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## *Is Trump Proving That the System Actually Works?*

Perhaps one of the most overused phrases in the news and among commentators is the phrase “constitutional crisis,” especially as it applies to a cluster of issues surrounding the Donald Trump presidency including whether he can be indicted or if, as an anonymous NY Times op-ed asserts, administration officials are part of a resistance to limit his action. I am not sure what the term means, but there is no constitutional crisis when it comes to Donald Trump, the “system” is working whether we like it or not.

A constitutional crisis means a situation where the Constitution and the laws cannot handle or address a specific situation and we are left totally with non-constitutional solutions to address a problem. This is not happening here. When Trump was first elected, I began giving a series of talks that continue to today. In those first talks I said that there was something remarkable the day after the election—there were no tanks in the streets or troops on the corner. I said that what will largely happen is that the Trump administration will confront this nasty thing called the Constitution and the Bill of Rights and both will largely do their job. Lacking government experience and an inclination to want to learn, Trump would face the checks and balances and separation of powers limits that the Constitution imposes. Moreover, for Trump to get anything done he and his administration needed to secure the assistance of the 3,000 or so members of the Senior Executive Service—SES—the careerists who really run the federal government. Finally, were Trump to exceed the political boundaries of what Americans could tolerate, elections would be the final remedy.

Largely, all of this is happening now. Legal investigations are tightening the noose around Trump. His and the Republican overreach and ineptness will produce electoral results that will hold him Trump accountable, or at least check him, and the complex system of administrative law and members of the SES or the bureaucracy also are checking the president. All of this is consistent with the Constitution and its design.

Additionally, as the special prosecutor finishes his investigation, we may soon find Trump and others facing criminal charges. If a sitting president can be indicted for federal crimes, then the criminal justice process will render a final verdict. If a sitting president cannot be indicted—and we do not have a clear answer to that question—then possible impeachment or simply voter retribution against him or Republicans may occur. Trump of course can pardon those accused of committing federal crimes, but he cannot issue pardons for impeachment, civil action, or state crimes. It is also unlikely anyone would seriously argue the president can pardon himself.

Even if Trump were to fire the special prosecutor, he cannot remove the federal career prosecutor in New York who went after Michael Cohen, and even if he does fire him, Trump cannot fire the Manhattan Borough district attorney or New York State Attorney General who are investigating charges against Trump and his foundation. It is also an open legal question regarding whether a sitting president could prevent facing state criminal charges. And the Supreme Court has already ruled that a sitting president can face civil law suits. Federal courts have already ruled against Trump on many key issues, and more adverse decisions will come. Overall, regarding of who sits on the Supreme Court, Trump will face monumental legal challenges that have already checked much of his behavior.

Even if the legal process breaks down, the final verdict lies with the people. Barack Obama said it well in his Friday, September 7, 2018 speech when he said that: “Because there is actually only one real check on bad policy and abuses of power, and that’s you. You and your vote.” Elections are the ultimate check on abuses of power, and they are provided for in the Constitution. Trump’s overreach appears to be producing renewed interest to vote and perhaps will yield significant Democrat Party turnout that will correct and check the worst of the abuses. 2020 may too be another verdict.

The Constitution is proving to be able to address or anticipate many of the problems we are seeing, acting as disciplinary tool to define mainstream political economic orthodoxy. Trump has not precipitated a new constitutional crisis. Maybe there is a political crisis but not a constitutional one. The Constitution is mostly a process document, not one of

substantive public policy. Yes Trump and Congress have enacted many ugly policies that hurt people. When I say the system works, I do not mean it produces the policy outcomes that I want or which liberals may desire. The system is working for many of the ways it was designed to work, which was undemocratic from the start. The Electoral College is by today's standards undemocratic but it may be working the way it is supposed in the sense that it checks real populism. The structure of the US Senate that favors rural and less populous interests too is undemocratic. And one can argue that it is no coincidence that the racial, economic, and overall demographic profile of the people who head the government and the economic institutions of the United States today look a lot like the people who were the constitutional framers.

If there is a constitutional crisis, it is because the Constitution may be working in ways it was supposed to, it is just not the way many of us like.