



## Trying to Reason with Parchment Barriers on the Other Side of a Nightmare

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At noon on January 20, 2021, the American experiment in self-government passed a crucial, difficult test: Joseph R. Biden, Jr. took the Oath of Office and became President of the United States two weeks to the day after the most serious threat to the peaceful transfer of power since 1861. Rarely have we as a Nation stared into the abyss as we did on January 6, 2021 (Snyder, [Jan. 9, 2021](#)). Standing on the other side of a national nightmare and trying to assess what it means is to veer between those two Wednesdays in January; to juxtapose the folly of insurrection’s indelible stain with the reality of inauguration’s promise. Are the self-inflicted wounds to representative democracy fatal or can they be healed? Any attempt at an answer requires a reckoning with reality, an appeal to reason and a healthy dose of the optimism demonstrated by Amanda Gorman, our youth poet laureate (see, Gorman, [Jan. 20, 2021](#); Domonoske, [Jan. 20, 2021](#)).

To begin, strip away names and partisan affiliations, suspend factional passions, and apply reason to the most basic facts. The sitting President of the United States lost his bid for reelection in a free and fair election. Rather than accept the decision of the people, the President spent months lying about the outcome, conjuring doubt where none was warranted. Dozens of dubious lawsuits were filed and rejected by the courts but served the more nefarious purpose of escalating the lies. Per law, the United States Congress undertook the largely ceremonial function of certifying the results of that election transmitted from the States in the form of the Electoral College ([3 U.S.C. §15](#)). Coinciding with the process, the defeated President incited or encouraged an insurrectionist mob to attack the United States Congress and the sitting Vice President. Initial conclusions are that the crowd generally sought to somehow alter or otherwise prevent the ceremonial certification of the choice of the citizen of the Nation.

Among other things, the entire episode called to mind a rhetorical question posed by James Madison in the *Federalist Papers*, framed in different lights. Whether it was “sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power” (Madison, *The Federalist* [No. 48](#)). Madison’s concept,

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built into the Constitution, was a design to keep the separated powers in check by balancing them against each other in various ways; a method to work in the real world of political power (Feldman 2017, at 206; Nourse 1996, at 464). He concluded that “a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands” (Madison, *The Federalist No. 48*). Donald Trump’s presidency provided a serious stress test for Madison’s concept—and the Constitution—culminating in the desecration at the Capitol. In its wake, Madison’s question confronts us in more visceral and profound ways.

We witnessed the first instance of a sitting President encouraging or inciting an attack on Congress with the explicit goal of overturning an election that had turned him out of power (Barry, McIntire and Rosenberg, [Jan. 9, 2021](#); Savage, [Jan. 10, 2021](#); Savage, Goldman and MacFarquhar, [Jan. 19, 2021](#)). Harrowing accounts demonstrated our proximity to catastrophe; precariousness highlighted by Senate staff saving the boxes that held the electoral votes (Pramuk, [Jan. 6, 2021](#); Woodward, [Jan. 7, 2021](#)). Had those official papers been damaged or destroyed, lost or stolen, the matter of the election would have been further complicated; questions about the chain of custody and legitimacy could have fueled further lies, litigation and damage.

The visceral gives way to the profound when we contemplate that a large faction of the Members of Congress from the President’s party deployed the privileges of their offices to aid and abet the effort. They amplified the President’s lies, or they were complicit in the furthering of those lies; many used the lies to justify objections to certification in the formal process. Even after the attack on their institution 147 Republicans voted to object, a decision to effectively disenfranchise millions of their fellow Americans (Yourish, Buchanan and Lu, [January 7, 2021](#)). As Madison warned, there are no parchment barriers sufficient to guard against such matters.

The inauguration provided a drastic contrast and the chance to reflect on other parchment barriers. No one can assume the awesome powers of the presidency until they have taken the Oath of Office, a public promise to the Nation that they “will faithfully execute the Office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States” (*U.S. Const.*, Art. II, Sec. 1). Likewise Members of Congress and all federal and state officers must also take an Oath of Office “to support this Constitution,” with a public promise to “support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same” (*U.S. Const.*, Art. IV; [5 U.S.C. § 3331](#) (respectively)). An oath is the quintessential parchment barrier; a promise only as good as the person making it, enforceable by only the most difficult of undertakings.

It is instructive that the founding document provided for only one crime, treason (*U.S. Const.*, Art. III, Sec. 3). Subsequent federal law made it a crime to incite, assist or engage in an insurrection. Set aside controversial criminal matters of accusation and conviction to reason with the policy. A person convicted “shall be incapable of holding any office under the United States” ([18 U.S.C. §2383](#)). The 14<sup>th</sup> Amendment to the Constitution also provides for this consequence. Ratified in the wake of the Civil War, it includes the provision that “[n]o person shall . . . hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof” (*U.S. Const.*, Amendment XIV, Sec. 3). Words weighted and fraught, the point is that these are not ordinary crimes. They constitute violations of the promises in oaths of office and carry extraordinary consequences. So profound is the threat to the rule of law that the individual cannot be entrusted with political power, nor the responsibilities of public office.

From Machiavelli to the Founders, we have long had some understanding of the potent perils of political power; we have learned anew that the most dangerous among us are those knowingly on the cusp of losing power (Machiavelli 1531, Chapter V; Hamilton, *The Federalist No. 72*). History teaches that the “power to command frequently causes failure to think”; “[c]hief among the forces affecting political folly is lust for power” and that, because “it can only be satisfied by power over others, government is its favorite field of exercise” (Tuchman 1984, at 32 and 381). The bottom line? A system of self-government is only as good as the people elected to serve in it, and the people who elect them. It can be strong, resilient and self-correcting but also carry great risk of being fragile and self-destructive; a difference between the attacking mob and staff saving official papers from them. In the final analysis, there are only parchment

barriers to the tyrannical concentrations of political power; success or failure depends entirely upon the members of the polis who are the ultimate source of power. No system of government can save us from ourselves.

Armed with this understanding and steeled by our lived experience, we can take the occasion of inauguration to renew our promises to each other as citizens and to demand better, honest leadership. It is ultimately on we the people to ensure that the stress test of the parchment barriers of our government leaves only historical lessons. It is our responsibility to see that the gift of self-government we have inherited does not suffer damage so incalculable and irreparable that it cannot be passed to our progeny. Only reason can ensure that democracy does not die on our watch (Levitsky and Ziblatt 2018).

Reason recognizes that there is no respect in lies or pandering and that those who traffic in such matters do not demonstrate respect but the opposite; in those to whom they lie and pander they see only marks for their con. Respect is found in honesty and truth. Repairing the damage requires that we confront these lies of a Lost Cause because “[a]ll Lost Causes find their lifeblood in lies, big and small, lies born of beliefs in search of history that can be forged into a story and mobilize masses of people to act politically, violently, and in the name of ideology” (Blight, [January 9, 2021](#)). The Lost Cause before us was built on a lie so big that it must be believed against all discernible fact, reason and common sense; a lie that must be accepted as a matter of faith in those telling it. It is not new to us; today’s lie is rooted in the Lost Causes of the past and it recycles from a deep well of hate, grievance and pain (Wilkerson 2020).

The truth is Donald Trump did not win the 2020 presidential election; in fact, it was not particularly close. Trump lost the popular vote by more than 7 million votes. As reported, **81,283,563** (51.3%) Americans voted for Joe Biden and Kamala Harris, while **74,223,433** (46.8%) Americans voted for Donald Trump and Mike Pence ([The New York Times](#)). The Electoral College vote was not close: **306** electoral votes (56.9%) for Biden-Harris, **232** electoral votes (43.1%) for Trump-Pence ([National Archives](#)). No substantive fraud that would change the outcome of the election has been found. These indisputable facts have been validated in courts and certified by Congress; anything to the contrary is a lie. Moreover, any effort to elevate the 74 million voters at the expense of the 81 million voters is also dishonest and pandering.

This contemplation concludes with an acknowledgement that we have much work to do for an America precariously perched on a big question about the path we take, that of January 6<sup>th</sup> or that of January 20<sup>th</sup>. The former can only lead to a brutal recycling of the worst in our past; it points to something that looks awfully similar to 1861. The latter, if we look far enough ahead, leads towards the more perfect union promised in our founding document but not yet achieved. We can recognize the paradox in the America that we are without diminishing or denigrating ourselves. We can be the Nation founded upon the grandest of principles notwithstanding the fact that the Founders were imperfect men, many of whom brutally enslaved their fellow humans.

Down the path lighted by the inaugural messages is true exceptionalism in becoming the first nation in human history to share power across racial, ethnic and gender fault lines; humankind’s first completely democratic republic (NPR *Morning Edition*, [Nov. 3, 2020](#)). One necessity implicit in successful navigation is the participation of American agriculture writ large. From property rights to regulatory exemptions and direct federal assistance, the system bestows a disproportionate share of society’s benefits on a sector that bears a disparate share of the Nation’s most troublesome historical baggage. Without the capability to feed itself, however, no society can succeed or long survive. This reality is no free pass from responsibility in these matters but rather an appeal for it. It is time for those of goodwill and reason to choose to help lead the effort to heal and repair; to add their shoulders to the burden of restoring trust in the system; to lend their hands to the task of building a more perfect union that lives up to its principles and meets its promise.

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