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The World Ends in 2021

#Nevertrump has a conveniently short time horizon.

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A pair of legal scholars, John McGinnis of Northwestern University ([here](#) and [here](#)) and Ilya Somin of George Mason University ([here](#) and [here](#)), have been carrying on a spirited debate as to which would be worse from the standpoint of what is commonly called conservative jurisprudence, a Donald Trump presidency or a Hillary Clinton one. (McGinnis describes himself as a classical liberal, and Somin is affiliated with the libertarian Cato Institute. But both are exponents of conservative jurisprudence, a rough shorthand that serves the purpose for this discussion.)

It's a somewhat peculiar debate, in part because the answer seems like a no-brainer, notwithstanding Trump's manifest lack of knowledge about, and interest in, jurisprudence (beyond cases to which he is a party). McGinnis:

After Donald Trump's announcement of eleven judges whom he would consider appointing to the Scalia vacancy, many libertarian and conservatives commentators still doubted that Supreme Court appointments were a good reason to support Trump in the general election. They conceded that that [sic] those on his list were generally excellent candidates, but suggested that Trump could not be trusted to appoint people like them. . . .

I believe there is a substantial probability, even a likelihood that Trump would follow through on his judicial promises. Trump will need Republicans to govern. Democrats will oppose him. And little is as important to the base of the Republican Party as appointing justices who oppose the living constitutionalism of the Left. Conceding this issue to the base will give Trump a freer hand to pursue some of his actual core (and in my view very bad) policies that are more heterodox, like opposition to freer trade.

Mrs. Clinton, by contrast, would nominate reliable liberal justices, just as Bill Clinton and Barack Obama both did:

She would fill the Scalia vacancy with a justice antithetical to his methodological commitments. (Republicans would then be unlikely to retain the Senate and would in any event have difficulty holding out after an election in which the Democratic candidate won a mandate). This appointment would create a new liberal majority on the Court. And Justice Ginsburg would resign and be replaced by a younger and more radical version of herself. Anthony Kennedy's seat may also become vacant.

To the list of potential vacancies we would add the seat of Justice Stephen Breyer, whose ninth decade will begin during the next presidential term.

If Mrs. Clinton appoints three justices—or she and Obama do so together, since a lame-duck confirmation of Judge Merrick Garland is a possibility should she be elected—the result would be not only a liberal majority but, in all likelihood, a *young* liberal majority. Garland, who will be 69 as of Inauguration Day 2021, would almost certainly be the oldest of the group.

That Trump would be not just less than ideal but *worse* in this regard strikes us as the sort of idea so absurd only an intellectual could believe it. Somin is such an intellectual. Yet his arguments are worth taking seriously, if only because they expose a fundamental flaw in the entire Nevertrump line of reasoning.

Somin's case begins with the premise, undoubtedly correct, that Trump is not an ideological conservative in the mold of Reagan—and further, that unlike other recent GOP nominees, who've had their heterodoxies, he aims to change the party's ideological orientation in fundamental ways:

He wants to remake the GOP into a “workers party” (as he himself calls it), similar to the big-government right-wing nationalist parties of Western Europe, such as France's National Front. Like Trump, these parties combine xenophobia and protectionism with a strong authoritarian streak, and support for an expansive welfare and regulatory state (so long as the beneficiaries are primarily people of the “right” racial and ethnic background).

This characterization seems to us overwrought in some respects, but let's concede the basic point that Trump is ideologically something new under the Republican sun. Somin argues that even if President Trump appoints some old-fashioned conservative justices, the party's ideological reorientation would, in the long run, have a deleterious jurisprudential effect:

If Trump wins the presidency and his agenda is seen as a political success, he will have the opportunity to move the GOP further in a National Front-like direction. And a Trumpist/National Front party will have little use for limited government-originalist judicial philosophy. To the contrary, federalism, the separation of powers, and many individual rights limitations on government power would be an impediment to its agenda. A Trumpist GOP would, over time, seek to appoint judges in line with its priorities.

Somin acknowledges that “we don't yet know what the full contours of a Trumpist judicial philosophy might be”—no small understatement. He then offers some speculations as to what they could look like, about which it suffices to say we are with him in finding the picture he paints unattractive.

We do not fault Somin for taking the long view here, or for considering the worst-case scenario. But here is the problem: When it comes to evaluating the possible consequences of a Trump defeat at Mrs. Clinton's hands, he acts as if the world ends in 2021. That short time horizon is convenient for his argument but potentially disastrous for his objective.

Example: He opines that McGinnis “may . . . be excessively pessimistic in thinking that [Mrs.] Clinton would get two or even three Supreme Court appointments, if she wins.” He acknowledges that Anonin Scalia isn't coming back, but he scoffs at the idea that Ruth Bader Ginsburg would retire—after all, she hasn't done so before. Seriously, that's his argument:

Justice Ginsburg has resisted liberal pressure to resign before (in 2011-12 and again in 2013-14), and she may well prefer to serve for as long as she is physically able. That could turn out to be another four years, or even longer.

He also doesn't think Justice Kennedy would voluntarily leave the bench during a Democratic presidency. But then neither, one supposes, would Scalia have. At some point every justice departs, whether voluntarily or not.

If Mrs. Clinton is elected *and re-elected*, then by the end of her time in office Ginsburg would be 91, Kennedy 88 and Breyer 86. The likelihood of a youthful (by Supreme Court standards) and therefore enduring six-justice liberal majority seems perilously high.

It is true that conceding the 2016 election to Mrs. Clinton, as the Nevertrumplings urge, would not ensure her re-election four years later. But it would open the possibility—a possibility we have not seen seriously addressed in any of the voluminous Nevertrump literature we've reviewed. The plan seems to be along the lines of the Underpants Gnomes of "South Park": 1. Throw the 2016 election; 2. ?; 3. Conservative victory in 2020!

Electoral politics beyond 2016 lies beyond the scope of Somin's argument but is highly relevant to it nonetheless. What makes Nevertrump conservatives so confident in their ability to win in 2020? We'd venture to say it's more a matter of complacency than confidence.

"Movement conservatism" of the Goldwater-Reagan variety has been the Republican Party's dominant ideology since about 1980. Even presidential nominees with doubtful conservative bona fides, from George H.W. Bush in 1988 through Mitt Romney in 2012, were sufficiently beholden that conservatives found it easy to put aside their doubts and vote for them. Again, in this regard Trump is a departure.

But in the past quarter-century Republicans have had little success in presidential elections. In only one of the past six, in 2004, did the GOP nominee receive a majority of the popular vote. George W. Bush of course also won the tie election in 2000, though he might not have if the U.S. Supreme Court had declined to intervene (at some institutional cost) to stop the Florida Supreme Court's effort to steal the election for Al Gore.

Republicans won seven of the 11 presidential elections during the Cold War (1948-88). Since the Cold War ended, they've won only two of six, and the only decisive victory came at a time when the country was on a war footing. Not since 1928 has a Republican won a majority of the popular vote during peacetime. It is a reasonable hypothesis that the modern Republican Party—which for decades has meant the "conservative" party—is at a natural disadvantage, which it overcame in earlier decades (and in 2004) only through superior leadership in the international arena.

If that is true, why would one expect a traditional conservative nominee to beat Mrs. Clinton in 2020? Perhaps she would pursue a feckless foreign policy, à la Lyndon Johnson or Jimmy Carter, restoring the Republicans' "war" advantage. Maybe the Bernie Sanders insurgency portends a fracturing of the Democratic coalition, creating an opportunity for the GOP. Other things could go wrong for Mrs. Clinton. But it seems foolish simply to bet on disaster.

Somin worries, not without reason, about what will happen "if Trump wins the election and manages to recast the GOP in his image": "A president who is perceived as politically successful

usually has a substantial impact on his party's agenda, as other politicians will seek to mimic his platform in order to share in the electoral spoils."

The GOP is likely to be recast even if Trump loses. For some time now, Republicans have agonized over how to expand their appeal. Some Nevertrumplings have written of rebuilding the "conservative movement" after purging it of all those who have been "tainted" by their support for, or insufficient opposition to, Trump. That is a plan for contracting the party's appeal, not expanding it.

But the talk of purges is a fantasy anyway—an empty threat. Fred Barnes and John O'Sullivan still appear on the mastheads of the Weekly Standard and National Review, respectively, notwithstanding their deviations from the Nevertrump line. Even if Trump loses, it is quite possible that "Trumpism" will turn out to be an ascendant force in the GOP, just as movement conservatism did after Barry Goldwater got trounced in 1964.

As Somin acknowledges, "Trump is not completely isolated in the GOP, and there are others in the party's base who share his commitments." Win or lose, Trump supporters and movement conservatives will have to make some accommodation if the GOP is to remain a viable means of exercising political power. That, not the enforcement of ideological purity, is the purpose of a political party.

Somin hints at the alternative, concluding with a quote from Alexander Hamilton that is a favorite of the Nevertrump right: "If we must have an enemy at the head of government, let it be one whom we can oppose, and for whom we are not responsible."

Hamilton said that in 1800, in urging fellow Federalists to oppose the re-election of John Adams. Hamilton got what he wanted, as Thomas Jefferson prevailed. That worked out badly for Hamilton, who was killed in an 1804 duel by Jefferson's vice president.

No such end awaits Trump's Republican and conservative detractors in the 21st century. But consider the fate of the Federalist Party: It never won another presidential election and had gone extinct by 1824.

Vacuous Truth

"Gary Johnson Says He Won't Smoke Pot as President"—headline, Washington Examiner, June 7

Diagram This Sentence

"The Justice Department asked a federal judge Monday to accept 'additional details' under seal about how the FBI conducted its search for records a Vice News journalist requested under the Freedom of Information Act from the law enforcement agency about the probe it is conducting into Clinton's email set-up and how classified information came to reside in the Democratic presidential candidate's account."—Josh Gerstein, Politico.com, June 6

Other Than That, the Story Was Accurate

"An article on Friday about Britain's historic feeling of being apart from Europe as it considers whether to leave the European Union referred imprecisely to arrival protocols at British airports and to British passports. Only passengers from non-European countries are given British landing cards upon arrival, and they would not be directed to the line for British and European Union

passport holders. Some holders of British passports—for example, citizens of overseas British territories like Bermuda and Turks and Caicos—do not hold European Union citizenship as well; it is not the case that “British passports are by definition European Union passports.”—New York Times, June 8

We Blame George W. Bush

- “Sanders Aides Pin Blame for His Loss on Bernie Sanders”—headline, [TheWeek.com](#), June 8
- “Mitch McConnell Complains About ‘Unreasonable’ Conservatives, Points Blame at Talk Radio”—headline, [Daily Signal](#), June 8

What Would We Do Without Experts?

“Clinton Should Focus on Reaching Out to Sanders Supporters, Experts Say”—headline, [CNBC.com](#), June 7

Make That 6

- “4 Reasons Skeptical Conservatives Should Vote Trump”—headline, [WND.com](#), May 17
- “U.S. Soccer Boss Hints Trump Presidency Could Cost U.S. the World Cup”—headline, [Deadspin.com](#), June 7
- “Cher: Trump Makes Me ‘Want to Blow My Brains Out’ ”—headline, [Washington Examiner](#), June 7

Hypothesis and Proof—I

- “Neanderthals Are Still Human!”—headline, [Institution of Creation Research](#) website, undated
- “Losing Ugly: Bernie Sanders’ Neanderthal Moment”—headline, [Detroit Free Press](#), June 8

Hypothesis and Proof—II

- “‘Bad Goldilocks’ Emerges as Market’s Worst Enemy”—headline, [CNBC.com](#), Feb. 19
- “3 Bears Euthanized After Destroying Property in Durango”—headline, [Associated Press](#), June 7

Generalissimo Francisco Franco Is Still Dead

“Why Do People Still Use the Word ‘Mistress?’ A Reporter Reflects”—headline, New York Times website, June 7

Hey, Kids! What Time Is It?

“McConnell: Time for Trump to ‘Act Like a Serious’ Candidate”—headline, [WeeklyStandard.com](#), June 7

Look Out Below!

“Yes, Republicans Could Still Dump Trump”—headline, [Bloomberg](#), June 7

News of the Tautological

“Jessica Valenti Confirms Feminism Is Now Just About Whining”—headline, [Federalist](#), June 7

Bottom Story of the Day

“Billionaire Environmental Activist Tom Steyer Endorses Clinton”—headline, Reuters, June 8

Civility!

From Stephen Henderson, editorial page editor of the Detroit Free Press (with a hat tip to Mollie Hemingway):

We really ought to round up the lawmakers who took money to protect and perpetuate the failing charter-school experiment in Detroit, sew them into burlap sacks with rabid animals, and toss them into the Straits of Mackinac.

That’s harsh. Maybe.

But isn’t that what the Romans or Greeks or some other early practitioners of democracy used to do with solicitous and unprincipled public officials?

Because he has to write a certain number of words, Henderson repeats the murderous fantasy in the same column:

It is every bit deserving of an old-school retributive response.

A sack. An animal. A lake.

No lover of actual democracy could weep at that outcome.

Donald Trump has certainly lowered the level of American political discourse, hasn’t he?