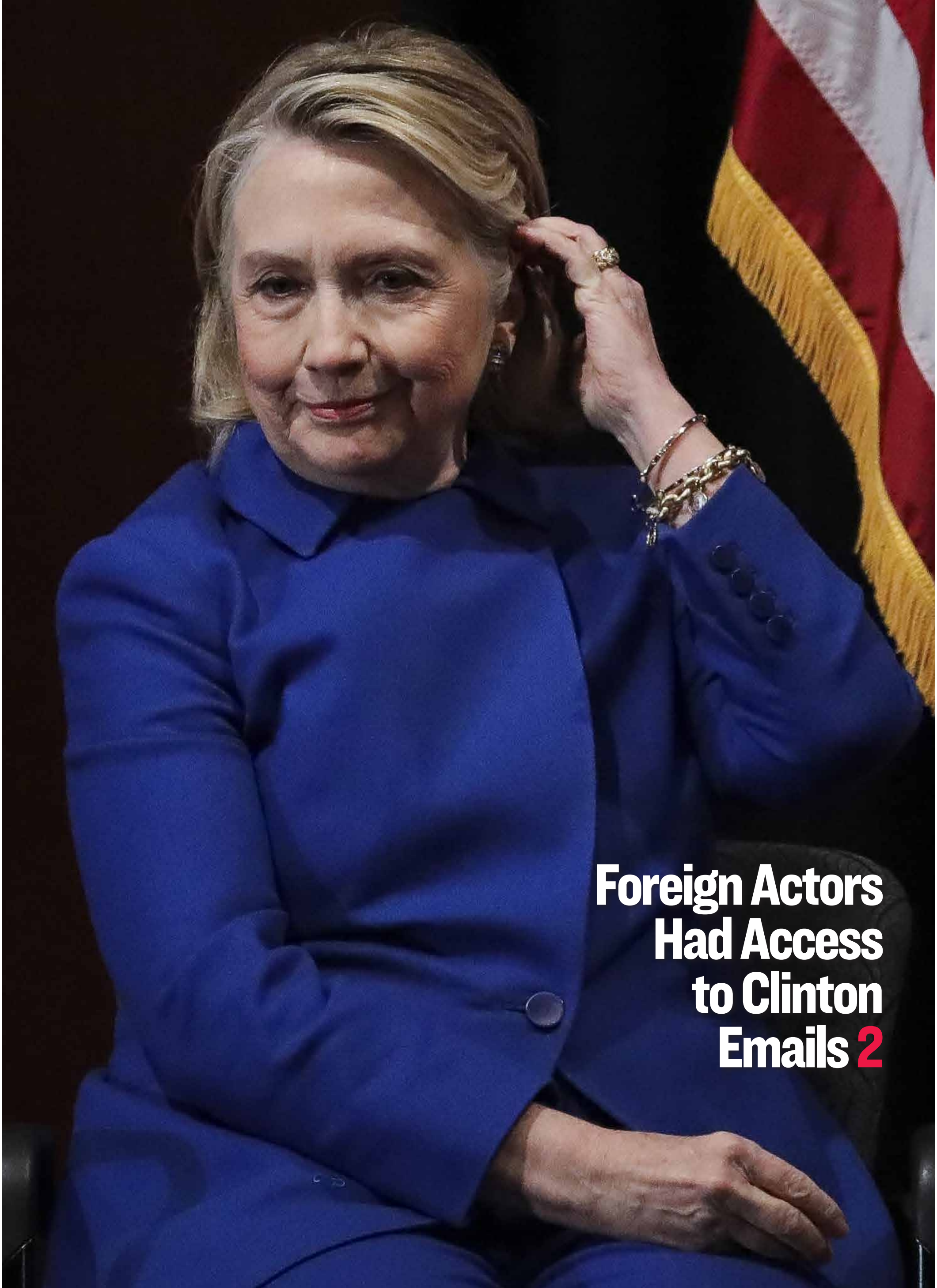


WEEK 33, 2019

THE EPOCH TIMES

# OUR NATION

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**Foreign Actors  
Had Access  
to Clinton  
Emails 2**

# Foreign Actors Had Access to Hillary Clinton's Email Server, Congressman Says

IVAN PENTCHOUKOV

**F**oreign actors obtained access to the private, unauthorized email server that Hillary Clinton used during her time as secretary of state, according to Rep. Mark Meadows (R-N.C.).

"There is no denying that foreign actors actually had access to the server," Meadows told *The Epoch Times* at a conservative political conference in Australia on Aug. 10. "The question is, to what extent. And I think there are several members of Congress who believe that [it] was a lot more invasive than perhaps the original inspector general's report."

Meadows made the statement while responding to a question about a supplementary report that Department of Justice Inspector General Michael Horowitz sent to lawmakers. In testimony before Congress in 2018, Horowitz promised to update the House Judiciary and Oversight committees on what steps the FBI took to investigate a lead from the Intelligence Community Inspector General (ICIG).

The ICIG told the FBI that an anomaly in the metadata of Clinton's email messages suggested that a foreign third-party received a copy of virtually every email that passed through the server.

Despite the alarming nature of the ICIG's lead, it wasn't included in the 568-page report by the inspector general on the handling of the Clinton email case. The report also doesn't address what digital forensic efforts the FBI undertook to determine whether an unauthorized third party accessed Clinton's server. Horowitz's supplemental report was meant to rectify that gap. His findings on the matter left some lawmakers feeling that the Justice Department (DOJ) didn't do enough to investigate the possibility the server was hacked.

"The inspector general did respond to our committee in terms of foreign infiltration into the Hilary Clinton server. Some members of Congress felt that the analysis done by the DOJ



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**There is no denying that foreign actors actually had access to the server.**

Rep. Mark Meadows (R-N.C.)



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SAMIRA BOUAOU/THE EPOCH TIMES



SAMIRA BOUAOU/THE EPOCH TIMES

was less than robust and didn't go far enough into the potential for some of the infiltration that whistleblowers had indicated to us had actually occurred."

Peter Strzok, the FBI agent who led the Clinton email investigation, expressed intense bias against then-candidate Donald Trump and believed that Clinton should win the presidential election "100,000,000-0." Horowitz concluded that Strzok's bias cast a cloud over the investigation.

According to Meadows and Rep. Louie Gohmert (R-Texas), Strzok was one of the four FBI officials who attended a meeting with two members of the ICIG's office—investigator Frank Rucker and attorney Jeanette McMillian. During that meeting, Rucker informed the FBI about the metadata anomaly. Meadows and Gohmert have suggested that Strzok ignored the lead.

The FBI declined to comment. Charles McCullough, who served as the ICIG during the FBI's Clinton email investigation, didn't respond to a request for comment.

According to a transcript of the closed-door testimony by Strzok reviewed by *The Epoch Times*, Strzok told members of Congress in June 2018 that he didn't remember a meeting with the ICIG during which a discussion about changes in the metadata occurred. Strzok added that he wasn't aware of anything in the Clinton email investigation that his team didn't pursue.

Several other FBI and DOJ witnesses questioned by Congress about the matter claimed to have no memory of it.

When then-FBI Director James Comey exonerated Clinton in 2016, he stated that while the FBI was unable to find direct evidence of an intrusion into Clinton's server, sophisticated foreign adversaries wouldn't have left discoverable traces on the server. The bureau determined that "hostile actors" gained access to the private email accounts of people Clinton regularly communicated with. As secretary of state, Clinton sent and received work-related emails on the territories of foreign adversaries, Comey said.

"Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton's personal e-mail account," Comey said on July 5, 2016.

Gohmert told *The Epoch Times* on June 26 that the U.S. intelligence community has established, without a doubt, that China hacked Clinton's emails and that the FBI refused to examine the evidence.

"There's no question, China was involved," Gohmert said. Gohmert was the first lawmaker

to publicly claim that China hacked Clinton's server. President Donald Trump is the only other official to have made the same claim.

"Hillary Clinton's Emails, many of which are Classified Information, got hacked by China," Trump wrote on Twitter on Aug. 28, 2018.

Marc Ruskin, a 27-year veteran of the FBI, told *The Epoch Times* that Comey's exoneration statement was so vague with regard to foreign intrusion into Clinton's server that his statement may have covered the recent disclosures from Gohmert and Meadows.

The FBI documented at least four meetings with the ICIG before Strzok was assigned to the Clinton email investigation and transferred to headquarters from the bureau's Washington field office. The meetings took place on July 10, July 13, July 22, and Aug. 3, 2015, according to documents the bureau released to the public since the closing of the investigation. Strzok began working on the Clinton email probe in late August 2015. The FBI didn't release any documents memorializing meetings with the ICIG after Strzok arrived on the team.

**There's no question, China was involved.**

Rep. Louie Gohmert (R-Texas)

Strzok was transferred to FBI headquarters from the Washington field office as a result of a decision to transform the Clinton email probe from a regular investigation into a "headquarters special." FBI witnesses told the inspector general that sensitive investigations have previously been run as "headquarters special" probes, which allowed senior executives to exercise tighter control over the investigation.

Over the course of three months, midway through the investigation, all of the officials in the chain of command above Strzok, with the exception of Comey, were replaced allegedly due to retirements and promotions. The reshuffle brought in Andrew McCabe as the deputy director and attorney Lisa Page as his liaison with the Clinton email team.

Page and Strzok maintained an extramarital tryst throughout the

Clinton email probe. Their biased text messages, expressing hatred toward Trump and preference for Clinton, served as the core evidence for Horowitz's conclusion that bias had cast a cloud over the investigation. Several witnesses told the inspector general that Strzok circumvented the official chain of command by communicating directly with Page and thus to McCabe.

Ruskin told *The Epoch Times* it's "unusual" for three senior-level executives to be replaced during a major investigation. Ruskin noted there would be an additional cause for concern if the outgoing officials didn't go on to executive-level positions in the private sector immediately after leaving the FBI. In this case, two of the officials entered the private sector shortly after leaving the bureau and a third was promoted to a higher post at the bureau.

Executive Assistant Director John Giacalone became the vice president of Hilton Worldwide in March 2016 after he left the FBI the month before. Deputy Director Mark Giuliano became the chief security officer of Invesco Ltd. in February 2016 after he left the FBI the month prior. Executive Assistant Director Randall Coleman was promoted to the executive assistant director position of a different FBI division in December 2015.

1. Hillary Clinton during the 10th Anniversary Women in The World Summit in New York on April 12, 2019.
2. Retired FBI Special Agent Marc Ruskin in front of the FBI office building in New York on May 19, 2017.
3. Rep. Mark Meadows (R-N.C.) listens to an aide during a hearing before the House Oversight and Reform Committee on Capitol Hill on June 26, 2019.
4. FBI agent Peter Strzok (L) arrives for a meeting at the Rayburn House Office Building in Washington on June 27, 2018.
5. Michael Horowitz, inspector general at the Department of Justice, at a Senate hearing in Washington on June 18, 2018.



BENJAMIN CRISTENHE/THE EPOCH TIMES

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# New Indictments Expected in Wake of Epstein's Death, Lawyers Say

STEPHANIE KEITH/GETTY IMAGES



BOWEN XIAO

NEW YORK—New indictments are expected in the wake of accused sex trafficker Jeffrey Epstein's death by apparent suicide, as the case shifts to focus on unnamed co-conspirators, according to criminal defense lawyers.

Two criminal defense attorneys told *The Epoch Times* that if the government was investigating Epstein to such a degree that they were able to make an arrest, it can be assumed that federal prosecutors in New York were also gathering evidence on those in his inner circle.

One attorney specifically mentioned the disgraced financier's former girlfriend, British socialite Ghislaine Maxwell, who allegedly assisted Epstein in luring minors. He said Maxwell would be prosecutors' next main target and she could potentially name others connected to the multimillionaire.

"She's going down. She's going to take everybody with her," Jeffrey Greco, a New York criminal defense lawyer and former prosecutor, said in a phone call. "They are going to ask her, 'Who else did you provide these girls to?' I think that she is going to start talking."

"Remember, it's just pieces to a puzzle, so she may not know everything. But they are going to use her to place the people at those parties, so if she can say, 'I was there on this date... and this senator and so-and-so was there,' that will be enough for them to get them involved."

Epstein often hosted parties at his Upper East Side mansion in New York City. He owned the property, which has been valued at \$77 million, through an LLC. The seven-story building is located on East 71st Street, between Fifth and Madison avenues.

Nearly 2,000 pages of documents relating to Epstein were unsealed on Aug. 9, revealing allegations against a number of rich and powerful men, just a day before his apparent suicide. The court documents, from a lawsuit by one of Epstein's accusers, Virginia Giuffrè, listed new names allegedly involved in Epstein's trafficking ring and more information on the role Maxwell played.

In a 2016 deposition, Gi-

**She's [Ghislaine Maxwell] going down. She's going to take everybody with her.**

Jeffery Greco, New York criminal defense lawyer and former prosecutor

(Top) A protest group called "Hot Mess" held up signs of Jeffrey Epstein in front of a federal courthouse in New York on July 8, 2019.

(Below) Ghislaine Maxwell in New York on Sept. 20, 2013.



LAURA CAVANAUGH/GETTY IMAGES

uffre claimed she was directed by Maxwell to have sex with a number of powerful men.

Greco believes the biggest implication of Epstein's death is that there will be "more and more indictments coming down." He said the government will be pressured to file "additional charges" against "additional people" and will be more aggressive in their methods.

"I think there is this extra pressure on the government now to really focus on these [unnamed] co-conspirators, no matter how high up because it's become so public," he said.

According to court documents, Epstein sexually exploited and abused dozens of minor girls at his homes in New York City and in Palm Beach, Florida, among other locations. Since his death, a slew of investigations have been opened or demanded into his death. The official autopsy result has been delayed, "pending further information at this time."

Julie Rendelman, a New York criminal defense attorney and former homicide prosecutor, said those who helped Epstein or assisted him along the way are now going to be the "focus of the future investigations" and will be "kind of the face of the Epstein case, instead of him."

Some of the currently unnamed co-conspirators could potentially have been cooperating with the government to get a better deal for themselves in testifying against Epstein, she said.

"I think many or some of them may have been witnesses against him [Epstein] and now, they are potentially going to be co-defendants," Rendelman told *The Epoch Times*.

"One would have assumed that the feds would have gone after everybody and tried to use those that were, I guess, the 'smaller fish' to go after the 'bigger fish,'" Rendelman added. "I assume they would continue to pursue potential criminal charges against any co-conspirator that was involved in the case at this point."

In an Aug. 10 statement, Manhattan U.S. Attorney Geoffrey S. Berman said the criminal investigation into sex trafficking and conspir-

acy accusations against Epstein "remains ongoing," Attorney General William Barr previously said both the FBI and the Department of Justice's inspector general were opening investigations into Epstein's death.

Epstein, 66, was found unresponsive in his New York jail cell in the Special Housing Unit of the Metropolitan Correctional Center (MCC) and was taken to a hospital, where he was pronounced dead, according to the Federal Bureau of Prisons, which operates the Lower Manhattan jail.

**Raiding Properties**

On Aug. 12, federal agents, including FBI and Customs and Border Protection agents, were seen at the dock and grounds of Epstein's private island in the U.S. Virgin Islands.

According to Greco, nothing prevents prosecutors from seeking further search warrants to prosecute Epstein, even after his death.

"If they can show a federal judge that there is potential evidence on co-conspirators that would be found at these locations, then there's not a federal judge around who's not going to sign that and authorize that search warrant," he said.

Potential evidence could be destroyed by people close to Epstein if authorities don't preserve it now, Greco said. The evidence could lead to the prosecution and conviction of other co-conspirators, he added.

Epstein's other "luxury properties and residences around the world," include his roughly 75-acre Little St. James Island in the U.S. Virgin Islands. Another key property was his "Zorro Ranch" in New Mexico that covers thousands of acres. Prosecutors believe that Epstein's island home was his "primary residence" in the United States.

Criminal defense attorney Eric Michael Arnone told *The Epoch Times* via email that Epstein's privacy rights to his properties died along with him.

"Anyone out there who is concerned that a damning undiscovered document may lie in as of yet unsearched property of Epstein's can no longer hide behind the powerful Fourth Amendment right that only Epstein, or another person with a valid privacy interest... could have asserted," he said. "According to the latest batch of unsealed documents, former President Bill Clinton had visited Epstein's private island. Clinton flew on Epstein's jet, infamously dubbed the 'Lolita Express,' at least 26 times, according to records obtained by Fox News in 2016. In a July statement, Clinton denied ever visiting the island and said he had only traveled on the plane four times."

President Donald Trump questioned if Clinton visited the island, telling reporters on Aug. 13, "If you find that out, you're going to know a lot."





# The Rainbow Coalition Re-visited: Why Kamala Harris Will Be the Democratic Presidential Nominee

BRENDAN SMIALOWSKI/AFP/GETTY IMAGES



## TREVOR LOUDON

### Commentary



It's over. The Democratic presidential primary was decided months, maybe even years ago.

President Donald Trump should refocus his energies away from Joe Biden and relegate Sens. Elizabeth Warren and Bernie Sanders to the sidelines. The Democratic nominee will be California's junior senator, Kamala Harris—and she will be very hard to beat. Not because of her personal qualities, formidable though they are, but because of the machine backing her and the philosophy guiding her.

Harris is set to harvest the seeds sown by former President Barack Obama and Jesse Jackson before him. Like Jackson's presidential campaigns in 1984 and 1988, which paved the way for Obama in 2008 and 2012, the 2020 Democratic campaign will be all about race.

When Jackson ran in 1988, he united enough white leftists and progressive "people of color" under his Rainbow Coalition banner to earn 7 million votes in the Democratic primary. Obama used the same formula 20 years later to win the presidency and then repeated the trick four years later.

In Jackson's day, about 12 percent of voters belonged to "minorities." Today, the figure is closer to 40 percent. Harris—a female, of black, Irish, and Asian Indian extraction, far-left but not publicly so—is the ideal modern Rainbow Coalition candidate.

The original Rainbow Coalition was led largely by pro-China communists—from Line of March, Communist Workers Party, and especially the 3,000-strong League of Revolutionary Struggle (LRS).

One LRS supporter, Stanford University law student Steve Phillips, was Jackson's West Coast student organizer in both the 1984 and 1988 campaigns.

According to a 2012 post on Phillips' blog "Political Intelligence":

"I've studied Marx, Mao, and Lenin. In college, I organized solidarity efforts for freedom struggles in South Africa and Nicaragua, and I palled around with folks

Democratic presidential candidate Sen. Kamala Harris (D-Calif.), with other candidates at the second Democratic primary debate of the 2020 presidential campaign season in Detroit on July 31, 2019.

who considered themselves communists and revolutionaries ... and I did my research paper on the Black Panther Party. ... My political baptism was the Jesse Jackson 1984 Presidential campaign ..."

When Jackson abandoned the Rainbow Coalition after his 1988 loss, many LRS cadres stayed with the Democratic Party. In 1990, the LRS dissolved with the majority faction to form a Unity Organizing Committee (UOC), which was specifically created to further infiltrate the Democrats.

Phillips was a UOC leader and became a prominent Democrat in the Bay Area. In the early 1990s, he was elected to the San Francisco School Board. Phillips also married his Stanford University sweetheart Susan Sandler—the daughter of Golden West savings and loan billionaires Herb and Marion Sandler.

The Sandler put almost half of their \$2.4 billion profit from the sale of Golden West to Wachovia Bank into the left. They fund the Center for American Progress, ProPublica, and many candidates and ballot measures around the nation.

According to journalist Matt Bai, Progressive Insurance billionaire Peter Lewis, along with Democratic donors George Soros and the Sandler, established America Votes "to coordinate various get-out-the-vote drives during the 2004 election." To consolidate this process, the Sandler also sent their son-in-law Phillips as their representative in October 2005 to help found the "Democracy Alliance" at the Chateau Elan near Atlanta.

The Democracy Alliance has now grown to more than 150 members—all leftist billionaires and multimillionaires fixated on moving the United States permanently to the left.

### Rainbow Coalition Rerun

In 2007 and 2008, Phillips organized an 18-state initiative, in mainly in the South and Southwest, called Vote Hope "that increased communities of color participation in state primaries and the federal general election in 2008."

This rerun of the Rainbow Coalition strategy was of great benefit to Phillips' friend and idol Barack Obama in his battle with Hillary Clinton for the Democratic Party

presidential nomination in 2008. Susan Sandler was Obama's earliest big donor.

In 2013, Phillips served on a panel at San Francisco's Chinese Historical Society in commemoration of Martin Luther King Jr.'s 1963 March on Washington—with former LRS comrades Francis Wong and Jon Jang.

Wrote Jang in a comment to Phillips's Facebook post about the event: "Steve, you and I were one of the few I know that share how the Jesse Jackson Rainbow Coalition had an impact on the election of President Obama."

In his New York Times best-seller "Brown is the New White" (endorsed by Obama and House Speaker Nancy Pelosi), Phillips argues that Jackson's Rainbow Coalition strategy set the stage for Obama and is the road to permanent Democratic Party control of the United States:

"Before Obama went to law school ... a forty-two-year-old Black civil rights leader shook up the political system by running for president of the United States of America. To get from Martin in 1968 to Barack in 2008, we needed Jesse in 1984 and 1988.

"It was during the presidential elections of the 1980s that the seeds planted in the 1960s began to sprout and become visible in national politics. Jackson was fond of saying, 'When the old minorities come together, they form a new majority.' The potential of this prophecy came into sharp focus in the 1988 campaign as Jackson won the presidential primaries in eleven states, led the race for the Democratic nomination near the halfway point, and finished as the Democratic runner-up with the most votes in history up to that time.

"The key to Jackson's success—and Obama's electoral victories twenty years later—was the power of connecting the energy of people of color and progressive Whites seeking justice, equality, and social change to a political campaign for elected office."

### A New American Majority

According to Phillips, the left already has a majority in this country. By his calculations, 23 percent of potential voters are what he terms "progressives of color" and 28 percent are white "progressives"—reliable locked-in Democratic voters. So, 23 percent plus 28

percent is 51 percent: the "New American Majority."

Phillips's message to the Democrats is clear. Stop wasting billions on "swing voters." Put that money into massive voter registration drives and Get Out the Vote efforts in Southern and Southwestern states. These states all have large minority populations that lean Democratic but vote in very low numbers. Get them registered and to the polls. Inspire them with "progressive candidates of color." Do this and you will destroy the Republican's Southern stronghold. Do that, and you rule the United States forever.

Through his organizations PowerPAC-plus, Democracy in Color, and the Sandler Phillips Foundation, Phillips and his Democracy Alliance comrades support a Southern network of voter registration organizations that have already seriously challenged Republican dominance in several states.

For several years, the Phillips-aligned New Virginia Majority has almost turned a once reliably Republican state blue through mass minority-voter registration. The organization is led by Jon Liss—a cadre with the pro-China Freedom Road Socialist Organization (FRSO)—and uses sophisticated precinct maps generated out of the Geography Department of Wuhan University China to micro-target new Democratic voters.

In 2017, Phillips and Sandler put several million dollars into voter registration in Alabama to help Democrat Doug Jones beat scandal-damaged Republican Roy Moore in that year's U.S. Senate race.

In Florida in 2018, Phillips, Soros, and Tom Steyer of the Democracy Alliance put several million dollars behind Tallahassee Mayor Andrew Gillum's race for the state governorship. Gillum, a longtime Phillips protégé and former PowerPAC-plus board member, was also aided by the FRSO-led New Florida Majority, which helped him raise the Democratic vote by 40 percent—almost all new minority voters. Gillum lost by a tiny margin.

In Georgia, another Phillips protégé, Stacey Abrams, came within a whisker of winning the Georgia governorship with at least \$10 million of Sandler and Democracy Alliance money and mass minority-voter registration drives.

In Texas, Beto O'Rourke came within 3 percentage points of beating Ted Cruz in the 2018 U.S. Senate race. Two Phillips-aligned and Democracy Alliance funded groups, Battleground Texas and Texas Organizing Project (formerly Texas ACORN), signed up hundreds of thousands of new minority Democrats from the poorer neighborhoods of Dallas, Houston, San Antonio, and Austin.

### A Winning Coalition

Phillips and at least some factions of the Democracy Alliance and Democratic Party want to run the 2020 election along Rainbow Coalition lines. They want to ignore the "center" and focus entirely on building a winning

## Expect to see Kamala Harris steadily rise to the top of the Democratic Party rankings.

coalition of "progressive" whites and "people of color."

Is Bernie Sanders the ideal candidate to motivate and mobilize millions of new mainly young "progressives of color"? How about Elizabeth Warren, Joe Biden, or Pete Buttigieg?

Phillips doesn't seem to think so. He's had two horses in this race for some time.

At Stanford University, Phillips was very close to a young black football player—a radical, but not the most extreme on campus. Phillips nurtured this man's career. In 2013, PowerPac-plus committed between \$1 million and \$2 million to make Cory Booker the U.S. senator from New Jersey.

Phillips had high hopes for Booker in 2020, but so far things have not panned out. Perhaps, Attorney General Booker under the next Democratic president?

Maya Harris was a young student radical at Stanford in the early 1990s. The daughter of openly Marxist Stanford professor Donald Harris, she was close to many activists in Phillips's circle.

Maya Harris would go on to become a senior fellow at the Sandler-funded Center for American Progress. Phillips also helped Maya Harris's husband, Tony West (another Stanford alum), get hired at the Obama Justice Department.

According to PowerPAC-plus: "We set up a D.C. office and worked closely with the administration's personnel staff to build a Diversity Talent Bank that the White House used to identify and hire more than 60 people, including Associate Attorney General Tony West."

Just before the 2016 election, Phillips said that Maya Harris would be a "social justice ally" in the Hillary Clinton White House.

After a stint in the leadership of Hillary Clinton's 2016 campaign, Maya Harris is now at the helm of her sister Kamala Harris's presidential effort.

Kamala Harris and the Phillips-Sandler family go way back.

From a PowerPAC-plus post on Political Intelligence:

"Once named the 'female Barack Obama,' Kamala ran for Attorney General of California in 2010 on a progressive platform. ...

"PowerPAC.org and PowerPAC+ have been Kamala supporters since 2010. In our efforts to support Kamala, PowerPAC.org produced a political ad outlining Kamala's promise to protect the most vulnerable working-class neighborhoods by holding California polluters accountable to their environmental crimes."

This short bio of Susan Sandler from the Sandler Phillips Center ties together several threads:

"Susan Sandler is a philanthropist and political donor. She was the first and largest donor behind the independent efforts to support Barack Obama's 2008 presidential campaign. She was also the lead investor in

the independent activities supporting Kamala Harris' 2010 campaign for California Attorney General and Cory Booker's 2013 election to the United States Senate. She has served as a board member of several progressive non-profit organizations including the Democracy Alliance."

When Kamala Harris announced her 2016 U.S. Senate bid, Aimee Allison, another former Stanford radical and Phillips's deputy at PowerPAC-plus and Democracy in Color, wrote:

"This Tuesday, California Attorney General Kamala Harris announced her U.S. Senate bid to replace Senator Barbara Boxer, who is retiring next year. We are thrilled at the opportunity to support a progressive that represents California and the nation.

"The PowerPAC+ family has supported Kamala Harris since before she ran for statewide office in 2010, and her record in leadership has been stellar. She took on banks responsible for the mortgage crisis, she stood up for marriage equality and she supported criminal justice reform. She is the right leader for the multiracial majority."

That's the key sentence. Kamala Harris is the "right leader for the multiracial majority."

The Phillips, Sandler, and Democracy Alliance helped to give us President Obama, Sen. Cory Booker, and Sen. Kamala Harris.

They've helped move several Southern and Southwestern states from deep red to purple or leaning blue.

Expect to see Kamala Harris steadily rise to the top of the Democratic Party rankings. Look to see much of Bernie Sanders's support base eventually fold into the Harris machine. Watch as the Hillary Clinton machine and money also gets behind Harris.

I predict that the Democrats will fight the 2020 election on an identity politics Rainbow Coalition platform—they will try to forge a "multi-racial majority" or a "New American Majority" that can never be beaten.

If they win, the United States as we now know it will likely be over.

I've wagered many steak dinners that Kamala Harris will be the new "Rainbow Coalition" candidate.

I hope I'm wrong, but I'm looking forward to trying the high protein diet that everybody's talking about.

*Trevor Loudon is an author, filmmaker, and public speaker from New Zealand. For more than 30 years, he has researched radical left, Marxist, and terrorist movements and their covert influence on mainstream politics.*

*Views expressed in this article are the opinions of the author and do not necessarily reflect the views of The Epoch Times.*

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SCOTT OLSON/GETTY IMAGES



# The 'Red Flags' Surrounding Red Flag Laws

JOHN MOORE/GETTY IMAGES



JEFF CARLSON

## Commentary

In the wake of two recent mass shootings, calls for the enactment of red flag laws have risen exponentially. It's perfectly understandable that so many want to do something, anything, to help prevent future tragedies such as the ones that took place in El Paso and Dayton.

But the blind enactment of red flag laws isn't the appropriate response.

Red flag laws are effectively prevention laws that allow law enforcement and family members to petition a court to have an individual's firearms temporarily confiscated if the person is believed to pose a danger to themselves or others.

The involuntary removal of weapons, usually done without notice, is generally for a set period of time—typically several days or weeks—until a more formal hearing can be held. At the formal hearing, the judge might rule that the ban is valid and extend the confiscation for a longer period of time, sometimes as long as a year. Or the judge might rule against the temporary order and allow the weapons to be returned to the owner.

In the event of a valid ruling, the gun owner may be forced to go to court multiple times in order to have his constitutional rights restored.

## Inverting Due Process

One of the troubling issues behind such laws is the intent to “catch” people before they actually commit a crime—based on a presumption that the individual “may” commit that crime in the future. In essence, red flag laws are “pre-crime” laws, which is why they are also known as prevention laws.

And they invert our nation's due process of “innocent until proven guilty” into something resembling “potentially guilty until proven innocent.” The intent behind red flag laws runs completely counter to the underpinnings of our legal system, which has been designed to impose punitive measures after illegal conduct has occurred, not in anticipation of it.

The idea that someone “might” be a danger, although tempting in the wake of these tragic shootings, doesn't provide legal sufficiency to strip away an individual's constitutional rights without the benefit of due process. Also worth asking is what, exactly, constitutes a red flag? And who gets to make that determination?

The issue of determination is a somewhat crucial question, as existing red flag laws are structured in a manner that incentivize seizure. A law enforcement officer or a presiding judge is unlikely to face any consequence for taking weapons away from someone who isn't really a threat. But the potential public backlash from refusing to do so if something tragic was to happen would be fierce. There is an ob-

A man looks into a gun shop in East Windsor, Conn., on Dec. 21, 2012.

**The intent behind Red Flag laws runs completely counter to the underpinnings of our legal system, which has been designed to impose punitive measures after illegal conduct has occurred, not in anticipation of it.**

vious inducement to err on the side of caution—even if it means a violation of that individual's Constitutional rights.

Several state red flag laws, such as those in Oregon, allow for the temporary confiscation of weapons based solely on a brief statement from a third party who must be a law enforcement officer, family member, or household member. The affected individual isn't given advance notice, nor is the person allowed to defend him or herself ahead of the confiscation. There is also no requirement that any illegal behavior must have occurred.

Some states allow for court petitions from parties outside of immediate family or household members and typically include mental health professionals. Hawaii goes even further, allowing for petitions to be made by medical professionals, educators, and coworkers.

## Involuntary Commitment

In most cases, red flag laws have been invoked when the individual was deemed to be either a danger to themselves or to their immediate family and not because they were deemed to be posing a threat to a larger section of the populace. And there are several studies that indicate these methods have reduced suicide rates.

But this raises the question of why, if a person represents a level of danger great enough to warrant the seizure of his weapons, is he allowed to remain active in society without treatment? If an individual is deemed to be so dangerous as to require the confiscation of his weapons, surely professional treatment and some sort of custodial setting should be required.

A more useful hurdle might be a judicial determination that the individual meets the state standard for involuntary commitment and that remedy is the one that is followed. At a minimum, some mental health treatment should be requisite—and only after a due process judicial determination.

## National Level

As it now stands, at least 17 states plus the District of Columbia have already enacted variants of red flag laws—known as Extreme Risk Protection Orders (ERPO). Most of these laws were enacted following the 2018 Parkland, Florida, shooting, although Connecticut, the first state to pass a red flag law, did so in 1999. Notably, Connecticut's red flag laws didn't prevent the 2012 Sandy Hook shooting tragedy from occurring.

At the national level, Sen. Marco Rubio (R-Fla.) introduced the Extreme Risk Protection Order and Violence Prevention Act. It would allow a court to issue an ERPO following the successful court petition by a family member or law enforcement officer that would require the surrender of the targeted person's firearms. It would also prevent the individual

from purchasing guns while the court order stands.

The act also requires that the issuance of the ERPO be reported to the “appropriate federal, state, and tribal databases.” Who would have access to these databases hasn't yet been made clear, nor is it known if the listing would be permanent.

Following the El Paso and Dayton shootings, Sens. Lindsey Graham (R-S.C.) and Richard Blumenthal (D-Conn.) announced a bill on Aug. 5 that would create a federal grant program to assist states in adopting red flag laws. According to Graham, “Many of these shootings involved individuals who showed signs of violent behavior that are either ignored or not followed up. State Red Flag laws will provide the tools for law enforcement to do something about many of these situations before it's too late.”

## Constitutional Violations

Judge Andrew Napolitano, who was asked for his opinion of the Graham Blumenthal legislation on Fox News, provided a direct and blunt response, noting, “Honest, decent, law-abiding people should not lose their rights because some judge thinks they might do something in the future. That's the Soviet Union model, not the American.”

Congress has long had a bad habit of enacting poorly written, responsive laws, and there is generally an inclination on the part of government to overreach. When enacted legislation and regulation fails, the nature of government is to follow up with additional laws and regulations. If the government is allowed to seize guns based on the possibility of a future crime, how long before the seizure is of one's liberty?

Laws that deter future crimes are obviously a positive step. But laws that punish a potential future crime are not. It's for this reason, along with a lack of due process, that many red flag laws are viewed as unconstitutional. Depending on how the law is written, there may be violations of several different constitutional amendments.

The Fifth and Fourteenth Amendments of our Constitution mandate that no citizen shall “be deprived of life, liberty, or property, without due process of law.” When individuals have their firearms confiscated in advance of a judicial hearing, both amendments are violated, and the individual's Second Amendment right has been effectively converted into a privilege.

Red flag laws may violate other portions of our Constitution as well—such as the right to an attorney (Sixth Amendment) and unreasonable searches and seizures (Fourth Amendment).

## NRA Requirements

The NRA has written repeatedly on emergency risk protection orders (ERPOs) and has listed a series of requirements they believe should be present in any ERPO legislation in order to

protect individual rights:

The process should include criminal penalties for those who bring false or frivolous charges.

An order should only be granted when a judge makes the determination, by clear and convincing evidence, that the person poses a significant risk of danger to themselves or others.

The process should require the judge to make a determination of whether the person meets the state standard for involuntary commitment. Where the standard for involuntary commitment is met, this should be the course of action taken.

If an ERPO is granted, the person should receive community-based mental health treatment as a condition of the ERPO.

Any ex parte proceeding should include admitting the individual for treatment.

A person's Second Amendment rights should only be temporarily deprived after a hearing before a judge, in which the person has notice of the hearing and is given an opportunity to offer evidence on his or her behalf.

There should be a mechanism in place for the return of firearms upon termination of an ERPO, when a person is ordered to relinquish their firearms as a condition of the order.

The ERPO process should allow an individual to challenge or terminate the order, with full due process protections in place.

The process should allow firearms to be retained by law-abiding third parties, local law enforcement, or a federally licensed firearms dealer when an individual is ordered to relinquish such firearms as a condition of the ERPO. The individual must also have the ability to sell his or her firearms in a reasonable time without violating the order.

Balanced Response  
The recent tragedies are horrific and it's understandable that our society would require some sort of response. But this shouldn't come at the expense of our civil liberties and in a manner that violates our constitutional rights. Nor should the underlying issue of mental health and requisite care be overlooked.

As Congress and the states continue their debate, these qualifying measures listed above should receive serious discussion and inclusion in any pending legislation.

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## OPINION

# The Old Civility Versus the New

WILLIAM BROOKS



More and more people are claiming that something has gone wrong with the civil tone in Western societies.

Elites in the United States blame President Donald Trump's supporters, whom they consider to be crude, ill-mannered bulls in the U.S. china shop. To one degree or another, the same animus exists in Canada and other Western countries such as the UK.

The tony disdain for so-called “populists” is shared by a wide range of established politicians, media pundits, high-ranking civil servants, academics, entertainers, and business leaders. All contend that “civility” must be restored in order to right the ship of state and bring people back together.

## 'Calls for Civility Are Rarely Innocent'

Others see things differently. Writing in the March 2019 edition of U.S.-based magazine First Things, R.R. Reno had some insightful observations about the growing calls for more civility. “Civility is an admirable quality,” he writes. Elites, he suggests, have always regarded civility as a stabilizing force that can serve to encourage trust and cooperation among diverse elements in society.

While it can be very useful to leaders who seek to maintain peace and comity in their realm, Reno also points out that civility is for the most part “an establishment virtue” and says “calls for civility are rarely innocent.”

In fact, Reno argues that civility also has an adversarial, outward-facing function. “Correct manners set apart the well-bred few from the demonic many,” he writes. “They are tools for ruling out challengers as ill-bred, crude, and vulgar, which is to say illegitimate.” As a result, ordinary citizens in Western democracies can't help noticing that hardly a week goes by without some member of the elite denouncing some popular outsider's speech and demeanor as being beyond the pale.

## Definition of Civility Has Changed

British historian John Gillingham, professor emeritus at the London School of Economics and Political Science, has pointed out that the meaning of civility has evolved from its origins in medieval and early modern English society. It has become less of a moral framework and more of a political code that judges the acceptability of people's behavior according to their ideological preferences.

Up to the late 1950s and early 1960s, civil behavior was still grounded in rules of conduct influenced by traditional religious



People attend the Epsom Derby in Surrey in 1924.

**Post-war elites appear to have concluded that the religious virtue, formal civility, and orderly habits of their parents were just too burdensome to carry on.**

Demonstrators protest Supreme Court nominee Judge Brett Kavanaugh near the Capitol on Oct. 4, 2018.

virtues. Most ordinary men and women believed that work was superior to idleness, forgiveness was better than sustained anger, admiration was healthier than envy, and humility was preferable to pride. Trust and reciprocity formed the basis of social capital. People of all castes, faiths, and convictions aspired, however imperfectly, to live by virtues that were fundamental to the maintenance of a civil, productive, and well-ordered society.

Some of us, myself included, are old enough to remember a childhood in which being civil generally meant being courteous, polite, and demonstrating respect for others, especially those in positions of authority. This was considered particularly useful when you ran into people you didn't know well or, for one reason or another, may have some disagreement with. You could still have a civil conversation.

## A New Normal

But roughly half a century ago, during the dawning of the age of Aquarius, things began to change. Post-war elites appear to have concluded that the religious virtue, formal civility, and orderly habits of their parents were just too burdensome to carry on.

Armed with the clever rhetoric of a long-established intellectual left, young people took to the streets of Western democracies to create a new normal in almost every form of human conduct. Angry protests against the perceived evils of capitalism, consumerism, Western imperialism, normative values, religious hypocrisy, and traditional order consumed their attention in the West's finest universities. Clarion—but ultimately, insincere—calls for equality, diversity, social justice, and inclusiveness rang through the parlors, bistros, theatres, and concert halls of the beau monde. As one

might expect, it didn't take long for ambitious members of the lower ranks, who were often the first in their families to attend university, to begin imitating their betters.

So from the late 1960s on, the road has been open for succeeding generations of liberal elites to establish an enormously politicized and self-serving standard of civility. Today, being “civil” literally means supporting the politically correct agenda of our progressive establishment.

Many American Republicans and Canadian Conservatives share these views and tactics with their high-class amigos on the left. Today, being civil means being “woke.” Keeping a civil tongue in your head means staying silent if you have any disagreement with the current conventional wisdom.

Shutting Down Dissenting Voices  
Our elites also don't hesitate to punch down, should a misguided member of the fly-over classes take issue with their agenda. If they can't actually lock you up, they will ignore you or embarrass you, and make your life and career as miserable as possible.

Raise questions about your country's capacity to absorb increasing levels of immigration and you will be summarily labeled as a racist, bigot, and xenophobe—or in the wake of a human tragedy such the one that just occurred in El Paso, Texas—an accessory to murder. Question the accuracy of climate research models or doomsday warming predictions and you will be branded a “denier.” Express any doubt about the merits of almost any sexual harassment charge and you will be characterized as an enabling member of a predatory patriarchy. The left's list of nondebatable “civil” positions is almost endless.

As the North Atlantic Triangle of nations heads into another election cycle—Canada this October, the United States in 2020, and the UK some-

**The left's list of nondebatable 'civil' positions is almost endless.**



A handgun in a holster in Olympia, Wash., on Jan. 19, 2013.



JACK FROG/SHUTTERSTOCK



When the self-restraint of the people, the norms and mores reinforced in families, churches, and synagogues, and communities are strong, the state can afford to be mild.

# FAMILY, FAITH, and NATION

PAUL ADAMS



*Commentary*

Years ago, I saw Michael, a boy then only 5 years old, racing a girl from his school in a park. She was the same age but, at this stage, was bigger and faster, and was pulling ahead. This was an informal race, with no rules, and the boy felt free to do as he wanted.

So he pushed the girl over and raced ahead.

For an exuberant boy such as Michael to grow into a good man, he must be constrained by others from such behavior, and internalize and develop the virtue of self-restraint or self-mastery, traditionally called temperance. He must learn that his own freedom isn't just balanced by constraint as a countervailing force, but it depends on constraint. Even an informal foot race is not really a race if the runners don't allow each other to run. They must recognize some basic rules and constraints.

But some conservatives of libertarian persuasion, political philosopher Yoram Hazony argues, see liberty as freedom from constraint. Author of "The Virtue of Nationalism" and organizer of the influential Washington conference in July on National Conservatism, Hazony argues that failure to understand the importance of constraint—internal and external—for the life of an individual, family, and nation is a failure to appreciate the conditions for freedom itself.

He argues that constraint is necessary so that each of us can be free. The freedom to drive a car depends on others not stealing or vandalizing the car and on our all following, more or less, the same rules of the road. In the same way, the freedom to say what one wants depends on others tolerating it and not driving one from one's job because they disagree. "But for others to tolerate what I have to say requires constraint, not freedom," he writes in an essay for the *American Mind*.

In order to grow up free, the boy must learn to follow the rules of the game—any game he wants to play, whether chess or football, playing the violin, or indeed a job or career, or marriage or family life, or service

**We live in a time of reckless abandonment of those structures and constraints that enable us to flourish, both as individuals and as a nation.**

HALFRONT/SHUTTERSTOCK



A family walk through a field. When the self-restraint of the people, the norms and mores reinforced in families, churches, and synagogues, and communities are strong, the state can afford to be mild.

to the nation. Constraint, as Hazony concludes, "is the key to everything productive or good that we do in life."

"Constraint does much more, however, than establishing freedom. If I wish to be able to play the guitar or piano, or to prepare cooked meals, or to defeat an armed opponent bare-handed using aikido, I gain the necessary skills not by insisting on my freedom, but through constraint: Through studying and practicing at length every day, even when I find it disagreeable and feel overwhelmed by the desire to be doing something else.

"In the same way, my marriage, remaining faithful to my wife and bringing children into the world and raising them, involves a massive, daily curtailment of my freedom. To make it work, I am constrained to take a job that I may not want so I can make a living. I am constrained to refrain from relations with other women, much as I may desire them. I am constrained to care each day for young people who are often angry, troubled, or sick. Yet all of these constraints are the price of building up a family that can endure and flourish, contributing to my nation and to the things that I believe in, long after I am gone. And the same can be said of serving in the military and paying taxes, observing holy days and sabbaths, and everything else that is of value," Hazony writes.

Such a list already suggests limits to the capacity of rulers, states, empires, and their police and bureaucrats to impose such constraints. When the self-restraint of the people, the norms and mores reinforced in families, churches, and synagogues, and communities are strong, the state can afford to be mild. When such self-discipline and the honoring of those who exercise it, even at high personal cost, are strong, the need for coercion, for bureaucratic and professional substitutes for informal care and control is weaker.

This rule applies not only to areas where government agencies take on the functions once performed by families and faith communities, but also to the functioning of markets. A friend of mine, a priest who had served in Nigeria, told me how he had attended a woman there at her execution. The condemned woman was a merchant who had dealt with

two competitors by hiring hit-men to kill them: a more deadly—to all concerned—application of young Michael's approach to dealing with competition. Where the rules and constraints of a free market are well established and accepted, such measures—not unknown in U.S. history in the form of urban gangsterism—become less the rule than the exception.

A good society depends on virtuous people—for example, those who work and sacrifice to sustain marriages and stable family structures, or serving the nation in the military, teaching the young, or personally caring for the infirm and aged. But a nation may make it easier or harder for its members to practice the virtues needed to lead good lives. A nation may, in its laws, customs, and moral environment, support stable marriage and family structure that enable children to thrive. Or on the contrary, it may promote and facilitate, in its laws and its TV shows, easy divorce and out-of-wedlock birth with all their attendant costs for children. It may recognize and honor tradition, duty, and sacrifice, or ridicule them as constraints on individual autonomy.

We live in a time of reckless abandonment of those structures and constraints that enable us to flourish, both as individuals and as a nation. It's not just a matter of carelessness and neglect. The demolition of the nation's traditions, vigorously and vindictively promoted by liberal and libertarian elites, is "at bottom, a struggle to prevent government, schools, and private institutions from giving honor to norms inherited from the past," Hazony argues.

Bishop Robert Barron often reminds us that "your life is not about you." But the dominant culture of our elites promotes the opposite message. It's all about you, your freedom as an unencumbered autonomous individual, unconstrained by duty to family, faith, or nation, all of which must, in their view, be torn down in the interest of freedom, understood as freedom from constraints.

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