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To cite this article: Conor Casey & David Kenny (2021): How Liberty Dies in a Galaxy Far, Far Away: *Star Wars*, Democratic Decay, and Weak Executives, *Law & Literature*, DOI: [10.1080/1535685X.2021.1991610](https://doi.org/10.1080/1535685X.2021.1991610)

To link to this article: <https://doi.org/10.1080/1535685X.2021.1991610>



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Published online: 10 Nov 2021.



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How Liberty Dies in a Galaxy Far, Far Away: *Star Wars*, Democratic Decay, and Weak Executives

Conor Casey and David Kenny

Abstract, In this article we argue that the story of *Star Wars* has much to tell us about perennial questions of constitutional design. The series offers a rich cinematic exploration of some of the most pressing real-life issues of politics and constitutionalism and is, we suggest, a fruitful source of insight for issues of constitutional design and regulation. This article proceeds in three parts. In Part I, we sketch the political context which grounds our analysis, outlining the key constitutional institutions of the Galactic Republic, and their rapid decline and fall as documented across the prequel trilogy. In Part II, we outline the existing contributions commentators have made in respect of *Star Wars* and its lessons for constitutional design and regulation—the problem with the concentration of government power in one person and the risks posed to political systems by excessive delegation of authority to the executive branch. We then introduce three more nuanced lessons that we think the films offer: the ‘Publius paradox’; the hollowness of legalism; and the dangers of confusion at the apex of power. In Part III, with detailed analysis of the films, we show how the *Star Wars* saga clearly illustrates these lessons: that a constitutionally weak executive, rather than a strong one, can be a cause of democratic decay and autocracy, as it proves incapable of meeting the demands of governance; that commitment to and obsession with law is not *per se* any bulwark against autocracy; and that unclear lines of constitutional authority pose a huge risk at times of strain and crisis. We argue that the constitutional problem *Star Wars* illustrates is more subtle and more important than the dominant accounts suggest: that *under concentration* of power creates the risk of *overconcentration* of power. If we fear the decay of democracy into autocracy and wish to respond to it, we must be careful not to excessively limit or diffuse power. If we do, and begin to see constitutionalism as solely or primarily a means of restraining government, we may limit government so much that we cause the very problem we seek to prevent.

Keywords, *Star Wars*, democratic decay, executive power, constitutional design, separation of powers, law and cinema

INTRODUCTION

Despite their massive impact across the culture, and being subject to sustained analysis in fields such as philosophy¹ and even other aspects of law,² the *Star Wars* films have not been subject to sustained analysis by constitutional scholars. An exception to this is Sunstein, in his popular book on *The World According to Star Wars*, who highlights the politics of the saga:

Star Wars isn't a political tract, but it has a political message ... That's one of the reasons for the universal appeal of the saga. Whatever your political convictions, and wherever you live, you're likely to see an Emperor of some kind, and you're likely to have some sympathy for the rebels.³

The saga, Sunstein says, criticizes 'central authority, and its rebel heart lies with those who try to resist it.'⁴ The prequels, he notes, deal with 'the rise of tyranny and the collapse of democracies', offering 'a warning about the need for citizen vigilance against the countless would-be emperors who try to accumulate power at the expense of the public.'⁵

Star Wars' grasp of the nuances of politics is somewhat thin, which is forgivable for a series of science fiction action films. The films initially read as naïvely anti-political, believing that politics as practiced in the real world—as a series of pragmatic compromises⁶—is equivalent to corruption, and that political ambition is fundamentally suspect.⁷ It harkens back to a time—which is always mythologised, in civilisations past or in a galaxy far away—where politicians were truly civil, listening, reasoning and debating, acting for a pure people rather than a corrupt elite.⁸ Sunstein is, perhaps for this reason, sceptical of the depth of *Star Wars*' insights into constitutionalism. Though he notes *Star Wars* is 'obsessed with the separation of powers'⁹ it does not 'have all that much to say about constitutions, at least not directly'. Sunstein maintains, 'if you're looking to learn about constitutional design, *Star Wars* probably isn't your best bet.'¹⁰ We respectfully disagree. We think that, in spite of its lack of political sophistication, the story of *Star Wars* has much to tell us about perennial questions of constitutional design, and it is much more interesting than its basic anti-politics. The series offers a rich cinematic exploration of some of the most pressing real-life issues of politics and constitutionalism and is, we suggest, a fruitful source of insight for issues of constitutional design and regulation.

This article proceeds in three parts. In Part I, we sketch the political context which grounds our analysis, tracing the form and structure of the constitutional institutions of the Galactic Republic; the political culture of this polity; the challenges facing the Republic; and its rapid decline and fall as documented across

the prequel trilogy.¹¹ In Part II, we first outline the existing contributions commentators have made in respect of *Star Wars* and its lessons for constitutional design and regulation—that the films’ commentary on constitutionalism is as a story of the ‘problem with the concentration of government power in one person’ and the risks posed to political systems by excessive delegation of authority to the executive branch.¹² We then introduce three more nuanced lessons that we think the films offer: the ‘Publius paradox’, the hollowness of legalism, and the dangers of confusion at the apex of power. In Part III, with detailed analysis of the films, we show how the *Star Wars* saga illustrates very effectively these lessons: that a constitutionally weak executive, rather than a strong one, can be a cause of democratic decay and autocracy, as it proves incapable of meeting the demands of governance; that commitment to and obsession with law is not *per se* any bulwark against autocracy; and that unclear lines of constitutional authority pose a huge risk at times of strain and crisis. We argue that the constitutional problem *Star Wars* illustrates is more subtle and more important than the dominant accounts suggest: that *under concentration* of power creates the risk of *overconcentration* of power. If we fear the decay of democracy into autocracy and wish to respond to it, we must be careful not to excessively limit or diffuse power.¹³ If we do, and begin to see constitutionalism as solely or primarily a means of restraining government, we may limit government so much that we cause the very problem we seek to prevent.

Why Film? Why *Star Wars*?

Why should we look to learn these lessons through *Star Wars*, or any film or piece of literature, rather than history? Certainly, we could look to the fall of the Roman Republic,¹⁴ or the ineffectual American Articles of Confederation of 1777,¹⁵ or the disaster of Weimar Germany.¹⁶ But literature offers advantages that historical examples cannot. In this work, we are engaged in what Jaakko Husa usefully calls comparative law and literature: looking to literature for comparative examples, in the way that we might look to a foreign legal system. Husa notes that by transplanting legal ideas into fictional worlds which they can control, authors can explore its implications in a space far less problematic than transplants in the real world, which are a fraught enterprise.¹⁷ One can make a very pure—if necessarily limited—case about a legal concepts in this literary sphere. Science fiction presents many rich possibilities, as shown by, for example, Christine Corcos’ examination of science fiction as a ‘disseminator and critic of rights talk’.¹⁸ Kiernan Tranter, in his 2018 book, illustrates how legality in science fiction—from *Dune* to *Dr. Who*—can illustrate well various facets of contemporary law such as technicality.¹⁹ We see our work as cognate with Tranter’s project.²⁰

Our approach also falls into, in Kamer's typology, 'film as jurisprudence' scholarship; what Greenfield and *et al.* would term 'legal film and theory'; and what Tranter and MacNeil both call a 'jurisprudential reading' of a popular text.²¹ The first advantage of this approach is the level of engagement that literature, broadly understood, can provide. Watching Shakespeare's *Julius Caesar*—which provides rich accounts of character motivation and vivid experience of the forceful power of rhetoric and the mentality of crowds—can throw more light on important questions about tyrannicide than trying to study the historical event alone, with all its attendant complexity and confusion.²² As Kamir puts it, a similarity between law and film is that '[e]ach invites participants—viewers, legal professionals, parties to legal proceedings and/or members of the public—to share its vision, logic, rhetoric and values.'²³ We can use analysis of film to make the law resonant in a way that historical accounts may not be.

Secondly, and relatedly, the reach of cultural touchstones such as *Star Wars* is vast, making the insights they can offer orders of magnitude more impactful than historical examples. Almost everyone knows *Star Wars*, being the most pervasive cultural phenomenon of the last half century. As a series of science fiction adventure films, it also tells the story of democratic decay in a way that most people will find more entertaining—well-trodden weaknesses of the prequel films notwithstanding—than reading a history. In nuancing the message of this well-known story, we have an opportunity to bring this idea to a wider audience and to make it more accessible than if it were done with dry constitutional analysis alone. The very fact that viewers may treat films as 'just entertainment' means that there is an important role for critical academic inquiry, since even very engaged viewers may uncritically embrace the surface-level lessons of the films without deeper reflection.²⁴ Thirdly, as Kamer argues, films can be 'jurisprudential texts'²⁵ that highlight different aspects of a topic or subjects, aspects that the law might ignore or decenter. Film, in showing us new and different accounts of what we think we know, can change our perspective and show us what we miss when look at the more mundane examples that usually populate our scholarship. *Star Wars*, we suggest, clearly does this.

A literary or film exploration of this topic also has disadvantages, however. The obverse of the simplicity that fictional narrative offers over history is that we are limited in what we can know about the world of *Star Wars* to that which is depicted in the franchise, which will be much less than a real-world example. Though it might appear otherwise at time during the prequel films, their point is not to be 'boring political science'²⁶ tracts, but to be science fiction adventure films, so thus they may not focus on the details of politics as much as we might wish. On the whole, however, the advantages far outweigh the disadvantages and offer us a fascinating, novel, and accessible insight into important constitutional issues.

To be clear, in law and literature scholarship we are not *per se* interested in the subjective intentions of the author/director/auteur, which is predominantly George Lucas in this case. The author's intention is of ultimately limited relevance to our understanding of texts; it is only when combined with the reader that meaning is generated, and the author cannot control how their text is received.²⁷ It is clear that Lucas has political commentary in mind when conceiving of *Star Wars*, and that he considered parallels to the collapse of various regimes.²⁸ But he also acknowledged that people invariably read into the story their own national perspectives and experiences.²⁹ His personal views—or those of anyone else involved in the creation, writing or direction of *Star Wars*—on the precise message of the films is not our concern.

Here, we limit ourselves to the *Star Wars* films, and do not venture into extended universe material, past or present, or into television. This should not be taken as a denigration of this material, much of which is very insightful as to various aspects of the *Star Wars* universe and its politics, and exploring it fully would be a worthwhile and useful future project.³⁰ For reasons of scope, we cannot undertake that task here, but moreover, we feel there is merit in examining the films alone to ground our argument. The films are, overwhelmingly, the most accessible, well-known, and popular aspects of the *Star Wars* franchise. Far more people have knowledge of the films than the extended universe. As such, this is the best place to begin and to ground a constitutional law analysis of *Star Wars*.

PART I -THE POLITICAL BACKDROP OF THE DECLINE OF THE GALACTIC REPUBLIC

The (Failing) Political Structures of the Republic

In the original trilogy of *Star Wars* films, we get only a loose sense of the Galactic Republic, and from the perspective of those who wish to harken back to its seeming golden age from the oppression and terror of the Galactic Empire. But when, in the subsequent prequel films, we get to see the old Republic, it is less a shining city on a hill and more a decaying political and social order facing severe challenges. One of the problems with mapping the Republic and its issues is that much of the commentary on it comes from a deeply unreliable source: Senator (and later Chancellor and Emperor) Palpatine, who repeatedly deceives essentially all the major characters in the films.³¹ Moreover, the overall impression of the prequels is that (to a degree that is wildly implausible, resembling Karl Popper's conspiracy theory of society³²) many of the major events that lead to the Republic's collapse are supposedly orchestrated by Palpatine rather than naturally emergent phenomena of a complex political system.³³ However, other characters do not contradict Palpatine's complaints about the Republic, and the

experience of the Republic over the films seems largely to bear them out. It seems, then, that Palpatine exploits and exacerbates genuine weaknesses in the political system rather than creates or fabricates them.

The Republic is extraordinarily large, with many thousand sovereign star systems, some of which have multiple inhabited planets.³⁴ It is not a comprehensive political entity, having little control of Outer Rim territories like Tatooine, which is run by the Hutts and where slavery continues without Republic intervention.³⁵ We do not get a detailed vision of how the individual systems are run. The governance of Naboo shows that elected, term-limited Queens are one method of system governance, but this is complicated by the apparent total exclusion of the Gungans from the system-wide government arrangements, and the apparent ability for the Queen's body double to make consequential executive decisions while impersonating the Queen.³⁶ The Trade Federation is an enormous corporate conglomeration headed by a Viceroy, but it is unclear if this position is an elective one or not.

The legislature of the Republic is apparently unicameral—there is no mention of a lower house—with a Senate comprised of Senators representing each system. The Trade Federation, as well as having de facto or de jure control over many systems, is separately represented in the Senate. It seems that Senators act as agents of the sovereign rulers of the systems rather than as independent representatives of the people of the planet.³⁷ We learn in *Clones* that Senator Amidala was not elected by the people, but gained her office by royal nomination, suggesting Senators represent the interests of system governments rather than developing independent relations between their peoples and the Republic. This is similar to the US Senate in the early decades of the Republic, before the system of direct election of Senators, or the Congress under the Articles of Confederation.³⁸ It is also suggested that Senators serve at the pleasure of the system governments.³⁹ Aside from an amorphous commitment to democracy and deep devotion to legality/procedure (discussed below), the legislative chamber seems to lack substantive co-operation and is bereft of a purposive vision for politics or a common good for the Republic.

The executive branch comes in the form of a Supreme Chancellor, who is described as the 'leader of the Senate'. We know that the Chancellor is appointed and removed by the Senate; wields some executive authority,⁴⁰ and emergency powers when appropriate, at the request of the Senate; serves for a defined term;⁴¹ and presides over a permanent and influential bureaucracy.

We learn little about the judicial branch in the films, but what we hear of the courts is not positive. In response to a suggestion Naboo consider judicial action to seek redress against the illegal invasion, the Queen snaps: 'The courts take even longer to decide things than the Senate.' We learn in *Clones* that Viceroy of

the Trade Federations remains in office despite four trials in Supreme Court. It appears, also, that the Jedi also perform forms of extrajudicial adjudication.⁴²

The picture painted of the Republic's internal politics across the prequels is one mired in bureaucratic red tape, sclerotic inaction, and perhaps even corruption. We are told, in the crawl to *The Phantom Menace*, that 'Turmoil has engulfed the Galactic Republic' owing to disputes about shipping and 'taxation of trade routes to outlaying star systems'. While the Trade Federation imposes a military blockade, we are told the 'the congress of the Republic endlessly debates this alarming chain of events'. Darth Sidious says he has 'the Senate bogged down in procedures' so that it will have no choice but to accept the Trade Federation's control of Naboo. His alter ego, Senator Palpatine, makes quite a downbeat assessment of the state of Republic: 'The Senate is full of greedy, squabbling delegates. There is no interest in the common good.' He thinks there is 'little chance the Senate will act on the invasion' of Naboo, even if it is flagrantly unlawful. Supreme Chancellor Valorum, we are told, is mired in corruption allegations and 'has little real power', so that the 'bureaucrats are in charge now'.⁴³

One of the core problems facing the Republic is the apparent dominance of the bureaucracy over the political executive. Palpatine describes them to Queen Amidala as 'the true rulers of the Republic' and suggests that elements may even be corrupt and in the pay of the Trade Federation. It is seemingly due to their influence and insistence that Chancellor Valorum defers action on the Naboo invasion so that a committee of inquiry can investigate the matter. It is this decision to defer which sparks the Queen, unwilling 'to watch [her] people suffer and die while you discuss this invasion in a committee', to call for a vote of No Confidence in the Chancellor. Palpatine had pushed her to seek the election of a new Chancellor, 'one who will take control of the bureaucrats and give us justice'.

By the time she leaves the capital, Queen Amidala says: 'It is clear to me now that the Republic no longer functions.' We do not know why the separatists leave the Republic in *Clones*; it seems likely that it relates to the taxation of trade routes, as the separatist leaders seem to be commercial actors.⁴⁴ While they are being manipulated by Palpatine and Count Dooku, their dissatisfaction is presumably sincere. Dooku is described by a Jedi master as a 'political idealist', suggesting his case for the separatists is *seen* as genuine.⁴⁵ As Last puts it, 'they seem genuinely to want to make a fresh start with a government that isn't bloated and dysfunctional.'⁴⁶

The Role of the Jedi

Though it is not centred in the text of the prequel films, the Jedi is a religious order. Jedi knights adhere of a religion, albeit one that is 'hokey', as Han Solo

would have it, or ‘ancient’, as one high ranking imperial officer would but it. (Vader finds ‘his lack of faith disturbing’.) But the Jedi were also ‘the guardians of peace and justice in the old Republic, before the dark times, before the Empire’.⁴⁷ In the original trilogy, we might have thought the Jedi role was similar to rōnin: samurai without daimyō, freelance zen warriors doing justice throughout the galaxy as they saw fit.⁴⁸ However, the prequels revealed the Jedi to be a vast, highly hierarchical, bureaucratized entity with Councils, official status, and official duties: acting as ambassadors or bodyguards, solving border disputes, and—in the latter days—serving as military leaders. As we will discuss further below, the constitutional status of the Jedi Order is deeply unclear. In particular, ambiguity over whether the Jedi Order acts at the behest of—or are the ultimate supervisors of—the Supreme Chancellor proves deeply problematic.

Legality in the Star Wars Universe

There is one political/moral commitment most political actors in the Republic seem to share: obsession with legality, particularly with formalistic legality. Trade Federation Viceroy Nute Gunray insists to the representatives of the Senate that ‘our blockade is perfectly legal’. He hesitates to invade the planet on the orders of Darth Sidious, asking tentatively ‘My Lord... is that... legal?’⁴⁹ (The future Emperor’s response is ‘I will make it legal’). He later insists: ‘We would never do anything without the approval of the Senate’. The greatest threat to the Federation appears to be Senate revocation of their trade franchise. Yet, form is all that matters: once the invasion can be made formally legal, nothing else is of concern. His plan is that he and the Queen of Naboo will sign a treaty that ‘legitimize our occupation here. I have assurances it will be ratified by the Senate.’ It is implied that the Federation would kill the Queen but for the need for her to sign this document. The Senate itself is committed to formalistic legality, ‘bogged down in procedures’ and investigative committees, wedded to the letter of the law,⁵⁰ apparently willing to accept a treaty signed at the barrel of a gun as a satisfactory resolution of events. The Separatists—breaking away from the Republic and creating a new legal order—do so by signing treaties, and some are concerned that their actions in doing this will be ‘construed as treason’. Everyone in the *Star Wars* universe is committed to legality. The bad guys are committed in form and name only, but they are still committed.

Fall of the Republic

The separatist movement introduced in *Attack of the Clones* violently secedes from the Republic following the dramatic Battle on Geonosis and form a break-away political entity known as the ‘Confederacy of Independent Systems’, a move

the Republic was paralysed and powerless to prevent given its lack of armed forces beyond the ‘peacekeeper’ Jedi. Reeling from the crisis, the Senate eventually responded by vesting extensive emergency powers in Chancellor Palpatine and allowing him to rapidly commission an enormous standing army to battle the secessionists, an army which would be commanded by the ‘peacekeeping’ Jedi Order. In *Revenge of the Sith*, Chancellor Palpatine/Darth Sidious uses this army and these powers to defeat the separatists, consolidate his internal authority, and crush the Jedi Order using an order pre-programmed into the Republican clone soldiers. With this done, he reconstitutes the Republic as the Galactic Empire with him as Emperor. This move to sovereign dictatorship was met with minimal opposition in the Senate; in fact, it receives ‘thunderous applause’. The ‘dark times’ of the Empire had begun on an optimistic note.

PART II - STARS WARS, CONCENTRATED POWER AND DIFFUSE POWER

Prevailing Narratives: The Dangers of Concentrated Power

We do not labour in untilled soil when it comes to *Star Wars*’ lessons for law and politics. Renowned legal scholar and self-declared *Star Wars* fan Cass Sunstein has engaged with what he describes as the series’ ‘obsession’ with the separation of powers and ‘constant fear’⁵¹ of tyranny. According to Sunstein, the saga implicitly ‘criticizes centralized authority’ and its sympathy clearly lies with those who ‘try to resist it’ and who put their faith in democracy.⁵² *Star Wars*’ arresting depiction of the decline of the Galactic Republic offers a ‘warning about the need for citizen vigilance against the countless would-be emperors who try to accumulate power at the expense of the public’.⁵³

Clearly buttressing this interpretation, Sunstein says, is the intentional parallel between the Senate’s delegation of broad powers to Supreme Chancellor Palpatine and the Weimar German Parliament’s enactment of the Enabling Act in 1933 which gave plenary powers to Chancellor Hitler to rule by decree. Like Hitler, Palpatine also used his delegated powers to amass a large degree of unilateral authority and national security powers, and eventually deployed these emergency powers to brutally crush his opponents. For Palpatine, this involved invoking Order 66—a programmed command to the clone troopers of the Republic’s Army to kill all the Jedi—to implement a purge of the Jedi Order.⁵⁴

In a review of Sunstein’s book, Somin queries whether the series does in fact take a benign view of democracy, contrasting the series sclerotic depiction of the Senate with the heroic portrayal of the Jedi Order, an ‘unelected elite of genetically superior Force users that usually has little if any accountability to democratically elected bodies.’⁵⁵ For Somin the entire series might be read as implicitly conveying a ‘message that the antidote to tyranny and oppression is to make

sure the right people are in power'.⁵⁶ If one were to work with Aristotelian classifications of political regimes, the series' depiction of politics can be read as a pean to the merits of rule by virtuous aristocracy as opposed to democracy and majoritarian self-government.⁵⁷

But Somin and Sunstein agree that the series does raise the 'question of the extent to which it is a good idea for the legislature to delegate' copious powers to the executive given that Chancellor Palpatine is able to 'subvert the Galactic Republic and turn it into a despotic empire by utilizing' the very emergency powers delegated to him by the Senate. Both accept that it is the concentration of power in the Chancellor that leads to the 'replacement of the Galactic Republic with the dictatorship of Emperor Palpatine'.⁵⁸ For commentators who share Sunstein's reading, the main constitutional lesson from the rise of Palpatine—from scheming Senator promising to be a reforming figure, to strong Chancellor, to totalitarian Emperor—is the immense danger in accumulating power in a single person or body.

This line of argument echoes central axioms of liberal constitutional theory. Executive power in many strands of liberal thought, is a constitutional anomaly or necessary evil.⁵⁹ The kind of broad and deep discretionary power—often only loosely constrained by law—associated with a powerful executive is troubling for those who see the potential for arbitrary political power as posing the greatest risk to good government and public welfare.⁶⁰ Concentration of immense political authority and leadership in the hands of a narrow few in the political executive can also invoke the uncomfortable spectre of absolute monarchy or dictatorship.⁶¹ Suspicion toward executive power in liberal constitutionalism is unsurprising given contemporary constitutionalism's origins in revolts against the abuses of monarchical authority unbound by law. Locke and Montesquieu pointed to the 'long train of abuses, prevarications and artifices' associated with absolute rule to justify concepts like separating political power in different institutions and for a modest executive role.⁶²

This mode of thought remains enormously influential and undergirds liberal constitutional theory concerning the executive branch: a powerful executive faces fewer veto-gates when trying to turn its power to abusive ends, and this is dangerous and undesirable. Indeed, it has been suggested the argument that 'too *little* constraint can have bad effects such as abuse of power' might be the 'main thought of liberal constitutionalism'.⁶³ These sorts of argument also chime with extensive scholarly discussion of the impact of emergencies on constitutional systems, which dwells on the potential existential threat they can pose to core values of constitutional democracies.⁶⁴ This threat is typically said to stem from vesting vast power in the executive, which can then rely on the pretext of quelling an emergency to deploy its authority to suspend constitutional norms and rights, erode democratic governance, and usher in authoritarian government.⁶⁵

On one view therefore, the *Star Wars* saga is a fictional but compelling picture of the necessity of constraining public power—especially executive power—lest it run riot and undermine the constitutional order from within.

We seek to build on these insights, arguing that the relevance of *Star Wars*' portrayal of political and constitutional issues is deeper and richer than has hitherto been explored. The foregoing insights are not wrong—these risks are real, and *Star Wars* illustrates them—but they are only part of what the films can teach us. The most important constitutional lesson of *Star Wars* is, counterintuitively, that the contrary danger also exists and must be given weight: weak government, excessive diffusion of authority, and rigidly legalistic thinking can *lead to* excessive concentration. The roots of the demise of Republic lie not in the excessive strength of the State and its political institutions, but from their severe weakness and an excessive diffusion of authority and power.

Three Issues: The Publius Paradox, Legalism, and Confusion at the Apex of Power

Although many contemporary strands of liberal constitutionalism regard constitutional rules as a negative constraint on government and state power, there are rich veins of constitutional thought which regard them first and foremost as *empowering* political institutions to act for the good of a polity, and to be able to respond to the contingencies of politics.⁶⁶ One of the most notable proponents of constitutionalism as a profoundly empowering social practice was Alexander Hamilton, who famously wrote in defence of a robust national government in the *Federalist* papers under the pseudonym Publius. The American Articles of Confederation of 1777 suffered excessive weakness, with a government of modest powers that lacked a strong central executive, robust legislature, or ability to organise militarily. The US Constitution of 1787, that Hamilton was arguing for, sought to remedy this, providing a strong central authority and more empowered legislature to keep diffuse parts of a union together and defend it effectively. But this was also the flashpoint of controversy around the Constitution, as various states and political grandees feared excessive central authority would threaten the liberty on which the American experiment was founded.

In defending the Constitution against these charges, Hamilton stressed the need to avoid overly constraining state power, so that it could better respond to the exigencies and necessities of political life.⁶⁷ If government was not strong enough, Hamilton argued, then there was a risk it might have to 'over-leap the bounds' imposed by law, just as Rome was obliged to short-circuit its very elaborate system of checks and balances during times of crisis by creating dictators⁶⁸ who could suspend the law in an attempt to save the polity.⁶⁹ America, perhaps, was lucky that the Articles of Confederation did not end up with this result.

Washington—beloved general at the head of a dissatisfied army in the mid 1780s—could have exploited its weakness if he had personal ambition to rule.

Vermuele has dubbed this the ‘Publius Paradox’, a principle of Hamiltonian constitutional design which cautions against excessively weakening the government—including the executive—out of fear of abuse of power.⁷⁰ This paradox is based, Vermeule says, on an observable structural tendency for different political regimes to create or risk perverse consequences through attempts to constrain or incapacitate the State.⁷¹ The perverse consequence is that if the State is denied the

power to do what is necessary in order to survive, it will be forced to push past the boundaries that the law imposes—either by changing the law to meet the demands of new and unforeseen situations or, in extremis, by throwing off the restraints of law altogether.⁷²

In other words, excess of constraint—tightly binding government to ensure it will not become too powerful—can ironically create sclerosis and dysfunction that leads to the very excessive executive empowerment that we seek to avoid.⁷³ The new and unforeseen circumstances referred to by Hamilton may encompass threats natural threats like environmental catastrophes; internal political troubles like sedition and secession; and dangers outside the polity, such as armed invasion.⁷⁴

When it comes to the executive branch, this principle cautions against its excessive constraint on the premise that doing so may have the perverse effect of ultimately *strengthening* it excessively.⁷⁵ This paradox is realised in circumstances where the executive might be forced, in order to safeguard the polity or respond to very pressing social need, to break from restraints it has been put under and act extra-legally out of sheer necessity.⁷⁶ An executive branch unable to respond robustly to issues of great concern to the polity may eventually prompt ‘procedural impatience and general contempt for parliamentary institutions’ and legal constraints perceived as a chokepoint to robust political action needed to preserve goods like peace and prosperity, and thus lead to demand for extraconstitutional action.⁷⁷ Law, process, and procedure become the enemy of necessary action and are cast aside. ‘If the bonds of constitutionalism are drawn too tight’, concludes Vermeule, ‘they will be thrown off altogether when imperative need arises.’⁷⁸

Constitutionalism is ultimately purposive. It exists to structure and control governance, but also to *enable* it.⁷⁹ If we are too fixated on the restraints we wish to impose, we risk forgetting that the restrained power must be effective, or those subject to it will cast it off in favour of something that fulfils its purpose of

enabling effective governance. In times of exigency and crisis, that will often be the very unconstrained power that is feared. The Publius paradox shows us when dealing with complex systems like constitutions and the state, we cannot expect simple linear results—that if some restraints are good, more restraints are better.⁸⁰ The restraints, at a certain point, become self-defeating. Of course, it is not simple to draw the line, as the correct balance will vary with time, place, and context, changing with circumstances that cannot be easily foreseen.⁸¹ Crucially, this paradox shows us that constitutional designers cannot not undervalue the need for a robust executive. Even if the fear of executive strength is prevalent, an excessively weak executive similarly carries serious dangers to a political community.

One way that the insight of liberal constitutionalism can play out is with a focus on and obsession with legality and legalism. Disregard of the law; insufficient attention to legal structures and requirements; a preference for extra-legal solutions—these are said to be the seeds of democratic decay and authoritarianism. However, it is not commitment to legality *per se* but commitment to a rich and substantive vision of legality that might protect against democratic backsliding. Commitment to legality—particularly procedural legality—is not sufficient because it pays too much regard to the means and not enough regard to the ends.⁸² Procedures are important, but only insofar as they enable and restrain government *in the right way*.⁸³ A thin vision of law will enable anything done within the formal bounds of the system without question, even if that is blanket signing over of emergency powers or vast extension of a leader's term in times of exigency. One must have a substantive and thick vision of why legality is important, and what a commitment to legality accomplishes, in order to prevent democratic decay. Scheppele highlights that many autocrats, far from operating outside the law, use the law to set up and consolidate their autocracies, a phenomenon she terms *autocratic legalism*.⁸⁴ The idea of a system of 'rule by law', often associated with east Asian autocratic states, is similar.⁸⁵ We should thus be wary of seeing a fixation on legality, without more, as a virtue.

A similar and related problem for constitutional orders comes from confusion about the lines of power and authority. While checks and balances demands that there be multiple centres of power, and that they overlap in certain respects, effective governance ultimately requires a clear sense of who is in charge and when—and to whom—they are accountable. In many schools of jurisprudential thought, the legitimacy of political authority and law stems at root from their 'sheer ability to coordinate the affairs of the populace in the interests of the common good'.⁸⁶ Legal ordinances promulgated by political authorities with the capacity to settle co-ordination problems offer polities an effective way to authoritatively determine how a community ought to pursue the welfare of its citizens, ensuring conflicts are settled in an orderly fashion.⁸⁷ Constitutions

which create, sustain, and allocate public power play a critical role in allowing polities to structure political authorities in a manner conducive to the task of making and enforcing rules for the good of a people inhabiting a particular area—be it a region, country, planet, or galactic federation.⁸⁸ A constitutional order which has major ambiguity over the locus of political authority—which officials have ultimate care of the common good—risks upsetting a polity’s capacity to perform the most basic function of settling co-ordination problems amongst its populace. It also risks constitutional crises when it is hard to tell if some action is a legitimate constitutional policing of the bounds of power or an illegitimate coup. As we shall see, the story of the old Republic teaches these three lessons clearly.

PART III: LESSONS FROM THE FALL OF THE REPUBLIC: DANGERS OF WEAK GOVERNMENT

The Old Republic and the Publius Paradox

From engaging with the Publius paradox we can grasp the main lesson the *Star Wars* saga holds for constitutional regulators,⁸⁹ and for public understanding of constitutionalism. It is not, as some would have it, that concentration of power in a single person or body is dangerous and should be avoided in favour of an elaborate system of checks and balances. Unless qualified, this suggestion does not do justice to the political and constitutional complexity of these events. The most compelling constitutional lesson to draw from *Star Wars* is, instead, the dangers of *weak* government.

We can see this by considering the following: Why did emergency powers have to be granted to the Chancellor in the first place? Why did an enormous army have to be created essentially overnight and thus without formal planning or oversight? Why was the Republic unable to prevent unilateral secession? And why was there such little resistance to Palpatine’s eventual takeover and abolition of democratic governance? One answer to these questions is that the Emperor duped everyone, and the saga is just a story of grand deception. But this is not a credible reading. Even granting Palpatine’s considerable force power, there is no way that any individual or small group could manipulate a system this large and complex to create these problems.⁹⁰ At the very most, they could prey upon and exacerbate severe weaknesses already present in the system. The Emperor may exploit—but he did not create—the failure of the Republic. The better answer to these questions, we argue, is that Republic’s government was too weak and diffuse to cope with the challenges faced by its citizens, and that its overly weak government was liable to mutate into tyranny.

The first core weakness of the Republic is the lack of any standing army or any military organisation, and its reliance on a tiny group of peacekeepers to secure order in a sprawling polity. Despite its immense size, the Republic lacks a permanent, well-resourced, standing army or police force. Instead, it relies on the Jedi Order, a (comparatively) tiny order of very powerful, politically independent religious warriors. The Jedi have an ambiguous position in the constitutional structure of the Republic. They are nominally completely independent and autonomously controlled through their own hierarchy, at the apex of which sits the Jedi Council.⁹¹ That said, Jedi regularly serve the Republic and Supreme Chancellor as ambassadors and peacekeepers, as *'guardians of peace and justice'*. Powerful as they may be, it is untenable that the executive of such a vast government could rely on such a tiny band of peacekeepers to keep the peace and enforce the Republic's law across a sprawling federal system. Unsurprisingly, it has several negative consequences. The Jedi's scarce numbers mean the Republic's ability to enforce and execute its law are seriously compromised. We are told in *The Phantom Menace* that slavery is rampant in the outer rim territories, where the Republic 'doesn't exist'; the Jedi both cannot and will not do anything about it.⁹² There is also no army to stand up to the militarised trade federation when it blockades Naboo; the Republic's greatest threat to use against the Federation is revocation of its trade franchise.

The Republic's impotence continues in its inability to respond decisively to the growing, highly militarised separatist movement in *Clones* that wished to unilaterally (presumably illegally) split the state apart and form a new political entity. The separatists explicitly exploit the weakness of the Jedi, and their inability to match up militarily to their private armies: 'The Jedi will be overwhelmed. The Republic will agree to any demands we make'. Given that there are at most a few thousand Jedi, it is inconceivable that they would be able to cope with any widespread unrest in the galaxy-spanning Republic. Senator Amidala's—and her opposition's—year-long fight against the Military Creation Act is thus deeply misguided: there is no existing force that can possibly meet the needs of this Republic in a time of any significant unrest.

This problem is compounded by the apparent inability of the Senate to pass this Act with expedition when it becomes obviously necessary. We are told by Senator Organa that 'The Senate will never approve the use of clones before the separatist attack'. This leads one of Palpatine's advisors suggests that 'If the Senate votes the Chancellor emergency powers, he could approve the use of the army in a minute.' With secession actively taking place, and the Senate incapable of passing the most self-evidently necessary legislation for the security of the Republic, the only course left is to vote emergency powers to the Chancellor when he promises to use them to create such an army. Palpatine, addressing this call, says that 'It is with great reluctance that I have agreed to this calling. I love democracy... I love the

Republic. The power you give me I will lay down when this crisis has abated'.⁹³ His chief action with these powers is simply to do, in a timely manner, what the Senate cannot: create a Grand Army of the Republic to keep its political integrity.

If the Republic always had a robust executive capable of acting to ensure steady enforcement of the laws, prevent the use of unlawful private military force, and quell dissident activity before it spiralled into full-scale war, then the enormous and radical constitutional shifts we see in the films—concentrating (increasingly, as the war goes on) more power in the Chancellor—may not have been necessary. It would also have been possible to have proper democratic checks and processes on the use of force and war powers. These ideas would have been domesticated into the ordinary operation of the constitutional order, made subject to a web of oversight, and not experienced as a sudden rupture which thrust the political system into unfamiliar territory and chaos. Indeed, a stronger executive might have prevented the secession movement and the breakout of a destabilising war entirely, long before Palpatine came to power. It is hard to imagine similar audacity would be shown by the 'cowards'⁹⁴ in the Trade Federation and other secessionists if the Republic enjoyed capacity to execute the law and defend the integrity of the State with Hamiltonian qualities of vigour and dispatch.⁹⁵

Star Wars thus exemplifies the Publius Paradox: excessive weakness in the State and executive mutated into despotic strength through the consolidation of vast emergency powers in the Chancellor, and cemented through the overwhelming acclaim of the Senate. Sunstein is thus correct when he says that, 'Emperor Palpatine is able to rise to power only because of the ceaseless, pointless squabbling of the legislative representatives in the Republic'⁹⁶. But taking a wider temporal and institutional view, his rise to power was facilitated because the weakness of the Office Palpatine came to hold. It is not just that the Office of Chancellor was too strong at the end; it is that it was weak at the beginning. This created the political chaos and instability on display throughout the trilogy, chaos Palpatine would cynically exploit to implement dictatorship and Empire to restore order and security.

The second core weakness is the seeming dominance of the executive branch by unelected bureaucrats which generated resentment and allegations of regulatory capture. We are also told that the 'bureaucrats' are the real power behind the Chancellery and executive authority, and that they are to be in the pocket of the very industries and factions they are supposed to be regulating in the public interest. In other words, instead of being dutiful agents of the Chancellor, they are highly autonomous and use their power for self-serving ends. This picture, though painted by Palpatine, is plausible enough to convince various political figures to remove Chancellor Valorum in *The Phantom Menace*.

While constitutional discourse regularly expresses concern about the dangers of too much executive control over the bureaucracy and the erosion of bureaucratic independence, it shows less concern about bureaucrats with too much

autonomy and insultation from the executive. Certainly, loss of independence is a real concern, as it may lead to policy anchored on ‘false factual premises or faulty theories’⁹⁷ with negative effects on the welfare of citizens.⁹⁸ But bureaucrats exercising capacious policy authority with large degrees of autonomy and insulation from political executive direction may create institutional choke points which frustrate or obstruct the executive’s pursuit of substantive goals necessary for securing the common good.⁹⁹ If the bureaucracy is captured by powerful private interests, ossified due to excessive and misguided conservatism, or has its own ideological commitments, it may act as a powerful veto player¹⁰⁰ and create inertia, frustrating the executive’s pursuit of the common good.¹⁰¹ In *Star Wars*, corrupt bureaucrats appear to direct the political executive rather than the other way around. The frustration that attends this bureaucratic capture is core to Palpatine’s effort to delegitimise the Republic as a form of government. The Senators who welcome Palpatine’s Empire may have queried what good parliamentary democracy is if it has long been a shell for a weak executive dominated by a captured bureaucratic apparatus.

The Hollowness of Legality

The fact that the Galactic Republic was so committed to legality when it fell serves as a vivid illustration of how commitment to law alone is an insufficient defence against democratic decay. The (almost blind) faith that the political operators of the Republic display in the importance of legal validity, and the adequacy of legal remedies, is not a virtue. It is, in fact, suggestive of a political culture that has lost sight of what is substantively important due to its fixation on form. This is a culture unaware of its own erosion, because once formal adherence to legal norms is maintained—the Chancellor was properly voted emergency powers, the term limits were waived with the consent of the Senate—there is no sense that these actions might undermine the central democratic tenets of the state. This is another somewhat counterintuitive insight, similar (but not identical) to Scheppele’s autocratic legalism or the idea of rule by law.¹⁰² We might think that democratic decay happens in places where the law is disregarded or disrespected, where there is no rule of law. However, it is just as likely to happen in places with extraordinary respect for the law, but where the rule of law is reduced to a pious intoning of words rather than a substantive commitment to the core purposes of having a political culture that is committed to legality.

Confusion at the Apex of Power

As noted earlier, it is essential to have a clear sense of who governs and who, in exigent circumstances, checks the government. An excessive diffusion of

responsibility at the apex of power—or uncertainty as to where legal and constitutional responsibility to check power rests—is problematic and even dangerous in a constitutional system. This problem also beset the old Republic and was another major reason for its decline. More specifically, there was a serious confusion about who was the ultimate guardian of the common good of the Republic and defender of the constitutional order: the Supreme Chancellor or the Council of the Jedi Order?

As noted above, the prequels revealed the Jedi were not a scattered band of nomadic warrior-monks, but a vast, highly hierarchical, bureaucratized entity with baroque councils, official (but ambiguous) legal status, and official duties. The Jedi are led by a Council of Masters that ‘elects its own members.’¹⁰³ They claim, at points, to act in the name of the Senate,¹⁰⁴ and to have general allegiance to the Republic¹⁰⁵ and to democracy,¹⁰⁶ but the actual allocation of power and their place in the legal hierarchy of the Republic is unclear. The most problematic ambiguity is the question of who, if anyone, controls the Jedi? This is not answered in the films. The most plausible interpretation, we think, is that the Office of Supreme Chancellor and Jedi Council *both* consider themselves the ultimate custodian of the political community, and there is no clear constitutional resolution of this dispute.

In *TPM*, two Jedi are dispatched on a secret mission by the Chancellor, seemingly posing as ambassadors. But it is unclear who if anyone can *order* the Jedi. Indeed, the Jedi seem fiercely independent. When Chancellor Palpatine tries to intervene to have Anakin Skywalker appointed to the Council, the Jedi find this move ‘disturbing’, do not allow it ‘lightly’, and in the end seem to accept it only because they wish Skywalker to spy on the Chancellor on their behalf. Obi-Wan makes it clear that ‘The Council doesn’t like it when [the Chancellor] interferes with Jedi affairs’. Though the Chancellor has personal influence over Anakin, he does not have any authority to order him as a Jedi: when the Chancellor tells him to leave Obi-Wan for dead at the beginning of *ROTS*, Anakin point-blank refuses.¹⁰⁷

At various points, it appears that the Jedi play a major role in military or governance matters, essentially standing as an independent, near-militarized branch of government. In *Clones*, Mace Windu reminds the Chancellor that the Jedi cannot protect the Republic in a war: ‘We are keepers of the peace, not soldiers’. However, notwithstanding such protestations they clearly serve a highly martial role. Obi-Wan asks the Council in *Clones* if it authorized the creation of a clone army. It did not, but this suggests that it could have, within its powers and bailiwick. Similarly, when the clone army arrives, the Separatists wonder: ‘How did the Jedi amass an army so quickly?’¹⁰⁸ The Jedi then direct the war effort, immediately taking on roles as generals. Thus, the argument that they are not soldiers rings hollow. We also see evidence that the Jedi are not just respected but *feared*.¹⁰⁹

The Jedi are also, at the decline of the old Republic, clearly arrogant. Obi-Wan says the Anakin has become arrogant, and Yoda notes this to be a prevalent problem in the Order. The prequel trilogy provides many other examples.¹¹⁰ The Emperor in *ROTS* says ‘Your arrogance blinds you, Master Yoda’—and he has a point.

All this comes to a head when it becomes clear that the Jedi see themselves as not only the police *of* the state, but as *policing* the state. At the end *Clones*, observing the start of the Clone Wars, the Jedi declare that they will keep a ‘closer eye on the Senate’. In *ROTS*, the Jedi perform a literal police action against the Chancellor, something they intended to do even before finding out he is a Sith Lord. The Jedi Council—because Mace Windu has ‘sensed’ a plot to destroy the Jedi—suggest that if Palpatine ‘does not give up his emergency powers’ after the death of the Separatist’s military leader, he should be ‘removed from office.’¹¹¹ Windu says that the ‘Jedi Council would have to take control of the Senate in order to secure a peaceful transition’.

Palpatine lures Anakin to betray the Jedi by persuading him of a Jedi plot: ‘The Jedi Council want control of the Republic. They are planning to betray me.’ He says they don’t trust ‘the Senate. Or the Republic. Or democracy, for that matter’. Palpatine, again, has a point. When the Jedi Council asks Anakin to spy on the Emperor, Anakin points out that this is treason, to which Obi-Wan replies—unsatisfactorily—‘We are at war, Anakin’. This suggests the Jedi see themselves as having an unbounded, plenary power to defend the Republic by whatever means they think necessary.

When Anakin comes to tell Windu that Palpatine is a Sith Lord, he and several other armed Jedi are already ‘on [their] way to ensure the chancellor gives up his emergency powers to the Senate.’ Confronting him, Windu places him under arrest ‘In the name of the Galactic Senate of the Republic’, though it is unclear that there was any actual authorisation of this police action by the Senate. Palpatine—not without cause—suggests that this is ‘treason’ and ‘the Jedi are taking over’. This action is made even more legally dubious given that, throughout *Revenge of the Sith*, the Chancellor is clearly reliant on the Senate and is not (yet) an autocrat. The Senate votes to continue the war; the choice is not his alone. The Senate ‘is expected to vote more executive powers to the Chancellor’, again suggesting that the Chancellor’s power is still far from absolute and that he enjoys (and requires) the ongoing support of the Senate. Though Palpatine has ‘managed to stay in office long after his term has expired’, we are told that this is only because the Senate demanded it. Even after the formation of the Empire, the Senate is not dissolved for many years, and even then, the decision is seen as risky.¹¹² Thus, though he may say to the Jedi who come to arrest him, with bravado, ‘I am the Senate!’, Windu is right (in a sense other than his intended one) when he says: ‘Not yet’.

Though initially planning to bring him to account before the Senate, Windu decides that he is ‘too dangerous to be left alive’. Anakin protests that he ‘must stand trial’ and that this is ‘not the Jedi way’. (Windu himself said in *Clones* that assassination was not in a Jedi’s character). ‘He has control of the Senate and the courts.’ Anakin’s interpretation of events is not clearly wrong when he later says: ‘The Jedi have tried to overthrow the Republic... I saw Master Windu attempt to assassinate the chancellor myself. Palpatine’s subsequent reaction—that ‘every single Jedi... is now an enemy of the Republic’—is clearly disproportionate and presumably cynical. We know where this is going and that when he promises that soon ‘we shall have peace’, this will be the peace of the henhouse when the fox has finished her work. But his version of events, which suggests that the Jedi’s actions are extra-legal and treasonous, is true, from a certain point of view. The fact that Palpatine’s version of events was readily believed by the Senate shows that the Jedi’s betrayal was a risk within their contemplation.

Star Wars shows the risk of having two rival guardians of the constitutional order, with no means to choose between them. This constitutional tension tips over into chaos when their rival claims meet in violence. There is a lesson here for any who want to build a stable constitutional order.

CONCLUSION

The untold side of the constitutionalism of the *Star Wars* saga is that the Empire rose because of the foundational constitutional weakness of the Republic, its muddled hierarchy, and its commitment to a thin formal legality. When Palpatine finally declares that ‘In order to secure security and continued stability, the Republic will be reorganised into the FIRST GALACTIC EMPIRE for a safe and secure society’, Senator Amidala says: ‘So this is how liberty dies: with thunderous applause’. She might consider that a large part of this applause may be that many of her fellow delegates clearly agree that ‘a rough, tough central authority, whatever its shortcomings, is infinitely superior to a rudderless, passive confederacy’¹¹³ that lacks any sense of purposive rule or animating vision. The Senators are trying to achieve basic security and action in the face of mired mismanagement that puts them in peril and cannot fend off civil war and illegal military action. As Sunstein points out, ‘a lot of people’s political preferences are weakly held. They aren’t sure what to believe’.¹¹⁴ Most people care only about day-to-day life, and Last suggests that ‘The Empire has virtually no effect on the daily life of the average, law-abiding citizen.’¹¹⁵ If the Republic ‘failed miserably’ in restoring order and ending chaotic political violence says Sunstein, then ‘the Emperor succeeded’.¹¹⁶ By the time the full cost of this is apparent to most people—perhaps not until Alderaan is destroyed by the Death Star some twenty years later—it is far too late.

For the avoidance of doubt, we are not here to defend the Galactic Empire, or any empire—we come to bury Caesar, not to praise him.¹¹⁷ Our point, rather, is that *Star Wars* teaches a lesson about constitutional governance, and how to avoid the slippery slope to tyranny, but it is not the one that people think and which dominates discourse on the topic. It is also probably not the one that characters in the *Star Wars* universe internalise. In the most recent trilogy, we see the fall of the New Republic. While we don't get much sense of the politics of the New Republic, we get a sense that it repeated the mistakes of its republican predecessor.¹¹⁸ Perhaps in an effort to contrast itself to its *imperial* predecessor, it seems to be somewhat anti-militaristic: rather than directly stand up to the highly militarised First Order itself, it backs a (possibly extra-legal) 'Resistance' led by Leia, to do this in its stead. This ends badly in *The Force Awakens*, with Star Killer Base wiping out the central governing planets of the Republic in one fell swoop. Weakness of governance and unwillingness to establish a strong state seems, once again, to lead to ruin for the Republic. At the end of this new trilogy, with the Sith once again vanquished (for now), we do not get a sense of what will come next and whether the cycle of collapsing Republics will continue. But here in the real world, or in the Third Republic in a galaxy far, far away, attending to the lessons of why the old Republic fell can offer valuable insights into not—for fear of the giant wielding its strength¹¹⁹—binding the state so tightly that it slips into the very tyranny we seek to avoid.

DISCLOSURE STATEMENT

No potential conflict of interest was reported by the author(s).

1. See e.g. Kevin S. Decker and Jason T. Eberl, *Star Wars and Philosophy* (Open Court Publishing, 2005); Slavoj Žižek, 'Revenge of Global Finance' In *These Times*, May 21, 2005.
2. See Browning's excellent gathering of citations of *Star Wars* by courts: John G. Browning, "A Long Time Ago, in a Courtroom Far, Far Away" *Texas Bar Journal* 77, no. 2 (2014): 158; and Peter's analysis of the parallels with law of the ordering nature of the Force; Timothy D. Peters, 'The Force as Law: Mythology, Ideology and Order in George Lucas' *Star Wars*' *Australian Feminist Law Journal* 36, no. 1 (2012): 125.
3. Cass Sunstein, *The World According to Star Wars* (Harper Collins, 2019): 113.
4. Sunstein (n 3) 114

5. Id. 115
6. Margaret Canovan, "Trust the People! Populism and the Two Faces of Democracy," 46 *Political Studies* (1999): 2, arguing that politics is always fundamentally a series of pragmatic bargains, but must appear to have another, more idealistic face as well. See also David Kenny, "The Human Pared Away: Hilary Mantel's Thomas Cromwell as an Archetype of Legal Pragmatism" (2021) *Law and Literature* (forthcoming).
7. The term 'politics' is an arch negative in *Star Wars*. Palpatine bemoans that 'There is no civility. Only politics.'; and Pamd  longs for a time in her life when there was 'No politics, no plotting, no war' (*noscitur a sociis*).

8. In short, it is populist, in a somewhat naïve sense, in seeing politics as a corrupt, self-serving elite betraying a pure people. See Margaret Canovan, "Two Strategies for the Study of Populism" *Political Studies* 30 (1982): 544; David Kenny, "Always, Inevitably Local: Ireland's Strange Populism and the Trouble with Theory" Jean Monnet Working Paper 7/2017.
9. Sunstein (n 3) 116.
10. Id. 145.
11. These films are, in order: *The Phantom Menace* (hereinafter *TPM*); *Attack of the Clones* (hereinafter *Clones*); and *Revenge of the Sith* (hereinafter *ROTS*).
12. Sunstein (n 3) 116.
13. There is a vast body of literature on democratic decay/democratic backsliding/constitutional retrogression. A common theme in this literature is that good government and constitutional democracy is threatened above all by executive aggrandisement and concentration of authority. See Aziz Huq and Tom Ginsburg, "How to Lose a Constitutional Democracy" (2018) 65 *University of Chicago Law Review* (2018) 78; David Landau, "Abusive Constitutionalism" (2013) 47 *University of California Davis Law Review* 189; Mark Tushnet, "Authoritarian Constitutionalism" (2015) 100 *Cornell Law Review* 391; Tarunabh Khaitan, "Executive Aggrandizement in Established Democracies: A Crisis of Liberal Democratic Constitutionalism" (2019) 17 *International Journal of Constitutional Law* 342.
14. See generally Tom Holland, *Rubicon: The Triumph and Tragedy of the Roman Republic* (Little, Brown 2003).
15. See Akhil Reid Amar, *America's Constitution: A Biography* (Random House 2005) 106; G. Wood, *The Creation of the American Republic, 1776-1787*, (University of North Carolina Press, 1998), 354-363.
16. Henry Ashby-Turner Jr., *Hitler's Thirty Days to Power: January 1933* (Addison-Wesley Publishing, 1996).
17. Jaakko Husa, "Comparative Law, Literature and Imagination: Transplanting Law into Works of Fiction," *Maastricht Journal of European and Comparative Law* (2021): 1.
18. Christine Corcos, "Visits to a Small Planet: Rights Talk in Some Science Fiction Film and Television Series from the 1950s to the 1990s" (2009) 38 *Stetson Law Review* 183 at 246.
19. Kieran Tranter, *Living in Technical Legality: Science Fiction and Law as Technology* (Edinburgh University Press, 2018).
20. Tranter and Travis have also noted that the lawyer is interestingly absent from most science fiction. Mitchell Travis and Kieran Tranter, "Interrogating Absence: The Lawyer in Science Fiction," *International Journal of the Legal Profession* 21, no. 1 (2014): 23.
21. Steve Greenfield, Guy Osborn, Peter Robson (eds.), *Film and the Law: the Cinema of Justice* (Hart Publishing, 2nd ed, 2010), 193-6; Orit Kamir, "Why 'Law-and-Film' and What Does it Actually Mean?" (2005) 19 *Continuum: Journal of Media & Cultural Studies* 255, 261; Tranter (n 19) 43; cf William P. MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Stanford, 2007).
22. Miola argues "Shakespeare Transformed a Confused Welter of Historical Fact and Legend into Taut, Balanced, and Supremely Ambivalent Drama," Robert S. Miola, *Julius Caesar and the Tyrannicide Debate* (1985) 38 *Renaissance Quarterly* 271, 273.
23. Kamir (n 21) 257.
24. Id.
25. Id.
26. Jason Snell et al., "Force Denier", The Incomparable Podcast, Episode 237, March 6th 2015.
27. Roland Barthes, "The Death of the Author" in *Image-Music-Text* (Fontana, 1997) 142; Stanley Fish, *Is There A Text in this Class? The Authority of Interpretive Communities* (Harvard, 1980).
28. Sunstein (n 3) 114-115, quoting Lucas, who compared the Empire to Nixon, Rome, the French Revolution, and the rise of Bonaparte.
29. Lucas noted that fans in every part of the world tended to read the films as commentary on their own circumstances. Id. For a critique of his own parallels, see Amy Davidson Sorkin, "Close Read: Dark Forces," *The New Yorker*. April 20th, 2009.
30. *The Clones Wars* animated series, in particular, includes interesting insights into the Republic; see e.g. Season 2, episode 4, 'Senate Spy';

- Season 2 episode 15, 'Senate Murders'; Season 3, episode 5 'Corruption'; Season 3, episode 11, 'Pursuit of Peace'; Season 6, episodes 5-7. Though some now rest outside the current *Star Wars* 'cannon' as a 'legends' text, some background on the politics of the Republic is provided by books such as James Luceno, *Cloak of Deception* (Del Ray, 2001); EK Johnson, *Queen's Shadow* (Del Ray, 2019).
31. Žižek suggests that the inconsistency of the *Star Wars* universe's politics is, in fact, what makes a true political myth: it is 'not so much a narrative with a determinate political meaning, but rather an empty container of multiple, inconsistent and even mutually exclusive meanings.' Žižek (n 1).
 32. See Karl R. Popper, "The Conspiracy Theory of Society" in *Conspiracy Theories: The Philosophical Debate*, ed. David Coady (Routledge, 2006). In Popper's telling, this view of the world—which holds that a near-Olympian class of hypercompetent operators rule and plan everything centrally—is deeply naïve, and that institutions are too complex to be consciously planned and run in this manner.
 33. Though Popper didn't use the term, it is chaotic, referring to complex systems that are unpredictable and have spontaneous, emergent order. See James Gleick, *Chaos* (Viking, 1987).
 34. We are told, in the opening screen-crawl of *Attack of the Clones*, that several thousand-star systems have seceded from the Republic, presumably leaving at least several thousand more.
 35. As Queenan puts it, 'nobody in the Republic cares one way or the other about the plight of juvenile slaves on a far-flung planet.' Joe Queenan, "Anakin, Get Your Gun," in *A Galaxy Not So Far Away*, ed. Glenn Kenny (Henry Holt, 2002) 247, 260-261.
 36. This is highlighted by Jason Snell et al., "Go Wash a Droid!" The Incomparable Podcast, Episode 137, 29th April 2013.
 37. In *The Phantom Menace* the Queen of Naboo essentially stands in for her Senator and speaks directly to the Senate, even instigating a motion of no-confidence in the Chancellor.
 38. Amar (n 15) 411.
 39. When she falls pregnant in *ROTS*, Senator Amidala says she doubts that the Queen would allow her to continue to serve in the Senate. Leaving the problematic gender politics of this aside, it suggests that the Senators serve at the pleasure of the government of each system.
 40. In *Attack of the Clones* we are told that Senator Amidala would not disobey an 'Executive order' from the Supreme Chancellor.
 41. This is made clear when Obi-Wan comments in *Revenge of the Sith* that the Chancellor has exceeded the usual term in office.
 42. Obi-Wan, we are told in *Attack of the Clones*, has just returned from adjudicating a border dispute on the Planet Ansion.
 43. Palpatine's account is self-interested, but the move against Valorum succeeds, suggesting some basis for—or at least broad acceptance of—these claims.
 44. Travis and Tranter (n 20) note that in science fiction, lawyers and corporate interests are often indistinguishable, that law is captured by corporations. *Star Wars* may illustrate this point too.
 45. We are told this by Jedi Master Ki-Adi Mundi in *Attack of the Clones*.
 46. Johnathan Last, 'The Case for the Empire' (May 15 2002) *Washington Examiner*, available at <<https://www.washingtonexaminer.com/weekly-standard/the-case-for-the-empire>>.
 47. This is said by Obi-Wan Kenobi in the original *Star Wars*, also known as *A New Hope*.
 48. Stephen Turnbull, *The Samurai: A Military History* (Routledge, 1996).
 49. *The Phantom Menace*.
 50. Snell et al. (n 36) describe the Senate scenes in Episode I as 'Robert's Rules of Order in space'. The original script for Episode 1 was even more legalistic. The Chancellor was to say: 'The point is conceded... Section 523A take precedence here. Queen Amidala of the Naboo, will you defer your motion to allow a commission to explore the validity of your accusations?' See <<https://imsdb.com/scripts/Star-Wars-The-Phantom-Menace.html>>.
 51. Sunstein (n 3) at 73.
 52. Id. 116.
 53. Id. 117.
 54. Gerard Quinn, "Dangerous Constitutional Moments: the 'Tactic of Legality' in Nazi Germany and the Irish Free State Compared," in *Judges, Transition and Human Rights*, eds. Morrison, McEvoy and Anthony (Oxford University Press, 2007).

55. Illya Somin, 'Star Wars, Science Fiction and the Constitution' (27 June 2016) *JotWell: Constitutional Law* <https://conlaw.jotwell.com/star-wars-science-fiction-and-the-constitution/>.
56. Id.
57. See Aristotle, *Politics*, in Mortimer J. Adler (ed.), *Great Books of the Western World* Volume 8 (Encyclopedia Britannica, inc., 1990).
58. Somin (n 55).
59. See Harvey Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power* (John Hopkins University Press, 1993).
60. Judith Skhlar, *Legalism* (Harvard University Press, 1964) 23.
61. Sheldon Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Princeton University Press, 2006) 311.
62. NW Barber, 'Constitutionalism: Negative and Positive' (2015) 38 *Dublin University Law Journal* 249, 255.
63. Adrian Vermeule, 'The Publius Paradox' (2019) 82 *Modern Law Review* 1, 10.
64. Clement Fatovic and Benjamin Kleinerman, "Introduction: Extra-Legal Measures and the Problem of Legitimacy" in *Extra-Legal Power and Legitimacy*, ed. Clement Fatovic and Benjamin Kleinerman (Oxford University Press, 2013) 1; Jules Lobel, "Emergency Power and the Decline of Liberalism," (1989) 98 *Yale Law Journal* 1385, 1386.
65. See Carl Schmitt, *Dictatorship: from the origin of the modern concept of sovereignty to proletarian class struggle* (Translated by Michael Hoelzl and Graham Ward, Polity Press, 2014); Carl Schmitt, *Political Theology: Four Chapters on the Concept of the Political* (Translation by George Schwab, University of Chicago Press, 2005).
66. NW Barber, *The Principles of Constitutionalism* (Oxford University Press 2016), 1–6.
67. Hamilton wrote: 'The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense.' Alexander Hamilton, *The Federalist* No. 23.
68. See Nomi Claire Lazar, "Why Rome Didn't Bark in the Night: Some Thoughts on Crisis Government and Constitutional Flexibility" (2013) 42 *Polity* 422, 432–435.
69. Alexander Hamilton, "Constitutional Convention. Remarks on the Necessity for a National Government," in H. C. Syrett (ed.), *The Papers of Alexander Hamilton*, vol 4, January 1787–May 1788 (Columbia University Press, 1962) 212–213.
70. Vermeule (n 63).
71. Id.
72. Paul F. Scott, 'The "Publius Paradox" and the United Kingdom: Comments on Adrian Vermeule's 2018 Chorley Lecture' (2019) *Modern Law Review Forum* 1.
73. Eric A. Posner and Adrian Vermeule, "Tyrannophobia," in *Comparative Constitutional Design*, ed. Tom Ginsburg (Cambridge University Press, 2012), 317–346.
74. Scott, (n 72) 5.
75. Madison writes 'It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions'. James Madison, *The Federalist* No. 41
76. Vermeule, (n 63) 2.
77. Jeremy Waldron, *Political Political Theory* (Harvard University Press, 2016), 30–36; Adrian Vermeule, *The Constitution of Risk* (Cambridge University Press, 2016), 80.
78. Id.
79. Martin Loughlin, *Foundations of Public Law* (Oxford University Press, 2010), 11.
80. Vermeule (n 63).
81. On this problem generally, and the difficulty drawing the line in constitutional design, see David Kenny, "The Virtues of Unprincipled Constitutional Compromises: Church and State in the Irish Constitution," (2020) 16(3) *European Constitutional Law Review* 417.
82. Conor Casey and David Kenny, "The Gatekeeper's: Executive Lawyers and Executive Power in Comparative Constitutional Law" (Forthcoming 2022) *International Journal of Constitutional Law*.
83. Such as respect for moral agency and human dignity as in Lon Fuller's famous account. Lon

- Fuller, *The Morality of Law* (Yale University Press, 1962).
84. Kim Lane Scheppele, Autocratic Legalism (2018) 85 *University of Chicago Law Review* 545. She borrows the term from Corrales! Javier Corrales, 'Autocratic Legalism in Venezuela', (2015) 26 *J Democracy* 37.
85. See Mark Tushnet, 'Rule by Law or Rule of Law?' (2014) 22(2) *Asia Pacific Law Review* 79; National Committee on North Korea, *Workshop Report: Constitutional Design in North and South Korea*, (May 2021) 5 available at https://www.ncnk.org/sites/default/files/Constitutional_Design_in_North_and_South_Korea.pdf.
86. Oran Doyle, Populist constitutionalism and constituent power (2019) *German Law Journal* 161, 170.
87. See John Finnis, *Natural Law and Natural Rights* (Oxford University Press 2011) Chapter 10.
88. Loughlin (n 79) 11.
89. By constitutional regulator we adopt Vermeule's description as 'any actors who make constitutional rules, whether at the stage of constitutional design or at the stage of constitutional "interpretation" and implementation.' Vermeule, (n 63) 3.
90. See Popper (n 37).
91. The Council play a leading role in the events of the *Phantom Menace*, *Attack of the Clones*, and *Revenge of the Sith*.
92. Shimi Skywalker explains this to Padme Amidala in the *Phantom Menace*. Qui-Gon Jinn says he 'did not come here to free slaves'.
93. *Attack of the Clones*.
94. Per Qui-Gon Jinn in the *Phantom Menace*.
95. Alexander Hamilton, *The Federalist Papers* No. 70.
96. Sunstein (n 3) 116.
97. Barry Sullivan and Christine Chabot, 'Science of Administrative Change' (2020) 52 *Connecticut Law Review* 1, 24-25.
98. Bruce Ackerman, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 633, 688.
99. Bijal Shah, 'Civil Servant Alarm' (2019) 94 *Chicago-Kent Law Review* 627, 634.
100. George Tsebelis, 'Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism' (1995) 25 *British Journal of Political Science* 289-325.
101. See Conor Casey, Political Executive Control of the Administrative State: How Much is Too Much? (Forthcoming 2021) 81 *Maryland Law Review*.
102. Scheppele (n 84); National Committee on North Korea (n 84).
103. Obi-Wan Kenobi says this in *Revenge of the Sith*
104. Mace Windu announces to Chancellor Palpatine in *Revenge of the Sith*: 'In the name of the Galactic Senate of the Republic, you're under arrest, Chancellor'.
105. Mace Windu declares Chancellor Palpatine to be a 'traitor' to Anakin.
106. Obi-Wan exclaims to Anakin in *Revenge of the Sith*. 'My allegiance is to the Republic, to DEMOCRACY'.
107. Anakin says to Chancellor Palpatine during the latter's rescue from General Grievous' command ship: 'His fate will be the same as ours.'
108. Count Dooku in *Attack of the Clones*.
109. Arriving on the Trade Federation ship in *TPM*, Qui Gon Jinn says 'These Federation types are cowards. The negotiations will be short', suggesting that the Jedi use fear and intimidation. Their presence has the intended effect: various Trade Federation grandees say 'We dare not go against the Jedi' and 'We will not survive this'.
110. For example, the in *TPM*, the Jedi plan to wait around until 'an eight-year-old boy wins a junior spaceship race and secures the parts they need.' Queenan (n 35) 258. See also in *Attack of the Clones* when Mace Windu leads several hundred Jedi into the arena on Geonosis against thousands of droids, losing most of them in the process; and the archivist of the Jedi Library insisting that if a planet is not in their archive, it does not exist.
111. This is suggested senior Jedi Ki-Adi Mundi in *Revenge of the Sith*.
112. The wisdom—indeed the feasibility—of the Emperor's decision to dissolve the Senate in *A New Hope* is questioned by senior imperial officers.
113. Queenan (n 35) 271.
114. Sunstein (n 3) 136.
115. Last (n 46).
116. Sunstein (n 3) 75.

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| 117. | Here we borrow from William Shakespeare, <i>Julius Caesar</i> , Act III, Scene ii | 119. | 'O, it is excellent/ To have a giant's strength; but it is tyrannous/ To use it like a giant.'
William Shakespeare, <i>Measure for Measure</i> , Act II, scene ii. |
| 118. | The political background to the sequel trilogy is explored to some degree in an extended universe novel; Claudia Gray, <i>Bloodline</i> (Del Ray, 2016). | | |

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