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Alternate Realities: Conspiracy Theory and the Constitutional and Democratic Order

Dr. Charles J. Reid, Jr.

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ALTERNATE REALITIES: CONSPIRACY THEORY AND THE CONSTITUTIONAL AND DEMOCRATIC ORDER

CHARLES J. REID, JR.*

I. WHAT IS CONSPIRACY THEORY?

We might begin with definitions. What is a conspiracy theory? Merriam-Webster's online dictionary proposes: "A theory that explains an event or set of circumstances as the result of a secret plot by usually powerful conspirators."¹ The online Encyclopedia Britannica offers: "An attempt to explain harmful or tragic events as the result of the actions of a small, powerful group."²

The Oxford English Dictionary suggests: "The theory that an event or phenomenon occurs as a result of a conspiracy between interested parties; [specifically], a belief that some covert but influential agency (typically political in motivation and oppressive in intent) is responsible for an unexplained event."³ Dictionary.com submits: "A theory that rejects the standard explanation for an event and instead credits a covert group with carrying out a secret plot."⁴ And that source which everyone consults but no one cites, Wikipedia, declares: "A conspiracy theory is an explanation for an event or situation by sinister and powerful groups, often political in motivation, when other explanations are more probable."⁵

The common denominators to these definitions include: secrecy; hidden power; malevolent actors moving in the shadows to control events; the consequent rejection of obvious explanations as the product of naivete, gullibility, or collusive guilt; the self-satisfaction that comes from finding

*Dr. Charles J. Reid, Jr. is a professor at the University of St. Thomas School of Law, as well as the faculty advisor for the University of St. Thomas Journal of Law and Public Policy.

¹ *Conspiracy Theory*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/conspiracy%20theory> (last updated Sept. 25, 2021).

² Scott A. Reid, *Conspiracy Theory*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/conspiracy-theory> (last visited July 25, 2022).

³ *Conspiracy Theory*, OXFORD ENGLISH DICTIONARY.

⁴ *Conspiracy Theory*, DICTIONARY.COM, <https://www.dictionary.com/browse/conspiracy-theory> (last visited July 18, 2022).

⁵ *Conspiracy Theory*, WIKIPEDIA, https://en.wikipedia.org/wiki/Conspiracy_theory (last visited July 25, 2022).

others who share one's own suspicions that the truth must run deeper and be stranger than whatever superficial circumstance suggests. The venue is usually political, but need not be. There is usually also a group of victims that might variously struggle against great odds to overcome their oppression and/or enlighten the general public; or who suffer silently and unwittingly the attacks the conspirators launch against them.

We all have in mind scenarios that fit these standard definitions. Such as something truly fantastical, like the idea that shape-shifting lizard people have constituted themselves into a secret society that rules the world.⁶ Or that the Apollo moon landing was faked,⁷ or that scientists and government officials have been covering up evidence of visits by extra-terrestrial beings.⁸

But conspiracy theories might also have a profoundly damaging impact on groups of persons, such as the notorious Protocols of the Elders of Zion.⁹ An early twentieth-century Czarist forgery, this document, which appeared in installments between 1903 and 1905, alleged the existence of a secret plan by Jewish leadership to dominate the world.¹⁰ The allegations, of course, were false and were issued at a time when Czar Nicholas II's regime was particularly brittle and vulnerable.¹¹ The document, in other words, like many conspiracy theories, was short-sighted, self-interested, and incredibly

⁶ Alex Abad-Santos, *Lizard People: The Greatest Political Conspiracy Ever Created*, VOX (Feb. 20, 2015), <https://www.vox.com/2014/11/5/7158371/lizard-people-conspiracy-theory-explainer>. Belief in this conspiracy theory has, however, had tragic results. See, for example, David Gotfredson, *Father Charged With Murdering Kids May Have Believed in 'Lizard People'*, CBS8 (Sept. 9, 2021); and Lynn Stuart Parramore, *Like QAnon's Capitol Rioters, the Nashville Bomber's Lizard People Is Deadly Serious*, NBC THINK: OPINION, ANALYSIS, ESSAYS (Jan. 12, 2021).

⁷ Elizabeth Howell, *Moon-Landing Hoax Still Lives On. But Why?*, SPACE.COM (Jan. 25, 2022), <https://www.space.com/apollo-11-moon-landing-hoax-believers.html>.

⁸ Cody Nelson, *'Something Happened Here': Roswell Prepares for Pentagon's UFO Report*, THE GUARDIAN (June 25, 2021), <https://www.theguardian.com/us-news/2021/jun/24/roswell-pentagon-ufo-report-aliens>; James Rampton, *'Is There Anybody Out There?' Did the US Government Cover Up Roswell?*, INDEPENDENT (Oct. 29, 2021), <https://www.independent.co.uk/independent-premium/long-reads/ufo-roswell-tv-show-conspiracy-us-b1946239.html>.

⁹ Erin Blakemore, *The Text That Stoked Modern Antisemitism*, JSTOR DAILY (Aug. 21, 2020), <https://daily.jstor.org/the-text-that-stoked-modern-antisemitism/>.

¹⁰ WILLIAM I. BRUSTEIN, *ROOTS OF HATE: ANTI-SEMITISM IN EUROPE BEFORE THE HOLOCAUST 274-77* (Cambridge Univ. Press, 2003).

¹¹ MARC FERRO, *NICHOLAS II: THE LAST OF THE TSARS*, 100 (Brian Pearce, trans., Oxford Univ. Press, 1991).

hateful and harmful.

The Protocols, regrettably, had a long and very unfortunate second life. It represented the leading edge of a particularly vicious wave of anti-Semitism that coursed throughout Europe¹² and the United States¹³ in the years before World War II, and this noxious text even today surges onward in places like Malaysia,¹⁴ Egypt,¹⁵ other parts of the greater Middle East,¹⁶ and in the more toxic corners of the internet.¹⁷

On the other hand, we know that conspiracies do exist. We learn this from the criminal law, where conspiracy is regularly prosecuted.¹⁸ Price-fixing is a reality, which requires proof of hidden collusion among market players.¹⁹ The illicit distribution of narcotics similarly depends upon the

¹² STEPHEN ERIC BONNER, *A RUMOR ABOUT THE JEWS: ANTISEMITISM, CONSPIRACY, AND THE PROTOCOLS OF ZION* (St. Martin's Press, 2000) (Reflecting on the early and middle twentieth century, "Henri Rollin, the French scholar of antisemitism, called the Protocols the most widely distributed book in the world other than the Bible, and its distribution was accompanied by a mountain of secondary literature comprising well more than one thousand titles"). *Id.*, at 2.

¹³ Leo P. Ribuffo, *Henry Ford and "The International Jew,"* 69 *AM. JEWISH HIST.* 437, 441–42, 447–51 (1980).

¹⁴ Stephen J. Whitfield, *The Persistence of the Protocols,* 55 *SOCIETY* 417, 417 (2018).

¹⁵ Daniel J. Watkins, *Anti-Semitic 'Elders of Zion' Gets New Life on Egypt TV,* *NEW YORK TIMES* (Oct. 26, 2002), <https://www.nytimes.com/2002/10/26/world/anti-semitic-elders-of-zion-gets-new-life-on-egypt-tv.html>; cf., Steven R. Weisman, *Threats and Responses: U.S. Objects to 'Protocols' On Egyptian TV,* *NEW YORK TIMES* (Nov. 1, 2002), <https://www.nytimes.com/2002/11/01/world/threats-and-responses-us-objects-to-protocols-on-egyptian-tv.html> (detailing the American response to the airing of this television series).

¹⁶ Amjad Taha, *Anti-Semitism Is On the March From Kuwait to Tunisia,* *ISRAEL NATIONAL NEWS ARUTZ SHEVA* (Jan. 24, 2021), <https://www.israelnationalnews.com/news/295474>.

¹⁷ Juliane Wetzel, *The Protocols of the Elders of Zion on the Internet: How Radical Political Groups Are Networked Via Antisemitic Conspiracy Theories,* in *THE GLOBAL IMPACT OF THE PROTOCOLS OF THE ELDERS OF ZION* 147–60 (Esther Webman, ed., 2011); *Nearly 50 % of QAnon Supporters Believe Jews Want World Domination,* *THE JERUSALEM POST* (June 29, 2021), <https://www.jpost.com/international/nearly-half-of-qanon-supporters-believe-jews-want-world-domination-672335>.

¹⁸ Steven R. Morrison, *The System of Modern Criminal Conspiracy,* 63 *CATH. U. L. REV.* 371, 394–415 (2014).

¹⁹ See, for instance, JOHN M. O'CONNOR, *GLOBAL PRICE FIXING,* 61 (Berlin, Heidelberg Springer, 2d ed., 2007); Can Erutku & Vincent A. Hildebrand, *Conspiracy at the Pump,* 53 *J. OF L. & ECON.* 223 (2010) (price-fixing in the Canadian gasoline market); Christopher R. Leslie, *Foreign Price-Fixing*

covert cooperation of numerous parties often separated by great distance and who may not even be aware of the other participants.²⁰ Sex trafficking – and other forms of human trafficking – constitute another form of criminal conspiracy whose dimensions are becoming known.²¹

In 2003, Neal Katyal defended the continued vitality of the federal law of criminal conspiracy against those who would weaken its requirements, arguing that “[p]sychologists have made many advances in understanding the ways in which people in groups act differently than they do as individuals,” and that when persons conspire together to break the law, they should be punished for that reason alone.²²

There is, in other words, a class of conspiracies that are real and that have malignant consequences for society. The concern of this symposium, however, is not with price fixing, or the distribution of narcotics, or the destruction of human lives in trafficking rings, or even with the general defense of the law of criminal conspiracy. All of these topics are important, they are, each of them, worthy of scholarly examination, but they are not the focus of this volume. The concern of this Symposium, rather, is on conspiracy theory as understood in those definitions that appear in the opening paragraphs of this essay. What this Symposium is about is conspiracy theory understood in its esoteric sense. The strange, the gothic,

Conspiracies, 67 DUKE L. J. 557 (2017) (application of U.S. antitrust law to international markets); John M. O’Connor, *The Global Lysine Price-Fixing Conspiracy of 1992-1995*, 19 REV. OF AGRIC. ECON., 412 (1997) (criminal prosecution of Archer, Daniels, Midland for price-fixing); cf. J.D. Jaspers, *Business Cartels and Organised Crime: Exclusive and Inclusive Systems of Collusion*, 22 TRENDS IN ORGANIZED CRIME 414 (2019) (exploring bid-rigging in the construction industry and its occasional relationship with organized crime).

²⁰ See, for example, Mangai Natarajan, *Understanding the Structure of a Large Heroin Distribution Network: A Quantitative Analysis of Qualitative Data*, 22 J. OF QUANTITATIVE CRIMINOLOGY 171 (2006); Bruce Zagaris, *International Narcotics Control and Transnational Organized Crime*, 35 INT. L. ENF’T REP. 41 (Jan. 2019); and Emilie Kurth, *Drug Conspiracy Sentencing and Social Injustice*, 91 U. OF COLO. L. REV. 1215 (2020).

²¹ See, for example, Luz Estella Nagle, *Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude*, 26 WISC. INT’L L. J. 131 (2008); Monica DeLateur, *From Craigslist to Backpage-com: Conspiracy as a Strategy to Prosecute Third-Party Websites for Human Trafficking*, 56 SANTA CLARA L. REV. 531 (2016); Kendal Nicole Smith, *Human Trafficking and RICO: A New Prosecutorial Hammer in the War on Modern Day Slavery*, 18 GEORGE MASON L. REV. 759 (2011).

²² Neal Kumar Katyal, *Conspiracy Theory*, 112 YALE L. J. 1307, 1309–10 (2003); cf., Mitchell McBride, *Federal Criminal Conspiracy*, 57 AM. CRIM. L. REV. 759 (2020) (reviewing the state of federal criminal conspiracy prosecutions).

the outlandish, the bizarre, and, yes, also the injurious, the repulsive, and the odious.

In particular, this Symposium is focused on the political and public dimensions of conspiracy theory. Necessarily, the contributions to this Symposium are inter-disciplinary. After all, conspiracy theory begins as a phenomenon of the human mind. It is a question of epistemology, the reception and processing of knowledge of the external world. And among the papers collected in this Symposium issue, we will see the issues of the epistemology and psychology of conspiracy theory addressed.

But conspiracy theory has an impact as well on the decision-making and deliberations of the body politic. We might begin with a simple proposition: It would seem that democracy and conspiracy theory are polar opposites. Indeed, it would seem that they cannot co-exist. Democracy, after all, is the consent of the governed, and if the governed are to consent, then they must have an accurate awareness of that to which they are consenting. And since conspiracy theory obstructs this awareness, then it would seem that conspiracy theory frustrates and defeats the democratic process.

Yet we have a paradox. As the papers in this volume reveal, conspiracy theory is not a recent phenomenon. On the contrary, conspiracy theory is as old as the American Republic, even older perhaps, although social media has recently magnified its role in American life. And yet I think that few of us would say that the United States is for that reason not democratically governed. So, the situation is a complex one, and we should realize, upon completing this volume, that what is required is the development of tools for coping with what is, for better or worse, a hardy perennial of American life.

In fact, we shall come to the sober understanding that life is messier than the simple syllogism declaring conspiracy theories and democracy incompatible that I constructed a couple of paragraphs ago. Constitutional rule and the democratic order have not withered and died under the assault of conspiracy theory, even if, on balance, we would prefer the absence of such phenomena.

Thus, although we should conclude that conspiracy theory is not a good thing, we must also acknowledge that, like viruses perhaps, conspiracy theories are an ineradicable feature of life, and that while they may have occasionally sickened the body politic, we have always recovered our health and well-being. Indeed, we might borrow a phrase that some of us have come to know all too well – we must learn to “live with this particular virus.” That

does not mean surrender. On the contrary, we need to study its features, we must keep our protections ready at hand, and we then we must live boldly, always prepared to oppose and repel these threats as they emerge.

I. THE CONTRIBUTORS

There are eleven contributions to this volume on conspiracy theory. In keeping with the mission of the University of St. Thomas Journal of Law and Public Policy to investigate timely questions of policy through an interdisciplinary lens, this Symposium has gathered the work not only of academic lawyers, but of political scientists, psychologists, historians, and experts on public health. They are among some of the best scholars in their chosen fields. And they include:

A. James Morone

James Morone is John Hazen White Professor of Public Policy at Brown University, and the author, most recently, of The Devils We Know: Us and Them in America's Raucous Political Culture.²³ His paper is significant for capturing two phenomena at once: first, he gives his readers a remarkably long and panoramic view of the relationship of conspiracy theory and American history. It is not necessarily reassuring to know that conspiracy theory goes all the way back in American history – to the Salem Witch Trials, Professor Morone asserts, and even before. Much violence has been done in the name of conspiracy. The Catholic Convent at Charlestown, Massachusetts was burnt to the ground in 1834 when a nativist mob, their minds stuffed with make-believe stories about sexual slavery, torched it.²⁴

The so-called White Slavery panic of the first years of the twentieth century is a second conspiracy theory that Professor Morone discusses in his paper. Fearful that young country women were being led to their doom in the big cities, Congress eventually acted, passing the Mann Act, seeking to criminalize the crossing of state lines for immoral purposes.²⁵ It turned out that so-called “white slavery” – the mass involuntary confinement of women to lives of prostitution – was actually a phantom problem, but the Mann Act survived and has been used as selectively as an instrument to persecute

²³ JAMES MORONE, *THE DEVILS WE KNOW: US AND THEM IN AMERICA'S RAUCOUS POLITICAL CULTURE* (Univ. Press of Kansas, 2014).

²⁴ Ray Allen Billington, *The Burning of Charlestown Convent*, 10 *NEW ENG. Q.* 4 (1937).

²⁵ White Slave Traffic (Mann) Act, Pub. L. No. 61-277, 36 Stat. 825a (1910).

disfavored individuals.²⁶

These are not pleasant features of American history. Professor Morone is clear on that point. But they are at least a familiar part of the fabric of American life. In his paper, however, Professor Morone expresses fears about the ways in which conspiracy theory has come to be weaponized and used as a partisan tool. The so-called “Birther” controversy – the unfounded allegation that President Barack Obama was born in Kenya and was thus ineligible for the American presidency was just the opening wedge of a larger partisan deployment of conspiracy.²⁷ Professor Morone, however, ends his paper on a (mostly) optimistic note, putting his trust in a waning partisan divide and a future generation that has little patience for such appeals.

B. Patrick Callaway

Dr. Patrick Callaway teaches history at the University of Maine, and has written on early American history,²⁸ and on trade between New England and Nova Scotia in the early American Republic.²⁹ Dr. Callaway’s paper is focused on an important but relatively unknown story about polemics and controversy in the 1790s – the exciting, short-lived career of a certain Peter Porcupine, who was actually William Cobbett (1763-1835), a protean, shape-shifting political thinker who worked and wrote at various times in both Great Britain and the United States, and even managed the unusual feat of both

²⁶ Thus Professor Morone mentions the boxer Jack Johnson and the rock singer Chuck Berry. See, for example, LORI LATRICE MARTIN & HAYWARD DERRICK HORTON, *Racism Front and Center: Introducing the Critical Demography of Athletic Destinations*, in *OUT OF BOUNDS: RACISM AND THE BLACK ATHLETE* 105, 115 (Praeger, 2014) (on Jack Johnson); MAUREEN MAHON, *RIGHT TO ROCK: THE BLACK ROCK COALITION AND THE CULTURAL POLITICS OF RACE* 153–54 (Duke Univ. Press, 2004) (on Chuck Berry).

²⁷ BEN RAILTON, *WE THE PEOPLE: THE 500-YEAR BATTLE OVER WHO IS AMERICAN* 135–37 (Rowman & Littlefield, 2019).

²⁸ See, for example, Patrick Callaway, *Fear, Capital Punishment, and Order: The Construction and Use of Capital Punishment Statutes in Early Modern England and Seventeenth-Century New England*, in *AN INVITATION TO AN EXECUTION: A HISTORY OF THE DEATH PENALTY IN THE UNITED STATES* 47–59 (Gordon Morris Bakken, ed., 2010).

²⁹ See, for example, Patrick Callaway, *An Uncertain Trumpet: Coastal Mainers, Nova Scotians, and the War of 1812*, 21 *CHEBACCO: THE MAGAZINE OF THE MOUNT DESERT ISLAND HISTORICAL SOCIETY* 80 (2020).

serving time in Newgate Prison³⁰ and in Parliament.³¹

Peter Porcupine operated in a propitious time. America has always been a land of self-definition. The nation continuously redefines itself from generation to generation, and gives opportunity to its inhabitants to do the same.³² And there were few times when the reality of America as the land of self-definition loomed as large as the 1790s, when Americans of different classes, castes, and states of mind sought to make sense of the Revolution, the Constitution, and what was expected of them in this new and hard-won country.

Dr. Callaway uses this backdrop for the story of Peter Porcupine, the penname for William Cobbett, as he fashioned a career for himself as a controversial writer. Was he a British agent? Was he part of some larger conspiracy to undermine American democracy? His enemies thought that he was. Were his enemies actually in league with the French, and shared their antinomian, atheistic, revolutionary spirit? Was Peter Porcupine himself the victim of a conspiracy, as the Philadelphia establishment, led by Dr. Benjamin Rush, mounted a libel case against him, the outcome of which might be well-captured by the old expression, “the fix was in?”

And then there is Peter Porcupine’s rhetoric: Belligerent, suspicious, dark, threatening, bombastic, cynical, in a word, conspiratorial. Peter Porcupine, Dr. Callaway makes the case, established a rhetorical model that has served conspiracy theorists well for the next 230 years. Dr. Callaway tells a great story – as he masterfully weaves a tapestry of florid conspiracizing from an abundant and rich skein of raw materials.

C. Ian Iverson

Ian Iverson is completing his doctorate in the History Department at the University of Virginia. His paper is focused on the febrile politics of the 1850s. This was a time of great conspiracy theories. And among the most deeply held was the Anti-Catholicism of the emerging Know-Nothing Party.

Focusing his research on politics in Illinois in a fairly confined period

³⁰ CHRISTINA PAROLIN, *RADICAL SPACES: VENUES OF POPULAR POLITICS IN LONDON, 1790 - c. 1845* 30 (Canberra, ANU Press, 2010).

³¹ ROBERT WATERS, *HOW TO GET ON IN THE WORLD: AS DEMONSTRATED BY THE LIFE AND LANGUAGE OF WILLIAM COBBETT* 212–16 (J.W. Pratt, 1883).

³² Thus Walt Whitman envisioned America as a “teeming nation of nations,” always reinventing, always becoming, always restless. Walt Whitman, *Leaves of Grass*, quoted in *NEW WORLD METAPHYSICS: READINGS ON THE RELIGIOUS MEANING OF THE AMERICAN EXPERIENCE* 241(Giles Gunn, ed., 1981).

of time – roughly 1854 to 1858 – Mr. Iverson thoroughly explores the fractured nature of the political order and how those fractures and fault-lines eventually closed near the end of that tumultuous decade.

When contemporary Americans, in the here and now of the 2020s, think about the politics of the 1850s, only one issue generally comes to mind – slavery, and the steady and inexorable movement to Civil War that characterized that decade. But in the middle 1850s, many American voters had other preoccupations. Focusing particularly on Illinois, Mr. Iverson identifies immigration – particularly Catholic immigration – as a concern that was on the forefront of many voters’ minds. There was, many old-stock white Protestants feared, a terrible Catholic conspiracy afoot.³³ The Pope had designs on America and papal agents – especially the cunning and secretive Jesuit Order – was preparing to subvert and destroy American freedom.³⁴ Where once a constitutional order of limited government and self-rule prevailed, a reign of medieval obscurantism will soon descend.³⁵ While slavery was on the minds of many, others were obsessed with the perceived disorder associated with Catholics – who did not know how to respect the Sabbath,³⁶ read the Bible,³⁷ or refrain from strong drink.³⁸

With the break-up of the Whig Party following the 1852 election, it was not clear who would form the opposition to the Democratic Party then in control of the White House. The anti-Catholic Know Nothing Party made

³³ See, for example, the collection of anti-Catholic essays by Samuel F.B. Morse, the inventor of the telegraph, published anonymously under the title, *FOREIGN CONSPIRACY AGAINST THE LIBERTIES OF THE UNITED STATES* (New York, Lord & Co. 1835); and the essay by LYMAN BEECHER, *PLEA FOR THE WEST* (New York, Lord & Co. 1835). Cf., ROBERT S. LEVINE, *CONSPIRACY AND ROMANCE: STUDIES IN BROCKDEN BROWN, COOPER, HAWTHORNE, AND MELVILLE* 108–11 (Cambridge Univ. Press, 1989) (further expanding on these texts).

³⁴ LUKE RITTER, *INVENTING AMERICA’S FIRST IMMIGRATION CRISIS: POLITICAL NATIVISM IN THE ANTEBELLUM WEST* 86–89 (Fordham Univ. Press, 2021).

³⁵ KATHLEEN M. SANDS, *AMERICA’S RELIGIOUS WARS: THE EMBATTLED HEART OF OUR PUBLIC LIFE* 105–07 (Yale Univ. Press, 2019).

³⁶ TIMOTHY VERHOEVEN, *SECULARISTS, RELIGION, AND GOVERNMENT IN NINETEENTH-CENTURY AMERICA* 83–87 (Cham Springer Int’l Publishing Palgrave Macmillan, 2019).

³⁷ TYLER ANBINDER, *NATIVISM AND SLAVERY: THE NORTHERN KNOW NOTHINGS AND THE POLITICS OF THE 1850S* 11–12 (Oxford Univ. Press, 1992).

³⁸ ROBERT JAMES BRANHAM & STEPHEN J. HARTNETT, *SWEET FREEDOM’S SONG: ‘MY COUNTRY ‘TIS OF THEE’ AND DEMOCRACY IN AMERICA* 82–83 (Oxford Univ. Press, 2002).

a bid to become that opposition.³⁹ The Party nominated a formidable candidate – the former President Millard Fillmore, who won nearly 22 % of the popular vote.⁴⁰

1856, however, was also the year that the newly-organized Republican Party first ran a presidential candidate, John C. Frémont. Had Frémont and Fillmore not split the anti-Democratic Party vote, the Democratic candidate, James Buchanan, would not have won.⁴¹ Of course Buchanan did win. And a few days after Buchanan took office, the Supreme Court handed down the Dred Scott decision.⁴² And a tragic, familiar history followed.

Ian Iverson's contribution to this symposium tells the story of how Abraham Lincoln, who was not a conspiracy theorist, not a nativist, and who made clear in published letters did not support the Know-Nothing cause, nevertheless succeeded in drawing to his side a substantial majority of the Fillmore vote. It is an important, intricate, and well-researched work of scholarship.

D. Michael Conklin

Dr. Michael Conklin is the Powell Endowed Professor of Business Law at Angelo State University in Texas, and a prolific scholar. He has published some 100 articles in law journals and other scholarly venues.

In his contribution to the Alternate Realities symposium Dr. Conklin poses a careful and precise legal question: Can former President Donald Trump be prosecuted for incitement to riot for his speech at the Save America Rally on January 6, 2021? We know now, of course, a great deal more of the back story. The Select Committee to Investigate the January 6 Attack has revealed numerous efforts to suppress accurate counting of the popular vote,⁴³ and to manipulate rules to allow for the invalidation of electoral votes

³⁹ DONALD CHARLES SWIFT, *RELIGION AND THE AMERICAN EXPERIENCE* 144–45 (M.E. Sharpe, 1998).

⁴⁰ PAUL FINKELMAN, *MILLARD FILLMORE* 133–34 (Times Books, 2011).

⁴¹ MICHAEL LIND, *WHAT LINCOLN BELIEVED: THE VALUES AND CONVICTIONS OF AMERICA'S GREATEST PRESIDENT* 151–52 (NY Doubleday, 2004).

⁴² *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

⁴³ See, for example, Alan Feuer, *A Georgia Election Worker Testified About Receiving Threats After Conspiracy Theories Spread by Trump*, NY TIMES (June 21, 2022), <https://www.nytimes.com/2022/06/21/us/shaye-moss-georgia-trump-january-6.html>; Zach Montague, *Brad Raffensperger, Georgia's Top Election Official, Resisted Trump's Order to Falsely Declare Him the Winner: The Witnesses*, NY TIMES (June 21, 2022), <https://www.nytimes.com/2022/06/21/us/brad->

won by Trump's opponent, President Joseph Biden.⁴⁴

But Dr. Conklin's paper is not concerned with what went on behind closed doors, or in planning sessions, or even in the presidential limousine.⁴⁵ His focus is on President Trump's speech at the Rally and whether that speech rises to the level of incitement to riot.

In developing his case, Dr. Conklin commenced with two landmarks of First Amendment Free Speech case law, Brandenburg v. Ohio⁴⁶ and Hess v. Indiana.⁴⁷ Clarence Brandenburg, the defendant in the first of these cases, was a Ku Klux Klan leader in Ohio, who invited news reporters to film a Klan rally at which he spoke.⁴⁸ Evidence was adduced that he had a proclivity for violence.⁴⁹ He was tried and convicted of violating the Ohio Criminal Syndicalism statute, which forbade the "advocacy" of various forms of criminal activity, including "sabotage, violence, or unlawful methods of terrorism."⁵⁰ The United States Supreme Court reversed Brandenburg's conviction, reasoning "that the constitutional guarantees of free speech and

raffensperger-trump-jan-6-hearing.html.

⁴⁴ See, for example, Luke Broadwater & Alan Feuer, *Panel Ties Trump To Fake Elector Plan, Mapping His Attack on Democracy*, NY TIMES (June 21, 2022); Luke Broadwater & Alan Feuer, *Trump Pressured States To Comply on Fake Electors*, NY TIMES (June 22, 2022); and Jeremy Herb, *Texts Between Aides Reveal Role Senator Ron Johnson Played in Pushing 'Fake' Trump Electors*, CNN (June 21, 2022), <https://www.cnn.com/2022/06/21/politics/ron-johnson-fake-elector-scheme-trump/index.html>; Emily Brooks, *Bowers Says Biggs Asked Him to Sign Letter to Decertify State's Electors*, THE HILL, (June 21, 2022), <https://thehill.com/homenews/house/3531373-bowers-says-biggs-asked-him-to-sign-letter-to-decertify-states-electors/>.

⁴⁵ Michael McAuliff & Tim Balk, *Trump's Angry and Erratic Behavior On January 6 Takes Center Stage in Testimony From Former White House Aide*, NY DAILY NEWS (June 28, 2022), <https://www.nydailynews.com/news/politics/us-elections-government/ny-jan-6-hearing-cassidy-hutchinson-20220628-xcake2olovem3dy2ep7pb5emry-story.html>; A.J. McDougall, *Secret Service Agents Deny Claim of Violent Trump Freakout on January 6: WaPo*, DAILY BEAST (June 28, 2022), <https://www.thedailybeast.com/cassidy-hutchinsons-jan-6-testimony-on-trump-limo-assault-disputed-by-secret-service-agents>.

⁴⁶ Brandenburg v. Ohio, 395 U.S. 444 (1969).

⁴⁷ Hess v. Indiana, 414 U.S. 105 (1973).

⁴⁸ Jacob Hillesheim, *Sanctuary of Belief and Conscience: the U.S. Supreme Court, Freedom of Speech, and Brandenburg v. Ohio 67* (2018) (M.A. Thesis, University of Nebraska-Kearney, 2018).

⁴⁹ *Id.*, at 66, note 74.

⁵⁰ Brandenburg v. Ohio, *supra* note 46, at 444–45 (quoting Ohio Rev. Code Ann. Sec. 2923.13).

free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to produce such action.”⁵¹

Hess, furthermore, involved a heated exchange during an antiwar protest that involved both the use of a commonplace vulgarity and promise to “take the . . . street.”⁵² Hess was convicted of disorderly conduct, but the Supreme Court reversed, reasoning that “[defendant’s speech] amounted to nothing more than advocacy of illegal action at some indefinite future time.”⁵³

If this is the state of the law, then could Donald Trump be convicted of incitement to riot? That is the question Dr. Conklin put to his readers, and he walks the readers through a careful, balanced, well-reasoned analysis of the legal problem. The article is a brief, sharp, incisive synthesis of case law – including numerous appellate and state-court decisions – with the facts, and it is well worth reading.

E. Cynthia Boyer

Dr. Cynthia Boyer teaches at the Institut National Universitaire, Champollion, in France, where her specialty is comparative constitutionalism, with a focus on the United States. Professor Boyer has contributed one of this symposium’s most provocative articles.

The article is really divisible into two discrete sections. The first half of the paper is a reflection on a question of fundamental importance to any consideration of conspiracy theory, and that is, “what is truth?”⁵⁴ It is the question that Pontius Pilate put to Jesus in the Gospel of John. Was Pilate a skeptic? Did he doubt the possibility of truth? Skepticism was a lively philosophical controversy at the time the Gospel was composed, and it is certainly possible the author of John meant to summon that controversy to mind.⁵⁵ But any inquiry into conspiracy theory must have at some philosophical level, a commitment to a knowable, identifiable truth, if only to distinguish the real from the fictional, or the factitious.

Professor Boyer well knows that arriving at an understanding of truth

⁵¹ *Id.*, at 447.

⁵² *Hess v. Indiana*, *supra* note 46, at 107.

⁵³ *Id.*, at 108.

⁵⁴ *John* 18:38.

⁵⁵ JOHN HENRY, A SHORT HISTORY OF SCIENTIFIC THOUGHT 130 (Palgrave Macmillan, 2012); DANIEL DERRIN, RHETORIC AND THE FAMILIAR IN FRANCIS BACON AND JOHN DONNE 68 (Fairleigh Dickinson Univ. Press, 2013).

in a competitive political environment is challenging. She makes reference to Jonathan Swift's famous essay, The Art of Political Lying.⁵⁶ The essay was written with the narrow purpose of criticizing certain governmental figures who were contemporaries of Swift's,⁵⁷ but it speaks, dare one say it, vivid truths to a contemporary audience. Written in the form of a book review, Swift satirizes a political establishment that believes that the public "[has] no right at all to political truth."⁵⁸

Boyer proceeds from Swift to consider the book by Edward Herman and Noam Chomsky, Manufacturing Consent.⁵⁹ For Herman and Chomsky, media, especially corporate news media focused on politics or economics, operates within a "propaganda model" that steers public assent to a government that favors corporate interests and a militarized foreign policy over other alternatives.⁶⁰

Professor Boyer moves from these sources, and the realization that truth at least is hard to come by, to consider the special position of the President of the United States within the Constitution especially with respect to the President's obligation to engage in truthful speech on social media, especially Twitter. Professor Boyer develops the point that President Trump's tweets were recognized as official statements by the president. Was there, therefore, a special obligation on the part of the President, as a government employee – the government employee in chief, so to speak – to be truthful?⁶¹

On the other hand, Professor Boyer also looked to Twitter's obligations in this matter, especially following Twitter's permanent suspension of President Trump's twitter account in the wake of the January 6, 2021, unrest and finds that those obligations might include permitting the President of the United States a continuing right of free speech. "[T]he permanent suspension of a politician who, in the jurisprudence of the First Amendment, is supposed to enjoy the broadest amplitude of freedom of expression is confusing." She finds significant Justice Clarence Thomas'

⁵⁶ Jonathan Swift, *The Art of Political Lying*, in 17 THE WORKS OF THE REV. JONATHAN SWIFT, D.D. 339–55 (Thomas Sheridan, ed., 1808).

⁵⁷ EUGENE HAMMOND, JONATHAN SWIFT: IRISH BLOW-IN 413 (University of Delaware Press, 2016).

⁵⁸ Swift, *supra* note 56, at 344.

⁵⁹ EDWARD S. HERMAN & NOAM CHOMSKY, MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF MASS MEDIA (Pantheon, 2002).

⁶⁰ *Id.*, at xii–xix.

⁶¹ Professor Boyer cites in particular *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

concurrence in Biden v. Knight First Amendment Institute at Columbia University to endorse the proposition that social media companies, because of their market power, ought to be treated like public utilities.⁶²

F. Nick Sciullo

Dr. Nick Sciullo is Professor of Communications at Texas A & M, Kingsville. He is the author of an important book, Communicating Hip-Hop, which is a survey of “hip-hop culture,”⁶³ in fields as diverse as law, religion, and politics. He has written on white supremacy and Trayvon Martin,⁶⁴ the intersection of “law, popular culture, and identity politics.”⁶⁵ “Social Justice in Turbulent Times,”⁶⁶ and the contributions of Slavoj Žižek as a legal theorist.⁶⁷

In his contribution to this Symposium, Professor Sciullo takes very seriously its title: It is about conspiracy theories and specifically their threat to “democratic order.” But what is “democratic order?” He proposes to perform a “radical critique . . . to save democracy from itself.” He looks to several leading critical thinkers as sources and inspirations. He thus looks to Jacques Rancière, who finds that ““Our institutions are not democratic. They are representative, therefore oligarchic.””⁶⁸ Rancière, as Sciullo understands him, teaches modesty. “[W]e must neither condemn democracy to the trash bin of history nor accept that democracy will inevitably come and be wonderful.”

Sciullo also turns to Ernesto Laclau and Chantal Mouffe. These two authors aspire to create a “radical democracy” – an open society that allows

⁶² Biden v. Knight First Amendment Institute at Columbia University, 141 S. Ct. 1220, 1224 (Thomas, J., concurring).

⁶³ NICK SCIULLO, COMMUNICATING HIP-HOP: HOW HIP-HOP CULTURE SHAPES POPULAR CULTURE 2 (Praeger, 2019).

⁶⁴ Nick J. Sciullo, *The Ghosts of White Supremacy: Trayvon Martin, Michael Brown, and the Specters of Black Criminality*, 117 W. VA. U. L. REV. 1397 (2015).

⁶⁵ Nick J. Sciullo, *Conversations with the Law: Irony, Hyperbole, and Identity Politics or Sake Pase? Wyclef Jean, Shottas, and Haitian Jack: A Hip-Hop Creole Fusion of Rhetorical Resistance to the Law*, 34 OKLA. CITY U. L. REV. 455, 456 (2009).

⁶⁶ Nick J. Sciullo, *Social Justice in Turbulent Times: Critical Race Theory and Occupy Wall Street*, 69 NAT'L. LAW. GUILD REV. 225 (2012).

⁶⁷ Nick Sciullo, *Žižek/Questions/Failing*, 47 WILLAMETTE L. REV. 287 (2011).

⁶⁸ NICK J. SCIULLO, THE UN-REALITY OF DEMOCRATIC ORDER: AN ALTERNATIVE (quoting Jacques Rancière, *Jacques Rancière: The Crisis of Democracy*, VERSO BOOKS (Dec. 2, 2019), <https://www.versobooks.com/blogs/4576-jacques-ranciere-the-crisis-of-democracy>).

conflict among groups to be forthrightly and honestly addressed, and that permits the economic premises of today's world to be brought to account and judged. Sciullo then examines Slavoj Žižek. He quotes Žižek who is himself paraphrasing Karl Marx for the proposition that: "Real freedom resides in the 'apolitical' network of social relations, from the market to the family, where the change needed in order to make improvements is not political reform, but a change in the social relations of production."⁶⁹ Summarizing Žižek, Sciullo concludes: "Democracy is not the solution to alternative facts and conspiracy theories – it is the precondition for them."

Jacques Derrida is the final thinker Sciullo examines in his survey. Derrida (1930-2004) was among the greatest minds of the twentieth century. Derrida's great byword was "deconstruction." He imagined the world of language as a series of violent binaries and hierarchies, "normal" vs. "abnormal," "beautiful" vs. "ugly," and so forth. Yet these hierarchies were unstable, and through deconstruction Derrida hoped to reveal the precariousness of all attempts to communicate.⁷⁰

Summarizing Derrida's views on democracy, Sciullo states: "Democracy does not so much promise a new set of political relations as it rather leaves open the possibility of an as yet unrealized new political order." Sciullo then proceeds to criticize this proposition as risky – "simply too dangerous, too utopian, and too promising." Sciullo closes with "timeless reminders." Everyone – but especially lawyers – must read widely and critically; be prepared to confront the types of disinformation and misinformation that can threaten even the imperfect democracy that we inhabit; and always and everywhere avoid the demonization of one's opponents that can strip them of their humanity and turn them into reviled "Others."

G. David W. Opderbeck

David Opderbeck is professor of law at Seton Hall University where he also serves as co-director of the Institute for Privacy Protection and the Gibbons Institute for Law, Science, and Technology. He has a Ph.D. in Theology from the University of Nottingham and has produced a large and

⁶⁹ Quoting Slavoj Žižek, *Democracy Is the Enemy*, LONDON REVIEW OF BOOKS (Oct. 28, 2011), <https://www.lrb.co.uk/blog/2011/october/democracy-is-the-enemy>.

⁷⁰ Charles J. Reid, Jr., *The Linguistic Turn (I): The French Connection* (unpublished manuscript) (on file with author).

wide-ranging body of scholarship. He has written widely on cybersecurity,⁷¹ on intellectual property,⁷² and, more recently, on the Greek Christian philosopher and biblical scholar Origen (c. 185–253 CE).⁷³ He has as well written an important book defending a space for a human-centered law in the face of encroaching scientific developments in the field of neuroscience.⁷⁴

In his contribution to this Symposium, Professor Opderbeck seeks to solve a problem: Why did the crowd that gathered at the United States Capitol on January 6, 2021, display so much and such intense Christian religious imagery and symbolism? To Professor Opderbeck, the presence of these crowds of impassioned believing Christians was “no fluke.” The body of Professor Opderbeck’s paper is dedicated to explaining why this involvement was, far from some random occurrence, actually a predictable outcome of trends with a long and deep history in the Christian tradition.

And to be clear, Professor Opderbeck travels deep within the tradition, to its very founding. The historical Jesus, the preacher from Bethlehem and Nazareth, was apocalyptic in many of his pronouncements. Speaking of the horrors to come, he proclaimed: “When you see the abomination that causes desolation, standing where it does not belong, let the reader understand – then let those who are in Judea flee to the mountains.”⁷⁵ Or, again, “Then he said to them, ‘Nation will rise against nation, and kingdom against kingdom. There will be great earthquakes, and in various places famines and pestilences. And there will be terrors and great signs from heaven.’”⁷⁶

Other parts of Christian Scripture develop and embellish on these

⁷¹ See, for example, David W. Opderbeck, *Cybersecurity, Data Breaches, and the Economic Loss Doctrine in the Payment Card Industry*, 75 MD. L. REV. 935 (2016); David W. Opderbeck, *Current Developments in Data Breach Litigation: Article III Standing After Clapper*, 63 S.C. L. REV. 599 (2016); and David W. Opderbeck, *Encryption Policy and Law Enforcement in the Cloud*, 49 CONN. L. REV. 1657 (2017).

⁷² David W. Opderbeck, *Patent Damages and the Shape of Patent Law*, 89 BOS. U. LAW REV. 127 (2009); David W. Opderbeck, *Beyond Bits, Memes, and Utility Machines: A Theology of Intellectual Property as Social Relations*, 10 U. OF ST. THOMAS L. J. 738 (2013); and David W. Opderbeck, *Patents, Essential Medicines, and the Innovation Game*, 58 VAND. L. REV. 501 (2005).

⁷³ David W. Opderbeck, *Can Origen Help Us Understand Adam?*, 99 NEW BLACKFRIARS 561 (2018).

⁷⁴ DAVID W. OPDERBECK, *THE END OF THE LAW: LAW, THEOLOGY, AND NEUROSCIENCE* (Cascade Books, 2021).

⁷⁵ *Mark* 13:14.

⁷⁶ *Luke* 21:10-11.

themes. Paul believed that the second coming of Jesus was imminent, and he believed that he would still be alive to witness it.⁷⁷ At that time, the human body itself will be transformed into something unrecognizably transcendent and god-like.⁷⁸ The Book of Revelations, traditionally the final book of the Christian Scripture, is a veritable cornucopia of apocalyptic imagery.

Professor Opderbeck notes that this apocalyptic strain of thought remained a vivid and real part of early Christian writings,⁷⁹ although St. Augustine sought to domesticate it by asserting the need to read the Christian sources as allegory and not as literal predictions.⁸⁰ St. Augustine's interpretation of the New Testament has become generally accepted in many Christian circles.⁸¹ Thus it more or less accurately represents the Catholic view of apocalypticism. But even the most comfortable Christian must reckon with the apocalypticism of the gospels and letters that comprise the New Testament. Thus, the historian Paula Fredriksen has written: "Western culture, in brief, continues to move within the charged field that lies between the twin poles of the Christian message, the 'now/not yet' of a messiah who has come and a messianic age yet to arrive."⁸²

Opderbeck situates his discussion of "dispensational premillennialism" within this larger framework. The apocalypticism of this form of Christianity is, Opderbeck argues, at least disposed to view favorably conspiracy theories, especially those involving the political order. Opderbeck argues this point respectfully. He does not cast aspersions upon religious believers, nor call for any limitation on the First Amendment's religious freedom safeguards. Indeed, he goes out of his way to stress both the need to respect individuals and their constitutional rights. But he does want the public at large to be aware of the easy pathway that leads from end-of-the-world

⁷⁷ 1 *Thessalonians* 4:15.

⁷⁸ 1 *Corinthians* 15:42-44.

⁷⁹ See, for example, Jaroslav Pelikan, *The Eschatology of Tertullian*, 21 *CHURCH HISTORY* 108 (1952).

⁸⁰ See generally, J. Kevin Coyle, *Augustine and the Apocalyptic: Thoughts on the Fall of Rome, the Book of Revelation, and the End of the World*, 9 *FLORILEGIUM* 1 (1987).

⁸¹ See, for example, Zita Ballinger Fletcher, *Catholicism Offers Path to Dispel Apocalyptic Fear*, *NAT'L CATH. REP.* (Jan. 27, 2020), <https://www.ncronline.org/news/opinion/catholicism-offers-path-dispel-apocalyptic-fear> (evaluating Pope Francis' and the Vatican's recent statements on apocalypticism).

⁸² Paula Fredriksen, *Apocalypse and Redemption in Early Christianity: From John of Patmos to Augustine of Hippo*, 45 *VIGILIAE CHRISTIANAE* 151, 167 (1991).

prognosticating to conspiracy theory. And he also wants Christians – especially those whose faith experience does not include millenarian speculation – to be sensitive to the apocalyptic origins of their faith.

H. Daniel Jolley

Dr. Daniel Jolley is Professor of Psychology at the University of Nottingham, in the United Kingdom, and one of the world's foremost authorities on the cognitive, emotional, and psychological dimensions of conspiracy theory. He has written on conspiracy theory and the COVID-19 pandemic,⁸³ on anti-vaccination conspiracy theories in the pre-COVID-19 era,⁸⁴ and on the development of conspiracy theories by adolescents.⁸⁵ He has submitted testimony to the British House of Commons on the impact of conspiracy theories.⁸⁶ He has also studied extensively the relationship of conspiracy theories and politics,⁸⁷ and the sociology of conspiracy theories – who believes in conspiracy theories, and why.⁸⁸

⁸³ Daniel Jolley & Jennifer Paterson, *Pylons Ablaze: Examining the Role of 5G COVID-19 Conspiracy Beliefs and Support for Violence*, 59 BRIT. J. OF SOC. PSYCH. 628 (2020); Gaëlle Marinthe, et al., “Looking Out For Myself:” *Exploring the Relationship Between Conspiracy Mentality, Perceived Personal Risk, and COVID-19 Prevention Measures*, 25 BRIT. J. OF HEALTH PSYCH. 957 (2020).

⁸⁴ Daniel Jolley & Karen M. Douglas, *Prevention Is Better Than Cure: Addressing Anti-Vaccination Conspiracy Theories*, 47 J. of Applied Soc. Psych. 459 (2017); Daniel Jolley & Karen M. Douglas, *The Effects of Anti-Vaccine Conspiracy Theories on Vaccination Intentions*, 9 PLOS ONE (2014).

⁸⁵ Daniel Jolley, Karen Douglas & Yvonne Skipper, *Measuring Adolescents' Beliefs in Conspiracy Theories: Development and Validation of the Adolescent Conspiracy Beliefs Questionnaire*, 39 BRIT. J. OF DEV. PSYCH. 499 (2021); Daniel Jolley, et al., *Conspiracy Theories Start to Take Hold at Age 14, Study Suggests*, THE CONVERSATION (2021), <http://theconversation.com/conspiracy-theories-start-to-take-hold-at-age-14-study>

⁸⁶ Daniel Jolley, Silvia Mari & Karen M. Douglas, *Consequences of Conspiracy Theories*, in ROUTLEDGE HANDBOOK OF CONSPIRACY THEORIES (1st ed., 2020). Written Evidence Submitted to Home Affairs Committee on Home Affairs Preparedness for COVID-19 (Coronavirus) Inquiry (COR158), House of Commons, Home Affairs Committee (2020).

⁸⁷ Daniel Jolley, et al., *Examining the Links Between Conspiracy Beliefs and the EU 'Brexit' Referendum Vote in the UK: Evidence From a Two-Wave Survey*, 52 J. of Applied Soc. Psych. 30, 30-46 (2022); Daniel Jolley, et al., *Blaming a Few Bad Apples To Save a Threatened Barrel: The System Justifying Function of Conspiracy Theories*, 39 POL. PSYCH. 465 (2018); Daniel Jolley & Karen M. Douglas, *The Social Consequences of Conspiracism: Exposure to Conspiracy Theories Decreases Intentions to Engage in Politics and to Reduce One's Carbon Footprint*, 105 Brit. J. of Psych. 35, 35-36 (2014).

⁸⁸ Darel Cookson, et al., *'If They Believe, Then So Shall I: Perceived Beliefs of*

In his contribution to the Symposium, Dr. Jolley provides a quick but thorough review of the psychological element of conspiracy theory. Why do people believe in conspiracy theory? One basic explanation is the desire of the human mind to discover patterns to the universe. When large, earth-shattering events occur, the suggestion that they were brought about by random chance – the presidential motorcade happening to pass the assassin’s place of employment during the lunch hour – seem hollow, disrespectful even.

Furthermore, human society seems more often to act in an organized fashion rather than a chaotic one. Why isn’t chaos the default rule? In attempting to answer this question, the conspiratorial mind continues, there must be some hidden power, some mastermind out there, shrouded in the nebulous ether, pulling hidden strings, ensuring events follow their pre-patterned course.

There is also the human desire for certainty, and the attendant need for emotional security. The suggestion that there is someone or something – space aliens, say, or the CIA, or, for that matter, the lizard people – that secretly run the world can be greatly comforting to some persons. Dr. Jolley explores all of these explanations, and more, in order to explain the stubborn endurance of conspiracy theories, in a brief, brilliant, and illuminating article.

I. F.E. (Enrique) Guerra-Pujol

Enrique Guerra-Pujol teaches business law at the University of Central Florida, in Orlando, Florida. His subject is Kurt Gödel and Gödel’s preoccupation with the works of Gottfried Wilhelm Leibniz. Who was Kurt Gödel (1906-1878)? He was a German-speaking mathematician trained at the University of Vienna in the late 1920s (he received his doctorate in February 1930).⁸⁹ He eventually sought to synthesize the fields of mathematics and formal logic and did so through his “incompleteness theorems,” which challenged the possibility of ever giving a complete account of the axioms of mathematics.⁹⁰

the In-Group Predict Conspiracy Theory Belief, 24 GROUP PROCESSES AND INTERGROUP RELATIONS 759 (2021).

⁸⁹ John W. Dawson, Jr., *Kurt Gödel in Sharper Focus*, in MATHEMATICAL CONVERSATIONS: SELECTIONS FROM THE MATHEMATICAL INTELLIGENCER 407, 412 (Robin Wilson and Jeremy Gray, eds., Springer, 2001).

⁹⁰ See, for example, Jaakko Hintikka, *Kurt Gödel: An Introduction*, 59 REVUE INTERNATIONALE DE PHILOSOPHIE 451 (2005); Yong Cheng, *Current Research on*

Gödel might further be described as a psychologically frail, even vulnerable human being. He suffered an emotional breakdown in the middle 1930s that required hospitalization.⁹¹ He was a close friend of Albert Einstein and was emotionally shattered by his friend's death.⁹² Following his wife's illness and hospitalization in 1977, "Gödel literally starved himself to death, unwilling to eat anything not prepared by her."⁹³

But let us return to Gödel's obsession with Leibniz. Leibniz (1646-1716) was the greatest mathematician of his day, and a contributor to many other debates besides. He wrote extensively on the psychology of mind and human consciousness.⁹⁴ He contributed to debates on physics, including studies of motion,⁹⁵ time,⁹⁶ and space.⁹⁷ He wrote as well on law and political theory.⁹⁸ Leibniz also wrote on the nature and processes of human thought, and sought to create a "characteristica universalis – by which to explain all human thought through a series of rules and principles that would eliminate error and result in perfect communication."⁹⁹

Gödel's Incompleteness Theorems, 27 THE BULLETIN OF SYMBOLIC LOGIC 113 (2021); and Saeed Salehi, *Gödel's Second Incompleteness Theorem: How It Is Derived and What It Delivers*, 26 THE BULLETIN OF SYMBOLIC LOGIC 241 (2020).

⁹¹ Karl Sigmund, 'Dozent Gödel Will Not Lecture,' in KURT GÖDEL AND THE FOUNDATIONS OF MATHEMATICS: HORIZONS OF TRUTH 75, 83-84 (Matthias Baaz, et al., eds., Cambridge Univ. Press, 2011).

⁹² REBECCA GOLDSTEIN, INCOMPLETENESS: THE PROOF AND PARADOX OF KURT GÖDEL 234–36 (W.W. Norton, 2005).

⁹³ Martin Davis, *Gödel's Universe*, 435 NATURE 19, 20 (May, 2005).

⁹⁴ Mark Kulstad & Laurence Carlin, *Leibniz's Philosophy of Mind*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (June 29, 2020), <https://plato.stanford.edu/entries/leibniz-mind/>.

⁹⁵ John T. Roberts, *Leibniz on Force and Absolute Motion*, 70 PHILOSOPHY OF SCIENCE 70 553, 553-573(2003).

⁹⁶ Richard T.W. Arthur, *Leibniz's Theory of Time*, in THE NATURAL PHILOSOPHY OF LEIBNIZ 263–313 (Kathleen Okruhlik & James Robert Brown, eds., Springer Netherlands, 1985).

⁹⁷ See Vincenzo De Risi, *Leibniz on the Continuity of Space*, in LEIBNIZ AND THE STRUCTURE OF SCIENCES: MODERN PERSPECTIVES ON THE HISTORY OF LOGIC, MATHEMATICS, AND EPISTEMOLOGY 111–69 (Vincenzo De Risi, ed., Springer, 2019).

⁹⁸ PATRICK RILEY, LEIBNIZ' UNIVERSAL JURISPRUDENCE: JUSTICE AS THE CHARITY OF THE WISE (Harvard Univ. Press, 1996); Stephen Waldhoff, *Proposals for Political, Administrative, Economic, and Social Reform*, in THE OXFORD HANDBOOK OF LEIBNIZ 684–98 (Maria Rosa Antognazza ed., 2018).

⁹⁹ "Leibniz envisioned a 'universal characteristic' (characteristica universalis) that was a universal mathematical language in which all subjects could be formulated...Leibniz thought of this language as one in which all knowledge could be unified and in which all disputes could be resolved." VAL DUSEK, THE HOLISTIC

It was Leibniz's contributions to language that became a particular obsession of Kurt Gödel. Gödel had devoted himself to the intense and meticulous study of everything ever written by Leibniz. And he began to notice that there were gaps in Leibniz's arguments – logical claims that should have been made that were not made; papers that should have been published, that were even acknowledged by Leibniz as having been written, but which appeared nowhere in Leibniz's corpus of published works. Gödel came to suspect a terrible conspiracy. It was, as Guerra-Pujol puts it, quoting other sources, “a vast conspiracy, apparently in place for centuries, to suppress the truth [about Leibniz's writings] and make men stupid.”¹⁰⁰

Guerra-Pujol uses the Gödel conspiracy as a launching pad for a wide-ranging examination of the nature and function of conspiracy theories. Among the scholars and writings whose works he reviews are numbered Ludwig Wittgenstein, Michel Foucault, Richard Dawkins, and even Ross Douthat. Guerra-Pujol's narrative skill is impressive, and his story-telling brisk yet thorough. His work pays substantial dividends to the attentive reader.

J. Kimberly Breedon

Kimberly Breedon is a Professor of Law at Ohio Northern University College of Law, in Ada, Ohio. She has written a series of important law review articles. She has argued for strengthening the Presidential Records Act to ensure the preservation of potentially embarrassing documents that presidents might prefer to destroy.¹⁰¹ She has written on the potential for abuse of electronic voting machines and recommended reforms to ensure electoral integrity.¹⁰² She has recommended the use of constructive and blind trusts to address the problem posed by presidential emoluments-clause

INSPIRATIONS OF PHYSICS: THE UNDERGROUND HISTORY OF THE ELECTROMAGNETIC THEORY 199 (Rutgers Univ. Press, 1999); and THOMAS BEDÜRFTIG & ROMAN MURAWSKI, PHILOSOPHY OF MATHEMATICS 52 (De Gruyter, 2018).

¹⁰⁰ Internal citations omitted.

¹⁰¹ Kimberly Breedon, *Pandemics, Public Trust, and Presidential Records: Amending the Presidential Records Act to Minimize the Risk of Public Corruption During Times of National Crisis*, 67 WAYNE L. REV. 1, 1-26 (2021).

¹⁰² Kimberly Breedon & A. Christopher Bryant, 'Counting the Votes: Electronic Voting Irregularities, Election Integrity, and Public Corruption', 49 U. OF MEMPHIS L. REV. 979 (2019).

conflicts.¹⁰³ She has examined executive privilege, its legitimate scope, and the balance that should prevail between the Executive and Legislative branches in a time of hyper-partisanship.¹⁰⁴

In her contribution to this Symposium, Professor Breedon is particularly concerned with the weaponization of conspiracy theories by state actors and the implications of this conduct for international law. She begins her investigation with a series of case studies, demonstrating the range of possible forms of interference. She considers the controversy over the “Bronze Soldier” of Tallinn, Estonia. This monument, erected in the latter 1940s as a tribute to Soviet dead in World War II,¹⁰⁵ became a source of intense controversy in the 1990s and early 2000s as the Estonian and Russian-speaking parts of Estonia took very different interpretations of its presence.¹⁰⁶ This was a controversy, furthermore, that was exploited by Russian cyber-operations.¹⁰⁷

Professor Breedon then looks at the 2010 air crash that killed Polish President Lech Kaczyński, members of the Polish government, and other senior officials in the Polish state and Church.¹⁰⁸ The crash occurred in Smolensk, in Russian territory, and Poland initially condemned Russia for causing the crash.¹⁰⁹ And while it is now clear that Russia was not responsible for the disaster,¹¹⁰ the Polish government has not ceased its insinuations that Russian hostile action is to blame.¹¹¹ Indeed, Jaroslaw Kaczyński, Lech’s

¹⁰³ Kimberly Breedon & A. Christopher Bryant, ‘*Restoring Trust with Trusts: Constructive and Blind Trusts as Remedies for Presidential Violations of the Constitution’s Emoluments Clauses*’, 11 ALBANY GOV’T L. REV. 284 (2018).

¹⁰⁴ Kimberly Breedon & A. Christopher Bryant, *Executive Privilege in a Hyper-Partisan Era*, 64 WAYNE L. REV. 63 (2018).

¹⁰⁵ MEIKE WULF, *SHADOWLANDS: MEMORY AND HISTORY IN POST-SOVIET ESTONIA* 160–161 (Berghahn Books, 2016).

¹⁰⁶ FEDERICO BELLENTANI, *THE MEANINGS OF THE BUILT ENVIRONMENT* 40–41 (De Gruyter Mouton, 2021).

¹⁰⁷ CHRIS BRONK, *CYBER THREAT: THE RISE OF INFORMATION GEOPOLITICS IN U.S. NATIONAL SECURITY* 42–43 (Praeger, 2016).

¹⁰⁸ KAROL MODZELEWSKI, *RIDING HISTORY TO DEATH: CONFESSIONS OF A BATTERED RIDER* 302 note 50 (Frank L. Vigoda, trans., Rowan & Littlefield, 2021).

¹⁰⁹ JOHN BESEMERES, *A DIFFICULT NEIGHBOURHOOD: ESSAYS ON RUSSIA AND EAST-CENTRAL EUROPE SINCE WORLD WAR II* 1283 (ANU Press, 2016); and *Poland Says Russians Partly to Blame for Air Crash That Killed President*, THE GUARDIAN (July 29, 2011), <https://www.theguardian.com/world/2011/jul/29/poland-russians-air-crash-president>.

¹¹⁰ PETRO ANDREAS NUNGOVITCH, *HERE ALL IS POLAND: A PANTHEONIC HISTORY OF WAWEL, 1787-2010* 242–44 (Lexington Books, 2019).

¹¹¹ Dimitris Kouimtsidis, ‘Russian Coup’ Fears Over Plane Crash Mystery That

twin brother and leader of the Law and Justice Party – Poland’s ruling party – has found it advantageous to embellish and prolong the conspiracy theory.¹¹²

Finally, there is “Stop the Steal” – the shambolic campaign to overturn the results of the 2020 presidential election. This is the final case study Professor Breedon investigates. Some of the allegations associated with this campaign were beyond ludicrous – such as the charge that the Dominion Voting Systems, whose machines were in use in several closely-contested states – had ties to former Venezuelan President Hugo Chavez, who used the machines to “rig” his own election as president of that country.¹¹³ These and other similar preposterous claims were proven to be unfounded, but their falsity is not Breedon’s point. Rather, she has two related but distinctly different concerns. First, that the Trump Administration was active in spreading these false claims;¹¹⁴ and, second, that “Trump and his domestic allies found inauthentic amplification by foreign-sourced bots and trolls on social media.”¹¹⁵

Common to all three of these case studies is the interplay of governments – foreign and domestic – with conspiracy theories. The Bronze

Killed Polish President, DAILY STAR ONLINE (Apr. 10, 2022), <https://www.dailystar.co.uk/news/world-news/deadly-plane-crash-took-life-26667856>; *Polish Commission Again Accuses Russia Over 2010 Smolensk Plane Crash*, EURONEWS (Apr. 11, 2022), <https://www.euronews.com/2022/04/11/polish-commission-again-accuses-russia-over-2010-smolensk-plane-crash>.

¹¹² Emily Tamkin, *Has the Clock Run Out on the Smolensk Conspiracy?*, FOREIGN POLICY (Apr. 10, 2018), <https://foreignpolicy.com/2018/04/10/has-the-clock-run-out-on-the-smolensk-conspiracy/>; Christian Davies, *The Conspiracy Theorists Who Have Taken Over Poland*, THE GUARDIAN (Feb. 16, 2016), <https://www.theguardian.com/world/2016/feb/16/conspiracy-theorists-who-have-taken-over-poland>.

¹¹³ See, for instance, Will Sommer, *Here’s How Hugo Chavez, Dead Since 2013, Became Responsible For Trump’s Election Loss*, DAILY BEAST (Nov. 19, 2020), <https://www.thedailybeast.com/heres-how-hugo-chavez-dead-since-2013-became-responsible-for-trumps-election-loss>; Harriet Alexander, *Giuliani Claims ‘Chavez Approved’ Venezuelan Election Technology Was Used To Rig Election*, THE INDEPENDENT (Nov. 19, 2020), *Giuliani Claims ‘Chavez Approved’ Venezuelan Election Technology Was Used To Rig Election*; Ali Swenson, *Family of Hugo Chavez Does Not Own Dominion Voting Systems*, AP NEWS (Dec. 1, 2020), <https://apnews.com/article/fact-checking-9809670730>.

¹¹⁴ CAROL LEONNIG & PHILIP RUCKER, *I ALONE CAN FIX IT: DONALD J. TRUMP’S CATASTROPHIC FINAL YEAR 425–27* (Penguin Press, 2021).

¹¹⁵ Breedon’s allegations concerning Russian involvement in Stop the Steal is more speculative, focused on the person of Roger Stone.

Soldier was the relatively easy case. But the Smolensk crash and the “Stop the Steal” posed complications. In the Smolensk case, Polish politicians benefitted from promoting a conspiracy theory concerning the conduct of a foreign state, while in the case of “Stop the Steal,” the President allegedly knew or had reason to know that foreign states were involved in spreading a false conspiracy theory about the integrity of the 2020 election and seemingly did nothing to halt that activity.

These complex scenarios led Professor Breedon to articulate the problem she wished to solve: “[T]he purpose of the foregoing discussion [the three case studies] is to lay the groundwork for exploring the implications for the development of customary international law in situations involving a target State’s failure to respond to a hostile State’s cyber intrusion into the target State’s democratic opinion-making processes because the target State’s head of government has corruptly or complicitly consented to the intrusion.”

This is an important question, and Professor Breedon’s answer provides a master-class in careful analysis. This is not the place to summarize her dissection of the law, but it is appropriate to say that her’s is an answer that must command attention.

K. Katherine Drabiak

Katherine Drabiak is Associate Professor at the University of South Florida College of Public Health and College of Medicine, where her specialty is health law and related topics. She has published widely. She has written an important examination of the constitutional dimension of COVID-19 stay-at-home orders and other restrictions on daily life in pandemic times.¹¹⁶ She has explored the tragedy of nursing mothers addicted to controlled substances and the sometimes deadly consequences for their offspring.¹¹⁷ She has argued for a go-slow approach to using genomic editing as medical treatment.¹¹⁸ She has also argued cogently for the creation of exemptions to mandatory vaccination laws and to place reliance instead on non-coercive means of persuasion.¹¹⁹

¹¹⁶ Katherine Drabiak, *The Intersection of Epidemiology and Legal Authority: COVID-19 Stay-At-Home Orders*, 18 RUTGERS J. OF L. AND PUB. POL'Y 1 (2021).

¹¹⁷ Katherine Drabiak, *Treating for Two: Reforming Maternal Substance Abuse Policy*, 32 Health Matrix: J. of L.-Med. 311 (2022).

¹¹⁸ Katherine Drabiak, *Untangling the Promises of Human Genome Editing*, 46 J. OF L., MED., AND ETHICS 991 (2018).

¹¹⁹ Katherine Drabiak, *Disentangling Dicta: Prince v. Massachusetts, Police*

In her contribution to the Symposium, Professor Drabiak explores the question, what if we have it all wrong? What if it is the case that the powerful are the conspirators and the dissenters from orthodoxy correctly perceive reality? In support of this inquiry, she puts together a powerful, historically-grounded argument that demands attention.

She implicitly refutes a popularly-held view about science. Let's call it, the Don't Look Up perspective. In that movie, an astronomy graduate student discovered a comet which mathematical computations revealed was hurtling directly at the planet earth. This information was brought to the attention of the President of the United States, who utterly failed to rise to the occasion. Through a combination of political sleaze and the grifting of major campaign donors, an attempt to explode the comet failed, the comet struck the earth, and the earth was rendered uninhabitable by the impact.

As political satire, the movie works wonderfully well. It is a pitch-perfect portrayal of the constitutionally-protected corrupt bargains that characterize American political life.¹²⁰ And as a description of settled principles of astronomy, it is also entirely credible. Comets have historically struck the earth and may do so again. But the movie also relies on and promotes an assumption that science is always settled, and that we can and should, as the slogan has it, "follow the science."¹²¹ Historians know otherwise.

Professor Drabiak has the historian's keen sense of distance and difference. She knows that the history of science is littered with the wreckage of shattered paradigms. She explores several examples. There was, for example, the miasma theory of disease. This was the "belief . . . that most, if not all disease, was caused by inhaling air that was infected through exposure to corrupting matter."¹²² It took scientific bravery to challenge this orthodoxy. Professor Drabiak tells the story of the Hungarian obstetrician Dr. Ignaz Semmelweis (1818-1865), who did just that, and paid for his efforts with ostracism, isolation, and much worse.

Power, and Childhood Vaccination Policy, 29 *Annals of Health Law* 173 (2020).

¹²⁰ David Sirota, *The Man Behind the Curtain*, THE LEVER (June 28, 2022), <https://www.levernews.com/roberts-is-the-man-behind-the-curtain/>.

¹²¹ Ross Douthat, *When You Can't Just "Trust the Science,"* N.Y. Times (Dec. 19, 2020), <https://www.nytimes.com/2020/12/19/opinion/sunday/coronavirus-science.html>.

¹²² Stephen Halliday, *Death and Miasma in Victorian London: An Obstinate Belief*, 323(7327) *BMJ* 1469, 1469 (Dec. 22, 2001).

Or, what if the science is simply ignored by the politically powerful who have their reasons? Again, a gifted story-teller and historian, Professor Drabiak reconstructs in detail the many missteps by state and local officials that led to the disaster that was the City of Flint, Michigan, water crisis.¹²³ The City of Flint, in an effort to economize, switched its water supply from the Detroit River,¹²⁴ which was fed by Lake Huron, to the locally more convenient Flint River, which happened to be contaminated with a variety of substances harmful to life.¹²⁵ An epidemic of disease, injury, and lead poisoning soon followed.¹²⁶ Litigation eventually led to the creation of a large settlement fund to meet the health needs of victims.¹²⁷

Professor Drabiak tells other stories like these. Her overall point might be summarized in the homely aphorism, “Trust but verify,” – a rhyming Russian proverb that goes, “doveryai, no proveryai.”¹²⁸ The scientific establishment proceeds with good faith, most of the time, but even establishments committed to the search for truth have turf to protect and reputations to shield.

If that is one lesson Professor Drabiak teaches, another is that we should not punish dissenters. The COVID-19 pandemic saw many ugly displays of precisely this sort of propensity, but none was perhaps worse – or more barbaric – than the so-called “Herman Cain Award.” A psychotherapist,

¹²³ Dustin Renwick, *Five Years On, the Flint Water Crisis is Nowhere Near Over*, Nat'l Geo. (Apr. 25, 2019), <https://www.nationalgeographic.com/environment/article/flint-water-crisis-fifth-anniversary-flint-river-pollution>.

¹²⁴ Libby Nelson, *Flint, Michigan, Tried To Save Money On Water: Now Its Children Have Lead Poisoning*, Vox (Jan. 19, 2016), <https://www.vox.com/2015/12/15/10237054/flint-lead-poisoning>.

¹²⁵ Tim Carmody, *How the Flint River Got So Toxic*, The Verge (Feb. 26, 2016), <https://www.theverge.com/2016/2/26/11117022/flint-michigan-water-crisis-lead-pollution-history>.

¹²⁶ Jon Lapook, *Doctors Explain the Long-Term Health Effects of Flint Water Crisis*, CBS Evening News (Jan. 19, 2016), <https://www.cbsnews.com/news/doctors-explain-the-long-term-health-effects-of-flint-water-crisis/>; Abby Goodnough, *Flint Weighs Scope of Harm to Children Caused By Lead In Water*, NY Times (Jan. 29, 2016), <https://www.nytimes.com/2016/01/30/us/flint-weighs-scope-of-harm-to-children-caused-by-lead-in-water.html>.

¹²⁷ *In re Flint Water Cases*, 969 F. 3d 298 (6th Cir., 2020).

¹²⁸ Rick Horowitz, *The Latest Craze – A Russian Phrase!*, Chi. Trib. (Dec. 14, 1987), <https://www.chicagotribune.com/news/ct-xpm-1987-12-14-8704020771-story.html>.

<https://www.nbcnews.com/think/opinion/reddit-s-herman-cain-covid-award-depressing-sign-our-times-ncna1280616>.

F. Diane Barth, described what this so-called award was all about: “The [Herman Cain Award subreddit], which now has upwards of 340,000 followers, ‘celebrates’ those ‘who have made public declaration of their anti-mask, anti-vax, or COVID-hoax views, only to die from COVID-19 or COVID-related complications.’”¹²⁹ Not to put too fine a point on it, but these were people dancing on the graves of the dead in a ghoulish, shameless spectacle of cruelty. Barth counsels her readers that this practice was extraordinarily dehumanizing.¹³⁰ One could add other epithets, like divisive, hateful, and expressions not fit to print.

Professor Drabiak stands fully on the side of humanity. She reminds us, furthermore, that there are times that the dissenters have it right. Not only respect for divergent viewpoints, but humility should thus be the order of the day. That gadfly who seems so ridiculous may be speaking truths that you really need to hear. As one of the soundest, sanest, and most sensible epidemiological voices on the COVID-19 pandemic, Francois Balloux of University College, London, reminds us, “One simply cannot ‘follow the science.’ The best you can hope to achieve is for the science to tend towards the truth, though that process can be complicated and at times erratic.”¹³¹

¹²⁹ F. Diane Barth, *Reddit’s Herman Cain COVID ‘Award’ Is a Depressing Sign of Our Times*, NBC Think: Opinion, Analysis, Essays (Oct. 2, 2021), <https://www.nbcnews.com/think/opinion/reddit-s-herman-cain-covid-award-depressing-sign-our-times-ncna1280616..>

¹³⁰ Quincy Walters, Ben Brock Johnson & Amory Sivertson, *The Herman Cain Award: The Prize No One Wants to Get and the Creators Want to Destroy*, WBUR (Apr. 8, 2022), <https://www.wbur.org/endlessthread/2022/04/08/herman-cain-award>.

¹³¹ Francois Balloux, *The Best of Times, the Worst of Times...That’s Science in the Age of COVID*, The Guardian (July 17, 2022), <https://www.theguardian.com/commentisfree/2022/jul/17/best-of-times-worst-of-times-science-in-age-of-covid>.