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## **CIVIC IGNORANCE AND THE RISE OF THE PRESIDENT-KING**

**By Eric Lane<sup>1</sup>**

### **ABSTRACT**

Everybody wants to be a king, to be free to do what they want. Presidents particularly want to be kings. After successfully negotiating the gauntlet of the modern presidential campaign, they arrive at the White House profoundly determined to realize their visions for the country. The framers would have expected no less. They understood all about this “monarchial” view of human nature. They designed a government to restrain it. At the White House this design of American government becomes, at least from a presidential perspective, a presidential problem. To succeed Presidents must act “unkingly.” Usually they conform in one way or another to this rule, but sometimes they don’t. They act in a kingly fashion. They ignore constitutional restraints and the law. The Bush administration provides the most recent and the most expansive example. A compliant legislature and public has made this possible. Such compliance is a product of both anxiety and civic ignorance. Anxiety has been a product of 9/11 and the on-going war on terrorism. Civic ignorance has been the consequence of a school system that no longer sees its mission as teaching students, as William Galston wrote, to be willing and able “to engage in public discourse and evaluate the performance of those in office.” A citizenry lacking this capacity opens the door to expanding monarchial behavior, undermining American democracy.

The challenge of accommodating a vigorous executive power within the framework of the rule of law remains formidable even eight centuries later. Consequently, whether it is seen as imperial or simply magisterial – or as “close to the people” as ambition and the media can make it – the American Presidency will never be easy to locate within our constitutional framework. . . . [T]he President like the English kings before him is a person as well as an institution; and unlike other institutions, the Presidency is led by an individual elected by the entire Nation to secure its survival, to represent it to the world, and to voice its aspiration to all the people. Thus it is only by an extraordinary triumph of constitutional imagination that the commander-in-chief is conceived as commanded by law.

Laurence Tribe<sup>2</sup>

Few people want to be president, but everyone wants to be a king. Writes Homer: “I . . . maintain . . . that it is no bad thing to be a king - to see one’s house enriched and one’s authority enhanced.”<sup>3</sup> Or as the screen writer Mel Brooks wrote in *History of the World Part I*: “It’s good to be the king.”<sup>4</sup> We all understand this. The common proverb about being a master in one’s own castle captures the sentiment. In that space, whether bedroom size or boardroom size or nation size, “you are the boss and no one can tell you what to do.”<sup>5</sup> Being a king is about the unfettered power to do what you want, about getting your way.

This monarchial element of human nature is particularly applicable to modern presidents. Presidents want to be kings. They want to effect the “energy” Hamilton attributed to the office,<sup>6</sup> to be the “big” men that President Woodrow Wilson declared they all could be.<sup>7</sup> After successfully negotiating the gauntlet of the modern presidential

campaign they arrive at the White House profoundly determined to realize their visions for the country, to fulfill their campaign promises, and to make their historical mark.

Behind whatever façade they may effect, they are driven to get their way.

The framers would have expected no less. They understood all about this “monarchial” view of human nature. Over the eleven years that separated independence from the constitutional convention, they observed a new nation almost destroy itself from multiple factions clashing over multiple interests, each trying to get its way. The earlier utopian hope that Americans could be publically virtuous—capable of repressing their own self-interest for the greater good—had been dashed by factionalism, leaving a nation described by John Quincy Adams as “groaning under the intolerable burden of . . . accumulated evils.”<sup>8</sup> Or as the historian Gordon Wood has written: the framers saw in America “mistrust, the breakdown of authority, the increase of debt, the depravity of manners, and the decline of virtue.”<sup>9</sup>

The problem was Americans themselves. As Madison observed, the more fatal cause of the nation’s crisis “lies among the people themselves.”<sup>10</sup> Only months before the convention George Washington wrote to John Jay: “We have probably had too good an opinion of human nature in forming our confederation. . . . We must take human nature as we find it. Perfection falls not to the share of mortals.”<sup>11</sup> As “mortals,” we passionately pursue our own self-interests, thinking what is right for us is right for everyone else. Americans, like all others, “think of themselves in possession of all truth, and that whatever others differ from them it is so far error,” Benjamin Franklin observed.<sup>12</sup> And they will act on this. Noted Alexander Hamilton more bluntly about the

monarchical nature of Americans: “Men love power. . . . Give all the power to the many, they will oppress the few. Give all power to the few, they will oppress the many.”<sup>13</sup>

To counter this aspect of human nature the framers established a system of government designed to make a virtue of the vice of self-interest. The basic details are the contents of what once was Civics 101 (more on this later). Freedom was to be preserved first through representation to assure the nation’s multiple interests (as the framers then defined them and later amendments expanded them) could be heard, and then by the separation of political power, “the best defense of liberty,”<sup>14</sup> to make sure no particular interest could dominate another and that Americans would suffer neither executive or legislative (majority) tyranny. Of this latter form of tyranny wrote Madison: “[t]here is no maxim in my opinion which is more liable to be misapplied, and which therefore more needs elucidation than the current one that the interest of the majority is the political standard of right and wrong.”<sup>15</sup> In short, a reliance on public virtue was to be replaced by a “policy of supplying, by opposite and rival interest, the defect of better motive[.]”<sup>16</sup> Or more bluntly put, “[a]mbition must be made to counteract ambition.”<sup>17</sup> Success would require compromise and consensus.

This view was not restricted to domestic law making power, but also informed how the constitution assigned responsibilities for the historically royal powers for the conduct of foreign policy and war. Observes Professor David Ayers in this volume: “The Constitution assigns to Congress senior status in a partnership with the president for the purpose of conducting foreign policy [including war].”<sup>18</sup> Again the arrangement flowed from the framers view of human nature. Wrote Alexander Hamilton, among the most monarchical of the framers,<sup>19</sup> in Federalist No. 75: “The history of human conduct does not

warrant that exalted opinion of human virtue” which allow the granting of power over foreign affairs “to the sole disposal of a magistrate created and circumstanced as would be a president of the United States.” And similarly about the war powers Madison wrote: “The constitution supposes, what the History of all governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care, vested the question of war in the Legislature.”<sup>20</sup>

At the White House this complex, power sharing design of American government becomes, at least from a presidential perspective, a presidential problem. “Congress’ separate power is an obstacle to modern policy making,” wrote then-Nixonian philosopher Kevin Phillips,<sup>21</sup> a view later expanded upon by President Jimmy Carter’s Counsel Lloyd Cutler, who called for replacing Congress with a parliamentary form of government.<sup>22</sup>

The problem is simple. The president cannot change the law himself. The president’s inevitable monarchial temperament encounters a system designed, as Louis Brandeis wrote, “not to promote efficiency, but to preclude the exercise of arbitrary power.”<sup>23</sup> Presidents must convince Congress that there is a problem worth addressing and that he has the appropriate solution. Recall, in the extreme, President Clinton’s failure to convince a Democratic Congress that they needed to turn their attention to health care and that he had the solution to the problem. Or President George W. Bush’s failure to convince a Republican Congress to support his major domestic initiative, the privatization of social security.

To negotiate such obstacles, presidents must act less kingly. They must entertain objections to their vision and compromise for success. For some this is not an uncomfortable role. President Lyndon Johnson, for example, was a master of the process and, by all accounts,

relished its incredible demands. But not every president is game for such work. Some simply find, for various reasons, these efforts “unkingly.” Wrote Arthur Schlesinger about President Nixon: he “aimed at reducing the power of Congress at every point along the line and moving toward rule by presidential decrees.”<sup>24</sup> An example was the presidentially approved secret Huston Plan to spy on American citizens in the anti war movement or on the political left, justified, after exposure, by the assertion: “Well, when the president does it that means that it is not illegal.”<sup>25</sup>

But probably no administration has embraced kingly conduct with more vigor and aim than that of the President George W. Bush. The grave security concerns created by 9/11 provided an opportunity for the Bush administration to effect its monarchical view. The goal was to restore to the presidency the powers perceived to have been stripped from it since, and as a result of, the ignominious fall of President Richard Nixon. “In 34 years, I have repeatedly seen an erosion of the powers and the ability of the president of the United States to do his job,” declared Bush’s Vice President Dick Cheney on ABC in January 2002.<sup>26</sup> “I feel an obligation . . . to pass on our offices in better shape than we found them to our successors.”<sup>27</sup> And what needed to be restored, Cheney noted in 2005, could be found in an “obscure text,” the minority report that accompanied the Iran Contra Report of 1987.<sup>28</sup> In that report the Vice President wrote: “the Chief Executive will on occasion feel duty bound to assert monarchical notions of prerogatives that will permit him to exceed the law.”<sup>29</sup> And that argument of a then young Wyoming minority congressman became the openly expressed rationale for the Bush Administration rejection of laws prohibiting torture or the wiretapping of American citizens. According to Frederick A. O. Schwarz and Aziz Huq: “No sitting president before President Bush asserted or used power under the Constitution to set aside laws wholesale. Such power

means a president can ignore statutes passed by the Congress whenever he claims that ‘national security or military necessity’ is at issue.”<sup>30</sup>

Beyond simply exercising the monarchial prerogative to ignore the law, the Bush administration did everything it could to ignore or circumvent Congress. Many of its actions, observes Louis Fisher in his essay in this volume, “evaded normal checks and balances for years because they were done in secret.”<sup>31</sup> Wrote former Republican Senator Lincoln Chafee: “The White House was out to neuter Congress . . . [to] set the stage for one-branch rule in America and all the consequences we live with today.”<sup>32</sup> And the prime strategy adopted for this purpose was the extensive use of another monarchial prerogative, secrecy. Asked the Senator from Virginia and the philosopher of Jeffersonianism, John Taylor of Caroline in 1814, about the “monarchical custom” of “executive secrecy,” how “can legislatures be wise or independent, who legislate in the dark upon the recommendation of one man?”<sup>33</sup> Then and now, the answer is they cannot. A 2007 report on governmental secrecy found:

In the past six years, the basic principle of openness as the underpinning of democracy has been seriously undermined and distrust of government is on the rise.

The Administration has taken an extreme view of the power of the presidency. In its view, its powers to operate are largely unchecked by the Congress, courts, states, or the public. The number of secrets generated has substantially increased, while release of information has declined.<sup>34</sup>

Through the control and management of information, the Bush Administration steered Congress and the public toward the policies the administration favored. The most striking and serious example of this was the Iraq war.<sup>35</sup>

It is pretty clear that, at least after September 11, President Bush wanted to go to war with Iraq to effect regime change. The administration judged such a war could not be undertaken without congressional and public support. So they had to convince both that the war made sense. To this end they conducted a marketing campaign “to convince the American people that Iraq was in possession of weapons of mass destruction and had contacts with the al Qaeda terrorist organization.”<sup>36</sup> Approaching a war like a marketing campaign, writes Gary Jacobson, “[breeds] a cavalier approach to truth: dishonesty not by lying, but by a deceptive selection of truthful but misleading statements.”<sup>37</sup> And this was certainly true in this case. As part of this campaign, as I have written elsewhere:

[A]dministration officials concealed both the paucity of evidence in support of their claims and any evidence that contradicted them. They touted questionable information regarding the existence of weapons of mass destruction, they claimed a connection to the 9/11 attacks where none existed, and they minimized concerns over problems that might arise in the post-invasion phase. Through distortions and half-truths, the administration was able to portray the specter of an Iraq that posed a direct threat to America through its weapons of mass destruction and its support of the 9/11 terrorists.<sup>38</sup>

Would Congress and the American public have supported the war if the administration had been more forthcoming about the factional basis for its support? I think not, but regardless of one’s view of the war’s virtue, it is hard, I think, to justify the administration’s decision under a constitution that requires war to be declared and paid for by Congress in order to assure that such a profound decision be the subject of real public debate. Unless you want to be a king.

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The path from president to king should not be unfamiliar to Americans. Throughout our history we have off and on flirted with monarchial rule. Wrote Washington to John Jay in August of 1786, as the new country seemed to be imploding: “What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror. From thinking proceeds speaking, thence to acting is often but a single step. But how irrevocable and tremendous!”<sup>39</sup> And during this same period of time it has been reported that Nathaniel Gorham, a member and then president of the Continental Congress and delegate to the Constitutional Convention, wrote to Prince Henry of Prussia inquiring if he would be interested in assuming “regal powers” over America.<sup>40</sup> The Prince declined. And the historian Max Farrand reports that during the constitutional convention some of the delegates “may have been circulating rumors of establishing a monarch in order to try out public opinion.”<sup>41</sup> In the early 1930s as the depression deepened, the journalist Henry Hazlitt suggested replacing Congress with a twelve-man directorate.<sup>42</sup> Republican Senator David Reed of Pennsylvania suggested that “a Mussolini” may be needed.<sup>43</sup> Barron’s Magazine called for a “genial and lighthearted dictator.”<sup>44</sup> And the renowned journalist Walter Lippmann advised Franklin Delano Roosevelt: “The situation is critical Franklin. You may have no alternative but to assume dictatorial powers.”<sup>45</sup>

Anxiety over social and political upheaval has been the common threads of these separate events. In his profoundly disturbing book *Escape from Freedom*, the psychologist Erich Fromm explores how anxiety and its consequential feeling of helplessness produce a powerful attraction to authoritarian figures that promise some

form of salvation, secular or religious.<sup>46</sup> And the political scientist William Scheuerman has recently translated this urge into the president–king context:

As in the distant past, social and political anxiety apparently leads many to develop a deep emotional identification with the most concrete and seemingly unmediated representative of the political community, namely the single person of the presidency, whose every staged word and action can now be communicated into the recesses of the private abode of even the most apathetic member of the political community to a degree to which his royal predecessors could only have fantasized. In the contemporary U.S. version of this popular ideology, the president alone represents the popular will, whereas our numerous elected representatives in Congress—whose organizational complexity, it seems, is inconsistent with the emotionally charged sense of identity with a concrete personal symbol apparently called for by our anxiety-ridden times—stands for nothing more than particularized “special interests.”<sup>47</sup>

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Once again, as in 1787, the cause of the problem, as Madison reported then, “lies among the people themselves.”<sup>48</sup> Despite polls that find that eighty-four percent of Americans believe that for America’s government to work citizens needed to be informed and active, and that three-quarters of those polled claimed that the Constitution mattered in their daily lives,<sup>49</sup> the reality brutally undermines the rhetoric. Americans know almost nothing about their government: about its structures, processes, or the principles or values that over time have formed our constitutional conscience. And it is this knowledge that pushes back against a president who wants to become

a king and against our natural tendency to measure our government's legitimacy through outputs that our favorable to ourselves. On this point a public opinion survey once asked Americans to "[s]uppose the President and Congress have to violate a constitutional principle to pass an important law the people wanted. Would you support them in this action?"<sup>50</sup> Only 49% of the public said flatly, no.<sup>51</sup> The other half were a mix of yes (22%) and undecided or neither (29%).<sup>52</sup> And it is hard to imagine that most Americans appreciate the extraordinary display of public deliberation that surround the healthcare legislation, measuring the process only by projected outcomes and by their perspective on whether the President is being strong enough.

American's ignorance about their government is often and well documented. For example a National Constitution Center (NCC) survey found that 41% of respondents were not aware that there were three branches of government, and 62% couldn't name them; 33% could not even name one. Over half of all those answering the NCC survey did not know the length of a term for a member of the Senate or House of Representatives. And another NCC study found that while 71% of teens knew that "www" starts an online web address, only 35% knew that "We the People" are the opening words of the Constitution. A study by the Intercollegiate Studies Institute found that "the average college senior knows astoundingly little about America's history, government, international relations and market economy, earning an 'F' on the American civic literacy exam with a score of 54.2 percent."<sup>53</sup> And most Americans would have a very tough time passing the recently adopted test for citizenship, heralded by the government as a real measure of "what makes an American citizen,"<sup>54</sup> which asks such questions as: "What is the supreme law of the land?" "What does the Constitution do?" "The idea of self-government is in the first three words of the Constitution. What are these words?" and "What is the rule of law?"<sup>55</sup>

And these questions just touch the edge of civic literacy. Imagine the results if we asked Americans the much more important questions of what vision of human nature informed the constitution and how does the constitution reflect its answer?

Civic ignorance threatens the American Republic. Without civic knowledge we cannot understand why it is important to balance our output measure of government legitimacy with an input measure. We cannot understand that American government is far more about process than products. Only with civic knowledge can we fulfill the constitutional obligation Madison imposed on all of us. “[Y]ou must,” he wrote in *Federalist 51*, “oblige [the government] to control itself.”<sup>56</sup> This is the same message that two recently retired Supreme Court Justices, O’Connor and Souter, have delivered around the nation in recent months. Declares Souter: the republic “can be lost, it is being lost, it is lost, if it is not understood.”<sup>57</sup> It is through civic literacy, William Galston writes, that we gain both the willingness and ability to engage in public discourse and evaluate the performance of those in office.<sup>58</sup> And proof of this proposition is offered in Henry Milner’s *How Informed Citizens Make Democracy Work*.<sup>59</sup> Two scholars, Michael Delli Carpini and Scott Keeter, also detail this same point in their 1996 study *What Americans Know About Politics and Why It Matters*. They find that civic literacy provides meaningful understanding and support for a number of core constitutional values, including compromise and tolerance, and promotes meaningful political participation.<sup>60</sup> They also argue that “a better-informed citizenry places important limitations on the ability of public officials, interest groups, and other elites to manipulate public opinion and act in ways contrary to the public interest.”<sup>61</sup>

Thomas Mann and Norman Orenstein provide an example of negative consequence of this civic ignorance. Discussing the six year relationship between President Bush and the

Republican controlled Congress, they write: “Members of the majority party, including the leaders of Congress, see themselves as field lieutenants in the president’s army far more than they do as members of a separate and independent branch of government.”<sup>62</sup> And in this mode they failed to fulfill their constitutional obligation, particularly as it relates to congressional responsibility for declaring war. As seen by two foreign policy experts, Stefan Halper and Jonathan Clark, the run-up to the Iraq war was a quintessential breakdown of the roles of Congress and the media. “Those institutions that could have challenged the scare scenarios governing the nation’s perception of the terror challenge and Saddam Hussein failed to do so.”<sup>63</sup>

But perhaps the more powerful expression of the nexus between kings and civic ignorance is that set forth, not by a scholar or journalist, but by a President, Dwight Eisenhower. In 1959, he received a letter from the dying World War II veteran Robert Biggs challenging his leadership qualities because of what Biggs thought an inadequate public response to public feelings of insecurity that “manifest themselves in the guise of a recession . . .”<sup>64</sup> For Eisenhower the letter provided an opportunity to discuss what he saw as a powerful connection between Americans’ demands for presidential certainty and authority and civic knowledge. Using the ideas of Eric Hoffer as a reference point, Eisenhower wrote “dictatorial systems make one contribution to their person which leads them to tend to support such systems—freedom from the necessity of informing themselves and making up their own minds concerning these tremendous complex and difficult questions.”<sup>65</sup> To which he then added that though such education “is a taxing one to a free people,” it is a critical one, not only because of new ideas and “tremendous vigor, vitality and progress” that will ensue, but because of its critical value to self government.<sup>66</sup>

Through being better informed, they can best gain greater assurance regarding our nation's situation and participate in establishing policies and programs which they think to be sound and right. The quest for certainty is at best, however, a long and arduous one. While complete success will always elude us, still it is a quest which is vital to self-government and to our way of life as free men.<sup>67</sup>

As Eisenhower pointed out, it is hard work to be civically literate, made harder by our complacency. Despite Benjamin Franklin's often repeated response to a woman's question concerning the nature of the new government—"a republic, madame, if you can keep it"<sup>68</sup>—most Americans have absolutely no concern about its endurance. "Of course the Republic will survive, how can it be otherwise? We have always been free, and we will always be free," I have heard more than a few people—educated, politically conscious people—say. I recently tested this issue with a class of mine. Almost all of these students thought we were experiencing a decline in civil liberties and growing challenges to our constitutional system. But few thought it was possible that today's democracy would be dramatically different fifty years hence. While they all thought that presidential power would continue to grow, none saw a democratic crisis ahead. Such complacency forecloses serious reform.

Civic illiteracy is the fault of our schools and our expectation for them. Declared James Madison: "Learned institutions ought to be favorite objects with every free people. They throw that light over the public which is the best security against crafty & dangerous encroachments on the public liberty."<sup>69</sup> And in fact public schools were founded for that very purpose. But since the industrial revolution, and now, they are committed almost exclusively to the industrial education of our children. The focus is on jobs, and, of course, that is an important focus, but the

exclusivity of that focus leaves little time for thinking about citizenship. As retired Supreme Court Justice Sandra Day O'Connor recently noted, the current emphasis on science and math "has effectively squeezed out civics education because there is no testing for that anymore and no funding for that."<sup>70</sup> Not once, that I have found, has President Obama or his Secretary of Education in heralding their new educational efforts touted civic literacy as a goal of public education. A competitive America seems their only goal, as if Americans are civically literate or can home school themselves to become so. As I have written elsewhere:

Public schools have an obligation to teach children about our history and civic institutions including the Constitution. This obligation trumps even math and science education: After all, what is the value of either math or science, if we don't have our democracy? Or as Amy Gutmann, the President of the University of Pennsylvania, asserted, "'political preparation'—the cultivation of virtues, knowledge, and skills necessary for political participation—has moral primacy over other purposes of public education in a democratic society."<sup>71</sup>

President or king? It's up to us.

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<sup>2</sup> Laurence H. Tribe, *American Constitutional Law* (Mineola, N.Y.: Foundation Press, 2000), 631.

<sup>3</sup> Homer, *The Odyssey* (New York: Penguin Classics, E. V. Rieu trans., 2003), 13.

<sup>4</sup> *History of the World Part I* (Twentieth Century Fox 1981).

<sup>5</sup> Gregory Y. Titelman, *Random House Dictionary of Popular Proverbs & Sayings* (New York: Random House, 2000).

<sup>6</sup> *The Federalist No. 70* (Alexander Hamilton).

<sup>7</sup> Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1908), 70.

<sup>8</sup> Robert A. East, *John Quincy Adams: The Critical Years: 1785-1794* (New York: Bookman Associates, 1962), 85.

<sup>9</sup> Gordon S. Wood, *The Confederation and the Constitution: The Critical Issues* (Washington: University Press of America, 1979), 87.

<sup>10</sup> James Madison & Jack N. Rakove, *Writings* (New York: Library of America, 1999), 76.

<sup>11</sup> Letter from George Washington to John Jay (Aug.15, 1786).

<sup>12</sup> Carol Berkin, *A Brilliant Solution: Inventing the American Constitution* (Orlando: Harcourt, 2002), 163.

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<sup>13</sup> James Madison, *Notes of Debates in the Federal Convention of 1787* (New York; London: Norton, 1987), 131-35.

<sup>14</sup> Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill, University of North Carolina Press, 1969), 598.

<sup>15</sup> Ralph Ketcham, *James Madison: A Biography* (New York: Macmillan, 1971), 181.

<sup>16</sup> The Federalist No. 51 (James Madison).

<sup>17</sup> Id. See also Wood, *supra* note 8, at 608.

<sup>18</sup> David Gray Alder, “Presidential Ascendancy in Foreign Affairs and the Subversion of the Constitution,” *White House Studies* 10, no. 1 (2010).

<sup>19</sup> See generally William E. Scheuerman, “American Kingship?: Monarchical Origins of Modern Presidentialism,” *Polity* 1 (2005).

<sup>20</sup> Letter from James Madison to Thomas Jefferson (April 2, 1798), in *Letters and Other Writings of James Madison: 1794-1815*, vol. 2 (Philadelphia: J.B. Lippencott & Co., 1865), 131.

<sup>21</sup> Kevin Phillips, “Our Obsolete System,” *Newsweek* (Apr. 23, 1973), 13.

<sup>22</sup> Lloyd N. Cutler, “To Form a Government,” *Foreign Affairs* (1980), 132.

<sup>23</sup> *Meyers v. United States*, 272 U. S. 52, 293 (1926).

<sup>24</sup> Arthur Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghlin Mifflin, 1973), 246.

<sup>25</sup> Interview by David Frost with Richard M. Nixon (television broadcast May 19, 1977).

<sup>26</sup> Charlie Savage, “Hail to the Chief: Dick Cheney’s Mission to Expand—or ‘Restore’—the Powers of the Presidency,” *Boston Globe* (Nov. 26, 2006), C1.

<sup>27</sup> Id.

<sup>28</sup> Charlie Savage, “Cheney Aid is Screening Legislation; Advisor Seeks to Protect Bush Power,” *Boston Globe* (May 28, 2006), A1.

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<sup>29</sup> Senate Select Comm., Report of the Congressional Committees Investigating the Iran-Contra Affair, S. Rep. No. 100-216, at 465 (1987).

<sup>30</sup> Frederick A. O. Schwarz, Jr. & Aziz Huq, *Unchecked and Unbalanced: Presidential Power in a Time of Terror* (New York: New Press: Brennan Center for Justice at NYU School of Law, 2007), 153.

<sup>31</sup> Louis Fisher, “Presidents Operating Under the Law,” *White House Studies* 10, no. 1 (2010).

<sup>32</sup> Lincoln Chafee, *Against the Tide: How a Compliant Congress Empowered a Reckless President* (New York: St. Martin’s Press, 2008), 54.

<sup>33</sup> Schlesinger, *supra* note 23, at 450, quoting John Taylor, *An Inquiry into the Principles and Policy of the Government of the United States* (New Haven: Yale Univ. Press, 1950), 194.

<sup>34</sup> David Banisar, *Government Secrecy: Decisions Without Democracy* (Washington, D.C.: People for the American Way, 2007), 13.

<sup>35</sup> See generally Eric Lane, Frederick A.O. Schwarz, & Emily Berman, “Too Big a Canon in the President’s Arsenal: Another Look at *United States v. Nixon*,” *George Mason Law Review* (forthcoming April 2010).

<sup>36</sup> Banisar, *supra* note 33, at 36.

<sup>37</sup> Gary C. Jacobson, *A Divider, Not a Uniter: George W. Bush and the American People* (New York: Pearson Longman, 2007), 75.

<sup>38</sup> Lane, Schwarz, & Berman, *supra* note 34, at 36-37 (footnotes omitted).

<sup>39</sup> Letter from George Washington to John Jay (Aug.15, 1786).

<sup>40</sup> David P. Szatmary, *Shays’ Rebellion: The Making of an Agrarian Insurrection* (Amherst: University of Massachusetts Press, 1984), 82.

<sup>41</sup> Max Farrand, *The Framing of the Constitution of the United States* (New Haven: Yale

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University Press, 1913), 175.

<sup>42</sup> William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal: 1932-1940* (New York: Harper & Row, 1963), 30.

<sup>43</sup> Cass R. Sunstein, *The Second Bill of Rights: FDR's Unfinished Revolution and Why We Need It More Than Ever* (New York: Basic Books, 2004), 40.

<sup>44</sup> Leuchtenburg, *supra* note 41, at 30.

<sup>45</sup> David M. Kennedy, *Freedom from Fear: The American People in Depression and War, 1929-1945* (New York: Oxford University Press, 1999), 111.

<sup>46</sup> See generally Erich Fromm, *Escape from Freedom* (New York: Henry Holt & Co., 1994).

<sup>47</sup> Scheuerman, *supra* note 18, at 47.

<sup>48</sup> *Letters and Other Writings of James Madison*, Published by Order of Congress, vol. 1 (New York: R. Worthington, 1884), 325.

<sup>49</sup> Eric Lane, "America 101: How We Let Civic Education Slide—And Why We Need a Crash Course in the Constitution Today," *DemocracyJournal.org* 10 (2008), 54.

<sup>50</sup> Herbert McKlosky & Alida Brill, *Dimensions of Tolerance: What Americans Believe About Civil Liberties* (New York: Russell Sage Foundation, 1983), 148, Table 4.1.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Intercollegiate Studies Institute, *Failing Our Students, Failing America: Holding Colleges Accountable for Teaching America's History and Institutions*, [http://www.americancivilliteracy.org/2007/summary\\_summary.html](http://www.americancivilliteracy.org/2007/summary_summary.html) (last visited Oct. 31, 2009).

<sup>54</sup> Julia Preston, "Tough Questions for a New Test: What Does 'American' Mean?," *New York Times* (Sept. 28, 2007), A26 (quoting Emilio Gonzalez, Director of Citizenship and Immigration

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Services).

<sup>55</sup> U.S. Citizenship and Immigration Services, Civics (History and Government) Items for the Redesigned Naturalization Test, <http://www.uscis.gov/files/nativedocuments/100q.pdf> (last visited Oct. 31, 2009).

<sup>56</sup> *Federalist No. 51* (James Madison).

<sup>57</sup> Debra Cassens Weiss, “Souter Decries Lack of Civics Knowledge, Plans to Do Something About It,” *ABAJournal.com* (May 21, 2009), [http://www.abajournal.com/news/souter\\_decries\\_lack\\_of\\_civics\\_knowledge\\_plans\\_to\\_do\\_something\\_about\\_it/](http://www.abajournal.com/news/souter_decries_lack_of_civics_knowledge_plans_to_do_something_about_it/).

<sup>58</sup> William A. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (New York: Cambridge University Press, 1991), 221-24.

<sup>59</sup> See generally Henry Milner, *Civic Literacy: How Informed Citizens Make Democracy Work* (Hanover: University Press of New England, 2002).

<sup>60</sup> See generally Michael X. Delli Carpini & Scott Keeter, *What Americans Know About Politics and Why It Matters* (New Haven: Yale University Press, 1996).

<sup>61</sup> *Id.*, 220.

<sup>62</sup> Thomas E. Mann & Norman J. Ornstein, *The Broken Branch: How Congress is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006), 155.

<sup>63</sup> Stefan Halper & Jonathan Clarke, *The Silence of The Rational Center* (New York: Basic Books, 2007), 70.

<sup>64</sup> Dwight David Eisenhower et al., *The Papers of Dwight David Eisenhower: Keeping the Peace* (Baltimore: Johns Hopkins Press, 2001), 1342, n. 2.

<sup>65</sup> *Id.* at 1341.

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<sup>66</sup> Id.

<sup>67</sup> Id. at 1341-42.

<sup>68</sup> William Lockhart Morrow, *A Republic, If You Can Keep It: Constitutional Politics and Public Policy* (Upper Saddle River, N.J.: Prentice Hall, 2000), 2.

<sup>69</sup> *The Writings of James Madison: 1819-1836* (New York: G.P. Putnam's Sons, 1910), 105.

<sup>70</sup> Seth Schiesel, "Former Justice Promotes Web-Based Civics Lessons," *New York Times* (June 9, 2008), C7.

<sup>71</sup> Lane, *supra* note 48, at 60-61.