

## “NOW . . . THIS”

HON. JUSTIN R. WALKER\*

Some of my favorite places to visit are Civil War battlefields. I’ve been to about 30 of them, and to show you how nice my wife is, we spent a day at Chickamauga on our honeymoon.

My favorite of them all is Gettysburg, where I’ve been more than 20 times, and where I go annually with my clerks. On the wall in my chambers is a photo of each clerk class, taken with me at the same spot, from Devil’s Den, with Little Round Top behind us. Every year, in every picture, I get a little grayer, and gain a little weight.

I told my clerks this year that instead of using a licensed guide, I was going to try to give the tour myself. And their expectations were appropriately low. I assured them that I’m not an expert, and that my only goal for Gettysburg was to share with them what I think when I see it.

I’ll tell you now that when I look at Little Round Top, I think about how there was a time when it seemed like the Union might be just one battle away from defeat; a time when it looked like America might not survive.<sup>1</sup> And I think of Chamberlain’s 20th Maine, when they ran out of ammunition, and fixed bayonets.<sup>2</sup> And whether I’m on Little Round Top or on Cemetery Ridge or in the

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\* Judge, United States Court of Appeals for the D.C. Circuit. These remarks were delivered to the Harvard Federalist Society on October 3, 2023.

1. James R. Brann, *Defense of Little Round Top*, AM. BATTLEFIELD TRUST, <https://www.battlefields.org/learn/articles/defense-little-round-top> [https://perma.cc/C99H-6D4E].

2. Joshua L. Chamberlain, NAT’L MUSEUM OF THE U.S. ARMY, <https://www.thenmusa.org/biographies/joshua-l-chamberlain/> [https://perma.cc/HS96-6VQ5].

cupola where Reynolds found Buford,<sup>3</sup> I think, "Here is where it happened. Here's where the Union was saved." You see, it's a salvation story. And salvation even came on the third day.

Proverbs says, "A good man leaves an inheritance to his children's children."<sup>4</sup> And you don't have to be a military historian to see that we've inherited quite a country from Chamberlain, and Reynolds, and Buford, and many, many more. That's how I come to you today—as an heir to that great inheritance, eager to talk with my fellow heirs, my co-equal heirs, about the effect on that inheritance from social media—and in particular, what social media is doing to the increasingly uncivil and unhinged discourse about our courts and our law.

**First, social media is, by its nature, cynical, shallow, and combative.** With every mind-numbing scroll through Twitter, our screens present us with so many things to be all for or all against—with little room for nuance—and no option for compromise in the binary world of a "like" button. True, we can learn many things reading Twitter, but sort of in the sense that we will learn many phone numbers by reading the phone book. And consider the opportunity costs: Every minute we spend on Twitter is a minute we could have spent reading Robert Caro, or Barbara Tuchman, or Jack Goldsmith.

The difference between Twitter and books is the difference between trivia and knowledge. And an attention span that can't last longer than 140 characters is a reason, to quote Bill Moyers, we live in "an anxious age of agitated amnesiacs."<sup>5</sup> Many "Americans seem to know everything of the last 24 hours but very little of the last sixty centuries or the last sixty years."<sup>6</sup>

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3. *The Cupola*, HIST. MARKET DATABASE (July 13, 2013), <https://www.hmdb.org/m.asp?m=66686> [<https://perma.cc/HR3B-83TJ>].

4. *Proverbs* 12:22 (New Catholic Bible).

5. Sam Ainsworth, Book Review, NEIL POSTMAN, *AMUSING OURSELVES TO DEATH* (1985), <https://www.samainsworth.com/post/amusing-ourselves-to-death> [<https://perma.cc/ESY5-QFWJ>].

6. *Id.*

In that sense, social media has exacerbated a phenomenon Neil Postman labeled, “Now ... this.” He observed that:

“Now . . . this” is commonly used on radio and television newscasts to indicate that what one has just heard or seen has no relevance to what one is about to hear or see, or possibly to anything one is ever likely to hear or see. The phrase is a means of acknowledging the fact that the world as mapped by . . . electronic media has no order or meaning and is not to be taken seriously. There is no murder so brutal, no earthquake so devastating, no political blunder so costly—for that matter, no ball score so tantalizing or weather report so threatening—that it cannot be erased from our minds by a newscaster saying, “Now . . . this.”<sup>7</sup>

Like Moyers, Postman offered his thoughts decades before social media, but however bad it was then, it is worse now. And it is antithetical to our professional calling. Good lawyers are careful; deliberative; thoughtful; thorough; informed.

Those are not the hallmarks of social media’s “now this” presentation. And when I say social media, I’m including most blogs and substacks and similar websites, not just Twitter and Facebook and TikTok and Instagram.

To be sure, some of them are not so bad. I’ve even found a few that I like. I get a daily email of *Wall Street Journal* articles. I also get two or three essays a day from *Law and Liberty*. And each week, I read David Lat’s Judicial Notice. I think he strikes a nice tone while flagging important judicial opinions, with good humor and good cheer. So too do Will Baude and Dan Epps on their Divided Argument podcast.

There is however—and I think Lat and Baude and Epps would agree with this—there is no substitute for actually reading the judicial opinions they discuss. That’s especially true if you’re getting your news from the mainstream media, which oversimplifies the cases and paints caricatures of judges and justices.<sup>8</sup>

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7. NEIL POSTMAN, *AMUSING OURSELVES TO DEATH* 99 (20th Anniversary ed. 2005).

8. See, e.g., Elizabeth Sepper, *Opinion: With its 303 Creative decision, the Supreme Court opens the door to discrimination*, L.A. TIMES (June 20, 2023), <https://www.latimes.com/opinion/story/2023-06-30/supreme-court-303-creative-gay->

To be clear, the fault here is not just with journalists, and it’s not confined to the left. When it comes to headlines and hot takes, there is plenty of blame to go around.

Take, for example, a conservative law professor who describes himself as “a national thought leader on constitutional law and the United States Supreme Court.”<sup>9</sup> In 2020, he called the Amy Barrett nomination “unsettling,” in part because he “didn’t know who she was” when he met her at a conference.<sup>10</sup> Take a minute, and think about that. Amy Barrett was one of the nation’s leading scholars on textualism and originalism, on one of the best faculties anywhere.<sup>11</sup> But this fellow didn’t know anything about her scholarship,<sup>12</sup> and he blamed *her* for not attending enough conferences with *him*.<sup>13</sup>

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rights-first-amendment-lorie-smith-neil-gorsuch-sonia-sotomayor [https://perma.cc/U7LB-EMTH]; Katie Scofield, *Amy Coney Barrett: The Cruel Irony of a Female Originalist*, THE HILL (Oct. 12, 2020), https://thehill.com/opinion/judiciary/520891-amy-coney-barrett-the-cruel-irony-of-a-female-originalist/ [https://perma.cc/K7HN-NE9V].

9. Josh Blackman, S. TEX. COLL. L., https://www.stcl.edu/profile/josh-blackman/ [https://perma.cc/FP7Q-3ZV4].

10. Josh Blackman, *Conservatives Should Not be Surprised by Justice Barrett’s Cautious Approach*, REASON: VOLOKH CONSPIRACY (July 20, 2023), https://reason.com/volokh/2023/07/20/conservatives-should-not-be-surprised-by-justice-barretts-cautious-approach [https://perma.cc/3P96-K5WZ].

11. See, e.g., Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109 (2010).

12. Blackman, *supra* note 10 (“She warmly said hello to me, but I was embarrassed that I didn’t know who she was; it took me a few moments to recall that she was the professor from Notre Dame who had been nominated to the Seventh Circuit. That was *all* I knew about her.”).

13. *Id.* (“Even while living in the District of Columbia, she never attended the Federalist Society’s national lawyers convention—a pilgrimage for conservative lawyers. . . . The Federalist Society hosted a faculty conference at the same time as the AALS convention, usually in a hotel across the street. I do not recall ever seeing Barrett at any of those meetings. . . . I do not recall ever seeing Barrett at any Federalist Society event before 2017. And as best as I can remember, I met her for the first time in August 2017 at a law professor conference in Florida. She warmly said hello to me, but I was embarrassed that I didn’t know who she was; it took me a few moments to recall that she was the professor from Notre Dame who had been nominated to the Seventh Circuit. That was *all* I knew about her. . . . I’ll admit there is something unsettling about Justice Barrett’s glide path to the Supreme Court. . . . To use baseball analogies, the conservative legal movement could have scored three home runs. However, we didn’t even score a run. Justice Gorsuch was a standing double—a solid hit that probably could have been extended to a triple. Justice Kavanaugh was a sacrifice bunt—he advanced the

There is indeed something “unsettling” about that, and it isn’t Justice Barrett’s nomination.

Two years later, our same friend tried his hand at psychoanalysis—because, I guess, why not? On the internet, anyone can say anything. Referring to a Kavanaugh line in *Bruen* endorsing the validity of a mental-health records check for gun licenses, he wrote: “I have to think that Kavanaugh’s dicta here was affected by the assassination attempt, in which a person with apparent mental health problems tried to kill” him.<sup>14</sup> Really? Is that also why Justice Scalia called mental-health requirements “presumptively lawful” in *Heller*?<sup>15</sup> And is it why Justice Alito did the same in *McDonald*?<sup>16</sup> And is it what made Kavanaugh quote Scalia and Alito with approval in a 2011 opinion—11 years before someone tried to shoot him?<sup>17</sup>

To give this guy his due, he stays busy: He’s written more than 10,000 blog posts, often thousands of words long,<sup>18</sup> and over the past 10 years, he has spoken at more than 300 Federalist Society events.<sup>19</sup> So he is a remarkably fast writer, and he’s happy to share an opinion about everything, everywhere; and that turns out to be a winning recipe for getting clicks and getting quoted. For example, the *New York Times* quoted him saying that “Gorsuch, Kavanaugh and Barrett have and will continue to disappoint conservatives”<sup>20</sup> —

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movement, but still scored an out. Justice Barrett was a walk—she never swung but still made it to first.”).

14. Josh Blackman, *The Kavanaugh Concurrences in Bruen and Dobbs*, REASON: VOLOKH CONSPIRACY (June 28, 2022), <https://reason.com/volokh/2022/06/28/the-kavanaugh-concurrences-in-bruen-and-dobbs> [<https://perma.cc/RX6A-9LNC>].

15. *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & n.26 (2008).

16. *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010).

17. *Heller v. District of Columbia*, 670 F.3d 1244, 1291 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

18. *Blog*, JOSH BLACKMAN, <https://joshblackman.com/blog/> [<https://perma.cc/P5CN-X5YA>].

19. *Speaking Engagements*, JOSH BLACKMAN (October 1, 2013 through October 26, 2023), <https://joshblackman.com/speaking/debates/> [<https://perma.cc/M3LZ-LSXJ>].

20. Adam Liptak & Alicia Parlapiano, *Along With Conservative Triumphs, Signs of New Caution at Supreme Court*, N.Y. TIMES (July 1, 2023), <https://www.ny-times.com/2023/07/01/us/supreme-court-liberal-conservative.html> [<https://perma.cc/76X6-XARM>].

which struck me as odd, because I know a few legal conservatives, and they’re not exactly disappointed by *Dobbs*; or *West Virginia*; or *Harvard*. Or by *Roman Catholic Diocese, Alabama Realtors, Collins, Bruen, Kennedy, Carson, 303 Creative*, and *Biden v. Nebraska*. From an originalist perspective, this is the best Supreme Court since John Marshall’s. But our friend the “national thought leader” told the *Times*, “I don’t know that future [Supreme Court] ‘short lists’ are worth much if they are made by the same people who generated the last batch of lists.”<sup>21</sup>

Well, the people who made those lists include Don McGahn and Leonard Leo.<sup>22</sup> And calling Don McGahn and Leonard Leo insufficiently conservative is what the kids call a “hot take” — which leads me to the **second** problem with social media: You don’t have to be right, or eloquent, or even coherent. **You just have to be loud.**

I’m barely old enough to remember an era when people got their news for 30 minutes a night from Tom Brokaw, Peter Jennings, or Dan Rather—the nightly news anchors at NBC, ABC, and CBS.<sup>23</sup> Now, there were plenty of problems with that. TV was always a “now this” medium,<sup>24</sup> plus there was plenty of bias in those newsrooms, especially Dan Rather’s.<sup>25</sup> But I look back on that era with more fondness than I felt at the time—because back when I was watching a national newscast, filtered for the broadest possible audience, I didn’t know that the alternative would turn out to be a never-ending circus of click-seeking clowns, hecklers, and hysterics—all shifting the Overton window away from any perspective that could have made it onto Tom Brokaw’s teleprompter.

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21. *Id.*

22. Robert O’Harrow Jr. & Shawn Boburg, *A conservative activist’s behind-the-scenes campaign to remake the nation’s courts*, WASH. POST (May 21, 2019), <https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/> [https://perma.cc/LC9N-G2W4].

23. Michael J. Socolow, *The Last Time We Worshipped in the Church of the Nightly News*, SLATE (Sep. 10, 2021), <https://slate.com/business/2021/09/911-anchormen-nightly-news-rather-jennings-brokaw-legacy.html> [https://perma.cc/RS3M-9RGB].

24. POSTMAN, *supra* note 7.

25. Charles Krauthammer, *Opinion, Rather Biased*, WASH. POST. (Jan. 13, 2005), <https://www.washingtonpost.com/archive/opinions/2005/01/14/rather-biased/51d4abbb-8a06-462b-bb51-f13e2a294665/> [https://perma.cc/7F95-XDRK].

Now, by the time I was in college, cable news was prevalent, and I was a cable news junkie back then. Years later, there was even a summer when I appeared a lot on cable news, which I don't regret. And there was also a time when I read a fair amount of social media. But at a certain point, several years ago, two things occurred to me about my news consumption.

First, I thought, "All this does . . . is make me mad." I wasn't following the most outrageous voices. But I was following understandably outraged people, who were rebutting the kooks and cranks to whom social media has handed a megaphone. And I just thought to myself, "I already know there are crazy people out there. I don't need to be reminded of it all day every day."

The second thought I had was while I was scrolling on the couch next to my daughter. And I thought, "No. Just no. She's only a kid for so long. And I'm a fool if I let social media distract me from our limited time together."

And that's the **third** problem with social media: **It's isolating.** It takes your attention away from actual people. And not just your family or close friends.

Social media is a substitute—a poor substitute—for the real-life community interactions that Tocqueville found indispensable, and that we enjoyed for most of our history.<sup>26</sup> If you've read *Bowling Alone*, you know this story. And I liked that book so much I actually joined a bowling league. My RAs and I played 3 seasons, won just 1 match, and lost the other 23.

*Bowling Alone* argues that we used to join more bowling leagues, and church groups, and rotary clubs.<sup>27</sup> They taught us how to cooperate with people outside an immediate social circle we can closely control.<sup>28</sup> Republicans and Democrats alike learned that the

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26. Matthew Wilson, *Strengthening Community Bonds Two Centuries after De Tocqueville*, THE CATALYST (2016), <https://www.bushcenter.org/catalyst/leadership/strengthening-community-bonds-two-centuries-after-de-tocqueville> [<https://perma.cc/224Q-9HZF>].

27. ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (20th Anniversary ed. 2020).

28. *Id.*

other bowlers were more than Republicans and Democrats—that we are not simply “too different” to bowl together, or eat together, or perpetuate our national inheritance together.

The upside was a surplus of the social capital necessary for a republic to function at its best.<sup>29</sup> Our debates were humanized, because although you may not have known your opposition, you saw them. You shared a common space as companions on a common enterprise. And when there were disagreements, you needed at least a modicum of courage, respect, and restraint—because both sides were looking directly into the eyes of another person.

But what began with television accelerated with social media, and now when you hold a screen in your hand, often the only eyes you will see are those found in the reflection of that screen—your own.

When we see only ourselves, it’s hard to see past ourselves. Or as George Hawley recently wrote, “Cross-party dialog is . . . effective in instances of face-to-face communication, where people are likely to practice basic norms of civility,” but the “online world of anonymous or semi-anonymous social media and comment sections, where partisan hyperbole is the norm, is unlikely to foster such positive results.”<sup>30</sup>

Among the practitioners of that partisan hyperbole are fanatics on both sides, including people who called themselves “the resistance,”<sup>31</sup> as if they were in occupied France, or a Star Wars movie.

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29. See generally Paul Lichterman, *Social Capital or Group Style? Rescuing Tocqueville’s Insights on Civic Engagement*, 35 *THEORY & SOC’Y* 529 (2006).

30. George Hawley, *Our Partisan Future?*, *L. & LIBERTY* (Aug. 28, 2023), <https://lawliberty.org/book-review/our-partisan-future/> [<https://perma.cc/S95P-4CWE>]; see also Jonathan Haidt, *Why the Past 10 Years of American Life Have Been Uniquely Stupid*, *ATLANTIC* (May 2022).

31. See, e.g., *The Resistance with Keith Olbermann*, *GQ*, <https://www.gq.com/video/series/the-closer-with-keith-olbermann> [<https://perma.cc/E4WT-8NEP>]; Opinion, *I Am Part of the Resistance Inside the Trump Administration*, *N.Y. TIMES* (Sept. 5, 2018), <https://www.nytimes.com/2018/09/05/opinion/trump-white-house-anonymous-resistance.html> [<https://perma.cc/H5MW-PRPP>]; Kenneth P. Vogel, *The ‘Resistance,’ Raising Big Money, Upends Liberal Politics*, *N.Y. TIMES* (Oct. 7, 2017), <https://www.nytimes.com/2017/10/07/us/politics/democrats-resistance-fundraising.html> [<https://perma.cc/UJF9-24UR>].



In a recent Pew poll, 71 percent of Democrats said they wouldn't even date a Trump voter, and 51 percent of Republicans said they wouldn't date a Clinton voter.<sup>32</sup>

A social media landscape that rewards the loudest voice and pits people against each other is one reason why the political is so often personalized, and the personal is so often politicized. Because it's not just dating. Take sports:<sup>33</sup> Are you going to stand for the national anthem?<sup>34</sup> And how many national anthems will there be today?<sup>35</sup> Or your morning coffee: Are the beans fair trade?<sup>36</sup> Is Starbucks anti-union?<sup>37</sup> Or is it only anti-Christmas?<sup>38</sup> I bet Howard Schultz wishes we'd just pick a lane.

Somehow it's even video games—and not just their content, like in the good old days of *Mortal Combat II*. No, now *Hogwarts Legacy* is being boycotted, and banned from competitions.<sup>39</sup> These are the

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32. Anna Brown, *Most Democrats who are looking for a relationship would not consider dating a Trump voter*, PEW RSCH. CTR. (Apr. 24, 2020), <https://www.pewresearch.org/short-reads/2020/04/24/most-democrats-who-are-looking-for-a-relationship-would-not-consider-dating-a-trump-voter/> [https://perma.cc/R5R8-XWGG].

33. Dave Zirin, *The New Era of Backlash in Sports and Politics*, *The Nation* (Mar. 1, 2023), <https://www.thenation.com/article/politics/sports-politics/> [https://perma.cc/UP8B-LLBJ].

34. Lindsey Kagawa Colas, *Why Brittney Griner Will Stand for the National Anthem This Year*, *TIME* (May 19, 2023), <https://time.com/6281073/brittney-griner-national-anthem-stand/> [https://perma.cc/73SE-6P58].

35. Ryan Gaydos, *Black national anthem at Super Bowl stirs debate on social media*, *FOX NEWS* (Feb. 12, 2023), <https://www.foxnews.com/sports/black-national-anthem-super-bowl-stirs-debate-social-media> [https://perma.cc/9GEF-L9NW].

36. *Coffee should be more*, <https://www.boycottcoffee.com> [https://perma.cc/4QWE-HRVB].

37. Megan K. Stack, *Inside Starbucks' Dirty War Against Organized Labor*, *N.Y. TIMES* (July 21, 2023), <https://www.nytimes.com/2023/07/21/opinion/starbucks-union-strikes-labor-movement.html> [https://perma.cc/QL4E-FXZW].

38. Whitney Filloon & Brenna Houck, *A Brief History of Starbucks' Holiday Cup Controversies*, *EATER* (Nov. 5, 2018), <https://www.eater.com/2015/11/10/9705570/starbucks-holiday-red-cups-controversy-history> [https://perma.cc/WR47-PHDZ].

39. Jenna Benchetrit, *The new Harry Potter game is a hit. Here's why some trans gamers wish it wasn't*, *CBC* (Mar. 4, 2023), <https://www.cbc.ca/news/entertainment/hogwarts-legacy-controversy-explained-1.6765491> [https://perma.cc/2USY-D7U9]; Hope Bellingham, *Leading speedrunning event bans Hogwarts Legacy and all other Harry Potter games from future events*, *GAMESRADAR+* (Feb. 20, 2023),

kinds of tournaments where adults play video games for millions of dollars—or for charity. That hardly seems like a place for politics, but welcome to the rabbit hole.

Is all of this the fault of social media? Of course not. But the success of social media is both a cause of the disease, and a symptom. And the disease is dangerous. Everywhere you look, unifying institutions and democratic norms are dismissed and disparaged with the arrogance of a teenager who just discovered Howard Zinn. Western Civilization? Oppressive.<sup>40</sup> America? Racist.<sup>41</sup> The Senate?<sup>42</sup> The Electoral College?<sup>43</sup> The Supreme Court?<sup>44</sup> Illegitimate, every one of them.

The effect is, to say the least, destabilizing. It tears at the partnership that makes total strangers into a functioning society—a partnership that took generations to form—“a partnership,” as Burke said, “not only between those who are living, but between those who are dead, and those who are to be born.”<sup>45</sup>

And so I return to the place I began—our inheritance. This partnership we call America, it’s a hell of an inheritance. And it depends on institutions like the family, houses of worship, and an

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<https://www.gamesradar.com/leading-speedrunning-event-bans-hogwarts-legacy-and-all-other-harry-potter-games-from-future-events/> [<https://perma.cc/2TK9-PF35>].

40. Simon Kennedy, *The revealed and the hidden: Reconceiving Western civilization*, AUSTL. BROAD. SERV. (Oct. 27, 2020), <https://www.abc.net.au/religion/revealed-and-hidden-reconceiving-western-civilisation/12821176> [<https://perma.cc/UXL7-QE46>].

41. Rashawn Ray, *Is the United States a racist country?* BROOKINGS (May 4, 2021), <https://www.brookings.edu/articles/is-the-united-states-a-racist-country/> [<https://perma.cc/8X74-VARR>].

42. Dylan Matthews, *The Senate is so crazily designed it would be literally illegal for a US state to copy it*, VOX (Dec. 13, 2015), <https://www.vox.com/policy-and-politics/2015/12/13/9910796/senate-reynolds-sims> [<https://perma.cc/HT6F-8LGV>].

43. *Outgrowing the Electoral College*, PURDUE POL’Y RSCH. INST. BLOG (Dec. 1, 2020), <https://www.purdue.edu/discoverypark/ppri/blog/outgrowing-the-electoral-college/> [<https://perma.cc/GM8M-YB9J>].

44. David Smith, *Democrats fight to expand a ‘broken and illegitimate’ supreme court*, GUARDIAN (May 21, 2023), <https://www.theguardian.com/law/2023/may/21/supreme-court-expansion-democrats> [<https://perma.cc/L89B-MTDL>].

45. EDMUND BURKE, OXFORD ESSENTIAL QUOTATIONS (4th ed. 2016), <https://www.oxfordreference.com/display/10.1093/acref/9780191826719.001.0001/q-oro-ed4-00002268> [<https://perma.cc/UB6R-MUSK>].

independent judiciary—to name just a few institutions for which social media influencers often have little patience and even less understanding.

There is, however, good news: Not only do I know that we can do better, but I believe most of us want to do better. Professor Dan Epps, who I mentioned earlier, and who was a year ahead of me here at HLS, recently said that he tries to be a “little bit less online” so that he can “come up with the way he thinks independently.”<sup>46</sup> I think almost all of us, myself included, would be better off following his lead and aiming to be a “little bit less online.”<sup>47</sup>

So if you can, get off social media. But if you can’t, just try to cut back. And at the very least, approach it with caution, and reject the social media mentality that will never understand what even Mike Tyson understood when he said: “Everybody you fight is not your enemy.”<sup>48</sup>

And if I you’ll permit me one more piece of related advice: Be hopeful. It’s easy to despair when you’re doom scrolling—or being attacked on social media for something you said in class—or for joining the Federalist Society. But despair is an accelerant for tribalism, cynicism, and burn-it-all-down-ism—three plagues, inflamed by social media, and found at either end of the ideological spectrum.

Despair is a choice, and it’s an easy choice. But hope too is a choice.

Chamberlain chose hope on Little Round Top. And so did the rest of the 20th Maine.

I suppose if you’ve ever seen *The Shawshank Redemption*, you know that Andy chose hope too—because he knew it was “a good thing . . . maybe the best of things.”<sup>49</sup>

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46. *My Despised World*, DIVIDED ARGUMENT, at 01:44 (July 21, 2023) <https://www.dividedargument.com/episodes/my-despised-world> [<https://perma.cc/7G6M-C5R8>].

47. *Id.*

48. Mike Tyson, *Everybody that you fight is not your enemy & everybody that helps you is not your friend*, YOUTUBE (Sept. 2, 2022), [https://youtu.be/9Du7tkUq0yg?si=Wdyr0OjmoHQ\\_oS2Z](https://youtu.be/9Du7tkUq0yg?si=Wdyr0OjmoHQ_oS2Z).

49. *Shawshank Redemption, Hope is a good thing*, YOUTUBE, <https://youtu.be/9K30e9O3Nng?si=EcXN8DwSEOc9WHT4&t=6>.

Saint Peter chose hope. A future clerk recently reminded me that after Peter denied Jesus, he could have despaired, as Judas did. But Peter went on to lead the Church, because he had hope that there is no sin too great for God to forgive—that there is nothing too crooked for Him to make straight.

My childhood hero, Ronald Reagan, was one of our most hopeful presidents, and it’s fitting that his last big speech was called, “America’s Best Days Are Yet to Come.”<sup>50</sup> I gave it at speech tournaments in middle school, and today it hangs in my home office. In it he said, “A fellow named James Allen once wrote in his diary, ‘many thinking people believe America has seen its best days.’ He wrote that July 26, 1775.”<sup>51</sup>

I want to conclude with two more people who chose hope. One was my boss, and one was the grandmother of my wife’s boss. After I started law school here, my wife went to work across the river for the Democratic Governor, Deval Patrick. When he was a kid, his grandma used to tell him: Don’t say we’re poor; say we’re broke—because broke can be fixed.<sup>52</sup>

His grandma chose hope.

And so has my former boss, Justice Kavanaugh, in spite of everything. Hanging in his chambers is a replica of the painting that his old boss, George W. Bush, kept in the Oval Office. The painting is titled “Rio Grande,” and it shows the east side of the Franklin Mountains, beyond the desert and past a prominent cactus.<sup>53</sup>

I was just out of high school in August of 2000 when I watched from the convention hall in Philadelphia as George Bush concluded his acceptance speech with an explanation of that painting. He said, “My friend, the artist Tom Lea of El Paso, Texas, captured the way

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50. Ronald Reagan, Speech to the 1992 Republican National Convention, *America’s Best Days Are Yet to Come* (Aug. 17, 1992), <https://teachingamericanhistory.org/document/speech-to-the-republican-national-convention/> [<https://perma.cc/AHR5-Z2MJ>].

51. *Id.*

52. Editorial, *Broke, not poor*, BOSTON GLOBE (Nov. 19, 2018), <https://www.bostonherald.com/2009/01/16/broke-not-poor/> [<https://perma.cc/XJQ2-G4JU>].

53. Tom Lea, *Rio Grande* (1954), <https://www.digie.org/en/media/12376> [<https://perma.cc/LZ6K-MYW8>].

I feel about our great land, a land I love. He and his wife, he said, 'live on the east side of the mountain. It's the sunrise side, not the sunset side. It is the side to see the day that is coming, not to see the day that has gone.' Americans live on the sunrise side of the mountain. The night is passing, and we're ready for the day to come."<sup>54</sup>

Whether your politics are more like Deval Patrick's or more like George Bush's, my wish for you is that you will choose hope. I do not know when this long night of tribalism, cynicism, and burn-it-all-down-ism will begin to pass. But I know I'm ready for the day to come.

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54. *El Paso artist Tom Lea dies after fall*, CHRON (Jan. 30, 2021), <https://www.chron.com/news/houston-texas/article/el-paso-artist-tom-lea-dies-after-fall-2000476.php> [https://perma.cc/KT87-ZDQZ].