

## The Breach 206: How Our Looming Constitutional Crisis Could Play Out

Lindsay: Welcome to Breach, your deep dive into authoritarianism and corruption in the era of Trump. If you're enjoying the show, please take a moment to rate and review us on iTunes to help inform more people about these critical issues. Consider it an act of resistance.

My guest today is Yascha Mounk. He's a lecturer on government at Harvard University, a columnist for Slate, and the host of Good Fight podcast. His most recent guests are columnists Anne Applebaum, and author George Packer. We'll post a link in the show notes. He's here today to talk about Trump and authoritarianism as a force in politics. In a recent Slate column, he argues that Trump is an authoritarian by instinct, rather than ideology.

Yascha, welcome to the program.

Yascha Mounk: Thank you so much, pleasure to be here.

Lindsay: What drew you to the subject of authoritarianism?

Yascha Mounk: What drew me to it was just sort of, you know, optimistic life outlook and wanting to focus on the beautiful things in life. No, I mean, you know, I've been thinking and studying about how democracy works, and how it's sustained in various parts of the world for a number of years, and so, like a number of other people who have expertise in countries like Russia and Venezuela and so on, I found myself a little startled that the things I've been thinking about for a while are suddenly relevant in places like the United States, and parts of Europe like Poland and Hungary, so partly it's an accident, and partially perhaps it has very radical reasons in that, you know, my family is from various parts of Europe and kept being thrown out of whatever country they were in, as they were always sort of in the wrong place at the wrong time, so perhaps I have a baseline instinct for fragility of democracy, than people who were born and raised in the United States where the system had been functioning very well for 250 years.

Lindsay: And can you give us a working definition of authoritarianism?

Yascha Mounk: You know, there's very different forms of authoritarianism. You know, I mean, any authoritarian system will have in common, that there's either a person or a group of people who make the ultimate political decision, as opposed to some form in which the people can make those decisions. So, there can be a king, there can be a dictator, it can be a political party, it can be a theological council like in Iran, but I think actually what's more important today is for people to understand what we mean by populism, because populism is used all the time, and it sort of is often applied a little indiscriminately, so you know, Donald Trump is a populist, Erdogan in Turkey is a populist, but perhaps it was Elizabeth Warren is too, I don't know, you know. People are unsure.

So I think it helps to actually get a sense of what makes a populist. And a populist is

somebody who doesn't, they don't necessarily have the same political values, they don't necessarily share policy ideas, but they think that all of the problems of a political system come from an elite that is incompetent and corrupt and self-serving, and all it needs to resolve the problems that they see, the ways in which they think the country is weak, and it's citizens aren't being looked after enough, is for somebody who is uniquely able to represent the people, and only the real people, not the minorities, not people with weird political views; you know, ordinary, real people, that's always part of the populist appeal.

That person has to gain power, and they have to get into government, and they're going to solve everything; everything is going to be simple. And of course, what we recognize quite quickly is that everything isn't simple, that they start running into all kinds of problems, and then they start blaming outsiders for that, they start blaming foreign powers for that, they start blaming independent institutions for that, and that's why populism is so dangerous; populism very quickly devolves into attacks on anybody who isn't in favor of populists, because by definition, they are not part of the real people.

Lindsay: You've written that Donald Trump is more of an authoritarian by instinct than by ideology; what do you mean by that?

Yascha Mounk: Well, when you think of somebody like Victor Alban in Hungary, and like Kaczynski in Poland, they are very ideological people who think very hard about what they dislike about the current political system, and the way they want to take their countries. Alban does this big speech every year at a sort of retreat of the international party carders, he just held that about a week ago, and he said at an early one, quite clearly, that he doesn't like liberal democracy, he wants to take Hungary in the direction of a hierarchical liberal democracy, wants a more unified country, doesn't like the press being able to criticize various aspects of Hungary, criticize him, so it's a very explicit idea of where they want to go, what they want, and whereas when you look at someone like Donald Trump, I don't think he had a clear idea on the day he got elected, how he wanted to undermine civil liberties, how he wanted to abolish the independence of the FBI, how he wanted to close down newspapers and so on, so forth.

Lindsay: Well, he definitely wanted to close our borders and do things that are pretty authoritarian that way.

Yascha Mounk: Well, I don't think that closing down borders is authoritarian, right. So we have to distinguish between things for which we have a strong sort of policy dis-preference, right. I mean, I think that it's very bad idea to build a wall on the Mexican border, I think it's a bad idea to make it more difficult for people to bring in family members as Donald Trump is sort of suggesting now, but that doesn't go against basic element of liberal democracy.

Lindsay: But many things involved in actually constructing a wall would go against treaty obligations that we have and environmental laws, and he's just kind of announced by fiat that he's going to do it, he doesn't care about any of those things.

Yascha Mounk: Well, it depends on how you do it and so on, right? It's not clear to me to what extent that would be the case, but most treaty obligations, you can sort of give terms on and say that you want to get out of them, and you might have a penalty, so it might take a while, but you know, here are countries in the world with very restrictive immigration policies, like Australia, that aren't authoritarian countries. I disagree with them on a number of policies, but I think it's clear that Australia's a liberal democracy, even though it has very restrictive immigration policies.

So I do think it's important to distinguish between things that Trump is doing that are really bad, that we disagree with, but that are legitimately something that a politician in a liberal democracy would do, we just want to fight against it on political grounds, we want to win elections, so that we put in place policies that we think are more just, and more reasonable, more effective. And on the other hand, things like firing James Comey, things like potentially firing Robert Mueller, the special investigator, things like attacking the freedom of the press, things like going to a ceremonial event for new recruits to the army and asking them to take political actions, those are undermining the very basics of liberal democracy.

Lindsay: But Trump was campaigning to undermine the free press even on the campaign trail, when he was saying things like "We're gonna scale up the libel laws," by implication scaling back the First Amendment.

Yascha Mounk: Yeah. So, I think the press is one example where, even in the campaign, he had rhetoric, was quite extremely anti-liberal, and there was other ways in which that was the case as well -- Hillary Clinton, I mean, saying that you're going to put your main political adversary in jail, on spurious grounds, is a hallmark of authoritarianism, and I agree with that. But nevertheless, I think all of this is reacting; even on the campaign trail, and it's not that he has some worked out system whereby he wants a harmonious society where the press isn't really free and doesn't criticize in the kind of way in which Alban might do, but, you know, you would always say that on the campaign trail because yesterday the New York Times ran a mean story about him, and so then he was annoyed by it, and he was going to be out on the campaign trail saying the failing New York Times telling you this and that, so with him, there's always react, and that's what I mean by his authoritarianism is reactive...

He's not willing to accept any limits on his power and practice, so whenever he butts up against one of those liberals, whatever Congress asserts, whatever the FBI asserts, and whatever the newspapers do good work and investigative journalism, that draws his attention to some other form of independent power that he wants to abolish, and so all the time he's going to wind up going the same direction as Alban in Hungary or Kaczynski in Poland, but with less of a plan or less of a vision.

Lindsay: And do you find that more disconcerting, or less disconcerting?

Yascha Mounk: I mean, I think I had the hope that it was less disconcerting because I think it has the potential of making him make mistakes and errors from this point of view,

right? So, for example, when you think about Neil Gorsuch, the Supreme Court Justice he nominated, again, he's somebody with whom I have strong disagreements on all kinds of philosophical issues and all kinds of policies; I think Neil Gorsuch is going to be a very bad influence on this country, on the Supreme Court, but there's no indication that Gorsuch will simply rubber stamp a real power grab by Donald Trump.

Now, people like Kaczynski in Poland and Alban in Hungary realize that one of the first things they have to do is to stack the Supreme Courts of their countries with complete loyalists, and that's what they've been trying to do, vis a vis successfully. Because Trump didn't have that sort of master plan, he nominated Gorsuch to the Supreme Court, who again, is a strong conservative but is not somebody who would willingly destroy the Constitution, I don't think, and so, one of the hopes I had was that Trump would make those mistakes because he doesn't have a clear idea of where he wants to go.

To some degree, that's been borne out, but I think that, at this point, he has already seen the limits on his power enough, and is already at war with those institutions enough, that the difference between him being an authoritarian by instinct or by ideology is rapidly slimming.

Lindsay: Should we be concerned about the extent to which Donald Trump is attracting generals to play roles in his administration that have been traditionally held by civilians? I mean, we're looking everything from the Defense Secretary who had to get special clearance because he'd been the general so recently, to his current Chief of Staff, who's a former general. Is that a trend that should concern us?

Yascha Mounk: I mean, I think it should definitely concern us in one respect, which is that it shows the degree to which Trump is attracted to figures of authority who can command, rather than having to build consensus in the way the democratic politicians usually do. And that closeness that Trump has to, not just Vladimir Putin in Russia, but to people like Duterte in the Philippines. I mean, he just seems to be generally attracted to these authoritarian figures, these dictators, and in the same way, he prefers generals and their demeanor and manner to civilian leaders, and that should concern us in itself, it's a growing indication of what the President values.

You know, I do think it's concerning. I mean, anywhere where you see the military become that enmeshed in the government, it's a bad find, when you look at comparative perspective at other countries, that is not where you want democracy to go. And, at the same time, the US military does have this deep tradition of respect for civilian leadership and of actually upholding Constitutional values, and so, in some ways, I prefer seeing figures like McMaster in the government as opposed to some of the more illogical figures like Steve Bannon or Seb Gorka, so I'm sort of a little torn on that.

I do think from a hundred yard perspective, it's a worrying sign that that's where we're at, but given some of the alternatives of who Trump might put in those positions otherwise, those generals seem like the least bad out of a bad bunch.

Lindsay: There was an interesting incident last week, where Trump tweeted out a seeming ban on transgender people serving openly in the military, and then the military followed by saying that they essentially shrugged off his tweet, saying "We're just waiting for real orders," because a tweet doesn't count, essentially. It seems like there's both a rapprochement of the military in Trump's administration, and a kind of alienation and disaffection, where the military is going out of its way in some ways not to recognize every tweet and every posture.

Yascha Mounk: Yeah, and, I mean, in a functioning democracy, you want clear civilian supremacy, which means that elected politicians rather than generals get to call the shots, as to what the military should do and what else should happen, but huge problems in countries in Latin America and elsewhere where the military has traditionally had a large political role to play, and at the same time, you want real faith in the Constitution, and to make sure it does not really enact policy, if it violates the rights of individuals.

In this administration, we increasingly see a conflict between those two things, where, ironically, the military is standing up for those Constitutional values, for the rights of individuals, but they have to do that by being drawn to some degree into politics, so you sort of win one and you lose the other, and that, again, may be the best outcome given the circumstances, but it's a pretty worrying place to be, when you zoom out of the picture.

Lindsay: Definitely, but there was some people who have been arguing that it's kind of worrisome, despite the fact if you may like the outcome of the military dragging its feet on the trans ban, that the fact that they're deciding to pick and choose which communications from the President they're following could be worrisome in itself.

Yascha Mounk: Exactly. And my fear is that we're going to get to an even more extreme version of that, that if Trump does fire Mueller, if he does pardon himself, but at some point, if he simply decides to disregard a court order, we may get to a real Constitutional crisis, where essentially, in order to be true to the Constitution, the military has to disobey an order from the President.

Now, under certain circumstances, if your order is illegal, that is the right thing for the military to do, but if we get to a stage where military leaders have to decide to disregard an order from the Commander in Chief, that is a very, very deep breach of civilian supremacy, and we don't want to start a political tradition of the military seeing itself in some way as a true guardian of the Constitution, above the political leadership, the way in which it was long true in Turkey, until the early 2000s. That is not a good situation to get into, and I think depending on how things play out over the next years, that it's at least not entirely unlikely that we might get to that stage.

Lindsay: A few weeks ago, you wrote that you felt like a Constitutional showdown was becoming inevitable. Do you still feel that way?

Yascha Mounk: Yes. I mean, I think in some ways, there's been some very encouraging news over

the last days, but those news in themselves might make that showdown even more likely. You know, Congress, even some congressional republicans have now made clear that they won't accept it if Trump plans to fire Mueller, and so you could imagine Trump firing Mueller and Congress trying to reinstate him, and the President trying to shut it down. I mean, my sense is that Trump, at this point, feels that he has so much to lose from the investigation, that he'll do whatever it takes to shut it down, and that either means that other institutions yield to him, and essentially give up on their independence and let Trump run roughshod over the most basic democratic norms, or that they will step up and actually raise to the fight, and at that point, we will have a Constitutional crisis.

Lindsay: Procedurally, what would Trump have to do to remove Mueller?

Yascha Mounk: Well, he would have to find somebody in the Department of Justice who is willing to fire Mueller on his behalf, so what that means in fact is much the same as Nixon did famously in the 1970s, which is to fire Jeff Sessions, at that point he would instruct the person below Jeff Sessions to fire Mueller on his behalf, that's at this point, I believe Rod Rosenstein. Rod Rosenstein would most likely say, "I'm sorry, Mr. President, I'm not able to do that," and either tender his resignation or Trump would fire him, and he'd sort of go down the chain of command until he finds somebody who is willing to say yes, I'll do that for you.

Lindsay: It's interesting, there have been a bunch of bipartisan initiatives in the Senate to introduce legislation that would put further strings on Trump's capacity to get rid of Mueller. Do you think any of those have a good chance of becoming law?

Yascha Mounk: So, this is one of those showdowns that we're headed towards. I very much hope so, I mean, it's intelligent, at least to Republican senators who are not on the most moderate end, they are not Lisa Murkowski, they are not Susan Collins, saying, "this is a red line for us, and we're actually willing to put forward legislation of which our present leader disapproves, in order to reign him in." So that's an intelligent sign. But it's very clear that the President will veto any such bill as long as he believes that veto will win, so we need at least 18, 19 Republican senators to get on board with this bill, and we need a good number of Republican members of the House to get on board with this bill.

Neither of that is going to be easy, but it is becoming possible, and approval ratings for Trump play a big role here, because they're going to determine how rank and file Republicans feel about this, how far they're willing to go in defying the President. Now, you know, people on Twitter and FaceBook always share the sort of most extreme polls, and, you know, I know all of my friends, many of my friends, always post, you know, cherry pick the one poll that shows Trump doing least well because that's what they want to see. In fact, Trump's approval rating has been very stagnant for the last months. In mid-May, 538 had his approval rating about 38.9%, and a few weeks ago, they had it about 38.9%, 39% as well, but in the last couple of days, it's really taken a little hit, and it's now down to 37%.

If it keeps sinking further than that, if it's below 33%, below 30%, then you're

wanting to see a lot of Republicans try to move away from Donald Trump, and a law like this could pass despite the super-majority rule that it requires.

Lindsay: I've noticed that the Senate also unanimously moved to block Trump from recess appointments during this upcoming recess, which would limit his ability to install someone other than Sessions as Attorney General. That seems like a heartening development, too.

Yascha Mounk: Yeah, I mean, it really is. And of course, there was the Jeff Flake oped, and the book he's writing, in which he, for the first time, is actually making a Republican case for why Trump is sort of ideologically unacceptable, politically unacceptable, for the first time for a sitting legislator. So, it does feel as though we may be approaching a breaking point, between congressional Republicans and Donald Trump. For many, many months now, for a better part of the year, Republicans have, time and time again, put Party above country, in a very disheartening way, and it's starting to look as though they may be willing to put country above Party at some point. They're not there yet, we've been disappointed many times in the past, but there have been some quite encouraging signs in the past weeks.

Lindsay: Could you just sort of sketch out a scenario in which Trump defies a court order? What would then happen?

Yascha Mounk: Well, we've never been there. Or at least, we haven't been there in about two centuries. It isn't clear. I mean, it depends a little bit on the nature of the court order, and who is bound by it, but essentially, if it's a fellow bureaucracy, but let's say that Trump somehow appropriates money in some unusual way to build the border wall, and the Supreme Court says, "actually, sorry, you can't do that, you know, you don't have the building permits, or you don't, you know, the money isn't correctly appropriated, or whatever," you know, there would be a situation at some point where Trump gives an order to some wing of a federal government to do something, and the Supreme Court has clearly stated that they shouldn't do that, and a bunch of poor bureaucrats on the ground, are going to have to make a decision whether to follow the direct order of the President, or whether to follow what the clear interpretation of the Supreme Court ruling is.

Lindsay: It's interesting that Trump has done such a bad job of packing federal agencies with loyalists; so many of those posts are unfilled still. Do you think that that would decrease his chances of prevailing in a standoff like that?

Yascha Mounk: Yeah, I mean, I think it might. You know, the thing is, people have been getting up and saying, you know, one of the reasons why we don't worry as much about Trump is that it's actually very difficult to get things done because they need to know how to do things, you know. You need to have expertise and experience in order to know how to do things, and you know, I was being skeptical of that, because while it may take some expertise to do something at all, it doesn't take much expertise to break things.

Lindsay: Very true.

Yascha Mounk: And Trump's been breaking a lot of things. But once he starts to actually want people bureaucracy to carry things out for him, especially if there's a Constitutional conflict and reporters saying "no, no, no, don't do that," his inability to have a loyalist in these positions would really matter. Confirmed  
A loyalist presumably would side with Trump in those circumstances, and the career bureaucrat who's been there 20 years and wants to be there another 20 years, you know, might have a different calculation, and a first calculation is going to be what minimizes my chances of going to jail for defying a court order, and that may be disobeying the President, rather than disobeying the Supreme Court.

Lindsay: Yeah, so that's all the time we have for now. Thanks so much for coming on the program!

Yascha Mounk: Thank you so much, it was a pleasure!

Lindsay: And now it's time for recommended reading. Hand-picked selections to help you come to grips with our bewildering political moment.

In honor of the FBI's raid on former Trump campaign manager, Paul Manafort's house, we bring you a two-part explainer by Ken White, a former federal prosecutor who blogs at PopeHat. Ken is not only informative, he's incredibly funny. I've bookmarked his essay, "If a Bigfoot Hunter Doesn't Have His Reputation, What Does He Have?" to re-read when I'm feeling sad because it always cracks me up. Part one is called "How Federal Grand Juries Work," and part two is called, "We Interrupt this Grand Jury Lawsplainer for a Search Warrant Lawsplainer." Read these, and you'll be able to impress your friends at cocktail parties with your professional-strength legal knowledge. If you're not invited to a cocktail party, you might consider throwing one of your own just to give yourself the appropriate venue. Cheers!

The Breach is produced by Nora Hurley for Rewire Radio. Our executive producer is Marc Faletti, our theme music is "Dark Alliance," performed by Darcy James Argue Secret Society, and I am your host, Lindsay Beyerstein. Tweet your suggestions, comments, and questions to @Beyerstein on Twitter. See you next week!