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OF MIGHT AND MEN

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MANHOOD: THE MASCULINE VIRTUES AMERICA NEEDS. By Josh Hawley.
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INTRODUCTION

“If a man talks shit, then I owe him nothing.”

—*Taylor Swift*¹

“[N]arcissism joined to power is dangerous.”

—*Josh Hawley*²

Are men okay? No—at least according to a spate of recent scholarship and popular writing documenting the precarious fortunes of American men.³ The gist of this body of work is that after five decades of interventions aimed at rectifying discrimination against women and girls, we are facing a new gender gap—one in which men are on the losing end. Today, women outperform men on most measures of academic success, from kindergarten to graduate programs.⁴ Men are less likely than women to complete high school—and, if they enroll in college, they are less likely to obtain college degrees.⁵ Richard Reeves, the President of the American

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1. *I Did Something Bad*, on REPUTATION (Big Machine 2017).

2. MANHOOD: THE MASCULINE VIRTUES AMERICA NEEDS 187 (2023).

3. See, e.g., WARREN FARRELL, THE BOY CRISIS: WHY OUR BOYS ARE STRUGGLING AND WHAT WE CAN DO ABOUT IT (2018); KAY S. HYMOWITZ, MANNING UP: HOW THE RISE OF WOMEN HAS TURNED MEN INTO BOYS (2012); RICHARD V. REEVES, OF BOYS AND MEN: WHY THE MODERN MALE IS STRUGGLING, WHY IT MATTERS, AND WHAT TO DO ABOUT IT (2022); Sujata Gupta, *The Boys Are Not OK*, SCIENCE NEWS, July 1, 2023, at 18.

4. Joel Mittleman, *Intersecting the Academic Gender Gap: The Education of Lesbian, Gay, and Bisexual America*, 87 AM. SOCIO. REV. 303, 303 (2022).

5. Richard V. Reeves & Ember Smith, *The Male College Crisis Is Not Just in Enrollment, but Completion*, BROOKINGS (Oct. 8, 2021), <https://www.brookings.edu/articles/the-male-college-crisis-is-not-just-in-enrollment-but-completion> [perma.cc/M996-HCMX].

Institute for Boys and Men, has studied these trends, and noted that women now receive 57% of bachelor's degrees.⁶ Women also obtain more master's and associate's degrees.⁷

A similar pattern is emerging in the labor market and personal finance. The share of men between the ages of 25 and 54 who are in the labor market has declined sharply: Today, almost 10% of men in that age bracket are 'neither working nor seeking work,' a description that applied to only 3% of those men in 1960.⁸ Between 1980 and 2021, financial independence among 25-year-old men declined from 77% to 64%, while financial independence among 25-year-old women rose from 50% to 56%.⁹ Men also lag behind women with respect to lifespan and certain health metrics. On average, American men die at younger ages than their female counterparts.¹⁰ The data are even more alarming in the context of particular types of deaths, like drug overdoses,¹¹ alcohol-related deaths,¹² and suicide, with men far outpacing women in each of these categories.¹³

Still, it is not all doom and gloom for American men, who continue to dominate certain sectors of society. College-educated men remain significantly over-represented in the halls of power. Men still dominate elected government positions, representing approximately 75% of members of

6. REEVES, *supra* note 3, at 11; Richard V. Reeves, BROOKINGS, <https://www.brookings.edu/people/richard-v-reeves/> [perma.cc/2Y2A-UP7Q].

7. *Id.*

8. Idrees Kahloon, *What's the Matter with Men?*, THE NEW YORKER (Jan. 23, 2023), <https://www.newyorker.com/magazine/2023/01/30/whats-the-matter-with-men> [perma.cc/A44F-6VLG].

9. Jacob Zinkula & Jason Lalljee, *Young Men Aren't Working as Much as They Used To—and They Have Less Financial Freedom Than Previous Generations*, BUS. INSIDER (June 23, 2023, 6:30 AM), <https://www.businessinsider.com/young-men-work-less-financially-independent-salary-marriageability-2023-6> [perma.cc/4LFZ-TH92].

10. Charlotte Morabito, *Here's Why American Men Die Younger Than Women on Average and How to Fix It*, CNBC (Mar. 1, 2023, 7:50 AM), <https://www.cnbc.com/2023/03/01/why-american-men-die-younger-than-women-on-average-and-how-to-fix-it.html> [perma.cc/4ZQT-NY3Y].

11. U.S. CONG. JOINT ECON. COMM., LONG-TERM TRENDS IN DEATHS OF DESPAIR 8 (2019), https://www.jec.senate.gov/public/_cache/files/0f2d3dba-9fdc-41e5-9bd1-9c13f4204e35/jec-report-deaths-of-despair.pdf [perma.cc/5KZC-NVX].

12. *Alcohol Abuse Statistics*, NAT'L CTR. FOR DRUG ABUSE STAT. (2023), <https://drugabusestatistics.org/alcohol-abuse-statistics> [perma.cc/7M6F-ZLDX].

13. *Suicide Statistics*, AM. FOUND. FOR SUICIDE PREVENTION (2023), <https://afsp.org/suicide-statistics> [perma.cc/ND7X-P4CB].

the federal legislature¹⁴ and up to 85% of some state legislatures.¹⁵ They also make up the vast majority of state chief executives.¹⁶ Men continue to enjoy a distinct advantage in the most highly compensated private sector industries.¹⁷ Male doctors make more than their female counterparts,¹⁸ and male lawyers are overrepresented in high-ranking positions in the private sector.¹⁹ And when it comes to accrued wealth, at the top there is no comparison: Of the 400 wealthiest Americans in 2022, only 60 were women.²⁰

For some, however, men's vice grip on positions of power and wealth does not assuage general concerns about American men. Among those fixated on the plight of American men is Missouri's senior senator, Josh Hawley, who recently shared his thoughts on the topic in the book *Manhood: The Masculine Virtues America Needs*. Unlike Reeves and other scholars who have devoted considerable attention and research to the new gender gap, Hawley comes armed principally with Bible verses and personal anecdotes.

Hawley adverts briefly to the research of some scholars who have studied these issues and concurs with their view that American men are

14. In 2022, just 24 women served in the 100-member United States Senate, and 122 in the 435-member House. *Women in the U.S. Congress 2022*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/facts/levels-office/congress/women-us-congress-2022> [perma.cc/QQ9L-CB5A].

15. In Mississippi, the state from which *Dobbs v. Jackson Women's Health Organization*, the decision overruling *Roe v. Wade*, arose, 85% of legislators are men. *Women in State Legislatures 2024*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/facts/levels-office/state-legislature/women-state-legislatures-2024> [perma.cc/793B-NAVS]. See Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 728, 769 (2024) (discussing the gender imbalance in state legislatures).

16. As of 2023, twelve of fifty state governors are women. *Women in Statewide Elective Executive Office 2023*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/facts/levels-office/statewide-elective-executive/women-statewide-elective-executive-office-2022> [perma.cc/88LM-R2AU].

17. In 2023, for the first time, women represented a whopping 10% of Fortune 500 CEOs—a widely touted milestone. See Emma Hinchliffe, *Women CEOs Run 10.4% of Fortune 500 Companies. A Quarter of the 52 Leaders Became CEO in the Past Year*, FORTUNE (June 5, 2023, 6:45 AM), <https://fortune.com/2023/06/05/fortune-500-companies-2023-women-10-percent/#> [perma.cc/RUA7-C8HV].

18. Hailey Mensik, *Women Making up More of Physician Workforce*, HEALTHCARE DIVE (Jan. 18, 2023), <https://www.healthcaredive.com/news/AAMC-us-physician-workforce-women-specialties/640621> [https://perma.cc/8QZ4-YFN5].

19. A.B.A., ABA PROFILE OF THE LEGAL PROFESSION 2022 66 (2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf> [perma.cc/2TZR-3F2E] (noting that, as of 2022, women represented only 22% of law firm equity partners).

20. *The Forbes 400: The Definitive Ranking of the Wealthiest Americans in 2023*, FORBES (2023), <https://www.forbes.com/forbes-400> [perma.cc/7B6L-GM84].

falling behind. But many scholars who have done research, rather than “he-search,” maintain that a constellation of social, cultural, and economic forces is responsible for the precarious state of contemporary men, and accordingly propose some possible interventions. Reeves, for example, suggests that this new gender gap may be attributed to what he views as sex-based differences in the speed and character of adolescent brain development,²¹ for which he offers a range of responsive policy proposals.²² Economists Anne Case and Angus Deaton have identified “deaths of despair,” a genuine epidemic of drug and alcohol-related deaths and suicides that disproportionately impacts men—primarily middle-aged white men—for which they too offer a range of policy prescriptions, including reforms to current approaches to addiction, healthcare, education, and wage policies.²³

Hawley does not engage with any of this research. Instead, Hawley’s “he-search” has convinced him that responsibility for the various crises afflicting American men lies primarily with a group he calls, ridiculously, the “Epicureans.” Although Hawley does not clearly define the term, it seems to refer to liberals, elites, Democrats, and maybe also Alexandria Ocasio-Cortez, Ketanji Brown Jackson, and Taylor Swift fans. It’s hard to say.²⁴

On Hawley’s telling, the Epicureans and their demands for “wokeness” are not only the principal cause of men’s decline—they are, by extension, driving the *nation’s* decline. Hawley insists that men’s failures lead inexorably to the failure of the American experiment. Hawley’s prescription—and the masculine redemption it underwrites—therefore has broader, more patriotic contours. He is not simply fighting to redeem men. He is fighting to redeem the promise of America and American democracy itself.

In this Review, we analyze Hawley’s prescription and what it tells us about both Hawley and his vision for America. As we explain, Hawley’s assessment of the problem and his reform proposals reflect the blinkered view that equal opportunity is a zero-sum game. Although women and minorities have managed to gain a toehold on better educational and employment prospects, such progress, Hawley suggests, comes at the expense of the white men who have always enjoyed unfettered access to such things. In this regard, Hawley’s quest for masculine redemption underwrites the kind of grievance-fueled, revanchist fever dream that launched demands to “make America great again” and spurred thousands to storm the Capitol on January 6, 2021.

21. REEVES, *supra* note 3, at 4, 8–11.

22. *Id.*

23. ANNE CASE & ANGUS DEATON, DEATHS OF DESPAIR AND THE FUTURE OF CAPITALISM 245–62 (2020).

24. *See infra.*

This Review proceeds in two parts. Part I holds our collective noses to briefly rehearse *Manhood's* principal themes. Hawley organizes the book around six traditional masculine archetypes: husband, father, warrior, builder, priest, and king. He lavishly praises Theodore Roosevelt as the embodiment of all of these archetypes—the very model of the “true man.” And Hawley depicts the true man’s antagonist, the Epicurean, as the person(s) responsible for the woes that have befallen American men. Hawley’s veneration of Roosevelt and antipathy for the Epicurean class reveals much about Hawley’s worldview, including how it aligns, whether intentionally or not, with “replacement theory” and other assaults on the prospect of an integrated, multiracial democracy.

Having provided an account of *Manhood's* themes, Part II draws connections between the book’s themes and other sociolegal developments. In particular, we note the considerable synergies between Hawley’s views and recent Supreme Court jurisprudence. Reviewing a series of recent cases that align with Hawley’s masculine archetypes, as well as recent developments outside of the Court, we detail the ways in which the Court has played—and may continue to play—a role in recuperating the flagging fortunes of American men.

I. MAKING MEN MATTER . . . MORE!

Manhood is organized into two principal parts. Part I outlines the various problems facing American men and sets the stage for Hawley’s prescriptions. As if to underscore the divine nature of his mission to redeem American manhood, Hawley’s first chapter is titled “In the Beginning” and links the roots of manhood and masculinity to a prelapsarian Eden. The implication seems to be that American men, like Adam before them, were on a preordained path to greatness until a pesky woman (with serpentine, or at least serpent-influenced, tendencies) got in the way. Adam’s mission, *man's* mission, is to create order from chaos—to restructure the Earth as a temple and “to serve God by helping build the earth into an Eden” (p. 11).

Hawley believes the problem is that men have failed to execute this mission. For Hawley, this failure can be traced, in part, to the fact that “the story of the Bible is so little known today” (p. 11). Reacquainting American men with the Bible—“an epic that speaks directly to the purpose of men” (p. 11)—is the path to redemption. Thankfully, Hawley—along with *Manhood*, currently on sale for only \$14.99 on Amazon.com²⁵—is available to light the way, providing American men with a reintroduction to the “greatest story ever told” (with a healthy side of men’s rights po-

25. *Manhood: The Masculine Virtues America Needs*, AMAZON, <https://www.amazon.com/Manhood-America-Needs-Josh-Hawley/dp/168451357X> [perma.cc/X6S9-TG4E].

lemic). “[I]n telling again these Adam stories,” Hawley hopes that American men “will find our own story written there and discover new vision for our lives” (p. 13).

The next three chapters in Part I outline the problems facing American men. Much of it nods to the Bible, specifically the Old Testament and its stories of the Abrahamic patriarchs.²⁶ Between folksy anecdotes from his own life,²⁷ Hawley venerates Abraham as the paradigmatic model of masculinity because Abraham lived his life according to God’s purpose. Abraham was a “builder” who sought to create a temple to God on Earth whilst shouldering the masculine responsibilities of a wife and family. As the story goes, God was so pleased with Abraham that he blessed the patriarch and his elderly wife, Sarah, with a postmenopausal baby (chs. 2–4).

American manhood would not be in disrepair, it seems, if more men emulated Abraham (or Adam, for that matter). But alas, American men have fallen prey to the siren song of Epicurean liberalism: a worldview Hawley traces to the philosopher Epicurus, who, according to Hawley, counseled people to abandon religious faith to “pursu[e] pleasure and personal satisfaction.”²⁸ “Epicureanism” and “liberalism” become interchangeable shorthand for a culture in which secular values prevail over religion, political conservatism is mocked (or worse, canceled), and individuals embrace feminism, civil rights, LGBTQ rights, moral relativism,

26. For a book that seeks to restore the Bible to its rightful place as the principal text in American life, *Manhood* has shockingly little to say about the New Testament, Jesus, and his (Epicurean-like) efforts to feed and clothe the poor and comfort the afflicted.

27. These anecdotes are selective. Hawley never really acknowledges his ultra-elite credentials, nor does he mention that his Supreme Court clerkship, to which he does allude, was with Chief Justice John Roberts, a figure some on the right revile as an unreliable conservative. *Biographical Directory of the United States Congress: Hawley, Joshua David*, CONG., <https://bioguidereetro.congress.gov/Home/MemberDetails?memIndex=H001089> [perma.cc/2BEL-F5AM]; Kathy Gilsinan, *Josh is a Show Pony. Erin is a Work Horse*, POLITICO: MAG. (Feb. 23, 2024, 5:00 AM), <https://www.politico.com/news/magazine/2024/02/23/erin-hawley-abortion-pill-supreme-court-00142493> [perma.cc/42BB-AFBF]; see also Josh Gerstein, *Conservatives Blast Roberts as Turncoat*, POLITICO (June 27, 2019, 8:54 PM), <https://www.politico.com/story/2019/06/27/conservatives-blast-roberts-1386124> [perma.cc/CJY2-P5XE].

28. P. 28; see Rebecca Onion, *Man Overboard*, SLATE (May 18, 2023, 5:50 AM), <https://slate.com/culture/2023/05/josh-hawley-manhood-book-republican-senator-wife.html> [perma.cc/X8NB-LCY2]. Hawley seems to have fallen into the common trap of misunderstanding Epicurus and his philosophy. Epicurus advocated a life of pleasure, but his understanding of what constitutes “pleasure” was far less self-serving and hedonistic than Hawley’s account allows. In fact, Epicurus cautioned that a person can only be happy and free from suffering—that is, live a life of pleasure—by living *wisely, soberly, and morally*. Epicurus, *Letter to Menoeceus*, MASS. INST. TECH.: INTERNET CLASSICS ARCHIVE, (Robert Drew Hicks, trans.), <http://classics.mit.edu/Epicurus/menoec.html> [perma.cc/Y7ET-NMP6]; see JONATHAN BARNES, *Epicurus: Meaning and Thinking*, in LOGICAL MATTERS: ESSAYS IN ANCIENT PHILOSOPHY 606 (Maddalena Bonelli ed., 2012).

and diversity, all in pursuit of their own individualistic vision of the good life.

Having identified the problem and its root cause, Part II of *Manhood* pivots to prescription. To recuperate American men—and save the soul of this nation—Hawley calls upon American men to recommit to manhood and masculine virtues. And manhood, for Hawley, is conveniently embodied in the Biblical archetypes of husband, father, warrior, builder, priest, and king, each of which is discussed in its own chapter.²⁹

But it is not only Biblical archetypes that Hawley marshals as exemplars of manhood. Theodore Roosevelt—on whom Hawley has long been fixated³⁰—is perhaps the key nonscriptural character in the book, in magnitude of influence if not citation count.³¹ Like Hawley, Roosevelt was preoccupied with what he understood to be a crisis of masculinity—in Roosevelt’s day termed “The Boy Problem.”³² For Roosevelt, as for Hawley, the antidote to “the Boy Problem” was cultivating “manly vigor.”³³

It is difficult to overlook the connections between Hawley and Roosevelt’s shared interest in masculinity as a vehicle for nation-building and

29. See Onion, *supra* note 28.

30. P. 201 (“As a boy I loved Roosevelt, and I still do . . .”). Hawley even authored a book about Roosevelt in graduate school. See JOSHUA DAVID HAWLEY, *THEODORE ROOSEVELT: PREACHER OF RIGHTEOUSNESS* (2008). Hawley’s Roosevelt biography is a hagiographic portrait, including a bizarrely euphemism-laden chapter about Roosevelt’s undergraduate studies at Harvard under the tutelage of figures like Nathaniel Shaler, whose views Hawley terms “racialist.” *Id.* at 38. Shaler’s teachings described “the Teutonic race” (in modern parlance, the white race) as the only race that “managed to climb above the tribal stage to the final station of human development.” *Id.*; see also DAVID MCCULLOUGH, *MORNINGS ON HORSEBACK* 195–218 (1981) (discussing Shaler). Hawley is evasive on whether Roosevelt shared Shaler’s views, but Roosevelt’s own words suggest that he likely did. See THEODORE ROOSEVELT, *THE WINNING OF THE WEST* 45 (1889) (extolling the “righteous[ness]” of “a war with savages . . . American and Indian, Boer and Zulu, Cossack and Tartar, New Zealander and Maori,—in each case the victor, horrible though many of his deeds are, has laid deep the foundations for the future greatness of a mighty people”); HERMAN HAGEDORN, *ROOSEVELT IN THE BADLANDS* 355 (1921) (quoting Roosevelt as saying “I don’t go so far as to say the only good Indians are the dead Indians, but I believe that nine out of every ten are, and I shouldn’t like to inquire too closely into the case of the tenth”).

31. He is mentioned just four times, but nevertheless looms large in Hawley’s narrative as an exemplar of the “true man.”

32. WILLIAM BYRON FORBUSH, *THE BOY PROBLEM: A STUDY IN SOCIAL PEDAGOGY* (2d ed. 1902); see also BEVERLY GAGE, *G-MAN: J. EDGAR HOOVER AND THE MAKING OF THE AMERICAN CENTURY* 21 (2022) (discussing the perceived crisis of manhood afflicting young men in the late nineteenth and early twentieth centuries).

33. See GAGE, *supra* note 32, at 21; see also Theodore Roosevelt, *Manhood and Statehood: Address at the Quarter-Centennial Celebration of Statehood in Colorado* (Aug. 2, 1901), <https://www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/theodore-roosevelt-manhood-and-statehood> [perma.cc/8K5A-CJJ4] (linking masculinity and nation building).

racial dominance. As Beverly Gage has observed, during the early twentieth century, the insistence on “manly vigor” was not simply about cultivating certain characteristics in boys and men; it was *explicitly* about ruling colonial possessions and preserving the future dominance of the white race.³⁴ The project of westward expansion that Roosevelt lauded for wringing “green fertility” from “endless leagues of Indian-haunted desolation”³⁵ depended upon the subjugation of other civilizations and people.³⁶ *That* is the intellectual lineage from which *Manhood* proceeds.

If Theodore Roosevelt is Hawley’s paragon of masculinity, its paradigmatic antagonist is the “Epicurean,” whose presence reveals what Hawley is peddling. Right-wing populism often needs an “other” to serve as a focal point against which to unite the preferred populace.³⁷ The Epicurean is that foil for Hawley. Hawley argues that the Epicurean is to blame for everything, because, according to Hawley, the Epicurean blames everyone else for society’s problems. “Our modern, Epicurean culture . . . wants to insist that . . . [society’s ills are] the fault of ‘the patriarchy’ or systemic racism or capitalism or the like” (p. 34). More troublingly, “[o]ur modern culture absolves us of personal responsibility and urges us to blame someone or something else—society, perhaps, or ‘the system.’”³⁸

Despite faulting Epicureans for their failure to take responsibility, *Manhood*—and Hawley himself—falls prey to the same predilection. If the Epicureans blame all of society’s ills on “the system,” then Hawley identifies the “Epicureans” as the root cause of the bulk of the nation’s woes:

Men have been told this nonsense for decades now by the press and politicians. They have been taught it in schools . . . America’s policymakers have acted on this same ideology, medicating boys into submission in their school years, then shipping the manufacturing jobs many men

34. GAGE, *supra* note 32, at 21 (describing Roosevelt’s view that “the nation’s ability to rule its new imperial possessions depended upon cultivating young men who would not shrink from danger” (internal quotations omitted)); *see also* Theodore Roosevelt, *The Strenuous Life* (Apr. 10, 1899), <https://voicesofdemocracy.umd.edu/roosevelt-strenuous-life-1899-speech-text> [perma.cc/LF3B-RMGE].

35. Roosevelt, *supra* note 33.

36. *See generally* AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* (2010) (detailing settler colonialism in the United States and the attendant subordination of Native Americans and other groups).

37. *See id.* at 3 (describing “our long-standing difficulty in imagining liberty without suppression and free citizenship without the control of subject communities”); JAN-WERNER MÜLLER, *WHAT IS POPULISM?* 4–5 (2016).

38. P. 39. On page 144, Hawley writes that “[t]he left routinely blames men for our planet’s supposedly imminent climate doom.”

once performed as adults off to foreign countries. In these circumstances, under the influence of this creed, is it any wonder that so many men now feel adrift, bereft, and—yes—ashamed to be men? (p. 9)

In blaming this faceless class of Epicureans for so much of what ails men, *Manhood* engages in an awful lot of projection. Among the Epicurean vices Hawley blames for the sad state of American manhood are: “the left’s denigration of men” (p. 67); its insistence on “self-care” (p. 118); “screen time, including video games” (p. 5); “[m]ajor porn consumption”;³⁹ declining marriage rates (pp. 76–77); delaying or abstaining from parenthood (pp. 145–46); “‘zero tolerance’ policies found in many schools”; and “[c]hildhood diagnoses of ADD and ADHD” (p. 111). Hawley barely registers that one might blame men themselves for succumbing to some of these vices (if, indeed, they all are vices).

Men, as much as the Epicurean class, could forego the temptations of pornography, or video games, or self-care, or anything else. If Theodore Roosevelt was known for his embrace of “rugged individualism,”⁴⁰ perhaps that same character trait might be marshaled to resist the Epicurean traps that lie waiting for American men? One might read Hawley as exhorting American men to get off the couch, man up, and resist the temptations of porn, Ritalin, and therapy. Instead, this fleeting impulse toward self-help yields to a recurring condemnation of Epicureanism. On Hawley’s telling, the Epicureans are the causal force behind the decline of American men—they not only “welcome th[e] collapse” of masculine strength but “[i]n fact . . . helped drive it” (p. 7).

Manhood’s apparent goal is to reinstate Hawley’s preferred image of American manhood: an amalgam of the Biblical archetypes he explores in the book’s second half. Hawley desperately attempts to depict the American Man as a kind of warrior-father figure—a real-life Harvey Dent, the Gotham City district attorney in Batman, who fights off bad guys, creates (or builds) the institutions that are necessary for society to flourish, and serves as the provider and faith-leader for the family.

But like Harvey Dent, Hawley’s American Man has two faces.⁴¹ And perhaps inadvertently, Hawley captures (and embodies) both of them.

39. P. 74. Pornography is a topic of significant interest to Hawley. During Justice Ketanji Brown Jackson’s confirmation hearings, Hawley was fixated on lines of questioning that badly distorted Jackson’s sentencing record in cases involving child pornography, leading even conservative commentators to denounce Hawley’s attacks as “meritless to the point of demagoguery.” Andrew C. McCarthy, *Senator Hawley’s Disingenuous Attack Against Judge Jackson’s Record on Child Pornography*, NAT’L REV. (Mar. 20, 2022, 9:31 PM), <https://www.nationalreview.com/2022/03/senator-hawleys-disingenuous-attack-against-judge-jacksons-record-on-child-pornography> [perma.cc/ZL9H-HGVN].

40. See, e.g., KATHLEEN DALTON, *THEODORE ROOSEVELT: A STRENUOUS LIFE* (2002).

41. *Two-Face*, D.C., <https://www.dc.com/characters/two-face> [perma.cc/DSF2-BGYN].

One face is the warrior-father figure, which *Manhood* obsessively seeks to bring to the fore. The other face, the one that Hawley seeks to vanquish, is that of the coward. As Hawley tells it, the cowardly American man does not lead or live by a higher code; he is not a leader of society or a protector of his family (ch. 7). What Hawley does not say is that the coward is deeply *fearful*. He cannot reconcile himself to the realities of a changing nation—one where white, straight, cisgender men are asked to share space and authority with women and people of color.

Manhood isn't the first time Hawley has embodied this duality. Who could forget the widely circulated image of Hawley—the wannabe warrior-father figure—with his fist raised in apparent solidarity with the election deniers gathering outside the Capitol?⁴² And who could forget the footage, captured just a few hours later, of Hawley running in fear when the same insurrectionist mob breached the Capitol?⁴³

42. *E.g.*, Michael Schaffer, *What Did Josh Hawley's Jan. 6 Fist Pump Really Mean? We Asked the Photographer Who Got the Shot*, POLITICO: MAG. (Jan. 6, 2024, 7:00 AM), <https://www.politico.com/news/magazine/2024/01/06/jan-6-josh-hawley-photo-q-a-00134017> [perma.cc/2L2Q-V2QM].

43. *E.g.*, Virginia Chamlee, *Footage Shows Josh Hawley Running from the Capitol as Trump Supporters Descended on the Building*, PEOPLE (July 21, 2022, 10:23 PM), <https://people.com/politics/footage-shows-josh-hawley-running-from-the-capitol-as-trump-supporters-descended-on-the-building> [perma.cc/M7YH-TKAV]; Joe Lynch, *Josh Hawley Fleeing Capitol Rioters Gets a Britney Spears, Kate Bush & Monty Python Soundtrack*, BILLBOARD (July 22, 2022), <https://www.billboard.com/culture/politics/josh-hawley-run-capitol-riot-memes-1235117054> [perma.cc/B8FR-XYAR].



[Photograph of Josh Hawley with fist raised, supporting protesters that contested election results.]
Originally by Francis Chung for POLITICO. © 2021 for AP. Reprinted with permission.



[Security footage photograph of Josh Hawley fleeing the insurrectionist mob.]
In the public domain.

At first blush, the broad pillorying of Hawley for his retreat at the Capitol may seem to rest upon and perpetuate the same familiar tropes about masculinity that Hawley deploys. But beneath the memes lies a more profound critique: Hawley and his brand of reactionary masculinity seek to project strength while deflecting responsibility. On January 6th, Hawley appeared eager to invite marauders to the Capitol and to publicly

align himself with the righteousness of their cause⁴⁴—and was just as eager to avoid the full consequences of that invitation.

We do not have the full measure of Hawley's conduct on January 6th. But we do know that some members of Congress responded differently to the ongoing crisis—by caring for and protecting others. Members trapped in the House gallery as the Capitol was breached helped barricade the door and comfort colleagues.⁴⁵ Representative Katie Porter hid Representative Alexandria Ocasio-Cortez in her office and lent her a pair of running shoes to facilitate a possible escape.⁴⁶ Vice President Mike Pence not only resisted President Trump's appeals to disrupt the certification of the Electoral College votes,⁴⁷ he also reportedly defied his security detail's directives to flee the Capitol for his own safety⁴⁸—which, as we now know, was not an abstract concern.⁴⁹

By contrast, we do know that in the immediate aftermath of January 6, 2021, Hawley was one of a handful of Senators who voted to disenfranchise Arizona and Pennsylvania voters in a last-ditch effort to help Donald Trump cling to power.⁵⁰

44. See Jeremy Herb, Phil Mattingly & Lauren Fox, *GOP Senator to Delay Affirming Biden Victory by Forcing Votes on Electoral College Results*, CNN (Dec. 30, 2020, 6:51 PM), <https://www.cnn.com/2020/12/30/politics/josh-hawley-force-votes-electoral-college-results/index.html> [perma.cc/VRZ6-V9YJ].

45. Mary Clare Jalonick, "We Were Trapped": Trauma of Jan. 6 Lingers for Lawmakers, ASSOCIATED PRESS (Jan. 5, 2022, 8:43 AM), <https://apnews.com/article/jan-6-capitol-siege-lawmakers-trauma-04e29724aa6017180259385642c1b990> [perma.cc/PZ57-BGAF].

46. Shweta Sharma, *Capitol Riot: AOC Reveals How She Hid from Mob Looking to Kill Her as Lawmaker Loaned Her Shoes to 'Run for Her Life'*, INDEPENDENT (Feb. 8, 2021, 11:46 AM), <https://www.independent.co.uk/news/world/americas/us-politics/capitol-riot-aoc-alexandria-ocasio-cortez-b1796197.html> [perma.cc/5HNS-UPV8].

47. Luke Broadwater & Michael S. Schmidt, *Trump, Told It Was Illegal, Still Pressured Pence to Overturn His Loss*, N.Y. TIMES (June 16, 2022), <https://www.nytimes.com/2022/06/16/us/trump-pence-election-jan-6.html> [perma.cc/JE2Q-54L2]. Trump advised Pence that "[he could] either go down in history as a patriot . . . or you can go down in history as a pussy." Peter Baker, Maggie Haberman & Annie Karni, *Pence Reached His Limit With Trump. It Wasn't Pretty*, N.Y. TIMES (Jan. 13, 2021), <https://www.nytimes.com/2021/01/12/us/politics/mike-pence-trump.html> [perma.cc/ZZ3T-F5KJ].

48. Celine Castronuovo, *Pence Refused to Leave Capitol During Riot: Book*, THE HILL (July 16, 2021, 10:50 PM), <https://thehill.com/homenews/administration/563513-pence-refused-to-leave-capitol-during-riot-book> [perma.cc/V68W-VGHF].

49. See *Rioters Chant "Hang Mike Pence," on Jan. 6, 2021*, WASH. POST (June 16, 2022, 5:35 PM) https://www.washingtonpost.com/video/politics/rioters-chant-hang-mike-pence-on-jan-6-2021/2022/06/16/3cc093f1-0eb7-427d-8073-b5874ca27e80_video.html [perma.cc/LEP3-G8RM].

50. Alvin Chang, *The Long List of Republicans Who Voted to Reject Election Results*, GUARDIAN (Jan. 7, 2022, 1:30 PM), <https://www.theguardian.com/us-news/2021/jan/07/list-republicans-voted-to-reject-election-results> [perma.cc/RF86-Z3FZ]; see Barbara Sprunt, *Hawley Defends Decision To Object To Electoral Votes*, NPR (Jan. 13,

Hawley is surely aware of how widely lambasted both his terrified retreat and his efforts to overturn the election have been. In this regard, *Manhood* may be a rudimentary effort to recuperate Josh Hawley's own manhood and political image in the face of a very public drubbing—to recast Hawley as an icon of American masculinity, while burying the craven image of a truly ordinary man fleeing extraordinary violence.

II. A JURISPRUDENCE OF MEN, NOT LAWS

As amusing as it is to dismantle the book's shoddy arguments and prescriptions, it would be a mistake to dismiss *Manhood* as irrelevant drivel. Josh Hawley is not just trying to hawk a sad book that recycles other people's talking points on men and masculinity. His work also speaks to other like-minded political actors who are in positions that could allow them to impose their views on everyone else. With that in mind, in the sections that follow, we consider how the male archetypes around which *Manhood* is organized are also reflected in recent Supreme Court jurisprudence.

A. *Father*: *Dobbs v. Jackson Women's Health Organization*

Both Hawley and the Court revel in the importance to the country of an archetype that Hawley labels the "father" (p. 85). As Hawley sees it, "[t]he mission of manhood is bound up with fathering" (p. 90). Indeed, manhood and fathering are so inextricably intertwined that the chapter devoted to the husband archetype uses the father and husband archetypes interchangeably: "[S]omeone must feed and protect children and their mothers' . . . That 'someone' is, traditionally, a man. Specifically, a husband" (p. 82).

The Court solidified what Hawley calls the "mission of manhood," "fathering" (p. 90), when it overruled *Roe v. Wade* and *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*.⁵¹ As one of us has written, *Dobbs* and other recent decisions reflect "the Roberts Court's commitment to an ascendant 'jurisprudence of masculinity' that prioritizes . . . men's rights, even as it diminishes and constrains women's rights."⁵²

The outcome in *Dobbs* ensures that more men will become fathers because the decision permits states to force people to remain pregnant

2021, 5:04 PM), <https://www.npr.org/sections/trump-impeachment-effort-live-updates/2021/01/13/956497657/hawley-defends-decision-to-object-to-electoral-votes> [perma.cc/4F4C-NBRB].

51. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022).

52. Melissa Murray, *Children of Men: The Roberts Court's Jurisprudence of Masculinity*, 60 HOUS. L. REV. 799, 799 (2023).

and to become parents against their will.⁵³ To the extent that fatherhood is part of the plan to redeem American manhood, as Hawley says it is, women are merely vessels for men's path to redemption. Women must become mothers for men to become fathers, which is apparently necessary for America to become great (again).

Dobbs is also consistent with the idea that pregnancy and motherhood themselves are sites of masculine dominion, as the decision allows the (overwhelmingly male) government to subordinate pregnant women's lives and wishes to the existence of a fetus and the government's assessment of the fetus's needs. Along these lines, in *Dobbs*, the Justices briefly reflected on whether a right to abortion might be part of the constitutionally protected "freedom to make 'intimate and personal choices' that are 'central to personal dignity and autonomy.'" ⁵⁴ The Court rejected this prospect, because "[w]hile individuals are certainly free *to think* and *to say* what they wish about 'existence,' 'meaning,' the 'universe,' and 'the mystery of human life,' they are not always free *to act* in accordance with those thoughts."⁵⁵ So pregnant people's liberty—and their lives and their health—must yield to the state's preference for "potential life."⁵⁶

The *Dobbs* majority's insistence that *true* liberty means, well, the absence of liberty for some (women and people who may become pregnant) could have been lifted straight out of Hawley's book. *Manhood* rejects "claims to prioritize liberty" on the ground that "[t]he Bibl[ical] claims [for] order and self-command are not opposite to liberty but are liberty's prerequisites" (p. 193).

"[T]he jurisprudence of masculinity" that *Dobbs* embodies also "recasts the legal landscape to ensure maximum solicitude for the protection of men and the exercise of men's rights."⁵⁷ *Dobbs* assumes an originalist posture, announcing that in order to determine the fundamental rights that are protected from government interference, courts must ask what rights were recognized in the mid-1800s. This approach all but guarantees that only white men's rights will be safeguarded.⁵⁸ As the joint dissent in *Dobbs* explained:

53. See Eleanor Klivanoff, *Nearly 10,000 More Babies Born in Nine Months Under Texas' Restrictive Abortion Law, Study Finds*, TEX. TRIBUNE (June 30, 2023, 10:00 AM), <https://www.texastribune.org/2023/06/30/texas-abortion-johns-hopkins-study> [perma.cc/G2B5-3QLV] ("Close to 10,000 additional babies were born over a nine-month period after Texas banned most abortions after about six weeks of pregnancy . . .").

54. *Dobbs*, 142 S. Ct. at 2257 (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992)).

55. *Id.*

56. *Id.*

57. Murray, *supra* note 52, at 800.

58. For critiques of originalism's veneration of moments of democratic deficit as critical to constitutional meaning and interpretation, see Murray, *supra* note 52, at 843–

The majority's core legal postulate, then, is that we in the 21st century must read the Fourteenth Amendment just as its ratifiers did. . . . But . . . "people" did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women's liberty, or for their capacity to participate as equal members of our Nation.⁵⁹

Reva Siegel has shown that when originalism was first offered as a method for interpreting the Constitution, it was understood in part to convey an implicit promise to overrule *Roe v. Wade* and generally further social conservatism.⁶⁰ That understanding of originalism persists,⁶¹ even as other variations on the method have emerged.⁶² For some (and arguably, for many) people today,⁶³ originalism is inextricably linked to a world that allows a state "to impose its moral choice on a woman and coerce her to give birth to a child."⁶⁴

48; Reva B. Siegel, *Memory Games: Dobbs's Originalism as Anti-Democratic Living Constitutionalism—and Some Pathways for Resistance*, 101 TEX. L. REV. 1127, 1193 (2023) [hereinafter Siegel, *Memory Games*] ("The *Dobbs* majority signed on to an opinion in which decisions and laws written by men were presented as America's history and traditions, without a single woman's voice represented, and which claimed those traditions were sufficient to justify stripping women today of a half-century of constitutional rights."); Reva B. Siegel, *The History of History and Tradition: The Roots of Dobbs's Method (and Originalism) in the Defense of Segregation*, 133 YALE L.J.F. 99 (2023) [hereinafter Siegel, *The History of History and Tradition*].

59. *Dobbs*, 142 S. Ct. at 2324 (Breyer, Sotomayor & Kagan, JJ., dissenting).

60. Siegel, *Memory Games*, *supra* note 58, at 1148–69; Reva B. Siegel, *The Supreme Court, 2012 Term—Foreword: Equality Divided*, 127 HARV. L. REV. 1, 27–29 (2013); Reva B. Siegel, *Dead or Alive: Originalism as Popular Constitutionalism in Heller*, 122 HARV. L. REV. 191, 219–22 (2008); Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 CALIF. L. REV. 1323, 1346–47 (2006).

61. *See, e.g., Dobbs*, 142 S. Ct. at 2301 (Thomas, J., concurring).

62. *E.g.*, Keith E. Whittington, *The New Originalism*, 2 GEO. J. L. PUB. POL'Y 599, 607–12 (2004) (describing the emergence of a "new originalism" in the 1990s). *See generally* Mitchell N. Berman, *Originalism is Bunk*, 84 N.Y.U. L. REV. 1 (2009) (describing and critiquing various strains of contemporary originalism).

63. *E.g.*, Mary Ziegler, *Originalism Talk: A Legal History*, 2014 B.Y.U. L. REV. 869, 907 (2015) (describing anti-abortion movement leaders' ultimate embrace of originalism as "a powerful tool . . . to chip away at *Roe*"); *see also* Jane Coaston, *Polling Data Shows Republicans Turned Out for Trump in 2016 Because of the Supreme Court*, VOX (June 29, 2018, 10:00 AM), <https://www.vox.com/2018/6/29/17511088/scotus-2016-election-poll-trump-republicans-kennedy-retire> [perma.cc/YZB2-J4MS].

64. *Dobbs*, 142 S. Ct. at 2318 (Breyer, Sotomayor & Kagan, JJ., dissenting).

B. *Husband*: 303 Creative v. Elenis and Obergefell v. Hodges

Closely related to Hawley's interest in the father is his veneration of the "husband" archetype (p. 63). Hawley repeatedly conflates husbandhood with fatherhood.⁶⁵ And he confidently asserts that "[w]hat was true in traditional societies is also true today" (p. 82): Marriage is where a man "learn[s] to open his life to another and bind his fate to hers" (p. 63, emphasis added). Marriage, then, is between a man and a woman.⁶⁶

Hawley has previously made clear that he rejects LGBTQ equality. After the Supreme Court announced its decision in *Bostock v. Clayton County*,⁶⁷ Hawley took to the Senate floor and warned that the decision represented "the end of the conservative legal movement."⁶⁸

Hawley's statement reflects an ascendant view among conservatives that the recognition of LGBTQ civil rights is a manifestation of an increasingly secular culture where the faithful are a beleaguered minority.⁶⁹ This victim narrative inverts the "traditional antidiscrimination narrative" into one where (conservative, Christian) religious objectors are now in need of state protection.⁷⁰ And it has become central to a line of recent Roberts Court decisions that have persistently narrowed and chipped away at LGBTQ equality.

Consider a trilogy of recent cases that began with *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, in which the Court identified constitutional defects with Colorado's adjudication of a civil rights complaint against a baker who refused to make a cake for a same-sex

65. *E.g.*, p. 82 ("[S]omeone must feed and protect children and their mothers . . . that someone is, traditionally, a man. Specifically, a husband.") (cleaned up); *see also* p. 90 ("The mission of manhood is bound up with fatherhood.").

66. "Marriage exemplifies this pattern in the relationship between husband and wife." P. 69.

67. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

68. Josh Hawley, *Was It All for This? The Failure of the Conservative Legal Movement*, PUB. DISCOURSE (June 16, 2020), <https://www.thepublicdiscourse.com/2020/06/65043> [perma.cc/6ZYA-8XVF]. As one of us wrote two years ago about these remarks, "Lol." Leah M. Litman, "Hey Stephen", 120 MICH. L. REV. 1109, 1119 n.55 (2022) (book review).

69. *See, e.g.*, Jane Coaston, *Social Conservatives Feel Betrayed by the Supreme Court—and the GOP that Appointed It*, VOX (July 1, 2020, 11:00 AM), <https://www.vox.com/2020/7/1/21293370/supreme-court-conservatism-bostock-lgbtq-republicans> [perma.cc/BYB5-GZJR].

70. Melissa Murray, *Inverting Animus: Masterpiece Cakeshop and the New Minorities*, 2018 SUP. CT. REV. 257, 282; *see also* Kate Shaw, *The Supreme Court's Disorienting Elevation of Religion*, OPINION, N.Y. TIMES (July 8, 2023), <https://www.nytimes.com/2023/07/08/opinion/supreme-court-religion.html> [perma.cc/PC74-WLWV]. ("Where historically some of the court's most important religious freedom rulings have protected members of minority religions from discrimination, the big winners in the recent cases have been practitioners of mainstream Christian religions.").

wedding in violation of Colorado’s antidiscrimination law.⁷¹ The petitioners sought a carveout from the antidiscrimination measures protecting the LGBTQ community and made “claim[s] that their traditional morals no longer hold sway in majoritarian culture, transforming them into minorities who face discrimination and subordination in public life.”⁷² The Court embraced that narrative, which allowed the conservative, Christian claimants to cast themselves as victims of a dominant secular (some might say Epicurean!) culture, while enlisting the Court’s assistance in projecting their—and Hawley’s—preferred vision of marriage onto others.⁷³ The Court further developed this “jurisprudence of conservative grievance”⁷⁴ in *Fulton v. City of Philadelphia*, where it held that the City of Philadelphia’s contracting terms for agencies participating in the City’s foster care certification program were unconstitutional.⁷⁵ The decision permitted a religious entity, performing functions at the government’s behest, to project its preferred vision of marriage as a heterosexual union onto other people.⁷⁶

And just last year, in *303 Creative v. Elenis*, the Court crafted an even broader exception to antidiscrimination measures.⁷⁷ The Court held that Colorado could not enforce its public accommodations statute, which prohibited goods and service providers from discriminating on the basis of sexual orientation, against a wedding website designer who did not want to create websites celebrating same-sex marriages.⁷⁸ The Court concluded that the First Amendment did not allow the state to enforce its public accommodations statute in ways that “compel[led]” an individual to create “pure speech” and “communicate ideas” with which the individual disagreed—here, that marriage could be husbandless (or involve two husbands).⁷⁹

71. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719 (2018).

72. *Murray*, *supra* note 70, at 282.

73. See Leah M. Litman, *Disparate Discrimination*, 121 MICH. L. REV. 1, 51–55 (2022); Douglas NeJaime & Reva B. Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 YALE L.J. 2516, 2566–74 (2015).

74. Litman, *supra* note 73, at 74. For much more on this, stay tuned for Leah Litman, *LAWLESS: HOW THE SUPREME COURT CAME TO RUN ON CONSERVATIVE GRIEVANCE, FRINGE THEORIES, AND BAD VIBES* (forthcoming 2025).

75. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021).

76. See Litman, *supra* note 73, at 51–54.

77. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023). For an explanation of how *Fulton* altered the reasoning in *Employment Division v. Smith*, 494 U.S. 872 (1990) (permitting government to enact neutral laws of general applicability, even if those laws incidentally burden religion), see Litman, *supra* note 73, at 32 n.154.

78. *303 Creative*, 143 S. Ct. at 2321–22.

79. *Id.* at 2312–13.

Like Hawley, the Court was deeply concerned about discrimination against conservative Christians. But the Court's solution in *303 Creative*, conferring a "license to discriminate" against LGBTQ persons with respect to certain wedding-related services, did not offer "an obvious limiting principle."⁸⁰ It thus invites further discrimination and solidifies discriminatory attitudes against the LGBTQ community.⁸¹

As one of us has argued, the trend in these cases might be explained by the Justices' apparent belief that "certain religious groups, specifically conservative, (often) Christian groups, are socially powerless and subject to rampant discrimination."⁸² The cases "reflect considerable sympathy and perhaps nostalgia for a not-so-distant past when white conservative Christians controlled the levers of political and social power to the exclusion of racial minorities and religious minorities."⁸³ Accordingly, the decisions "share[] some parallels to narratives in politics and public commentary about conservative victimization."⁸⁴ *Manhood* is shot through with this grievance narrative, including Hawley's claim that "today's leftists" seek to "impose[] a new hierarchy on America" (p. 169), rather than the old sex-based hierarchies Hawley desperately wants to restore.

C. *Warrior*: New York State Rifle & Pistol Association v. Bruen

Hawley's meditation on the virtues of his "warrior" archetype begins with an anecdote from his wife Erin's family tree. In 1860s New Mexico, two of Erin Hawley's ancestors, Susan Murphy Sumpter and her son Bud,

80. Shaw, *supra* note 70.

81. See Sara Emily Burke & Roseanna Sommers, *Reducing Prejudice Through Law: Evidence from Experimental Psychology*, 89 U. CHI. L. REV. 1369 (2022) (finding through experiments that when people learn that the law tolerates discrimination against a group, it can license more prejudicial attitudes, and that when people learn that the law prohibits discrimination against a group, it can lessen prejudicial attitudes toward the group).

82. Litman, *supra* note 73, at 6; see also *id.* at 7 (discussing the effort to recast certain groups as beleaguered minorities).

83. *Id.* at 11; see also Melissa Murray, *Consequential Sex: #MeToo, Masterpiece Cakeshop, and Private Sexual Regulation*, 113 NW. U. L. REV. 825, 865 (2019) (describing "a coordinated effort to deploy principles of religious freedom for the purpose of recreating, accommodation by accommodation, an earlier epoch where sex was confined to heterosexual marriage and homosexuality was condemned"); Melissa Murray, *The Geography of Bigotry*, 99 B.U. L. REV. 2611, 2627 (2019) ("[T]he grant of an accommodation assents to the recharacterization of public space, where the state and its laws hold sway, into private space, where private actors may continue to espouse their objections to same-sex marriage and LGBTQ civil rights without fear of the enforcement of antidiscrimination laws.").

84. Litman, *supra* note 73, at 66; see also *id.* at 9 ("[O]ne premise of the Court's jurisprudential outlook, the idea that conservative Christians are a group that faces considerable risks of discrimination and exclusion, shares important similarities with a narrative of victimization that Republican politicians and conservative commentators have occasionally embraced.").

lived alone on a ranch in the Cimarron Canyon (p. 103). Predictably, their frontier homestead was routinely preyed upon “by the region’s most notorious outlaw, Captain William Coe” (p. 104). Coe and his band of raiders would frequently descend upon the Sumpters, “demanding dinner for themselves and feed for their horses” (p. 105). Resenting these impositions, Bud, at the tender age of “thirteen or fourteen,” decided to man up, sneak away from the ranch while Coe and his gang slumbered, and alert law enforcement, who captured Coe (pp. 106–07).

Bud’s heroism, Hawley intones, is a lesson for all young men—call the cops! Or, as he phrases it, “choos[e] to face the darkness, choos[e] to take up responsibility and the risk that comes with it, to venture out into the dangerous and unknown” (p. 107).

Although Hawley does not say so explicitly, his defense of warrior virtues—and his critique of the Epicurean war on “male assertiveness” and “male power”—recall the pitched debate over gun rights and gun safety in the United States. While Hawley does not confirm it, Bud was likely armed during his midnight run. After all, on the mythologized frontier of NRA lore, men like Bud had to be armed to defend themselves, their families, and their property from raiders like William Coe.⁸⁵ In this regard, the Second Amendment’s guarantee of a right to keep and bear arms is one principle in a constellation of masculine virtues that enable men to fulfill their purpose as men.

This vision of armed “warrior” manhood is no longer just the stuff of NRA advertisements. Thanks to the Supreme Court, it is now constitutional law. In 2022, a 6–3 majority in *New York State Rifle & Pistol Association, Inc. v. Bruen* invalidated a New York concealed-carry gun licensing regime and endorsed an expansive right to keep and bear arms in and outside of the home.⁸⁶ And, importantly, the *Bruen* majority emphasized that the Court’s Second Amendment inquiry would take an originalist cast in focusing on whether contemporary gun laws are consistent with historic efforts to regulate firearms in the United States.⁸⁷

Much ink has already been spilled over *Bruen*’s impact on local, state, and federal laws regulating firearms possession.⁸⁸ Less discussed is the

85. See Dahlia Lithwick, *Bearing Arms . . . Against Bears*, SLATE: SUP. CT. DISPATCHES (Mar. 18, 2008, 7:31 PM), <https://slate.com/news-and-politics/2008/03/justice-kennedy-thinks-d-c-residents-need-protection-from-grizzlies.html> [perma.cc/QC6G-GUWE] (describing Justice Anthony Kennedy’s fixation on a “settler-in-the-wilderness rationale for the Second Amendment” during the *Heller* oral arguments).

86. N.Y. State Rifle & Pistol Ass’n v. Bruen, 142 S. Ct. 2111, 2134 (2022).

87. *Id.* at 2131.

88. See, e.g., Joseph Blocher & Eric Ruben, *Originalism-by-Analogy and Second Amendment Adjudication*, 133 YALE L.J. 99 (2023); Joseph Blocher & Reva B. Siegel, *Guided by History: Protecting the Public Sphere from Weapons Threats Under Bruen*, 98 N.Y.U. L. REV. 1795, 1801–03 (2023).

way in which both the *Bruen* majority and Justice Alito, in a concurring opinion, discuss the exercise of gun rights in ways that clearly contemplate men as the relevant rights bearers. Writing for the *Bruen* majority, Justice Thomas's vision of the Second Amendment seems ripped from the pages of *Manhood*. As Thomas recounts, in the postbellum period, southern states relied on gun laws and other official actions to thwart newly freed Black men who sought to exercise their Second Amendment rights.⁸⁹ Unable to arm themselves, these new citizens could not "defend themselves and their communities."⁹⁰ Thomas underscores this image of frustrated manhood by linking the right to keep and bear arms to the then-extant understanding of (male) citizenship.⁹¹

Other members of the *Bruen* majority gave this masculine account of the Second Amendment a modern update. At oral argument, Justice Alito bemoaned the prospect of "ordinary hard-working, law-abiding people" forced to brave an urban landscape replete with criminals brandishing "illegal guns."⁹² Who exactly were these "ordinary law-abiding citizens who fe[lt] the need to carry a firearm for self-defense"?⁹³ Justice Alito mentioned "people who work late at night in Manhattan," doormen, nurses, orderlies, dishwashers, and janitors.⁹⁴ According to Department of Labor statistics, excepting nurses, these occupations are highly likely to be comprised of men.⁹⁵

It is perhaps unsurprising that the Court's disposition of *Bruen* would take on a masculine tilt. After all, the Second Amendment was drafted and ratified by white, property-owning men, with the expectation that its guarantees would be exercised by the same class of (white, property-owning) men. But the Court's preferred methodology for interrogating the scope and substance of Second Amendment rights also ties the amendment's meaning to the expectations and the decisions of white, male property owners—the men who were the political decisionmakers at the Founding and the only persons included in the political process and

89. *Bruen*, 142 S. Ct. at 2150–53.

90. *See id.* at 2151.

91. *See id.* at 2150–51.

92. Transcript of Oral Argument at 67–70, *Bruen*, 142 S. Ct. at 2111 (No. 20-843).

93. *Id.* at 66–67.

94. *Id.* at 67.

95. Labor Force Statistics from the Current Population Survey, U.S. BUREAU OF LAB. STAT. (2022) <https://www.bls.gov/cps/cpsaat11.htm> [perma.cc/J9NW-FN9J] (reporting that 80% of dishwashers are men, and 60% of "janitors and building cleaners" are men; although there is no category for "doormen," the category that includes "security guards" is 75% men).

the polity at that time.⁹⁶ In interpreting rights, the Court, as much as Hawley, venerates a select group of patriarchs and their vision for how society should be structured.

D. *Builder*: Sackett v. EPA

Another one of Hawley's archetypes is the "builder" (p. 129). Here, too, the chapter is framed by Hawley family lore. As Hawley tells it, his Uncle Bruce, who "started his own business, pouring concrete," exemplifies the builder archetype (p. 130). Hawley juxtaposes Uncle Bruce's homespun diligence against the Epicurean (liberal!) ethos that disdains manual labor and insists upon college attendance "to avoid the kind of labor Bruce has been doing for forty years."⁹⁷ Blue-collar work of the sort that Hawley attributes to Bruce has dwindled and been replaced by "government benefits—welfare, dependency" (p. 131). This kind of dependence is the antithesis of manhood—and a contributing force in the decline of American men and America itself (pp. 131–35, 140–41). Hawley lauds Bruce's manual work, since "[t]he antidote to dependence is building."⁹⁸

The Supreme Court displayed a similar affinity for would-be builders (and a similar antipathy for government) in *Sackett v. Environmental Protection Agency*,⁹⁹ where it invalidated the EPA's exercise of its jurisdiction to regulate wetlands under the Clean Water Act. Like Uncle Bruce, Michael and Chantell Sackett were entrepreneurs—they owned and operated "an excavation and construction business."¹⁰⁰ The Sacketts ran afoul of the Clean Water Act when they poured "dirt and rocks" to backfill wetlands that the EPA asserted were protected waters of the United States.¹⁰¹ Although the Act's *text* allowed the EPA to regulate wetlands "adjacent" to navigable waters,¹⁰² the Court concluded that the EPA could regulate

96. Siegel, *The History of History and Tradition*, *supra* note 58 at 110–11, 147; *cf.* Murray & Shaw, *supra* note 15, at 806.

97. P. 131. Again, Hawley's own trajectory exemplifies the elite education credentialing that he laments. Hawley is no Uncle Bruce. His father was a banker who sent Hawley to prep school and then two of the most elite educational institutions in the world. Ruairi Arrieta-Kenna & Emily Cadei, *The Education of Josh Hawley*, *POLITICO: MAG.* (Jan. 19, 2021, 6:30 PM), <https://www.politico.com/news/magazine/2021/01/19/josh-hawley-senator-stanford-history-capitol-insurrection-ambition-460481> [perma.cc/6MK3-E7QG].

98. P. 131. "While he labors to shape and manage the world, the labor itself shapes his soul." P. 134.

99. *Sackett v. EPA*, 143 S. Ct. 1322 (2023).

100. Judith Lewis Mernit, Opinion, *Pity the Sacketts? Not Much*, *HIGH COUNTRY NEWS* (Jan. 27, 2012), <https://www.hcn.org/wotr/pity-the-sacketts-not-much> [perma.cc/STT3-VRZY].

101. *Sackett*, 143 S. Ct. at 1331–32.

102. 33 U.S.C. §§ 1344(g)(1), 1362(7).

only those wetlands that had “a continuous surface connection with that water.”¹⁰³

The *Sackett* majority justified this conclusion based in part on an interpretive presumption that quite literally favors builders over government. The Court stated that it “require[s] Congress to enact exceedingly clear language if it wishes to significantly alter . . . the power of the Government over private property.”¹⁰⁴ The Court expressed concern that a broader interpretation of the CWA could “criminalize mundane activities like moving dirt.”¹⁰⁵ “What are landowners to do if they want to build on their property?” the Court implored.¹⁰⁶

These passages reflect the same antiregulatory, pro-private-property conception of liberty that underwrites Hawley’s veneration of builders. “If someone else controls your livelihood, he controls you,” Hawley writes (p. 141). On this account, men should reject government handouts—and the dependency that they cultivate—because “the Bible has something better to offer. A man . . . can build” (p. 146).

Like Hawley’s reading of the Bible, the Court, it seems, has something “better” to offer prospective builders. By dismantling regulations aimed at ensuring a sustainable environment for present and future generations, the Court offers men unfettered space and freedom to build. The *Sackett* Court’s “judicially manufactured clear-statement rule” reflects, as Justice Kagan wrote in her dissent, a desire to “rescue property owners from Congress’s too-ambitious program of pollution control.”¹⁰⁷ The Court “shelve[d] the usual rules of interpretation” to place a “thumb on the scale for property owners” who want to build.¹⁰⁸

A variation on the builder archetype also played a prominent role in the oral argument in one of two challenges to the Biden Administration’s student debt relief plan.¹⁰⁹ In their exchanges with the Solicitor General, some of the Justices seemed troubled by the apparent unfairness of a program that would forgive the debts incurred by individuals pursuing higher education. To make this point, Chief Justice Roberts conjured up a

103. *Sackett*, 143 S. Ct. at 1341.

104. *Id.* (quoting *U.S. Forest Serv. v. Cowpasture River Pres. Ass’n*, 140 S. Ct. 1837, 1849–50 (2020)).

105. *Id.* at 1355.

106. *Id.* at 1356.

107. *Id.* at 1360 (Kagan, J., dissenting). Hawley’s “builder” chapter likewise criticizes theories of climate change that warn of future dangers. *See* pp. 143–46; *cf. West Virginia v. EPA*, 142 S. Ct. 2587 (2022) (invalidating the Clean Power Plan, designed to reduce man-made climate change, based on the judicially-invented major questions “doctrine”). For analysis of the political ideology reflected in the major questions doctrine, see Daniel T. Deacon & Leah M. Litman, *The New Major Questions Doctrine*, 109 VA. L. REV. 1009 (2023).

108. *Sackett*, 143 S. Ct. at 1360–61 (Kagan, J., dissenting).

109. *Dep’t of Educ. v. Brown*, 143 S. Ct. 2343 (2023) (dismissing for want of jurisdiction).

lawn care entrepreneur who never attended college and thus would be ineligible for student debt relief:

I think it appropriate to consider some of the fairness arguments. You know, you have two situations, both two kids come out of high school, they can't afford college, one takes a loan, and the other says, well, I'm going to, you know, try my hand at setting up a lawn care service, and he takes out a bank loan for that. At the end of four years, we know statistically that the person with the college degree is going to do significantly financially better over the course of life than the person without. And then along comes the government and tells that person: You don't have to pay your loan. Nobody's telling the person who is trying to set up the lawn service business that he doesn't have to pay his loan.¹¹⁰

Roberts returned repeatedly to this imagined small business owner,¹¹¹ as did Justice Amy Coney Barrett¹¹² and Justice Alito.¹¹³ Never mind that a lawn care entrepreneur would have been eligible for other forms of COVID relief aimed at small business owners;¹¹⁴ or that student debts, unlike most business debts, are not dischargeable in bankruptcy.¹¹⁵ What was most important, and most damning, was that the loan forgiveness plan granted relief to those pursuing higher education (aspiring Epicureans, no doubt)—but not to small business entrepreneurs like Uncle Bruce. On this account, the Court's antipathy for regulation and the administrative state assumed familiar contours. The Court, like Hawley, seemed intent on disavowing dependence (however constituted) and reading into our system of laws a free-floating principle that mandates protecting and privileging the builder.

110. Transcript of Oral Argument at 27, *Brown*, 134 S. Ct. (No. 22-535).

111. *Id.* at 28–32.

112. *Id.* at 66 (“JUSTICE BARRETT: What about the Chief Justice’s lawn–lawn care person who doesn’t go to college, starts a lawn care business.”).

113. *Id.* at 34 (“JUSTICE ALITO: Why is it fair? GENERAL PRELOGAR:--is warranted. JUSTICE ALITO: Why is it fair?”).

114. See generally CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (containing the “Paycheck Protection Program” or PPP, which provided loans to small businesses including sole proprietorships, independent contractors, and self-employed individuals); Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20811, 20813 (Apr. 15, 2020).

115. Kayla Webley, *Why Can’t You Discharge Student Loans in Bankruptcy*, TIME (Feb. 9, 2012), <https://business.time.com/2012/02/09/why-cant-you-discharge-student-loans-in-bankruptcy> [perma.cc/HKL3-R4DY].

E. *Priest: Kennedy v. Bremerton School District and Carson v. Makin*

Not surprisingly, the chapter devoted to the masculine archetype of the priest is a paean to religion. But not just any religion. Hawley is nodding to Christianity—and perhaps more particularly, *evangelical* Christianity. Men, Hawley explains, are not simply charged with “build[ing] the world into a temple” (p. 155). They must also serve as priests “bring[ing] God to the world” (p. 155).

Of course, thwarting men in their priestly duties is . . . the Epicurean! “[F]undamentally atheistic” Epicurean liberals, like Epicurus himself,¹¹⁶ reject religion, leading them to attack “American society as ‘systemically’ racist, sexist, and oppressive” (p. 156). This is quite a broad brush with which to paint all liberals, including certain minority groups who have long had a robust relationship with Christianity and other organized religions.¹¹⁷ But the overarching narrative that Hawley constructs is tailored to serve Hawley’s purpose: restoring “the biblical influence that has shaped much of American life” (p. 156).

Again, Hawley is not alone in this crusade. In recent years, the Supreme Court has taken up the banner of religion—more specifically, Christianity—with the apparent goal of restoring it to a central place in American society and government. Indeed, in October Term 2021, the Court decided two cases that fundamentally altered the contours of First Amendment jurisprudence.

In *Kennedy v. Bremerton School District*, the Court considered the case of Joseph Kennedy, a football coach at a public high school who repeatedly engaged in a postgame practice of praying at midfield.¹¹⁸ The school district, concerned that a school official engaged in prayer at a school event on school property might give rise to an Establishment Clause challenge, demanded the coach cease and desist. Kennedy persisted, prompting the school board to discipline him. He filed suit, arguing that the school board’s action violated his First Amendment right to free exercise of religion.¹¹⁹ A majority of the Court agreed, explaining that although

116. Again, this seems to be a profound misunderstanding of Epicurus. See, e.g., Dirk Obbink, *The Atheism of Epicurus*, 30 GREEK ROMAN & BYZANTINE STUD. 187, 194–95 (1989).

117. See, e.g., CURTIS J. EVANS, THE BURDEN OF BLACK RELIGION (2008); see also *Belief in God by Race/Ethnicity*, PEW RSCH. CTR.: RELIGIOUS LANDSCAPE STUDY, <https://www.pewresearch.org/religion/religious-landscape-study/compare/belief-in-god/by/racial-and-ethnic-composition> [perma.cc/2BG9-DLDG] (finding that 83% of Black respondents indicated a certain belief in God, compared to 61% of white respondents); *Attendance at Religious Services*, PEW RSCH. CTR.: RELIGIOUS LANDSCAPE STUDY, <https://www.pewresearch.org/religion/religious-landscape-study/attendance-at-religious-services> [perma.cc/9LCN-GXHV] (finding that 47% of Black respondents, compared to 34% of white respondents, attend religious services at least once per week).

118. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022).

119. *Id.* at 2415–19.

Kennedy was a school official, he was engaged in prayer on his own time, outside the scope of his employment, rendering the school board's censure improper and unconstitutional.¹²⁰

There is much one could say about the Court's disposition of *Kennedy*,¹²¹ but for these purposes, it is worth noting the way in which the Court's logic accords with Hawley's view of man as a vessel—indeed, a temple—of God. The fact that Kennedy was engaged in the “sincere” act of prayer at a time when he was not engaged in activities in furtherance of his public employment rendered his conduct private in nature.¹²² Put differently, private prayer is protected conduct—as is the body engaged in that protected conduct. And because of their private protected status, both Kennedy and his prayers were insulated from public regulation. In this regard, the fabled separation of church and state is not simply about protecting sacred conduct; the “wall” between church and state effectively renders Kennedy's “body and the space it occupies a literal temple or church—sacred, private, and beyond the reach of the state.”¹²³

In *Carson v. Makin*, the Court went beyond simply carving out a private space for religion from the public sphere.¹²⁴ It concluded that when a state funds secular institutions, it must also extend that funding to religious institutions.¹²⁵ As in *Kennedy*, *Carson* implicated the inherent “tension”¹²⁶ between the Establishment Clause, which precludes the government from endorsing religion, and the Free Exercise Clause, which precludes the government from interfering with religious exercise. Specifically, *Carson* addressed whether a policy that prohibited public aid to sectarian schools violated the Free Exercise Clause.¹²⁷

In a 6–3 opinion, the Court held that “a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.”¹²⁸ The Court was apparently unconcerned that providing funding for religious schools would violate the Establishment Clause: “[A] neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.”¹²⁹ Indeed, the Court suggested

120. *Id.* at 2424–25.

121. *See, e.g., Murray, supra* note 52, at 810–13, 825–26, 829–832, 835–37.

122. *Kennedy*, 142 S. Ct. at 2421–22.

123. *Murray, supra* note 52, at 832 (emphasis omitted).

124. *Carson ex rel. O.C. v. Makin*, 142 S. Ct. 1987 (2022).

125. *Id.* at 2002.

126. *Locke v. Davey*, 540 U.S. 712, 718 (2004).

127. *Carson*, 142 S. Ct. at 1993.

128. *Id.* at 1996.

129. *Id.* at 1997.

that Maine's concerns regarding excessive state entanglement with religion were overblown—excluding religious schools from the program “promotes stricter separation of church and state than the Federal Constitution requires.”¹³⁰ In reaching this conclusion, which appeared to sideline decades of Establishment Clause jurisprudence, the Court relied principally on two relatively recent decisions: *Espinoza v. Montana Department of Revenue*¹³¹ and *Trinity Lutheran Church of Columbia v. Comer*.¹³² Like *Carson*, both cases involved claims that denying religious institutions access to public subsidies violated the First Amendment's Free Exercise Clause.¹³³ And in both cases, as in *Carson*, a majority of the Court agreed that refusing state benefits to religious institutions while extending those benefits to secular institutions amounted to discrimination against religion.¹³⁴

Hawley does not reference this line of cases in *Manhood*, but it seems clear that public subsidization of religious institutions is consistent with his effort to “defend our history as a nation, shaped by the Bible” (p. 175). His project to staff the world with priests would be infinitely easier if public funds and institutions were available to support it. Perhaps that is why, as a young lawyer, Hawley himself sought to “bring[] God to the world”¹³⁵—or at least the world of the Supreme Court. Prior to his time in public office, he provided legal services to Trinity Lutheran Church.¹³⁶ When he became Missouri's Attorney General, as the church's religious-liberty case was pending before the high court, he recused himself, citing his earlier representation.¹³⁷

Although *Manhood* often reads like a testosterone-laced, Vacation Bible School fever dream, Hawley's ethos has real-world implications.¹³⁸ He

130. *Id.*

131. *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).

132. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

133. *Espinoza*, 140 S. Ct. at 2262–63; *Comer*, 137 S. Ct. at 2017–18.

134. *Espinoza*, 140 S. Ct. at 2262–63; *Comer*, 137 S. Ct. at 2025.

135. P. 155 (emphasis omitted).

136. Chuck Raasch, *Lawyers Argue Missouri Church-State Case Should Go On*, ST. LOUIS TODAY (Apr. 19, 2017), https://www.stltoday.com/news/local/govt-and-politics/lawyers-argue-missouri-church-state-supreme-court-case-should-go-on-entire-ags-office-recuses/article_5ed90c0a-55ab-56cd-aae4-e3673c554ae4.html [perma.cc/Y939-9US2].

137. Benjamin Peters, *Attorney General's Office Recuses Self from Trinity Lutheran Case, Citing Greitens' Executive Order*, MO. TIMES (Apr. 18, 2017), <https://themissouritimes.com/attorney-generals-office-recused-trinity-lutheran-case-citing-greitens-executive-order> [perma.cc/FB2Q-Y5F5]. The entire office subsequently recused itself after the Missouri Governor issued a new Executive Order changing the policy at issue in the case. *Id.*

138. As observers predicted in the wake of cases like *Trinity Lutheran*, *Espinoza*, and *Carson*, see, for example, Leah Litman, Melissa Murray & Kate Shaw, *Law and Religion on the Barrett Court*, STRICT SCRUTINY (Aug. 1, 2022), <https://crooked.com/podcast/law-reli->

articulates a worldview that now is expressed in the conservative legal movement—and in the Supreme Court that has been shaped by that very movement. As a result, the Court is now equipped to enshrine these priestly virtues in its changing jurisprudence of religious freedom.

F. King

The final section of Hawley's book urges men to lead. As Hawley tells it, "[i]t is good for a man to exercise authority—good for him and good for those around him" (p. 182). Despite the importance of men leading, "[t]he left today warns shrilly that male leadership can only ever amount to domination" (p. 181). This, of course, strikes Hawley as profoundly misguided: "Our problem today is not that too many men lead, but that too few do" (p. 181).

In a book that is as unintentionally funny as it is genuinely disturbing, the chapter entitled "King" may be the most chilling. This is particularly acute in light of the events that brought Hawley into national view: His craven willingness to play a critical role in the scheme to assist President Trump's efforts to cling to power after Trump's loss in the 2020 presidential election—that is, to allow Trump to crown himself king, impervious to and above the will of the people.

Trump himself is conspicuously absent from *Manhood*. But there are glimmers of Trumpism in Hawley's presentation. Trump has successfully pulled off a feat to which Hawley aspires: He has convinced the masses that he, the scion of a wealthy family, possessed of elite credentials, is in fact an everyman who seeks to wrest the country from the control of Deep State Liberals and return it to its original greatness. With this in mind, it is hardly surprising that this chapter's rhetoric—which does not offer a remotely coherent formula for leadership, male or otherwise—could easily be overheard at a Trump campaign rally.

Like Trump, Hawley displays an abiding distrust of science and expertise, asking rhetorically, "who is going to run the country? The people or the experts?" (p. 200). The answer is obvious. The people must take the reins from the Epicurean experts, with their mask mandates and vaccines, and return the country to its great traditions. To do so, Hawley instructs men to "get their character in order and reclaim their

gion-on-the-barrett-court [perma.cc/R5X6-TYTU], moves to provide public funding for religious charter schools would not be far off. In 2023, the ACLU filed a case challenging one such scheme in Oklahoma. Daniel Mach & Heather L. Weaver, *A Religious Public Charter School in Oklahoma? Not on Our Watch*, ACLU (July 31, 2023), <https://www.aclu.org/news/religious-liberty/a-religious-public-charter-school-in-oklahoma-not-on-our-watch> [perma.cc/885F-BZXB]. A frontal attack on longstanding limitations on prayer in public schools is likely not far behind.

independence as men,” and warns that, if they do not, “the American republic as we have known it will cease to exist” (p. 200).

If there is a substantive vision of leadership in this chapter, it is one that is entirely anathema to the American constitutional design, which disavows kings¹³⁹ and unchecked concentrations of governmental power. The only discernible checks on the king Hawley imagines are internal checks: devotion to God’s directives¹⁴⁰ and self-mastery.¹⁴¹ Of course, in the hands of “a man unprincipled in private life[,] desperate in his fortune, bold in his temper, [and] possessed of considerable talents,”¹⁴² these are no checks at all. Like we said: chilling.

The “king” chapter is particularly relevant in view of recent events that have highlighted certain Justices’ penchants for flouting accepted norms and insisting upon their own prerogatives.¹⁴³ But despite the monarchical pretensions of some of the Court’s members,¹⁴⁴ the individual

139. Cf. MICHAEL W. MCCONNELL, *THE PRESIDENT WHO WOULD NOT BE KING: EXECUTIVE POWER UNDER THE CONSTITUTION* (Stephen Macedo, ed. 2020). Michael McConnell is Hawley’s former boss. Ashley McGuire, Opinion, *Josh Hawley Will Defend the First Amendment and Religious Liberty*, THE HILL (Nov. 17, 2018, 6:00 PM), <https://thehill.com/opinion/civil-rights/417264-josh-hawley-will-defend-the-first-amendment-and-religious-liberty> [perma.cc/T CJ5-XN3SQ].

140. “[Solomon] is to guide his life by God’s directives, to order his life by God’s will.” P. 190.

141. “To rule, a man must first order his soul.” P. 189.

142. ALEXANDER HAMILTON, *ENCLOSURE: OBJECTIONS AND ANSWERS RESPECTING THE ADMINISTRATION OF THE GOVERNMENT (1792)*, reprinted in 12 *THE PAPERS OF ALEXANDER HAMILTON* 229, 252 (Harold C. Syrett et al. eds., 1967).

143. See, e.g., Brett Murphy & Alex Mierjeski, *Clarence Thomas’ 38 Vacations: The Other Billionaires Who Have Treated the Supreme Court Justice to Luxury Travel*, PROPUBLICA (Aug. 10, 2023, 5:45 AM) <https://www.propublica.org/article/clarence-thomas-other-billionaires-sokol-huizenga-novelly-supreme-court> [perma.cc/S6SM-RPME]; Jo Becker & Julie Tate, *How a Justice Came to Own A Luxury R.V.*, N.Y. TIMES, Aug. 6, 2023, at A1, <https://www.nytimes.com/2023/08/05/us/clarence-thomas-rv-anthony-welters.html> [perma.cc/3PC8-SFMQ]; Paul Kiel, *How Harlan Crow Slashed His Tax Bill by Taking Clarence Thomas on Superyacht Cruises*, PROPUBLICA (July 17, 2023, 5:00 AM), <https://www.propublica.org/article/harlan-crow-slashed-tax-bill-clarence-thomas-superyacht> [perma.cc/R948-N5FZ]; Justin Elliott, Joshua Kaplan & Alex Mierjeski, *Justice Samuel Alito Took Luxury Fishing Vacation with GOP Billionaire Who Later Had Cases Before the Court*, PROPUBLICA, (June 20, 2023, 11:49 PM) <https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court> [perma.cc/2HX9-9GCY]; Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition*, PROPUBLICA (May 4, 2023, 6:00 AM), <https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus> [perma.cc/264Y-SPWH]; Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas and the Billionaire*, PROPUBLICA (Apr. 6, 2023, 5:00 AM), <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow> [perma.cc/T4NW-JWJQ].

144. See Leah Litman & Melissa Murray, Opinion, *Supreme Court Justice Samuel Alito Has Vast Power and Life Tenure. So What’s His Problem?*, L.A. TIMES (June 25, 2023, 3:30

with perhaps the strongest jurisprudential interest in advancing the king archetype is former President Donald Trump. As Trump's legal strategy has taken shape in the multiple pending criminal cases against him,¹⁴⁵ he has asked the Court to rule that there is no distinction between president and king.¹⁴⁶

To wit, a core aspect of Trump's legal strategy is the assertion of absolute immunity—the immunity of a king—to deny prosecutors the chance to proceed against him, and juries the chance to adjudicate his guilt, at least until after the presidential election. Trump's attorneys alluded to this position on various television networks in the days immediately following his August 1, 2023 indictment for conduct surrounding January 6th.¹⁴⁷ In July 2024, in a much-anticipated decision, a majority of the Supreme Court credited many of those arguments.¹⁴⁸

In the run-up to the decision, Trump broadcasted that he expected loyalty from his Supreme Court nominees,¹⁴⁹ though they had voted against him at certain points, declining to intercede in his efforts to keep documents from the January 6th committee¹⁵⁰ and rejecting specious “absolute immunity” arguments against the Manhattan District Attorney's effort to subpoena his financial records.¹⁵¹ But in the high-stakes pre-election case about whether to either shield Trump from, or expose him to, genuine accountability, the Republican appointees delivered. A majority of the Court announced that former presidents were entitled to absolute immunity for exercising any “core constitutional powers,” including removing officers and “[i]nvestigative and prosecutorial decisionmaking.”¹⁵² They also added that there was, at a minimum, a presumption of immunity when presidents act within the “outer perimeter” of their responsibilities.¹⁵³ Five members of the Court's conservative

AM), <https://www.latimes.com/opinion/story/2023-06-25/supreme-court-justice-samuel-alito-problem> [perma.cc/G5RM-B3XK].

145. See generally MELISSA MURRAY & ANDREW WEISSMANN, *THE TRUMP INDICTMENTS: THE HISTORIC CHARGING DOCUMENTS WITH COMMENTARY* (2024).

146. Transcript of Oral Argument, *Trump v. United States* (No. 23-939), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-939_f204.pdf [perma.cc/FGC8-EZTN].

147. See MSNBC, *Trump's Attorney Says the Former President Is 'Immune From Prosecution,' Evoking Nixon*, YOUTUBE (Aug. 7, 2023), <https://youtu.be/HoUIIQUelqk?si=XBPS4oWOxvOSM1Yt>.

148. *Trump v. United States*, 144 S. Ct. 2312, 2327 (2024).

149. See President Donald Trump, Remarks before Marine One Departure (Sept. 9, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-marine-one-departure-63> [perma.cc/V9KD-MNDD].

150. *Trump v. Thompson*, 142 S. Ct. 680 (2022).

151. *Trump v. Vance*, 140 S. Ct. 2412 (2020).

152. *Trump v. United States*, 144 S. Ct. at 2327, 2335 (2024).

153. *Id.* at 2333, 2340.

bloc then crafted an evidentiary privilege that limited prosecutors' ability to introduce evidence about acts or actions entitled to immunity.¹⁵⁴

Even before the Court rendered its ultimate disposition of Trump's claim of immunity from criminal liability, its timeline for deciding the case¹⁵⁵ eliminated any prospect of a pre-election trial. Although the Court agreed to hear the immunity issue in February 2024, it scheduled oral arguments on the question two months later, on April 25, 2024.¹⁵⁶ These actions, in tandem with its announcement of the ultimate decision on July 1st, blocked a pre-election trial—effectively immunizing the former president (who is a current presidential candidate) from having a jury decide whether he sought to reject the results of a validly conducted election and impeded the peaceful transition of power so that he might remain president.¹⁵⁷

In these respects, the immunity case was the ultimate test—both of the Court and the force of Hawley and Trump's views about the future of our constitutional democracy. That, with apologies to Justice Blackmun, was when “[a] choice between two worlds w[as] . . . made.”¹⁵⁸

CONCLUSION

One senses that Hawley's coup-stained book is a vehicle for recasting the author as a more palatable, “thinking man's” version of the stars of the “manosphere,”¹⁵⁹ a term we (regrettably) learned in the course of preparing this Review. The term evidently encompasses a range of archetypes, including men's rights activists (MRA); men going their own way (MGTOW); pick-up artists (PUA); and involuntary celibates (incels).¹⁶⁰ Learning about these archetypes has been quite an education—much of which we cannot unsee.

154. *Id.* at 2340–41.

155. See Kate Shaw, Opinion, *Why the Supreme Court Should Clear the Way for a Pre-Election Trump Trial*, N.Y. TIMES (Mar. 11, 2024), <https://www.nytimes.com/2024/03/11/opinion/trump-supreme-court-jack-smith.html> [perma.cc/AU3A-SHL4].

156. Melissa Murray & Andrew Weissman, *The Supreme Court Has Already Botched the Trump Immunity Case*, N.Y. TIMES (Apr. 24, 2024), <https://www.nytimes.com/2024/04/24/opinion/supreme-court-trump-immunity.html> [perma.cc/HXR5-28LM].

157. *Id.*

158. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 943 (1992) (Blackmun, J., concurring in part and dissenting in part), *overruled by* *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

159. For discussion of the manosphere and its key players and archetypes, see MensGroup.com, a website that seeks to steer men away from what it describes as dangerous Internet subcultures. Sean Galla, *Manosphere*, MEN'S GROUP, <https://mensgroup.com/manosphere> [perma.cc/86YX-8WHY].

160. *Id.*

However one understands these categories, a key figure in the “manosphere” is Andrew Tate, the former kickboxer and TikTok sensation¹⁶¹ who is currently facing charges in Romania for rape, human trafficking, and organized crime.¹⁶² Tate is no fringe figure. According to a poll by *The Independent*, one in four young men in the United Kingdom (Tate is a dual citizen of the United States and the United Kingdom) report that they *agree with Tate’s views on masculinity*,¹⁶³ which include describing himself as a misogynist and celebrating male supremacy and violence against women.¹⁶⁴ Despite these abhorrent views, Tate currently has over 7 million followers on X (formerly Twitter),¹⁶⁵ and as of August 2022, his videos on TikTok had been watched 11.6 billion times.¹⁶⁶

Hawley is publicly critical of Tate, who he accuses of “gleefully” embracing “the left’s claim that real masculinity is founded on exploitation” (pp. 67–68). Worse still, Hawley notes that “Tate and company do not challenge the Epicurean line; they merely rehearse it in a nihilist, misogynistic key” (p. 68).

Hawley puts forth *Manhood* as an alternative to Epicureanism and the masked Epicureanism that apparently informs Tate’s misogyny. But is Hawley so different from those he claims to abhor? Despite his efforts to bury it amidst folksy stories about summers on the farm, Hawley has the elite resume of an Epicurean.¹⁶⁷ And despite his denunciation of Tate and his acolytes, Hawley’s brand of masculinity is only slightly less toxic than Tate’s criminal strain. Hawley’s image of masculine strength, like

161. He also starred in *Big Brother* before being kicked off the show after video surfaced of him striking a woman with a belt. Shanti Das, *Inside the Violent, Misogynistic World of TikTok’s New Star, Andrew Tate*, *GUARDIAN* (Aug. 6, 2022 12:48 PM), <https://www.theguardian.com/technology/2022/aug/06/andrew-tate-violent-misogynistic-world-of-tiktok-new-star> [perma.cc/H6PT-26LS].

162. E.J. Dickson, *Andrew Tate is Suing Victims for Defamation. They’re Not Staying Silent*, *ROLLING STONE* (July 14, 2023), <https://www.rollingstone.com/culture/culture-news/andrew-tate-defamation-lawsuit-trafficking-accusers-1234788622> [perma.cc/X9ST-P2R6].

163. Maya Oppenheim, *One in Four Young Men Agree With Andrew Tate’s Views on Women, Poll Finds*, *INDEPENDENT* (May 22, 2023, 8:25 AM), <https://www.independent.co.uk/news/uk/home-news/andrew-tate-women-masculinity-romania-b2342084.html> [perma.cc/L92J-WSNQ].

164. Avishay Artsy, *How Andrew Tate Sells Men on Toxic Masculinity*, *VOX* (Jan. 10, 2023, 10:50 AM), <https://www.vox.com/culture/2023/1/10/23547393/andrew-tate-toxic-masculinity-qa> [perma.cc/T5Y2-XHCZ].

165. Andrew Tate (@Cobratate), X, <https://twitter.com/Cobratate> [perma.cc/HL4L-K5CU].

166. Das, *supra* note 161.

167. *Infra* note 27, Section II.D.

Tate's, is built on someone else's back. Tate seeks to dominate and subjugate *women*.¹⁶⁸ Hawley's brand of masculinity also depends on dominion and subjugation—and importantly, it demands the subjugation of women within the *family*. His archetypes of husband and father are meaningless in the absence of subordinate (and subservient) wives and daughters needing protection and provision. In this regard, Hawley's packaging may be different from Tate's—less slick, violent, and (ahem) muscled—but the fundamental vision is the same.

Where Hawley exceeds Tate—and aligns with Trump—is in his explicit demand for men to assume the power and prerogatives of institutions, including government. Tate and his followers are intent on exerting dominion in their own milieus. Hawley is arguably more ambitious. He is not content for men to exert control in their homes and respective private spheres but rather seeks to restore them to the unquestioned authority they enjoyed in the days before the rise of the Epicurean class. On this account, Hawley's vision, like Trump's, seeks to restore institutions and allocations of power as they existed in the salad days before civil rights, Title VII, Title IX, or anything else that gave women and minorities a precarious toehold on the major institutions of public life.

January 2021 will be remembered as one of the most tumultuous moments in American history. It also represented the changing nature of American leadership. During this period, Nancy Pelosi served as the incumbent Speaker of the House and Kamala Harris became the Vice President. For many, these changes were welcome—indeed, celebrated. But for some, these changes provoked considerable anxiety. And Josh Hawley's activities on January 6th are not just reflected in the two faces of Harvey Dent or the twin faces of the warrior-father and the coward. They also reflect, perhaps more directly, the twin faces of Janus, the Roman god who looks forward and backward.

Manhood is nothing if not nostalgic for the past. Hawley laments a receding model of leadership—one where Hawley and his ilk were, literally, The Man. This nostalgia is prompted by profound discomfort with an ascendant leadership model—one that is more diverse and inclusive than anything we have seen in this country's history. It is a model of leadership that embraces women and people of color not as anomalous tokens, but as central figures on the national stage. For these reasons, *Manhood* is not simply an exultation of biblical archetypes or an effort to highlight Hawley's Harvey Dent-like qualities (while suppressing associations with the villainous Two-Face). It is a demand to bypass a more inclusive future by reclaiming and restoring a world that is sunseting out of view.

168. *Id.*; see also ROBIN DEMBROFF, REAL MEN ON TOP: HOW PATRIARCHY WEAPONIZES GENDER 56 (forthcoming 2024) (“Within patriarchy’s regimes of the normal, manhood is equated with and so measured by physical, sexual, and economic dominance over women and other men.”).