

Trump Is Canceling the Rule of Law – and US Democracy

di Aziz Huq

Not only has the second Trump administration shown an utter contempt for the rule of law, but so too have its allies in Congress and on the Supreme Court. The bedrock principle that has long defined and sustained the American democratic project is being shredded before our eyes.

The first year of US President Donald Trump's second term has taken a heavy toll on the rule of law. While this bedrock ideal of American governance has long been invoked to capture a broad range of hopes, [at its core](#) lie two mutually reinforcing values: that ordinary people can look to the law to predict accurately the consequences of their actions; and that the same law will render predictable the behavior of officials wielding the awesome powers of the state.

Trump's second administration refuses to be bound by anything so ordinary and mundane as the laws that Congress passes. The Justice Department has [stated explicitly](#) that it is no longer in the business of routinely complying with orders from federal district courts or courts of appeal, and the administration has treated laws mandating spending (and more) as [optional](#).

The rhetorical foundation for these moves is Trump's [claim](#) to have a "mandate" in the form of his (slender) election victory in November 2024. Never mind that, under the US constitutional system, presidents exercise authority within the terms set by the country's laws. The administration is determined to dissolve both pillars of the rule of law – the predictability putatively promised by written, statutory law, and the principle that officials are as bound by that body of rules as ordinary people.

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Accordingly, Trump’s talk of a “mandate” offers a useful starting point for thinking about the months and years ahead. The central questions that will shape not just the second Trump administration, but also the dimming prospects for American democracy, will turn on how far the president is willing to push this claim. To what lengths will he go to preserve the illusion?

Enabling Actors

To answer that, we need to consider how the vision of a limitless mandate has been advanced to dismantle the rule of law so far. The story here is less about the president, and more about the other branches of government that are supposed to act as checks on America’s executive. Of course, the fact of united government under Republican control means that the Trump administration faces scant oversight or resistance from Congress. But perhaps the most significant enabler of the president’s lawlessness has been the Supreme Court.

Under Chief Justice John Roberts, the Court, seemingly paradoxically, has become a force for weakening the rule of law. In [21 of the 23](#) appeals pressed by the Trump administration outside the ordinary channels of judicial review in its first nine months (the so-called shadow or emergency docket), the Court has affirmed the president’s power to act, often despite statutory law, until whenever it issues a definitive ruling. Incredibly, the justices even [allowed](#) the administration to disregard the spending mandates established recently by Congress, effectively gutting the most important of congressional checks on the power of the presidency.

The Court’s licensing of an overtly lawless presidency is something new in US history. So, too, is the widespread [disquiet](#) that one sees among lower-court judges appointed by presidents from both parties. These are officials directly supervised by the justices, and their loss of confidence in the Court is unprecedented.

We now must consider whether their growing alarm might coalesce into more explicit pushback over the next year or two, when the Court is likely to be where the president’s lawyers – as the Justice Department may now be appropriately [called](#) – will try to

alchemize talk of a “mandate” into durable legal doctrine. Already, the Court’s docket includes several cases that speak directly to that possibility.

Two of these concern the president’s ability to fire officials that Congress has chosen to shield. Despite powerful [evidence](#) of a contrary “original understanding,” the Court is almost certain to license such broad presidential power to fire at will. The Court’s conservative majority claims to adhere to “originalism,” a school of jurisprudence which claims that the US Constitution can and must be interpreted according to the original meaning of its language as used by its framers. But the Court’s conservative bloc has demonstrated, time and again, that it is only a fair-weather friend to this approach.

Equally important are challenges to the tariffs that Trump issued under the International Emergency Economic Powers Act. When the Court decides these cases, watch closely how it handles the question of what constitutes an “emergency.” If the justices say an “emergency” can be something as banal as a trade imbalance (which the US has run [since](#) the 1970s), all other statutes with emergency triggers will effectively have had those triggers reset. The president will then be able to invoke them whenever and however he sees fit.

The implications of such a loosening of presidential emergency power would be felt quickly. The Trump administration has not hesitated to [use](#) other emergency statutes to detain and render non-citizens into indefinite detention under harrowing conditions, and it [might do the same](#) to expand domestic troop deployments using the Insurrection Act. Already, Immigration and Customs Enforcement (ICE) agents and National Guard troops are being unleashed on residents of cities controlled by the Democratic Party. In Chicago, these shock troops have used [tear gas](#) against protesters and even local police, and have arrested [reporters](#) and local [aldermen](#) who try to document their abuses. What will happen when the Court gives Trump free rein to double down?

Dissolve the People

While National Guard deployments attract media attention, the more gradual amping up of ICE’s aggressive use of violence against municipalities warrants closer attention in the coming months. Such naked aggression is unlikely to soften locals’ attitudes toward the federal government. Instead, the violent suppression of protest could

become [normalized](#), especially in view of the radicalization of ICE's internal culture. If this agency – whose budget now [exceeds](#) that of most other countries' armed forces – comes to view itself as akin to an occupying army in its own country, justified in using whatever force is needed to subdue “enemies within,” the risk of escalating political violence will climb even more sharply.

Another application of force may also undergo a seismic shift in the coming months. As of mid-October, the US military had sunk [five boats](#) allegedly being used by Venezuelan drug smugglers. Such attacks represent an [unprecedented](#) use of indiscriminate military force against civilian targets. There is no reason to believe that the boats could not have been seized, and their passengers arrested, rather than killed. These are executions shorn of any pretense of due process. But even if the boats were legitimate targets, such killings are plainly a crime under both domestic and international law. Former Philippine President Rodrigo Duterte is currently [facing charges](#) at the International Criminal Court for a similar campaign of indiscriminate extrajudicial violence against alleged drug dealers at home.

A key question for the coming years, then, is whether deadly use of military force will remain confined to targets outside the United States. After all, it is easy to imagine this administration reasoning its way to domestic uses. If a boat can be attacked without warning by a Predator drone when it is in international waters, why not also when it is within 200 nautical miles of the US coast? And if on open water, why not in a US harbor, or on a freeway? Or in someone's home? The diffusion of ICE activity from the borders into the heartland of the US is already following this authoritarian logic.

The use of military and quasi-military violence against disfavored ethnic groups and cities that diverge politically from the administration would be significant even if it had no systemic repercussions for democracy. But it obviously does. Such acts, and their potential escalation, change the terms on which elections in 2026 and beyond will be conducted. The administration is intentionally casting a pall of intimidation on the democratic process, while introducing other, more subtle threats against the American experiment.

One such threat is gerrymandering in Republican-controlled states (Texas, Missouri, North Carolina), which Trump has openly urged to ensure that his “mandate” does not

wither because of potential Democratic gains in the 2026 midterm elections. In ordinary times, it would be worth savoring the irony of a president using his victory in a fair election to ensure that the next election is unfairly tipped in his favor. But these are not ordinary times. If the gerrymandering fails (or is countered by California's tit-for-tat response), and if the troops in Democratic-controlled cities fail to deter voters from turning out, Trump is unlikely to stop there.

As Paul Rosenzweig, a former official in the George W. Bush administration, [warns](#), Trump's March 2025 executive order on election "integrity" is clearly meant to be used "to disenfranchise his opponents and forestall electoral defeat." The Roberts Court is already [seriously considering](#) one of the more outrageous provisions of this order – a ban on counting votes received after election day – and other provisions, such as those requiring recertification of all voting machines, could be invoked to seize machines in districts that Trump's allies lose.

People Against the American Way

It would almost be comforting if the threat to American democracy from the erosion of the rule of law was confined to the 2026 and 2028 elections. But the threat to free and fair elections is just a symptom of a larger problem. Consider what follows from the notion of a limitless presidential mandate. At stake is not just a few thrown elections (though that is serious enough). Rather, we are talking about a chief executive who is above the law. It would be a categorical repudiation of the American way, a rejection of the notion that there is a shared political community that stretches over time and is animated by deliberation and democratic choice.

In a system where presidents can discard laws on a whim, there is no reason for Congress to pass laws in the first place. Legislation adopted today will not bind any future leader. By rejecting the moral force of the past, advocates of unlimited presidential mandates depart from how democratic politics has historically been done. Statutes, eked out by democratic majorities, are the *raison d'être* and proof of democratic life – but perhaps no more.

Of course, those who eschew the past also relinquish their claims on the future. If the democratic project no longer extends through time, it no longer exists. If we fail to honor what our forebears enshrined into law, why should decisions taken today matter

tomorrow? Legislation has been reduced to mere moments of sound and fury, signifying nothing. It becomes impossible to make policy through new law.

But if you cannot make new law that binds your successors, you must make sure that your successors mirror you. You must negate the irksome habit that the voting public has of changing its mind. Your mandate must be made permanent somehow – perhaps through executive orders, or gerrymandering, or troops in the streets. The idea that animates the second Trump administration amounts to a rejection of everything the US has ever stood for. That vision may be fully realized in 2026.