Annual Review of Political Science

The US Presidency: Power and Constraint

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The *Annual Review of Political Science* is online at polisci.annualreviews.org

https://doi.org/10.1146/annurev-polisci-051120-113134

Keywords

presidency, democracy, Constitution, Trump, executive power, unitary executive

Abstract

How much should we fear that a president will break the law to pursue power—then use their office to avoid legal accountability? Political scientists studying the presidency have often overlooked the risk of what we here call a criminal president. Donald Trump's presidency spotlighted that risk and has begun to shift the field's focus toward not just presidential power but presidential constraints. We believe this shift should continue. In this review, we aim to set an agenda that makes the danger of a criminal president central to understanding the presidency more broadly. Situating the criminal presidency within wider questions about legal and constitutional constraints on presidential power, we emphasize the unique risks to democracy that a president unbound by law can pose. We call for a greater focus on the legal rules governing the executive branch—especially unitary executive ideas—and the policies needed to hold criminal presidents accountable.

INTRODUCTION

Political scientists studying the presidency can affect politics. When Richard Nixon was elected in 1968, his chief of staff made aides read Richard Neustadt's *Presidential Power* (1960). After Nixon resigned in disgrace, one ex-aide told Neustadt, "You have to share the responsibility" for the administration's transgressions, since the book had given Nixon and aides a playbook for aggrandizing the presidency (Neustadt 1991, p. xvi). Neustadt had aimed to empower a presidency he saw as overly weak. But he learned firsthand that a president who seized that power to disregard the law could threaten the entire system.

The Watergate crisis marked a climax in a debate that traced to the Founding: How much should Americans fear a president who breaks the law to gain power—then uses the presidency to escape accountability? And how should this risk of law-breaking inform the institutional design of the executive branch? After Watergate, political actors treated this risk as monumental: Rudalevige (2005) documents a sweep of post-Nixon reforms designed explicitly to rein in a rogue president. Yet, many political scientists' responses were mixed. Nixon's criminality seemed an anomaly, not a risk inherent to the office. By the end of the twentieth century (Bowles 1999), Watergate had faded from scholarly focus, as scholars prioritized questions of presidential powers over the need for legal constraints. Though Nixon's presidency led to new limitations on the executive branch, political science did not fundamentally alter its approach to the presidency—and the specific democratic dangers posed by what we here call a "criminal president."

Today, however, Donald Trump's presidency has begun to shift the field's focus. Trump made vivid how a president who abuses the law can threaten democracy. In the wake of investigations over election interference, multiple impeachments, a violent threat to the transition of power, and ongoing lawsuits, political scientists have begun to emphasize not just how presidential power should be used but how it must be constrained (Crouch et al. 2020, Howell & Moe 2020, Skowronek et al. 2021).

We believe this development should expand. Political science should focus on the foundational risks to democracy from a president who breaks the law to gain power then uses the office to evade accountability. Specifically, drawing on the Anti-Federalists, we define a criminal president as one who commits crimes that themselves endanger the democratic republic. That is a concern familiar to comparative politics (Linz & Valenzuela 1994, Martinez 2017, Przeworski 2019). It should translate to the United States. This review aims to set an agenda for this study, calling for a focus on the dangers of a criminal president—and how legal constraints such as independent investigators can be checks in today's politics. This agenda should draw on multiple subfields within the discipline: Political theorists should study the tradeoffs between presidential power and constraint in a liberal democratic system; Americanists should analyze how structural reforms have affected the office and its growing authority; and public law scholars in political science departments should continue to join legal scholars in law schools in analyzing the legal rules governing the executive branch, especially how "unitary executive" ideas affect limits on the office.

Here, we draw on each of these areas to show how a criminal president can pose a particular risk to democracy and to argue why political science scholarship should treat that threat as crucial to understanding the office. Our review puts two presidencies—Nixon's and Trump's—at the center of our inquiry, arguing that far from being anomalies, these examples demonstrate risks to democracy that need to be brought to the forefront of the study of presidential power and constraint. In short, we treat the specific danger of a criminal presidency as a prime example of the damage a president unconstrained by constitutional rules can cause.

This review proceeds as follows. The next section highlights the Founding Era fear of a criminal president and connects that specific concern to a broader worry that a rogue president could destroy the republic. That fear subsequently faded in law and scholarship until Nixon's abuses

stirred its revival and motivated post-Watergate legal reforms. The following section turns to the reaction to the Watergate reforms in law and political science. The unitary executive theory—arguing that the whole executive branch must be accountable to the president and subject to his or her control—developed in response to what its proponents saw as excessive constraints resulting from an overreaction to Watergate. Some political scientists paralleled unitary theorists in exploring presidential powers, at times praising their expansion. Putting these trends in conversation, we to show how scholars deemphasized presidential constraint and elevated presidential powers, wrongly treating Nixon's presidency as an anomaly and thus marginalizing the danger to democracy of a criminal president.

The third section notes how Trump's presidency has shifted scholarly focus away from lamenting constraints on presidential power and toward recognizing the danger. New work has focused on the legal structure of the executive branch, calling for greater engagement with post-Watergate reforms and their adaptation to today's politics. Trump's presidency illustrates the precarity of political constraints on the office. We discuss scholarship identifying these political risks and connecting them with the lack of legal limits on the president. In conclusion, we advocate for a research agenda, spanning the discipline, that makes the downsides of an unaccountable criminal president fundamental to the way we approach studying the presidency.

HISTORICAL FEARS OF A CRIMINAL PRESIDENCY

Can American democracy persist if the nation's chief law enforcer gets away with breaking the law? This question was front-of-mind for the Founders designing the executive branch. Anti-Federalists feared a monarchical president using the position as a shield for criminal behavior (Storing 1981). Federalists, by contrast, trusted that a president would be virtuous, believing separated powers would sufficiently check a rogue president (Rossiter 1961). For nearly two centuries, Federalist trust, at least about the specific question of criminal presidencies, was thought largely vindicated. Then, in the 1970s, Richard Nixon's presidency revived this debate, highlighting the risk of a president breaking the law to pursue power—and prompting reforms to mitigate it, before the alarm again subsided. This section sets the historical groundwork for what we see as the still-present risk of a criminal president today.

Our constitutional presidency arose amid a debate about its dangers (Ketcham 2006, Storing 1981). Some Anti-Federalists feared that a president would use the office to abuse the law with impunity and potentially topple the political system. They linked these fears with their worries over monarchical ambition (Freedman 1992). Patrick Henry fretted, "If ever [the president] violates the laws," and "if he be guilty," the "recollection of his crimes" might "teach him to make one bold push for the American throne." With little power to "oppose this force," he asked, and without the president fearing "being ignominiously tried and punished, . . .[w]ill not absolute despotism ensue?" (Kaminski et al. 2009, p. 964). George Mason feared that a president "may frequently pardon crimes which were advised by himself"—an example of rejecting the limits of law. Even staunch Federalist James Madison could imagine "the president be[ing] connected in any suspicious manner with any persons," illustrating a broadly shared belief that a president might conspire with criminals and poison our politics (Tulis & Brettschneider 2020). These Anti-Federalists raise the issue of a criminal president: the concern that a president could commit crimes that threaten democracy and evade accountability, risking the collapse of the democratic system.

Most Federalists, by contrast, often stressed that the virtue of a president and informal norms would ensure legal and constitutional compliance. They argued that people chosen as president could be trusted, while too weak a presidency would preclude the "energy" and "unity" Hamilton thought an executive needed (Rossiter 1961). Moreover, they argued that political checks to constrain a president—impeachment, along with the force of the coequal branches—mitigated

this risk (Rossiter 1961). Some Framers took this thread further (Nelson 2017), even welcoming monarchical character in a president; John Adams, for example, believed a president was immune to prosecution and could subordinate the Constitution to protect the country (Freedman 1992).

The Federalists, of course, won, and the Constitution was ratified. An energetic executive was born, and the "Decision of 1789" confirmed that a president had the power to remove "Officers of the United States" at will (Bailey et al. 2013). Much ink has been spilled over presidential power and its limits since. But for the most part, the problems subsequent presidents posed revolved around policies, not the specific Anti-Federalist worry of a criminal president breaking the law to undermine the foundations of democracy. Indeed, with the Anti-Federalists the clear historical losers, they could be dismissed as paranoid or even irrelevant.

However, the Anti-Federalists' concerns did crop up in the early republic, illustrating the background risks of a powerful presidency. When President Adams signed the Alien and Sedition Acts in 1798, he showed his rejection of presidential accountability, acting to suppress dissent and sic the criminal law on critics (Brettschneider 2019, Mettler & Lieberman 2020). Despite this serious threat to accountability, a "constitutional revolution" in 1801 reversed these policies, not through judicial review or new legal limits on the president, but through the more contingent means of politics: Thomas Jefferson won the presidency, and republican (Anti-Federalist) ideas for the moment prevailed (Brettschneider 2024, Dunn 2004). Jefferson did embrace a more expansive vision of presidential power during his presidency than he had prior, though he still believed himself bound by law (Bailey 2007).

Subsequent nineteenth-century presidents generally did not raise the distinct worry of the criminal presidency; indeed, the office itself was long seen as relatively weak, not the locus of threats to the rule of law (Neustadt 1960, Tulis 1987). When presidents did push the limits of their power, it was not often via criminal actions. Andrew Jackson, for example, sought to elevate the presidency over other branches, using a speaking tour to disparage his congressional opponents and battling with the Supreme Court over constitutional authority. Still, these efforts revolved around political power—not legal immunity (Magliocca 1999, Skowronek 2020). Abraham Lincoln, in the Civil War, invoked arguably extralegal powers (called by some dictatorial) by suspending habeas corpus and shutting down newspapers. But he frequently insisted on adhering to constitutional constraints, including viewing wartime authority as temporary and requiring legal processes to end slavery (Kateb 2015, Rossiter 2002).

Additionally, as Tulis (2017) notes, only one president—Andrew Johnson—was impeached in our first 190 years of constitutional government, suggesting that at least "high Crimes" were not regular. Moreover, even Johnson's impeachment, focused on violating a law on executive branch removal but motivated by deeper opposition to Reconstruction, illustrated that norms against presidents breaking the law could at times be strong enough to thwart a crisis. Though the impeachment failed—illustrating its imperfection as a check against a dangerous president—Johnson's political career collapsed, and no prosecution was needed as he faded from public life. Other presidencies confirmed the conventional wisdom that presidents—whatever their political goals—were bound by the law: When Ulysses Grant was pulled over for a traffic violation driving his coach in Washington, he paid the fine. When Warren Harding faced corruption charges, his political prospects plummeted.

These early examples in part illustrate Tulis's (1987) view that from the Founding Era to the twentieth century, Anti-Federalist concerns largely seemed misplaced. No criminal president arose, and those who came closest were mostly thwarted by political or constitutional norms before a real threat to the system materialized. Still, the danger continued to lurk. Adams and Johnson did push the boundaries of law to evade accountability, and neither was stopped by

formal legal constraints (Adams prosecuted opponents; Johnson's impeached failed)—instead, they were stopped by resistance from other branches and the people. That resistance reinforced the idea that the president is not above the law. However, with less vigilance from an active populace, there is no guarantee that a "King John" or "King Andrew" would not have run over the republic (Brettschneider 2019, 2024).

Tulis (1987) notes a significant shift in norms beginning with President Woodrow Wilson that increased the danger of legally unconstrained power. By the twentieth century, then–political scientist Wilson's [2011 (1908)] fear was not that a president would overstep his office but that he would do too little to address the day's problems. Wilson stressed the need for a president to be a "leader," first among the branches, as the only officeholder who represented the whole polity—giving him an independent mandate to govern, perhaps beyond the Constitution. President Theodore Roosevelt had begun to use that power by creating the White House press office (Cornwell 1965), and Wilson transformed it further as president, using the rhetorical power of press briefings and direct conversations to make the president perhaps *the* central figure in politics. President Franklin Roosevelt later took this trend further: During the Depression, FDR's ability to prod public opinion spurred a "switch in time" that got the Supreme Court to capitulate to his policies (Cornwell 1965)—enacting the New Deal. Ackerman (2000) calls this a "constitutional moment" that pushed the structure of our government toward greater executive policymaking authority. Whittington (1999, p. 159) agrees that FDR finally "recast the president as leader of the national state." Katznelson (2013) charts how FDR transformed the power of the government—and the president along with it—by expanding the administrative state.

This more powerful presidency upped the potency of a potentially criminal president. As presidential power expanded, political critics did paint presidents like Wilson and FDR as quasi-dictators; but whereas the idea that Johnson had become "King Andrew" had led to his political demise, FDR has been lauded for his leadership. The Anti-Federalist fear of a criminal president seizing the throne did not stick. Indeed, despite the presidency expanding rhetorically and politically, by mid-century Neustadt (1960) still assumed a "weak presidency"—especially measured by formal powers—far from a branch whose leader could skirt the law and commence a dictatorship. Cornwell (1965, p. 7), too, believed then that the president did not "present a clear and present danger to American democracy." While the presidency had grown much in the twentieth century, especially with informal powers and a multiplying administrative state, Neustadt (1960) was preoccupied with an ineffective president, too hamstrung to govern the vast bureaucracy and provide national leadership. As Whittington (1999, pp. 159–60) summarized, "the actual growth in presidential power was both reflected and encouraged in the scholarly literature." Anti-Federalist fears about a criminal president subverting law and democracy had faded after the Founding, at least in political science.

However, in the 1970s, Richard Nixon's presidency rightfully revived those fears. Nixon's presidency captured the connection between a criminal president and the threat to democracy. His alleged crimes were many: soliciting illegal campaign funds, instigating a break-in at his political opponents' headquarters, even cheating on taxes. When Congress appointed a special prosecutor to investigate, Nixon cycled through three attorneys general in the "Saturday Night Massacre" to have him fired (Genovese 1999). Even after political pressure made Nixon let Congress choose a new investigator, Nixon still claimed "executive privilege" to withhold documents. Ultimately, the Supreme Court rebuffed him, exposing evidence the House Judiciary Committee used to recommend impeachment (Chafetz 2021), and Nixon resigned facing near-certain removal—the checks on the president having barely prevented him from undermining fair elections (Kutler 1992). Nixon's actions, particularly attempting to interfere with elections and then seeking to fire those investigating him, revealed the close connection between a criminal presidency and a democratic

crisis. A president could break the law to amass political power—then use the office as a shield against legal accountability.

The post-Watergate period was marked by reforms to the presidency designed explicitly to mitigate this risk (Rudalevige 2005). Chief among these were laws limiting presidential emergency power; creating "inspector generals" within agencies; reporting campaign contributions; enforcing ethics rules; and, crucially, creating an "independent counsel" position to investigate executive wrongdoing. As Rudalevige (2005) skillfully describes, these reforms constituted a "resurgence regime"—a comprehensive rebuke to the unfettered executive power Nixon enjoyed. The Ethics in Government Act, a centerpiece of this agenda, was initially titled the Watergate Reorganization and Reform Act, showing how front-of-mind Nixon's criminal threat was at the time (Berger & Tausanovitch 2018).

Harriger's (1998, 2000, 2001) work highlighted the role of the independent counsel law in directly addressing the risk of presidents avoiding legal accountability. The law said that when an attorney general received criminal allegations, he had to recommend appointing an independent counsel, who would be confirmed by a panel of federal judges and insulated from presidential firing except "for cause" (Johnson & Brickman 2001). Harriger situates the independent counsel law as a response to the Saturday Night Massacre, showing that by creating an investigative office outside the Department of Justice (and thus outside direct presidential control), it provided a crucial external accountability mechanism to ensure the law applied equally to the president.

Harriger (1998, 2000, 2001), Rudalevige (2005), and others document a period of presidential reform when, after Nixon proved what a criminal president could do, trust in presidential norms was replaced by formal constraints on presidential power. Their work is particularly salient today amid similar presidential abuses of law to undermine democracy. But although the post-Watergate period models the need to restructure the presidency, the era that followed was characterized by an attempt to release the president from these constraints—with the rise of the unitary executive theory making the Anti-Federalist worry even more salient.

THE UNITARY EXECUTIVE AND THE FOCUS ON PRESIDENTIAL POWER

The post-Watergate focus on constraining the presidency was not universally shared. Indeed, with Ronald Reagan's ascendance in 1980, lawyers and critics developed a "unitary executive" theory—arguing, in part, that the president has sole control over the executive branch. This section connects the rise of the unitary theory with the attack on the Watergate reforms limiting the presidency. We focus primarily here on one aspect of the broader "unitary executive" theory: the ability of the president to fire executive officers without constraint. While this may seem a narrow concern, we see it as central to understanding the risk of presidential powers. We then put this theory in conversation with the post-Watergate political science literature on the presidency, which we argue often deemphasized or overlooked ways the unitary theory could amplify the danger a criminal president poses. Tracing the literature's emphasis on power over constraint illustrates why political science should pay more attention to the legal structure of the executive branch—and how it can limit or enable a criminal president.

The unitary theory derives from how its proponents read the Constitution. Though the theory has many variants, they largely interpret Article II's guarantee that "the executive power shall be vested in a President" to mean *all* executive authority must be in a singular president (Waterman 2009). To many unitary theorists, sole executive control means, at a minimum, that the president must be able to hire and remove executive officials at will, because otherwise, those officials would be wielding executive power that is properly (and solely) the president's (Calabresi & Yoo 2008). Some extend the theory more broadly, and most proponents agree that executive power is a core

component of the office (Bailey 2008). Unitary theorists are thus at odds with imposing legal constraints on the president that may impinge on his control of the executive branch.

To understand how the unitary theory has gained traction, however, requires looking beyond constitutional text. Hollis-Brusky (2015, 2011) traces its political origins to a group of lawyers in President Reagan's Department of Justice who hoped to revive the old Federalist trust in the presidency, joining with the newly created Federalist Society—founded in 1982 by Steven Calabresi, Theodore Olson, and others—to undo the post-Nixon reforms (Teles 2008). These lawyers trained their sights on the independent counsel law, believing a prosecutor who could not be fired except for cause usurped the presidency's sole control of executive power. They lauded the 1920 case of *Myers v. United States*, which held that President Wilson must be able to remove an appointed postmaster without Senate approval. And they detested the 1935 case of *Humphrey's Executor v. United States*, which allowed Congress to create independent agencies with leaders the president could not remove for political reasons.

These lawyers brought the theory to court, where Olson challenged an independent counsel investigation over his refusal to turn over documents. In 1988, an 8–1 Supreme Court decision in *Morrison v. Olson* held that the independent counsel's insulated structure did not overly interfere with presidential power. But the dissent of Justice Antonin Scalia, a Nixon administration alumnus—arguing that any vesting of executive power outside direct presidential control was invalid—became a quasi-template for future unitary theorists' advocacy. (Scalia also opposed other post-Watergate constraints on the presidency, arguing, for example, while in the Ford administration, that legislative vetoes were unconstitutional—a position later vindicated in *INS v. Chadha* and in a future amendment to the National Emergencies Act.)

Although originally a lone voice, Scalia's dissent in *Morrison* has since ascended in both politics and law. In politics, the independent counsel law seemed to work successfully for several presidencies, with Presidents Carter, Reagan, and Bush publicly accepting investigations into their administrations (Brettschneider 2024). President Clinton appeared also to embrace the law initially, praising it and signing its renewal in 1994. But after an expansive probe by independent counsel Kenneth Starr into Clinton's Whitewater real estate dealings and affair with Monica Lewinsky, Democrats questioned the costs of independence. After an acrimonious impeachment, both parties turned against what they saw as an over-insulated prosecutorial regime, and Congress, with Clinton's encouragement, let the law expire (Harriger 2001). As Kagan (2001) noted, even if unitary ideas were contested (and never embraced by Clinton), both parties increasingly supported presidential primacy. (Clinton's Office of Legal Counsel, for example, agreeing with a Nixon-era memo, concluded that presidents were immune to criminal indictment while in office; Starr's independent office, however, reached the opposite conclusion.) Future presidents ran with these unitary-adjacent ideas, as George W. Bush expanded wartime authority on the theory that constitutional protections applied with less force abroad (Zeisberg 2013), while Barack Obama drew on unitary ideas to justify increased executive policymaking (Barilleaux & Maxwell 2017). Unitary principles went mainstream—and bipartisan.

The unitary theory's strongest embrace has come in the legal academy. Calabresi popularized the theory in law reviews beginning the 1990s (Calabresi & Rhodes 1992, Calabresi & Yoo 1997). Calabresi & Yoo (2008) claim it requires expansive executive control. While most unitarians are conservatives, liberals like Kagan (2001) have also believed in increased presidential control over agencies without adopting the unitary theory (Ahmed et al. 2024). The legal debate over the unitary executive continues to occupy the academy, with supporters and opponents contesting its legal foundations and policy implications (Bamzai & Prakash 2023, Rosenblum & Katz 2023).

The debate has also reached the Supreme Court, which has embraced some unitary tenets and questioned limits on the presidency. With the independent counsel law gone, the constitutionality

of this unitarian bailiwick has not been tested, and *Morrison* has not been formally overturned. But the Federalist Society's success in placing federal judges has given unitary ideas more sway in contemporary legal doctrine (Hollis-Brusky 2015). *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2009) suggested that imposing too many layers of for-cause removal thwarts presidential control of administration; *Seila Law LLC v. Consumer Financial Protection Bureau* (2020) prevented any agency from having a single head insulated from presidential removal (even as it upheld yet starkly narrowed *Morrison* and *Humphrey's*); and *United States v. Arthrex, Inc.* (2021) limited the legality of independent agency "judges" whose tenure was not controlled by the president. These cases point to how the unitary ideas motivating Scalia's dissent might influence the current Court. Together, they stand for an increasing judicial acceptance of presidential control over the administrative state.

The Trump era illustrated that this loosening of constraints on the presidency can pose a deeper risk to democracy than a seemingly narrow legal theory about removal power might suggest. Past presidents, and later Trump, drew on the unitary theory to justify why they could break the law without consequence; Trump even articulated an extreme unitary position when claiming that Article II gives him the right to "do whatever I want" and seeking to fire those investigating him (Skowronek et al. 2021). While Trump's claim overstates the unitary position, its spirit animates our worry here: that a president using his unique power to break the law poses a unique threat to the democratic system.

Before Trump, the unitary theory received some attention in political science. Hollis-Brusky (2015, 2011) documented the way the Federalist Society brought the theory from the academy to the courts and executive branch. This story about law and courts is essential not just to public law but to American politics, as it speaks to ideological underpinnings of changes in the executive branch's structure. Skowronek (2009) also provided a deep history of the political origins of the unitary executive (helpfully melding law with political science), Ellis (2009) lamented the decline of linking legal studies with presidential scholarship, and Bailey et al. (2013) produced an exceptionally detailed history of the unitary theory and removal power.

Yet, this political science engagement with the law of the presidency and the unitary theory was more the exception than the rule before Trump. Contemporaneous with the rise of the unitary executive in law, much of political science continued to study the informal power and politics of the presidency without treating Nixon's criminal presidency as a pressing and continuing concern for institutional design. In the immediate aftermath of Watergate, many scholars did not directly challenge the rise of executive power, instead discussing how presidents could use their power without breaking constraints (Whittington 1999). Burns (1975, p. xii) argued that "the cardinal problem is not the amount of power but the control and accountability of that power"—a power which Sorensen (1975, p. 75) still believed could "do great good." Neustadt (1974, 1991), concerned though he was by Nixon's abuse of his work, maintained his focus on informal powers in his 1991 edition of *Presidential Power and the Modern Presidents*, and, writing in the immediate aftermath of Watergate, predicted that the affair would help restore "prudence" to the White House, making it "not a tragedy, far from it" (Neustadt 1974, pp. 383–84). Cronin (1975 pp. 54, 86, 104) assessing the "state of the presidency," lauded the "brakes" on the office and charted the growth in executive agency power, still putting the president at the center of the American political project (Forsythe 1976, p. 345).

By the 1990s, with the reform regime in place, the memory of Watergate—and risk of a criminal presidency—had seemed to fade. When Bowles (1999) identified five schools of presidential study in political science, just one, led by Corwin and Fisher, emphasized the *legal* limits on the president. Watergate is referenced just twice in the review. And the leaders of the prominent "institutional school"—Skowronek and Tulis—treated Nixon more as an error

than as an emblem of the presidency. Skowronek's (1993) "political time" thesis emphasized that presidents advance new visions of the office by responding to both their predecessors and their moments, but conceded that Nixon fit awkwardly in this framework. And Tulis (1987, p. 7) highlighted how the bully pulpit marked a "true transformation of the presidency," though he did not treat Nixon's attack on the impeachment investigation as a central case study in its abuse, nor study his impeachment in comparison to Johnson's. Though both works greatly expanded our understanding of the presidency, something is lost in not treating Nixon's criminality as a central and unavoidable risk in our presidential system. Now, after the Trump presidency, the importance of that gap is even clearer: While presidential power has many dimensions, the danger of a lawless president threatening democracy should not be overlooked.

Until Trump, political science scholarship in the twenty-first century largely emphasized dimensions of the presidency other than legal constraints. In that trend, the discipline reflected the growing sense in politics that Nixon and Watergate had been an anomaly and that to curtail presidential power on the off chance a president abuses the law would be an overreaction. In short, Anti-Federalist skepticism of the office had given way to Hamiltonian optimism. From this vantage point, valuable scholarship has explored how much policy power the president should possess through executive order (e.g., Lowande & Rogowski 2021, Mayer 2002, Rudalevige 2021). Potter (2019) has focused on administrative politics, Lewis (2008) on appointments, and Lowande & Shipan (2022) on public perceptions of power. The discipline, in an era of "normal" presidents, seemed to assume a stable equilibrium.

Indeed, one pre-2016 strand of scholarship pitched *greater* presidential power, positioning recent gridlock, not Watergate-era crimes, as the primary foil against which presidential power should be addressed. Howell & Moe (2020) argue that the Madisonian view of a presidency checked by other branches is outdated and inefficient. Posner & Vermeule (2011) reject constraints and support an "unbound" executive, believing presidential power crucial to solving national problems. Even those who criticize executive power often focus more on the downsides of policymaking prerogatives or wartime authority than the particular risk of a president rejecting the constraints of law to subvert democracy (Ginsberg 2021).

In this way, the unitary theory in law and the focus of political science at times operated in parallel. As the conservative legal movement worked to erode formal legal constraints on the president, political science has often (though not exclusively) put its attention on the informal and institutional powers of the president. These inquiries have yielded important insights into the functioning of our most popular and powerful office, especially in "normal" presidencies. But although they of course acknowledged downsides to presidential power, they did not see as unavoidably intertwined with a powerful office the risk that a president could break the law for political gain—then thwart attempts to hold them to the law. Today, the election of Donald Trump in 2016 has revived important questions at the intersection of informal and formal presidential power. In the next section, we examine and welcome recent efforts in political science to integrate legal structures—especially those influenced by the unitary theory—into the study of a presidency capable of skirting the law and undermining democracy along with it.

DONALD TRUMP AND THE TURN TOWARD CONSTRAINT

The fear of a criminal president is not just an abstract concern about following rules. It is a response to the danger that a person holding our most powerful office could break the law in ways that subvert democracy while avoiding legal accountability. Donald Trump's presidency crystallized these risks. In response, political science has begun to shift from largely not engaging with legal rules like the unitary theory toward recognizing the danger to democracy of a criminal president. In this section, we first provide background on how Trump's presidency revived the risk of a

criminal president. We then discuss how political science has responded, highlighting an increased engagement with the unitary theory and formal legal constraints. We next address the relevance of impeachment as a political check on law-breaking, exploring its limits amid rising presidential power. Last, we connect Trump's abuse of law with recent work considering the broader political threats Trump poses, highlighting how political coalitions can both enable and stand up to a law-breaking president. In assessing this post-Trump work, we suggest an agenda for how political science should approach the criminal presidency.

Trump's Abuse

In office, Donald Trump arguably broke the law and inarguably pushed the boundaries of presidential authority. When Robert Mueller was appointed as special counsel to investigate Russian election interference aiding the Trump campaign, Trump sought twice to fire him—a move only legally plausible because of the death of the independent counsel law, which left Mueller operating under rules like those Nixon exploited in the Saturday Night Massacre; a president could arguably fire him, as an employee of the Department of Justice (DOJ), for any reason. In this legal context, Mueller's ultimate report was ambiguous and difficult to decipher; read in light of subsequent insider accounts, his team functionally concluded that Trump had obstructed justice but felt bound by internal DOJ policy against indicting a sitting president (Weissman 2020).

Later, as Trump faced impeachment for extorting the Ukrainian president, Congress voted (almost entirely on party lines) to acquit. In 2020, Trump sought to overturn an election, asking his DOJ to find voter fraud, pressuring state officials to flip election results, and instigating a violent insurrection to prevent the peaceful transition of power. Since losing the 2020 election, Trump has been criminally indicted for a range of offenses from conspiracy to witness tampering to document destruction; faces civil suits over fraud and hush money; and has been held civilly liable for defamation.

This confluence of legal allegations has again proved prescient the Anti-Federalist worry that a president unbound by law could subvert the foundations of democracy. Trump's presidency has already spurred a rise in political science scholarship confronting him and re-emphasizing the downsides to presidential power. Scholars have done important work on the Republican coalition that elected him (Sides et al. 2018), the rise of racial resentment he fomented (Abramowitz & McCoy 2019, Morone 2020), the risks of unilateral executive action (Lowande & Rogowski 2021), and the role of bureaucratic governance (Thompson et al. 2020). Here, however, we focus on three branches of post-Trump scholarship that warrant sustained focus in the discipline: Trump's relationship to the unitary theory, the limits of impeachment as a political check, and the relation of Trump's legal abuses and his political threats. These inquiries should form an agenda that treats as embedded in the office the risk a criminal president can pose to democracy and the rule of law (Brettschneider 2007, 2024).

Legal Constraints

Recent work in political science has usefully viewed Trump through the lens of constraints on presidential authority; we view this work as crucial to pull forward the threat of criminality in scholars' assessment of the presidency. Skowronek et al. (2021) is a prime example. Bowles (1999) contended that Skowronek's "political time" thesis did not account for Nixon, but Skowronek (2009) documented the unitary executive's role in political regime change, and now after Trump, Skowronek et al. (2021) have mounted a frontal criticism of the unitary executive. They use the Trump presidency to illustrate how presidents seek to aggrandize their power, situating Trump within a long tradition of presidents practicing unitarian ideas. They see Trump as the unitary executive unmoored, showing the maximal damage a president can cause by seeking not only to control the

executive branch but to disparage its legitimacy as the "deep state." When Trump sought twice to fire Mueller to stop his "witch hunt," he both asserted unitary control and undermined the idea of executive independence.

In situating Trump as a unitary, dangerous president, Skowronek et al. (2021) seem to identify the Trump presidency as distinct from the kind of regime shifts that Skowronek (1993) had documented in earlier work. Trump's efforts went beyond policy differences and instead were attempts to aggrandize the presidency beyond criminal limits and outside the rule of law. Skowronek et al. (2021) show how the unitary theory—which Trump's rhetoric increasingly adopted as his term progressed—can dangerously cut off presidential accountability, especially when a president disregards the law.

Still, we think further work should explore how the erosion of legal accountability mechanisms amplifies the danger of Trump's embrace of the unitary theory. Specifically, we see a structure similar to an updated independent counsel law as one potentially crucial counterweight to the unitary presidency. Even with the law's imperfections, the combination of its demise and the rise of unitary ideas has given presidents more room to break the law with less fear of being held accountable, a connection underappreciated in the literature. For example, while Skowronek et al. (2021) point to the Carter presidency as a precursor to unitary ideas, President Jimmy Carter advocated for the passage of the independent counsel law (Johnson & Brickman 2001), a law Skowronek et al. do not frequently discuss. The unitary theory's true ascendance, then, is marked by Clinton letting the independent counsel law expire—making politics, not law, the constraint on Trump firing Mueller. Similarly, because Mueller sat within the DOJ, policy from the Nixon and Clinton eras prevented him from indicting a president; had Mueller been situated more like Starr, who produced a counter-memo arguing for indictment, he might have felt more empowered to push a criminal case.

The Mueller investigation is a particularly crucial case study illuminating the demise of checks on the presidency. Political scientists should compare its failure to indict the president with investigations of presidential crime during Watergate, focusing on how the different structures of legal investigation affected the ultimate outcomes. Similar to Bersch & Fukuyama (2023), who call for study of "bureaucratic autonomy," we see value in prioritizing questions of investigative independence. Given the risks of a criminal presidency, we need more theorizing of institutional designs and systems that can legally and effectively hold executives in check. That concern has only become more pressing in the wake of the efforts to prosecute Trump for his role in January 6th. His actions make plain the risk of a president's crimes threatening democracy, and his claim of absolute immunity from prosecution even after his presidency ended—a claim pending at the time of this writing—highlights how far this risk might extend.

Like Skowronek et al. (2021), Howell & Moe (2020) updated their theory for the rise of Trump. After lamenting that Madisonian constraints produced inefficiency, now they defend a larger role for presidential limits after Trump's strongman approach threatened self-government. Their updated work still puts the president at the center of policymaking, but it rejects the unitary theory as "bogus" and calls for more independence for DOJ investigators, including a truly independent counsel. This focus is a laudable attempt to balance the desire for presidential leadership with the downsides of a lawless leader. Still, it raises tensions worth further study: Can unitary ideas be divorced from the risks of a criminal president? Can we empower the president in some areas without placing them beyond accountability in others?

Additionally, the field should go further in clarifying what legal and institutional regimes are best suited to mitigate the risk of a criminal president. Two primary examples should be theorizing what an independent prosecutor and insulated DOJ can look like. Legal scholars have begun offering suggestions: Bauer & Goldsmith (2020), for example, seek to "reconstruct the presidency" after

Trump, including via increased protections for special counsels, though they would leave prosecution decisions with the attorney general and reject the insulation of past independent counsels. Political science should join the conversation, adding their complementary expertise on the institutional operation of the presidency, while zooming out to consider the scope of prosecutorial independence needed—within and beyond the DOJ—to confront a criminal president.

Crouch et al. (2020) engages in a sustained approach to critiquing the unitary executive. Their work is a no-holds-barred call for a limited presidency. Attacking the unitary theory on issues from removal to war to rulemaking, they conclude that the president is weak by constitutional design and requires far greater oversight. Their work marks a helpful counterbalance to earlier expositions of the need for presidential power. We believe it should spur further and more detailed scholarly study into the particular legal institutions enabling the rise of a less constrained executive, with new work offering specific accounts of how a revival of formal constraints (not just constitutional norms) can rein in future presidents.

To us, these beginnings of an account of presidential constraint suggest the importance of building on the pre-Trump work of Harriger and Rudalevige. Political science scholarship should treat the risk of a president who breaks the law for political gain as not a distant danger but as a core feature of the structure of the office. Post-Watergate reforms, as Rudalevige (2005) notes, offered a comprehensive response to the then-rise of the imperial presidency under Nixon; today, a similar structural approach to the presidency—seeing Trump's rehash of Nixon's crimes not as anomalous, but inherent to a unitary office—can begin imagining how to constrain the damage a criminal president can do to democracy. Harriger's (1998, 2000, 2001, 2020) work on the independent counsel law is a model, as her detailed study of both its normative force and qualitative impact should inspire new approaches to ensure the president cannot abuse his legal authority to escape accountability today. Specifically, the independent counsel law raises important questions of whether we can situate reforms to the presidency within the DOJ or whether more legal separation is required given the changing politics of the presidency.

Crucially, the reforms political science develops must be responsive to the rise of the conservative legal movement hostile to presidential accountability (Hollis-Brusky 2015). Cases like *Seila Law* demonstrate that something like a modern independent counsel law would face at least a skeptical Supreme Court, meaning scholars need be creative in pinpointing where checks can be both effective and legally sound. Presidential power creates the potential for a leader to break the law (and get away with it) to further antidemocratic goals; political science needs to engage this risk.

Impeachment

The unitary executive has undermined the formal legal constraints on the president, especially within the DOJ. But unitary theorists, and presidential power advocates more generally, frequently point to what they see as the intended check on a president who breaks the law: impeachment by Congress. After Trump's two failed impeachments—one following an allegedly criminal attempt to block the democratic transfer of power—and given the fact that no president has ever been removed, political scientists should explore the role of this constraint and question if it can adequately substitute for formal legal accountability. On our view, pointing to impeachment is not enough to prove that a criminal president will be stopped.

Tulis's (1987) earlier work on the rhetorical presidency—and modern attempts to update it—is instructive. Tulis traced the growing import of presidential speech, which shifted the presidency from weak to influential. He distinguished between a period when constitutional norms could constrain a president—such as Andrew Johnson being impeached in part for inflammatory rhetoric—and a modern period when the president's prime position can make him seem above the Constitution, a "leader" in Woodrow Wilson's terminology.

The Wilsonian rise Tulis (1987) notes is prescient in the Trump era. Scholars should put this work in conversation with the unitary theorists' advocacy of the elimination of guards on the presidency. Trump married the expanded power of the presidency with a paranoid rhetorical strategy alleging that sinister people within the executive branch sought to torpedo his agenda. That conspiratorial approach has gained traction in Republican politics (Rosenblum & Muirhead 2019), meaning that as Trump lied about the election and denigrated the civil servants working to uphold the law, he did not lose support in his party—all but assuring that impeachment would cease to operate as a functional check on his law-breaking. Using this beefed-up rhetorical presidency—bolstered by media available to spread conspiracist claims—Trump was able to recast the idea of impeachment itself as a political stunt rather than a core constitutional limit to stop a law-breaking president from threatening the political system.

In the face of this threat, political scientists should engage more with impeachment through the lens of its efficacy in stopping a criminal president. Though Whittington (2006) argued that impeachment is "basically sound," changes in the structure of the presidency should precipitate new research. Tulis & Brettschneider (2020) have begun theorizing structural constraints on the office, arguing the Constitution's limit on the president's pardon power "in cases of impeachment" meant that a president cannot pardon others for crimes related to his own impeachment. Additionally, as in the unitary executive debates, legal scholars have been central, arguing about whether impeachment applies just to crimes or to other constitutional threats (Bowie 2018, Tribe & Matz 2018). Political science should join this discussion, bringing expertise not only on the political power of impeachment (Franklin et al. 2020), or congressional investigations (Schickler & Kriner 2016), but also on the value of impeachment for the separation of powers and the ways it might address the need for legal accountability of a criminal president.

Tulis (2017) and Rosenblum & Muirhead (2019) show that where formal legal constraints have eroded, the informal powers a president can wield have even more force to undermine the formal political constraint of impeachment. In the hands of a conspiratorial populist president, the "power to persuade" (Neustadt 1960) has the potential to undermine democracy and the rule of law, putting a president beyond both legal and political forms of accountability. These scholars should be lauded for highlighting how an unconstrained presidency can avoid accountability today. There is still more to study. One small strand of Andrew Johnson's impeachment was for violent rhetoric; an improved impeachment process today might once again acknowledge the bully pulpit's political dangers as reason to remove a president (Shaw 2020), understanding the connection between breaking the law and delegitimizing it. In addition to the legal checks on the presidency, it is important that scholars think about how Congress can revive impeachment in the wake of its inability to remove Trump after he arguably committed crimes that attacked democratic election results.

Political Constraints

We have argued that political science should engage with formal constraints on the presidency, especially the unitary theory and impeachment, to check a president who breaks the law yet evades legal accountability. Yet, the discipline's traditional strengths in institutional and informal studies of politics are valuable as a complement to this legal focus. The scholars who have begun to respond to Trump by showing how he has fomented a political movement validating his lawless approach to the presidency have an important role in understanding the political factors enabling a criminal presidency—and how we might build a polity that can check a president. Since politics has often been what stopped presidents in the past, political science should consider the role the people can and should play today.

Trump's election spurred a subset of work on the broader risks he posed to democracy and how the constituency he has built has enabled him to escape accountability. In this way, the American

literature is catching up with comparativists like Linz (1990), who have long identified presidential systems as risks to democracy. Levitsky & Ziblatt (2019, 2023) focus on more than the presidency but chart the demise of norms and institutions able to check antidemocratic demagogues. Relatedly, Grumbach (2022) notes that an antidemocratic spirit has spread from Trump to state legislatures. Müller's (2016) work on populism is instructive: Distinguishing between populism and democracy, Müller puts Trump's rhetoric in a dangerous tradition of appealing to "the people"—making a democratic-sounding claim of representation while equating his supporters with the whole country—to support his self-serving claim that the only legitimate elections are those he and his "people" win. Müller's analysis shows how Trump takes the motivating ideas of the unitary executive to the extreme to claim power beyond the Constitution—and builds popular support for criminal ideas with no place in our constitutional scheme.

Trump has also inspired a look back at history to make sense of how present politics enabled him to abuse the law with little repercussion. Mettler & Lieberman (2020), for instance, document a history of vulnerabilities in democracy, including the rise of executive power. Their historical approach rightly recenters the historical dangers of a dictatorial executive, as do the contributions of Tulis (1987) on Johnson and Rossiter (2002) on Lincoln. Their work offers important pathways for situating the rise of executive power within the legal rules that have governed it through history—and how political movements have at times enabled it.

Smith (2020) recently reconsidered his own commitment to a national identity and stories of "peoplehood" in light of Trump. Smith continues to argue that nation-centered thinking can coexist alongside individual rights. He sees in Frederick Douglass and Lincoln attempts to do both, consistent with democracy. But he is mindful that the factors that let Americans prize their own national identity can be abused, a point emphasized in the Trump era; he now emphasizes that progress advocates must recognize the danger of nationalism tilting toward antidemocracy (Smith 2015). Like Skowronek et al. (2021) and Tulis (2017) **,** Smith is not fundamentally shifting his commitments but adapting them to the risks that Trump made present.

The democratic themes of Müller (2016), Mettler & Lieberman (2020), and Smith (2020) are not new to the discipline or their own work. Still, each should be lauded for updating their frameworks to assess the unique danger presented by a criminal president. In the future, history can continue providing a guide to the role of politics in stopping a criminal president when legal rules will not. Although we have emphasized that the risks of a criminal presidency were long marginalized, the discipline should reconsider even popular presidents, as one of us details in a book on threats to democracy (Brettschneider 2024). That work shows how, for example, Adams used law to prosecute political opponents, Johnson stoked violence against political enemies, Wilson expanded the presidency while threatening equal citizenship for Black people, and Nixon sought to shut out opposition by resorting to criminal acts. Those threats were each met in their time by political constituencies who backed projects of recovering a Constitution devoted to democratic principles. These cycles of crises stoked by presidents and recoveries demanded by citizens who prevailed upon subsequent presidents show that people can step in where law fails—but these past recoveries of democracy are no guarantee of future ones. American democracy remains vulnerable to a president abusing the law—just as the Anti-Federalists warned—a threat that political science should treat as fundamental to the presidency and our democracy.

CONCLUSION

This review has identified a feature of the presidency that has long been feared but has too often been pushed aside: the risk of a criminal president who breaks the law to amass power and uses the office to avoid legal accountability, undermining democracy. The Anti-Federalists first framed this worry; Nixon then proved their worry had weight. Yet, much scholarship since Nixon treated

him more as aberration than archetype, focusing on how presidents should wield power, not how that power must be constrained. While political science's focus was elsewhere, the legal rules and ideas governing the presidency shifted, as unitary executive–inspired trends in presidential power gave chief executives more control over the executive branch.

The Anti-Federalist concerns are once again alive. Trump's term brought these two trends—the rise in presidential power and diminished focus on presidential constraint—to a head. When Trump instigated an alleged insurrection on January 6, 2021, seeking to prevent the democratic transition of power, he showed the maximal risk from a president willing to break the law and unwilling to be held legally accountable: attacking the results of a free and fair election—or as Patrick Henry might have put it, making a "bold push for the American throne." This unprecedented event illustrates the need for a reckoning with how to approach a presidency that has proven capable of this kind of damage.

It is promising that after Trump and January 6, scholars have begun focusing on the dangers of an unconstrained president, especially one with increasingly unitary authority over the largest branch of government. Reviving this focus—and addressing the relationship between holding presidents legally accountable and protecting democracy—is a task to which political science should bring its strengths. Building on the discipline's engagement with informal presidential power, political science should sustain focus on the formal constraints of executive branch control and impeachment, while reckoning with what informal power can do in the service of criminal ends. Drawing from the response to Watergate, the discipline should treat presidents who use law to subvert democracy not as anomalies but as proof of the continued need for constraints. No longer does the office need Neustadt's playbook for presidential power; it needs reminders of presidential constraint.

DISCLOSURE STATEMENT

The authors are not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

LITERATURE CITED

Abramowitz A, McCoy J. 2019. United States: racial resentment, negative partisanship, and polarization in Trump's America. *Ann. Am. Acad. Political Soc. Sci.* 681:137–56

Ackerman B. 2000. *We the People*, *Vol. 2: Transformations*. Cambridge, MA: Belknap

Ahmed A, Menand L, Rosenblum N. 2024. Building presidential administration. *Harvard Law Rev.* 137:In press

Bailey J. 2007. *Thomas Jefferson and Executive Power*. Cambridge, UK: Cambridge Univ. Press

Bailey J. 2008. The new unitary executive and democratic theory: the problem of Alexander Hamilton. *Am. Political Sci. Rev.* 10:453–65

Bailey J, Alvis J, Tayor F. 2013. *The Contested Removal Power: 1789–2020*. Lawrence: Univ. Press Kansas

Bamzai A, Prakash S. 2023. The executive power of removal. *Harvard Law Rev.* 136:1756–844

Barilleaux R, Maxwell J. 2017. Has Barack Obama embraced the unitary executive? *PS: Political Sci. Politics* 50:34–37

Bauer B, Goldsmith J. 2020. *After Trump: Reconstructing the Presidency*. Washington, DC: Lawfare Inst.

Berger S, Tausanovitch A. 2018. *Lessons from Watergate: preparing for Post-Trump reforms*. Rep., Cent. Am. Progress, Jul. 30. **https://www.americanprogress.org/article/lessons-from-watergate/**

Bersch K, Fukuyama F. 2023. Defining bureaucratic autonomy. *Annu. Rev. Political Sci.* 26:213–32

Bowie N. 2018. High crimes without law. *Harvard Law Rev. Forum* 132:59–77

Bowles N. 1999. Studying the presidency. *Annu. Rev. Political Sci.* 2:1–23

Brettschneider C. 2007. *Democratic Rights: The Substance of Self-Government*. Princeton, NJ: Princeton Univ. Press

Brettschneider C. 2019. *The Oath and the Office: A Guide to the Constitution for Future Presidents*. New York: W.W. Norton
Brettschneider C. 2024. *The Presidents and the People*. New York: W.W. Norton
Burns J. 1975. Foreword. See Sorensen 1975, pp. xi–xv
Calabresi S, Rhodes K. 1992. The structural Constitution: unitary executive, plural judiciary. *Harvard Law Rev.* 105:1153–216
Calabresi S, Yoo C. 1997. The unitary executive during the first half-century. *Case Western Reserve Law. Rev.* 47:1451–561
Calabresi S, Yoo C. 2008. *The Unitary Executive: Presidential Power from Washington to Bush*. New Haven, CT: Yale Univ. Press
Chafetz J. 2021. Nixon/Trump: strategies of judicial aggrandizement. *Georgetown Law J.* 110:125–50
Cornwell E. 1965. *Presidential Leadership of Public Opinion*. Bloomington: Univ. Indiana Press
Cronin T. 1975. *The State of the Presidency*. New York: Little
Crouch J, Rozell M, Sollenberger M. 2020. *The Unitary Executive Theory: A Danger to Constitutional Government*. Lawrence: Univ. Press Kansas
Dunn S. 2004. *Jefferson's Second Revolution: The Election Crisis of 1800 and the Triumph of Republicanism*. Boston: Houghton Mifflin
Ellis R, ed. 2009. *Judging Executive Power: Sixteen Supreme Court Cases that Have Shaped the Presidency*. Washington, DC: Rowman & Littlefield
Forsythe D. 1976. Review. *Political Sci. Q.* 91:343–45
Franklin D, Caress S, Sanders R, Taratoot C. 2020. *The Politics of Presidential Impeachment*. New York: SUNY Press
Freedman E. 1992. The law as king and the king as law: Is the president immune from criminal prosecution before impeachment? *Hastings Const. Law Q.* 20:7–68
Genovese M. 1999. *The Watergate Crisis*. New York: Bloomsbury
Ginsberg B. 2021. *The Imperial Presidency and American Politics: Governance by Edicts and Coups*. London: Routledge
Grumbach J. 2022. Laboratories of democratic backsliding. *Am. Political Sci. Rev.* 26:193–212
Harriger K. 1998. The history of the independent counsel statute: how the past informs the current debate. *Mercer Law Rev.* 49:489–517
Harriger K. 2000. *The Special Prosecutor in American Politics*. Lawrence: Univ. Press Kansas. 2nd ed.
Harriger K. 2001. The president and the independent counsel: reflections on prosecutors, presidential prerogatives, and political power. *Pres. Stud. Q.* 38:338–48
Harriger K. 2020. Witchhunts and the rule of law: Trump, the Special Counsel, and the Department of Justice. *Pres. Stud. Q.* 50:176–92
Hollis-Brusky A. 2011. Helping ideas have consequences: political and intellectual investment in the unitary executive theory, 1981–2000. *Denver Univ. Law Rev.* 89:197–244
Hollis-Brusky A. 2015. *Ideas with Consequences: The Federalist Society and the Conservative Counterrevolution*. Oxford, UK: Oxford Univ. Press
Howell W, Moe T. 2020. *Presidents, Populism, and the Crisis of Democracy*. Chicago: Univ. Chicago Press
Johnson C, Brickman D. 2001. *Independent Counsel: The Law and Its Investigations*. Ann Arbor: Univ. Mich. Press
Kagan E. 2001. Presidential administration. *Harvard Law Rev.* 114:2245–385
Kaminski J, Saladino G, Leffler R, Schoenleber C, Hogan M, eds. 2009. *The Documentary History of the Ratification of the Constitution: Ratification by the States: Vol. IX: Virginia, No. 2*. Charlottesville: Univ. Va. Press
Kateb G. 2015. *Lincoln's Political Thought*. Cambridge, MA: Harvard Univ. Press
Katznelson I. 2013. *Fear Itself: The New Deal and the Origins of Our Time*. New York: Liveright
Ketcham R, ed. 2006. *The Anti-Federalist Papers and the Constitutional Convention Debates*. New York: New Am. Libr.
Kutler S. 1992. *The Wars of Watergate: The Last Crisis of Richard Nixon*. New York: W.W. Norton
Lewis D. 2008. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. Princeton, NJ: Princeton Univ. Press

Levitsky S, Ziblatt D. 2019. *How Democracies Die*. New York: Crown
Levitsky S, Ziblatt D. 2023. *Tyranny of the Minority*. New York: Penguin
Linz J. 1990. The perils of presidentialism. *J. Democracy* 1:51–69
Linz J, Valenzuela A, eds. 1994. *The Failure of Presidential Democracy: Comparative Perspectives*, Vol. 1. Baltimore, MD: Johns Hopkins Univ. Press
Lowande K, Rogowski J. 2021. Presidential unilateral power. *Annu. Rev. Political Sci.* 24:21–43
Lowande K, Shipan C. 2022. Where is presidential power? Measuring discretion with experts and laypersons. *Br. J. Political Sci.* 52:1876–90
Magliocca G. 1999. Veto! The Jacksonian revolution in constitutional law. *Nebr. Law Rev.* 78:205–62
Martinez CA. 2017. Presidential survival in South America: rethinking the role of democracy. *Intl. Political Sci. Rev.* 38:40–55
Mayer K. 2002. *With the Stroke of a Pen: Executive Orders and Presidential Power*. Princeton, NJ: Princeton Univ. Press
Mettler S, Lieberman C. 2020. *Four Threats: The Recurring Crises of American Democracy*. New York: Macmillan
Morone J. 2020. *Republic of Wrath: How American Politics Turned Tribal from George Washington to Donald Trump*. New York: Basic
Müller J. 2016. *What Is Populism?* Philadelphia: Univ. Pa. Press
Nelson E. 2017. *The Royalist Revolution: Monarchy and the American Founding*. Cambridge, MA: Harvard Univ. Press
Neustadt R. 1960. *Presidential Power: The Politics of Leadership*. Hoboken, NJ: Wiley
Neustadt R. 1974. The constraining of the president: the presidency after Watergate. *Br. J. Political Sci.* 4:383–97
Neustadt R. 1991. *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. New York: Free Press
Posner E, Vermeule A. 2011. *The Executive Unbound: After the Madisonian Republic*. New York: Oxford Univ. Press
Potter R. 2019. *Bending the Rules: Procedural Politicking in the Bureaucracy*. Chicago: Univ. Chicago Press
Przeworski A. 2019. *Crises of Democracy*. Cambridge, UK: Cambridge Univ. Press
Rosenblum N, Katz A. 2023. Removal rehashed. *Harvard Law Rev. Forum* 136:404–27
Rosenblum N, Muirhead R. 2019. *A Lot of People Are Saying: The New Conspiracism and the Assault on Democracy*. Princeton, NJ: Princeton Univ. Press
Rossiter C, ed. 1961. *The Federalist Papers*. Washington, DC: New Am. Libr.
Rossiter C. 2002. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New York: Routledge
Rudalevige A. 2005. *The New Imperial Presidency: Renewing Presidential Power After Watergate*. Ann Arbor: Univ. Mich. Press
Rudalevige A. 2021. *By Executive Order: Bureaucratic Management and the Limits of Executive Order*. Princeton, NJ: Princeton Univ. Press
Schickler E, Kriner D. 2016. *Investigating the President: Congressional Checks on Presidential Power*. Princeton, NJ: Princeton Univ. Press
Shaw K. 2020. Can anything be done to rein in the president's speech? *Atlantic*, Aug. 2. **https://www.theatlantic.com/ideas/archive/2020/08/how-counter-bully-pulpit/614728/**
Sides J, Tesler M, Vavreck L. 2018. *Identity Crisis: The 2016 Presidential Campaign and the Battle for the Meaning of America*. Princeton, NJ: Princeton Univ. Press
Skowronek S. 1993. *The Politics Presidents Make: Leadership from John Adams to Bill Clinton*. Cambridge, MA: Harvard Univ. Press
Skowronek S. 2009. The conservative insurgency and presidential power. *Harvard Law Rev.* 122:2070–103
Skowronek S. 2020. *Presidential Leadership in Political Time: Reprise and Reappraisal*. Lawrence: Univ. Press. Kansas. 3rd ed.
Skowronek S, Dearborn J, King D. 2021. *Phantoms of a Beleaguered Republic: The Deep State and the Unitary Executive*. New York: Oxford Univ. Press
Smith R. 2015. *Political Peoplehood: The Roles of Values, Interests, and Identities*. Chicago: Univ. Chicago Press
Smith R. 2020. Toward progressive narratives of American identity. *Polity* 52:370–83

Sorensen T. 1975. *Watchmen in the Night: Presidential Accountability after Watergate*. Cambridge, MA: MIT Press
Storing H. 1981. *What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution*. Chicago: Univ. Chicago Press
Teles S. 2008. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, NJ: Princeton Univ. Press
Thompson F, Wong K, Rabe B. 2020. *Trump, the Administrative Presidency, and Federalism*. Washington, DC: Brookings Inst.
Tribe J, Matz J. 2018. *To End a Presidency: The Power of Impeachment*. New York: Basic Books
Tulis J. 1987. *The Rhetorical Presidency*. Princeton, NJ: Princeton Univ. Press
Tulis J. 2017. *The Rhetorical Presidency*. Princeton, NJ: Princeton Univ. Press. New ed.
Tulis J, Brettschneider C. 2020. The traditional interpretation of the pardon power is wrong. *Atlantic*, July 13. **https://www.theatlantic.com/ideas/archive/2020/07/traditional-interpretation-pardon-power-wrong/614083/**
Waterman R. 2009. The administrative presidency, unilateral power, and the unitary executive theory. *Pres. Stud. Q.* 39:5–9
Weissman A. 2020. *Where Law Ends: Inside the Mueller Investigation*. New York: Random House
Whittington K. 1999. *Constitutional Construction: Divided Powers and Constitutional Meaning*. Cambridge, MA: Harvard Univ. Press
Whittington K. 2006. The presidential impeachment process is basically sound. In *Debating the Presidency: Conflicting Perspectives on the American Executive*, ed. R Ellis, M Nelson, pp. 48–53. Washington, DC: CQ Press
Wilson W. 2011 (1908). *Constitutional Government in the United States*. New York: Quid Pro
Zeisberg M. 2013. *War Powers: The Politics of Constitutional Authority*. Princeton, NJ: Princeton Univ. Press