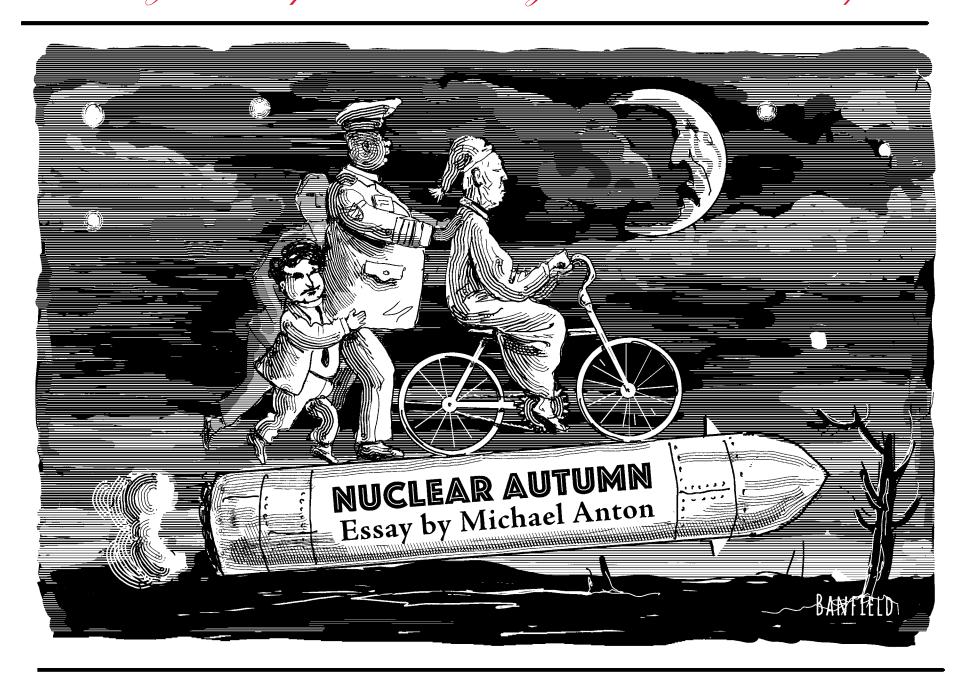
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William Voegeli:

Is Inequality Our Fault?

Colin Dueck:

Tom Cotton's Only the Strong

Douglas A. Jeffrey: Merle Haggard

Jeffrey H. Anderson:

"Our Democracy"

Myron Magnet Bradley C.S. Watson:

Clarence Thomas

Barry Strauss:

Julius Caesar

Charles Murray:

Is Diversity Our Strength?

Peter Berkowitz:

Walter Russell Mead on Israel

Christopher Caldwell:

The Death of Rock'n'Roll



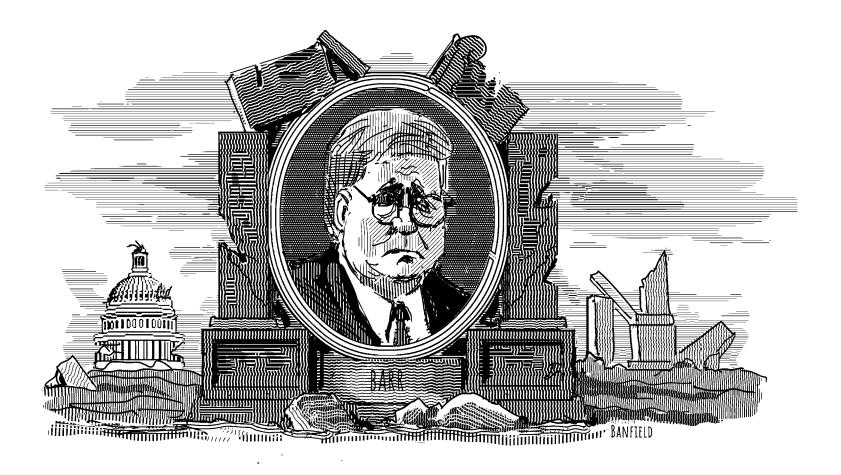
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Book Review by Joseph M. Bessette

Law Man

One Damn Thing After Another: Memoirs of an Attorney General, by William P. Barr. William Morrow, 608 pages, \$35 (cloth), \$19.99 (paper)



ORMER ATTORNEY GENERAL WILLIAM Barr opens his lengthy memoir, One Damn Thing After Another, with an account of his meeting with President Donald Trump on December 1, 2020, just hours after Barr had told an Associated Press reporter that "[t]o date, we have not seen fraud on a scale that could have effected a different outcome in the election." Trump was "enraged" and "struggle[d] to keep his temper under control." He demanded to know why his attorney general had made such a statement. "Because it is true, Mr. President." "You must hate Trump," came the president's response. "You could only do this if you hate Trump." Barr tried to explain how each of the major fraud claims advanced by the president's private attorneys proved groundless, but Trump remained unconvinced. Then, "roar[ing] harshly, staring daggers at me," Trump proceeded to rake him over the coals for two other malfeasances, U.S. Attorney John Durham's unfinished investigation of the Russia collusion hoax and the non-indictment of former FBI Director James Comey. The attorney general offered to submit his resigna-

tion. "Accepted!' the President yelled" as he "slammed the table with his palm." "Accepted!' he yelled again." "You are done right now. Go home!' he barked."

Minutes later, as Barr's FBI detail was about to drive him out of the Executive complex, two top White House attorneys started pounding on the windows of the Chevy Suburban: "He did not mean it. He is not firing you." Two weeks later, the attorney general and the president amicably parted ways and Barr returned to private life.

A.G. was, as is well known, his second stint in the office. Seventy years old when he left in December 2020, he was only 41 in August 1991 when he began 17 months as the head of the Department of Justice under President George H.W. Bush (the first three months as Acting A.G.). The only other person to serve twice as attorney general was John Crittenden, in 1841 and 1850-53. Barr liked to joke that he was the first person to serve twice as A.G. "in two different centuries" (indeed, he could have said two different millennia!).

Barr devotes more than two thirds of his memoir to the "Trump Years." Before getting to this, he recounts his upbringing in the neighborhood that surrounds Columbia University in New York City (where both his parents were on the faculty); his college years at Columbia where he majored in government and took as many courses in Chinese language, history, culture, and politics as he could; his first job at the CIA, where he got to know and respect George H.W. Bush, who was the director for the last year of the Ford Administration; his growing interest in the law ("especially constitutional law") and decision to enroll in the George Washington University Law School night program; the beginning of what would eventually become many years in the private practice of law; his brief stint as a staff member on the White House Domestic Policy Council in the first Bush Administration; and his years in the Bush Department

In April 1989 Barr was confirmed as the assistant attorney general for the Office of Legal Counsel (OLC) in the Department of Justice. What particularly attracted him to the

job, which he first thought "might be a little too 'ivory tower' for me," was the opportunity to help President Bush accomplish one of his highest priorities: restoring the powers of the presidency after years of erosion following Vietnam and Watergate. (In the interests of full disclosure, I was acting director of the department's Bureau of Justice Statistics at the time of Barr's appointment, but never had any direct dealings with him and, as best I can remember, did not meet him then and have not since.) "Of all the positions I held in government," he writes, directing the Office of Legal Counsel "was the one in which I was happiest." With the expiration of Bush's term, Barr began 26 years working in the private sector, 14 of these as the general counsel of GTE Corp., which, after merging with Bell Atlantic in 2000, became Verizon.

Because the american people know him primarily as a man of the law and not as a prominent contributor to major national policy debates during his years as a private citizen, the reader might be surprised to discover a variety of incisive miniessays sprinkled throughout the book on a range of important social and political issues.

The most impressive of these comes at the beginning of his long section on "The Trump Years." Here he devotes eight pages to the "deeper disorder" that underlay the "Obamaera policy failures": namely, "the growing strength in the Democratic Party of a Far Left progressive ideology that aimed to tear down and remake American society." With "its incipient totalitarian style, this ideology was poisoning the country's political life." Trump's emergence in 2016 was "a reaction against the Obama era's increasingly strident progressivism. Trump was not the cause, but the result, of our embittered politics." Radical progressivism sought a total break with the nation's "liberal democratic tradition." Its "messianic premises," "totalizing ambitions to control all aspects of life," "need to tear down society's existing belief systems and institutions," and "antagonism to free and open debate" were all "alien to the values of liberal democracy." It is "a form of Jacobinism," which aims "at replacing liberalism." As a movement, it is "Maoist: it isn't concerned only with what you say and do; it's concerned with what you think." Its economic program is a form of "Marxist redistributionism," which wants "able-bodied citizens to become more dependent, subject to greater control, and sympathetic to outright dependency." Make no mistake, the goal here is "destruction": "Every existing foundational idea, every cultural convention and moral value, must be rooted out and replaced by something new and 'equitable." And it appears to be succeeding, at least at the elite level. Barr marvels at the "speed with which the [new ideology] ran through elite institutions."

This "ideological blitzkrieg" could not have succeeded but for "the corruption of the mainstream news media beginning around the turn of the century." Journalists began seeing themselves as "agents of societal change, bearers of enlightenment, guardians of advanced wisdom." Narratives replaced facts because facts imply an objective truth; it had now become respectable to "distort...the truth in the cause of righteousness." As "business and other professional elites" bought into the new ideology, they became isolated "from the lives of ordinary Americans" and "disdainful of their values." This new ideology has become an "ersatz religion" that "brooks no rival." Unlike Christianity, "which focuses on...personal morality" and the duties we owe "to God and man," radical progressivism teaches a kind of "macro-morality in which one's virtue isn't gauged by private conduct but by participation in political causes and group action." Barr concludes this section by explaining that "[t]his is why I believed the stakes of the upcoming election were so high."

trenchant analysis of the dangers posed by radical progressivism. Later in the book Barr offers equally incisive treatments of violent crime, the death penalty, and retributive justice; the threat that "militant secularism" presents to religious freedom and the moral foundations of Western democracy; the "pernicious danger" of Big Tech's growing control over the free flow of information and ideas; and the "lie" promoted by the organization Black Lives Matter "that racist cops routinely and gratuitously gun down unarmed black men."

When Attorney General Eric Holder was asked in 2013 when he planned to leave the Obama Administration, he responded, "I'm still enjoying what I'm doing, there's still work to be done. I'm still the President's wing-man, so I'm there with my boy." Although Barr doesn't mention this well-known quote, it is fair to say that he understood his relationship to President Trump in an entirely different way. Barr had supported Jeb Bush during the Republican primaries and was wary of Trump: "not my idea of a President." Like others, he found himself "cringing at his frequently crass, bombastic, and petulant style." But he also saw strengths in Trump: "the clear and direct way he staked out a position," "his willingness to state unpleasant truths," and his determination "to confront head-on difficult issues that

other politicians attempted to avoid." Once Trump won the Republican nomination, Barr "had no hesitancy backing him over Hillary Clinton." Trump was "offering policies I supported." "Of central importance" was Trump's intention "to appoint constitutionalist judges to the federal judiciary." "On this basis alone," he writes, "I would crawl over broken glass to the polls to vote for Trump." On the moral question—whether Trump had the character suitable for the nation's highest office—"there was one thing I was sure of: Hillary Clinton was not morally superior to Donald Trump." Though Barr donated to Trump's general election campaign, he played no role in the actual campaign itself.

Jeff Sessions announced his resignation. Top lawyers in the Department and others with Trump's ear began to float Barr's name as a possible replacement. He generally agreed with Trump's policies, which he thought "essential for the United States," and thought he could be instrumental in combatting Democrats' "implacable" efforts to nullify the results of the 2016 election.

But he would be no "wing-man" for Donald Trump. "[T]he circumstances called for someone leading the department who was truly independent...[and] was free to do what he thought was right without fearing how it might affect his future economic or political prospects." Nearing the end of his own professional life, Barr believed that he "had the personal independence to help steer the department back to its core mission of applying one standard of justice for everyone and enforcing the law evenhandedly." He told Trump as much when they discussed the appointment, which was only the second time they had met. The department, he insisted, must be "insulated from political interference." If offered the job, he would only take it on the understanding that he would "not tolerate political interference in criminal cases." The president agreed. In the course of the lengthy conversation, Trump brought up the investigation into Hillary Clinton's emails and surprised Barr by saying that he had wanted the matter to be dropped after the 2016 election. "Even if she were guilty," he told Barr, "for the election winner to seek prosecution of the loser would make the country look like a 'banana republic."

Perhaps the greatest domestic challenge that confronted Barr (and the Trump Administration) during his two years as attorney general was how to respond to the riots and civil disorder that followed the death of George Floyd in Minneapolis in May 2020. In our fed-

eral system, local and state authorities have the primary responsibility to maintain order, and governors may call upon their state's National Guard to help do so. Yet, the federal Insurrection Act also authorizes the president to employ federal troops to suppress "unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States" when these make it impossible to enforce the law "by the ordinary course of judicial proceedings." During the summer, President Trump was inclined (and publicly threatened) to invoke the Act, but Barr, fearing that the introduction of federal troops would inflame passions and thereby lead to yet more violence, cautioned against doing so. Instead, the Department of Justice worked "to push the states to deploy whatever manpower was needed to get control of the streets, including their own National Guard where necessary." In addition, Justice beefed up the protection of federal buildings (thus freeing up local police from the task), helped to resupply the states with "antiriot" equipment, and worked with the governors of states not affected by the violence to keep on standby "a continuous reserve of National Guard military police units"—"the best units to use for civil disturbances."

Although the violence subsided in most cities within a few weeks, in Portland "rioters launched orchestrated attacks on the federal courthouse every night for more than a hundred successive nights." Here was "an assault on the United States government," night after night, with local authorities simply refusing to assist. The courthouse was defended by "a small group of deputies from the U.S. Marshalls Service." An A.P. reporter who spent a weekend at the courthouse in late July reported that "[m]ortars were being fired off repeatedly, fireworks & flares shot into the lobby, frozen bottles, concrete, cans...regularly whizzed over the fence at high speeds." "I watched as injured officers were hauled inside." One officer got "bloody gashes on both forearms" from a commercial firework. Another got a concussion "from being hit in the head w[ith] a mortar." "Three officers were struck [by high-powered lasers] in the last few weeks & still haven't regained their vision."

RUMP'S NATURAL INSTINCT WAS "TO intervene decisively" by invoking the Insurrection Act. Barr pushed back. The attacks had "dwindled to few hundred rioters each night." Existing resources could continue to defend the courthouse—federal troops were not necessary for that. Sending in the military "would itself massively swell the number of rioters." Surprisingly, Barr didn't expect either state or federal judges to "sup-

port the arrest and detention of rioters." But why would federal judges in particular, whose offices and courtrooms were in the very building that was attacked night after night, treat the rioters with impunity? Barr does not say. He saw no point in sending in federal forces, who would "have no teeth" and "stand around having things thrown at them." As Barr puts it, "Given the nation's volatility at that moment, it was my judgment that sending the Eighty-Second Airborne into Portland would end up touching off serious violent rioting throughout the nation."

Although Barr's prudential judgment may have been sound, what is odd here is that he seems to set up a false dichotomy: either maintain a small force of deputy U.S. marshals to defend the building from nightly attacks or send in regular troops armed for combat. Yet, as Barr recounted earlier in the book, when riots broke out in Los Angeles in 1992, he organized the sending of "about two thousand" federal law enforcement officers to the city, "giv[ing] President Bush an option other than using the military" (emphasis in the original). And when riots broke out in the nation's capital in late May 2020, Barr called on the FBI, DEA, the Marshal's Service, and the Bureau of Prisons for a reserve force "of more than 2,000 additional officers... to help with any contingency." The point here is that the federal government has substantial civilian law enforcement resources which, presumably, could have been deployed to end the nightly attacks by the few hundred rioters in Portland. The reader is left to wonder why this was not done, or why Barr, a strong advocate of governors using their National Guard to preserve order when local police are overwhelmed, did not recommend that Trump nationalize the Oregon Guard—as, for example, President Dwight Eisenhower did with the Arkansas National Guard in 1957-or nationalize Guard military police from one or more other states.

arr is equally outspoken about other controversies that faced the Trump Administration (including some before he became attorney general). He is unsparing in his criticism of those responsible for the "Russian collusion' narrative"—a "manufactured scandal" from start to finish; for "there were never any legitimate grounds for accusing Trump or his [2016] campaign of colluding with the Russians." "It was almost inconceivable to me," he writes, "that the FBI opened a counter-intelligence investigation against a presidential candidate's campaign in the middle of an election." Indeed, it was nothing less than a "travesty" that the investi-

gation "was premised on a low-level campaign adviser's throwaway comment in a wine bar" (referring to comments that "twenty-eightyear-old Trump campaign volunteer, George Papadopoulos" made in London). Moreover, the failure of the investigation to turn up any corroborating evidence between July 2016 and the election did not stop the FBI from continuing the investigation well into Trump's term. Four days after Trump took office, FBI Director James Comey "bypassed normal procedures" to send agents into the White House for the apparent purpose of "gin[ning] up a 'false statement' charge against" National Security Adviser Michael Flynn, Barr, who had known Comey for 20 years, "had come to believe that Comey's high self-regard had swelled into an acute case of megalomania."

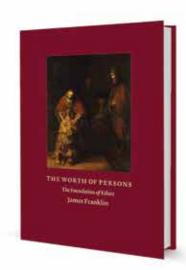
Just weeks after Barr was confirmed, he received the lengthy investigative report on the collusion controversy from Special Counsel Robert Mueller. Barr and his deputies learned that very early on Mueller and his team had concluded that there was no evidence of collusion; but instead of wrapping things up then and there, they launched a lengthy investigation into possible obstruction of justice by Trump. An FBI agent assigned to the Mueller team later revealed that "the office quickly developed a 'Get Trump' attitude and began with a preexisting conviction that there must be 'something criminal." In the end, according to Barr, the investigation became "something not so different from a witch hunt." Many months before, when Barr was still a private citizen, Mueller had told him in a phone conversation, "I am not going to let them steal our democracy."

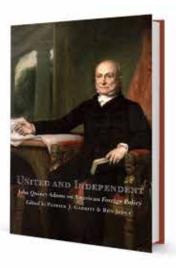
THEN THE REPORT WAS COMPLETED, the whole second half of it, about 180 pages, was on potential obstruction of justice, including an analysis of ten specific episodes. Oddly, however, the report reached no conclusion as to "whether the evidence was sufficient to establish an indictable offense." Instead, it announced that "while this report does not conclude that the President committed a crime, it also does not exonerate him." That sentence, Barr writes, "puzzled us all." It is not the job of the Department of Justice to exonerate people. You either seek to indict someone because there is sufficient evidence to convict, or you don't. What prosecutors in the Justice Department should never do is to "publicly editorialize on the conduct of an individual we've chosen not to indict." That was not Mueller's job, and "it effectively turns the well-known 'innocent until proven guilty' standard on its head." With Mueller punting on whether to seek an indictment for obstruction, the matter was left to

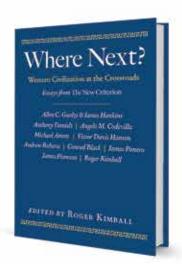
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Barr and his staff. They spent a long weekend reviewing each of the ten episodes. In the end, "[e] veryone on the team agreed that, for each of the episodes, the evidence was insufficient on one or more of the essential elements." In fact, Trump had cooperated fully with both the FBI counterintelligence investigation and with Mueller's probe: the president gave "unfettered access to campaign and White House documents, directed his aides to testify, and asserted no privilege." In the end, "Mueller greatly disserved the public interest."

Barr holds that Trump remained good to his word and never interfered with an ongoing criminal investigation, though he did occasionally make public statements that placed the Department of Justice in an embarrassing or awkward position. A notorious example is Trump's request to Ukraine President Volodymyr Zelensky (in the July 2019 phone call that became the basis for Trump's first impeachment) that Zelensky should work with Barr and Rudy Giuliani to investigate Joe Biden's role, when Biden was Obama's vice president, in removing the Ukrainian prosecutor who was purportedly investigating the energy company for which Biden's son, Hunter, was on the board. Months before, Barr had urged Trump to rein in Giuliani. At the end of an Oval Office meeting in the spring, he told the president that he was not "being well served by Giuliani at this point.... Why is Giuliani thrashing about in Ukraine? It is going to blow up." When Barr read the transcript of Trump's call with Zelensky, he "hit the ceiling." He had the department issue a public statement that the president had never spoken with Barr about the matter, that Trump had not asked Barr to contact anyone in Ukraine, that Barr had never communicated with Ukraine "on this or any other subject," and that Barr had never "discussed this matter, or anything related to Ukraine, with Rudy Giuliani."

ANY OF THE PRESIDENT'S MOST problematic public statements came in the form of tweets. "[T]he secret...of a really good tweet," he once told Barr, is "[j]ust the right amount of crazy." One tweet in particular "would soon make my job almost impossible." In the midst of department deliberations in early 2020 as to what sentence to recommend for Roger Stone after his conviction for obstruction of Congress and related federal felonies, Trump sent a midnight tweet expressing his outrage over the trial prosecutors' original recommendation of seven to nine years. The next morning Barr and the U.S. Attorney for the District of Columbia, who both thought that such a long sentence was "grossly disproportionate and

unprecedented," met to work on a supplemental filing that would withdraw the prosecutors' recommendation and simply leave the matter up to the judge, who was the actual sentencing authority. When they learned about the tweet, Barr exclaimed, "Shit.... Goddamn him. Now what?" The president had placed Barr in an untenable position. He couldn't let the tweet change his own decision; yet, by formally withdrawing the stiffer sentencing recommendation, it would look like he had caved to presidential pressure. By now Barr "was fed up with the President's tweeting,... [which] constantly threatened to undermine me and the Department of Justice." In the end, the judge sentenced Stone to three years and four months. (In July Trump commuted Stone's prison sentence, leaving the underlying conviction intact, and in December he issued Stone a complete pardon.)

For these and other reasons, relations between the president and his attorney general soured throughout 2020. Though Barr had had no illusions about the darker side of Trump's character when he agreed to serve in the administration, his assessment grew increasingly negative the longer he served. As

"The secret of a really good tweet," Trump told Barr, is "just the right amount of crazy."

Trump's litany of complaints against his chief law enforcement officer got longer, Barr came to see that it did not matter if he was right about some issue or question:

[T]his did not matter to Trump. Everyone except family members has a shelf life with him.... People are worthwhile to Trump only as means to an end—as utensils. When they don't get him what he wants, they are useless.

Early on Trump had called Barr "virtually daily—sometimes two or three [times] a day"; by the fall of 2020, they had effectively ceased to communicate directly.

parting of ways came because of Barr's refusal to give any credence at all to the unsubstantiated claims of massive election fraud in the 2020 election in the key swing states—even though Barr, himself, had serious reservations about some of the changes in law or practice that governed voting in 2020,

especially universal mail-in voting, ballot harvesting, and extending the voting period to a month or longer. But the Department of Justice had no authority over these decisions by state legislators, executives, and judges. While Barr conceded that these changes often made fraud more likely—indeed, this was the very reason he opposed them—they were not themselves evidence that fraud had occurred, and certainly not on a scale to have changed the result in the presidential election.

Trump's private attorneys, led by Rudy Giuliani and supplemented by a variety of independent analysts and others posting on the internet, focused on about half a dozen claims of massive fraud in enough states to change the result in the electoral college: that thousands of nonresidents had voted in Nevada; that "massive numbers of Biden ballots" had been fraudulently added to vote totals in the early morning in Detroit and Milwaukee; that in Pennsylvania more absentee ballots had been counted than voters had requested; and so forth. Barr called on the relevant U.S. Attorneys to investigate each of these claims. In every case, the claim was found to be without merit.

The claims that "most offended" Barr were "the grossly irresponsible allegations regarding the Dominion voting machines." These claims—repeated by Trump attorneys as late as the rally at the Ellipse on January 6, 2021—"were presented with such assurance, and sounded so sinister, that they undoubtedly shook the confidence of many Americans in the election." Barr and his attorneys, assisted by experts from the Department of Homeland Security and the FBI, concluded that the claims "were absolute nonsense." These machines simply counted paper ballots, and every time the machine counts were compared to the actual ballots, "the machine counts were validated." In a lengthy meeting with the president and others on November 23, Barr explained that the claims of the president's private attorneys did not hold up. But "[t]he absence of evidence didn't deter the President."

dent's lawsuits moved from one defeat to another," Trump and his legal team "were doubling down on their fraud claims, and voicing them more categorically and hysterically." The president appeared on a Fox News show on November 29, where he "claimed that the election was stolen" and then "attacked the Department of Justice as 'missing in action." Two days later Barr went public on the vote fraud claims in his interview with the Associated Press. Hours after the interview, Trump fired Barr and then unfired him.

On December 14, the same day that the electors voted in their states, Barr met with the president (for the last time) to communicate his desire to leave before Christmas. Trump "launched into a monologue," claiming now to have "absolute proof that the Dominion machines were rigged." It turned out that the report, written by a self-described cybersecurity firm in Texas, "focused exclusively on an error that occurred in [heavily Republican] Antrim County, Michigan." But this was "unquestionably" a human error, had been caught early, and "had nothing to do with the reliability of the Dominion machines," Barr concluded that if the president "actually believed this stuff he had become significantly detached from reality."

Should Barr have stayed to the end? It seems that this was indeed an option. After the president fired him and then reversed himself on December 1, Trump made no moves to force his A.G. out of office. Apparently, the White House attorneys (and perhaps others) had convinced the president that firing Barr would serve no useful purpose and would only play into the hands of Trump's enemies. Yet, after the Oval Office meeting on December 14, Barr knew that nothing he could say or do would shake the president's belief that he had really won the 2020 election and that he had a realistic chance to start his second term on January 20, 2021. Why, then, stay on? Barr expected that his trusted Deputy A.G., Jeff Rosen, would be made acting attorney general and that two other top staff would continue in office. "I had total confidence," he writes, "that these three individuals would continue to protect the department from getting drawn into the President's machinations and, together with [White House Counsel] Pat Cipollone, would not let the President get away with anything improper."

NE OF THE IMPROPER THINGS THAT jeopardized the peaceful transition of power was what Barr calls the "hairbrained legal theory" that "Trump seized on," which would have had Vice President Pence, while presiding over the count of electoral votes before a joint session of Congress on January 6, send the electoral votes back to the states for further investigation by their legislatures. This would allow the legislatures, if convinced that Trump had really won the popular vote in their state, to certify an alternative slate of Trump electors whose votes, under this theory, the vice president would be required to count at the reconvened joint session of Congress. It appears that Barr did not learn of this plan until after he had stepped down (a few days before Christmas), though this is unclear in the book. None of the three men whom Barr left in charge of the Justice Department were known to the larger public and none had Barr's gravitas and credibility. It is certainly possible that had he remained at the helm, things would have turned out differently in that fateful first week of January 2021.

Perhaps an even more important question is why Barr did not at the time put into writing the Department's debunking of the claims of massive fraud in the 2020 election. When he went public in his interview with the A.P., apparently all he really said on the matter was that the Department had not seen sufficient fraud to have changed the results: "I could have said more, but I knew this would be plenty." Consequently, the A.P. story reported the "top-line" blockbuster news but said nothing about the specific claims. To the best of my knowledge (and there is nothing on this in the book), the Department of Justice issued nothing in writing detailing the results of their investigations of the allegations of major fraud; nor did Barr (or anyone else from

Justice) hold a press conference to refute the allegations. Within the administration, Barr displayed no such reticence: he was perfectly willing to explain to the president and others how the claims lacked any empirical foundation. Surely, had Barr informed the public in late 2020 of what he wrote about these major fraud claims in his memoir, it would have had some impact on the public debate over the election results. To put it another way, if Barr had good reasons to explain in 2022, when his book came out, why and how the major fraud allegations were bogus, why didn't those reasons also apply—indeed, even more strongly—in the weeks after the 2020 election?

his public condemnation of Trump on January 7, 2021, for "betray[ing]...his office and supporters" by his part in the events of January 6; details the many policy "successes the President delivered for the American people"; praises Trump for "show[ing] Republicans they must stick to their guns and ignore [the mainstream press and the chattering class]"; and concludes that "[o]nly Trump could have beaten Trump, and he did." He ends his book with with a plea to fellow Republicans to look beyond Donald Trump for future political leadership.

In the end, William Barr's memoir is not really about "one damn thing after another," but about a few of the most important things: the need to confront the totalitarian threat from the radical Left head-on and without apology; the importance of truth and principle in guiding political action; and the indispensability of the rule of law.

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