Slouching Toward Plutocracy:
The Judicial Contribution to the Corruption of American Free Government

I have been asked me to address the evolving role of the judiciary in the American Republic. Especially he suggested that I explore whether the judiciary has contributed to an alteration of the original precepts initially embedded in the American experiment in governance. As conveyed to me, the question is also whether such alterations by the judiciary have "corrupted" American public life and degraded the "free government" sought by the Founders.

I.

First, it is important to clarify the meaning of the corruption of public life. Examination of literature on the topic provides us with two distinctive understandings of corruption. One understanding is that corruption is *individual*. It is when bad people break the law in the pursuit of power, wealth, and sex. For example, a judge is bribed to decide in favor of a specific party. Also, corruption can be defined as unscrupulous acts and violations of ethical norms. For example, a judge could violate ethical standards and rule in a case that affects her economic interests, such as investments in stocks. Fortunately, these forms of judicial corruption rare.

A second understanding is that corruption is *systemic.* This concept emerged in eighteenth-century British and colonial American political writing. It maintains that privileged classes can weaken or challenge the essential principles of a political regime. In the era of the American Founding, the fear of systemic corruption was rampant. Based on the Founder's experience with British politics, it was the fear that their liberties might devolve into tyranny or control by cabals, a privileged class, or an aristocracy. It was the fear that the privileged class would subvert the liberties of all citizens, establish an oppressive government, and dominate the economy, religion, and social mores.

II.

To prevent systemic corruption, the American Founders created a government with various precepts aimed at safeguarding liberty and political equality. For me, five of these precepts and related institutional features stand out.

(1) *Popular sovereignty* or governance that is designed to protect and advance the public good. Popular sovereignty holds that everyone is part of a community of equals, where the collective public rights transcend the private interests of a minority. Individuals must shed some of their personal interests to serve the common good. To achieve these ends officials will be controlled through active citizen participation in elections and other political events. Popular control will ensure that government will secure justice, promote the general welfare, and secure the blessings of liberty for all. It will curtail aristocratic impulses. It will advance a sense of collective belonging, human dignity, and political and social equality.

For the Founders, the additional problem was how to realize the common or public good. Many eighteenth-century theorists thought that small, like-minded communities of free citizens best promoted the public good. These theorists insisted that the law and social order grow organically

out of participatory choices by free men. Shared community values would suppress the pettiness, suspicions, and fears among people. However, the vastness of America, the social and religious diversity of its immigrant population, slavery, and, even within small towns, economic tensions made difficult the recognition of a shared, common good. Therefore, to secure the public good, the Founders turned to a Constitution and laws to protect liberty and the public good.

(2) To safeguard popular sovereignty and the public good, the Founders second precept was the need to *control factionalism.* James Madison defined faction as "a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community." Factions promote the selfish interests and passions of individuals, such as greed, envy, and hate that might destabilize order and social peace. Factions endanger the sense of belonging in a common political enterprise to secure the greater good. Thus, factions must be controlled through political competition, constitutional provisions and laws.

(3) Since Madison noted that the "latent causes of faction (or self-interest) are sown in the nature of man," institutions and law had to manage factions. One institutional measure was "To refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations." The precept was that such individuals might possess *civic virtue:* public-spiritedness, prudence, and a willingness to sacrifice their own ambitions for the good of others. To increase the chance that individuals with civic virtue held office, the Founders created a complex scheme for the election and appointment of multiple officeholders at the federal, state, and local levels. The aspiration was that these selection methods might refine the pool of potential office holders and secure more virtuous representatives.

(4) To further limit the influence of factions, the Founders fourth precept was to distribute political authority among representatives. It was assumed that multiple offices could lead to conflicting interests among officeholders. Therefore, factional interests would *check and balance* opposite and rival interests. Consequently, they divided and arranged the branches of the federal government and between the federal and state governments "so each may be a check on the other that the private interest of every individual may be a sentinel over the public rights."

(5) Finally, they instituted the *rule of law* to protect the right of the public to control its own destiny. The rule of law would secure the public good as a restraint on factional evils such as "licentiousness," "luxury," "anarchy," "vanity," "conspiracy," "aristocracy," and authoritarianism. Laws, made through and enforced through multiple representative political officeholders in accord with the public good, were to govern public behavior.

III.

Have any judicial rulings undermined the core precepts? Although the systemic corruption of these precepts cannot be assigned solely to judges, by attending to the interpretive powers of the judiciary we can trace aspects of the evolution of the core precepts. What, then, has the judiciary

said about the core precepts? To answer this question, I will concentrate on decisions of the Supreme Court of the U.S. since 1970. Since that year conservative Republican presidents have appointed both the Chief Justice and most associate justices. Several of these justices, Barrett, Gorsuch, Kavanagh, Scalia, and Thomas, claim that they are originalists. Originalists propose the interpretation of legal texts, especially the Constitution, as understood at the time of their adoption. However, have they and other judges remained true to the core precepts of free government as enshrined in the Constitution? Also, how have judicial interpretations of common law and statutory law resolved conflicts in ways that regulate power and define the public good?

Popular sovereignty: The judiciary has enabled the executives of corporations to exert subtle but substantial power and shape the social, economic, and political preferences of the public. Undercutting the precept of popular sovereignty, they have emerged as powerful participants with great influence in the policymaking process. How has this occurred?

Before the Civil War the corporation usually was a special and narrow grant of a privilege by legislators to investors. Primarily because governments could not afford costly projects such as road and canal construction, the judiciary permitted but narrowly interpreted legislative grants of privileges to corporations (*Charles River Bridge v. Warren Bridge*, 1837). The Supreme Court also held that corporations did not possess the rights of citizens (*Bank of Augusta v. Earle*, 1839).

After the Civil War changes in the law revolutionized the political place of the corporation. States adopted general incorporation laws that permitted the creation of corporations with much reduced legislative oversight and much more flexibility in their functions. Beginning with the decision in *Santa Clara County. v. So. Pacific Railroad (*1886) the judiciary began to treat corporations as a person with "private" rights such as a "liberty" to transact business and "property" protected against unreasonable or discriminatory legislation. From the end of the nineteenth century to the present much litigation has centered on the reasonableness of laws that regulate decisions by corporate managers. In many instances the federal and state judiciaries found it reasonable for managers to assume greater authority over corporate operations for the purpose of generating profits.

At the same time, corporations acquired contracts (especially defense industries) and subsidies (agriculture) from governments that allowed them to dictate the costs and aspects of the delivery of public goods. The Trump administration has taken these practices even farther to benefit corporate executives that Trump considers his friends. The administration invested government money in computer chip maker Intel for ten percent of its profits, acquired shares of at least seven technology and mineral firms, and took control of Venezuelan oil sales. It acquired partial control of corporate managerial decisions of U.S. Steel for the approval of its purchase by Japan's Nippon Steel. It arranged for a government share of profits of the overseas sale of technology by firms such as Nvidia and ADM, and it charged TikTok a $10 billion fee for arranging investors to purchase the firm. It sought favorable regulations for cryptocurrency businesses, a source of massive income for Trump's family business. It attempted to halt wind energy projects that might adversely affect the profits of his oil and gas campaign donors. It adopted tariff policies that favored selected corporations. Although the administration claimed these practices protected national security and the economy, the foremost outcome was to ensure profitable corporations, protect their shareholders, and empower the president. Lawsuits about

the reasonableness or constitutionality of these actions have yet to materialize. Congressional approval of these actions, which seem akin to colonial British mercantilist economic policies instead of free market capitalism, has not occurred. Therefore, governmental financial assistance and managerial intervention protected the extensive power for favored corporate executives to manage the finances, health, and general welfare of the public.

In recent decades corporate power has become even more *politically* significant. The judiciary extended the "personal" rights of the corporation. In *First National Bank of Boston v. Bellotti* (1978) a narrow majority of the Supreme Court afforded corporations a First Amendment right to free speech in political matters. Then in *Citizens United v. Federal Election Commission* (2010) the justices removed many significant restrictions on spending in support of political candidates and governmental policies. As organizations with the greatest resources, spending on elections by corporate funded political action committees (PACs) increased as a major influence on political officeholders.

Once designed to curtail the accumulation of power by massive corporations, the judiciary has constricted the impact of antitrust laws designed to control corporate power. Especially in *Continental T.V. v. GTE Sylvania* (1977), federal judges have adopted a new economic logic that sanctions more permissive treatment of mergers and acquisitions. Their approach has allowed mergers that centralize the media--and the availability of political and cultural information--in the hands of fewer corporate managers. An example is Elon Musk's control of the internet platform X, and Amazon billionaire Jeff Bezos' acquisition of the *Washington Post.* Also, the Supreme Court has freed the internet from most public control, turning its regulation over to media corporations such as Google and Facebook (*Reno v. ACLU*, 1997; *Moody v. NetChoice,* 2024).

Even more critically, the managerial mindset of the corporation has seeped into politics. The judiciary has done little to contain the administrative development of policies without direct public sponsorship. Especially administrators, whose policy construction is reliant on technology, social science, and a managerial ethos, seldom come under tough judicial scrutiny. For example, the Elon Musk's drive for efficiency in the federal government and Robert Kennedy, Jr's decisions on public health have yet to face significant judicial scrutiny (but see *Am. Academy of Pediatrics v. Kennedy*, D. Mass. 2026). The same judicial neglect is true of corporate use of technology and artificial intelligence by firms such as Google and Meta that increase their surveillance of the public's economic preferences and social behavior.

In short, judicial support for the rise of corporate power and a managerial way of thinking have subverted the public's collective ability to make informed and independent political decisions.

Favoritism toward factional interests. Since 1790 the judiciary has expanded the Bill of Rights amendments into a series of defenses of the individual liberty. Some of the decisions, especially those of Supreme Court about searches, detention, and trials, can function to preserve personal liberty as a public good. Interpretations of the Fourteenth Amendment have promoted the equality of citizens and restraints on racism. However, some more recent decisions about rights have emboldened factions. As previously stated, the *Citizens United* decision has facilitated the emergence of PACs, thereby concentrating political influence among a limited group of affluent

donors and corporate executives. These factions donate vast sums in elections to gain access to public officials. They are the donors who meet with President Trump, fund his renovations to the White House, and erect his golden statute. Because these expenditures have no clear limits, they can bolster government policy making that serves special interests—factions--and not the public good.

Other examples exist. Many Founders regarded established religions as powerful but divisive factions that could threaten social peace (as witnessed in European religious wars). Yet, in recent years the Supreme Court has established or inserted contentious religious beliefs and practices into public policies. Since *Van Orden v. Perry* (2005) the Supreme Court has permitted religious monuments on public property, religious prayers at public meetings (*Town of Greece v. Galloway,* 2014), and financial aid to religious bodies (*Trinity Lutheran Church v. Comer* 2017). It created a new test more deferential to religious activities in public settings (*Kennedy* v. *Bremerton School Dist.,* 2022), broadened the definition of religious activities exempt from governmental control (*Catholic Charities Bureau v. Wisc. Labor & Industry Rev. Comm'n.*, 2025) and allowed parents to opt out of public school materials they regarded as religiously offensive (*Mahmoud v. Taylor,* 2025). Its abortion decision, *Dobbs v. Jackson Women's Health Organization*, 2022), authorized comprehensive state restriction of abortion favored by some religions but contrary to the doctrines of other churches (such as the Evangelical Lutheran Church, United Church of Christ, the Episcopal Church, the Presbyterian Church USA, and the United Methodist Church) and the beliefs of the nonreligious. These decisions have contributed to politically destabilizing disrespect for others and cultural conflict.

Another example is the judicial interpretation of the Second Amendment. Recent decisions by the Supreme Court have ignored the prefatory clause of the amendment: "A well-regulated Militia, being necessary to the security of a free State." For the Founders, a militia was a public good, a body of citizens who might engage in community defense against Indian raids and foreign mercenary armies. However, in *District of Columbia v, Helle*r (2008) the justices ruled that the amendment protects an individual's right to possess a firearm for "traditionally" lawful purposes and is unconnected to service in a militia. Later decisions significantly expanded the meaning of "lawful purposes" to favor the gun owning faction without attention to the original civic purpose of the amendment.

Finally, the judiciary has ignored the factionalism that originates outside of the governmental sphere. As stated by Nicolas Rose, today we are governed by "multiple circuits of power, connecting a diversity of authorities and forces, within a variety of complex assemblages." In addition to corporations there exists a complex of experts, influencers, insurers, and therapists who attempt to treat the individual as a consumer to be managed, not as an active participant in public life. This complex of powerholders often sanctions individual impulses of passion and interest and without concern for the aggregate interests of the community.

The Decline of Civic Virtue: If you examine the biographies of elected representatives, you find that a clear majority have a background as corporate businesspersons or with the law firms that serve business. During campaigns they often state that officials should manage government to ensure a profitable environment for business. Also, as American media moved from print through radio, movies, and television to the internet, celebrities in entertainment or sports have begun to

satisfy their egoism by winning public office. Businessman and entertainer, Donald Trump is the archetype of such officeholders. He places his "brand" on public buildings, enhances his personal wealth through cryptofinance schemes, uses derogatory language to belittle his critics, and supports taxation policies beneficial to himself and his billionaire corporate executive supporters.

Although Trump is an extreme example, many public officials are enacting policies that serve their own interests, like targeted tax cuts and weaker workforce protections. With little judicial restraint they seek pork barrel expenditures policies and subsidies that enhance their profits. Efforts to control this spending have failed. For example, in *Clinton v. City of New York* (1998) the Supreme Court held as unconstitutional the creation of a presidential line item veto that would allow presidents to eliminate pork barrel projects. Also, after he left office in 2021, the Supreme Court declined to hear cases that asserted that Trump had made decisions to enrich himself despite the constitutional ban on "emoluments" or profits or gains from public office (*Trump v. Citizens for Responsibility and Ethics in Washington,* 2021). These examples signal that the judiciary has neglected the decay of the precept of civic virtue even among the most significant of American officeholders.

Check, balances, and the separation of powers: Various judicial decisions and inactions indicate a weakening of the principle of checks and balances. The U.S. Supreme Court has favored the expansion of executive power in ways that significantly intrude on congressional lawmaking and Congress' original role in the definition of the public good. The most significant assault on the balance of powers is the expanded use of executive orders. Once a tool for the president to manage the duties of federal administrators, executive orders rarely proclaimed broad change in public policy. Despite contrary examples, such as Lincoln's Emancipation Proclamation and Franklin Roosevelt's order to remove Japanese Americans to camps, the justices' decisions in *Youngstown Sheet and Tube v. Sawyer* (1952) and *Hamdan v. Rumsfeld* (2006) indicate that the president has quite limited power to issue orders and make policy without congressional authorization. However, President Trump's many executive orders, which impact individual rights and change laws without Congress's approval, is still only incompletely restricted by the judiciary (*Learning Resources v. Trump,* 2026). Also, the purposes of his orders suggest a lack of respect for congressional articulation of the public good and the constitutional boundaries on executive powers.

Over time the justices also allowed executive branch administrators to interpret congressional acts and the enforce policies and regulations with minimal judicial checking and balancing. Although the recent decision in *Loper Bright Enterprises v. Raimondo* (2024) allows judges greater authority to veto administrative interpretations of congressional laws, affected parties still must possess the financial and informational resources to legally challenge executive agency actions. Thus, the recent activity of ICE has faced legal challenges in a disorganized fashion. To date judicial decisions provide modest support for agency discretionary actions (for example, *A.A.R.P v. Trump*, 2025; *Dept of Homeland Security v. D.V.D* (2025); *Matter of Yajure Hurtado,* 2025; *Noem v. National TPS Alliance*, 2025; *Noem v. Perdomo,* 2025; *Trump v. J.G.G.* 2025).

Finally, challenges to judicial impartiality voiced in Congress and by President Trump and corporate efforts to limit the authority of state trial courts in personal injury cases expose an effort to reduce legal restraints on the power of politicians and corporations.

Representative leadership: A core of the precept of popular sovereignty is the election of public officials. Although the Trump administration has alleged abuses in elections lost by the President and his supporters, the judiciary has rejected these claims. However, he and his supporters propose a variety of state and federal legislation aimed at curtailing when and how citizens cast their ballots. Many of these laws are expected to gradually limit voting access for people less likely to back candidates opposed to corporate or conservative interests. In numerous cases the state and federal judiciary have assessed the reasonableness and constitutionality of these laws but with mixed outcomes for persons seeking greater voting turnout. More litigation seems likely.

Although the Fifteenth, Nineteenth, Twenty Fourth and Twenty Sixth amendments now protect the right to vote for most adult Americans, Congress also attempted to eliminate racially discriminatory election laws with the passage of the Voting Rights Act of 1965. Despite the laws effectiveness in reducing barriers for racial minority voters, the U.S. Supreme Court's decision in *Shelby County v. Holder* (2013), invalidated a key enforcement provision of the Act. Subsequently some states passed voter identification laws and policies that limited minority voters' ability to choose their candidates. Later judicial decisions further weakened the use of the Act to eliminate racial discrimination in the election process (*Brnovich v. Democratic National Committee,* 2021).

The Supreme Court also has not prevented gerrymandering, the process of designing maps of legislative and other political districts to skew elections to favor certain candidates, interests, or political parties. In general, the judiciary has refused to intervene in this process (*Rucho v. Common Cause, 2019)*. When claims of racial bias in districting have arisen, the Court has set a high bar for proof of discrimination (*Bethune-Hill v. Virginia State Bd. of Elections,* 2017; *Abbott v. Perez,* 2018). These decisions imply that the judiciary is not the strongest supporter of the right to vote as a crucial element of the precept of popular sovereignty.

IV.

What is the consequence of the judicial treatment or neglect of the core principles? What I have outlined is judicial participation in the systemic corruption of the free government as envisioned by America's Founders. Even self-identified originalist jurists have neglected the core precepts of the Founders vision of free government. By shifting power away from the core precepts, the judiciary has abetted the growth of the power of a faction of corporate owners and their political sycophants. I identify this faction as *plutopopulists*: an elite or ruling class of people whose political influence derives from money, legal chicanery, and gender. However, plutopopulists masquerade as populists. They have transformed the meaning of "populist" from its nineteenth century egalitarian and anti-elitist roots. Populism has evolved into an appeal to racial, ethnocentric, nativist, and gender stereotypes that some in the monied class manipulate for their own gain. Also, they try to manipulate cultural conflicts about sexuality, homelessness, drug dependency, and mental illness so that their favored politicians hold office. Although plutopopulists claim that their wealth and power provide employment and commodities that the public desires, all too often they cannot imagine the lives of others. More critically they want to destroy any idea of a public good that hinders their desires. They are akin to Tom and Daisy in

Scott Fitzgerald's *Great Gatsby*, who "were careless people … they smashed up things and creatures and then retreated back into their money or their vast carelessness or whatever it was that kept them together and let other people clean up the mess they had made."

What kind of politics does this condition encourage? Plutopopulists, abetted by the judiciary, have made a mess and fostered a systemic corruption of free government. The idea of a shared public good has eroded. Systemic corruption by monied men in suits has eroded popular sovereignty. Over time, corporate power has fostered a sense of powerlessness, political apathy, passivity and even anger among a public that senses a loss of influence and respect. Consequently, one segment of the public does not perceive any benefit from engaging in politics. They avoid human interactions in collective, nonprofit enterprises that serve the public good as well.

Beyond a segment of the populace that has abandoned politics, however, a political-cultural conflict exists. On one hand there are people locked into political nostalgia. They imagine a reassertion of an American life of the past in which white fathers controlled politics, finance, families, and religion. It is a world in which the norm is deference to maleness, whiteness, and money. Also, it is a world that they often assume their money or cultural values are being subverted by conspiratorial agents of racial and sexual equality or agnosticism. On the other hand, there are people who envision an America threatened by what Hillary Clinton called a great conservative conspiracy. These persons argue that the nation is undergoing an assault on racial and gender equality, the expression of diverse moral and cultural values, and a range of personal liberties. Consequently, American politics has become marked by a refusal to accept differences. More significantly, public figures such as Donald Trump intensify differences and disrespect. They deploy extremist statements, lies, misinformation, and conspiracy theories to demonize enemies and accuse critics of endangering democracy. In this hostile context, even civil unrest, such as the 2021 assault on the Capitol and the actions of ICE and police in Minneapolis, acquire a gloss of legitimacy.

Is there any remedy for the dangers generated by plutopopulism? A century ago, Justice Louis D. Brandeis wrote that, "We must make our choice. We may have democracy, or we may have wealth concentrated in the hands of a few, but we cannot have both." Regrettably, I do not foresee any immediate change in public values or judicial actions that oppose a politics driven by greed, disrespect for others, and moral arrogance. Even if unvoiced, since colonists arrived at Jamestown in 1607, "greed is good" has been an American mantra. It motivated the destruction of indigenous nations, the existence of slavery and Jim Crow, the economic abuse of workers, disparagement of immigrants, and the ruin of natural environments.

As a response, my desire is that a moral message about free government and civic virtue be taught to the public. It should a message that rejects egoism and greed and demands respect for others. In my view, this message resonates with both religious and secular interpretations of a Christ-like way of living. It is a life that practices care for the welfare of others, mercy, compassion, forgiveness, and concern for the sick and the poor in spirit. It is a life that does not place wealth above other values. It is a life that avoids the condemnation of others. It is a life that seeks the good for all (Matthew chap. 5-6; Luke chap. 18: 18-25). Unfortunately, this might be a false hope.

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