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## CIVIC EDUCATION IN CIRCUMSTANCES OF CONSTITUTIONAL ROT AND STRONG POLARIZATION

LINDA C. MCCLAIN\* & JAMES E. FLEMING\*\*

### ABSTRACT

*This Essay argues that civic education is crucial to remedying what Jack Balkin, in *The Cycles of Constitutional Time*, diagnoses as “constitutional rot” in the United States. A twenty-first century civic education must meet challenges of polarization and growing diversity and inequality and equip people for forms of democratic participation necessary to the health of constitutional democracy. Some commentators have called the insurrection on January 6, 2021, a “Sputnik moment for teaching civics”—seeing a link between the white-supremacist/conspiracy-theory mob’s actions and the failure to instill civic virtue in “We the People.” To be capable of spurring national reconciliation and renewal, civic education must reckon with systemic racism and with how to strive to overcome it. This Essay critiques the model of “patriotic education” set out in The 1776 Report as a signal of, rather than a cure for, constitutional rot. The Report’s attacks on “identity politics” and critical race theory as incompatible with “authentic” civics education echo in recent proposed or enacted state and local laws prescribing whether and how teachers may teach students about racism and sexism. A better model of civic education, we argue, is the call for “reflective patriotism” set out in the Educating for American Democracy Initiative. This model combines “love of country with clear-eyed wisdom about our successes and failures in order to chart our path forward.” It helps students to engage with “hard histories” of inclusion and exclusion and to understand how the constitutional order has become more democratic because of the efforts of social movements. It seeks to educate young people “to participate in and sustain our constitutional democracy.” This model offers hope for addressing constitutional rot and preparing students to face present-day challenges.*

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\* Robert Kent Professor of Law, Boston University School of Law.

\*\* The Honorable Paul J. Liacos Professor of Law, Boston University School of Law.

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## CONTENTS

CONSTITUTIONAL ROT: IT'S EVEN WORSE THAN IT LOOKS.....	1773
I. CONSTITUTIONAL ROT: NOT ONLY IN OUR INSTITUTIONS OF GOVERNMENT BUT ALSO IN OUR PEOPLE .....	1775
II. HOW <i>NOT</i> TO LAUNCH A PROJECT OF CIVIC EDUCATION AND RENEWAL: THE 1776 COMMISSION'S REPORT .....	1779
III. HOW <i>TO</i> LAUNCH A PROJECT OF CIVIC EDUCATION AND RENEWAL: THE EDUCATING FOR AMERICAN DEMOCRACY ROADMAP .....	1785
A. <i>A Few Orienting Thoughts About Civic Education</i> .....	1786
B. <i>The "Educating for American Democracy" Model and             Roadmap</i> .....	1788
CONCLUSION.....	1792

## CONSTITUTIONAL ROT: IT'S EVEN WORSE THAN IT LOOKS

Many have feared that the United States is in the throes of a constitutional crisis or, worse yet, constitutional failure. In his splendid new book, *The Cycles of Constitutional Time*, Jack Balkin assures us that this is not the case.<sup>1</sup> Instead, he argues, the United States is suffering from an advanced case of constitutional rot. Happily, he offers a message of hope for the future: that we will survive, as he once put it, paraphrasing Gloria Gaynor's famous disco song.<sup>2</sup> He observes that democratic republics—like the United States—are especially susceptible to rot.<sup>3</sup> He quotes Benjamin Franklin's famous line answering the question of what form of government the Constitution establishes: "A republic, Madam, if you can keep it."<sup>4</sup> That line highlights that keeping a democratic republic requires maintenance, lest it rot<sup>5</sup> or even die.<sup>6</sup>

Notably, Balkin does not prescribe a remedy for mitigating or overcoming the rot he diagnoses (though he does propose a series of judicial reforms). Rather, the message of hope he provides is basically an assurance that the system will undergo renewal, as it has done before when going through the cycles of constitutional time. We will get through these difficult times, evidently not so much through a rejuvenation of the civic virtues and capacities needed to maintain a democratic republic, but instead through the emergence of a new regime following the collapse of the current Reagan regime.<sup>7</sup> Thus, the renewal he anticipates seems pretty thin: basically, an assurance that a new regime will emerge and, for a time, the parties will not be so polarized and the government will function more effectively in addressing pressing national problems. And so, the renewal does not seem to entail a renewal of the civic character of the people themselves as capable, responsible members of a well-functioning polity, striving through critical reflection and deliberation to live up to our ideals.

We will suggest that the constitutional rot undermining our democratic republic is *even worse than it looks* (to repurpose the title of Thomas Mann and Norman Ornstein's well-known book).<sup>8</sup> We aim not so much to criticize Balkin's book—he accomplishes an incredible amount in 200 pages—as to raise

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<sup>1</sup> See generally JACK M. BALKIN, *THE CYCLES OF CONSTITUTIONAL TIME* (2020).

<sup>2</sup> See Jack M. Balkin, *The Last Days of Disco: Why the American Political System Is Dysfunctional*, 94 B.U. L. REV. 1159, 1199 (2014) (quoting GLORIA GAYNOR, *I Will Survive*, on LOVE TRACKS (Polydor Records 1978), as encapsulating "the American story").

<sup>3</sup> See BALKIN, *supra* note 1, at 44.

<sup>4</sup> *Id.* at 47.

<sup>5</sup> See *id.*

<sup>6</sup> See STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* 3 (2018) ("Democracies may die at the hands not of generals but of elected leaders—presidents or prime ministers who subvert the very process that brought them to power.").

<sup>7</sup> See BALKIN, *supra* note 1, at 64.

<sup>8</sup> See THOMAS E. MANN & NORMAN J. ORNSTEIN, *IT'S EVEN WORSE THAN IT LOOKS: HOW THE AMERICAN CONSTITUTIONAL SYSTEM COLLIDED WITH THE NEW POLITICS OF EXTREMISM* (2d ed. 2016).

some questions for him as well as to use his book as a springboard for our own project on civic education in circumstances of extreme polarization. We will use as an example of the kind of civic education that is not the answer—but is instead a sign of constitutional rot!—*The 1776 Report*, issued in January 2021 by President Trump’s Advisory 1776 Commission.<sup>9</sup> Although President Biden swiftly disbanded the 1776 Commission and withdrew *The 1776 Report* upon taking office,<sup>10</sup> the Report’s approach to “patriotic education” warrants attention.<sup>11</sup> It attacks “identity politics” and critical race theory (“CRT”), in particular, as incompatible with American principles and “authentic” civics education by teaching young people to “hate [our] country.”<sup>12</sup> Such attacks find echoes in the spate of proposed or enacted state and local laws prescribing whether and how teachers may teach students about racism and sexism—including, in some instances, prohibiting teaching CRT.<sup>13</sup> Indeed, CRT “has become a new boogie man for people unwilling to acknowledge our country’s racist history and how it impacts the present.”<sup>14</sup>

We will contrast *The 1776 Report*’s call for “patriotic education” with the more promising call for “reflective patriotism” and “excellence in history and civics” set out in the Educating for American Democracy (“EAD”) initiative.<sup>15</sup> This model combines “love of country with clear-eyed wisdom about our successes and failures in order to chart our path forward.”<sup>16</sup> Recognizing that the

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<sup>9</sup> See THE PRESIDENT’S ADVISORY 1776 COMM’N, *THE 1776 REPORT* (2021), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf> [<https://perma.cc/35FL-FL2C>].

<sup>10</sup> See Collin Binkley, *Biden Revokes Trump Report Promoting ‘Patriotic Education,’* AP NEWS (Jan. 21, 2021), <https://apnews.com/article/biden-revoke-trump-patriotic-education-259b9302ab24bac55fa14676a1a9d11e> (“In an executive order signed on Wednesday in his first day in office, Biden disbanded Donald Trump’s presidential 1776 Commission and withdrew a report it released Monday.”).

<sup>11</sup> THE PRESIDENT’S ADVISORY 1776 COMM’N, *supra* note 9, at 16.

<sup>12</sup> *Id.* at 29-30, 37.

<sup>13</sup> See Adrian Florido, *Teachers Say Laws Banning Critical Race Theory Are Putting a Chill on Their Lessons*, NPR (May 28, 2021, 9:04 AM), <https://www.npr.org/2021/05/28/1000537206/teachers-laws-banning-critical-race-theory-are-leading-to-self-censorship> [<https://perma.cc/7223-9E52>]; Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS (Aug. 2021), <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/> [<https://perma.cc/V2K2-NLP2>]; *Map: Where Critical Race Theory Is Under Attack*, EDUC. WEEK (Sept. 13, 2021), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/9MUP-QEH2>].

<sup>14</sup> Ray & Gibbons, *supra* note 13.

<sup>15</sup> Compare THE PRESIDENT’S ADVISORY 1776 COMM’N, *supra* note 9, at 16, with EDUCATING FOR AM. DEMOCRACY INITIATIVE, *EDUCATING FOR AMERICAN DEMOCRACY: EXCELLENCE IN HISTORY AND CIVICS FOR ALL LEARNERS* 1, 8 (2021), <https://www.educatingforamericandemocracy.org/wp-content/uploads/2021/02/Educating-for-American-Democracy-Report-Excellence-in-History-and-Civics-for-All-Learners.pdf> [<https://perma.cc/RB4Y-Z599>].

<sup>16</sup> EDUCATING FOR AM. DEMOCRACY INITIATIVE, *supra* note 15, at 8.

constitutional order has become more democratic over time because of the efforts of social movements, EAD's model seeks to educate young people "to participate in and sustain our *constitutional democracy*" in order—in the language of the Constitution's Preamble—to make our union "more perfect."<sup>17</sup>

I. CONSTITUTIONAL ROT: NOT ONLY IN OUR INSTITUTIONS OF GOVERNMENT BUT ALSO IN OUR PEOPLE

Balkin focuses mostly on rot within our institutions of government and among our elected officials. He identifies the basic causes of constitutional rot—which he dubs "the Four Horsemen of Constitutional Rot"—as political polarization, increasing economic inequality, loss of trust, and "policy disasters."<sup>18</sup> We found his analysis painfully apt and insightful, although, reading his book in early 2021, it seems appropriate to add the nation's failure to reckon with systemic racism as a cause of rot.<sup>19</sup>

We plan in our own work over the next few years to address a form of rot Balkin mentions but does not analyze fully: rot in the civic character of the people themselves due to the failure of government and the institutions of civil society adequately to inculcate civic virtues, capacities, and skills necessary to maintain our democratic republic. This project will build upon the work we did in our book, *Ordered Liberty: Rights, Responsibilities, and Virtues*.<sup>20</sup>

To be sure, there are parallels between rot in our institutions and rot in our people. But the way Balkin conceives the United States as moving beyond institutional rot to renewal seems basically to be through the emergence of a new regime that accompanies changes in the demographics or changes in the strategies of parties to attract voters and the like. He also mentions that a "transformative social movement" often "accompanies a new regime"; at the time he finished the book, he noted that the nationwide protests against police racism in 2020 might "mark the beginning of such a mobilization."<sup>21</sup> We would

<sup>17</sup> *Id.* at 9, 25. On these aspects of "reflective patriotism," see Linda C. McClain & Robert L. Tsai, *How to Avoid the Culture War Trap Around Critical Race Theory*, SLATE (June 23, 2021, 3:40 PM), <https://slate.com/news-and-politics/2021/06/loudoun-county-critical-race-theory-debacle.html> [<https://perma.cc/R4L5-HM42>].

<sup>18</sup> See BALKIN, *supra* note 1, at 49 (quoting STEPHEN M. GRIFFIN, *BROKEN TRUST: DYSFUNCTIONAL GOVERNMENT AND CONSTITUTIONAL REFORM* 20 (2015)).

<sup>19</sup> Spurred by an observation by Guy-Uriel Charles that *The Cycles of Constitutional Time* "does not say a lot about race," Balkin has acknowledged that "race is not an organizing theme of the book," and has written an article trying to "tell the story of the book by making race the organizing principle." Jack M. Balkin, *Race and the Cycles of Constitutional Time*, 86 MO. L. REV. (forthcoming 2021) (manuscript at 444) (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3770410](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3770410)).

<sup>20</sup> See JAMES E. FLEMING & LINDA C. MCCLAIN, *ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES* (2013).

<sup>21</sup> BALKIN, *supra* note 1, at 164. In her forthcoming book, *Black Lives Matter and the Necessity of Democratic Social Movements*, philosopher Deva Woodly offers the Movement

have thought that the efforts of Stacey Abrams and groups like the New Georgia Project to turn Georgia blue and similar efforts would be another transformative social movement.<sup>22</sup>

In any case, the emergence of a new regime does not seem necessarily to entail any changes in the attitudes of the people toward each other or their institutions, or to require any particular civic virtues or capacities on their part. To be fair, Balkin does mention that republics depend on certain “political norms” like mutual forbearance, toleration, and trust, and that their decline evidences constitutional rot.<sup>23</sup> And in his subsequent article, *Rot and Renewal: The 2020 Election in the Cycles of Constitutional Time*, he writes that the theory of republicanism often emphasizes the importance of civic virtue to maintain republican government; for that reason, “one might say that constitutional rot is the gradual loss of civic virtue and public-spiritedness in the country’s leaders and in the public as a whole.”<sup>24</sup> But the book itself gives surprisingly little attention either to civic virtue or to civic education.

Thus, in Balkin’s otherwise rich analysis, the “selves” in constitutional self-government seem to be missing. The regime changes, the parties change, and the institutions work better once the parties are not so polarized, but the people themselves do not seem to change for the better. They seem simply to vote for different parties or different types of candidates. And maybe in the new regime they develop greater trust in our institutions of government once those institutions work better. Balkin mentions the “generational replacement” problem the Republican Party evidently faces—that it is failing to reproduce itself by attracting younger voters<sup>25</sup>—but this is not the same thing as conscious social reproduction of the sort that civic education undertakes.

Civic education, in contrast to Balkin’s idea of renewal, targets the attitudes of the people themselves toward one another and their institutions. Such education helps to equip people for forms of democratic participation (including

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for Black Lives as a case study to highlight the vital role of social movements in counteracting “the politics of despair by ‘repoliticiz[ing] public life.’” DEVA WOODLY, BLACK LIVES MATTER AND THE DEMOCRATIC NECESSITY OF SOCIAL MOVEMENTS (forthcoming) (manuscript at 4) (alteration in original) (quoting IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 199 (2011 ed.)) (on file with authors) (quoted with permission). Woodly argues that democratic social movements are an important institutional structure in American constitutional democracy—an essential “Fifth Estate.” *Id.* at 12. For further discussion, see generally Linda C. McClain, *Experimental Meets Intersectional: Visionary Black Feminist Pragmatism and Practicing Constitutional Democracy*, 69 DRAKE L. REV. (forthcoming 2021).

<sup>22</sup> See Austa Somvichian-Clausen, *How Stacey Abrams Helped Get Out the Black Vote in Georgia*, HILL (Nov. 10, 2020), <https://thehill.com/changing-america/respect/diversity-inclusion/525387-how-stacey-abrams-helped-get-out-the-black-vote> [<https://perma.cc/9SZS-YBXP>].

<sup>23</sup> See BALKIN, *supra* note 1, at 45–46.

<sup>24</sup> Jack M. Balkin, *Rot and Renewal: The 2020 Election in the Cycles of Constitutional Time*, 13 NE. U. L. REV. 617, 638 (2021).

<sup>25</sup> See BALKIN, *supra* note 1, at 164.

in social movements) necessary to the health of constitutional democracy. It aspires to inculcate civic virtues and develop capacities for responsible constitutional self-government, for example:

- tolerance and respect for others who are different from ourselves;
- reciprocity in our relationships with others, including those with whom we disagree;
- mutual forbearance and trust (norms on which republics depend, as Balkin acknowledges);
- a willingness to meet people halfway (rather than to insist on our own way); and
- a disposition and capacity to give reasons (rather than merely to make assertions).<sup>26</sup>

What is more, civic education aims to develop substantive knowledge and civic skills, as well as a set of dispositions and capacities, for example:

- to learn about and critically reflect upon the history of the United States and its basic texts, ideals, and principles—such as liberty and equality—as well as the shortfall between commitments and historical practices;
- to engage in critical reflection about what programs and policies are needed to promote our ideals; as well as
- to care for and strive to further a common good that may not always coincide with our own individual good.<sup>27</sup>

And, as civic educators insist, a rebooted civic education in the twenty-first century must meet challenges of polarization, growing diversity, and growing inequality.<sup>28</sup> It must also teach media literacy to help young people be discerning consumers of news versus fake news and responsible users of social media.<sup>29</sup> Young people must also gain skills to be discerning listeners able to assess and evaluate political speech. Balkin aptly recognizes the problem of “propaganda”

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<sup>26</sup> See FLEMING & McCLAIN, *supra* note 20, at 121-24.

<sup>27</sup> See *id.* For a helpful account of the aims and methods of civic education, see generally PETER LEVINE & KEI KAWASHIMA-GINSBERG, *THE REPUBLIC IS (STILL) AT RISK—AND CIVICS IS PART OF THE SOLUTION* (2017), <https://www.civxnow.org/sites/default/files/resources/SummitWhitePaper.pdf> [<https://perma.cc/W75M-CW6W>].

<sup>28</sup> See Linda C. McClain, *Bigotry, Civility, and Reinvigorating Civic Education: Government's Formative Task amid Polarization*, in *THE IMPACT OF THE LAW: ON CHARACTER FORMATION, ETHICAL EDUCATION, AND THE COMMUNICATION OF VALUES IN LATE MODERN PLURALISTIC SOCIETIES* 109, 119 (John Witte & Michael Welker eds., 2021) (discussing contours of a twenty-first century model of civic education).

<sup>29</sup> On news media literacy education, see LEVINE & KAWASHIMA-GINSBERG, *supra* note 27, at 10.

and how it contributes to dividing and confusing people and, thus, drives polarization.<sup>30</sup>

For a variety of reasons, we believe our nation has neglected civic education and failed to adequately inculcate the civic virtues and develop the capacities needed to maintain constitutional self-government. We believe that this has contributed to constitutional rot and extreme polarization. One commentator even called the insurrection on January 6, 2021, a “Sputnik moment for teaching civics”—seeing a link between the white supremacist/conspiracy theory mob’s shocking disregard for the rule of law, spurred by President Trump’s demagoguery, and the failure to instill civic virtue in “We the People.”<sup>31</sup> As school teacher Christie Nold tweeted: “Each person knocking down those doors once sat in a classroom.”<sup>32</sup> Thus, the answer to the question, “Can we teach our way out of political polarization?”—and, to add Balkin’s formulation, out of constitutional rot—is a qualified “yes”: civic education is a necessary but not sufficient step.

Even though civic education seems imperative and is a “perennial concern of various national commissions and summits,” it is hard to imagine a way forward in our scheme of federalism—with control over education largely in the hands of state governments—given not only regional diversity over the “what” and “how” of civic education but also growing polarization.<sup>33</sup> The challenge is encapsulated in a much-discussed *New York Times* article and corresponding interview from last year: *Two States. Eight Textbooks. Two American Stories*<sup>34</sup> and *Two Textbooks, Two Americas*.<sup>35</sup> In ordinary times, federalism might seem a good structure for reckoning with disagreements concerning basic values. People who disagree with values prominent in their state can “vote with their feet,” as Ilya Somin has put it.<sup>36</sup> That is, they can move to a different state where people’s values are more congenial to their own. But in deeply polarized times—perhaps accentuated by people having voted with their feet—it becomes harder

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<sup>30</sup> See BALKIN, *supra* note 1, at 49 (“Propaganda is more than false information. It is designed to confuse and divide people.”).

<sup>31</sup> Andrea Gabor (@aagabor), TWITTER (Jan. 15, 2021, 8:38 AM), <https://twitter.com/aagabor/status/1350074771191582721> [<https://perma.cc/N89W-4G6U>].

<sup>32</sup> Christie Nold (@ChristieNold), TWITTER (Jan. 6, 2021, 2:55 PM), <https://twitter.com/ChristieNold/status/1346908292254216199>. We acknowledge, as someone observed when we presented an earlier draft of this paper, that the quoted statement is not entirely true given some parents’ choices to homeschool their children.

<sup>33</sup> McClain, *supra* note 28, at 115-17.

<sup>34</sup> Dana Goldstein, *Two States. Eight Textbooks. Two American Stories*, N.Y. TIMES (Jan. 12, 2020), <https://www.nytimes.com/interactive/2020/01/12/us/texas-vs-california-history-textbooks.html> (contrasting how important issues such as the Second Amendment are taught differently in schools depending on political leanings of state).

<sup>35</sup> Adeel Hassan, *Two Textbooks, Two Americas*, N.Y. TIMES (Jan. 18, 2020), <https://www.nytimes.com/2020/01/18/us/two-textbooks-two-americas.html>.

<sup>36</sup> ILYA SOMIN, DEMOCRACY AND POLITICAL IGNORANCE: WHY SMALLER GOVERNMENT IS SMARTER 4 (2013).



to imagine finding common ground and a way forward. Witness how the ongoing culture war over CRT—and distorted presentations of the theory in calls to ban it—stymies a constructive conversation about how to educate young people about racism.<sup>37</sup> This polarization makes it more difficult for the federal government to address many of our most pressing problems that do not respect state borders.

## II. HOW *NOT* TO LAUNCH A PROJECT OF CIVIC EDUCATION AND RENEWAL: THE 1776 COMMISSION'S REPORT

As a preface to calling for an antiracist civic education that might help to mitigate constitutional rot, let's begin with an example of how NOT to launch a project of civic education and renewal: the 1776 Commission's vision of patriotic education in *The 1776 Report*. On September 17, 2020—Constitution Day—President Trump gave a speech announcing the establishment of the 1776 Commission to help “restore patriotic education to our schools” and prepare a report on how to do so.<sup>38</sup> He called for clearing away “the twisted web of lies in our schools and classrooms.”<sup>39</sup> He blamed “left-wing indoctrination” that distorts American history for left-wing “rioting and mayhem” and “mobs” seeking to tear down monuments and statues.<sup>40</sup> He singled out for special condemnation the work of the 1619 Project and CRT as “propaganda” being taught in schools and universities.<sup>41</sup> Trump also signed an executive order prohibiting diversity training and the teaching of CRT in the federal government.<sup>42</sup>

His idea of patriotism was a form of tribalism, not the patriotism needed to sustain a morally diverse—and polarized—democratic republic. It was in keeping with his charge that Democrats and activists seeking justice “hate our country.”<sup>43</sup> This was to be expected from the most divisive president in our history and the one most ignorant of our history at that. Any call he would make for national unity would be suspect, simply something to be read off his teleprompter and discarded by his next rally.

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<sup>37</sup> See Ray & Gibbons, *supra* note 13; McClain & Tsai, *supra* note 17.

<sup>38</sup> Michael Crowley, *Trump Calls for 'Patriotic Education' for American Children*, N.Y. TIMES, Sept. 18, 2020, at A19.

<sup>39</sup> Tamara Keith, *Trump Announces Commission to Promote 'Patriotic Education'*, NPR: ALL THINGS CONSIDERED (Sept. 17, 2020, 4:59 PM), <https://www.npr.org/2020/09/17/914143187/trump-announces-commission-to-promote-patriotic-education> [<https://perma.cc/76XZ-SZD2>].

<sup>40</sup> See Crowley, *supra* note 38, at A19.

<sup>41</sup> See *id.*

<sup>42</sup> Alexandra Olson, *Trump's Diversity Training Order Faces Lawsuit*, AP NEWS (Nov. 12, 2020), <https://apnews.com/article/trump-diversity-training-lawsuit-naacp-4c426e9f14fcf0618eac5d457e0d2066>.

<sup>43</sup> *Id.*

Predictably, the 1776 Commission in its Report, issued two days before President Biden took office, took basically the same approach, blasting virtually every progressive movement in our history as anti-American and as rejecting and trying to destroy our nation's ideals.<sup>44</sup> Although President Biden swiftly disbanded the Commission and withdrew its Report,<sup>45</sup> we would still like to examine *The 1776 Report*—not just as a dismayingly flawed approach to civic education but, indeed, as a manifestation of constitutional rot. Before turning to the substance of *The 1776 Report*, we can't help but note the irony of its timing. *The 1776 Report* was released after January 6, 2021, but made no mention of the Capitol riot, even though the Report extols reverence for the rule of law and warns that “mob rule” violates that rule: “[W]hen good men do nothing, the lawless in spirit will become lawless in practice, leading to violence and demagoguery.”<sup>46</sup>

The flaws in *The 1776 Report* begin with its primary aspiration to “restor[e] patriotic education”—exalting love of country as founded in 1776—rather than supporting civic education, which emphasizes inculcating civic virtues and capacities needed in our morally pluralistic and diverse country in 2021.<sup>47</sup> They continue with the Report's offensive and inflammatory tracing of a direct line from defenders of slavery and racial caste (like John Calhoun and Stephen A. Douglas) to today's so-called “identity politics” and CRT.<sup>48</sup>

To be fair, *The 1776 Report* does not claim that the United States should be immune from criticism. Instead, it adopts a strategy of accepting *some* historical criticisms of the United States' failure to live up to its principles of liberty and equality while condemning more recent criticisms, like present-day calls to address “systemic racism.”<sup>49</sup> It draws a line between (1) movements that accept the “fundamental truths of the Declaration of Independence” and (2) those that do not but instead “seek to destroy our constitutional order.”<sup>50</sup> For example, it praises certain historical figures—like Frederick Douglass, Dr. Martin Luther King, Jr., and Elizabeth Cady Stanton—for appealing to founding documents like the Declaration of Independence and insisting that the United States live up to the promises of such documents. Stating that “by design there is room in the Constitution for significant change and reform,” it praises “great reforms—like

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<sup>44</sup> THE PRESIDENT'S ADVISORY 1776 COMM'N, *supra* note 9, app. III at 29. The primary authors of the Report are affiliated with the Claremont Institute. For an account of the Institute's embrace of Trumpism, see Laura K. Field, *What the Hell Happened to the Claremont Institute?*, BULWARK (July 13, 2021, 8:00 AM), <https://www.thebulwark.com/what-the-hell-happened-to-the-claremont-institute/> [https://perma.cc/HXA6-2ZSZ].

<sup>45</sup> See Binkley, *supra* note 10.

<sup>46</sup> THE PRESIDENT'S ADVISORY 1776 COMM'N, *supra* note 9, at 19.

<sup>47</sup> *Id.* at 16.

<sup>48</sup> *Id.* at 29-30.

<sup>49</sup> *Id.* at 18.

<sup>50</sup> *Id.* at 10.

abolition, women's suffrage, [and] the Civil Rights Movement" as "improv[ing] our dedication to the principles of the Declaration of Independence under the Constitution."<sup>51</sup> Notably, alongside those social movements are anti-Communism and the Pro-Life Movement!<sup>52</sup>

But after praising the Civil Rights Movement for its appeal to founding texts and taking the United States to the culmination of its "nearly two-century effort to realize fully the principles of the Declaration," *The 1776 Report* makes a sharp pivot.<sup>53</sup> It alleges that the Civil Rights Movement soon moved away from "the promise of color-blind civil rights" to "'group rights' not unlike those advanced by Calhoun and his followers."<sup>54</sup> Rather than nondiscrimination and equality of opportunity, the group rights approach led to "affirmative action in the form of preferential treatment to overcome long-accrued inequalities."<sup>55</sup>

Thus, on the other side of the ledger where *The 1776 Report* places threats to the constitutional order, it lumps together slavery, progressivism, and supposed theories of "group rights" and "identity politics" (along with foreign threats like fascism and communism).<sup>56</sup> Appendix III, "Created Equal or Identity Politics?" elaborates on this attack on "group rights," claiming: "In portraying America as racist and white supremacist, identity politics advocates follow Lincoln's great rival Stephen A. Douglas, who wrongly claimed that American government 'was made on the white basis' 'by white men, for the benefit of white men.'"<sup>57</sup>

Nowhere does the Report acknowledge what Isabel Wilkerson so powerfully describes as the caste system in the United States.<sup>58</sup> Instead, the argument seems to be that, because the Declaration of Independence expressed true and eternal principles about liberty and equality and asserted that "all men are created equal," notions of group hierarchy or racial caste are utterly alien to America. The Declaration's assertion "means . . . that human beings are equal in the sense that they are not by nature divided into castes, with natural rulers and ruled."<sup>59</sup>

The Appendix asserts that "the creed of identity politics teaches that America itself is to blame for oppression" of minority groups.<sup>60</sup> The evident logic is that this must be false since the Declaration itself espouses equality and "Americans

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 15.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See id.* at 10-15.

<sup>57</sup> *Id.* app. III at 29.

<sup>58</sup> *See* ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS 17, 19 (2020) (arguing that the United States has a "caste system" that is the "architecture" of a "four-hundred-year-old social order" and that "[r]ace, in the United States, is the visible agent of the unseen force of caste").

<sup>59</sup> THE PRESIDENT'S ADVISORY 1776 COMM'N, *supra* note 9, at 4.

<sup>60</sup> *Id.* app. III at 29.

are deeply committed” to this “principle of equality.”<sup>61</sup> To adapt Eduardo Bonilla-Silva’s coinage, “racism without racists,” the Report seems incredulous that racism and group hierarchy could exist in 2021, since Americans—unlike John Calhoun and apologists for slavery—reject group hierarchies.<sup>62</sup>

*The 1776 Report* takes things a step further: those who engage in identity politics are somehow creating the group hierarchies, not identifying and trying to eliminate them! Again, the Report tries to yoke modern social and racial justice movements to abhorrent past defenses of racial caste: “While not as barbaric or dehumanizing, this new creed [of identity politics] creates new hierarchies as unjust as the old hierarchies of the antebellum South, making a mockery of equality with an ever-changing scale of special privileges on the basis of racial and sexual identities.”<sup>63</sup>

The only mention of “systemic racism” in the entire Report is in a paragraph indicting “historical revisionism” that “shames Americans by highlighting only the sins of their ancestors . . . that can only be eliminated by more discrimination.”<sup>64</sup> This, it states, is “an ideology intended to manipulate opinions more than educate minds.”<sup>65</sup> It is this ideology that “shatters the civic bonds that unite all Americans.”<sup>66</sup>

As one of us (with Robert Tsai) has elaborated elsewhere, the “patriotic education” that *The 1776 Report* elaborates seems to make two claims: “First, love of country requires accepting certain ennobling ‘truths’ about America; and second, that criticism of the past will erode a shared affection that is a pillar of political community.”<sup>67</sup> Patriotism as we conceive it should stem from a critical appreciation of our nation striving to live up to its ideals—to form a more perfect union for all—not a “love it or leave it” mentality that denigrates those who recognize the ways in which the nation has fallen short of its ideals. To be fair, the Report admits that “the American story has its share of missteps, errors, contradictions, and wrongs.”<sup>68</sup> Yet it insists that “[t]hese wrongs have always met resistance from the clear principles of the nation, and therefore our history is far more one of self-sacrifice, courage, and nobility.”<sup>69</sup>

This “more noble than not” approach leads to *The 1776 Report* (1) seeming to minimize the horrors of slavery in America, while also (2) rationalizing the compromises made over slavery in the Declaration of Independence and the

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<sup>61</sup> *Id.*

<sup>62</sup> See EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* (5th ed. 2018).

<sup>63</sup> THE PRESIDENT’S ADVISORY 1776 COMM’N, *supra* note 9, app. III at 33.

<sup>64</sup> *Id.* at 18.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> McClain & Tsai, *supra* note 17.

<sup>68</sup> THE PRESIDENT’S ADVISORY 1776 COMM’N, *supra* note 9, at 1.

<sup>69</sup> *Id.*

Constitution as “just that: compromises.”<sup>70</sup> That “[t]he founders knew slavery was incompatible” with the Declaration’s “truth” about equality is somehow evidence that “the foundation of our Republic planted the seeds of the death of slavery in America.”<sup>71</sup> But even if true, this can hardly justify the Report’s minimizing of slavery’s horrific human toll and its lack of recognition of the pervasiveness of white supremacy and racial caste long after the end of the Civil War.

A similar “more noble than not” approach applies to *The 1776 Report*’s extolling of religion as a positive force in “America’s greatest reform movements,” like abolition and the Civil Rights Movement.<sup>72</sup> We do not deny that positive force, but the Report never mentions the role of religion in *opposing* the Civil Rights Movement and *defending* slavery, Jim Crow, and segregation.<sup>73</sup> One could also add religious arguments for *and* against coverture marriage and women’s demands for political and civil rights. The Report’s one-sided account of the role of “faith” as an engine for realizing the Declaration’s principles relates to the Report’s appeal to “reason and revelation” as twin sources of these principles.<sup>74</sup>

Implicitly, any “wrongs” in American history stem from failure to realize the Declaration’s “principles,” which are “universal—applying to everyone—and eternal: existing for all time.”<sup>75</sup> The Declaration appeals to “the laws of Nature and of Nature’s God.”<sup>76</sup> *The 1776 Report* treats religious faith as buttressing this “common morality” of “equal natural rights.”<sup>77</sup> Missing is any recognition of the role of religious faith in shoring up natural *inequality* among and separation of “the races” as part of the created order. To see religion’s role in supporting inequality, just revisit the legislative debates over the Civil Rights Act of 1964 or read the trial court’s theological statement against interracial marriage in *Loving v. Virginia*.<sup>78</sup>

This idea of “eternal” and unchanging truths present from the Founding Era also seems to fuel *The 1776 Report*’s criticism of what it calls “Progressivism,”

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<sup>70</sup> *Id.* at 10-11 (explaining that slavery was not a “uniquely American evil,” since “the unfortunate fact is that the institution of slavery has been more the rule than the exception throughout human history”).

<sup>71</sup> *Id.* at 11.

<sup>72</sup> *Id.* app. II at 27.

<sup>73</sup> For elaboration on the competing theologies of segregation and integration with respect to *Brown v. Board of Education* and religious testimony for and against the Civil Rights Act of 1964, see LINDA C. MCCLAIN, WHO’S THE BIGOT? LEARNING FROM CONFLICTS OVER MARRIAGE AND CIVIL RIGHTS LAW 76-126 (2020).

<sup>74</sup> See THE PRESIDENT’S ADVISORY 1776 COMM’N, *supra* note 9, app. II at 25.

<sup>75</sup> *Id.* at 1.

<sup>76</sup> *Id.* app. II at 26.

<sup>77</sup> See *id.* app. II at 27.

<sup>78</sup> 388 U.S. 1, 3 (1967) (quoting trial judge’s opinion invoking “Almighty God” creating and separating races to justify Virginia’s anti-miscegenation law). For the legislative debates over the Civil Rights Act, see MCCLAIN, *supra* note 73, at 103-26.

which supposedly believes that “society has the power and obligation not only to define and grant new rights, but also to take old rights away as the country develops.”<sup>79</sup> Part and parcel of this “false understanding of rights” seems to be “a new theory of the ‘living’ Constitution,” under which government “should constantly evolve to secure evolving rights.”<sup>80</sup> The Report also attacks “the administrative state”—unelected and unaccountable—as a product of progressivism.<sup>81</sup>

To recapitulate: patriotism is or should be an attitude of commitment to a country—mindful of its fundamental flaws—and of commitment to honor its ideals of equality and justice for all. Patriotism is not a dogmatism that banishes criticism of the country for those flaws as anti-American. *The 1776 Report’s* approach, in effect, is that love of country requires accepting that all the “universal and eternal”<sup>82</sup> truths about equality and justice were present from the beginning and only awaited their gradual realization. The Report also requires belief in American exceptionalism:

While this country has its imperfections, just like any other country, in the annals of history the United States has achieved the greatest degree of personal freedom, security, and prosperity for the greatest proportion of its own people and for others around the world. These results are the good fruit of the ideas the founding generation expressed as true for all people at all times and places.<sup>83</sup>

Obviously, arguments about structural racism and inequality have no place in such a love of country.

Much of the critical response to *The 1776 Report* was by historians who said the Report was “garbage” from the standpoint of history.<sup>84</sup> That is true enough—the Commission included no professional historians and generated a Report that lacked any citations and was “not a serious work of history.”<sup>85</sup> But the Report is also “garbage” as a painfully inappropriate misadventure in partisan, divisive propaganda—when what we need is a proposal for civic education and renewal. Such a proposal would have (1) begun with a recognition of deep disagreement (or polarization), (2) sought to articulate a basis for unity (or common ground), and (3) aimed to instill the virtues and capacities needed to pursue the common good. It would not have taken the view that one side of a polarized divide was

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<sup>79</sup> THE PRESIDENT’S ADVISORY 1776 COMM’N, *supra* note 9, at 12-13.

<sup>80</sup> *Id.* at 13.

<sup>81</sup> *See id.*

<sup>82</sup> *Id.* at 5.

<sup>83</sup> *Id.* app. IV at 40.

<sup>84</sup> Colleen Flaherty, *A Push for ‘Patriotic Education,’* INSIDE HIGHER ED (Jan. 20, 2021), <https://www.insidehighered.com/news/2021/01/20/historians-trump-administrations-report-us-history-belongs-trash> [<https://perma.cc/8PA9-AG9K>] (reporting historians generally agree that the Report is “garbage”).

<sup>85</sup> *Id.* (quoting Jim Grossman, Executive Director of American Historical Association). The Report, for example, made no mention of Native Americans. *Id.*

completely right, and the other side was completely wrong and indeed anti-American. But that is the approach that President Trump's 1776 Commission's Report took, as we might well have expected. After all, President Trump appointed only Trumpian partisans to the Commission.<sup>86</sup> That was no way to constitute a commission whose project should have been to articulate a basis for unity (or common ground), especially in circumstances of deep disagreement along with pluralism and diversity.

What is more, as we have shown, *The 1776 Report* is backward-looking and "animated by a nostalgic whitewashing of the past."<sup>87</sup> It aims to teach the eternal truths of 1776, not to inculcate the civic virtues and capacities for responsible self-government necessary to prepare people for living in the dramatically different country we have become in 2021. It preaches a love of the country as originally founded, not as the country we have become through critical reflection on how better to realize our ideals. It rejects those who engage in such critical reflection and who call for a reckoning with systemic racism as anti-American and hating their country.

Finally, *The 1776 Report* presupposes that the way to achieve national unity is for one side—the conservative side—to win it all. We suppose this was to be expected from President Trump and the Trumpian partisans he appointed to the 1776 Commission. One might have hoped and expected that, in our democratic republic being torn apart by strong polarization and tribalism, a President would have appointed a bipartisan commission to do a study of the causes of rot and to prepare a report outlining a plan for national civic renewal. Instead, *The 1776 Report* was itself a manifestation of rot rather than a prescription of a remedy for it.

### III. HOW TO LAUNCH A PROJECT OF CIVIC EDUCATION AND RENEWAL: THE EDUCATING FOR AMERICAN DEMOCRACY ROADMAP

In the larger project of which this piece is a part, we will argue that any adequate project for national reconciliation and renewal would include reckoning with systemic racism throughout our nation's history up to the present and thinking about how to address and strive to overcome it. We will argue that this should be part of civic education, not only for children and adolescents, but also for adults. As an initial step, we begin with some thoughts about why civic education is crucial to remedying what Balkin calls constitutional rot. We then discuss the promising Educating for American Democracy ("EAD") model,

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<sup>86</sup> Nicole Gaudiano, *Trump Appoints 1776 Commission Members in Last-Minute Bid to Advance 'Patriotic Education,'* POLITICO (Dec. 18, 2020, 1:02 PM), <https://www.politico.com/news/2020/12/18/trump-1776-commission-appointments-448229> [https://perma.cc/65VE-RAQN].

<sup>87</sup> Robyn Autry, Opinion, *Trump's '1776 Commission' Tried to Rewrite U.S. History. Biden Had Other Ideas.,* NBC NEWS: THINK (Jan. 21, 2021, 4:30 AM), <https://www.nbcnews.com/think/opinion/trump-s-1776-commission-tried-rewrite-u-s-history-biden-ncna1255086> [https://perma.cc/TWT9-Y4Z5].

which sharply contrasts with *The 1776 Report*'s ideas about civic education. This model, premised on what we believe best practices about civic education recommend, provides a useful *Roadmap to Educating for American Democracy* ("Roadmap") aimed at helping all learners achieve "excellence in civic and history education."<sup>88</sup> So, too, does its ideal of "reflective patriotism" hold promise.<sup>89</sup>

A. *A Few Orienting Thoughts About Civic Education*

It bears repeating that schools are not the only institutions with a necessary role in these tasks of reckoning with systemic racism and engaging in reconciliation and renewal. As James Grossman, Executive Director of the American Historical Association, observed after January 6, 2021: "The pathology is white supremacy . . . . It's baked into institutions. It's baked into aspects of our culture."<sup>90</sup> Thus, students need to be taught about the United States' history of white supremacy as well as the many "democratic struggles" of civil rights.<sup>91</sup>

One of the most disturbing aspects of the January 6 insurrection was that some members of the mob and their supporters viewed themselves as comparable to the "heroes" and patriots of the nation's founding: "I personally love it because you know what? It's how this country was built, the way our Founding Fathers stormed the British Empire."<sup>92</sup>

These troubling invocations of "patriotism" show the urgent need to provide better instruction in civics and American history and to inculcate "reflective patriotism," a term we will explain below. Educators have developed promising "best practices" (or "proven practices") for civic education, and there is an encouraging body of knowledge about how curricula work.<sup>93</sup> Teachers need to equip "students with an honest account of our nation's political DNA,"<sup>94</sup> for example:

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<sup>88</sup> See EDUCATING FOR AM. DEMOCRACY, ROADMAP TO EDUCATING FOR AMERICAN DEMOCRACY 2 (Mar. 2, 2021) [hereinafter ROADMAP], [www.educatingforamerican-democracy.org](http://www.educatingforamerican-democracy.org) [<https://perma.cc/8NVU-A6WF>].

<sup>89</sup> *Id.* at 4.

<sup>90</sup> Sarah Garland, *Can We Teach Our Way out of Political Polarization?*, HECHINGER REP. (Jan. 25, 2021), <https://hechingerreport.org/can-we-teach-our-way-out-of-political-polarization/> [<https://perma.cc/CY5B-MW7Y>] (arguing schools are not to blame for political polarization).

<sup>91</sup> See *id.*

<sup>92</sup> *Id.* (quoting Tara Immen, who protested at Arizona State Capitol over election results).

<sup>93</sup> For these "proven practices," see LEVINE & KAWASHIMA-GINSBERG, *supra* note 27; and Appendix C: Proven Practices in EDUCATING FOR AM. DEMOCRACY INITIATIVE, *supra* note 15, app. C at 31-32.

<sup>94</sup> Garland, *supra* note 90 (quoting Ursula Wolfe-Rocca, a high school social studies teacher on the board of Rethinking Schools).



- Educators refer to filling children and adolescents’ “‘intellectual knapsacks’ with ideas like the principle of free and fair elections; skills such as how to talk to people they disagree with about politics; and the ability to fact check so they are less susceptible to misinformation and outright propaganda.”<sup>95</sup>
- Engaging students in debates and political simulations is a critical component. But teaching students to think critically and deliberate respectfully across difference is not easy, nor are efforts to “teach the controversies.”<sup>96</sup>
- Scholars argue for a “new national narrative” that is neither “the White power propaganda” espoused by former President Trump nor the “more noble than not”/exceptionalism narrative crafted by *The 1776 Report*.<sup>97</sup>
- But the challenges of a national narrative that is antiracist and encourages critical reflection are considerable, given federalism and the location of primary responsibility for education with the states and with local school boards: “What you learn about U.S. history and democracy depends on where you live,” so that “American students lack a shared foundation in U.S. history and civics.”<sup>98</sup>
- A February 2020 CBS study into how Black history is taught found that education “standards in seven states don’t directly mention slavery and that eight don’t mention the Civil Rights Movement.”<sup>99</sup> State standards varied markedly in how extensively public schools taught about slavery and what they taught about it (for example, North Carolina’s standards inaccurately referred to “immigration of Africans

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<sup>95</sup> *Id.* (quoting Diana Hess, Dean of University of Wisconsin-Madison’s School of Education).

<sup>96</sup> For more on the many challenges faced by educators attempting to “teach the controversies,” including creating a safe and respectful environment in which students may encounter and understand different perspectives, see generally the case studies in *DEMOCRATIC DISCORD IN SCHOOLS: CASES AND COMMENTARIES IN EDUCATIONAL ETHICS* (Meira Levinson & Jacob Fay eds., 2019).

<sup>97</sup> Max Boot, Opinion, *We Need Civics Education — Not the White Power Propaganda Trump Promotes*, WASH. POST (Sept. 21, 2020, 3:54 PM), <https://www.washingtonpost.com/opinions/2020/09/21/we-need-civics-education-not-white-power-propaganda-trump-promotes/>.

<sup>98</sup> Garland, *supra* note 90.

<sup>99</sup> *Id.*

to the American South”).<sup>100</sup> “Only two states mention white supremacy.”<sup>101</sup>

- While the 1619 Project—targeted by Trump in announcing the 1776 Commission—is not above legitimate criticism (and has acknowledged some of those criticisms in its current incarnation), it can be an important resource in constructing a more adequate and antiracist civic education.

B. *The “Educating for American Democracy” Model and Roadmap*

As observed in Part I, Balkin identifies political polarization as one “horseman” of constitutional rot;<sup>102</sup> we have argued that civic education is a necessary but not sufficient step to reduce that polarization. Indeed, following EAD, we would amend our initial argument to say that such education should include history as well as civics because the two are “closely related and intertwining subjects” needed for “reflective patriotism.”<sup>103</sup> However, that very polarization, including “about the nature of our past and the meaning of our institutions,” has been an obstacle to reaching any national consensus about standards concerning such education.<sup>104</sup> In a vicious cycle, the neglect of civics and history, EAD explains, contributes to “our civic and political dysfunction.”<sup>105</sup> While EAD and the accompanying Roadmap—released in early March 2021—grew out of a sixteen-month collaboration that predated the November 2020 election and aftermath, its words about the consequences of this neglect are all too evocative of those events:

A recent surge in voter participation has been accompanied by dangerous degrees of misinformation and tension, even rising to violence. Dangerously low proportions of the public understand and trust our democratic institutions. Majorities are functionally illiterate on our constitutional principles and forms. The relative neglect of civic education in the past half-century—a period of wrenching change—is one important cause of our civic and political dysfunction.<sup>106</sup>

Just as educators referred to January 6, 2021, as being a “Sputnik moment” for civic education, EAD argues that, although a lack of national consensus has prevented the kind of investment of time and resources in STEM education

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<sup>100</sup> Jericka Duncan, Christopher Zawistowski & Shannon Luibrand, *50 States, 50 Different Ways of Teaching America’s Past*, CBS NEWS (Feb. 19, 2020, 8:16 AM), <https://www.cbsnews.com/news/us-history-how-teaching-americas-past-varies-across-the-country/> [<https://perma.cc/H6AL-BLW6>] (emphasis added).

<sup>101</sup> *Id.*

<sup>102</sup> See BALKIN, *supra* note 1, at 49.

<sup>103</sup> EDUCATING FOR AM. DEMOCRACY INITIATIVE, *supra* note 15, at 12.

<sup>104</sup> *Id.* at 10.

<sup>105</sup> *Id.* at 9.

<sup>106</sup> *Id.*

spurred by Sputnik and the Cold War, “now in response to our dysfunction and failures of governance we need an equivalent scale of investment for civic learning.”<sup>107</sup>

So what form should that civic learning take? What are its aims and its methods? With respect to aims, notably, EAD’s Roadmap is “neither a set of standards nor a curriculum,” but instead an “inquiry-based approach to content that is organized by major themes and questions,” leaving room for diversity in perspective.<sup>108</sup> This emphasis on inquiry and room for diversity reflects both the genesis of the EAD project and its methodology: the National Endowment for the Humanities and the Department of Education issued a call for a “national framework for history and civic education in public schools,” and educators from iCivics and three universities—Arizona State, Harvard, and Tufts—“sought to harness philosophical, ideological, and geographical diversity to develop a balanced, national-consensus framework and proposed plan of action.”<sup>109</sup> Recognizing how “fraught” the terrain is concerning disagreement about “the shape and purpose of American history” and how to represent it, EAD identifies the urgent need for a “shared, national conversation about what is most important to teach in American history and civics, how to teach it, and . . . why.”<sup>110</sup>

As to why, EAD explains that the inquiry-based method aims at “excellence in civic and history education” that will undergird a “national civic infrastructure” and help to build “civic strength.”<sup>111</sup> It invokes a lawsuit brought by public school students in Rhode Island against their state, in which they argued that “adequate civic education is an American citizenship right.”<sup>112</sup> The federal district court urged adults to heed this “cry for help from a generation of young people who are destined to inherit a country which we—the generation currently in charge—are not stewarding well.”<sup>113</sup> Responding to that “plea,” EAD advances a normative ideal of “reflective patriotism” to explain the kind of education all deserve: “[A]ppreciation of the ideals of our political order, candid reckoning with the country’s failures to live up to those ideals, motivation to take responsibility for self-government, and deliberative skill to debate the challenges that face us in the present and future.”<sup>114</sup>

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<sup>107</sup> *Id.* at 10.

<sup>108</sup> *Id.* at 12.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 10 (giving as an example of lack of consensus over presentation of American past “[h]istorians’ widely divergent responses to the *New York Times*’s ‘1619 Project’”).

<sup>111</sup> *Id.* at 8-9. EAD and the Roadmap build on and update “Proven Practices” for civic education articulated in earlier reports. *See id.* app. C at 31.

<sup>112</sup> *Id.* at 12 (citing *A.C. v. Raimondo*, 494 F. Supp. 3d 170 (D.R.I. 2020)).

<sup>113</sup> *Raimondo*, 494 F. Supp. 3d at 175.

<sup>114</sup> EDUCATING FOR AM. DEMOCRACY INITIATIVE, *supra* note 15, at 12 (citing, on reflective patriotism, ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 308-11 (Francis Bowen ed., Henry Reeve trans., Dover Publ’ns 2017) (1835) (discussing the “Public Spirit in the United States”)).

This model of “reflective patriotism” also stresses “civil disagreement” and “civic friendship” as two key civic virtues necessary for realizing the ideal of *e pluribus unum*.<sup>115</sup> It calls for a transformative approach to realizing this ideal, not simply one that adds in different stories in a “checklist approach to diversity,” but that integrates diversity and inclusion for civic purposes, so that history and civics are

taught in ways that incorporate a wide range of perspectives and interests into shared understanding, coherent even where it is complex, and grounded in appreciation for America’s ideals of liberty, equality, and rule of law—ideals which by their nature always call forth argument about whether we are living up to them.<sup>116</sup>

On first glance, EAD’s emphasis on a “candid reckoning” seems to have some parallel with *The 1776 Report*’s recognition that the United States has not always lived up to its ideals. However, unlike *The 1776 Report*, the Roadmap does not draw a sharp line between older and more recent social movements, suggesting that the latter seek to destroy the Constitution, or treat condemnation of systemic racism as akin to embracing racial caste. To be sure, the Roadmap never uses the term “systemic racism,” perhaps because of the ideological diversity of the participants and/or the goal of presenting a framework on which there could be consensus despite partisan polarization. However, the Roadmap clearly speaks of engaging with what it calls “hard histories” of inclusion and exclusion, histories of “oppression and power,” and marginalization of groups and how to “explore constructive ways to discuss” these histories.<sup>117</sup> In focusing on the United States as a “constitutional democracy,” EAD highlights that the United States was called both a *republic* and a *democracy*.<sup>118</sup> Importantly, it explains that the United States has become more democratic over time due to efforts by social movements—for example, expanding the right to vote.<sup>119</sup>

Both *The 1776 Report* and the Roadmap prescribe that students engage with fundamental texts like the Declaration of Independence and the Constitution, but the latter encourages critical reflection rather than hagiography.<sup>120</sup> The types of inquiry that shape “reflective patriotism” are evident. Themes like “We the People,” “A New Government and Constitution,” and “Institutional and Social

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<sup>115</sup> *Id.* app. A at 26.

<sup>116</sup> *Id.* at 24.

<sup>117</sup> One such example from the Roadmap is the question, “How did Cherokee Removal, Jim Crow, Mexican American segregation, Japanese internment, and other cases of officially sanctioned discrimination affect the development of the United States?” ROADMAP, *supra* note 88, at 15, 28.

<sup>118</sup> See EDUCATING FOR AM. DEMOCRACY INITIATIVE, *supra* note 15, at 25.

<sup>119</sup> See *id.*

<sup>120</sup> Two examples of the reflective approach are: “How and why did people support, perpetuate, resist, or combat enslavement in U.S. history and society?” and “How and why did the Constitution determine different legal statuses for different parts of the United States population?” ROADMAP, *supra* note 88, at 17, 28.

Transformation—A Series of Refoundings?” encourage critical reflection through posing incisive questions about who was left out of framing these texts and out of full rights in the polity.<sup>121</sup> Consider the contrast between *The 1776 Report* and the Roadmap’s sample questions such as: “In what ways and to what degree were liberty and equality present in 1619, 1620, 1776, 1789? Where were they absent? How did the relation between them change over time?”<sup>122</sup>

The Roadmap poses hard design challenges about how to cultivate reflective patriotism and civic honesty, such as: “How can we offer an account of U.S. constitutional democracy that is simultaneously honest about the wrongs of the past without falling into cynicism, and appreciative of the founding of the United States without tipping into adulation?”<sup>123</sup> The Roadmap asks students about how individuals and groups “used agency in the face of oppression” and worked to expand constitutional and civil rights.<sup>124</sup>

The Roadmap also includes a theme oriented to present-day civic participation and civic agency, “A People with Contemporary Debates and Possibilities,” helping students explore the connections between “hard histories” and “contemporary debates” and how they and their allies can seek to avoid historical mistakes.<sup>125</sup> In asking about reflective patriotism, the guiding questions ask students: “How can we balance critical and constructive engagement with our society, our constitutionalism, and our history, and still be proud to be Americans?”<sup>126</sup> Media literacy is a critical component of this theme, as students are asked about how “our own biases play in our information habits” and “how can we combat confirmation bias, personalized algorithms/suggestions . . . bad actors (trolls, disinformation agents), and other influences that diminish our ability to think carefully about political issues, find common ground, or to sustain civic disagreement and civic friendship?”<sup>127</sup>

The Roadmap, if adopted by schools and used by teachers, would seem to offer some hope in addressing constitutional rot and preparing students to be agents in present-day challenges facing the United States. This approach is preferable to the unwarranted attacks on CRT, where it functions (as noted above) as a “bogeyman” to avoid dealing with how best to teach students to engage in critical reflection about the past and ongoing problems of racism and injustice.<sup>128</sup> “Reflective patriotism” can empower people to engage with fundamental texts to try to solve society’s most pressing problems. As one of us has argued elsewhere (with our colleague Robert Tsai):

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<sup>121</sup> *Id.* at 3.

<sup>122</sup> *Id.* at 24.

<sup>123</sup> *Id.* at 4.

<sup>124</sup> *Id.* at 27.

<sup>125</sup> *Id.* at 35-39.

<sup>126</sup> *Id.* at 39.

<sup>127</sup> *Id.*

<sup>128</sup> See *supra* notes 12-14 and accompanying text.

When young people are not taught to think about the design of the Constitution and instances of past constitutional change, they can't imagine a better way of doing things together. When they see history as simply a collection of facts and events, they become detached from past generations and believe that past problems of justice have been solved. But when they are taught that constitutional history has been made, and continues to be made, through a series of "refoundings," then the skills necessary for democracy's continuation are hardwired into the learning of history. Questions of justice can then be broached with maturity and understanding . . . .

[D]eveloping critical faculties is not merely consistent with American constitutionalism, it is essential to its survival.<sup>129</sup>

#### CONCLUSION

In concluding, we wish to express our appreciation to Jack Balkin for writing such a rich and provocative book. We do not view our Essay as a criticism of his book and, indeed, we doubt that he would disagree with much of what we say. We thank him for elucidating the problem of constitutional rot and jump-starting our own project on civic education and renewal in circumstances of constitutional rot and extreme polarization.

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<sup>129</sup> McClain & Tsai, *supra* note 17.