
With this conception of presidential power, Republicans built a rationale to justify presidential action in the face of legislative opposition. In effect, the doctrine of the unitary presidency is an ideal tool for a party holding the White House in divided government. While superficially appearing to ground presidential authority in the Constitution, the doctrine was in fact made politically relevant by Ronald Reagan's own plebiscitary appeal.

Jeremy Bailey's excellent book is an important contribution to political science and history. Through its conceptual lens we recognize how the parties have used representational and constitutional arguments. The latest cycle of presidential election and politics demonstrates the continuing applicability of Bailey's arguments. Democrats still insist their candidate won the popular vote in 2016, while Republicans counter that the Constitution's mechanism elected Donald Trump. But now, with President Trump impeached, Republicans disparage a constitutional mechanism and express horror that Trump's removal would negate the roughly sixty-three million votes he won in 2016. As with earlier presidents, political circumstances and convenience, as well as party principles, determine presidents' claims of authority.

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Joshua E. Kastenberg: *The Campaign to Impeach Justice William O. Douglas: Nixon, Vietnam, and the Conservative Attack on Judicial Independence*. (Lawrence: University Press of Kansas, 2019. Pp. xv, 319.)

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This book explores a constitutional episode remembered primarily for then House Minority Leader Gerald Ford's assertion that an impeachable offense is "whatever a majority of the House of Representatives considers it to be at a given moment in history." Kastenberg's extensive archival research presents a comprehensive historical account of the maneuvers and motives surrounding the investigation of Supreme Court Justice William Douglas and revives political and constitutional questions that resonate today.

Kastenberg draws from an impressive array of sources—including papers from many members of Congress, presidents, and Supreme Court justices as well as local, national, and world media—to assemble the most complete

account of the background, proceedings, and aftermath of the effort to impeach Douglas. He situates Ford's April 15, 1970, House floor speech within its larger political context: Senate rejections of President Richard Nixon's two nominees to the Supreme Court in 1969–1970, growing concerns over judicial integrity and ethics following the 1968 confirmation hearings of Abe Fortas to be chief justice resulting in his resignation from the court, Nixon's Southern Strategy, and "an attempted deflection for the controversial invasion of Cambodia" that Nixon planned for later Spring 1970 (4).

Kastenberg documents the extent of Douglas's extrajudicial public and secret political activities, which extended even beyond Ford's accusations. These included Douglas's public criticism of the Vietnam War in print (including his book *Points of Rebellion*, excerpted in the *Evergreen Review*), in speeches on college campuses and overseas, and in his Supreme Court opinions. Kastenberg recounts in detail Douglas's involvement with previous administrations in fighting communism around the world, including in the Dominican Republic, his recruitment activities for the Central Intelligence Agency, and his financial and personal ties to the Parvin Foundation, funded by a Las Vegas casino magnate reputed to have Mafia connections. Kastenberg admits that Douglas "regularly acted more like a politician than a judge" (25).

Contrary to claims by Ford and executive officials denying coordination, Kastenberg shows that the Nixon administration gave Ford access to Department of Justice files concerning the Parvin Foundation. Vice President Spiro Agnew criticized Douglas in a CBS News interview two days before Ford's speech. Kastenberg chronicles Ford's outreach to southern and mountain western members of the House and Senate—Republicans and Democrats—who supported segregation or opposed the 1964 Civil Rights Act. Kastenberg considers these efforts an extension of Nixon's Southern Strategy, and his judgment is unsparing: "Ford made an alliance with bigots" (256).

The impeachment effort, Kastenberg shows, fizzled quickly. Republicans as well as Democrats immediately offered resolutions to limit House inquiry to specific violations of law by a Judiciary Committee favorably disposed to Douglas. Media reaction was negative. Leaders of both parties opposed impeaching Douglas, including new Senate minority leader Hugh Scott (R-Penn.) as well as northern, midwestern, and West Coast Republicans in the House and Senate. After Ford's floor speech, Nixon abandoned him. Administration officials expressed no further public support and failed to provide Ford promised additional information about Douglas from Justice and CIA files. Within weeks, the invasion of Cambodia, increasing antiwar protests (including the shooting at Kent State), and the debate over the Economic Stabilization Act pushed Ford's effort to impeach Douglas out of the headlines. "Nixon did little with regard to Douglas," Kastenberg writes, as "other events would rapidly overtake Ford's demand for the removal of a long-serving justice" (211, 123). The Judiciary Committee eventually published the results of its investigation in December 1970, after the midterm

elections. It determined that Douglas had engaged in no financial wrongdoing and then ended proceedings without a vote. Douglas remained on the court until 1975; President Ford named John Paul Stevens to succeed him.

While Kastenbergs book offers substantial documentation and context for the campaign against Douglas, several of his interpretations require further justification. One is the lack of direct evidence to support his assertion that one purpose of the effort was "an attempted deflection" using Douglas as a "scapegoat ... to provide political cover for the Cambodian invasion" (4, 258). As scholars like Laura Kalman and David E. Kyrig have concluded, personal and political motives based on revenge seem sufficient to explain the timing. Ford had mentioned moving against Douglas on the House floor in the fall of 1969, during Senate hearings leading to the defeat of Clement Haynsworth. Ford's April 15, 1970, speech advocating Douglas's ouster occurred one week after the Senate rejected G. Harrold Carswell.

Kastenbergs could also have assessed more deeply the present-day consequences of Ford's effort. Although Douglas engaged in activities "ill-suited for the judiciary," Kastenbergs writes, he "deplored seeing justices withdraw into a cloistered life" (235, 60). Did the resulting publicity of Douglas's activities, which Kastenbergs admits are subject to "valid criticisms" (69), along with adoption of judicial ethical standards, lead later justices to exercise "greater caution in their extrajudicial lives" (258)? Might it have contributed to presidents nominating fewer candidates with political experience to the federal bench?

Kastenbergs rejects Ford's view and expresses a desire for a "clear" or "finite" standard for impeachment (113), but he ultimately fails to persuade. He claims that Ford "departed from a fundamental conservative tenet of strict constructionism," going beyond the "plain text" of the Constitution to argue that "impeachment was a political rather than constitutional process" (114). Douglas's legal counsel argued that past impeachment of judges required evidence of a statutory criminal offense. Kastenbergs finds that argument "a clear winner" (198). Yet such a heightened standard, applied to presidents, would justify the impeachment of Bill Clinton but not Andrew Johnson. "The impeachment effort against Douglas," Kastenbergs concludes ruefully, "failed to resolve whether a constitutional standard exists for impeachment, or whether the standard is what Ford claimed it to be: the agreement by a bare majority of the House of Representatives" (257).

Later presidential impeachments vindicate Ford's prudential standard. Under Article 1, Section 2, the House possesses "sole power of impeachment." The Constitution does not prohibit members of Congress from using powers of oversight, confirmation of nominees, or impeachment for political or electoral purposes. The people ultimately judge the wisdom of impeachment: they did in 1974, 1976, and 1998, and will again in 2020.

Kastenbergs laments "the absence of political liability" of either Nixon or Ford for an "attack" that was "politically irresponsible" and "placed the nation's constitutional institutions at risk" (25–26, 256). This lack of

consequences “haunts us today,” he writes, noting Donald Trump’s attacks on federal judges during the 2016 campaign (256–58). He could also cite President Barack Obama’s criticism of the *Citizens United* decision during the 2010 State of the Union address. But Trump’s continued assaults on the integrity of federal judges prompted a rebuke from Chief Justice John Roberts. “We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” Roberts stated in November 2018. “What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for.” Kastenbergs’s chronicle of the effort to impeach Douglas highlights the responsibilities of both judges and elected officials to act in ways that allow courts to fulfill their constitutional duty to say what the law is.

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Amitai Etzioni: *Reclaiming Patriotism*. (Charlottesville: University of Virginia Press, 2019. Pp. 220.)

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For sixty years Amitai Etzioni has crafted a sociological, moral, and political vision he calls liberal communitarianism, of which his new book is a succinct summary. The term is something of an oxymoron, given that communitarianism developed as a critique of liberalism, but these days I welcome any defense of tolerance, facts, due process, transparency, the rule of law, and other basic elements of liberal societies. Etzioni’s effort will appeal to most scholarly readers, whose education and expertise are among the frequent targets of today’s global antiliberalism.

Etzioni is not the only author to defend liberalism by calling for a new, “good” patriotism to replace the bad patriotism of hateful nationalism. He pins his hopes on a new patriotic movement that would promote the public good through social interactions like national service, civics classes, and volunteers who would teach English to immigrants. It would identify shared values through local and national “moral dialogues.” He entrepreneurially offers a number of specific programs, right down to a suggested logo of a national flag with a *P* on it, ready to be stamped on millions of lapel pins and T-shirts.