

Citizenship in Crisis

The Dying Citizen: How Progressive Elites, Tribalism, and Globalization Are Destroying the Idea of America, Victor Davis Hanson, Basic Books, 2021, pp. ix + 419, \$30.00 hardcover.

The United States in Crisis: Citizenship, Immigration, and the Nation State, Edward J. Erler, Claremont Books and Encounter Books, 2022, pp. 139, \$27.99 hardcover.

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Victor Davis Hanson's *The Dying Citizen* and Edward J. Erler's *The United States in Crisis* provide overlapping diagnoses of the cancers afflicting America. Hanson gathers a wide-ranging array of American woes and categorizes them as different assaults on the power and the concept of the citizen. Erler has drafted a tighter legal and ideological brief, to argue against the constitutional underpinnings of the doctrine of birthright citizenship and for the Claremont School's understanding of America and its constitutional order. Neither provides a convincing guide for how America may rise from its sickbed, because neither provides a clear argument for the American *nation* as a good in itself, rather than a mere adjunct for the American republic. America cannot recover until its doctors prescribe a cure for both republic and nation.

Hanson's *Dying Citizen* uses a thin overlay of Greek history and political theory to categorize the various ills that he and other (mostly conservative) polemicists have noted for the last several decades. The Greek city states in their heyday, and America in its, depended on 1) a robust class of industrious smallholders; 2) a strong distinction between citizens and noncitizens; 3) a robust exercise of civic powers by the ordinary citizenry; and 4) an equally robust theoretical

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conception of the status of the citizen. Hanson takes all these components to be in sharp decay in modern America.

The self-reliant American middle class has fallen on hard times in the last half century. Wage competition imposed by globalization and mass immigration has reduced income, the costs of housing and college have risen, while metastasizing bureaucracies increase taxes, impose economically crippling regulations, and convert Americans from self-reliant citizens to economically dependent clients of the state. The consequences include later marriage and fewer children—fewer new American citizens to replace the old.

America also has ceased to distinguish clearly between citizens and non-citizens. (Hanson 62-97) American elites have acquiesced since the passage of the Immigration and Naturalization Act of 1965 to scarcely controlled mass immigration, much of it illegal, at the behest of employers eager for cheap labor, politicians eager for votes, and radicals eager for the raw material for revolutionary transformation. They now demonize assimilation, enforcement of the immigration laws, any distinction between citizens and noncitizens, and the very concept of a border, while promoting a “diversification” that erases both American politics and culture. *Multiculturalism*, meanwhile, has had a similar effect in domestic policy, as American elites promote a regression from an assimilatory civic identity to a tribal one that takes race and sex as fundamental identities. (Hanson 99-151)

American elites also have begun to assault the constitutional framework that sustains the citizen’s rights and powers. An administrative state unaccountable to the citizenry has leached power from the executive, legislative, and judicial branches of our government. (Hanson 155-213 “Unelected”) Elites eager for power also work with increasing fervor to dismantle the Constitution’s guardrails, by such means as eliminating the Electoral College, packing the Supreme Court, reducing the power of the Senate, creating new states, and vitiating the First and Second Amendments. (Hanson 215-268) The same elites also abandon American sovereignty and substitute allegiance to *global* governance. (Hanson 269-321) Hanson concludes with the pessimistic note that, as the Biden administration supercharges the destruction of the constitutional order, our republic teeters on disintegration. (Hanson 323-46)

The Dying Citizen usefully highlights how much of the recent decay of America turns on the status of the citizen. Yet Hanson overreaches by including in his book a grab-bag of polemic: a concept that explains everything explains

nothing. The title, moreover, exudes despair. The citizen is dying—and? *What is to be done?* Should we simply seek to restore a civic order and ideal that already failed, piously hoping it will not fail again?

Hanson particularly disappoints because he does not call upon his expertise in Greece and Rome to suggest innovations to revitalize the American republic. Athens practiced direct democracy rather than representative democracy: should we use more direct democracy in our America of corrupt elites and “experts” too thickly insulated from popular opinion? The Roman tribunes could veto laws: should we create tribunes to veto the endless and arbitrarily enforced regulations of the administrative state? America’s dying citizens, if they are to live, need creative suggestions drawn from the wealth of Greco-Roman constitutional thought and practice, rather than complaints that may relieve but will not cure.

Erler’s brief serves both to argue against the constitutionality of birthright citizenship and for the Claremont School’s understanding of America and its constitutional order. The argument against birthright citizenship, which plays a role in the linked policy debates about immigration policy and the merits of the Trump administration, is a largely self-contained whole. The brief for the Claremont School interpretation of America’s constitutional order, most importantly here the transcendent importance of natural law and the American Founding’s effects to create a total rupture with America’s English origins, is more by way of repeating established assertions than by persuading readers who do not share the Claremont position. Yet the argument against birthright citizenship turns significantly on accepting Claremont *a priori*—which may be a weakness both in the actual courtroom and in the courtroom of public opinion.

Erler’s brief against birthright citizenship consists largely of a close examination of *United States v. Wong Kim Ark* (1898), which established the precedent for the principle of birthright citizenship. He also examines select earlier cases from the nineteenth century that were invoked as precedents in *Wong Kim Ark*. Erler partly argues that *Wong Kim Ark*’s precedent only applies to the children of noncitizens who possess *permanent domicile* in the United States—a class of noncitizens which need not include birth tourists, residents with student visas, or illegal aliens. More fundamentally, he attacks *Wong Kim Ark* as wrongly decided because 1) it ignores the original intent of the drafters of the Fourteenth Amendment’s Citizenship Clause; and 2) it relies upon a common-law concept of

a subject's permanent allegiance to the crown, drawn from the legal precedents of our quondam colonial masters in England.

Erler emphatically denies that any aspect of common law survived the revolutionary transformation of 1776—although, if the states' sovereignty means anything, it surely matters that New York and Pennsylvania stated explicitly during the Revolution that the common law continued in force. Erler maintains, rather, that the Constitution is based solely on the Natural Law ideals that the Declaration articulates. Citizenship is neither a badge of hereditary subjection nor a right available to all mankind, but an exclusive and voluntary compact among the members of a sovereign nation-state. American citizens must *agree* to extend citizenship to any noncitizen; to claim that a noncitizen has a right to citizenship is to abrogate the true rights of American citizens.

Erler's argument that we should overturn *Wong Kim Ark* turns on his constitutional and philosophical arguments, and particularly on his claim that common law has no standing in America's constitutional structure. Erler acknowledges that common law terms and concepts pervade the Constitution and the Bill of Rights (e.g., *jury*, *habeus corpus*). (Erler 51-52)¹ He stipulates, however, that "these rights—although in the form of the common law—were viewed, not as part of America's common law heritage, but as natural rights, the dictates of the Law of Nature." (Erler 52) I doubt the American judiciary will adopt this transubstantiary mode of argumentation, but they may in any case take Erler to proffer a false dichotomy. William Blackstone, after all, wrote in his *Commentaries* that "the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature."² Our judges may believe that they already recognize natural law sufficiently in the precedentiary power they have allotted to common law.

Neither Hanson nor Erler pays much attention to the American nation. Hanson's critique of the effects of mass immigration and multiculturalism does not distinguish clearly between the American nation and the American republic. His model for America is the "ideas absorbed over centuries from the growth of a multiethnic Rome, a multiracial Christianity, the European Enlightenment and Reformation, and the traditions of British parliamentary republicanism." (Hanson 66-67) Hanson distances himself from any substantive argument on

1 As they do the Declaration. James R. Stoner, Jr., *Common Law and Liberal Theory: Coke, Hobbes and the Origins of American Constitutionalism* (Lawrence, KS: University Press of Kansas, 1992), 187-88.

2 William Blackstone, *Commentaries on the Laws of England*, Vol. I. (Oxford: Clarendon Press, 1768), 124.

behalf of the American nation by his resort to language such as “the ethnic chauvinism of white Protestant Anglo-Americans.” (Hanson 66)

Erler similarly argues that “[a]ny honest observer can see that diversity is the solvent that dissolves the unity and cohesiveness of the nation.” (Erler 12) But though Erler frequently invokes nation-states and the nation, and condemns multiculturalism and the decay of the assimilatory ideal, his stance is based on Thomas Jefferson’s bloodless comment in *Notes on the State of Virginia* (1785) that “[e]ducation to republican virtue begins almost at birth; it is not easily acquired, even for those who live their entire lives in republican regimes. To expect the newly arrived easily to exchange the chains of despotism for the robes of republican virtue is unrealistic, if not wholly utopian.” (Erler 118) Erler ignores all the other attributes of a nation, which have nothing to do with liberty—faith, kinship, shared history, all the customs large and small that distinguish peoples even when they share republican virtues.

Erler’s American nation is nothing more than a collection of citizens with the habits of liberty, united solely by the Founding Documents. It is not clear how his Jeffersonian proof-text justifies Erler’s contention that encouraging “immigration from Third World countries” was particularly mistaken because their “people would have the greatest difficulty assimilating.” (Erler 120) If a nation is nothing more than the habits of liberty, and liberty appeals equally to all mankind—since “All immigrants can trace their lineage to the blood of the Founders through ‘the electric cord’ of the Declaration,” (Erler 119)—there is no particular reason why assimilating a Somali should be more difficult than assimilating an Englishman.

What Hanson and Erler share is an embarrassed unwillingness to conceive of the American nation as something worth defending for its own sake, or even defining, as something more than an adjunct to the American republic. If they feel affection for the American nation, it is a love that dares not speak its name. Nor do they address those studies of the American Founding which find that the theories of the Founders explain little of how the Founding generation of Americans thought.³

They should, for the American nation is as exceptional as the American republic, and worthy on its own account to be loved and to be preserved. Partly, like any other nation, it is defined by bonds of kinship—the bonds that animate

3 Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton: Princeton University Press, 1994).

every visit to a colonial graveyard to trace the letters of a familiar name. Partly it is defined by the common law, dedicated to liberty, which it inherited of its mother in England and did not relinquish in 1776. Partly it is the reverence, bred in the Congregationalist churches of New England; the responsibility fostered in town meetings, juries, and militias—and those mores that are not simply the habits of liberty, such as baseball games, hunting weekends, quilting, corn-on-the-cob, and a taste for beer in the neighborhood tavern. The American people once knew that God's covenant had descended to them; that they were God's New Israel, chosen in 1620 rather than 1776; that they were members of a nation that preceded their republic. *Mutatis mutandis*, so we are still.

Hanson and Erler only diagnose part of the ills imposed by the American elites' uncontrolled immigration policy and multiculturalism. These policies imperil the nation as well as the republic. They have reduced the American nation to a shrinking majority of the people, while our elites transform themselves into a post-American nation defined not least by its mission to desecrate the heritage of America and remove from all positions of prestige and power those who still devote to our country their loyalty and their love. The mission of the American nation must be to use the powers of the state to Americanize or re-Americanize the peoples within the borders of the state. We must assimilate them—or be reduced to hewers of wood and drawers of water.

Citizenship alone is not enough to summon the reserves of loyalty and courage needed to fight the multiculturalists, who themselves draw strength from a Soviet-style coordination of subordinate nationalities, united by diversity commissars. We need a nation to fight their assembled tribes—and to provide an object of affection so alluring that their children will abandon their tribal gods.

A republic that cannot sustain the American nation and all its customs will have no people to fight for it—and it will not be a republic worth fighting for. We must have both a state and a nation before we can have a republic. The state without a nation is an empire managing and subjugating a congeries of lesser peoples. A nation without a state is dependent on the kindness of strangers. Only a nation twinned with a state, a state accountable to a nation, provides the full consent of national and civic attachment that can animate a free, sovereign, and democratic republic.

The Pledge of Allegiance commits us to liberty, justice, and the Republic—and to *one nation under God, indivisible*. We must recommit ourselves to the American nation, or indeed the Republic will die.

