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ARTICLE

On the Perversion of the Public/Private Distinction

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Abstract

The Article revisits the public/private distinction to discuss, in this framing, the dispute over the classified documents and the immunity ruling of the U.S. Supreme Court, both concerning the President of the United States. After introducing the relevant provisions of the Presidential Records Act and the Espionage Act, the conflict is analyzed by means of a matrix distin, as well as public or private property and the public or private nature of the location where the presidential papers were stored. Guided by arguments taken from the theoretical discourse, the property-related public/private distinction is submitted to a review of its critical situations. The Article closes with four different readings of the public/private distinction—liberal, authoritarian, perspectival, and symbolic—that are applied to the conflict concerning the classified documents and the immunity ruling.

Keywords: Public; private; presidential records; immunity; classified documents; property

A. Aftermath Like in a Fairty Tale

Once upon a time, there was a ruler who was officially called "president." When his term in office came to an end because he lost the election, he did not want to part with the presidential documents. But they were "classified."[1] A number of them were top secret.[2] Still, he transported them from the office to his home and stored them—in the bathroom and ballroom—of his Mar-a-Lago estate.[3] Therefore, he was indicted by a Grand Jury on no less than forty counts of violating federal law.[4] He was accused of mishandling documents from the White House, where he had previously resided as president.[5] After all, the materials contained hundreds of files that also included nuclear secrets and military plans.[6] The ruler was outraged. He spread the word that his successor as president, "public enemy" Joe Biden, was conducting a "witch hunt" against him.[7] His lawyers further argued that Biden's "henchmen in the Justice Department" were engaging in

[1]Luke Broadwater & Michael S. Schmidt, *Material Recovered from Trump by Archives Included Classified Information*, NEW YORK TIMES (Feb. 18, 2022), https://www.nytimes.com/2022/02/18/us/politics/trump-archives-white-house.html.

[2]Jude Sheerin & Rebecca Seales, *What's in the Trump Indictment: US Nuclear Secrets and Files Kept in Shower*, BBC (June 9, 2023), https://www.bbc.com/news/world-us-canada-65852286.

[3]*Read the Full Trump Indictment on Mishandling of Classified Documents*, PBS News (July 28, 2023), https://www.pbs.org/newshour/politics/read-the-full-trump-indictment-on-mishandling-of-classified-documents.

[4]Tierney Sneed, *Trump Pleads Not Guilty Twice in 24 Hours With Plea to New Charges in Classified Documents Case*, CNN POLITICS (Aug. 4, 2023), https://www.cnn.com/2023/08/04/politics/trump-classified-documents-not-guilty/index.html.

[5]*Read the Full Trump Indictment*, *supra* note 3.

[6]Sheerin & Seales, *supra* note 2.

[7]Eric Tucker, Alanna Durkin Richer & Terry Spencer, *Judge Rejects Bid by Donald Trump to Throw Out Classified Documents Case on Constitutional Grounds*, ASSOCIATED PRESS (AP) (Mar. 14, 2024), https://apnews.com/article/trump-classi

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Figure 1. The Mar-a-Lago bathroom of the former President who was later re-elected.[8]

"prosecutorial abuse" led by special counsel Jack Smith because, according to the Presidential Records Act,[9] the outgoing president had "every right to keep the documents."[10] After he took office for the second time,[11] the Department of Justice returned to him the boxes that the Federal Bureau of Investigation (FBI) had seized in August 2022, and on February 28, 2025, he brought the boxes to Mar-a-Lago again.[12]

Originally, he had also claimed that the Espionage Act[13] did not apply to him, because he was not a spy: "The Espionage Act has been used to go after traitors and spies. It has nothing to do with a former president legally keeping his own documents."[14]

After the FBI raid, the former ruler demanded his files back.[15] Just one year later, he was re-elected president.[16] Before and after that, the fate of the documents took an unexpected turn.

fied-documents-maralago-presidential-records-200d4c73d7c7dd75d9c9d878b77d05ce; Kayla Epstein, *Donald Trump: What We Learned from His Rally in Pennsylvania*, BBC (Sep. 4, 2022), https://www.bbc.com/news/world-us-canada-62761333.

[8]*Photos From Trump Indictment Show Where Boxes of Classified Documents Were Stored*, Reuters (June 12, 2023), https://www.reuters.com/news/picture/photos-from-trump-indictment-show-where-idUSRTSKBFE9/.

[9]Presidential Records Act (PRA) of 1978, 44 U.S.C. §§ 2201–2209 (amended 2014).

[10]*See* Sneed, *supra* note 4; Fareed Zakaria, *Gen. Milley Refutes Controversial Claim Made by Trump*, CNN Politics (Sep. 14, 2023), https://www.cnn.com/videos/politics/2023/09/14/mark-milley-donald-trump-mark-meadows-iran-zakaria-src-vpx.cnn.

[11]*Second Presidency of Donald Trump*, Wikipedia (last visited x), https://en.wikipedia.org/wiki/Second_presidency_of_Donald_Trump.

[12]Stephen P. Mulligan, Peter G. Berris, Jennifer K. Elsea & Michael A. Foster, Cong. Rsch. Serv., LSB10810, The Mar-a-Lago Search Warrant: A Legal Introduction (Dec. 27, 2022), https://www.congress.gov/crs_external_products/LSB/PDF/LSB10810/LSB10810.4.pdf; Zoë Richards, Tara Prindiville & Charlie Gile, *FBI Returns Records from Mar-a-Lago Search to Trump, White House Says*, NBC News (Feb. 28, 2025), https://www.nbcnews.com/politics/white-house/white-house-staffers-seen-transporting-trump-boxes-mar-lago-rcna194316.

[13]The Espionage Act, 18 U.S.C. §§ 792-799 (1948) (amended 1994).

[14]Robert Farley, *Ad Misleads: Trump Not Charged as Spy*, FactCheck.org (June 16, 2023), https://www.factcheck.org/2023/06/ad-misleads-trump-not-charged-as-spy/.

[15]Zach Schonfeld, *Trump Calls for Return of Privileged Documents Reportedly Seized at Mar-a-Lago*, The Hill (Aug. 14, 2022), https://thehill.com/policy/national-security/3601967-trump-calls-for-return-of-privileged-documents-reportedly-seized-at-mar-a-lago/.

[16]*Donald J. Trump*, The White House, https://www.whitehouse.gov/administration/donald-j-trump/.

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Before, in June 2024, U.S. District Court Judge Aileen Cannon—who, as luck would have it, had been appointed by the President during his first term—dismissed the lawsuit over the storage of the documents.[17] Judge Cannon ruled that the appointment of the special investigator and the financing of the prosecutor's investigation had no statutory basis and were unconstitutional.[18] After the former President's re-election, the appeal went nowhere because the mantra of "no indictment of a sitting president" prevailed.[19] Thus, it will remain unclear whether the presidential documents at Mar-a-Lago are private or public—in nature, not regarding the access—and could be stored with impunity in the domestic bathroom and ballroom.

The lost election of 2020 had another aftermath. The outgoing ruler was hit with the well-founded accusation that he had attempted to manipulate the election results while still in office.[20] Moreover, to incite his supporters to storm the U.S. Capitol in order to prevent the election results from being certified, Trump once again told the fairy tale of the stolen election: "This the [sic] most corrupt election in the history, maybe of the world."[21] He said, among other things: "We fight like hell. And if you don't fight like hell, you're not going to have a country anymore . . . . So, we're going to, we're going to walk down Pennsylvania Avenue. I love Pennsylvania Avenue. And we're going to the Capitol . . . ."[22]

In response to the "conspiracy against the United States," which was well and widely documented in the media, the Supreme Court investigated whether the outgoing president had acted *ex officio* or as a private person.[23] The subject of the dispute was once again the public/private distinction, now in the context of presidential immunity concerning a president's address and the attempt to manipulate the election results. The "government majority" of the U.S. Supreme Court introduced another variation on this distinction.[24] By a vote of six to three, the justices ruled that presidents enjoy absolute immunity for actions within the scope of their core constitutional powers.[25] They can invoke presumed immunity for "official acts" within the "outer perimeter of his official responsibility," while "unofficial acts" do not enjoy immunity.[26] The Court thus overturned the Appellate Court's decision and remanded the case back to the District Court to examine whether the specific actions of the defeated incumbent, who had quite obviously and

[17] *See* Katherine Faulders, Peter Charalambous & Alexander Mallin, *In Surprising Ruling, Judge Dismisses Trump's Classified Documents Case*, ABC NEWS (July 15, 2024), https://abcnews.com/Politics/judge-dismisses-donald-trumps-classified-documents-case/story?id=111951588/.

[18] *United States v. Trump*, No. 23-80101-CR-CANNON, 2026 WL 491163, *12–20 (S.D. Fla. Feb. 23, 2026).

[19] *But see* Akhil Reed Amar & Neal Kumar Katyal, Commentary, *Executive Privileges and Immunities: The* Nixon *and* Clinton *Cases*, 108 HARV. L. REV. 701, 702, 717 n.62 (1995) ("The Constitution nowhere explicitly describes what litigation immunity, if any, the President merits by dint of his unique constitutional role".); Charlie Savage, *Can the President Be Indicted? A Long-Hidden Legal Memo Says Yes*, NEW YORK TIMES (July 22, 2017), https://www.nytimes.com/2017/07/22/us/politics/can-president-be-indicted-kenneth-starr-memo.html ("Nothing in the Constitution or federal statutes says that sitting presidents are immune from prosecution, and no court has ruled that they have any such shield."); *see also* Laurence H. Tribe, *Yes, the Constitution Allows Indictment of the President*, LAWFARE (Dec. 20, 2018), https://www.lawfaremedia.org/article/yes-constitution-allows-indictment-president; Barry Michael Okun, Note, *Presidential Immunity From Constitutional Damage Liability*, 60 B.U. L. REV. 879 (1980); Akhil Amar & Neal Katyal, *Executive Privileges and Immunities: The Nixon and Clinton Cases*, 108 HARV. L. REV. 701 (1995).

[20] Andrew C. Eggers, Haritz Garro & Justin Grimmer, *No Evidence for Systematic Voter Fraud: A Guide to Statistical Claims About the 2020 Election*, 118 NAT'L ACAD. SCI., Nov. 9, 2021, at 1.

[21] Donald J. Trump, President of the U.S., Speech at January 6 Rally (Jan. 6, 2021), *in* Brian Naylor, *Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial*, NPR (Feb. 10, 2021), https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial/.

[22] *Id.*

[23] *Trump v. United States*, 603 U.S. 593, 605 (2024).

[24] *See generally* MICHAEL WALDMAN, THE SUPERMAJORITY: HOW THE SUPREME COURT DIVIDED AMERICA (2023).

[25] *Trump*, 603 U.S. at 642; *see generally* MARK BOWDEN & MATTHEW TEAGUE, THE STEAL: THE ATTEMPT TO OVERTURN THE 2020 ELECTION AND THE PEOPLE WHO STOPPED IT (2022); Laura H. Burney, Casenote, *Constitutional Law—Presidential Immunity—The President Is Absolutely Immune from Civil Damages Liability for Acts Done Within the "Outer Perimeter" of His Official Capacity*, 14 ST. MARY'S L.J. 1145, 1163-64 (1982).

[26] *Trump*, 603 U.S. at 614, 615 (citing *Nixon v. Fitzgerald*, 457 U.S. 731, 756 (1982)).

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by all means sought to reverse the 2020 election result in his favor, and in particular his speech on January 6, 2021, should be classified as official—public—or unofficial—private—conduct.[27]

Unlike the defendant and his lawyers, it seems sensible to take a look at what is widely regarded as the "law of the land," rather than spinning tales of witch hunts, law abuse, or possible "fake news."[28] Thereafter, I introduce a matrix of the public/private divide and take a closer look at some critical narratives of the distinction.[29] Finally—as a last resort—I offer four readings of the distinction that might or might not serve as a possible justification in the classified documents case and as an explanation of the immunity ruling.[30]

B. The Law's Counter-Narrative

In the dispute over the classified documents, most of the 40 charges were based on the Presidential Records Act of 1978 (PRA), with a few others based on the Espionage Act of 1917.[31] The provisions of the PRA leave nothing to be desired in terms of clarity of wording and purpose:

> § 2202. Ownership of Presidential records.
>
> The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.
>
> § 2203. Management and custody of Presidential records.
>
> (a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are preserved and maintained as Presidential records pursuant to the requirements of this section and other provisions of law.
>
> (b) Documentary materials produced or received by the President, the President's staff, or units or individuals in the Executive Office of the President the function of which is to advise or assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.[32]

The purpose of preserving presidential records is clearly to provide Congress, the public, and researchers with documents, background information, and explanations of a president's—official—actions, and not to transfer the records to the private ownership of the (former) office holder. To this end, the PRA establishes the necessary public regulations for storage, maintenance, and access—especially for the public.[33]

In contrast and in addition to this, the Espionage Act traditionally prohibits interference in military operations, espionage, and anti-war statements, but currently also penalizes the deliberate withholding of state secrets.[34] According to a parallel assessment in the lay sphere, it is difficult to

[27]*Id.* at 593, 642.
[28]*See infra* Part B.
[29]*See infra* Part C.
[30]*See infra* Part D.
[31]Superseding Indictment, United States v. Trump, No. 23-80101-CR-CANNON (S.D. Fla. Feb. 23, 2026).
[32]PRA, 44 U.S.C. §§ 2201–2203.
[33]*See id.* at § 2203.
[34]*See* 18 U.S.C. §§ 792–799.

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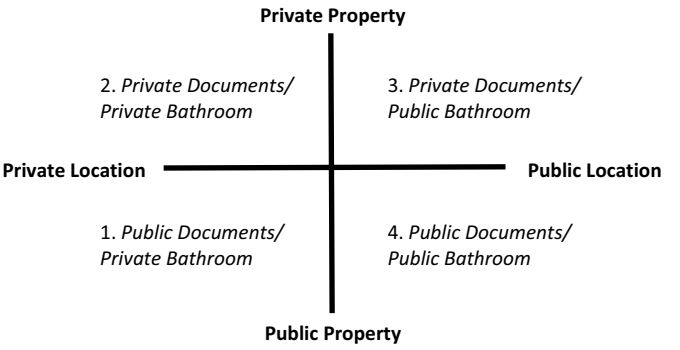


Figure 2. Matrix concerning the storage of classified documents in a bathroom. *Source*: the author.

understand how classified information could be the private property of a departing president. Whether the normative order nevertheless provides a satisfactory solution is a question to be asked and answered below.

C. On the Public/Private Distinction

I. The Matrix

Between the case of the classified documents and the decision on immunity, the respective distinction between public and private establishes an internal connection; an external one can be deduced from the practice of "efficient rule-breaking."[35] The question arises as to whether it would not have been helpful to examine more closely the distinction between public and private actions—and property—of a U.S. president in order to then activate the protection of immunity from criminal prosecution. Examining the public/private nature of both the documents and their storage location could at least clarify whether, contrary to the PRA, the president has a right to justification[36] that allowed him to "privatize" the White House documents. Yet, this would also mean that the public prosecutor's office had not recognized their admissible private nature or their coverage by presidential immunity. Therefore, attention must be paid to the different forms of ownership that could be at stake in the documents case—and the ironic twist that the documents are public but their classification reduces the access of the general public at least for the time being.

Using a matrix, I will attempt to present four conceivable—not equally plausible—perspectives, which encapsulate narratives of the ownership of the classified documents and their storage location, the bathroom. The matrix is meant to show logically possible variants of the public/private distinction (Figure 2). Its horizontal axis connects the private or public storage location, whereas the vertical axis assigns the documents to private or public ownership.

The narrative presented in *Trump v. United States* provides little guidance on how to determine which behavior is private or public and whether the outgoing president's "politics of the self"[37] should be penalized.[38] It is not surprising that this task falls, at least formally, to the lower courts. The framing of the Supreme Court's immunity narrative is likely to give presidents an incentive to

[35]Klaus Günther, *De nihilo aliquid facit – Zur Kriminologie des effizienten Regelbruchs [On the Criminology of Efficient Rule-breaking], in* Die Sinnprovinz der Kriminalität. Zur Dynamik eines sozialen Feldes [The Province of Meaning in Crime: On the Dynamics of a Social Field] 121 (Henning Schmidt-Semisch & Henner Hess eds., 2014).

[36]Rainer Forst, The Right to Justification: Elements of a Constructivist Theory of Justice (Jeffrey Flynn trans., Colum. Univ. Press 2014) (2007).

[37]*See* Klaus Günther, *Die Unordnung der Verantwortlichkeit—Kriminalpolitik im Zeichen einer Politik des Selbst [The Disarray of Criminal Liability: Criminal Policy and the Politics of the Self]*, 42 Kriminologisches [Criminological] J. 90, 93–95 (2010) (describing this concept).

[38]*Trump*, 603 U.S. 593.

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shift private actions—or rather actions that do not fall within the scope of "official" conduct—into the protected public sphere, because official conduct would be immune from judicial scrutiny.[39]

This is precisely what happened when the former president and defendant in the classified documents case argued that the government documents were private and could comfortably be stored in a private bathroom or ballroom—rather than in the National Archives.[40] Trump thus classified the case as one of quadrant No. 2, while the prosecution and Grand Jury had already opted for quadrant No. 1.

In connection with the four readings of the public/private distinction presented in the last section of this article—to be considered the wisdom of last resort—it will be necessary to ask whether documents and storage locations could plausibly be classified in quadrant No. 3 or No. 4. These readings are prepared by a very brief excursion to the philosophical family tree of the public/private distinction[41], two sobering reviews of the distinction to problems,[42] and of critical situations.[43]

II. The Philosophical Pedigree of the Public/Private Distinction

According to liberal political philosophy, the dichotomy between public and private spheres arose from a "double movement in political-legal thinking" in the course of modernity.[44] *Firstly*, the emergence of the nation state and the corresponding theories of sovereignty gave the new public sphere an institutional structure.[45] *Secondly*, in response to monarchs and later to parliaments and administrations, a philosophical counter-movement emerged that aimed to demarcate spheres of action and private property and protect them from unlawful state interference. The property-based "possessive individualism"[46] of private persons was defended by conservative, but above all liberal philosophers such as James Harrington, who was rather republican, and especially John Locke and later John Stuart Mill.[47] The *public/private distinction* came to full fruition in the social contract theories of the liberal paradigm.[48] In their models, influential white, male members of the propertied class—embodied by the nobility, the landed gentry, and, since the 19th century, also the bourgeoisie—were always the main actors and reference persons.[49] The focus was invariably on private property rather than, say, dignity or integrity, as is illustrated, for example, by eminent philosophers.[50]

In exercising his rather unusual position as "gentleman of the bedchamber," James Harrington was required to perform a balancing act between his private duty of dressing the king and his public function of advising him on political matters.[51] Harrington thus constructed a theoretical

[39]*See e.g., Trump*, 603 U.S. at 668 (Sotomayor, J., dissenting).

[40]*See* Andrew Goudsward, *US Pushes Back on Judge Over Trump Claim that Classified Records He Kept Were Personal*, Reuters (Apr. 3, 2024), https://www.reuters.com/world/us/us-pushes-back-judge-over-trump-claim-that-classified-records-he-kept-were-2024-04-03/.

[41]*See infra* Part C, Section II.

[42]*See infra* Part C, Section III.

[43]*See infra* Part C, Section IV.

[44]*See generally* Karl Polanyi,The Great Transformation: The Political and Economic Origins of Our Time (2nd ed. 2001) (creating the concept of the "double movement" in his 1994 seminal treatise).

[45]*See generally* Dieter Grimm, Souveränität: Herkunft und Zukunft eines Schlüsselbegriffs [Sovereignty: Origin and Future of a Key Concept] (2009); Klaus Günther, *Divided Sovereignty, Nation and Legal Community*, 55 J. Common Mkt. Stud. 213 (2017) (discussing divided sovereignty).

[46]*See* C. B. Macpherson, The Political Theory of Possessive Individualism (13th impr. 1990) (1962).

[47]*See* David Conway, *Liberalism, Classical, in* The Encyclopedia of Libertarianism (Ronald Hamowy ed., 2008) 295, 295–298 (concerning the political philosophy of James Harrington, John Locke, and John Stuart Mill).

[48]*See generally* John W. Gough, Fundamental Law in English Constitutional History (Oxford Univ. Press 1961) (1955).

[49]*See infra* Part C, Section V.

[50]*See generally* Macpherson, *supra* note 46.

[51]*See* James Harrington, Oceana (J.G.A. Pocock ed. 2012) (1656) (providing information on weighing up the options).

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model that attempted to strike a balance between the property of the few and that of the many.[52] He understood property as a defining characteristic and basis of power and linked it to the common good.[53] In contrast, Harrington's contemporary, John Locke, attempted to justify private property as a natural right.[54] Work played a key role in this.[55] In his theory of the social contract, Locke introduced two moments of consent: consent to acquire private property through work in the state of nature and to give money value as a medium of exchange; and also the agreement to cede all power to the majority in order to enforce the rights associated with private property and to establish a public authority of civil society.[56]

In these philosophical narratives, the separation between public and private is linked to a spatial vocabulary—spheres. They each delimit an area in which property is appropriated *privately*, either in the state of nature, in civil society, in the state, or on the market. This sphere is contrasted with an area in which public institutions, especially courts, parliaments, the administration, or the state as a whole, intervene generally on the basis of public law and, if necessary, enforce the protection of property under private law.

III. The Connection Between the Distinction and a Problem

A distinction such as that between public and private spaces and official/public and unofficial/private conduct must offer a meaningful contrast and be stable, that is, it must be able to be maintained even when situations change. Otherwise, it will be ignored or rejected by the *interpretive community* as an implausible concept for semantic operations. From a philosophical point of view, at least the liberal one, the *public/private distinction* is plausible if one shares the premises. However, its status and stability are not constant. The reason: Its conceptual components are usually associated with a *problem* characterized by the tension between what is and what could or should be.[57] As a result, the boundary between what should be considered private or public is inherently unstable over time, both in terms of the perception of the problem at hand and the techniques used to solve it.[58] Given the central importance of public or private property in the case of classified documents and of official or unofficial conduct in the ruling on immunity, it is worth identifying the problem underlying the difference.

Problems, which social sciences analyze, change with any shift in perspective. This distinguishes them from problems in mathematics, which, once solved, are repeated as exercises. Accordingly, problems addressed by social sciences are not permanently or intrinsically assigned to a specific area of action, such as the public or private sphere, in the *problem view*. The instability of classifications and distinctions—triggered by problems and their perception—can be illustrated, for example, by the historical development of taxation from a private gift to a compulsory public levy: "As late as the sixteenth century, English judges still analyzed taxation, not as an exaction by the state but as a private gift from the donor – the taxpayer. Parliament was thought to have simply arranged this consensual private transaction."[59]

With the advent of the fiscal state and budgetary law, taxation came to be understood as a matter of public law. Private individuals make payments—taxes—to a central public authority—

[52]*Id.*

[53]*Id.*

[54]John Locke, Two Treatises of Government §§ 25–40 (Peter Laslett ed. Cambridge Univ. Press 1988) (1690).

[55]*See id.*; J. P. Day, *Locke on Property*, 16 Phil. Q. 207–220 (1966); Lawrence C. Becker, *The Labor Theory of Property Acquisition*, 73 J. Phil. 653–664 (1976).

[56]*See* Locke, *supra* note 54.

[57]*See generally* Colin Crouch, *Privates, Publics and Values*, *in* Public Value: Theory and Practice 52 (John Benington & Mark H. Moore eds., 2011); Raymond Geuss, Public Goods, Private Goods (2001); Karl E. Klare, *The Public/Private Distinction in Labor Law*, 130 U. Pa. L. Rev. 1358 (1982); Beate Rössler, The Value of Privacy (2005); Berry Tholen, *Drawing the Line: On the Public/Private Distinction in Debates on New Modes of Governance*, 18 Pub. Integrity 237 (2016).

[58]*See generally* Morton J. Horwitz, *The History of the Public/Private Distinction*, 130 U. Pa. L. Rev. 1423 (1982).

[59]Horwitz, *supra* note 58.

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the Internal Revenue Service—to finance government spending, for example, during wartime or for catering at peace conferences. Similarly, the conceptualization of property crosses the boundary between public and private—in the transition from feudal to capitalist market societies or from capitalist to socialist systems.

> Oliver Letwin, a British conservative theorist, observed that the private sector had to be invented. This occurred with the great European trading companies, such as the British and Dutch East India companies, founded in the 17th century. Notions of property before the Renaissance assumed that different actors had different relations to the same property.[60]

> Pure capitalism is defined as a system wherein all of the means of production (physical capital) are privately owned and run by the capitalist class for a profit, while most other people are workers who work for a salary or wage (and who do not own the capital or the product).[61]

Another example illustrates the influence of problem-solving *techniques* on this distinction—the dramatic transformation of portrait painting from a private to a social and more public practice. This change is evident in two key developments, firstly, from a painter's self-portraits to "selfies," and secondly, from portraits as status symbols to their role as instruments of social criticism.[62] These changes were driven by advances in artistic techniques—in painting and photography—which in turn contributed to the blurring of boundaries and the transmutation between public and private social life in the digital age. This transformation is taking place through a transition from autobiographical memory to (probably) public reproduction and dissemination of visual images.[63]

The connection between the problem and the view of the problem, on the one hand, and the private/public dichotomy, on the other hand, is also evident in the Supreme Court's case law on immunity, which will only be briefly mentioned here. In *Nixon v. Fitzgerald*, the Court ruled that the president's official acts are protected from civil damages claims, but later clarified that the protection does not extend to acts committed before taking office.[64] The *Trump v. Vance* decision limited the president's privileges in the context of court proceedings.[65] This added a temporal and procedural dimension to the immunity narrative and included the concept of risk. Thus, immunity varied according to the greater or lesser risk involved—deprivation of liberty or civil damages, and according to the conflicting legal interests in civil or criminal proceedings. The president was granted immunity in civil proceedings because the court considered that the enforcement of civil/private claims was not absolutely necessary.[66] In criminal proceedings, however, Trump was not granted any privilege with regard to the presentation of evidence; here, the court attached greater social and legal importance to the administration of criminal justice.[67]

[60] *Privatization*, International Encyclopedia of Political Science 2132 (Bertrand Badie, Dirk Berg-Schlosser & Leonardo A. Morlino eds. 2011); Davina Cooper, Review, *Being in Public: The Threat and Promise of Stranger Contact*, 32 Law & Soc. Inquiry 203 (2007).

[61] Howard J. Sherman, Andrew Zimbalist & Stuart Brown, Comparing Economic Systems: A Political-Economic Approach 6–7 (1st ed. 1984).

[62] Michael J. Walsh & Stephanie A. Baker, *The Selfie and the Transformation of the Public-Private Distinction*, 20 Info. Commc'n & Soc'y 1185, 1189 (2017).

[63] *See generally* Theoretical Perspectives on Autobiographical Memory (1st ed. Martin A. Conway, David C. Rubin, Hans Spinnler & Willem A. Wagenaar eds. 1992); Norman R. Brown, *Autobiographical Memory and the Self: A Transition Theory Perspective*, 14 WIRES Cognitive Sci. (2022).

[64] *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982); *see also Clinton v. Jones*, 520 U.S. 681 (1997).

[65] *Trump v. Vance*, 591 U.S. 786, 805–06 (2020).

[66] *Id.* at 809–810.

[67] *Id.* at 811.

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IV. Critical Situations in the Conceptual Life of Distinctions

In their conceptual life, distinctions not only change because they are tied to problems, and their perspective, but also typically find themselves in critical situations that may occur. These are commonly referred to as *incoherence* and *contradiction*—to which I will add and elaborate *perversion*.[68] Accordingly, the *public/private distinction* reaches a critical point, "when troublemakers begin to argue that the distinction is incoherent because, no matter how you try to apply it, you end up in a situation of hopeless contradiction."[69]

Incoherence can also be triggered when the same phenomenon is characterized as private at one instance and public at another—either at different points in time or even simultaneously. This can be illustrated by the conflict over classified documents and the immunity narrative. In the latter case, the court changed the boundary between private and public and, in terms of form and scope, privileged a doctrine that deviated from earlier legal and democratic ideas.[70] It was sharply criticized by historians, political scientists, constitutional lawyers, and journalists.[71]

Inconsistencies and contradictions also arise when distinctions become stereotypes:

> Stereotypification means that people come to see the overt, formally rational part of the argument about where an institution fits on the continuum, and about what mixed package of rules of procedure it should operate under, as involving the mechanical manipulation of balanced, pro/con policy arguments that come in matched pairs.[72]

Stereotypification occurs, for instance, when arguments put forward by a court to substantiate the public nature of a project can be applied equally to virtually any conceivable project, including private ones. In the case of the classified documents, federal District Court Judge Cannon avoided stereotypificaton when suspending the proceedings by failing to even touch upon the public nature of government documents after the end of a president's term of office. Instead, Judge Cannon focused on the legal basis for the appointment of the Special Counsel.[73] If the proceedings were to continue—at the earliest after the end of the sitting president's term of office—it would be entirely conceivable that the majority of the Supreme Court might not only redraw the boundaries of immunity, but also stereotypify classified information as private, thereby manipulating the public/private distinction in yet another way.

Strictly speaking, however, such a privatization of public documents would transcend stereotyping. It illustrates a complete breakdown of the distinction, which can be described as

[68] *See generally* Duncan Kennedy, *The Stages of the Decline of the Public/Private Distinction*, 130 U. PA. L. REV. 1349 (1982).

[69] *Id.* at 1352. *See generally* Gerald Turkel, *The Public/Private Distinction: Approaches to the Critique of Legal Ideology*, 22 LAW & SOC'Y R. 801 (1988) (providing a different critical perspective on the public/private distinction); Susan Gal, *A Semiotics of the Public/Private Distinction*, 13 DIFFERENCES: J. FEMINIST CULTURAL STUD. 77 (2002); PAUL R. VERKUIL, OUTSOURCING SOVEREIGNTY: WHY PRIVITIZATION OF GOVERNMENT FUNCTIONS THREATENS DEMOCRACY AND WHAT WE CAN DO ABOUT IT 78–101 (2007); Lorenzo Casini, *"Down the Rabbit Hole": The Projection of the Public/Private Distinction Beyond the State*, 12 INT'L J. CONST. L. 402 (2014).

[70] While national concepts of immunity vary widely, international law grants former heads of state functional immunity from criminal prosecution for certain acts if this is necessary to preserve "the integrity of the activities of the foreign state" during the head of state's term of office. Acts performed in an official capacity include, in particular, military activities, the exercise of public authority, or legislative acts. Functional immunity does not preclude proceedings for "acts . . . claimed to have been performed in a 'private capacity'" and "acts committed during the term of office in a private capacity." In re Pinochet [2000] AC 147 (HL) (appeal taken from Eng.); Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 4 (February 14); *see also* HAZEL FOX & PHILIPPA WEBB, THE LAW OF STATE IMMUNITY (3d ed., rev. & 2015).

[71] Of the many critical voices, see Ryan Tarinelli, *Historians, Legal Experts Express Dismay at Trump Immunity Ruling*, ROLL CALL (July 1, 2024), https://rollcall.com/2024/07/01/historians-legal-experts-express-dismay-at-trump-immunity-ruling/; Patrick Marley, *Supreme Court's Trump Immunity Ruling Poses Risk for Democracy, Experts Say*, WASHINGTON POST (July 1, 2024), https://www.washingtonpost.com/politics/2024/07/01/supreme-court-immunity-trump-democracy/.

[72] Kennedy, *supra* note 68, at 1353.

[73] *United States v. Trump*, 2026 WL 491163, at *19–20.

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perversion. Perversion occurs when a distinction is deliberately abolished or reversed for political or other reasons that are neither required nor justified by law. A striking example of perverse "distinction problems" of this kind is illustrated by the ruling on immunity, operating with the terms of "official" and "unofficial" conduct. With regard to the central argument of the Court, this perversion was aptly criticized as giving "instructions for law-breaking presidents"[74] because it teaches an officeholder how to evade accountability by simply conspiring with other government officials—preferably after hours—in order to transform a public act into a private one and avoid being held accountable. The distinction between official/public and unofficial/private acts thus contradicts fundamental principles of law-rule and democracy by defining the unofficial conduct of presidents, even after their term of office has expired, as *ex officio*—in an extremely counterfactual manner—in order to extend the scope of immunity,[75] leads to the ironic and perverse result that a president can be held publicly accountable only when the President acts privately, that is, outside the scope of official conduct.

V. A Few Critical Keywords to the Public/Private Distinction

The public/private divide as celebrated by liberal philosophies has been submitted to a variety of critical readings which focus on relational aspects. Feminist criticism inspired by Carole Pateman's ground-breaking study, *The Sexual Contract*, has focused on the perversion of the distinction, without using this term.[76] According to Pateman, the feminist critique of the dichotomy between public and private "is central to almost two centuries of feminist writing and political struggle."[77] The assumption of a clear distinction is not only called into question but also, and more importantly, the dichotomy itself is criticized as implying a hierarchical, sexualized, and gendered binary order that is constituted by the public social contract and the myriad of private sexual contracts between spouses: "The social contract is a story of freedom, the sexual contract a story of subjugation."[78]

Carole Pateman's original and unorthodox interpretation of social contract theories ties in with Freud's analysis *The Civilization and Its Discontents*.[79] According to Pateman, the public social contract has always been accompanied by a prior sexual contract that lays down the rules for theprivate relationships between men and women.[80] These relationships have a political and public dimension and, more importantly, involve a proprietary aspect Pateman refers to as "self-ownership."[81] The fundamental original pact is immanent in men's consent to dominate women, which contract theory conceals or fails to recognize.[82] Liberal theory, Pateman argues, legitimizes patriarchy and masculine property interests through methods of contractual subjugation and serves a systemic sexism.[83]

[74]Akhil Reed Amar, *Something Has Gone Deeply Wrong at the Supreme Court*, The Atlantic (July 2, 2024), https://www.theatlantic.com/politics/archive/2024/07/trump-v-united-states-opinion-chief-roberts/678877/.

[75]In both situations—stereotyping and perversion—it is important to recognize how the abolished distinction is, or should be, replaced, whether by courts, legal science, or other actors.

[76]*See generally* Carole Pateman, The Sexual Contract (1988).

[77]Carole Pateman, *The Feminist Critique of the Public/Private Dichotomy, in* Public and Private in Social Life 281 (S.I. Benn & G.F. Gaus eds., 1983).

[78]*Id.*; *see generally* Brigitte Bargetz, *The Politics of the Everyday: A Feminist Revision of the Public/Private Frame*, 24 IWM Junior Visiting Fellows' Conf. Procs. (2009).

[79]Sigmund Freud, Civilization and Its Discontents 64–145 (James Strachey ed. & trans., W.W. Norton & Co. 2005) (1930).

[80]*See generally* Pateman, *supra* note 76; Pateman, *supra* note 77.

[81]Carole Pateman, *Self-Ownership and Property in the Person: Democratization and a Tale of Two Concepts*, 10 J. Pol. Phil. 20, 20–21 (2002).

[82]*Id.*

[83]See generally Pateman, *supra* note 76; Pateman, *supra* note 77.

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Public Sphere:	*Private Sphere:*	*Relations:*
State	Market	Competition
General public	Intimacy/Privacy	Protection/Control
Society/Company	Family	Division of Labor
Concerning Others	Concerning the Individual	Regulation
Legitimacy	Authority	Function/Power
Collective Property	Private Property	Disposition/Entitlement

Figure 3. Public/private dichotomies and relations.[84]

Like Pateman, legal-critical approaches also question the spatial architecture of spheres and their boundaries, instead focusing on relational aspects and the power structure that also dominates property rights:

> [As] a social institution that comprises a variety of contextual relationships among individuals through objects of social wealth and is meant to serve a variety of individual and collective purposes. It is characterized by allocating to individuals a measure of control over the use and alienation of, some degree of exclusivity in the enjoyment of, and some of obligation to and responsibilities for scarce and separable objects of social wealth.[85]

The legal significance of the network of relationships becomes apparent when property rights are enforced. Relationship certainty is then ensured by property-related legal remedies, such as claims for compensation or injunctions.

The relational patterns of the dichotomy between private and public and the property basis can be schematically represented as follows:

D. Four Readings of the Public/Private Distinction to Justify the Double Immunity of Presidents

Armed with the matrix, the discussion of different problem situations, and some critical keywords regarding the public/private distinction, a final attempt is now made to discuss four narratives that might help justify the "privatization" of the classified documents and the decision on presidential immunity.

I. First Reading: Liberal

In accordance with the PRA and the Espionage Act, both the prosecution and the Grand Jury, as explained, rely on a conventional rule of law interpretation of the conflict over *classified information*.[86] This interpretation is covered by the liberal paradigm with respect to freedom of information, public access, property and privacy. As a result, the prosecutor and the Grand Jury assumed, very plausibly, that the bathroom in the Mar-a-Lago residence is firmly integrated into the sphere dominated and demarcated by the defendant's private property. In contrast, the classified documents stored there do not share the legal nature of their place of storage. Ownership of the documents belongs to the United States, with the result that they had to be placed in legal custody and transferred to the National Archives.[87]

[84]The author's source, informed by Klare, *supra* note 57 (with a focus on labor law).

[85]David Lametti, *The Concept of Property: Relations* Through *Objects of Social Wealth*, 53 Univ. Toronto L. J. 325, at 326 (2003); *see* also Anna di Robilant, The Making of Modern Property: Reinventing Roman Law in Europe and its Peripheries 1789–1950 (2023) (concerning the history of property).

[86]*See* PRA, *supra* note 8; The Espionage Act, *supra* note 13.

[87]*See The Presidential Records Act*, Nat'l Archives (last accessed Dec. 22, 2025), https://www.archives.gov/news/topics/presidential-records-act; *see also* Sara Dorn, *Trump Blasts Jack Smith as a 'Deranged Lunatic' in Social Media Tirade—But Plays It Cool on*

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Not enough time had passed since the outgoing president left office and stored the documents in his bathroom, so the president could hardly claim a transfer of ownership by adverse possession under the rules of common law, *usucapio* in Roman Law.[88] Furthermore, since the Watergate scandal and the Supreme Court's decision that then President Richard Nixon was obliged to hand over the tape recordings, the argument that the outgoing president acquired the government documents in good faith would, or should, not stand up in court. Although possession usually gives a "strong right"—because the common law is more "pragmatic" in this respect than, say, § 903 of the German Civil Code— the PRA explicitly excludes ignorance of the relevant provisions as a justification for acquisition *bona fide*.[89]

No matter how you twist and turn the arguments of liberal philosophers and legal theorists on the dichotomy of public/private property, they will not provide the outgoing president with a narrative of justification. So, Trump should actually be more interested in obscuring their versions of the distinction, since they draw and defend precisely the boundary between public and private he has repeatedly tried to cross. At best, Thomas Hobbes,[90] with his 'natural' "right of everyone to all things,"[91] could be called upon as an ally. While this right would hardly be of any help with the immunity narrative, where help is not currently sought anyway, it could—tentatively—be brought into play with regard to the documents. Admittedly, even Hobbes, despite his sympathy for the "engineers of the right order"[92] and their disregard for ethics, would probably point out that there is no private property that takes precedence over the property rights of the state. Hobbes would likely add the argument that, after the conclusion of the social contract "all property relations are determined by the sovereign."[93] After the end of the president's term in office, however, this position was *passé* at least for the time being. No chance for any "possessive illiberalism" then.[94] Unless, that is, the United States Government found itself in a state of nature after the former president's return to office.

Even in a state of nature, John Locke's theory of property[95] would not give the president a natural right to retain classified information once it had already been legally defined as public—

Golf Course After Mar-a-lago Indictment, FORBES (June 9, 2023), https://www.forbes.com/sites/saradorn/2023/06/09/trump-blasts-jack-smith-as-deranged-lunatic-in-social-media-tirade-but-plays-cool-on-golf-course-after-mar-a-lago-indictment/.

[88]*See* James Y. Stern, *The Essential Structure of Property Law,* 115 MICHIGAN L. REV. 1167 (2017) (regarding adverse possession); DI ROBILANT, *supra* note 84 (regarding the same).

[89]PRA, *supra* note 8; *see* Bürgerliches Gesetzbuch [BGB] [Civil Code], § 903, https://www.gesetze-im-internet.de/englisch_bgb/index.html (Ger.).

[90]Who hardly qualifies as a liberal thinker though.

[91]THOMAS HOBBES, *Part 1 – Of Man*, *in* LEVIATHAN: OR THE MATTER, FORME, AND POWER OF A COMMON-WEALTH ECCLESIASTICALL AND CIVILL 6–7 (Ian Shapiro ed. Yale Univ. Press 2010) (1651); 2 THOMAS HOBBES, DE CIVE: LATIN VERSION 95, para. 10 (Howard Warrender ed., Clarendon critical ed. Oxford Univ. Press 1983) (1642).

[92]*See generally* JÜRGEN HABERMAS, KNOWLEDGE AND HUMAN INTEREST (Jeremy J. Shapiro trans., Beacon Press 1971) (1968); James Gordon Finlayson & Dafydd Huw Rees, *Jürgen Habermas*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta & Uri Nodelman eds., Sept. 15, 2023), https://plato.stanford.edu/entries/habermas/#TranWork1971/.

[93]*See* Benjamin B. Lopata, *Property Theory in Hobbes*, 1 POL. THEORY 203, 205 (1973); *see generally* David Gauthier, *Hobbes on Sovereign Authority: How the Right of Nature Becomes Sovereign Right*, *in* SOVEREIGNTY AND THE NEW EXECUTIVE AUTHORITY 3 (Claire Finkelstein & Michael Skerker eds. 2018).

[94]*See* MACPHERSON, *supra* note NOTEREF _Ref229436199 \h 46 (creating the term "possessive illiberalism" by combining Macpherson's "possessive liberalism" and the more recent turn to illiberalism); Günter Frankenberg, *Exploring the Topography of the Authoritarian: Populism, Illiberalism, and Authoritarianism*, 2 J. ILLIBERALISM STUD. 1 (2022) (discussing the more recent turn to illiberalism).

[95]JOHN LOCKE, TWO TREATISES OF GOVERNMENT [1690] (with an Introduction by Peter Laslett, 1960) §§ 25–51; *see* also Alex Tuckness, *Locke's Political Philosophy*, STAN. ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta & Uri Nodelman eds., revised Oct. 6, 2020), https://plato.stanford.edu/entries/locke-political/ (last visited May 4, 2026).

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US—property. The philosopher never approved of efforts to include objects belonging to other persons or institutions in the "realm of the *suum*."[96] Instead, Locke believed that people in a state of nature must primarily be able to "acquire" through work the things necessary for their livelihood.[97] While access to government documents under a freedom of information act is important for democracy, the documents are hardly necessary to sustain the livelihood of a former president.[98] According to Locke and relevant U.S. law, the documents could not be appropriated and "privatized." Without perversion they could not be made the "private property" of the then-former president, such as the Lockean "fruits" and "animals."[99]

II. Second Reading: Authoritarian

To justify keeping secret documents in his private residence, the Trump claimed, to repeat, that they were his private property—in conformity with the PRA, while the Espionage Act did not apply to him as president. This defense—relying on quadrant 2 of the matrix—is hardly conclusive, because contrary to the opinion of the President and his lawyers, the PRA does not grant a departing president "unverifiable discretionary power" to classify US documents as personal.[100]

It is unlikely that the President or his legal team recognized or were concerned that this defense, located in the second quadrant, could reveal a structure of authoritarianism.[101]

Withholding and mishandling classified documents may not only reveal a character flaw and negligence, but also and above all this practice shows the casual transformation of public power into private property that presupposes an understanding the office of president as a personal asset. The events following the lost election illustrate an authoritarian mindset and logic of power, even if the decision of the conservative majority of the Supreme Court on immunity points in a different direction. After a flood of baseless lawsuits against the election results failed, the defeated incumbent even pressured election officials to commit electoral fraud.[102] Contrary to all evidence, he claimed the election had been stolen, insisted on repeated recounts, and defended what he believed to actually *belong* to him—the presidency.

After being abandoned by the majority of voters, Congress, and judges in the courtrooms in 2020, the President decided on January 6, 2021, at the "Save America" rally, to take the last remaining option and stage a 'postmodern' coup,[103] which he had previously warned about.[104]

[96]*See* Karen Vaughn, *John Locke's Theory of Property: Problems of Interpretation*, 3 Literature of Liberty: A Rev. of Contemp. Liberal Thought, 1980, at 13–14, n.9. n.10.

[97]*Id.*; Locke, *supra* note 95, at § 27.

[98]*See* The Freedom of Information Act, 5 U.S.C. § 552 (1967) (amended 2016).

[99]Locke, *supra* note 95, at §§ 25–51, 123–26.

[100]*See* PRA, *supra* note 8.

[101]Günter Frankenberg, Authoritarianism: Constitutional Perspectives 134–170 (2021).

[102]Brad Raffensperger, Integrity Counts (2021) (providing an instructive memoir by the Georgia Secretary of State).

[103]Whether the defeated incumbent's speech on January 6, 2021, and his earlier statements in the days leading up to it, can be considered incitement to commit a crime in the technical sense, i.e., as a call to others to commit a crime, remains an open question at this time. Politically, there can be no serious doubt that his inflammatory rhetoric incited the mob that stormed the Capitol. *See* Maggie Haberman, *Trump Told Crowd 'You Will Never Take Back Our Country With Weakness'*, The New York Times (Jan. 15, 2021), https://www.nytimes.com/2021/01/06/us/politics/trump-speech-capitol.html; Timothy W. Luke, *Democracy Under Threat After 2020 National Elections in the USA: 'Stop the Steal' or 'Give More to the Grifter-in-Chief?'*, 55 Educ. Phil. & Theory 551 (2021); *see generally* Paula Diehl, *Media Entertainment and Right-Wing Authoritarian Political Ideas, an Example: The Storming of the Capitol*, *in* Drivers of Authoritarianism: Paths and Developments at the Beginning of the 21st Century 329 (Günter Frankenberg & Wilhelm Heitmeyer eds., 2024).

[104]David Nakamura, *With Brazen Assault on Election, Trump Prompts Critics to Warn of a Coup*, The Washington Post (Jan. 5, 2021), https://www.washingtonpost.com/politics/trump-election-coup/2021/01/05/26afcfc0-4f6c-11eb-bda4-615aaefd0555_story.html; *Trump Keeps Warning of a Coup. But the Only One in American History Was a Bloody, Racist Uprising*, The Washington Post (Feb. 20, 2019), https://www.google.com/search?q=news+article+%22Trump+keeps+warning+of+a+coup%22&oq=news+article+%22Trump+keeps+warning+of+a+coup%22&gs_lcrp=

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"Take back your country" was the proprietary rhetorical move to regain the President's lost property—his power.[105] Encouraged and incited by their idol, far-right leaders and their cohorts such as the Oath Keepers and the Proud Boys first besieged the U.S. Capitol, then overwhelmed the security forces—who were bereft of the support of the National Guard—stormed Congress, and vandalized the building to prevent the counting of the Electoral College votes.[106] All that just to restore the authoritarian order, that is, the privately owned office of the former president.[107] After "ruling by cheating"[108] and "autocratic hedging,"[109] the defeated incumbent followed the path of other autocrats—over a hundred since 1946—who had seized power from a legitimate government through an *autogolpe*, or at least attempted to do so.[110] If necessary, they were prepared to lift or ignore term limits by making the necessary cosmetic constitutional changes, assigning compliant party cadres to the task, or openly disregarding constitutional rules. These avenues were closed to the outgoing president. Nor could Trump transfer his office to a person he trusted, just as owners transfer their property, to ensure the continuity of authoritarian rule.

When the public/private distinction is not merely translated into a physical or symbolic space, but is based on a power structure of crude politics, any justification in the dispute over the classified documents is bound to fail. Courts might have accepted that the boxes and their contents were private and could therefore be lawfully stored in a private bathroom before the ruling on Nixon's White House tapes. After the Watergate trauma in 1973, which led to *United States v. Nixon* and the passage of the PRA, even a government majority on the Supreme Court could not overlook the perversion of the *public/private distinction* in this dispute and decide that, within the scope of their powers, a sitting or unseated president could reclassify government documents as private property in clear violation of the law.

III. Third Reading: Perspective

Regardless of the legal situation following the intervention of Federal District Court Judge Aileen Cannon and after the Justice Department dropped the case against the defendant[111] because of its "longstanding policy" that a sitting president should not be prosecuted,[112] the former and re-elected president might still be tempted to hold on to the idea of the documents being private, as suggested by the authoritarian interpretation of the case. To avoid the legal consequences discussed above, a president would have to change the legal nature of the storage location and declare the bathroom, and ballroom, to be public though.

The space/documents combination would then place this idea in quadrant No. 3 of the matrix, which, incidentally, would confirm the defeated incumbent's and also re-elected president's

EgZjaHJvbWUyBggAEEUYOTIHCAEQIRiPAjIHCAIQIRiPAtIBCDY3NTNqMGo0qAIBsAIB8QU6jKnR7Dlxog&sourceid=chrome&ie=UTF-8.

[105]*See* Haberman, *supra* note 103.

[106]See *Jan. 6 Archive*, NPR, https://apps.npr.org/jan-6-archive/.

[107]*See generally* Diehl, *supra* note 103.

[108]ANDRÁS SAJÓ, RULING BY CHEATING: GOVERNANCE IN ILLIBERAL DEMOCRACY (2021).

[109]*See generally* Alvin Camba & Rachel A. Epstein, *From Duterte to Orbán: The Political Economy of Autocratic Hedging*, 26 J. INT'L RELS. & DEV'T 347 (2023); İpek Çınar, *Riding the Democracy Train: Incumbent-Led Paths to Autocracy*, 32 CONST. POL. ECON. 301 (2021).

[110]*See generally* John J. Chin, David B. Carter & Joseph Wright, *The Varieties of Coups D'état: Introducing the Colpus Dataset*, 65 INT'L STUD. Q. 1040 (2021); Arthur A. Goldsmith, *Power Grabs from the Top: A Data Base of Self-Coups*, 68 INT'L STUDIES Q. (2025).

[111]Carrie Johnson, *Special Counsel Jack Smith Taking Steps to Wind Down Federal Cases Against Trump*, NPR (Nov. 6, 2024), https://www.npr.org/2024/11/06/g-s1-33021/trump-trials-jack-smith-election-2024.

[112]Carrie Johnson, *Court Drops Remaining Classified Documents Appeal Against Trump's Aides*, NPR (Feb. 11, 2025), https://www.npr.org/2025/02/11/nx-s1-5293113/trump-document-case-nauta-de-oliveira/.

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preference for claims about "post-truth"[113] and "fake facts."[114] Needless to say, to characterize the bathroom at Mar-a-Lago as public the owner of the premises would have to grapple with the findings of *toiletology* and an authoritative statement as well as a definition presented at the 1995 International Symposium on Public Toilets in Hong Kong:

> [A] [t]oilet is part of history of human hygiene which is a critical chapter in the history of human civilisation and . . . cannot be isolated to be accorded unimportant position in history. [. . .] Community toilets are toilets shared by a group of households in a community. In some cases each household will have a key to one of the toilets within a block: this may be one toilet per household, or one toilet for a group of households. Communal toilets may be owned by the group of households. Public toilets are toilets open to anybody, in public places or in residential areas: Typically, there will be a charge for each use. Sometimes charging will be monthly: each user pays for a monthly ticket. Users of public toilets will generally feel less 'ownership' than users of communal toilets.[115]

This view has been confirmed worldwide and historically substantiated.[116] Despite some excursions into eccentricity and variations in design and construction, indoor toilets or bathrooms, as seen in Mar-a-Lago, have been considered private places for centuries. This is true even when they were set up as outbuildings with no physical connection to the main house. There is evidence that toilets were, and still are, sometimes used for individual spiritual contemplation. It was on a toilet that Martin Luther, as he—actually or presumably—claimed, received the idea of "salvation through faith alone."[117]

In stark contrast to this spiritual location, a public toiled is a mostly walled room or small building with toilets or urinals, pissoirs in France, and washbasins for use by the general public. A

[113]In philosophy and communication theory, post-truth generally refers to the widespread documentation and concern in the 21st century about disputes over public claims to truth. Its academic development is driven by theories and research that explain the historically specific causes and effects of the phenomenon. *See generally* MICHIKO KAKUTANI, THE DEATH OF TRUTH: NOTES ON FALSEHOOD IN THE AGE OF TRUMP (2019); Emanuel Adler & Alena Drieschova, *The Epistemological Challenge of Truth Subversion to the Liberal International Order*, 75 INT'L ORG. (SPECIAL ISSUE) 359 (2021) (being less apocalyptic than *The Death of Truth*); Jayson Harsin, *Post-Truth and Critical Communication Studies*, OXFORD RSCH. ENCYCLOPEDIA COMMC'N (Dec. 20, 2018), https://oxfordre.com/communication/display/10.1093/acrefore/9780190228613.001.0001/acrefore-9780190228613-e-757.

[114]Jane C. Timm, *Trump Versus the Truth: The Most Outrageous Falsehoods of his Presidency*, NBC (Dec. 31, 2020), https://www.nbcnews.com/politics/donald-trump/trump-versus-truth-most-outrageous-falsehoods-his-presidency-n1252580; *see generally* KATHARINA NOCUN & PIA LAMBERTY, FAKE FACTS: WIE VERSCHWÖRUNGSTHEORIEN UNSER DENKEN BESTIMMEN [FAKE FACTS: HOW CONSPIRACY THEORIES SHAPE OUR THINKING] (2020) (Ger.); Svend Erik Larsen, *Taking Responsibility for the Pasts*, 15 PÓLEMOS 191 (2021).

[115]Bindeshwar Pathak, *History of Toilets* (INT'L SYMP. ON PUB. TOILETS, 1995), https://www.ircwash.org/resources/history-toilets-paper-presented-international-symposium-public-toilets-hong-kong-may-25-27; *The Men That Made the Water Closest*, PLUMBING & MECH. MAG. (July 12, 2000), https://www.pmmag.com/articles/91499-the-men-that-made-the-water-closet; *see* Sam Drabble & Akhilesh Gautam, *A Ward-by-Ward Approach to Eliminating Open Defecation: Experience from Visakhapatnam, India*, *in* WATER & SANITATION FOR THE URB. POOR (Topic Brief, Feb. 2017), https://wsup.com/wp-content/uploads/2017/08/02-2017-A-ward-by-ward-approach-to-eliminating-open-defecation.pdf.

[116]*See generally A Brief History of the Flush Toilet*, BRIT. ASS'N OF UROLOGICAL SURGEONS (last visited Dec. 27, 2025), https://www.baus.org.uk/museum/164/a_brief_history_of_the_flush_toilet/; JAN CARSTENSEN & HEINRICH STIEWE, ORTE DER ERLEICHTERUNG: ZUR GESCHICHTE VON ABORT UND WASSERKLOSETT [PLACES OF RELIEF: ON THE HISTORY OF THE TOILET AND WATER CLOSET] (2016) (Ger); Bettina Möllring, Toiletten und Urinale für Frauen und Männer: die Gestaltung von Sanitärobjekten und ihre Verwendung in öffentlichen und privaten Bereichen (Aug. 1, 2003) (Ph.D. dissertation, University of Art Berlin) (Kooperativer Bibliotheksverbund Berlin-Brandenburg (KOBV) [Cooperative Library Network Berlin-Brandenburg]), https://opus4.kobv.de/opus4-udk/files/8/moellring_bettina.pdf (Ger.); WORLD TOILET ORG., *Our Case Studies*, https://worldtoilet.org/casestudies-main/.

[117]*See* Matt Lewis, *From Filthy Streets to the First Flush: A Brief History of Toilets*, HISTORYHIT (Mar. 22, 2022), https://www.historyhit.com/the-history-of-the-toilet/; Ron Ferguson, *Martin Luther's Toilet Unearthed*, HIST. NEWS NETWORK (Nov. 11, 2004), https://www.historynewsnetwork.org/article/martin-luthers-toilet-unearthed/.

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public toilet went through many onomatological changes, from the former latrine and public lavatory to the public toilet facility, and multiple synonyms: bathroom in American English; public bathroom; comfort room in the Philippines; powder room, a polite term for a ladies' or guest toilet; restroom, a more formal term; lavatory; retirade, a formerly common French-Italian term; WC; or washroom, usually in the commercial context. Ergo, customers, travelers, employees, students, prisoners, museum visitors, and many others[118] now have access to facilities that guarantee a certain degree of privacy in public.

Toilets, especially public ones, are subject to a range of regulations, often found in building codes, industry standards, and guidelines relating to construction, hygiene, performance, for example, flushing and waste disposal, maintenance, usage fees, and number in public areas, etc. Even the World Health Organization has issued guidelines, accordingly: "Toilets should be … [s]uitable, private and safe to use for all intended users, taking into consideration their gender, age and physical mobility (e.g. disabled, sick, etc.)," and "[a]ll shared or public toilets should have … doors that can be locked from the inside, and lights."[119]

With a wild, post-factual, alternative, and almost Nietzschean twist, the defense in the classified documents case could have argued, when it was still relevant, that all insights and ideas—including the concept of a bathroom, toilet, or washroom—are the result of a particular perspective, hence there are many possible perspectives from which a truth could be inferred or a value judgment made. As a conclusion, they could have claimed that there is no objective truth to the statement that the toilet at Mar-a-Lago is functionally integrated into the owner's private space. If there is neither a "true" view nor a single hermeneutic interpretation that covers the world of toilets, then also any outgoing president could argue that they simply have a different perspective on the documents.

Nevertheless, the President's "perspectival" interpretation—whether Nietzschean,[120] Latourian,[121] or otherwise—would have to contend with the widely accepted notion that not all perspectives are equally valid, including those that concern the distinction between private and public property and its use. At the core of Nietzschean perspectivism, one learns, lies a minimum of realism: "There is only perspectival seeing, only perspectival 'cognition'; and the more emotions we express about a thing, the more eyes, different eyes, we know how to use for the same thing, the more complete our 'concept' of this thing, our 'objectivity,' will be."[122]

If, therefore, it is fair to assume that even perspectivism requires a modicum of realism for the production of knowledge, then the President's assertion that the documents are private and his bathroom is public, quadrant No. 3, should collapse in a similar way to how Bruno Latour never denied gravity, but understood it metaphorically.[123]

And what if the former and now incumbent President had cared little about the public or private nature of his bathroom? Even then, the argument that the documents were stored in a toilet intended for public use would hardly be tenable. And the President himself would run the

[118]In the past, toilets were usually divided into men's and women's toilets, but more recently they have been opened up for unisex or multigender use.

[119]*Guidelines on Sanitation and Health*, World Health Org. 32, 34 (WHO) (2018), https://iris.who.int/server/api/core/bitstreams/2f17fb04-1425-4680-bf39-d5bb6da0b7ed/content.

[120]*See generally Tracy B. Strong, Text and Pretexts: Reflections on Perspectivism in Nietzsche*, 13 Pol. Theory 164 (1985); Nietzsche, *infra* note 122.

[121]*See e.g.*, David Papineau, *The Truth is Out There*, Times Literary Supplement (Aug. 2022), https://www.the-tls.com/philosophy/contemporary-philosophy/perspectival-realism-michela-massimi-book-review-david-papineau

[122]Friedrich Nietzsche, On the Genealogy of Morals § 12 (Douglas Smith ed. & trans., Oxford Univ. Press 1996) (1887); Colin Wight, *Post-Truth, Postmodernism and Alternative Facts*, 26 New Persps. 17 2018).

[123]On Bruno Latour, see Ava Kofman, *Bruno Latour, the Post-Truth Philosopher, Mounts a Defense of Sciences*, New York Times Mag. (Oct. 25, 2024), https://www.nytimes.com/2018/10/25/magazine/bruno-latour-post-truth-philosopher-science.html.

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risk of falling into a category once introduced by the philosopher Harry Frankfurt—the bullshitter.[124]

IV. Fourth Reading: Symbolic

Under the highly counterfactual assumption in this case that raw politics and greed are not the only personal characteristics of a president and that the judicial administration of justice still functions reasonably well, it would have been possible for the—former—defendant, if necessary,[125] to seek final salvation from criminal prosecution—or else to pardon himself.[126] Another option would be to clear his name in some other way,[127] if that were still conceivable and called for. In any case or rather for the purpose of this text, Trump could invoke the doctrine of immunity, which works in his favor anyway, and argue that both the boxes containing the documents and the bathroom are legal fictions emanating from the public domain. With this argumentative move, the defense would resort to quadrant No. 4 of the matrix.

At first glance, this strategy seems absurd. It would have the advantage, though, of shifting the controversy over the classified materials and the interpretation of presidential immunity into the symbolic dimension. It is true that realpolitik has little to do with a symbolic shift of the public/private distinction à la quadrant No. 4. It is also true that realpolitik finds no resonance in the wording and purpose of the Presidential Records Act and the Espionage Act.[128] Nevertheless, salvation could lie in the field of political theology.[129] Of course, this would require accepting the assumption that the body and even the bathroom of a president have a dual nature. This would then clear the way to invoking the—admittedly medieval—doctrine of the *two bodies of the king*—supplemented by the two natures of his bathroom—and tentatively update it in three steps as follows.

Firstly, this argument would transfer the legal distinction made by medieval political theology between the natural and mortal, private, body of a king and his spiritual body, or "body

[124]Harry G. Frankfurt, On Bullshit 50–53 (2005).

[125]The case involving the secret documents was dropped after the re-election of the Trump. As a result of this election in November 2024, prosecutor Jack Smith announced on November 25 that he would withdraw the appeal. The court dismissed the appeal on November 26, 2024. *See US Court Dismisses Appeal in Trump Classified Documents Case*, Reuters (Nov. 26, 2024), https://www.reuters.com/world/us/us-court-dismisses-appeal-trump-classified-documents-case-2024-11-26/; Eric Tucker, *Justice Department Drops Criminal Proceedings Against Trump Co-Defendants in Classified Records Case*, Associated Press (AP) (Jan 29, 2025), https://apnews.com/article/trump-justice-department-classified-documents-c887926663beeb5a04d45c7c896609ba.

[126]*See* Ilya Shapiro, *The President Can Self-Pardon, But it Would Be an Impeachable Offense*, CATO Inst. (Dec. 15, 2020), https://www.cato.org/commentary/president-can-self-pardon-it-would-be-impeachable-offense. See also the long list documenting the incumbent president's clemency practice, *Clemency Grants by President Donald J. Trump (2025-Present)*, U.S. Dep't Just. Off. Pardon Att'y (last accessed Dec. 26, 2025), https://www.justice.gov/pardon/clemency-grants-president-donald-j-trump-2025-present; Kyle Cheney, *The President Pardons Top Allies Who Aided Bid to Subvert the 2020 Election*, Politico (Nov. 10, 2025), https://www.politico.com/news/2025/11/10/trump-pardons-top-allies-who-aided-bid-to-subvert-the-2020-election-00644198.

[127]*See generally* Klaus Günther, *Kritik der Strafe I [Critique of Punishment I]*, *in* 1 WestEnd: Neue Zeitschrift für Sozialforschung [WestEnd: New J. for Soc. Rsch.] 117 (2004) (Ger.) (critiquing criminal punishment or denying responsibility); and Klaus Günther, *Kritik der Strafe II [Critique of Punishment II]*, *in* 1 WestEnd: Neue Zeitschrift für Sozialforschung [WestEnd: New J. for Soc. Rsch.] 131 (2005) (Ger.); Chris Maxwell, *Criminal Responsibility and Human Capacity: Why Impaired Mental Functioning Affects Moral Culpability*, 30 Psychiatry, Psych. & L. 4 (2023) (concerning responsibility); Nikola R. Hajdin, *Attributing Criminal Responsibility for the Crime of Aggression*, 51 Ga. J. Int'l & Compar. L. 1 (2022), https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2555&context=gjicl.

[128]PRA, *supra* note 8; Espionage Act, *supra* note 13.

[129]*See generally* Carl Schmitt, Political Theology: Four Chapters on the Concept of Sovereignty (George Schwab trans., Univ. Chicago Press 2006) (1922).

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politick"[130]—contrary to the secularization of rulership—*mutatis mutandis* to the body of a sitting or outgoing U.S. president.

Secondly, the toilet in the residence of an incumbent or outgoing president would reflect the dualism of the president's two bodies, provided no distinction is made between the private "natural body" and the spiritual "political body" upon its use.

Thirdly, the dualism should therefore also apply to the space that is inevitably located within the "outer sphere" of a president's duties.[131] Thus, one could conclude that it is primarily public because it serves a former office holder who still has the right to be addressed as "Mr. President" and enjoys far-reaching immunity: "A former President is entitled to absolute immunity from damages liability for acts within the 'outer perimeter' of his official responsibility."[132]

We do not know, nor will we ever know, how Ernst Kantorowicz—or his critics—would interpret this problem and the technique to solve it. It is impossible to say with certainty whether the groundbreaking and fascinating treatise on *The King's Two Bodies*,[133] which reconstructs the origins and facets of once influential legal doctrines of common law, could be updated in light of, say, the immunity ruling and be applied, at least as an ironic punchline, to the case of the classified documents. For the sake of the monarchy and to resolve property disputes, medieval common law, as we learn from Kantorowicz, distinguished between the roles of monarch and landowner. The king as feudal lord, with a small "k," could sell property as long as it was considered private. In contrast, the King as Crown, with a capital '"K,"' was prohibited from selling crown lands, as these were legally deemed public.[134]

> First were the lands the King held as feudal lord. These he could alienate as private property. But increasingly, English law defined a second category of crown lands—in essence, public lands—which he could not alienate. Here we see an example of the gradual emergence of a distinctively public realm, which in the field of crown ownership of land finally crystallized in seventeenth-century struggles over the King's power to alienate land between high and low watermark.[135]

Ernst Kantorowicz examined the vocabulary and techniques developed by medieval theologians and jurists to "defeat death" and "extend physical existence far beyond the limits of the flesh."[136] The legal fiction of two bodies relied on notions of time and narrative to settle disputes over property rights under customary law while preventing the squandering of the Crown's property. What Frederic Maitland had called the abstract "metaphysical ... nonsense" of constitutional history[137] was explained by Kantorowicz as a mystical fiction with theological roots that was applied by Tudor jurists to rather concrete property conflicts[138] and then—unconsciously—

[130]*See generally* 2 Edmund Plowden, The Commentaries, Or Reports by Edmund Plowden (Creative Media Partners 2018) (1597); A. N. McLaren, Political Culture in the Reign of Elizabeth I: Queen and Commonwelath 1558–1585 100 (1999). First and foremost, see Ernst Kantorowicz, The King's Two Bodies: A Study in Medieval Political Theology (Princeton Univ. Press 1994) (1957). *See also* Stephen Greenblatt, *Introduction: Fifty Years of The King's Two Bodies*, 106 Representations 63–66 (2009); Kristin Marek, Die Körper des Königs: Effigies, Bildpolitik und Heiligkeit [The Bodies of the King: Royal Effigies and Holiness in Late Medieval England] (2009) (offering criticism of Kantorowicz's interpretation of the "sacred body.").

[131]*See Trump*, 603 U.S. 593 (referring to the terminology of the Supreme Court's immunity ruling).

[132]*Trump v. United States*, 603 U.S. at 594 (citing *Fitzgerald*, 453 U.S. at 756)).

[133]*See* Kantorowitz, *supra* note 135.

[134]*See generally* J.G. Allen, *The Office of the Crown*, 77 Cambridge L. J. 298 (2018) (providing a detailed discussion of the relevant doctrines).

[135]Horwitz, *supra* note 58.

[136]Kantorowicz, *supra* note 130

[137]F. W. Maitland, The Crown as Corporation, 17 Law Q. Rev. 131, 134 (1901); *see* Maura B. Nolan & F.W. Maitland, *Metaphoric History: Narrative and New Science in the Work of F.W. Maitland*, 118 PMLA 557 (2003).

[138]*See generally* Martti Koskenniemi, To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300 (2021) (providing a monumental study of the internal relationship between sovereignty and

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Figure 4. *America* by artist Maurizio Cettalan.[139]

transferred to the myth of the state[140] as a public *body politic*. Thus, the separation between public and private was closely linked to the estate, power, and property of the monarch and was more symbolic than spatial in nature. In his fascinating treatise Kantorowicz demonstrated how the myth was translated into a complex web of doctrines in private law, particularly in debt and property law.

While the separation between public and private life of royals in the Tudor era and the political-theological distinction between their mortal "natural body" and the immortal, symbolic "political body" can hardly be transferred one-to-one to today's presidents, two principles of that time are still instructive. On the one hand, the mantra of the "King can do no wrong" finds its secular echo in the immunity rule of the Supreme Court.[141] "Rex non potest peccare," the Latin version, rose from its common law context to the status of a doctrine of sovereign immunity.[142] The figure of the ruler who is immune from criminal and civil prosecution, regardless of his sins, is entirely consistent with some presidents' understanding of their office—and their self. On the other hand, medieval law in England might be relevant here in so far as it distinguished, from Kantorowicz's perspective, between forms of property—ownership of land as a material thing and ownership of the kingdom as an immaterial, symbolic *corpus*. It is therefore possible, if certainly contested, to conclude that property, not really the king, was and has always remained at the heart of the public/private distinction.[143]

Nonetheless, the doctrine of the *King's Two Bodies* is far too finely spun and its legal doctrines are certainly too complex and symbolically charged to be applied to the casual practice of today's

property. Property conflicts were sparked by land enclosure, church land seizures, feudal tensions, challenges to royal succession, monarchs' land sales, and other constellation).

[139]In 2016 Cattelan made two copies. One of them was auctioned at Sotheby's and purchased by the US entertainment franchise Ripley's Believe It or Not! for $12.1 million US Dollars. Ripley's announced that it would initially display the toilet, but was considering making it accessible again. *See Klos in der Kunstgeschichte: Aus Scheiße Gold machen [Toilets in Art History: Turning Shit into Gold]*, MONOPOL MAGAZIN (Nov. 13, 2025), https://www.monopol-magazin.de/klo-kunstgeschichte-aus-scheisse-gold-machen; Zachary Small, *Believe It or Not, That $12 Million Gold Toilet Was Bought by . . . Ripley's*, THE NEW YORK TIMES (Nov. 19, 2025), https://www.nytimes.com/2025/11/19/arts/design/gold-toilet-owner-ripleys.html.

[140]*See generally* ERNST CASSIRER, THE MYTH OF THE STATE (Yale Univ. Press 2009) (1946).

[141]*See Trump v. United States*, 603 U.S. 593.

[142]Jed. S. Rakoff, *The Last of His Kind*, NEW YORK REV. (Sep. 26, 2019), https://www.nybooks.com/articles/2019/09/26/john-paul-stevens-last-of-his-kind/.

[143]*See* Brett Edward Whalen, *Political Theology and the Metamorphoses of* The King's Two Bodies, 125 AM. HIST. REV. 132, 125 (2020).

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materialistic *zeitgeist*. Even if the mythical narrative may appeal to an indicted president, medieval legal doctrines on property rights neither justify the illegal privatization of public documents nor magically transform a private toilet into a public one. Accordingly, quadrant No. 4—like any of the other quadrants—does not give a president the right to keep and store classified state documents in a private bathroom.

Ultimately, a head of state to whom fell the bonanza to reshape the Supreme Court and federal courts, as they please, can only turn to his appointees—much like even a King with a capital K has to turn to their loyal barons and servants, which, history shows,[144] is not without risks. However, the King cannot seriously expect the *law* to grant him what the legislature has already denied every incumbent or outgoing president. At the end of the day, the classified documents of the US remain public property, regardless of the publicness or privateness of the Mar-a-Lago bathroom.

E. Epilogue: "Ripley's Believe It or Not"

One of the two toilets made of solid 18-karat gold, created by Italian artist Maurizio Cattelan and christened *America*, was once installed for public use in the restrooms of the Guggenheim Museum in New York City.[145] It was later offered to the U.S. President after his request to borrow Vincent Van Gogh's Landscape with Snow had been turned down.[146] Trump did not accept the offer, perhaps because he saw through its irony—but could hardly "read" it as a veiled ironic commentary on the case of the classified documents and the distinction between public and private. Cattelan's *America* then found a new—again public—home at Blenheim Palace, the birthplace of William Churchill.[147] In the museum located there, the fully functional toilet *America* was accessible to all visitors as an object of art before it may be again relocated to serve, in a quiet place, its intended purpose. Of course, what the artist had created as a public statement on the contrast between excessive wealth and extreme poverty in the United States and the inequality between the classes mutated in Blenheim into a series of "private comments" on British history, "disposed of" by museum visitors and users. In 2019, a theft that has not yet been solved led to the illegal privatization of the Blenheim golden toilet and abruptly ended its public existence, much like the removal of a president from office. A sibling will replace it and will be displayed first—and later, maybe, made accessible as a functional toilet.

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[144]*See generally* RALPH TURNER, MAGNA CARTA (2003) (describing how the Magna Carta when the rebel barons forced the unpopular king John to sign the document at Runnymede. The forced treaty magically survived as an icon of liberty); Max Radin, *The Myth of Magna Carta*, 60 HARV. L. REV. 1060 (1947) (discussing the same).

[145]Lena Dillenburg, *Ein goldenes Klo, mehr wert als ein Van Gogh [A Golden Toilet, Worth More Than a Van Gogh*, DER SPIEGEL (Nov. 16, 2025), https://www.spiegel.de/panorama/sothebys-goldene-toilette-america-soll-fuer-rund-zehn-millionen-dollar-versteigert-werden-a-25029c6c-3cfa-4774-b14a-ce54fc3cac1e/.

[146]Paul Schwartzman, *The White House Asked to Borrow a van Gogh. The Guggenheim Offered a Gold Toilet Instead*, THE WASHINGTON POST (Jan. 25, 2018), https://www.washingtonpost.com/local/dc-politics/the-white-house-wanted-a-van-gogh-the-guggenheim-offered-a-used-solid-gold-toilet/2018/01/25/38d574fc-0154-11e8-bb03-722769454f82_story.html.

[147]*See* Clodagh Stenson, Jonathan Eden & William McLennan, *The Inside Story of Blenheim's Gold Toilet Heist*, BBC (Mar. 18, 2025), https://www.bbc.com/news/articles/cjev7vn4qp0o.

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