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## Republicans must not abandon originalism of the Constitution

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# Republicans must not abandon originalism of the Constitution

BY EDWARD PURCELL JR., OPINION CONTRIBUTOR — 12/03/19 12:00 PM EST  
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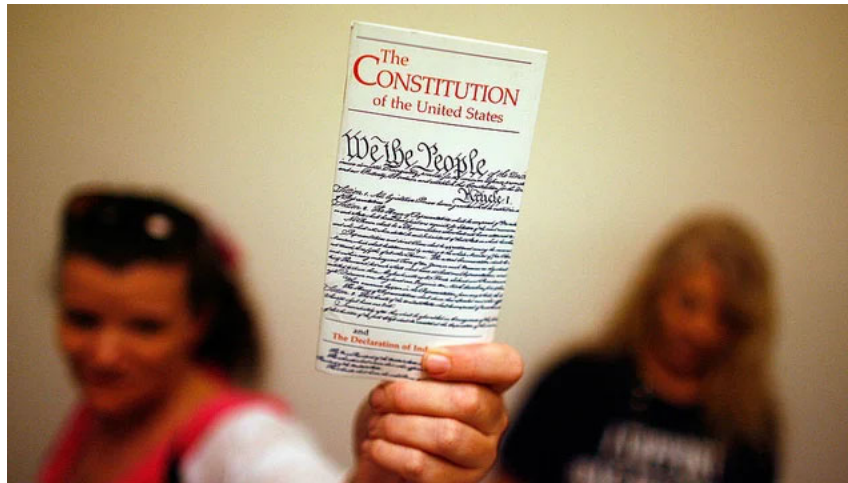
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The late Supreme Court Justice Antonin Scalia, a passionate advocate of originalism, staunchly insisted that the meaning of the Constitution does not change. His views were embraced by the Republican Party under Ronald Reagan and became inextricably linked to modern conservatism. But under Donald Trump, the marriage between the Republican Party and originalism has been dissolved. We are now witnessing a determined campaign to fundamentally change the meaning of the Constitution.

First, Trump and the Republicans are seeking to make the tradition of “executive privilege” a doctrine of virtually absolute power. But this term does not even appear in the Constitution, and the idea evolved over time into an implied doctrine designed to protect some communications between the president and his advisers. Scalia, a determined defender of executive power, acknowledged that it had an “uncertain scope.” When the Supreme Court finally ruled on it in 1974, it held that the privilege was limited and could be overcome by a showing of reasonable need. The assertion by Trump of sweeping “executive privilege” transforms the concept into an absolute bar that holds no basis in the Constitution.

Second, Trump and the Republicans are defining the executive power over American foreign affairs as effectively absolute. The Constitution does grant a number of international relations powers to the president, but it also limits those powers in various ways. The current Republican rhetoric, however, rejects the very idea of limits. Former Senator Rick Santorum, for instance, has defended the actions by Trump to extort political advantages from Ukraine on that basis. “The president has the most absolute authority when it comes to foreign policy,” Santorum declared. It makes no difference, he suggested, what the president does in handling American foreign affairs or why he does it. Attorney General William Barr has made similar claims for the president. Such pretensions to

absolute power are unfounded and antithetical to the foundational principles of limited and balanced government in the Constitution.

Third, Trump and the Republicans are attacking the impeachment power itself as an unconstitutional device to push against the facts of the 2016 election. The text of the Constitution repudiates that claim by specifying impeachment as the proper remedy for removing an otherwise duly elected president and by conferring “the sole power of impeachment” on the House. The effort by Trump to delegitimize the process as a “political coup” and an “overthrow attempt” contradicts those express terms.

To guarantee that the American chief executive would not be like the British king, Alexander Hamilton stressed that the Constitution provided specifically that “the president of the United States would be liable to be impeached.” Indeed, the Founders regarded the impeachment power as such an essential limit on the executive that they specifically excluded “cases of impeachment” from the pardon power of the president. If Trump and the Republicans succeed in delegitimizing the impeachment process underway in Congress, they will have radically changed the Constitution.

Finally, Trump and the Republicans are defeating the very purpose of the structure of separated governmental powers. That structural division, as James Madison explained, created a system of checks and balances that are designed to keep the three federal branches “in their proper place.” Hamilton, the greatest defender of executive power among the Founders, highlighted the fact that “the powers relating to impeachments” were “an essential check” necessary to block “encroachments of the executive.”

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The Republicans, however, have turned their backs on the mandate of checks and balances in the Constitution. They have refused to pursue the relevant facts or to fairly evaluate the facts established in the hearings conducted by the House. Worse, many of them have openly sought to obstruct the process, and some have already declared that they would vote against impeachment. Senator Lindsey Graham said that he would not even bother to read the testimony of the witnesses in the hearings. By allowing personal and party loyalty to supersede their duties, Republicans have rejected the purpose of the separation of powers in the Constitution.

If Trump and the Republicans succeed, they will have created a near absolute executive power. The president would have unfettered control over American foreign affairs and be free to corrupt the granted powers of government by warping them to serve his own interests, even when those interests conflict with official United States foreign policy and essential national security. Such an absolute executive authority runs contrary to the views of true conservatives and flies in the face of the Constitution.

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