

# Mob Constitutionalism: The Riot in the Rights

by Rose Parfitt | 12 Jan 2021



The Trump presidency has been a rocky road for pretty much everyone to the left of Trump himself. Nonetheless, the lethal efforts of the President's supporters, at his command, to storm the Capitol and overturn 2020's supposedly 'fraudulent' result by force, seems to have been the final straw. Many of the Trump machine's most loyal enthusiasts have now broken ranks. As for the sceptics both in the US and internationally, this attempted takeover, which left dozens injured and seven

people dead, has been met with a torrent of condemnation (laced, every so often, with a splash of *Schadenfreude*).

In the UK, for example, [Boris Johnson](#) condemned this as ‘disgraceful’ episode in the history of a country that ‘stands for democracy around the world’. India’s Prime Minister [Narendra Modi](#) described himself as deeply ‘distressed’ by the ‘rioting and violence in Washington DC’ and warned that ‘[t]he democratic process cannot be allowed to be subverted through unlawful protests’. In France, [Emmanuel Macron](#) characterised the break-in as ‘not American’. UN Secretary-General [Antonio Guterres](#) stressed the need for ‘political leaders’ (meaning Trump, presumably) ‘to refrain from violence, as well as to respect democratic processes and the rule of law’, and [Turkey’s Foreign Ministry](#) described the events of 6 January 2021 as ‘worrying’.

Back in the States, the reaction has been one of utter horror. In a televised address, President-elect [Joe Biden](#) described himself as ‘shocked and saddened’ to see ‘that our nation – so long the beacon of light and hope of democracy – has come to such a dark moment’ and condemned the ‘assault on the citadel of liberty’ perpetrated by what he described as a ‘lawless’ ‘mob’ of ‘extremists’ who ‘do not represent who we are’. The mayor of Washington [Muriel Bowser](#) described the break-in as an ‘affront on our American democracy’. Even former Republican President [George](#)

**W. Bush** was withering: ‘This is how election results are disputed in a banana republic – not our democratic republic’.

There is much that could be said about these reactions, together with numerous others along the same lines. For a start, and as many have pointed out, it was, of course, fully-functioning ‘American democracy’ that funded, armed and orchestrated the relentless series of right-wing coups and insurrections that systematically destroyed the so-called ‘banana republics’ of the Global South during the Cold War. Equally, the clichéd notion that constitutional democracy in the United States is somehow more robust and authentic than it is anywhere else is belied by not only its rootedness in genocide, conquest and slavery but also by glaring contemporary pathologies – highly racialised patterns of police violence and incarceration, for instance, and the ongoing detention of hundreds of forcibly-separated Mexican children.

But there is more to these condemnations than the unabashed exceptionalism, hypocrisy and ignorance which underpin them. For this mainstream reaction is notable also for the consistency with which it positions this attempted ‘**fascist coup**’ as an external assault on the normal functioning of democracy and the rule of law. As former Secretary of State **Hillary Clinton** put it, for example: ‘Today, domestic terrorists attacked a foundation of our democracy: the peaceful transfer of power following free elections. We must reestablish the

rule of law and hold them accountable’.

Yet as soon as we look closely at the motivations of these ‘domestic terrorists’ a certain dissonance arises, as though two supposedly opposite ideological poles – law/democracy/good on the one hand; violence/fascism/evil on the other – had somehow got mixed up together and jammed in one another’s gears. It is certainly true that the ‘very special’ people who broke into the Capitol building – including numerous well-known white supremacists and neo-nazis – flew the Confederate flag, carried assault rifles and metal bars, sported sweatshirts printed with slogans like ‘Camp Auschwitz: Work Brings Freedom’ and ‘Civil War: January 6, 2020’ and left two pipe-bombs in their wake. These protesters were perfectly explicit about their objective of overturning the results of the election. On the other hand, however, having been convinced that the election had been ‘rigged’, they were equally insistent that, in doing so, they were acting to ‘defend democracy’ and protect ‘the honesty of our elections and to the integrity of our glorious republic’ from being ‘stolen’ by ‘radical left democrats’ and the ‘fake news media’ – as Trump had put it when addressing them moments earlier.

However groundless those claims have (repeatedly) been shown to be, it is important to note that it is somewhat disingenuous to describe the arguments of this ‘mob’ as ‘lawless’. For those arguments were anchored just as firmly in the Constitution as are those of the ‘defenders of democracy’ who now condemn them. Nor is this

particularly surprising when one considers that the right of ‘the people’ to ‘throw off’ a government whenever they believe it to be in the process of ‘reduc[ing] them under absolute Despotism’ has been baked into ‘American democracy’ since at least [1776](#). More importantly, however, both in States and elsewhere, the ‘natural’ and ‘inalienable’ right to ‘liberty’ has always found its purest expression in the liberty to appropriate land and other ‘resources’ from the members of any community, and naturally from any species, that proved unwilling or unable to muster enough force to resist, or enough capital to reciprocate.

Of course, the lawfulness or otherwise of this process of ‘primitive accumulation’ thorough which the European colonies that eventually became the United States (and Canada, and Australia, and New Zealand, and...) gradually acquired their territory and imposed their law is no longer an issue (unless, of course, you approach that question from the perspective of Indigenous law). Sovereign statehood has been recognised and the rule of law has been established, plastering over centuries of breath-taking violence until all that remains visible (as long as you are rich and white) is the smooth, symmetrical, orderly, formal surface of property and propriety.

And yet, as the events of 6 January 2021 remind us, colonialism’s ‘terrific boomerang effect’, as identified by [Aimée Césaire](#), lives on: the violence with which colonialism’s techniques return home, in the form of

fascism, to smack its architects in the head. And today, as ever, when that ‘boomerang effect’ is felt:

People are surprised, they become indignant. They say: ‘How strange! But never mind – it’s Nazism, it will pass!’ And they wait, and they hope; and they hide the truth from themselves... [The truth that they] cultivated that Nazism, that they are responsible for it, and that before engulfing the whole edifice of Western, Christian civilization in its reddened waters, it oozes, seeps, and trickles from every crack.

But what is it (with due acknowledgement to this most notorious of cultural appropriations) that [makes this boomerang boomerang](#)? As we have just seen (again), the answer – the concrete that holds this ‘edifice’ together – is not ‘lawlessness’ but law; or European law, to be more precise. This system of law recognises only one form of ‘subject’: the individual, projected at the macro level into some kind of collective super-subject, whether sovereign state, Nazi *Reich*, or hypothetical cyberfascist ‘[sovcorp](#)’. And it endows that subject with only one fundamental right: the liberty to regard everything that is *not* a subject – everything that is not human (an [ever-shifting category](#), in any case) – as an ‘object’, or rather as an unlimited reservoir of objects, which may be freely appropriated, transformed, accumulated, exchanged, consumed and discarded without any restrictions whatsoever, other than the duty to respect the right of fellow-subjects to do the same.

Since the beginning, however, this paradigm has run up against a problem – a problem that all those taken aback by the January 6th ‘assault on democracy’ seem to have forgotten about. For the supply of non-human objects, or ‘natural resources’, on which the realisation of the ‘fundamental’ or ‘inherent’ right to individual freedom depends, is not, as it turns out, unlimited. Moreover, this is precisely the problem to which colonialism and fascism were designed to respond, both in theory and in practice. It is axiomatic to both expansionist systems that the ‘resources’ of any territorially-bound collective cannot, by definition, be expected to satisfy the growing demands of an increasingly healthy, prosperous and population of equally free individuals forever – or at least not unless large swathes of the population are either relegated to the category of object and/or liquidated.

In short, the flipside of the individual right to freedom is an equivalent liberty to expand – a right to *lebensraum* – on the part of the state/collective. *This* is the relationship to which the American constitution, [like every ‘modern’ constitution](#), refers. This is also the [double-scaled freedom](#) that lies at the heart of every far-right interpretation of that relationship – from [Mussolini’s promise](#) that it was only in the Fascist state that the ‘true freedom of the Italian people’ could be realised, to more recent proposals for [‘neocameralism’](#), ‘ethnopluralism’ and ‘ethnic bioregionalism’ coming from the post-libertarian purveyors of ‘neoreaction’ (NRx), the ‘dark enlightenment’ and the ‘alt-right’ today.

The logic of the (European) rule of law, then, is one of violent competition, not peaceful coexistence.

What *has* changed, in our formally post-fascist, post-colonial era, is the category of humanity, which now includes not only white, property-owning, heterosexual, able-bodied, Christian men but (in theory) all members of the human species. Slavery, genocide, apartheid and conquest, having been outlawed, are now (somewhat) less viable options for states than they once were. But the problem of how to meet the demands of all these subjects with a supply of objects sufficiently abundant to allow them to realise their constitutional rights remains. Indeed, that problem, on which the internal harmony of all states depends, has become only more acute.

This is not to say that we shouldn't be deeply freaked-out by the [ominous spectacle](#) of Trump (who, in black-leather gloves and greatcoat, appears to take his A/W styling tips directly from the [Wehrmacht High Command](#)) informing his frenzied, gun-toting 'army' that '[w]hen you catch someone in a fraud, you're allowed to go by' (pregnant pause) 'very different rules'; or by the spectre of further conflict or even civil war that continues to loom as this is being written. On the contrary, this is terrifying. Nor is it to say that, when spear-carrying white supremacist and 'QAnon shamen' [Jake Angeli](#) (covered in red, white and blue 'war paint' and [Yggdrasil, Mjolnir and Valknut](#) tattoos, and sporting his faux-Native American buffalo-horned, coyote-skin hat — evidently a reference to the '[Indian disguise](#)' worn by the 'Liberty Boys' during their celebrated rampages of 1773) breaks into the Senate



and howls ‘FREEEEEDOOMMMMMM’ for the cameras, as his fellow-protesters rampage through the Capitol building chanting ‘[hang Mike Pence!](#)’, attacking journalists and security staff, and in one case beating a police officer to death [with a fire-extinguisher](#), these people aren’t acting unlawfully. Of course they are.

And yet it matters that it was *this* ramshackle effort to circumvent the ‘peaceful transfer of power’ – *not* the ‘Muslim ban’; *not* the ‘pussy-gabbing’; *not* the abandonment of the Kurds; *not* the ‘fine people on both sides’; *not* the ‘China virus’; *not* the ‘stand back and stand by’; *not* the ‘shit-hole countries’; *not* the ‘[most vicious dogs](#), and most ominous weapons’ threatened against BLM ‘thugs’ (and so on) – that has finally caused the majority of American law-makers and world-leaders to turn against Trump. It matters not least because the election was decided on a knife-edge. Trump received 46.82 per cent of the popular vote; more than 74 million United Stateans cast their ballots for him. Just a few million more and the insistence of this ‘mob’ that the House of Representatives was ‘theirs’ would have been correct. There would have been no public outcry; no ‘assault on the citadel of liberty’. On the contrary, ‘liberty’ would have been vindicated. In other words, when Trump’s ‘personal attorney’ Rudy Giuliani, former mayor of New York and Associate Attorney-General under Regan, began his [address](#) by telling the crowd: ‘Every single thing that has been outlined as the plan for today is perfectly legal’, he was within a whisker of being right. No wonder [Elizabeth from Knoxville, Tennessee](#) got a

shock when she was maced in the face while ‘storming the Capitol’. No wonder Curtis Yarvin, NRx’s chief ideologue, describes himself as a ‘[formalist](#)’.

But the point is not only that fetishising the procedural helps to legitimise the [substantive continuity](#) of white supremacism, dispossession and violent discrimination, rendering it uncontroversial, if not completely invisible. The point is also that, in the context of a legal system that elevates individual liberty to the point at which even the encouragement of mid-pandemic mask-wearing, let alone taxation, become instances of tyranny to which [death is preferable](#) (quite literally, on the part of at least four protesters) – ‘democracy’ will inevitably resurface as ‘fascism’ at a certain point. This is usually a point of acute material inequality, as ‘[most of the world](#)’ knows only too well. The ongoing violence accompanying the run-up to [Uganda’s forthcoming election](#) offers a case in point. This legal system, born in Europe, now covers not only the settler states but virtually the entire surface of the world, turning the boomerang into a kind of deadly cosmic Beyblade. And all over the world, its effects in terms of relentless upwards redistribution and racialised expansionist violence have been the same. As we see here, once again, on the level playing-field of the law only the fittest survive – and fitness requires to be fed.

*Rose Parfitt is a Senior Lecturer at Kent Law School. She is the author of The Process of International Legal Reproduction: Inequality, Historiography Resistance (Cambridge University Press, 2019), among*

*other works on the relationship between international law and fascism/the far-right.*

*This essay draws on the work of many, many colleagues. I would like to thank all of them, especially those who are or have been involved in the ‘[Fascism & the International](#)’, ‘[International Law & the Challenge of Populism](#)’ and ‘[History, Anthropology & the Archive of International Law](#)’ (HAAIL) projects. Special thanks are due to Luis Eslava and Illan Wall, and to the institutions that have supported these projects, including the Australian Research Council, the Socio-Legal Studies Association, Melbourne, Kent and Gothenburg Law Schools and the Institute for Global Law & Policy (Harvard Law School). The views and mistakes expressed here are all my own.*



Facebook 42



Twitter



LinkedIn

## 4 Comments

1.

**Robert** on 12 January 2021 at 9:47 am

Who wrote this? The author’s name is missing.

**REPLY**

- **Io** on 12 January 2021 at 2:00 pm

Rose Parfitt

**REPLY**

2.

**SA Peters** on 16 January 2021 at 1:34 am

This piece is, clearly, mutton-dressed-as-lamb: it attempts to pass off its take on the events leading up to and at the US Capitol Building as the fruits of “critical thinking”. I am well aware of both the concept of critical thinking and its use as an analytical tool, and the above falls well far of the mark.

**REPLY**

3.

**Graham Whittaker** on 15 February 2021 at 1:52 am

Too many folk do not know the symbolism of the Black leather glove encasing a raised fist. It is not only a fascist signal but can be used as a non verbal ‘instruction’ to the faithful fascist to do the bidding of the dictator, (Mussolini?) I was a child at the end of the last war but the recent raising of black gloved fists from DJT had me beginning to wonder. Days later the Capitol building was stormed by loyal fascists. I think the future couple of years will be in the mould of Hitler’s coming after his time in prison. The black leather glove and leather greatcoat are awful memories for me, and someone has to speak up before the United States falls into total chaos.

**REPLY****Submit a Comment**

Your email address will not be published. Required fields are marked \*

Comment

Name \*

Email \*

- Notify me of follow-up comments by email.
- Notify me of new posts by email.

**SUBMIT COMMENT**

This site uses Akismet to reduce spam. [Learn how your comment data is processed.](#)



**Facebook**  
**14k**  
Followers



**Twitter**  
**5k**  
Followers

---

## POSTS BY EMAIL

Join 4,098 other subscribers

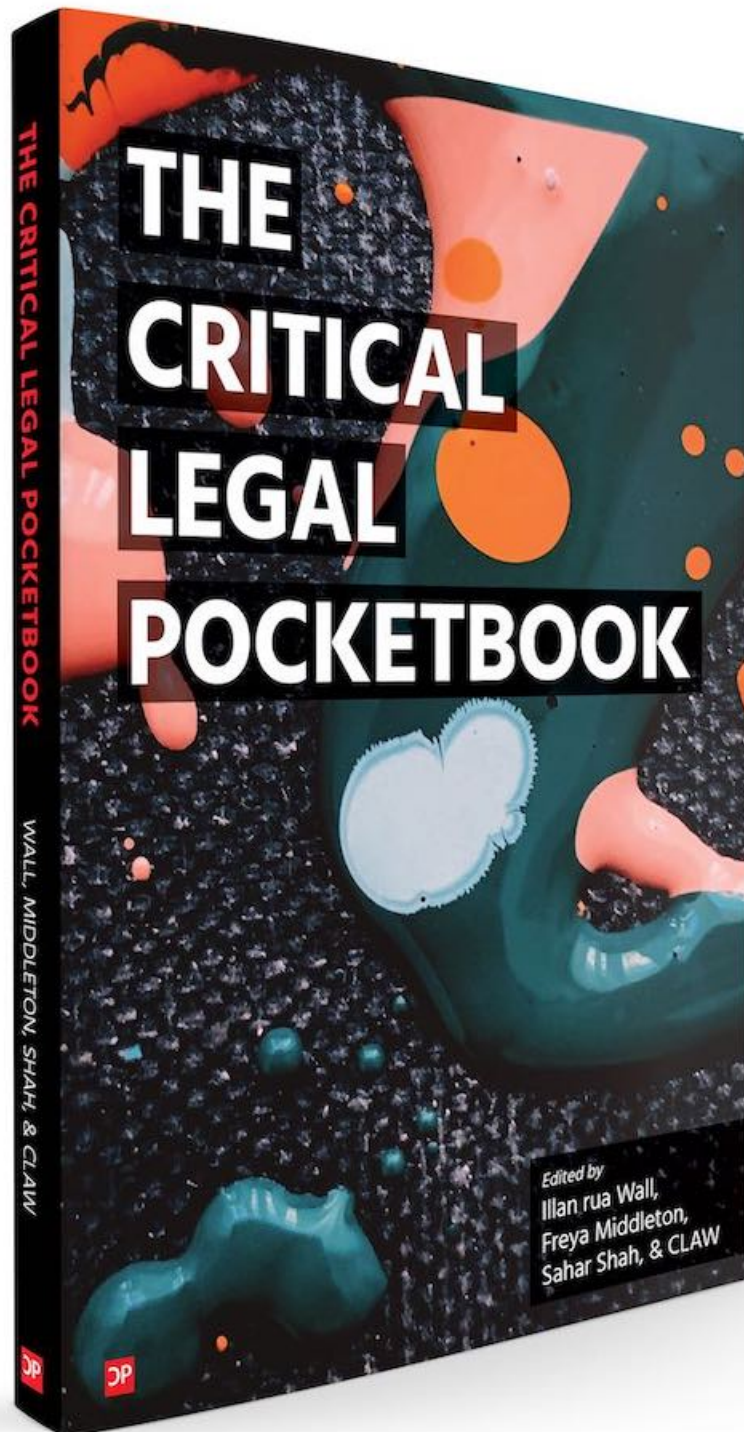
**SUBSCRIBE NOW**

We respect your [privacy](#).

---

## COUNTERPRESS

Fair access publisher in  
critical law and humanities.



Reasonably priced paperbacks.

Pay-what-you-can Ebooks.

**SEE MORE**

---

© CLT (Holding) Ltd. CLT (Holding) Ltd is a company limited by shares registered in England & Wales with number 11150350 and address as listed in the Register of Companies. CLT (Holding) Ltd is a wholly owned subsidiary of Counterpress Limited. Unless otherwise indicated, written content on this site is published under [Creative Commons licence \(CC BY-NC-SA 4.0\)](#). This means you are free to share/repost /republish/remix for non-commercial purposes on condition that you acknowledge CLT and link to the source page. Images and other media may be under different licences.

---

## **PRIVACY POLICY**