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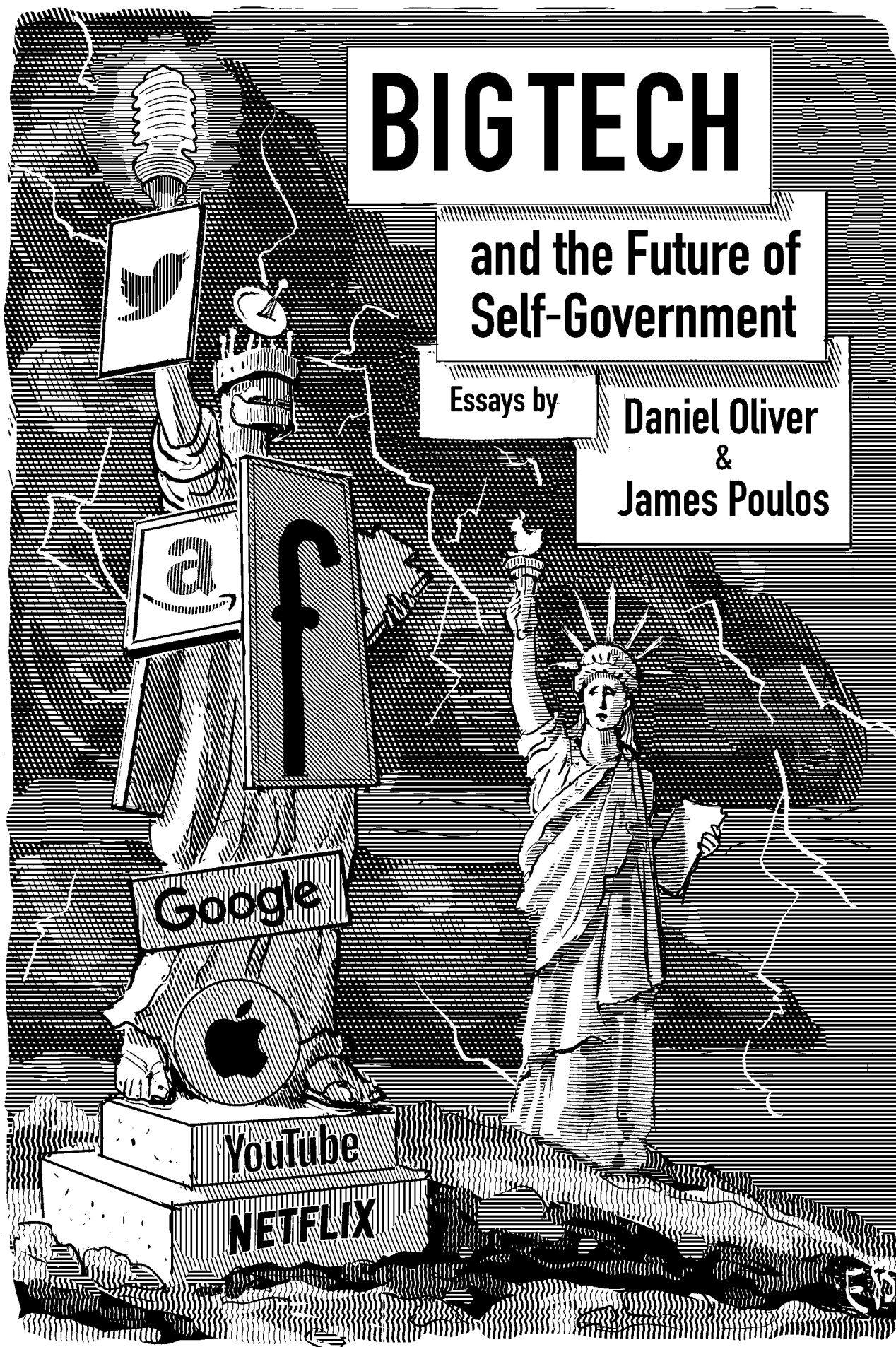
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CORRESPONDENCE

Calling the Election

Andrew E. Busch does a good job of explaining the recent election but seems flippant about a couple of important points (“Why Trump Lost,” Winter 2020/21).

Busch acknowledges “the most unbalanced coverage of a president in modern times” and describes “almost all major newspapers, all major networks but one, and all social media empires serving as Democratic Party adjuncts.” That’s a fair depiction of the media situation vis-à-vis Trump and the 2020 election, and Busch even acknowledges that those complaining about the energetic partisanship of the media “have a point.” Then he dismisses it all with: “But it is too easy to blame the media.”

Busch observes, too, that “numerous key states dramatically (and perhaps unconstitutionally) altered their voting rules and procedures without consent of the legislature.” The media adjuncts have said repeatedly that these states went to that kind of trouble out of an altruistic impulse to provide the public with free and fair elections during a pandemic. More likely, they took these numerous steps, especially in the so-called “swing states,” in order to commit fraud. Yet we have a steady chorus from establishment

figures of all political stripes that there’s just no evidence that anything was untoward.

Regarding the media, no casual dismissal of their behavior during (or before) the Trump years will help us confront their pernicious toxicity and everything that it implies for the country’s future. Or if you prefer: they will not suddenly become competent, honest, and principled. Just look at how they cover President Biden’s ice cream preferences and early bedtimes while all but ignoring the gaffes, unilateral actions, and, yes, scandals that would have them hyperventilating under a Republican administration.

Regarding electoral practices, Busch says “fraud does occur in the United States.” That may be, but look at the track record: beginning with the IRS’s harassing of conservative organizations before the 2012 election, stretching through the attempted 2016 fraud by agencies of government conspiring with one party, to the frauds that turned numerous elections in California in 2018 (and the one cited by Busch in North Carolina that same year), so that by 2020, it’s not simply that we have fraud, it’s that we have an establishment that covers for it. That establishment is sounding increasingly irritated that not everyone buys their false assurances. A good extrapolator can probably figure out where this is heading.

To varying degrees, the post-mortem essays that follow Busch’s accept his vague implication that some of these other aspects warrant a mention but the real problem was Donald Trump’s character flaws. Even if Trump were like all other American politicians apparently are—flawless, selfless, principled beacons of freedom and prosperity—chances are pretty good that’s not how he’d be depicted by the media.

Roger Ruvolo
Riverside, CA

Andrew Busch did not make his case with regard to President Trump’s loss. His indictment of Trump is, in effect, specious. We would have been better served if Busch had asked why and how Joe Biden won, especially in the states that violated their own constitutions or laws. Plus, why did the judiciary refuse even to consider the substantial evidence of voter fraud? For the least popular ticket in my lifetime, which did not campaign on anything except not being Trump and which had nothing to say about the looting, riots, and arson throughout summer 2020, to have received some 80 million votes defies common sense, irrespective of polls. For an incumbent president to have received some 75 million votes, including the largest number for re-election of a president in history, unexpectedly increasing down-ballot wins (despite polls), and carrying all the bellwether states to have lost is literally nonsense. The Democrats, Silicon Valley, and the media—longstanding masters of deceit—seized the opportunity of the coronavirus to accelerate their assault on the American republic of the people, by the people, and for the people. The 2020 election was flat-out stolen.

Philip Melita
Charlottesville, VA

Andrew E. Busch replies:

Mr. Ruvolo points to several arguments in my essay, expresses agreement with them—the media were tilted against Trump, fraud is a real thing in American elections, and numerous election changes around the country that hurt Trump were legally dubious—and protests that I didn’t take my own arguments seriously enough. It is, of course, impossible to know with certainty the full effect of these phenomena. My point is that President Trump did not come close to meeting the burden of proof required to show

that certified election results should be overturned, and that the certified results were not too difficult to predict.

As is usually the case, the simplest explanation is the most likely one. In this instance, given Trump’s longstanding unpopularity and difficult conditions in the country, one does not need to rely on more exotic theories to explain his defeat. Nowhere in my essay (or in any other piece I have ever written) have I suggested that all other politicians are paragons of virtue. As Biden has proved, however, one can be very far from a paragon of virtue and nevertheless appear to a decisive segment of Americans as preferable to Trump. As I mentioned in the essay, the president won narrowly among the three quarters of voters who said issues were most important to them, but lost by a 2-1 margin among the quarter who said personal qualities were most important. It is simply not plausible to deny that Trump’s personality (or, if you will, character and temperament) played an important role in his defeat. The country is now paying the price.

As Mr. Ruvolo notes, Mr. Melita’s point respecting constitutionally dubious election changes made by several states is one that I actually did make, saying,

In fact, the Trump campaign’s strongest argument had nothing to do with fraud but with the way numerous key states dramatically (and arguably unconstitutionally) altered their voting rules and procedures without consent of the legislature. (The Pennsylvania legislature also adopted an important change that seemed to violate its state constitution.) But these were legal battles that should have been fought months or years before election day.

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I don't doubt, as Melita says, that the Democrats and their allies in media and Big Tech took advantage of COVID-19 to tilt the playing field, but this is a separate question from fraud or "stealing" the election. How and why Biden won is, of course, the flip side of the question of how and why Trump lost. Biden won exactly as Melita incredulously suggests, by *not being* an unpopular incumbent buffeted by a variety of crises—which is how most presidential challengers who win do so. To say Biden's victory defied common sense "irrespective of polls" is essentially to say that we should simply ignore the fact that Trump's average approval rating never broke 50% and that survey averages indicated that his advocates were outnumbered by his detractors on every single day of his presidency after January 27, 2017. I have dealt with Mr. Melita's other points in the article itself, as well as in greater depth in *Divided We Stand: The 2020 Elections and American Politics*, co-authored with John J. Pitney, Jr., just published by Rowman & Littlefield. There they receive the extended attention they deserve, which cannot be replicated here without producing a response longer than the original article.

Free Speech and Equality

In his review of my book *What Snowflakes Get Right*, Keith Whittington fears for the future of American higher education ("Speaking Power to Truth," Winter 2020/21). "If given free rein, Ulrich Baer's version of a university is unlikely to resemble the kind that has made American higher education the envy of the world.... The buildings might survive, but there is no guarantee that free and open inquiry will." Professor Whittington is correct that American universities will not resemble their current state in a few decades. But he is wrong to think

that my ideas will result in an academic apocalypse. They can contribute to the urgently needed transformation of today's universities challenged by digital technologies, changing demographics, waning trust in expertise, and globalization. Searching for the right balance of the interlocking rights to freedom and equality can create universities that surpass today's finest institutions.

Whittington accuses me of inflexibly holding on to an immutable creed, perhaps not unlike the idea of "absolute free speech" held by others. This belief, he maintains, directly contradicts the university's purpose of subjecting even the most self-evident truths to examination and debate.

[Baer] thinks modern democracies, and by extension university campuses, are committed to a creed—non-negotiable, non-debatable, and unquestionable. Central to that creed is the "principle of equality." Anyone who disputes this principle threatens the community and should be suppressed and excluded.

Indeed, I believe that modern democracies and universities are committed to equality as an inalienable, constitutional principle. I happily find this "creed" of equality imposed by federal law on all accredited U.S. universities with public funding. There should be robust debates on the meaning of equality or the best ways to achieve it. But the university undermines its mission when it invites speakers who do not only argue about equality but deny this foundational principle altogether.

Prof. Whittington names the stakes: "If the question is whether neo-Nazi activist Richard Spencer should give an academic talk sponsored by the political science department, then the answer is an easy one. But no one thinks that is the question." Based on my service in university leadership and 26 years of teach-

ing, I know that many people, including university presidents, trustees, faculty, and students, consider it a central question whether a "neo-Nazi activist" should speak on campus. Once there is a controversy, people rightly ignore the institutional divisions between the political science department—loathe to host a firebrand—and the university. If "the answer is an easy one" to such situations, these controversies should not concern the CRB's readers.

The "snowflakes" in my book's title expect the university to uphold the legally mandated right of equal participation, via Title IX passed in 1972, in all university-controlled spaces. When the university hosts speakers who declare that some students are not fully human and therefore do not qualify for legal protection, students consider the university's sponsorship to be an endorsement. Whittington wants everyone to know that an invitation is not such an endorsement of a speaker's views. But as Columbia University President Lee Bollinger has shown in a landmark study, there are no self-evident boundaries separating hosting, toleration, and condonation. The university's principles are engaged in every instance of speech, and thanks to social media, a visiting speaker's views are instantly compared to a university's legal commitments to equality and its norms and values.

Keith Whittington believes that my "notion of what counts as a view that is too controversial to be aired on a college campus would likely encompass ideas held by the bulk of the American citizenry and a non-trivial fraction of the professoriate." In contrast, I believe that the view I consider controversial—that some persons do not count as fully human—is disavowed by most Americans and all members of the academic community once they join it.

Ulrich Baer
New York University
New York, NY

Keith E. Whittington replies:

I, of course, agree entirely that American universities have legal obligations to ensure that students are equally able to take advantage of their educational opportunities, and particularly that neither the university nor its employees discriminate against or harass students. Universities can quite appropriately take steps to make sure that the members of the faculty understand their legal responsibilities and live up to them. If what was at stake in debates about equality and diversity on college campuses was compliance with the law, then the issue would be important but not especially controversial.

That, however, is mostly not what is at stake in current debates about equality and diversity on college campuses. Instead, the debate is whether we are allowed to discuss freely basic questions of scholarly interest that implicate disputes about the principle of equality, its priority relative to other values, and its implications for social and political practice. It is of a great deal of significance whether it is possible to engage in public discussions about the merits and demerits of affirmative action, the scholarly foundations of implicit bias tests, and the significance of racial bias as a driver of economic or educational outcomes, and yet those discussions are under increasing threat at universities that ought to be venues for frank and robust debate.

It is an extraordinarily sweeping, and legally flawed, claim to assert that if neo-Nazi Richard Spencer is allowed to rent a publicly accessible auditorium on a college campus then students have had their statutory rights of equal educational opportunity violated. That is neither university sponsorship nor endorsement, and students should be educated to understand the difference. By Baer's standard, if Spencer were even to stand on a milk crate on the public sidewalk alongside a public university to spout his political views, then universities would have an obligation to shut him down. In-

deed, perhaps the municipal police would have an obligation to arrest him because someone might feel harmed by the existence of unpleasant speech and have been told that there is no important difference between the government tolerating hateful speech and engaging in hateful speech. Not much is left of the principle of free speech if we cannot recognize a principled distinction between tolerating and endorsing speech.

But perhaps Baer really does want to reduce the campus free speech debate entirely to the question of whether Richard Spencer should be allowed on a college campus. That is an interesting theoretical question but not a very important practical one. We learned in 2018 that if we simply ignored Spencer and did not give him the attention he craves then he would soon lose interest in campus appearances and would find something else to do. But the students that Baer defends do not limit themselves to accusations that Spencer alone denies that some people count as fully human. That is instead the common complaint against any professor or outside speaker who questions any element of current campus orthodoxies regarding a host of topics involving personal identity, and such complaints are soon followed by the demand that the offender be de-platformed, unpublished, or fired. If we are going to consider whether the “snowflakes” are getting anything right, then we should not obscure what they are in fact saying and doing.

Chinese Characters

I thank James Hankins for his appreciation of my book *You Will Be Assimilated: China's Plan to Sino-Form the World* (“What Kind of Realism Toward China?” Winter 2020/21), but would like to clarify a couple of points, in particular what I mean by “Sino-forming.” Hankins emphasizes

“the deceptive way China deploys infrastructure aid to developing countries—what has been called its ‘debt-trap diplomacy.’” That is the standard accusation against China, and there is some truth to it. But my argument was different. I am less worried about what China does wrong than about what it does right.

What makes China such a formidable contender for world influence is the transformational impact of the infrastructure it builds around the world, especially broadband and its downstream applications. Hundreds of millions of people who languish in the so-called informal economy are being integrated into global markets through cheap and ubiquitous broadband, as dozens of countries attempt to reproduce aspects of China’s development model with Chinese help.

I saw some of this firsthand. Between the mid-2010s, when I introduced Huawei management to Mexican officials, and 2019, mobile internet lines have grown to 77 per 100 inhabitants from just 23. If the United States and its allies cannot mount a credible competitor to China’s global outreach, including the Belt and Road Initiative, China’s power will wax greater.

From its earliest origins 5,000 years ago to the present, Chinese civilization has expanded through large-scale investment in infrastructure (initially for irrigation and flood control), directed by an administrative (“Mandarin”) caste. By those means a small civilization in the Yellow River valley assimilated its neighbors and created the Chinese Empire. China now hopes to assimilate as economic dependencies great swaths of Eurasia as well as much of Africa and Latin America.

Hankins was provoked by the title of my Introduction (“Everything You’ve Heard About China is Wrong, or Not Right Enough”). These misperceptions parse into two themes, namely, the conviction that China couldn’t possibly succeed because it is authoritarian and the fond

belief that America can “engage and empower the Chinese people” (in Mike Pompeo’s words) while treating the Chinese Communist Party (CCP) as a passing aberration. That is the nub of Hankins’s assertion that Chinese political reform might be inspired by “Confucianism,” as opposed to the “Legalism” of the Qin and, in his view, today’s Communist regime. Confucianism, he avers, “rejects predatory state behavior as un-Chinese and inhumane.”

I didn’t address the matter in my book because I think it mainly of academic interest; Chinese universities today teach more Kant than Confucius, and one might think of China’s technocratic authoritarianism as a Kantian *Vernunftstaat* (rational state) minus Kant’s precept that the human person must always be an end rather than a means. But Hankins’s attempt to draw a bright line between “Legalism” and “Confucianism” strays from the mainstream scholarly view. As Professor Victoria Tin-bor Hui observes, “The problem is that the actual Chinese tradition is better characterized by Legalism than by Confucianism.... [M]any Chinese mistake Confucianism as the single Chinese tradition because Chinese rulers ingeniously followed ‘Legalism with a Confucian façade.’” Confucianism teaches benevolence on the part of the powerful; nowhere does it assert that the powerless possess inalienable rights.

As evidence for China’s propensity to reform, Hankins cites his interaction with Chinese students. Surely that is a textbook case of sample bias; there is a difference between Chinese who choose to come to America and those who choose to stay home. Tens of millions of Chinese yearn for personal freedom and a voice in government, and many come to America to find it. They are a small minority of the 1.4 billion Chinese, but a larger proportion of China’s most innovative entrepreneurs and engineers.

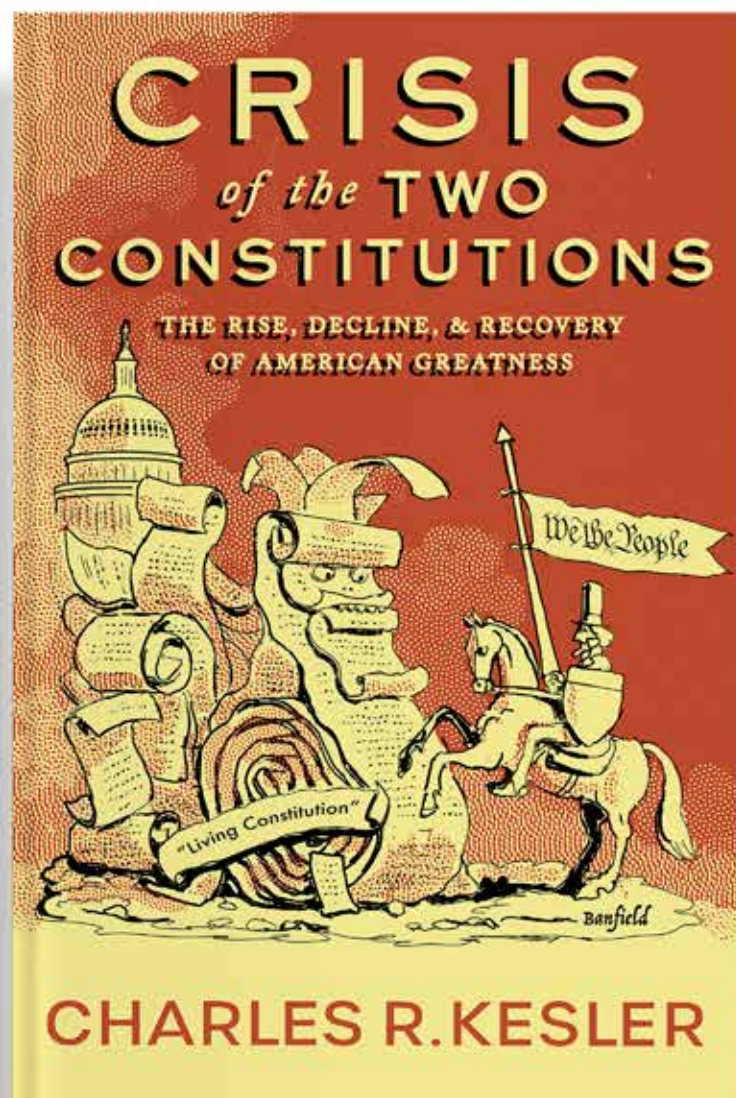
I also take sharp exception to Hankins’s statement that “if

someone were to say the kind of things about Jews that Goldman says about the Chinese, he would be accused of anti-Semitism,” because I allegedly think that “the Chinese people are willing partners in the evils of the CCP regime.” It is hard to draw a bright line, too, between the 93 million members of the CCP, a tenth of China’s adult population, and the population in general. It is equally absurd to characterize the CCP as wholly evil: the Chinese people mostly accept CCP rule because the CCP has multiplied capital consumption ten times over since 1979 and lifted more people out of poverty faster than any regime in history. It is more accurate to characterize the CCP as an amoral technocracy, indifferent to the rights of dissidents or the fate of ethnic minorities when the regime finds them inconvenient. Most Chinese evince little interest in the Hong Kong democracy protests or sympathy for the oppressed Uyghurs.

As for the Chinese people, it isn’t that the Chinese don’t have friends, as Hankins misquotes me; they don’t have political friends in Aristotle’s sense of the term, because China’s top-down hierarchy excludes the kind of subsidiarity in civil society that fosters political friendship. Far from harboring rancor against the Chinese people, I think the U.S. has no problems that a sufficient number of qualified Chinese immigrants wouldn’t fix. The same Chinese who evince loyalty to family but cynicism toward the Chinese state may feel differently about the American system, which holds sacred the rights of the individual. We should endeavor to help those Chinese offer their talents.

All this has a direct bearing on policy. American liberals imagine that by opening China’s economy to the world, they would foster internal reform. Many conservatives (e.g., Pompeo) believe that by containing China, America could undermine Communist Party rule. I believe both views are equally misguided. The pres-

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ent Communist dynasty is well entrenched after its nearly tenfold increase in per capita income during the past 30 years. Like it or not, this is the imperial dynasty we have to deal with for the foreseeable future. In our self-absorbed narcissism we imagine that the Chinese really must be like us and must share our values and aspirations. As imperial subjects, they do not; as individual immigrants, they well may.

We cannot make policy on the mere hope that the dragon will transmogrify into a Golden Retriever. We cannot change China, except by setting an example of American success so convincing that the Chinese will want to emulate us.

David P. Goldman
New York, NY

James Hankins replies:

I thank David Goldman for his response, which convinces me that we have many more areas of agreement than disagreement. We agree about the CCP, which like most bureaucracies often acts like an amoral technocracy, and certainly cares much more about preserving and extending its own power than about the rights of dissidents or ethnic minorities. We agree that immigration from China is desirable, not just because Chinese immigrants are often immensely talented and hard-working, but also because immigrants from Communist countries, sadly, tend to be more appreciative of American freedoms than we natives are. We agree, too, on the most substantial issue: that recent U.S. policies toward China have been misguided, both the “Washington Consensus” of the 1990s that believed China would eventually have to liberalize in a Western direction, and the view of the Trump Administration (and now, seemingly, Biden’s foreign policy shop) that “standing up to the CCP” would weaken its hold on the Chinese people. In my view, standing up to the CCP, especially when

all we do is talk, is exactly what the CCP wants us to do. Both Trumpian trash-talk and Biden’s hypocritical blather about human rights just help China cement its hold on power.

Goldman thinks I have selection bias in favor of Chinese students because the students I have taught at Harvard are likely to be pro-Western. But I have taught in China as well, both in Hong Kong and the mainland, even in departments of Marxism, and I’ve met students and professors with a wide range of political views. A decade or so back one could count on meeting mostly pro-Western students; now this is less often the case. Most Chinese students I meet nowadays take great pride in their country, are much less ready to admit the superiority of Western ways, and give the CCP some credit for China’s achievements. Most assume that the sub-Marxist *xyloglossie* pumped out by the party is self-serving propaganda and are cynical about the motives of party leadership. But that doesn’t mean they are ready to fight for democracy in China, as I think Goldman would agree.

Goldman says I stray from the mainstream scholarly view in strongly distinguishing Legalism from Confucianism, citing the opinion of Victoria Tin-bor Hui, a young professor at Notre Dame, a Hong Kong activist, and a recognized expert on war in ancient China. “Legalism with a Confucian façade” is the sort of provocative exaggeration Goldman enjoys, but it would be hard to prove, given that imperial China was governed mostly by Confucians from the Han Dynasty to the end of the Qing, who uniformly condemned Legalism in its pure, proto-Machiavellian form. In the words of the Han Dynasty essayist Jia Yi, the Legalist philosophy of the Qin dynasty was good at acquiring power but not at preserving it. Confucian principles were needed to establish the long-term moral legitimacy of the state. Rule-based Legalist structures

and Confucian moral philosophy were in fact interdependent and mutually reinforcing in imperial China, as is argued in great textual detail by Dingxin Zhao in *The Confucian-Legalist State*. Readers can find a mainstream scholarly summary of Legalist thought in Yuri Pines’s excellent article in the *Stanford Encyclopedia of Philosophy*—which, incidentally, provides far deeper insight into contemporary Chinese statecraft than any investigation of the CCP’s chimerical “Socialism with Chinese characteristics.”

Goldman mentions this issue because he wants to suggest, I think, that I am naïve about modern political Confucianism and its prospects for humanizing China. I know Confucians in mainland China who also worry that they are naïve in their hope for a better China, given the recent hard line coming from the CCP. But we intellectual historians know that history is dynamic, not static, and that powerful ideas (which are not necessarily good ideas) can change the world, sometimes very suddenly.

Goldman thinks the best path forward for the U.S. is to take a leaf from China’s book and pour federal resources into a whole-of-government push to counter China’s growing dominance in broadband and infrastructure. We need to engage in more long-term planning as the Chinese do and not leave interstate competition to the short-term, private-interest driven investment strategies of the free market. Huawei, a national champion, not Google, should be our model. My view is that we should not aim to defeat China’s challenge by becoming more like it. Not all rivalries need to be hostile ones. Classical educators in the premodern West used to encourage *generosa aemulatio*, noble rivalry, a fruitful competition between aristocrats in which each person strives to be the best example of what he essentially is. That might make a better model for interstate rivalries than the Machiavellian-Legalist model Goldman advocates.

Getting Rights Right

Michael Zuckert has written a review of Pierre Manent’s *Natural Law and Human Rights: Toward a Recovery of Practical Reason* that is by no means dishonest, but that is not always fair or equitable or well informed (“Act Naturally,” *Winter* 2020/21). It begins with the rather silly intimation that Manent is some kind of old regime conservative, a cheap shot rather than an argument supported by any evidence. In truth, Manent has always argued that liberalism is part of our modern “temporal order,” as Charles Péguy put it, and that its considerable virtues are worthy of respect. In his autobiographical book of interviews, *Seeing Things Politically*, Manent forthrightly criticizes his own Catholic Church for traditionally not having enough confidence in republican liberty, and preferring moderate authoritarian or clerical regimes to the risks entailed in the pride of the self-governing citizen. In a 2010 article in *Modern Age*, “The Greatness and Misery of Liberalism,” Manent praises the public and private liberties that accompany the liberal order but highlights its “one fault”—a considerable one—namely, indifference to truth, and the accompanying “inherent and troubling indetermination of liberal liberty.” We are incessantly told we are free, autonomous, un beholden to God or the natural moral law. At the same time, we are obliged to choose, “to be free!” Something has to give.

In this regard, Zuckert seems curiously unconcerned about Manent’s motive in writing his small book. Manent makes the perfectly persuasive claim, in our view, that the contemporary dogma that limitless individual rights are the sole source of all moral and political legitimacy is a momentous development that warrants serious examination and not a little consternation. We have reached, Manent suggests, an “inflection point” where au-

thoritative institutions necessary for the regime of modern liberty (family, churches, universities, the armed forces, the self-governing nation itself) are transformed beyond recognition by imperial and increasingly antinomian rights claims that will admit no challenge.

Manent, in contrast, suggests that freedom is “archic” in character, always informed by “commanding reason” in the form of practical reason. He lays out the grammar of moral and political agency, guided by what Aristotle called “reflective choice,” a non-subjectivist understanding of conscience that emerged “in the context of Christianity,” and a humane and principled effort to conjugate the deepest motives of the human soul: the honest, just, and noble; the useful; and the pleasant. Zuckert has some thoughtful things to say about Manent’s treatment of practical reason and human motives but is silent about his discussions of reflective choice, non-arbitrary conscience, and the sempiternal relevance of the cardinal virtues. “However inconvenient, painful, and even humiliating may be obstacles external to his body or his soul, the free agent aims mainly at what his free will allows him, or rather commands him, to aim at, that is, right action, whose declensions are courage, justice, prudence, and temperance—in brief, action that takes on its form and coloration according to the catalogue of virtues.” Manent argues that this truthful account of free will and moral and political agency so necessary to political freedom and human action finds very little support in modern political philosophy.

Zuckert rightly locates Manent in relation to two of his inspirations, Leo Strauss and Thomas Aquinas (worthy company, indeed). But Manent’s rich effort to explain what is proper to the practical point of view, and why the recovery of it necessitates a practical, not theoretical, understanding of natural law does not elicit any judgment, positive

or negative. There are reasons why Manent’s semi-Thomism is more moral-political than “meta-physical,” reasons he explains in his lectures. There is a “grammar” inherent in human action itself, that is, in moral-political agency—including the liberty that informs a healthy constitutional republic—that is not dependent on any dogmatic theology or cosmology. Zuckert faults, or seems to fault, Manent for not having written a treatise on natural law, without giving a modicum of attention to the perfectly good reasons he gave for not doing that. He also deplores the fact that Manent did not draw practical consequences from his practical intent without taking sufficient notice of Manent’s rather long analysis of the gay marriage question (although Zuckert mentions it), or what he says about the understanding of terrorist actions, or euthanasia and the trivialization of death, or why Communism violates the natural law. Do these not count as practical questions? Nor does Zuckert address Manent’s suggestive effort to show the place of practical reason, and moral and political action in accord with the natural law, as an essential part of God’s Providence, as Saint Thomas argues in Question 91 of his “Treatise of Law.”

The chapters that make up *Natural Law and Human Rights* are thus indeed succinct as befits the form of presentation. But they are also rich, discerning, and provocative, as many previous reviewers have pointed out. Michael Zuckert goes some way to addressing Manent’s perspective but with significant distortions, lacunae, and omissions along the way. Perhaps the heart of this ultimate incomprehension lies in the contrast between Zuckert’s commitment to John Locke’s deepest “exoteric teaching” (that he has done so much to illumine brilliantly) and Manent’s more classical and Christian effort to aid the liberal order by attempting to overcome the debilitating indetermina- tion that confronts it at its core. Locke certainly shares in that

debilitating indetermination and to acknowledge as much does not make one a reactionary or partisan of the old regime. These are legitimate differences and disputes. We welcome Zuckert’s effort to engage and raise questions about Pierre Manent’s challenge to modernist complacency even if we are not satisfied by it. May the debate continue.

Daniel J. Mahoney
Assumption University
Worcester, MA

Ralph C. Hancock
Brigham Young University
Provo, UT

Michael Zuckert pronounces Pierre Manent’s *Natural Law and Human Rights: Toward a Recovery of Practical Reason* “rather disappointing.”

Zuckert starts by distinguishing the French Manent from American conservatives, writing that Manent lacks a preference for natural rights in the Lockean sense and that he tries “to reestablish and revive the centrality of natural law and to diminish or suppress natural rights—and, even more, human rights.” Zuckert claims natural law stems from “medieval Catholicism and Roman antiquity.”

Manent doesn’t deny that “enlightened opinion” holds natural law in contempt and he admits that “certain sectors of Catholic thought” continue to recur to it “as a relevant or even indispensable notion for orienting ourselves in the human world.” But he never says natural law stems from Catholicism.

Zuckert, following Leo Strauss, believes natural law presupposes Catholic revelation, unlike Manent, who, following Thomas Aquinas, finds natural law in nature. In his treatise *On Being and Essence* and in his *Summa Theologiae*, Aquinas argued that Christian revelation confirms natural law but does not presuppose revelation: human reason, on its own and unassisted, discovers natural law. (Here I

have relied on James Carey, who in *Natural Reason and Natural Law: An Assessment of the Straussian Criticisms of Thomas Aquinas* presents Aquinas’s understanding of natural law and explains how it differs from Strauss’s.)

Zuckert asserts that Manent doesn’t share Strauss’s “preference for natural right in the Platonic or Aristotelian sense.” But about Strauss’s preference for natural right in the Lockean sense Zuckert is noticeably quiet, which may mean he thinks Strauss, like Manent, can be distinguished from American conservatives and would diminish or suppress natural and human rights. “One consequence of Manent’s approach,” writes Zuckert, “is that natural law is no set of unyielding and universal rules, but flexible and circumstantial. Perhaps this approach is meant to avoid the critique put forward by Strauss in his preference for natural right in the Platonic or Aristotelian sense.” As Zuckert hints (and Carey demonstrates in *Natural Reason and Natural Law*) Strauss criticized natural law for appealing to unyielding and universal rules, rules or ethics that were not flexible and situational.

An example of an unyielding, universal rule can be found in the *Nicomachean Ethics* (1107a 9-18) in which Aristotle writes that committing adultery “is never possible to be right; rather, one always errs.” Another example is natural law’s first principle: avoid ignorance, or—putting it affirmatively—seek to know. That principle is self-evident to practical reason in the same way the principle of non-contradiction is self-evident to theoretical reason. The two principles cannot be logically demonstrated or proved, but without both practical and theoretical reason seize up and leave a body in the grip of desire or imagination.

Manent did not mean to avoid Strauss’s critique. “Natural law,” Zuckert quotes him saying, “issued commands in the name of a teaching implicit in human nature, in a tendency of human nature to society and to knowl-

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edge, or in a natural difference among ages, sexes, and capacities, a tendency or difference that reason once made explicit and on the basis of which it founded its commandments and recommendations.” Manent’s words echo Aristotle’s and Aquinas’s, or at least they do to my ears. Over time human beings have shown themselves to vary in ability and virtue (as well as physically), and for ages (going back at least to the first line of Aristotle’s *Metaphysics*) humans have stretched to know and have spoken and acted in common, in human or political association. Taking into account those observed differences and tendencies we can observe that 1) humans are by nature mortal, sexual, reasoning, political animals, and 2) certain fixed rules fit their nature and profitably orient them in the world. Avoid ignorance and don’t offend your fellow humans—in today’s speech, don’t violate a person’s boundaries—are two unyielding principles on which reason builds its profitable commandments. Unless I am badly mistaken, Aristotle, Aquinas, and Manent agree on that.

Finally, although Manent is a friend of natural law, he is not an enemy of naturally oriented rights or of American conservatives. In *Natural Law and Human Rights* Manent writes, “The changes in laws and in behaviors produced by the civil rights movement in the United States provide what is doubtless the most eloquent and convincing example of an

extension of rights that enlarges and deepens the meaning of the human association itself.” Although that is not an unqualified endorsement of rights, it is wholly in line with the idea that if natural law guides (that is, if reason’s commands rule) the rights and values we assert, claim, construct, or effect in our civil law and behaviors, then we can move closer to happiness and to what the U.S. Constitution calls a more perfect union, two ends prudent conservatives favor and toward which they act naturally.

Bruce C. Sanborn
Mahtomedi, MN

Michael P. Zuckert replies:

My friends Daniel Mahoney and Ralph Hancock—I hope they still consider us such—have responded to my review of Pierre Manent’s *Natural Law and Human Rights* as if it were a root-and-branch critique of it. It is not. I believe they greatly missed my point. Except for my last paragraph, which raises a gentle, tentative criticism of Manent’s “presentation” but not of his substance, I offer not a peep. I say at the end that more needs to be said about the way the “recovery” of the perspective of “practical reason” produces the determinate guidance of natural law, a judgment Mahoney and Hancock at least partially accept. I did not doubt that Manent can supply what is missing and merely called for him to do so.

Mahoney and Hancock’s judgment that I am “not always fair or equitable or well-informed” derives from their identification of “the heart” of my “incomprehension” in a “contrast” between my “commitment” to Locke and “Manent’s more classical and Christian effort to aid the liberal order by attempting to overcome the debilitating indetermination that confronts it at its core.” Their conviction that my review stems from this contrast leads them to interpret my attempt to develop Manent’s position as criticism in every case where I attribute to him a claim *they believe* I differ from. That is not the review I wrote or the sort of review I believe to be proper. I found Manent’s book challenging and attempted to bring out the main thread of the argument as best I could. I did not write from the point of view that he was mistaken wherever he and I disagreed; I did not even indicate anywhere in my review where Manent and I might disagree. I would call my gentle criticism in my last paragraph an internal one in that I thought these were matters where Manent fell short of his own agenda, not mine.

They take me to task for not emphasizing his aspiration to aid liberalism rather than to reject it, which they support with several quotations from other Manent writings. But I was reviewing this book and space constraints prevented me from talking about other Manent writings, which admittedly my two critics

know far better than I. So in closing, I say to Mahoney and Hancock, “we are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection.”

I’m not sure what point Bruce Sanborn wants to make, other than wishing to signal his agreement with James Carey’s critique of Leo Strauss on Aquinas. He misrepresents my review in several respects. He claims that I believe “natural law presupposes Catholic revelation.” I said no such thing. I did trace natural law thinking back to “medieval Catholicism and Roman antiquity,” but I hope he does not believe the ancient Romans “presupposed Catholic revelation.” I merely meant to identify periods when natural law thinking was prominent.

Unlike Mahoney and Hancock, who attribute to me Lockean ideas, Sanborn finds the thought of Strauss. I mentioned Strauss because I thought he was an author familiar to many CRB readers, but I did not anywhere in my review endorse his views of natural law. Sanborn claims that I found Manent’s book “disappointing.” This was meant as a judgment not on the book as a whole but on the approach to natural law via Manent’s account of practical reason. For the record I found Manent’s account of the origin and nature of rights thinking highly original and very serious—and more critical of rights thinking than any of my correspondents seems to realize.

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