The Trump Administration's Attack on Knowledge Institutions

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28.03.2025 doi: 10.59704/33688cf491034d9e

Headlines in the Washington Post and New York Times over a two-day period in March announced 1) President Trump's order closing the Education Department, 2) executive action designed to attack lawyers who bring suits against the government, and 3) a temporary judicial order restraining the Trump Administration from deporting a research fellow at Georgetown University. What do these events have in common? They reflect a multipronged attack, heedless of academic or press freedoms and the rule of law, against institutions of knowledge and of law.

Why knowledge institutions are crucial for constitutional democracies

Knowledge institutions – including universities, the truth-oriented press, government offices with data collection or scientific responsibilities – are crucial for constitutional democracies. They have as a central mission the search for truth or better understandings, through independent application of disciplinary or professional standards of reliability. Without free discussion based on knowledge, the *democratically* legitimating role of public participation in elections and policy processes declines. Elections become less meaningful indicators of public views; public checks on poor policy choices, or abusive or corrupt governance, dwindle. A *constitutional* democracy is committed to the rule of law and the equal protection of rights – to which ends the public must be able to know what the laws are, what their rights are, how to protect those rights, and how well the legal system is functioning. The exercise of rights – whether individually or by organizations – will often depend on a foundation of informed choice.

Institutions provide the home where much knowledge is produced. As explained in prior work (e.g. here, and here), they are critical to sorting through the many claims that bombard us about what is true, and they help protect their working members' rights in many ways. But knowledge institutions cannot perform their knowledge – creation/verification roles if they are at risk of being punished by the government. They avoid topics or views that may upset the government. As Steven Levitsky says,

> *"When you see important societal actors – be it university presidents, media outlets, C.E.O.s, mayors, governors changing their behavior in order to avoid the wrath of the government, that's a sign that we've crossed the line into some form of authoritarianism".*

To be the kinds of institutions healthy democracies need, knowledge institutions must honestly and independently apply their own institutional criteria for truth-seeking. Intimidating knowledge institutions not only chills their members' willingness to be critical, but also the willingness of others in society publicly to question the government. (Attacks on these institutions are often coupled with attacks on unpopular minorities, such as foreign student protesters, and other assaults on constitutional democracy.)

And this is what is happening in the United States today, across many different kinds of knowledge institutions.

The press

From his 2017 calling the press "the enemy of the American people" (echoing Stalin), to the present, Trump has sought to muzzle and intimidate the press. Some examples:

- punishing press outlets that don't comply with Trump's view of the world, e.g. suspending the

AP's participation in press briefings because it refused to go along with Trump's renaming of the Gulf of Mexico – an episode that reflects not just an authoritarian but a totalitarian view of knowledge as whatever comes out of the mouth of the "leader"; in a free society, knowledge is not determined by Executive Order;
- ousting NBC, Politico, NYTimes, and NPR from office space at the Pentagon, to be replaced by One America News, Breitbart News, the New York Post, and HuffPost, and threatening to cancel subscriptions (depriving news media of financial support);
- launching investigations of or reinstating complaints about NPR, PBS, Comcast/NBC, ABC, and CBS, threatening their licenses;
- threatening to defund public news sources;
- accepting gifts and settlements from major media companies for the President's benefit (e.g., in a defamation suit involving ABC), reflecting a relationship that's often a feature of authoritarian governments.

Universities

Trump's administration is on a campaign against core academic freedoms to teach and research perspectives on equality and to decide how to preserve the learning environment for all students under conditions of severe disagreement; it seeks to excise "diversity", "equity", and "inclusion" (DEI), with investigations of at least 60 universities reported. The Administration has threatened to defund (and has defunded) major universities, in ways designed to intimidate others to agree with its positions (e.g., on DEI issues, student protests, anti-Semitism, etc.), in what is arguably an unconstitutional effort to leverage longstanding federal programs to *coerce* adherence to Administration views; it has reportedly even threatened adverse action if members of the institutions talk to the press. In addition, the Administration has:

- implied that "teach[ing] students that certain racial groups bear unique moral burdens that others do not" could be a Title VI violation, threatening intrusion on a core academic freedom (e.g., freedom to discuss group vs individual responsibility concepts);
- used the threat of fund withdrawal to force Columbia University to act against one of its own academic departments and modify its internal disciplinary procedures (with the apparent goal of more aggressively sanctioning protesters, in possible tension with university obligations to provide neutral decisionmaking in student disciplinary processes);
- terminated research grants (in science, on DEI-related subjects) and suspended Fulbright grants abruptly;
- attacked future grant-making at auxiliary knowledge institutions, like the NSF and NIH (including for vital medical research);
- misinterpreted the Supreme Court's decision in *SSFA v. Harvard* to prohibit even race-neutral academic decisions, e.g. "eliminat[ing] standardized testing to achieve a desired racial balance or to increase racial diversity".

Dramatically changing longstanding federal policies without process for public input on a major change in positions – e.g., revoking the 1965 Executive Order requiring federal departments to promote equal employment opportunity and demanding an end to "diversity, equity, and inclusion" (DEI) programs, departing from "long-standing bipartisan consensus that the government should fund scientific research and then mostly stay out of the way," or cutting off funds with little or no notice – is inconsistent with the institutional self-restraint all major government organs in a democracy need to show when taking action that treads on sensitive First Amendment-related rights and liberties.

The Administration's multiple pronouncements sow confusion that itself may chill academic speech. One order, which prohibits federal agencies, contractors or recipients of federal assistance from promoting DEI policies, states that the prohibition does not prevent "persons teaching at a Federally funded institution of higher education as part of a larger course of academic instruction from advocating for, endorsing,

or promoting" otherwise prohibited diversity practices. Three weeks later, the Education Department issued guidance on the nondiscrimination obligations of schools receiving federal financial aid, asserting that schools have "toxically indoctrinated students with the false premise that the United States is built upon 'systemic and structural racism'" and insidiously teach that some racial groups have unique moral burdens (see above); thereafter, an FAQ document indicated that teaching could create a "racially hostile environment" (in violation of Title VI) depending on "facts and circumstances." Is teaching that majority groups have obligations to remedy past harms to minority groups allowed? Teachers, beware.

Government knowledge offices

Modern government requires an independent, competent civil service for many reasons, including the need for consistency in treatment implied by constitutional equality norms. To secure consistent evidence-based governance, foundational principles for academia and the truth-seeking press – an aspiration to find what is true, by applying disciplinary standards (including openness to correction), and doing so independently – should also prevail in government offices charged with scientific evaluation, data collection and/or reporting. But this Administration seems set to destroy capacities for consistent knowledge-based administration of the laws; valuing loyalty over competence, it is undermining capacities for reliable fulfillment of government knowledge tasks assigned by Congress and the Constitution:

Even in the first Trump term several government departments experienced deep (apparently intended) losses of personnel with expert knowledge;

More aggressive measures to drive out expertise are being employed, with executive offices (like USAID) closed down by fiat and massive firings of probationary employees (though those firings and USAID shutdown have been temporarily halted judicially);

The Census Bureau – responsible for the population statistics on which representation allocations under the Constitution (and funding) depend and whose professional staff came under pressure in the first Trump Administration – recently disbanded its expert advisory committees for the 2030 census;

On January 20, 2025, Trump issued an Order restoring his prior order establishing a "Schedule F" in the Civil Service, a move designed to undercut civil service protection for federal workers – and arguably *unlawful* under a 2024 notice-and-comment issued regulation to preserve a merit-based civil service.

On January 20, 2025, Trump *withdrew* the Biden Administration's memo requiring evidence-based policy-making in science.

The role of law

Knowledge institutions are interdependent. Academia and the press depend on government statistics; government offices depend on press reports of problems requiring attention and on university analysis of long-term effects that may be the subject of or require regulation. Yet the entire U.S. knowledge infrastructure is under real threat.

The significance of these attacks is magnified by concurrent attacks on the role of law. The Trump Administration has sanctioned or threatened major law firms, essentially because they represented or employed persons perceived as Trump's opponents; it does not appear that the decisions to revoke security clearances for the lawyers were based on evidence of actions that threatened national security or otherwise justified revocation. In other Trump Administration action, the US Attorneys' office in DC announced it would not consider Georgetown Law graduates for federal employment because of Georgetown's DEI commitments. All this without any hearing or judicial findings – and without any new statutory or properly promulgated regulatory authority. These efforts may well intimidate lawyers from representing persons the Trump administration opposes.

Administration members and supporters have also threatened judges – with defiance of judicial orders, and removal from office – eliciting an unusual public response from the Chief Justice. These and other threats warrant sustained resistance, like that offered by the American Bar Association.

When a federal official in 2007 threatened law firms that were representing GTMO detainees, there was an outcry and the threats were disavowed by the Bush administration. This reflects a correct constitutional understanding of the role of lawyers here. The silence today is deafening – with some exceptions, including the ABA statement, Princeton University's president's statement, and the Georgetown Law Dean's response to the announced refusal to hire its graduates.

A core ethical obligation of the Bar is providing representation even to unpopular clients; the adversarial system of law depends on this. A core element of a democracy is that election winners do not persecute election losers simply because they were opponents; doing so elevates the stakes of loss and may contribute to erosion of democracy (because those in power won't want to risk a fair election and possible loss of power). Yet overbroad immunities for serious criminal acts by those in power can remove essential guardrails; knowledge and legal institutions are essential to maintaining a proper balance, preventing politically motivated prosecution without removing those guardrails. And the rule of law not only requires notice and clarity about the law, but also stability in the law. From dismantling entire federal offices funded by Congress to penalizing universities and employers for DEI programs or research encouraged by prior administrations, an across-the-board disregard for stability has been shown. Large-scale changes with serious material consequences should be made through reasonable legal processes, not by executive fiat.

Time for courage - and resistance

The only source of opposition from within the government thus far has been from the federal courts, whose judicial independence to apply the law is being demonstrated by courageous judges. As Salman Rushdie is reported to have said in 2008,

> *"Two things form the bedrock of any open society – freedom of expression and rule of law. If you don't have those things, you don't have a free country."*

It is a time for courage and for the institutions of knowledge, of law and lawyers to resist – clearly, and repeatedly, for all have a stake in preserving knowledge-related freedoms and the rule of law. Over the long haul, knowledge institutions need also ask themselves how to improve public trust in their processes and thereby help forestall future attacks.

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Editor's Pick

by MAXIM BÖNNEMANN



Glasnost, Greed, and Glass Towers: A restless banker works towards improving relations with the Soviet Union, under the watchful eyes and ears of intelligence agencies and the Red Army Faction (RAF), a left-wing German terrorist group. In close contact with Chancellor Kohl, Alfred Herrhausen, CEO of Deutsche Bank, arranges loans for Gorbachev's crumbling planned economy. Not everyone approves – Herrhausen also encounters opposition elsewhere, be it with his proposals for debt relief for the Third World or his shift towards investment banking. Herrhausen has enemies, and the photo of his bombed-out limousine spreads across the globe. Although the RAF claimed responsibility, doubts remain. This gripping multi-part series, available in the ARD media library (in German), tells the story of his final years.

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

It is finally spring in Germany, and these first warm sun rays under a clear blue sky can't help but evoke Eduard Mörike's famous spring poem: "*Spring lets its blue ribbon flutter in the breeze again*". In the meantime, Trump lets his iron chain rattle, and no voices rise with ease again. VICKI C. JACKSON gave plenty of cases in point above. SCOTT CUMMINGS (ENG) focusses on Trump's declaration of war against lawyers – on the autocratic playbook behind targeting law firms, the role of **lawyers** in democratic backsliding, and why it's time for lawyers to take action now.

ELIZA BECHTOLD (ENG) unpacks the above-mentioned case of Mahmoud Khalil, a lawful permanent resident of the USA who was arrested for his public support for Palestinian human rights, and shows how the targeting of immigrants for public expressions implicates the perhaps "most sacrosanct of American constitutional rights": **free speech**.

After reading the editorial, you know why constitutional democracy needs knowledge institutions, and how government depends on data. Against this backdrop, the removal of over 2,000 datasets from data.gov is particularly worrying. NANNA BONDE THYLSTRUP and KATIE MACKINNON (ENG) explore how "the politics of digital erasure" reshape access to **knowledge and democracy** in the USA and beyond.

SIMON PIELHOFF (GER) dives deeper into the interrelationship of democracy and the **administrative state**, both in the USA and in Germany. Despite the vagueness of the concepts, there's something to be gained from looking at their relationship – it is exactly because of their ambiguity that they are easily instrumentalised, he argues.

Trump does not discriminate against any law though – he disregards them all, national and international ones. It is hard to keep track of the multiple **international law violations** by the 2025 Trump administration. MARKUS GEHRING and TEJAS RAO (ENG) got you covered with an overview, starting with the first six weeks of the Trump administration.

Many describe the above as a constitutional crisis. GARY J. JACOBSOHN and YANIV ROZNAI (ENG) witness the same crisis rhetoric in Israel. Comparing the USA and Israel, they argue that whether or not the term "constitutional crisis" adequately describes what's currently underway in both countries, the process may well culminate in a **constitutional revolution**.

We may soon witness a revolution in **Turkey** as well, after Istanbul Mayor Ekrem İmamoğlu, the opposition's most promising candidate, was arrested and is now in prison pending trial. CEM TECIMER (ENG) describes how Turkey's ruling party is using lawfare tactics to eliminate the rising opposition and further consolidate its one-party rule.

"*Sweet, well-remembered scents, drift portentously across the land*" – sadly, it's the rotten-sweet narratives of dangerous asylum seekers that should better be fended off at the border of the promised land. Markus Söder, the conservative Minister President of Bavaria, even recently compared the police at the German-Austrian border with the "Night's Watch" from Game of Thrones. But now, the Bavarian Higher Administrative Court considered the border controls to violate EU law. This ruling could mark the beginning of the end of Germany's **border control** practices, according to LEON ZÜLLIG (GER) – spring is coming.

In a rather winter-like spirit, SPD and CDU/CSU plan in their coalition talks to temporarily suspend **family reunification** for those with subsidiary protection status. RHEA KUMMER and GRETA WESSING (GER) analyse why this plan is not just politically but also legally dubious.

Sweeter scents are drifting over from Luxemburg where Advocate General Tamara Ćapeta recently concluded that Denmark's so-called **ghetto law** may be a violation of the EU's Race and Equality Directive. SARAH GANTY and KARIN DE VRIES (ENG) reveal the case's potential to challenge harmful stereotypes embedded in integration policies and practices.

In Strasbourg, however, the air carries notes of moral decay – the Chinese tech giant Huawei is suspected of bribing Members of the **European Parliament** to advance its commercial interests.

ALBERTO ALEMANNO (ENG) highlights the inadequacy of the Parliament's ethical framework.

Money might not only buy Members of Parliament but also Union citizenship. In the latter context, the ECJ's judgment on **Malta**'s citizenship for investment scheme is eagerly anticipated. LORIN-JOHANNES WAGNER (ENG) maps some potential consequences in case the Court endorses the Advocate General's (ill-conceived) opinion.

Brussels smells rather of gunpowder these days. The European Commission's Joint White Paper on **European Defence** signals a transformative moment in the EU security architecture. ALBERTO VECCHIO (ENG) notes that this strategic shift remains limited to short-term measures, lacking the political will for a sustainable, permanent framework.

As the EU thus steps up its efforts to fund the defence of Europe, **Hungary** keeps undermining those efforts whenever it can. DERRICK WYATT (ENG) offers a solution: The Member States should simultaneously withdraw from the EU Treaties under Article 50 TEU and concurrently sign up to new EU Treaties without Hungary, thereby walking out on Hungary in order to stand up to Russia.

"*Violets, already dreaming, will soon begin to bloom* – yet, reawakening the rule of law in **Poland** without inflicting further damage proves challenging. JOHN MORIJN (ENG) explains why the Venice Commission, of all institutions, could have made this task even more complicated and sketches a way forward.

In the meantime, **Albania**'s alarm clock rang: Its Vetting Commission recently concluded its mandate, marking a pivotal moment in the country's judicial reform effort, especially with a view to anti-corruption. However, the reform process itself could turn out sleep-inducing as it is now threatening the reform's outcome, as JOAQUÍN URÍAS (ENG) warns.

Not just sleep-inducing but straight up harmful and addictive can be the effects of **social media** on teenagers. Several EU Member States are now calling for social media age restrictions. SARAH ESKENS (ENG) dissects at the debate around age restrictions for social media and advocates for a focus on problematic design features rather than age bans.

This week, the Federal Constitutional Court considered a different kind of age limit: under current German law, a **notary**'s position ends upon reaching the age of 70, and an ageing notary is challenging this. SIMON DIETHELM MEYER (GER) argues that the restriction is not only disproportionate but also undermines rather than safeguards the proper functioning of the legal system.

Time is also a limiting factor in the restitution of Nazi-looted art. After months of intense debate, Germany now agreed to establish an "**Arbitration Tribunal for Nazi Looted Art**". ANNE DEWEY (GER) addresses common criticism and demonstrates why the new material criteria for the tribunal's restitution decisions represent a fair solution.

The issue of when something was unlawfully seized is controversial – not just in art, but also in international criminal law. Rodrigo Duterte's recent transfer to the **ICC** was widely celebrated – but could deepen Southeast Asia's scepticism toward international justice, as LASSE SCHULDT (ENG) explains.

"*Listen, the sound of a harp, so faint from so far!*" Law's echo might seem fainter and farer with every week, but we can still hear it.

"*Spring, it is you! I can hear you coming!*"

Thanks for the pep talk, Eduard.

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Take care and all the best!

Yours,

the Verfassungsblog Team

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Vicki C. Jackson ist Laurence H. Tribe Professor of Constitutional Law an der Harvard Law School. (Foto: Phil Farnsworth)Vicki C. Jackson is Laurence H. Tribe Professor of Constitutional Law at Harvard Law School. (Picture: Phil Farnsworth)

SUGGESTED CITATION

Jackson, Vicki C.: The Trump Administration's Attack on Knowledge Institutions, Verfassungsblog, 28.03.2025, doi: 10.59704/33688cf491034d9e.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250329-002026-0.