On the Brawndo Tyranny

February 21, 2021

America was, for much of its existence, defined as a nation of laws, not men, in the famous phrase of John Adams. No more. Now men, but only some men, rule. They rule as they please, in arbitrary, selective, self-benefitting fashion. Thus, what we live under is a tyranny, a system without rule of law. Unlike a traditional tyranny, though, our tyrant is not one man, but rather a compound being. Think the classic picture of Hobbes's Leviathan, one giant and powerful undying creature, whose body is composed of the hive members of our rotten ruling class. But look more closely—our Leviathan is giant and powerful, yes, but is also drooling and imbecilic.

This our tyranny is something new in history, and I name it the Brawndo Tyranny. The reference is to the prescient 2006 movie *Idiocracy*, a dark comedy where a future society of morons starves because they irrigate crops with Brawndo, a Gatorade stand-in (the "Thirst Mutilator"), figuring it's better for plants than nasty water. Our tyranny is the same level of stupid. Oh, certainly, its real-life effects, in lives ruined and people killed, are not a joke, and those guilty must be made, ultimately, to pay for their sins. But those of us who worry that the Brawndo Tyranny will have a long tenure should worry less. It is a lot like a malicious five-year-old who has somehow gotten the keys to a backhoe. Yes, he can cause a lot of damage, but it's not going to go as he plans, and very soon he's going to be upside down in the ditch.

To be sure, it is not only our ruling classes that are stupid. They have infected much of the country with their stupidity, and thus stupidity dominates nearly all public discourse. Years of propaganda have created a type of harmonic resonance across the land, where stupidity bounces back and forth, increasing in power with each bounce (though of late our rulers have had to resort to blanket censorship to keep reality from dampening the resonance). The best recent example of mass stupidity is reaction to the Wuhan Plague, where public opinion has been characterized by total irrationality and hyper-feminization. There are many other examples, however; it is truly unbelievable how much stupidity America features today. Any prior society with this level of stupid would long since have collapsed, but due to a combination of

wealth and historical circumstance, we stagger on, for now. But we can be certain that the end is going to be no different than watering crops with Brawndo.

The inevitable terminus of the Brawndo Tyranny doesn't mean, unfortunately, that we're going to get the rule of law back afterwards. After, in A.D. 9, Publius Quinctilius Varus led twenty thousand Roman soldiers to their death in the Teutoburg Forest, it is said the aged Augustus wandered his halls on the Palatine, crying "Quinctilius Varus, give me back my legions!" He didn't get his legions, and we, with our similar cry, may very well not get our country. We may simply get chaos, perhaps followed by a less stupid, but more effective, traditional tyranny. That's a problem. But we have immediate problems to deal with, and sufficient unto the day is the evil thereof.

I warn you what I am writing today is very much not for everyone. Rather than history or political philosophy, for the most part it is technical legal analysis of government actions. My aim is to show, in all its naked rancidness, how it is we are actually ruled at this moment. I am not focusing on spectacular and compelling examples, such as how corruption has enabled Nancy Pelosi to accumulate a fortune of more than a hundred million dollars, or how Janet Yellen is allowed to maintain her position while accepting millions in open bribes from those most affected by her decisions. Instead, I am talking about drier examples which show the pervasive underlying rot of the system. For this reason, we will focus mostly on civil law and the making of law, not the application of criminal law. This means we will not talk, except in passing, of how the criminal law has in the past few years been repeatedly used to persecute enemies of the regime, a classic move of tyranny. Yes, those injustices cry out to heaven, but that is not our focus here; it will instead be the focus of future trials and punishments.

The point of this exercise is to assist those out there who can sense that everything we are told by our overlords about how we are governed is a lie, but don't understand precisely what is really going on. Even the few news sources that are not lying do not go into the necessary level of detail about government actions that obviously are outside the rule of law; there is just not enough of an audience. Certainly, this level of detail is an acquired taste, and I sympathize with, because I share, the idea that it is hardly worth bothering. After all, we already know we

are being lied to, and the solution is not to better understand the lies, but to silence the liars. Nonetheless, I am going through the intellectual project in the hope that it may benefit some, perhaps those who are trying to persuade others they are being lied to.

First, what is the rule of law? We can use A. V. Dicey's famous nineteenth-century definition, as rephrased by the pseudonymous blogger Lexington Green: "Restated, Dicey says the Rule of Law consists of: (1) disallowing arbitrary power, restricting the use of power to what is permitted by law, (2) treating all persons to the exact same law, in the same courts, without regard to their status, and (3) treating the officers of the government to exactly the same law as everybody else." You will note that none of this has anything to do with democracy, or for that matter any particular form of government. A monarchy can have the rule of law just as much as any other form of government, and in fact true democracies are the most prone of all types of government to lose the rule of law.

To add flavor with another definition, we can use John Locke, of whom I'm not that much of a fan, but at least he wasn't stupid. "Wherever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another."

Or, more colloquially and simply: when the people cannot see the real law, and therefore do not know the law, and worst of all, no longer care about the law, realizing instead that all is merely power, Lenin's "who-whom?", then the society has no rule of law.

The rule of law is a strictly Western concept, and always has been. When the Greeks spurned the "Eastern despotism" of Xerxes, lack of rule of law is what they meant. No non-Western culture has ever had the rule of law to any significant degree, but it has been the general practice in the West, and always the goal. For this reason Magna Carta was once famous, taught to every schoolchild, but it is now unknown to the vast majority of Americans, what with the general dumbing down of the population, and the substitution of ideology for education.

So, for example, during Barack Obama's presidency, when some on the Right accused Obama of violating the rule of law, there was a brief flurry of explanatory pieces by young leftist journalists, who had never heard the term, claiming that "rule of law" was a fresh quasi-fascist concept. And under Donald Trump, the term was again weaponized by the Left, to claim the opposite—that Trump was a tyrant who had destroyed the rule of law. None of the innumerable Left opinion pieces (or news articles; there is no difference now) claiming this gave any examples or reasoning; it was just a magic incantation that sounded sonorous, the atheist's version of "Get thee behind me, Satan!" As with "saving our democracy," "erosion of the rule of law" as typically used today simply means that some action is reducing Left power, and must be stopped by any means necessary. This is just more stupidity.

The short version of what follows is that America is now a country without the rule of law. In any federal government action of any prominence, or touching on any aspect of Left power, and in many actions without prominence and without political import, we should assume the rule of law does not exist. I will analyze three separate acts tied to the power of government. First, the September 2020 order from the Centers for Disease Control forbidding evictions. Second, the January 2021 order from the CDC mandating mask usage nationwide. Third, the 2020 debate in Congress around the "Emmett Till Antilynching Act."

The Eviction Order

The Eviction Order was issued by the CDC on September 4, 2020. After reciting basic, if overblown, facts about the Wuhan Plague, and briefly reasoning that if everybody stays put where they live now the virus is less likely to spread, it forbids any eviction on the basis of nonpayment of rent in any part of the United States or its possessions. It provides a form to "invoke" the Order against landlords, which limits the use of the order to those who claim under penalty of perjury that they have tried to get the money to pay their landlord, that they cannot do so, earned no more than $99,000 (as an individual), and have no other housing options.

If you read any news piece on the Eviction Order, it is always merely assumed that all this is normal. Never is it addressed, in any way, how the

CDC has the authority to issue, without any form of public consultation or debate, a nationwide order affecting tens of millions of people, in a matter that is traditionally exclusively a state matter, where by definition there is no interstate activity (normally necessary for the federal government to have any power to act on a matter).

The CDC is an administrative agency. In general, as most of my readers know, but most Americans no longer know, the theory of laws under the Constitution is that Congress makes laws, the President executes them, and the judiciary applies them to cases in controversy. The theory of administrative law, something found nowhere in the Constitution but created in the early twentieth century as a supposed aid to good government in an increasingly complex age, is that Congress delegates some set of functions to a body it creates (or in some cases one existing in the executive branch), through an "enabling act." That act is supposed to specify the powers delegated and the limitations on that power. Naturally, no more power can be granted than Congress has. Moreover, the Constitution explicitly requires that Congress cannot delegate its power to legislate. But in practice this "nondelegation doctrine" is a dead letter; since the late 1920s the Supreme Court has allowed Congress to delegate anything, as long as the grant is controlled by an "intelligible doctrine," a meaningless theoretical control. For nearly a hundred years the Supreme Court has never found a single instance of Congress illegitimately delegating its power.

Most Americans don't understand any of this. They think that the government, which they view as more or less unitary, but headed by the President, can simply issue orders. Thus, when Dementia Joe issued a slew of executive orders upon illegitimately assuming the office, nobody asked whether he had any authority to issue them. (In fact, most, or maybe all, of them don't even bother stating the supposed basis for his authority; they simply recite "By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:") They think this is just normal. In other words, they have been lied to so much that they have been brainwashed into thinking tyranny is the normal method of operation in American government.

There are many complex doctrines and rules surrounding the administrative state, such as "*Chevron* deference," one of many judge-created

doctrines that in practice are designed to allow no substantive review of any action by any administrative agency. (You may find it interesting that I was taught administrative law by Cass Sunstein, who is generally regarded as the greatest living expert in administrative law, in the flesh.) However, it is important not to get bogged down in these doctrines and rules, but simply to understand that all these doctrines have been developed to allow more power to accrue to faceless, unaccountable federal bureaucrats, the vast majority of whom are leftists, and who, starting under Bill Clinton, began to be formally weaponized to advance the Left as a whole. These act in coordination with leftist judges and, of course, the media, in order to (very successfully) achieve Left goals. For this reason (among others), the administrative state has long been the focus of criticism by conservatives. I have written several times on this and won't repeat myself; for more detail, you might check out my review of John Marini's *Unmasking the Administrative State*.

The CDC is a division of the Department of Health and Human Services. The Order refers repeatedly to "I", as in "I have determined" and "I order." The "I" is one Nina B. Witkofsky, the "Acting Chief of Staff" of the CDC. How Witkofsky has the power to issue this order, given there is a Director and a Deputy Director of the CDC, and the "Office of the Chief of Staff" is merely one of seven apparently co-equal "staff offices," is not explained. Perhaps there is some internal delegation to Witkofsky, but we are not shown it. No, we are to simply assume that any person at the CDC can order the nation to do anything. If the Order were signed by a random CDC janitor in Topeka, They would assume that We would obey without question, for They have power, and through what channel or method they choose to exercise it is none of our business. Our only job is to obey, or be punished.

And punishment there is. Each violation is a federal Class A misdemeanor, punishable by a year in jail plus a $500,000 fine. These criminal penalties, and the Order itself, are not justified by or taken from any grant of authority by Congress relating to the Wuhan Plague or any other remotely relevant action taken by Congress. Rather, the Order refers for authority solely to 42 CFR 70.2, a regulation issued in the 1940s. 42 CFR 70 is a set of regulations headed "Interstate Quarantine." 42 CFR 70.2 is a subsection of the quarantine regulations that provides, in full, under the heading "Measures in the event of inadequate local control":

> The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

The thrust of this is obvious—to allow actions by bureaucrats to quickly corral "sources of dangerous infection." 42 CFR 70.1 defines "quarantine," the exclusive focus of the regulation as a whole: "Quarantine means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease." Explicitly excluded from the definition of quarantine is anyone not reasonably believed to have already been exposed to a communicable disease.

42 CFR 70 itself refers to its authority, that is, its enabling act, as "Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 USC 216, 243); section 361-369, PHS Act, as amended (42 USC 264-272); 31 USC 9701." These are a complex of laws dating back, again, to the 1940s, discussing quarantine powers, cooperation with states, and so on. Nothing in any of these laws suggests Congress granted, much less intended to, grant any power to any administrative agency to govern housing, or to take any action other than as related to the direct quarantine of individuals or items known or suspected to be actually infected with a communicable disease.

Now, the Administrative Procedure Act, the umbrella federal statue governing administrative agencies, does provide very specific rules regarding the issuance of regulations. These include what is called "notice and comment," for a specified period. In other words, for any proposed regulation, the agency is required to first promulgate a proposed regulation, solicit public opinions, and respond to those opinions. Of course,

in reality, the agency does whatever it wants, and this is a farce. But at least the process sometimes shines some light on what's going on.

Not here, though. The Eviction Order recites, "This Order is not a rule within the meaning of the Administrative Procedure Act ('APA') but rather an emergency action taken under the existing authority of 42 CFR 70.2. In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date." No authority is provided for the claim that "good cause" allows dispensing with the provisions of the APA, but the CDC is apparently referring to 5 USC 553(B), which says that there is no need to bother with this core notice and comment provision whenever, in its sole discretion, an agency decides (and "incorporates the finding and a brief statement of reasons therefor in the rules issued") that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In other words, they only have to do it when they feel like it, and there is no actual recourse against their determination.

We can see that the Eviction Order is completely contrary to the rule of law, because it is arbitrary. First, there is no limitation to the power claimed. The CDC could just as easily forbid any moving of a household to a new domicile. Or any movement at all—the CDC could simply say that we must all stay in our houses, and starve to death if we can't get food. Or that we must all stand on our heads for a minimum of 8.2 hours a day, and send video proof to an internet address set up by the government, or go to jail for five years. Second, it is effectively completely divorced from any actual law, under the American system, granting authority to the decision-maker. Third, it is uncoupled from reality, because its stated reason for existence is a lie, and everyone knows it.

Nobody actually believes the Eviction Order is meant to prevent disease by allowing people to stay in their homes. People in the professional-managerial elite, who do not suffer eviction, already stay in their homes. The working class and the underclass, who do suffer eviction, have not stayed at home at all during the Wuhan Plague. The former serves the elite and must go to work; the latter doesn't care about the Wuhan Plague, as is entirely obvious. Rather, the Eviction Order is meant to accomplish a political purpose thought desirable by

our rulers, avoiding the social unrest and criticism of the elite, sitting on their Zoom calls and mostly collecting money for doing nothing of value, that would come from evictions during the Wuhan Plague.

On the face of it, the Eviction Order doesn't seem to meet the other two, independent tests Dicey sets up for lacking the rule of law. Everyone is, it appears, treated to the exact same law. That's not true, actually, since we know that nobody will ever be investigated, much less prosecuted, for making a perjured statement that he is entitled to benefit from the law. That provision is window-dressing, a pantomime of the rule of law. Only one set of people, landlords, could ever be the target of enforcement of the Eviction Order. And the officers of the government are equally subject to the law. That's irrelevant, though, because this law has no impact except on the narrow class of people targeted. Oh, probably if a federal employee were a landlord, he'd be functionally exempt from any enforcement, since the ruling class takes care of its own, but that's not the real problem here.

Preventing evictions might be a legitimate social goal. If so, why didn't Congress address this? Well, it did. True, under the American system as it existed for most of its history, evictions were certainly not something Congress had any power to affect, since Congress had no authority to legislate with respect to matters without any interstate component. Only a state could have laws on evictions, or on any matter pertaining to real estate. That limitation was written out by the Supreme Court in the 1930s, though, as part of the general gutting of the system of the Framers. So Congress had, in March 2020 as part of the so-called CARES Act related to the Wuhan Plague, legislated a limited eviction moratorium, confined to federally-financed housing. That had expired on July 24, 2020, and Congress had chosen not to make it broader or to extend it.

Thus, the CDC did something that Congress had not only not authorized under any rational reading of the relevant actual laws, but had specifically rejected doing, even in a more limited format. But when a group of landlords filed a lawsuit, the judge naturally, in an opinion in October 2020, breathtaking in both its stupidity and arrogance, and which mentioned nothing about Congress's implicit rejection of the CDC's action, completely rejected their claims. This judicial action was appealed to the next level in the federal system, the Court of Appeals.

However, in December, Congress passed a law explicitly extending the Order until January 31, 2021, which appears to have stayed court proceedings.

You would think this obviates the argument that Congress didn't intend to allow the Eviction Order. But it doesn't, because this obscure provision was merely one part of the Consolidated Appropriations Act 2021, a six-thousand-page monstrosity that covered $2.3 trillion in spending. In fact, it reinforces the argument. There can be no rule of law, in that all government is in essence arbitrary, if those elected to represent us are given the binary choice between voting for a law covering a vast range of matters in which they were allowed no input, or shutting down the government entirely. Of course, that's the intention. From the perspective of our real rulers (in government, at least), a tiny clique within Congress combined with the whole of the administrative state, this is no accident. It's the desired mechanics of a system that allows them to rule without oversight, and to ensure that special treatment is given to them and to their friends, both inside and outside government, who as we all know (and I could provide innumerable examples), are subject to an entirely different set of laws. By no stretch of the imagination can it be said our legislature chose to approve the CDC's action.

Regardless, in January, the CDC purported to issue a new order, nearly identical to its first order, extending the Order to March 31. (Dementia Joe also purported to issue a similar executive order.) It is impossible to find information about how this has affected housing in America. Are huge numbers of people just not paying their rent, and landlords lumping it? Is there a giant pent-up demand for evictions, such that if the Eviction Order terminates, massive numbers of people will be forced from their homes? Who knows? You'd think this would be a matter of great importance, but there is no information to be found on the matter. We just sit, passive and uninformed, or rather misinformed, under tyranny.

The Mask Order

On January 29, 2021, the CDC issued an order requiring universal wearing of masks in every public conveyance in the United States. I will spend less time on this Mask Order, because in the substance of

its violations of the rule of law, it is very similar. It contains an extra item of note, however.

Unlike the Eviction Order, the Mask Order spends quite a bit of time trying to justify itself. Because masks are pseudo-science, modern talismans, it does this by lying, both directly and by omission. As with everything else that "experts say," nearly nothing that "experts" say, about this or anything else, today can be trusted, because they say what is politically desirable for their masters first, perhaps later followed by consideration of the far subordinate question of what is true. (Anthony Fauci's every utterance is one prominent example of this; another is how were told the Floyd Riots were to be permitted, but no other public or private gatherings. But there are thousands of examples.) This shouldn't be a surprise; as Trofim Lysenko could have testified, corruption of science is a hallmark of all modern tyrannies.

Rather than actually studying the science, the CDC decided to join the scientifically unsupported (but very common) belief that masks have any use in combatting the Wuhan Plague (outside, perhaps, of a few very narrow circumstances). But rather than simply make up conclusory fictions, as in the Eviction Order, they cited the fictions of others, or cited the truths of others to prove propositions they do not prove. So, for example, footnotes 14 and 15 of the Mask Order claim that asymptomatic transmission of the Wuhan Plague is common. Footnote 15 is to a January 2021 "study," which is a mathematical model, the starting point for which is, without any evidence or citation, "our baseline assumption is that . . . 30% of individuals with infection never develop symptoms and are 75% as infectious as those who do develop symptoms." (No, I am not making this up.) Footnote 14 is to a July 2020 study, another model, whose only reference to asymptomatic empirical data is to March 2020, the very beginning of the pandemic, where two small populations were tested (the *Diamond Princess* cruise ship and Japanese evacuees from Wuhan), and a small number of people were found to be asymptomatic. Neither study suggested asymptomatic individuals could pass on the disease. The entire point of both studies was merely to see what percentage was asymptomatic. Yet this is the entirety of the "evidence" the CDC cites.

I could go on in this vein, focusing on the risible nature of the claims behind footnotes that purport to show that masks work. I could note

how the CDC ignores the few rigorous studies done so far on whether masks protect the wearer (no, they do not). As far as I can tell, no actual empirical study has been done on whether masks protect others, just "models" that assume the conclusion and laughable "my dummy sneezed on me" second-grade level "experiments." Certainly areas that are heavily masked, such as California, have suffered considerably worse than areas where mask wearing is rare (Florida). It seems quite evident that masks have zero real world effect on transmission of the virus in daily, public interactions; I suppose there might be some extremely marginal benefits to masks, but certainly none that outweigh their massive costs.

Naturally, the CDC totally ignores those costs—the resulting mental illnesses and suicide of children and adults; the corrosion of trust; and much else. And they will, forever and ever, ignore those costs. For this sin no penalty will ever be paid, at least under the system as it exists today. No penalty could ever be paid, since there is, quite literally, no mechanism within the existing system under which any functionary of the administrative state can pay any penalty for violating the rule of law in this fashion.

Both CDC Orders are not the type of technocratic, neutral decision-making envisioned by long-ago theorists of administrative law. Rather, they are extra-legal political actions taken by political actors, where the political power is lacking to implement the same policies through the actual channels of law under the American system. No surprise, both of these are actions favored by the Left, which controls the administrative state. The Left has far more heavily bought into the irrational hysteria surrounding the Wuhan Plague (although, strangely, more than a few people on the Right have as well, a topic for another day), and the Left is highly desirous of conditioning the populace to obey, in their eternal quest to remake human society and human nature. The arbitrary, mendacious, extralegal nature of the Orders is the very opposite of the rule of law.

The Emmett Till Antilynching Act

Let's turn away from the administrative state to actual Congressional lawmaking. The ethnonarcissist Left is today suddenly obsessed with lynching, by which they mean to evoke the historical specter of white

people killing black people in order to terrorize black communities (back, long ago, when there were actual attempts in some locations to maintain "white supremacy"). They gloss over that no such lynching is going on nowadays. Well, that's not strictly true—if lynching includes any assault with murderous intent, numerous white people were the victims of such racially motivated violence this past summer, often seen on video (quickly censored from all platforms, of course, and never reported on by our complicit media, in order to maintain the fiction that Burn-Loot-Murder is not a terrorist organization). That's not what the Left means when they talk about lynching, though. Just in the past few years, they have begun peddling a wholly imaginary narrative in which black people are frequently attacked by white people for being black, and they peddle this lie in order to gain political power. Even though a law isn't needed against lynching because there is no lynching in the way the Left defines it (i.e., excluding white people), the value in power gained of passing a law against lynching is high, because anyone who opposes it must want lynching to continue, obviously.

Back when lynching was actually occurring (some thousands of black people were lynched during the early decades of the twentieth century), and state governments were refusing to enforce the laws, some in Congress tried to get involved. The most notable such attempt was the Dyer Anti-Lynching Bill, introduced by the Republicans and opposed by the Democrats, which failed to pass in 1918. (Because of the post-Civil War amendments to the Constitution, this actually probably was a proper use of federal power.) The Dyer Bill, one page long, would have punished anyone involved in a lynching, as well as any federal official who failed to protect a lynching target under his jurisdiction. Lynching was precisely defined not by the motive of the attacker or the racial identity of the victim, but as when "someone [was] put to death by a mob or assemblage." Other bills were proposed over the years and also shot down by the Democrats, but the issue largely went away when mob lynching disappeared by the 1950s. No new bills were introduced for decades, any more than bills to add sailing ships to the Navy were introduced, although in 2005 the Senate passed a resolution apologizing for "the failure of the Senate to take action when action was most needed." Everyone agreed there was no modern problem.

Well, at least until it was convenient to pretend there was a modern problem, namely in 2018. In that year Kamala Harris introduced the Justice for Victims of Lynching Act (JVLA). It was titled "An Act to amend title 18, United States Code, to specify lynching as a deprivation of civil rights, and for other purposes." After a preamble citing historical facts about lynching of black people in the United States (which it notes the last instance of was 1968), it proposes a new subsection, 250, to 18 USC 13. Proposed subsection 250 says, in essence, that if two or more persons conspire to, or do, cause "bodily injury" to another person, because of "actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability," a crime is committed. As is usual, penalties are listed, and variations on the basic offense described. Moreover, a limitation is put that certain procedures must be followed to limit the degree to which the federal government, rather than the relevant state government, will prosecute the underlying crime. This bill was passed by the Senate but not passed by the House.

The JVLA had very little to do with historical lynching, which was almost exclusively directed at black people in America, not at other racial groups, much less the disabled (except for abortion, but the Left loves abortion) or the risible non-category of "gender identity." It was vastly overbroad; did not address a real problem; and did not criminalize behavior that was not already criminal under federal law. However, one could at least argue that the substance of the JVLA had some real, if tenuous, relationship to historical lynching.

In 2019, a supposed successor bill, the Emmett Till Antilynching Act (ETAA), was introduced. It was titled the same as the JVLA. It contains a similar preamble to the 2018 bill. But there the resemblance ends. None of the prior text relating to bodily injury, or any other provision, survives. Instead, the entire substance of the law, under the heading "Lynching," is:

> Whoever conspires with another person to violate section 245, 247, or 249 of this title or section 901 of the Civil Rights Act of 1968 (42 USC 3631) shall be punished in the same manner as a completed violation of such section, except that if the maximum term of imprisonment for such completed violation is less than 10 years, the person may be imprisoned for not more than 10 years.

The reader wonders what this means. I'll tell you what it means, though it's difficult for a non-lawyer to figure it out. "This title" means "Title 18" of the "United States Code"—that is, the thousands of pages of federal law, supplemented by hundreds of thousands, or millions, of pages of additional law in the form of the regulations of the administrative state. The four listed sections cover all of the following:

> 18 USC 245, "Federally Protected Activities," makes it a crime if any person "by force or threat of force willfully injures, intimidates or interferes with" "any other person or class of persons" from a long list of activities, including voting (and voting/campaigning-related activities); "participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States"; "applying for or enjoying employment, or any perquisite thereof, by any agency of the United States"; and "participating in or enjoying the benefits of any program or activity receiving Federal financial assistance."

As you can see, this is extremely broad. It covers literally any activity that has any connection, however remote, to nearly any federal activity. Nor is either "intimidation" or "interfere" defined. The law gets even broader in some other sections, including making it illegal to interfere with or intimidate any person "participating lawfully in speech or peaceful assembly" protesting the denial of any of the protected benefits. But any interference with any activity related in any way to the federal government is the core of Section 245, which was first enacted (in a more modest form) in 1968. The penalty is a maximum of one year in prison, except if bodily injury results (ten years), or death (life).

> 18 USC 247, "Damage to religious property; obstruction of persons in the free exercise of religious beliefs," is a very similar law, with narrower subject coverage, that protects actions based on religious belief, as well as religious property.

> 18 USC 249, "Hate crime acts," is a general law, passed in 2009, that increases penalties for any other crime that results in bodily injury, or attempts to cause bodily injury, "because of the actual or perceived

religion, national origin, gender, sexual orientation, gender identity, or disability of any person."

The intent here is to increase the maximum penalty to ten years (or life in the case of death resulting) for any other crime that has a lesser penalty, if the motive of the offender is judged impure. (True, hate crime laws such as this are stupid, because they confuse motive and intent, and their purpose is to punish and terrorize a single disfavored group, namely non-elite whites. But that's not what we're talking about today.)

42 USC 3631, part of the "Fair Housing Act," makes it a crime to "injure, intimidate or interfere with" "selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings," if the conduct is "because of [such person's] race, color, religion, sex, handicap . . . familial status . . . or national origin." The penalty is a maximum of one year in prison (that is, the offense is a misdemeanor), except if bodily injury results (ten years), or death (life).

But what does any of this have to do with lynching, you ask? It is crystal clear that lynching, racially-motivated injury or killing, is already illegal, under more than one of these laws. More to the point, the ETAA does not add substantively new offenses to federal law at all. On its face, it creates a new crime of conspiracy to violate these "civil rights" laws. But there is already a federal conspiracy statute, 18 USC 371, which makes any conspiracy to violate any federal law a crime. True, under that statute the maximum penalty is five years, and the proposed penalty here is ten. So the only thing the ETAA would do is increase the penalty for conspiracy. Maybe. For there is in fact also 18 USC 241, which covers conspiracies to "injure, oppress, threaten, or intimidate any person in the . . . free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same." This statute, which seems like it would cover all, or nearly all, of the substantive "civil rights" violation scenarios in these laws, carries a penalty of ten years. So, in point of fact, the ETAA would, it seems, change nothing at all.

Now, one can argue whether these laws make sense. If I were king (soon), I would erase all these laws except for very narrow laws specifically only protecting black people, and leave the rest of the crimes to state law. (And I'm not at all clear we need any federal laws protecting black people, but I'd tolerate that for historical reasons.) But again, that's not what we're talking about now. What's we're talking about is that nobody, not a single person, seems to have noticed that (a) the ETAA and the JVLA have nothing to do with each other and (b) the ETAA has, quite literally, nothing to do with lynching under any understanding of the term whatsoever. What's really going on here?

The ETAA was about to pass by huge margins in 2020 (it was the subject of a propaganda campaign, none of which discussed any actual aspect of what the law said). It passed the House by a vote of 410 to 4. However, it was held up in the Senate by Rand Paul, who, it was reported, wanted a clearer definition of "bodily injury," and a threshold, such that minor bodily injury would not constitute a crime. The *New York Times* shrieked, in an article headlined "Frustration and Fury as Rand Paul Holds Up Anti-Lynching Bill in Senate," that Paul was holding up a bill that would "explicitly make lynching a federal crime." The *NYT* helpfully linked the text of the bill, even though that makes it obvious their description of it is a total lie, but not Paul's proposed amendment. The reader, as is no doubt intended, is left completely unclear as to what the bill really does, or what exactly it is that Paul wanted.

But if you dig deep enough, you can find out what it is that Paul wanted. I turned to the *Congressional Record,* after figuring out the relevant date, June 4, 2020. The relevant section begins on page 22 of 65. Paul is objecting to an attempt to pass the bill by unanimous consent (apparently a procedural maneuver both desired for propaganda reasons and to streamline passage), and offering an amendment. After the obligatory preemptive apologies and obeisance, granting his opponents the moral high ground and groveling, Paul cites an earlier statement by Justin Amash, "To be clear, the bill does not make lynching a new Federal hate crime. Murdering someone on account of their race or conspiring to do so is now illegal under Federal law. It is already a Federal crime, and it is already a hate crime." One also has to dig to find the amendment. But when one does obtain the amendment itself, everything becomes clear. It is essentially the entire text of the 2018 bill, the JVLA, offered

as an amendment, though with the change from "bodily injury" to "serious bodily injury," and, like the ETAA, confind to conspiracy That is to say, Paul was trying to change the proposed law back to one that actually addressed lynching.

All this is insane, because neither Paul's objection nor the *NYT's* article bear any relation to reality. It is as if they were all arguing whether the sun god Ra had written the Constitution. Yes, Paul's amendment would set the threshold higher for the crime of conspiracy as tied to racially-motivated violence. However, the threshold in all the laws above already contains the lower threshold of simple "bodily injury." Thus, the only actual change in law occurring, had Paul's amendment been accepted, would be that for a certain narrow class of conspiracies, where the only crime charged was conspiracy (and not attempt or the completed offense), the maximum penalty might increase from five to ten years. This could be accomplished by a simple amendment to these laws.

Nonetheless, in the *Congressional Record,* Paul is immediately viciously attacked in the most lurid, mendacious, disgusting terms by two Senators: Kamala Harris and Cory Booker. They make a variety of utterly non-responsive claims and do not address either the substance of the bill or Paul's statement. He didn't back down, though, and the bill died. Given the majorities in favor, the obvious conclusion is that its proponents thought the political value of bringing it up again and discussing it as part of a future propaganda campaign was of much more value to them than, you know, actually passing it.

Now, it's entirely clear from Paul's lengthy statements in the *Congressional Record* that he is trying to prevent excessive penalties and over-broad application of federal criminal law to events that have little or no criminal gravity, even if his solution wouldn't do that. It is equally obvious his opponents want the opposite—they want maximum federal criminal law and maximum penalties over a huge swathe of human interactions, so their myrmidons can pick and choose whom to prosecute and jail, even if this law wouldn't do that either. When everyone is a criminal, those who control the implements of justice are massively empowered. We still don't specifically know what's going on, though. Why the farce?

Part of the explanation is that I guarantee you that not more than a handful of the members of Congress have any idea whatsoever what

is contained in the ETAA, or any idea what the debate around Paul's amendment is or means. No, they just signed on because their staffers (most all of stupid, young, and uninformed) told them to and it sounded good to them. The reason for this charade must be that a small nest of leftists in Congress, or perhaps their staffs, or shadowy organizations they have connections to, think it's a good idea. Everyone else just goes along for the ride, and the public lives in darkness.

The only reason this small group goes through the charade is propaganda value (and the participation of the *NYT* in spreading disinformation about the ETAA buttresses this conclusion). There is propaganda value in being able to tout they have finally done something about lynching. Not so much to please those who believe they have fresh new protection, or that these leftists are fighting against a real problem, although propaganda and stupidity mean there are plenty of those. Rather, in order to silence their opponents on any issue even remotely tied to race, because if you disagree on any matter with such pure paragons as those who spoke out for the ETAA, you obviously must want lynching to go unpunished. As with everything in public life today, it's all a psyop.

When our elected legislators do not actually legislate, the result is arbitrary government. Thus this entire farce, along with the underlying laws, is a gross violation of the rule of law. By this package of laws, a huge range of actions is already criminalized, allowing selective enforcement. Talk in an "intimidating" way to the wrong person? Off to jail with you! At least if you have been identified as a target. Just ask Douglass Mackey, aka Ricky Vaughn, last month indicted under 18 USC 241 for conspiring to interfere with the right to vote under 18 USC 245. The substance of his offense? Twitter memes that joked about how stupid Hillary voters were. Of course, his real offense was being wildly popular and undermining the majesty of our overlords.

Note two critical matters, though, about the Mackey case, to my point about the real reason these laws exist. First, the "offense" took place in 2016, but the indictment only took place when Biden took power, in order to show the peons who is boss now, and that we had all better shut our traps. Second, and crucially, he was not charged with the offense itself, which would require a showing that he did, in fact, interfere. He was charged with conspiracy with others to commit the offense, those

others unnamed and uncharged. Conspiracy is notoriously easier to prove, which is why the rule of law, as universally understood, disfavored casual prosecution of conspiracies, because such prosecutions were a frequent tool of historical tyrannies.

The political nature of this prosecution is even, unbelievably (I keep overusing that term, or maybe my overuse proves its necessity), stated on the face of the Department of Justice's own press release on the matter, which repeatedly talks about "misinformation" and "disinformation." Neither term has any relevance in law or even has any meaning; its only meaning is "information that contradicts what you are told today that you must believe." But it is the propaganda term of the day, part of a massive campaign to suppress all conservative speech, in which the DOJ is here signaling it will be an eager and active participant.

It used to be that juries were the American (and English) system's brake on political prosecutions. But defendants no longer receive review of their case by juries in the federal system, except in extremely rare instances. First, most defendants can't afford to defend their case; the unlimited resources of the federal government are unleashed against any defendant who dares to actually plead not guilty and assert his right to a trial. Second, and more important, the tyrannical expansion of both crimes and penalties in the federal system means the government can easily charge almost anyone with crimes carrying decades in prison—but offer a much lighter sentence as part of a plea bargain. The risk in going to trial, in terms of personal destruction, is just too high for most people. A choice that is no choice at all is the very definition of tyranny.

So What?

(Welcome, the select, elite readers who have made it here!) Who would have thought a mere three examples would take so long? Oh, I could endlessly multiply examples of tyranny, of the same types and cousins to it. I could point to the gangster reaction to the recent Capitol Hill protests—not just the hard state terrorism unleashed as a result, but the soft terrorism, such as when those just marching outside the Capitol are identified by facial recognition software and detained and interrogated at airports. I could point to Biden's unprecedented dozens of "executive orders," very few, if any, of which are actually within

the power of the executive. I could talk about how woke corporate America is complicit, and will also need to be brought low. Enough for now, however.

You may think this is all too technical. Actually, that is part of the point. When the average citizen cannot hope to understand the labyrinthine ways of government; when opacity is a feature for our overlords, not a bug, serving to ensure they can never be exposed to criticism, much less punishment; when they feel no need to justify themselves except to other elites who return the favors of their class; then the average citizen is far more disenfranchised than if he merely had no vote. Those living under an autocracy that is responsive to the citizens are far better off than today's non-elite American citizen.

I began by saying this was the Brawndo Tyranny. It sure doesn't sound like I think it is the Brawndo Tyranny, because I'm not laughing. The stupid is hard to see when so many lives are being deliberately and successfully ruined. But this is all a thin artificial skin stretched over a rotting corpse. The bedrock principle of the Brawndo Tyranny, which after all is exclusively a project of the Left, is the denial of reality, a project that requires that ever more resources and effort be expended to get ever diminishing returns, until reality forcibly reasserts itself. Gatorade will never nourish plants, men will never be women, slavery will never be freedom, and forced equality combined with channeling all our energies into the relief of imaginary oppressions will never create human flourishing. You can have excellence and a thriving society, or you can have the ideology of the Left and implosion. Those who administer and benefit from the Brawndo Tyranny will find this out, whether they want to or not.

A core principle, on which I am putting most of my rhetorical chips, is that stupid cannot continue for long, and the more stupid, the less long. The usual response to such optimism is to quote Adam Smith, that there is a lot of ruin in a country. But he meant the ruin resulting from bad or unlucky decisions, especially debt and overspending, not the type of ruin we are experiencing that he could never have imagined: the collective insanity of the ruling classes and the handing over of the reins of power to those least able to honorably and capably exercise power.

So, for example, our military. It seems like the most powerful military in the world. That said, it hasn't fought another competent modern

military for thirty years, if you count the First Gulf War (which you probably shouldn't), or seventy years (if you go back to the Korean War). And in that time, there is extremely strong evidence that it has become a hollow imitation of its former self. Oh, sure, with our wealth we can drone Muslim wedding parties halfway around the world anytime we want to. But what would happen if we had to fight a real military, say Russia or China? Well, given that military training and leadership has been wholly handed over to the woketard Left, combined with the stupidity and fear of any hardship that the Wuhan Plague has revealed to be the default of most Americans, my guess is that we would lose, very fast. While we've been celebrating women, homosexuals, and trannies as the new emblems of our warriors, the Chinese have been building hypersonic weapons and anti-ship ballistic missiles, while their people stand resolutely behind the nation (propagandized, to be sure, but then, so are we, perhaps more so, just in a different direction). Stalin famously suffered as the result of purging his officer ranks early in World War II; we've done the same, only to a much greater degree, replacing the purged with the worst type of incompetent ideologues, and infected the lower ranks with the same ideologies. Our military is the supposed muscle of the Brawndo Tyranny, and it's going to collapse in the face of any real challenge or opposition, along with the rest of the organs of the Tyranny. It's a golem with feet of clay, susceptible to failure and fracture on multiple axes, though that doesn't help you if you get droned as it collapses. And the same is true of all the supposed sinews of the Brawndo Tyranny.

So what should we do? One choice is just waiting around for the Tyranny to collapse. I have a certain sympathy for this, since as I say my bet is collapse is coming soon, though it will likely require some triggering event, such as a war or an actual pandemic hitting America. But maybe not; sometimes unrest and consequent massive changes result from opaque internal causes, such as in the Great Fear of 1789. Another choice is helping it to collapse. I'd be happy to help it collapse, but there's no evident mechanism for that, and the regime is still strong enough to deal a lot of damage to those it identifies as enemies, especially if they are acting in isolation and without a triggering event. Some suggest a John Galt-style retreat from supporting the regime, but that's not effective, both because the state has the reach to simply confiscate

resources from the productive, and because the Brawndo Tyranny is already well on its way to removing the competent from any productive role on its own initiative. (I'd be shocked if Elon Musk isn't targeted soon for being insufficiently woke.)

A third choice is the next step up from pushing the regime—open armed rebellion. This certainly has a long and honorable pedigree in America, and I've written earlier at length on when it might be appropriate. The estimable Spencer Klavan recently devoted two episodes of his podcast *Young Heretics* to an honest analysis of this topic. His conclusion was that we are far from having the justification for a rebellion, and we should go and do the hard work of trying to take back power by recapturing the institutions, as the Left did. I think he is mainlining Pollyanna—there is zero chance the Left would allow this. One man, one vote, once is the nature of their project, and always has been. Klavan himself admits that the offenses against Americans listed in the Declaration of Independence are small beans compared to the offenses against Americans at this moment being committed by the Brawndo Tyranny, which undermines his contention. Still, I'm not certain that open rebellion would be morally justified—mostly because it has to have some chance of success to be legitimate, and at the current moment I don't see much chance of success. Not to mention that I'm not real interested in taking the risk myself; that's a game for unattached young men, starting rebellions.

A fourth choice, Klavan's choice, is working to defeat our enemies through the channels of our existing system. The group for which Klavan works, the Claremont Institute, recently opened the Center for the American Way of Life, overseen by Arthur Millikh, the point of which is to do exactly this—explicitly in an aggressive, manly way, rejecting the catamite, grifting Right of men like Jonah Goldberg that pretends it opposes the Left. I listened to what he, and they, had to say this past week, and found myself nearly convinced. Maybe I'm not optimistic enough, and shouldn't reject this choice out of hand. After all, Donald Trump got more votes than any Republican ever for President. This strongly suggests the Brawndo Tyranny is ultimately a paper tiger—even with nearly total control of the Narrative, they could not prevent this massive collective slap in the face to them, which furthermore suggests that the stupidity resulting from harmonic resonance is curable. I still think

that if such a project gains traction, accompanied by mass manifestations, the awesome Capitol Hill protests on Epiphany writ large, the Left will simply try to crush it. But their non-violent tools for this, such as screaming "racist!", have rapidly lost their power (again, as shown by the votes for Trump). This will require them to either give way (as unlikely as that is), or again use violence, as they did this summer, but ratcheted higher, which will feed into one of the other choices leading to their overthrow. There is no way out for them. It is a trap. But that's what happens when you're stupid.