

Trump II and the Presidency 2

The Unitary Executive & Congressional Delegation

Paul Martin *paul.martin@wadham.ox.ac.uk*

Government and Politics of the US - Lecture xiv

1. The Unitary Executive as Practice not Theory

1.1 Can there be a Civil Service?

- 1883 Civil Service Reform Act ([‘Pendleton Act’](#))
- (most) government employees appointed on merit not as a reward for political support (“spoils system”)
- “tenure” protection for civil servants from politically-motivated dismissal
- Civil Service Reform Act of 1978 modernisation: [Merit Systems Protection Board](#) (qv litigation in 2025-6.)

1.1 Can there be a Civil Service?

- Trump also creates a new *Schedule Policy/Career* in Executive Order 14171 (20.i.25) to enable him to dismiss:

“government employees with substantive policymaking or administrative authority”

Office of Personnel Management [regulation](#)

- estimate of approx 50k civil servants now removable by the President

1.2 Beyond the constitution, again?

Election Assistance Commission (EAC)

- Help America Vote Act of 2002

National Mail Voter Registration Form under EAC control (with statutory limits on how changes can be made)

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”

Article I Section 4

1.2 Beyond the constitution, again?

“the Election Assistance Commission shall take appropriate action to require, in its national mail voter registration form issued under 52 U.S.C. 20508: (A) documentary proof of United States citizenship, consistent with 52 U.S.C. 20508(b)(3); and (B) a State or local official to record on the form the type of document that the applicant presented as documentary proof of United States citizenship...”

Executive Order 14248 Preserving and Protecting the Integrity of American Elections (25.iii.25) Sec. 2 (a)(i)

- [litigation](#) - administration [lost](#) in Federal District Court

1.3 ... and again?

- at various points Trump administration has claimed much wider (and ill-defined) Article II powers. A recent example that fairly clearly steps outside the constitutional text:

1.3 ... and again?



Todd Blanche  
@DAGToddBlanche

X.com

Judges don't pick U.S. Attorneys, @POTUS does. See Article II of our Constitution. You are fired, Donald Kinsella.



Brendan Lyons  @Brendan_LyonsTU · 1d

In an extraordinary end-run on the Trump administration, New York's Northern District judges appoint former federal prosecutor Donald T. Kinsella as new interim U.S. attorney in Albany.
timesunion.com/capitol/articl... via @TimesUnion

02:46 · 12/02/2026 · 1M Views

 1.1K  2.4K  8.9K  231 

1.3 ... and again?

“the Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant ... A person appointed as United States attorney under this section may serve until ... the expiration of 120 days after appointment.

(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.”

28 United States Code §546

1.3 ... and again?

*“He shall have Power, by and with the Advice and Consent of the Senate, to [...] nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but **the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.**”*

Article II Section 2 paragraph 2

1.4 The potential costs of unitary rule

- Why has unitary executive theory remained on the sidelines?
- the Trump *personality*...?

1.4 The potential costs of unitary rule

“The saddest thing is that because I’m the President of the United States, I am not supposed to be involved with the Justice Department. I am not supposed to be involved with the FBI. [...] I am not supposed to be doing the kind of things that I would love to be doing. And I am very frustrated by it.”

Trump on the Larry O'Connor Show, quoted by CNN 3.xi.17

1.4 The potential costs of unitary rule

- are there advantages for the Presidency in the existence of independent agencies?
- appearance of independence can be an advantage
- consider the advantages of a Department of Justice over whom the President does not exert full control:

1.4 The potential costs of unitary rule

 **Donald J. Trump**  
@realDonaldTrump

Pam: I have reviewed over 30 statements and posts saying that, essentially, “same old story as last time, all talk, no action. Nothing is being done. What about Comey, Adam “Shifty” Schiff, Leticia??? They’re all guilty as hell, but nothing is going to be done.” Then we almost put in a Democrat supported U.S. Attorney, in Virginia, with a really bad Republican past. A Woke RINO, who was never going to do his job. That’s why two of the worst Dem Senators PUSHED him so hard. He even lied to the media and said he quit, and that we had no case. No, I fired him, and there is a GREAT CASE, and many lawyers, and legal pundits, say so. Lindsey Halligan is a really good lawyer, and likes you, a lot. We can’t delay any longer, it’s killing our reputation and credibility. They impeached me twice, and indicted me (5 times!), OVER NOTHING. JUSTICE MUST BE SERVED, NOW!!! President DJT

14.9k ReTruths **49k** Likes Sep 20, 2025 at 6:44 PM

1.4 The potential costs of unitary rule

Grand Juries in D.C. Reject Wave of Charges Under Trump's Crackdown

The persistent rejections suggest that the grand jurors may have had enough of prosecutors seeking harsh charges in a highly politicized environment.

Chicago grand jurors continue stunning streak of rejecting Trump DOJ indictments

Yet another grand jury declined to approve felony charges in a case alleging an assault on law enforcement.

1.4 The potential costs of unitary rule

- how common is this?
 - 6 in total in 2016 (from 115,615 cases)
-

1.4 The potential costs of unitary rule

No grand jurors found the Trump DOJ met low probable cause threshold in failed indictment of Democratic lawmakers



Ryan J. Reilly

None of the D.C. grand jurors who heard the Trump administration's pitch on why they should [indict Democratic lawmakers over a video urging members of the military and intelligence communities to uphold their oaths](#) believed the Justice Department had met the low threshold of probable cause, two sources familiar with the matter told NBC News.

1.4 The potential costs of unitary rule

Six Prosecutors Quit Over Push to Investigate ICE Shooting Victim's Widow

Joseph H. Thompson, a career federal prosecutor who was the acting U.S. attorney for Minnesota last year, was among those who resigned as the Justice Department sought to examine the woman's supposed ties to activist groups.

8 more federal prosecutors leaving US Attorney's Office in Minnesota

1.4 The potential costs of unitary rule

Government attorney who told judge in ICE case, 'This job sucks,' removed from detail

A government attorney who was representing the Justice Department in court is no longer detailed to the U.S. Attorney's Office for the District of Minnesota after telling a judge her job "sucks" and asking to be held in contempt so she "could get 24 hours of sleep."

2. The Trump Presidency's breadth

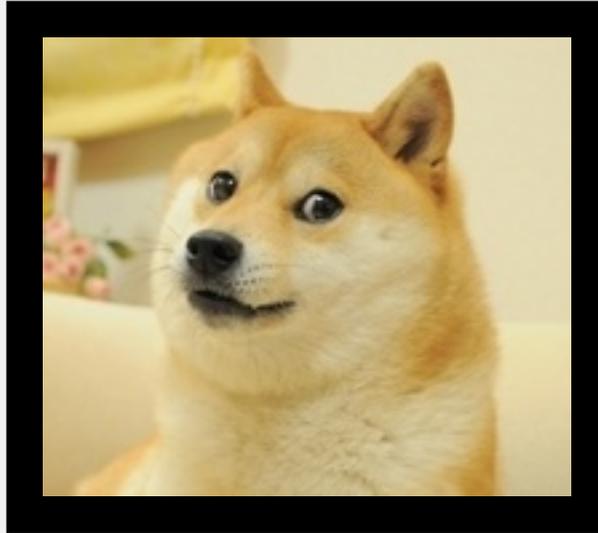
Don't Be a Panican. We're Winning — and We're Not Slowing Down.

The White House

February 9, 2026

Under President Donald J. Trump's leadership, this Administration is smashing through the chaos and destruction left by Democrats and unleashing the most aggressive pursuit of the America First agenda in history. While the Fake News and Radical Left collude to distract, depress, and divide, they're simply lying to mask the undeniable truth: America is safer, stronger, richer, and more secure than at any point in decades.

2.1 DOGE



Kabosu (2005--24),
a Shiba Inu,
subject of the
2013-era 'doge' meme

2.1 DOGE



“This Executive Order establishes the Department of Government Efficiency to implement the President’s DOGE Agenda”

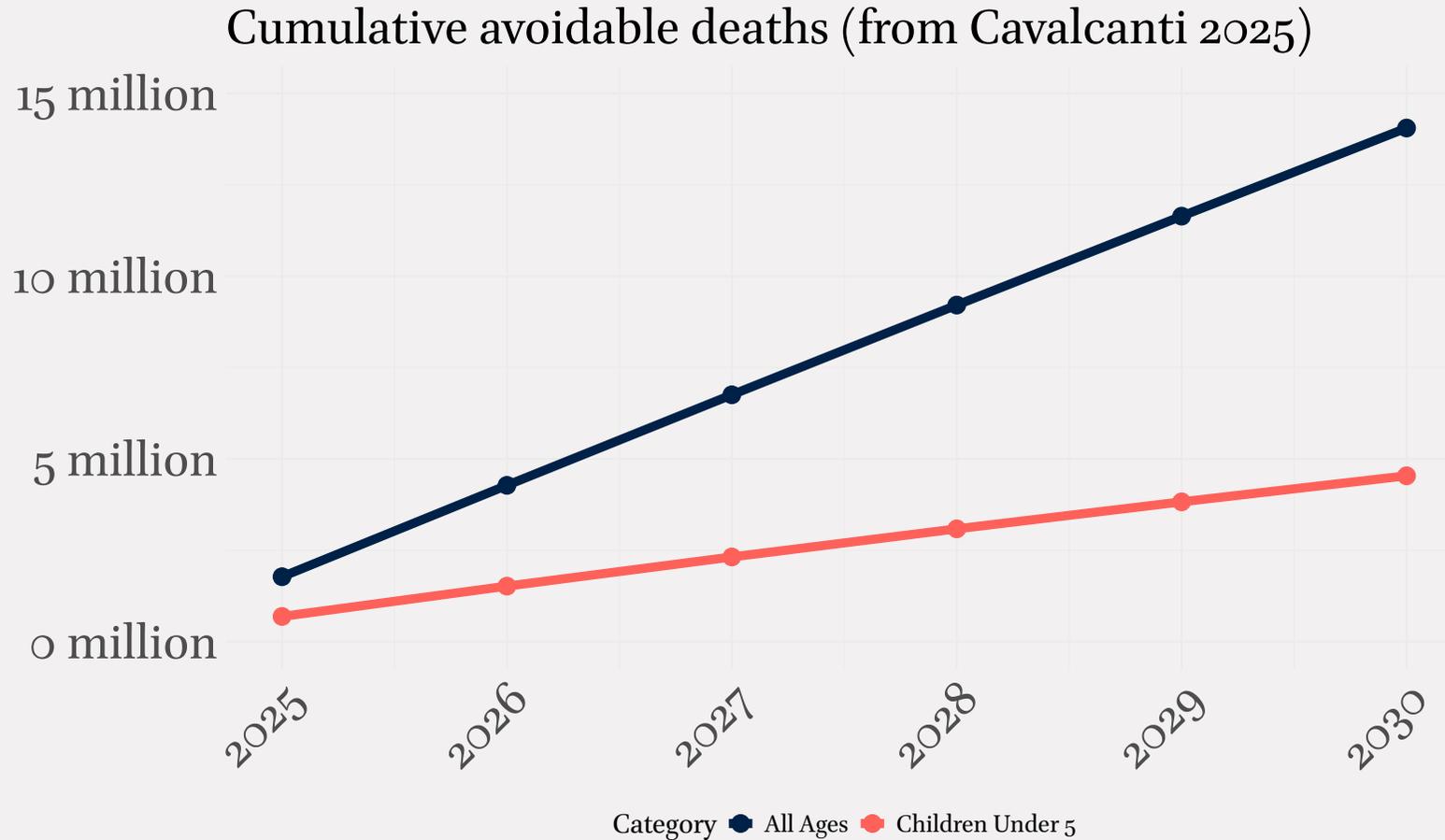
Executive Order 14158, 20.i.2025

2.1 DOGE

"That doesn't exist," Office of Personnel Management Director Scott Kapor told Reuters earlier this month when asked about DOGE's status.

- but from the period in which it did do thinks like abolish the US foreign aid infrastructure, what sort of consequences? (Cavalcanti et al. 2025)

2.1 DOGE



2.1 DOGE

- [litigation continues](#)
- partly unitary executive (who controls the bureaucracy and how much)
- but also funding: who controls what happens to the money?
- and who has the power to raise money?

3. Liberation Day (etc etc)

3.1 Tax raising powers

- Article I tax powers:

“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States”

Article I Section 8

- Article II tax powers: ○

3.1 Tax raising powers

- C20th onward delegation to presidents of power to tariff in specific legislation
- court historic deference to executive determinations within those delegations
- 5-6 current legislative delegations of tariff powers - (Zirpoli 2025)
- none is *general*
- Trump had relied on two

3.2 Trade Expansion Act

- the first is the Trade Expansion Act of 1962.
- national security only
- *Section 232* investigation
- first term: steel, aluminium
- cars and car parts (?)
- now a range of products: incl furniture (!), timber, and pharmaceuticals
- relatively minor litigation for now

3.3 International Emergency Economic Powers Act (IEEPA)

- The IEEPA of 1977: only in National Emergencies which the President can declare under the National Emergencies Act.

“The authorities granted to the President by section 203 may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose.”

50 United States Code 1701

3.3 International Emergency Economic Powers Act (IEEPA)

“(A) investigate, regulate, or prohibit— (i) any transactions in foreign exchange, (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof [...]

and (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;“

50 United States Code 1703

3.3 International Emergency Economic Powers Act (IEEPA)



3.3 International Emergency Economic Powers Act (IEEPA)

- Does IEEPA delegate tariffing powers to the President?
- *Learning Resources Inc. v. Trump* (2026) - No (6-3)

“The U. S. Code is replete with statutes granting the Executive the authority to “regulate” someone or something. Yet the Government cannot identify any statute in which the power to regulate includes the power to tax. [...] We are therefore skeptical that in IEEPA—and IEEPA alone—Congress hid a delegation of its birth-right power to tax within the quotidian power to ‘regulate.’”

Chief Justice Roberts, 607 U. S. — (2026), [slip opinion](#) at pp. 14-5

3.3 International Emergency Economic Powers Act (IEEPA)

- messy (6 opinions!)
- the Trump response:
 - to attack the court:

“The Supreme Court’s ruling on tariffs is deeply disappointing and I’m ashamed of certain members of the court, absolutely ashamed, for not having the courage to do what’s right for our country [...] they’re very unpatriotic and disloyal to our Constitution. It’s my opinion that the court has been swayed by foreign interests...”

Press Conference: Donald Trump Addresses the Supreme Court Tariff Decision - February 20, 2026

3.3 International Emergency Economic Powers Act (IEEPA)

- though not the dissenters:

“I’d like to thank and congratulate Justices Thomas, Alito, and Kavanaugh for their strength and wisdom and love of our country, which is right now very proud of those justices. When you read the dissenting opinions, there is no way that anyone can argue against them [...] Justice Kavanaugh, whose stock has gone so up. You have to see. I’m so proud of him. “

Press Conference: Donald Trump Addresses the Supreme Court Tariff Decision - February 20, 2026

- but also to pursue other routes for tariffs

3.4 Section 122 powers

- Section 122 of the Trade Act of 1974: “temporary import surcharge”

“... neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.”“

19 United States Code §2132(e)

- so why does Congress delegate those powers?

3.4 Section 122 powers

“Whenever fundamental international payments problems require special import measures to restrict imports—

(1) to deal with large and serious United States balance-of-payments deficits.

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium“

19 United States Code §2132(a)

- see Bowles (2005) on the end of Bretton Woods

3.5 Presidential Proclamation of 20.ii.2026

“These senior officials have informed me that fundamental international payments problems within the meaning of section 122 exist and that special import measures to restrict imports are required to address these problems. Specifically, my advisors have determined that an import surcharge in the form of ad valorem duties is required to deal with large and serious United States balance-of-payments deficits.”

Presidential Proclamation of 20.ii.2026

- Trump purports to impose a 10% global tariff on the basis of that Section 122 power.
- or...?

3.6 Presidential informal announcement of 21.ii.2026



@realDonaldTrump

Based on a thorough, detailed, and complete review of the ridiculous, poorly written, and extraordinarily anti-American decision on Tariffs issued yesterday, after MANY months of contemplation, by the United States Supreme Court, please let this statement serve to represent that I, as President of the United States of America, will be, effective immediately, raising the 10% Worldwide Tariff on Countries, many of which have been “ripping” the U.S. off for decades, without retribution (until I came along!), to the fully allowed, and legally tested, 15% level. During the next short number of months, the Trump Administration will determine and issue the new and legally permissible Tariffs, which will continue our extraordinarily successful process of Making America Great Again - GREATER THAN EVER BEFORE!!! Thank you for your attention to this matter. President DONALD J. TRUMP

3.7 Presidential determinations

- eg Presidents of both parties have declared national emergencies in pursuit of their programmatic goals
- legislative veto unconstitutional in *INS v. Chadha* 462 U.S. 919 (1983)
- so Congress delegates by majority but then needs 2/3 majority of each chamber to overturn a Presidential veto to get the power back...!
- but if the delegation criterion is just: can an Administration **say it has made** a determination? then... (Frankfurt 2005)

3.8 Rest of the series

- Next lecture: Presidents and funding
- final lecture: Checks and balances?

4. Bibliography and Further Reading

4. Bibliography and Further Reading

- Bowles, Nigel. 2005. *Nixon's Business: Authority and Power in Presidential Politics*. Joseph V. Hughes, Jr. And Holly O. Hughes Series in the Presidency and Leadership Studies. Texas A&M University Press.
- Cavalcanti, Daniella Medeiros, Lucas de Oliveira Ferreira de Sales, Andrea Ferreira da Silva, et al. 2025. “Evaluating the Impact of Two Decades of USAID Interventions and Projecting the Effects of Defunding on Mortality up to 2030: A Retrospective Impact Evaluation and Forecasting Analysis.” Doi: 10.1016/S0140-6736(25)01186-9. *The Lancet* 406 (10500): 283–94. [https://doi.org/10.1016/S0140-6736\(25\)01186-9](https://doi.org/10.1016/S0140-6736(25)01186-9).
- Frankfurt, Harry G. 2005. *On Bullshit*. Princeton University Press.

4. Bibliography and Further Reading

Zirpoli, Christopher T. 2025. *Congressional and Presidential Authority to Impose Tariffs*. CRS Reports, no. R48435. Congressional Research Service.