

The End of the Rule of Law

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[Bruce Fein](#), a former senior official in the Department of Justice and a constitutional scholar, has identified 12 impeachable offenses committed by Donald Trump. But, as he notes, many of these constitutional violations are not unique to the Trump administration. They have been normalized by Democratic and Republican administrations. These long-standing violations are, for this reason, ignored by Democratic Party leaders seeking to impeach the president. They have chosen to focus exclusively on Trump's attempt to get the Ukrainian president to open an investigation of Joe Biden and his son, Hunter, in exchange for \$400 million in U.S. military aid and a visit by the Ukrainian leader to the White House. Ignoring these institutionalized violations during the impeachment inquiry, Fein fears, would legitimate them and lead to the death of democracy.

In a letter on Friday to House Speaker Nancy Pelosi, also signed by Ralph Nader and [Louis Fisher](#), Fein warns that Trump is “shattering our *entire* constitutional order.” He lists as the president's most serious constitutional violations the “defiance of congressional subpoenas and oversight; spending billions of dollars on a southern border wall not appropriated for that purpose; continuing or expanding presidential wars not declared by Congress; exercising line-item veto power; flouting the Emoluments Clause; and, playing prosecutor, judge, jury, and executioner to kill any person on the planet based on secret, unsubstantiated information.” But he also notes that many of these violations are not unique to Trump and were also carried out by Barack Obama and George W. Bush.

“Many of the Democrats in the past have been complicit in these violations,” Fein said when I reached him by phone in Washington, D.C. “They have unclean hands. They have acquiesced in illegal surveillance, as revealed by Edward Snowden. The most serious constitutional violations are the ones that are institutional usurpations. These usurpations [by both parties] have permanently weakened, if not eviscerated, the power of the legislature versus the executive.”

“We have a Congress whose members, by and large, do not want the responsibilities the Constitution entrusts them with,” Fein continued. “They like to give away everything to the president and then clamor if something goes bad. The most worrisome constitutional violations are, unfortunately, ones many members of Congress rejoice in. It enables them to escape making hard choices that might compromise their ability to win reelection. But you can't rely on a past dereliction to justify its perpetuation indefinitely.”

“If we take a narrow approach to impeachment, that will mean that all the more egregious violations will be viewed as having been endorsed and not rebuked and successive presidents will feel they have a green light to emulate Trump on everything except a Ukrainian shakedown,” Fein said. “This is dangerous for the country. This could boomerang, even if we get rid of Trump, by endorsing these usurpations forever. This would be a return to a one-branch

government like the monarchy we overthrew in 1776. The unwitting result is to further the [power of the] executive rather than diminish it, which is what should be happening.”

Bush and Obama bequeathed to us nine illegal wars, if we include Yemen. None were declared by Congress, as is demanded by the Constitution. Bush placed the entire U.S. public under government surveillance in direct violation of the Fourth Amendment and the Foreign Intelligence Surveillance Act (FISA), which makes it a crime for the government to surveil any American citizen without authorization by statute. Under the Executive Order 10333 the president spies on Americans as if they were foreigners, although this surveillance has not been authorized by statute. Bush embarked on a global program of kidnapping and torture, including of foreign nationals, which Obama continued. Bush and Obama carried out targeted assassinations, usually by militarized drones, across the globe. And Obama, reinterpreting the 2002 Authorization for Use of Military Force Act, gave the executive branch the authority to assassinate U.S. citizens. The killings began with drone strikes on the radical cleric Anwar al-Awlaki and, two weeks later, his 16-year-old son. Such a violation denies U.S. citizens due process. By signing into law Section 1021 of the National Defense Authorization Act, Obama—whose record on civil liberties is even more appalling than Bush’s gutted the 1878 Posse Comitatus Act, which prohibits the use of the military as a domestic police force.

These two presidents, like Trump, violated treaty clauses that required Senate ratification. Obama did this when he signed the Iran nuclear deal and Trump did this when he walked away from the deal. Bush and Obama, like Trump, violated the appointments clause of the Constitution by appointing people who were never confirmed by the Senate as required. The three presidents, to override Congress, all routinely abused their right to use executive orders.

At the same time the courts, a wholly owned subsidiary of corporate power, have transformed the electoral system into legalized bribery through the [Citizens United ruling](#), handed down by the Supreme Court in 2010. Corporations pouring unlimited money into elections was interpreted by the court as the right to petition the government and a form of free speech, essentially overturning the people’s rights by judicial fiat. Also, the courts have steadfastly refused to restore basic constitutional rights including our right to privacy and due process. “The constitutional rot is in all three branches,” Fein said.

The 12 impeachable offenses committed by Trump and singled out by Fein are:

1. Contempt of Congress

Trump made clear his contempt of Congress when he boasted, “... I have Article II, where I have the right to do whatever I want as president.”

“President Trump has repeatedly and unconstitutionally systematically undermined the congressional oversight power, including the ongoing congressional impeachment inquiry of the President himself, by instructing numerous current and former White House staff and members of the executive branch to defy congressional subpoenas on an unprecedented scale far beyond any previous President,” Fein wrote to Pelosi. “Without congressional authority, he has secretly deployed special forces abroad and employed secret guidelines for targeted killings, including American citizens, based on secret unsubstantiated

information. He has unconstitutionally endeavored to block private persons or entities from responding to congressional requests or subpoenas for information, e.g., Deutsche Bank. He has refused to provide Congress information about nepotistic or other security clearances he granted in opposition to his own FBI security experts. He has refused to disclose his tax returns to the Chairman of the Ways and Means Committee contrary to a 1924 law, 26 U.S.C. 6103 (f).”

2. Abuse of the Powers of the President and Abuse of Public Trust

“Unlike prior presidents, he has made presidential lies as routine as the rising and setting of the sun, confounding civil discourse, truth and public trust,” the memo to Pelosi reads. “He has disrespected, belittled, and serially preyed upon women, mocked the disabled, incited violence against the mainstream media and critics, and encouraged and displayed bigotry towards minorities and minority Members of Congress, including intercession with Israel in serious violation of the Speech or Debate Clause, Article I, section 6, clause 1, to deny two Members visitor visas.”

3. Appropriations Clause, Revenue Clause

“Congress has consistently voted much less money than President Trump requested to build an extensive, multi-billion-dollar wall with Mexico,” the memo reads. “In violation of the Clause and the criminal prohibition of the Anti-Deficiency Act, President Trump has committed to spending billions of dollars far in excess of what Congress has appropriated for the wall. The congressional power of the purse is a cornerstone of the Constitution’s separation of powers.”

Article I, Section 7, Clause 1 of the Constitution requires all revenue measures to originate in the House of Representatives.

“In violation of the Clause, President Trump has raised tens of billions of dollars by unilaterally imposing tariffs with limitless discretion under section 232 of the Trade Expansion Act of 1962,” the memo reads. “He has become a Foreign Trade Czar in imposing tariffs or quotas or granting exemptions from his trade restrictions in his unbridled discretion to assist political friends and punish political enemies. Literally trillions of dollars in international trade have been affected. Riches are made, and livelihoods destroyed overnight with the capricious stroke of President Trump’s pen.”

4. Emoluments Clause

“Article I, section 9, clause 8 prohibits the President (and other federal officers), without the consent of Congress, from accepting any ‘present, emolument, office, or title, of any kind whatsoever, from any King, Prince, or foreign state.’

“President Trump has notoriously refused to place his assets in a blind trust,” the memo reads. “Instead, he continues to profit from opulent hotels heavily patronized by foreign governments. He has permitted his family to commercialize the White House. He has compromised the national interest to enrich family wealth on a scale unprecedented in the history of the presidency.”

5. Treaty Clause

Article II, Section 2, Clause 2 requires Senate ratification of treaties by two-thirds majorities.

The text is silent as to whether treaty termination requires Senate ratification, and the Supreme Court held the issue was a non-justiciable political question in *Goldwater v. Carter*, 444 U.S. 996 (1979).

“President Trump flouted the Treaty Clause in terminating the Intermediate-Range Nuclear Forces Treaty (INF) with Russia unilaterally,” the memo reads. “The treaty assigned the termination decision to the ‘United States.’ The President alone is not the United States under the Treaty Clause.”

6. Declare War Clause

Article I, Section 8, Clause 11 empowers Congress alone to take the nation from a state of peace to a state of war. That power cannot be delegated.

“In violation of the Declare War Clause, President Trump has continued to wage or has initiated presidential wars in Libya, Somalia, Yemen, Syria, Iraq, Afghanistan, and Pakistan, and has used special forces offensively in several African nations,” the memo reads. “President Trump has claimed authority to initiate war against any nation or non-state actor in the world—not in self-defense—on his say-so alone, including war against North Korea, Iran, or Venezuela.”

7. Take Care Clause; Presentment Clause

Article II, Section 3 obligates the president to “take care that the laws be faithfully executed.”

“In violation of that trust, President Donald J. Trump deliberately attempted to frustrate special counsel Robert Mueller’s investigation of collaboration between the Trump 2016 campaign and Russia to influence the presidential election,” Fein points out. “Among other things, the President refused to answer specific questions relating to his presidential conduct; endeavored to fire the special counsel; dangled pardons for non-cooperating witnesses; and, urged Attorney General Jeff Sessions to reverse his recusal decision to better protect his presidency. In all these respects, the President was attempting to obstruct justice.”

“President Trump has also systematically declined to enforce statutory mandates of Congress by arbitrarily and capriciously revoking scores of agency rules ranging from immigration to the Consumer Financial Protection Board to the Environmental Protection Agency in violation of the Administrative Procedure Act or otherwise,” the memo reads. “He has routinely legislated by executive order in lieu of following constitutionally prescribed processes for legislation.”

“In violation of his constitutional duty to take care that the laws be faithfully executed, Mr. Trump has dismantled and disabled scores of preventive measures to save lives, avoid injuries or disease, help families, consumers, and workers, and detect, deter, and punish tens of billions of dollars of corporate fraud,” the memo continues. “He has disputed climate disruption as a ‘Chinese hoax,’ compounded the climate crisis by overt actions that expand greenhouse gas emissions and pollution, and excluded or marginalized the influence of civil service scientists.”

8. Due Process Clause

The Fifth Amendment provides that no person shall “be deprived of life ... without due process of law.”

“In violation of due process, President Trump claims power, like his immediate two predecessors, to act as prosecutor, judge, jury, and executioner to kill American citizens or non-citizens alike, on or off a battlefield, whether or not engaged in hostilities, whether or not accused of crime, and whether or not posing an imminent threat of harm that would trigger a right of preemptive self-defense,” the memo reads.

9. Appointments Clause

“President Trump has repeatedly appointed principal officers of the United States, including the National Security Advisor and Cabinet officials, who have not been confirmed by the Senate in violation of the Appointments Clause, Article II, section 2, clause 2,” the memo reads. “On a scale never practiced by prior presidents, Mr. Trump has filled as many as half of Cabinet posts with ‘Acting Secretaries’ who have never been confirmed by the Senate.”

10. Soliciting a Foreign Contribution for the 2020 Presidential Campaign and Bribery

“President Trump has endeavored to corrupt the 2020 presidential campaign by soliciting the President of Ukraine to contribute something of value to diminish the popularity of potential rival Joe Biden, i.e., a Ukrainian investigation of Mr. Biden and his son Hunter relating to potential corrupt practices of Burisma, which compensated Hunter handsomely (\$50,000 per month). In so doing, Mr. Trump violated the criminal campaign finance prohibition set forth in 52 U.S.C. 30121,” Fein’s memo reads.

“President Trump solicited a bribe for himself in violation of 18 U.S.C. 201 in seeking something of personal value, i.e., discrediting Joe Biden’s 2020 presidential campaign with the help of the President of Ukraine to influence Mr. Trump’s official decision to release approximately \$400 million in military and related assistance,” it adds.

11. Violating Citizen Privacy

“Government spying on Americans ordinarily requires a warrant issued by a neutral magistrate based on probable cause to believe crime is afoot,” the memo reads. “President Trump, however, routinely violates the Fourth Amendment with suspicionless surveillance of Americans for non-criminal, foreign intelligence purposes under Executive Order 12333 and aggressive interpretations of the Foreign Intelligence Surveillance Act.”

12. Suppression of Free Speech

“President Trump is violating the First Amendment in stretching the Espionage Act to prosecute publication of leaked classified information that are instrumental to exposing government lies and deterring government wrongdoing or misadventures, including the outstanding indictment against Julian Assange for publishing information which was republished by the *New York Times* and *The Washington Post* with impunity,” the memo reads.

“The Republic is at an inflection point,” the letter to Speaker Pelosi reads. “Either the Constitution is saved by impeaching and removing its arsonist in the White House, or it is reduced to ashes by continued congressional endorsement, whether by omission or commission, of limitless executive power and the undoing of checks and balances.”

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