

161 Roberts and his majority have consistently enfeebled or
162 abolished corporate regulations, campaign finance, and voting
163 rules, and rolled back women's, worker's, and minority rights.
164 Simultaneously, these legal magicians have inoculated Trump
165 with imperial powers of immunity.

166 In [*Trump v. United States*](#) this historically egregious
167 ruling holds that any presidential action deemed an official duty
168 can go unpunished. In her dissent, Justice Sonia Sotomayor
169 wrote: "In every use of official power, the President is now a king
170 above the law." In hers, Justice Ketanji Brown Jackson described
171 the ruling as a "five-alarm fire that threatens to consume
172 democratic self governance and the normal operations of our
173 Government."

174 Energized by the cheerleading Roberts court, Trump's
175 judicial activists are now eager to abolish a 1935 ruling,
176 *Humphrey's Executor v. United States*, that prevents a president
177 from firing members of independent agencies such as the
178 attorneys general.

179 By December of 2025 nearly 300,000 federal employees
180 were forced out of service.

181 Another legalism to politicize the Supreme Court is the
182 manipulation of the court's schedule, its docket. As in other
183 aspects of Trump's reign, his handlers have offended the

184 constitutional provision that enables a president to use
185 “emergency” powers.

186 The Supreme Court’s emergency docket, in ethical
187 hands, is used to expedite rulings in circumstances such as
188 natural disasters, foreign crises, and desists (stop orders). Now
189 misused in such record-breaking numbers by the Roberts-Trump
190 team, a new term — the “shadow docket” — has emerged.

191 This antidemocratic maneuver uses the emergency
192 docket to bypass regular deliberative court procedures such as
193 oral arguments, transcripts, or written decisions.

194 While the Roberts court fully obliges, the court’s third
195 liberal dissenter, Justice Elena Kagan, wrote, “Our emergency
196 docket should never be used, as it has been this year, to permit
197 what our own precedent bars. Still more, it should not be used,
198 as it also has been, to transfer government authority from
199 Congress to the President, and thus to reshape the Nation’s
200 separation of powers.”

201 * * *

202 RECALL Powell’s insistence in his memo that the Supreme
203 Court undergo an ideological transformation because all roads
204 eventually lead to the high court. Today, the radical right
205 occupies the bench where these robed barons continue, via legal
206 machinations, to restore democracy by whittling it away.

207 They are joined by a corporate-dominated legislature led
208 by a cult masquerading as a political party in tandem with a
209 mostly ineffective opposition party that appears to stand for little
210 more than re-election.

211 Combine this with Donald Trump, and you get a
212 kakistocracy, a government by the least qualified, most
213 unscrupulous, and downright malevolent. (The etymology of the
214 word predates the Trump era by hundreds of years, but its popular
215 usage soared during his first term.) Our royal wannabe swindles
216 and gleefully swings his wrecking ball into all that remains
217 democratic and decent in our society.

218 The three pillars of government have fractured and, not
219 so ironically, one of these pillars, the Supreme Court, presides
220 over the destruction of the entire foundation — the rule of law.

221 With the legislative and executive branches in disarray
222 and the judiciary colonized by extremists, this oligarchy may
223 evolve into an American-style fascism. Key elements of
224 authoritarianism are in place, so the question is open to honest
225 debate.

226 However, while we debate, we should continue to resist
227 and prove history wrong.

####END TEXT####

BIO/COATTAIL:

####BEGIN BIO/COATTAIL####

228 **TIM KIPP** is a retired from 39 years of teaching U.S.
229 history. He has been a political activist since the 1960s, including
230 draft and war tax resistance and advocating peace and
231 environmental issues. He is one of the founders of the Vermont
232 Progressive Party, is a longtime field organizer for Sen. Bernie
233 Sanders, and is currently active with the Vermont Indivisible
234 movement.

####END BIO/COATTAIL####

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