

IS IT BETTER TO BE LOVED OR FEARED? SOME THOUGHTS ON LESSONS LEARNED FROM THE PRESIDENCY OF GEORGE W. BUSH

NEIL KINKOPF*

The first lesson the Bush Presidency has taught us about executive power is that the topic is exceedingly important. Our conception of presidential power matters, and the law of presidential power matters. There are two competing models of presidential power. One is a unilateral and confrontational vision of presidential power. The other is a more accommodationist and cooperative model of the allocation of power between the President and the other branches of the federal government.

This dichotomy presents a modern version of the question Machiavelli posed five centuries ago: “Is it better for the Prince to be loved or feared?”¹ In updating Machiavelli’s question, I equate the unilateral and confrontational model with “being feared” and the accommodationist and cooperative model with “being loved.” Machiavelli’s answer was that “it is better to be feared than loved.”² More precisely, he asserted it is better to be both feared and loved, but such an ideal is not realistically attainable.³ As between the two, the prince should prefer being feared to being loved.⁴

It is now common to regard the unilateral, confrontational model as the pro-presidential view of the Constitution and the more accommodationist, cooperative model as the pro-congressional view.⁵

* Professor of Law, Georgia State University College of Law.

1. Nicoló Machiavelli, *THE PRINCE* 58–59 (Quintin Skinner & Russell Price, eds., Cambridge University Press, 16th ed. 2004) (1532).

2. *See id.* at 59 (“[I]f one of them [fear or love] has to be lacking, it is much safer to be feared than loved.”).

3. *Id.*

4. *Id.*

5. *See* Melissa K. Mathews, *The Imperial Presidency: An Examination of President Bush’s New Emergency Powers*, 23 *HAMLIN J. PUB. L & POL’Y* 455, 457–58 (2002) (describing the

I am skeptical about this conventional wisdom, which essentially holds that Machiavelli was correct that it is better to be feared than loved. Rather, I believe that there is something to be said for accommodation, even from the perspective of the President. The Presidency of George W. Bush provides an excellent vehicle for assessing Machiavelli's question. It is clear the Bush Administration chose to be feared rather than loved, which is to say it governed using the unilateral, confrontational model.

A few examples are illustrative: First, the Bush Administration followed its own view of how best to proceed regarding detainee treatment. Administration officials deliberated only among themselves: not publicly and not with Congress. The Administration did not go to Congress to seek legal authorization for its policies and programs. Rather, the Administration unilaterally decided how enemy combatants would be treated and, in fact, asserted that it was the President's prerogative alone, impervious to review by either Congress or the courts.⁶ Eventually, Congress passed the Military Commissions Act,⁷ which gave the President the authority to conduct military commissions in precisely the manner the President had previously ordered. So one might regard the President's assertion of power as a useless exercise: he could have been accommodationist and still received the authority he wanted. But the President's strategy was aimed at a different goal. The President followed the unilateral model not simply to establish the kinds of military commissions he wanted, but also to vindicate his broad theory of unilateral presidential power.

Second, the warrantless surveillance program, also known as the Terrorist Surveillance Program,⁸ was adopted completely in secret. Its

pro-Congress view, which relies on Constitutional language that explicitly provides that Congress and the President make decisions in war, and the pro-Executive view, which emphasizes the "take care" clause and the Constitutional grant of the Executive's Commander-in-Chief power to justify the President's special role in times of war).

6. This view is set forth most succinctly in President Bush's signing statement on the McCain Amendment, which prohibited military personnel from inflicting "cruel, inhuman, and degrading treatment" on enemy combatants. See Statement on Signing Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, 41 WKLY. COMP. PRES. DOC. 52 (Dec. 30, 2005), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=65259>. The Administration also argued essentially this position to the Supreme Court in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) and in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

7. 28 U.S.C. § 2241(e).

8. See *Constitutional Limitations on Domestic Surveillance: Hearing on Warrantless Surveillance and the Foreign Intelligence Surveillance Act Before the H. Comm. of the Judiciary*,

existence eventually was leaked, and a tremendous controversy followed.⁹ Members of Congress loudly objected but then largely capitulated in authorizing the President's program.¹⁰

Third, the 2006 mid-term election can be understood as a public repudiation of the President's position on the war in Iraq. The contemporaneous report of the Iraq Study Group strongly urged a different, scaled back strategy in Iraq.¹¹ The President nonetheless responded to this public repudiation by ordering a troop surge.¹² Here again, President Bush acted unilaterally and without regard for the views of Congress or the public.

Fourth, when the Bush Administration announced its initial bailout plan for the financial industry, it submitted the plan to Congress, an action that may appear accommodationist.¹³ But the plan's content was largely unilateral. In essence, President Bush asked Congress for \$700 billion to spend as he saw fit and without oversight or accountability. Ultimately, Congress approved the plan, but only after demanding provisions for oversight, limits on executive pay for participating companies, and a governmental ownership stake in return for its investments.¹⁴

Finally, President Bush's use of signing statements is consistent with the view that the President may unilaterally decide what policies are in the best interest of the nation and what course to pursue.¹⁵

110th Cong. 76 (2007). The program authorized the NSA to monitor—without prior FISC or other court approval—phone calls and other communications where the NSA believed one party to the communication was affiliated with Al Qaeda and outside the United States, even if it was possible that the other party resided in the United States.

9. See James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. TIMES (Dec. 16, 2005), available at http://www.nytimes.com/2005/12/16/politics/16program.html?_r=1&scp=1&sq=Bush_Lets_U.S._Spy_on_Callers_without_Courts&st=cse.

10. See The Protect America Act, Pub. L. No. 110-55, 121 Stat 552 (Aug. 5, 2007) (Congress approving warrantless surveillance of persons believed to be outside the United States); The FISA Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat 2436 (July 10, 2008) (same).

11. JAMES A. BAKER III & LEE H. HAMILTON ET AL., THE IRAQ STUDY GROUP REPORT 31, 32–62 (2006), available at http://www.usip.org/isg/iraq_study_group_report/report/1206/.

12. See Michael R. Gordon, *Troop 'Surge' Took Place Amid Doubt and Debate*, N.Y. TIMES (Aug. 30, 2008), available at <http://www.nytimes.com/2008/08/31/washington/31military.html?fta=y>.

13. Eamonn K. Moran, *Wall Street Meets Main Street: Understanding the Financial Crisis*, 13 N.C. BANKING INST. 5, 78 (2009).

14. Press Room, U.S. Dep't of Treasury, HP-1207, Treasury Announces TARP Capital Purchase Program Description (2008), 2008 WL 4562242.

15. For a compilation of the constitutionally based objections contained in President Bush's signing statements, see Peter Shane & Neil Kinkopf, *Index of Presidential Signing Statements 2001–2007*, 1 ADVANCE 3 supp. (2006), available at <http://www.acslaw.org/node/5309>.

Taken together, they demonstrate contempt for the idea that Congress through law may bind the President.¹⁶ The best and most notorious example is “the Torture Memo,”¹⁷ which addressed whether the President could order the use of torture to interrogate enemy combatants.

A treaty, the Convention Against Torture,¹⁸ binds signatory nations (including the United States) to refrain from employing torture.¹⁹ In addition, the Anti-Torture Statute makes it a federal crime for United States personnel to engage in torture outside of the United States.²⁰ The Office of Legal Counsel, nevertheless, issued a memorandum claiming that either the statute prohibiting the use of torture does not apply or, if it does apply, that the statute is unconstitutional because Congress cannot regulate or limit the President’s choice of interrogation techniques in the War on Terror.²¹ The memorandum asserts that Congress has no authority in this area, even though the Constitution specifically grants Congress the power to define and punish offenses against the laws of nations,²² which is what the Anti-Torture statute aims to do.²³

The Constitution gives Congress authority to make rules for the “Government and Regulation” of the military²⁴ and to provide for captures on land and at sea.²⁵ All of these powers are obviously

16. Neil Kinkopf, *Signing Statements and the President’s Authority to Refuse to Enforce the Law*, 1 ADVANCE 3 (2006).

17. Memorandum from Jay S. Bybee, Assistant Att’y Gen., RE: Standards of Conduct for Interrogation Under 18 U.S.C. §§ 2340–2340A, to Alberto Gonzales, Counsel to the President (Aug. 1, 2002) in THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB (Karen J. Greenberg & Joshua L. Dratel eds., 2005), also available at http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/memo_20020801_JD_%20Gonz_.pdf.

18. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Open for Signature Dec. 10, 1984*, 1465 U.N.T.S. 85, available at <http://www.hrweb.org/legal/cat.html>.

19. The United States has signed the Convention Against Torture, but has not yet ratified it.

20. 18 U.S.C. §§ 2340–2340A.

21. For an annotated copy of the “Terror Memo,” see http://www.aclu.org/pdfs/safefree/cia_3686_001.pdf.

22. U.S. CONST. art. I, § 8, cl. 10 (granting Congress the power “To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations”).

23. See 18 U.S.C. §§ 2340–2340A. By both defining torture and establishing offenders under its jurisdiction as both “nationals” and those “present in the United States,” Congress was obviously asserting its authority in this area.

24. U.S. CONST. art. I, § 8, cl. 14 (granting Congress the power “To make Rules for the Government and Regulation of the land and naval Forces”).

25. *Id.* at cl. 11 (granting Congress the power “To declare war, grant letters of marquee and reprisal, and make rules concerning captures on land and water”).

relevant sources of authority for Congress' power in this area, but the Bush Administration's Justice Department was so contemptuous of the idea that Congress could have any war-related authority that its memo does not even acknowledge them.

The view expressed in the Torture Memo is fundamentally incompatible with our constitutional system. Decisions about matters such as whether we should use torture, and if so, under what circumstances, are decisions that define us as a nation. They are therefore decisions that ought to come from a process of deliberation and approval through the constitutional method of bicameralism and presentment.²⁶ They are not decisions to be made alone and in secret by the President. In this respect, the model of presidential power employed during the Bush Administration affronted our nation's system of checks and balances, democratic accountability, and republican notions of deliberation.

For two reasons, the Torture Memo does not appear to have been an aberration. First, the Administration executed a memorandum that withdrew the Torture Memo after it was leaked. In the section dealing with the President's power, the memorandum withdrawing the Torture Memo explained that the whole discussion of torture was dicta because the President had ordered that torture not be used. The withdrawing memorandum did not disclaim the substance of the legal analysis contained in the Torture Memo, but instead only characterized it as dicta.²⁷ Why did the withdrawing memorandum not accept that the Torture Memo's legal analysis was wrong? Likely because the Administration did not believe that it was: after all, we know at least one other program, the Terrorist Surveillance Program,²⁸ relied on the same model of unchecked presidential power. Second, a review of the signing statements that President Bush issued relating to signing statements discloses a theory of presidential power that can

26. U.S. CONST. art. I, § 7, cl. 2 ("Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States . . .").

27. See *Legal Standards Applicable Under 18 U.S.C. §§ 2340–2340A*, Op. Att'y Gen. (Dec. 30, 2004), available at <http://www.usdoj.gov/olc/18usc23402340a2.htm> ("Because the discussion in that memorandum concerning the President's Commander-in-Chief power and the potential defenses to liability was—and remains—unnecessary, it has been eliminated from the analysis that follows. Consideration of the bounds of any such authority would be inconsistent with the President's unequivocal directive that United States personnel not engage in torture.").

28. See Attorney General & Principle Deputy Director of National Intelligence, Press Briefing of Dec. 19, 2005, available at http://www.dni.gov/20051219_release.htm (recognizing and debriefing some aspects of the Terrorist Surveillance Program).

only be justified on the same expansive, unilateral grounds that are set forth in the Torture Memo.²⁹

So the Bush Administration seems clearly to have chosen fear over love, confrontation and unilateralism over cooperation. But at least by one telling, the story has a happy ending. According to this version of recent history, the Bush view was repudiated and the correct approach of accommodation prevailed. The first hero of this story is the Supreme Court, which rejected unilateralism in a series of opinions starting with *Hamdi v. Rumsfeld*,³⁰ then *Rasul v. Bush*,³¹ *Hamdan v. Rumsfeld*,³² and finally *Boumediene v. Bush*.³³ Moreover, the public also rejected the Bush Administration's view of presidential power by electing Barack Obama. No more fear-based view of presidential power; which is to say, the public has rejected Machiavelli.

Jack Goldsmith, who headed the Office of Legal Counsel for almost a year in the Bush Administration and who fought valiantly during his tenure to uphold the rule of law within the executive branch, has written a brilliant memoir about his government service—*The Terror Presidency*.³⁴ In his account, he draws the conclusion that the President's approach to executive power ultimately and inevitably failed.³⁵

Goldsmith claims that even if the war in Iraq had gone well, the President and the President's approach would have failed because he focused too much on "hard power"—the powers mentioned in the text of the Constitution, such as the President's power as commander in chief, the veto power, and the pardon power—and not enough on the President's "soft power"—the power of the bully pulpit, the power to persuade people, to lead the nation in deliberation, to gain consent

29. See Kinkopf, *supra* note 15 (analyzing the legal foundation of President Bush's signing statements).

30. *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (recognizing governmental authority to detain enemy combatants, but requiring that U.S. citizens have an opportunity to challenge their detention before an impartial judge).

31. *Rasul v. Bush*, 542 U.S. 466 (2006) (holding that U.S. courts have jurisdiction to hear wrongful imprisonment challenges of non-citizens held at Guantanamo Bay).

32. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (holding that the military commissions established by the Bush Administration to try detainees at Guantanamo Bay violated the Uniform Code of Military Justice and the Geneva Convention).

33. *Boumediene v. Bush*, 128 S. Ct. 2229 (2008) (finding that the Military Commissions Act of 2006 unconstitutionally restricted Guantanamo Bay prisoners' right to habeas corpus review).

34. JACK L. GOLDSMITH, *THE TERROR PRESIDENCY* (2007).

35. *Id.* at 205–16.

and consensus for the policies and programs that the President would then ultimately pursue.³⁶ The Bush Administration, says Professor Goldsmith, has rejected an approach relying on the President's soft powers in favor of a unilateral approach that did not engage in deliberation but that simply looked every four years for ratification.³⁷ And, because that is contrary to our fundamental commitment to democracy and to civic republican values, it was bound to fail.³⁸ That is our happy ending.

I agree with Professor Goldsmith's argument, drawn from the work of historians and political scientists like Arthur Schlesinger, that at least in our polity, Machiavelli is wrong.³⁹ Even from the standpoint of presidential power, it is better for the President to adopt an accommodationist model, rather than a unilateral and confrontational model. But the claim that the unilateral model approach is bound to fail is an unduly optimistic assertion.

One reason unilateralism is not bound to fail is that Congress is not a reliable check against presidential power. Congress capitulated on military commissions, on domestic surveillance, and on the surge in Iraq. Congress also largely capitulated on the bailout bill. Although the bailout bill Congress ultimately enacted included a few modest measures for oversight, Congress basically gave the Administration what it wanted.⁴⁰

But why doesn't Congress stand up as a check on the President? Madison's view, expressed in *The Federalist* and in the structure of the Constitution, was that parchment barriers and legal constraints on power would not be worth the parchment on which they were written.⁴¹ Madison argued that the way to constrain power was to

36. *Id.* at 205.

37. *See id.* at 205–06, 209–10, 215 (repeatedly noting the Bush Administration's unilateral action).

38. *See id.* at 205–13 (recognizing how a presidential administration's soft powers are crucial to the administration's success and how the Bush Administration focused solely on its hard powers).

39. *See, e.g., id.* at 213 (“[T]he ‘truly strong President is not the one who relies on his power to command but the one who recognizes his responsibility, and opportunity, to enlighten and persuade.’” (quoting Arthur M. Schlesinger, Jr., *War and the Constitution: Abraham Lincoln and Franklin D. Roosevelt*, in *LINCOLN, THE WAR PRESIDENT: THE GETTYSBURG LECTURES* 145, 174 (Gabor S. Boritt ed., 1992))).

40. *See generally* Emergency Economic Stabilization—Energy Improvement and Extension—Tax Extenders and Alternative Minimum Tax Relief, Pub. L. No. 110-343, 122 Stat. 3765 (2008) (bill passed by Congress to attempt to redress America's economic crisis).

41. *THE FEDERALIST* NO. 48, at 274 (James Madison) (E.H. Scott ed., 1898); *see also, e.g.,* U.S. CONST. art. I, § 2, cl. 5 (granting to the House of Representatives the “sole

structure government so that each institution would have its own ambition, which would counteract the ambitions of the others.⁴² Thus, Madison envisioned Congress' institutional ambitions counteracting the power of the Executive Branch.⁴³

But Madison's idealistic system of checks and balances relies on institutional loyalty, which does not take into account party loyalty.⁴⁴ Congressional members who want to get reelected, if they are from the President's own party, pursue their own ambition and self-interest by making sure the President is successful.⁴⁵ Thus, these self-interested members are less likely to check the President's power than Madison envisioned.⁴⁶ Otherwise, the public would lose confidence in the President's decisions and in the political party he represents, which could cause Congress to change hands and which disserves the self-serving congressional party members. While this dynamic is important, for the last two years, we have had congressional majorities from a different party than the President. And yet Congress still has not acted as a significant check on presidential power. Why not?

The Executive Branch enjoys three formidable institutional advantages that have undermined the capacity of Congress to act as a check on the President. First, the Executive Branch houses nearly all of the government's expertise and knowledge. This resides in the agencies of the federal government, and they are under the control of the President. So the Executive Branch controls the information collected by agencies and can, and over the last eight years certainly has, manipulated that information by disclosing what is useful and withholding what is not.⁴⁷

Power of Impeachment"); *id.* at art. I, § 3, cl. 6 (giving the Senate the power to try impeachments); *id.* at art I, § 8 (enumerating the powers of Congress).

42. THE FEDERALIST NO. 51, at 286 (James Madison) (E.H. Scott ed., 1898).

43. *See id.*

44. Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2311, 2316–25 (2006).

45. *See id.* at 2319 (congressmen, instead of having ambitions that compete with the President's, form "incipient organizations that [ake] sides on contested policy and ideological issues" and compete to "marshal support for their agendas," which leads to "the organization of enduring parties that . . . facilitate alliances among groups of like-minded elected officials and politically mobilized citizens on a national scale.").

46. *Id.* at 2323–24.

47. *See, e.g.*, Sidney A. Shapiro, "Political" Science: *Regulatory Science After the Bush Administration*, 4 DUKE J. CONST. L. & PUB. POL'Y 31, 31–33 (2009) (discussing the Bush Administration's manipulation of information collected and released by government agencies).

Second, members of the House of Representatives are perpetually campaigning for reelection, and therefore the institution is chronically distracted. Members of the House of Representatives have to run for reelection every two years and must constantly fundraise and campaign. They never stop running, so they always have one foot in their home district to campaign, and the other foot back in Washington to engage in policy deliberations. But that is a serious disadvantage. The demands of campaigning seriously impair the ability of even conscientious legislators to engage in continuing, rather than sporadic, oversight.

A third factor that is sometimes undervalued is a competing ambition of many members of Congress. Their ambition is not to be powerful as members of Congress or as part of a coequal institution that checks the President's power, but to be powerful period. Ten senators considered running for President this time around, plus several Representatives.⁴⁸ So what position should these presidential hopefuls take while serving in the Congress? Because they may hold the Executive Office in the near future, they may be unwilling to limit the President's powers that they themselves may hope someday to employ. It is unlikely that Congress can act as a check on presidential power when so many of its members hope to one day hold the office of President, or would be happy to give up their current job to serve in a President's cabinet.

Members of Congress themselves realize this. Senator Carl Levin was asked how Congress could check the President's power.⁴⁹ His answer was "[w]e need a Democrat in the White House."⁵⁰ It was not, "There is a lot we can do here in Congress, we can hold hearings and we can enact legal regimes to prohibit or at least inhibit excesses."

Fortunately, even before the public rejected the Bush Administration's model of unilateralism by electing President Obama, the Court did the same.⁵¹ The *Hamdi* decision—the first in the recent line of decisions checking presidential power—is interesting for when

48. See, e.g., Susan Page, *President's Job Gets Harder When 10 Senators Want It*, USA TODAY, July 27, 2007, available at http://www.usatoday.com/news/washington/2005-07-27-president-job-harder-campaign-08_x.htm (listing senators who indicated interest in running for presidency).

49. Jonathan Mahler, *After the Imperial Presidency*, N.Y. TIMES MAG., Nov. 9, 2008, available at <http://query.nytimes.com/gst/fullpage.html?res=940DE4DA1F3BF93AA35752C1A96E9C8B63&sec=&spon=&pagewanted=11>.

50. *Id.* (quoting Senator Carl Levin).

51. See *supra* notes 30–33.

it was decided. After the case was argued, but before it was decided, the revelation of photographs of Abu Ghraib and the leak of the Torture Memo became public.⁵² What the Court would have said had those events not occurred is sheer speculation. But it is not far-fetched to believe that they had some effect on the way the Court looked at the issues in that case and at the issues that came up in the later cases. But even setting that aside, the most recent case, *Boumediene v. Bush*,⁵³ finally declared that enemy combatants detained at Guantanamo Bay are entitled to petition for a writ of habeas corpus.⁵⁴ Yet it took over six years after the beginning of the War on Terror merely to establish this fairly preliminary point, and *Boumediene* still does not tell us what rights are guaranteed under the Great Writ. In the seven years of the President's unilateral authorization of enemy combatant detainment, the judiciary has not begun to address these questions. So what kind of constraint has the Court really put on presidential power?

According to the happy-ending version of the story, the public repudiated fear by electing Barack Obama. Perhaps, but what would have happened if the war in Iraq had gone differently? What if inspectors had found weapons of mass destruction loaded onto a cargo ship? What would have happened if we had captured Osama bin Laden? The public's view of executive power might look very different than it does now.

Given this uncertainty, how should presidential powers be checked? It is possible that structural safeguards could have some effect. On the occasions when Congress has been able to stand up effectively to the President, it has enacted structural constraints; that is, legal constraints on the exercise of presidential power. For example, after the Civil War, Congress enacted the Tenure in Office Act⁵⁵ and adopted the Civil Service System.⁵⁶ These measures served as effective

52. *Boumediene v. Bush* was argued on December 5, 2007, whereas the Torture Memo was leaked in 2004. See Dana Priest & R. Jeffrey Smith, *Memo Offered Justification for Use of Torture: Justice Dept Gave Advice in 2002*, WASH. POST, June 8, 2004, at A1, available at <http://www.washingtonpost.com/wp-dyn/articles/A23373-2004Jun7.html> (Washington Post's first article regarding the Torture Memo).

53. *Boumediene v. Bush*, 128 S. Ct. 2229 (2008).

54. *Id.* at 2277.

55. An Act Regulating the Tenure of Certain Civil Offices, 14 Stat. 430 (1867) (repealed 1887).

56. An Act To Regulate and Improve the Civil Service of the United States, 22 Stat. 403 (1883).

constraints on some abuses of presidential power, at least until the Tenure in Office Act was partly repudiated.⁵⁷

Watergate, however, provides a cautionary example. In the wake of that scandal, a wave of reforms swept over Washington. Congress enacted a vast array of legislation to prevent executive abuses of power.⁵⁸ Yet here we are thirty years later, worrying about the same issues. In light of this history, it is not surprising that Senator Levin would think not of legislation but of politics as the most effective check against the abuse of power.

It is tempting to consider the lesson of the Bush Administration to be that unilateral attempts to expand executive power are doomed to fail. But it is important not to indulge this myth because doing so will only further diminish the capacity of the public and other government institutions to check against abuses in the future.

57. An Act to Repeal Certain Sections of the Revised Statutes of the United States Relating to the Appointment of Civil Officers, 24 Stat. 500 (1887); *see also* *Myers v. United States*, 272 U.S. 52 (1926) (finding Tenure in Office Act unconstitutional as violating principles of separation of powers).

58. *See, e.g.*, Thomas E. Harris, *Implementing the Federal Campaign Finance Laws*, 67 NAT'L CIVIC REV. 217 (1978) (discussing the campaign finance reform as well as the public ethics legislation responding to the Watergate scandal).