

President Trump and the Congress

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Abstract: Il Presidente Trump e il Congresso – The present essay explores the complex interaction between the two branches of the US form of government, namely the former President Donald Trump and the Congress. By analysing Trump's unorthodox and atypical attitude in different fields, the Author argues that the dispute between the two branches has reached exceptional levels of conflict and partisanship, possibly culminating in an irreparably divisive social impact. Due consideration is also given to a comparison with previous Administrations.

Keywords: President; Congress; Form of government; Law-making power; Executive power.

909

1. The political structure of the Congress during the Trump Presidency

In his first two years President Trump has enjoyed very favorable conditions, due to the presence of a Republican majority both in the Senate (51 to 47 plus two independents voting with the Democrats) and in the House of Representatives (239 to 201, with 5 seats vacant at the end of the 115th Congress). The partial switch in the November 2018 mid-term elections strengthened the Republican majority in the Senate (now 53 to 47, or 45 plus the two independent voting with the Democrats) but delivered the House to the Democratic Party with a majority of 234 to 201. The supplementary elections have changed very little in the power relation between majority and minority. In the Senate only one of the two Alabama seats, belonging to a Republican, went to a Democrat in a special election¹, while all the other vacancies have been filled by members of the same party². In the House, only one seat changed party during the last two years³: before the November 3 elections, therefore, the House of Representatives is comprised of 232 Democrats, 198 Republicans, 1 Liberal and 4 vacant seats.

¹ Jeff Sessions (R) resigned in February 2017 and Doug Jones (D) took his place.

² The Minnesota seat, belonging to Al Franken (D), who resigned on January 2, 2018, was won by Tina Smith, of the same Party on November 6. The Mississippi seat, belonging to Thad Cochran, was won by Cindy Hyde-Smith on the same date. Two more seats (those of John McCain (R., Arizona) and Johnny Isakson (R., Georgia)) were to be covered on November 3, 2020.

³ The vacancy of the California 25 district, assigned to Katie Hill (D), was filled by Mike Garcia (R) on May 12, 2020.

In the second half of President Trump's mandate, that is during the 116th Congress, due to the new party allegiance of the House of Representatives, it has not been easy for the Presidency to push forward legislation. This has caused a substantial diminution of the number of enacted bills, that have decreased from 443 in the 115th Congress to only 163⁴.

It must be said that even in the first two years President Trump's difficulty in keeping good relationships with the lawmakers of both Parties caused serious problems for the congressional approval of some of his core measures. In particular, the opposition of then senator John McCain and of two more GOP colleagues⁵, notwithstanding a presidential tweet addressed to all his co-partisans in Congress urging them to vote in favor of the so-called "skinny repeal" of the Obamacare, contributed to blocking the approval of the bill for the replacement of the Affordable Care Act. Furthermore, this lack of support by some members of his own Party, probably because of reasons concerning local constituencies, took place during the supposed "honeymoon period", when lawmakers, according to traditional literature, are more available to showing loyalty to the President as a result of the recent popular mandate⁶. Obviously, in times of growing ideological polarization, it should be expected that the rate of presidential support in Congress might increase over the years. In fact, a recent detailed analysis of the historical trend⁷ shows that in 2017 President Trump received support of 95.9% of his co-partisans in the House and of 98.9% in the Senate, or of 96.7% if the nomination votes on presidential appointments are excluded. Since 1969, the first year of Richard Nixon' administration, onwards, with the possible exceptions of 1989 and 2009, the rate of support has constantly grown. President Obama in 2016 only received the support of 90% of House Democrats and 87% of Senate Democrats⁸. It is well known, in any case, that lawmakers have to aim at reelection in their respective districts or States, so that the electoral connection⁹ may prevail on the loyalty to the President's requests.

No doubt, however, that President Trump's style in the interaction with Congress, like in several other fields, has been atypical, or

⁴ As of October 12. Source: govtrack.us.

⁵ Namely Susan Collins (Maine, Rep.) and Lisa Murkowski (Alaska, Rep.).

⁶ See e.g. L.J. Grossback, D. A. M. Peterson, J.A. Stimson, *Comparing Competing Theories on the Causes of Mandate Perceptions*, 49 *Am. J. of Pol. Sc.* 406 (2005).

⁷ K. Amira, L. Johnson, D. McCray, J. Ragusa, *Adversaries or Allies? Donald Trump's Republican Support in Congress*, 17 *Perspectives on Politics* 756 (2019), 756 ff., who found their research on CQ Roll Call data. See also Presidential Support, Washington, D.C., Congressional Quarterly, 2019 and J.R. Bond, *Validity and Reliability of Identifying Presidential Positions on roll Call Votes in the Age of Trump*, 49 *Pres. St. Q.* 898,903 (2019), who raises some doubts about the reliability of the CQ interpretation of the data.

⁸ Ibidem, 758 and Figure 1.

⁹ See R. Fenno, *Home Style. House Members in Their Districts*, Northbrook, 1978; R. Herrick, M.K. Moore, J.R. Hibbing, *Unfastening the Electoral Connection: The Behavior of Representatives When Reelection Is No Longer a Factor*, 56 *J. of Pol.* 214 (1994).

unorthodox¹⁰. He has given no evidence of owning the three attitudes that Richard Neustadt¹¹ indicated as necessary for a President to be successful in Congress, that is bargaining, persuading and compromising. That he attempted to persuade senator Murkoswski to support the Obamacare repeal by threatening, through the Interior Secretary, of withdrawing presidential help to energy exploration policies in Alaska it is often quoted. The result was that she voted against the bill and, as Chair of the Energy and Natural Resources of the Senate, she delayed a nomination anxiously requested by the Interior Department. It was not quite the excellent bargaining capacity that Trump boasted of in his bestseller¹².

His bad relationship with the Democrats in Congress is well known and the peculiar hostility between him and Nancy Pelosi is proverbial: he is reported to have called her a “third-grade politician” during a White House meeting, while she told to have shouted back “I wish you were a politician”. On other occasions he called her “crazy Nancy”. On February 4, 2020, during the ceremony of the State of the Union address, she stuck her hand out for a handshake and he snubbed her, while an hour later, after a particularly partisan speech, she tore her copy of his speech into shreds in front of the cameras. At the end of October, in a final effort to achieve an agreement on the fifth program for the Covid-19 emergency, worth around two billions, conversations were started again between Nancy Pelosi, the head of the White House staff, Mark Meadows, and the Treasury Secretary Steven Mnuchin. In the same days, however, the Speaker of the House was proposing to create a commission to review the capability of the President of carrying out his presidential duties after being hospitalized and granting “zig-zagging” interviews allegedly revealing “disassociation from reality”. The immediate angry reply was “Crazy Nancy is the one who should be under observation”.

His own Party had been internally divided long before his election¹³. The traditionally conservative Republican Study Committee, the Tea Party-oriented House Freedom caucus and the more moderate Main Street Partnership caucus are ideologically distant from each other. Trump might have thought of abstaining from excessive interference with the Republicans in Congress, letting them pursue the general Party goals that he had shared in his campaign, such as the reduction or altogether abolition of the Obamacare, tax cuts and deregulation, achieving the first two objectives possibly in the first 200 days, and to step in only when strictly necessary requesting the adoption of other measures. He might have chosen such an approach deliberately or have been compelled to it by his impulsiveness,

¹⁰ J.R. Bond, *Contemporary Presidency. Which Presidents Are Uncommonly Successful in Congress? A Trump Update*, 49 *Pres. St. Q.* 898 (2019).

¹¹ R-E. Neustadt, *Presidential Power: The Politics of Leadership*, New York, 1960.

¹² D.J. Trump, *The Art of the Deal*, New York, 1987.

¹³ A short description of the GOP fragmentation in J. Herbert, T. McCrisken, A. Wroe, *The Ordinary Presidency of D. J. Trump*, 2019, ch. 7.

inconstancy and impatience with or lack of specific skill in political negotiations. By so doing, however, he failed in strengthening the cohesion of the Party and offering a unifying vision. At the same time, his personalistic and anti-establishment attitude, together with his unorthodox agenda, made many Republicans fear about their political future, at least in the medium run, although the congressional loyalty that he has obtained was in the average very high¹⁴.

The real question, however, concerns the future of the GOP after Trump, whatever the results of the November 2020 elections. Will he leave traces of his style in the executive leadership? Will he have contributed to welding together the different components of the American conservative thought? The promises of privatizations, deregulation and reduction of the federal administration might be mere echoes of neo-liberal theories or really deep-rooted beliefs: but is there a chance that his interpretation of such values may leave enduring seeds in the mainstream of the Republican political culture? The results of both presidential and congressional elections of November 2020 are likely to be the litmus of the evolution of the GOP. A full success could buttress a reflection on the political soul of conservatism, with the advantage of having good span of time to activate the traditional think-tanks, while a failure on both sides or even only on one of them would trigger a real crisis, because the reasons of a defeat would be conducive either to the unrestrainable personality of Trump or to a lack of clear political identity of the Party, or to both.

Careful research¹⁵ have been carried out with reference to the engagement of President Trump in the campaigns of the Republican candidates to one of the two Chambers, in order to define the criteria applied in the selection of the candidates to support. It is traditionally believed that presidential activity in midterm elections is helpful to the endorsed candidates both in terms of vote shares and of fundraising capacities, although their opponents receive a benefit too, because the personal engagement of a President triggers a countermobilizing effect¹⁶. The pertinent data suggest that Trump has endorsed at least five times more

¹⁴ See e.g. H. Liu, G.J. Jacobson, *Republican Candidates' Positions on Donald Trump in the 2016 Congressional Elections: Strategies and Consequences*, 48 *Pres. St. Q.* 49 (2018); M. Kruse, *The Loneliest President*, *Politico*, September 15, 2017. Much more negative statements, e.g., in J.B. Comey, *A Higher Loyalty: Truth, Lies, and Leadership*, 2018; B. Woodward, *Trump in the White House*, New York, 2018; M. Wolff, *Fire and Fury: Inside the Trump White House*, New York, 2018. Detailed data about the votes of individual Congressmen in FiveThirtyEight, *Tracking Congress in the Age of Trump*, Fivethirtyeight.com, progressively updated.

¹⁵ See e.g. A.O. Ballard, H.G. Hassell, M. Heseltine, *Be Careful What You Wish for: The Impacts of President Trump's Midterm Endorsements*, *Leg. St. Q.*, April 2020, 1 ff.

¹⁶ See above all B. Heersink, B.D. Peterson, J.C. Peterson, *Mobilization and Counter-Mobilization: Candidate Visits in the 2016 Presidential Election*, *Fordham University Working Paper*, 2018. But see also A.B. Hall, *Who Wants to Run? How the Devaluing of Political Office Drives Polarization*, Chicago, 2019 and E.R. Tufte, *Determinants of the Outcomes of Midterm Congressional Elections*, 69 *Pol. Sc. Rev.* 812-26 (1975).

candidates in 2018 than Obama in 2014 and ten times more than in 2010, if one takes into account the number of rallies. Trump also outscores Obama in terms of in person endorsements¹⁷, while Obama was more active in 2010 in soliciting fundraisers¹⁸. Furthermore, Obama never availed himself of Twitter, while Trump did a massive use of it, also adding it to personal endorsements.

In terms of choice criteria, it seems that the President preferred to step in with active endorsements whenever the political race promised to be more competitive or when a win in a given constituency might have been strategic, which seems to be reasonable, given the probable clogging of the presidential agenda. However, the results were not always positive, since apparently presidential endorsements normally get votes and funds on a random basis, but also motivate the opposition. Eighty Republican candidates (out of a total of 430 running in the general elections of 2018) were endorsed by Trump: 61% of those running for the Senate and only 18.6% of those running for the House, 23% of the incumbents and only 8.2% of the challengers. In all cases there was an increase in turnout, but apparently the candidates' vote share decreased by 2.3% in the House and by 11.8 in the Senate. It is alleged that the Republican Party would have won 11 more seats in the House and 4 in the Senate without presidential endorsement. More in general, in a framework of growing polarization at national level, the engagement of the Presidency in congressional elections definitely contributes to increase the level of conflict, although it is true that midterm elections have always been a ¹⁹sort of referendum on the President²⁰.

Due both to his uneasy relationship with lawmakers and to the flip of the House to a Democratic majority in 2018, President Trump has often resorted to unilateral action, that many scholars had predicted as a natural consequence of the political polarization and of the emergence of the so called plebiscitary presidency. Independently of framework theories that incline towards either the increasing search by Presidents of extraconstitutional means to respond directly to the electorate²¹ or the preference for by-passing Congress in order to be directly in touch with the public²², a recent study

¹⁷ 35 by Trump in 2018, 16 and 8 by Obama respectively in 2010 and 2014: see A.O. Ballard and al., cit. in note 1, Table 1.

¹⁸ See A.O. Ballard and al., *Be Careful What You Wish for*, cit., 21 ff.

¹⁹ See e.g. B. Ackerman, *The Decline and Fall of the American Republic*, Cambridge, Mass.-London, 2010.

²⁰ See also J.E. Campbell, *Explaining Electoral Change in the 2018 US Midterm Elections: The Three Components of Electoral Mandates*, 16 *The Forum* 513 (2018); J.E. Cohen, *Polls and Elections: Presidential Referendum Effects in the 2018 Midterm Elections: An Initial Analysis*, 49 *Pres. St. Q.* 669 (2109).

²¹ W.G. Howell, T.M. Moe, *Relic: How Our Constitution Undermines Effective Government- and Why We Need a More Powerful Presidency*, New York, 2016.

²² A. Reeves, J.C. Rogowsky, *Unilateral Action, Public Opinion and the Presidency*, 78 *J. of Politics* 137 (2016).

carried out by Harvard scholars²³ demonstrates that on several occasions unilateral actions on important topics - such as the recognition of Jerusalem as capital of Israel, the construction of the Keystone XL pipeline, the withdrawals of the US from the Paris Climate Agreement, from the Trans Pacific Partnership and from Iran Nuclear Accord, the repeal of the measures to cut greenhouse emissions, the travel ban on foreigners from some countries, the ban on transgender people from serving in the military and the requirement of cutting two current regulations with each new one enacted - have all been implemented with different issue agreements in public opinion and without unanimous support by Republican electors or unanimous opposition by Democratic voters, even in times of high polarization²⁴.

Even more radically different theories have been emerging in the last years about the confrontation between the Presidency and Congress. On one side some authors, opposing President Trump, have heralded the starting of “The Resistance” against his administration²⁵. Others²⁶ object that Congress has largely withdrawn from its legislative function, dedicating more and more time to presidential control, pursuing parallel investigations, frequently resorting to subpoenas and holding executive officers in contempt for obstruction of Congress, in one word encroaching in the area of executive privilege.

The dispute between the two branches has reached unprecedented levels of conflict and partisanship, and the social impact of such controversies risks to be irreparably divisive.

2. The veto power and the signing statements

While Trump did not issue any veto in the first two years of his Presidency and up till March 2019²⁷, in the last eighteen months of Trump’s mandate due to the new political alignment during the 116th Congress he issued seven vetoes.

The first and probably most important case concerned the Resolution²⁸ relating the national emergency declared by the President on February 15, 2019 in order to secure the funding to build a wall on the Mexican border. Twelve Republicans joined the Democrats to pass the Resolution on March 14 by a 59-41 vote. Trump issued his veto the following day. The House sustained

²³ S.D. Ansolabehere, J.C. Rogowski, *Unilateral Action and Presidential Accountability*, 50 *Pres. St. Q.* 129 (2020).

²⁴ See also D.P. Christenson, D.L. Kriner, *Constitutional Qualms or Politics as Usual? The Factors Shaping Public Support for Unilateral Action*, 61 *Am. J. Pol. Sc.* 335 (2017) and J.A. Dearborn, *The Foundations of Modern Presidency: Presidential Representation, the Unitary Executive Theory, and the Reorganization Act of 1939*, 49 *Pres. St. Q.* 185 (2019).

²⁵ See D.S. Meyer, S. Tarrow (Eds.), *The Resistance: the Dawn of the Anti-Trump Opposition Movement*, Oxford, 2018.

²⁶ See e.g. W.P. Barr, *The Role of the Executive*, 43 *Harv. J. of L. & Publ. Pol.* 605 (2019); the author is Attorney General of the United States.

²⁷ See G.F. Ferrari, *President Trump and the Congress*, in G.F. Ferrari (Ed.), *The American Presidency under Trump: The First Two Years*, The Hague, 2020, 1 ff.

²⁸ Senate J. Res. 46.

the veto on March 26 by a 248-181 vote. Other vetoes were issued in 2019 against the joint Resolution that directed the removal of U.S. forces from hostilities in Yemen²⁹; the two joint Resolutions that disapproved the transfer of weapons such as laser-guided bombs to some European and Arab countries³⁰; and another joint Resolution concerning the wall on the Southern border³¹. In 2020 the President has issued two vetoes: the first one on May 6, against the joint Resolution that directed the removal of armed forces from hostilities against Iran not previously authorized by Congress, following a January 3 airstrike ordered to kill the commander of a unit of Iran's Islamic Revolutionary Guards Corps³²; the second on May 29, against a joint Resolution concerning a Department of Education rule about student loan discharge³³.

The President has resorted to signing statements in substantial continuity with his predecessors³⁴. Their number was of 7 in 2017, 30 in 2018, 14 in 2019 and 7 as of October 2020. In the last two years the sectors where statements have been added when signing bills into law have been appropriations³⁵, environment³⁶, foreign policy³⁷, and, in 2020, public health³⁸. The President dedicated special attention to the 5G problem, appending a long and careful note to the 5G and Beyond Act of 2020³⁹.

²⁹ S.J. Res. 7, proposed on January 30, 2019, passed by a 54-46 vote of the Senate on March 13 and by a 247-175 vote of the House on April 4. The veto was issued on April 16. The Senate sustained the veto on May 2 with 53-45 vote of the Senate.

³⁰ The first one was S.J. Res. 36 introduced on June 5, 2019, approved by the Senate by a 53-45 vote on June 20 and by the House on July 17 by a 238-190 vote; the veto was issued on July 24 and sustained by the Senate on July 28 by a 45-40 vote. The second was S.J. Res. 37, introduced on June 5, 2019, passed by the Senate by a 51-45 vote on June 20 and by the House on July 17 by a 238-190 vote; the veto was issued on July 24 as well and sustained by the Senate on July 29 by a 45-39 vote.

³¹ S.J. Res. 54, introduced on September 10, 2019, passed by the Senate by a 54-41 vote on September 25 and by the House on September 27 by a 236-174 vote. The veto was issued on October 15 and sustained by the Senate on October 17 by a 53-36 vote.

³² S.J. Res. 68, introduced on January 9, passed by the Senate by a 55-45 vote on February 13 and by the House on March 11 by a 227-186 vote. According to the veto message, the action was included in the 2002 Authorization for Use of Military Force Against Iraq.

³³ H.J. Res. 76, introduced on September 26, 2019, passed on January 16, 2020 by the House by a 231-180 vote and on March 11 by the Senate by a 53-42 vote. The Senate sustained the veto on May 7 by a 49-44 vote.

³⁴ See G.F. Ferrari, *President Trump and the Congress*, cit., 6 ff.

³⁵ Consolidated Appropriations Act, 2019 (P.L. 116-6); Consolidated Appropriations Act, 2020 (P.L. 116-93) and National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92); Further Consolidated Appropriations Act, 2020 (P.L. 116-94).

³⁶ *Nuclear Energy Innovation and Modernization Act* (P.L.115-439); John D. Dingell, Jr., *Conservation, Management and Recreation Act* (P.L. 116-9).

³⁷ *Hong Kong Human Rights and Democracy Act of 2019* (P.L. 116-76); *Uyghur Human Rights Policy Act of 2020* (P.L. 116-145); *Hong Kong Autonomy Act* (P.L. 116-149).

³⁸ *Family Coronavirus Response Act* (P.L. 116-127); *Supporting Older Americans Act of 2020* (P.L. 116- 131); *Coronavirus Aid, Relief, and Economic Security ACT* (CARES Act, P.L. 116- 136).

³⁹ P.L. 116-129.

3. Executive orders and Proclamations

President Trump's overall number of executive orders has been quite similar to those of former Presidents. 55 EOs were adopted in 2017, partially due to the intent of amending, revoking or superseding acts of his predecessor; the number abated to only 37 in 2018; then it increased again to 45 in 2019 and to 53 in 2020, when the Democratic majority in the House may have made it more comfortable to circumvent Congress by resorting to administrative activities⁴⁰. The average of 47.5 is higher than Obama's 43.5, Bush's 36.4, Clinton's 45.5 and G.H.W. Bush's 41.5 and akin to Reagan's 47.6, that represented a net diminution in comparison with all Presidents since Truman⁴¹. The increase in comparison with the Obama Presidency is not very important, but the promise to stop "signing them like they're butter"⁴² has not been kept.

Proclamations, the other most important tool available to Presidents to further their policy goals outside Congress, are used preferably for ceremonial reasons, such as commemorations of anniversaries, holidays or other important events. However, traditionally they have been also resorted to in the fields of tariffs and trade on one side and immigration policy⁴³ on the other. The yearly number of Proclamations published by Trump has been slightly lower than that of his predecessor: an average of 135, compared with 153.5 by Obama⁴⁴, who had been the most loquacious ever, at least through this kind of expression⁴⁵.

An unusual number of EOs and Proclamations by President Trump have been dedicated to immigration issues, in order to reorganize government entities or to assign functions, to create task forces or require report, to create new policies or modify current practices in their implementation, to suspend the entry of certain categories of immigrants according to sec. 212 (f) or facilitate naturalization of immigrants in the

⁴⁰ This is one of the most frequent intents of Presidents in using EOs: see e.g. A.L. Warber, Y. Ouyang, R.W. Waterman, *Landmark Executive Orders: Presidential Leadership through Unilateral Action*, 48 *Pres. Studies Q.* 11n0 ff. (2018); T. Garvey, V.S. Chu, *Executive Orders: Issuance, Modification, and Revocation*, 2014; J.A. Fine, A.L. Warber, *Circumventing Adversity: Executive Orders and Divided Government*, 42 *Pres. Studies Q.*, 256 ff. (2012).

⁴¹ The data concerning former Presidents in M. Waslin, *The Use of Executive Orders and Proclamations to Create Immigration Policy: Trump in Historical Perspective*, 8 *J. on Migration and Hum. Sec.* 54, Table I.

⁴² World of President Trump reported by L. Green, *Guess Who Called Out the Unconstitutional Emergency Immigration Powers Trump's Eyeing? Trump and His Personal Lawyer*, *The Daily Beast*, February 5, 2019.

⁴³ In this area, however, the legal source is the Immigration and Nationality Act of 1952, Pub. L. 82-414, 66 Stat. 163, U.S.C. ch. 12, sec. 212 (f).

⁴⁴ 119 in 2017, 147 in 2018, 140 in 2019 (see M. Waslin, *The Use*, cited), Table 2. In 2020 the Federal Register reports 120 proclamations.

⁴⁵ M. Waslin (op.cit) counts 153.5 proclamations per year during the Obama years, 117.6 in the Bush mandates, 75.8 in the Clinton years, 147.3 during the G.H.W. Bush Presidency and 139.8 in the Reagan years.

military. At least 10 EOs and 18 proclamations have been issued in this area⁴⁶.

During 2020 much care has been dedicated to health matters, with particular reference to Covid-19. The declaration of national emergency concerning the Covid-19 outbreak has taken place in the form of Proclamations⁴⁷, while almost all successive measures have had the form of EOS, in number of at least a dozen⁴⁸. Some more EOs have been used in the field of communications technology and in particular those signed on the 8th of August and published on the 11th addressed the “threat posed by Tik Tok” and by WeChat⁴⁹.

It is commonly believed⁵⁰ that President Trump has resorted to EOs and Proclamations in a more aggressive ways than his predecessors. In the field of immigration policy, in particular, his EOs have been frequently aimed at introducing new policies. In the area of border security the Presidency has required more staffing, agreements with State and local police and even a more frequent recourse to detention. The visa measures have heralded and promoted new statutes to be proposed by governmental agencies. In the EOs concerning internet providers, he has recommended a strict judicial interpretation of existing legislative provisions, solicited independent agencies to adopt new rules, requested the Attorney General to draft bills to be introduced in Congress, and premised elaborated ideological premises⁵¹. With the EOs and Proclamations concerning the “travel ban” immediate and direct effects on large categories of persons have been produced. In most cases, the executive authority has been pushed to its extreme outer limits. However, the Supreme Court on at least one occasion has validated the presidential administrative activity: in *Trump v. Hawaii et al.*⁵², it has

⁴⁶ See e.g. K. R. Johnson, *Immigration and Civil Rights in the Trump Administration: Law and Policy Making by Executive Order*, 57 *S. Cl. L. Rev.* 611 (2017); P. Margulies, *Bans, Borders, and Sovereignty: Judicial Review of Immigration Law in the Trump Administration*, 2018 *Mich. St. L. Rev.* 1; K. Miner, S.K. Peterson, *High Stakes for High-Skilled Immigrants*, 44 *Mitchell Hamline L. Rev.* 970 (2018); S.S. Wadhia, *National Security, Immigration and the Muslim Bans*, 75 *Wash. & Lee L. Rev.* 1475 /2018); Banned, *Immigration Enforcement in the Time of Trump*, New York University Press, 2019; J. Davies, M.D. Shear, *Border Wars, Inside Trump's Assault on Immigration*, New York, 2019.

⁴⁷ No. 9994 of March 13, 2020.

⁴⁸ In detail EO 13909 of March 18; EO 13910 of March 23; EO 13911 of March 27; EO 13917 of April 28; EO 1922 of May 15; EO 13924 of May 19; EO 13927 of June 4; EO 13938 of July 24; EO 13944 of August 6; EO 13945 of August 8; EO 13947 of July 24; EO 13948 of September 13; EO 113951 of September 24.

⁴⁹ EO 13942 and 13943.

⁵⁰ See *supra*, the authors cited in note 7.

⁵¹ This is for instance the case of EO 13925, signed on May 28 and published in the Federal Register on June 2, 2020: see G. F. Ferrari, *L'Executive Order sulla prevenzione della censura online: quali effetti sull'autonomia dei social network?*, *DPCE online*, 2020, 2, 1145 ff.

⁵² 138 S. Ct. 2392, 585 U.S. _ (2018), concerning Proclamation 9645, of September 24, 2017, under the authority of 8 U.S.C. §§1182(f) and 1185 (a).

stated that the President has lawfully exercised the broad discretion granted to him in order to suspend the entry of foreign nationals and to decide the length and conditions of the suspension.

It is well known, finally, that President Trump has resorted to several other means of communication, such as presidential memoranda and policy memos, and that his use of social media has been intense and aggressive. His tweets have often given start to new policies or to changes in the implementation of current policies.

4. Appointments

Notoriously before the Inauguration Day a President has to fill approximately 4,100 appointed positions, in the upper echelon of the Executive branch, including Government and federal agency posts. This procedure is governed by the Presidential Transition Act of 1963⁵³ and the Pre-Election Presidential Transition Act of 2010⁵⁴ and is ordinarily carried out by a Transition Team, which enjoys funding, space, services provided by federal money⁵⁵. The Trump-Pence team was accused of ethical lapses and poor practices⁵⁶, but these allegations might belong to the sphere of political gossip, devoid of institutional relevance, and have produced no real consequences.

Several positions have been filled more than once, due to substitutions made necessary by resignation or revocations, often preceded or followed by personal or institutional complications. For instance, at the Department of State, the first appointee, Rex Tillerson, quit after little more than one year⁵⁷ due to divergences with the President and Michael Pompeo had to leave the C.I.A. to take his place. At the Department of Defense, James Mattis gave up after two years⁵⁸ after the troop withdrawal from Syria and was replaced by Mark T. Esper, who got confirmed only seven months later. At the Department of Health and Social Services, Tom Price held on for seven months only and had to resign due to criticism for wasteful expenditures⁵⁹. Attorney General Jeff Sessions lasted eight months, before resigning due to involvement in the so-called Russiagate⁶⁰, and it took more than one year to have his successor confirmed⁶¹. Even more complicated has been the story of the Department of Labor, where the first nominee, Andrew Puzder, was

⁵³ Pub. L. 88-277, 3 U.S.C. §102.

⁵⁴ Pub. L. 111-283, 3 U.S.C. §102.

⁵⁵ The whole mechanism is described by J. P. Zoffer, *The Law of Presidential Transitions*, 129 *Yale L. J.* 2501 (2020).

⁵⁶ Bloomberg, *Trump Team's Conflicts and Scandals: An Interactive Guide*, March 2019.

⁵⁷ Confirmed on February 1, 2017, left on March 31, 2018. Pompeo was confirmed on April 26, 2018.

⁵⁸ Confirmed on January 20, 2017, left on December 31, 2018. Mattis was confirmed on July 23, 2019.

⁵⁹ Confirmed on February 10, 2017, left on September 9, 2017. His successor, Alex Azar, was confirmed on January 24, 2018.

⁶⁰ Confirmed on February 8, 2017, left on November 7, 2017.

⁶¹ William Pelham Barr, confirmed on February 14, 2019.

revoked by the President before being confirmed⁶²; Alexander Acosta endured up to June 2019, when the Epstein scandal forced him to quit⁶³ and was substituted by Eugene Scalia⁶⁴, son of the late Associate Justice Antonin, a corporate lawyer usually counseling for entrepreneurs. At the Department of Veterans Affairs, David Shulkin was fired by tweet a little more than one year after confirmation⁶⁵ and the nomination of his successor, Ronny L. Jackson, was revoked within three months⁶⁶, when Robert L. Wilkie was finally confirmed⁶⁷. At the Department of the Interior, Ryan K. Zinke⁶⁸ had to resign after less than two years due to alleged ethical questions concerning excessive expenses and it took more than three months to have his deputy confirmed in his post.

Similar events took place with the heads of many agencies. Besides the transfer of Mike Pompeo from the C.I.A. to the Department of State, the most important case concerned Scott Pruitt, put at the head of the Environmental Protection Agency although, as Attorney General of Oklahoma, he had sued the E.P.A. several times, was forced to resign after allegations of conflicts of interests⁶⁹. It took almost nine months to get his deputy, Andrew R. Wheeler, confirmed⁷⁰.

At the end of September 2020, according to newspapers data⁷¹, out of 757 key positions requiring Senate confirmation, for example, 104 had had formal nomination and awaited advise and consent, 8 were in the process of receiving a nomination that however had not been submitted, while 133 had no nomination at all. No fewer than 16 Cabinet-level Departments lacked more than 12 tracked positions. 531 appointments had been confirmed, 53 withdrawn by the President, 4 returned to him, and 148 incumbents resigned during his mandate. The most serious difficulties in filling positions were found in the Homeland Security Department (35% of the total number of positions filled), the Justice Department (45%), and the Departments of Transportation (55%), Education (56%), Commerce (57%) and the Environmental Protection Agencies (57%).

5. Administrative control over policy

President Trump has not followed Obama's example in appointing and

⁶² Nomination announced on December 8, 2016 and revoked on February 28, 2017.

⁶³ Nomination announced on February 16, 2017, resignation on June 19, 2019.

⁶⁴ Nomination announced in July 2019, confirmation on September 26.

⁶⁵ Confirmed on January 11, 2017, resigned on March 28, 2018.

⁶⁶ Nomination announced on March 23, 2018 and revoked on June 20.

⁶⁷ On July 23, 2018.

⁶⁸ Confirmation on March 1, 2017, resignation on January 2, 2019. David Bernhardt was confirmed on April 11, 2019.

⁶⁹ Confirmed on February 17, 2017, resigned on June 5, 2018. The president of the League of Conservation voters had defined his nomination "like the fox guarding the henhouse".

⁷⁰ On February 28, 2019.

⁷¹ The Washington Post, September 2020.

trusting “czars” for the coordination of administrative policies. Since the beginning of his campaign he declared his intention of deconstructing the administrative state⁷², implementing a public opinion feeling of declining confidence in public institutions. However, besides some antigovernment rhetoric, he has not heralded a brand new toolkit nor proposed a different approach to public administration. He has rather preferred to try to centralize administrative policies by relying on persons not strictly related to the departments but working as advisors in different areas. After some initial unsuccessful appointments, he also preferred to be surrounded by members of his family, such as his daughter Ivanka, his son-in-law Jared Kushner and his son Donald jr., in unpaid positions. Such a choice led to harsh criticism first for their lack of previous governmental experience and later for the involvement of some of them in some difficult passages of his administration, e.g. in the relationship with Russian politicians⁷³. Vice-President Pence was also heavily used at least in the first two years, due to his congressional experience, above all as a link with Capitol Hill. Outside this inner circle of close advisors, the turn over in staff and cabinet has made it difficult to give continuity to his administrative policies, besides creating significant opposition in the Senate confirmation process. Often he openly declared that he had not appointed a lot of posts because they were unnecessary⁷⁴.

Some of President Trump’s policies, therefore, have been adopted after a superficial and/or hasty preparation: the main examples have been the Travel ban, his approach to DACA and the immigration policy in general⁷⁵.

There is also evidence that some executive departments have made efforts to streamline independent agencies, generating harsh judicial litigation, sometimes ending up successfully for the Presidency and bringing about a reduction in the Chevron standard deference towards the agencies⁷⁶. Unsympathetic authors have even tried to demonstrate that the Take Care

⁷² D.E. Lewis, *Deconstructing the Public Administration*, 81 *J. of Politics* 767 (2019); J.C. Rogowski, *The Administrative Presidency and Public Trust in Bureaucracy*, *Harvard University Paper*, December 2019. Some authors have reacted by intervening in support of the idea of administrative state: see Donald F. Kettle, *The “Clumsy” War against the Administrative State*, 77 *Publ. Adm. Rev.* 639 (2017); S. Rahman, *Reconstructing the Administrative State in an Era of Economic and Democratic Crisis*, 131 *Harv. L. Rev.* 1671 (2018); J. A. Marini, *Unmasking the Administrative State*, N.Y., 2019; A. Roberts, *Should We Defend the Administrative State?*, 80 *Publ. Adm. Rev.* 391 (2020); P.L. Strauss, *How the Administrative State Got to This Challenging Place*, *Col. Publ. L. Research Paper* No. 14–668 (2020).

⁷³ See e.g. J.D. King, J.W. Riddlesperger, Jr., *The Trump Transition: Beginning a Distinctive Presidency*, 99 *Soc. Sc. Q.* 1821 (2018); J. Pfiffner, *Organizing the Trump Presidency*, 48 *Pres. St. Q.* 153 (2018); W. Hatcher, *The Curious Public Administrator: The New Administrative Doctrine*, 21 *Publ. Int.* 225 (2019).

⁷⁴ S. Heidari-Robinson, *Subjecting Donald Trump’s War to Administrative State to Management Science*, 77 *Publ. Adm. Rev.* 641 (2017).

⁷⁵ See G.F. Ferrari, *President Trump and Congress*, cit.; now see in detail J.L. Mashaw, D. Berke, *Presidential Administration in a Regime of Separated Powers*, 35 *Yale J. Reg.* 549 (2018).

⁷⁶ See above all B. Shah, *Executive (agency) Administration*, 72 *Stan. L. Rev.* 641 (2020).

Clause of Art. II, Sec. 3, could have been violated through a less than “faithful” exercise of discretion⁷⁷.

6. Administrative control over personnel

During the Obama Presidency the total amount of the federal workforce, including contractors, grantees, active duty military and postal workers first increased from about 10 million to 11.3 million and then abated to about 9⁷⁸. After some electoral promises to the contrary, Trump almost immediately made a generous use of contracts and grants, generating more than 2 million jobs, most of them to the Departments of Defense and Transportation⁷⁹. The so-called Whitten’s cap, that since 1950 limits the number of contractors and grantees to within the threshold of 2 million, has not been substantially exceeded; furthermore, contractors and grantees are hired at will. However, they place a serious burden on the budget. The most important growth in total number of jobs between 2017 and 2020 is found in the Defense Department, amounting to 611 thousands (19% of the total), due above all to contracts, while the highest percentage of increases is attributed to the Transportation (42%), Interior (38%), Health and Human Services (30%), and Homeland (25%) Departments: all of them depended on grants for the most part⁸⁰. The biggest growth in terms of civil servants has taken place in the Treasury (18 thousands or 13%). NASA (17 thousands or 13%) and Commerce (29 thousands or 28%) also increased their numbers significantly, but as a consequence of a mix of all kinds of employees.

7. The emergency powers

Two real emergencies have taken place during the Trump Presidency. The first one was due to domestic political reasons and concerned the construction of the anti-immigration wall on the border with Mexico, developing along financial, more than political, lines. The second was induced by global causes and required the adoption of sanitary and economic measures. On both occasions the President had to confront Congress over federal spending and division of powers. His stance prevailed in both cases, but the watershed that was already deep was harshly enlarged.

During the pandemic negotiations were started with Congress and the Democrats, represented by the Speaker of the House and the minority leader of the Senate⁸¹. They soon stalled and rapidly failed, leaving the parties

⁷⁷ E.D. Bernick, *Faithful Execution: Where Administrative Law Meets the Constitution*, 108 *Geo. L.J.* (2019).

⁷⁸ See G. F. Ferrari, *The relationship between Presidency and Congress*, in G.F. Ferrari (Ed.), *The American Presidency after Barack Obama*, The Hague, 2018, 25.

⁷⁹ See U.S. *Bureau of Labor Statistics*, September 2020; P.C. Light, *The true size of government is nearing a record high*, October 7, 2020.

⁸⁰ See P.C. Light, *The true size*, cit., Appendix Table 1.

⁸¹ Nancy Pelosi and Chuck Schumer respectively.

embittered and resentful: the President accused the Democrats of not seeking out a deal seriously; the Democrats reproached him for spending the first weekend of August, in the apex of pandemic and unemployment crisis, in one of his luxury golf clubs, in order to make the talks fail and to resort to executive measures thereby circumventing Congress. The concrete result was a package of measures including a payroll tax suspension, a federal eviction ban, some relief for student borrowers and an unemployment benefit of \$ 400.00 a week, approved by EOS⁸². According to the Democrats, it would have been possible to reach a bi-partisan agreement, worth the much higher amount of \$3.4 trillion, twice as large as the presidential package and including a more effective relief.

The legal basis for the presidential intervention was represented by the Stafford Act of 1988⁸³, a statute conceived and structured to face major disasters and emergencies of likely instant nature⁸⁴ by providing federal “ordering and continuing means of assistance...to State and local governments”. In many other countries, also not completely prepared for events of a pandemic nature, a major role in facing the pandemic has been played by the Executives, by-passing Parliaments through generous interpretations of existing statutes addressing emergencies and civil protection. The peculiar polarization of the American context has overheated the political climate, also thanks to the imminent presidential elections.

The other emergency was somehow self-procured. The presidential decision to by-pass Congress’ resistance to finance the border wall caused the President to “rather do it much faster”. Proclamation 9844 of February 15, 2019 declared a national emergency concerning the Southern border, invoking secs. 201 and 301 of the National Emergencies Act of 1976⁸⁵ as a statutory basis. At least 60 national emergencies have been declared before 2020 and some of them have lasted decades or are still on-going. Obama resorted to emergencies 13 times, Trump 7. Congress reacted with a joint Resolution⁸⁶ passed by the House with a 245-182 vote and by the Senate with a 59-41 vote, with 12 Republicans joining the Democratic minority. The President vetoed the Resolution the day after its presentation and Congress could not override it⁸⁷.

The following litigation has been unsuccessful for the claimants. Some private owners of land interested by the construction of the wall in Southern Texas⁸⁸, besides the problem of their standing to raise questions of

⁸² EOs and Proclamations concerning the pandemic are listed supra, at notes 47 and 48.

⁸³ Robert T. *Stafford Disaster Relief and Emergency Assistance Act*, Pub. L. 100-707, 102 Stat. 4689, 42 U.S.C. ch. 68 § 5121 et seq.

⁸⁴ See the definitions in sec. 102.

⁸⁵ P.L. 94-412, 90 Stat. 1255, 50 U.S.C. § 1601-51.

⁸⁶ H. J. Res. 46 of March 15.

⁸⁷ The House voted 248 to 181, without reaching the two thirds majority prescribed.

⁸⁸ Such as in the case of *Alvarez v. Trump*, 1:19-cv-00404 (D.D.C.).

separation of powers and diversion of funds by the Presidency, had their claims dismissed after the Government's declaration, under penalty of perjury, that only money appropriated by Congress under the Continuing Appropriations Act of 2019 would be used. Other cases reached the Supreme Court⁸⁹, which denied the motion to lift a stay order granted by the Court of Appeals of the Ninth Circuit against a permanent injunction issued by the District Court. Justices Ginsburg, Sotomayor and Kagan would deny the application, while Justice Breyer's opinion was concurring in part and dissenting in part.

8. The President and the judicial nominations

President Trump has had the unusual, if not historic, chance of nominating three Supreme Court Justices, although in a turmoil of polemics due not only to his declared intention of creating an enduring conservative majority but also to the radical change in the Senate rules and practices applicable to the advice and consent for Supreme Court nominees. It is well known that in 2012 the Democratic majority of the 114th Congress had triggered the so called nuclear option in order to reduce the then prescribed three fifths majority to a simple majority and to put an end to filibuster, for all executive branch and judicial nominees with the only exception of Supreme Court judges⁹⁰.

In November 2017 the Republican majority resorted to the same solution for the Supreme Court nominees, trying to cloture the filibuster opposed to Neil Gorsuch, approved by a 54 to 45 vote. Later on, Brett Michael Kavanaugh was confirmed by a 50-48 vote on October 6, 2018, after supplemental hearings due to accusations of sexual misconduct. Finally, the death of Ruth Bader Ginsburg gave the President the opportunity of consolidating the conservative majority on the Supreme Court by appointing Amy Vivian Coney Barrett, confirmed by the Senate by a 52-48 vote within 35 days from her nomination.

In his four years, as a total, Trump has been able to nominate 53 candidates to the Courts of appeals, in comparison with 66 appointed by Clinton, 63 by Bush and 55 by Obama. The appointments to District courts were 305 by Clinton, 250 by Bush and 255 by Obama, in comparison with 162 by Trump in four years⁹¹. It seems, therefore, that the uneasy

⁸⁹ Trump et al. V. Sierra Club, et al., No. 19A60, 588 U.S., July 31, 2019. See e.g. *Supreme Court says Trump can proceed with plan to spend military funds for border wall construction*, *Washington Post*, 26 July 2019.

⁹⁰ *Democrats trigger "nuclear option": eliminate most filibusters on nominees*, *Washington Post*, November 21, 2013.

⁹¹ More details in D.F. II McGahn, *A Brief History of Judicial Appointments from the Last 50 Years through the Trump Administration*, 50 *Wl. & Mary L. Rev. online* 105 (2018-2019); B.J. McMillion, *Congress. Research Serv., Judicial Nomination Statistics and Analysis, U.S. District and Circuit Courts, 1977-2018* (2019); L.H. Southwick, *A Survivor's Perspective: Federal Judicial Selection from George Bush to Donald Trump*, 95 *Notre D. L.*

relationship with Congress and with his own party has placed no serious obstacle in his way.

Republican Senators have often demanded roll call votes both for cloture and for confirmation during the Obama Presidency and Democrats have done the same during the Trump years. The resort to the nuclear option in 2012 and its extension to Supreme Court nominations have paved the way to an increase in the rate of ideologizing and polarization, making it less necessary to achieve agreements in a harshly divided Senate. The convergence towards moderate candidates, capable of obtaining a cross sectional consensus, has become less probable. To the contrary, the more limited a majority in the Senate is going to be, the more it will be tempted to impose nominees with a strong ideological identity, as close as possible to the current majority. A vicious circle has been triggered, where the very nature of the democratic process is at stake. The future of judicial nominations, whoever is elected on November 3, promises to be at least uncertain, unless an unlikely shared solution is agreed upon.

9. Freedom of information

President Trump is generally accused of a cynical use of government information: for instance, he has been accused of removing data from the public domain, of manipulating them, of censoring if not completely silencing scientists of departments and agencies, of scrubbing some terms and topics from federal web sites, of using transparency only to undermine scientific acquisitions (“weaponizing”), and even of disregarding truth⁹². However, more than a deliberate organic information policy, this practice might have been an erratic moving away from the practices of his predecessors, consisting in a case by case use of discretionary powers or in changes of guidelines and manuals by agencies and departments. It is true that some government websites have been closed, others no longer have been fed or remanded to other sources. The administration has tried to interfere with the elaboration of data, suggesting orientations to the Congressional Budget Office and to the Census Bureau. A sort of ideological battle has been fought in order to “clean up” the language of the E.P.A.

Rev. 1847 (2020). See also Remarks by President Trump on Judicial Appointments, September 9, 2020.

The President has also nominated two members of the U.S. Court of International Trade, six to Court of Federal Claims, seven to the Tax Court, 6 to the U.S. Court of Appeals for Veterans Claims, one each for Court of Military Commission Review and for The Court of Appeals for the Armed Forces.

⁹² See e.g. N. Cortez, *Mischief in the Trump Administration*, 94 *Chi.-Kent L. Rev.* 315 (2019), citing, among other things, President Trump has made 4,715 false or misleading claims in 592 days, *Wash. Post*, September 4, 2018. See also R.M. Landers, *Mischief with Government Information Policy*, 94 *Chi.-Kent L. Rev.* 593 (2020) and D. Thaw, *Administrative Truth: Comments on Cortez’s Information Mischief*, 94 *Chi.-Kent L. Rev.* 607 (2020); R.L. Glicksman, *Shattered Government*, 62 *Ariz. L. Rev.* 573 (2020).

concerning climate change. Many legal controversies have been lodged in order to preserve government databases from elimination. The Honest and Open EPA Science Treatment (HONEST) Act, prohibiting the agency from making decisions using studies containing data that had not been provided to it and made publicly available online, passed the House in 2017 but not the Senate⁹³. Newspapers and law reviews also report some threats to prosecute journalists for publishing classified information⁹⁴. The Department of Justice has sometimes invoked the official secrets privilege to prevent a witness from testifying as to a case of torture. At least a leaker has been for first time charged for violating the Espionage Act. The Comey affair occupied the frontpages of all newspapers for months.

Personally, President Trump has always refused to disclose his tax returns; his business relationships and possible conflicts of interests, unlike all former presidential candidates; and all information about alleged foreign interests and constitutionally forbidden emoluments. On such ground, during the 116th Congress, oversight and investigations activated by the House of Representatives, including subpoenas issued to third parties, have been resisted in State and federal courts. The Supreme Court had to redefine twice the ambit of the executive immunity and the room for congressional inquiry⁹⁵.

Another issue that came to surface in 2018 is the extensive use by the President of nondisclosure agreements aimed at preventing White House staff and campaign aids from leaking information to the press in order to shield his family or the administration⁹⁶.

Finally, there is literature concerning a likely underperforming of the Trump Administration in processing requests, releasing records and resorting to exemptions to deny requests according to FOIA provisions⁹⁷.

It is even alleged that a new trend toward the politicization of the secret service personnel might have been triggered by the new conflictual situation and the recent attitude of the American politics towards information and transparency. In fact intelligence officers have often prepared papers (“cooked books”) to be used for personal or organizational interests and politicians have made use of intelligence to gain advantages in the debate⁹⁸.

⁹³ *Pruitt unveils controversial “transparency” rule limiting what research EPA can use*, *Washington Post*, April 24, 2018.

⁹⁴ See e.g. T.C. Ellington, *Transparency under Trump: Policy and Prospects*, *Publ. Integrity*, 1, 2018.

⁹⁵ *Trump v. Vance*, 140 S. Ct. 2412, 591 U.S. and *Trump v. Mazars*, 140 S. Ct. 2019, 591 U.S. —. See J.H. Adler, *All the President’s Papers*, 2019 *Cato S.Ct.Rev.* 31 (2019-2020); A. S. Grewal, *The President’s Tax Returns*, 27 *Geo. Mason L. Rev.* 440 (2020).

⁹⁶ See e.g. E. Lampmann, *President Trump’s Contracts for Silence*, 5 *U. Pa. J. of L. & Pub. Affairs* 124 (2020).

⁹⁷ B. Wasike, *FOI in Transition: A comparative analysis of the Freedom of Information Act performance between the Obama and the Trump administration*, *Gov. Inform. Q.*, December 2019.

⁹⁸ See above all J.A. Gentry, *“Truth” as a Tool of the Politicization of the Intelligence*, 32

10. The impeachment

The impeachment of a President is a measure of last resort in American constitutional law. Congress takes up judicial functions in order to protect the Constitution. Trump is probably the only President in American history whose impeachment was foretold or wished for since the moment of his election or even before⁹⁹. Another part of this book tells the detailed story of the first effort by Democratic Representatives in January and June 2017 up to the 2019 and 2020 events, with the House 230-197 and 229-198 votes under the accusations of abuse of power and obstruction of Congress and the acquittal in the Senate by 48-52 and 47-53 votes. Here suffice it to say that only historians will be able to clarify whether it was only a gut feeling transformed into an institutional turmoil, or if Trump “stretched presidential authority to the breaking point”¹⁰⁰. In this phase of American history it can be said only that the ideological conflict has reached a peak hard to be traced in any former age with the possible exception of the Civil War. Adjustments need to be agreed upon before irreparable damage is caused to the most ancient Constitution in the world. The immediate follow up of the presidential elections will be the litmus test of the future.

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Int'l J. of Intell. & Counterintell. 217 (2019) and *The New Politicization of the U.S. Intelligence Community*, 33 *Int'l J. of Intell. & Counterintell* 1 (2020).

⁹⁹ See A.J. Lichtman, *Predicting the Next President: The Keys to the White House 2016*, Lanham, 2016 and *The Case for Impeachment*, New York, 2017.

¹⁰⁰ See P. Horst, *The Politics of Removal: the Impeachment of a President*, in M. T. Oswald (ed.), *Mobilization, Representation, and Responsiveness in the American Democracy*, London, 2020, 90. But see also C.L. Sunstein, *Impeachment: A Citizen's Guide*, Cambridge, Mass., 2017; L. Tribe, J. Matz, *The End of a Presidency: The Power of Impeachment*, New York, 2018; A. Hirsch, *Impeaching the President: Past, Present and Future*, San Francisco, 2018; G.J. Jacobson, *Donald Trump and the Parties: Impeachment, Pandemic, Protests, and Electoral Policy in 2020*, APSA Reprints, 2020; B.L. Owsley, *Due Process and the Impeachment of President Donald Trump*, 2020 *U. Ill. L. Rev. online*, 67; R.A. Sedler, *The Constitution, Impeachment, and the Trump Presidency*, *Wayne State University Law School Paper* No. 2019-64; L.J. Trautman, *Impeachment, Donald Trump and the Attempted Extortion of Ukraine*, 40 *Pace L. J.* 141 (2020).