

TRUTH IN CRISIS: CRITICALLY RE-EXAMINING IMMIGRATION RHETORIC & POLICY UNDER THE TRUMP ADMINISTRATION

*Scott B. Astrada & Marvin L Astrada**

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I. INTRODUCTION

Although we are in the very early stages of understanding and explaining the long-term impact of the Trump administration on American political culture, national identity, and civil society, it clearly represents a watershed moment in the history of the Presidency. This is especially the case in the realm of the present administration’s ideology, which some commentators have designated “Trumpism.”¹ At the most general level, the Trump administration appears to have inaugurated a noteworthy change in the exercise of executive power and the content and character of American politics. Among other things, Trumpism has demonstrated a tendency to employ fear, loathing, and spectacle to bolster support for and perpetuate the administration’s interpretation of the general welfare expressed in public policy. The politics of fear and loathing, expressed in law and policy, are not a new phenomenon.²

* Scott B. Astrada (J.D., M.B.A, Marquette University; L.L.M, Georgetown University Law Center; B.A., University of Wisconsin – Madison). Professor of Law at the Georgetown University Law Center. Marvin L. Astrada (Ph.D., M.A., Florida International University; J.D., Rutgers University Law School; M.A., C.A.S., Wesleyan University; B.A., University of Connecticut). Professor in the Politics & History Department at New York University – Washington D.C.

¹ See Jon Sopel, *What is Trumpism?*, BBC NEWS, (Jan. 20, 2018), <http://www.bbc.com/news/world-us-canada-42738881>, archived at <https://perma.cc/56F4-WNB8>.

² See, e.g., *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the legality of Executive Order 9066 which ordered Japanese-Americans into internment camps during World War II regardless of their citizenship).

In the 21st century, however, Trumpism seems to have revitalized fear and loathing as cornerstones within specific policy spaces in ways that have altered the conditions of policy debate. This can be readily observed in immigration law and policy. The Trump administration has impacted and disrupted public policy in various spaces, such as immigration, criminal justice, and civil rights, all of which involve some degree of positing an “other”, such as the Latin American immigrant, to fear and loathe, in order to preserve the American homeland from what can be termed viral contaminants.³ In a relatively short amount of time, the administration’s unilateral approach to executive power and governance, which is part of perpetuating an overall “nationalist” economic and political agenda,⁴ has profoundly impacted law and public policy discourse.⁵ In the realm of immigration, the administration has at times referred to immigrants from Latin America as “criminals” and “animals” that potentially can “infest” the US, with Trump once asking “Why are we having all these people from sh—hole countries come here?”, referring to countries such as Haiti and El Salvador. Since Trump launched his presidential campaign by calling Mexican immigrants “rapists” and “murderers,” he has attracted both scorn and praise for his radical immigration policies.⁶ This is one of the most significant examples of the Trump administration framing the immigrant “other” as an enemy, opposed to American culture and the rule of law. In fact, “enemy framing” has far-reaching impacts across the entirety of the media, the policy process, and cultural landscapes: “In so doing, enemy formation activates a range of behaviors—distrust, polarization, negative stereotyping, black-and-white

³ See, e.g., Adam Goldman, *Trump Reverses Restrictions on Military Hardware for Police*, N.Y. TIMES, (Aug. 28, 2017), <https://www.nytimes.com/2017/08/28/us/politics/trump-police-military-surplus-equipment.html?mcubz=0>, archived at <https://perma.cc/2E69-A43Q>; see also David Jackson, Kevin Johnson & Alan Gomez, *Trump Winds Down DACA Program For Undocumented Immigrants, Gives Congress 6 Months To Act*, USA TODAY, (Sept. 5, 2017), <https://www.usatoday.com/story/news/politics/2017/09/05/trump-congress-do-your-job-daca-immigration-replacement-plan/632191001/>, archived at <https://perma.cc/CJ4D-TS44>.

⁴ See Quint Forgey, *Trump: “I’m a nationalist,”* POLITICO, (Oct. 22, 2018), <https://www.politico.com/story/2018/10/22/trump-nationalist-926745>, archived at <https://perma.cc/W8M8-ZBGP> (quoting President Trump, “[y]ou know, they have a word, it sort of became old-fashioned. It’s called a nationalist. . . . And I say, ‘Really? We’re not supposed to use that word.’ . . . You know what I am? I’m a nationalist. k”).

⁵ See *Trump v. Int’l Refugee Assistance Program*, 137 S.Ct. 2080 (2017) (per curiam). See also Greg Stohr, *U.S. Supreme Court Lets Trump’s Travel Ban Take Full Effect for Now*, BLOOMBERG, (Dec. 4, 2017), <https://www.bloomberg.com/news/articles/2017-12-04/u-s-high-court-lets-trump-travel-ban-take-full-effect-for-now>, archived at <https://perma.cc/RP7V-RM FY>

⁶ See Abigail Simon, *People Are Angry President Trump Used This Word to Describe Undocumented Immigrants*, TIME, (June 19, 2018), <http://time.com/5316087/donald-trump-immigration-infest/>, archived at <https://perma.cc/UNY8-DRAD>; see also Eugene Scott, *In reference to ‘animals,’ Trump evokes an ugly history of dehumanization*, WASH. POST., (May 16, 2018), https://www.washingtonpost.com/news/the-fix/wp/2018/05/16/trumps-animals-comment-on-undocumented-immigrants-earn-backlash-historical-comparisons/?noredirect=on&utm_term=.005adea54ccb, archived at <https://perma.cc/3YTC-NR7X>.

thinking, aggression, deindividualization, and demonization—while fostering ethnic intolerance, racism, and political or religious fundamentalism.”⁷

American identity politics and public policy have also shifted. The US has entered a seemingly new era of political, civic, and media discourse that can be termed the era of the *spectacle*.⁸ The nature of spectacle vis-à-vis ideology and politics is succinctly explicated by philosopher Guy Debord: the spectacle “erases the dividing line between true and false, repressing all directly lived truth beneath the real presence of the falsehood maintained by the organization of appearances.”⁹ This is the core idea of the spectacle, wherein empirical data and conventional or rather scientific (natural and social) notions of ascertaining truth may no longer serve as adequate bases for the articulation of policy.¹⁰ Spectacle, as an ideological and political organizing concept, thrives in political contexts permeated by fear and loathing. As is the case with images, which are devoid of substantive content, policy based on spectacle requires nothing more than demagogic assertions upon which to justify the why and how of policy positions.

For example, the President stated the following regarding the most recent migrant caravan from Guatemala en route to the US:

Anybody throwing stones, rocks—like they did to Mexico and the Mexican military, Mexican police, where they badly hurt police and soldiers of Mexico— we will consider that a firearm . . . We will consider that the maximum that we can consider that, because they’re throwing rocks viciously and violently . . . You saw that three days ago. Really hurting the military. We’re not going to put up with that. If they want to throw rocks at our military, our military fights back. We’re going to consider—and I told them, consider it a rifle. When they throw rocks like they did at the Mexico military and police, I say, consider it a rifle.¹¹

⁷ Barbie Zelizer, *Why Journalism in the Age of Trump Shouldn't Surprise Us in TRUMP AND THE MEDIA 9* (Pablo J. Boczkowski & Zizi Papacharissi eds. 2018) (citations omitted). See also Samuel P. Huntington, *The Hispanic Challenge*, FOREIGN POLICY, (Oct. 28, 2009), <https://foreignpolicy.com/2009/10/28/the-hispanic-challenge/>, archived at <https://perma.cc/L3YV-GLW9>.

⁸ See, e.g. *President Trump: 7 Ways the world has changed*, BBC NEWS, (Apr. 25, 2017), <http://www.bbc.com/news/election-us-2016-37918242>, archived at <https://perma.cc/2J6V-V2CL>; Colleen Shalby, *How is Donald Trump Affecting American Culture*, L.A. TIMES, (Apr. 28, 2016), <http://www.latimes.com/politics/la-na-donald-trump-readers-thoughts-20160428-snap.htmlstory.html>, archived at <https://perma.cc/TX3J-PS94>.

⁹ GUY DEBORD, THE SOCIETY OF THE SPECTACLE 219 (1967: 1994), http://www.antiworld.se/project/references/texts/The_Society%20_Of%20_The%20_Spectacle.pdf, archived at <https://perma.cc/9RVH-YAJ2>.

¹⁰ We use the term Spectacle and Specular to indicate the particular concept of self-referentiality not reliant or derived from empirical data and devoid of substance outside of the image.

¹¹ *Trump says rocks thrown at U.S. military by immigrants at border will be considered “a rifle”*, CBS NEWS, (Nov. 2, 2018), <https://www.cbsnews.com/news/trump-to-give-immigration-remarks-as-he-fumes-over-border-security-live-updates/>, archived at <https://perma.cc/TQ8G-JDC6>.

Irrespective of one's ideological and political stance on migration and immigration, the foregoing policy statements clearly reflect the use of spectacle. To equivocate rocks with firearms as a justification for condoning use of deadly force by U.S. law enforcement is an example of how fear, loathing and spectacle work in tandem to divest terms such as *rocks*, *rifles*, and *violently*, in light of the use of deadly force justifications, of their actual meaning. However, these facts no longer serve as reflections of an empirical reality, but rather as part of an unending flow of spectacle-based information chain. This has become the primary mode that underpins policy pronouncements and explanations of the world and has profound effects on the implementation of policy and justice under the law. Under the spectacle, facts, as conventionally understood, are no longer the basis for policy pronouncements. Facts under the spectacle, are divested of their potential to challenge and change opinions. Jacques Derrida gives more depth to this concept in his discussion of civic life and ethics: "In order to be responsible and truly decisive, a decision should not limit itself to putting into operation a determinable or determining knowledge, the consequent of some preestablished order."¹² The spectacle undermines facts, and replaces policy narratives as the mere formulaic deployment of news, divorced from empirical accountability, along the lines of identity politics.

Within this context, this article thus explores the structural consequences of the Trump administration's use of fear, loathing and spectacle in articulating the character and content of policy spaces, and the effect of specular politics on law, governance, and national identity. Immigration from the Global South serves as an empirical case study to anchor and explore these themes. Ancillary questions that arise are: Does the Trump presidency reflect a populist disjunction that has polemicized and polarized society and the electorate? On a policy level, what are the effects of Trump's campaign and administration on democratic representation and government?¹³ How have Trump's rhetoric and policy impacted immigration in the context of civil society?¹⁴

While change is commonplace within the political landscape with the advent of a new Presidential administration, the election of Donald Trump has seemingly reconfigured it. Indeed, there has been a plethora of deeply critical political analyses, namely progressive liberals putting forth claims of fascism, racism, and the demise of decades of progressive politics.¹⁵ On the

¹² JACQUES DERRIDA, *APORIAS* 17 (1993)

¹³ See, e.g., Robert Draper, *Trump vs. Congress: Now What?*, N.Y. TIMES, (Mar. 26, 2017), <https://www.nytimes.com/2017/03/26/magazine/trump-vs-congress-now-what.html>, archived at <https://perma.cc/WB2G-UWTB>; *In His Own Words: The President's Attacks on the Courts*, N.Y.U. LAW SCHOOL BRENNAN CENTER FOR JUSTICE, (June 5, 2017), <https://www.brennancenter.org/analysis/his-own-words-presidents-attacks-courts>, archived at <https://perma.cc/6YTK-35RB>.

¹⁴ See generally DAVID CAY JOHNSTON, *IT'S EVEN WORSE THAN YOU THINK: WHAT THE TRUMP ADMINISTRATION IS DOING TO AMERICA* (2018).

¹⁵ See, e.g., S. V. Date, *Don't Worry About Trump the Fascist. Trump the Inept Will Save Us*, HUFFINGTON POST, (Feb. 6, 2018), <https://www.huffingtonpost.com/entry/trump-fascist-in>

other side of the ideological spectrum, there have been mixed reactions from conservatives lauding what they perceive to be a substantial blow to the elitism of the left and the end of the neglect of the “silent majority,” while others have critiqued the administration for going against conservative social and economic principles.¹⁶

We contend that the Trump administration, during both Trump’s campaign and his tenure in office, has effectively employed spectacle to an unprecedented level in modern times, and that this may have a significant impact on the character and conduct of politics and policy going forward. A potential consequence of Trump’s presidency for the present and future of American politics is that spectacle has been elevated to an unprecedented level in politics and policymaking, resulting in what Debord had previously termed the rise of a “society of the spectacle.”¹⁷ Spectacle has profound implications for representation, democratic politics, and the rule of law because of its capacity to appropriate images that are divorced from empirical actuality, and re-casted to meet specific politico-ideological agendas. The use of perception and image to construct governing mechanisms, such as “alternative facts,”¹⁸ and “fake news,”¹⁹ and stoking the public’s fear and loathing of the immigrant “other” from the Global South because they pose an existential threat to American identity and security,²⁰ that do not comport

ept_us_5a7a2bade4b06505b4e8ffb8, archived at <https://perma.cc/6G9F-GHYQ>; see also Richard Wolfey, *Yet More Proof: Donald Trump is a Fascist Sympathizer*, THE GUARDIAN, (Nov. 29, 2017), <https://www.theguardian.com/commentisfree/2017/nov/29/donald-trump-britain-first-fascist-sympathiser>, archived at <https://perma.cc/ES9U-3BBT>.

¹⁶ See, e.g., Leigh Ann Caldwell, *Congressional Republicans threaten action over Trump’s tariffs*, NBC NEWS, (Mar. 8, 2018), <https://www.nbcnews.com/politics/congress/congressional-republicans-threaten-action-over-trump-s-tariffs-n855026>, archived at <https://perma.cc/G5ZF-N8FB>; see also Sabrina Siddiqui, *Battle hymns of the Republicans: Trump civil war just getting started*, THE GUARDIAN, (Oct. 28, 2017), <https://www.theguardian.com/us-news/2017/oct/28/donald-trump-republicans-flake-corker-bannon>, archived at <https://perma.cc/T2QD-7KGA>.

¹⁷ DEBORD, *supra* note 9 at 5.

¹⁸ Gregory Krieg, *Donald Trump’s Universe of Alternative Facts*, CNN POLITICS, (Feb. 8, 2017), <https://www.cnn.com/2017/02/08/politics/donald-trump-alternate-universe/index.html>, archived at <https://perma.cc/9N8Z-UMHV>; see also Rebecca Sinderbrand, *How Kellyanne Conway Ushered in the Era of ‘Alternative Facts’*, WASH. POST, (Jan. 22, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/01/22/how-kellyanne-conway-ushered-in-the-era-of-alternative-facts/>, archived at <https://perma.cc/DK8B-24U8>.

¹⁹ See David A. Graham, *‘Alternative Facts’: The Needless Lies of the Trump Administration*, THE ATLANTIC, (Jan. 22, 2017), <https://www.theatlantic.com/politics/archive/2017/01/the-pointless-needless-lies-of-the-trump-administration/514061/>, archived at <https://perma.cc/3L9L-MUE2>.

²⁰ See *President Trump Addresses the Nation on Immigration: “A Crisis Of The Soul,”* REAL CLEAR POLITICS, (Jan. 8, 2019), https://www.realclearpolitics.com/video/2019/01/08/watch_live_president_trump_addresses_the_nation_on_government_shutdown_border_wall.html, archived at <https://perma.cc/CVT9-23SA> (“Our southern border is a pipeline for vast quantities of illegal drugs, including meth, heroin, cocaine and fentanyl. Every week 300 of our citizens are killed by heroin alone, 90% of which floods across from our southern border. More Americans will die from drugs this year than were killed in the entire Vietnam War. . . . Over the years thousands of Americans have been brutally killed by those who illegally entered our country and thousands more lives will be lost if we don’t act right now. This is a humanitarian crisis, a crisis of the heart and a crisis of the soul.”). See also Ron Nixon and Linda Qiu, *Trump’s Evolving Words on the Wall*, N.Y. TIMES, (Jan. 18, 2018), <https://>

with empirical evidence to the contrary, is indicative of a politics steeped in spectacle. Spectacle combined with a securitized immigration discourse results in a complex and contradictory state of affairs in which law and politics are explicitly conflated, leading to a “‘point of imbalance between public law and political fact’ that is situated—like civil war, insurrection and resistance—in an ‘ambiguous, uncertain, borderline fringe, at the intersection of the legal and the political.’”²¹

The imbalance or lack of logical consistency between public law and political fact can be readily observed in the immigration context, and specifically in the Latin American immigrant and migrant contexts. This article thus provides a select analysis of how the Trump administration has been able to employ spectacle and develop justifications for why this phenomenon merits further examination. We seek to gain insight into how its agenda and the politics that attach to spectacle will impact American politics generally, and immigration specifically. The purpose of our analysis is to stimulate academic and policy debate and provide fodder for further research questions as to the enduring impact that the Trump presidency will have on American identity, politics, and civil society, and the US policy posture toward immigration. We also analyze the national backlash that has erupted across the country from Trump detractors in response to the 2016 election, the policies of the administration,²² and their unorthodox governing style,²³ in the form of mass and diversified social protests and mobilizations, and the possibility that they point to a shift in public perceptions of executive power and reactions to the overall agenda that the Trump administration seeks to effectuate.²⁴ The Trump administration’s approach to Obama era policy,²⁵ such as attempts to end DACA,²⁶ shows that previous policies can certainly be undone or scaled back. It seems, however, that the Trump administration is engaged in a different type of politics, one that substantially attempts to

www.nytimes.com/2018/01/18/us/politics/trump-border-wall-immigration.html, archived at <https://perma.cc/4P89-PE9Q>.

²¹ GIORGIO AGAMBEN, STATE OF EXCEPTION 1 (Kevin Attell trans., 2005).

²² See Emanuella Grinberg & Madison Park, *Second Day of Protests over Trump’s Immigration Policies*, CNN, (Jan. 30, 2017), <http://www.cnn.com/2017/01/29/politics/us-immigration-protests/index.html>, archived at <https://perma.cc/PP7R-TPBS>.

²³ See Meridith Mcgraw, *A Timeline of Trump’s Immigration Executive Order and Legal Challenges*, ABC NEWS, (June 29, 2017), <http://abcnews.go.com/Politics/timeline-president-trumps-immigration-executiveorder-legal-challenges/story?id=45332741>, archived at <https://perma.cc/BSH2-6BE3>; Kenneth T. Walsh, *Governing on a Feeling*, US NEWS & WORLD REPORT, (April 14, 2017), <https://www.usnews.com/news/the-report/articles/2017-04-14/donald-trumps-governing-styles-has-critics-up-in-arms>, archived at <https://www.usnews.com/news/the-report/articles/2017-04-14/donald-trumps-governing-styles-has-critics-up-in-arms>

²⁴ See Erica Chenoweth and Jeremy Pressman, *Last month, 83% of U.S. protests were against Trump*, WASH. POST, (Sept. 28, 2017), https://www.washingtonpost.com/news/mon-key-cage/wp/2017/09/25/charlottesville-and-its-aftermath-brought-out-many-protesters-in-august-but-still-more-were-against-trump-and-his-policies/?utm_term=.5542157ff755, archived at <https://perma.cc/H3AA-SHDN>.

²⁵ See generally JOHNSTON, *supra* note 14.

²⁶ See Graham Lanktree, *Trump Administration Calls on Supreme Court to End DACA*, NEWSWEEK, (Jan. 19, 2018), <https://www.newsweek.com/trump-administration-calls-supreme-court-end-daca-785322>, archived at <https://perma.cc/QQ6F-UVQS>.

reconfigure or ablate the rules governing the perception, decision-making, and ethos that have bolstered progressive developments in American politics and democratic society since the 1960s.²⁷ The very function of some federal agencies has been reconfigured, whereas other agencies have been made essentially powerless due to a 2-for-1 regulatory restriction on issuing new rules,²⁸ or have had their fundamental mission statements rewritten to embody the opposite of their traditionally accepted function., such as the word “science” being dropped from the Environmental Protection Agency’s Office of Science mission statement.²⁹

Even as the political drama on Capitol Hill has been absorbed into mainstream media and culture, the Trump administration has produced distinct policy changes in immigration law and policy as well as tax reform, the nomination of Supreme Court Justices, threats to net neutrality, and Wall Street reform, among other policy spaces.³⁰ The election of President Trump is not an historically disruptive phenomenon per se, as previous campaigns have relied on apocalyptic populist platforms, such as those of Ross Perot, Pat Buchanan, and Barry Goldwater. However, Trump’s election does mark a political watershed in that it inaugurates a norm of politics based heavily on spectacle that does not comport with empirical evidence to a substantial degree.³¹ This merits critical analysis because the “spectacle is not a collection of images; rather, it is a social relationship between people that is mediated by images.”³²

²⁷ See, e.g., Sandhya Somashekhar, et al., *Trump Administration Rolls Back Protections for Transgender Students*, WASH. POST, (Feb. 22, 2017), https://www.washingtonpost.com/local/education/trump-administration-rolls-back-protections-for-transgender-students/2017/02/22/550a83b4-f913-11e6-bf01-d47f8cf9b643_story.html?utm_term=.5222e911f44b, archived at <https://perma.cc/S6EN-B9KV>; Seth Reiss, *In Trump’s America*, THE NEW YORKER, (May 19, 2017), <https://www.newyorker.com/humor/daily-shouts/in-trumps-america>, archived at <https://perma.cc/GUV5-2LJN>; John McWhorter, *Symposium: America After Trump – Race in Trump’s America*, DEMOCRACY (Winter 2017) 43, <https://democracyjournal.org/magazine/43/race-in-trumps-america/>, archived at <https://perma.cc/V258-7NV8>.

²⁸ See Cheryl Bolen, *Trump’s 2-for-1 regulatory policy yields minimal results*, BLOOMBERG, (Sept. 29, 2017), <https://www.bna.com/trumps-2for1-regulatory-n73014470324/>, archived at <https://perma.cc/VKL5-SCBH>.

²⁹ See Emily Atkin, *The EPA’s Science Office Removed “Science” From Its Mission Statement*, NEW REPUBLIC, (Mar. 7, 2017), <https://newrepublic.com/article/141174/epas-science-of-fice-removed-science-mission-statement>, archived at <https://perma.cc/8T25-XUQ4>.

³⁰ See, e.g., David A. Graham, *Trump’s Quietly Growing List of Victories*, THE ATLANTIC, Jan. 18, 2018, <https://www.theatlantic.com/politics/archive/2018/01/what-trump-has-accomplished/550760/>, archived at <https://perma.cc/N3AU-NFJB>; Ezra Klein, *Trump is Winning*, VOX, (Jan. 29, 2018), <https://www.vox.com/policy-and-politics/2018/1/29/16900646/trump-administration-tweets-media-polarization>, archived at <https://perma.cc/Y2WG-N6ZB>.

³¹ See generally Katherine J. Rosich, *Race, Ethnicity, and the Criminal Justice System*, AM. SOC. ASS’N. (Sept. 2007) <http://www.asanet.org/sites/default/files/savvy/images/press/docs/pdf/ASARaceCrime.pdf>, archived at <https://perma.cc/HW92-LDVB> (discussing racial and ethnic disparities in the criminal justice system).

³² DEBORD, *supra* note 9, at 5.

II. THE POLITICS OF THE SPECTACLE: A PRIMER TO CONCEPTUALIZING IMMIGRATION

Within this space of spectacle, facts, as conventionally understood, lose their ability to accurately frame policy spaces, such as immigration, because they become enmeshed, trapped in spectacle. This undermining of facts reverses traditional notions of censorship and what is considered a threat to democracy. This is succinctly described by media theorist Alain de Botton:

A contemporary dictator wishing to establish power would not need to do anything so obviously sinister as banning the news: he or she would only have to see to it that news organizations broadcast a flow of random-sounding bulletins, in great numbers but with little context within an agenda that kept changing, without giving any sense of the ongoing relevance of an issue that had seemed pressing only a short while ago [. . .] This would be quite enough to undermine most people's capacity to grasp political reality—as well as any resolve they might otherwise have summoned to alter it. The status quo could confidently remain forever undisturbed by a flood of, rather than a ban on, news.³³

This is a consequence of spectacle: rather than a premise/conclusion model, facts flow incessantly without any empirically verifiable conclusions. Spectacle allows facts to take on almost parodic impressions, freeing facts from the scope of critical thinking.

One of central narratives of the Trump presidential campaign was American exceptionalism, with an emphasis on the lost greatness of America's place in the world as an economic success and leader.³⁴ This idea of past greatness not only scapegoats the responsibility of the economic consequences of decades long policy decisions by both parties, but also serves a deeper function: "This passion for the past is [. . .] something like redemption rather than predestination. The past is not fatal, it does not oblige us to do anything."³⁵ The past, in this space, functions as a redirection of anger and violence for political gain. There is no objective result when one believes in the reality of America's past greatness; instead, the consequence of believing in past greatness is to channel of resentment and frustration to strategic targets. In the case of Trump's narrative, this anger and frustration is directed toward immigrants. For instance, President Trump has equivocated immigrants with negative impacts to public safety, national security, and the integrity of the American nation-state, stating:

³³ ALAIN DE BOTTON, *THE NEWS*, 31-32 (2014).

³⁴ See, e.g., Stephen Wertheim, *Trump and American Exceptionalism*, FOREIGN AFFAIRS, (Jan. 3, 2017), <https://www.foreignaffairs.com/articles/united-states/2017-01-03/trump-and-american-exceptionalism>, archived at <https://perma.cc/MG3T-TYQY>; Peter Beinart, *How Trump Wants to Make American Exceptional Again*, THE ATLANTIC, Feb. 2, 2017, <https://www.theatlantic.com/politics/archive/2017/02/how-trump-wants-to-make-america-exceptional-again/515406/>, archived at <https://perma.cc/4RE9-EZRB>.

³⁵ JEAN BAUDRILLARD, *FROM HYPER-REALITY TO DISAPPEARANCE: UNCOLLECTED INTERVIEWS*, 22 (2015).

The United States will not be a migrant camp, and it will not be a refugee holding facility. Won't be. You look at what's happening in Europe, you look at what's happening in other places; we can't allow that to happen to the United States. Not on my watch. For the rest of the world, you look at everything that's taking place; pick up your newspapers this morning, and you see. We want safety and we want security for our country.³⁶

The Trump administration's interpolation of American exceptionalism discourse is rooted in spectacle, which has figured prominently into the administration's politics both during the campaign and after the election. Specular rhetoric that informs policy conceptualization and implementation merits critical examination because of the spectacle's power in mediating socio-political relationships that, in turn, are mediated by images.³⁷ It is not uncommon for press conferences, statements and events to be framed as entertainment events, where emotional characters take the stage. In fact, this notion of the "event" under the Trump administration is similar to Roland Barthes' analysis of the spectacle as captured by professional wrestling:

[N]othing exists unless it exists totally, there is no symbol, no allusion, everything is given exhaustively; leaving nothing in shadow, the gesture severe[s] every parasitical meaning and ceremonially presents the public with a pure and full signification [. . .] What is enacted by wrestling, then, is an ideal intelligence of things [. . .] raised for a while out of constitutive ambiguity of everyday situations and installed in panoramic vision of univocal Nature, in which signs finally correspond to causes without obstacle, without evasion, and without contradiction.³⁸

This is the radical nature of the spectacle, in that it is able to relate to itself as its own truth and is transmitted without any ambiguity or extraneous and subaltern references. This is the theoretical basis for the Trump administration's policy positions: a crystalized definition of people and concepts derived from national myth and racial/ethnic cultural archetypes, in place of an empirical exploration of the infinite complexity of lived social experience, to drive and justify radical policy priorities. This notion of the specular archetype warrants further investigation, as defined by Homi Bhabha: "For it is the force of ambivalence that gives the [. . .] stereotype its currency: ensures its repeatability in changing historical and discursive conjunctures [. . .] produces that effect of probabilistic truth and predictability which, for the stereotype, must always be in excess of what can be empirically proved or

³⁶ Tim Hains, *President Trump: "The United States Will Not Be A Migrant Camp," "Not On My Watch,"* REAL CLEAR POLITICS, (June 18, 2018), https://www.realclearpolitics.com/video/2018/06/18/president_trump_the_united_states_will_not_be_a_migrant_camp.html, archived at <https://perma.cc/K2G4-4LUQ>.

³⁷ DEBORD, *supra* note 9, at 5.

³⁸ ROLAND BARTHES, *MYTHOLOGIES* 24-25 (2013).

logically constructed.”³⁹ This notion of the stereotype, much like spectacle, cannot be empirically proved or disproved. Rather, it floats freely as a conclusion ready to force any future historical developments into its purview and shields the stereotype from claims of historical hypocrisy.

President Trump has effectively captured the imagination of a sector of the American public with the notion stereotype and has employed spectacle effectively to do so. In the case of immigration, Trump has continued to drive a discourse and policy of immigration based on spectacle, fear and loathing, and security in order to maintain and enhance power. This combination of concepts that inform executive power and policy making has serious repercussions for American politics, identity, and policy:

Trump’s ability to gin up fears about illegal immigration, more than perhaps any other issue, won him the White House. Headed into a midterm election that will be won by the political party that can better rally its base, Trump has remained determined to talk about immigration, even when others in his party have resisted.⁴⁰

Spectacle has been employed to rally and procure support for the Trump agenda of recapturing the ideal of American greatness, premised on an idyllic time that may never have actually existed. The power of spectacle lies, in part, in how it has been employed to redefine what “comprises an event [which] is no longer constructed in the direction of [empirical] history, or in the political sphere, but against them. There’s a disaffection, . . . an indifference, which can suddenly crystalize into a more violent form, through a process of instantaneous passage to the extreme.”⁴¹ Thus, Trump’s rhetorical and political posture assumes a fear and insecurity-based war-response character, despite problematic racial and ethnic undertones. A war-response is one which, generally speaking, tends to frame the struggle against an enemy of public safety “in military terms of an enemy-centric war,”⁴² wherein the government’s security apparatuses are mobilized to forcefully counter and neutralize perceived threat. There is, one commentator notes, a new level of intensity, stating in late 2018:

I mean, just look back at the week. On Monday, he sent thousands of troops to the southwest border. On Tuesday, we got a report that the White House wants to do away with birthright citizenship. On Wednesday, the president tweeted an inflammatory ad that compares migrants in the caravan to a convicted cop killer who entered the U.S. illegally years ago. And yes-

³⁹ HOMI BHABHA, *THE LOCATION OF CULTURE* 95 (1994).

⁴⁰ Susan B. Glasser, *Trump’s Cynical Immigration Strategy Might Work for Him—Again*, *THE NEW YORKER*, (June 22, 2018), <https://www.newyorker.com/news/letter-from-trumps-washington/trumps-cynical-immigration-strategy-might-work-for-himagain>, archived at <https://perma.cc/FRN8-TVZD>.

⁴¹ BAUDRILLARD, *supra* note 35, at 134.

⁴² Jason Rineheart, *Counterterrorism and Counterinsurgency*, 4 *PERSP. ON TERRORISM* 31, 37–38 (2010), <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/122/html>, archived at <https://perma.cc/74JZ-5LG3>.

terday in his speech, he said repeatedly that these are, quote, ‘tough people,’ unquote, and really that we should be afraid of them.⁴³

So how is it that Trump has been able to capitalize politically on a theatrical platform? Enter perception, image, and spectacle as the underlying bases of political engagement, law, and policy.⁴⁴ In the case of immigration, spectacle was and continues to be effectively employed to conflate fear, angst, and hate into political will and votes. The realities of immigration have been displaced by specular politics. Fear, loathing, and insecurity have blended together in a way that has enabled Trump to channel feelings of fear and hatred into political capital. The administration is promoting immigration as an impending crisis at the border, releasing fact sheets that contain messages such as: “GROWING CRISIS: Our country is facing an urgent crisis as illegal aliens stream across our border, including a caravan of thousands heading here at this moment.”⁴⁵

Criminality and insecurity are proffered as the descriptors for, and cornerstones of, a crisis that requires a war-type response to immigration as a whole. The immigrant from the Global South is spatially captured and presented in a securitized specular discourse as synonymous with drugs, crime, and violence, threatening the very fabric of American identity via attenuation of geo-political borders. As one commentator notes, what is transpiring at the border is subject to interpretation, as “crisis is in the eye of the beholder,” noting that the number of people apprehended at the border in 2018 was lower than at any point in the Obama administration, as well as below the amounts in the 1990s and 2000s. However, “the administration would argue that it is a crisis today because it’s a different mix of people who are showing up at the border. . .now you see many more families, many more children. And those groups have many more protections under the law

⁴³ Joel Rose, *Immigration Experts Say Some Of Trump’s Statements Are False And Misleading*, NPR, (Nov. 2, 2018), <https://www.npr.org/2018/11/02/663655405/immigration-experts-say-some-of-trumps-statements-are-false-and-misleading>, archived at <https://perma.cc/V72Z-FMUE>.

⁴⁴ See Eugene Scott, *Trump: ‘I Just Don’t Want a Poor Person’ in Cabinet Economic Jobs*, CNN, (June 22, 2017), <https://www.cnn.com/2017/06/22/politics/donald-trump-poor-person-cabinet/index.html>, archived at <https://perma.cc/X9WR-DA4V>. (President Trump recently stated: “I just don’t want a poor person” in the billionaire-laden cabinet. “‘Somebody said, ‘Why’d you appoint rich person to be in charge of the economy,’ said Trump, a billionaire himself. ‘I said, ‘Because that’s the kind of thinking we want.’” “‘They’re representing the country. They don’t want the money. They’re representing the country. They had to give up a lot to take these jobs. They gave up a lot,’ he said.”)

⁴⁵ The White House, *Fact Sheets: Confronting the Urgent Crisis at Our Border*, (Nov. 1, 2018), <https://www.whitehouse.gov/briefings-statements/confronting-urgent-crisis-border/>, archived at <https://perma.cc/PZB9-EA4C>, (Stating “CBP stopped 17,256 criminals and 1,019 gang members from entering our country in FY 2018. Brutal gangs like MS-13 have exploited the influx of unaccompanied minors for recruitment. Mexico is the source of more than 90 percent of wholesale heroin seized by law enforcement in the United States, up from only 10 percent in 2003. The amount of fentanyl seized by Immigration and Customs Enforcement (ICE) in FY 2017 (2,370 pounds) was enough to kill every American citizen by overdose. The southern border is the main entry point for cocaine entering the United States. Methamphetamine seizures at the southern border jumped by 157 percent from 2012 to 2016.”); see also *id.*

and get to stay in the U.S. while they fight in immigration court to win their asylum cases.”⁴⁶ Contrary to the specular discourse of the immigrant emanating from the administration, there is in actuality no singular, objective interpretation that the immigrant is an existential security threat. Children and families can be viewed as constituting a security threat because they are perhaps able to take advantage of sundry legal protections that single adults may not have, thus enabling deportation to take place at a slower pace. The mere presence of the immigrant may be viewed as a threat because, one can argue, the longer the immigrant stays, the longer the immigrant can find ways of remaining in the country – and it is mere presence that triggers a xenophobic and ethnocentric security response.

As noted above, crisis is indeed in the eye of the beholder. What one may see as a bona fide threat to the integrity of American political culture and identity, another may see as enriching and bolstering the integrity of the foregoing. Spectacle, however, creates a basis from which rationality and logic are divested of their force in challenging eye-catching and image-based reasoning for policy pronouncements.

III. IMAGE & THE POLITICS OF THE SPECTACLE

Immigration, in law, policy, and practice, does not function in a vacuum. Other structural factors have enabled a specular politics to arise around the immigrant from the Global South. In *Twilight of the Elites*, Christopher Hayes paints a picture of frustration and resentment as one by one the mainstays of society, and the beliefs that upheld them, became seriously attenuated.⁴⁷ Hayes puts it succinctly:

The core experiences of the last decade [are not] just political dysfunction. It’s something much deeper and more existentially disruptive: the near total failure of each pillar institution of our society. The financial crisis and the grinding, prolonged economic immiseration it has precipitated are just the most recent instances of elite failure [. . .] The Supreme Court- an institution that embodies an ideal of pure, dispassionate, elite cogitation- handed the presidency to the favored choice of a slim, five person majority [. . .] Just a few months later Enron and Arthur Anderson imploded, done in by a termitic [sic] infestation of deceit that gnawed through their very foundations. [. . .] And just as Enron was beginning to be sold off for scraps in bankruptcy court [. . .] the Iraq disaster began. Iraq would cost the lives of almost 4,500 Americans and 100,000 plus Iraqis, and \$800 billion [. . .] As the decade of war dragged on, the housing bubble began to pop, ulti-

⁴⁶ See Rose *supra* note 43.

⁴⁷ CHRISTOPHER HAYES, *TWILIGHT OF THE ELITES: AMERICA AFTER MERITOCRACY* (2012).

mately bringing about the worst financial panic in eighty years. In the wake of the bankruptcy of Lehman Brothers in September 2008, it seemed possible that the U.S. financial system as a whole would cease to operate [. . .]⁴⁸

There are even more significant examples of the attenuation of faith in civil society and democratic government, including the scandal that plagued the Catholic Church,⁴⁹ the greatest Ponzi Scheme in history perpetrated by Bernie Madoff,⁵⁰ and the impeachment of a President fueled by what some deemed a political witch-hunt.⁵¹ The controversy of scandal also made its way into America's pastime with a steroid scandal,⁵² and tainted the reputation of Joe Paterno, the head coach at the Pennsylvania State University football team and a previously-esteemed figure of American values.⁵³ These scandals, with the more recent ones subject to a 24/7 news cycle, had significant consequences: "[t]he cumulative effect of these scandals and failures [reflects] an inescapable national mood of exhaustion, frustration, and betrayal."⁵⁴ A mixture of economic and cultural distress was a significant motivation for those individuals who voted for Trump, both on a regional and national level.⁵⁵ Exhaustion with business as usual, combined with a politics of fear tapping into the angst of the so-called silent majority based on, among other things, xenophobia, nationalism, and loathing of "un-American" foreign influences on national identity and civic culture, were all chan-

⁴⁸ *Id.* at 2-3.

⁴⁹ *Across The Nation, Priest Sexual Abuse Cases Haunt Catholic Parishes*, USA Today, (Aug. 23, 2017), <https://www.usatoday.com/story/news/2017/08/23/priest-sexual-abuse-cases-catholic-parishes-nationwide/569221001/>, archived at <https://perma.cc/B78N-JUJX>.

⁵⁰ *See Con of the Century*, THE ECONOMIST, (Dec. 18, 2008), <https://www.economist.com/node/12818310>, archived at <https://perma.cc/7NSS-E7XT>.

⁵¹ *See 'Clinton Vs. Starr': A 'Definitive' Account*, NPR, (Feb. 16, 2010), <https://www.npr.org/templates/story/story.php?storyId=123653000>, archived at <https://perma.cc/H2Y4-S3RL>.

⁵² *See Congress's Decision to Subpoena Former Baseball Players to Testify*, CNN, (Mar. 29, 2005), <http://www.cnn.com/2005/LAW/03/17/lazarus.steroids/>, archived at <https://perma.cc/CB3F-G4NE>.

⁵³ *See Eugene Robinson, The Penn State abuse scandal: Joe Paterno's shameful inaction*, SEATTLE TIMES, (July 13, 2012), <https://www.seattletimes.com/opinion/the-penn-state-sex-abuse-scandal-joe-paterno-shameful-inaction/>, archived at <https://perma.cc/8NHF-MMRK>.

⁵⁴ HAYES, *supra* note 47, at 4.

⁵⁵ *See Shannon Monnat and David L. Brown, How Despair Helped Drive Trump to Victory*, INSTITUTE FOR NEW ECONOMIC THINKING: COMMENTARY, (Nov. 16, 2017), <https://www.inetconomics.org/perspectives/blog/how-despair-helped-drive-trump-victory>, archived at <https://perma.cc/MFQ9-NE6M>, ("Trump's average over-performance – defined as the difference between his percentage share of the vote compared to that of Romney four years earlier – was greater in areas of higher economic, social, and health distress."). *See also Examining Trump's Appeal To Voters*, NPR POLITICS, (Nov. 9, 2016), <https://www.npr.org/2016/11/09/501382657/author-j-d-vance-explains-trumps-appeal-to-voters>, archived at <https://perma.cc/UPG5-4YMB>, ("I think I heard a lot of the things that people have talked about. I heard a very large amount of frustration, a feeling that things weren't going especially well, also that the elites didn't care necessarily about a lot of the folks living in middle America. So, I do think that feeling of alienation and frustration really drove a lot of people to make a political decision that obviously a lot of people don't quite understand.").

neled into a specular politics.⁵⁶ The fear of the immigrant “other” and the attenuation of a compromised American identity conjured from an idealized past was particularly effective in playing on the prejudice, exhaustion, and angst of the voting blocs that felt left behind and disenfranchised.⁵⁷

The foregoing dissonance is reflected as far back as the 2010 midterm election when, “[s]urveying the results . . . on election night, Tom Brokaw alluded to the collapse of trust in institutions in the wake of a war based on lies and a financial bubble that went bust. Almost nothing is going the way most people have been told that it will. And every time they’re told in Washington that they have it figure it out, it turns out not to be true.”⁵⁸ This observation is corroborated by survey data from Gallup, which showed that “[b]y 2007. . . public trust in nearly every single major institution [was] at or near an all-time low. [. . .] Those institutions that have lost the most trust are also the most central to the nation’s functioning: banks, major companies, the press, and perhaps most troubling, Congress.”⁵⁹ Continuing this sensation, Trump has promulgated an immigration and security discourse premised on fear, loathing, and spectacle in a policy context that seeks someone or something to blame or to project angst upon, and to allay fears rooted in insecurities that are racial, ethnic, cultural and economic in nature. Thus, a caravan of immigrants from the Global South can be characterized as an existential and material threat to the security of the US:

⁵⁶ See, e.g., Sasha Polakow-Suransky, *White Nationalism Is Destroying the West*, N.Y. TIMES, (Oct. 12, 2017), <https://www.nytimes.com/2017/10/12/opinion/sunday/white-nationalism-threat-islam-america.html>, archived at <https://perma.cc/CED4-MRL4>, (“In recent years, anti-immigration rhetoric and nativist policies have become the new normal in liberal democracies from Europe to the United States. Legitimate debates about immigration policy and preventing extremism have been eclipsed by an obsessive focus on Muslims that paints them as an immutable civilizational enemy that is fundamentally incompatible with Western democratic values.”). See also Exec. Order. 13768, 82 F.R. 8799 (2017), (“Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.”).

⁵⁷ Full text: *Donald Trump announces a presidential bid*, WASH. POST, (June 16, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.ca99d901fb65, archived at <https://perma.cc/9S6S-52UE>, (announcing his bid for the presidency, Trump stated: “When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people. But I speak to border guards and they tell us what we’re getting. And it only makes common sense. It only makes common sense. They’re sending us not the right people. It’s coming from more than Mexico. It’s coming from all over South and Latin America.”). See also Matthew C. MacWilliams, *Who Decides When the Party Doesn’t? Authoritarian Voters and the Rise of Donald Trump*, 49 POL. SCI. AND POL. 716, (Oct. 2016), <https://www.cambridge.org/core/serVICES/aop-cambridge-core/content/view/8751AFAC70288BD234A8305F4687B1C7/S1049096516001463a.pdf/div-class-title-who-decides-when-the-party-doesn-t-authoritarian-voters-and-the-rise-of-donald-trump-div.pdf>, archived at <https://perma.cc/5V6Y-AV7S>; Alex Altman, *No President Has Spread Fear Like Donald Trump*, TIME, (Feb. 9, 2017), <http://time.com/4665755/donald-trump-fear/>, archived at <https://perma.cc/H7FZ-QJ77>.

⁵⁸ HAYES, *supra* note 47, at 4.

⁵⁹ *Id.*, at 10.

At this very moment, large, well-organized caravans of migrants are marching towards our southern border. Some people call it an “invasion.” It’s like an invasion. . . . These are tough people, in many cases. A lot of young men, strong men. And a lot of men that maybe we don’t want in our country. But again, we’ll find that out through the legal process. . . . this isn’t an innocent group of people. It’s a large number of people that are tough.⁶⁰

Ultimately, the narratives of who we are as Americans and the sociocultural bases of moral judgments on the social and political system have, for some, been wavering, and, as Hayes describes, “[t]he foundation of our shared life as Americans – where we worship, where we deposit our paychecks, the teams we root for, the people, who do our business in Washington,”⁶¹ seems to be at a point where a collective angst rooted in fear and loathing can be displaced onto immigrants. A response to the culmination of this fallout peaked in response to the recession, and nascent strains of populism began to take root across the country.⁶² Here is where the specular narrative of Trump’s campaign and subsequent election found fecund soil and took root, finding expression in anger, hate, fear, and frustration across racial, cultural and economic lines.

A. *Populism & Revolt*

As mentioned in the forgoing paragraph, frustration has had far reaching consequences, especially when the social and cultural institutions, that were weakening in their significance as authorities and cultural reference points, encountered with the aftermath of the financial crisis of 2008. The rise of tribalism, social media silos, and populism all surfaced in the years leading up to the 2016 election. The turmoil caused many scholars to revisit populism as a topic warranting renewed exploration.⁶³ John Judis succinctly defines two varying strains of populism that have found expression in the present political environment: “[l]eftwing populists champion the people against an elite or establishment. Theirs is a vertical politics of the bottom and middle arrayed against the top. Rightwing populists champion the people against an elite that they accuse of coddling a third group, which can consist, for instance, of immigrants, Islamists, or African American mili-

⁶⁰ Remarks by President Trump on the Illegal Immigration Crisis and Border Security, (Nov. 1, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-illegal-immigration-crisis-border-security/>, archived at <https://perma.cc/4Y56-ESK3>.

⁶¹ HAYES, *supra* note 47, at 6.

⁶² See Amanda Taub, *Trump’s Victory and the Rise of White Populism*, N.Y. TIMES, (Nov. 9, 2016), <https://www.nytimes.com/2016/11/10/world/americas/trump-white-populism-europe-united-states.html>, archived at <https://perma.cc/HC7G-92AN>.

⁶³ See Deidre McPhillips, *What is Populism? A political ideology that pits the people against the elite isn’t new, but it is gaining momentum*, U.S. NEWS & WORLD REPORT, (Mar. 1, 2017), <https://www.usnews.com/news/best-countries/articles/2017-03-31/populisms-resurgent-rise-around-the-world>.

tants.”⁶⁴ The populism that drove the campaigns of Bernie Sanders and Donald Trump on the left and the right, respectively, relied on populist sentimentality that was not only the result of a political and economic system profoundly lacking in the equitable distribution of wealth and resources, but also in view of a “system” itself that was inoperative or hijacked by the political and corporate elite.⁶⁵ Amongst working-class Americans, for instance, “government is now generally seen as being made up of two sorts of people: ‘politicians,’ who are blustering crooks and liars but can at least occasionally be voted out of office, and [economic elites.] There is assumed to be a kind of tacit alliance between what came to be seen as the parasitical poor . . . and the equally parasitical self-righteous [elites] whose existence depends on subsidizing the poor using other people’s money.”⁶⁶

The Trump campaign was based on perceptions and images that were theatrical in nature, in that fact and fiction became indistinguishable from one another. Hate and fear, visceral human emotions, were appropriated in the service of the campaign and subsequent election of Trump. The political consequence of this phenomenon is comprehensive, in that, “the spectacle is at once united and divided. In both, unity is grounded in a split.

As it emerges in the spectacle, however, this contradiction is itself contradicted by virtue of a reversal of its meaning: division is presented as unity, and unity as division.”⁶⁷ An example of this contradiction is the administration nominating and appointing individuals who had no background in the agencies or departments that they were to govern. Appointing those without any training or expertise to run government has been a mainstay of the administration: for example, a Department of Education Secretary with no background in education theory or administration; a neurosurgeon with no housing policy background to run the Department of Housing and Urban Development; a Wall Street banker, Steve Mnuchin, who made a fortune by foreclosing on homeowners to run the Treasury Department; a lawyer who publicly vowed to destroy the Environmental Protection Agency chosen to run it; and a Surgeon General who owned substantial tobacco stocks.⁶⁸ Only in the realm of spectacle could these appointments take place.

The reach of specular politics is grounded in the history of Trump’s base, comprised mainly of white working- and middle-class voters – “precisely the voters who had originally flocked to Wallace and then to Nixon, who had been attracted to Perot and Buchanan, but who now felt that they had found a champion in Trump. He had become the ‘voice’ of middle-

⁶⁴ JOHN B. JUDIS, *THE POPULIST EXPLOSION: HOW THE GREAT RECESSION TRANSFORMED AMERICAN AND EUROPEAN POLITICS* 15 (2016).

⁶⁵ See Susan Page and Brad Heath, *How anti-establishment outsider Donald Trump was elected the 45th president of the United States*, USA TODAY, (Nov. 9, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/11/09/election-analysis-hillary-clinton-donald-trump/93198882/>, archived at <https://perma.cc/SA4Y-3UQY>.

⁶⁶ DAVID GRAEBER, *THE UTOPIA OF RULES: ON TECHNOLOGY, STUPIDITY, AND THE SECRET JOYS OF BUREAUCRACY* 10 (2015).

⁶⁷ DEBORD, *supra* note 9, at 16.

⁶⁸ JOHNSTON, *supra* note 14 at 8-9.

American radicalism and more broadly white Americans that felt left behind by globalization and the shift to a post-industrial economy.”⁶⁹ Spectacle was employed to create a binary between us and them, as well as American and un-American and white and non-white. The immigrant “other” from the Global South fit into this discourse permeated with nationalist sentiment.

There is considerable research about the rise of the Alt-right and its relation to, or corroboration with, the Trump campaign.⁷⁰ It has been noted that, “[t]he mainstream conservative movement has long served as an important gatekeeper, keeping certain right-wing tendencies out of view and under control. Since the conservative movement emerged in the 1950s, it has engaged in periodic housecleaning [. . .] During these purges, the movement drove out open racists, anti-Semites, and conspiracy theorists from its ranks and from mainstream political discourse [. . .] Following the breakdown of conservatism [embodied by Trumpism] new and destabilizing forces on the right are likely to emerge. The alt-right qualifies as such a destabilizing force.”⁷¹ For the alt-right “Identity politics is everything.”⁷² The presence of the alt-right, however one defines Trump’s affiliation with the movement as a whole, played a significant role in his election.⁷³ The alt-right was one faction of the divided political landscape, driven by what is called empirical tribalism, created by “filter bubbles” where “[. . .]because of algorithmic and financial incentives of media platforms and search engines, audience members are increasingly exposed to only points of view they already agree with [. . .] then lead[ing] to a hardening of extreme political attitudes and a clustering of people with the same beliefs who also reinforce each other’s opinions.”⁷⁴ This empirical tribalism, employed by specular discourse, has been long recognized as anti-democratic and a threat to social function. George Orwell, in his notes on nationalism, long ago identified the social tribalism that undergirds identity politics: “Indifference to objective truth is encouraged by the sealing off of one part of the world from another, which makes it harder and harder to discover what is actually happening.”⁷⁵ Orwell goes on in the same essay to explain the consequences of this sealing-off: “Since nothing is ever quite proved or disproved, the most unmistakable fact can be impudently denied. Moreover, although endlessly brooding on power, victory, defeat, revenge, the nationalist is often somewhat uninterested in what happens in the real world. What he wants to *feel* that his own unit is

⁶⁹ JUDIS, *supra* note 64, at 75. See also Timothy J. Lombardo, *Why white blue-collar voters love President Trump: He has mastered their language*, WASH. POST, (Sept. 16, 2018), https://www.washingtonpost.com/outlook/2018/09/17/why-white-blue-collar-voters-love-president-trump/?utm_term=.ba562edbcde0, archived at <https://perma.cc/7GFD-J5KK>.

⁷⁰ See generally GEORGE HAWLEY, *MAKING SENSE OF THE ALT-RIGHT* (2017).

⁷¹ *Id.*, at 7.

⁷² *Id.*, at 18.

⁷³ *Id.*

⁷⁴ C.W Anderson, *Empirical Failures, in TRUMP AND THE MEDIA* 9 (Pablo J. Boczkowski & Zizi Papacharissi eds. 2018) (citations omitted).

⁷⁵ GEORGE ORWELL, *ESSAYS* 874 (1996).

getting the better of some adversary than by examining the facts to see whether they support him.”⁷⁶

Racial and ethnic hostility aside, the nationalist template is an effective means of peddling ideology because nationalism, a primarily political principle, holds that the “political and the national unit should be congruent.”⁷⁷ Furthermore, nationalist “sentiment is the feeling of anger aroused by the violation of the principle, or the feeling of satisfaction aroused by its fulfillment . . . Nationalism is a theory of political legitimacy, which requires that ethnic boundaries should not cut across political ones, and that the ethnic boundaries within a given state – a contingency already formally excluded by the principle in its general formulation – should not separate the power holders from the rest.”⁷⁸ Furthermore, ideology “is the foundation of the thought of a class society within the conflictual course of history. Ideological entities have never been mere fictions; rather, they are a distorted consciousness of reality, and, as such, real factors retroactively producing real distorting effects; which is all the more reason why that materialization of ideology, in the form of the spectacle.”⁷⁹ This, in turn, has a powerful effect on policy spaces, and especially on voting behavior.⁸⁰

B. Spectacle, Law, Identity & Representative Politics

The spectacle has serious implications for law, especially in the realms of identity and representative politics. The cross-section of identity, politics, law and spectacle has far reaching impacts on policy spaces. Representation permeates every facet of law. Law and legislation are the primary means by which policy is effectuated and can serve as a facilitator or counter to the spectacle in framing policy spaces. The law is part of a biopolitics in which power is exercised in a manner that can be characterized as the “power of regulation” to regularize life, which “consists in making live . . . the right to intervene to make live . . . eliminating . . . deficiencies.”⁸¹ The “regularization of life,” as Foucault terms it, in the context of biopower and politics, is one that excludes, reduces, and emplaces thought and being in binary oppositions within which complexity, diversity, and the morass of being human are silenced in the name of a pragmatic politics, which, in turn, serves a very narrowly defined identity for the purposes of wielding power in the realm of power politics.⁸²

⁷⁶ *Id.*, at 875 (emphasis in original).

⁷⁷ Ernest Gellner, *Nations & Nationalism*, in *CONFLICT AFTER THE COLD WAR: ARGUMENTS ON CAUSES OF WAR & PEACE* 280 (Richard K. Betts ed., 4th ed. 2013).

⁷⁸ *Id.*

⁷⁹ DEBORD, *supra* note 9, at 62.

⁸⁰ See GEORGE A. AKERLOF AND RACHEL E. KRANTON, *IDENTITY ECONOMICS*, 121-30 (2010) (discussing the psychological research behind why some people ostensibly vote against their economic interests because of their value and cultural affiliations).

⁸¹ Michel Foucault, *Society Must Be Defended*, in *THE NORTON ANTHOLOGY OF THEORY AND CRITICISM* 1445 (William E. Cain et al. eds., 3d ed. 2018).

⁸² *Id.* at 1447.

When thinking of the law's rule-based mandate to procure order, it is interesting to note how law seeks to regularize life, and administer identity as articulated by elites in the service of procuring order, stability, and security. Fixing identity in space and time for the explicit purpose of political mobilization, organization, and as the conceptual basis for applied representation and public policy may suffer from what California Supreme Court Justice Roger Traynor observed in 1968 in *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*,⁸³ which addresses the difficulty in assigning a singular meaning to a particular word: "If words had absolute and constant references, it might be possible to discover . . . intention in the words themselves and in the manner in which they were arranged. Words, however, do not have absolute and constant referents . . . The meaning of particular words or groups of words varies with the . . . verbal context and surrounding circumstances and purposes in view of the linguistic education and experience of their users and their hearers or readers (not excluding judges) . . . A word has no meaning apart from these factors; much less does it have an objective meaning, one true meaning."⁸⁴ Judge O. Rogeriee Thompson's dissent in *Kosilek v. Spencer*⁸⁵ exemplifies Justice Traynor's observation of the problem of affixing identity in space and time. Judge Thompson directly confronts the conflict between the integrity of the binary and challenges to its usage in grounding the law's approach to identity-based signifiers and the judicial provision of remedies and protections, stating that the majority's opinion, "aggrieves an already marginalized community and enables correctional systems to further postpone their adjustment to the crumbling gender binary."⁸⁶

The focus on language cannot be overstated. From a policy and social perspective, words provide the crucial filter to interpret and understand the world and, and frame and set the stage for perception. Victor Klemperer, in examining linguistic policy in Nazi Germany, studied how language in its creation and manipulation is central to authoritarianism and fascism: "But language does not simply write and think for me, it also increasingly dictates my feelings and governs my entire spiritual being the more unquestionably and unconsciously I abandon myself to it. And what happens if the cultivated language is made up of poisonous elements or has been made the bearer of poisons? Words can be like tiny doses of arsenic: they are swallowed unnoticed, appear to have no effect. And then after a little time the toxic reaction sets in after all."⁸⁷

This gives renewed brio to the political cliché "words matter", and places the language of the Trump administration at the center of critical anal-

⁸³ *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641 (Cal. 1968).

⁸⁴ *Id.* at 644-45 (quoting Arthur L. Corbin, *The Interpretation of Words and the Parole Evidence Rule*, 50 CORNELL L.Q. 161, 187 (1965)).

⁸⁵ *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014).

⁸⁶ *Id.* at 113 (Thompson, J., dissenting).

⁸⁷ VICTOR KLEMPERER, *THE LANGUAGE OF THE THIRD REICH*, 15-16 (2000).

ysis, especially with clinical research backing this link between language and reality.⁸⁸ Using phrases like “illegal immigrant”, ignoring gender pronoun preferences (both in law and in social interactions), or using the term “animals” for Central American gang members all point to an appropriation of the complexity of reality and ethics into ideological spectacle. The example of Trump’s remarks labeling MS-13 gang members “animals”⁸⁹ is particularly illustrative of the role ideology in spectacle. Drawing on Slavoj _i_ek’s definition of ideology, “a reduction to the simplified “essence” that conveniently forgets the “background noise” which provides the density of its actual meaning [. . .] what this ‘background noise’ conveys is—more often than not—the obscenity of the barbarian violence which sustains the public face of law and order.”⁹⁰ This definition outlines the function of the specular process. The designation of “animals” provides policy justifications for the harsh and inhumane police response to all immigrants from the Global South. Specular immigration discourse relegates the realities of the root socio-economic causes of immigration itself. The violence suffered by children, the sexual assaults suffered by young girls at the border, the hazardous journey undertaken by families, and the accountability the U.S. has toward contributing to the root cause of the crime and socio-economic economic problems of Central America are all “background noise” under the spectacle.

Spectacle also impacts the law in various policy spaces. Law, as a producer and product of knowledge that informs the administration of justice and safeguards the enduring facets of American political culture and society, has serious implications for the actuality of subjects that reside in the law’s jurisdiction. “Policymaking embodies identity formation while it preserves, enhances, or augments the power to classify and define legal and political actuality. As the structural ambience that anchors the constitutional order, policy making also dismantles identity as it re-configures social functions and redefines social welfare.”⁹¹ Law is fraught with complexity and contra-

⁸⁸ See Gary Lupyan and Emily J. Ward, *Language can boost otherwise unseen objects into visual awareness*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA, (Aug. 2013), <https://www.pnas.org/content/early/2013/08/08/1303312110.abstract>, archived at <https://perma.cc/DZ8H-G9XA>.

⁸⁹ See Philip Bump, *The slippery slope of Trump administration’s political embrace of calling MS-13 ‘animals’*, WASH. POST, (May 21, 2018), https://www.washingtonpost.com/news/politics/wp/2018/05/21/the-slippery-slope-of-the-trump-administrations-political-embrace-of-calling-ms-13-animals/?utm_term=.a01bb40dc7c1, archived at <https://perma.cc/3E9J-SN8>.

⁹⁰ SLAVOJ _I_EK, *LIVING IN THE END OF TIMES*, 5-6 (2011).

⁹¹ See Marvin L. Astrada, *The Nature of the Judicial Process: A Complex Systems Analysis of Checks & Balances & Separation of Powers in the Present Political Context*, 21 RICH. PUB. INT. L. REV. 279 (2017). See also *Shelley v. Kraemer*, 334 U.S. 1 (1948) (holding courts may not enforce restrictive racial covenants for real estate); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (holding segregating schools by race violates the Equal Protection Clause of the Fourteenth Amendment); *Roe v. Wade*, 410 U.S. 113 (1973) (holding unconstitutional laws that restrict a woman’s right to an abortion prior to fetal viability); *Miranda v. Arizona*, 384 U.S. 436 (1966) (holding police must advise criminal suspects of their rights under the Constitution to remain silent, consult an attorney, and have legal representation appointed if indi-

dictions. To explicitly layer politicized identity into law can create problems for representative politics because of politicized identity's capacity to cabin the scope of representation. The reductionist nature of politicized identity, which has the effect of grossly simplifying the diverse and complex intersectionality of competing identities to a singular, palpable identity for public and political consumption, shrinks the space of representation *vis-a-vis* the public sphere in which policy is constructed, articulated, and implemented. As James Madison noted,

[L]aws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications. Besides the obscurity arising from the complexity of objects, and the imperfection of the human faculties, the medium through which the conceptions of men are conveyed to each other adds a fresh embarrassment. The use of words is to express ideas. Perspicuity, therefore, requires not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriate to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is delivered.⁹²

The "political thicket"⁹³ of politicized identity thus exacerbates the erosion of the overarching political system's representative capacity. As a form of knowledge and practice, law is subject to the same limitations as social scientific knowledge: "knowledge falls into a complex, conflict-filled social environment, inhabited by agents with different interests and motivations . . . 'sheer knowledge alone, or 'disinterested search for truth,' will never be determinative . . .'"⁹⁴

gent); *Hernandez v. Texas*, 347 U.S. 475 (1954) (holding that trying a defendant particular race or ethnicity in front of a jury where all persons of his race or ethnicity have been excluded by the state violates of the Equal Protection Clause of the Fourteenth Amendment); *Citizens United v. FEC*, 558 U.S. 310 (2010) (holding political campaign contributions by corporations and labor unions constitute speech protected by the Constitution).

⁹² THE FEDERALIST NO. 37 (James Madison).

⁹³ THE OXFORD GUIDE TO THE SUPREME COURT 317, (Kermit L. Hall, ed., 2d ed., 2005). See also *Baker v. Carr*, 369 U.S. 186, 267 (1962) (Frankfurter, J., dissenting) ("The Court should abstain from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.").

⁹⁴ Louis Schneider, *The Social Sciences in America*, in SOCIAL SCIENCE IN AMERICA: THE FIRST TWO HUNDRED YEARS 211 (Charles M. Bonjean et al. eds., 1976).

The US Supreme Court has expressed various opinions about the relationship between politicized identity and representation. In *Shaw v. Reno*,⁹⁵ the Court noted, regarding challenges to a redistricting plan, that, “by perpetuating stereotypical notions about members of the same racial group—that they think alike, share the same political interests, and prefer the same candidates—a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract. It also sends to elected representatives the message that their primary obligation is to represent only that group’s members, rather than their constituency as a whole.”⁹⁶ The Court has found that politicized identity is most viable or valid when an identity-based group is found to be “politically cohesive.”⁹⁷ Identity elites and entrepreneurs are thus incentivized to “find” or manufacture consent, so to speak, as to what constitutes a discrete and insular cohesive identity that will, in turn, find expression and protection under the law. Such cohesiveness, however, must appear organic or at the very least not “forced”; when probing the relationship between politicized identity and law, the Court, in *Bush v. Vera*,⁹⁸ for example, stated that legislative decisions that focus primarily on race in redistricting “cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial.”⁹⁹ The Trump administration has done an efficient job utilizing spectacle to manufacture a cohesive political identity that has, in turn, found expression in law and policy.

C. *Race, Ethnicity, Religion & Trump*

By unilaterally identifying the perceived problems plaguing civil society and its greatness, Trump became the spokesperson of the so-called ‘silent majority,’ promising to fight the policies that made the majority feel like a threatened minority. Specular politics was key to implementing this strategy and procuring electoral victory. This is the case because within the spectacle, “we are dealing with a form of ideological inoculation. Historically, one of the most effective ways for a system of authority to tout its virtues is not to speak of them directly, but to create a particularly vivid image of their absolute negation—of what it claims life would be like in the total absence of, say . . . capitalism . . . [this] works best when the image is on some level, profoundly appealing.”¹⁰⁰ Trump was able to skillfully appropriate perceptions and images of fear and loathing of the immigrant “other” as the basis for campaign promises, such as promising to end Muslim immigration¹⁰¹ and

⁹⁵ 509 U.S. 630 (1993).

⁹⁶ *Id.*, at 631.

⁹⁷ *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

⁹⁸ 517 U.S. 952 (1996).

⁹⁹ *Id.*, at 980.

¹⁰⁰ See GRAEBER, *supra* note 66, at 104.

¹⁰¹ The Trump Administration has tried to push national security-based travel bans and border wall policies explicitly premised on politicized identity as well as socioeconomic policies premised on particular politicized identity groups. See, e.g., Exec. Order No. 13788, 82

identifying the very real threat from the Global South as an existential and material threat to the US and its people:

If these [migrant] caravans are allowed into our country, only bigger and more emboldened caravans will follow . . . Very, very hard for the military to stop it. Our military will have no problem. But very, very hard. Mexico is having a very, very hard time with it . . . You and the hardworking taxpayers of our country will be asked to pick up the entire tab. And that's what's happening . . . No nation can allow itself to be overwhelmed by uncontrolled masses of people rushing their border. That's what's happening . . . And it's a very bad thing for our country. It's sad in many ways, but it's a very bad thing for our country. And again, costs us billions and billions and billions of dollars a year.¹⁰²

Trump has been adept at employing and deploying spectacle to obtain political capital and posit and effectuate select public policy pronouncements, such as severely curtailing immigration, and characterizing immigrants as breaking into the US, the way a thief or burglar would break into a home, violating the law, and rendering the intruder a criminal. Regarding the supposed caravan in November 2018, Trump stated that, "it was a break-in of a country. They broke into Mexico."¹⁰³ President Trump has thus been able to articulate and implement, to some degree, such policy because of the ability to use the spectacle as an "enormous positivity, out of reach and beyond dispute [-] 'Everything that appears is good; whatever is good will appear.' The attitude that it demands in principle is the same passive acceptance that it has already secured by means of its seeming incontrovertibility, and indeed by its monopolization of the realm of appearances. [Yet, the] spectacle is essentially tautological, for the simple reason that its means and its ends are identical."¹⁰⁴ Thus, the President can equate immigrants as a threat to the personal security of all Americans, and to women in particular, using the specter of sexual violence to further justify the total, indiscriminate restriction of immigration from the Global South, stating:

There's nothing political about a caravan of thousands of people, and now others forming, pouring up into our country. We have no idea who they are. All we know is they're pretty tough people . . . I don't want them in our country. And women don't want them in our country. Women want security. Men don't want them in our country. But the women do not want them. Women want security. You look at what the women are looking for. They want to have security. They don't want to have these people in our country.¹⁰⁵

Fed. Reg. 18837 (Apr. 18, 2017) ("Buy American and Hire American"); Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017) ("Protecting the Nation From Foreign Terrorist Entry Into the United States"); Exec. Order No. 13795, 82 Fed. Reg. 20815 (Apr. 28, 2017) ("Implementing an America-First Offshore Energy Strategy").

¹⁰² *Remarks by President Trump, supra* note 60.

¹⁰³ *Id.*

¹⁰⁴ DEBORD, *supra* note 9, at 6.

¹⁰⁵ *Remarks by President Trump, supra* note 60.

In “time of crisis a democratic, constitutional government must be temporarily altered to whatever degree is necessary to overcome the peril and restore normal conditions. This alteration invariably involves government of a stronger character; that is, the government will have more power and the people fewer rights.”¹⁰⁶ Securitization at the border therefore enables a war-response to be used, and immigration can be reconfigured as fodder for a war-response based on a state of exception wherein law is used to fight immigrants, restricting immigration based on race and ethnicity factors. The “state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics. This . . . technique of government threatens radically to alter—in fact, has already palpably altered—the structure and meaning of the traditional distinction between”¹⁰⁷ law and politics. Laying out the differences between immigrants and residents has thus proven to be a significant concept in structuring and implementing immigration policy.

The populist surges that have supported the administration’s immigration policy, and the counter-movement that has actively resisted the rhetoric and policies from Trump, begs the question: who are the American people? Formalizing the *who* is essential to understanding what *they* want. The picture of discrete and insular sub-communities is not, in the context of the spectacle, the profile of a survey or market, but is rather a political question.

IV. AMERICA FIRST: THE POLITICAL QUESTION OF WHO ARE “WE THE PEOPLE”¹⁰⁸

The starting point for examining an “America First” policy is to understand how the term is being utilized, and precisely *who* is getting put first in this political agenda.¹⁰⁹ Taken at the face value, it is a self-evident definition: “the American people” functions as a relatively stable notion that manifests through a “general will” (or even multifaceted will). However, it is the case that any interpretation of an American “general will” is subjective, rife with complexity, and encompassed by various power relations along intersecting axis of race, gender, geography, and ethnicity:

there is no people before the act by which a people becomes a people in the first place; and, even afterward, the people are never one or homogenous but many and internally divided. In sum, far

¹⁰⁶ CLINTON L. ROSSITER CONSTITUTIONAL DICTATORSHIP: CRISIS GOVERNMENT IN THE MODERN DEMOCRACIES 5 (1948).

¹⁰⁷ AGAMBEN, *supra* note 21, at 2.

¹⁰⁸ This section draws upon Marvin L. Astrada & Scott B. Astrada, *Enemy at the Gates: The Consequential Effects of Securitizing Immigration*, 3 GLOBAL SEC. & INTELLIGENCE STUD. 25 (FALL / WINTER 2018).

¹⁰⁹ *Trump revisits ‘America First’ campaign slogan in morning tweets*, L.A. TIMES, (Jan. 13, 2018), <http://www.latimes.com/politics/la-pol-updates-everything-president-trump-revisits-america-first-campaign-1515886970-htmlstory.html>, archived at <https://perma.cc/3KGR-5WRR>.

from constituting a stable identity derived from a preordained essence that would have been racially, ethnically, linguistically, culturally, or ontologically definable, “people” here serves as a name – one name among others- for the political process that produces its own subject, while reminding us that without an element of subjectivization there can be no politics.¹¹⁰

The result is a term that is not a objectively stable and verifiable referent, but rather becomes a political question, and thus, subject to critical analysis. A central question is how a *people*, or even a subsection of it, is theorized in the context of political representation. The administration has made clear its perception of what should constitute the character and content of the American people. Immigrants from the Global South, particularly from Latin America, are viewed as a material and existential threat to this coherency, integrity, and longevity of the American nation-state. The immigrant that does not hail from countries or regions that are like Norway but from Haiti, El Salvador and Africa is viewed as less than desirable as far as adding to the form and substance of the American People. In a statement supporting a measure to enhance immigration security, the Trump administration declared that “H.R. 6136 would close the legal loopholes that: (1) impede close cooperation with State and local law enforcement agencies; (2) prevent the detention and timely removal of unaccompanied children, families, and criminal aliens; and (3) enable asylum fraud. H.R. 6136 would also appropriate nearly \$25 billion for DHS to secure the border.”¹¹¹

The question of who exactly are “the People,” is thus ensnared in ideology and identity politics. The ability of Trump to define—and anoint himself a spokesperson of — the genuine American “people” is inextricably linked to race, ethnicity, and economic status. This is important to note and examine because policy spaces reflect, rather than produce, the politics of defining who the American people are. In the case of immigration, the American “people” is defined and organized by the executive’s substantial control over the legal regime governing which *type* of people (racial, ethnic, class, religious, ideological) are eligible to enter and remain in the United States. This notion of an American people is, as a result, an unrepresentative one. The people, in this context, exemplify how the concept is lacking any objective status, and instead is manipulated as a policy lever. Alain Badiou defines the notion of “a People” (in his example, the French People) as “in reality mean[ing] nothing more than ‘the inert mass of those upon whom the state has conferred the right to call themselves’ [citizens of the nation-state].”¹¹²

¹¹⁰ Bruno Bosteels, *This People Which Is Not One*, in *WHAT IS A PEOPLE* 20 (2016).

¹¹¹ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY: H.R. 6136 – BORDER SECURITY AND IMMIGRATION REFORM ACT OF 2018 (2018).

¹¹² Alain Badiou, *Twenty-Four Notes on the Uses of the Word “People,”* in *WHAT IS A PEOPLE* 23–24 (2016).

The process of legitimizing the normative association for a subset of the polity to be or have the authorization to properly identify as “the People” is, in part, effectuated by the process of identification with a reflection of what type of person or group is the basis of the interests of political leaders. And while the Will of the people is an essential aspect of legitimate policy, “[a]s soon as the state in question is formed, regulated, and enrolled in the ‘international community,’ the people it claims as its authority ceases to be a political subject. It becomes a passive mass that the state configures, universally no matter what the form of the state.”¹¹³ The creation of a “people” is thus an exercise of political power, whereby certain subsets of the whole have the privilege of identifying as the majority (regardless of number), while simultaneously defining what constitutes an American versus what does not constitute an American. As one commentator notes, President Trump is effective to some degree, politically, because of his ability to “speak American,”¹¹⁴ and people, in turn, respond by (in some manner) providing support and justification for a war-response-based immigration policy against the Global South. Spectacle, fear, and loathing become subsumed and reconfigured in the ability to “speak American” to the “people.” Analyses of immigration have revealed, according to the ideological right as well as left, that negative myths persist regarding immigration. According to the conservative Mercatus Center at George Mason University, for instance,

immigrants strengthen the US economy by filling key jobs in important industries, starting businesses, filing patents, creating new products, and keeping America demographically younger. A large majority of immigrants embrace America’s culture of freedom and opportunity. Immigration is both a sign and a source of American dynamism. US immigration policy should move toward welcoming more hard-working immigrants to build a stronger US economy.¹¹⁵

Such an analysis should undermine the notion of the immigrant “other” from the Global South as a grave threat. The “people,” however, as envisioned by the Trump administration, signify an alternative interpretation or understanding of the American People:

Donald Trump speaks American. . . . When Trump says this is the greatest country in the world, when he brags that he’s really smart, when he claims that we have the mightiest military and he wants to show it off by having a massive parade, he’s speaking American . . . [The] People who disagree with Trump are morons, stupid, nut

¹¹³ *Id.* at 25–26.

¹¹⁴ Phil Kadner, *Trump’s Greatest Strength: He Speaks “American,”* CHI. SUN TIMES, (Aug. 28, 2018), <https://chicago.suntimes.com/columnists/trump-speaks-american-greatest-strength/>, archived at <https://perma.cc/3343-FXJC>.

¹¹⁵ Daniel Griswold, *The Benefits of Immigration: Addressing Key Myths*, MERCATUS CTR., GEORGE MASON UNIV., (May 23, 2018), <https://www.mercatus.org/publications/benefits-of-immigration-key-myths>, archived at <https://perma.cc/56XD-33TX>.

jobs, whackos, sad and pathetic . . . Trump is talking the way Americans do in barrooms, restaurants, at kitchen tables and family barbecues . . . When Trump mocks the weak, when he spews bigotry, when he disparages people in African and Hispanic countries and says he's tired of immigrants coming into this country, taking our jobs and raping our women, he's speaking for millions of Americans . . . Trump knows Americans care about money more than ideals and ethics . . . Greed is good. Truth isn't truth. There are alternative facts. You can't trust the courts, Congress, the newspapers or U.S. intelligence agencies. They are your enemies. They are enemies of Trump nation . . . Trump . . . speaks American.¹¹⁶

The people function, in this context, as the legitimatization for the State to *act*, as it is always acting on their behalf, seeing as:

it is never really the case that all of the possible people who are represented by 'the people' show up to claim they are the people! So 'we, the people' always has its constitutive outside, as we know. It is this surely not the fact that the 'we' fairly and fully represents all the people; it cannot, even though it can strive for more inclusive aims.¹¹⁷

The goal of civic life then, is not to arrive at a homogenized discrete, and completely comprehensive popular will, but rather "a set of debates about who the people are and what they want."¹¹⁸ This process is contradictory to a political spectacle, where concepts, terms and people are static and one dimensional. Here is where the spectacle is most opposed to democracy, and the idea of dialogue and debate, and the ultimate recognition that the "people" are never, and can never, be fully expressed in their political expression since,

[t]he people who are the 'we' do something other than represent themselves as the people, and this act of self-making or self-constitution is not the same as any form of representation [. . .] This act of self-designating and self-constituting forms as assembly that articulates itself as the 'people.' Popular sovereignty is thus a form of self-making that is separate from the very representative regime it legitimates.¹¹⁹

Spectacle trumps this movement of the people existing outside one-dimensional political representation, and instead creates the illusion that the general will of the American people is a transparent, stable and homogenous

¹¹⁶ Kadner, *supra* note 114.

¹¹⁷ Judith Butler, "We, the People": *Thoughts on Freedom of Assembly*, in *WHAT IS A PEOPLE* 53 (2016).

¹¹⁸ *Id.*

¹¹⁹ *Id.*, at 51–53.

concept recasts the polity as a passive, singular-willed body of citizens with homogenous interests.

The outcome of a domestic homogenization narrative is exemplified by the immigrant “other.” The organizing of an “other” relies on a narrative of a static and homogenous population. The administration’s blanket banning of “Muslim countries” because refugees are “Trojan Horse[s]” of ISIS, exemplifies this.¹²⁰ Opposite this spectacle of the “other” as one dimensional is Cornel West’s notion of cultural depth, one that resists spectacle: “[I]like rabbinical or Catholic Christianity, clerical Islam is in no way the essence of Islam – or its only form. [. . .] All religions are polyvalent – subject to multiple interpretations under changing circumstances. Islam must be understood, by both non-Muslims and Muslims, as a fluid repertoire of ways of being a Muslim, not a dogmatic stipulation of rules that govern one’s life.”¹²¹

Yet, the administration has proceeded with implementing new rules that make asylum, a key legal process relied upon by immigrants for legal entry into the United States, even more difficult.

Pursuant to statutory authority, the Departments [U.S. Citizenship and Immigration Services, Homeland Security, Executive Office for Immigration Review, and Justice] are amending their respective existing regulations to provide that aliens subject to such a proclamation concerning the southern border, but who contravene such a proclamation by entering the United States after the effective date of such a proclamation, are ineligible for asylum. The interim rule, if applied to a proclamation suspending the entry of aliens who cross the southern border unlawfully, would bar such aliens from eligibility for asylum and thereby channel inadmissible aliens to ports of entry, where they would be processed in a controlled, orderly, and lawful manner.¹²²

The conferral of privilege to identify as the American people “is never the affirmation of a pre-given identity, never a self-fulfilling prophecy—it is always the production of an image of identity and the transformation of the subject in assuming that image.”¹²³ Therefore, the executive relies on a policy narrative to justify transforming a population into a “people”—as it interprets the term—expressing its will. The executive becomes the voice box of the “people.” Therefore, the question of who the American people are, in the sense of political will, must remain an open one, and a space for critical

¹²⁰ See Gregory Krieg, *Trump’s History of Anti-Muslim Rhetoric Hits Dangerous New Low*, CNN, (Nov. 30, 2017), <https://www.cnn.com/2017/11/29/politics/donald-trump-muslim-attacks/index.html>, archived at <https://perma.cc/Y67V-B7DV> (“Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States . . . until our country’s representatives can figure out what the hell is going on.”) (citations omitted).

¹²¹ CORNEL WEST, *DEMOCRACY MATTERS* 135 (2004).

¹²² *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 Fed. Reg. 55,934 (Nov. 9, 2018).

¹²³ BHABHA, *supra* note 39, at 64.

inquiry. The reliance on the immigrant “other”, or outsiders as a perpetual threat, undermines this necessity, and instead encourages tribalism.

V. CONCLUSION: GOING FORWARD

The core disruption of the Trump Presidency in the character and content of American politics and national identity is the seismic shift in how spectacle relates to the politics of truth and immigration. Truth based in empirical evidence is anathema to spectacle. The infinitely complex reality of lived experience, especially as reflected in economic and social scientific analyses premised on qualitative and quantitative methodology, can effectively shatter or discredit spectacle. Yet, politics and passion have always gone hand in hand, and rhetoric and emotion are well-established drivers in campaigning and in the articulation of public policy. President Trump has been able to utilize specular-based rhetoric to not only supplant “truth,” but also contradictory evidence, or opinions that are recognized using accepted empirical methodology, which are casually dismissed as a hoax or fake with no necessity for corroboration utilizing traditional notions of soundness and credibility.

The consequence of unchecked spectacle can have very negative effects on policy making because “[t]o abandon facts is to abandon freedom. If nothing is true, then no one can criticize power, because there is no basis upon which to do so. If nothing is true, then all is spectacle.”¹²⁴ Spectacle, which has become a mainstay, the nucleus of Trumpism, has been effective in attenuating or nullifying facts premised on an empirical basis. As David Cay Johnston notes, Trump has thrived in “truthful hyperbole.”¹²⁵ This is along the same lines as claims of “fake news,” wherein a disruptive discernable narrative of anti-truth becomes commonplace in the conduct of politics. Then-candidate Trump constantly boasted of his job-creating abilities, touting “his plan to rev up the economy by cutting taxes, reducing federal regulations and negotiating better trade deals. . . .”¹²⁶ Holding candidates accountable to their campaign promises assuredly will lead to disappointment, but the disconnect between candidate Trump’s statements and President Trump’s actions exemplify the extent and scope of how much he relies on spectacle to drive policy.

Through the appropriation and deployment of truncated histories, and discourses and racialized typologies that have a specular basis, particularized configurations of social order have been able to engender and reproduce relations of domination that have a basis in objective actuality. The ebb and flow of spectacle-based stereotype in public policy space can lead to a

¹²⁴ TIMOTHY SNYDER, *ON TYRANNY* 65 (2017).

¹²⁵ JOHNSTON, *supra* note 14, at 55.

¹²⁶ S.A. Miller, *Donald Trump: “I’ll Be the Greatest President for Jobs that God Ever Created.”* WASH. TIMES, (Sept. 18, 2016), <https://www.washingtontimes.com/news/2016/sep/28/donald-trump-ill-be-greatest-president-jobs-god-ev/>, archived at <https://perma.cc/E53X-W43U>.

proliferation of empirically unsound policies and reconfigure what we demand of the Office of the President. The antithesis of the spectacle is a belief in truth, and the courage to be a democratically-minded individual in the tradition of Ralph Waldo Emerson, as explained by Cornel West: “[T]o be a democratic individual is to speak out on uncomfortable truths; to be an active player in public discourse is to be thrown into life’s contingency and fragility with the heavy baggage of history and tradition, baggage like the American legacies of race and empire.”¹²⁷ A larger concern of theatrical politics becoming the norm in American politics is that foundational notions of racism, elitism, and exceptionalism, as discussed above, not only remain viable in the 21st century, but are substantively woven into public policy while remaining obfuscated by spectacle.

¹²⁷ WEST, *supra* note 121.