

THE POLITICAL INFLUENCE OF MINOR VOTING BLOCS IN CREATING AMERICAN LEGISLATION

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ABSTRACT

This article works as a succinct guide regarding the connection between the political process, the electoral process, the interweaving functioning of the executive, the legislative and judicial and the possibility of destabilising society in the name of the few.

KEYWORDS: *voting rights, abortion, US Supreme Court, Dobbs v. Jackson, Roe v. Wade, voting blocs*

INTRODUCTION

We live in strange times where little to nothing seems secure or even an image of certainty may be ephemeral or false but a red string crosses all ideas debated in the current media landscape, the state of democracy and freedom in one's life.

After the second world war many countries were directly aided¹ or looked up to the American society as a model of organisation and an image of true freedom, after the fall of the iron curtain America itself assumed the position of the protector of democracy in a more official capacity as the winner of the cold war.

Nowadays this title is highly contested in the face of far-right activism, sardonic terrorism, ideological pundits and civil unrest. In this article I will present one of the more fundamental flaws affecting the political and legal systems that sit at the foundation of America itself, the possibility of a tiny contingent of citizens deciding for all.

1. Terminology and the connection between laws and voting:

In order to explain what may look initially as an obtuse or confusing title we must firstly unravel the individual elements of the issue at hand. A voting bloc² can be described as a fraction of the population that are driven by common concerns in regards to some societal issues or ideological leanings leading to that specific group of the population always voting a certain way. A small number of voters may create change for better or worse and here appears the tricky question, what is beneficial and what is detrimental to the majority of the population in the long run?

In order for a party to maintain the small but extremely faithful voting bloc any political organisation must compromise and maintain certain ideals that may ultimately be detrimental in the long term for the majority³. As soon as a politician reaches the objective of

¹<https://www.archives.gov/milestone-documents/marshall-plan> .Through the Economic Recovery Act of 1948 as signed by President Truman the United States has offered some European countries financial aid approximating 13 billion dollars in a period of 4 years in the form of capital and materials in order to rebuild a destroyed continent.

² <http://kolibri.teacherinabox.org.au/modules/en-boundless/www.boundless.com/definition/voting-bloc/index.html> .

³ <http://america.aljazeera.com/opinions/2014/9/tax-cuts-economicsreaganbush.html> .There is a mythology linked to the beneficial influence of tax cuts on the economy when in reality there is only a short-term benefit for the private sector since most tax cuts can be linked to less spending on the side of the governmental institutions but are generally covered by acquiring debt meaning that in the long term, inevitably, it will hurt the

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institutional power in order to maintain it they must “feed” their electorate and financial backers in some form, mainly through legislation that was promised in the campaigning phase.

Now we can see a clear causality link between the will of the few and the ones that hold power in the name of all. The only aspect left to be discussed is regarding personal beliefs, this article is not intended in taking sides in political games but its purpose is to show that unpopular or damaging laws can be passed and enacted upon in the name of holding political power or due to the lack of trust in the voting system allowing monstrosities to occur.

2. *The decision in the case of Dobbs v. Jackson Women’s Health Organisation*

2.1. *The case itself:*

In the decision of the case Dobbs v. Jackson⁴ the original ruling in Roe v. Wade⁵ by which abortion was considered legal and should be allowed up to 22 weeks⁶ and at all stages in the case of rape, incest or a threat brought to the mother is overthrown. The case was decided 6-3 and triggered anti-abortion legislation adopted by state legislatures during the presidency of Donald J. Trump⁷ in 13 states at the same moment⁸ creating mass outrage⁹ and a

economy. Both Democrat and Conservative leaderships have engaged in various tax cuts for the private sectors and backing it up with private borrowed capital resulting in cracks slowly evolving to right out holes in the current economy. Such tax cuts passed by presidents George W. Bush in 2001 and Donald J. Trump in 2017 ultimately have led to insufficient funding going into the public sector resulting in the need for the Infrastructure Bill passed in 2022 by president Joseph Biden that again backs public sector investment through debt and not tax code modifications. The Infrastructure Bill is needed to fix elements of the American infrastructure that were left in poor condition or not finalised (the lack of high-speed internet, the erosion of bridges and roads, the lack of public transport) exactly due to insufficient funds. Even if low taxes were a good political instrument for most politicians to hold onto power and it isn’t the sole cause of poor public infrastructure it can now be seen that for a short-term political gain a problem influencing a vast majority appears and it’s directly correlated to policy and political interest.

⁴ In this particular case Jackson Women’s Health Organisation (the only clinic providing abortions in the state of Mississippi) was trying to fight the Mississippi’s Gestational Age Act of 2018 by which the state imposed a 15 week term on all abortions with the exception of severe fetal abnormalities. This law went directly against the constitutional right to privacy as protected in the case of Roe v. Wade.

⁵ Roe v. Wade is a Supreme Court case ruled in January 22, 1973 in a 7-2 decision by which the idea of restricting abortion rights is unconstitutional. The case establishes that by outlawing abortion the state of Texas is infringing upon the implied right to privacy, in the specific case the right of a woman to have body autonomy and due process.

⁶ The specific term for an abortion to be legal varies state by state but it has to keep to the standards as set by Planned Parenthood v. Cassey by which the standard of “undue burden” was imposed, by this standards states can have specific conditions in regards to all aspects of the abortion process as long as it doesn’t cause any undue burden.

⁷ <https://www.npr.org/2022/06/24/1107531644/trigger-laws-have-been-taking-effect-now-that-roe-v-wade-has-been-overturned>. Many states had either laws before Roe v. Wade or have adopted them after the victory of Donald Trump in the presidency run or right after the decision in Dobbs. One such bill is Senate Bill 1178 in the state of Indiana by which all drugs or contraception methods are banned if they have the purpose to aid or provoke an abortion.

⁸ <https://www.gutmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned>. Trigger laws were individually adopted by different states aiming at limiting or outright banning abortions that were unconstitutional with the purpose of being enforced as soon as any legislative or judicial body would permit it to happen.

⁹ <https://www.bbc.com/news/world-us-canada-62109971>. Before the actual opinion was made public people have started protesting the leaked decision all over the USA protests erupted against the decision, protesters cited the right to bodily autonomy, the right of women to choose when to start a family and even people who would ideologically opposed to abortions marched in solidarity invoking the right to freedom.

plethora of medical problems for women all over the United States¹⁰. The case itself was justified in the majority opinion with quite a few “inventive” arguments.

Justice Alito was tasked with writing the majority opinion and presented the following questions: does the constitution offer the right to an abortion when “properly interpreted”¹¹? The second question at hand was if the idea of abortion is a long-rooted concept in American history¹²?

Not only did the majority opinion consider that the constitution does not confer the right to abortion but it also disconfirmed the idea of abortion being an issue correlated to the gender of the affected parties avoiding the heightened scrutiny in regards to discrimination¹³.

The majority of the Supreme Court argues that the right to abortion cannot be considered a substantive right¹⁴ and so it is not protected at a federal level by the Constitution and that for the longest time abortion was considered a crime by many states, further it is considered by the majority to not be deeply rooted in tradition¹⁵

Justice Alito proceeds to present his argument by saying that until the 20th century the debate of abortion previously called “complicated” in the same ruling was non-existent since in the 18th approximately ¾ of the states banned abortion entirely.

Furthermore he invokes the failure of common law to consider abortion a crime resulting in the state-based legislation, he cites the wisdom of the English jurist Lord Hale¹⁶ in his endeavour to reason his argument.

One more significant statement coming from the majority opinion is that women do not plan their life around the right to have an abortion and as such it is not of vital significance for the majority of people¹⁷.

Another notable concept brought up in the case is the one made by Justice Thomas, in his argument he proposed the “necessity” of the court to analyse the protection extended by the due process clause furtherly. He points out that rights such as same sex marriage¹⁸, the right to contraception¹⁹ or the right to engage in consensual sexual acts outside the purpose of reproduction²⁰ should be revised in order to “correct past errors”²¹

2.2. *The minority dissenting opinion and a counterargument to the majority decision:*

¹⁰<https://www.theguardian.com/commentisfree/2022/jul/16/rightwing-rape-abortion-10-year-old-worse>. One of the worst situations of this kind was the situation of a 10-year-old girl in the state of Ohio which couldn't get an abortion after she was left pregnant by a 27-year-old. Local politicians belonging to the Republican party that are directly responsible for instating a trigger law in the state of Ohio even denied the validity of the story calling it “a hoax”.

¹¹ Dobbs v. Jackson, paragraph (1).

¹² Dobbs v. Jackson, paragraph (2).

¹³ The Constitution of The United States, more precisely, The Fourteenth Amendment and Title Nine provide equal rights between women and men.

¹⁴ In the case of Dobbs Justice Alito has stated the used definition of substantive rights being only the first 8 amendments of the US constitution and what it protects directly.

¹⁵ Dobbs v. Jackson, paragraph 2, page 2: “In deciding whether a right falls into either of these categories, the question is whether the right is “deeply rooted in [our] history and tradition” and whether it is essential to this Nation’s “scheme of ordered liberty”.

¹⁶ https://lawprofessors.typepad.com/gender_law/2022/05/relying-on-the-precedent-of-witch-trials-in-the-draft-dobbs-abortion-opinion.html. Lord Hale was infamous for putting on trial and killing women for witchcraft and found legal exceptions to not prosecute men practicing marital rape.

¹⁷ Dobbs v. Jackson, majority opinion, page 64.

¹⁸ The right of homosexual couples was established by the case of Obergefell v. Hodges in 2015.

¹⁹ The right for couples that are not married to use contraception was won in the SCOTUS case of Eisenstadt v. Baird in 1972.

²⁰ SCOTUS found in 2003 the laws against sodomy enforced by the state of Texas to be unconstitutional in the case of Lawrence v. Texas.

²¹ Concurring opinion in the case of Dobbs v. Jackson written by Justice Thomas, page 3, paragraph 5.

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The minority opinion can be briefly resumed to a simple idea that attacks the omission presented by the majority. Realistically the only people who have the ability to become pregnant are women and transgender men to a lesser degree, the well thought slide of hand executed by the majority exempts the court from the scrutiny of Title 9 of the constitution²². By removing a federal right to safe abortion as ratified in *Roe v. Wade* the Supreme Court is technically infringing on the rights of a protected group hence such a decision should not be based purely on the concepts used in the majority decision.

As for the concepts used in the logical process of overturning *Roe v. Wade* is ultimately shaky and not solid enough ground to turn the tables in such a drastic way.

In regards to the historical argument even though there is some truth to the statement it is still fundamentally inaccurate. Even before the colonisation and the “manifestation of destiny” by the United States as for the longest part of history woman’s business was left up to the women themselves without the intrusion of any other party²³, if an indigenous woman wished to have an abortion a religious ceremony and appropriate herbal remedies would be prepared.

Furthermore, Benjamin Franklin, one of the founding fathers of America has given a recipe for an herbal solution to have an abortion inside of what would be considered today a math textbook²⁴.

Even though abortion was illegal in most states at the time the 14th amendment there is a notable error to the history²⁵ presented by the majority, mainly that until the year 1873 when the Comstock act was passed into law making abortion and contraception illegal as they were considered obscene and immoral endeavours²⁶. The man whom the law took its name from even arrested feminist writer Ezra Heywood who in his article named “Cupid’s Yoke” declared that all people should be free to exercise their own sexual liberty²⁷.

The point made by the majority in regards to women planning their lives with the freedom to have an abortion is easily disprovable using statistics. A vast majority of the women that had an abortion in the year 2019 were mothers of one, two or three children²⁸. By this metric we can presume that the freedom of a woman to have an abortion is important in

²² “No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

²³ <https://indiancountrytoday.com/news/supreme-court-could-halt-access-to-safe-abortions-indigenous-activists-say>. Historically indigenous women were not allowed the right to have reproductive freedom, indigenous Americans did have herbal remedies in order to practice safe abortions, after the colonialization of America by European nations and the expansion of American settlers many indigenous women were forcefully sterilised or denied the right to abortion, such issues still have cultural and real-life influence upon the few native Americans still living.

²⁴ <https://slate.com/news-and-politics/2022/05/ben-franklin-american-instructor-textbook-abortion-recipe.html>. In order to educate young and old immigrants to start a new life in America Benjamin Franklin has modified a book written by George Fisher named, *The Instructor: or Young Man’s Best Companion* which fundamentally was a manual intended to teach people who might have been illiterate or lacking in the absolute basics of mathematics but Benjamin Franklin added some ulterior information regarding wildlife, plants and even a recipe for an abortion derived from the book *The Poor Planter’s Physician* written by Doctor Tennent. This choice was intentional as other basic algebra and reading textbooks came from England and had such remedies and plant-based solutions for many illnesses and even for abortions but they were mainly focused on the plant life native to Europe.

²⁵ <https://www.wgbh.org/news/national-news/2022/05/24/a-legal-history-of-abortion-in-the-us-before-and-after-roe-v-wade>.

²⁶ <https://www.mtsu.edu/first-amendment/article/1038/comstock-act-of-1873>.

²⁷ E. H. Heywood *Cupid’s Yoke or The Binding Forces of Conjugal Life*, page 17, Princeton, Massachusetts Co-Operative Publishing, 1879.

²⁸ <https://www.pewresearch.org/fact-tank/2022/06/24/what-the-data-says-about-abortion-in-the-u-s-2/>. According to the Pew Research Centre only 25% of the women who had abortions are without children.

the life decisions of a mother that already has children and maybe does not wish to have more or she doesn't have the material means to grow another child.

The last opinion that must be argued against is the one emitted by Justice Thomas who argued that all the previous cases which extended the written ideas of the constitution have to be rethought and overthrown. In his concurring opinion he argues that the 14th amendment was poorly used by precedent courts hence leading to bad precedent and a "false" right to privacy. The reasonable question is what are those bad precedents?

The latest case that was decided on the basis of the right to privacy was the case of *Obergefell v. Hodges*; in that specific case the Supreme Court decided that person of the same sex have the right to have their marriages recognized as valid by all states resulting in the legalisation of same sex marriages.

Another highly important case based on *Lawrence v. The State of Texas*²⁹, the cruxes of the case are the illegality of consensual sexual acts between consenting adults without the purpose of reproduction, in reality such a law would forbid people and unmarried couples to have any intimate relation. The Supreme Court ruled that such a law would be infringing on the personal liberties of individuals. The decision in this case forbid states from enforcing the so called "sodomy laws".

If we are to go even further in the past we can observe that the current American ethos of accepting diversity and multiculturalism is derived from the inferred right to privacy.

In the case of *Brown v. Board of Education*³⁰ the public-school system was banned from segregating public schools as it is a violation of the constitutional right to equality, the aforementioned case of *Eisenstadt v. Baird* the right to contraception for unmarried couples was established as a protected constitutional right, and in a bizarre turn of faith the case of *Loving v. Virginia*³¹ which allow interracial couples to marry, the oddity appears in the fact that Justice Thomas is married himself to a white woman³².

The whole idea of the right to privacy is predicated on the work of jurists Warren and Brandies in the year 1890 in the seminal article *The Right to Privacy*³³. In this article the authors argued that with the social and economical shifts new rights are bound to be born, the example used is bodily harm, through the evolution of humanity the idea of killing a human became more and more frowned upon until we got to the present where even the intention to inflict bodily harm is punished by the criminal legal system. For a civil law idea, they also bring up the concept of private ownership not only of physical goods but also of ideas and art through copyright. By this metric the writers saw fit to extrapolate a right to privacy from various constitutional articles. By the right to privacy the authors refer to the right to express one's self through all means available to him and to be ultimately left alone to do so by others that are not harmed by such actions of expression.

3. *The missing link:*

Now, we have established the link between passing legislation and tiny voter groups forcing parties into creating harmful policy and we have analysed the way that the Supreme Court has ultimately stiped women of their choice to carry a pregnancy or not in approximately 13 US states. These two facts function separately as an argued truth yet there

²⁹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

³⁰ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

³¹ *Loving v. Virginia*, 388 U.S. 1 (1967).

³² This is not intended as an *ad hominem* attack against Justice Thomas but it's undeniably hypocritical for a person that benefitted from the right to privacy to manifest their love without restrictions towards another human when they also wish to take such freedom from other people.

³³ http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html. 1890, Harvard Law Review Volume IV December 1890.

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is a missing link between the judiciary and people being sworn in office through the democratic process of voting. The missing link is the method by which Supreme Court Justices are chosen for the role they occupy.

In America the Supreme Court justices are chosen by the president of the USA and voted by simple majority by the senate³⁴. Such a procedure already opens up the sacred division of executive, legislative and judiciary to possible political interference in the judiciary system. The 2 main issues that have historical precedent are the following: naming a judge that will inevitably do partisan politics either for the republican or democrat side or a game of chicken between the senate and the presidency to see who will fall first when a new judge must be named.

The first situation happened during the presidency of President Donald J. Trump³⁵, he appointed 3 judges individually holding conservative views, namely: Justice Neil Gorsuch in 2017 replacing Justice Antonin Scalia³⁶, Justice Brett Kavanaugh³⁷ in 2018 replacing Justice Anthony Kennedy and Amy Coney Barrett³⁸ in 2020 replacing Justice Ruth Bader Ginsburg. In all 3 cases the judges appointed showed a strong conservative leaning making the Supreme Court a super majority of 6 to 3 that will take decisions politically biased towards the republican electorate. The clarity of such a bias is seen in 2 cases, the aforementioned *Dobbs v. Jackson* being ruled in such a manner that it almost dissolves the long-standing concept of a right to privacy in order to leave such issues up to the state legislature.

Only a week after the ruling the case of *New York State Rifle & Pistol Association, Inc. v. Bruen*³⁹ was decided based on the idea of a right to privacy leading into dissolving the right of individual states to regulate the freedom to bare arms as given by the second amendment of the Constitution. Further-more, in the case of *Bruen* in a concurrent opinion Justice Alito has stated that the effect of guns on the American society is not a relevant parameter in the analysis of such an issue. The logical question to be presented is this: why is a practice such as abortion that was present since before the colonial invasion of America is not considered an essential right with historical standing when the open carry of guns which came with the colonial settlers and was limited outside the fighting of wars on the continent⁴⁰ is now given more protection.

Statistically, gun owners are more prone to voting conservative presidents⁴¹, a vast majority of the currently conservative leaning Supreme Court Justices was voted in by a conservative president hence the party loyalty remains unbroken and ends up influencing the decisions of the most important part of the judicial system in the United States.

The second situation caused by the process by which Supreme Court Justices are chosen is the political friction between the President and the Senate. This happened to president Barak Obama, at the end of his presidency Justice Antonin Scalia has died and

³⁴https://www.supremecourt.gov/about/faq_general.aspx.

³⁵<https://abcnews.go.com/Politics/trump-appointed-supreme-court-justices-previously-roes-precedent/story?id=84470384>.

³⁶https://www.oyez.org/justices/neil_gorsuch.

³⁷<https://www.afj.org/document/supreme-court-nominee-report-first-look-brett-kavanaugh/>.

³⁸<https://www.afj.org/nominee/amy-coney-barrett/>.

³⁹https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf. In this specific case appellants Robert Nash and Brandon Koch have sued the state of New York for the longstanding legislation which specifies that only people who prove that they have a serious motive in order to publicly carry a fire weapon in public that is legally owned.

⁴⁰ The second amendment allows all people of the United States to bear arms as part of a well organized militia for the purpose of protecting the country, it does not specify the freedom of individuals to carry weapons in public outside of a militia.

⁴¹ <https://sites.uci.edu/energyobserver/2018/02/18/its-not-the-nra-money-its-the-gun-voting-block/>. President Donald J. Trump has gained the vote of 61% of all gun owning citizens across the US.

senate leader Mitch McConnell stated that he will not accept any nomination in regards to a replacement for the open seat in the Supreme Court⁴² leaving the duty of nominating a new Justice to president Donald J. Trump ensuring a conservative majority for the next few decades⁴³.

4. *The political and legal outcome of the Dobbs decision:*

4.1. *The legal outcome:*

In legal sense quiet, a few happenings have derived from the decision. Most prominently, 13 of the 51 states of the USA have instantly banned the right to abortion resulting in women's health clinics⁴⁴ being shut down and creating personal tragedies for families all around the US⁴⁵.

In a more light-hearted twist of faith Representative John Bartlett of the state legislature in Indiana proposed a bill by which erectile dysfunction medication is to be banned stating that "if a pregnancy is an act of God so is impotence"⁴⁶. In more serious terms he did bring up the fair point of the need for 2 people for a pregnancy to happen and as such the yoke of keeping the child and raising it shouldn't be square on the part of the woman.

In the state of Georgia, the lower courts have been fighting the 6-week abortion requirement in order to allow the citizens of the state to have the right to a safe abortion for 22 weeks, the previously enforced term.

At federal level the United States Senate has passed the Marriage Equality act by which they enshrine the right of same-sex and mixed-race couples to marry, this act can be directly linked to the concurring decision of Justice Thomas questioning the constitutional protection of many previously secure rights.

4.2. *The political effects of the decision:*

And so, what has the republican side of American politics gained through fulfilling the wishes of a minority of the population? Statistically they have secured an approximate 8% of the US population⁴⁷

On a political level we can observe an anomaly in regards to the US elections that recently transpired. In the last midterm election, the Republican party was set to enact what was called a "red wave"⁴⁸, a devouring of the congress whole, both in the Senate and the House of Representatives. The reality was that the Republican party has won a small majority in the House of Representatives and has lost the Senate to the Democratic part. One of the main issues that has influenced the voting patterns of the electorate was the right to have an abortion. Generally, in any 2-party system the pendulum swings with every voting year and yet such an anomalous event is quite rare.

⁴² <https://www.npr.org/2018/06/29/624467256/what-happened-with-merrick-garland-in-2016-and-why-it-matters-now>.

⁴³ https://www.supremecourt.gov/about/faq_general.aspx. A Supreme Court Justice has a life long term as they can only be replaced if they die or retire voluntarily.

⁴⁴ Jackson Women's Health Organization was the only clinic to offer abortions in the state of Mississippi, the systems ensuring easy access to abortion before the decision in Dobbs made it virtually impossible.

⁴⁵ <https://www.personalpac.org/the-tragedy-of-illegal-abortion-gerri-santoros-lonesome-death/>. The story of Gerry Santoro is a tragedy lived by many women before the institution of a right to privacy allowing them to divorce or to have an abortion, to illegally and unsafely try and stop a pregnancy resulting in her death. Previously the case of a 10-year-old girl in Ohio was mentioned. It is still too early to predict the impact of the current legal predicament in the life of individual people yet we can observe the history and hope it doesn't repeat at the same magnitude.

⁴⁶ <https://www.scmp.com/news/world/article/3187973/midwestern-us-state-lawmaker-proposes-bill-outlaw-erectile-dysfunction>.

⁴⁷ <https://www.pewresearch.org/religion/2022/05/06/americas-abortion-quandary/>.

⁴⁸ <https://www.rutgers.edu/news/what-happened-red-wave>.

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5. *Conclusions:*

Even if the issue of abortion is extremely important this article has shown that the democratic process can be profoundly flawed and result in the tyranny of a few hurting the lives of many through political games that are well planned and executed. In the case of abortion, a whole country now has to fight to maintain the flame that is the right to have a private life all due to an 8% margin of the population that is vehemently against any type of abortion regardless of circumstances.

This bigger issue is not about the personal beliefs of any person in regards to the question of when life starts, it isn't about the religious belief of any human occupying our planet, it's an issue of false prophets chanting that the loss of freedom is caused by people exercising freedom, the freedom to love who they wish, the freedom to choose one's own faith and the request that people in power ensure that society does not collapse under the weight of economical and environmental disasters. America was considered since it's inception as the beacon of true freedom and excellence.

In the current climate Uncle Sam is fighting its own social ills that have to be supervised by all other nations that wish to not falter in the face of rising neo-fascism and hatred artificially engineered by interest groups gnawing at soul of European and American society alike.