

How Originalism Killed the Constitution

A radical legal philosophy has undermined the process of constitutional evolution.

by Jill Lepore

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A BUSHY-BROWED, PIPE-SMOKING, piano-playing Antonin Scalia—Nino—the scourge of the left, knew how to work a crowd. He loved opera; he loved theater; he loved show tunes. In high school, he played the lead role in *Macbeth*: “I have no spur to prick the sides of my intent, but only vaulting ambition.” As clever as he was combative, Scalia, short and stocky, was known, too, for his slightly terrifying energy and for his eviscerating sense of humor. He fished and hunted: turkeys and ducks, deer and boar, alligators. He loved nothing better than a dictionary. He argued to win. He was one of the Supreme Court’s sharpest writers and among its severest critics. “It’s hard to get it right,” he’d tell his clerks, sending back their drafts; they had that engraved on a plaque. Few justices have done more to transform American jurisprudence, not only from the bench but also from the seminar table, the lecture hall, and the eerie velveteen intimacy of the television stage. He gave one speech so often that he kept its outline, scribbled on a scrap of paper, tucked in his suit pocket. The Constitution is not a living document, he’d say. “It’s dead. Dead, dead, dead!”

Two hundred and fifty years after Americans declared independence from Britain and began writing the first state constitutions, it’s not the Constitution that’s dead. It’s the idea of amending it. “The whole purpose of the Constitution,” Scalia once said, “is to prevent a future society from doing what it wants to do.” This is not true. One of the Constitution’s founding purposes was to prevent change. But another was to allow for change without violence. Amendment is a constitution’s mechanism for the prevention of insurrection—the only way to change the fundamentals of government without recourse to rebellion. Amendment is so essential to the American constitutional tradition—so methodical and so entirely a conception of endurance through adaptation—that it can best be described as a philosophy. It is, at this point, a philosophy all but forgotten.

The philosophy of amendment is foundational to modern constitutionalism. It has structured American constitutional and political development for more than two centuries. It has done so in a distinctive, halting pattern of progression and regression: Constitutional

change by way of formal amendment has alternated with judicial interpretation, in the form of opinions issued by the U.S. Supreme Court, as a means of constitutional revision.

This pattern has many times provided political stability, with formal amendment and judicial interpretation as the warp and weft of a sturdily woven if by now fraying and faded constitutional fabric. But the pattern, which features, at regular intervals, the perception by half the country that the Supreme Court has usurped the power of amendment, has also led to the underdevelopment of the Constitution, weakened the idea of representative government, and increased the polarization of American politics—ultimately contributing, most lately, to the rise of a political style that can only be called insurrectionary.

The U.S. Constitution has one of the lowest amendment rates in the world. Some 12,000 amendments have been formally introduced on the floor of Congress; only 27 have ever been ratified, and there has been no significant amendment in more than 50 years. That is not because Americans are opposed to amending constitutions. Since 1789, Americans have submitted at least 10,000 petitions and countless letters, postcards, and phone and email messages to Congress regarding constitutional amendments, and they have introduced and agitated for thousands more amendments in the pages of newspapers and pamphlets, from pulpits, at political rallies, on websites, and all over social media. Every state has its own constitution, and all of them have been frequently revised and replaced. One delegate to a 19th-century constitutional convention in Missouri suggested that a state constitution ought to be rewritten every 14 years on the theory that every seven years, “every bone, muscle, tissue, fibre and nerve matter”—every cell in the human body—is replaced, and surely, in twice that time, every constitution ought to be amended too.

Since 1776, the states have held some 250 constitutional conventions and adopted 144 constitutions, or about three per state. Every state constitution currently in place has an amendment provision. For most of American history, the states have

been exceptionally busy holding constitutional conventions, but as with amending the U.S. Constitution, the practice has stagnated. (No state has held a full-dress convention since Rhode Island did in 1986.) Nevertheless, the practice of amendment by popular vote thrives in the states, where constitutional revision is exponentially easier to achieve. Since 1789, some 7,000 amendments formally proposed in the states have been ratified, more than two-thirds of those introduced.

Article V, the amendment provision of the U.S. Constitution, is a sleeping giant. It sleeps until it wakes. War is, very often, what wakes it up. And then it roars. In 1789, in the aftermath of the Revolutionary War, Congress passed 12 amendments, 10 of which, later known as the Bill of Rights, were ratified by the states by 1791. A federal amendment requires a double supermajority to become law: It must pass by a two-thirds vote in both houses of Congress (or be proposed by two-thirds of the states), and then it must be ratified by three-quarters of the states (either in legislatures or at conventions). No amendments were ratified in the 61 years from 1804 to 1865, and then, at the end of the Civil War, three were ratified in five years. What became the Thirteenth Amendment in 1865, abolishing slavery, had first been proposed decades earlier. No amendments were ratified in the 43 years from 1870 to 1913, and then, around the time of the First World War, four were ratified in seven years. The Nineteenth Amendment, granting women the right to vote and first called for in 1848, was ratified in 1920, after a 72-year moral crusade.

Again, the giant slept. In the 1930s, President Franklin D. Roosevelt largely abandoned constitutional amendment in favor of applying pressure on the Supreme Court, and the civil-rights movement adopted a legal strategy that involved seeking constitutional change through the Court too. The Second World War did not awaken Article V, because mid-century liberals abandoned amendment in favor of the exercise of executive and judicial power. From 1961 to 1971, as the United States became engulfed in the Vietnam War, Americans ratified four amendments and seemed very likely to

ratify two more. Those that succeeded included the Twenty-Fourth Amendment, which in 1964 abolished poll taxes (generally deployed to suppress the votes of the poor and especially of Black people), and the Twenty-Sixth Amendment (which in 1971 lowered the voting age to 18). Both relied on a broad liberal consensus. Other efforts, such as an amendment abolishing the Electoral College, which passed the

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House in 1969, failed in the Senate. The Equal Rights Amendment, prohibiting the denial or abridgment of rights on the basis of sex, was introduced in Congress in 1923 and sent to the states in 1972. It fell short of the 38 states needed for ratification before the deadlines set by Congress. Liberals soon stopped proposing amendments, and amendments proposed by conservatives—providing for school prayer, banning flag burning, defining

marriage, protecting fetal life, and requiring a balanced budget—all failed, leading conservatives, like earlier liberals, to instead seek constitutional change through the federal judiciary. The amending stopped. The Twenty-Seventh Amendment, which concerns congressional salaries and was ratified in 1992, was one of the 12 amendments sent by Congress to the states in 1789, and then was more or less forgotten; it can hardly be said to have introduced a new idea into the Constitution. The giant has not awoken since, despite half-hearted attempts to rouse it, mainly in the form of presidential political theater. Ronald Reagan supported a balanced-budget amendment. Bill Clinton supported a victims'-rights amendment (granting rights to victims of crime, a law-and-order answer to the defendants'-rights movement of the 1960s), and George W. Bush called for a defense-of-marriage amendment (identifying marriage as between a man and a woman). Neither made any headway. Joe Biden, after stepping down from his reelection campaign in 2024, proposed a constitutional amendment to reverse the Supreme Court's decision that year granting the president considerable immunity from criminal prosecution. The giant did not wake.

Between 1980 and 2020, members of Congress proposed more than 2,100 constitutional amendments. Congress, more divided with each passing year, approved none of them. In roughly that same stretch of time, state legislatures introduced almost 5,000 amendments and ratified nearly 4,000. Instead of arguing for amendments at the national level, legislators, lobbyists, and other advocates pursued different means of either securing or thwarting constitutional change: by influencing the nomination and confirmation of Supreme Court justices and by altering the method that those justices use to interpret the Constitution.

The Constitution has not been meaningfully amended since 1971, right when the political parties began to polarize. Polarization would ultimately make the double-supermajority requirements for amending the Constitution impossible to meet. Tellingly, 1971 marked another turning point in the history of American

constitutionalism. That year, a method of constitutional interpretation that became known as originalism was put forward by a distinguished legal scholar, the Yale law professor Robert Bork. The word *originalism* didn't enter the English language until 1980, and it had virtually no currency before 1987, when Reagan nominated Bork to a seat on the U.S. Supreme Court. The nomination was rejected. Bork maintained that the only way to read the Constitution is to determine the original intentions of its Framers and that every other method of interpretation amounts to amendment by the judiciary. Rather than Bork, it would be Scalia who brought originalism to the Court, trapping the Constitution in a wildly distorted account of the American past at a time when ordinary Americans found their ability to amend and repair a constitution to which they had supposedly given their consent entirely thwarted.



ANTONIN SCALIA, like Felix Frankfurter, came to the Court after a career primarily as a law professor. He'd been a judge for only four years; most of his published writing consisted of law-review articles and speeches, not opinions from the bench. He grew up in Queens, an only child. His father was an Italian immigrant who'd become a professor of Romance languages; his mother, the daughter of Italian immigrants, taught elementary school. He inherited his first gun from his grandfather, who grew up hunting in Sicily and used to take Nino to Long Island to shoot rabbits. Scalia attended a Jesuit military school, where he was on the rifle team; he used to ride the subway from Queens to Manhattan carrying his .22 carbine target rifle. "When I was

growing up in New York City, people were not afraid of people with firearms," he'd say. He went to Georgetown University and then to Harvard Law School. He was a Goldwater conservative—a supporter of Senator Barry Goldwater of Arizona, the Republican presidential nominee, in 1964. He served in the Nixon and Ford administrations and taught law at the University of Virginia and the University of Chicago before Reagan appointed him to the D.C. Court of Appeals in 1982. Four years later, Reagan nominated him to the Supreme Court.

On the first day of Scalia's confirmation hearings, in 1986, he was welcomed by the 83-year-old committee chair, Strom Thurmond, a one-man timeline of the political and constitutional history of the 20th century: a Democratic governor of South Carolina, the 1948 presidential candidate of the southern splinter Dixiecrat party, a drafter of the segregationist Southern Manifesto, and, in 1964, a backer of Goldwater. No one in the U.S. Senate had more fiercely fought for segregation and against civil rights.

"You have got a lot of children there," the senator from South Carolina said affably. "I believe you have eight of them here?"

"All nine are here," Scalia, 50, told Thurmond, beaming. "I think we have a full committee."

Thurmond asked Scalia about the difference between serving on a circuit court and on the Supreme Court.

"There's no one to correct your mistakes when you're up there," Scalia answered, "except the constitutional-amendment process."

That process was by then no more than a chimera. The more difficult it became to amend the Constitution, the more politicized nominations to the Supreme Court became. Scalia's confirmation, though, was a breeze, partly because liberals had decided to focus their efforts on questioning the elevation of William Rehnquist to the chief justiceship, following the resignation of Warren Burger, which is what had opened up a seat for Scalia. Also: Scalia was charming. And he'd been exceptionally well briefed. Aides had peppered him with questions in practice sessions and provided memos with titles such as "Likely

Areas of Interest Arising Out of Your Writings," warning him, among other things, about *Roe v. Wade*, the 1973 decision that had legalized abortion: "You have probably said a little more on this topic than you think." (In 1978, Scalia had said that, in his view, the courts, in cases such as *Roe*, had "found rights where society never believed they existed.") In a typed list in Scalia's briefing packet titled "Talking Points," the No. 1 topic was abortion. Scrawled below in black ink were two tips: "1. Professional, not adversarial" and "2. Don't get sucked in."

Thurmond, after a friendly chat with the nominee, yielded the floor to Senator Edward Kennedy of Massachusetts, who, without so much as a hello, jumped in:

KENNEDY: Judge Scalia, if you are confirmed, do you expect to overrule the *Roe v. Wade* [decision]?

SCALIA: Excuse me?

For a long time, the overruling of *Roe* had appeared most likely to come in the form of a constitutional amendment. Even before the Court issued its 1973 decision, the right-to-life movement had worked, unsuccessfully, to defeat abortion by amending the Constitution to guarantee a "right to life" beginning at conception. But by the time Kennedy confronted Scalia, right-to-lifers had decided there was one other way to overturn *Roe*. In 1980, the GOP had vowed in its party platform to appoint "judges at all levels of the judiciary who respect traditional family values and the sanctity of innocent human life."

During the confirmation hearings for John Paul Stevens in 1975—the first justice named to the Court after *Roe*, and by a Republican president, replacing the most liberal justice, William O. Douglas—no one asked him even a single question about the abortion decision. That changed under Reagan, who, in his two terms in office, appointed more than 400 federal judges, amounting to half the federal judiciary. All were screened for their views on abortion. (Reagan's influence on the judiciary has had a long afterlife: Supreme

Court Justices John Roberts, Clarence Thomas, and Samuel Alito all worked in his administration.)

Screening judges in this way was, at the time, both novel and controversial. Members of Reagan's Justice Department defended the practice by insisting that they were screening, instead, for originalism. As an assistant attorney general put it in a memo to the attorney general, "The idea of 'original intent' must not be marketed as simply another theory of jurisprudence; rather it is an essential part of the constitutional framework of checks and balances." He emphasized that, "contrary to allegations, we are not choosing judges who will impose a 'right-wing social agenda' upon the Nation, but rather those who recognize that they, too, are bound by the Constitution."

In 1981, Reagan nominated Bork to the D.C. Court of Appeals. "*Roe v. Wade* is an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of state legislative authority," Bork had written in a statement. To opponents of abortion, Sandra Day O'Connor's Supreme Court hearings a few months later were far less reassuring. O'Connor, at 51, said she was personally opposed to abortion but then added, "I am not going to be pregnant anymore, so it is perhaps easy for me to speak." This response alarmed pro-lifers and greatly contributed to the movement's decision to abandon constitutional amendment in favor of influencing the judicial-nomination process. "The intensity of right-to-lifers on the issue of judicial power should not be underestimated," a Reagan adviser had reported.

Republican strategists had been hoping to make the GOP the party of the pro-life movement as a way to expand its base, bringing in Catholics and white evangelicals. This realignment happened very slowly. Not until 1979 were Republican members of Congress more likely to vote against abortion than Democrats. That year, Jerry Falwell helped found the Moral Majority, and a new evangelical-Christian right joined the crusade against abortion. Only after Republicans in Congress began aligning with the pro-life movement did the rest of the party follow, but again, they did so gradually: Republicans were

more pro-choice than Democrats until around 1990. And only during Reagan's presidency did this effort begin to involve attacking the legitimacy of the Court's decision in *Roe*.

Reagan's alliance with the New Right proved crucial to his landslide reelection in 1984, after which he appointed Edwin Meese as his attorney general. Meese's Justice Department would soon fill up with young lawyers who were members of a new organization known as the Federalist Society, formed by law students at Yale (studying with Professor Bork) and the University of Chicago (studying with Professor Scalia). Keen to avoid the word *conservative*, they chose instead to emphasize the original intent of the Framers, and, in naming the organization, they honored both the original Federalists and a Reagan doctrine known as New Federalism, which sought to transfer power from the federal government to the states. The first meeting of the Federalist Society, at Yale in April 1982, featured 20 invited scholars and jurists, including Bork and Scalia. Some Yale law students perceived the meeting to be hostile to both reproductive rights and civil rights. A poster objecting to the symposium warned NEW FEDERALISM MEANS OLD BIGOTRY—SUPPORT CIVIL RIGHTS. The legal scholar Mary Dudziak, then a second-year law student, was among those who picketed. She carried a handwritten sign with the feminist slogan IF MEN COULD GET PREGNANT, ABORTION WOULD BE A SACRAMENT.

Soon after Meese took office, in 1985, he announced that the official policy of the Reagan Justice Department would be to pursue a "jurisprudence of original intention" as the only legitimate and properly democratic method of constitutional interpretation. Meese hired some of the founders of the Federalist Society and trained them up as a "farm team" (as one Meese aide later put it). He aimed to sell originalism not only to the legal community but also to the public as a form of modest and humble deference to the wisdom of the Framers, in contrast to the unrestrained imperiousness, the judicial oligarchy, of the Supreme Court.

This strategy raised liberals' hackles, and it raised historians' hackles, too.

Justice William Brennan, in a speech at Georgetown, called the doctrine of original intent "arrogance cloaked as humility" and speculated that proposals endorsing the idea "must inevitably come from persons who have no familiarity with the historical record." Nothing in history is as clear as originalists pretended, and not even the most skilled historian—which justices were not—could reach such certain conclusions from such fragmented evidence. What really rankled was Meese's claim that original intent was democratic, because it was quite clear that, having failed in their efforts to amend the Constitution, conservatives had changed course, instead using judicial selection to pursue objectives they could not achieve by democratic means. "The aim is now to accomplish in the courts what the Administration failed to persuade Congress to do—namely, adopt its positions on abortion, apportionment, affirmative action, school prayer and the like," a political scientist wrote in the *Los Angeles Times*. Nor did Meese's jurisprudence escape censure as realpolitik. "Mr. Meese's version of original intent is a patent fraud on the public," the historian Arthur M. Schlesinger Jr. argued in *The Wall Street Journal*. "The attorney general uses original intent not as a neutral principle at all but only as a means of getting certain results for the Reagan administration. He is shamelessly selective." He was also undeniably effective.

Before Reagan moved into the White House, as the legal scholar Mary Ziegler has demonstrated, the pro-life movement had not been especially interested in originalism, on the theory that there is no "right to life" in the Constitution, at least not any more than there's a "right to privacy," the right cited by the Court in *Roe*. But after Reagan pledged to use opposition to *Roe* as a litmus test in appointing federal judges, litigation seemed a far better approach than amendment. In 1984, Americans United for Life held a conference under the rubric "Reversing *Roe v. Wade* Through the Courts." Two years later, the National Abortion Rights Action League observed in a report on the Scalia and Rehnquist nominations that the pro-life movement, having failed to amend the Constitution, had turned to a legislation-and-litigation strategy.

In 1985, for its brief in *Thornburgh v. American College of Obstetricians and Gynecologists*—concerning a Pennsylvania law that placed restrictions on abortion—the Meese Justice Department directed the acting solicitor general, Charles Fried, to ask the Court to overturn *Roe* and to base the government’s argument on original intent; Fried obliged. (A young Samuel Alito, in the Office of Legal Counsel, who had stated his opposition to abortion in his application for the position, worked on the brief.) “There is no explicit textual warrant in the Constitution for a right to an abortion,” Fried’s brief read. The brief elicited considerable protest, including from five former solicitors general. Only narrowly did the Supreme Court decide against overturning *Roe*. On June 11, 1986, the Court issued its 5–4 decision in *Thornburgh*, declaring Pennsylvania’s law unconstitutional. Warren Burger, who had joined the majority in *Roe*, now dissented. Six days later, Burger announced that he was resigning to devote himself to the celebration of the Constitution’s 1987 bicentennial.

And so it came to pass that in August 1986, Antonin Scalia sat before the Senate Judiciary Committee and stumbled over Senator Kennedy’s question.

“Excuse me?”

Kennedy repeated: “Do you expect to overrule the *Roe v. Wade* Supreme Court decision?”

Scalia declined to answer.

Kennedy had been questioning Scalia while waiting for the committee’s ranking Democrat, Joseph R. Biden, the junior senator from Delaware, to arrive from another meeting. Biden sought a national stage, but when he got one, he often talked for too long and without making a great deal of sense. “Obviously, I don’t know what the hell I’m talking about,” he once said in the middle of remarks at a Judiciary Committee hearing about revising the criminal code. Biden was a devout Catholic, but he was opposed to a constitutional ban on abortion. In 1983, he had considered making a play for the 1984 Democratic presidential nomination. (He would make his first bid in 1988.) As Scalia’s briefing materials warned, Biden had “gradually lived down his early reputation

as an *enfant terrible*.” Biden was affable—goofy, even—and willing to compromise, and Thurmond liked working with him so much that he called him “my Henry Clay.”

Biden and Scalia had much in common: middle-aged Catholic men from industrial eastern cities, with young families and thinning hair and big dreams and funny jokes, though Scalia’s humor was more studied. (He once famously began an opinion with this sentence: “This case, involving legal requirements for the content and labeling of meat products such as frankfurters, affords a rare opportunity to explore simultaneously both parts of Bismarck’s aphorism that ‘No man should see how laws or sausages are made.’”) Biden gave the judge his wide smile, told him he’d read all of his speeches that he could find, and said he was pretty darn interested in this “newfound, newly enunciated doctrine of original intent.” He began by asking Scalia about a speech he’d given two months earlier, at a conference hosted by Meese.

Scalia had known when he delivered that speech, on June 14, that he was being considered for a position on the Court. Burger had visited the White House on May 27 to tell Reagan he intended to retire and to give him a list of possible replacements for the chief justiceship, including Scalia and Bork. By June 12, Reagan had decided to nominate Rehnquist for the chief justiceship and leaned toward replacing Rehnquist with Scalia, in part because he was nearly a decade younger than Bork, though there was some concern about the quickness of his temper. Scalia was scheduled to meet with the president on June 16.

Riffing on the flap between Meese and Brennan, Scalia in his June speech had cataloged the weaknesses of the doctrine of original intent, including by pointing out that the early Supreme Court could not possibly have followed it, because James Madison’s notes on the Constitutional Convention, generally cited by originalists as definitive, were not available until 1840. What people who talked about original intent must mean, then, Scalia argued—essentially offering Meese a way out of the box he’d locked himself in—was not the original intent of the *Framers* but of the *Constitution*: “It is not that ‘the Constitution must

mean this because Alexander Hamilton thought it meant this, and he wrote it’; but rather that ‘the Constitution must mean this because Alexander Hamilton, who for Pete’s sake must have understood the thing, thought it meant this.’” The doctrine of original intent, Scalia concluded, just needed a better name; he proposed “the doctrine of original meaning.” (Originalism, perhaps surprisingly, is quite changeable, and originalists have for decades come up with new varieties, so many niceties.)

When Biden seemed baffled, Scalia said he’d be happy to explain the distinction but it wouldn’t be worth it, because, he admitted, “it’s not a big difference.” As for that June speech, in which Scalia had professed his allegiance to originalism, Biden told Scalia wearily, “I just hope you don’t mean it.” But he very much did.

Originalism in the 1970s and ’80s was an outsider’s game. Originalists accused the Supreme Court of amending the law by creating new rights, such as the right to an abortion, and insisted both that Article V amendment was the only legitimate method of constitutional change and that originalism was the only legitimate method of constitutional interpretation. Practically, though, originalism took hold from the failure of conservatives to change the Constitution by democratic means—by means of amendment.

Since the days of the New Deal, social and especially fiscal conservatives had now and again called for constitutional amendments and even for a constitutional convention. Among their more notable efforts was a campaign starting in 1939 to call a convention to repeal the Sixteenth Amendment, which provides for a federal income tax. For the entirety of the Warren and Burger Courts, there had also been calls for a constitutional convention: in the 1950s, to overturn *Brown v. Board of Education*, which found racial segregation in public schools to be unconstitutional, and in the 1960s, to repeal the Court’s one-man, one-vote decisions. A balanced-budget amendment, first seriously proposed in the ’50s, gained support during the economic malaise and rising federal debt of Jimmy Carter’s presidency. By March 1979, 28 states had called for a convention to adopt a balanced-budget amendment. Richard

Rovere, the celebrated Washington correspondent for *The New Yorker*, believed that the call for a constitutional convention was a bluff and that Congress would pass a stand-alone balanced-budget amendment in order to avoid the terrifying prospect of a convention—which, he warned, might “throw out much or all of the Bill of Rights” and could lead “possibly even to civil war.”

Sixty-five percent of Americans favored a constitutional convention. Scalia, asked at a forum that May whether the prospect was really all that dangerous, joked that it was always possible a constitutional convention might “pass a bill of attainder to hang Richard Rovere,” but said he’d support “a convention on abortion.”

One person who was decidedly unwilling to run that risk was the conservative insurgency’s most prominent political strategist, Phyllis Schlafly. A convention called for the purpose of a balanced-budget amendment might get out of hand and turn its mind to other business—becoming a so-called runaway convention—and very likely undo all her work to defeat the Equal Rights Amendment. She went to war, and she won. Aside from defeating the ERA and “making the Republican Party pro-life,” Schlafly considered defeating a convention in the 1980s her signal achievement.

Herein lie the origins of originalism’s rise to power: in the failures of the right-to-life amendment and the balanced-budget amendment. It was at this very moment that the Federalist Society was founded.



THE SUBSEQUENT HISTORY of originalism has everything to do with abortion, and everything else to do with guns. One in three Americans owns a gun; one in four American women will have an abortion.

In the 1970s, as partisanship strengthened and polarization worsened, guns and abortion became the defining constitutional issues in the life-and-death, winner-take-all fury of modern American politics. On the left, abortion came to mean freedom and guns murder; on the right, guns came to mean freedom and abortion murder. That none of these equivalencies can withstand scrutiny has not seemed to matter.

In 1975, the District of Columbia introduced a law that all but banned the possession or sale of any handgun. That year, there were two assassination attempts on President Gerald Ford. The National Council to Control Handguns proposed a national ban. In 1976, the California legislature debated a similar bill; opponents proposed a state constitutional amendment guaranteeing a right to keep and bear handguns, rifles, and shotguns. There was no reason to believe that any of these gun-control measures violated the Second Amendment, which the Court had hardly ever paid attention to and in any case had long read as concerning only the keeping and bearing of arms for military purposes—not as a right pertaining to citizens as individuals—and as limiting only the federal government, not the states.

The National Rifle Association, whose motto since 1957 had been “Firearms safety education, marksmanship training, shooting for recreation,” had endorsed the 1968 Gun Control Act. But in the mid-1970s, the NRA began organizing in opposition to handgun-control laws. Ronald Reagan, who had just left the California governor’s office, joined this campaign, too. In an article published in *Guns & Ammo* in 1975, Reagan advocated for the altogether novel and unsupported individual-rights interpretation of the Second Amendment, maintaining that “it appears to leave little, if any, leeway for the gun control advocate.” In 1977, the NRA abandoned a planned move to Colorado to remain in Washington, where it became essentially a lobbying organization, with a new motto displayed at the entrance of its building: “The right of the people to keep and bear arms shall not be infringed.”

In 1981, Strom Thurmond appointed Senator Orrin Hatch of Utah as chair of

the Senate Judiciary Committee’s subcommittee on the Constitution. Hatch had already proposed a right-to-life amendment, and an amendment outlawing affirmative action. Reagan would later consider naming him to the Supreme Court. Amending the Constitution having failed, Hatch was now interested not in a new amendment but in an old one. Upon assuming the chairmanship, he called immediately for a report on the original meaning of the Second Amendment.

While Hatch’s subcommittee was at work, Reagan was shot; his press secretary, James Brady, was also shot. Reagan continued his opposition to gun-control legislation; Brady became an advocate for it. In February 1982, Hatch’s subcommittee published a report called “The Right to Keep and Bear Arms.” The subcommittee maintained that it had found “clear—and long-lost—proof that the second amendment to our Constitution was intended as an individual right of the American citizen to keep and carry arms in a peaceful manner, for protection of himself, his family, and his freedoms.” That November, after the NRA waged a well-funded campaign against California’s handgun-control bill, voters resoundingly defeated it in a statewide referendum.

As the Reagan administration prepared for the Constitution’s bicentennial, a private committee was set up to consider possible constitutional reforms. Its members included present and former elected officials, scholars, and business and labor leaders, and its focus was largely on addressing the growing problems of congressional gridlock and budgetary brinkmanship. In a compilation of working papers published in 1985, it urged Americans not to treat the Constitution as “immutable, like the Ark of the Covenant,” but to be open to changes, such as amendments. It recommended six, including longer congressional terms and bonus seats in the House and the Senate for the party that wins the presidency. None of these ideas made any headway. It wasn’t voters who were opposed to amendments. The hurdle was Congress—and, more and more, conservatives. In 1984, James McClellan, who had left his position as a staff member on the Senate Judiciary Committee to become

the president of a newly formed Center for Judicial Studies, urged conservatives to “kick the habit” of Article V. “There is something fundamentally wrong with our system if we are driven to amend the Constitution so as to restore its original meaning,” McClellan wrote. “We should resist efforts to add amendments to our fundamental law to correct misinterpretations rendered by the Supreme Court.” Better to effect constitutional change under the guise of *restoring* the Constitution’s original meaning. But that would require taking over the Court.

When Meese became attorney general in 1985, he announced that originalism would govern judicial selection. John Paul Stevens would later recall that between 1969, when Burger became chief justice, and 1986, when Scalia joined, “no judge or justice expressed any doubt about the limited coverage of the [second] amendment.” But in 1986, Congress passed the Firearms Owners’ Protection Act, which repealed parts of the 1968 Gun Control Act by invoking “the rights of citizens to keep and bear arms under the second amendment.” This was by no means an article of faith among conservatives. To the contrary. Bork, for instance, did not endorse this theory. “I’m not an expert on the Second Amendment,” he said in 1989, “but its intent was to guarantee the right of states to form militia, not for individuals to bear arms.” From retirement in 1991, Warren Burger, appearing on PBS and holding a pocket Constitution in his hands, said that if he were writing the Bill of Rights, he wouldn’t include the Second Amendment, adding that the NRA’s individual-rights interpretation was “one of the greatest pieces of fraud, I repeat the word *fraud*, on the American public by special-interest groups that I have ever seen in my lifetime.” The test of originalism would be whether this interpretation—an amendment by fiat—would be accepted by the Supreme Court.

As the Constitution’s bicentennial year began, Meese’s Office of Legal Policy issued a 200-page sourcebook on “original meaning jurisprudence,” containing excerpts from the work of Bork, Scalia, and Meese himself, with Brennan as a counterpoint. It alleged that until the

1960s, original-meaning jurisprudence had been “the dominant form of constitutional interpretation during most of our nation’s history.” Meanwhile, plans were drawn up for grocery-store cashiers to give away free copies of the Constitution; the government was to print enough for every American household. A facsimile of the Constitution went on the road, along with an original of the Magna Carta, in

SCALIA BROUGHT ORIGINALISM TO THE SUPREME COURT, TRAPPING THE CONSTITUTION IN A WILDLY DISTORTED ACCOUNT OF THE AMERICAN PAST.

a temperature-controlled, 40-foot trailer that traveled to more than 100 cities. ABC ran a series of “Bicentennial Constitutional Minutes” during Saturday-morning cartoons, featuring characters from *Looney Tunes*. Professor Bugs Bunny, dressed in cap and gown at the front of a lecture hall, sings, “Our Constitution’s really splendid, but sometimes we do amend it.” Daffy Duck, dressed as a

vaudevillian in waistcoat and spats, soft-shoes across the stage, while Bugs belts out, “It was intended! To be amended!”

And it *was* intended to be amended. But it was no longer amendable. Instead of producing constitutional amendments, liberals achieved landmark legislative gains and rights-protecting Court decisions whose importance was matched only by their reversibility. Conservatives of course were abandoning amendment too, instead seeking constitutional change by judicial appointments and judicial interpretation. Reagan transformed the judiciary; not since FDR had a single president replaced so high a percentage of the federal bench. He nominated Bork to the Supreme Court in July 1987, but the prospects for confirmation were mixed at best: The president was a visibly aging lame duck and reeling, too, from the Iran-Contra scandal; Republicans had lost the Senate in the 1986 midterms, with the result that Biden, not Thurmond, was now chair of a Democratic-run Senate Judiciary Committee. Scalia had replaced Rehnquist, which meant that his appointment didn’t change the balance on the Court. But Bork would be replacing Lewis Powell, often a swing vote. On the day Reagan announced the nomination, Ted Kennedy described “Robert Bork’s America” as

a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens’ doors in midnight raids, and schoolchildren could not be taught about evolution. Writers and artists would be censored at the whim of government, and the doors of the federal courts would be shut on the fingers of millions of citizens for whom the judiciary is, and is often, the only protector of the individual rights that are the heart of our democracy.

Bork afterward insisted that “there was not a line in that speech that was accurate,” but it had raised the stakes for the hearings.

Warren Burger wanted Congress to declare Constitution Day, September 17, 1987 (which happened to fall on his own 80th birthday), a onetime national holiday. But, in a speech in Hawaii, Justice

Thurgood Marshall declared his refusal to participate in any such celebration. “I do not believe that the meaning of the Constitution was forever ‘fixed’ at the Philadelphia Convention,” Marshall said. “Nor do I find the wisdom, foresight, and sense of justice exhibited by the Framers particularly profound.”

When Constitution Day came, Reagan delivered a bicentennial address at Independence Hall, in Philadelphia, calling the Constitution a “covenant with the supreme being,” and CBS televised Philadelphia’s Constitution Day parade. But on C-SPAN that day, you could watch a very different discussion of the Constitution: Robert Bork explaining his understanding of the nation’s founding document.

Biden’s staff had advised him not to center his attack on abortion but instead to call attention to Bork’s “judicial philosophy,” while Bork’s opponents waged a remorseless and relentless campaign against his confirmation. In an unprecedented attack on a Supreme Court nominee, People for the American Way aired a television ad narrated by Gregory Peck. “If Robert Bork wins a seat on the Supreme Court, it will be for life,” Peck warned. “His life and yours.” A Block Bork Coalition argued that Bork would “turn back the clock” on civil rights, women’s rights, and workers’ rights. Making the case that Bork would not hesitate to overturn *Roe*, no matter what he told the committee, Kennedy played an audio recording from 1985 in which Bork had said, “I don’t think that in the field of constitutional law, precedent is all that important.” In a cover story published on September 21, four days after the Constitution Day parade, *Time* magazine hinted that if Bork were confirmed, *Roe* might go.

Roe did not go, at least not then. Bork went instead, defeated 42–58. Having endured a brutal series of attacks, many of them unwarranted, he sought vindication in a tell-all book recounting his experience of the confirmation process—he noted, for instance, how news stories on CBS ran eight to one against him. Intended to tamp down the politicization of Supreme Court appointments, Bork’s book only inflamed it.

If Bork’s nomination had been a referendum on originalism, originalism had lost.

But originalism also won, because it had been brought so entirely into the public eye. Biden gave originalism 115 days of free television at the height of the nation’s celebration of the Constitution’s bicentennial.

Scalia, meanwhile, bided his time.



IN 1989, abortion again came before the Court. *Webster v. Reproductive Health Services* involved an abortion-restricting Missouri law. Rehnquist wrote a draft opinion that both upheld the law and, almost as an afterthought, essentially overturned *Roe* by arguing that the key elements of *Roe* “are not found in the text of the Constitution or in any place else one would expect to find a constitutional principle.” Stevens, who had been wavering, declined to join the majority, circulating a memo in which he said that he’d rather not overturn *Roe*, but if it had to be done, he’d rather give it “a decent burial instead of tossing it out the window of a fast-moving caboose.” O’Connor agreed, which everyone assumed would elicit a strong reaction from Scalia. “The expected ‘Ninogram’ will arrive this morning,” Justice Harry Blackmun’s clerk wrote, anticipating Scalia’s fury that the majority opinion would fall short of overturning *Roe*. Scalia was indeed furious, scolding the Court in his concurrence: “We can now look forward to at least another Term with carts full of mail from the public, and streets full of demonstrators urging us—their unelected and life-tenured judges who have been awarded those extraordinary, undemocratic characteristics precisely in order that we might follow the law despite the popular will—to follow the popular will.”

The Court again upheld *Roe* in *Planned Parenthood v. Casey*, in 1992. Scalia said,

“The only reason you need a Constitution is because some things you don’t want the majority to be able to change.” Those things are fundamental rights, and Scalia did not believe that a woman’s right to decide whether to end a pregnancy, even if her life was in danger, was one of them. Unlike an individual right to bear arms.

Because neither side in the abortion debate had succeeded in amending the Constitution, the right to an abortion asserted from *Roe* to *Casey* remained vulnerable. By the end of the 1980s, the parties had sorted themselves over this issue. Few were the commentators who, like the feminist legal scholar Joan C. Williams, acknowledged that views on abortion were nuanced, complicated, deeply felt, and likely irreconcilable. “I, for example, am convinced, absolutely convinced without hesitation, that the Constitution protects a woman’s right to choose abortion as a basic, undeniable political right, a right without which many other political rights are worthless,” Williams wrote. “And yet I can see how the conclusion that seems so obvious to me can seem foreign, even repulsive” to others—a celibate priest, say, or a mother of five—and “I must acknowledge that consensus on this issue is not in the cards.”

The abandonment of amendment has meant that constitutional history since the 1970s has turned on presidential nominations to the Supreme Court, placing pressure on that institution that it has proved nearly unable to bear. Presidential elections no longer involved campaigns to amend the Constitution. They involved campaigns to appoint justices. Nomination hearings have become spectacles. Trust in the Court has plummeted. And it’s no longer clear that the president of the United States will honor its decisions.

In 1991, when George H. W. Bush nominated D.C. Court of Appeals Judge Clarence Thomas to replace Thurgood Marshall in what some called the “Black seat” on the Court, opponents of the nominee again braced for battle. This time the hearings took a nasty turn when Anita Hill, a Black law professor and former colleague of Thomas’s, testified before an all-male, all-white Senate Judiciary Committee that Thomas had sexually harassed

her. Other women had made similar allegations, but only Hill had been called to appear before the committee, where Biden, as chair, altogether failed to restrain Republican Senators Orrin Hatch, Arlen Specter, and Alan Simpson from essentially placing Hill on trial. Thomas, citing his own right to privacy, refused to answer questions about “what goes on in the most intimate parts of my private life or the sanctity of my bedroom.” Questions about Thomas’s qualifications to serve as a justice were set aside, overwhelmed by the attention given to the allegations of sexual harassment.

Feminists had defeated Bork by claiming that he would turn back the clock on women’s rights and undo *Roe*. By the time Bush nominated Thomas, sexual harassment was the unforgivable sin of the day. The Thomas hearings also set a precedent, prefiguring the airing of sexual-assault charges levied at Donald Trump’s nominee Brett Kavanaugh in 2018, and the reckless, remorseless, and wildly partisan news coverage in which liberal news organizations appeared less interested in reporting on the nomination than in defeating it, while conservative organizations sought only to secure the confirmation. The Senate confirmed Thomas, 52 to 48.

In 1993, Bill Clinton desperately needed to appoint a woman to the high court. Ruth Bader Ginsburg was rightly celebrated as the Thurgood Marshall of women’s rights. She’d first appeared before the Supreme Court in 1973, and as the head of the women’s-rights program at the ACLU, she had methodically chipped away at discrimination on the basis of sex, each case, as she once put it, another “small, guarded step.” Yet she refused to take on cases that would have required her to defend *Roe*, which she believed had been badly decided (among other things, she wished the case had rested on an argument for equality, not privacy). Jimmy Carter had named her to the D.C. Circuit in 1980, where she served alongside Scalia and Bork. “*Roe v. Wade* sparked public opposition and academic criticism, in part, I believe, because the Court ventured too far in the change it ordered and presented an incomplete justification for its action,”

she said in 1984. In 1993, at NYU, she had cited *Roe* as an example of a bad judicial decision. When Clinton nominated her to the Court, leading women’s groups refused to endorse her. Fourteen members of the faculty of NYU Law School signed a letter stating that they were “distressed that her remarks at NYU have been misconstrued as anti-choice and anti-women.” The Senate confirmed her 96–3. The fact that she had grave doubts about *Roe* would be forgotten and, by the left, forgiven.

There were rumors, in the spring of 2000, that if Al Gore were to win the presidency, Scalia would resign, at age 64. “A Gore presidency would eliminate his chance of becoming Chief Justice and ensure that his jurisprudence will never be anything more than a footnote,” one reporter wrote at the time. During the campaign, Gore pledged that, if elected, he “would look for justices of the Supreme Court who understand that our Constitution is a living and breathing document, that it was intended by our Founders to be interpreted in the light of the constantly evolving experience of the American people.”

After *Bush v. Gore*, which resolved the disputed 2000 election results in Florida in favor of Bush, giving him the presidency, Scalia, who had generally failed to build a conservative coalition on the Court, became more isolated. In *Lawrence v. Texas* (2003), the Court found laws banning homosexual conduct to be unconstitutional. Scalia, dissenting from the bench, said that while he did not endorse the Texas law at issue—he once said he wished all judges were given a stamp that said “Stupid but Constitutional”—the Court had no right to overturn it and was, instead, taking sides in a culture war. (Where did the Court find the right to homosexual behavior in the Constitution? he would later ask. “On the basis of, I don’t know, the sexual-preference clause of the Bill of Rights?”)

Amendments defining marriage as between one man and one woman were first introduced in Congress in 2002. Two years later, the GOP platform endorsed such an amendment for the first time. But public opinion increasingly favored allowing same-sex marriage. Fifty percent

of Americans favored a constitutional amendment banning gay marriage in 2003; that fell to 37 percent in 2008. In 2015, in *Obergefell v. Hodges*, the Court held that same-sex marriage is protected under the Fourteenth Amendment.



IF SCALIA HAD WAVED ASIDE Biden’s question, in 1986, about the difference between original intent and original meaning, he eventually settled the matter in his own mind. “The theory of originalism treats a constitution like a statute, and gives it the meaning that its words were understood to bear at the time they were promulgated,” he explained. He brought his case to the public in a series of interviews and speeches that pundits came to call the Dead Constitution Tour. “When I find it—the original meaning of the Constitution—I am handcuffed,” he’d say, pressing his hands together, as if bound. “The Constitution is not a living organism, for Pete’s sake,” he’d say, and then recite the familiar refrain: “It’s dead, dead!”

The case Scalia had been waiting for finally came before the Court in 2007, in *District of Columbia v. Heller*, a challenge to D.C.’s handgun ban. The work of discovering the original meaning of the Constitution, Scalia had once said, was “a task sometimes better suited to the historian than the lawyer.” But in case after case, he set aside briefs submitted by distinguished historians in favor of his own reading of a carefully selected set of historical documents. No application of this method was more consequential than his reinterpretation of the Second Amendment in *Heller*, an opinion that Scalia considered to be, as he told NPR’s Nina

Totenberg, “the most complete originalist opinion that I’ve ever written.”

Heller is an excellent illustration of the distance between originalism and historical scholarship. “Historians are often asked what the Founders would think about various aspects of contemporary life,” read an amicus brief submitted by 15 eminent university professors of early American history. “Such questions can be tricky to answer. But as historians of the Revolutionary era we are confident at least of this: that the authors of the Second Amendment would be flabbergasted to learn that in endorsing the republican principle of a well-regulated militia, they were also precluding restrictions on such potentially dangerous property as firearms, which governments had always regulated when there was ‘real danger of public injury from individuals.’”

In June 2008, in a 5–4 opinion, Scalia held most of the provisions of the handgun law unconstitutional. “The Court had before it all the materials needed to determine the meaning of the Second Amendment at the time it was written,” he explained. “With these in hand, what method would be easier or more reliable than the originalist approach taken by the Court?” He then set aside the brief written by distinguished scholars of American history who disagreed with his interpretation of the Second Amendment. Relying on his own reading of history, Scalia insisted that the Second Amendment protects the right of citizens to bear arms not only to defend the state in a militia but also to defend themselves as individuals. The day after the Court issued its opinion, *The Wall Street Journal* ran an op-ed by Randy Barnett, a Georgetown law professor and the author of *Restoring the Lost Constitution*, under the headline “News Flash: The Constitution Means What It Says.” Barnett argued that “in the future, we should be vetting Supreme Court nominees to see if they understand how Justice Scalia reasoned in *Heller* and if they are committed to doing the same.” This proved prophetic.

“I used to be able to say with a good deal of truth that one could fire a cannon loaded with grapeshot in the faculty lounge of any law school in the country

and not strike an originalist,” Scalia, delighted with his triumph in *Heller*, said at a Federalist Society meeting. “That’s no longer true.” But the criticism of *Heller* had been pointed, too, beginning with sharply worded dissents written by Justices Stevens and Stephen Breyer. In *McDonald v. City of Chicago* (2010), Stevens described Scalia’s account of the Second Amendment as part of a “ruderless, panoramic tour of American legal history” that was “not only bad history, but also bad constitutional law.” Stevens would later propose amending the Second Amendment to avoid Scalia’s “misinterpretation.”

Criticism of *Heller* had also come from conservative quarters. J. Harvie Wilkinson III, a retired conservative Fourth Circuit Court of Appeals judge, argued that Scalia had done exactly what he accused liberals of doing: He had found in the Constitution a new right, a “right of self-defense,” a “right that the Court had never acknowledged in the more than two hundred years since the amendment’s enactment.”

By now, the Second Amendment, like *Roe*, had come to feature in judicial confirmation hearings. Elena Kagan, nominated to the Court by Barack Obama in 2010, was asked so many questions about whether she had ever hunted or even held a gun (she hadn’t) that, in a private session with a member of the Senate, she promised that, if confirmed, she would go hunting with Scalia. (And when she was confirmed, she did.) Originalism appeared to gain strength, even as it lost all historical coherence in Thomas’s bewildering opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen* in 2022, a decision announced in the same term that, with *Dobbs v. Jackson Women’s Health Organization*, the Court overturned *Roe*.

In *Bruen*, which came six years after Scalia’s death, Thomas applied a “text, history, and tradition” test, requiring lawyers to demonstrate the existence of an 18th-century (or in some cases 19th-century) “historical analogue” to any law that in any way restricted or regulated the ownership of firearms. If no analogue could be found, the law violated the Second Amendment. (“Tradition is a living thing,” Justice John Marshall Harlan II

once wrote; the Roberts Court disagreed.) American history is full of gun laws at the municipal, county, and state level—rules and restrictions of nearly every kind and variety—which meant that lawyers and organizations all over the country were left to dedicate countless hours to arcane historical research to meet the requirements of *Bruen*. An entirely new field of the history of firearms law emerged, documenting that if anything could fairly be said of American text, history, and tradition, it was that Americans had always been interested both in owning guns and in imposing rules on their manufacture, sale, use, and ownership.

Two years after *Bruen*, in *United States v. Rahimi*, the Court would attempt to walk back *Bruen* by clarifying that its intent in its recent Second Amendment cases was not “to suggest a law trapped in amber.” (Thomas dissented.) But originalism, like the text, history, and tradition test, had become so confused that seven justices found it necessary to offer separate opinions in *Rahimi*, each attempting to explain what originalism is or isn’t, or ever was or wasn’t. Without Scalia, originalism—its conceptual integrity as constitutional theory—disintegrated. Its political power, however, remains intact.



ANTONIN SCALIA considered *Heller* to be his most important legacy. But he also wanted to leave behind an originalist instruction manual. That book, *Reading Law*, appeared in 2012, jointly authored with the legal scholar and lexicographer Bryan Garner. In a chapter called “Thirteen Falsities Exposed,” Scalia and Garner discuss *Heller* under the heading “The false notion that lawyers and judges, not

being historians, are unqualified to do the historical research that originalism requires.” Historical research is not a difficult endeavor, they alleged. Nor are historical sources difficult to discover or to read. Nor is such a reading likely to be inconclusive. The historical record is, instead, legible, unitary, and dispositive. Learning how to “read law” requires three years of law school and the study of many books, like the more-than-500-page textbook *Reading Law*, but anyone can write history and anyone who says otherwise has exaggerated the nature of the work.

This, unsurprisingly, did not quiet Scalia’s detractors. *Heller* is the most criticized of all of Scalia’s opinions. The Seventh Circuit judge (and Reagan nominee) Richard Posner wrote in a review: “*Reading Law* is Scalia’s response to the criticism. It is unconvincing.” Scalia and Garner had suggested that one tool that made reading history so simple was the availability of so many amicus briefs written by actual historians. But as Posner observed, “The book’s defense of the *Heller* decision fails to mention that most professional historians reject the historical analysis in Scalia’s opinion.” Scalia must have known that the historical record is scarcely ever unambiguous. In *Heller*, Justice Stevens had stacked his historical evidence up against Scalia’s. What made Scalia’s history into law was that he got five votes, and Stevens got only four. That didn’t make Scalia’s history right.

Yet Scalia may have wielded his greatest influence not on the Court but outside it. At a certain point, he seems to have become more interested in speaking to his admirers off the Court than in winning votes on it. He had an insatiable appetite for intellectual battle, but as political rhetoric heated up after the election of Barack Obama, in 2008, Scalia found himself the subject of ceaseless personal attack. Understandably, he grew weary and alienated. Like many Americans, he found the polarization of the press troubling and the insurrectionary style of American politics unbearable. The crazier the far-right press of Fox News got, the crazier became MSNBC, CNN, and even the nation’s newspapers of record. At the beginning of Obama’s second term, Scalia told a

reporter that he didn’t read *The New York Times* and had given up on reading *The Washington Post*, saying that it “went too far for me. I couldn’t handle it anymore.” By then, he said, he was getting most of his news from talk radio.

Heller, he began to fear, had been originalism’s high point. But after that case, originalism soared on the Supreme Court, as Trump added three originalist justices to the bench: Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. In 2022, this originalism-powered Court overturned *Roe*. Progressives, who expect originalism to prevail on the Court for decades to come, have attempted to devise something called “progressive originalism,” seemingly favored by the Biden-appointed justice Ketanji Brown Jackson. As one law professor explained in 2022, “If conservative judges are making selective use of history to make originalist arguments for conservative results, then the only way to show this is to make better originalist arguments to the contrary.”

Would judging law be reduced to the act of choosing among competing accounts of the past written by different groups of historians, based on some as-yet-undefined method of determining which account is the correct one? It hasn’t worked out that way. In a series of crucial cases, the Trump-era Court cited history if the history supported a preferred outcome; if history did not support that outcome, the Court simply ignored the past. As the liberal justice Sonia Sotomayor observed in a scorching dissent in the presidential-immunity case *Trump v. United States*, “It seems history matters to this Court only when it is convenient.”

The Constitution is dead! Scalia liked to say. To many Americans in the early decades of the 21st century, it has begun to seem that way, although half of the country blames Republicans and the other half blames Democrats. In 2021, one in three Americans said they might consider either abolishing the Supreme Court or limiting its power. Senator Elizabeth Warren of Massachusetts, a former Harvard law professor, co-sponsored a new Judiciary Act to restructure the Court. Warren charged the conservative six-justice supermajority with pursuing a

“deeply unpopular and partisan agenda at odds with the Constitution and the settled rights of our citizens.”

In 2022, Trump, citing “Massive Fraud” in the 2020 election and seeking reelection, called for “the termination of all rules, regulations, and articles, even those found in the Constitution.” Democrats called for two justices, Thomas and Alito, to recuse themselves in cases relating to the 2020 election and the January 6 insurrection, arguing that their wives had been publicly associated with the “Stop the Steal” effort; when they refused, Democrats in Congress called for their impeachment. After *Dobbs* and *Bruen*, public estimation of the legitimacy of the Court fell to record lows, although opinion divided along strictly partisan lines. This year, after Trump returned to the White House, he was asked whether he has a duty to uphold the Constitution. He said he didn’t know.

Scalia did not live to witness this crisis in constitutionalism. In an exceptionally candid interview near the end of his life, he speculated that he might be despised for his legacy, adding, “And I don’t care.” Long before, playing Macbeth onstage back in high school, he’d uttered some of Shakespeare’s most aching lines:

Life’s but a walking shadow, a poor
player
That struts and frets his hour upon
the stage
And then is heard no more.

Did he ever wonder if that might be true of the Constitution, if he had been wrong, and if it were, all along, a living thing, though now stunted, thwarted, ailing? In 2016, during a quail-hunting trip in Texas, he died in his sleep, at age 79. The Constitution limps along, a walking shadow. *A*

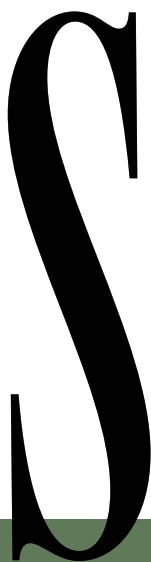
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THE NEIGHBOR FROM HELL

Israel and the United States
delivered a blow to Iran. But
it could come back stronger.

BY GRAEME WOOD





hortly after the end of the Iran-Iraq War, the United States Institute of Peace held an event in Washington, D.C., to discuss the Middle East's delicate prospects. Panelists suggested ever more intricate ways to give regional peace a chance, until the neo-conservative Michael Ledeen spoke out heretically. "You have heard the case for peace," he said. "I rise to speak on behalf of war." He said that the conflict, which lasted

from 1980 to 1988 and killed perhaps a million people, had been "a good war." And he said that any "peace" between the United States and a government as malevolent as Iran's would be a sham, and a prelude to more war. Peace is what happens "when one side imposes conditions on another," Ledeen told me in 2013. He said it is not enough for both sides to stop fighting. One of them must lose. Ledeen died in May, well into his fifth decade of arguing against peace, or at least a sham peace, with Iran.

War had its chance just weeks later. On June 13, Israel assassinated high-ranking Iranian officials and neutralized Iranian air defenses. During the next 12 days, Israel and Iran traded missile strikes. About 1,000 Iranians and dozens of Israelis died. Iran's "Axis of Resistance," its federation of militias and other allies, did not show up to fight. On June 22, the U.S. bombed three Iranian nuclear sites and declared the conflict over. The Trump administration said that the country's nuclear program had been "obliterated," but no public evidence has confirmed that claim. Ledeen, if he were alive, would no doubt note that at the end of the war, Iran did not accept any cease-fire conditions. In fact, Iran's official position is that it never accepted a cease-fire at all.

Now that talk of what happens after war is back, I rise to make the case for déjà vu. The region risks reverting to its default setting, which is peace that has characteristics of war, with Iran planning to attack its enemies but not actively doing so, and vice versa. "This is a regime on its last legs, but it could last like that for another 20 years," Michael Doran, a senior fellow at the Hudson Institute, told me. "They took a blow, but I see no signs that it's ready to fall." In the past, Iran has recovered from its tribulations by revising its strategy and finding novel ways to subvert the United States, Israel, and their interests. It should be expected to recover once more.

Even before the Axis of Resistance turned out to be an Axis of No-Shows, the Islamic Republic had suffered humiliating defeats: bombings and assassinations inside Iran itself; the decimation of Hezbollah, its most sophisticated proxy; the slow and bloody dismantling of another proxy, Hamas; the collapse of its main state

ally, Bashar al-Assad's regime in Syria. In December, Iran's 86-year-old supreme leader, Ali Khamenei, said that his country's predicament reminded him of the absolute nadir of the Islamic Republic, which was the Iran-Iraq War. He noted for his audience members that few of them were alive—but he was—when Iraqi warplanes bombed Tehran.

"I was giving a speech at a factory near Tehran's airport," Khamenei reminisced, in an especially portentous installment of Imam Story Hour. "I saw an Iraqi plane descending, dropping its bombs on the airport and then flying away. We have witnessed these things." He said the belief that these difficult moments were setbacks was mistaken. He spoke optimistically of Iran's allies. "The Resistance Front is not a piece of hardware that can be broken, dismantled, or destroyed," he said. "It doesn't weaken under pressure; it also becomes stronger."

Some of this was bluster. Khamenei could hardly have delivered a speech acknowledging that the double act of Great and Little Satan had won. But his rendition of the history of the Axis of Resistance—from its birth out of necessity, to its success, to its present adversities—is largely accurate. In the past year, I visited several countries where Iran has made inventive use of its limited resources. The trip was a survey of destruction and dismay. The Axis, which bought Iran 20 years of survival and "peace," wrecked the places where it operated. This wreckage was intentional. Iran prefers weak allies over strong ones, and corrupt and corruptible governments over ones that respond to their citizens' needs.

The purpose of Iran is Shiite theocracy, for its own sake and as a counterweight to democratic, secular, and Sunni governments allied with the United States in the region. Khamenei has made the argument to his own people that the Islamic Republic is an anti-fragile empire. It gets closer to its purpose and stronger when attacked and should therefore be patient and steadfast, focusing on surviving to learn from its failures. To Iran's enemies, he has inadvertently made the opposite argument: that defeating Iran means vigorously prosecuting the war now, giving no chance for Iran to survive, and finally imposing a peace that will last.

THE AXIS OF RESISTANCE is a simple concept: a network of armed friends of Iran, spread across the region and on call to fight against Iran's enemies. As of mid-2024, this network was a cordon around the country itself, a line of what Iran called "forward defense" that kept its enemies busy hundreds of miles away from Iran's own border. Its main members were Hezbollah in Lebanon, Shiite militias in Iraq, the Houthi de facto government in Yemen, the Alawite government of Syria, and Hamas in Gaza. Iran, by far the world's largest Shiite-majority country, encouraged these groups—mostly Shiite minorities—by scouting them, nurturing the most promising, and building trust and fellow feeling. Iran's leaders and allies spoke of a "unity of the arenas." Any attack against one could draw retribution by another, somewhere far away.

For years, members of the Axis armed themselves and conducted regular harassment operations—for example, rocket attacks against Israel and American bases in Iraq. Before Israel began a counterattack against Hezbollah in September 2024, this strategy

PREVIOUS PAGES: ALI AL-SADI / AFP / GETTY; SHUTTER-STOCK; POP_JOP / GETTY; KAVEH KAZEMI / GETTY

was reckoned brilliant by Iran's supporters and adversaries alike. A U.S. diplomat had told me the month before that "the Iranian strategy works to this day." He said time was on Iran's side. "I suspect we'll be out of the region before they're out of business." One Lebanese Shiite politician told me that the United States and Israel should stop being such sore losers. "Don't blame Iran," he said. His voice was pitying and patient, like a peewee-soccer coach imparting a lesson of sportsmanship. "If we play, you lose the ball, and I shoot, I score, it's your mistake," he said. "Move on."

Within a matter of months, the Axis line of defense had been broken. Only the Houthis remain more or less intact, and indeed resilient against Israeli and American retaliation.

Although the Axis is in shambles now, it was no failure. It dictated the terms of Middle East geopolitics for 20 years and allowed a poor, isolated nation, run by partisans of a small religious sect, to keep stronger and richer countries scrambling, spending billions of dollars just to maintain a status quo in which those countries were periodically peppered with rockets and drone attacks.

The strategy was thrust upon the Islamic Republic after others failed. Directly after its 1979 revolution, Iran busied itself with internal enemies. It labored mightily to suppress and, when convenient, murder those reluctant to support the revolution's leader, Ayatollah Ruhollah Khomeini. In 1980, when Iraq's president, Saddam Hussein, seized oil fields on the Iranian border, under the assumption that Iran was too distracted to object, Iran saw an opportunity to pivot to fighting external enemies. Far from letting Iraq take its land, Iran fought back and recovered its territory within two years. Saddam sued for peace, but Iran rejected him and opted to turn the war into a death match. It lasted for the next six years. The United States and other Western powers were delighted to watch both countries suffer. Sunni monarchies propped up Iraq when it looked ready to collapse. The war prompted the most reptilian of Henry Kissinger's quips: "It's a pity," he reportedly said, "they can't both lose."

But they did both lose, and badly. One would have to look back to Passchendaele, the Somme, or Stalingrad to find a similarly pointless churn of death at this scale. Iraq used chemical weapons and other outré methods of killing, such as putting electrified cables into bogs and zapping Iranian infantrymen as they waded through. ("We are frying them like eggplants," an Iraqi officer told the *Los Angeles Times* in 1984.) Iran deployed human-wave attacks and recruited child soldiers as human minesweepers. In his book about the war, the scholar Efraim Karsh quotes an Iraqi officer who faced an Iranian human wave:

They chant "Allahu Akbar" and they keep coming, and we keep shooting, sweeping our 50 millimetre machine guns around like sickles. My men are eighteen, nineteen, just a few years older than these kids. I've seen them crying, and at times the officers have had to kick them back to their guns. Once we had Iranian kids on bikes cycling towards us, and my men all started laughing, and then these kids started lobbing their hand grenades and we stopped laughing and started shooting.

The war ended in 1988 without strategic gain for either side. Both were exhausted. Khomeini died in 1989. A 49-year-old minor cleric named Ali Khamenei succeeded him as leader of an Islamic Republic that was a mutilated shadow of its revolutionary self.

Virtually all of Iran's recent military leaders, including the architect of the Axis of Resistance, General Qassem Soleimani, fought in the Iran-Iraq War and learned its main lesson: not to do *that* again. Big wars are catastrophic. After this miserable experience, Iran spent the 1990s and early 2000s like a sailor in port: wandering, getting in trouble, never quite mustering long-term planning or vision. Because it had an international reputation as mad, bad, and dangerous, it had little choice but to innovate. "The Iranians took a good, hard look at themselves," a former U.S. intelligence official told me. "They said: *We've got no technology. We have no friends. We don't have money.* They said, *We need an unconventional approach.*"

That approach originated in Lebanon. In 1982, several years into the Lebanese civil war, Israel invaded Lebanon to dismantle the Palestine Liberation Organization, then headquartered in Beirut. Iran trained and supported Hezbollah to counter Israel, the United States, and the Sunni and Christian Lebanese militias. No party in the war was blameless, but Hezbollah distinguished itself by outright rejecting norms of war and diplomacy. It took hostages and tortured them. It attacked embassies and civilians, inside and outside the country. It pioneered the use of suicide bombs. In 1983, a Hezbollah operative blew up 241 American soldiers and Marines in their barracks next to Beirut International Airport. The bomber is said to have been grinning as he sped past the checkpoint and crashed into the building.

Hezbollah was built to fight. In 1989, when all other Lebanese groups agreed to give up arms and become political entities, Hezbollah remained armed so that it could continue fighting Israel. Hezbollah persisted until Israel's withdrawal from southern Lebanon in 2000—a moment of celebration and vindication for Hezbollah, and for Iran, a sign that the Hezbollah model held promise elsewhere. Hezbollah took advantage of its win to dig tunnels and stockpile missiles for the sole purpose of attacking Israel. Iran now had a seasoned fighting force, assembled at minimal cost out of Arab Shiite volunteers, with nary an Iranian among them to be shot or electrocuted on the battlefield. When Hezbollah killed Americans and Israelis, it received little in the way of punishment or retribution. It drove out enemy invaders, and it held its own against Israel in a monthlong war in 2006. Later, when Syria looked ready to fall to Sunni jihadists, Hezbollah answered the call and crossed the border to terrorize the population and keep the Assad regime in power.

The Hezbollah model followed a three-step recipe: create a proxy; arm it to fight by any means necessary; wait for it to outlast the enemy. An alternative to creating a proxy is finding one. Because the Middle East is rife with hostility toward America as well as domestic governments, Iran found these friends easily. An Axis member could flourish as long as there was a vacuum of responsibility, where no competent government was present to discipline it. Acute chaos helped, allowing Iran to provide guns and training. Most but not all of the proxies were Shiite. Hamas, for example, is Sunni, and the Houthis of Yemen and Alawites of Syria practice

forms of Shiism distinct from Iran's. The phrase *Axis of Resistance* was coined by a Libyan journalist in 2002, as an alternative to the "Axis of Evil" tag applied by President George W. Bush to Iran, Iraq, and North Korea that same year. Soon, Iranians were using it themselves.

Just as Iran needed Israel's occupation of Lebanon to cultivate Hezbollah, it needed the U.S. occupation of Iraq to fertilize and grow Axis partners there. Iran did not initially welcome the 2003 invasion. Its first response was to put its entire nuclear program on ice, almost certainly out of fear that it would be invaded next. The early months of the U.S. occupation of Iraq went well compared with the years that followed, in part because the senior Shiite cleric in Iraq, Ayatollah Ali al-Sistani, was then—and continues to be, at the age of 95—a sort of anti-Khomeini, at least in his attitude toward the role of religious scholars in politics. He prefers to influence politics from a distance rather than seize the state and rule directly. U.S. officials figured out how lucky they were that al-Sistani differed from Khomeini in this regard, and eventually they went to great lengths to seek his favor and refer to him by honorifics ("his Eminence," "Sayyid") they would not bother applying to other clerics.

Al-Sistani's patience during the early months of the occupation kept Iraqi Shia from zealously fighting the Americans. Iraqi Sunnis were resisting but without great effect. The Americans' success was frustrating to Iran's high echelons. Finally, in 2004, they did something about it, by intervening the only way that seemed to work: by Lebanonizing the fight. Find a proxy; arm it; let it fight so you don't have to. Iraq became proof that the model would work across the region, with Hezbollah serially midwifing the proxies that Iran sired.

By February 2004, two non-Iraqi figures were quietly turning Iraq's Shia against the occupation and preparing them, militarily, to inflict pain on the Americans. The first was Soleimani, the commander of Iran's Quds Force. The second was the most wanted Shiite jihadist in the world: Imad Mughniyeh, the military chief of Hezbollah. Both men would eventually die violently at the hands of the United States and Israel. But until then, they managed to undermine those enemies' interests, at minimal cost.

Because Iraq's al-Sistani would not militarize his followers, Iran went mullah shopping and found another more inclined to do so. That ornery cleric was Moqtada al-Sadr, the son of Mohammad Sadiq al-Sadr, a grand ayatollah assassinated almost certainly by Saddam's order in 1999. The position of ayatollah is not hereditary: Clerics tend to be graybeards who have distinguished themselves through scholarship. Al-Sadr, who was 29 at the time of the invasion, instead distinguished himself through resistance.

He visited Iran for the first time in 2003 and met with Supreme Leader Khamenei. In the months after his return, he mobilized his followers into a militia, the Mahdi Army. By early 2004, the Mahdi Army was in an all-out war with the Americans in the streets of Najaf. The United States was better armed and trained. But the very fact that the battle was taking place was ominous for the U.S. and its allies, and al-Sadr

cut a worrisome contrast to the American commanders. He was young and tubby. The American failure to neutralize this preachy butterball suggested serious limits to the occupying force's control of the situation. At a press conference, the commander of U.S. ground forces in Iraq, Lieutenant General Ricardo Sanchez, announced that his objective in Najaf was "to kill or capture Moqtada al-Sadr." One could not help but notice, though, that al-Sadr delivered sermons before crowds, whereas Sanchez, during his press conference, appeared to be hiding in a bunker somewhere.

For the next few years, the Mahdi Army and the Iranians shared a goal: to bleed the American occupiers. Iraq had plenty of small arms and ammunition, which could kill Americans but would often plink harmlessly off their armored vehicles. As the occupation wore on, the Iraqis became proficient at building roadside bombs in basements, garages, and other insurgent test kitchens spread across Baghdad and Anbar. The Iranian contribution was leveraging the R&D from elsewhere in Iran's area of operations—chiefly Lebanon—and multiplying the Iraqis' lethality. The key Iranian ingredient was explosively formed penetrators (EFPs). Instead of blasting in all directions, like a primitive roadside bomb, an EFP directs and concentrates the force of its explosion. It forms a molten metal blob and fires it like a cannon. The United States estimates that at least 603 of the approximately 3,500 American soldiers killed in combat in Iraq were victims of Shiite militias. Many more were maimed, and almost all the carnage was the direct and intended result of Iran's nascent Axis.

Success in Iraq gave Iran confidence to try the same model elsewhere. In Syria, it had a state partner, led by Assad, and when Assad's grip began slipping in 2011, at the onset of the Syrian civil war, Iran at first sent its own soldiers—Iranians, in uniform—to help put down the Sunni and American-backed uprisings. But the real force deployed to keep Assad in place was Lebanese. Hezbollah, its hands relatively idle since 2000, showed up and crushed rebels. Iraqi Shiite militias, idle after the end of the American occupation there, appeared too, and, in tandem with Russian mercenaries, kept Syria in a grim stalemate. By 2018, Assad had control of Damascus and Aleppo, and the rebels were confined to a jihadist ministate in Idlib.

Emboldened, Iran began reviving or confecting proxy forces in yet more locations. In Bahrain and Saudi Arabia, it found fellow Shia eager to overthrow Sunni monarchies. In Yemen, it found a remarkable, and remarkably weird, partner in the Houthis. The Houthis are led by a family of clerical megalomaniacs who have been prophesying apocalyptic war since the early 2000s. With Iran's and Hezbollah's assistance, they managed to kick out Yemen's Saudi-backed government and get into a long-distance shooting war with the United States and Israel. The Houthis' success is due in part to the rock-bottom price they place on human life (including their own), and in part to the sophisticated weaponry they have received from Iran. In late 2023, they fired anti-ship ballistic missiles at commercial and military vessels in the Red Sea. They were the first such missiles fired in anger in the history of the world.

By the mid-2010s, these proxies were connecting, networking, sharing plans and technical knowledge, and operating in sync. Iran had made its own army redundant, and assembled a more agile and creative alternative in its place. “Suddenly, they have this whole keyboard to play a tune, instead of just one or two notes,” the former U.S. intelligence official told me. The polyphony of proxy groups could now harmonize and syncopate so that the United States and its allies would always be offbeat.

THE SENTINELS of conventional wisdom settled on the view that the Iraq invasion was one of the great own goals of American foreign policy, and that its beneficiary was Iran. “The Bush administration has done more to empower Iran than its most ambitious ayatollah could have dared to imagine,” the *New York Times* editorial board declared in 2006.

Those fortunes were made and squandered rapidly—Iran went from bereft during the Iran-Iraq War, to unbeatable two decades later, to resoundingly beaten a little less than two decades after that. But the Axis was guaranteed to fail, and the signs of that failure were visible long before the Axis started wobbling. No country in the region has wobbled more vertiginously than Lebanon, and no country has had a longer history of Iran’s sustained attention. Those distinctions are not coincidental. In the summer of 2024, I met the historian Makram Rabah in his office at the American University of Beirut. He likened Hezbollah to “Iran’s strategic consultants—the proxies’ brain, the force that gets them running,” a jihadist McKinsey that multiplies the Iranian proxies’ power. He said Hezbollah’s brilliance in this endeavor came at the expense of its competence at any task that might make Lebanon a functional democratic state.

“Hezbollah is a parasite that kills its host,” Rabah told me. A group that exists only to fight, and prepare to fight, develops weaknesses and limitations, because it never learns to do anything else. That leaves it friendless, brittle, and uncreative—and, paradoxically, that leaves it vulnerable when fighting, too. Hezbollah, Rabah said, never sought conversion into a strong, durable political force, because it was never meant to be that. Since the outbreak of the Syrian civil war, he said, the group had treated Lebanon as a base and traveled the region on a series of bloody adventures, while growing less interested in its home country. “Domestic politics became a nuisance for Hezbollah,” Rabah said. He compared Hezbollah unfavorably to its Shiite Lebanese cousin, Amal, which disarmed after the

civil war and set to work learning the dark arts of politics: backroom dealing, parliamentary maneuvering, and plundering a system rife with old-fashioned corruption within an acceptable range. The Hezbollah members “who try to be politicians are all actually intelligence people or military people,” Rabah said. “They’re all Sparta, no Athens.”

“Other political parties have taken up arms in Lebanon because they wanted a better seat at the table,” he said. “But Hezbollah never cared about having a state of their own. Lebanon became a shell for them, something to protect them while they fought abroad.” Fighting abroad overextended Hezbollah. And because its soldiers used phones and posted images online, the Israelis were able to map out the whole group. Ultimately, they became a regional problem instead of a local one. “They grew into a beast that couldn’t be brought back into the barn,” Rabah said.

That Lebanon is a catastrophe is beyond dispute. Parts of Beirut seem to have been written off, after a series of disasters even a minimally competent government could have averted. In 2020, the Port of Beirut exploded when a 2,750-ton pile of ammonium nitrate caught fire in a warehouse. It normally takes a nuclear blast for a city to be so suddenly and awesomely ripped apart by a percussion wave. In downtown Beirut, one can still see windows blown out and buildings uninhabited. In 2019, Lebanese depositors discovered that their banking system had, in effect, just been kidding about those savings accounts. The money was gone. The Lebanese pound lost nearly all its value, and nowadays if you fly into Beirut, once a center of banking, it’s wise to strap foreign currency to your body, like a drug mule. The biggest advertising billboard I saw in downtown Beirut was for a service that will help you get a second passport.

What the *New York Times* columnist Thomas L. Friedman once called the “Pottery Barn rule”—you break it, you own it—has an analogue in civil conflict: If you have the guns, you have the responsibility. And Hezbollah, as the most heavily armed and violent element of Lebanon’s menagerie of factions and sects, wanted the guns without the responsibility. With adventures to be had in Syria, Iraq, and Yemen, and patrons to please in Tehran, Hezbollah had little time left over (let alone inclination) to build up the country it purported to defend.

I spoke with Fouad Siniora, a former prime minister of Lebanon, who said that Iran’s backing of Hezbollah had unbalanced the country’s system, which was set up to make sure that all the largest sects—Christians, Sunnis,

HEZBOLLAH FUNCTIONED AS A JIHADIST McKINSEY, MULTIPLYING THE IRANIAN PROXIES’ POWER.

Shia, Druze—have power. But when one faction is supercharged by support from overseas, the balance is lost, and, with it, the ability to govern. “In a democracy, you have a majority that rules and an unmarginalized opposition that actually wants to get rid of the majority” by winning elections, he told me. What could never work, he said, is a system where the government coexists forever with a shadow entity lacking democratic intentions. He quoted the Quran, which says that only one God exists, because if there were multiple gods, all would be ruined. There can be only one government, one leader. That is true of a state, of a family, of a company, Siniora said. Or as his father used to say, two captains “will sink the ship.”

AS A TOOL for threatening Israel, however, Hezbollah for almost a quarter century had no real rivals. It was Iran’s key instrument for deterrence and punishment: *If you touch us, we will use Hezbollah to touch you.* The end of that era came slowly, through the pathetic collapse of Syria and Lebanon as functioning states, and then quickly, when Israel began touching Hezbollah in unexpected places.

In September 2024, Israel blew up the group’s pagers, causing gruesome injuries as the devices detonated in Hezbollah operatives’ pockets. The Quran says that God is closer to a man than his jugular vein. The pager operation showed that Israel was only a few inches away from Hezbollah’s femoral artery. Devastating pinpoint strikes showed that Israel had near-complete knowledge of the group’s structure, whereabouts, and leadership. Israel then invaded and occupied southern Lebanon again. Its incursion ended with an agreement between Israel and the Lebanese government that was humiliating for Hezbollah and Lebanon. The Lebanese government affirmed that it would keep southern Lebanon free of military buildup by Hezbollah, and Israel reserved its right to defend itself. Because Israel had never conceived of its attacks on

Hezbollah as a war of aggression in the first place, the assertion of this right amounted to a threat to return to Lebanon for further rounds of demolition. The deal was an embarrassment to Iran as well. Iran was supposed to defend its proxies, to reciprocate for their many years of fighting for Iran. Now Iran would not, or could not, protect them.

In parallel, Israel had begun dismantling Hamas. As of this writing, Israel has not finished doing so—and Hamas’s mere survival, after nearly two years of bombing and siege, is for the group’s stalwarts a victory in itself. But the ability to harass Israel and lob rockets at it in perpetuity has never been Iran’s main use of the group. Hamas’s real value to Iran is as a threat to the Palestinian Authority, the West Bank–based secular Arab autocracy seated in Ramallah, and by extension the secular Arab governments that are Iran’s other targets in the region.

If Hamas took over the West Bank (ejecting the Palestinian Authority, as it did in Gaza in 2007), it would establish a jihadist state on the border of Jordan, one of the closest regional allies of Israel and the United States. More than half the population of Jordan is of Palestinian descent, and the presence of Palestinian refugees is a persistent source of instability. A Hamas-controlled West Bank would threaten Jordan’s secular Sunni monarchy. The war in Gaza has not destroyed Hamas, but it has mortally wounded the version of Hamas that could have served this purpose for Iran. Hamas lives, but Hamas as a strategic asset for Iran is dead.

The last of the proxy defeats was preordained. Syria’s regime could not survive without Hezbollah. Syria was like a dialysis patient: guaranteed to die if left to its own resources, but kept alive through costly intervention. At the beginning of the Syrian civil war, Iranian soldiers arrived to save Assad. Hezbollah and Iraqi militias reinforced the government further, and Russian soldiers joined them in 2015. But when Israel began escalating its own strikes against targets in Syria, even the Iranians left. Last year,

when an army of erstwhile Sunni jihadists marched on Damascus, each of these saviors had more important chores to take care of: Hezbollah was depleted from fighting Israel; Russia was fighting Ukraine; Iraq’s Shiite militias mostly preferred to stay home; and Iran itself was gun-shy after its recent losses there. Syria’s military lacked the will to defend its cities, and Damascus fell just 10 days after the offensive began.

THESE DEFEATS happened faster than anyone predicted. But Iran’s model decayed even in places where Israel and the



PHOTO-ILLUSTRATION BY ALEX WERTO; KARIM SAHIB / AFP / GETTY; MAXAR / GETTY; POP_JOP / GETTY; HOSSEIN BERIS / AFP / GETTY

United States had not attacked for some time. The most ironic is Iraq, given that Iraq was, after Lebanon, the site of Iran's greatest success. Iran had the chance to install a government that would mimic its own theocracy. Shiite parties dominate Iraq's politics, and Iraqi politicians who spent years during Saddam's rule living in Iran have led Iraqi Shiite parties and served as prime minister. By 2008, Americans were withdrawing, and combat deaths were subsiding to their lowest level since the start of the occupation. Iran seemed to have won, and whether the next game was electoral or military, most observers assumed that Qassem Soleimani and the Iranian government would decide who would end up in charge and what they would do.

To the surprise of many Shiite factions who thought they had Soleimani's support, they were both right and wrong: Iran had raised them all, and now rather than seeing any one of them dominate, it preferred for them all to fight. The internecine squabbling was immediate. The Mahdi Army controlled large parts of Basra. In 2008, it came under attack—not only by the Americans but also by Iraq's Shiite-led government. The Iraqi prime minister at the time, Nuri al-Maliki, was a Shiite sectarian with close ties to Iran, and many of his fellow Shia thought he could be relied on to listen to Iran's wishes and find a way to avoid clashing with an Iranian proxy militia. But Iran did little to stop the fratricide. By custom, every subsequent Iraqi government has been Shiite-led. Many, including the present one, are beholden to Shiite militias with strong ties to Iran. The militias are powerful and, because of their control of smuggling and other criminal activity, profitable. They are also engaged in constant bickering over the spoils of illicit trade and corruption.

Not long ago, these militias' tendency to bicker was mitigated by the deft orchestration of Soleimani. He had helped create and coordinate many of them, and sometimes played them off one another. After the United States killed him in a missile strike in 2020, the whole unruly gang of militias started pursuing their own interests. Many of the militias were incorporated into the Iraqi government in 2016, as the Popular Mobilization Forces. But rather than strengthen the Iraqi state, they have undermined it from within, by using their government privileges to streamline their corruption. "They use the PMF units to do things outside the government chain of command," Hamdi Malik, an associate fellow at the Washington Institute for Near East Policy, told me. In practice, PMF vehicles are exempt from investigation by any other Iraqi security services, as if they have diplomatic immunity from their own country's police and customs agents. "They have total freedom of movement, and that's why they can smuggle," Malik added.

Baghdad, it must be said, is flourishing now. When I visited in August 2024, I was moved to see that city, which I had known only as a site of murder and oppression, beset by the comparatively venial sin of gentrification. I found freshly built shopping malls and cafés with the interchangeably chic aesthetic of Dubai or Miami, filled with men and women bearing all the signs of new wealth: makeup, tanklike SUVs, beach bodies. At a bakery, I bought a pastry that tasted awful, because it was gluten-free. Downtown, I ate a burger from a food truck and lingered over

cold drinks, without wondering whether I should scam before someone decided to kidnap me and videotape my beheading.

On previous trips to Baghdad, I had wanted to visit Mutanabbi Street, a narrow lane of booksellers that terminates at one of the Arab world's great remaining literary cafés. To stop there before would have been a risk—and indeed, in 2007, someone blew the whole place to bits, killing dozens. This time I browsed every bookstall, at leisure. The goods were odd. In English, I found copies of Assyrian histories, printed in England in the middle of the last century. In stock in Arabic were books by Margaret Atwood and Steve Harvey and Hitler. As a souvenir, I bought a recent translation of the Unabomber's manifesto, and read it in the reopened literary café, over a hot tea.

Iraqis warned me that this new peace conceals rot. "It's totally peaceful, and you can go anywhere," Ali Mamouri, who advised Prime Minister Mustafa al-Kadhimi on strategic communications from 2020 to 2022, told me. But he said there is a "deep dark side." The country's large businesses, such as power companies, refineries, and financial institutions, still operate under the influence of the militias, he said. "You have to pay protection money to this or that militia." I said that the protection seemed to be working, because the streets felt safe, and no one seemed afraid. "They get security," he said. "But they mostly do not get the security from police, or from the government." He said that the arrangement was going to be fatal for Iraq eventually, because the Mafias demanding protection money were a temporary measure, and they were at risk of descending into conflict in the streets. Iraq's lasting prosperity demanded the building of a state.

I saw signs of that state-building. At an intersection in central Baghdad one morning, I noticed about 30 men dressed identically for what appeared to be a casting call for a Mesopotamian remake of *Reservoir Dogs*: cheap black suits, thin black ties, white shirts. They were, in fact, cadets—officers in training at the Ministry of Interior, a main organ of Iraqi state security.

But never far from the sites of state-building were signs of others undermining that same state. I thought of the ominous line from the poet Shelley: "I arise and unbuild it again." In this case, the undermining agent occupied prime real estate just across from the Interior Ministry: an administrative headquarters for the PMF. It sprawled over a large block in central Baghdad. On the right, a state-building site; on the left, a site for unbuilding it, through the efforts of militias widely suspected of answering to another country's government.

Within the PMF headquarters, the group's leaders barely disguise the fact that their allegiances are split between Iraq and Iran. Photos of Khamenei and Soleimani are everywhere. The militias that make up the PMF have units that operate independently from the Iraqi state and are even more proudly sectarian and loyal to Iran. Some are listed by the Americans as terror groups. I spent an hour in a political office of one of the more extreme of these groups, Harakat Hezbollah al-Nujaba. "Nujaba is quite simply the closest militia to Iran," Malik said. "It is Iran's military wing in Iraq. They get their commands directly from Tehran." The friendly spokesperson, Hussein al-Musawi,

compared his group's fondness for Iran to the natural alliance, based on shared interests and values, between the United States and Israel. Look in the mirror, he said. "America and Israel have their alliance, and we have ours." It was odd, though, that Iran had so *many* friends, and that even with such dominance, they could not come together to form a coherent government.

The reason for this incoherence, other Iraqis told me, is that incoherence has always been in Iran's interest. If you were Khamenei, or Soleimani, and had spent your early life listening to Iraqi-bomber raids on Tehran, or reading reports of your countrymen being fried like eggplants by Iraqis, wouldn't you be cautious about conjuring an Iraqi government as powerful as your own? Any tool that a Shiite government could build might become an American, Sunni, or Kurdish one, if power shifted. The safest course would be to force out the Americans, persecute the Sunnis, and then let the Shiite factions bicker forever. The most dangerous of all scenarios, for the Iranians, would be the rise of an Iraq with its own interests and means to pursue them at Iran's expense. Iran built an Axis to serve Iran, but built it in such a shoddy and corrupt way that, in Iraq, it often prefers to serve only itself.

Just two years ago, it appeared that Iran had three guns pointed at Israel's head. One was Hezbollah, with its much-vaunted rockets; another was Iraq, with battle-hardened militias ready to send drones and rockets, and possibly even fighters, through Syria; and the last was Yemen. When Israel decided to strike Iran, two of the guns didn't fire. Hezbollah was caught by surprise and decimated in the first attack. Iraq's militias were understandably concerned about facing the same quick denouement as Hezbollah. Only Yemen's Houthis took their shot—multiple drones and missiles, aimed straight at Israeli population centers—but without partners, they were not enough to substantiate the threat that the Axis represented.

By 2025, the Axis was in disarray. Iran's leaders still had their old distaste for direct confrontation. No direct confrontation and no indirect confrontation means no deterrence. Israel's dominance in those other corners of the arena gave it the confidence to start June's 12-day war, in which the last remaining Iranian strategic tool was its ballistic missiles. The war ended with a lopsided Israeli victory, and with Iran scrambling to find more ways to punish and deter Israel if hostilities resumed.

HOW LONG will Iran take to find an alternative to the Axis? When Iran was bereft before, finding another way forward took 15 years. Maybe it will never recover, and the Axis will turn out to be Iran's last good strategic idea. Maybe the next idea will be much better than the Axis—a nuclear weapon produced with unprecedented stealth, say, or something more clever than my own small mind can contemplate. Michael Doran, of the Hudson Institute, suggested that one possible fate was that of Castro's Cuba: Iran would swap its first generation of charismatic leaders for a military junta. "By some lights, the reign of the mullahs ended a long time ago, and it's already an IRGC regime," he told me, referring to Iran's Islamic Revolutionary Guard Corps. The ideology of the regime is evolving from revolutionary Shiism to Persian nationalism, he

said. But that shift would not mean that enmity with the United States and Israel would evaporate. A diminished Iran, sapped of its charisma, would continue seeking ways to harass Israel and the United States. This behavior is a singular and consistent feature of the Islamic Republic. Even when the regime has looked more amenable to peace with the U.S., through deals and compromise, it has labored mightily for the opposite.

"The resistance is an inextricable part of the Islamic Republic's identity," Karim Sadjadpour, a scholar at the Carnegie Endowment for International Peace, told me. Khamenei has made feints and tactical adjustments. But the attempt to lead a revolutionary international movement against the United States and Israel, Sadjadpour said, is nonnegotiable. "Death to America, death to Israel, and hijab," he told me, seem to be points of stubborn insistence, not subject to reassessment.

In 2015, the Obama administration's nuclear deal with Iran established unprecedented access to its nuclear sites, and strict but temporary limits on enrichment. It did nothing, though, to dull Iran's enthusiasm for attacking the United States and Israel. In anticipation of a deal, and during the years the deal was in effect, Iran accelerated its support for the Axis. It used extra resources and latitude to become more aggressive. It intensified its support for Assad (having already prolonged a civil war); it strengthened its ties to the Houthis; it gave money and rockets to Hezbollah; it reportedly plotted and carried out terrorist attacks overseas. After the United States exited the nuclear deal, Iran allegedly tried to kill former National Security Adviser John Bolton, former Secretary of State Michael Pompeo, and the Iranian dissident Masih Alinejad.

Peace is not overrated. Many Iranians who hate their government nonetheless cheered the end of the war, and decried the senseless death of their countrymen at the hands of a faraway government whose concern for Iranian life was open to doubt. But not all peace is equal, and this strange, eventful history offers many reasons to suspect that the present peace with Iran will be a brief parenthesis in the long story of mutual enmity.

When Ayatollah Ruhollah Khomeini agreed to end the Iran-Iraq War, he likened the peace to drinking from a poisoned chalice. He did not—he could not—perform the elementary self-criticism that would have been involved in admitting that his decision to prolong the war and multiply its miseries was catastrophic. The peace at the end of the recent war with Israel is similarly marked by a lack of Iranian introspection or remorse.

Many Iranians wonder why their government spends so much money and effort on picking fights with Israel, the United States, and their allies, rather than on fixing its own corruption. I see no sign that the government itself wishes to reassess those priorities. Instead, it will do what it always does, which is look for bold new ways to pursue those priorities, with renewed vigor. The suffering of Iranians would be bad enough. But Iran's determination to spread that suffering around to its friends and enemies alike makes it a uniquely awful neighbor, in peace as well as in war. *A*

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ESSAY

The Ghost of Lady Murasaki

*A thousand years ago,
she wrote The Tale of
Genji, a story of sex
and intrigue in Japan's
imperial court. I went
to Kyoto to find her.*

By Lauren Groff
*Photographs by
Takako Kido*

In mid-April, I flew to Japan because I'd become obsessed with an 11th-century Japanese novel called *The Tale of Genji*. I also had a frantic longing to escape my country. At its best, literature is a way to loft readers so far above the burning present that we can see a vast landscape of



Kyoto at night



A view of the Genji garden from the veranda of the Rozan-ji Temple

time below us. From the clouds, we watch the cyclical turn of seasons and history, and can take a sort of bitter comfort in the fact that humans have always been a species that simply can't help setting our world on fire.

I was bewildered that *The Tale of Genji* had such a hold on me at this particular moment: It is a wild, confounding work that many consider to be the first novel ever written, by a mysterious woman whose true name we'll never know, but whom we call Murasaki Shikibu, or Lady Murasaki. The novel is more than 1,000 pages long, more than 1,000 years old, and larded with enigmatic poetry. It's about people whose lives differ so much—in custom, religion, education, wealth, privilege, politics, hierarchy, aesthetics—from the lives of 21st-century Americans that most of their concerns have become nearly illegible to us through the scrim of time and language.

Even so, this novel, which I first encountered almost three decades ago, returned insistently. Once again, I was caught up in its radically unfamiliar

world and literary form. Unlike most Western books, Lady Murasaki's tale isn't guided by an Aristotelian arc of action that steadily rises to a climax, followed by a denouement. Instead, the novel is episodic and patterned with recurring images and ideas: swiftly fading cherry blossoms, clouds moving through the sky, autumn leaves, the aching transience of life on this planet. The spirits of jealous lovers possess and sicken primary characters; scandals in one generation echo, transformed, in the next. Nine centuries before Gabriel García Márquez was born, Lady Murasaki infused her story with magical realism. Classics resonate through time for a reason, but what *The Tale of Genji* was saying to me so urgently was far too faint to hear. I wanted to track down the ghost of its author in her own city, now Kyoto, which was then the capital of imperial Japan. I wanted to get her to speak to me a little louder.

Medieval women have long fascinated me, particularly artistic medieval women whose work seems to push against the limits of their era and, as a result, show

the places they write about in a strange new light. In my 2021 novel, *Matrix*, I imagined a life of the 12th-century writer Marie de France, the first known female poet in the French language, whose *Lais*, a series of courtly poems, brims with weird vitality, and about whom only two facts are known: that her name was Marie, and that she came from France but lived in England. I have lived in both of those countries, but the Heian era (794–1185) in Japan is thrillingly distant to my imagination.

What we know of the contours of Heian imperial-court culture makes *The Tale of Genji*'s very existence miraculous. The lives of high-born women within the court were both isolated and political: They were pawns in a clan system by which men acquired social status and power through marriage. Polygamy prevailed in the aristocracy, and a husband's various wives were ranked in importance. Once married, women in the ruling class lived almost entirely in seclusion, and were forced to hide their faces behind screens and fans. Almost no court women

were taught to read or write Chinese, the language of the imperial bureaucracy.

In response, women in the court developed a written form of Japanese, which was still relatively new when Lady Murasaki, likely born in 973, was growing up. Along with monogatari, fictional tales drawn from the oral tradition, the first fully Japanese prose texts were women's autobiographical writings. The other famous work from the era that remains famous today was a racy diary about the Heian court, *The Pillow Book*, by a contemporary of Lady Murasaki named Sei Shōnagon. Men in the imperial aristocracy also avidly read texts in Japanese, but nobody, male or female, bothered to retain for the historical record the actual name of *The Tale of Genji's* author, even though she was recognized during her lifetime as a supremely skilled writer. She was given her pen name, which means "purple," in homage to one of the central female characters in her tale: the child-wife—and dearest beloved—of the eponymous Genji, who is a prince of both imperial and common blood. *Shikibu*, which means "ministry of ceremonies," has nothing to do with the writer, either: It refers to the position of her father at court.

ON THE NIGHT I arrived in Kyoto with my husband, I was delighted to bump my suitcase down Teramachi Street, where Lady Murasaki is rumored to have lived with her father at some point in her youth. In the dark, Kyoto is at its most magical. It emanates a deep softness and hush, despite the hordes of tourists eager to touch the layers of history that the city so conscientiously maintains. The buildings are traditionally wood, and so most of Kyoto has been repeatedly subject to fires, razed and rebuilt many times over the past millennium. Still, the streets of the city's old sections, though immaculate and nearly odorless, seem to retain some of their medieval flavor, with small buildings pressed closely together, and tiny storefronts on the bottom floors gently illuminated by round lanterns.

Teramachi Street, much of which is now a covered arcade, surely looks nothing like it did in Lady Murasaki's time, yet its refined-but-accessible vibe tracks with

the known outlines of the writer's life. She was born into a family waning in power, a minor offshoot of the most prominent clan at the time, the Fujiwaras. Her pedigree was literary: Her father, grandfather, great-grandfather, and brother were all celebrated poets. Her diary offers intimate glimpses of her private thoughts. It tells how, as a young girl, she eavesdropped on her father as he taught her brother Chinese, and proved herself the far better student. "What a pity she was not born a man!" she describes her father saying. To be a woman fluent in Chinese was so freakish that she "pretended to be incapable of reading even the inscriptions on the screens" that divided rooms and shielded women's bodies from view. She "worried what people would think if they heard such rumors" of her abilities.

In the year 996, still unmarried at a time when marriage in very young womanhood was expected for the aristocracy, she accompanied her father north to Echizen; he'd been appointed a regional governor, which was considered something of a dishonor, as power diminished with distance from the capital. She returned to Kyoto in her mid-20s to marry a much older relative, Fujiwara no Nobutaka, who is vividly described in *The Pillow Book* as a flamboyant character with many other wives. He died two years later in an epidemic, leaving her with a young daughter who would eventually become a poet known as Daini no Sanmi. During her widowhood, in the early 1000s, out of grief or boredom, Lady Murasaki began writing *The Tale of Genji* in Japanese.

Because *The Tale of Genji* described scandalous love affairs, reading it became a craze, something like watching a prestige television series today. Around the same time that its circulating chapters won admirers, Lady Murasaki was summoned to the aesthetically refined court of Emperor Ichijō. There she entered the service of Shōshi, the second empress and the daughter of the most powerful man of the day, Fujiwara no Michinaga, the controlling figure behind the emperor's throne. Shōshi surrounded herself with ladies talented in music, drawing, and poetry, and when she discovered that

Lady Murasaki could read and write Chinese, she asked for secret lessons.

Lady Murasaki's diary suggests a sort of singing-bird entrapment—a sense of being under immense pressure to add new chapters to her tale; Michinaga would even go into her private space to steal her work in progress. She was lonely at court and reserved among the competitive women. One moment in her diary has always stood out to me, when the careful screen of convention slips and a piece of the too-bright self flares through. She is talking about the ladies of the court and how they see her: "No one liked her," she writes, ventriloquizing their views of her. "They all said she was pretentious, awkward, difficult to approach, prickly, too fond of her tales, haughty, prone to versifying, disdainful, cantankerous, and scornful." Sometime after 1013, the year she may have turned 40 and the date of the last mention of her in court records, she died.

I DISCOVERED an onsen, or a hot collective bath segregated by gender, in the basement of our ryokan, a small traditional inn, in an old part of Kyoto. My husband and I descended from our room in slippers and traditional cotton robes (yukatas), which we'd been instructed to fold left over right before fastening them with the embroidered obi, because right over left is how the Japanese dress their dead. Then we scrubbed ourselves pink with bucketfuls of water before climbing into the pool. It was very late, and the heat drew out the travel weariness from my bones. I floated and dreamed, and I had an inkling that, though my love of Lady Murasaki could be explained only through beautiful abstraction—by meeting her mind in her work—I might begin to understand something tangible about her through the wordless animal body.

The Tale of Genji's early chapters are rooted in fairy-tale monogatari, but the book soon metamorphoses into its own strange thing, a courtly romance that follows Prince Genji over his half century of life, and then, after Genji's death, takes up the lives of the next generation. Genji, called "The Radiant Prince," is the son of an emperor and his most beloved wife, who has no powerful family to protect her

child. Like Lady Murasaki herself, Genji is both an insider and an outsider. As a young boy, he enters the court with the rank of a commoner, but he becomes by far the most beautiful and talented of men, easily outshining his half brother, the future emperor. He is also wildly, and audaciously, sexy: As a teenager, he seduces and has a son with one of the wives of his father, the current emperor. Though Genji goes on to marry several times, he continues to make a game of seducing as many of the most beautiful women at court as he can, a game as much of spiritual and poetic yearning as it is of bodily lust. When he's about 26 years old, his scandalous behavior leads him to years of exile in Suma, by the seaside. There he begins another relationship, one that produces a child who becomes an empress. When he returns to court, restored from disgrace, he never stops chasing women.

My husband and I rise early; even in Japan, we were up with the birds. Nothing opened for hours, so we descended to the onsen again, then went out on a quest for coffee—not easy to find in Japan before 8 a.m., we learned, unless you like cold coffee in cans from the vending machines on every street. This is how we discovered the wonders of the Japanese 7/11, full of tasty fresh foods such as onigiri, seaweed-covered rice pyramids, and the internationally and justly famous egg-salad sandwiches, with their incredibly soft white bread and tangy, smooth egg filling, which became our favorite anytime snack. I had a surreal moment while we sat on the clean-swept Kyoto curb, drinking hot coffee and eating egg-salad sandwiches, when the barely dawn-touched streets were entirely empty of people. I suddenly felt myself living outside time for a brief spell, not within the 21st century or any of the other centuries visible in Kyoto's smooth palimpsest, but within the hovering dual-time that is the experience of reading a great novel.

I do think *The Tale of Genji* is a great novel, and some of its greatness comes from its self-contradictions. Prince Genji is held up as a courtly ideal, yet he's also a renegade; he's an amorous adventurer, yet also deeply attached to one of his beloved wives, Murasaki. The narrative sporadically darts into his consciousness, reflecting a conflicted conscience and a degree of interiority that

make the book revolutionary. I believe interiority is necessary to define a novel as a novel, and its absence disqualifies the other books that scholars have proposed as alternative “first novels” in the history of literature, such as Apuleius's *The Golden Ass*.

Interiority is especially fraught in the evocation of Genji and his young wife Murasaki's relationship. He discovers her as an enchanting child of about 10, kidnaps her, secludes her in a lonely house, molds her into the perfectly accomplished wife he wants, and marries her when she is a teenager, which the narrative presents as something of a romantic coup. But the prose simultaneously makes clear what is happening from Murasaki's point of view: This man, who first presented himself to her as her adoptive father, comes to her bed when she is still a child and violates her painfully, against her will and to her immense distress. None of the people who care for her lifts a finger to help her.

Genji pursues many other affairs, then suddenly the narrative reveals that he has died at the age of 52. At this point, *The Tale of Genji* does a spin in the air: There are 13 more chapters, set primarily in Uji, a city south of Kyoto, which feature two men of the next generation vying for the love of the young princess Ukifune. She is driven to despair by their caddish treatment, and her suffering becomes the focus of the narration. This final section closes the book cryptically and counter-romantically—Ukifune renounces the world and becomes a nun—and delivered a jolt when I first read it, because it goes against any epiphanic or revelatory ending that I've been taught by Western narratives to expect.

When I returned to the book with the idea of visiting Kyoto, I began to read the final chapters as the novel's firm renunciation of itself. The tale turns its back savagely on its previous concerns, saying that the things it had taught us all along to think of as so important—the heartache, the rise and fall of fortunes, the attention to aesthetics—in the end actually mean nothing; it is as if the author has lost patience with male callousness, upheld for so many pages as the signature of courtly elegance.

The reader of any text provides half of its meaning. To me, an American woman in the early 21st century, prickly and

free-spirited Lady Murasaki now appears to have been chafing under conformist pressures in the Heian court. I read her radical evocations of characters' internal states as though they are eruptions of the author's own rebellious soul. Perhaps this subversive interpretation is wish fulfillment on my part. But Kyoto itself seemed to agree with it. The city is a place for people who love history and appreciate ambiguity. Shinto shrines are everywhere, meticulously maintained and restored, robust memento mori of the many generations of humans who have lived and died adoring them. The April cherry trees, with their brief pink opulence, seem infused with the spirit of *mono no aware*—the Japanese idea of the transience of things, the gentle sadness yet also the beauty of impermanence. This is a place where Lady Murasaki's work has never disappeared, yet also has never ceased to take on new shapes and transform to fit the current moment.

BY DAWN, we were driving along the Kamo River next to runners confettied by the last of the cherry blossoms. We were joined by Takako Kido, our spark plug of a photographer, and her friend (and fellow hip-hop dancer) from college, Masaaki Kaga, who had once been a historical tour guide for schoolchildren, and had been roped into being our driver that day. When I asked them about *The Tale of Genji*, Takako shrugged. “Everyone knows *Genji*,” she said. “It's in our bones.” But neither she nor Masa had read the book in decades.

As a millennium-old, omnipresent reference in Japan, like Shakespeare's work in the Anglophone world, the book “no longer has to be actually read in order to have been ‘read,’” Dennis Washburn, a professor at Dartmouth College, writes in an introduction to his 2015 translation (in my opinion the best one, with its clear and accessible prose). Soon after *The Tale of Genji* appeared, it inspired fan fiction and painted illustrations, and artists in every century since have used the tale as a prism to refract the aesthetic, political, and spiritual concerns of their times. Its legacy is everywhere you turn—in Noh drama, erotic parodies, Buddhist rituals, advertisements, manga books, games, anime films. At the Tale of Genji Museum, in Uji, we

watched one film that featured a teenage girl who turns into a cat and ends up in the arms of Genji with a bizarre expression of *ahégao*, or “sexual ecstasy,” on its face. The homage to the novel is eclectic and ever-evolving, both irreverent and faithful. One can find echoes of the work, too, in places frequented long ago by Lady Murasaki and her characters that can be visited today.

It was still dawn when Masa brought us to one of the oldest Shinto shrines in Japan, the Shimogamo, the original version of which was built in 678 and would have already been antique by the time Lady Murasaki venerated its deities there. Shintoism is an Indigenous animist belief system that predates Buddhism’s arrival in Japan, and Shinto sites of worship now exist comfortably alongside Buddhist temples. The forest that surrounds the shrine itself is a *kami*, or “powerful spirit,” and when we watched people, out giving their Shiba Inus an early-morning walk, bowing to individual trees that wore rope belts from which dangled paper lightning bolts, we discovered that the trees were also *kamis*. Genji visits these woods before his exile to Suma and composes a poem wishing that the forest might one day see the injustice against him reversed. As the sun rose, the vermilion paint that decorates most Shinto shrines to ward off evil and misfortune began to shine dazzlingly. At the main shrine, Masa taught us how to pray: throw a small coin into a slatted wooden trough, bow twice, clap twice, pray, then bow again. We prayed, feeling a great spiritual potency in the place, and because it never hurts to send sparks of gratitude into the world.

Kamis can have negative power, too, and shrines are not always portals to peace. In *Genji*, the Kamigamo shrine—loud and crowded and too bright in the hot mid-afternoon sun when we arrived there—appears often, sometimes as a place of conflict. In a memorable scene, one of Genji’s lovers, the intensely jealous Lady Rokujō, and his first wife, Aoi, have both come in ox-drawn carts to Kamigamo to see Genji ride by during the Aoi Matsuri, or wild-ginger festival, and are soon jostling for the best viewing spot. Rokujō’s jealous spirit eventually enters and sickens Aoi’s body until she dies. Later, young Murasaki is also possessed by that bad spirit.



Top: *At the entrance of the Nonomiya shrine, the twisted rope serves as a boundary between sacred and ordinary spaces.*
Middle: *During a tea ceremony at the Shunkō-in Temple, the head priest, Reverend Takafumi Zenryu Kawakami, fills participants’ cups.* Bottom: *The Imperial Palace was rebuilt in the Heian style in 1855.*



*The garden at the
Ginkaku-ji Temple*

We were too early for the wild-ginger festival, which takes place in mid-May, when celebrants in Heian-era costumes process to the shrine from Kyoto's Imperial Palace. I was happy to be spared the crowds jostling for views. The palace itself, which burned down many times over the centuries and in 1855 was rebuilt in the Heian style, is breathtaking in scale, with astonishing roofs curving up at the corners, constructed of layers of cypress bark lashed into place with bamboo strips. Its surrounding lawns of raked gravel and its park of pruned trees made it appear even bigger.

Takako had never visited before—"this is an entirely new Japan for me," she murmured. A moment later, a loud alarm went off: She had leaped across the moat surrounding the wall to take a photo, and leaped nimbly back, laughing, after she was scolded by the guards. Inside the palace,

the rooms were dark and very large; in the days of the Heian court, they would have been partitioned off by screens and curtains. I thought of Murasaki Shikibu trying to write in this place, separated from the noises and voices and smells of others by thin silk, trying to lose herself and her worries in the composition of her text. I saw that the book she was writing would have been another screen between herself and the world, even as the fame the book brought would have, paradoxically, served to bind her even tighter to that world.

ALTHOUGH LADY MURASAKI wrote in her diary of her loneliness and alienation at court, one of her childhood homes was only a couple of miles away. Rozan-ji is a dark-wood Tendai Buddhist temple on the grounds where her family house is said to have been. Fire destroyed the

original residence centuries ago, but in rooms off the temple's quiet courtyard is a small exhibition of scrolls and gilded clamshells decorated with scenes from the novel. A sign at the front gate lays claim to Lady Murasaki, proudly calling her a GREAT WOMAN OF THE WORLD.

Masa brought us to another quiet courtyard just off a busy road, where we found the grave site of Lady Murasaki. Inside were two neatly maintained mounds, with two markers. Her ancient bones are thought to lie beneath the big mound; under the smaller one are those of Ono no Takamura, a poet who lived two centuries before she did, and who was considered to be a protector of souls sent to languish in hell. No one knows how they were paired up, but legend has it that Lady Murasaki's admirers, fearful that her scandalous book had consigned her to punishment in the afterlife,

put them side by side so that he could help her travel out of the underworld. I said a quiet thank-you to her remains for the book I love so much. I was answered by birdsong and traffic on the street beyond the walls. The solemnity was broken by a garbage truck pattering by, singing out in a recorded loop a warning in the voice of a small Japanese child.

Perhaps the most important location for the book is an eighth-century temple called Ishiyama-dera, east of Kyoto on a hillside overlooking Lake Biwa, the largest body of fresh water in Japan. The myth is that Lady Murasaki, during a visit there after her husband died, was struck with the inspiration to write her chef d'oeuvre while gazing up at an August moon. Although Ishiyama-dera is the most stunning of the shrines we saw, with hiking paths and high views of the lake, we encountered very few other tourists, perhaps because the trip from Kyoto requires two train transfers. The grounds were dotted with statues of Lady Murasaki, all of which depict a woman with a large forehead and loose hair, her writing brush in hand. As soon as we entered the gates, I felt a strange, holy energy.

I believe that places, like people, hold memory, and when place memory announces itself, it does so through the body. A tiny museum on the grounds displayed ancient scrolls on which Heian hands had written, sculptures of ancient Buddhas to which Lady Murasaki might have prayed. The temple of Ishiyama-dera rising up from huge, jagged slabs of wol-lastonite; the pagodas perched like little hats atop the hill; the dangling purple wisteria; the lake glittering below; the way the cool wind and the April sunshine filtered through the leaves and pressed upon our skin—an ambiguous understanding that I'd been searching for arrived. There, my body recognized something of the long-gone body of Lady Murasaki, who had also once stood, an animal like me, seeing the stones, smelling the woods and the lake, feeling

the breeze and the warmth on her flesh. I was gripped by the truth of something I'd known only intellectually: how much courage Lady Murasaki, as a woman in her era, had to summon, how much loneliness and insecurity she must have felt, when she dedicated her life to literature in Heian Japan.

We climbed the steps to the great temple, where we found a statue of Kannon, the Buddhist deity of compassion and mercy. We tossed the money, rang the bells, clapped, and prayed to Kannon for the sake of our wounded world.

BY THE END of our trip to Japan, I knew less than ever about the real Murasaki Shikibu. She did not visit me as a ghost in the night. Although I sensed in Kyoto a more rebellious artist than I'd imagined her to be from her work, I didn't hear a clear message from her to blow up the poisonous narratives that have created the tragedies of the current age. I didn't understand much more of the heartache of her life, the person beyond the words.

Yet my body understood *The Tale of Genji* and its marvelous writer far better. First through the sense of taste: At a ryokan near Lake Biwa, famous for its geothermal onsen, we ate a kaiseki dinner, which is a seasonally inspired sequence of courses, their flavors and textures and aromas carefully choreographed. There was no Aristotelian arc in this meal, no central main dish. Every course was equally important, to be savored in its own way. Soup gave way to sashimi so fresh that I could swear it twitched, and this gave way to simmered salted fish, which gave way to a grilled course, and on and on, for three exquisite hours. The meal was episodic, patterned, refusing the very concept of climax in its devotion to the moment.

The sense of sight taught me other things when, at the Zen Buddhist Tenryuji Temple, we walked through the most stunning garden I've ever encountered. Japanese gardens aren't subservient to symmetry in the way that many European gardens are.

They aren't built around any central focus point. Instead, they are created with keen attention to texture and color and season. The one at Tenryuji is said to remain as it was when it was built in the 14th century, when the designer and head priest, Musō Soseki, integrated the surrounding hills into the garden's pattern, in a tradition called shakkei, or "borrowed scenery." As a result, any place in the garden has its own perfect view; every spot holds something new to contemplate. The neat lines of raked gravel around the buildings bring awareness to the present moment and to the impermanence of all things. As I walked its paths, I became hyperconscious of pattern, repetition, texture, transience, the shifting of viewpoint: koi, pond, stone, azalea, camellia, pine, weeping cherry, hill beyond in its gradients of green. I felt I had been given a three-dimensional map of *The Tale of Genji*.

And then, at a tea-and-meditation ceremony at the Shunkō-in Temple, the Reverend Takafumi Zenryu Kawakami, in his splendid purple robes, gave voice to the things that my body had been telling me in its wise, oblique way. We sat on cushions in a room that opened out onto a cool garden, and were led through a long meditation, after which the reverend spoke, telling us that of course there is no single definition of enlightenment. The self is a shifting, inconstant phenomenon, brain and body ever transforming in time and space, with no clear delineation between what is self and what is other. Westerners want certainty but we should embrace ambiguity, he told us; ambiguity is part of nature. He said that to taste tea that has been steeped in cold water, first we should taste with the tip of the tongue, then with the back of the tongue. First you taste umami, then you taste the floral. First you taste the bitter, then you taste the sweet. *A*

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