



Trump’s potential SCOTUS appointee thinks America took a wrong turn when women got the vote

But let’s keep talking about Hillary’s pneumonia instead.

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Peter Thiel, a libertarian billionaire known for funding a lawsuit seeking to destroy the media company behind the website Gawker, is a leading candidate for the Supreme Court in a Trump administration, according to reporting by the Huffington Post’s Ben Walsh and Ryan Grim.

Thiel, according to a source consulted by Walsh and Grim, told friends that Trump will nominate him to the Court if the GOP nominee is elected president. Another source confirms that members of Trump’s “inner circle” consider Thiel a potential justice. Spokespeople for both Trump and Thiel deny these claims.

Though Thiel’s early career resembles that of a potential future justice—he graduated by Stanford Law School and clerked for a federal appeals court judge—Thiel abandoned the practice of law very early to pursue a career in business. Accordingly, he has very few of the qualifications typically held by a judicial nominee and is unlikely to have the same grasp on legal doctrine as a professional lawyer or judge.

Indeed, in 2012, the conservative Federalist Society asked Thiel to deliver its annual Barbara K. Olson Memorial Lecture. It is one of the most prestigious and high-profile platforms offered by the influential legal group—past speakers include former Vice President Dick Cheney, Chief Justice John Roberts, and the late Justice Antonin Scalia. And yet, speaking before an audience of many of the nation’s leading conservative lawyers and judges, Thiel barely discussed legal matters at all, and what he did say betrayed only a passing knowledge of the underlying doctrines.

The bulk of Thiel’s speech outlined his pessimistic belief that economic and technological growth is slowing. He mentioned the law and the Supreme Court only a few times in the speech, and then only briefly. Those brief mentions, however, did suggest that Thiel would make radical changes if he had the power to reinterpret the Constitution.

Thiel blames the alleged slowdown, at least in part, on “mischief that has happened on the legislative, left-wing legal side” which has permitted the rise of “environmentalism”—a statement which suggests that, as a justice, he would be very sympathetic to arguments raised by lawyers active within the Federalist Society, which seek to hobble the federal government’s ability to protect the environment. In an even more drastic departure from widely

accepted legal and economic doctrine, Thiel attacked a series of decisions which enabled America to abandon the gold standard, claiming they destroyed money's "link to something real."

Thiel's belief that the gold standard was a good idea is not shared by, well, pretty much anyone who knows anything at all. As Matthew O'Brien explained in the Atlantic,

Economics is often a contentious subject, but economists agree about the gold standard—it is a barbarous relic that belongs in the dustbin of history. As University of Chicago professor Richard Thaler points out, exactly zero economists endorsed the idea in a recent poll. What makes it such an idea non grata? It prevents the central bank from fighting recessions by outsourcing monetary policy decisions to how much gold we have—which, in turn, depends on our trade balance and on how much of the shiny rock we can dig up. When we peg the dollar to gold we have to raise interest rates when gold is scarce, regardless of the state of the economy. This policy inflexibility was the major cause of the Great Depression, as governments were forced to tighten policy at the worst possible moment.

Indeed, as economist Brad DeLong notes, nations began to emerge from the Great Depression at about the same time that they abandoned the gold standard.

So, while Thiel's views on the law do not appear to be especially well developed, he also appears eager to upend fundamental assumptions that are widely shared by nearly everyone in the fields of law and economics, even though the consensus view is that overturning those assumptions would be catastrophic.

Oh, and there's one other thing.

In an essay published by the Cato Institute, an influential libertarian think tank, Thiel questioned the very idea that the right to govern flows from the will of the governed. "I no longer believe that freedom and democracy are compatible," Thiel claimed. He added that he thinks America made a serious wrong turn when it began extending basic human rights to women and poor people.

The moment when it all went wrong, according to Peter Thiel.

"The 1920s were the last decade in American history during which one could be genuinely optimistic about politics," Thiel claims about the decade that culminated in the single worst economic calamity in American history. "Since 1920," he adds, "the vast increase in welfare beneficiaries and the extension of the franchise to women—two constituencies that are notoriously tough for libertarians—have rendered the notion of 'capitalist democracy' into an oxymoron."

In fairness, Thiel later attached additional remarks to his Cato essay, where he walked back his attack on women's suffrage somewhat. "While I don't think any class of people should be disenfranchised," Thiel said, "I have little hope that voting will make things better."

So what are we to make of Trump's reported flirtation with a Justice Peter Thiel? After the Huffington Post's piece went live, several journalists dismissed the risk of a Thiel appointment, suggesting that he would face widespread opposition.

Maybe Sarlin and Hayes are right. But here's the thing, Thiel is hardly treated as an unconfirmable pariah by the American right. To the contrary, the Federalist Society and the Cato Institute are two of the nation's preeminent conservative organizations. The Federalist Society, in particular, played a major role in helping select President George W. Bush's judicial appointments. And Trump has said that he will defer to the Federalist Society when he names judges in the past. (Though, in fairness, he's also said that he would pick Supreme Court nominees from a much more conventional list of judges in the past as well.) If Cato and the Federalist Society are willing to vouch for Thiel, it is far from clear that Republican senators will rebel.

Moreover, Thiel's views, while out of place among mainstream thinkers, are increasingly common among right intellectuals. Consider his Cato essay, for example. The main thrust of that piece is not that women shouldn't be allowed to vote, but that democratic values are the enemy of the libertarian society Thiel would prefer to live in. "The great task for libertarians," according to Thiel, "is to find an escape from politics in all its forms—from the totalitarian and fundamentalist catastrophes to the unthinking demos that guides so-called 'social democracy.'"

Thiel claims that technology will effectively enable privileged libertarians such as himself to go Galt—among his more speculative ideas is "because the vast reaches of outer space represent a limitless frontier, they also represent a limitless possibility for escape from world politics." But his general idea that democracy is the enemy is not limited to libertarians who believe they must shoot themselves into space in order to build their billionaires' paradise.

Consider Randy Barnett, a leading libertarian scholar who rose to prominence after his unsuccessful efforts to convince a majority of the Supreme Court to repeal the Affordable Care Act. In a recent book, Barnett distinguishes between what he calls the "Democratic Constitution," a constitution that preferences the will of the people, and the "Republican Constitution," which stands athwart democracy yelling stop. Under Barnett's Republican Constitution, libertarian boogiemens such as Obamacare, the minimum wage, and the right to join a union are all killed with fire.

The primary difference between Thiel and Barnett is that Thiel appears to believe that libertarians must remove themselves from ordinary politics in order to build their dystopia, while Barnett believes that libertarians can build it right here in the United States of America if only the right people control the Supreme Court.

If Thiel is willing to accept Trump's nomination to sit on the Supreme Court, that will be a pretty good sign that he's embraced Barnett's charge to reshape America in his own image.