

BRAND VALUE

How succession can make or break a party

A political party can survive the test of time only if its brand value stays intact—which is dependent on whom popular leaders pass the baton to. The case of the Shiv Sena is an example of how things can go wrong if poor choices are made.

OPINION

VISHWAS PATHAK



The driving force behind the success of any sector in the public domain is the dominant perception of its respective brands amongst recipients. The better the perception, the higher the acceptance. There are numerous examples to be analysed of how popular brands had to bite the dust only because their choice of succession had been based on impractical decisions. Look at Nokia's journey from being the "king of the phone era" to "struggling for survival", or that of the late Dhruvrai Ambani, whose business was divided between his two sons, Mukesh and Anil Ambani. The economic scenarios of the two, if compared, have become case studies for understanding the importance of succession.

Even politics has not escaped from being grappled with this phenomenon of brand perception. Shiv Sena leader Sanjay Raut has made an appeal recently to MNS chief Raj Thackeray, requesting to step up his efforts and play a vital role in preserving the "Thackeray" brand in Maharashtra's politics.

As far as the concept of brands is concerned, one has to understand that this par-

ticular concept is a market-driven phenomenon which can be defined as a general idea and an abstract meaning that gives a certain consistency to a brand and creates a distinctive identity in the market and the minds of consumers, or voters, in the case of politics. This is also built over the years.

In the case of the Shiv Sena, which was established by the late Balasaheb Thackeray years ago, it became a widely accepted brand initially since its ideological foundation was based on regional chauvinism. However, with changing times, Balasaheb moved on to the issue of Hindutva, which later resulted in the party extending its base across the entire state of Maharashtra. The brand of the Shiv Sena was also associated with its *karyakarta*, who worshipped their party leader because Balasaheb Thackeray's credibility and acceptance had percolated through the minds of his party workers.

However, when it came to appointing his successor, Balasaheb chose his son, Uddhav, over the largely accepted leadership of Raj Thackeray who was seen as the mirror image of Balasaheb. Raj, having learned the basics of politics from Balasaheb himself, could naturally find in the nature of the politics of the Shiv Sena.

However, with the choice of a blood relation over a more politically deserving person, the late Shiv Sena supremo certainly could not manage and navigate through his succession plan. As a result of the choice not being done



Maharashtra Chief Minister Uddhav Thackeray (right) with his son, Aaditya Thackeray.

using the correct equations, political perils were likely to be encountered. And thence commenced the devolution of the "Thackeray" brand in Maharashtra.

The situation now is such that at a time when the Thackeray scion is none other than the chief minister of Maharashtra, his close confidante has appealed to Raj Thackeray to help save the brand of Thackeray. What can be understood from here is that the devolution of a brand, no matter how huge it is, is inevitable if succession is based on emotion or nepotism, rather than pragmatism. Change is the only constant in nature and those who fail to adapt with the changing times are bound to fail.

The BJP is often regarded as the party with a difference. Currently, the BJP is a brand which is much bigger than all the political parties in the country combined. However, the party's image is marked by its choice of pragmatism and not nepotism. While it is a fact established beyond doubt that the next successor of the Congress will be someone among the Gandhis, or

that the successor to Uddhav Thackeray and Raj Thackeray will be Aaditya and Amit, no one in the wildest of their imaginations can name the next BJP national president.

This is the difference between the brand of the BJP and other political parties. The BJP's brand is based on not on one person's capability but on the ideologies derived from the efforts made by numerous generations. Having said so, it should be mentioned that the torch-bearer of the same changes from time to time in the most democratic manner.

As far as the appointment of a successor for the party is concerned, the names of the party's leaders can point to the fact that the decision is based on merit. While there was the era of Syama Prasad Mukherjee and Deen Dayal Upadhyay, there was also a successful reign handled by the combination of Atal Bihari Vajpayee and L.K. Advani. Similarly, later choices involved the likes of Pranab Mahajan, Arun Jaitley, Nitin Gadkari and Rajnath Singh.

Even now, when our leaders are none other than Prime Minister Narendra

Modi, Home Minister Amit Shah and BJP president J.P. Nadda, efficient leaders who have the potential to lead the party in the future are being nurtured and trained from their nascent stages.

While thinking of the next ten years, one also has to bear in mind the thought of who can hold the reins for the ten years thereafter! Then one may think of Devendra Fadnis or Yogi Adityanath. Tejasvi Surya, a party worker who went on to become a Member of Parliament, is also an example of how the BJP believes in making merit-based choices. This practice can also be traced in the RSS where every successor has set a paradigm to be followed, while the organisation evolves and grows stronger.

The most important aspect of the phenomenon of maintaining a brand is to have a strong foundation based on principles and ideologies which have to be improvised with changing times. While making these changes, if the next successor who is appointed is contrary to the needs and requirements of the brand, then decline

is inevitable. This is exactly what has happened in the Shiv Sena.

Ever since Uddhav Thackeray became the chief minister and appointed his son as a minister, disdain for the brand of the Shiv Sena commenced. While the first dent on the party brand appeared due to its mismanagement of the state's governance, the dent only grew deeper with Uddhav Thackeray's inefficiency in handling the Covid-19 situation. The last nail in the coffin was struck when the Shiv Sena lost the battle of popular perception amidst the Kananga Ranaut versus BMC row. This incident caused the brand image of the Shiv Sena to fall to its lowest.

The situation could have been entirely different had the late Balasaheb Thackeray appointed the correct successor. The case of the Shiv Sena verily makes it clear that taking a pragmatic decision while deciding on matters of succession is ultimately the key to a lasting brand!

The writer is the media head of BJP Maharashtra. The views expressed are personal.

PERSPECTIVE

DEV ANAND'S 97TH BIRTH ANNIVERSARY

THE EVERGREEN HERO AND INDIA'S FIRST SUPERSTAR

Without a doubt, Dev Anand was the first mega star of Indian cinema, who over a period of time, influenced the lifestyles of multiple generations. Although a part of the trio comprising him, Dilip Kumar and Raj Kapoor, he had a fan following that was mind boggling. If Raj Kapoor was considered as the greatest showman and Dilip Kumar the tragedy king, Dev Anand was the quintessential romantic hero. Girls would swoon over him and boys copied his hair style or tried to dress like him. Each and every movie starring Dev Anand would be eagerly awaited and the black market of tickets for the first day, first show was higher than any other contemporary star of his time. Even when Rajesh Khanna and later Amitabh Bachchan attained a superstar status, it was Dev Anand alone who survived their phenomenal rise, and continued to have his box office appeal.

Having interviewed him on several occasions, one could safely conclude that he was a power bank of energy and enthusiasm. He would always be on the lookout for new scripts and new talent and was obsessed with making films. Many of his critics during his last years, wanted him to give up acting, but in his intangible manner, Dev Sahab, as he was addressed later, would shoot back and ask, what was their problem when he was spending his own money and time in doing what he liked the most. Together with his brothers—Chetan and Vijay—he had set up the Navketan films, under whose banner, he acted in multiple blockbusters. His movies were trend setters and many were even ahead of their times. *Guide*, for instance, is regarded as probably his most memorable movie, so far as his performance goes, but his appeal always remained undiminished. *Teri Mere Sapne* and *Hare Rama, Hare Krishna* were exceptional, as were *Taxi Driver*, *CID*, *Hum Dono* and *Jewel Thief*. He enthralled his fans by his performances in *Jodhpuri Men*, *Naam and Gambler* and innumerable films before that. When Prakash Mehra decided to make *Zangfer*, he made Salim-Javed write the script keeping Dev Anand in mind. However, the actor turned down the role and Amitabh stepped in to make history. The principal reason why Dev Sahab outlived his generation of actors in the silver screen was that he kept abreast with the times and looked after his appearance. He told me once that since childhood, he was administered Chyawanprash by his mother and he continued to have it.

Dev Anand had a mind of his own and politically was never afraid of taking a stand. He was one of the very few stars who came out against Emergency in 1977. He was romantically linked to many actresses of his time, Suraya and Madhubala in the early years and Zeenat Aman in the later phase. However, he did not allow that to affect his work. In an interview, he told me that he would tell me about his heroines one day, but that opportunity never arose. A product of Government College, Lahore, where he was a batchmate of my father, Dev Anand was specially invited by Atal Bihari Vajpayee when he was the Prime Minister undertook his historic Bus Yatra to Lahore. He became a hit, across the border as well. For him, there was no singer who could sing ghazals better than Mohammad Rafi and lighter songs better than Kishore Kumar, both of whom were his favourite playback voices. Most of the films produced by him had music by Sachin Dev Burman, in whose abilities, he had immense faith. However, many others also composed hit songs for him in his various other stardoms. When he fell ill, he went to London for treatment since he did not wish any of his fans to see him in the condition he was in. It is not surprising that he breathed his last in the British capital where his last rites were also performed. While remembering him on his 97th birth anniversary on Saturday, we must never forget that Dev Anand was the man for all seasons of the Indian cinema. A phenomenon who left an indelible imprint on the celluloid.

Pankaj Vohra

EDUCATION & JOBS

Aatmanirbhar Bharat: Roadmap for making universities self-reliant

OPINION

R.L. RAINA



Prime Minister Narendra Modi-led government started the Aatmanirbhar Bharat initiative with a motive to address the basic issue of abysmally low market demand and economic slowdown induced by the Covid-19

pandemic. The main thrust of the programme is towards making India self-reliant and resilient in both normal and crisis times. During the pandemic, the universities had a single option of changing the study module to the digital one. The educational institutions started focusing on thinking out of the box to meet the challenges of the digital revolution while embracing entrepreneurship, critical and problem-solving skills as part of the academic experience, as well as creating cultures where innovative thinking is inspired

and nurtured.

The challenge didn't end here. The universities are also planning adequate steps to prepare all students for a rapidly changing job market and to make them industry-ready and self-reliant. They must ensure that talent from the diverse, global community has access to opportunities in the new era of digitalisation. Since Aatmanirbhar Bharat has become a mantra for everyone, universities are urging students to showcase their talent by developing more Indian apps in different categories under the "Aatmanirbhar Bharat Innovate Challenge". Apart from this, the universities are also playing a crucial role in making Indian universities self-reliant.

NEW DIMENSION TO ENTREPRENEURSHIP MODEL

In the pre-Covid era, academic institutions put at-

tention on training their students in skills that were required in larger companies. But with Aatmanirbhar Bharat, the initiative has brought the country's focus back on MSME— one of the key driving forces towards self-sufficiency. MSME constitutes 80 per cent of the workforce in the Indian industry. Ignoring this sector would be a lost opportunity. In developing nations across the world, MSMEs have engaged with academia by investing in research and innovation—a relationship that can benefit both institutions and industry. Students need to be trained accordingly for the jobs that will be in demand in future.

INNOVATION AS THE MAJOR OBJECTIVE

Indian universities have taken up the challenge of finding innovative solutions to the problems raised by Covid-19. Though it has brought

insurmountable suffering to humankind, it has also propelled many to push their creative boundaries for the

Indian universities have taken up the challenge of finding innovative solutions to the problems raised by Covid-19.

betterment of the society. With the help of advanced artificial intelligence and Internet of Things (IoT), many universities are working hard to transform a village into a smart city so that the residents of the village can also avail all the facilities that will enable them to grow.

MAKING EMPLOYMENT SUSTAINABLE When the world is going

through such a phase, it is inevitable for the industry to rely on academia to access and train the kind of talent that is required to thrive in the future workplace and to ensure life-long learning. It has been estimated that more than 12 million Indians get job-ready every year but the sad part is that not everyone is well acquainted with the needs of the country. Our educational institutions should follow the "Experiential University" model, which might be one of the answers to the challenge of a highly developed education system.

PROVIDING QUALITY EDUCATION AND TRAINING

Through the provision of quality education and training to its students, we can make the students self-reliant. It is important that universities pay much premium on this because the more educated and highly skilled

people are, the higher are the chances of a nation's development. It is for this reason that many developed countries that are self-reliant do take education for granted. Such countries have a huge chunk of their population having various degrees of quality education and training.

ENCOURAGING STUDENTS TO TAKE RESPONSIBILITIES

Responsible students are aware of their roles, duties, tasks and schedules. This enables them to plan and prepare for their days. They are committed to tasks from start to finish. They will be taking corrective actions on their own. They will also persist in doing tasks even if they are tedious or boring and will always be ready to face the consequences of their actions. Being responsible empowers students to feel confident and in control of their lives.

NATIONAL EDUCATION POLICY'S CRUCIAL ROLE

The policy lays special emphasis on the National Research Foundation because innovation is important for the country's progress. Only when we strengthen innovation and research, then our country will remain competitive and move ahead. The more innovation is strengthened in the country, the more progress it will make in a competitive world. This will also enable citizens to become global citizens and at the same time making them know their roots. The New Education Policy also focuses on research and development to make India a key research and development destination for the world.

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6 LEGALLY SPEAKING

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ANALYSIS

Fifty one shades of speech

INDIC VIEWS

J. SAI DEEPAK



In the previous piece, this author had raised the following questions in the process of etching the contours of public morality: "The sum and substance of these discussions is that under the framework of the Indian Constitution, it is the State, meaning thereby the Executive and the Legislature but not the Judiciary, which has the power to invoke public morality within reasonable bounds, for the purposes of placing reasonable restrictions on fundamental

rights guaranteed by Part III of the Constitution. The Judiciary's role is limited to examining the constitutional validity of the claim made by the State that the latter's action is in the interest of or furthers public morality.

That said, what are the parameters that must be applied to such an examination? In other words, how does the State demonstrate that its action represents public morality? What kind of exercise must the State undertake, if at all required by the Constitution, to assess public morality in relation to a given right? Or does the Constitution grant elected representatives the unfettered right as *parents patriae* i.e. parent of the nation, to speak on behalf of their constituents on every issue merely because they have been elected? Can members of the State form an opinion on public morality in relation to a given issue or topic without

consulting members of the society to marshal some form of concrete evidence to base their positions on? Critically, in the context of a diverse society such as Bharat, how can the State hope to do justice to varying and often conflicting positions on public morality?

Does this mean that the scope of use of public morality by the State as the basis for limiting individual freedoms is limited to public spaces? What is the position of the Indian civilization and the Constitution on the spaces and contexts in which public morality may be used as a legitimate restriction on individual rights? What constitutes public morality within the framework of the Indic civilizational worldviews and what are its sources?

While the author's original intent was to address these specific questions in the present piece, a legitimate and related digression is warranted in the current atmosphere to give the discussion a much more relevant and concrete peg. Over the last few days, "hate speech" has become the talk of the town because some have taken offense to the contents of a certain programme which, they believe, target a par-

ticular community. While the Ministry of Information and Broadcasting, and the Hon'ble Supreme Court, are simultaneously, and perhaps incongruously, seized of the case, it may be worthwhile to understand the relationship between speech, culture and public morality. In the interest of fair disclosure, this author is appearing on behalf of a few Interveners in the proceedings before the Supreme Court. Therefore, in the interest of propriety, he shall desist from commenting on the specific merits of the case. The focus of the instant piece is the meta nexus between speech and civilizational ethos.

Language, while acting as the vehicle for expression of thought, results in speech. Therefore, speech could be treated as but one form of expression, and for the purposes of the discussion at hand, may be treated as a broad representative of varied forms of expression. To reduce speech to merely a collection of words is to betray one's ignorance and superficial understanding of human psychology, both individual and collective. Speech, in fact, contains the

markers of a civilisation's journey, depth and the values it believes in. One could go even a step further to make the point that speech is perhaps the most literal, visible, audible and ubiquitous expression of public morality. The lessons, beliefs, achievements, tragedies, the objects of worship and hatred of a people take the shape of similes, idioms, usages, proverbs and even cuss words. Therefore, to police speech, is to police not just the ability to express thought, but thought itself because policing the formers' words and stifles the latter, thereby killing the idea at source.

Given the implications of policing speech, society is naturally expected to be extremely cautious and selective in handing the right to police its speech and thought to any particular organ as part of its social contract with the State. To hedge against unilateralism and authoritarianism, the republican premise is that it is safer, if not the safest, to put faith in organs which are vulnerable to and are the product of the will of the people, namely the Legislature and the Executive.

Even if this choice has the inherent risk of surrendering one's individual right at the altar of a process which ruthlessly rewards the numerical majority, it still puts faith in the deeper churn of a society and its tendency to see the light through trial and error. Perhaps this is because of the unspoken belief in the existence of a "society" which shares a common minimum pool of values and aspirations, notwithstanding differing political perspectives and ideological persuasions. More often than not, this common minimum pool of shared values and aspirations traces its origins to the fundamental ethos of a people or a civilization i.e. the shared ethos which justifies the reason for the existence as a single national/civilizational, and hence political unit. This demonstrates that politics cannot be faithfully and fully reflect the bonds that connect the members of a society. It also explains why as part of a social contract an individual is assumed and expected to submit to the dispensation of the majority law, even if the individual is at loggerheads with the

dispensation's positions.

In view of the above rationale, an organ, such as the Judiciary, whose rectitude is its hallmark and is presumed to translate to impartiality and objectivity, cannot, must not and is not designed to attempt to step into the shoes of elected organs. This is not only because it violates the rules of "the" social contract, namely the Constitution, but also because it deprives the people of their say in the process of laying down the law, which partakes significantly, if not solely, from public morality. Critically, since notions of public morality vary from society to society and even within society, only the State, namely the Legislature and the Executive but not the Judiciary, is competent to and mandated to prescribe the red lines of free speech.

In a brilliant paper titled "Morality as a Legitimate Government Interest" published in Penn State Law Review in 2012, Daniel F. Piar, then a Professor of Law at Yale Law School, examined in detail the United States Supreme Court's tendency to homogenize moral standards in the name of

the Constitution (a.k.a. constitutional morality), and concluded as follows: "As discussed above, moral diversity yields numerous moral benefits to individuals and to the society that they constitute. To resist the proliferation of moral diversity is to deny that we are a pluralistic society. If we are to remain true to our liberal commitments, we must acknowledge—and accept—that the world is full of matters on which people of reason and good will are apt to disagree. A productive moral diversity, then may flourish, to the betterment of each of us and the society.

The law, however, has trod a more dangerous road, threatening to suppress diverse responses to moral issues through a homogenizing constitutionalism. If society is to retain the cultural and personal benefits of moral diversity, society will need to be attentive to the points at which the law impedes it, as well as to the opportunities in law for sustaining it."

Why should the logic be any different in the Indian context? J. Sai Deepak is an Advocate practising as an arguing counsel before the Supreme Court of India and the High Court of Delhi.

ANALYSIS

Know about farm bills that have been turned into law

OPINION

SHREYASHKAR & SHIVAM SHANTANU

The farmer is the only man in the economy who buys at retail, sells everything at wholesale, and pays the freight both ways. This line by John F. Kennedy reflects the pain which a farmer faces in conducting his trade. The farm bills which passed through Rajya Sabha on Tuesday amidst great opposition from various parties and high voltage drama in the Upper House seeks to bring revolutionary changes in the trading process of farm produces. Farmers have showed up in huge numbers on the roads of Punjab, Haryana, Uttar Pradesh and many other states across the nation to show their dissatisfaction against these bills. Adding flare to the agitation Union Minister for Food Processing Industries, Harshrat Kaur Badal resigned from the Central Government in solidarity with the farmers. The big question which arises is whether the leaders of such farmer groups which are up in arms against the bills really want to bring about change in the lives of the farmer or are just masquerading as the farmers to get political mileage. The bills which are due to presidential assent are The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020. These bills aim to channelize the trade of farm produces directly be-

tween the farmer and the buyer leading to economic welfare of the farmers. It is a very historic moment in the Indian agricultural scenario which seems to bring a revolutionary change just like the 1991 liberalisation and globalisation phase.

FARMERS' AUTONOMY

Terming the present three bills which are due for assent by the president of India, as "anti-farmer" bills is a rhetoric completely made in ignorance. These bills are rather providing flesh and blood to a farmer's right to trade, commerce and inter-course as enshrined under Article 19 of the Constitution and Article 301 of the Constitution. The existing framework was set up by different state governments for the regulation of trade and commerce of agricultural produce, which is done through Agricultural Produce Marketing Committees (APMCs). This framework is hit by many deficiencies such as cartelization by APMC agents which lead to a non-transparent price fixation mechanism and paying variation of tax and cess which leads to up the total value of the farmer's produce. Additionally the existing framework creates a highly anti-competitive market system where there is rampant red tapism through licensing of traders, making it very difficult for a new trader to join in.

The new farm bills seek to create an alternate trading atmosphere which will be more conducive for the farmers and based on the principle of *laissez faire* attracting minimal govern-

mental intervention. It aims to remove all the barriers and restrictions imposed on the trading autonomy of a farmer. The new farm bills are going to amplify the magnitude of the fundamental right to trade of the farming community in its fullest sense.

Art. 19 of our Constitution ensure the freedom to practise any profession, or to carry on any occupation, trade or business. Moreover, Art. 301 ensures freedom of trade, commerce and inter-course throughout the territory of India. A conjunctive reading of Article 19 and Article 301 paints a greater constitutional mandate regarding an individual's freedom to trade by supplementing it with freedom to trade inter-state or intra-state both. The definition of 'trade area' as per Clause 2(m) of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 specifically excludes 'market yards, sub-market yards and market sub-yards managed and run by the market committees formed under each state APMC (Agricultural Produce Market Committee) Act' and 'private market yards, private market sub-yards, direct marketing collection centres, and private farmer-consumer market yards managed by persons holding licenses or any ware-houses, silos, cold storages or other structures notified as markets or deemed markets under each State APMC Act in force in India'. In the existing framework due to reasonable restrictions, a farmer could only trade in the mandis regulated by the APMCs. But with coming of these bills into force, the farmers will have a choice to trade inside their outside that area with their free will and without any unnecessary obligations. It also allows farmers to freely trade through electronic medium. It aims to reduce the total farming cost which a farmer incurred in the existing framework by abolishing

any kind of market fees charged by the state government subject to trade takes place outside the APMC market.

Now a farmer will have negotiating power as regards to price of his produce. He can bargain the amount to his benefit and not just settle at the amount manipulated by existing trader cartels. He can participate in an agricultural market which is open to competition and not just controlled by a few big players. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020 seeks to provide the farming community with a significant role to play in the agricultural market and not just be a raw material provider surrendered at the hands of agents and traders. It seeks to bind farmer and buyer in an agreement which takes place prior to production and price fixation is done with the consent of both the parties. This is known as 'Contract Farming'. Such type of farming provides a farmer with benefits like there is direct reduction of price related risk because they have already the price to their benefit. Any volatile market situation will not affect their pre-defined right to a certain amount of money. Many farmer groups are apprehensive that they will not get the appropriate amount for their produce. Their fear is also valid as it seems to them that they will not even receive the Minimum Support Price as big corporations may use their influence to get the agreement signed at a lower price. But all these fears should not exist as these bills are not here to replace the already existing framework of APMCs but to give an alternative which respects a farmer's individual autonomy. If a farmer experiences that he is not able to get a price worth of his produce then he has the option to conduct his trade at the

mandis setup by the APMCs.

The sole aim of these bills is to recognize the individual autonomy of a farmer in conducting trade of his hardy grown produce. Another big advantage of this contract farming is going to be linkage of agreement with credit or insurance schemes of central or state governments. Now the farmers will not be dependent on local moneylenders for quick loans which led such farmers into a debt trap and with this linkage there will be a huge risk mitigation in the favour of farmers.

DISPUTE RESOLUTION

After introduction of these bills into the parliament, there was a huge hue and cry across the nation against introduction of 'contract farming'. It is being perceived that due to unequal bargaining powers between a corporation and a small farmer, the agreement may heavily favour the interest of corporations and be detrimental for poor and illiterate farmers. But these doubts are really unfounded because the bill already provides enough safeguard through its provisions from Sections 3 to 12. The biggest problem is when there are parties with unequal bargaining powers, the party with the high bargaining power like corporations draft boilerplate contracts and insert dispute resolution clauses which binds in their favour and party with a lower bargaining power is kept away from justice. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020, introduces a dispute resolution provision to cure this mostly used method to deny access to justice to party with a lower bargaining power. It is a big step in the direction of providing access to justice to the farming community by introducing conciliation as a method of

dispute resolution. It saves a farmer a whole lot of money and time by keeping him away from litigation. Now a farmer could resolve his agricultural dispute in a speedy manner without knocking the heavy doors of courts.

THE POWER-SHARING GAUNTLET

Post-tabling the concerned farm bills, the Upper house witnessed opposition admonishing the bills on the account that there was a brazen attack on the federal structure of our constitution. It is hereby rebutted that the concerned bills do not in any case breach the constitutional limits. Moreover, they bolster the idea of co-operative federalism. The legislative power sharing between the centre and the state has been enunciated in seventh schedule of our constitution. The seventh schedule of the Indian constitution has three lists. List I refers to the subjects under the Centre or the Union, List II refers to the state list and List III refers to the concurrent list where the states and the Centre are co-sharers of power and responsibility.

Entry 33 of the Concurrent List says that Centre and the States have powers to control production, supply and distribution of products of any industry, including agriculture. Further, Entry 34 of the concurrent list deals with price control. Conjunctive reading of Entry 33 and Entry 34 connotes that the centre has power to make laws on trade and commerce in production, supply and distribution of products of agricultural industry and further on fixation of the prices. Constitutional propriety of Centre to make laws on agricultural products flows from the above mentioned entries of Concurrent List. Thus, the centre in no way is encroach-

ing upon the laws making powers of the state.

Moreover, the concerned farm bills do not crumble upon the idea of cooperative federalism envisaged by our constitution. The above proposition can be well elucidated by the following stages:

1. Agricultural Produce Market Committee i.e. APMCs are established by a state government though their respective state adaptations. APMCs are physical market places where farmers are required to bring their produce to the market if they have to sell it there. Gradually, these APMCs have become de facto monopolies because of the fact that almost all farmers used these markets to sell their produce which resulted in no serious competitions.

2. Farmers Produce Trade & Commerce (Promotion & Facilitation) Bill, 2020 seeks to ameliorate the state chief created by the state APMCs. The concerned bill allows intra-state and inter-state trade of farmers produce outside (i) the physical premises of market yards run by market committees formed under the state APMC Acts and (ii) other markets notified under the state APMC Acts.

What can be construed is that Farmers Produce Trade & Commerce (Promotion & Facilitation) Bill, 2020 will eliminate the restriction that used to be imposed by the state APMCs. It seeks to demolish the dens of monopolistic power which throttle the Indian farmer. The concerned bill creates a legal framework to set up markets that will run parallel to what the states have established through APMCs. Thus, it in no way, restricts the operation of the state APMCs. What is does is that, it expands the horizons of options for the Indian farmers to sell their produce.

Cooperative federalism, also known as marble-cake federalism, is a concept of federalism in which federal, state, and local governments interact cooperatively and collectively to solve common problems, rather than making policies separately but more or less equally. This step significantly bolsters the notion of cooperative federalism in a way that, now, the farmers will have two recourses, i.e. either to sell their produce through the state established APMCs or do it individually by virtue of Centre's Farmers Produce Trade & Commerce (Promotion & Facilitation) Bill, 2020. Thus, the concerned bill seeks to establish harmony between the centre and state.

CONCLUDING REMARKS
The bills which are being protested are not 'anti-farmer' but those who are protesting these bills are certainly 'anti-farmer', they are trying to impede the positive change which is going to boost the economic condition of farmers. The farm bills aim to enhance the scope and freedom of farmers to trade. The Government has introduced these bills to further enlarge the individual autonomy of farmers to trade as guaranteed under Article 190(g). India is witnessing the epitome of co-operative federalism wherein without any kind of encroachment on the State's framework, the Centre has carved an alternative method for the welfare of farmers. Both the frameworks are mutually exclusive of each other. The Farm Bills are breaking the chains of cartelization and licensing away from the farmers which stood in the path of their glory. The economic boost which the farmers will now experience will never let a food provider die of hunger.

New Delhi

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13 THE IDEAS PAGE

Drawing a red line

To both preserve the independence of the media, whose role in a democracy is indispensable, as well as to regulate it, there are several possible indigenous models. Supreme Court must tread wisely



S Y QURAISHI

THE SUPREME COURT last week came down heavily on a TV channel that was intent on broadcasting hate-filled programmes. The Court underlined the need for laying down clear guidelines, and their effective implementation, for the media against hate speech. This has brought to the centre-stage, once again, the debate about the need, scope and extent of media regulation.

The government has made several attempts in the past to regulate the media but all such attempts came crashing down in the wake of public outcry. The last such attempt was in April 2018 when the Information and Broadcasting Ministry issued a circular stipulating that the accreditation of a journalist found to have "created and/or propagated fake news" will be suspended or permanently cancelled. The next 15 hours witnessed a huge furor against the circular, culminating in the I&B ministry revoking the circular.

It is undeniable that television has become the most powerful media with unprecedented influence over the minds of the people. TV channels have the power to set the country afire with their hateful discourse, for which some of them have become notorious. Everyone can see freedom of speech being blatantly abused on a daily basis.

Unbridled power is always dangerous. Some checks and regulations are obviously required. What are the possible forms of such regulation? They are government regulation, self-regulation and independent regulation.

Government regulations are, of course, not desirable as these could interfere with the freedom of speech and expression enshrined in the Constitution (Article 19), though it is pertinent to remember that the same Article also provides for "reasonable restrictions" on this freedom.

Currently, the government is not without its own regulation policies: Provisions within the Cable Television Network Rules of 1994, the Cable Television Networks (Regulation) Act of 1995, and the Policy Guidelines for Linking of Television Channels from India of 2000, give it the power to block the transmission and re-transmission of any channel in the country. How effective or fair this is, is a matter for critical examination.

The second alternative—self-regulation—though ideal, is easier said than done and continues to be a pipedream, at least in India.

That brings us to the third and most desirable option— independent regulation. Who will set it up? If the government does it, the whole world is ready to pounce on it. A greater responsibility has fallen on the Supreme Court, an opportunity that it must not miss.

Incidentally, a fourth model has accidentally evolved—self-run-independent regulation.

The News Broadcasters Association (NBA), which was set up in 2008, in turn, set up the National Broadcasting Standards Authority (NBSA), with the legendary former Chief Justice of India, Justice V S Verma, as its chairman. He agreed to chair this body on the express condition that this will be an independent body and that he would brook no

—a condition which the Association has always honoured. The NBSA consists of four representatives from among media editors and an equal number of independent members of eminence, besides the chairman. I was an independent member for nearly seven years and can vouch for the total non-interference of the parent body, despite several orders going against the members. It imposed heavy cash fines on recalcitrant channels and, more significantly, forced them to release a public apology at prime time, often for several days. The channels seemed more scared of this humiliation than the cash fines.

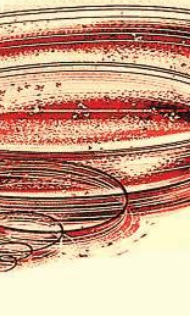
There was only one occasion when, upset with a series of hostile orders, the firming Association came calling. It took just five minutes of tough speak from us for them to back off.

The NBA is a private association of news broadcasters (25 in number comprising 65 news and current affairs channels, when I left a year ago) formed with the object to "test high standards, ethics and practices in news broadcasting" and take action against defaulters.

In the first 10 years, the NBSA has considered and dealt with 2,669 complaints and issued 74 judgements/orders. Its role has already been acknowledged by the Ministry of Information and Broadcasting and the Election Commission—by the way, they have been referring complaints to them. However, I must admit we often felt exasperated that despite our best efforts, we could not discipline some of the channels spewing venom day in and day out.

The NBSA did suffer from some serious shortcomings. First, its writ extended only to its members, which was limited due to its voluntary membership. Those who were unhappy with a verdict found it easy to walk out. Always thought that the government should step in to break this unique model with statutory backing, extending its jurisdiction to non-members as well, besides empowering it to take punitive action like suspending and cancelling licences.

Here, the UK offers a good example in the form of Ofcom (Office of Communications)—the government-approved regulatory and competition body for the broadcasting, telecommunications and postal industries.



C R Sankumar

from the industry itself. However, unlike the NBA, and this is what makes a substantial difference, it is created by an Act of Parliament. This implies that the Ofcom is given authority by the British parliament, is answerable to it and has been given legitimacy. Not long ago, in February 2020, the UK government announced that it intended Ofcom to have a greater role in internet regulation to protect users from "harmful and illegal" content.

The government has pointed out to the SC the disastrous role social media is playing in tearing the social fabric and the need to tackle it before television. This seems to be a red herring to divert the SC's attention. I do not think it is an either/or situation. Both forms of media are destroying the country's social harmony of the country, often in tandem. Both need to be dealt with decisively and urgently.

To both preserve the independence of the media, whose role in a democracy is indispensable, as well as to regulate it, there are several possible indigenous models. One model is empowering the NBSA with statutory backing, more stringent powers and extending its writ to all news channels.

The other model could be an SC-appointed monitoring panel—like the one I set up in 1998 to monitor encroachments in Delhi which worked very effectively till the members became too old and the Court just forgot about them after appointing them. The Press Council model is an equal failure, spineless and toothless, despite a retired SC judge heading it. The fourth model is like the Election Commission—a constitutionally-appointed body which was empowered by the SC in 2002 as a regulator to enforce the model code of conduct evolved by the political parties voluntarily for self-discipline.

Whichever model it chooses, the Supreme Court must not fall prey to the diversionary tactics of vested interests. It should also see this case as an opportunity to change the image of inaction and insensitivity it has unfortunately acquired during the last couple of years.

Lordships, you are the country's last hope. You're the country's saviours. Please do not put the issue on the back burner while the country is a fire.

The writer is former Chief Election Commissioner of India and a former member

WHAT THE OTHERS SAY

"Both Xi and Trump addressed the General Debate on Tuesday with pre-recorded videos. Xi emphasised unity and cooperation, while Trump mentioned China 12 times, making the country his most outstanding stunt." —GLOBAL TIMES, CHINA

Can we slice apart the river?

Tribute to Kaifi Azmi is a reiteration of our pluralistic heritage, identity



MEERA DEWAN

"In Harf-i-Nisbat Awar Mi Gayam wa Mi Raqam/Az-Eshq Dil Aspad ba Inham Bitah" (Using these joy-inspiring words I dance with delight if it is Love that is a balm to the heart.) —Iqbal

THE PRIDE we have in our country's secularism is giving way to a sense of shame. Can the consequences of majoritarianism be fully comprehended by the dominant faith? Who could imagine that a tattoo on one's hand, a symbol of devotion, can cause so much displeasure that the hand itself has to be saved off from the body? Do concerns about a possible threat to life cross the mind of a woman from the majority community, as she packs her husband's office lunch? Yet minorities have paid with their lives for perceived "offences", including carrying non-vegetarian food on a train, transporting their own cat, wearing a headscarf, at times while being forced to chant "jai Shri Ram".

The Azmi siblings' timely film, *Mee Raqam* (I Dance), rekindles hope at a time of the dismantling of democratic values. Maryam, the teenage protagonist, is delighted by Bharatanatyam. However, society's expectations, ingrained into the vulnerable psyche of the oppressed, result in self-censorship and a denial of her passion. Bharatanatyam is director Baba Azmi's visual yet subtle metaphor, questioning the idea that Azmi is a pluralistic nation, where all forms of religion, while culture—the arts, festivals or clothes—belongs in the public space.

Maryam's sole surviving parent, Salim, a tailor, decides he will nurture her talent, despite the inevitable ruffling of feathers both within and between communities. Together, daughter and father fight society's manufactured rules that threaten to shatter a shared composite heritage. Their confidence is founded on the belief that it would surely take more than an ancient dance form to weaken bonds between peoples or break up a neighbourhood, much less a nation.

The chosen theme of culturally-dematigated identities, elaborated upon by writer Ali Husain Mir, raises questions that are frighteningly real. In 2018, after Nawazuddin Siddiqui was compelled to abandon his role in the Rameela midway through ongoing performances in Bihar on charges of not being a Hindu. Will there come a time when laws and patents will determine who can recite Sanskrit shlokas, Sufi verses or Buddhist chants? How does one construct a dam that bifurcates the waters of the Ganga from Yamuna, an inter-mingled tehzeeb? Can we slice apart the rivers?

Mee Raqam's forthright story-telling refuses to focus on the complexities of society's deeply-entrenched hierarchies, based on faith and class. The lines between feature and documentary genres blur. Rural landscapes in Kaifi Azmi's hometown of Mirjam, UP,

Muslim bastis, characters primarily comprised of those who live the realities, not emote them, captured in a cinematic style. There are no mandatory nods to Muslim stereotypes such as an obligatory Sufi song, qawwali, or azaan.

When isolated and communicated even by their own, the daughter-father duo displays human frailties. A local cleric blocks Salim's entry into a mosque, as he is now perceived to be a kafir. The tailor's once busy sewing machine is compelled to sit idle beside him, even during Eid. His books must be sold by weight, though not of the words within them. When Salim visits his wife's grave, where he can recreate memories of better times and regain strength, no shero-shayari is layered as a background score to accentuate his condition. The concept of gharibans and cemeteries as tangible physical sacred spaces to offer gratitude at, are acknowledged as healing spots, with minimal fuss.

Sas Shabana Azmi who presents the film in commemoration of progressive poet Kaifi Azmi's birth centenary. "Kaifi Azmi's values and principles quietly pervade and inspire us. It is time we redefine the toxic masculinity. Why can't men be portrayed as nurturers?"

An illustration is when Maryam sits crouched in an attempt to apply aita to her feet in preparation for her first performance. Her father extends a helping hand. It is a gesture so spontaneous and non-traditional for a male parent. On her withdrawal, he inquires, "Anni ki maa karoti?" (Would you not permit your mother?). This startlingly simple analogy and the actor's indignant delivery is a refreshing tribute to single parenting. Screen mother of the oppressed, real roles; a father's contribution is generally limited to being the breadwinner. The gentle parental gesture is also a throwback to a time when Kaifi, as a child, was once one who paid tribute to the death of his father, Kaifi Azmi, the filmmaker Baba Azmi and his actor, Danish Husain. Each one communicates in his own chosen creative medium, reinforcing contemporary reality. The message remains the same. Kaifi Azmi uses verse as his language to bring dignity to the common citizen. Baba salutes the towns' tailor who offers solitary resistance. A third reiteration of respect for the worker comes from Salim, who enacts his portrayal with an intrinsic taneer, a trait typical of UP.

Making the struggles worthwhile, this sense of self-worth of the working class is imbibed by the new generation, conveyed by young Maryam. Now an acknowledged figure within the small community, she announces publicly, "Darzi hair, mere Abba". There is a quiet pride in her tone, not shrill defiance. She follows this disclosure with a performance to a melody of the Ganga, now meter and melody in praise of Shiva, now to the chants of Alai.

No, the waters of the rivers will not be separated. *Mee Raqam* is a rare gift of 2020. It also the Azmi siblings respond to their father's final alvida to them, a reminder from his hospital bed: "Kar le hain hum fida-e-tan saashiyon/Ab tumhare hawale watan saashiyon."

The writer is a filmmaker

The technology front

Ladakh face-off may be linked to India aligning with US against Chinese tech players



ANIRUDH SURI

IT IS a strange phenomenon when two of Asia's largest economies decide that in the midst of one of the worst pandemics the world has ever seen, they want to raise the stakes in a decades-long border dispute. What is really going on, one might ask, is there a war brewing between India and China?

The skirmishes on the Ladakh border might suggest that long-standing territorial issues are at the core of the conflict. But there is another possible explanation. A larger conflict is brewing, almost entirely along the lines of the conflict between China and the US. And the dominance of global technology platforms and networks is likely at the centre of it.

Various policy measures announced by the government in recent months—all coinciding exactly with skirmishes on the Ladakh front—have specifically targeted Chinese-origin technology players. Suddenly, China seems to have lost its mantle as the master of the Indian technology sector's destiny—as Chinese VC firms/strategic investors have lost favour. India seems to be pushing back hard against China. Why?

One narrative that we're hearing frequently is that India, under a stronger political leadership, has decided to take a tougher stance against China's incursions, both at the border and on the economic front. But the question—why this tougher stance—remains unanswered.

One hypothesis, and this incidentally partly

also explains the narrative above, is that India is demonstrating its commitment to alignment with a broader US strategy against Chinese technology players. Earlier this year, the Donald Trump administration rolled out the Clean Network programme, "a comprehensive approach to guarding its citizens' privacy and its companies' most sensitive information from aggressive intrusions by malign actors, such as the Chinese Communist Party". This programme is more significant than it seems. It is laying the seeds for a new kind of global alliance led by the US. This new alliance is centred not around military bases or economic ideology but on ensuring that the emerging global infrastructure of 5G technology—networks, carriers, storage, apps and cables—is built "cleanly", that is, without Chinese players.

Over 30 countries and many global techs have lined up for this alliance already. From India, Reliance Jio has been named by the US as the trusted partner for 5G networks, encompassing India and Jio firmly in the US camp. Not surprisingly, many of the recent global investors in Reliance Jio are prominent private and public players from the US and its allies.

Why is the 5G technology infrastructure so important? In the words of senior officials of the US State Department, "whoever builds a nation's 5G networks gains the key to that country's most sensitive personal, commercial, and governmental data." 5G networks will

form the underlying infrastructure for everything from financial networks, telecommunications, transportation and energy networks, to key government services such as defence and intelligence. So, if a 5G network falls or its security is compromised or its primary ownership or control lies with a foreign entity, there would be significant ramifications for all parts of society. The loss of economic prowess that will come by ceding ownership of the new "roads and seaways that connect the world" will be significant in itself.

Now, note this: In response to India's move to ban 118 Chinese apps in the interest of national security, privacy and data security, the Chinese spokespeople did not criticise India's move as much as she hit back at the US by citing US programmes such as DIBOX, PRISM and Irritant Horn, all of which according to the Chinese were aimed at similar objectives as the ones the Chinese companies are accused of.

In doing so, the Chinese have wittingly or unwittingly admitted to two things: One, that some of their technology players might be engaged in trying to do what the Chinese are claiming the US has allegedly long done, and two, that China and the US are engaged in this land-grab on the technology and 5G front, and India is placing itself within the US camp.

In a way, it does not matter whether the Ladakh skirmishes are being caused by India firmly placing itself within the US camp, or vice

versa. What is important is that both are intricately linked. The Chinese spokesperson's statement suggests that China also views tensions on the Ladakh border as a manifestation of a broader strategy to encircle and exclude China from this Global Technology Alliance. But the Chinese probably see the bigger picture. They definitely do not want to escalate the tensions to anything resembling a war right now with India or any other country that it has disputes with. China knows that its political capital with the rest of the world is at very low levels. That would explain why they have not hit back that hard.

It must also be noted that while the military conflict and tensions on the Ladakh border are dominating headlines in India, that is not the case in China. At the same time, while the aggressive Indian stance might, secretly at least, generate respect for India amongst Chinese people, it will not be surprising if the Chinese also think creatively about how to show India down sooner than later.

China will most likely not let Ladakh escalate that much more now, and we'll probably see an approachment in the coming days and weeks. But rest assured, the Chinese will try to open up another front to hurt India, and the board may include the technology front. Indian policymakers need to be ready.

The writer is managing director, India Internet Fund

LETTER TO THE EDITOR

US IS HERE

THIS REFERS TO the editorial, "Friends and neighbours" (IE, September 24). In the past, India was confident about its capacity to be the net security provider for its neighbours. That appears to have changed. The US-Maldives pact signals the dramatic change not only in India's relations with the US but also in how India is looking to enhance its own security and other interests. India has been the dominant power in South Asia. To keepout China, India is allowing the US to play a larger role in the region, which is a welcome development.

SS Padi, Noida

AN OVER-REACH

THIS REFERS TO the editorial, "The G in NGO" (IE, September 24). There is no doubt that there are many NGOs that do not have the best interests of the country at heart. But when our government is not able to provide much-needed relief to the poor and marginalised sections of the society, and moreover, in the absence of a social security structure, NGOs play a big role in the field of education, healthcare, sanitation, etc. With the new FCRA Bill, this whole ecosystem would be challenged and suspended will fall on all due to the wrong practices of a few. Putting the entire society with the same brush is not justified.

Bal Govind, Noida

IDEAS ONLINE

GAUTAM'S STEP FORWARD
VARUN VARMA

CHINA'S AGGRESSIVE
UNLATERALISM:
ABANITHATTACHARYA

www.indianexpress.com

THIS REFERS TO the editorial, "The G in NGO" (IE, September 24). The government's overwhelming desire to bring transparency to the working of NGOs through the FCRA Bill begs a question: Why has the same transparency not been demonstrated in funds to political parties? It is quite possible that there may be some black sheep in the NGO ecosystem but one cannot throw away along with the bathwater. Many NGOs are doing yeoman service to the nation. Breathing down their necks may be counterproductive, especially during trying times. The government should partner with the sector to combat COVID-19.

Deepak Singhal, Chennai

6 EDITORIAL

FRIDAY, SEPTEMBER 25, 2020



Terms of disengagement

Military-level talks help avoid confrontation, but the China border remains a challenge

That India and China have agreed to stop sending more troops to the frontline is a welcome step towards hitting pause on the rising tensions along the LAC. Indeed, the genesis of the tensions lies in China's large-scale deployment of troops to forward areas in May, and subsequent multiple transgressions in the Galwan Valley, Pangong Lake, Gogra, Hot Springs, and Depsang plains that have violated almost every core tenet of the four border agreements that have helped keep the peace since 1993. This has forced India to match the Chinese deployment, leading to an extraordinary build-up on a scale not seen since 1962. The new agreements of September 21, at the sixth round of Corps Commander talks since June, will put a stop to this build-up, that is, it is implemented sincerely. The joint press release said the sides had agreed to strengthen communication on the ground, avoid misjudgments, and to refrain from unilaterally changing the situation on the ground, besides holding a next round at an early date, underlining that many issues remain unresolved.

If this agreement can potentially help stem the bleeding as it were, it does not address most of India's fundamental concerns on the LAC. Prior to the talks, Indian officials had highlighted the key points of their agenda as having China withdraw from all friction points including Depsang and Pangong Tso and granting unhindered access to all patrolling points (PPs) — China has blocked access to 10 PPs since May. The joint press release makes no mention of restoration of the *status quo ante* of April, only referring to no unilateral changes to the ground situation, which refers to the current *status quo*. It is true that one or two rounds of talks cannot be expected realistically to resolve a situation that is, in many ways, even more complex than the 1986 Sino-Indian Stand-off. At the same time, a second joint public statement in as many weeks is a positive development in itself, showing both have the intent to stabilise the situation, even if their motivations may be different. For the Indian government, such a statement in the midst of a Parliament session where it has faced questions over its handling of the LAC situation sends the message that the China crisis is under control. For China, the motivations could be two-fold — either a tactical pause that gives it time to prepare for further military manoeuvres, or the case in end-August south of Pangong Lake, or a signal that Beijing wants to dial down tensions, albeit on its own terms and mostly likely without giving up the territorial gains it has made since May. Whichever may be the case, the reality for Delhi is that the challenge along the LAC may be far from over.

The foreign hand

NGOs fill in for the state; regulations should not stifle their functioning

As a result of the FCRA, drafted without consultation with stakeholders and passed with limited discussion in Parliament, further clip the wings of India's battered civil society. New regulations put onerous conditions on civil society organisations, and educational and research institutions that have partnerships, including of a financial nature, with foreign entities. Passions overwhelm rationality in conversations on foreign influences, and it could well be true that a portion of such foreign assistance may be reaching the wrong hands. In Parliament, the BJP alleged that foreign money was being used for religious conversions. In 2017, the government barred American Christian charity, Compassion International, accusing it of supporting conversions. The debate on religious propagation and conversions must be delimited from the question of foreign funding. There are adequate laws against conversion by inducement, and the right or wrong of it cannot be decided against the touchstone of the source of funds, native or foreign. Some of the restrictions appear well meaning, but could impact NGOs besides showing up India to be overregulated.

The International Commission of Jurists has said the new law was incompatible with international obligations and India's own constitutional provisions on rights. Seamless sharing of ideas and resources across national boundaries is essential to the functioning of a global community, and should not be discouraged unless there is reason to believe the funds are being used to aid illegal activities. Prime Minister Narendra Modi has often cited the ancient Indian ethos of *Vasudhaiva Kutumbakam* as the framework for its global engagement. The pandemic has only underscored the importance of this approach. As a growing economy, India under Mr. Modi has been proactive in seeking global capital and technology. The aversion appears to be towards select categories of global ideas and ideals — environmentalism, human rights and civil liberties. Organisations working in these fields have often had their patriotism being called into question. To be fair, this approach predates the current government, and it was during the UPA that an official report even quantified the GDP losses allegedly caused by environmental NGOs, insinuating a foreign conspiracy against India. Such paranoia does not go well with India's legitimate ambitions to be a global player. The BJP and the Congress are well aware of the limits of the national-foreign binary. In 2017, both joined hands to legislate an escape route after receiving funds from foreign entities in violation of FCRA provisions. Thousands of NGOs serve extremely disadvantaged sections, at times filling in for the state, others, supplementing it. A presumption of guilt against them all, followed by control, amounts to throwing the baby out with the bathwater. The world is poorer when new barriers are raised.

Shadow force apart, India needs a China plan

With a resolution to the stand-off far away, New Delhi must study how Beijing has handled its other boundary disputes



GURDIP SINGH UBAN

The mystic, celestial snow lion, 'Gang Se' in local lore, derives its name from the Sanskrit *Simha*. It is the emblem of Tibet showcasing its eternally snow-covered mountains and glaciers, even as it symbolises power, strength, fearlessness and the joy of living. It is also the symbol and the flag of the intrepid, fearless warriors of the 'Special Frontier Force', or the SFF, which has figured so prominently in the recent clashes in eastern Ladakh.

Stand-off in the heights

Towards the end of April this year, 4 Motorised and 6 Mechanised Divisions of the Chinese Western Theatre Command, having completed their exercises on the edge of the Gobi Desert, took to the Xinjiang highway. In a well-planned and rehearsed manoeuvre, they branched off onto a series of feeder roads on the Line of Actual Control (LAC) in eastern Ladakh. Once the troops were in position, they initiated multiple incursions across the LAC into what had been 'No Man's Land' patrolled by both sides (India and China). This included areas in the Depsang plains threatening the forward airstrip of Daulat Beg Oldie as also the north and the south of the expansive Pangong Tso salt water lake.

The world watched in horror, as soldiers of two nuclear armed Asian giants engaged each other in a slug fest on the snowy summits of the Himalayas. In the melee that followed, they went at each other with clubs studded with barbed wire, machetes and rocks, resulting in serious injuries. Not a shot was fired, but the Indian Army which was initially surprised, reacted swiftly and with bravery and courage inflicted casualties to

the Chinese side. The inevitable fallout of these actions was both sides jostling for heights, leading to a stalemate. Suddenly, on the night of August 29-30, in a surprise move, the Indian Army turned the tables on China by occupying heights that were not only of great tactical importance north and south of the Pangong Tso lake as also dominating the Spanggar Gap. It was now looking into the innards of the Chinese depth localities at Molde including China's armour, guns and reserves. This amazing feat was accomplished primarily by a Ghost Army, the Special Frontier Force. Who are these super human troops? What are their antecedents? They are the dreaded shadow warriors of the SFF.

Working in the shadows During the era of the 'Great Game', the British employed natives to patrol their own lands, which included Tibetans. It was the Mustang Base in the Northern Border Range that escorted the 14th Dalai Lama to safety to India during the 1959 rebellion. As a consequence of the 1962 war, the Jawaharlal Nehru government ordered the raising of an elite Commando Force called the Special Frontier Force comprising among others, Tibetans who had sought refuge in India along with the Dalai Lama.

My father, Major General Sujan Singh Uban, was a natural choice for this based on sheer merit and his being a legendary war veteran of the British Army famous for his daring exploits with the Long Range Desert Group in the Middle East, and the Guerrilla Wars in Burma during World War II. He was tasked with raising, training and commanding this nascent Force; as also moulding them into a well-oiled fighting machine.

To enhance their inherent fighting capabilities its members were given airborne training in the desert, and acquiring expertise in mountain and jungle warfare. Initially armed and equipped by the United



GETTY IMAGES/SHUTTERSTOCK

States, they quickly indigenised and were soon on their own feet. The opportunity to display their mettle as also to repay their host country came during the India-Pakistan war of 1971. As the Indian Army moved in with its major thrust into East Pakistan, the SFF, while supporting the flank of the Indian Army, in a blitzkrieg cleared the Chittagong hill tracts, as also the Kaptai dam, and encircled and prevented the escape of the Pakistani 97 (Indep) Brigade and No 2 Commando Battalion, all of whom were taken prisoners. The SFF was poised for the capture of Chittagong port when a ceasefire was declared; a daring move which paid handsome dividends. This earned them the *dorn de guerre*, the 'Phantoms of Chittagong'.

The importance of Tibet It soon became my turn to serve the SFF, enabling me to fulfil a family commitment. Having performed exceedingly well in the Indian Army (including being awarded the Vishisht Seva Medal (VSM) and based on my record of service) I was promoted as Inspector General to command the SFF and was privileged to command it during the Kargil war in battles fought at heights of 14,000 feet and above in subzero temperatures; actions which were lauded in the Ladakh and Kargil sectors. That year, the security for the Annapurna Yatra was provided by the SFF.

The strategic importance of Tibet cannot be overemphasised. It is the roof of the world, with vast

mineral and natural resources. The mighty rivers that emanate from its expansive glaciers — such as the Brahmaputra, the Yangtze, the Yellow river, the Mekong, the Salween and the Indus — together with thousands of their tributaries have nurtured civilisations in peripheral countries for centuries. The Kalash Mansarovar, which is centered in this region and with its spiritual overtones, tugs at the heart strings of every Indian. In an act of naked aggression, China occupied Tibet in 1959.

A buffer was eliminated, and the de facto boundary of China became contiguous to that of India, a boundary deliberately left unmarked to enable further expansion. Mao Zedong declared, 'Tibet is the palm that we shall occupy and then go after the five fingers, Ladakh, Nepal, Bhutan, Sikkim and Arunachal Pradesh.' Consequently, in 1959, China committed the naked act of aggression, to which India acquiesced, and our dream of 'Hindi Chini Bhai Bhai' was rudely shaken in 1962.

Understanding China's stand

India is dealing with a belligerent neighbour, with its obsession for asserting its rights over land which its predecessors may have acquired through conquest or guile. China has land borders with 14 neighbours covering an estimated 22,100 kilometres. Spot independence, and as its economic status burgeoned, so did its military muscle. China embarked on claims based on perceived imbalances of treaties forced on countries when they were weak.

Some of these have since been resolved after bloody clashes such as with Russia and Vietnam, while others have been resolved using a combination of lucrative offers of money, trade and gold. In most cases, the end result has been such that victory can be claimed by both sides.

Russia accepted half of China's claim, Kazakhstan was given lucrative economic deals, Kyrgyzstan retained 70% of the world, with vast

just 30%, and so on.

It would be fallacious to surmise that there will be any resolution to the on-going stand-off between India and China in the near future. Let us assume that both countries wish to avoid a full-scale war considering the nuclear backdrop, the COVID-19 pandemic and also the economic downturn. The road ahead will have to be evolved and based on a study of the manner in which China has negotiated its boundary disputes with 12 of its neighbours and the results achieved.

What must be done

There can be little doubt that the actions by the People's Liberation Army, or the PLA, in Ladakh were pre-meditated, planned and executed with precision. The Chinese were fully aware that they were transgressing into 'No Man's Land'. With a pre-determined mind in mind they proceeded to secure tactical heights and gained access to the areas which would forestall a counter-offensive by the Indian Army. To expect them to vacate these areas at this juncture would be naive. At the same time, the PLA, in its present configuration and posture, has immense weaknesses which will be aware of, and which should make them uneasy.

Under the prevailing circumstances, it has become imperative to form a group of experts from among retired professionals, who have a proven track record with the Indian Army, the Indian Navy, the Indian Air Force, diplomats, the intelligence services, cyber technology and cartographic services, who will plan and prepare, short, medium- and long-term goals to achieve them within a suggested time frame. Let us play down the rhetoric and adopt a pragmatic approach. It can no longer be a part-time issue as crisis occurs. The crisis is upon us now.

Gurdip Singh Uban is former Inspector General, Special Frontier Force

Health worker safety deserves a second look

The key is to adopt a systems approach and lay emphasis on a culture of health worker well-being



HARIKERTAN RAGHURAM & ANANT BHAN

Health facilities are a place of healing and restoration. But can they be places of harm as well? The world over, one in 10 patients experiences or is subject to harm in health care settings. These range from operations done on the wrong patient, to injections being administered in an unsafe manner. Studies in India have shown that more than two thirds of injections are given in an unsafe manner; equally worrying is the fact that over two-thirds of injections in primary care are unnecessary in the first place.

Global focus To highlight this important issue, the World Health Organization observes World Patient Safety Day (https://bit.ly/3mOqOTG) every year (September 17). The theme for 2020 was 'Health Worker Safety: A Priority for Patient Safety' with a call to action to 'Speak up for health worker safety'. But one may wonder, why, on a day dedicated to patient safety, we should speak up for health worker safety? So, why is health worker safety important for patient safety?

Much harm done to patients in health-care settings is because of unsafe health-care practice and unsafe health-care communication. Unsafe health-care practice refers to unsafe or unscientific procedures, wrong medications, wrong timing, wrong dose, etc. Unsafe health-care communication refers to mistakes made in health-care settings due to miscommunication between health professionals, for example, wrong patient handover in the ward, wrong practice shifts. The quality of both practice and communication is dependent on the safety and well-being of health workers. For example, numerous studies have shown that health workers, such as residents, who have been on duty for more than 24 hours at a stretch, have a higher risk of making mistakes, increasing the likelihood of a direct impact on patient safety.

COVID-19 and reporting cases During the current COVID-19 crisis, health workers are not only putting in longer hours but also working under increased duress and difficult circumstances, which affect both their physical and mental health. The mental health of health workers is linked to the workplace culture. Some organisations have a culture of supporting staff, responding to their needs and encouraging learning from mistakes while others have a culture of fault-finding, blame, guilt and abuse. When instances of patient harm occur, whether people feel encouraged to report them, depends on the organisation's culture and leadership.

Without reporting, it is difficult for organisations to learn from mistakes and create systems, such as check lists in order to prevent similar future occurrences. In addition, in India, it is not uncommon to find health-care organisations observe strict hierarchies between specialties, between designations, long term. Vague allegations about the commercialisation of agriculture, akin to what happened under British colonial policy which forced the farmer to grow indigo, will not fetch the desired results. The Opposition cannot expect an Indigo revolt in the 21st century without adequate mobilisation through sustained, systematic communication lines and the grass-root level

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example of overcrowding. In many hospitals, quality of care is often compromised because of overcrowding, such as in the emergency department. To take a systems approach in this situation would mean looking at it holistically — for example, from at least three angles using the input-throughput-output conceptual model described by Aspin et al in the *Annals of Emergency Medicine* in 2003 (https://bit.ly/2HuA3Nh).

One, the power differences at whether patients who come to the emergency department need to be there in the first place or could be managed somewhere else such as in the community itself. Two, the throughput: looking at whether there are inefficiencies such as shortage of doctors, nurses, equipment or space that is increasing the time taken for patients to be treated. And three, the output: looking at whether the patients are staying longer in the emergency department than required because of lack of non-emergency department inpatient beds, delays at the pharmacy or delays in transportation of patients out of the emergency department.

The consultation on health during COVID-19 has often centred on individuals, with certain individuals, such as health-care workers, seen as heroes, and others (including those referred to as 'super spreaders' in a stigmatising way), seen as villains. Many health workers have demonstrated excellence despite the limitations in the Indian health system. This is laudable but may not be sustainable. Creating sustainability would involve taking a systems approach to ensure all parts of the system, both of health care and of support-

ive social care are well functioning. Many health workers are overworked but by choice, but rather the lack of it since understaffing and shortages are a common feature of the Indian public health-care system. In addition, India simply does not have enough health facilities to cater to all its population, even without a pandemic. Further, the lack of adequate social care, such as care homes, community health services and community-based rehabilitation and palliative services, unduly increase the burden on health-care facilities.

Stakeholder involvement Finally, a systems approach involves all stakeholders. Patients themselves need to be aware of patient safety as well as be empowered to demand safe health care and resist unnecessary medications and procedures. Hospital managers must understand the need for and be empowered to create systems of reporting, monitoring and organisational learning. Policy makers must prioritise staffing, co-designing functional and safe workplaces, and ethics in health care.

Numerous persons find healing and restoration in health care. But some are harmed as well. In crises such as COVID-19, quality of care can be compromised further. We can help improve patient safety by taking a systems approach and promoting a culture of health worker safety and well-being.

Dr. Harikertan Raghuram is a public health researcher and consultant. Dr. Anant Bhan is a researcher in global health, bioethics and health policy

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Opposition strategy

Through the passage of the 'farm Bills' in Parliament raises certain questions about the working of democratic processes, especially under the present government, the onus lies on the Opposition to make a sincere effort to inform the stakeholders — through online platforms and other forms of media — about what it perceives to be the adverse impact of the Bills in the short, medium and

long term. Vague allegations about the commercialisation of agriculture, akin to what happened under British colonial policy which forced the farmer to grow indigo, will not fetch the desired results. The Opposition cannot expect an Indigo revolt in the 21st century without adequate mobilisation through sustained, systematic communication lines and the grass-root level

participation of farmers and social organisations.

ROMAN DUTTA, New Delhi

Narcotics and actors

Drug abuse and drug peddling should be dealt with seriously. Some members of Parliament who were once film stars themselves should not be mobilised through about alleged drug use in Bollywood as they must remember that their days in

the film industry were vastly different from what it is now. Many actors alleged to be involved in the narcotics are also 'role models' and 'ambassadors'. They too must realise the impact they will have on society and youth.

message must be clear — no to drugs and drug abuse.

T. KALASH DITTA, Hyderabad

It appears that the famed Indian film industry in

wrapped in the tentacles of the narcotics trade. But are the crocodiles still lurking from the water? The huge clean-up before the woods are reduced to ashes.

P.K. VARADARAJAN, Chennai

COVID-19 and after

With only a vaccine to our aid, we cannot breathe easy till mid-2023 — the year when we can start measuring the benefit of total pan-India vaccination, provided we

work with super efficiency to ensure that quality case counts will continue indefinitely even if we keep to the 10-lakh testing level. We are in the 1988 trap now, with no vaccine and no medicines. But unlike 1918, we have advanced medical chemistry. We need to rid society of fear, without which a revival is difficult.

M. BALAKRISHNAN, Bengaluru

A 08-04E

Opinion

The New York Times

FARHAD MANJOO

Go Live in Another Decade. I Recommend It.



AFTER THE 2016 ELECTION, I was deeply shaken not just by the outcome, but by the terrifying sense that I did not understand the nation as well as I'd thought I did. To blunt the shock, I went on a bender through American history. I dove into books about the Civil War, the Progressive era and, finally, Robert Caro's titanic biography of Lyndon B. Johnson, where I washed up on the shores of the turbulent 1960s.

I discovered something amazing: After 1960, much of history as many Americans experienced it — through popular culture on TV, on the radio and at the movies — is preserved and easily accessible online. With a few clicks around YouTube, history leaps into the present, often in ways that deepen and complicate the narrative.

For instance, Caro ably describes Johnson's stirring first presidential address to Congress. It was five days after the assassination of John F. Kennedy, and the new president pressed lawmakers to pass civil rights legislation in Kennedy's honor. "Everywhere you looked, people were crying," the journalist Hugh Sidney wrote.

Watching the speech is something else. "All I have I would have given gladly not to be standing here today," Johnson begins, and the hairs on the back of your neck tingle. You feel the weight of the hushed chamber and Johnson's labored delivery. And then, the trauma that enveloped the audience is transformed, over the 24-minute address, into cheering and demonstration, even hope.

That was the speech that hooked me, and soon I found myself living a second life in the past. I'd spend my days as a journalist covering the raucous present; but on and off over the last few years, on nights and weekends and vacations, I'd jump into my digital DeLoorean and take up residence in earlier times — making my way, slowly, through the 1960s and then the '70s, accompanied by an unending library of historical documents and pop cultural artifacts I found online.

It is a project I commend you to try. Go live for a bit in another, far-off decade, and I promise it will give you fresh perspective on a present as nutty as ours.

Doing so will take a bit of work. Although the internet contains uncountable historical treasures, its most-used services tend to constrict our focus to the instantaneous ever-present. Every moment on social media offers up a deluge of novelty; news is always breaking, memes always trending, hot takes never not taken.

The Trump years, especially, have been marked by a barrage of events so overwhelming that each new day seems to scramble every day that preceded it. We are all Dory, Nemo's forgetful fish friend, so unsettled by the present that we forge — I'm sorry, my pocket just buzzed, what was I saying?

Right. To visit the past online, you need to deliberately seek it out. My method was straightforward: I began by reading. In addition to Caro's Johnson biography, the historian Rick Perlstein's excellent books on the rise of modern conservatism — which take readers from Barry Goldwater through the treacheries of Richard Nixon to, in the latest volume, the political era dominated by Ronald Reagan — are a perfect place to start. Then, as you read, seek out videos online. Among other things, you will find the chilling news coverage of Johnson arriving at Andrews Air Force Base after the assassination. There's Johnson's 1965 speech introducing the Voting Rights Act, in which he invoked the anthem "We Shall Overcome," a speech that made Martin Luther King Jr. cry. You will find King's own thundering speeches — not just the most famous one, but also many others worthy of your time, including the last one he gave.

You see Malcolm X parrying with derivative reporters ("What is your real name?"). There's news coverage of the 1968 Democratic National Convention in Chicago, as delegates cheer inside and riots erupt outside. Here is Walter Cronkite telling Americans the truth about the war in Vietnam, which pushed Johnson not to run for re-election. By the time you get to Nixon you are overwhelmed with video — from his slick 1968 campaign ads to the dramatic trip to China to the endless hours of content related to Watergate.

Sure, there are easier ways to understand Watergate. "Slow Burn," the Slate podcast that documented Nixon's downfall, may be a better use of your time than watching every minute of the investigation. But the magic of the internet is how it collapses time; you can listen to a documentary produced in 2017 about a break-in in 1972, and then, if you want to fall in even further, you can watch testimony in the Senate's 1973 Watergate hearings as if it were just unfolding.

There's unexpected value in consulting the originals. "One of the things I tried to get across was the extraordinarily high level of civic commitment that the public showed in following these things, because it was complicated and slow,"

Perlstein said of Watergate. After watching long stretches of Senate hearings in the background while I cooked or cleaned the kitchen, I understood what he meant.

The Trump era has drawn numerous comparisons with the 1960s and early '70s. Both periods have had protests, riots, police brutality, political turmoil and corruption and endless war. And both have been consumed by unsettled questions over race, gender and equality.

What has stood out to me is not the similarities in plot but the differences in presentation. Watching TV news from the past is jarring and refreshing. A lot of it is outdated — this is the news as seen through the eyes of old white men — but there are aspects to coverage from the past that I felt myself pining for in the present.

When broadcast news was tightly controlled by three TV networks, there was an antiquated formality to the spectacle. I marveled at the tone of the presidential news conferences from the time.

The basic grammar of political media was different from what we see today: The questions were longer and more complex, the answers more detailed and nuanced. Even under a president as mendacious as Nixon, the political universe was still bounded by a shared sense of reality. Facts mattered, and documentary evidence had weight. If a politician said something today that contradicted what he (or, rarely, she) said yesterday, or there were recordings of a president disclosing something in private that undermined what he'd said in public, the inconsistencies were considered damning.

Broadcast news, which the TV networks offered as public service, also had little room for cheap punditry and outrage in search of profits. As a result, the coverage was more serious than anything on (paid) today — no shouting talking heads, no montages of precisely edited sound bites, nothing engineered to drive you to share with your million friends. But because broadcast news was the only game in town, it was also more trustworthy, and more influential — perhaps explaining why both Johnson's and Nixon's presidencies ultimately collapsed under the weight of their own distortions.

In the fishbowl of 2020, where the news is fragmented and none of us can remember yesterday, we are not at all so lucky.

LETTERS

200,000 Dead: An American Tragedy

TO THE EDITOR:

Re "Coronavirus Update: More Than 200,000 Dead in United States" (Sept. 23) and "Senators Line Up to Aid President in Nominée Fight" (front page, Sept. 22):

Some 200,000 have died, economic ruin is a reality for millions of unemployed people and there is still no national response plan.

The Senate must prioritize the pandemic over politics. The 9/11 tradition of reading the names of the departed is a moving reminder of the enormity of the loss.

To honor those who have succumbed to the virus and refocus senators' minds, the names of some who have lost their lives during the pandemic — perhaps 50 from each state — should be read on the Senate floor before they take up any other business.

STEVE CASTLEMAN, SAN FRANCISCO

TO THE EDITOR:

My wife and I, who are both over 65, have been quarantining for the last six months. Recently, in what undoubtedly was the highlight of our week, we went to the drive-through at our local Wendy's for lunch, and brought our food back home.

I'd love to be able to see my family and my friends, but right now it's not possible. We simply can't put any more demands on our doctors, nurses or other health providers, with the flu season around the corner.

I ask my fellow Americans to keep that in mind and to act responsibly. Their lives, and many of ours, depend on it.

ROBERT H. MOULTON III
COMMERCE CITY, COLO.

TO THE EDITOR:

Re "C.D.C. Again Taken to Task on Guidance" (front page, Sept. 22):

Our respected Centers for Disease Control and Prevention has fallen into the trap of complicated, wordy and sometimes erroneous advice, and it's irrelevant at this stage whether that is because of politics, red tape or even some genuine scientific misinterpretations.

The simple facts, for all readers, can be summed up in two sentences: 1) "Respiratory droplets" are larger and heavier, resulting from sneezes, coughs, etc., and they tend to fall to the ground or onto surfaces within 6 feet. 2) "Aerosols" are much smaller, lighter particles, which can hover or drift in the air for much longer, often wafting like an invisible cloud.

Fortunately, there is no need for lengthy deliberations about how to protect ourselves against both. One (even shorter) sentence will suffice: Wear a mask and maintain social distancing. Nit-picking over who said what, and when, and trying to allocate relative importance to both routes of transmission serve no useful purpose. That also confuses the public. I would urge a much simpler, straightforward approach.

HERSCHEL FLAX, GREAT NECK, N.Y.
Albert is a professor of anatomy at Albert Einstein College of Medicine.

TO THE EDITOR:

Re "Negligence With American Lives" (editorial, Sept. 10):

You explain that the president's "fatal mishandling of the pandemic" is the product of his public lies and his muzzling and sidelining of scientists and health officials who disagree with him.

It is time, indeed past time, for the formation of a "Shadow Pandemic Cabinet," the members of which, free to speak their minds, would tell the truth.

The cabinet would be funded by a philanthropy (Bloomberg Philanthropies?), and staffed by former C.D.C., F.D.A. and task force officials, including Dr. Anthony Fauci and Dr. Deborah Birx, all of whom would have resigned their current posts.

Like shadow cabinets in parliamentary democracies, it would offer alternative views and prescribe alternative policies to those of the government.

For example, the cabinet would weigh in about the safety of a vaccine or the efficacy of a treatment the president, or even his own F.D.A., may vouch for before the election, and prescribe a comprehensive testing program.

Its views and policies would likely be followed by all of the Democratic governors (24) plus two or three Republican governors. The result would put the country in a hugely better place, especially if the president gains a second term.

ROBERT E. LEHRER, CHICAGO

TO THE EDITOR:

As a physician, I am deeply concerned about the coming confluence of Covid-19 and influenza. A bad flu season with continuing Covid-19 community spread is going to be a huge challenge for the health care system and our citizenry.

President Trump has expressed great confidence in a potential Covid-19 vaccine. Perhaps he can express similar confidence in the flu vaccine and encourage all Americans, which is almost everyone over six months of age, to be vaccinated against the flu this year. Rates of flu vaccination are very poor in the United States. Yet we know that even an imperfect flu vaccine is helpful in reducing the incidence and severity of the flu.

I think that a photo with President Trump, Melania and Barron receiving the flu vaccine would serve as a great inducement for everyone to get vaccinated against the flu. A light flu season will not only save lives, but will also allow us to have more energy and resources to fight Covid-19.

SHEREE STARRETT, VERONA, N.J.

How Would You Change The Supreme Court?

What do you think about the way Supreme Court justices are now chosen, and how the court functions? What changes, if any, would you like to see? Would you prefer term limits for justices, for instance, or do you think the size of the court should be increased? Submissions should be no more than 150 words. Please include your name, city, state and contact information, and put "Supreme Court" in the subject line.

Email: letters@nytimes.com

GAIL COLLINS

The Republican Irritation Olympics

SO WHICH SENATE REPUBLICAN do you find most irritating? Lindsey Graham, Mitch McConnell or Mitt Romney? I know there are lots of other contenders, but let's stick with the men of the moment — the three stars of the Supreme Court follies! All famous for keeping their word except when it involves, you know, something they really want.

All currently supporting Donald Trump's plan to get a new Supreme Court justice in place before the election. That's just a little over a month, and far less time than it would normally take Congress to modify the rules on mackerel importation.

Of course, they all found it totally, deeply unacceptable when Barack Obama nominated a Supreme Court justice during his last year in office. McConnell, in fact, hated the idea of a Democratic president nominating judges at all. He dragged his feet so successfully that when Trump entered the White House, McConnell was able to go into a legislative closet somewhere and gift him with 105 moderating judicial vacancies. Probably the greatest achievement of the Senate majority leader's career. Nothing Mitch cares about more than keeping Democrats off the court benches.

McConnell's absolute pinnacle was

keeping Merrick Garland off the Supreme Court. Who did Obama think he was, trying to put a nominee on the highest court of the land less than a year before he was scheduled to leave office? Totally unacceptable.

Yeah, said Graham and Romney. Totally unacceptable. And in no way related to Trump's decision to nominate a replacement for Ruth Bader Ginsburg as he was racing toward the end of his reelection campaign.

Romney likes to present himself as the righteous, stiff-spined defender of bipartisan principles. It is possible some of this backbone has to do with the fact that he is a very wealthy 73-year-old with a very safe Senate seat. But everybody remembers how he dived toward the end of his reelection campaign.

He argued then that Trump lacked the moral stature necessary to run the government. However, he decided this week that Trump had more than enough spiritual wisdom to nominate a judge-for-life for the most critical court in the nation.

In the uproar that followed, Romney seemed very surprised that anybody was questioning his judgment. After all, he was a former presidential nominee himself with terrific conservative creds,

not to mention a terrific record for consistency.

We would pause here just for a moment to recall that Romney ran for governor of Massachusetts on a pro-choice platform, then ran for president as "proud to be pro-life." His explanation that he did not formerly understand what an embryo was is one of my favorite Mitt stories. Second only to the time he drove to Canada.

So much talent, if you really enjoy exasperation.

da with the family dog strapped to the roof of the car.

Now, when Mitt voted to convict Trump I swore I'd never bring up the dog again. But a person has the right to change her mind, right?

Or would you prefer to present the blue ribbon for irritation to Lindsey Graham? He's chairman of the Senate Judiciary Committee, so we'll probably see a whole lot of him during this court ap-

pointment fight. Which is wonderful, since I know there is nothing you like better than listening to Graham sound sincere.

"I want you to use my words against me. If there's a Republican president in 2016 and a vacancy occurs in the last year of the first term, you can say Lindsey Graham said let's let the next president, whoever it might be, make that nomination," he said when he was trying to help McConnell ditch Merrick Garland.

Well, sure. All together now: Lindsey Graham said the next president make the Supreme Court nomination. Until ... he didn't.

Graham is one of Trump's regular golfing partners. He has a long history of hanging out with the top dogs — he was a permanent fixture on John McCain's campaign bus when McCain ran for president in 2008. He visited the Obama White House a lot. His initial relationship with Trump was rather rocky — Graham, who made a deeply unsuccessful try for the White House himself in 2016, called the future president a "race-baiting, xenophobic, religious bigot."

He also said that if Trump got the Republican nomination, "we will get destroyed ... and we will deserve it."

And, hey, he said Joe Biden was "as good a man as God ever created." But who's keeping track? Well, Graham is running for re-election against Democrat Jaime Harrison, and apparently he now believes his winning strategy is hanging on to Donald Trump for dear life. There's speculation the Supreme Court dust-up might actually help him generate a little more enthusiasm. Maybe. (The Cook Political Report, which rates Senate races, recently downgraded Graham's re-election chances from "likely" to "leaning.")

But the little things mean a lot, and Graham is really good at tiptoeing carefully around White House minefields. Remember, when Trump was reported to have referred to American war dead as "losers," Graham's response was that he didn't believe the president really said it. God knows Trump's not the kind of guy to randomly blurt out weird or offensive comments.

And Romney has been dodging questions about how he will vote if the Senate does take up Trump's new Supreme Court nominee. Which is certainly a smart approach, given the fact that for all we know, Trump could be planning to put up Roger Stone.

How to Depoliticize The Court

Steven G. Calabresi

ALL Americans should mourn Justice Ruth Bader Ginsburg. She was a pioneer of women's constitutional rights, a brilliant jurist who transformed our understanding of the 14th Amendment and a close friend to many conservatives, including Justice Antonin Scalia and me.

Justice Ginsburg would send me long handwritten notes about my law review articles, though we often disagreed. No wonder: I was one of the leaders of the effort to appoint conservatives and libertarians to the federal bench. But she treated me and everyone else she knew with courtesy and respect.

Justice Ginsburg's close friendships with Justice Scalia and Judge Robert H. Bork should teach us another lesson in the hyperpartisan world we occupy. We all need to do a better job of reaching out to those who we disagree with, to make the effort to understand their perspectives and endeavor to get along with them.

This is particularly the case now, as the United States confronts a Supreme Court vacancy during a presidential election year for the second time in four years. In the spirit of Justice Ginsburg's friendship with Justice Scalia, for whom I clerked, I propose a constitutional amendment that would permanently reform a broken selection process for Supreme Court justices: a single 18-year term for each of the court's members.

Supreme Court justices often try to retire during the presidency of someone sympathetic to their jurisprudence. Of course, that doesn't always work. Justice Scalia died after almost 30 years on the high court trying to wait out President Barack Obama, and Justice Ginsburg died after nearly 27 years trying to outlast President Trump.

Over all, though, strategic retirements give the justices too much power in picking their own successors, which can lead to a self-perpetuating oligarchy. The current system also creates the impression that the justices are more political actors than judges, which damages the rule of law. It may even change the way the justices view themselves.

No other major democracy in the world gives the justices on its highest court life tenure, nor do 49 of the 50 states. The longest terms are more like the 12-year terms served by German Constitutional judges. Countries and states that do not have term limits have mandatory retirement ages; many jurisdictions have both. The unpredictable American system of life tenure has led to four presidents picking six or more justices and four presidents selecting none, as happened with Jimmy Carter. This gives some presidents too much influence on the Supreme Court and others too little.

It also leads to justices remaining on the Supreme Court when they are unable either physically or mentally to do the job, though this was not the case with Justices Ginsburg or Scalia. Allowing lengthy tenures on the Supreme Court—from 1971 to 2000, for instance, justices who left the court had served an average of 25.6 years—ignores Lord Acton's admonition that

Justices should be appointed to a single 18-year-term.

"power tends to corrupt, and absolute power corrupts absolutely." Though, of course, this was not the case with Justices Ginsburg or Scalia.

The solution is for Republicans and Democrats to unite in supporting a constitutional amendment that fixes the size of the Supreme Court at its current nine justices, each of whom would serve an 18-year nonrenewable term, staggered so that one seat opens up during the first and third years of a president's four-year term. One-term presidents would be guaranteed two appointments; two-term presidents would get four. Each two-year Senate session would consider a nominee.

Given the length of this term, longer than for judges on the high courts of any other constitutional democracy, the justices would be amply independent.

Presidents would no longer have the incentive to pick comparatively young nominees—say, someone 45 to 50 years of age—to project their influence decades into the future. Justices would lose their power to help pick successors who share their views by retiring strategically.

In the case of early retirements or deaths, the president would nominate and the Senate would confirm a replacement to fill out the unexpired term with no possibility of reappointment.

Justice Ginsburg's successor should serve an 18-year term. The eight current justices should draw lots as to who serves terms of two, four, six, eight, 10, 12, 14 or 16 years as the amendment goes into effect.

Failure to confirm a justice by July 1 of a president's first or third year should lead to a salary and benefits freeze for the president and all 100 senators, and they should be confined together until a nominee has been approved. The vice president would act as president during this time and the Senate would be forbidden from taking action whatsoever on any of its calendars.

This approach would end what has become a poisonous process of picking a Supreme Court justice. It would depoliticize the court and judicial selection, and thus promote the rule of law. □

STEVEN G. CALABRESI is a professor at the Fritcher School of Law at Northwestern and is a visiting professor at Yale Law School.

When Prosperity Trumps Liberty

Jochen Bittner
HAMBURG, GERMANY

A TURKISH friend told me the other day about his summer travels to his home region in southeastern Anatolia, a particularly poverty-stricken part of Turkey. Under the rule of President Recep Tayyip Erdogan, things have improved. My friend's cousin showed off his new Mercedes-Benz, bragging about the state aid his family received and his general well-being. "I live like an American here!" he said.

So of course he would vote again for Mr. Erdogan, who has been in power for the best part of two decades. The imprisonment of government critics? Not for him to worry about.

The story crystallized a key issue of the 21st century. As authoritarian leaders oversee economic success, the importance of civil liberties that ensure freedom from arbitrary punishment and harassment may dwindle. The abstract notion of human rights may be much less

appealing than the reality of being lifted from hardship, insecurity and hunger.

The "freedom to be free," as Hannah Arendt put it, is a privilege that, globally, very few enjoy: The world is full of people who are economically advanced, but politically repressed. That's why it's vital to make a renewed case for human rights.

It's no wonder that the pull of human rights is weak—in Turkey, and more important, in China. It is barely convincing to millions of Chinese to say that human rights are shields that citizens can hold up against attacks of the state on their liberty, life and livelihood when the state apparently does everything to lift its people from bad living conditions, inadequate medical care and bleak educational chances.

The Communist Party of China has an impressive balance sheet: China's exports grew to \$2.6 trillion in 2019 from \$11.3 billion in 1980, and its economy is on its way to overtaking America's. As Australia's former prime minister Kevin Rudd put it, China's pace of change is like the English Industrial Revolution and the global information revolution combining simultaneously and com-



ASSOCIATED PRESS

Police officers and mourners in Istanbul at the funeral of an imprisoned human rights lawyer in August.

Help Out Minority-Owned Banks

Katherine Waldoock

FOUR years before this summer of unrest in New York City, I attended the protests after Alton Sterling and Philando Castile were shot and killed by police officers that July.

I remember a day spent drifting among a crowd of angry protesters in Washington Square Park. I remember that the dissertation I was finishing, about finance, felt remote. On its face, little of what I was exploring seemed relevant to social justice and to helping repair imperiled communities.

But later that month, I learned about an unusual cause championed by the activist Michael Santiago Render, better known as the rapper Killer Mike: Move your money into Black-owned banks. The movement became known as #bankblack, and it grabbed my attention. In the multipronged considerations of how to make America more equitable, could banking, which has so long been at the heart of the problem, actually be part of the solution?

As an article in the magazine Black Enterprise recently argued, "All issues affecting our community, from health care to police brutality to voter suppression and beyond, revolve around economics."

Distressed groups—whether Black urbanites or white, rural shopkeepers—have long striven, unevenly, for eco-

nomic self-sufficiency as a means of mobility. Typically, Wall Street-centered firms haven't had their backs. But, in many cases, smaller banks have.

If you want to help minority-owned businesses, the first best thing is to shop local. But there's a next best thing, which is to move your deposits into Black-owned banks or community banks in general.

A couple of blocks from my Brooklyn apartment about the same distance from me as the nearest Bank of America branch—is a Carver Federal Savings. Carver's roughly \$650 million in total assets make it less than one-tenth of 1 percent the size of Bank of America.

Named after the pioneering Black scientist George Washington Carver, the bank was founded in 1948 with an explicit mandate to help African-American individuals and businesses get better access to the financial system. It is among the roughly 1,000 government-recognized Community Development Financial Institutions dedicated to economically underserved areas. These financial institutions are for-profit, but their mission is community revitalization.

Because of their structure, small banks have become the most reliable source of financial services for minority-owned, female-owned and rural businesses. Relative to large banks, they place more emphasis on personal relationships, collecting what economists refer to as "soft information." While small banks also use the sophisticated algorithms that big banks use to price loans,

they succeed by relying on their deep knowledge of their local ecosystem, and using that knowledge to make smart lending decisions.

As a result, banks with under \$10 billion in assets (each less than 1 percent of the size of Bank of America) collectively make up almost half of all lending to small businesses.

That's why the renewed trouble for small banks during this pandemic recession spells trouble for the small and minority businesses that they serve. We have yet to see any bank failures, but big or

An innovative way beyond the ballot box to be an ally.

small, directly stemming from the pandemic. That's largely because the government, through the CARES Act's forbearance provisions, has nudged banks, and in some cases forced them, to pause collecting interest on many federally backed mortgages.

But only for now. Once that temporary relief ends and regular payment schedules resume, we might see a wave of defaults. Bank failures also mean that, in 2010, 157 failed in 2010.

If there is a wave of small bank failures, the macroeconomic fallout will be contained because these modest institu-

pressed into not 300 years, but 30."

Francis Fukuyama made the famous prediction that once a middle class emerged in an authoritarian state, its members would demand the franchise, leaving the regime with no choice but to establish the rule of law and democracy. That has not happened in China. Rather, the opposite seems to be true: If people rise from poverty, they tend to choose prosperity over liberty.

Does this devalue the core belief that society can prosper only if the individual's pursuit of happiness is protected against arbitrary restriction? No, the idea still holds true. To prove it, affluent Chinese should ask themselves one simple question: If there were to be an

Human rights are the bread and butter of a healthy society.

economic downturn, would I want to live with my current legal guarantees?

The philosopher John Rawls suggested that to find the best legal order, we ought to imagine living behind a veil of ignorance, unaware of our own standing in society. In China, citizens should imagine life behind a veil of decline, as the country's economic expansion slows down. The rule of law might seem much more important.

Because if the state's principal interest is the well-being of the greatest number, how can wealthy citizens—who, rightly or wrongly, might be seen to hinder that goal—be sure about their own well-being?

The fate of the Uighurs in Xinjiang might provide a hint, or that of the laborers who were evicted within hours, their houses peeled away like "cabbage leaves," as Beijing's party secretary proudly announced, because they were in the way of new building projects.

Think of it this way: Human rights are like a fire department. You care about their existence only once your safety is in danger. But if your house is on fire and there's no fire department, it's too late to ask for help. The damage is done.

Smoke plumes are already emerging from Asia's powerhouse: China has high levels of internal debt, a rapidly aging population and chronic pollution that has increasingly costly effects on people's health.

There's no easy fix for these systemic problems. But human rights are the bread and butter of a healthy society—and the best guarantee that the Mercedes-Benz you tolled for during the day will still be there when night falls. □

JOCHEN BITTNER is a co-head of the debate section for the weekly newspaper Die Zeit and a contributing opinion writer.

Democrats Can't Count On the Hispanic Vote

Linda Chavez

DEMOCRATS are counting on Hispanics to help them win the White House on Nov. 3, but they may be in for a surprise.

Though I've been a conservative most of my life, I didn't vote for Donald Trump in 2016 and won't this year either. But I understand why his brand of populism and appeal to religious voters has struck a chord not just with white voters and evangelicals but also with Hispanics, who will likely make up 13 percent of voters in November.

While a majority of Hispanics routinely vote Democratic, for nearly five decades a sizable minority have consistently voted for the Republican nominee in presidential elections. In 1972, about a third of Mexican-Americans voted for Richard Nixon. In 1984, an estimated 40 percent of Hispanics voted for Ronald Reagan, a level George W. Bush also achieved in his re-election bid in 2004.

In the 2016 campaign, 28 percent of Hispanics voted for Mr. Trump, despite his openly racist language, saying Mexico was sending rapists to the United States. Polls now suggest that he has not largely maintained his support among Hispanics nationwide; it has actually increased in key states.

In Florida, an NBC News/Marist poll shows Mr. Trump leading among Hispanic voters, 50 percent to 46 percent. In Texas, nearly 28 percent of Hispanics say they support Mr. Trump, while in Arizona, 29 percent do, according to recent polls. As with other demographic groups,



ANNA MONTAGNER/GETTY IMAGES

Hispanic men are more likely than women to support Mr. Trump, with nearly 46 percent of Hispanic men in Texas and 42 percent of young Hispanic men in Arizona supporting him.

We tend to think of Hispanics as a non-white minority group, but many don't necessarily think of themselves in such terms. What's more, growing numbers of Hispanics are Protestant or evangelical Christians, a group that, like their non-Hispanic coreligionists, is far more inclined toward Mr. Trump. In Texas, for example, Hispanic Protestants support him over Joe Biden by almost two to one, according to the Texas Hispanic Policy Foundation.

But perhaps more than because of racial or religious affiliation, some Hispanic voters may gravitate toward Mr. Trump because they think he will be better on the economy. Like most American voters, Hispanics rate the economy as the No. 1 issue in the election, at 80 percent according to a recent Pew Research survey. While they are more likely than Hispanics in general to rate income inequality as a major issue, fewer Hispanic men than women do, and income inequality and immigration rank below health care and the coronavirus outbreak as top voting issues.

Before the pandemic, Hispanic unemployment was lower and household in-

come was higher than in most previous periods. Even though Hispanics have been disproportionately affected by the coronavirus, both in disease rates and loss of income, roughly a third approved of Mr. Trump's handling of the pandemic, a rate not substantially different among other Americans.

Another factor that may help Mr. Trump among some Hispanic voters, especially in Florida, is his continuous effort to portray Democrats as soft on socialism. Slightly more than one-quarter of Florida's residents are Hispanic, with a plurality who are of Cuban origin but also sizable populations of Nicaraguans and Venezuelans who fled autocratic regimes. When Mr. Trump tells voters that "Joe Biden is just a Trojan horse for socialism," it raises real fear among those whose families have lived under Fidel Castro, Hugo Chavez, Nicolas Maduro or Daniel Ortega.

It's getting late in the game to change voters' minds, but Mr. Biden had better pay attention to a group that Democrats have long taken for granted. The Trump campaign began running Spanish language ads in Florida three weeks before Mr. Biden's did and has an aggressive campaign with 16 offices focusing on wooing Hispanic voters in Florida, Arizona, Texas and Nevada. If Mr. Biden doesn't devote more time, money and organization to winning at least as many Hispanic voters as Hillary Clinton and Barack Obama did, he may see his hopes of becoming president dashed. □

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OPINION

Biden Can't Duck Trump's Court



WONDER
LAND
By Daniel
Henninger

No other person story about Ruth Bader Ginsburg has been told more this week than the one about her warm relationship with conservative Justice Stephen Tip O'Neill. Thanks for the memories, but those days are gone.

With the prospect before us that on Saturday the Donald Trump—a president loathed without limit by liberals—will nominate a conservative to the Supreme Court in the shadow of the 2020 election, we'd say

A Barrett or Lago nomination will give voters a choice about the justice's role.

"The Godfather" offers a more apt description of our politics just now. We are "going to the mattresses." To quote Con-servative Chief Justice Warren: "Nothing is off the table." Nancy Pelosi is threatening to

How American politics went from live-and-let-live to tribal war is a long story, but the issue in front of us now is the Supreme Court of the United States.

That subject alone surfaces an important right-left distinction. While conservatives typically talk about "the court" as an institution and its competing judicial philosophies, Dem-

ocrats and the left prefer discussing the court in terms of discrete policy goals, such as abortion or various public services.

Then, of course, there's the battle this week: "Let's be clear what's at stake—health insurance for millions of Americans and life-saving protections for the 25 million people with pre-existing conditions." It's more than that.

In conservative circles, a bit more data in the political system's descent into total war is 1987 and the hearings into Robert Bork to the Supreme Court. Those hearings—actually, a show trial—were presided over by Judiciary Committee Chairman Joe Biden, an exercise that included the public excavation of Judge Bork's history of video rentals, which ironically incited Alfred Hitchcock's "The Man Who Knew Too Much."

With respect, we would like to call Robert Bork back as a witness to what happened to American politics and why we are going to war over who looks to be the nomination of the first conservative woman to the Supreme Court, likely either Judge Amy Coney Barrett or Judge Barbara Lago. Back in 1971, Bob Bork saw what was coming.

Writing for the *Indiana Law Journal*—by some accounts it is the 10th most cited law journal article of all time—Bork made an argument on behalf of judicial decisions based on principles in the Constitution versus rulings based on personal, albeit strongly held, values.

In an unstated homage to President Lewis Carroll's Queen of Hearts ("Sentence first, ver-



dicted afterwards") Bork called

judging based on personality derived values. "Decisions first, principles later."

But Bork didn't find much to be learned about the court's role in politics or his morality. I can think of nothing except the assertion that he will ignore the Court whenever he can get away with it and overthrow it if he can.

And here we are, with prominent Democrats such as Rep. Jerry Nadler and Sen. Edward Markey and liberal commentators promising to pack the court with additional justices if President Trump (whose 2016 election Democrats have rejected daily the past four years) doesn't stand down from his constitutional right to appoint RBG's replacement. They will overthrow the current court, if they can.

A main element of the decision in tension between the Biden-led Democratic establishment and the ascendant Sanders voters progressives. As Rep. Alexandria Ocasio-Cortez acutely put it: "Voting for Joe Biden, it's not about whether you like him or not, it's a vote to let democracy

live another day." Mr. Biden didn't create this division during the primaries. The Democratic Party has been moving leftward for seasons on policies affecting personal rights claims, the environment and regulatory authority—so much so that the possibility of liberal-conservative legislative compromise in Congress all but disappeared.

Ever resentful, the left turned to filing policy-outcome lawsuits whose goals were implemented by policy-oriented federal judges, effectively making the court's a parallel legislature. Decisions first, principles never.

The culture war fought in so many presidential elections didn't originate in legislatures. They came out of left-liberal judicial decisions. A Barrett or Lago Supreme Court won't "make" conservative policy. It likely will force policy making back onto legislators, where it belongs.

Robert Bork asked 50 years ago whether Americans understood enough of what was happening to the court to be able to say they had consented to it. The left's use of the judiciary as a parallel legislature has rarely been put down before Americans, in large part because Democratic candidates won't talk about it.

With this nomination, which the Senate may confirm days before the election (the real one Nov. 3, not the mail-in tabulation weeks later), Mr. Trump is forcing an important and overdue choice before the country's voters: We'll see Tuesday's debate whether Mr. Biden can get through the evening ducking the question of the court's proper role.

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Here We Go Again: Debates Start Tuesday

By Karl Rove

On Tuesday night, President Trump and Vice President Joe Biden will arrive on the health-care campus of Case Western Reserve University and the Cleveland Clinic to begin the first presidential debate of the general election. This "Clash in Cleveland" will have its own tempo and tone, but the 36 such debates since 1950 have elements in common.

Incumbents often do badly in the first debate, perhaps because after being president for four years, they consider why they're even sharing the stage with a challenger. Or maybe may challengers, with fewer demands on their time, come better prepared and psyched up.

Mr. Romney was widely thought to have miscalculated President Barack Obama's 2012's opening bid. President Ronald Reagan did so poorly in the first 1984 debate with Walter Mondale that news reports questioned whether, at 73, he was too old. Reagan answered that in the next debate with a joke: "I am not going to exploit, for political purposes, my opponent's youth and inexperience." (Mr. Mondale was 56.) Game, set, match.

Yet debates are rarely decisive. It's the unusual counterpoint—think the first Kennedy-Nixon debate in 1960—that heads the contest in a

new direction. Sen. John F. Kennedy failed going into that debate but was among people who outdined on television as Vice President. John Kennedy persevered with no makeup and a 5 o'clock shadow. JFK came across as elegant and in command. He countered with a debate podium bump and went on to win narrowly.

Usually, though, debates tend to harden trends already in the race. Take the second 1988 debate, when CNN's Bernie Shaw asked Michael Dukakis, "If Hillary Clinton is elected, will you be the first man to be impeached?"

Trump and Biden continue the tradition JFK and Nixon began six decades ago.

his, were raped and murdered, would you have an atrocious death penalty for the killer?" Historian John Pitych characterized Mr. Dukakis' "frenzied response": "No, I don't, Barack"—as now being "as if he were talking about Swedish land-use planning." But this didn't change the race's trajectory. Mr. Dukakis in the first debate looked like a loser. August said charges that he was too far left; the debate continued his slide.

Small gestures and actions are magnified by the moment. At Gore's sighing and eye-roll-

ing while George W. Bush was speaking in the first debate of 2000, and Mr. Bush's head and the third debate when Mr. Gore tried intimidating him by invading his space, left the impression that Mr. Gore was the ineffectual, snail-paced, high-school debate every Democrat defeated. August is key to winning the night.

Such moments can inform an election. The briefest: In over President Gerald Ford's 1976 defeat that the Soviet Union dominated Eastern Europe took days to walk back, chewing up time that could have been devoted to better issues for Ford.

Expectations also matter. Each camp should lower them for its candidate and raise them for its opponent. That's why Mr. Trump's comments on Mr. Biden's incoherence have been striking and why the Trump campaign recently shifted gears. Reports have surfaced of Mr. Trump privately and his team publicly reflecting on Mr. Biden's long history of Senate and vice presidential debates, and his seasonings in this year's dozen primary debates in which he held his own, even though Sen. Bernie Sanders held back in the first debate. It was a contest between the race was over. That wasn't the case Tuesday, but Mr. Trump should be careful not to go over the top with personal attacks. Biden will probably be

memorable lines tagging an opponent's weakness. Every candidate comes armed with some. They must be delivered naturally but are rarely as effective as Reagan's "There you go again" retort to Jimmy Carter in 1980.

Most important for debates is to raise the stakes for the candidates, their theory of the case. Mr. Biden's is simple: This election is a referendum on Mr. Trump's besotted conservatism, and Mr. Biden is a normal Democrat who can be trusted to improve health care and lower drug costs.

For his part, Mr. Trump must use the debates to make this a choice election. This requires him to remind voters what he's done and explain what he'll do that's new in a second term, and then contrast both with Mr. Biden's agenda.

COVID-19 has denied us the months of appearances and news conferences that reveal the candidates' personalities, values and abilities. For good or ill, voters know Mr. Trump, they don't possess anywhere near the same information about Mr. Biden. That leaves him with more to gain and more to lose in Cleveland.

Mr. Rove helped organize the political-action committee *American Crossroads* and is author of "The Triumph of William McKinley" (Simon & Schuster, 2019).

BOOKSHELF | By Adam J. White

Self-Government Minus the Self

Law & Leviathan

By Cass R. Sunstein and Adrian Vermeule
(Belknap/Harvard, 180 pages, \$25.95)

The U.S. Constitution's separation of powers is a concession to man's fallibility. Man tends to abuse power, so the Founders dispersed it. To preserve liberty and promote the public good requires not just intentions but also institutions.

Yet when we think of our institutions merely as safeguards, we sell them short. Clarence Thomas, then a young regulator, contended in 1997 that the best of constitutional self-government "is not replacing good institutions with good institutions, but rather having good institutions that protect and reinforce good intentions." Congress embodies the Founders' aims for moderation and deliberation in making laws; the presidency for energetic and steady administration of those laws; and the courts for dispassionate neutral cases of the rule of law.

But more recently, America created new institutions—namely the alphabet soup of federal agencies that constitute the "administrative state," from the Federal Trade Commission to the Consumer Financial Protection Bureau—to make rules or decide disputes much more swiftly and unilaterally. These new institutions embody aims quite different from those of the Founders: less democratic accountability and more technocratic authority, among other things. And the creators of these new institutions succeeded.

Today the main engine of federal lawmaking is the administrative state, not Congress.

Justice Thomas and other judges and scholars have grown increasingly vocal in challenging the administrative state's constitutional legitimacy. They question the statutes and judicial precedents that undergird the administrative state. In contrast, the administrative state's doctrine of judicial "deference" to agencies' legal interpretations, these jurists see as a violation of the Constitution's "judicial power." In old statutes giving some agencies substantial independence from presidential control, they see violations of the Constitution's grant of "executive power" to the president alone. And in old statutes empowering agencies to regulate with minimal limits, they see violations of the Constitution's vesting of "legislative powers" in the Congress alone. All of these, they argue, undermine republicanism and the rule of law.

Cass R. Sunstein and Adrian Vermeule reject that position in "Law & Leviathan: Reforming the Administrative State." Mr. Sunstein was President Obama's White House regulatory coordinator and is perhaps the leading regulatory thinker in Democratic policy-making circles. Mr. Vermeule is an intellectual leader for a rising generation of conservatives who demand a much more explicitly political, not academic, constitutionalism. While the two Harvard law professors rarely disagree on many things, they both believe that the administrative state doesn't undermine the rule of law but exemplifies it. Drawing inspiration from "The Morality of Law" (1964), a major work of legal philosophy by Lon Fuller, they argue that "American administrative law has its own internal morality," which "embraces many of the concerns and objections of those who are deeply skeptical of the administrative state" and which ultimately serves to "both empower and constrain the administrative state."

Fuller contrasted administrative law's morality with eight ways in which policy makers can fail. The "first and most obvious" of these was a failure to make rules at all ("so that every time we need to be decided on an ad hoc basis," the others included a failure to make rules "understandable" and "introducing such frequent changes in the rules that the subject cannot orient his actions by them." While acknowledging that Fuller's approach has its limits, Mr. Sunstein and Vermeule identify similar principles animating the Supreme Court's decisions governing agency action.

Two Harvard professors—one from the left, the other from the right—defend the 'morality' of the administrative state

Take, for example, their account of the Supreme Court's rule that an agency must follow its own rules—the doctrine of *Arizona Grocery v. Arizona*, *Topinka v. Santa Fe* (1932). This rule is "foundational" for limiting agency discretion, they write, yet "remarkably, the US Supreme Court has never clarified the actual legal basis for such a standard, and it is not clear the authors intend, that any such standard exists. In the absence of such a basis in written law, Mr. Sunstein and Vermeule see *Arizona Grocery* as exemplifying Fuller's natural moral principle of "congruence between the rules as announced and their actual administration."

Similarly, in the court's increasing tendency to give more deference to agencies' longstanding legal interpretations and less deference to agencies' novel or inconsistent ones, Mr. Sunstein and Vermeule see Fuller's moral principle against "frequent changes in rules." These doctrines seem to reflect judges' own profound view rather than the more concrete foundation of, say, the Administrative Procedure Act of 1946, which set the basic rules for agency process and judicial review but this absence of hard statutory foundation is, for Mr. Sunstein and Vermeule, evidence of the natural, though invisible, gravitational pull of administrative law's morality.

The authors freely admit that the administrative state is not perfect. But, they contend, it is far better than its critics allow. And administrative law's morality helps to "legitimize the administrative state" not just "as a necessary consequence of the state's existence" but also as a "lawful" state. But what kind of law is it? If *Arizona Grocery*, Congress was built to produce laws through deliberation, negotiation and compromise; those laws can then be changed only by the same laborious process. Administrative agencies, built quite differently, produce laws much more swiftly and unilaterally—and those laws can be remade or unmade just as swiftly and unilaterally by the next administration. The administrative state might govern us by a rule of law but its rule is much less moderate, and much less steady, than the rule envisioned by the Founders.

When governance becomes a matter of administrative assertion rather than legislative deliberation, politics becomes a matter of power rather than persuasion. The administrative state demoralizes citizens, in both senses of the word.

Mr. White is a resident scholar at the American Enterprise Institute and director of George Mason University's C. Boyden Gray Center for the Study of the Administrative State.

Africans Knock on America's Door

By Dave Semanira

The left keeps saying America is increasingly racist and prejudicial. Trump is a white supremacist. So why do so many black Africans want to immigrate to the U.S.? On Sept. 4 the State Department released statistics on the green-card lottery, a good game for U.S. visas determined by chance, anyone with a high school diploma or specialized work experience is eligible to apply. For fiscal 2020, the number of applicants from 47 eligible Sub-Saharan African nations was 92 million, compared with only 2.8 million in fiscal 2011.

Residents of the countries that send the most immigrants, including Brazil, China, India and Mexico—may not apply. Hopefuls apply in the fall and receive their visas a year or more later, so fiscal

2011 applicants would have applied in the fall of 2005. Nigeria, the lone African country excluded from the program, was eligible until 2015. Between fiscal 2010 and 2016, an average of 14.5 million foreign nationals in all registered for

Why would millions want to immigrate if the U.S. is a land of 'systemic racism'?

the annual lottery. From 2017 and 2020, the average figure was 21.9 million a year.

The Trump administration, which has sought to curtail the program, recently tightened its eligibility requirements and subsequently applications for the fiscal 2021 program sank to 11.5 million.

Lottery winners who didn't obtain visas because of Trump's Jan. 20 executive order, and a federal judge ordered the State Department to resume processing visas. A group called African Communities Together is also using court to require that applicants have valid passports. The application period for the 2021 program was last fall, but there's no connection to this year's racial unrest, and the dip is likely attributable to the new application requirements.

Clearly many aspirant immigrants from Africa don't buy the left's thesis that America is a racist country. Why should they? By most measures, African immigrants are successful. Pew Research reports that African immigrants are more likely than Americans overall to have a college degree, and a recent

study from the University of Kansas reveals that their labor-force participation rate is 73%, 10 points higher than that of the overall population. By some measures, Nigerians are the most successful immigrant group in the country. Fifty-nine percent have a college degree, more than double the population as a whole; and in 2018 their median household income was nearly \$7,000 higher than the average.

If leftists really believed America is a hostile, dangerous place for new arrivals, wouldn't they be warning potential immigrants from Africa and elsewhere not to come?

Mr. Semanira is a journalist and former diplomat. He is author of "Bet, Breakfast & Drunken Threats: Dispatches From the Margins of Europe."