THE BAFFLER

The Poverty of Theory

Maximillian Alvarez, December 21

A Show Trial that No One Watched

What the first of the J20 trials means for our future

J20 protestors on Inauguration Day. / Joe Catron

Author's Note: **Today, a jury in the Washington, D.C., Superior Court rendered a verdict of *not guilty* on all counts for the first six defendants in the J20 trials. This article was researched and written over the past weeks in the breathless hope, but with absolutely no certainty, that such a verdict would be passed down. For freedom of speech and assembly in the United States, for democracy, and especially for the defendants and their loved ones, this is pretty much a best-case scenario. I'd love nothing more than to throw this column in the shredder and take to the streets to celebrate—and this is *definitely* a cause to celebrate. But the dystopian realities detailed below are, sadly, just as real now as they were yesterday.**

The verdict does not change the fact that our government, in unprecedented fashion, has thrown its full weight behind this effort to prosecute almost two hundred protesters, medics, and journalists just for *being at* an anti-capitalist, anti-fascist demonstration where some property damage occurred. The verdict does not change the fact that the government, in that effort, has relied on the kind of trumped-up charges and deeply questionable evidence that have been the historical hallmark of political show trials. The verdict does not change the fact that there are still more than 180 defendants awaiting similar trials. The verdict does not change the fact that much of the country didn't seem to give two shits about the first trial, nor does it excuse the infinitely damning fact that there was no broad, sustained movement on the left to defend and show solidarity with the J20 defendants.

I'm not pointing this out to be a buzzkill. I'm doing it because we have a troubling tendency to treat momentary ends as a justification for our collective lack of political means. I'm doing it because the worst thing we can do now is take today's verdict as proof that the crisis has been averted and things will go back to "normal." This has not been the case with the Muslim ban, it was not the case with tax reform or gutting health care—with the current administration at the helm, our government is a bumbling, ravenous ogre, but it's an ogre that learns how to adapt. As I and others have said before, the fate of the J20 defendants has, from the beginning, been representative of our collective fate. And a victory for this first trial group is also a victory for us. But it is a victory that *many* of us cannot take credit for. Since the arrests in January, I have witnessed a truly soul-shaking amount of love and solidarity and mutual aid among the J20 defendants themselves, from their friends and family, from legal support groups (like the Dead City

Legal Posse), and from media collectives (like Unicorn Riot and *It's Going Down*). But I have also seen an unforgivable lack of these things from so many others.

The verdict today is a much-needed ray of light in our very dreary time. Against the state's authoritarian designs, the line of justice held, for now. Celebrate it. But please do not think for one moment that the fight is over, or that we can hope to win it in with so many continuing to stand idly on the sidelines. . . .

IN WASHINGTON, D.C., CARS BURPED GRUMPILY down city roads, the way they always do. The holiday bustle is about what you'd expect. To the naked eye, the rain fell as inconspicuously as ever. This is what it looks like, apparently, when the entire social arrangement of American life is being radically rewritten.

This is not hyperbole. In the cold grey of the Beltway, some of the most potentially drastic changes to life in the United States were unfolding. Two of these changes have garnered a significant amount of national attention and despair: the GOP tax bill, which has now passed, and the FCC's vote to kill net neutrality. While each of these policy changes has been cloaked in the language of free market scripture, they collectively figure as part of an aggressive crusade to *limit* competition and condense monopoly power, to greatly exacerbate wealth inequality and effectively secure the United States as a hereditary aristocracy, and to further empower the corporate grip on our communication and information-sharing habits. There is a third (potentially) monumental change in the works, too, but it has quietly sputtered in the vacuum of public indifference.

This week, jurors in the D.C. Superior Court rendered a verdict that determined the fate of the first group of defendants in the J20 trials (Michelle "Miel" Macchio, Jennifer Armento, Christina Simmons, Alexei Wood, Oliver Harris, and Brittne Lawson). This group consists of just six of the 194 protesters, medics, and journalists who attended an "anti-capitalist, anti-fascist" demonstration on January 20, Inauguration Day, in D.C. These first half-dozen defendants faced a slate of felony and misdemeanor charges that could have landed them up to sixty-one years in prison. The "not guilty" verdicts handed down for this first group may set a strong legal precedent for the remaining groups of defendants, whose trials are scheduled

through next fall. But collectively speaking, the fate of the J20 defendants will also set a legal precedent for the state's attempted draconian crackdown on free speech and assembly in the twenty-first century.

> We don't believe the evidence is going to show that any of these six individuals personally took that crowbar or that hammer and hit the limo or personally bashed those windows of that Starbucks in. . . . You don't personally have to be the one that breaks the window to be guilty of rioting, to be guilty of agreeing to riot.
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> —Assistant U.S. Attorney Jennifer Kerkhoff's Opening Statement (November 20, 2017).

I reported on many of the brutal, terrifying details of the state's repression of the J20 defendants back in the spring. The whole case was already deeply disturbing at that point, from the D.C. Metropolitan Police Department's (MPD) highly questionable tactics in shutting down the demonstration, and its alleged gross mistreatment of arrestees to the government's all-but-unprecedented pursuit of felony rioter convictions for every person who was caught in the "kettle"—i.e., the detention zone created by the riot police on the scene—and indicted, regardless of what they actually did on the day of the protest. But things got even more disturbing over the summer, when the Department of Justice, for instance, attempted to force DreamHost, the web-hosting provider for DisruptJ20.org, to hand over the 1.3 million IP addresses for those who visited the site in advance of the Inauguration Day protest. (I don't know about you, but I remember clicking on a link to the website sometime last December, so I certainly would have been included in that sweep.)

This was supposed to be my follow-up report on the trial phase of this hugely consequential episode in the history of dissent in the United States. As a journalist (of sorts), I know that my real job here is to inform—to unearth and package the details of this story for readers who want to know more about it. But, honestly, the details are out there already: Unicorn Riot and *It's Going Down* have been doing invaluable work to document the proceedings and post daily updates; Defend J20 Resistance has a whole page with an up-to-date list of any related news coverage; really solid reporting on the case has been featured in places like *Salon*, *The Intercept*, and *ThinkProgress*, with coverage (much of which has been misleading and vindictive) also making the

rounds from more progressive news sites like *Democracy Now* and *Al Jazeera* to mainstream outlets like *The Guardian*, *Washington Post*, and *VICE*. The details are pretty hard to miss at this point.

Almost two hundred people who attended an anti-capitalist, anti-fascist protest on Inauguration Day face the possibility of spending the majority of their remaining lives in prison just for being there. Many demonstrators came in "black bloc" attire—a point that has become central to the prosecution's case. During the march, some demonstrators pushed over trash bins and newspaper boxes. Others broke the front windows of some downtown businesses, including a Starbucks and a Bank of America. Later in the day, when police had trapped a large group of protesters on the corner of L and 12th Street, a limousine was set on fire. No one in the defense camp is disputing the fact that property damage occurred during the demonstration. The issue is really everything else that occurred.

> The Standard Operating Procedure (SOP) for Handling First Amendment Assemblies and Mass Demonstrations . . . outlines the procedures that are to be followed by officers when a protest turns violent and arrests are required. The SOP provides that warnings are to be given before arrests using amplification devices. The SOP requires that there must be at least one warning given, and absent exigent circumstance, three warnings are to be given. The purpose of these warnings is to give people the opportunity and time to disperse, and thus avoid arrest. However, when MPD corralled people, at 12th and L Streets, they were not allowed to leave. In addition, there is no indication in witness reports, nor any observations by OPC monitors, that any warnings were given either before or after the police line cordoned off those who were later arrested.
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> —Office of Police Complaints (OPC) Monitoring of the Inauguration Report (February 27, 2017)

The proceedings for the first trial have revealed time and again that the MPD was targeting the J20 demonstration from the start, since it was a gathering of anarchists. MPD Commander Keith Deville, who gave the orders to shut down the J20 demonstration, and who admitted under oath that he did not follow the legal protocol for doing so, was heard over the police radio repeatedly asking about "the anarchists" who were marching.

Riot police showed up minutes after demonstrators departed from their original meeting point in Logan Circle, further suggesting that the MPD had intended to treat "the anarchists" as a riotous mob from the beginning. Demonstrators were blasted excessively with stinger grenades and pepper spray, and they were swept up indiscriminately in the kettle maneuver—even as the riot police failed to give the legally required order to disperse beforehand. These facts were corroborated in an official report filed by the Office of Police Complaints (OPC), which also recommended that the MPD's conduct violations be investigated by an "independent consultant."

Even as the trial for the first group of J20 defendants has been underway, then, the very same police force involved in suppressing the demonstration and arresting the defendants is being investigated for its own troubling conduct in doing so. But there are two important caveats: first, the investigation is being conducted by what is historically (to put it mildly) a very police-friendly organization; second, during cross-examination, Commander Deville blurted out that his department has a vested interest in securing prosecutions for the defendants because it would "limit [their] civil liability" in the investigation.

McCool: Is it fair to say that, if the Defendants in this case are convicted, it's less likely that MPD or its officers would face civil liability based on actions taken by officers on orders issued by you on January 20, 2017?

Deville: My opinion?

McCool: Yes, sir. I'll take your answer.

Deville: I believe convictions in this case would perhaps limit our civil liability in the matter.

—Attorney Steven McCool's cross-examination of MPD Commander Keith Deville (December 4, 2017).

In the final stages before jury deliberation began, Judge Lynn Leibovitz, who presided over the first trial, made a really significant move by throwing out the lead felony charge of riot incitement, which carries a maximum prison sentence of ten years.

Nevertheless, Leibovitz refused to throw out the other charges, which include misdemeanor rioting, misdemeanor conspiracy to riot, and five counts of felony property destruction.

It is already a major rarity for participants in such demonstrations to be hit with misdemeanor *and* felony charges. What has put the J20 cases into a terrifying category all their own, though, is the government's forceful push to levy such charges against protesters, medics, and journalists *as a whole*. In her truly Orwellian opening argument at the beginning of the first trial, Assistant U.S. Attorney Jennifer Kerkhoff clearly acknowledged that *none* of the six defendants in the first group damaged property themselves. Then why, you might ask, were they being charged with five counts of felony property destruction? *That* was one of the questions upon which the future of dissent in America has hinged over the past week (and will continue to hinge, as far as we know now, for the future defendant groups).

In the absence of strong evidence against many of the individual defendants, the government has staked its collective case on proving, in any way it can, that *every individual* involved is a criminal appendage of the group as a whole—that together, they make up one nebulous, violent enemy of the state. Hence the prosecution's obsessed fixation on the "sea of black masks." Hence the attempt to argue that, by livestreaming the events, journalists like Alexei Wood were promoting and, thus, "playing a role" in the violence. Hence the reasoning that, by bringing "things like spray for when the police use pepper spray to wash out the eyes," Brittne Lawson, who acted as a volunteer medic at the demonstration, proved herself to be a conspirator and a participant in a "planned" clash with police. Hence the repeated assertion that basic event planning and communicating before a demonstration (i.e. where and when to meet, what to bring, etc.) amounts to a highly sophisticated and coordinated conspiracy.

Representing the government, Kerkhoff repeatedly argued that the criminality of the J20 defendants is rooted in a damning show of individual agency at the outset: they "made a choice" to be at the demonstration and to stay, even after property damage occurred. But the state, too, has made a deliberate (and unprecedented) choice to use this as justification to prosecute *all* the defendants as full riot conspirators. "You don't personally have to be the one that breaks the window," Kerkhoff argued, "to be guilty of rioting."

Judge Leibovitz: Down at the top of the—whatever it is—fourth paragraph: Ms. Macchio asserts that the First Amendment protects her conduct and her manner of dress on January 20. That is a line that's in a number of these. I don't want to be telling the jury that there is an overlay of First Amendment protection that, in addition to their needing to find the elements beyond a reasonable doubt, they also must be applying. . . .

Kerkhoff: What about the first sentence of the second paragraph, "Protected by First Amendment"?

Leibovitz: Oh. "Protected by the First Amendment." Yes. I think I need to do that. So I would take out 'Protected by the First Amendment.'

Next one, Mr. Wood—In the second paragraph, Mr. Cohen, I'm adding a "he," "maintains he was conducting lawful First Amendment reporting." I would delete "First Amendment." And just to make it grammatically okay, "was conducting lawful reporting by"—"was conducting lawful reporting of the demonstration on January 20," so that it's not 'lawful First Amendment reporting,' which I'm not quite sure what 'First Amendment reporting' is supposed to be.

—Judge Leibovitz's amendments to jury instructions in advance of deliberations ("Charge Conference") (December 15, 2017).

Should I go on?

There's also serious cause to question the political motivations of a number of the MPD officers involved in the case. Commander Deville, for instance, who was recorded taunting kettled protesters and who also praised the MPD for showing "enormous restraint" in shutting down the demonstration on Inauguration Day, appears to have a suspicious record when it comes to matters of social justice and basic human decency. More worryingly, perhaps, is the background of the primary detective assigned to the J20 investigations over the past year, Detective Greggory Pemberton. He has an even clearer track record of anti-activist sentiments—particularly when the activists in question are associated with Black Lives Matter. Unicorn Riot also pointed out on Twitter that Pemberton follows "one of the main online hubs for neo-nazi 'alt right' harassment campaigns." Moreover, in the summer of 2016, while also taking shots at Black Lives Matter, Pemberton stated in an interview with the pro-Trump media outlet One America News that Trump's "message of law and order"—a message that has expressly endorsed the kind of conduct the MPD exhibited during the J20 protests—"is appealing to a lot of police officers."

> [Trump] certainly has a message of law and order, and he really is appealing to a lot of police officers. . . . Police officers want to hear that someone is gonna come in and not allow this divisive, vitriolic rhetoric of this false narrative that all police officers are inherently criminal racists that are out here committing crimes against the citizens, and that they're gonna come in and put a stop to that.
>
> —MPD Detective Greggory Pemberton in an interview with the far-right media outlet One America News Network (August 24, 2016).

There's more. In order to substantiate its tenuous but profoundly chilling charges against the J20 defendants, the U.S. government introduced an array of "evidence" that was—or *should have been*, rather—a true mockery of the court. One such piece of "evidence" was a video from the far-right political group Project Veritas, who infiltrated a meeting of activists in advance of the inauguration. Project Veritas and its founder, James O'Keefe, have a long history of politically motivated and even criminal attempts to employ their "guerilla tactics" in efforts to misrepresent and slander liberal and leftwing groups. To make the absurdity even more apparent, the prosecution introduced this video "evidence" one day after the *Washington Post* exposed Project Veritas's failed attempt to dupe the paper into biting on its fabricated story about a scandal involving the supposedly aborted lovechild of former Alabama senate hopeful Roy Moore and a fifteen-year-old woman.

It didn't end there. The prosecution introduced more video "evidence" from another far-right group, the Oath Keepers, a radical anti-government militia consisting mainly of current and former military and law enforcement personnel. That the government aligned itself and its authoritarian case against the J20 demonstrators with such extremist right-wing groups is horrifying enough on its own terms. But it would be far more horrifying, for all of us, if this use of tainted ideological material had proven successful in court—and, again, it still might, if not for the first group of defendants, then for the remaining groups.

> And I'm pretty sure the Government doesn't want to talk about political opinions and disagreements and dissent because that gets to the uncomfortable position of explaining why they are prosecuting these folks who are protesting against Donald Trump.
>
> But we know that there was politics going on. We know that this is about politics. . . .
>
> We know because Commander Deville, almost from the moments this group stepped off Logan Circle, calls them anarchists. Anarchists. The commander that day almost immediately identifies their politics and says to go after them.
>
> —Closing Argument by Attorney Sara Kropf (December 15, 2017).

Again, these details are out there for all to see—if anyone cares to look. But it's really not about the details anymore. The future of free speech and assembly in the United States, not to mention the freedom of almost two hundred people, has been hanging in the balance of the J20 cases. While waiting this week for the jury to possibly render a verdict, though, I found myself obsessing over the question that all good journalists try to keep themselves from asking: why don't more people give a shit?

You'll drive yourself mad if you ask this question too often. Because the impulse is to assume that people just don't care, which can, in turn, make you feel like the only recourse is to finger wag and moralize and shame others for not being as socially conscious as you are. You'll find yourself, as I have, going down the soul-sucking rabbit hole, making ever more alarming but tenuous rhetorical comparisons: If leftist factions in the past were able to mobilize massive, international campaigns in solidarity with defendants in political trials (Ricardo Flores Magón, Sacco and Vanzetti, even Ethel and Julius Rosenberg), then what's our excuse for leaving the J20 defendants out to dry while seemingly devoting more of our time to self-righteously berating other leftists? How is it that far-right supporters around the country were quicker to raise funds to bail neo-Nazi Chris Cantwell out of jail than we've been to raise funds for the legal defense of almost two hundred Inauguration Day protesters? If the whole country could sustain a years-long obsession with the O.J. Simpson trial, then what does it say about us that the J20 trial has been a blip on the media feed until today? What good are the assembled forces of the so-called "Resistance" if they have only scantly acknowledged the J20 defendants in the past year for the purpose of throwing them under the bus? Etc., etc.

Some of these questions are more valid than others, but they still obscure what is ultimately a more complicated slew of factors at play. We live in a wildly different media environment these days, in which the flow of content is endless, our attention is perpetually strained, and the capacity to captivate, let alone mobilize national and international audiences faces a host of unprecedented challenges. We do not have a mass labor or student movement, nor mass leftist parties, to draw on. We have a destructive, monstrous idiot in the White House who dominates the news cycle. And so on.

Again, it's complicated. And I don't want to deviate from the issue at hand, nor do I want to overlook the heroic efforts that have been made to spur a broad coalition of solidarity for the J20 defendants. At the end of the day, it's up to each of us to reckon with these issues in the deepest wells of our own conscience. But regardless of today's "not guilty" verdict, the question itself will continue to hang there like a stain on our politics: why didn't more people give a shit?

Since Donald Trump took office, we have been suspended in dizzying, breathless anxiety about the many hypothetical, but suddenly possible, circumstances that *could* propel us toward a more authoritarian political regime. This week, though, no hypotheticals were needed. Had the government succeeded in convincing a jury of the defendants' guilt of these trumped-up charges, and if it is able to do so in the future trials, the case against J20 defendants would set a most dangerous precedent.

Whether they are anticapitalist or antifascist in nature, or whether they are simply critical of the ruling administration, future political demonstrations would be subject to the state's uniformly repressive and brutal logic. If some glass gets broken, *anyone* who happens to be standing nearby can be treated as a criminal conspirator. Suddenly, a new mechanism of political repression would become available, providing those in power with the means to sweep away dissenters *en masse*. And, just as suddenly, more pages from the playbook of history's demons would be opened anew. It's all too easy to envision how, for instance, a guilty verdict in the J20 cases would lay a legal foundation for eliminating government dissenters by planting agents provocateurs to cause property damage in future protests, thereby giving police officers and the Department of Justice a green light to employ their same repressive strategy. For most mainstream legal thinkers and political commentators, this scenario may sound incredibly paranoid and even unthinkable according to the norms and practices we're accustomed to in our current judicial system. But the unthinkable doesn't become thinkable all at once. It emerges in stages—like this one.

And, again, a positive verdict for the first trial group *does not* erase the fact that our government has been actively steering us toward this dystopian destination, and that many of us didn't seem to mind.

. . . a sea of black masks . . .

Postscript: Three Cheers for Anarchism

The black flag flew high last January. Many of those who attended the J20 demonstration, and many who are currently facing down the state as a result, were indeed avowed anarchists. As the proceedings for the first trial have shown again and again, this was one of the leading reasons for the police's swift crackdown on the demonstration, and it seems fair to say that the defendants' political beliefs have been a key factor in stunting any kind of broad public solidarity with them. In many ways, as has been the case on too many sad occasions in our history, anarchism is also on trial. And the outcome will reveal the true contents of our democratic souls.

Contrary to what the *Washington Post* would have us believe, democracy doesn't necessarily "die in darkness." The largely unremarked fate of the J20 defendants up to this point seems to prove, in fact, that democracy dies in broad daylight, right in front of us. Nor does it die at the hand of some alien force from outside. Democracy dies in its own name, at the hands of those who truly believe they are preserving it by grinding their brethren to dust, often under the weight of total apathy. It dies when our brothers and sisters have already become invisible to us long before they've been physically swept away, beaten, and swallowed up by the cold machinery of state repression. It dies when the rain seems to fall as inconspicuously as ever on nothing new, and we don't even notice that their black boots are empty.

Six defendants regained their freedom today, but more than 180 must still fight for theirs, and all of them have had to endure an endless year of wondering if any of us were really willing to fight for them. It may be premature to see this as a victory for democracy. Because if our vision of democracy has become so selective and so self-centered that we have spent less energy defending others against extermination than we have spent demarcating where and how we're not *like them*, then we've already lost it. If our impulse over the past year has been to disparage and distance ourselves

from "the anarchists" as a seemingly homogenous, dark, dangerous mass—if we have refused to look into the "sea of black masks" and see the humanity of individuals and comrades and lovers fighting for their vision of a better world—then, in one damning sense, today's verdict was always going to be inconsequential, because we had already validated the police and the government's logic. If we have become a nation of people who genuinely haven't seen our own fate in that of the J20 defendants this whole time, then the coals that keep democracy alive may have already gone out.

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