



ENQUIRY

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Anti-Trump Riots

By **AMY ELINSKI**
STAFF WRITER

Broken glass lines the windows of shops, and graffiti covers walls, as smoke rises from the remnants of trashcan fires. Rather than a post-apocalyptic film scene, this is the work of protests against President-Elect Donald Trump in Portland, Oregon.

Following a significant level of violence, the police declared the protests a riot. Rioters damaged a car park and threw objects at police who attempted to quell the violence. Reports claim rioters attacked drivers in their cars and shut down the I-5 and I-84 freeways. At least 29 people were arrested.

Though Portland saw the brunt of violent activity, protests in other major cities caused trouble as well. Protesters in Baltimore sat in the streets, blocking traffic during rush hour. In Minneapolis, they blocked freeways, halting traffic both ways for upwards of an hour. In Los Angeles, they blocked a major highway and burned an effigy of Trump. One protester stated, “people have to die to make a change in this world.”

While violence in reaction to Trump’s election has come from relatively few people, a hypocritical current seems to run through the anti-Trump side. Just last week, the media criticized Trump supporters who said they would protest should Hillary Clinton win what they believed to be a rigged election. However, as Trump gained the necessary 270 electoral votes, Clinton’s most vehement supporters began doing exactly, or more than, what they lambasted those Trump backers for suggesting. They not only took to the streets, but caused disarray and chaos.

Trump won at least 290 (and with Michigan, probably 306) electoral votes due to narrow margins in Florida, Wisconsin, and Pennsylvania. The last two states were surprising wins, especially since neither has supported a Republican presidential candidate since the 1980s. Clinton leads in the popular vote by .2 percent at the moment, having won California and New York by amounts larger than the entire voting populations

of many states. Her popular-vote margin is likely to grow, perhaps substantially, once all of California’s ballots are counted. Trump, however, apparently won 30 states to Clinton’s 20, often by margins comparable to hers in California and New York.

Many Clinton supporters have expressed their anger about the result online. The slogan “not my president” has permeated social media, and petitions have appeared on change.org demanding that the Electoral College either elect Clinton or be abolished.

Protesters, both online and in the streets, give the impression of wanting to undermine the

Shockingly, not all Republicans think alike

democratic process. Their refusal to accept the results, even though they were due partly to lower Democratic turnout in key states compared with 2012, suggests an unwillingness to tolerate diversity in politics. Had the election swung the opposite way, surely Clinton supporters would be telling Trump supporters to accept the results

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Duterte: A Disaster for the Philippines

By **ALEX KLOSNER**
STAFF WRITER

Following the regime of dictator Ferdinand Marcos, the People Power Revolution of 1986, along with the election of Corazon Aquino, ushered in a sense of optimism in democracy and political stability for the Philippines. However, corruption and cronyism have persisted until the present day. High poverty rates, crime, and little economic growth continue to plague the country’s people. According to a recent report from CNN, the vast majority of Filipino politicians come from political dynasties, and 76% of new economic growth in the past few years has gone to the 40 most affluent families. Additionally, the Philippines has dealt with a number of external conflicts over the past decade. China continues to increase its geopolitical power in Southeast Asia and threatens

DUTERTE cont.

valuable Philippine maritime territory in the South China Sea. These factors have created the conditions for a power vacuum, legitimizing another questionable “strongman” leader touting the mantra of political stability and domestic order.

Earlier this year, the Philippines elected Rodrigo Duterte to serve as president. Duterte, a member of the Philippine Democratic Party-Power of the People (PDP-Laban), served as mayor of Davao City for 22 years. While in office as mayor, he implemented a “tough on crime” approach against alleged criminals and drug dealers in Davao City. Duterte is rumored to have played an instrumental role in the Davao Death Squad (DDS). This vigilante group was responsible for the extrajudicial killings of more than 700 people from 1998 to 2008. (Duterte denies any affiliation with the DDS.) Davao City, a city of one million people in the southern province of Mindanao, still has one of the highest crime rates in the Philippines despite Duterte’s crime policies as mayor.

Despite the allegations of involvement in the death squad, Duterte still won by a large margin in the Philippine presidential election in May. The election had a record voter turnout of 81%. Duterte received 16.6 million votes (38.6%), followed by about 10 million votes (23.4%) for Mar Roxas. Senator Grace Poe came in third place with 21.7% of the vote. Since then, the number of extrajudicial killings has skyrocketed in Duterte’s war on drugs. According to data released by the Philippine National Police last month, vigilantes have killed 1,391 people. Based on his actions in the past few months, it is evident that Duterte will not bring much-needed political stability to the Philippines, but will preside over a

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reign of terror, potentially throwing the country back into undemocratic chaos. He even stated in August: “I don’t care about human rights, believe me.” He has also threatened to declare martial law in the event

Constitutional Originalism: Needed Now More than Ever

By **PAT BEDARD**
GUEST CONTRIBUTOR

A debate has brewed over the fragile balance of the Supreme Court since the passing of Justice Antonin Scalia last February. Scalia was perhaps the most influential force for “constitutional originalism” of the past century, and the recent presidential election, which will likely influence the Supreme Court’s makeup for decades to come, has brought the clamor over judicial appointments to a crescendo. While pundits and the media speculate on the future balance of the Court and the impact of a Trump presidency on abortion access and marriage equality, a subtler question looms concerning the nature of executive, as opposed to judicial, constitutional interpretation. Putting aside for a moment the question of Supreme Court nominations, I assert that it is categorically better to have a constitutional originalist in the Oval Office, as well as the judiciary, and that the engorgement of executive authority under the Obama administration set a dangerous standard which progressives will likely come to regret over the next four years.

Let me distinguish between two of the methods by which one can interpret America’s most important founding document. “Strict constructionism” takes perhaps the simplest approach: the literal meaning of the words in a law or the Constitution should be the sole factor in discerning their meaning. This method, however, is overly rigid, and for that reason Justice Scalia deviated from strict constructionism in favor of “constitutional originalism.”

His preference for “original meaning,” however, should not be confused with “original intent,” which is a more judicially activist interpretive method whereby the reader looks not at what the text of a law originally meant, but rather what Congress intended the law to mean – even if that supposed intention differs from the meaning of the text itself. Original intent was the distorted logic that brought us *King v. Burwell*, the Affordable Care Act case in which the Court



and move on, as they had said for weeks, anticipating her win.

Nevertheless, they engaged in the same response they mocked Trump supporters for considering. In addition, many have verbally and physically harassed and intimidated those who voted for Trump, refusing to acknowledge that many Republicans cast their ballots for economic and foreign policies rather than Trump himself. Shockingly, not all Republicans think alike. In addition, racism and homophobia are not the fundamental reasons why he won.

Furthermore, it is not as if one man has the power to undermine centuries of American progress. The president is checked by Congress and the court system. The social policies so many people fear Republicans will pursue lack both the support of the entire Republican coalition and the supermajority in the Senate necessary to pass them.

No matter how upsetting you may find the results of the election, protests and violence are not the way to enact positive political change. If you want change, get out and vote in two years. Encourage your friends to vote. Do your research and advocate for the candidate you think best fits your beliefs. America has survived through well over 200 years of presidents, some great, some not so great. Three of them, or four counting Trump, did not win the popular vote. Some elections were even more aggressively contested than this one. Nevertheless, America is still here, and in four years' time, America will still be here.

DUTERTE cont.

that political opposition attempts to halt his crime policies.

Earlier this fall, President Obama raised concerns about the extrajudicial killings resulting from his policies, but Duterte fired back: "I am no American puppet. I am the President of a sovereign country and I am not answerable to anyone except the Filipino people [...] son of a bitch I will swear at you." The new president has a long record of making extreme statements. He once referred to the Pope as a "son of a whore" and the U.S. ambassador to the Philippines as a "gay son of a whore." At a recent press conference, Duterte revealed plans to cut ties with the U.S. and align the Philippines with China and Russia. He has created a frighteningly erratic political environment in the Philippines, and another Marcos-style dictatorship may materialize in the coming years.

ORIGINALISM cont.

ruled that although the text of the law stated that health-care tax credits should be made available only through an "exchange established by the state," Congress

had actually intended it to mean an "exchange established by the state or the federal government." This was, in the words of Scalia's dissent, "interpretive jiggery-pokery." The original-intent method proceeds on, and fosters the idea that the meaning of a law should evolve as unanticipated circumstances emerge over time, thus contributing to the progressives' favored notion of a "living constitution."

In considering the courts, the importance of interpretive theory is self-evident, but it also affects the actions of the executive branch. There was a time when, to quote Alexander Hamilton's Federalist No. 78, the interpretation of the laws was "the proper and peculiar province" of the courts. Sadly, that time has passed.

When confronted with denunciations of abuses of executive authority, defenders of President Obama's legacy will often point to the fact that he has issued fewer executive orders than George W. Bush. That is correct, but misleading. The executive pen on the president's desk has not sat idle for these past eight years. It has been hard at work signing executive memoranda, as opposed to executive orders. Unlike executive orders, executive memoranda are not formally numbered or tracked, but they achieve the same purpose: to direct federal agencies to take a specific action. By all accounts, President Obama holds the record for the most frequent use of this troubling executive power.

The relevance of judicial theory to the presidency results especially from the practice of executive rulemaking, or the expansion (or reduction) of a law's scope. Congress delegates substantially to the executive branch in regard to the actual writing of the rules, regulations, memoranda, and bulletins that determine how laws are executed. In many ways, executive interpretations of laws have a more direct impact on Americans' lives than interpretations by courts because they can occur without judicial review, which is slow yet more transparent to the interested public. Executive rulemaking is only constitutionally prudent, or respectful of the Constitution's spirit, when the president respects the original textual meaning of the law Congress made. Accordingly, when executive rulemaking follows a living-constitution approach – in which a text is open to reinterpretation "as needed" – the separation of powers between the branches of government is seriously compromised, because such changes are supposed to result only from congressional lawmaking.

Executive lawmaking is by no means new, but it has significantly increased in scope under the Obama administration. The

Environmental Protection Agency (EPA) is perhaps the worst offender. Its authority to regulate greenhouse gas emissions, for example, stems from a 2011 reinterpretation of the Clean Air Act and the later Clean Air Act amendments. Although narrowly approved in part by the Supreme Court in 2014, the EPA's reinterpretation of the law was so egregious that, by its own admission, it would have rendered portions of the Act "unrecognizable" to the Congress that passed it in 1970. Scalia called the executive branch's legislative reinterpretation a blatant attempt to "just rewrite the statute." In a more recent and ongoing development, the Obama administration has structured adherence to this year's Paris climate agreement around executive directives to the EPA as opposed to Senate consent. With Trump's hot-off-the-press appointment of Myron Ebell, a noted climate-change skeptic, to lead Trump's EPA executive transition team, Obama's executive memoranda to the EPA will likely be off the books before winter's end.

The Obama administration did not limit its rulemaking overreach to carbon emissions. "Navigable waters" are another

The executive pen on the president's desk has not sat idle for these past eight years

area of federal oversight that has been greatly expanded by executive overreach. The Clean Water Act of 1972 gave the EPA the authority to regulate the discharge of pollutants into "navigable waters" and rivers, streams, and other bodies that flow into them. The source of federal jurisdiction over such bodies of water is the Constitution's interstate commerce clause, under the sound logic that navigable waterways can be used to transport goods from one state to another and should therefore be subject to federal oversight. Since the passage of the Clean Water Act, however, the EPA and presidential

memoranda have gradually ignored court action, expanding the law's reach to include runoff, seasonal ponds, trickling brooks, and practically any other water source that shares a watershed with a navigable waterway. Its original meaning has therefore gone down the drain. Attempts by the EPA to regulate private bodies of water with no significant navigability abound, affecting everything from suburban koi fish ponds to man-made swimming holes.

Regardless of one's views on pollutant discharges or koi ponds, the appropriate authority for the expansion of laws like the Clean Water Act lies with Congress, not the executive. The ability of the EPA to dictate state-level environmental affairs via executive fiat during the Obama presidency may have been a boon for environmentalists. But under the Trump presidency, such a precedent for other federal agencies will, if used, have a significantly regressive impact on some progressive initiatives.

Thus, no matter how judicially originalist or activist the balance of the Supreme Court may tip in the coming months and years, it is better to have a constitutional originalist than a living constitutionalist in the Oval Office. Unfortunately, Donald Trump falls into the latter camp. In the coming years, progressives will be in the unfamiliar, and somewhat ironic, position of having to advocate for executive and judicial restraint in the areas of marriage equality, deferred immigration enforcement (DACA), and universal health care—ironic because these hallmark achievements of the Obama administration have all been assisted by judicial activism and executive overreach.

If there is a lesson to be taken from Trump's victory on Tuesday, it is this: what one executive can do, another can undo. If you want real, lasting change, then act through the legislative branch (Congress). If you fear the short-term implications of authoritarian demagoguery, then limit executive power

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Elizabeth Barry
Editor in Chief

Will Utzschneider
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Associate Editors

Helen Sternberg
Layout Editor

STAFF WRITERS

Alex Klosner

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Sam Benevelli

Allison Zuckerman

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GUEST CONTRIBUTOR

Pat Bedard