Opinion

News



Demonstrators in Washington protest the Trump administration's immigration policy during a national day of action called "Keep Families Together" June 30. (CNS/Tyler Orsburn)



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Tomorrow is July Fourth, so today is a good day to assess the health of our republic and its more than 200-year experiment in self-governance. Are we living up to the ideals articulated in the founding document, the anniversary of which we commemorate on that day? Relatedly, the constitutional order that subsequently flowed from the Declaration and War of Independence, and has served us exceedingly well — how is that holding up?

This time last year, there was cause for concern but also reason to think our Constitution was up to the task of confronting Trumpism. President Donald Trump had been in office for some six months. The courts had blocked his effort to enact a ban on accepting refugees from certain Muslim countries. The Senate had just postponed a vote on its effort to repeal the Affordable Care Act because the recent analysis of the Congressional Budget Office showed that millions of Americans would lose their insurance. That was a bridge too far for at least three Republican senators. Bob Mueller, longtime Republican and almost universally respected former director of the FBI, had begun his investigation into Russian interference in our elections.

Trump even gave a decent speech at the NATO summit when a monument to the invocation of Article 5 of the NATO Charter after the attack of Sept. 11, 2001, was unveiled. Yes, he harped on the need for our allies to pay more for the alliance's military, but he did not attack the alliance per se nor the heads of state or government assembled in Brussels.

This Fourth of July, however, the picture is far less sanguine. The Republicans passed a tax reform law that was light on the reform and heavy on the lower rates for rich people. They also included in other legislation the abolition of the individual mandate, a key part of the Affordable Care Act. Congressional Republicans have been willing to abuse their oversight role to frustrate the Mueller probe, their questioning of Deputy Attorney General Rod Rosenstein demonstrating a fondness for conspiracy theories that would do Oliver Stone proud.

Worst of all, three developments the last week of June showed the degree to which the entire Republican establishment has caved to Trumpism.

The Supreme Court's decision in *Janus* v. *AFSCME, Council 31*, made me angry, but it was the decision in the Muslim ban case that was really shocking. The justices made clear they have no desire to restrain Trump's racist use of executive power, and that lack of such desire is shocking. In a courtroom, you will hear a lawyer say, "I object. The question assumes facts not in evidence." The court assumed facts not in existence, namely, that there was a legitimate government function, national security, and that the ban was not based on anti-Muslim animus of the kind prohibited by the Constitution.

Trump v. *Hawaii* was not, like *Janus*, built on a faulty legal theory. Like the infamous *Dred Scott* case, which was built on the lie that Scott was not a person, this decision was built on a lie. It was pitiful to see Chief Justice John Roberts puff up his little chest in moral rectitude, insisting the court was overturning the *Korematsu decision* permitting the internment of Americans with Japanese ancestry during World War II. At least the court in 1944 wrestled with the facts in the case. Despite the president's repeated public statements that his travel ban was directed at Muslims, and — what is worse because it harder to ignore in this instance — despite his repeated statements that he was making cosmetic changes to the Muslim ban so that the ban could pass judicial muster, the court looked the other way and accepted the lie that this ban was about anything more than using the power of the presidency to rile up Trump's base by stoking their fears of Muslims.

The oral arguments in the Muslim ban case were held in late April. Within weeks, the attorney general announced his plan to separate immigrant children from their parents at the border as a deterrent. Which leads to our second reason to fear for the country this July Fourth: Whatever the court's initial thinking about the Muslim ban case, the new policy of separating children, even toddlers, from their parents demonstrated that the Trump administration had no internal constraints in their willingness to demonize minorities through inhumane public policy.

The normal human sympathy for those in vulnerable situations is not normal in this White House: The vulnerability of the immigrants is exploited. It was against this backdrop that the Supreme Court indicated its unwillingness to demand the president's actions pass a test of strict scrutiny.

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Finally, the decision of Associate Justice Anthony Kennedy to retire indicates that the Republican legal establishment does not intend to defend the constitutional order from this orange rogue of a president. They have seen the Republicans in Congress cave. They have seen the court cave — even after Trump has spoken about the rule of law with more disregard than any president since Andrew Jackson famously, if apocryphally, said, "The chief justice has made his decision, now let him enforce it."

The Republican legal establishment will now let Trump appoint whomever he wants because that person, likely, will follow enough of their agenda that they can abide his or her willingness to look the other way if the government discriminates against Muslims and Latinos. Separating children from their refugee parents did not make them take a stand. What will?

Kennedy was my least favorite justice because he was the most libertarian of the justices. My liberal friends liked that he sided with them on same-sex marriage and upholding *Roe* but his reasons on both issues were always libertarian reasons, which are not my reasons.

And his decision to leave the court now means that my hope the Democrats would learn how to place a closed parenthesis on all culture-war discussions and focus, instead, on wage stagnation, that hope is now ended. The midterms and likely the 2020 election will be fought over abortion. The most repugnant racists and apologists for racism will be waving the pro-life flag, while those of us who care about migrants and refugees will see the party that stands up to Trump fall ever more into the grasp of abortion rights advocates who can't spell solidarity. It is grim.

I had been prepared for the *Janus* decision to go the way it did. I was, therefore, surprised by how angry I got when the decision was released and how my anger did not dissipate. I left my computer to go work in the garden, something that almost always restores equanimity, but not this time. The Supreme Court had a chance to defend the decency of the nation and it failed to do so.

Normally, when I get into a debate with a conservative friend and we are at an impasse, with no hope for resolution, I try to ease the tension with levity, and say, "Well, when the revolution comes, I will put in a good word for you and your family." To my friends in the Republican political and legal establishment who have not stood

up to Trump: When the revolution comes, you are on your own, and I will be clamoring not for mercy but for a seat next to the guillotine, where I can do my knitting.

[Michael Sean Winters covers the nexus of religion and politics for NCR.]

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