SPRING 2021

The COLUMNS

DISPATCHES FROM THE 4TH FLOOR

THE LAST YEAR CERTAINLY DIDN'T FEEL NORMAL, BUT EVERY NOW AND THEN, WE COULD ALMOST CONVINCE OURSELVES OTHERWISE.

Which is only to say that, in the spring newsletter, where we tend to both reflect and peek forward, we find ourselves reporting in much the same manner as prior years: similar news, that is, just different names. For example, 22 MU undergrads headed to D.C. in early June as part of our Kinder Scholars Summer Program, and as the note on p. 4 indicates, internship placements are right where they've always been, in spite of the many obstacles that students encountered during the search process. Though many final decisions are still being made, as the breakdown on p. 3 shows, we are, as always, bidding farewell to our graduating seniors at the same time as we're congratulating them (as well as some of our other recent alumni) on exciting next steps.

Looking a bit further forward, a double cohort of M.A. students have their sights set on Oxford in July; more Summer Welcome visits with incoming participants in our Kinder Institute Residential College are just around the corner; and the seminar room in Jesse Hall is booked solid starting in August. Perhaps a better way of phrasing it would be that, after a challenging year (to say the least), glimpses of normalcy are starting to creep into the frame. We hope this recap of Spring 2021 at the Kinder Institute finds you experiencing the same kinds of glimpses, and we look forward to seeing all of our *Columns* readers in the fall.

KINDER INSTITUTE
on CONSTITUTIONAL DEMOCRACY

UNDERGRADUATE PROGRAMS

CAMPUS & COMMUNITY

NEWS IN BRIEF

As the teaser on undergraduate affairs on the cover suggests, in the process of enduring a year of pandemic, our undergrads likewise found ways to continue to thrive. 2020-21 Kinder Fellow and Constitutional Democracy major **Bailey Martin** was a leading voice in organizing a campus-wide campaign to get out (or mail in) the vote in November. **Paul Odu**, **Luke Pittman**, and **Aravind Kalathil** (all also 20-21 Fellows) managed to launch the Missouri Debate Union in February during a time when most people had resigned themselves to debating what sitcom to re-watch for the 30th time (spoiler alert: *Frasier*). And **Sidne Fonville** somehow set a record for most Fellows events attended, and this despite graduating in December. This is only the tip of the iceberg when it comes to what our students accomplished both in and outside the classroom over the past year, and would that we could have applauded them in a way that wasn't a cartoon set of hands in the left-hand corner of a Zoom frame.

Updates about our Society of Fellows, Kinder Scholars D.C. Program, and *Journal on Constitutional Democracy* follow this introductory note, but as is our spring tradition, first a quick—and not at all complete, mind you—rundown of where some of our recent graduates are heading next year.

Ethan Anderson (May 2021): University of Notre Dame, Ph.D. in English
Christian Cmehil-Warn (May 2020): MIT Technology & Policy Program
Joe Davis (May 2021): J.P Morgan Investment Banking Division (New York City)
Sidne Fonville (December 2020): University of Missouri Law/Truman School Joint J.D/M.P.P.
Ryan Giesing (May 2021): Grand Center Arts Academy (St. Louis), 8th Grade Early American History
Jacob Hager (May 2021): Economic Researcher, Federal Reserve Cleveland Branch
Abby Hunt (May 2021): Washington University Law School

We also have a trio of Spring 2021 grads (**Mike Todd**, **Andrew Pogue**, **Sofia Copat**) commissioning into the U.S. Armed Services after walking across the stage this May, and another two, **Catherine Hutinett** and **Julia Gilman**—the latter of whom, if we're going alphabetically, is also the first ever student to receive a B.A. in Constitutional Democracy—sticking around Jesse Hall for another year to pursue the M.A. in Atlantic History & Politics.

SOCIETY OF FELLOWS

Thanks to the innovation of our beloved True/False Film Festival, we were actually able to introduce a new *in-person* tradition into Society of Fellows programming, as a small group made up of some of this year's and some of next year's Fellows gathered at Stephens Lake Park on May 7 for a screening of *Inside the Red Brick Wall*, the 2021 Kinder Institute-sponsored T/F documentary.

In addition to this capstone (or unofficial kickoff) event, the 20-21 Fellows got together a number of times during the spring semester, including for: one-reads with Program Coordinator **Thomas Kane**, Kinder Institute Teaching Professor **Rudy Hernandez**, and Kinder Chair **Jay Sexton**; a private Q&A following our colloquium on "The 2020 U.S. Election Crisis in Global Perspective" (see recap on pp. 15-17); and a rollicking back-and-forth on the evolution of the post-New Deal Democratic Party with KICD Associate Director **Jeff Pasley** and former Kinder M.A. Fellow and current Boston University Ph.D. Candidate **Henry Tonks**.

And as we were saying goodbye to our outgoing Fellows, we were welcoming the incoming cohort, who met with Dr. Kane on the evening of May 3 for what we hope will be the only Fellows event held on Zoom during their time in the program. Our new Fellows are named below, along with their major (M) and minor (m) department affiliations.

Jackson Bailey (M: Constitutional Democracy)
Nate Brenner (M: Journalism/Constitutional Democracy)
Izzy Colon (M: Sociology, m: Black Studies/Journalism)
Anna Cowden (M: Constitutional Democracy/Journalism)
Hope Davis (M: Journalism, m: Political Science/ACD)
Leah Glasser (M: Journalism/Political Science, m: ACD)
Myuah Hamilton (M: Sociology, m: Black Studies)
Ben Henschel (M: Constitutional Democracy/Journalism, m: Business)
Mark Hood (M: Business)
Isis Irving (M: History, m: Religious Studies/ACD)
Tommy Jackson (M: Economics/Constitutional Democracy, m: Philosophy)
Ben Kimchi (M: Constitutional Democracy/Political Science)
Mary Jae Kirby (M: Constitutional Democracy, m: Journalism)
Maddie Lepsky (M: Constitutional Democracy/Political Science)
Coleson Manade (M: Constitutional Democracy, m: Economics)
Becca Newton (M: Journalism, m: History/Peace Studies)
Lukas Parrish (M: Political Science/Journalism, m: German)
Sam Peterson (M: Political Science/Economics)
Shanley Silvey (M: Journalism, m: Spanish/Political Science)
Ethan Smith (M: Economics)
Lillian Williams (M: History, m: ACD)
Isabelle Wright (M: Social Work)

The Fellows, as they always do, will descend on the Tiger Hotel in downtown Columbia for their annual summer conference the week before the semester starts, and we will recap proceedings from that in our Fall 2021 newsletter.

KINDER SCHOLARS

Even as the number of sites in D.C. that were accepting summer interns dwindled—to put it mildly—this cohort of students was able not only to lock placements down but also to broaden the range of institutions and organizations where they'll be working in June and July, relative to past years. As of May 1, the students named to the right had accepted internships at the following places, with the remainder of the group in the process of going to final interviews and making final decisions (a full internship list will be included with the Fall 2021 newsletter).

They'll be joined in the capital city this summer by a wonderful roster of faculty members, including new Kinder Scholars Program Director (though longtime Kinder Scholars faculty participant) **Jay Dow** and first-timers **Rudy Hernandez** (KICD/Political Science), **Tommy Bennett** (KICD/MU Law), and MU Associate Dean of Arts & Science and Professor of Music **Stephanie Shonekan**.

Matthew Bozeman (Political Science, History, & Sociology): Lawyers' Committee for Civil Rights under the Law
Kadie Clark (Geography & Economics): Cambridge Associates, LLC
Olivia Evans (Journalism): *Forbes*
Alex Foerstel (Political Science & Constitutional Democracy): The Office of U.S. Senator Josh Hawley
Cameron Furbeck (Economics & Political Science): American-Arab Antidiscrimination Committee
David Garcia (History & Constitutional Democracy): Capitol Hill Historical Society
Kathryn Gluesenkamp (Economics & Public Health): Prosperity Now
Emily Hickey (Journalism & Political Science): Rainbow Families
Claudia Levens (Journalism & Constitutional Democracy): *Street Sense Media*
Emily Lower (Political Science, Statistics, & Economics): TargetSmart
Isabelle Robles (Journalism): The Office of U.S. Senator Chuck Grassley
Venkatesh Satheeskumar (Biology & Psychology): Keiser Family Foundation
Maddie Sieren (Political Science & Constitutional Democracy): The Office of U.S. Congresswoman Mary Miller
Austin Stafford (History & International Studies): Center for Education Reform
Megan Steinheimer (History, Sociology, & English): D.C. Coalition against Domestic Violence

JOURNAL ON CONSTITUTIONAL DEMOCRACY

"In the Strength of Our United Womanhood": Women's Authority in Historic Preservation

by Catherine Hutinett

It was 1853, and Louisa Bird Cunningham was awakened by the chiming of the ship's bells on a moonlit voyage down the Potomac River. As she emerged from her cabin, George Washington's former home, Mount Vernon, stood illuminated on the ridge. Even in the dark, Cunningham could see its dilapidated state. Half a century after the deaths of George and Martha Washington, the roof of the piazza was supported only by repurposed ship masts and surrounded by peeling paint. Upon her arrival in South Carolina, Cunningham wrote her daughter, Ann Pamela Cunningham, saying, "I was painfully distressed at the ruin and desolation of the home of Washington and the thought passed through my mind: Why was it that the women of his country did not try to keep it in repair, if the men could not do it? It does seem such a blot on our country!"

In the United States, the earliest forays into historic preservation were based in precisely the sentiment expressed by Louisa Bird Cunningham. Without even the right to vote, women organized to preserve both physical historic sites and the intangible expanse of historical memory. This essay will highlight three women who served as early practitioners of historic preservation and, for better and at times for worse, very much defined the field: Ann Pamela Cunningham, Mildred Lewis Rutherford, and Mary B. Talbert. Again, we might understand the contributions of these women as a rather complicated and powerful actualization of the words expressed in Louisa Bird Cunningham's letter: "Why was it that the women of his country did not try to keep it in repair, if the men could not do it?" Politically disenfranchised and socially marginalized, there is a fundamental paradox in the practical efforts these women took to preserve spheres of history they were largely barred from participating in during their lifetimes. And without examining this paradox, fair treatment could not be given to the impact of their early involvement in preservation. Even while conforming to an oppressive patriarchal structure, these women established authority for themselves within the same spaces that had set to exclude them. In acknowledging this balance between conforming to and undermining the institutions that oppressed them, we might see the ways in which these women created and maintained a unique sense of agency through historic preservation.

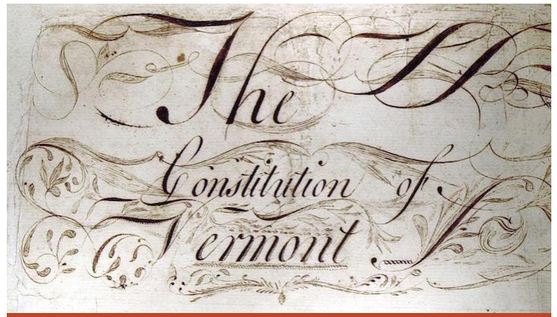
Before the National Parks Service or the National Trust for Historic Preservation, women's clubs in the United States were the primary outlets for the preservation of historic sites. As this essay will examine, these clubs alternately (and often simultaneously) operated within and broke from the traditional confines of the patriarchal culture of the 19th and 20th centuries. One of the earliest and most successful such groups actually emerged from Louisa Bird Cunningham's previously cited lament. In 1853, after receiving her mother's letter, Ann Pamela Cunningham formed the Mount Vernon Ladies Association of the Union (MVLA), the nation's oldest preservation organization and the self-described "oldest women's patriotic society in the United States." While the MVLA was primarily interested in purchasing and restoring Washington's home and tomb, to its first members, something greater than this was happening—they were creating a shrine.

The group first officially met in February 1854. Consisting of white, wealthy, and overwhelmingly Southern women, the MVLA under Cunningham's leadership looked to the restoration of Mount Vernon as an effort that might unify women on both sides of the growing sectional tensions in the lead up to the Civil War. By 1855, they had agreed to independently purchase the estate from Washington's great-grandnephew, John Augustine Washington III, for $200,000, and the ensuing fundraising initiative would be the first major project for the MVLA. The group sought to secure funds—and, in securing funds, establish a sense of national organizational authority—by attaching themselves to a quasi-divine image of George Washington. In an 1855 appeal to the women of Philadelphia authored by Cunningham, for example, the Association called the estate "the sacred, solemn spot, where Washington prayed, and died, and was buried—which awes into reverence even the foreigner." The language of this pamphlet clearly invites the women of Philadelphia to help fund the preservation of Washington's home not necessarily for the sake of history, but rather as a form of Christian duty to help sanctify the memory of Washington. Not participating in or donating to the cause would be disrespectful not only to the legacy of the United States' first president but, above all, to a higher power. The pamphlet continued in this rhetorical vein by reminding its readers of the Biblical story of the widow and the mite. Though $200,000 may seem like an impossible goal, it was nothing, Cunningham reiterated, if the nation's women all donated sums "in the strength of [a] united womanhood"…

COLLOQUIUM SERIES

Every newsletter, the Colloquium Series recap section seems to grow a few pages in length, but it's hard to imagine this record ever being broken. If there was one silver lining of a year lived on Zoom, it's that it was far easier to bring speakers to Columbia—or "Columbia"—for our regular Friday talks. And bring speakers to Columbia, we did. Save for Spring Break and Reading Day, not a Friday passed without a colloquium, and fear not, we made up for those missed Fridays with a pair of weeks when we doubled up on talks. Not only were they mightier in number, but the presenters this spring also traversed distances once functionally impossible to bridge, coming from Scotland, Tokyo, Cape Town, Oxford, Sydney, and more.

A pair of final notes before we get to the recaps themselves. First, a quick thanks to a handful of M.A. students who again filled in for our regular reporter: to **William Bloss** for his recounting of Prof. **Michael Joseph's** talk on reimagining empire after World War I; to Morgan Tripamer for bringing Prof. **Fredrik Logevall's** lecture to your living room; to **Claire Smrt** for decoding the mystery of viceregalism; and to **William Kemp** for recapping our annual Distinguished Visiting Research Fellow Lecture with Duke University Associate Professor of History **Reeve Huston**. Second, given the impossibility of adequately translating musical performance to newsletter prose, *un*-recapped here is Kinder Institute Postdoc **Billy Coleman's** April 23 symposium on "Music & Politics in the Early Republic," which featured a pair of panels related to the research that went into his recent UNC Press Book, *Harnessing Harmony*, as well as a MRSEAH discussion of Wichita State University Associate Professor of English **Rebeccah Bechtold's** book chapter on "Early American Plantation Novels and the Sounds of Slavery."



Hidden Laws: Understanding the Resilience of the American Constitution

Howard University Assistant Professor of Political Science Robinson Woodward-Burns

The question at the heart of Howard University Assistant Professor of Political Science **Robinson Woodward-Burns'** January 22 talk at the Kinder Institute—the same question at the heart of his forthcoming Yale University Press monograph—is a straightforward one: How, amidst continuous calls for reform, has the U.S. Constitution not only survived but survived in relatively stable form for the past two-plus centuries? One obvious answer is the high bar for amending it (the highest, in fact). Even as civic aspirations evolve, the legal and political realities that make amendment of the federal constitution so difficult remain entrenched.

But as Prof. Woodward-Burns quickly pointed out, this answer doesn't adequately address the sweeping, landmark changes that *have* happened over time. To account for these changes, he put forth a theory of conflict decentralization through which constitutional controversies are often filtered down to—and, far more importantly, often resolved at—the state level. For example, we've seen federal actors simply punt on divisive issues, leaving them to be sorted out by the states which, under the umbrella of the 10th Amendment, have much broader regulatory powers. Though the cases of this have been fewer, Prof. Woodward-Burns noted that the reverse can unfold as well. One could cite the discordant slave laws of the 1850s as an instance when state controversy forced national homogenization, though as Justice Louis Brandeis would later remark in regard to *New State Ice Co. v. Liebmann* (1932), such an arrangement nonetheless represents how states can critically function as "laboratories of democracy" in which policies are tested as a pathway to national harmonization.

How, amidst continuous calls for reform, has the U.S. Constitution not only survived but survived in relatively stable form for the past two-plus centuries?

The most common—and arguably most fruitful—pattern of conflict decentralization, however, comes when state controversy leads to state reform. In Jacksonian America, for example, widespread contest surrounding the extent of white male suffrage became "the dog that didn't bark" precisely because states uniformly repealed property requirements on the vote, effectively quieting national constitutional controversy by precluding the need for federal action. What underlies the frequency of this arrangement, Prof. Woodward-Burns explained, is the relative ease of constitutional change at the state level, where there are far lower bars for amendment (typically a simple majority); far smaller legislatures; better coordination; and, when amendment proves impossible, the opportunity to re-convene a constitutional convention and ratify a new state charter, something that half of state constitution-making bodies have at some point in their histories done.

Because they are flexible, less venerated documents that can readily adapt to reform pressure, state constitutions have, Prof. Woodward-Burns argued, long been a steady, *stabilizing* presence in American politics, if also an overlooked one. In fact, acknowledging the federal utility of state constitutional revision, as well as the ways in which state constitutions and the U.S. Constitution interact, can shed light on the degree to which we may have misunderstood certain aspects of the narrative of national constitutional change. To draw this out, Prof. Woodward-Burns first turned to 1968's *Harper v. Virginia Board of Elections*, in which the Supreme Court famously ruled on the unconstitutionality of the poll tax. If we pull back the curtain on this triumph, though, we see that states, in a long process of fulfilling the terms of the 15th Amendment, had already done the heavy lifting. All but four had outlawed the poll tax by 1968, meaning that the *Harper* decision, rather than a *sui generis* moment of reform, only formalized state constitutional action that had been taken even as the Supreme Court (prior to 1968) upheld the tax.

The story of the 19th Amendment similarly reveals how state constitutionalism in many respects makes American politics work. After a string of early failures to get traction in Congress for a federal amendment enfranchising women, suffrage

activists, perhaps most notably NAWSA's Ruth McCormick and Carrie Chapman Catt, launched a robust, grassroots campaign to secure the vote at the state level via state constitutional reform. And it worked. As more and more states came aboard, more and more opponents to suffrage were ousted from office, and over time, the belief that enfranchising women would in no way impose on the popular will was normalized in D.C. When the 19th Amendment came before the Senate, 41 of 56 votes in favor came from representatives of states who had already enfranchised women, and the 19th Amendment, not unlike the 24th, thus became a federal safeguard for voting rights that emerged from concentrated, strategic, state-level mobilization. The Equal Rights Amendment, Prof. Woodward-Burns noted in closing, tells a different story. By skipping over the states and immediately appealing to Congress for passage of the ERA, early advocates, like Alice Paul, underestimated the amendment's unpopularity at the state level, where women's trade unions in particular opposed it on the grounds that removing gender discrimination might simultaneously remove labor protections. When the tables turned in the 1970s and Congress sent a version of the ERA out for ratification, the states, acting with different agendas, instead started passing their own equal rights amendments, leading to a scenario where state constitutional reform ultimately blocked a national variant from taking hold.

What does this tell us? That state constitutions matter. Yes, they are idiosyncratic and often unwieldy—Alabama's totals over 870,000 words. And, yes, amendments to the federal constitution are of incredible importance. But if we study the latter in isolation, we often lose sight of the backstory of how and why they came to be in the first place.

The First World War: Reimagining of Empire in the French and British Caribbean

Corpus Christi College Brock Fellow in Modern History Michael Joseph

In his January 29 talk at the Kinder Institute, Dr. **Michael Joseph**, Brock Fellow in Modern History at Corpus Christi College (Oxford), took his listeners to a part of world history that few venture into: the Caribbean during the Great War. While there has been a recent surge amongst historians to discuss World War I in a more global context, this has mostly meant examining the lives of soldiers brought to Europe from colonial territories. Joseph's scholarship, on the other hand, keeps its focus in the Caribbean, primarily examining the economic, political, and social impacts that WW I had on the colonial possessions of the French and British Empires, with particular attention paid to the role these colonies played in providing materials and inputs for European wartime production.

While Joseph mostly highlighted World War I in his presentation, he emphasized that to truly grapple with its historical gravity, one must first have an understanding of the pre-war situation in the French Antilles and British West Indies. These small Caribbean islands and their booming sugar monoculture were the jewels of the colonial crowns of Europe in the seventeenth and eighteenth centuries. However, as Britain and France expanded their empires to span the globe, and as ideas of free trade began to be put into imperial practice, the importance and power of islands like Jamaica, Barbados, and Guadeloupe entered a long period of decline. By the final decades of the nineteenth century and the opening decades of the twentieth, the sugar islands had seen their market share eroded by product from Cuba, Java, and Germany, and nearly all citizens of these colonies were living in poverty, with most working small plots of land during the day and as wage laborers for sugar plantations or processing centers at night. While the common man suffered, the political class became ever more concerned about their colonies' place within the larger British and French Empires, fearful that they would become afterthoughts—too economically insignificant to the mother country to be helped out of their downslide.

The outbreak of the First World War provided a momentary *deus ex machina* which uplifted both the working classes and the political elites of the British West Indies and the French Antilles. With supplies from Germany cut off, and with demand for sugar to ration to armies and placate civilian populations on the rise, the price for sugar and related goods skyrocketed and the wilting economies of the Caribbean sprang to life once more. The impacts of the war were not only massive but also swift, as deeply impoverished laborers were able to support themselves within 12-18 months, solely on the profits from growing sugar on their own small farms. Sugar plantations and processors also boomed thanks to wartime demand. Rum distilleries in the French Antilles, for example, grew in number from a handful to several dozen in the opening two years of WW I. The war likewise ushered in the return of closed-loop, empire-centric economic policies in Britain and France, given the need to shorten supply lines wherever possible. Taken in the aggregate, these conditions sparked the economic rejuvenation of the sugar islands and brought about real change in the lives of the people who lived in the Caribbean. Individuals were now able to pay off debts, and companies were able to grow and modernize.

Joseph showed, though, that the leaders of the British West Indies and the French Antilles all recognized that the wartime bubble would eventually burst. And if these leaders sought political solutions to this looming problem, their intra-empire approaches were decidedly different. The primary goal in the British West Indies was to establish a preferential position in the empire in order to secure a stable and prosperous future, though in attempting to realize this ambition, islands like Jamaica and Barbados immediately faced the challenge of lacking a significant voice in imperial politics. Many ideas were bandied about to address this issue, perhaps most notably a proposal that the British West Indies form a union with Canada that would eliminate many of the political and economic obstacles in front of them. Specifically, union with Canada would give the islands a closer market for their sugar products and seed a partnership in which they might claim a greater say in politics between the metropole and the colonies. In the end, this plan failed to gain enough traction in all of the relevant countries to be a viable option in the interwar years. Also proposed was a West Indian federation that would give the islands a stronger collective voice in the empire and provide a path toward the goal of preferential imperial position. This would come to fruition in 1958.

While the British West Indies searched for a stronger position at the imperial table and perhaps a new political and national unit, the French Antilles hoped to tie themselves even more closely to France. In pursuing this goal, Antillean leaders sought full citizenship and a position as equals with those living in the mother country, but their aim was foiled by a simple reality: Antillean interests and French interests were not the same. This was particularly true among the southern French wine producers, who used their political clout to level restrictions on the Antilles' sugar industries and push them away from rum production.

In his conclusion, Joseph offered that the significance of his talk was that pragmatism and political economy were two of the most pronounced factors in shaping Caribbean colonial thought during the wartime and interwar eras and, in turn, had a real influence over these states' respective approaches to decolonization.

"A terror to others": Thomas Jefferson's Quiet Campaign against the Slave Trade, 1801-1807

Dr. Andrew J. B. Fagal (*Thomas Jefferson Papers*) and Prof. Craig Hollander (College of New Jersey)

For a figure as studied as Thomas Jefferson, relatively little ink has been spilled on his time in the executive office. We get the Louisiana Purchase and the Lewis & Clark expedition in our textbooks, Jefferson Papers Associate Editor **Andrew J. B. Fagal** noted, and if we're lucky, The Embargo Act. Similarly, as understandably central as Jefferson is to critical discussions of slavery's history in the United States, attention to Jefferson and the trans-Atlantic slave trade is far scarcer. And this in spite of the fact that the international slave trade met its constitutional demise in the U.S. during the Jefferson administration.

As Fagal and College of New Jersey Associate Professor of History **Craig Hollander** argue in the co-authored article they presented for the Kinder Institute's February 5 "Contextualizing Jefferson" colloquium, Jefferson's stance on the slave trade is its own distinct and curious matter, worthy of concentrated study. In describing what led him to the project, Hollander pointed toward the fact that U.S. participation in the foreign slave trade peaked during Jefferson's time in office, as the cotton boom triggered a geographic shift in enslavement from the Chesapeake and Upper South regions, to the Old Southwest (Georgia and Mississippi), and then, post-Louisiana Purchase, into the Lower Mississippi Valley. There is, he went on to offer, a readymade explanation for

this: Jefferson, a laissez-faire, states' rights enslaver with a political power base deeply invested in the institution of slavery, at best turned a blind eye toward, and at worst was complicit in, the slave trade's heyday. The problem, though—and the subject of the aforementioned article—is that the archives tell a different story. Rather than involved in the early-19th-century rise of the slave trade, Jefferson, with the help of a wide range of other actors, waged a quiet but vigorous war *against it* during his presidential tenure.

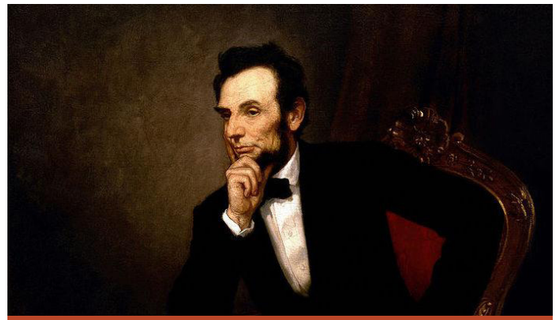
In the early years of the Jefferson administration, this war largely, and largely unsuccessfully, played out in district courts. In 1801, for example, the *Sally* set sail from Charleston loaded, among other things, with muskets, handcuffs, and bolts, only to be beaten back by a storm to Nottingham, MD. With cargo that clearly exposed the ship's captain as a slaver, Jefferson, Secretary of the Treasury Albert Gallatin, and U.S. Attorney General Levi Lincoln demanded that the Maryland District Court investigate the ship for being in violation of the Slave Trade Act of 1794. The law, however, proved hastily and clumsily crafted, and the judge in the case ruled in favor of the *Sally's* captain on the grounds that, while the statute deemed it illegal to outfit a ship for human trafficking, it provided no clear answer to the question of when—as soon as it left port? only once human cargo was on board?—a ship could legally be considered so fitted out. Soon after, just up the eastern seaboard, a similar case unfolded after a Liverpool slave ship, the *Young Ralph*, was captured by French privateers and sold at auction in New York City to a Danish merchant who had notoriously financed slave voyages throughout the 1790s. Port of New York Collector David Gelston (appointed by Jefferson) seized the vessel after being tipped off to the fact that it was outfitted with handcuffs and a boiler to feed 200 people, and Jefferson demanded that Edward Livingston, U.S. District Attorney in New York at the time, try the case as, again, a violation of the 1794 anti-slave trade law. While Livingston secured testimony from multiple witnesses who said that the ship's captain had explicitly told them that the *Young Ralph* was set to embark on a slaving voyage, Alexander Hamilton, hired as a defense attorney by the ship's owner, successfully discredited the witness testimony as hearsay and, relying on the same strategy that worked with the *Sally*, pointed out that the 1794 law didn't specify when fitting out occurs (the Supreme Court would eventually close this loophole, but only after a decade of it being exploited).

Unable to secure victories in the courts—a similarly-structured case against the *Charles & Harriet* was twice withdrawn in Rhode Island—Jefferson and Secretary of State James Madison turned to legislative means. Responding to claims from the U.S. Consul in Cuba that trafficking trips were being made with ease to Georgia and South Carolina in particular, the Jefferson administration promoted congressional passage of an 1803 law that essentially federalized existing state bans on the foreign slave trade (bans that all states by that point had passed). If the federal government couldn't constitutionally abolish the slave trade until 1808, it could, Jefferson reasoned, devote its resources toward augmenting the states' efforts to do so. And augment these efforts the new federal law did, as early 1803 saw a surge of anti-slave trade enforcement, with ships seized and their owners and captains prosecuted.

Neither did this strategy achieve its desired end, however. To the outrage of the nation, it instead led to South Carolina repealing its ban on the foreign slave trade later that year, a key factor in the early-19th-century spike in international human trafficking that Hollander highlighted at the talk's beginning and a response to which the Jefferson administration had little recourse. Jefferson's condemnation of the slave trade would nonetheless continue in the years after. In an 1805 letter to Navy Secretary Robert Smith, Jefferson insisted in no uncertain terms that U.S. forces should extend zero protection to any vessel engaged in slaving. In his 1806 Annual Message to Congress, Jefferson, apparently no longer inclined to wage a quiet war, openly and enthusiastically congratulated his fellow citizens on approaching the year when the slave trade would at long last no longer exist. And in 1807, he and Congress ensured this would happen via legislation that demanded that the slave trade be closed, and fines and punishments for anyone who dared still engage in it enhanced, as soon as it was constitutionally possible.

Still, Hollander and Fagal noted in closing, the question of why Jefferson did so much behind the scenes to suppress the slave trade remains unanswered. Some, they suggested, might argue that he wanted to stop the foreign traffic of slaves to increase the value of his own domestic assets, but this wouldn't explain the energy and resources he expended to stop the traffic of enslaved persons to other parts of the world. Perhaps, they concluded, Jefferson viewed it as a necessary humanitarian endeavor, if also an intensely contradictory one. Like many others of his time, Jefferson saw the Middle Passage as something far different—something far more barbaric and inhumane—than slavery itself, which might have led to the actions he took against the former in spite of his continued participation in the latter.

Discussion of Fagal and Hollander's co-authored paper spilled over into the evening as part of the first Spring 2021 gathering of the Missouri Regional Seminar on Early American History.



Lincoln, the Founding, and the Challenge of Self-Government

Washington & Lee John K. Boardman, Jr. Professor of Politics Lucas Morel

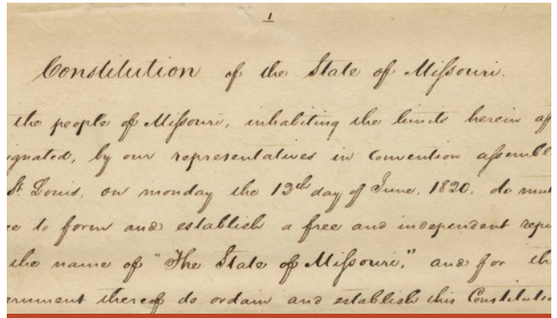
When, in the first sentence of the Gettysburg Address, Lincoln summoned the vision of a nation "dedicated to the proposition that all men are created equal," he very consciously took listeners back not to the ratification of the Constitution, nor to his own issuance of the Emancipation Proclamation just ten months prior, but rather to the drafting and signing of the Declaration of Independence: not to the body of the republic, as Washington & Lee John K. Boardman, Jr. Professor and Head of Politics **Lucas Morel** argued, but to its soul. In other words, tasked with securing the liberty of formerly enslaved persons, Lincoln tied this new birth of freedom—the unfinished work of the living—directly to an old principle of freedom inherited from the founding generation.

In a theme that Prof. Morel returned to throughout his talk, Lincoln, at Gettysburg and elsewhere, never sought to find new rights for a new age, due in no small part to the fact that, in his time, arguments for newness often perverted the original idea of American independence. As Confederate Vice President Alexander Stephens made clear in his "Cornerstone Speech," for example, he thought the CSA's new constitution an improvement upon the 1787 federal charter not only, or even primarily, because it explicitly protected the institution of slavery but also because it summarily rejected any principle of human equality subscribed to at the founding by rooting the Confederacy's slave society in an intractable theory of white supremacy and racial superiority.

For Lincoln, the moral, philosophical, and practical problems that fabricated political theories like Stephens' posed were not at all limited to the post-secession United States. "More dangerous because more insidious" to addressing the slavery question was the indifference of Stephen A. Douglas' notion of popular sovereignty, which would allow whites in the Western territories to decide the fate of slavery without congressional meddling. "I care not," Douglas declared on the question of extending slavery into Kansas, "whether it is voted down or voted up." Under Douglas' dangerous logic of popular sovereignty, especially after it was buttressed by the 1857 *Dred Scott* decision, slavery could—and, for Lincoln, *would*—become national simply by convincing people not to care if it did. And with this, Lincoln lamented, America would become unrecognizable.

In making his case against Douglas, he again turned to the 18th century. Per Lincoln's interpretation of the founding, Prof. Morel explained, slavery was a necessary evil in the states where it existed *before* the Constitution, a right that could not be undone without constitutional amendment. That said, any argument like Douglas' that supported the westward expansion of slavery was not only made out of craven self-interest; it was also made in stark opposition to what Lincoln saw as a clear founding-era intention to restrict slavery's growth as a way of putting the institution on a course toward "ultimate extinction." The Northwest Ordinance of 1787 proved, for Lincoln, that Congress could indeed meddle in the affairs of the federal territories to stop the spread of slavery; so did the constitutional provision ending the international slave trade in 1808 reflect a commitment to peaceful abolition. With this in mind, Lincoln charged Americans in 1854 with readopting the principles of the Declaration not only to save the union but to keep it forever worthy of saving.

Understanding the degree to which Lincoln's approach to ending slavery owed a debt to the founding generation—and grappling with the difficult questions and contradictions that arise in the course of doing so—brings us, Prof. Morel noted, to the issue of rule by consent of the governed. If freedom required revolution, independent self-government under a federal constitution required unity, which, in the early decades of the republic, required tragic compromise on the issue of slavery. In Lincoln's case, this meant reconciling personal wish and executive duty. He fiercely felt that a government based on equality imposed on its citizens an obligation to abolish slavery; "if slavery is not wrong," Lincoln wrote, "nothing is wrong." At the same time, though, he understood that the presidency didn't confer upon him a right to act on feeling. Emancipation was a righteous, humane cause. But it was likewise one for which humanitarian ends would need just constitutional means. What the founders tasked Lincoln with, Prof. Morel argued in closing, was thus twofold: ensuring that the maxims of a truly free society be enforced and made manifest as fast as circumstances permitted; and ensuring that such a society was an expression of the will of a self-governing American people.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The Missouri Compromise, Black Citizens, and the Question of State Citizenship in the Antebellum United States

Northwestern University Associate Professor of History
Kate Masur

In May of 1848, John Jones, a Chicago tailor, real estate owner, and vocal advocate for racial justice, sent a letter to New Hampshire Senator and congressional anti-slavery up-and-comer John Hale inquiring about the odds that his state suit petitioning for full rights as a citizen of Illinois might reach the Supreme Court. While the particular impetus for Jones' inquiry was something she circled back to toward the end of her February 19 talk, Northwestern Associate Professor of History **Kate Masur** led with this exchange because the question at the heart of the letter—how Jones' status as a free African American born into slavery in North Carolina impacted his citizenship in Illinois—underscores just how ambiguous, understudied, and central the issue of state citizenship was in the antebellum U.S.

"The Citizens of each State shall be entitled to the Privileges and Immunities of Citizens in the several States." So reads the U.S. Constitution's attempt to clarify the seemingly arbitrary language of the Articles of Confederation, which toggled between "inhabitants," "citizens," and "people" in addressing the question of the interstate applicability of citizenship rights. For whatever clarity it did offer, the Constitution still left a number of very fundamental questions unanswered: Who was a citizen? What were "privileges and immunities"? What, exactly, did "the several states" refer to? As Prof. Masur explained, congressional debates over Missouri's proposed 1820 state constitution marked the first significant airing of these questions in the young nation, particularly as they related to free African Americans like John Jones.

The controversy sparked by Missouri's path to entering the union stemmed from a constitutional provision banning the migration of free African Americans and mulattoes into the state. For Southern congressmen, this was entirely keeping with states' prerogative, per the police powers, to regulate who was and who was not entitled a place in the polity. The Northern counterargument, as argued in the *Niles Weekly Register*, required only "a very clean, simple, and imperative sentence: 'Free blacks and mulattoes' are 'citizens' in all the states…and cannot be dispossessed of their right to locate where they please." Congress was, yet again, deadlocked on a Missouri question, which resulted in what Prof. Masur dubbed "the second Missouri Compromise"—that the state's proposed constitution would be accepted, with the controversial clause intact, so long as the clause was never actually exercised.

While considered by many to be a toothless threading of the needle, the demand that Missouri not enforce its ban on migration was embraced by others as a federal acknowledgment that African Americans *were* to be considered citizens, entitled to the privileges and immunities outlined, even if vaguely, in the Constitution. As evidence of the latter line of logic (and of the second Missouri Compromise's broader historical significance), Prof. Masur pointed out how, immediately following Missouri's admission into the union, both the Massachusetts and New York legislatures officially recognized African Americans as citizens of their states, starting a broader conversation on the meaning and importance of state citizenship. Northerners, on the one hand, invoked the legal tradition of ancient Rome, which held that anyone in Rome's jurisdiction was either a citizen or an alien, while legal theorists like Chancellor Kent pushed back, arguing that even if African Americans were to be considered free citizens of the United States, individual states could still independently decide how they would be treated within their borders.

The political reality in Missouri offered little in the way of resolution. In spite of the congressional mandate that paved the way for its statehood, Missouri passed a number of laws—including an 1835 statute requiring that Black residents obtain licenses to be considered legal residents—aimed at curbing the migration of free African Americans into the state. That said, even the most restrictive laws were enforced only sporadically, and they likewise came with the unspoken caveat that entrance would be granted and residence protected (at least in theory, at least for a time) for anyone who could prove citizenship of another state. Highlighting the uncertainty of this arrangement, when James and Sylvia Robinson—former citizens of Illinois and New Jersey, respectively—petitioned under the terms of the second Missouri Compromise to remain in the state, the court refused their request on the peculiar (at best) grounds that "they did not come within cases provided for by the law," though Andrew Hatfield, a citizen of Pennsylvania making a similar case at roughly the same time, *was* successful. A grim precedent would be set in 1846, however, when Missouri Circuit Court Judge John Krum ruled against Charles Lyons, who was protesting the requirement that he purchase a license to live in Missouri on the grounds that he was born free in Kentucky. Maligning what he saw as the second Missouri Compromise's infringement upon the sovereign rights of states, Krum's ruling provided legislators all the cover they needed to re-impose the original, 1820 terms of the state constitution.

Which brings us back to John Jones, whose letter to Senator Hale was sparked by the proceedings of the 1847 Illinois constitutional convention, which not only denied free Blacks full citizenship rights (including voting rights) but, more notably here, also followed Missouri's lead in banning the migration of free Blacks into the state. If, as Jones recognized, court action was his only recourse, his hope that the federal judiciary would carry the banner of Black citizenship never came to fruition, as no federal court ever ruled on whether state-level regulations like Missouri's and Illinois' violated African Americans' rights under the privileges and immunities clause. (Though it wasn't necessarily for lack of trying, as Massachusetts sent envoys to New Orleans and Charleston to get a federal case off the ground, only to see them literally run out of town.) In fact, Prof. Masur noted in closing, in Justice Taney's ruling in *Dred Scott*, we almost see the opposite of what Jones had hoped for, as Taney, like Krum, attacked the second Missouri Compromise's implication that free Blacks of one state were entitled to migrate to another as unconstitutionally precluding states from being able to regulate their own safety.

Misleading Myths of the Missouri Crisis

Rothermere American Institute Senior Fellow
Donald Ratcliffe

Some key stories in the national narrative have become so familiar, RAI Senior Fellow Donald Ratcliffe argued in introducing his February 26 colloquium at the Kinder Institute, that our telling of them reflects not historical knowledge but gaps therein, not understanding but a perversion thereof. The Missouri Compromise is a prime example of this phenomenon, and he spent his talk laying out the two primary myths that make it so.

Myth 1. That the Compromise was the byproduct of an unflappable commitment to sectional balance

As illustrated by the work of historical geographer D.W. Meinig, the idea that a pro-slavery Senate would only consider Maine's admission into the union if it were paired with Missouri's—and, moreover, that this fulfilled a longstanding, unwritten rule regarding sectional balance—simply isn't born out in the numbers. The original existence of said balance, for example, wasn't a result of states entering the union in twos but was rather a product of abolition acts passed in 1799 and 1804 in New York and New Jersey. Louisiana entered the union not as counter-ballast to a free state but because of the circumstances of the War of 1812. And while Alabama and Illinois are often treated as an offsetting pair, the reality was that, in terms of how its representatives voted, Illinois was only nominally a free state, meaning that its entrance "with" Alabama in 1818-19 gave the South a 12-10 senatorial advantage.

As for the Maine-Missouri question, so incensed were members of the lower house at the idea of the two states' destinies being bound together that five of the seven Massachusetts congressmen representing would-be Maine districts said they would vote against Missouri statehood even if it meant leaving Maine's fate to the vindictive whims of a slavery-sympathetic Senate. The complete de-coupling of Maine from Missouri, Ratcliffe noted, was thus the first indispensable step in achieving compromise, a conclusion verified by the fact that the two very much *did not* enter the union together, with Maine coming in immediately after compromise was reached and Missouri following 17 months later, on the heels of heated debates about a provision in its proposed constitution banning free Blacks from entering the state. Nor, Ratcliffe continued, did the Missouri Crisis establish a pattern. Between 1822-1844, only Arkansas and Michigan were admitted to the union, notably in separate congressional sessions. Two slave states, Florida and Texas, were admitted in 1845, creating an imbalance that lasted until Iowa (December 1846) and Wisconsin (May 1848) leveled the

scales. From there, only free states were admitted, with the exception of West Virginia during the Civil War.

What, then, explains compromise, if not sectional balance?

Myth 2. That the Compromise was a result of weak-willed Northern doughfaces caving to the interests of the slave empire

The twists and turns leading up to the 1820 Compromise reflect, on one hand, just how fluid the Missouri question was and just how little the true magnitude of this fluidity is acknowledged. For example, John W. Taylor's post-Tallmadge re-proposal of the 36°30' dividing line was resisted by an anti-slavery contingent looking for total success but accepted by many pro-slavery Southerners (especially in the Old Southwest) whose priority was protecting the institution in Missouri. Just as some momentum for 36°30' was accruing, Rufus King's fiery moral condemnation of slavery on the Senate floor generated pushback from the South, which only compounded lingering Northern fear that the dividing line was functionally meaningless and would be challenged by Southern states as soon as the opportunity to do so arose.

The fluidity only intensified as resolution began to appear imminent. A mere 24 hours after a committee to settle the issue was appointed on February 29, 1820, it seemed that the tide had shifted finally toward the side of anti-slavery, as the March 1 draft of the Compromise that was presented for a vote expanded upon the original terms of the Tallmadge Amendment, forbidding any further introduction of slavery into Missouri and freeing children of enslaved parents immediately upon birth (versus at 25-years old in Tallmadge's initial proposal). The legislation that passed on March 3, however, appeared on the surface to be a near complete reversal of course, as well as a major blow to the anti-slavery House majority: while slavery was outlawed in any non-Missouri territory from the Louisiana Purchase north of 36°30', no restrictions on the introduction, nor any provisions for the emancipation, of enslaved people in Missouri were included.

For support to shift so suddenly away from the hardline anti-slavery version of the bill required an 18-vote swing, and as the story goes, each of these 18 votes came from a cowering doughface who turned coat on the Northern cause. This story, Ratcliffe assured us, is wrong. Ten of the 18 votes were expected, he explained, with seven coming from free state congressmen who had long voted the pro-slavery line and three coming from anti-slavery legislators, like Joseph Bloomfield of New Jersey and Henry Storrs of New York, who were convinced that Congress lacked the constitutional power to impose the kinds of restrictions on slavery contained in the Tallmadge Amendment and subsequent variations on it. As for the remaining eight votes, half were actually calculated abstentions, while the remaining four came from congressmen (Charles Kinsey and Bernard Smith of New Jersey, for example) who saw the bill not as caving to the slave power but as a maximization of the unique leverage that the North had at that moment in time. They saw it, that is, as a way to get the South, so devoted to the entrance of a pro-slavery Missouri, to concede as much of the Louisiana Purchase territory as possible to freedom. As Samuel Eddy of Rhode Island, who joined Kinsey and Smith in supporting the Compromise, noted, to not pursue this outcome would be "to lose all and gain nothing." Each of these final swing votes was, in effect, an act of political suicide, though the four men who cast them did so willingly, on the grounds that they believed banning slavery north of 36°30'—a fertile region bigger than the whole of the early-19th-century U.S.—was a practical *and* moral victory commensurate with the famous Northwest Ordinance of 1787.

Do Leaders Make History, or Is It Beyond Their Control?

Harvard University Laurence D. Belfer Professor of International Affairs Fredrik Logevall

The question of how historians should conceptualize the role individual agency plays in history was front-and-center at the Kinder Institute and Novak Leadership Institute's co-sponsored March 2 lecture, delivered by Pulitzer Prize-winning historian and Laurence D. Belfer Professor of International Affairs at Harvard's Kennedy School of Government **Fredrik Logevall.** In the past two decades, Prof. Logevall showed, historians have shied away from biographies and have instead embraced structural history, crafting works that are broad in scope and that tend to emphasize a grander storyline. History and its lessons, such works posit, are larger than any one person.

While he noted that structuralists certainly provide an important analytical framework for understanding human history, he likewise contended that they trend, perhaps overly so, toward deterministic impressions—that what happened had to happen. Hindsight bias feeds into the illusion that the course of history is inevitable and that human beings are simply characters playing out scripted events. Essentially, structural historians preclude the possibility of conclusions about or explanations for world affairs other than their own. As a way to push back against this bias, Prof. Logevall offered counterfactual analysis, or "what-if" questions. What if Johnson deescalated the Vietnam War? What if Kennedy stopped anti-Castro foreign policy? Could indulging these questions change the course of how we tell history? For Prof. Logevall, the answer is 'yes'. By implementing counterfactual analysis into his work, he has found that individual agency and individual choice impact history in quite substantive ways, meaning that certain historical events were not, as structuralists might suggest, inevitable. Moving forward, he drew out the latter of the two aforementioned case studies as a way to illuminate his methodology.

The Cuban Missile Crisis

On October 14, 1962, the world came perilously close to nuclear war after the U.S. photographed Soviet missiles on Cuban soil. The knowledge that nuclear missiles were pointed toward the states began a 13-day crisis during which the U.S. and the Soviet Union feverishly (and successfully) negotiated a peaceful conclusion. On October 28, an agreement between the two countries was reached, in which the U.S.S.R. pledged to remove its missiles from Cuba if the U.S. in turn did the same in Turkey.

Instead of portraying the Cuban Missile Crisis as another inevitable event in Cold War history, Prof. Logevall highlighted the role individuals played in both creating and ending the crisis. He argued, specifically, that there is a paradox inherent in this particular historical moment: JFK's continuation of Eisenhower's anti-Castro policies directly contributed to Cuba's decision to let the U.S.S.R. build missiles in Cuba. Consequently, it was JFK himself who both caused *and* resolved the crisis. To contextualize this paradox, Logevall played an audio recording of a conversation between JFK and former-president Eisenhower, in which JFK listens with affirming silence to Eisenhower and his anti-Castro analysis of the situation. Logevall then described a second audio clip, in which JFK argues to accept the proposed tradeoff to end the crisis but to keep its terms secret from the public. For Logevall, in solving the crisis, Kennedy thus insistently perpetuated its cause, as JFK continued to employ counterproductive anti-Castro policies even after an agreement with the U.S.S.R. was reached, a decision which, down the road, would have significant impact on the Vietnam War.

The Historian's Task

Not every historian is a fan of counterfactual analysis. History is already hard enough to interpret without throwing other possibilities into the mix. But, as Prof. Logevall emphasized, saying nothing counterfactual equates to saying nothing at all, and by refusing to indulge what other possibilities might have occurred at a particular moment in time, historians will ultimately struggle *more* to understand why events happened the way they did. Put more simply, historians need to seriously consider what did not happen in order to account for what did.

Going forward, historians must take account of reality and balance structural history with individual agency. Individual choice impacts history, just as history impacts the choices people make. In this takeaway, Prof. Logevall noted how he was heavily influenced by Karl Marx, who famously said, "Men make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstance existing already, given and transmitted from the past." By weaving together the personal with the impersonal, historical narratives can communicate a deeper, more contoured understanding of events. Instead of shying away from biographical stories, historians should embrace individuals and consider how they have influenced history.

The 2020 U.S. Election Crisis in Global Perspective

Distinguished Scholars Panel Discussion

With political bandwidth in the U.S. more and more consumed by tribal warfare, the perspectives of the American public and American leaders alike have become rigidly, problematically domestic. As Rich and Nancy Kinder Chair in Constitutional Democracy **Jay Sexton** noted in introducing

the March 5 panel of scholars he convened and moderated, this lack of attention to the rest of the world could not come at a worse time. Why? For one, the United States' place in the global order is (and for some time has been) in a state of tumult. More importantly, the challenges that we face in the U.S.—as well as the means of overcoming them—are entirely global in nature. Climate change pays no heed to borders. Any grappling with the violent history of racism must account for its international dimensions and legacies. The dizzying economic and technological changes of our time, along with the broader reverberations of globalization, are impacting societies everywhere, and today's social and political movements, as seen in the worldwide protests following the murder of George Floyd, are increasingly transnational in the awareness they demonstrate and raise.

The wager of the March 5 panel, Prof. Sexton highlighted, was simply that we have much to learn from other nations and other polities, including things about ourselves, and he began down this road by asking all panelists to reflect on how the United States' recent election crisis was being viewed and discussed abroad.

Dr. **Erika Pani**, El Colegio de México

As Dr. Pani described it, for a people who have no choice but to be intensely interested in the United States, January 6, 2021, was, in Mexico, shocking but not surprising. If there was any surprise at all, it was rooted in the fact that there wasn't *more* violence in the build-up to and wake of the 2020 elections. For Mexicans, she continued, the U.S. is often seen as a victim of its own success—a hegemon with a long history of reliably clean elections that, perhaps because of this, is plagued both by naivete and by the lack of a central mechanism for speaking truth to events and for solving controversies that challenge its image of itself. This might explain why, on January 6, CNN reporters likened the scene in D.C. to reporting from the "streets of Bogota," with nary a mention of the role that the U.S. played in 20th-century Latin American coups. Likewise, this might explain why armed forces weren't present to a fault at the Capitol despite being omnipresent in Summer 2020, as protests were taking place around the nation. The lasting image, then, was of a country in which performance has replaced reason as the animating force to its politics, a country which didn't—and still doesn't— fully realize how close it came to things going up in flames.

Dr. **Bheki R. Mngomezulu**, University of the Western Cape

When South Africa became a democratic nation in 1994, it looked to America and its liberal constitution as a model to emulate. That admiration took a hit in 2000—when Dr. Mngomezulu said he joked with his friends from Florida about having free elections for centuries and still not knowing how to count votes—but a more significant erosion of perception took place in the era of Trump. If, in 2016, South Africans were confused by the disconnect between the popular vote and the electoral college, that confusion transformed into disappointment in 2020. What posed as political debate was a disaster. And when the loser of a free, fair, and credible election refused to concede defeat, the post-election violence that the African continent has long known reared its head in the U.S. An old democracy had been compromised in the minds of South Africans, Dr. Mngomezulu argued in closing, and the onus is now on President Biden to rejuvenate and redeem the nation's reputation on the global stage.

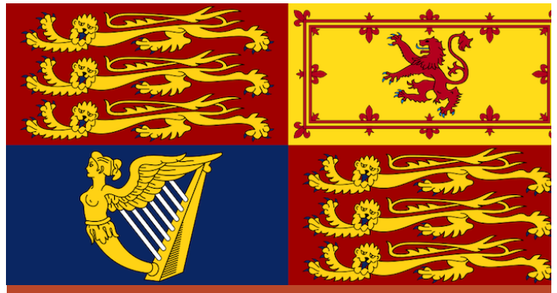
Dr. **Adam I.P. Smith**, Rothermere American Institute (University of Oxford)

To begin, Dr. Smith offered a contextual point of note: British political and media elites are completely obsessed with American politics, down to their most microscopic details. In this sense, other nations' disappointment at the 2020 elections and their aftermath didn't exist in Britain because it had very much anticipated high drama. Trump had one of the lowest approval ratings worldwide in the U.K., even among conservatives, so there was never much doubt that the next episode in U.S. politics would feature the kind of grim crescendo that ultimately unfolded. Perhaps more significant than how the recent past is viewed, Dr. Smith added, is the tempered optimism (emphasis on tempered) for the next four years. Ever since 1916, a sticking point in British geopolitical thinking has been alternating faith in or hope for a strong alliance with the U.S.—a "special relationship"—and in Joe Biden, British political elites saw and swooned over an old-style progressive who spoke about just that. The renewed hope that comes with the Biden presidency, however, is cut with post-Trump terror. After witnessing the polarization and violence that played out in the United States over 2020 and early 2021, there is deep anxiety in Britain that another Trump is just around the corner and that a catastrophic explosion with cascading global ramifications will follow if that anxiety bears out.

Dr. **Fumiko Nishizaki**, University of Tokyo

In Japan, Dr. Nishizaki explained, the image of the U.S. has always been conflicted, and the 2020 election did nothing to change this: the election itself was surprisingly placid, while Trump's denial of the results and his supporters' storming of the Capitol was horrifying. The more pressing question, though, has to do with the longer-term impact of the Trump presidency on Japan. There are, of course, differences between the two nations, perhaps most relevant to this discussion being the fact that there is no imminent threat of domestic terrorism in Japan. However, the notion of legitimacy, a cornerstone of any constitutional democracy, has for some time been eroding there as it has been in the U.S. As for where overlap exists with regard to this issue, Dr. Nishizaki pointed to three particular areas: (1) There has been a persistent undermining of the rule of law in Japan, where the constitution is fiercely contested, something with which the U.S. is all too familiar; (2) Abuse of power in personnel affairs is rampant, especially when it comes to Japanese politicians' drastic increase in control over bureaucratic positions and bureaucrats' *quid pro quo* willingness to bend the laws for politicians. Compounding the problem in Japan, she added, is a legislature with little to no investigative power (a facet of U.S. Congress with which the Japanese are fascinated); (3) The use of obfuscating language is corrosively prevalent in Japan, where being prosaic is valued over being responsive when it comes to addressing the public (though politicians are more candid in addressing supporters). And while this is, to be sure, diametrically opposed to the vitriolic Twitter bombast of Trump, it undermines legitimacy all the same. This latter point, Dr. Nishizaki concluded, is an important one. If many were shocked to see what happened in the U.S., the question remains as to whether Japan is headed in the same direction by a different path.

For more on the remainder of the panel, which touched on everything from U.S.-Mexico trade agreements, to what we can learn about reckoning with racists histories from the dismantling of apartheid in South Africa, and from Brexit and Trump, to the re-emergence of assertive forms of nationalism in Asian countries, visit the Kinder Institute YouTube page, where a recording of the full conversation and Q&A is waiting.



Viceregalism: Constitutional Crises, Heads of State, and Their History in Britain and the Postcolonial World

University of Edinburgh Senior Lecturer in British Politics Harshan Kumarasingham

The last of our Spring 2021 trans-Atlantic virtual visitors, University of Edinburgh Senior Lecturer in British Politics **Harshan Kumarasingham** stopped by the Kinder Institute on March 12 to present his research on the viceregal system and its function throughout the postcolonial world.

Kumarasingham opened with a line from "God Save Queen" that is often omitted from the standard version but that nicely encapsulates the curious role that members of the monarchical system play: "Confound their politics, frustrate their knavish tricks, on thee our hopes we fix." As the line suggests, while the crown and its viceregal officeholders are largely deemed symbolic by the public, these officials have nonetheless been imbued throughout history with political powers, some of which remain in quite significant, if also evolved, forms today.

As for how to approach the study of these figures and their powers, Kumarasingham emphasized that it is necessary to consider viceregalism in a global context. And while his talk primarily attended to the role of the monarchy in a post-colonial world, he likewise noted how the residual effects of colonialism and empire can still be seen in the fact that Queen Elizabeth II has been Head of State for 32 independent states. Moreover, there have been 179 Prime Ministers who have served in these various independent states during her reign and 159 governors-general who have represented a manifestation of her power in different governments globally.

In further focusing his talk, Kumarasingham gave his own updated version of Walter Bagehot's 1867 rights of a monarch. Bagehot understood the monarch's rights in three parts: to be consulted, to warn, and to encourage. Appending this list to apply specifically to the historical condition of the role of Parliamentary Heads of State when confronting political crises, Kumarasingham added "to rule, to uphold, and to oblige," which he then unpacked through nine global examples.

The right to rule marks the monarch's (and monarchical representative's) ability to intervene in turbulent times, as seen in the 20th-century political crises in Grenada, Australia, and Pakistan, where, in each case, the viceregal exercised direct influence over political events. In Grenada, for example, the executive took over during a time of political strife, which was well within their legal right. In Australia in 1972, there was a budget crisis due to a split of the legislature between two parties, and the governor-general decided to use his power not only to sack the Prime Minister but also invite the leader of the opposition to take over this position (this, on the other hand,

was controversial). Finally, in Pakistan, the right to rule was seen when the viceregal exercised the right to veto legislation.

The right to uphold pertains to the ability of Heads of State to preside over changing regimes and prop up tradition in times of political uncertainty. For context, while their longevity is often attributed to their ceremonial status, historical examples demonstrate that certain governors-general have taken a far more active, far less ceremonial role in order to preserve constitutions in crisis. In describing the practical application of this right to uphold, Kumarasingham used examples from Fiji, Canada, and Sierra Leone. When two military coup d'états occurred in Fiji in 1987, the Queen sent a formal statement affirming the legitimacy of the governor-general. Although the coups would end up undermining Fiji's democratically-elected government, and although the governor-general ultimately resigned, the coups' leader still expressed reverence for the Queen. The Canadian example pertained to Michaëlle Jean asserting her right as governor-general to restrict the Prime Minister's prorogation request in 2008, and in the case study from Sierra Leone, the governor-general attempted to certify a 1967 election only to be suspended by the new military government. In this latter instance, the Queen again continued to be regarded as the Head of State, even while her local representative faced the political consequences of exercising the right to uphold.

As for the last of Kumarasingham's three Bagehot updates, there was pushback during the question-and-answer portion of the talk as to what constitutes the right to oblige. Kumarasingham clarified that he meant this to be considered as a negative right and wanted it to be used for illustrative purposes. Oblige can in theory imply upholding or ruling, but the examples from the lecture—from Sri Lanka, Ireland, and India—focused instead on *avoiding* intervention in political crises. In the face of ethnic tensions in Sri Lanka, the governor-general affirmed rather than denied the passage of legislation that attempted to limit the speaking rights of the Tamil minority. The Irish example emerged from Eamon De Valera's attempts to undermine the political and symbolic significance of the office of governor-general during his tenure. The right to oblige was once more seen during Lord Mountbatten's tenure as viceroy and then governor-general of India, where the view of him as deeply political subverted any efficacy in his position and contributed to the conflict between India and Pakistan.

The Prescient Mind of James Madison: A Mini-Symposium

Professors Alan Gibson (KICD) and Michael Zuckert (Notre Dame, Emeritus)

When it comes to the question of how favorable the U.S. Constitution and its drafters were to the institution of slavery, two scholarly camps have formed. On one hand, there are neo-Garrisonians, partisans of 1619 who interpret the Constitution as directly (see: Fugitive Slave Clause) and indirectly (see: Insurrection Clause) hospitable to slavery and, in fact, as a life-sustaining force that dovetailed with the motives that led to slavery flourishing in the first place: greed, racism, Christian triumphalism, and moral indifference. And then there are neo-Lincolnians, partisans of 1776 who concede that the Constitution gave some accommodation to slavery but who frame this not only in terms of the press of necessity and compromise but also through the lens of the founders' full expectation, *and hope*, that the Revolution had set the union on a course toward universal, if gradual, abolition.

In laying out his vision of Madison's perspective on "Slavery at the Constitutional Convention," and while acknowledging the compelling arguments made by each camp, University of Notre Dame Nancy R. Dreux Professor Emeritus of Political Science **Michael Zuckert** argued that there are some ways in which both neo-Garrisonians and neo-Lincolnians miss or overshoot their marks. Neo-Garrisonians, for example, might consider how the Insurrection Clause—a hallmark of federal systems, per Montesquieu—would likely have been in the Constitution even without slavery's existence in the new nation. Their case for accommodation, that is, might be somewhat overstated. For their part, neo-Lincolnians might not adequately grapple with the degree to which the founders accepted pro-slavery provisions even when such provisions were unnecessary. Their case for concession under duress isn't, then, quite as irrefutable as they make it out to be.

Subscribers to a neo-Madisonian perspective, Prof. Zuckert posited, might approach the constitutional settlement on slavery in terms of the convergence of federalism and republicanism, as well as the distinction between legality and legitimacy. As for the former pairing, it's critical to note two main points: that the national government, as conceived at the constitutional convention, penetrated more deeply into the lives of states than had ever before been seen, but also that this intrusion was predicated on a clear, enumerated demarcation of matters of the union and matters of the state. And nearly all 55 delegates in Philadelphia, Prof. Zuckert continued, shared the common assumption that slavery was a local matter—a matter of republican self-government—to be settled at the state-level. This isn't to say, however, that slavery was *entirely* left to the states. In a way more readily forthcoming than neo-Lincolnians would have one believe, but also in a way less pro-slavery than neo-Garrisonians would suggest, the Fugitive Slave Clause marked a moment of federal intervention on the issue of slavery that was designed to reduce friction and endorse comity between the states. This was, Prof. Zuckert added, one of the aforementioned unnecessary concessions, but even in acknowledging this, we shouldn't take it to imply neutrality on the part of the founders. Rather, we should balance this against how their insistent refusal to pen 'slave' into the Constitution—their insistence on instead using 'persons'—reveals a total lack of neutrality, even if it likewise produced the awkward linguistic circumlocutions we see in the text of the national charter.

As for the second pairing (legality/legitimacy), Prof. Zuckert argued that the founding generation embraced a theory of political right that was wholly inconsistent with slavery and thus rendered it philosophically illegitimate. This theory, of course, by no means permeated through the entire federal system, as the Constitution gave slavery a legally established place in the union. Such a contrast between legality and legitimacy is problematic, to say the least, for the survival of any system, and the antebellum period brought to the fore the disparity (though not, Prof. Zuckert stressed, the wholesale incompatibility) between a Constitution that aided slavery and a widespread hope that slavery would pass away. Three responses in particular arose in this era, growing the rift between pro- and anti-slavery forces: the abolitionists moved to make legality cohere with legitimacy (or illegitimacy, as it were); the positive good school of Calhoun and Stephens sought to remake legitimacy to match anomalous legality; and between these, a path of least resistance emerged that maintained the tension of an awkward constitutional order and let the strain between legality and legitimacy boil over into civil war.

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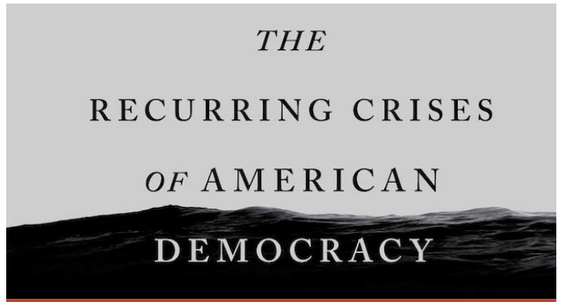
In the 60 character sketches of James Madison in *Founders on the Founders*, two overriding characteristics rise to the surface: Madison's timidity and, as Fisher Ames put it, his status as a "book politician." The latter acknowledgment of his studiousness might be construed as an unambiguous compliment, but at the time, it was not, implying instead—at least in some cases—a deficit of practical knowledge and worldliness. In introducing his talk on "James Madison, Thinking Revolutionary," Kinder Institute Senior Fellow **Alan Gibson** said we *should* appreciate Madison's native intelligence not only in its own right but also for how it speaks to an analytical altitude, penchant for historical comparison, and systematic activity of mind that made Madison the profound and ethical solver of political problems that he was. Collectively, he argued, these qualities might give us a Madisonian methodology.

Particularly when it comes to Madison's theorization of the extended republic, many contemporary ways of analyzing his political thinking do little justice to the intellectual influences he absorbed and the politically scientific approach to problem-solving that he derived from them. Progressive historians, for example, tend to dismiss the period of time that Madison spent reading prior to the constitutional convention, allowing formative figures like Hume to fall unduly out of the frame. The Skinner School, on the other hand, holds fast to the belief that Madison could not have been solving a concrete problem with his extended republic theory because the problem of an extended republic didn't exist.

As Prof. Gibson showed, such approaches to assessing Madison overlook the two most critical components of his methodology: first, just how engaged in systems diagnosis he was; and second, just how analogical he was. They miss, that is, the way in which Madison pored over ancient and modern history in order both to draw out the central factors that have caused political problems over time and to frame these factors within the unique conditions and context of the American republic…

For more on Prof. Gibson's unpacking of this Madisonian methodology in terms of issues ranging from public finance, to international law, visit the Kinder Institute YouTube page for a recording of the full talk.



Four Threats: The Recurring Crises of American Democracy

Profs. Suzanne Mettler (Cornell University) and Robert Lieberman (Johns Hopkins University)

After sending their recent co-authored book, *Four Threats: The Recurring Crises of American Democracy*, to press about a year ago, Cornell University John L. Senior Professor of American Institutions **Suzanne Mettler** and Johns Hopkins Krieger-Eisenhower Professor of Political Science **Robert Lieberman** watched as the threats to democracy that they examined escalated, culminating in the January 6 insurrection at the U.S. Capitol.

As for the book's overarching question, in assessing whether or not American democracy is today in genuine peril—and, if so, what imperils it—Profs. Mettler and Lieberman turned toward historical moments of systematic vulnerability to create a comparative analytical framework. And as Prof. Mettler noted in introducing their March 26 talk at the Kinder Institute, January 6, 2021, took her immediately back to November 10, 1898, in Wilmington, NC. During the 1896 local and national elections in North Carolina, she explained, a fusion of the Republican and People's Parties wrested control of the state's governorship, majorities in both the House of Representatives and state assembly, and numerous municipal offices away from elite white Democrats. Wilmington, in many respects, was the epicenter of this political and cultural sea change, particularly in terms of how the city's civic infrastructure reflected African American men's post-Civil War surge in democratic participation. Among other indicators of change, Wilmington had three Black aldermen, a growing Black middle class, and the *Daily Record*, the only Black-owned daily newspaper in the nation. The city was, in this, likewise an embodiment of elite Democrats' worst fears, and on the aforementioned day in November 1898, 2,000 white men belonging to paramilitary groups staged a coup, storming the city, burning the *Daily Record* offices to the ground, murdering hundreds of residents of Wilmington's Black neighborhoods, and forcing the resignation of the mayor and numerous aldermen at gunpoint before installing a replacement regime.

The parallels to January 6, Prof. Mettler continued, are striking. White supremacists were the most visible participants in both insurrections. Both instances of violence were incited by party leaders, and each was fueled by an unwillingness to abide by perhaps the most fundamental principle of democracy: when elections are held, someone loses; and when your party loses, you concede and communicate to your followers to do the same.

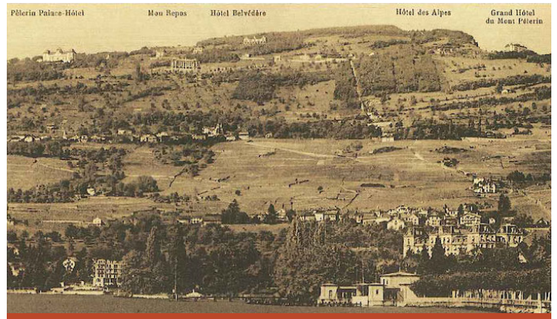
Returning to the 1890s later in her portion of the talk, Prof. Mettler drew attention to the tactics—poll taxes, literacy tests, widespread paramilitary violence—that Democrats throughout the South used to shut down their opposition and thus ensure that their elite, white, autocratic power bloc would have an outsized and corrosive voice in state and national politics for the next half century. As Republican presidents from McKinley to Taft sat by and did nothing to curb these and other abhorrent practices—in some cases even encouraging them—each of the four pillars that mark democratic health fell under attack: free and fair elections, rule of law, recognition of the legitimacy of political opposition, and the integrity of rights and liberties.

This was by no means the first time that American democracy had entered a period of decay. As Prof. Mettler showed in looking at the newspaper wars of the early national period, the fragility of American democracy (and particularly the notion of legitimate opposition) was exposed even as the ink on the Constitution was drying. That said, what we saw in the 1890s, as well as in the run up to the Civil War, were the first signs of a potential convergence of what she and Prof. Lieberman identified as the four key threats that render democracy most vulnerable: polarization, conflict over the boundaries of political community, high and rising economic inequality, and aggrandizement of the Executive Office.

The first three threats, Prof. Lieberman argued in opening his portion of the talk, were simultaneously exposed in the 1890s, but it wouldn't be until the election of FDR that the fourth truly surfaced in American political life. While Roosevelt never assumed dictatorial power, there is no question that he (with the blessing of Congress) left the presidency much more powerful than he found it. Some of the ways in which this played out are familiar: greater policymaking authority, greater managerial power over the federal government via an expanding administrative state, and greater operational control via a ballooning White House establishment. Other ways were less so, as Prof. Lieberman illustrated in pointing to a 1940 secret memorandum penned by J. Edgar Hoover and signed by FDR which, in response to the president's fears of Nazi subversion of the United States, authorized illegal wiretapping by the Justice Department and FBI—in practice, primarily of foreign nationals on U.S. soil, though in some instances, of private U.S. citizens as well. Though democracy persisted in spite of this, the New Deal and World War II-eras nonetheless saw the creation of a new executive toolbox, the contents and perceived necessity of which continued to grow with the rise of the national security state and the exigencies of the Cold War.

Any questions regarding what these tools might look like in the hands of a president less scrupulous than Roosevelt were answered in the 1970s, when Nixon weaponized the newfound power of the executive apparatus to target political enemies. Much can be gleaned from the Watergate disaster, Prof. Lieberman suggested, some of it dire and some of it reassuring. One reading would be that Nixon's malfeasance is but one in a long line of examples that show how, time and again, democracy has proven more fragile—and instability, violence, and the dimunition of rights closer at hand—than we might think. At the same time, Watergate also speaks to a certain modicum of resilience. As the talk's titular four threats have waxed, waned, and recombined over the past two-plus centuries, democracy has never backslid all the way to authoritarianism and, one could reasonably argue, has in fact progressed, on balance, toward greater robustness and inclusivity.

Circling back to where the talk began, Prof. Lieberman warned that what we saw on January 6 was, for the first time in American history, the convergence of all four threats at once. And while he emphasized that this convergence certainly pre-dates the Trump presidency, the damage that the pillars of democracy suffered over the past four years was no less profound. Moreover, any look at the us vs. them polarization of today's political arena, or at the large-scale attempts in Georgia and elsewhere to suppress the vote and undermine free and fair elections, shows that the damage is still being done. If there's a ray of hope, Prof. Lieberman concluded, it's that Americans still believe in democratic ideals, which leaves open the possibility that restoring the integrity of democracy—finishing what Lincoln called "unfinished work"—might be embraced in the coming years as a collective top priority.



Two Views of Universal Suffrage: Anticolonial and Neoliberal

University of Virginia Assistant Professor of Politics Kevin Duong

In his 1920 *Black Water*, W.E.B. Du Bois described universal suffrage in terms importantly different from our present procedural norm. "In people," Du Bois wrote, "we have the source of that endless life and unbound wisdom which the rulers of men must have." Votes, for Du Bois, weren't simply there to be counted. Rather, they were a way of gifting the "whole experience of the race to the benefit of the future." With this, he envisioned, the ballot could become a means both to spur on a new unity between human beings and subject the economy to democratic control.

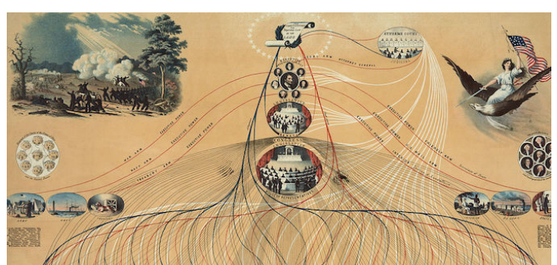
In some respects, Du Bois was decades ahead of his time. As UVA Assistant Professor of Politics **Kevin Duong** noted in framing the confrontation over ideas about universal suffrage on which his April 9 talk would focus, with the age of decolonization that spanned the 1940s through the 1960s came similar conceptions of mass franchise as a way to promote economic democracy and eradicate the color line. This utopian view, which came to be associated with African Socialism, was hotly contested by neoliberals of the era, whose fear of a majority non-white electorate in the former colonies led them to a conception of suffrage that might preserve engrained imperial hierarchies through understanding the franchise not in terms of votes but instead in terms of purchasing power.

To provide context for the central tenets of the anticolonial side of said confrontation, Prof. Duong turned to Vichy, France, in 1944, where a re-founding was taking place. Included among the delegates tasked with drafting a liberation constitution hospitable to the reality that France couldn't disavow Nazism while also continuing to forge an empire on racial grounds were poets Aimé Césaire (of Martinique) and Léopold Sédar

Senghor (of Senegal). While their role in the drafting process was anything but symbolic, this was hardly reflected in the charter that ultimately emerged, which gave white settlers an outsized voice in the former colonies through nefarious gerrymandering ploys that destroyed longstanding community boundaries. For Césaire and Senghor, Prof. Duong explained, the new constitution was as defective in theory as it was in practice. Specifically, both saw the constitution's individualist conception of the ballot as indicative of a form of suffrage that could only reproduce a European construction of society and, in this, serve as a vector for cultural assimilation and repression. The voice of Black Africa, for Césaire and Senghor, was not individual but familial. It was the voice of a whole race, a whole people, meaning that any mode of universal suffrage that did justice to the communal, fraternal societies of Africa would have to be corporate in nature. To organize the franchise around a collective African voice would, Césaire reasoned, gift an alternative value system to the world through which ante-capitalist and anti-capitalist principles could uplift the prosperity of all Africans while likewise disseminating religion and a cooperative strain of federalism to all corners of the former French empire.

Where Césaire and Senghor, like Du Bois, saw in traditional African civic values the seeds of a non-Soviet form of communism that might lead to economic democracy, the metropoles saw in the idea of equal citizenship and mass franchise a path toward France eventually becoming a colony of her former colonies (and a bankrupt one at that). Still, by the 1950s, the decay of empire and the rise of anticolonialism were irrepressible, and so neoliberal intellectuals also set out to craft counterarguments to universal suffrage, conventionally understood. Some, like Arthur Shenfield, selectively cited the 18th- and 19th-century liberal canon in decrying any call for "one person, one vote" as arising from a failure to appreciate "the hideous dangers of totalitarian democracy" that he thought would inevitably take root wherever formerly colonized voters became a majority. Limiting the franchise, Shenfield somehow deduced, was desirable for all races involved. Though less enthusiastic about racial discrimination than Shenfield, fellow Mont Pelerin Society member William Hutt likewise interpreted universal suffrage as a practice which would merely transfer power to a new majority without any constitutional limitations in place to prevent retaliatory abuse (Prof. Duong added, however, that the Mont Pelerinians were equally put off by minority rule, which they equated with the rule of private interest). For Hutt—as for neoliberal icons like Friedrich Hayek and Ludwig von Mises—a suitable, universally-inclusive alternative to the voting booth existed in the marketplace. Even while acknowledging the inherent inequalities that were built into their neoliberal vision, Hutt and Co. still argued that supplanting the voice of the people with the price mechanism when conceiving of political participation might prevent the lethal rise of privilege and deliver a system in which democracy can adapt to individual preference. Or, as von Mises bluntly put it, "in political democracy…the votes polled by the minority do not directly influence policies." In the market, however, "no vote is cast in vain." Far from egalitarian, this vision was inclusive precisely because it was *in*-egalitarian.

As Prof. Duong noted in closing, where anticolonial advocates believed in sovereignty and agency—in Rousseau's vision of a politics of self-transformation and of a voice that depends on our bond with others—the neoliberals believed in a system which had no room for collective self-determination outside of preference dictating commodity valuation. For the neoliberals, he explained, the people don't speak but rather the market speaks us.



Re-thinking the Separation of Powers

McGill University Tomlinson Professor of Political Theory Jacob Levy

In contextualizing the central theme of his April 16 talk within the history of political thought, McGill University Tomlinson Professor of Political Theory **Jacob Levy** summoned a figure who was something of a familiar specter in the Kinder Institute's 2020-21 Friday Colloquium Series: Montesquieu. Specifically, he held out Montesquieu's *Spirit of the Laws* as an ur-text of sorts for understanding and, more importantly, for diagnosing how to resolve the difficulties that face the separation of powers as a contemporary constitutional doctrine and practice.

The talk's tour through the philosophical backstory of a system of government in which the canonical powers (executive, legislative, judicial) are set against one another as equals began in the final years of the ancient Greek city-states, where deep concern over different regime types led Aristotle to hypothesize about a mixed constitutional order in which bringing together democracy (rule of the many), aristocracy (rule of the best), and oligarchy (rule of the wealthy) might draw out the advantages of each in a way that mitigated the forms of class conflict that were so pervasive and divisive in Greek life. A variation on this mixed construction, Prof. Levy explained, was then adopted by ancient Rome as a "flattering self-description" of the order underlying the republic's success. With the many represented in the popular Assembly, the elite few represented in the Senate, and two consuls appointed for one-year terms to avoid monarchical oppression, the republic ultimately created different institutional spaces in which distinct class interests could be expressed while also forcing the distinct classes to work together in service of a common good.

Independent any recognition of the historical continuum they were occupying, the monarchies of Western Europe likewise stumbled onto this institutional form during the Middle Ages as an efficacious system of government. Particularly when it came to the necessity of taxing by consent vs. by violent coercion, kings found that they required buy-in from both the feudal nobility and the residents of the cities, which were fast growing into commercial hubs and centers of wealth. As in Rome, establishing separate spaces in which the class interests of each group could be registered while cooperative government around shared civic interests was simultaneously being advanced proved a path forward, though Prof. Levy was quick to point out that a system of mixed constitutionalism like this one, where the different orders of society worked collectively, was not at all tantamount to a separation of powers doctrine.

This would start to change in late medieval England and France, where the rule of law was beginning to emerge as an apparatus for curbing excessive state authority and defending private citizens against arbitrary monarchical prerogative. The evolution of this innovation was slow and a bit haphazard, Prof. Levy noted, but its primary component—the rise of a judiciary which could limit new lawmaking to ensure consistency with legal/common law traditions—brings us finally back to Montesquieu, who saw England's post-Glorious Revolution constitution, into which such a judiciary was woven, as having made more progress toward a better, freer system of government than any other European republic's. More relevant here, Montesquieu specifically described this system in terms of a separation of powers in which the House of Commons (i.e., the people) had lawmaking authority; the monarch had an authority to act swiftly, decisively, and at times violently in executing the laws; and the few—the nobility and bishops who made up the House of Lords—possessed important aspects of judicial power. True, the House of Lords rarely acted as a court during this time, but highlighting this fact, Prof. Levy argued, would overlook how it was still the only venue in which members of the nobility could be tried and, even more critically, in which impeachment power was vested. For Montesquieu, people living under a system like this one—where legislation was separate from and preceded execution and judgment—were free because they knew what law was; knew that it was not tailored to unduly punish them; and knew that compliance with it implied safety, especially given the existence of a separate, ordinary judiciary that protected *habeas corpus* rights.

What the American founders knew of the English constitution, they learned from Montesquieu, but while they deeply imbibed and sought to emulate his idea that freedom required a separation of powers, they were confronted with the need to adapt this idea to a society without distinct classes or estates. However, as *The Federalist Papers* (among other textual examples) make clear, the founders fervently believed that an almost jealous commitment to institutions could sufficiently replace class distinction as a way to keep branches of government at productive odds with one another. Congress' pride in its own legislative authority implied, for instance, that it would naturally be on the lookout for and resistant to excess executive power. If judges were appointed for lifetime terms, they, too, would protect their particular power by closely monitoring other branches for potential abuses. As Prof. Levy emphasized, this vision was at the heart of his talk's thesis precisely because it never actually panned out.

Why it didn't pan out, he continued, can be traced back to how little foresight—or, alternately, how much willful ignorance—the U.S. constitutional architects had when it came to the development of political parties. Without parties, their vision might have held. The near-immediate (and inevitable) emergence of parties, however, profoundly transformed the relationship between the legislative and executive branches that the founding generation sought to bring to bear. If a president presided over a friendly partisan congress, there would exist no inclination for the latter to jealously protect its own power, thereby creating a glidepath for executive disregard of institutional constraints (congress, in this scenario, would lack the vanity which inclined the House of Lords to stand up to the monarch). On the other hand, if the government were divided between parties, any legislative attempt to hold the executive accountable for abuse would be seen by the people not as an institutional safeguard but instead as indistinguishable from normal partisan fighting. Further complicating things, Prof. Levy noted, is the fact that

parties are good—the fact that they serve more or less as a prerequisite for maintaining constitutional government through performing such functions as limiting the short-term ambition of officeholders and presenting comprehensive platforms that enable the electorate to make informed decisions.

Recent glimpses into just how far ruthless, demagogic leaders can go in a constitutional democracy has thus placed the truth of how much we need parties at stark odds with the truth of how much we need, as well as how much we lack, a separation of powers. We are left, then, with the question of what can be done about this, and in closing, Prof. Levy suggested that the answer might involve going beyond Montesquieu's three-part distinction and considering whether there might be more powers to separate. And given the massively disproportionate volume of governing that happens within the executive branch, this might be the place to start. We might, that is, be able to separate the executive branch in such a way that more closely approximates Montesquieu's animating principle that rules be made in one place and implemented and enforced in another and, in this, restore the founding-era vision of government that is currently breaking down in front of our eyes.

Money and the Remaking of American Politics, 1815-1840

Kinder Institute Distinguished Visiting Research Fellow Reeve Huston

While the importance of corporate money, and money overall, in U.S. politics has been studied extensively by historians, Duke University Associate Professor of History and Kinder Institute 2020-21 Distinguished Visiting Research Fellow **Reeve Huston's** current work aims to plumb this intersection with a more holistic approach than is typically taken. In his April 30 colloquium, in which he debuted a chapter from the book he was at work on while in residence in Columbia, Prof. Huston described his methodology as rooted in the idea that, by the early 19th century, we can begin to see how money did not just buy policies, but fueled, organized, and nationalized politics on a grand scale. It was at this moment, he argued, that the iconic gentleman-patron started to fade into the background, replaced by a new wave of activists, drawn from a far wider swath of the voting population, who were loyal to—and compensated for their loyalty by—not individual politicians but party apparatuses.

This was not, Prof. Huston continued, a paradigm shift of happenstance. Rather, over the course of the period on which his talk focused, it became increasingly clear that money was not just a luxury available to specific office (and favor) seekers, but a necessity—crucial, if problematically so, to the rise and strengthening of democratic institutions. Given that ordinary constituents had very little power, money was needed to mobilize the people, a conspicuously undemocratic phenomenon that presented a stark contradiction between politicians' and parties' claims and their actual practices. More specifically, out of this exchange arose a complex relationship between party actors and the public, in which the former strove to position themselves as the true representatives of the will of the people in order to cultivate both the volunteer labor and financial backing that were a core part of their actually fulfilling this promise of representation. In one of many examples of how this played out, Prof. Huston highlighted the symbiotic and democratically-untoward relationship between banks and corporations and a new class of politicians attempting to rise from humble origins to state and national prominence. He tied, on the one hand, shocking dollar amounts to the lines of credit that banks and corporations extended candidates in exchange for political favors. At the same time, however, he noted how one of the most important skills that political agents could develop was managing the expectations of their financial backers. Viewed through the lens of this new iron triangle of public and private institutions' co-dependence on one another, we find a painful irony embedded within the narrative of democracy that was emerging during this era: money and the forms of quasi-corruption that came with it were essential to the revival and expansion of partisan democracy.

Also foundational to this discussion is an acknowledgment of the promulgation of these trends within the print media and the use of written work to shape dominant narratives. As Prof. Huston showed, printing would become a core ritual of democratic mobilization, a theory, it should not go without mention, with strong roots in the Kinder Institute, as it builds upon Professor of History and Kinder Institute Associate Director Jeff Pasley's work in *The Tyranny of Printers* (2001) on the close relationship between printing and politics.

In further fleshing out this evolving democratic norm, Prof. Huston cited Daniel Webster as the quintessential new 19th-century politician. From his career as a lawyer and his press ties, to his curated style and his constant teetering on the brink of bankruptcy, Webster embodied the iconic caricature of the hand-extended politician with which the talk opened: "To make frothy speeches, and electioneer," the caption below the caricature reads, "There's no one doubts, but that you're a honey, And always ready, so the people swear, To serve your country for a little money."

BLACK HISTORY MONTH LECTURE

Undermining Marriage: White Supremacy and the Black Family

Seymour Institute for Black Church & Policy Studies Executive Director Jacqueline C. Rivers

That there has been a large-scale retreat from marriage over the last half century is, to some degree, common knowledge. Far less so, Seymour Institute for Black Church & Policy Studies Executive Director **Jacqueline C. Rivers** stressed in her February 18 Black History Month Lecture at Mizzou, is the disproportionate degree to which this trend has been seen in, and its cascading consequences experienced by, Black communities.

First, some of the numbers: Between 1970-2010, the number of married Black women between the ages of 40-44 fell from 61% to 37%. Between 1960-2008, the number of never-married adults rose from 17% to 44% in Black communities vs. 14% to 23% in white communities. And overall marriage rates—33% in Black communities in 2018, 57% in white communities—have been in a steady state of decline in spite of a nationwide rise in cohabitation.

In order to draw out their broader consequence, Dr. Rivers underscored that these statistics must be viewed alongside related data on out-of-wedlock childbirth and single-family households. Between 1965-2010, the number of Black children born out-of-wedlock rose from 25% to 73% (3% to 25% among white children), while two-parent households fell from 69% to 38% among Black families vs. 88% to 71% among white families (the latter dataset is from 1960-2016). Why is this significant? As current U.S. Treasury Secretary Janet Yellen and economist George Akerlof have noted, the policy implications of this trend are dire, particularly—though not, Dr. Rivers added, exclusively—in their relation to poverty rates. More than 50% of father-absent households in Black communities are designated 'poor,' and a staggering number 'extremely poor.' Going beyond this, the impacts on children of the shortage of parental attention that is a byproduct of single-family households include lower performance on standardized tests and higher rates of behavioral problems and, as these children reach adulthood, lower income and occupational

status, greater susceptibility to depression, and higher rates of divorce. The consequences, in other words, are generational.

These statistics, Dr. Rivers argued, require context, and she highlighted two structural factors, each tied to the United States' legacy of white supremacy, that might shed light on the outsized effects of declining marriage rates in and on Black families.

The history of racialized economic injustice: Economic insecurity, Dr. Rivers explained, is one of the strongest drivers (maybe the strongest) of marriage decline in Black communities, and she identified three 20th-century touchstones in which this insecurity is rooted. (1) *The New Deal:* As a result of racist Southern Democrats' policy machinations, farmers and laborers—occupations in which Black citizens, and Black men in particular, were highly represented—were largely cut out of Social Security benefits and unemployment insurance, removing a safety net for an already disproportionately poor community in a time of economic crisis; (2) *The G.I. Bill*: Black men were also often denied access to the housing, education, and occupational training benefits of the G.I. Bill, perhaps the single largest factor behind today's enduring racial wealth and equity gap. The G.I. Bill effectively created the homeowning white middle class while simultaneously trapping Black families under the pressures of poverty; (3) *Deindustrialization*: As the wealth gap grew during the 1960s on the back of nakedly racist hiring practices and union exclusion (among other things), deindustrialization catastrophically exacerbated this problem. Disinvestment in production and manufacturing—and the subsequent loss of employment, pensions, and health insurance—hit Black families especially hard, as many were concentrated in the regions and industrial sectors that saw the higher number of jobs vanish (a problem which education inequality only compounded the aftershocks of).

The recent history of mass incarceration: The statistics here, Dr. Rivers suggested, are soberingly familiar. In 2016, the incarceration rate for Black men was 1,608 per 100,000 vs. 274 per 100,000 for white men, and while the raw numbers have declined somewhat since then, the proportions have remained essentially the same (to underscore this, she pointed to the fact that Black Americans make up approximately 12% of the overall U.S. population and 33% of the prison population as compared to 63% and 30% for white Americans). The result of mass incarceration as it relates to the question of marriage is not only that there are simply less men in Black communities to marry but also that the collateral consequences of felon disenfranchisement reinforce the issue of economic insecurity.

It's on this front, however, that we can begin to see a way out of the downward marriage spiral. As a result of the mandatory minimum sentencing requirements and three strike laws that arose in the 1980s—each of which, again, bears the corrosive fingerprints of white supremacy—prison became the modal experience for Black men with less than a high school education. That said, steps to strike these laws have recently been taken at the federal level, though Dr. Rivers noted that, in order for such steps to produce substantive positive effects on marriage rates, we need bipartisan support at the state level for additional action, not only when it comes to rolling back these laws but also in regard to the creation of alternative sentencing options for non-violent offenders. Similarly, she pointed to how increasing educational opportunities for Black youth would likewise increase earning power going forward, helping to resolve, even if in incremental ways, the economic injustices and subsequent insecurity that undermine marriage in Black communities.

Though they are less universally agreed upon, Dr. Rivers also highlighted some of the cultural factors that she sees underlying the recent retreat from marriage. Increased economic independence among women in general, for example, has changed the overall perception of marriage, making it less likely for women to enter into marriage in the first place or to remain in unhappy unions. Increased access to birth control and abortions has de-coupled sex from childbearing and marriage (though this doesn't easily square with the concurrent increase in out-of-wedlock childbirths). Finally, studies show that the disproportionately high number of highly-educated Black women to highly-educated Black men has altered relationship dynamics and deteriorated gender relations in a way that, particularly when considered through the lens of Black women's traditionally more conservative sexual values, has had a discernible impact on the institution of marriage. It is in response to these cultural factors, Dr. Rivers argued in closing, that the church might enter the equation. Though the phenomenon might be more pronounced in white communities, both the rate of disapproval of pre-marital sex and marriage rates are noticeably higher among Black church attendees, evidence that we have levers beyond the world of policy that might help us jumpstart the long, difficult process of reviving the institution of marriage in the 21st century.

7th Annual

Shawnee Trail Regional Conference

on American Politics and Constitutionalism

As with most—almost all—of our programs this year, the show went on with our seventh annual Shawnee Trail Conference on American Politics & Constitutionalism, if in slightly altered form. Not only did things move to Zoom and take on the form of an article workshop. We also partnered not with another university on the conference this time but rather with an academic journal, as *American Political Thought* both co-sponsored the event and agreed to consider for publication all papers that were presented (see below) at the April 10 gathering. As always, a huge thanks to Kinder Institute Assistant Professor of Constitutional Democracy **Connor Ewing** for taking the reins on organizing the conference.

SESSION 1 (11:00am-12:30pm)

Natalie Fuehrer Taylor (discussant: **Katherine Rader**): "Henry Adams 'Remember[s] the Ladies'"

Connor M. Ewing* & Thomas R. Bell (discussant: **Natalie Fuehrer Taylor**): "Hypocrisy: The Homage Partisanship Pays the Constitution"

Matthew S. Brogdon (discussant: **Thomas R. Bennett***): "Free Association and the Corporate Form"

SESSION 2 (1:00-2:30pm)

Thomas R. Bennett (discussant: **Connor M. Ewing/ Thomas R. Bell**): "State Rejection of Federal Law"

Elizabeth Dorssom* (discussant: **Verlan Lewis/Robert Saldin**): "Flexible Law: The Impact of Legislative Resources on Policy Adoption"

James W. Endersby* & **Nicholas L. Brothers*** (discussant: **Matthew S. Brogdon**): "Kansas City and the Poll Tax: An American Experiment in Compulsory Voting"

SESSION 3 (3:00-4:30pm)

Verlan Lewis & **Robert Saldin** (discussant: **James W. Endersby/Nicholas L. Brothers**): "Never Trump, the Future of the Republican Party, and American Party Ideology Development"

Justin Peck (discussant: **Elizabeth Dorssom**): "America Firstism from a Developmental Perspective"

Katherine Rader (discussant: **Justin Peck**): "Frederick Douglass: Historical Interpretation and Claiming a Legacy"

* Indicates faculty members and Ph.D. candidates affiliated with the Kinder Institute

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Kinder Institute on Constitutional Democracy
University of Missouri

409 Jesse Hall
Columbia, MO 65211
573.882.3330
democracy.missouri.edu

NEWS IN BRIEF

An undergrad-heavy "News in Brief" this time around, but we'll start with a round of applause for KICD Advisory Board Member **Jean Becker,** whose new book, *The Man I Knew: The Amazing Story of George H.W. Bush's Post-Presidency*, came out in June 2021 . . . Staying in the board room, a second round of applause for Advisory Board Member **Jenelle Beavers**, who was recently named Vice President of Strategy at Colorado State University . . . A hushed congratulations for the following KICD-affiliated students who were all inducted into the Mortar Board Secret Society on the quad on April 30: **Bailey Martin**, **Emily Lower,** and **Olivia Evans** . . . In addition, Kinder Institute Director of Undergrad Studies **Thomas Kane** was a Faculty/Staff Honor Tap for the Omicron Delta Kappa Secret Society . . . **Joe Davis** and **Becca Wells** were both tapped for Mizzou '39 in March, while Becca doubled-down in the award category by taking home one of only thirteen Undergraduate Awards for Academic Distinction . . . Finally, we received news in April that our first two Constitutional Democracy majors have been inducted into Phi Beta Kappa: May 2021 grad **Rachel Slings**, and current junior **Paul Odu**, who was one of only ten third-year students to receive this honor