

How Do We Solve a Problem Like the Donald?¹

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How Do We Solve a Problem Like the Donald?

Abstract: Political observers have debated whether and how to remove Donald J. Trump from the office of the presidency. This article explains the difficulties associated with both the Twenty-Fifth Amendment's incapacity route and impeachment. These difficulties illuminate a larger underlying problem with American democracy that the Trump presidency both crystallizes and reinforces: the emergence of an energized core of political participants who unite around racialized identity and reject some core principles of democracy.

Constitutional scholars and pundits have recently been debating over whether long-standing constitutional democracies, particularly the United States, are in a moment of constitutional crisis, and if so, how this crisis is likely to resolve. Framing the problem as a question of whether it is a constitutional crisis, however, misses the mark. The "crisis of constitutional democracy" in the United States, if one exists, is both a constitutional and political problem. Ultimately, the question of whether Trump is so awful that he should be removed from the office of the presidency is a political one, as the constitution nowhere defines the kind of vicious behavior or irremediable incompetence that would trigger a structural process of involuntary removal. I set aside the interesting question of what kind of vicious behavior or irremediable incompetence *should* provoke the choice to initiate removal and will discuss instead the two potential routes. Exploring these routes helps to illuminate better what the Trump problem is, why it is a threat to constitutional democracy through its political structure, and why it probably won't go away when he does, regardless of how he goes.

Events in August heightened the urgency of discussions concerning crisis. In the wake of the white supremacist march and associated violence in Charlottesville, Trump's

responses were wildly erratic. The event, dubbed “Unite the Right,” opened on the night of Friday, August 11, with a tiki-torch fueled procession of more than 200 mostly young white men shouting racist and anti-Semitic slogans. They were confronted by a group of approximately 30 counterprotesters, many of whom were affiliated with the University of Virginia. A violent clash erupted as the white supremacists taunted the UVA contingent and some threw torches at them.² The following day, crowds of white supremacists and counterprotesters gathered early. Stores and businesses closed. Charlottesville and Virginia police were alarmed by the arrival of armed right-wing militia members dressed in combat gear and carrying rifles. When counterprotesters tried to block the supremacist marchers’ forward progress, the marchers responded with violence, and as the police declined to intervene, the situation deteriorated rapidly. By the end of the day, three people were dead – two Virginia state police officers in a helicopter crash, and Heather Heyer, when James Alex Fields, Jr. drove his car into a crowd of counterprotesters – and many more injured.³

On Saturday night, Trump weighed in, condemning violence “on many sides,” enraging many, including some prominent Republicans, and delighting far right white supremacists. The following Monday, as the firestorm of criticism raged, he released a second statement condemning white supremacy.⁴ On Tuesday, however, he staged an impromptu press conference again blaming both sides and identifying the “alt-left” as

² Joe Heim, “Recounting a Day of Rage, Hate, Violence, and Death” (*Washington Post*, August 14, 2017). Accessed online at https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.81918d29c5a4.

³ Id.

⁴ A.J. Willingham, “Trump made two statements on Charlottesville. Here's how white nationalists heard them” (CNN, Aug. 15, 2017). Accessed online at <http://www.cnn.com/2017/08/14/politics/charlottesville-nazi-trump-statement-trnd/index.html>

fomenting violence.⁵ And on Thursday, he followed up with a tweet lamenting the loss of Confederate monuments.⁶ Although Trump parted ways with Steve Bannon shortly afterward, this series of events heightened opposition to him and incited the strongest wave of elite Republican condemnations of his actions since before the 2016 election. Concerns about his fitness and his political viability grew after he hosted a rally in Phoenix on August 22, during which he veered off his prepared remarks into a rambling defense of his previous statements, an endorsement of Confederate memorials and monuments, and a possible threat to provoke a government shutdown to build the notorious border wall.⁷

While talk of removal has swirled since Inauguration Day, and Houston Democrat Al Green delivered a speech advocating for impeachment and drafted impeachment articles in June,⁸ since Charlottesville, the discussion has grown more serious. And in the background of this latest controversy (and undoubtedly by the time this article is published, there will be another), let us not forget that Robert Mueller's investigation into Trump's involvement with Russian attempts to meddle in the 2016 election continues.

The Twenty-Fifth Amendment

It is becoming an increasingly commonplace observation that Trump is unprecedented. His campaign was unprecedented, his transition into the role of President was unprecedented, and many aspects of his governing style have been unprecedented. Impeachment, as I shall

⁵ Dan Merica, "Trump says both sides to blame amid Charlottesville backlash" (CNN, Aug. 16, 2017). Accessed online at <http://www.cnn.com/2017/08/15/politics/trump-charlottesville-delay/index.html>.

⁶ Jeremy Diamond, "Trump calls removal of Confederate monuments 'so foolish'" (CNN, Aug. 17, 2017). Accessed online at <http://www.cnn.com/2017/08/17/politics/trump-tweet-confederate-statues/index.html>.

⁷ Eric Bradner, "Donald Trump defends Charlottesville responses, omits reference to 'many sides'" (CNN, Aug. 23, 2017). Accessed online at <http://www.cnn.com/2017/08/22/politics/trump-phoenix-rally/index.html>.

⁸ Abby Livingston, "Al Green pushes forward with Trump impeachment" (The Texas Tribune, June 7, 2017). Accessed online at <https://www.texastribune.org/2017/06/07/al-green-pushes-forward-trump-impeachment/>.

discuss below, is messy, long, and highly political. Some pundits, scholars, and political actors have suggested using the Twenty-Fifth Amendment, which provides for continuity of the executive branch and a line of succession, as a means of removing him involuntarily, although its use for this purpose is unprecedented.

The process itself would be relatively simple, far more so than impeachment. Section four of the amendment provides that the Vice President and a majority of “the principal officers of the executive departments or of such other body as Congress may by law provide”⁹ need only transmit a written declaration to Paul Ryan (Speaker of the House) and Orrin Hatch (President Pro Tempore of the Senate) expressing their judgment that Trump is “unable to discharge the powers and duties of his office,” and Michael Pence immediately becomes the Acting President.¹⁰ The fly in the ointment is the contestation process. Upon activation of section four, a President may contact the Speaker and President Pro Tem and declare himself to be able to execute the office of the presidency and re-resume it immediately. The Vice President and cabinet then have four days to re-declare his incompetence, and the question is then left to Congress to decide. Two-thirds of both houses must concur in the judgment that the President is unable to discharge the duties of office.¹¹ In the event that a President is removed through this means and the Vice President becomes Acting President, the Constitution provides no review mechanism for restoring the President.

The Twenty-Fifth Amendment was drafted and added to the Constitution to address concerns about the physical capabilities of the President to execute the office. President

⁹ Congress has never exercised its authority to legislate under this clause, although discussions are brewing now.

¹⁰ Twenty-Fifth Amendment, United States Constitution.

¹¹ Id.

Dwight Eisenhower suffered both a heart attack and a severe bout of ileitis requiring emergency surgery during his first term, and worries about incapacity heightened after John F. Kennedy, Jr.'s assassination in 1963. Upon the amendment's ratification, Lyndon Johnson praised its adoption, citing the controversies that arose concerning James Garfield, who did not die until 80 days after being shot, and Woodrow Wilson, who was "virtually incommunicado for many months after a stroke, yet dismissed his Secretary of State for attempting to convene a Cabinet meeting."¹² But increasingly, private individuals, pundits, and elected representatives have questioned Trump's mental stability and fitness to serve. While much of this could be brushed aside as political posturing, the seriousness and political portent of the conversation ticked upward sharply on August 17, when Republican Senator Bob Corker of Tennessee, chair of the Foreign Relations Committee, stated "The president has not yet been able to demonstrate the stability nor some of the competence that he needs to demonstrate in order to be successful."¹³ On August 18, Democrat Zoe Lofgren of California introduced a resolution in the House calling upon Vice President Pence and the cabinet to press Trump to submit to a mental health examination in preparation for Twenty-Fifth Amendment proceedings.¹⁴ This action follows others by Democrats who have openly questioned Trump's mental fitness to serve; while the

¹² Lyndon Johnson, "Remarks at Ceremony Marking the Ratification of the Presidential Inability (25th) Amendment to the Constitution" (Santa Barbara, CA: American Presidency Project, Feb. 23, 1967). Online by Gerhard Peters and John T. Woolley, The American Presidency Project.

<http://www.presidency.ucsb.edu/ws/?pid=28658>.

¹³ Sean Sullivan, "Republican Corker: Trump has not demonstrated 'stability' or 'competence' to lead effectively" (*Washington Post*, Aug. 17, 2017). Accessed online at https://www.washingtonpost.com/news/powerpost/wp/2017/08/17/republican-sen-corker-trump-has-not-demonstrated-stability-or-competence-to-lead-effectively/?tid=a_inl&utm_term=.de615c882edd.

¹⁴ Cristina Marcos, "House Dem introduces measure urging Trump undergo mental exam" (*Politico*, Aug. 18, 2017). Accessed online at <http://thehill.com/blogs/floor-action/house/347156-house-dem-introduces-measure-urging-trump-undergo-mental-exam>.

Congress is unlikely to act quickly on any of these proposals or suggestions, the topic is clearly no longer taboo or an outlandish impossibility.

The judgment that a President is unable to discharge the powers and duties of the office is a grave one, and in light of the general understanding that this inability is related to health, would entail a finding that President Trump's health is drastically impaired. While this might seem to be a fairly straightforward medical question, at bottom it is political, and the political judgment rests initially in the hands of the Vice President and the cabinet in the absence of any congressionally created alternative. Questions would inevitably rise about the nature of the inability; declaring inability alone might satisfy some opponents of Trump who would take any means of removal, but the broader optics would likely require either a shared understanding of what is wrong or the kind of physical incapacity that renders the question moot. Wilson's stroke was obviously incapacitating, and a President lying near death for weeks with a bullet still lodged in his body as Garfield did was clearly incapable of governing. Trump's situation is different, and while his recent rally and speech in Arizona led former Director of National Intelligence James Clapper to question directly his fitness for office,¹⁵ there is still no clear narrative of precisely what his incapacity is. Nor can anyone convincingly articulate what has changed since the election – which, if legitimate, constituted the judgment of the American people, at least as filtered through the electoral college, that he is competent – to render him incapable of serving as President.

Even if Pence and the cabinet were to take the drastic step of transmitting their judgment that Trump is not competent, Trump's ability to contest presents a dead end for

¹⁵ Leinz Vales, "James Clapper calls Trump speech 'downright scary and disturbing'" (CNN, Aug. 23, 2017). Accessed online at <http://www.cnn.com/2017/08/23/politics/james-clapper-trump-phoenix-rally-don-lemon-cnntv/index.html>.

this strategy. In a contest, two thirds of the House and Senate would have to support removal. Even if we assume that every Democrat in Congress would support removal, this would require the votes of 19 Republican Senators and 96 Republicans in the House. The Senate, under extreme enough circumstances, might be possible – if we look at the ideological spectrum based on patterns of co-sponsorship,¹⁶ this would require convincing Senator John Hoeven of North Dakota and everyone to his left, or a defector or two to the right, to support removal. Hoeven was one of the Senators who did not support Obamacare repeal, a stance taken explicitly or hinted at by five of his colleagues, perhaps signaling some room for maneuver in ideological terms. The House, however, is far more of an uphill battle. The line would fall to the right of, among others, Steve King (NY) and Darrell Issa (CA), and would require working hard to secure the support of Representatives in the ideological zone of Nunes (CA), Scalise (LA), and Young (IA-3). Regardless of the argumentative weight one might muster in favor of a Twenty-Fifth Amendment removal process, the political hurdle looks close to insurmountable.

In addition, one might rightfully expect some members of Congress to be concerned about setting the precedent. Trump's opponents would likely frame any attempt to use this process as an extraordinary one-off, never before contemplated and never again to be repeated, but once it is done, it lies within the realm of political possibility. We live in a moment in American history when both political polarization and ideological alignment within parties are at high levels. There is no guarantee that the Twenty-Fifth Amendment could be easily returned to its bottle, especially if no clear and compelling grounds are established for removal.

¹⁶ Graphically presented at <https://www.govtrack.us/about/analysis>.

Impeachment and removal

What then of impeachment? This path holds more promise, especially if Robert Mueller's investigation unearths credible evidence of Trump's direct connection to Russian efforts to interfere in the 2016 election and/or undermine the stability of American democracy.

While "high crimes and misdemeanors" are not legally defined in the Constitution and are left to Congress's political judgment, surely the worst case scenario (as well as many lesser alternatives) of a relationship between Trump and Russia would fit the bill, based both on previous serious efforts to impeach a President and other impeachments in American history.

As impeachment is a political process, however, other grounds could be found. Andrew Johnson's impeachment was a political function of the enmity that had developed between him and the hard-line Republican members of Congress over the conduct and progress of Reconstruction, but the formal grounds upon which his impeachment was based was a claim that he had improperly removed an official in violation of the restrictive Tenure of Office Act. The historical record concerning impeachment strongly suggests that the power to impeach and remove is not limited to the necessity of identifying a criminal act.¹⁷ Nonetheless, as a leading scholar of impeachment, Michael Gerhardt, cautions, "Impeachment requires proof of significant abuse of power or breach of public trust. Obstruction of justice, or even the attempt to obstruct, epitomizes that sort of offense,

¹⁷ Jared Cole, and Todd Garvey, "Impeachment and Removal" (*Congressional Research Service*, 2015), pp. 7-8. Accessed online at <https://fas.org/sgp/crs/misc/R44260.pdf>.

entailing as it does an attack on a system whose integrity the president has sworn to uphold.”¹⁸

The process is more familiar, especially in an audience where most remember one if not two significant instances of its initiation.¹⁹ Impeachment may begin with an individual House member, or through a committee, but ultimately demands for impeachment wind up in the House Committee on the Judiciary, which is responsible for drafting an article or articles of impeachment. The House then votes, with a simple majority accomplishing impeachment on individual articles. The Senate then deliberates and votes upon whether to convict and remove, which requires a two-thirds assent.²⁰ Here, as above, we must consider the partisan breakdown of both houses of Congress. Achieving the simple majority needed for impeachment would require holding all Democrats’ feet to the fire and adding twenty-four Republican House members. In the Senate, removal would require the same two-thirds majority discussed above for a Twenty-Fifth Amendment proceeding; nineteen Republican Senators would have to be persuaded to vote to remove. Possible, yes, but the grounds would have to be compelling, enough so that either those voting for removal were convinced that things are bad enough that even Trump’s core supporters are on the verge of desertion, or that things are bad enough that they must support removal even at the cost of their own political careers and physical safety.

¹⁸ Michael Gerhardt, “Considering Impeachment? Slow Down” (*Washington Post*, May 18, 2017). Accessed online at https://www.washingtonpost.com/opinions/considering-impeachment-slow-down/2017/05/18/5bb60dfc-3bfb-11e7-8854-21f359183e8c_story.html?utm_term=.c7c59b139a0f.

¹⁹ Nixon resigned before he could be impeached, though the process began formally in February 1974 with Congress authorizing the Judiciary Committee to investigate and resulted in the reporting of three articles of impeachment to the House in July. Bill Clinton was impeached on two charges in 1998, but the Senate acquitted him.

²⁰ Cole and Garvey, *supra* note 17.

The Trump Problem

All of this begs the more interesting question, which is why it is so difficult to imagine things getting bad enough that either of the constitutional remedies available could be mobilized successfully. We can take for granted that presidential unpopularity is often partisan in nature; an unpopular President is disliked more by members of the opposite party than by members of his own party. But spectacularly unpopular Presidents do manage to garner disaffection or at least apathy from some members of their own party, which gives other members of that party room to engineer either a public break or a quiet withdrawal of support.

Reactions to the extraordinary happenings of the Trump presidency are sharply divided. Despite historically low approval ratings, Trump continues to garner a core of support from Republicans that insulates him somewhat from threat; almost all of the chorus of disapproval he faces is coming from Democrats, and even Republicans who have spoken against him or his policies, like John McCain and Lindsey Graham, have voted to support him in key matters, including supporting his nominees. His approval rating has remained unusually low at the beginning of a first term, but not yet to the point that would seem a marker of a failed presidency when placed in historical context. Gallup notes that he is the first president to enter with an approval rating below 50%.²¹ But Presidents who fail to win re-election, or Nixon prior to his resignation, hit lows in the 20s, and disapproval ratings even for a popular President like Ronald Reagan peaked in the 60s.

²¹ Linda Saad, "Trump Sets New Low Point for Inaugural Approval Rating" (*Gallup News*, January 23, 2017). Accessed online at http://news.gallup.com/poll/202811/trump-sets-new-low-point-inaugural-approval-rating.aspx?g_source=position1&g_medium=related&g_campaign=tiles.

Table 1. Presidential approval ratings²²

PRESIDENT	Average	High	Low	Highest Disapproval
Truman	55.6%	87% (June 1945)	22% (February 1952)	67% (January 1952)
Eisenhower	69.2%	79% (Dec. 1956)	48% (March 1958)	36% (March 1958)
Kennedy	70.1%	83% (April 1961)	56% (September 1963)	30% (Nov. 1963)
Johnson	74.2%	79% (Feb. 1964)	35% (August 1968)	52% (March, Aug. 1968)
Nixon	55.8%	67% (Nov. 1969, Jan. '73)	24% (July, Aug. 1974)	66% (Aug. 1974)
Ford	47.2%	71% (August 1974)	37% (Jan., March 1975)	46% (April, Nov., Dec. 1975)
Carter	45.5%	75% (March 1977)	28% (June 1979)	59% (July 1979)
Reagan	50.3%	68% (May 1981, May '86)	35% (January 1983)	56% (Jan. 1983)
Bush (GHW)	60.9%	89% (February 1991)	29% (July 1992)	60% (Aug. 1992)
Clinton	49.6%	73% (December 1998)	37% (June 1993)	54% (Sept. 1994)
Bush (GW)	62.2%	90% (September 2001)	25% (October 2008)	71% (Oct. 2008)
Obama	49.1%	67% (January 2009)	40% (Aug 2011, Oct. '11, Sept. '14)	54% (Aug. 2014)
Trump	39%	46% (Jan. 24-25) ²³	34% (Aug. 13)	61% (Aug. 13)

Despite these low numbers, Trump retains a strong core of support among Republicans, support that prevented him even at the height of the Charlottesville controversy from dipping below 30% approval, a threshold passed by Truman, Carter, Nixon, and both Bushes. At this point, Trump's hardcore devotees both maintain a reservoir of positive approval for him and perhaps more importantly cushion his disapproval from dropping down to those historic and politically dangerous lows. However, this support extends beyond rally attendees in their Make America Great hats. His approval ratings among Republicans have yet to dip below 79%. This represents a striking level of polarization; his extremely high negatives are largely not reflected among Republicans (although he is performing substantially weaker among independents than his predecessors).

²² Gallup, "Presidential Approval Ratings -- Gallup Historical Statistics and Trends" (Gallup 2017). Accessed online at <http://www.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx>. Numbers current as of September 11, 2017.

²³ Since this date, Trump has once reached 45% on March 11.

But what of this? Some partisans will support their party's President based on partisan allegiance almost without question, and Trump certainly benefits from this phenomenon. I would argue, however, that something other than blind partisan support is driving the stable floor he seems to have established, and that "something" is the tangled relationship he has developed with a certain subset of the Republican Party that has coalesced and constructed an identity incorporating racial formation, identity, and consciousness.

The two parties have long engaged with American processes of racial formation, over the last decades with the Democrats aligning loosely with liberal and egalitarian visions and the Republicans with conservative colorblindness. These alignments have largely persisted into the Trump era; see, as but one example, the Republican Party platform's language:

[W]e oppose discrimination based on race, sex, religion, creed, disability, or national origin and support statutes to end such discrimination. As the Party of Abraham Lincoln, we must continue to foster solutions to America's difficult challenges when it comes to race relations today. We continue to encourage equality for all citizens and access to the American Dream. Merit and hard work should determine advancement in our society, so we reject unfair preferences, quotas, and set-asides as forms of discrimination.²⁴

²⁴ Committee on Arrangements for the 2016 Republican National Convention, Republican Platform 2016, p. 8. Accessed online at [https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL\[1\]-ben_1468872234.pdf](https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL[1]-ben_1468872234.pdf)

The Republican Party platform also indicates the party leadership's reliance on maintaining race as a leitmotif, while fronting with its major themes of national security, deregulation, and limiting the size, cost, and authority of the federal government.²⁵

A third frame, however, one largely dependent upon racial formation, has emerged and hardened in American politics. This frame, captured well by the work of Arlie Hochschild and Katherine Cramer, incorporates white racial resentment, anxiety and anger about immigration, some rural consciousness, and commitment to conservative Christian values to mold political consciousness and engagement.²⁶ This frame, which has collected and mobilized a significant subset of American voters, is now entangled with the Trump presidency, as he has effectively given national prominence and voice to these perspectives in ways that the insurgent Tea Party movement was unable to accomplish. I contend that, while some factions within the Tea Party began the consolidation of this frame, it has hardened not just into a political movement, but more fundamentally an identity over the course of the Trump campaign and presidency.

The racial formation underlying this is race conscious, but not in the left sense that mobilizes consciousness to see and remedy inequality. Rather, race consciousness is linked to racial resentment and increasingly to overt racism. The unfairness that this formation identifies is not about colorblindness and failures to achieve that standard. Rather, it invests in identifying and doubling down on racial difference to promote a narrative of racial inferiority on the part of people of color and to grieve the lack of consciousness or recognition directed at instances of white and Christian oppression. In some iterations,

²⁵ Id. at i-ii.

²⁶ Arlie Hochschild, *Strangers in Their Own Land: Anger and Mourning on the American Right* (New York: The New Press, 2016); Katherine Cramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker* (Chicago: University of Chicago Press, 2016).

anti-Semitism plays a significant role. The flexible and powerful nature of this frame enables it to shift easily to encompass immigrants, blacks (and in particular the BLM movement), and non-Christians (especially Muslims and, for some adherents, Jews), sweeping all into a general perception as enemies of the American state and American values.²⁷

These views are not new. Colorblindness never encompassed the entire range of right-wing conceptions of race in America and overt racism has never not been present. Two things are recent innovations: the consolidation of the third formation as a visible and coherent (albeit controversial) viewpoint and its political activation, for which it has used the Republican Party as a haven, a cover, and a legitimation device. Trump is the third element in this brew, having identified (or having had identified for him) a constituency that would respond with great vigor to his populist and racialized posturing. Let us call this constituency the hard core Trumpers, though they predated his candidacy to some extent.

With Trump as a candidate, the individuals who identified with this racial formation had a unifying figure who linked them to the Republican Party. Trump has done many things throughout his run for the presidency and his term as President that have appeared to be self-defeating and/or politically perplexing to long-term political analysts and political scientists. A comprehensive list of these actions and statements would be lengthy indeed, but beyond his response blaming “both sides” for the Charlottesville Unite the Right march and the death of Heather Heyer, we have the pardoning of controversial racist Sheriff Joe Arpaio, his insistence upon building a wall between the United States and

²⁷ I’m not talking about gender here, but gender is a piece of this, complicated a bit by the separation between same-sex marriage on the one hand, and other issues, particularly trans issues, within the LGBTQ community on the other. Nonetheless, the frame incorporates right-wing views on women’s natural inequality and on the need for controlling women’s reproductive capacities.

Mexico and his threat to shut down the government if Congress does not accede, his banning of Muslim immigration from several countries, his protest against “the removal of our beautiful[Confederate] statues and monuments,” his repeated threats to walk away from NAFTA, his saber-rattling toward North Korea, to name just a few. This has created consternation among analysts who look to his poll numbers, which at least partially reflect reactions to his controversial actions and statements, and describe his presidency as a “bumpy ride downhill,” identify his slipping popularity as a “dire” threat to his continued ability to govern, and note the “counterproductive” nature of his attacks on Republicans in Congress.²⁸ As McManus (a typical example) closes, “Politics is about addition, not subtraction, an ancient campaign adage holds. Trump’s own polls show that he hasn’t learned that lesson. Or, at least, hasn’t learned how to put it into practice.”²⁹

While none of this makes sense as an attempt to build and maintain a traditional political coalition, if we look at it through a lens of signaling toward the base, these actions, the Trumpers’ responses, and the feedback and reinforcement created by this relationship looks much different. True, those who voted for him solely out of partisan loyalty or strenuous opposition to Hillary Clinton are increasingly dissatisfied, and reluctant Trump voters are abandoning him. McManus and others, however, acknowledge but do not see the significance of point that “It’s true that most of Trump’s most fervent supporters are still committed to him.”³⁰ Recent polling underlines this point; “among self-identified [primary] Trump voters, an astonishing 98 percent approve of his performance,” an “unheard of”

²⁸ Doyle McManus, “Trump is shedding supporters like no other president in modern history” (*Los Angeles Times*, August 27, 2017). Accessed online at <http://www.latimes.com/opinion/op-ed/la-oe-mcmanus-trump-polls-20170827-story.html>

²⁹ Id.

³⁰ Id.

level of support rendered all the more surprising to most observers by the political turmoil around the administration.³¹

A few pundits have accused Trump of engaging in dog whistle politics, but this observation does not quite hit the gold. A dog whistle is a statement that resonates powerfully to a group of insiders who recognize its significance, but either does not register at all with outsiders or appears as a non sequitur. Classic examples would include Ronald Reagan's choice to initiate his presidential campaign with a speech celebrating states' rights in Philadelphia, Mississippi, or George W. Bush's statement in a 2004 presidential debate that he would not appoint a Supreme Court Justice who would condone the *Dred Scott* decision.³² Trump's outrageous statements and actions are not invisible, nonsensical, or meaningless to ordinary observers; they are rather openly coded signals to his core supporters. They reinforce the relationship between Trump and his supporters and signal to them that he puts them first and privileges the relationship above other conventional political ties. These openly coded signals communicate both to his Trumpers and to those outside this circle. To those outside the circle, the open code signals our outsider status and our exclusion from the core community of interest. The more outrage an openly coded message or action engenders, the more tightly it knits the Trumpers to Trump.

Examples are quite frequent; one of the most recent was his speech on Monday, August 28, in which he defended his controversial pardon of Sheriff Joe Arpaio. Trump

³¹ David Graham, "Trump's Shrinking, Energized Base" (*The Atlantic*, Sept. 8, 2017). Accessed online at <https://www.theatlantic.com/politics/archive/2017/09/trumps-shrinking-impassioned-base/539160/>. The subhead of this analysis refers to the inexorable shrinking of Trump's base, but provides no explanation for why core supporters would abandon Trump.

³² Reagan was speaking to right-wing opponents of national enforcement of civil rights who remembered the murder of civil rights workers Chaney, Goodman, and Schwerner in Philadelphia. Bush was speaking to conservative Christians who see *Roe v. Wade* as a moral abomination.

announced defiantly, after misgendering Chelsea Manning while attacking Barack Obama's commutation of Manning's sentence and falsely claiming that Obama had pardoned her, "Sheriff Joe is a patriot. Sheriff Joe loves our country. Sheriff Joe protected our borders. And Sheriff Joe was very unfairly treated by the Obama administration."³³ The code used in this speech signaled cultural solidarity on transgender concerns, linked patriotism with Arpaio's harsh practices against Latinos, including racial profiling, and, by accusing the Obama administration of unfairness, neatly employed the narrative of black unfairness and suppression of whites. All of these rhetorical elements reinforce core Trumper narratives.

This is interesting and potentially dangerous territory. The Tea Party relied on interest politics to mobilize individuals into action within the Republican Party, but Trumpers are approaching the status of a modern mass in Arendtian terms, a group of disaffected, disengaged, cynical, isolated individuals who come together and derive a sense of their place in the world through association with a movement.³⁴ I am not arguing that the United States is on the verge of totalitarianism, but I do believe that Arendt's concept of a mass is more helpful than the conventional toolbox we use to parse American political participation in the post-New Deal era. An Arendtian mass does not rely on bonds of class; rather they are peripheral individuals who cannot find structural representation within conventional political outlets and who, as a result, have been politically disengaged and indifferent. Bereft of a positive political identity, they can be organized around principles of resentment or revenge, and require only the repetition of key ideas. Distrustful and cynical,

³³ Kevin Liptak, "Trump defends Arpaio pardon, says timing was intended to draw attention" (CNN, Aug. 28, 2017). Accessed online at <http://www.cnn.com/2017/08/28/politics/donald-trump-joe-arpaio-pardon/index.html>.

³⁴ Hannah Arendt, *The Origins of Totalitarianism* (New York: Houghton Mifflin Harcourt, 1973), p. 323-24.

they are ready to embrace any simple system that makes sense of their world and validates their resentments.³⁵

Masses are particularly inclined to embrace propaganda. As Arendt explains, “They do not believe in anything visible, in the reality of their own experience; they do not trust their eyes and ears but only their imaginations, which may be caught by anything that is at once universal and consistent in itself. What convinces masses are not facts, and not even invented facts, but only the consistency of the system of which they are presumably part.”³⁶ Through their relationship with Trump, Trumpers have constructed a self-reinforcing world in which information and evidence that counters what they hear from Trump merely confirms the bias against him and strengthens their support for him as he lashes out at “fake news.” This linking and reinforcement helps to make sense as well of Trump’s proclivity for declaiming easily debunked falsehoods about the sizes of crowds, data on the American economy, or any number of other examples. Each media intervention debunking his lies underlines and strengthens the consistent narrative that Trumpers believe about the unreasoning hostility toward Trump, and by extension, toward them.

A recent analysis by 538’s Nate Silver seeks to reassure that, despite the Charlottesville firestorm’s failure to drop Trump’s approval rating much below 35%, the overall trend has been downward, and a continued series of political missteps, chaos, and failure to deliver on core campaign promises could continue this trend.³⁷ Silver estimates

³⁵ Id. at 305-63.

³⁶ Id. at 352.

³⁷ Nate Silver, “7 Rules For Reading Trump’s Approval Rating” (FiveThirtyEight.com, Aug. 24, 2017).. Accessed online at <https://fivethirtyeight.com/features/7-rules-for-reading-trumps-approval-rating/>.

Trump's floor for approval as somewhere in the 20s,³⁸ a figure with which I concur, and, as noted above, Nixon's approval rating was languishing in the 20s when he resigned. Silver, however, only mentions in passing what is to me the most interesting point – that a recent reliable poll showed that 61% of Trump supporters would never desert him, and overall 20% of respondents in aggregated polls reported strong support for Trump.³⁹

This is where Trump departs from previous politically damaged or unpopular Presidents and why constitutional mechanisms are not doing an effective job of containing him. A core principle of democracy is the idea that every political figure, no matter how competent or capable, may do things or refrain from doing things that will cause their supporters to turn against them, or at least desert them. Democratic control over elected officials may be very weak, especially in areas with extreme partisan gerrymandering, but the idea remains that a line exists somewhere that politicians must toe. This fundamental premise collapses in the face of a mass-oriented group of supporters. Perhaps the most trenchant observation issued over the course of the last two years regarding Trump and Trumpism came from Trump himself when he observed that his core devotees would not desert him even if he shot a man in broad daylight on Fifth Avenue.

While even Nixon had a few diehard supporters by the bitter end, these supporters recognized that the revelations of misconduct that rendered the threat of impeachment credible constituted political checkmate. Members of Congress did not have to be concerned that abandoning Nixon would be damaging to their political futures; quite to the contrary. While Republican partisans continued to grumble that the entire investigation

³⁸ Id.

³⁹ Id.

was driven by partisanship and that the press was out to get Nixon, by August 1974, only 11% believed his story that he had not known about the bugging of the Democratic headquarters and that he had spoken up as soon as he discovered what had happened.⁴⁰

In contrast, Trumpers show no signs of disbelieving Trump, and indeed, in the manner of Arendt's description of a mass response to propaganda, readily accept convoluted explanations that turn every falsehood into a truth and an attack on Trump's enemies. I am convinced that they will not grumpily and grudgingly accept Trump's fall from power. This concern dates back to the election campaign, when Trump and his supporters coyly refused to pledge in advance to accept the results of the election, and was heightened afterward when Trump and his supporters insisted that Trump had won the popular vote once illegal votes were discounted. Recently, former Trump campaign advisor Roger Stone warned that politicians voting for impeachment "would be endangering their own life." He continued, "Try to impeach him. Just try it . . . You will have a spasm of violence, an insurrection in this country like you have never seen before. Both sides are heavily armed, my friend."⁴¹ Grandstanding and publicity seeking? Perhaps, but worrisome nonetheless. A survey conducted in June found that 52% of Republicans would support postponing the midterm elections if Trump were to claim that they could not be secured

⁴⁰ Philip Bump, "How America Viewed the Watergate Scandal, as it was Unfolding" (*Washington Post*, May 15, 2017). Accessed online at https://www.washingtonpost.com/news/politics/wp/2017/05/15/how-america-viewed-the-watergate-scandal-as-it-was-unfolding/?utm_term=.66c1097fc6a9.

⁴¹ Brandon Carter, "Roger Stone: Politicians voting for Trump's impeachment 'endangering their own lives'" (*The Hill*, Aug. 24, 2017). Accessed online at <http://thehill.com/blogs/blog-briefing-room/news/347839-roger-stone-politicians-voting-for-trumps-impeachment>.

against illegal voters, and 56% would support such a move if Trump were joined by Republicans in Congress.⁴²

I believe that Trumpers – the core supporters Trump has bound to himself through his consistent and persistent messaging – will not accept as legitimate *any* means through which he departs from the presidency. Impeachment or Twenty-Fifth Amendment removal proceedings will be furiously denounced as illegitimate. If he resigns, they will spin narratives about the deep state’s conspiracy against him. If he makes it to 2020 and fails to win re-election, they will believe that the election was illegitimate, probably with some narrative about illegal voters. Even if he makes it through two terms, they will vociferously demand that he be permitted a third term. If he dies, they will believe he has been assassinated. The real questions remaining are how they will respond to his departure, in whatever manner it comes, and whether their response will entail violence, and if so, how much state violence will be necessary in response to maintain order.

This is a problem, but not necessarily a constitutional crisis. The constitution has managed to structure governance through many historical instances of resistance, including armed resistance, to the state going back to the 1791 Whiskey Rebellion. The reason that this situation is potentially a crisis lies in what the constitution, as interpreted by the Supreme Court, has allowed to happen in Congress. While the framers saw the constitution as a solution to the mischiefs of faction, they could not have anticipated the emergence of the type of mass politics described by Arendt, in which the masses hold the franchise and have been able to use it to secure not only a President, but a key handful of

⁴² Ariel Malka, and Yphtach Lelkes, “In a new poll, half of Republicans say they would support postponing the 2020 election if Trump proposed it” (*Washington Post*, Aug. 10, 2017). Accessed online at https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/10/in-a-new-poll-half-of-republicans-say-they-would-support-postponing-the-2020-election-if-trump-proposed-it/?utm_term=.3f8c041b65c1.

congressional districts that are largely impervious to the imperatives both of ordinary politics and reality.

It has become a commonplace observation in political science that we live in a moment when partisan and ideological polarization are both at a high level and map well onto each other. While not all of the blame lies in the partisan gerrymandering of congressional districts, this – and the Supreme Court’s willingness to allow the problem to fester – have served as a dangerous accelerant.⁴³ The Cook Political Report conveys something of the scope of the structural issue. If we look at the congressional districts where Trump received the strongest support, we note that these districts are (like their Democratic counterparts) heavily tilted in a partisan fashion. Given these levels both of support for Trump and partisan gerrymandering, the representatives from these districts have no meaningful incentive to break from the President and many good reasons not to break from the President.

Table 2: Congressional districts with highest levels of support for Trump⁴⁴

DIST	MEMBER	PVI	2016 D%	2016 R%	CLINTON %	TRUMP %
Alabama-04	Robert Aderholt	R+30	0.00%	98.50%	17.30%	79.80%
Kentucky-05	Hal Rogers	R+31	0.00%	100.00%	17.50%	79.60%
Texas-13	Mac Thornberry	R+33	0.00%	90.00%	16.80%	79.50%
Georgia-09	Doug Collins	R+31	0.00%	100.00%	19.30%	77.80%
Texas-11	Mike Conaway	R+32	0.00%	89.50%	19.00%	77.50%
Tennessee-01	Phil Roe	R+28	15.40%	78.40%	19.60%	76.40%
Missouri-08	Jason Smith	R+24	22.70%	74.40%	21.10%	75.30%
Georgia-14	Tom Graves	R+27	0.00%	100.00%	22.10%	75.00%
Texas-04	John Ratcliffe	R+28	0.00%	88.00%	21.60%	74.90%
Nebraska-03	Adrian Smith	R+27	0.00%	100.00%	19.70%	73.90%

⁴³ I note here that extreme partisan gerrymandering is a game played by both Republicans and Democrats, at times with cross-partisan collaboration in the drawing of safe districts.

⁴⁴ Cook Political Report PVI Map and District List, (Cook Political Report, August 2017). Accessed online at <http://cookpolitical.com/pvi-map-and-district-list>. The Partisan Voting Index score measures how a district performs compared to the nation on the whole in terms of its lean toward one party or the other.

Oklahoma-03	Frank Lucas	R+27	21.70%	78.30%	20.90%	73.60%
Oklahoma-02	Mark Mullin	R+24	23.20%	70.60%	22.80%	72.90%
West Virginia-03	OPEN (Jenkins)	R+23	24.00%	67.90%	23.30%	72.50%
Kentucky-01	James Comer	R+23	27.30%	72.60%	23.90%	72.40%
Tennessee-06	OPEN (Black)	R+24	21.80%	71.10%	23.60%	72.30%
Texas-19	Jodey Arrington	R+27	0.00%	86.70%	23.30%	72.00%
Texas-08	Kevin Brady	R+28	0.00%	100.00%	23.60%	71.90%
Texas-01	Louie Gohmert	R+25	24.10%	73.90%	25.10%	71.70%
Texas-36	Brian Babin	R+26	0.00%	88.60%	25.10%	71.70%
Illinois-15	John Shimkus	R+21	0.00%	100.00%	24.50%	70.70%
Missouri-07	Billy Long	R+23	27.40%	67.50%	24.60%	70.10%

The Trumpers are currently structurally incorporated into our political system in a way that magnifies their influence and grants them significant protection against the usual checks against faction. This puts the Republican Party in an obvious bind, but it also encourages the Democratic Party to frame the problem as one for the Republicans to solve, hoping that the tensions and infighting will tear the Republican Party apart, allowing inroads for further growth on the D side of the aisle. But as I have been emphasizing, this is no time for politics as usual. The stakes are high and the Trump problem, while it most directly affects the Republican Party, is an American problem, not a Republican problem.

Regardless of how Trump leaves the Oval Office, the mass remains. The group that has now coalesced may not so easily disperse, having forged a collective identity and cause. It remains, ready for the next politician who is willing to discard the conventional rules of engagement to mobilize. The continued political incorporation of the Trumpers as a group is dangerous; at best it might shift some areas of the country back to the political configuration common in some areas of the American south in the 1920s, when gaudy populist racism vied with conservative, racist legitimization projects for hegemony entirely

within the Democratic Party. At worst, this group could provoke violence and place the nation in the position of having to engage in its violent suppression.

Can the Trumpers can be reincorporated into a democratic republic as engaged political actors who accept the fundamental premises of democratic governance? If they cannot, the solutions available do not lie in the constitution. Constitutional structure cannot fix broken politics. Rather, we are left with hopefully a lesser form of the tragic choices posed by constitutional failure; the nation ultimately chose to drown in blood over the uncertain path of constitutional union symbolized by John Bell.⁴⁵ The long history the nation has of sacrificing dreams of equality to maintain the continued civic incorporation of those who oppose it does not give me cause for optimism. That, too, is part of our constitutional hard wiring.

⁴⁵ See Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (New York: Cambridge University Press, 2006).