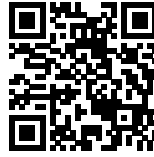




## INCITEMENT?

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Now that a little bit of time has passed since the "insurrection" of January 6, 2021, let us put those events into some perspective.

There were calls, then, from far and wide, to either quickly impeach President Trump from office, or to utilize the 25th Amendment to remove him from office, whichever was quicker.

We know now that the riots started well before Trump's speech ended, so it's wrong to strongly or even weakly imply that the subsequent events were a reaction to his speech. Here is Trump's key statement about protesting, "I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard." Donald Trump is accused of egging on, instigating, inciting his supporters to engage in an insurrection, to overthrow the U.S. government, starting with a violent attack on a sitting congress. What he did during his speech of January 6, 2021 was to utter phrases such as, "You will never take back our country with weakness," and many others similar, and to encourage his supporters "to peacefully and patriotically make your voices heard" outside of Congress. It is not at all clear that he anticipated the actions of the rioters, let alone supported them.

Rather, his goal was to attain an electoral college victory. How so? By demanding that electors from enough Biden states be rejected by Mike Pence in particular, in his role as Vice President, and by Congress in general. Yes these were last ditch efforts to overturn an election that he, along with many others, thought improper.

This essay is NOT a defense of Mr. Trump's speech on January 6, 2021. If you read his speech carefully, you will find not a scintilla of evidence that he incited anyone. In prospect, it was a good speech. In retrospect, it was unwise, given the results: he lost the support of such "virtue signalers" as Betsy DeVos, William Barr, Mick Mulvaney, Matt Pottinger, Ryan Tully, Stephanie Grisham and Sarah Matthews. President Trump's error was in giving the likes of Chuck Schumer and Nancy Pelosi an opening to attack him. As a sometime supporter of President Trump, do I regret that he gave that speech (as I also am remorseful about his performance in his first debate with Mr. Biden)? Yes I do. This is not because of the discourse itself, which was an excellent one. Instead I am saddened by it because of the "hay" his enemies were able to make of it. Are the likes of Schumer and Pelosi happy with Trump that he spoke out as he did on this occasion? Of course they are. Deliriously so. Therefore, I am not.

Let me try to clarify this point. I am not saying that although there was no evidence that Trump was inciting the crowd that marched on the capitol, he should not have created the situation in which violence erupted. Instead, I am saying that although there was no evidence that Trump was inciting the crowd that marched on the capitol, he should not have created the situation in which his enemies were able to score so many points against him.

Rather, I am now using this episode to engage in a philosophical analysis of the law regarding incitement. "Incitement" is pretty much on everyone's lips, Democrat as well as Republican, friend or enemy of Mr. Trump's. This gives us a golden opportunity to reflect upon the libertarian analysis of incitement, and why it should not be considered a crime.

The difficulty with this law is that it is a violation of free will. Murray N. Rothbard said it best when he wrote:

"Should it be illegal .... to 'incite to riot'? Suppose that Green exhorts a crowd: 'Go! Burn! Loot! Kill!' and the mob proceeds to do just that, with Green having nothing further to do with these criminal activities. Since every man is free to adopt or not adopt any course of action he wishes, we cannot say that in some way Green determined the members of the mob to their criminal activities; we cannot make him, because of his exhortation, at all responsible for their crimes. 'Inciting to riot,' therefore, is a pure exercise of a man's right to speak without being thereby implicated in crime. On the other hand, it is obvious that if Green happened to be involved in a plan or conspiracy with others to commit various crimes, and that then Green told them to proceed, he would then be just as implicated in the crimes as are the others—more so, if he were the mastermind who headed the criminal gang. This is a seemingly subtle distinction which in practice is clearcut—there is a world of difference between the head of a criminal gang and a soap-box orator during a riot; the former is not, properly to be charged simply with 'incitement.'"

In sharp contrast, when Spike Lee was incensed at George Zimmerman for his killing of Trayvon Martin, he was not guilty of mere incitement. Mr. Lee was, instead, responsible for actively aiding and abetting the crowd to go and attack this man who was later exonerated for his act of self-defense. Mr. Lee gave the crowd Mr. Zimmerman's address (it was erroneous, but that is beside the point) and publicly mused about the latter something to the effect of "Why is this man still alive?"

If you go to bed with a consenting five year old girl, you are guilty of statutory rape, even given that this

youngster "agreed" to that act. Why? We simply do not believe that a person of that age is capable of assenting to any such behavior. If you engage in sex on a voluntary basis with a 25 year old woman, whatever else it is of which you may be accused, it cannot be statutory rape, since any rational society maintains that people of that demographic are entitled to make such decisions for themselves. But where do you draw the line between these two ages? At 15? 16? 17? Whatever age you choose, it is possible to object that it should be one month younger or older. This is the classic example in philosophy of the continuum challenge. There is no unambiguous answer to questions of this sort (nor to those like the one about an 18 year old being of an age to participate in the military, but not to drink beer) forthcoming from any area on the political economic spectrum. All we can do in this country is rely on the prudential judgement of the electorate on such matters.

We have a continuum issue here. Lee, who went out of his way to help bring about mob violence, behaved culpably under libertarian law. The person who simply advocated violence did not. The key distinction is that Mr. Lee aided the mob by providing (though erroneous) an address for Mr. Zimmerman. Mr. Trump did no such thing. Lee did not merely incite. He aided and abetted the mob. President Trump did not even incite, let alone aid and abet.

P.S. Anyone notice the wildly different treatment of this right wing riot, compared to the much more devastating ones put on by left wing "peaceful" marches, mayhems, organized by BLM and Antifar? I don't think it is politically correct to even mention this disparity. So, fughedaboutit, as we say in Brooklyn.

P.P.S. Is it possible that there was a false flag operation in effect here? That BLM and Antifa snuck into the confused melee, with the goal of undermining President Trump's authority? Enquiring minds want to know.

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*Walter Block is the Harold E. Wirth Eminent Scholar Endowed Chair and Professor of Economics at Loyola University, New Orleans.*

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The featured image shows, "The Siege of an Elephant," a print attributed to Joannes van Doetecum I, ca. 1550.

