

34 out of 35 Scholars Agree: Trump is a Lawless Authoritarian

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For many years, the makers of Trident sugarless chewing gum ran an advertisement that included the line, “four out of five dentists recommend sugarless gum for their patients who chew gum.” That boast led to much comedy. Did twenty percent of dentists really recommend that patients chew gum with sugar instead? If so, was that because they wanted the extra business generated by the extra cavities?

As with teeth, so with democracy. A [recent article](#) in the *New York Times* reports on the results of a survey of 35 legal scholars who were asked “to identify the most significant unconstitutional or unlawful actions by” the second Trump administration thus far. The catalogue is devastating, with scholars from across the ideological spectrum pointing to numerous ways in which Donald Trump and his administration are undercutting the Constitution and the rule of law.

There appears to be only one exception. Harvard Law Professor Adrian Vermeule—who had a well-deserved reputation as an outstanding scholar of administrative law but has, in recent years, taken a turn towards socially conservative authoritarianism—claimed that Trump is not acting like an autocrat. Instead, he blamed “highly aggressive judicial decisions” by “overreaching district judges” for any sense that we are in a constitutional crisis. Perhaps Professor Vermeule acknowledged reality in other answers

that the *Times* chose not to quote. If not, he is the notorious (thirty-)fifth dentist.

I was one of the 35 scholars who responded to the *Times* survey and am quoted near the end of the article as follows: “Having surrounded himself with sycophants, Trump feels unconstrained by the Constitution and federal statutes.” I also agree with just about all of the other negative assessments by my fellow scholars. That said, there are subtle differences. Accordingly, and in the interest of completeness, the balance of this column sets out the questions the *Times* reporters posed (in bold) and my complete answers.

Question 1: What do you think are the most significant and/or egregious examples of illegal or unconstitutional behavior by Mr. Trump and his administration? Please give us your list.

I would put the actions in tiers. In tier 1:

A) Revoking security clearances and threatening companies that hire law firms that represent interests seen as adverse to the president personally or to his policies.

B) Threatening judges with impeachment for adverse rulings. Although removal is not a serious possibility with Republicans’ narrow edge in the Senate, the public nature of the threats could embolden actors to engage in private violence. That threat is real given the president’s constitutional and lawful but outrageous pardoning of even the most violent January 6 insurrectionists.

C) Failing to comply with court orders. Even as President Trump says that he always complies with court orders, his lieutenants have questioned the obligation to do so, and, more importantly, his administration has failed to comply (e.g., by not restoring funding when ordered to do so), even while disingenuously claiming to comply (e.g., by contending that Judge James Boasberg’s order in the case involving renditions to El Salvador didn’t count because it was oral).

I put all of the foregoing examples in the top tier because they undergird everything else. If persons and firms subject to unlawful orders cannot obtain legal representation and/or cannot depend on the courts to rein in the administration’s illegality, then the president can, as a practical matter, do whatever he wants. That would not be entirely true if there were a reasonable

prospect of pushback from Congress, but while individual Republican Senators have voiced opposition to the tariffs, the House leadership will not oppose Trump, at least not yet.

In tier 2, I would place the following actions aimed at curbing criticism of the regime:

A) Revocation of visas for permanent residents and students in retaliation for speech that would be clearly protected if engaged in by U.S. citizens—and is in fact protected for non-citizens as well.

B) Withdrawal or freezing of funding for research at universities that, in the administration's view, insufficiently cracked down on Gaza-related protests or insufficiently committed to barring transgender female athletes' participation in women's sports. In addition to violating free speech and academic freedom, these actions violate numerous federal statutory provisions setting procedural and substantive limits on funding withdrawals. (I discussed these issues [here](#) and [here](#).)

C) Threatening and in some instances bringing borderline-frivolous or actually frivolous litigation against journalists and news outlets for airing constitutionally protected opinion, resulting in settlements that are [tantamount to extortion](#). These actions are not only corrupt; they and others aim to intimidate the press.

In tier 3, I place all of the unlawful firings of agency personnel via DOGE or otherwise, across the entire federal bureaucracy. Apart from the imposition of the “reciprocal” tariffs, these actions have caused the most widespread harm and will have lasting effects, even if they are reversed by the courts or a subsequent Democratic administration (in the event that there are ever free and fair elections in the future), because it will take decades to rebuild the expertise and capacity that have been sacrificed. I place these actions in tier 3 only because the items I place in tiers 1 and 2 aim at the mechanisms for reining in the Trump administration's lawlessness and are thus, in some sense, meta-violations.

Question 2: Why do the examples you cite matter? Do they violate statutes? Breach civil liberties? Usurp Congress? Defy court orders? Disregard civil service protections? Target businesses for political reasons? Or something else?

They matter for all of those reasons and more. As I noted in my answer to question 1, many of these actions matter because they seek to insulate the administration's lawlessness from reversal by the usual means of constitutional democracy. I would add that they undermine the rule of law by personalizing the regime. In the old Soviet Union and other states modeled on it, there were official government organs but a parallel and much more important set of institutions and positions within the Communist Party where the real power resided. DOGE operates to some extent similarly.

Even more so, Trump has made personal loyalty the sine qua non of the exercise of power. One sees this most clearly in his efforts to do what he falsely accused the Biden administration of doing: turn the Justice Department (as well as other agencies of government) against his perceived political enemies. Put simply, the examples matter because taken collectively they convert the U.S. government from a somewhat flawed constitutional democracy into an autocratic kleptocracy.

Question 3: President Trump has already been twice impeached and found not guilty both times. Is impeachment the only remedy for some of the conduct you see as illegal or unconstitutional and, if not, what else can or should be done about it?

As a constitutional matter, no: impeachment is only one remedy. The courts can and have issued injunctions against many of the administration's unlawful actions. Although I noted in my answer to question 1 that the administration has been violating some of those injunctions, it has not asserted in open court that it has the power to disregard judicial orders.

In addition, Congress could, if it wanted to, rein in the administration by repealing some of the discretion it has delegated to the president. We have seen some movement towards doing so with respect to tariffs. Here too, there is a worry that an administration that is violating existing laws would also violate any new restrictions, of course.

State governments have some power to ameliorate the worst practical effects of the administration's actions by building capacity where Trump has cut it. That power varies by state, however, and direct confrontation risks vindictive retribution from Trump, as we saw after the Governor of Maine had the temerity to push back against him.

Ultimately, the most substantial remedy can come from the People. As a lame duck, Trump might appear immune to public opinion. However, that's not quite right. For one thing, Trump claims to be serious about circumventing (or outright violating) the 22nd Amendment and running for a third term. Even assuming Trump intends to leave office on January 20, 2029, he wants to accomplish things during his current term. Losing the House and possibly even the Senate to Democrats in the midterms will frustrate those of his plans that require congressional action. If Trump becomes sufficiently unpopular as to result in the kind of electoral success that Democrats enjoyed in 1936, removal via impeachment even becomes possible.

Question 4: Will the Supreme Court have to narrow the scope of *Trump v. U.S.* to assert its authority?

In a word, no.

[*Trump v. United States*](#) was, in my view, a deeply flawed decision that may have played a role in Trump's election. Had the Supreme Court not granted Trump immunity, none of the trials would have concluded in time to result in Trump's imprisonment before the November 2024 election, but a conservative Supreme Court's ruling that Trump could be deemed a lawbreaker might have had a marginal impact on the outcome (which is all that would have been needed to swing what was, despite Trump's characteristically hyperbolic boasts, a close election).

However, the issue now is how to block or slow Trump's abuse of executive power. Even before *Trump v. United States*, criminal prosecution of the sitting president was not an option, due to longstanding Justice Department policy rooted in constitutional considerations. Any role the courts can play will be through civil litigation, not criminal prosecution. As I have noted, the courts have been issuing orders in such litigation. Whether those orders make a difference depends on whether they are affirmed by the Supreme Court and, if so, whether Trump follows them.

Question 5: Of the recent significant actions that have received legal criticism, which do you think are within the powers of the president, whether you approve of them or not?

As I noted above, I believe the pardons of January 6 insurrectionists fall within the president's powers.

I also think that the role of Elon Musk is, in some respects, a red herring. Insofar as Musk has been firing people who have civil service or other protection, those actions violate the relevant statutes. However, in some instances, agency heads have made the formal moves against their staff. The relevant firings are still unlawful, but not because they were undertaken at the behest of Musk. Where agency heads ratified decisions by DOGE and Musk, those actions should be attributed to the agency heads.

Question 6: And, finally, where is this all heading? Where do you think Trump and his theorists are trying to push the Constitutional system as a whole? What are the implications for the rule of law and for the country?

Two sorts of actions by the Trump administration fit fairly comfortably within two longstanding goals of the mainstream of the Republican Party.

First, by purporting to fire commissioners who enjoy statutory protection against such firing absent good cause, the administration aims to challenge the 1935 Supreme Court precedent of [*Humphrey's Executor v. United States*](#). The *Humphrey's* ruling has long been anathema to those conservatives who espouse the unitary executive theory. *Humphrey's* has been weakened by subsequent Supreme Court precedent, so this approach could find a friendly reception in the Court. The difficulty for the Justices will be finding a way to overrule *Humphrey's* on a unitary executive theory without thereby giving the president the power to fire the chair and other members of the Federal Reserve Board, which would be disastrous. The Trump [executive order asserting control over the federal bureaucracy](#) exempts the Fed, but it offers no principled reason for doing so and would not be binding on Trump should the Court overrule *Humphrey's* without coming up with some way to make its holding inapplicable to the Fed. [Note: I provided this answer before Trump's threat to fire Federal Reserve Chair Jerome Powell and his subsequent rescission of that threat. I recently discussed whether such an action would be legal [on my blog](#).]

Second, reducing the size of the federal government has long been a stated goal of Republican administrations—although they have not, in practice, been able to achieve that goal. It's worth asking why not. The short answer is that prior Republican presidents have sought to reduce the size of the federal government (when they have), via lawful means. That requires congressional cooperation to cut spending, but even when Republicans held congressional majorities, the unpopularity of major cuts to entitlements and other

government programs stymied would-be government shrinkers in the Reagan, Bush I, and Bush II administrations. Because Trump is acting unilaterally, he is having much more success.

That brings us to the way in which Trump is fundamentally different from prior presidents, including even himself during his first term. Having surrounded himself with sycophants, Trump feels unconstrained by the Constitution and federal statutes. The theorists who are relevant here are not legal scholars who parse the meaning of “a President” in Article II but the [Silicon Valley neoreactionaries](#) who believe government should be run the way they believe that corporations should be run: by an all-powerful CEO.

Trump himself, of course, is a luddite whose alliance with the likes of Musk is transactional. If Trump were literate, the most important theorist for him would be Thomas Hobbes. The irony—and tragedy—is that in the name of order, Trump is dismantling the institutions that have long allowed the U.S. to prosper and thrive. As RFK Jr. unleashes pathogens aimed at making life short, Trump’s policies overall are nasty and brutish—creating the very war of all against all that his authoritarianism is ostensibly meant to restrain.