

Are We About to Face Our Gravest Constitutional Crisis?

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Before this lame-duck Congress adjourns in December we could face the most serious constitutional crisis in the history of the republic if Donald Trump attempts to shut down the investigation by special counsel Robert S. Mueller III.

A supine and pliant Republican Party, still in control of the House and the Senate, would probably not challenge Trump. The Supreme Court, which would be the final arbiter in any legal challenge to the president, would probably not rule against him. And his cultish followers, perhaps 40 million Americans, would respond enthusiastically to his trashing of democratic institutions and incitements of violence against the press, the Democratic Party leadership, his critics and all who take to the streets in protest. The United States by Christmas, if Trump plays this card, could become a full-blown authoritarian state where the rule of law no longer exists and the president is a despot.

Trump has flouted the Constitution since taking office. He has obstructed justice by firing the director of the Federal Bureau of Investigation, James Comey, and Attorney General Jeff Sessions, replacing Sessions with the Trump partisan Matthew Whitaker. The president regularly ridicules the Mueller investigation and insults its leader. In a tweet last week he called the investigation a “witch hunt,” a “total mess” and “absolutely nuts,” and he went on to assert that Mueller and his investigators were “screaming and shouting at people” to make them provide “the answers they want.” He called those involved in the probe “a disgrace to our nation.”

He has repeatedly delivered diatribes against the press as “the enemy of the people,” belittled, mocked and insulted reporters during press conferences and defended his revoking of the White House [press credentials of a CNN reporter](#). He and his family openly use the presidency for self-enrichment, often by steering lobbyists and foreign officials to Trump’s hotels and golf courses. He has peddled numerous conspiracy theories to discredit U.S. elections and deployed military troops along the southern border to resist an “invasion” of migrants. However, an attempt to fire Mueller and shut down the investigation would obliterate the Constitution as a functional document. There would be one last gasp of democracy by those of us who protest. It is not certain we would succeed.

The potential crisis the nation faces is far more serious than the one that occurred when it was revealed that President Richard Nixon had funded and covered up the June 17, 1972, burglary at Democratic National Committee headquarters at the Watergate complex in Washington. (Nixon’s lying about the secret bombing of Cambodia, which occurred from March 18, 1969, to May 26, 1970, and killed over half a million people, was, like all crimes of empire, never formally addressed and was not cited in the impeachment documents that

were prepared.) The institutions tasked with defending democracy and the rule of law were far more robust during the Nixon constitutional crisis: There were Republicans in the Congress willing to hold the president accountable to the law; the courts were independent; the press had widespread credibility. In addition, the president met the onslaught of charges and revelations by retreating from the public. None of this is true now. Trump, with Fox News acting as a megaphone for his hate speech and conspiracy theories, has been holding [Nuremberg-like rallies](#) across the country to prepare the roughly 40 percent of the public who remain loyal to him to become shock troops. His followers are filled with hate and resentment for the elites who betrayed them. They are hungry for revenge. They do not live in a fact-based universe. And they are awash in weapons.

“Trump knows once the Democrats control the House, they can subpoena the records of his administration,” Ralph Nader said when I reached him by phone in Connecticut. “He’s going to want to get this over with, even if it sparks a constitutional crisis, while the Republicans still control the Congress. There’s little doubt this will all come to a head before the Christmas holidays. Unfortunately for Mueller, he has not issued a subpoena to the president that would have protected him [Mueller]. If he had issued a subpoena, which he has every right to do, especially after being rebuffed in hours and hours of private negotiations for information from the president, he would be protected. Once you issue a subpoena, you have a lot of law on your side. If Trump defied a subpoena, he would get in legal hot water. But short of a subpoena, it’s just political back and forth. By not issuing a subpoena Mueller is more vulnerable to Whitaker and Trump.”

So far, there have been no hints from the Mueller investigation’s criminal charges or the guilty pleas by Trump associates that the Trump campaign colluded with Russia during the 2016 presidential election. Paul Manafort, Trump’s former campaign chairman, was found guilty on eight of the 18 counts that Mueller brought against him, but none of his crimes had anything to do with the presidential election or Russian influence. Manafort’s financial crimes included five counts of tax fraud, one of hiding foreign bank accounts and two of bank fraud. These crimes predated the Trump campaign. Rick Gates, the former deputy campaign chairman, pleaded guilty to conspiracy against the United States and making false statements. George Papadopoulos spent 14 days in jail for lying to the FBI. Michael Cohen, Trump’s onetime lawyer, pleaded guilty to making illegal campaign contributions by paying hush money to the porn actress Stephanie Clifford, known as Stormy Daniels, and Playboy model Karen McDougal. Cohen, due to be sentenced Dec. 12 in U.S. District Court in Manhattan on charges of tax evasion, making false statements to a bank and the two campaign contribution violations, appears to be cooperating with the investigation, like most of those who have been indicted.

In February Mueller indicted 13 Russians and three Russian entities on charges of interfering in the 2016 U.S. elections, indictments that would not, I suspect, have taken place without hard evidence, but these indictments still do not appear to link the Trump campaign directly to Russia in an act of collusion. Perhaps the expected indictments of [Roger Stone](#), reportedly for his alleged contacts with WikiLeaks, and [Jerome Corsi](#), who said he expects to be indicted for “giving false information to the special counsel or to one of the other grand [juries],” will connect Trump and Russia, but until now the Mueller investigation appears to be focused on financial crimes, which appear rampant within the Trump business organization and among Trump associates. It is questionable, however, whether financial crimes will be enough to justify impeachment proceedings. Trump says he has finished

[answering written questions](#) submitted to him from Mueller's team and has promised to turn them over this week.

"Trump is in a dimension by himself," said Nader. "He has inured the public to all kinds of scandals, bad language, accusations, admissions, harassment of women, boasting about it, lying about his business and keeping his tax returns a secret. You have to have an even higher level of damning materials in the [Mueller] report in order to breach that level of inurement that the public has become accustomed to."

Trump wields the power of the presidential pardon and has suggested he can use it to [pardon relatives](#) and himself. There is no legal precedent for such pardons, but the Supreme Court would probably uphold whatever novel legal interpretation the Trump White House would use. Trump might also try to divert attention away from the political meltdown by starting another war.

"Trump may try to save himself by starting hostilities abroad," Nader said. "He is especially inclined to do this because of his extraordinary psychological instabilities and impulsiveness. He also has a monumental ego that lets him live in a fantasy world. The signal that he is planning this kind of move, a move he would carry out if he loses all other options to stay in office and be re-elected, will be if he replaces chief of staff John Kelly with a war hawk and his secretary of defense, James Mattis, with another war hawk. He has two war hawks who would like to see this happen. One is John Bolton, his national security adviser, and the other is the secretary of state, Mike Pompeo. Bolton and Pompeo have similar views about using military might abroad and ignoring constitutional, statutory and treaty restraints. They would like to see Kelly and Mattis removed. Pompeo, a graduate of West Point, has ambitions to become secretary of defense. If you see Kelly and Mattis replaced with warmongers, this move might reveal his ultimate trump card. He can use a war to shut down political opposition and dissent in the name of supporting the troops."

Trump has a few weeks before the Democrats take control of the House. This may give him enough time to carry out his constitutional coup and consolidate power. Our decayed democratic institutions, including a corporate press that has rendered the working class and the poor invisible and serves as an apologist for corporate power, are detested by many Trump Republicans. Trump can rally his cultish supporters, hermetically sealed in their non-reality-based belief system, to attack and demolish the last of our democratic protections.

"We have a tremendous dearth of readiness by major constituencies such as civic groups, the legal profession, the business community and academia to deal with someone who misuses his authority, power and resources," Nader warned. "Nobody knows how to do it more precisely, relentlessly, strategically and tactically than the cunning Donald J. Trump."

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