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Fernando Hernández Gómez

PRESIDENT'S MESSAGE

The Rule of Law is a deliberate choice made by States through treaties, international agreements and internal law. It limits power in exchange for stability, development, and peace. Today, this choice is being questioned as unilateralism and coercion will increasingly weaken and undermine multilateral institutions.

When the Rule of Law declines, inequality rises. Legal uncertainty benefits the strongest, while access to justice shall be increasingly selective and uneven. A society cannot claim to uphold the Rule of Law while tolerating structural inequality.

Predictable legal systems foster development, protect human dignity, and ensure accountability. Law must serve as a bridge – connecting individuals to justice and states to cooperation – not as a tool of exclusion, coercion, or political dominance. Peace is preserved through respect for legal frameworks and norms, not through force or coercion.

The international legal order remains the best system to protect dignity and prevent conflict. Its preservation is essential. Lawyers worldwide must defend it, promoting unity over division and ensuring equal access to justice for all. **UNITY**, not division or separation, must be our future.

LE MOT DU PRÉSIDENT

L'État de droit est un choix délibéré fait par les États à travers des traités, des accords internationaux et des lois internes. Il limite le pouvoir en échange de stabilité, de développement et de paix. Aujourd'hui, ce choix est remis en question, alors que l'unilatéralisme et la coercition affaiblissent et sapent de plus en plus les institutions multilatérales.

Lorsque l'État de droit décline, les inégalités augmentent. L'incertitude juridique profite aux plus forts, tandis que l'accès à la justice devient de plus en plus sélectif et inégal. Une société ne peut prétendre défendre l'État de droit tout en tolérant l'inégalité structurelle.

Des systèmes juridiques prévisibles favorisent le développement, protègent la dignité humaine et garantissent la responsabilité. Le droit doit servir de pont – reliant les individus à la justice et les États à la coopération – et non d'outil d'exclusion, de coercition ou de domination politique. La paix se préserve par le respect des cadres et des normes juridiques, et non par la force ou la contrainte.

L'ordre juridique international demeure le meilleur système pour protéger la dignité et prévenir les conflits. Sa préservation est essentielle. Les avocats du monde entier doivent le défendre, en promouvant l'unité plutôt que la division et en garantissant un accès égal à la justice pour tous. **L'UNITÉ**, et non la division ou la séparation, doit être notre avenir.

MENSAJE DEL PRESIDENTE

El Estado de Derecho es una elección deliberada hecha por los Estados mediante tratados, acuerdos internacionales y leyes internas. Limita el poder a cambio de estabilidad, desarrollo y paz. Hoy, esta elección está siendo cuestionada, ya que el unilateralismo y la coerción debilitarán y socavarán cada vez más a las instituciones multilaterales.

Cuando el Estado de Derecho se debilita, la desigualdad aumenta. La incertidumbre jurídica beneficia a los más fuertes, mientras que el acceso a la justicia será cada vez más selectivo y desigual. Una sociedad no puede afirmar que defiende el Estado de Derecho mientras tolera la desigualdad estructural.

Los sistemas jurídicos previsibles fomentan el desarrollo, protegen la dignidad humana y garantizan la rendición de cuentas. El derecho debe servir como un puente – conectando a las personas con la justicia y a los Estados con la cooperación – y no como una herramienta de exclusión, coerción o dominación política. La paz se preserva mediante el respeto a los marcos y normas jurídicas, no mediante la fuerza o la coerción.

El orden jurídico internacional sigue siendo el mejor sistema para proteger la dignidad y prevenir conflictos. Su preservación es esencial. Los abogados de todo el mundo deben defenderlo, promoviendo la unidad por encima de la división y garantizando el acceso igualitario a la justicia para todos. La **UNIDAD**, y no la división o la separación, debe ser nuestro futuro.

Fernando HERNÁNDEZ GÓMEZ • *UIA President, Président de l'UIA, Presidente de la UIA* • president@uianet.org



Barbara Gislason

↘ EDITORIAL

Writing once carried the weight of the cosmos. In ancient civilizations, symbols did not merely describe reality; they were believed to participate in its structure and endurance. Egyptian hieroglyphs were living signs. To write was to bind time, belief, and authority into material form.

This conception endured across civilizations. Calligraphic traditions used *qi* energy to join breath, posture, and movement to text so that each character became an event. Sacred writings – from the Qur’an and Buddhist Sutras to the Gutenberg Bible – were treated as objects of power, handled with ritual care. Authority resided not only in meaning, but in seals, signatures, scripts, and the gravity of the medium itself.

As clerical authority receded, lawyers emerged as the principal interpreters of binding text. Through constitutions, statutes, contracts, and judgments, lawyers inherited an ancient function: to order society through symbols. Written law restrains power, allocates rights, compels future conduct, and projects legitimacy beyond the present moment and beyond borders.

Legal writing is therefore not a neutral description. It is structured authority – performative, consequential, and durable. Yet in the digital age, the aura of legal finality has thinned, even as access and speed have expanded. The accompanying risk is not merely technical, but philosophical: that

law becomes reactive rather than principled, procedural rather than normative, losing the symbolic gravity that once made it binding across time, cultures, and political change. In this moment of acceleration, jurists are not merely users of legal language, but its stewards, bound by a shared calling to preserve the care, authority, and trust on which law itself depends.

Editor’s Note

This editorial marks my final contribution as Editor-in-Chief of the Juriste International after five years of service. During this period, the journal was entirely reimaged – from typography, layout, and color palette, to the structure and clarity of its contents – transforming both its visual identity and its intellectual coherence. We recruited outstanding editors and authors from around the world and expanded our digital presence alongside the printed edition, with the valued support of LexisNexis and the UIA Executive Director and her Executive Assistant.

I am deeply grateful to the UIA for the opportunity to serve in this important role. I also extend my sincere thanks to Carlo Mastellone for the great honor of awarding me the Presidential Medal – an acknowledgment I receive with profound appreciation. And as I leave, you are in good hands with my successor, Ashu Thakur of India. She is a brilliant lawyer rich with ideas on how to make the Juriste International even better.

↘ L'ÉDITO

L’écriture porta jadis le poids du cosmos. Dans les civilisations anciennes, les symboles ne se contentaient pas de décrire la réalité : on leur attribuait une participation active à sa structure et à sa permanence. Les hiéroglyphes égyptiens étaient des signes vivants. Écrire, c’était lier le temps, la croyance et l’autorité dans une forme matérielle.

Cette conception traversa les civilisations. Les traditions calligraphiques mobilisaient l’énergie du *qi* pour unir le souffle, la posture et le mouvement au texte, faisant de chaque caractère un événement. Les écrits sacrés – du Coran et des sutras bouddhiques à la Bible de Gutenberg – étaient traités comme des objets de pouvoir, manipulés avec un soin rituel. L’autorité ne résidait pas seulement dans le sens, mais aussi dans les sceaux, les signatures, les écritures, et dans la gravité du support lui-même.

À mesure que l’autorité cléricale reculait, les juristes s’imposèrent comme les principaux interprètes des textes contraignants. Par les constitutions, les lois, les contrats et les décisions de justice, ils héritèrent d’une fonction ancienne : ordonner la société par les symboles. Le droit écrit limite le pouvoir, répartit les droits, prescrit les conduites futures et projette sa légitimité au-delà du présent et au-delà des frontières.

L’écriture juridique n’est donc pas une description neutre. Elle est une autorité structurée – performante, dotée d’effets et durable. Pourtant, à l’ère numérique, l’aura de la finalité juridique s’est amenuisée, alors même que l’accès et

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“ Yet innovation must rest on institutional integrity, and progress must be bound by ethical protections. ”

la rapidité se sont accrus. Le risque qui en découle n'est pas seulement technique, mais philosophique : que le droit devienne réactif plutôt que fondé sur des principes, procédural plutôt que normatif, perdant la gravité symbolique qui lui permettait autrefois de s'imposer à travers le temps, les cultures et les mutations politiques. En ce moment d'accélération, les juristes ne sont pas de simples utilisateurs du langage juridique, mais ses dépositaires, liés par une vocation commune : préserver le soin, l'autorité et la confiance dont le droit lui-même dépend.

Note de l'éditeur

Cet éditorial marque ma dernière contribution en tant que rédacteur en chef de Juriste International après cinq années de service. Durant cette période, la revue a été entièrement repensée – de la typographie, de la mise en page et de la palette chromatique à la structure et à la clarté de son contenu – transformant à la fois son identité visuelle et sa cohérence intellectuelle. Nous avons recruté des rédacteurs et des auteurs remarquables venus du monde entier et renforcé notre présence numérique parallèlement à l'édition imprimée, avec le précieux soutien de LexisNexis, de la Directrice Générale de l'UIA et de son Assistante de Direction.

Je suis profondément reconnaissante à l'UIA de m'avoir offert l'opportunité de servir dans cette fonction importante. J'adresse également mes sincères remerciements à Carlo Mastellone pour le grand honneur de m'avoir décerné la médaille de remerciements – une distinction que je reçois avec une profonde gratitude. Et au moment de mon départ, vous êtes entre de bonnes mains avec la personne qui me succède, Ashu Thakur, d'Inde. C'est une avocate brillante, riche d'idées pour rendre le Juriste International encore meilleur.

➤ EDITORIAL

La escritura cargó en otro tiempo con el peso del cosmos. En las civilizaciones antiguas, los símbolos no se limitaban a describir la realidad; se creía que participaban en su estructura y en su perdurabilidad. Los jeroglíficos egipcios eran signos vivos. Escribir era vincular el tiempo, la creencia y la autoridad en una forma material.

Esta concepción perduró a lo largo de las civilizaciones. Las tradiciones caligráficas empleaban la energía del *qi* para unir la respiración, la postura y el movimiento al texto, de modo que cada carácter se convertía en un acontecimiento. Los escritos sagrados – desde el Corán y los sutras budistas hasta la Biblia de Gutenberg – eran tratados como objetos de poder, manipulados con un cuidado ritual. La autoridad no residía únicamente en el significado, sino también en los sellos, las firmas, las escrituras y en la gravedad del propio soporte.

A medida que la autoridad clerical fue retrocediendo, los juristas emergieron como los principales intérpretes de los textos vinculantes. A través de constituciones, leyes, contratos y sentencias, heredaron una función antigua: ordenar la sociedad mediante símbolos. El derecho escrito limita el poder, distribuye los derechos, impone conductas futuras y proyecta su legitimidad más allá del momento presente y de las fronteras.

La escritura jurídica no es, por tanto, una descripción neutral. Es autoridad estructurada: performativa, eficaz y duradera. Sin embargo, en la era digital, el aura de la definitividad jurídica se ha atenuado, aun cuando el acceso y la velocidad se han ampliado. El riesgo que ello conlleva no es

meramente técnico, sino filosófico: que el derecho se vuelva reactivo en lugar de principista, procedimental en lugar de normativo, perdiendo la gravedad simbólica que antes lo hacía vinculante a través del tiempo, de las culturas y de los cambios políticos. En este momento de aceleración, los juristas no son meros usuarios del lenguaje jurídico, sino sus custodios, vinculados por una vocación compartida de preservar el cuidado, la autoridad y la confianza de las que el propio derecho depende.

Nota del editor

Este editorial marca mi última contribución como editor en jefe de Juriste International tras cinco años de servicio. Durante este período, la revista fue completamente reinventada – desde la tipografía, el diseño y la paleta cromática hasta la estructura y la claridad de sus contenidos – transformando tanto su identidad visual como su coherencia intelectual. Reclutamos editores y autores sobresalientes de todo el mundo y ampliamos nuestra presencia digital junto con la edición impresa, con el valioso apoyo de LexisNexis, de la Directora Ejecutiva de la UIA y de su Asistente Ejecutiva.

Estoy profundamente agradecida a la UIA por la oportunidad de servir en este importante cargo. Extiendo también mi sincero agradecimiento a Carlo Mastellone por el gran honor de haberme concedido la Medalla de agradecimiento, un reconocimiento que recibo con profunda gratitud. Y al despedirme, quedan ustedes en muy buenas manos con mi sucesora, Ashu Thakur, de la India. Es una jurista brillante, llena de ideas sobre cómo hacer que Juriste International sea aún mejor.



Has Fascism Come to America?



Bruce LANDAY

↳ Lors de son second mandat en tant que président des États-Unis, Donald Trump et son administration ont revendiqué des pouvoirs présidentiels sans précédents que certains qualifieraient de « fascistes ». Mais cette qualification de « fasciste » est-elle exacte, ou relève-t-elle de l'hyperbole ? Cet article examine certaines actions de l'administration Trump à la lumière de la définition du « fascisme » proposée par un universitaire.

↳ Durante su segundo mandato como presidente de Estados Unidos, Donald Trump y su administración han afirmado poderes presidenciales sin precedentes que algunos calificarían de « fascistas ». Pero ¿es acertada la etiqueta de « fascista », o se trata de una hipérbole? Este artículo examina algunas de las acciones de la administración Trump a la luz de la definición de « fascismo » propuesta por un académico.

**Editorial Note: Barbara J. Gislason, Editor-in-Chief,
Juriste International**

The *Juriste International* has a proud tradition of maintaining political neutrality. However, the complex factors contributing to the rise of fascism demand our attention and align with our mission. In this article, we explore the conditions that facilitate the emergence of fascism, drawing on a framework established by Umberto Eco, an esteemed Italian philosopher, in 1995. By examining Eco's elements, Bruce Landay, the author of this article, aims to shed light on how fascist ideologies take root and the implications they carry for the erosion of the rule of law – not only in the United States, but across the globe. We believe it is our duty to engage with these critical themes and reaffirm our commitment to upholding the rule of law within our publication.

Author's Preface

When I wrote this article in April 2025, it was already difficult to keep up with the pace of new developments I was reporting. Since then, that pace has only accelerated. Most readers will know of many important new facts not covered below. Due to space constraints and the quarterly frequency of this magazine, it is simply not possible to be completely up to date. In my view, however, the themes described in the article resonate just as much as they did in April, if not more.

For the past decade, Donald Trump has been almost omnipresent in American life. His administration represents something new in American political history. He is not the first president to have defied constitutional limits, lied, ignored political norms, or broken laws.¹ But he is the first to do all these things at once, regularly and brazenly. Many critics have called his administration "fascist." Is this hyperbole?

To answer this question, one must first define "fascism," a task once likened to "trying to nail jelly to the wall."² Most definitions involve a list of elements common to fascist regimes. Umberto Eco wrote in 1995:³

Fascism became an all-purpose term because one can eliminate from a fascist regime one or more features, and it will still be recognizable as fascist... But in spite

of this fuzziness, I think it is possible to outline a list of features that are typical of what I would like to call Ur-Fascism, or Eternal Fascism. These features cannot be organized into a system; many of them contradict each other, and are also typical of other kinds of despotism or fanaticism. But it is enough that one of them be present to allow fascism to coagulate around it.

Eco lists 14 features, presented here in a very abridged fashion and sprinkled with recent developments or statements from the Trump administration:

1. The "cult of tradition." Under fascism, Eco wrote, "there can be no advancement of learning. Truth has been already spelled out once and for all, and we can only keep interpreting its obscure message." Consider the Trumpist slogan, "make America great again" or "MAGA"; the refusal to acknowledge climate-change science; the "vaccine skepticism" of Robert F. Kennedy, Jr., Trump's current Secretary of Health and Human Services; the curtailment of the collection and sharing of scientific data by federal agencies, such as the Environmental Protection Agency and the National Oceanic and Atmospheric Administration; and efforts to regulate teaching at universities and schools that could be characterized as promoting "wokeness."
2. The "rejection of modernism." This is not necessarily a rejection of technology, but rather a rejection of the "the Spirit of 1789 (and of 1776, of course)" wrote Eco, who continued, "The Enlightenment, the Age of Reason, is seen as the beginning of modern depravity." The U.S. Constitution is the preeminent American expression of the enlightenment. Yet it is the constitutional order, and the rule of law itself, that the Trump Administration is arguably rejecting. Consider: the refusal (despite court orders) to provide due process for visa holders before they are detained; the revocation of some visas for political reasons (e.g., support of Palestinian rights); the threats to begin deporting "terrorists" and "gang members" who are "homegrown" (i.e., U.S. citizens); the dismantling of agencies established by law, such as the Agency for International Development (USAID); executive orders providing for the sanctioning or investigation of individual law firms and lawyers; and threats to the sovereignty of Denmark (via Greenland), Canada, and Panama.
3. The "cult of action for action's sake." "Action being beautiful in itself, it must be taken before, or without, any previous reflection. Thinking is a form of emasculation." Trump's rash actions include his on-again, off-again tariffs on imports from most countries, which have wreaked havoc on trade, diplomatic relations, and the U.S. stock market. Another is the mass dismissal (or inducement to retire) of more than 100,000 federal employees, mostly through the unofficial "Department of Government Efficiency" (or "DOGE"), led until recently by Elon Musk. This has caused unintended consequences, such as having to rehire specialists who maintain nuclear warheads.

1. This article is not intended to convince the reader that any specific event has occurred. For the limited purposes of this article, the author cites only conduct and statements of Donald Trump and his administration that have been so widely and authoritatively reported by mainstream news organizations as to be considered fact. An annotated version of this article with citations is available upon request to the author. The statements in this article are the author's alone and do not express the opinions of the *Juriste International* Editorial Board, the UIA, or anyone else.

2. I. Kershaw, *To Hell and Back: Europe 1914–1949*, p. 228 (2015).

3. All Eco quotes herein are from his essay published under several titles, in Italian and English, including *Ur-Fascism*, *The N.Y. Rev. of Books*, 22 June 1995).

Dissent within Trump's own Republican party has become vanishingly rare.

In this administration, immigration enforcement has taken on a new level of brutality [...].

4. "Disagreement is treason." Dissent within Trump's own Republican party has become vanishingly rare. Few Republican legislators will even admit publicly that Trump lost the 2020 election (a point settled in over 60 lawsuits brought by Trump or his supporters).

Some have reported being threatened if they are perceived as insufficiently supportive of Trump. With unusual candor, Republican Senator Lisa Murkowski of Alaska commented on 17 April 2025, "We're all afraid... It's quite a statement.

We're in a time and place where – I don't know, I certainly have not – I have not been here before. And I'll tell you, I'm oftentimes very anxious myself about using my voice because retaliation is real. And that's not right."

Outside his party, Trump has used executive orders and lawsuits to punish news organizations that he asserts have covered him unfairly and law firms who have represented parties adverse to him. On 24 April 2025, he ordered the Attorney General to investigate ActBlue, the top fundraising platform for the Democratic party – the opposition.

In some cases, fear of being targeted has led to "anticipatory obedience." The editorial boards of the *Los Angeles Times* and *Washington Post* were forced by their respective owners, Patrick Soon-Shiong and Jeff Bezos, to cancel planned endorsements of Trump's opponent, Kamala Harris, in the 2024 presidential election. Several prominent law firms, starting with Paul Weiss, Wharton & Garrison, approached Trump voluntarily to avoid being targeted by him, agreeing to provide *pro bono* services to causes of which Trump

approves and to end their diversity, equity and inclusion (DEI) hiring initiatives. Thus, retaliation, or the fear of retaliation, by Trump has been eating away at the independence of both the press and the legal profession – two essential features of any functional democracy.

5. Racism. Per Eco, "Ur-Fascism grows up and seeks for consensus by exploiting and exacerbating the natural fear of difference. The first appeal of a fascist or prematurely fascist movement is an appeal against the intruders. Thus Ur-Fascism is racist by definition." Consider Trump's own statements about immigrants from Haiti, such as, "They're eating the dogs. They're eating the cats. They're eating the pets of the people that live [in Ohio]," and from Mexico, such as, "They're bringing drugs. They're bringing crime. They're rapists." His administration has rounded up and flown migrants to countries other than their countries of origin. Several

hundred migrant men, mostly Venezuelan, were sent to a prison in El Salvador, based on an unsupported allegation that they are members of criminal gangs. More recently, the administration has been trying to send migrants to South Sudan. Since, in most cases, required hearings are not held, the accused have no opportunity to contest these allegations or even prove that they are legally in the U.S. Thus, people are being detained and expelled based on physical appearance alone.

Trump and Trumpism have also been focused on the supposed perils of caricatured notions of "wokism," "DEI," "affirmative action," and "critical race theory." The history of racial, religious, and gender-based inequities is denied, and efforts to redress such inequities now are decried as unfair to white men. Thus, "woke" books have been removed from some libraries, such as that of the U.S. Naval Academy (where Hitler's *Mein Kampf* remains on the shelf). Some government agencies have purged their websites of information highlighting the contributions of African-American figures (such as military heroes) and curtailed their efforts to recruit new employees at minority-focused events and schools. It is unclear in some cases whether such actions have been dictated by leadership or simply carried out by government employees to meet the perceived expectations of the White House.⁴

6. "Appeal to a frustrated middle class, a class suffering from an economic crisis or feelings of political humiliation, and frightened by the pressure of lower social groups." The Trump slogan "make America great again" is conveniently ambiguous, but it is understood to evoke a past when the U.S. was supposedly more prosperous and good jobs were more abundant for those without university degrees (e.g., manufacturing and fossil fuel jobs). But certain groups, such as African-Americans and women, often could not fully share in this prosperity. Efforts to correct such old inequities are presented as "pressure from lower social groups" ("DEI," etc.), which is frightening to those who hold this nostalgia.
7. Xenophobia. Mr. Trump, the son of an immigrant mother and husband of two immigrant wives (his second wife was U.S.-born), is known for his anti-immigrant rhetoric. Having referred to "shithole countries" in 2018, he said in 2023 that immigrants were "poisoning the blood of our country." In this administration, immigration enforcement has taken on a new level of brutality: visas cancelled without notice; arrests by agents in plainclothes and, increasingly, masks; extrajudicial detentions and deportations; and the flights of shackled detainees to a maximum-security prison in El Salvador

4. This phenomenon has been called "working towards the Führer" by Ian Kershaw, inspired by a 1934 speech in which a Nazi civil servant, Werner Willkens, said: "[T]he Führer can hardly dictate from above everything which he intends to realize sooner or later. . . . [I]t is the duty of everybody to try to work towards the Führer along the lines he would wish. Anyone who makes mistakes will notice it soon enough. But anyone who really works towards the Führer along his lines and towards his goal will . . . one day have the finest reward in the form of the sudden legal confirmation of his work."

- or Guantanamo. Trump has also claimed that, because a Venezuelan gang has supposedly “invaded” the U.S., he can detain and expel any Venezuelan under the Alien Enemies Act of 1798. This law applies to nationals of a country in a “declared war” with the U.S. or that “perpetrated, attempted, or threatened [to invade] the territory of the United States.”
8. An enemy that humiliates the country but can ultimately be defeated. As Eco says, “by a continuous shifting of rhetorical focus, the enemies are at the same time too strong and too weak. Fascist governments are condemned to lose wars because they are constitutionally incapable of objectively evaluating the force of the enemy.” For Trump, the main enemy is surely China. So far, the only war he has picked with China is a trade war.
 9. Permanent warfare. “[P]acifism is trafficking with the enemy. It is bad because life is permanent warfare.” This is not currently happening with the U.S., but the belligerent rhetoric of the administration may resonate with Eco’s thinking here. Trump has repeatedly said that Canada should become the “51st [U.S.] state;” threatened to “take back” the Panama Canal; and stated that the U.S. will “go as far as we have to” to gain possession of Greenland (currently a territory of Denmark).
 10. Popular elitism. “Every citizen belongs to the best people of the world, the members of the party are the best among the citizens, every citizen can (or ought to) become a member of the party.” While the U.S. has certainly been given to chauvinism (known as “American exceptionalism”), it cannot yet be called a one-party state.
 11. Cult of heroism. “[E]verybody is educated to become a hero... Heroism is the norm... [T]he Ur-Fascist hero craves heroic death, advertised as the best reward for a heroic life. The Ur-Fascist hero is impatient to die. In his impatience, he more frequently sends other people to death.” Putting aside the death-craving aspect, those who stormed the Capitol on January 6, 2021, many armed and clad in military-style gear, certainly thought themselves heroic. Many testified to their belief that they had acted at Trump’s command. Of those convicted of crimes, Trump pardoned most (about 1,200) on his first day back in office.
 12. Machismo. “Since both permanent war and heroism are difficult games to play, the Ur-Fascist transfers his will to power to sexual matters. This is the origin of machismo (which implies both disdain for women and intolerance and condemnation of nonstandard sexual habits, from chastity to homosexuality).” Trump and his party have campaigned on gender-related issues. Many Republican-controlled states have enacted bans on abortion. The administration is working to purge transgender personnel from the military. The administration also attempted to withhold funds for a child nutrition program from the state of Maine because one or two transgender girls have been permitted to play on girls’ sports teams at their Maine high schools (Maine sued and the administration agreed to resume the funding).

13. Erosion of democratic rights. “For Ur-Fascism, ... Individuals as individuals have no rights, and the People is conceived as a quality, a monolithic entity expressing the Common Will. Since no large quantity of human beings can have a common will, the Leader pretends to be their interpreter... Because of its qualitative populism Ur-Fascism must be against ‘rotten’ parliamentary governments... Wherever a politician casts doubt on the legitimacy of a parliament because it no longer represents the Voice of the People, we can smell Ur-Fascism.”

Presidents often use executive orders to enact their policy objectives when Congress is unable or unwilling to do so by legislation. But Trump’s executive orders have not only been unusually numerous (139 in the first 100 days of his second term), they also often violate the Constitution in rather obvious ways.⁵ Judges have blocked many of these executive orders. But the administration has also recently begun flouting orders of federal courts, including the Supreme Court (most notably in the deportation cases).

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On several occasions, Trump has said he might serve more than two terms as president, which is prohibited by the 22nd Amendment to the Constitution.

All of this presents a new test for the American constitutional order.

14. Newspeak. Eco here refers to the distorted language used by Ingsoc in George Orwell’s *1984*. Trump and his subordinates arguably engage in Newspeak (or doublespeak) when using terms like “fake news,” “alternative facts,” “woke,” “Gulf of America,” and “January 6 hostages.”

So, does the U.S. now have a fascist administration? Reader, you must decide for yourself. But, whether or not you think this specific label applies, ask yourself: is this a conversation you would have thought possible ten years ago? ■

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5. Examples: an attempt to curtail birthright citizenship, which is enshrined in the 14th Amendment; creation of the so-called “Department of Government Efficiency”, an organization not authorized by Congress, to review confidential government records, slash government spending and dismantle government agencies created by Congress; withholding of foreign aid and other spending authorized by law; various anti-diversity and anti-transgender measures; and punishing of individual law firms.