
**“OUR CONSTITUTION . . . SHOULD BE READ BY INTELLIGENT
AND PATRIOTIC MEN”: A STATISTICAL ANALYSIS OF
CONSTITUTIONAL RHETORIC**

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In the final Lincoln-Douglas debate, Abraham Lincoln reiterated one of his central arguments—that the Constitution used “covert language” when entrenching slavery as a founding principle.¹ Lincoln interpreted this linguistic strategy as evidence that the Founders “expected and intended the institution of slavery to come to an end.”² He stated:

I understand the contemporaneous history of those times to be that covert language was used with a purpose, and that purpose was that in our Constitution, which it was hoped and is still hoped will endure forever—when it should be read by intelligent and patriotic men, after the institution of slavery had passed from among us—there should be nothing on the face of the great charter of liberty suggesting that such a thing as negro slavery had ever existed among us.³

The audience then interrupted the future president with “enthusiastic applause.”⁴

Across the seven debates, Lincoln and Douglas referenced the phrase “constitution” 388 times,⁵ as both participants offered intricate arguments on

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1. Seventh and Last Debate with Stephen A. Douglas at Alton, Illinois (Oct. 15, 1858) [hereinafter *Seventh and Last Debate*], in 3 *THE COLLECTED WORKS OF ABRAHAM LINCOLN* 283, 307 (Roy P. Basler ed., 1953).

2. *Id.*

3. *Id.*

4. *Seventh Debate: Alton, Illinois*, NAT’L PARK SERV., <https://www.nps.gov/liho/learn/historyculture/debate7.htm> (Apr. 10, 2015).

5. This statistic is based on an author search of the transcripts of each debate provided by the National Park Service. See *The Lincoln-Douglas Debates of 1858*, NAT’L PARK SERV., <https://www.nps.gov/liho/learn/historyculture/debates.htm> (Feb. 16, 2017).

subjects ranging from *Dred Scott*⁶ to the Lecompton Constitution.⁷ I highlight this passage for two reasons. First, Lincoln provides a boldly revisionist understanding of the U.S. Constitution: By recognizing its flawed origin, he turns the original sin of slavery into a prophecy for constitutional rebirth.⁸ Second, consider the context in which he delivered this line. One might expect such a nuanced argument to be offered to a small gathering of intellectuals, yet Lincoln told his constitutional parable to a crowd of 5,000 on a cloudy October day in Alton, Illinois.⁹

Some prior debates drew crowds two-to-three times larger,¹⁰ prompting the Chicago and Alton Railroad to offer half price fares to Springfield residents wanting to catch the finale.¹¹ People also poured in via steamboat (after paying the 2022 equivalent of thirty-four dollars for a ticket) from St. Louis,¹² even though Missourians had no say in deciding the Illinois Senate race.¹³ In the mid-nineteenth century, constitutional politics was public spectacle in ways we can analogize to sporting events today. Levels of formal education among the crowd in Alton were likely much lower than what we

6. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857). For example, Lincoln critiqued Douglas's argument that slavery could not exist without police powers regulation of the institution. Third Debate with Stephen A. Douglas at Jonesboro, Illinois (Sept. 15, 1858), in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN, *supra* note 1, at 102, 130 ("Will the Judge [Douglas] pretend that *Dred Scott* was not held there [in Minnesota territory] without police regulations? There is at least one matter of record as to his having been held in slavery in the Territory, not only without police regulations, but in the teeth of Congressional legislation supposed to be valid at the time.").

7. See KAN. CONST. of 1857. For example, Lincoln critiqued Douglas's argument that the referendum on the Lecompton Constitution settled the issue of slavery in Kansas. Fourth Debate with Stephen A. Douglas at Charleston, Illinois (Sept. 18, 1858), in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN, *supra* note 1, at 145, 180 ("Now [Douglas] tells us again that it is all over, and the people of Kansas have voted down the Lecompton Constitution. How is it over? That was only one of the attempts at putting an end to the slavery agitation—one of these 'final settlements.'").

8. Perhaps a more accurate way to understand Lincoln's construction of constitutional redemption is not as an argument in itself, but as the coda to the more famous parable of the "house divided," which Lincoln had offered just a few paragraphs earlier. Seventh and Last Debate, *supra* note 1, at 305 ("A house divided against itself cannot stand. I believe this Government cannot endure permanently half slave and half free.").

9. *Seventh Debate: Alton, Illinois*, *supra* note 4.

10. For example, the second debate, which took place on August 27, 1858, drew an estimated crowd of up to 15,000 people. *Second Debate: Freeport, Illinois*, NAT'L PARK SERV., <https://www.nps.gov/liho/learn/historyculture/debate2.htm> (last updated Apr. 10, 2015).

11. *Seventh Debate: Alton, Illinois*, *supra* note 4.

12. The ticket price was one dollar. *Id.* I used a calculator provided by the Federal Reserve to adjust for inflation. *Consumer Price Index, 1800–*, FED. RESERVE BANK OF MINNEAPOLIS, <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1800-> (last visited July 31, 2023).

13. *Seventh Debate: Alton, Illinois*, *supra* note 4. Of course, Illinois voters also lacked direct influence on Lincoln and Douglas, although some scholars have argued that the 1858 state legislative election in Illinois served as a referendum on the Senate race. *E.g.*, AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 410–11 (2005).

would find among fans attending the Super Bowl, yet neither Douglas nor Lincoln dumbled themselves down to keep the audience entertained. In other words, the Lincoln-Douglas debates call into question Justice Scalia's observation that there is a reason "why the University of Chicago Law Review is not sold at the 7-Eleven."¹⁴

Constitutionalism in contemporary America, by contrast, seems to have moved away from the public square and into the ivory tower and the Marble Palace.¹⁵ One recent poll found that only forty-three percent of Americans have ever read the Constitution.¹⁶ Leaders, for their part, often avoid serious public engagement (on any subject). To cite but one example, when Donald Trump attempted to explain the role of state governments in responding to the COVID-19 pandemic, he said, "[y]ou can look at it constitutionally, you could look at federalism. . . . The federal government has absolute power."¹⁷ I doubt whether many attendees of the Lincoln-Douglas debates would have accepted such a facile response to such a vexing social problem.

What happened? In this Essay, I offer a preliminary, quantitative account of the decline of constitutional rhetoric by analyzing presidential speeches. By detailing when and why presidents changed their rhetorical practices, I hope to show how the civic capacity of "we the people" has shifted. Building off prominent studies of political and constitutional development, I discuss two reasons why presidents are now less likely to engage in constitutional argumentation. First, political scientist Jeffrey Tulis's concept of the "rhetorical presidency" suggests that modern presidents have been much more likely to see the American constitutional system as an obstacle to be overcome, rather than a political objective in its own right.¹⁸ As presidents became more involved in policy debates by "going public,"¹⁹ constitutional rhetoric was crowded out.

14. See Tony Mauro, *The Right Legislation for the Wrong Reasons*, 106 MICH. L. REV. ONLINE 8, 8 (2007).

15. For an account of the decline of popular constitutionalism as a tool to settle constitutional disputes, see LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* (2006). For an account of the rise of judicial supremacy in settling constitutional disputes, see KEITH E. WHITTINGTON, *POLITICAL FOUNDATIONS OF JUDICIAL SUPREMACY: THE PRESIDENCY, THE SUPREME COURT, AND CONSTITUTIONAL LEADERSHIP IN U.S. HISTORY* (2009).

16. The poll was conducted in September 2019. Charles Franklin, *Detailed Results of the Supreme Court Poll, September 3–13, 2019*, MARQ. UNIV. L. SCH. POLL (Oct. 21, 2019), <https://law.marquette.edu/poll/2019/10/21/detailed-results-of-the-supreme-court-poll-september-3-13-2019/>.

17. *Donald Trump Coronavirus Press Conference Transcript April 13*, REV (Apr. 13, 2020), <https://www.rev.com/blog/transcripts/donald-trump-coronavirus-press-conference-transcript-april-13>.

18. JEFFREY K. TULIS, *THE RHETORICAL PRESIDENCY* (1987); see *infra* notes 38–40 and accompanying text.

19. SAMUEL KERNELL, *GOING PUBLIC: NEW STRATEGIES OF PRESIDENTIAL LEADERSHIP* (3d ed. 1997).

Second, the conduct of American politics has become highly professionalized in recent decades, allowing presidents to deliver more speeches and written messages.²⁰ Speechwriters and advisors have realized the safest strategy is to calibrate presidential rhetoric to the lowest common denominator. As political scientist Elvin Lim notes, presidential rhetoric has been defined by “the increasing substitution of arguments with applause-rendering platitudes, partisan punch lines, and emotional and human interest appeals.”²¹ According to a new political science study, recent State of the Union addresses are about as linguistically complex as a fifth-grade textbook.²² It is hard to lead an adult conversation about the Constitution when you assume your audience are children sitting cross-legged on a gymnasium floor.

I then analyze a dataset of more than 16,000 spoken presidential communications from George Washington to Joe Biden. Multi-level negative binomial regression analysis²³ indicates that the decline in references to the Constitution coincides with the development of the rhetorical presidency.²⁴ As further corroboration, I find strong, negative correlations between constitutional references and the frequency²⁵ and simplicity²⁶ of presidential speeches, as well as the growth of White House staff.²⁷ The data also provide an initial insight as to what rhetorical themes fill the void: references to the economy.²⁸ Finally, Republican presidents mention the Constitution at a significantly higher rate compared to Democratic chief executives.²⁹

Citizens rely on elite cues to form political attitudes.³⁰ Given recent increases in rhetorical simplicity, it is unsurprising that political science is so

20. There is likely an endogenous relationship between political professionalism and the centrality of the economy to presidential rhetoric. *See also infra* Table 2, Model 4.

21. ELVIN LIM, *THE ANTI-INTELLECTUAL PRESIDENCY: THE DECLINE OF PRESIDENTIAL RHETORIC FROM GEORGE WASHINGTON TO GEORGE W. BUSH 6* (2012).

22. Kenneth Benoit, Kevin Munger, & Arthur Spirling, *Measuring and Explaining Political Sophistication Through Textual Complexity*, 63 *AM. J. POL. SCI.* 491, 503 (2019).

23. Negative binomial regression is a statistical method used to model count outcome variables. It is an effective tool for solving overdispersion—when the variance of the dependent variable is significantly larger than its mean value. *See* Clay Ford, *Getting Started with Negative Binomial Regression Modeling*, UNIV. OF VA. LIBR. (May 5, 2016), <https://data.library.virginia.edu/getting-started-with-negative-binomial-regression-modeling/>.

24. *See infra* Table 2, Model 1.

25. *See infra* Table 2, Model 2.

26. *See infra* Table 2, Model 3.

27. *See infra* Table 2, Model 4.

28. *See infra* Table 2, Models 5–6.

29. *See infra* Table 2, Models 1–6.

30. *See generally* JOHN ZALLER, *THE NATURE AND ORIGINS OF MASS OPINION* (1992).

pessimistic about mass-level political knowledge³¹ and engagement.³² Yet, I conclude by offering a more optimistic take. If elected officials decided to elevate the quality and quantity of their constitutional rhetoric, these findings suggest citizen efficacy and sophistication will follow suit. While we may not ever return to the days when a Senate debate will draw a larger crowd than the Super Bowl, there is no reason why constitutional politics need remain so withered.

I. THEORIES OF PRESIDENTIAL RHETORIC

The Lincoln-Douglas debates reflected one key feature of nineteenth-century civic life: Constitutional politics *was* politics. Constitutional contestation was not reserved for judges nor even other political elites. Ordinary citizens were expected to play a role too. According to legal theorist Larry Kramer's account of popular constitutionalism, the right to vote and petition were vehicles through which citizens could hold leaders accountable for actions they considered to be unconstitutional.³³ By contrast, as legal historian Gerald Leonard argues, today we tend to view politics as "*working within* a constitutional order rather than *working out* that constitutional order."³⁴

The design of the Constitution also shaped the conduct of early American political life. The Electoral College, the Founders believed, would create an executive that was independent of the legislature, but independence was a two-way street. According to Jeffrey Tulis, presidents had a corresponding duty not to interfere with deliberations in Congress.³⁵ This conception of the separation of powers had important ramifications for presidential rhetoric. Before the twentieth century, Tulis noted, "presidents preferred written communications between the branches of government over oral addresses to 'the people.'"³⁶ The themes of presidential speeches also varied from what we expect from the modern presidency. According to Tulis, "[m]ost were patriotic orations for ceremonial occasions, some raised constitutional issues, and several spoke to the conduct of war."³⁷

Twentieth-century presidents were quite different. In his doctoral dissertation, Woodrow Wilson critiqued the founding understanding of the

31. See generally MICHAEL X. DELLI CARPINI & SCOTT KEETER, WHAT AMERICANS KNOW ABOUT POLITICS AND WHY IT MATTERS (1996).

32. See generally CHRISTOPHER H. ACHEN & LARRY M. BARTELS, DEMOCRACY FOR REALISTS: WHY ELECTIONS DO NOT PRODUCE RESPONSIVE GOVERNMENT (2016).

33. KRAMER, *supra* note 15, at 35.

34. *Id.* at 8 (quoting GERALD LEONARD, THE INVENTION OF PARTY POLITICS 15 (2002)).

35. TULIS, *supra* note 18, at 42.

36. *Id.* at 5.

37. *Id.*

separation of powers: Instead of a neatly operating Newtonian machine, the Constitution's design impeded legislative deliberation and energy in the executive.³⁸ As president, Wilson attempted to overcome these constraints by making rhetorical appeals to voters in the hopes of shaping policy debates in Congress.³⁹ According to Tulis, making speeches about policy and vision was more than a change in political tactics. Wilson, in effect, created a second constitution, which Tulis described as "a view of statecraft that is in tension with the original Constitution—indeed, is opposed to the founder's understanding of the political system."⁴⁰

Subsequent presidents benefitted from Wilson's rhetorical innovation. As the welfare state increased in the 1930s and beyond, presidents had more programs and initiatives to sell to voters. One potential implication is that the Constitution was gradually crowded out on the rhetorical agenda in favor of other presidential priorities. The frequency of spoken communication also increased over the twentieth century, causing presidents to rely more and more on professional speechwriters. This personnel infrastructure not only facilitates presidential desires to "go public" but to do so using language that has been vetted and focus-group tested.

In Elvin Lim's account of the rise of anti-intellectualism in presidential rhetoric, speechwriters are the "partners in crime with presidents in driving the alleged degeneration of presidential rhetoric."⁴¹ Subsequent research has provided additional evidence for Lim's critique. In 1921, Warren Harding became the first president to use a speechwriter,⁴² and the linguistic simplicity of State of the Union addresses increased markedly around this time. Despite the rise in educational opportunities in the century since Harding's presidency, the trend of rhetorical simplification has only continued.⁴³

II. STATISTICAL ANALYSIS

The American Presidency Project ("APP") at the University of California, Santa-Barbara provided most of the data for the analysis.⁴⁴ However, this source did not include any communications from Donald

38. WOODROW WILSON, CONGRESSIONAL GOVERNMENT 305–33 (1908).

39. TULIS, *supra* note 18, at 121.

40. *Id.* at 18.

41. LIM, *supra* note 21, at 5.

42. ROBERT SCHLESINGER, WHITE HOUSE GHOSTS: PRESIDENTS AND THEIR SPEECHWRITERS 2 (2008).

43. See Benoit, Munger, & Spirling, *supra* note 22, at 504.

44. Jay Ravaliya, *American Presidency Project*, KAGGLE, <https://www.kaggle.com/datasets/jayrav13/american-presidency-project?resource=download> (last visited July 31, 2023).

Trump, Joe Biden, or (oddly enough) Grover Cleveland during his first term. Thus, I turned to the Miller Center for Public Affairs to fill in the missing data.⁴⁵ The most recent data point was President Biden’s “Soul of the Nation” speech, delivered on September 1, 2022.⁴⁶ Both datasets contain information on the date of the communication, the format (written or spoken), the title, and a categorization of the communication (e.g., State of the Union Address, Veto Message, Press Conference).

I attempt to make comparisons of only those communications that every president would have had the opportunity to make. For example, the APP data includes transcripts of presidential press conferences, but I drop it from my sample because this practice originated with Woodrow Wilson.⁴⁷ On the other hand, every president had the opportunity to deliver addresses and remarks. The sample does not include speeches to foreign audiences as those are not directed to the American public. I also dropped campaign speeches because candidate rhetoric likely differs from presidential rhetoric.

For each communication, I used the package “jsonlite” in the statistical software R to count the number of times the phrase “constitution” occurred.⁴⁸ This search technique would capture related words, like unconstitutional or constitutionality, references to other written constitutions, and other, non-topical uses of the word “constitution.” These concerns notwithstanding, I operate under the assumption that most of the search results reflect references to the U.S. Constitution.

I begin the analysis with Figure 1, which ranks each president by the frequency of their constitutional rhetoric. The figure is generated by dividing the number of constitutional references by the number of words in all communications. Presidents James Garfield and William Henry Harrison top the list, but this finding may reflect the fact that their terms in office were so short that there are very few communications in the dataset.⁴⁹ The next several presidents—Andrew Johnson, James Buchanan, Franklin Pierce, and Abraham Lincoln—bookend the Civil War, the country’s greatest

45. Miles Efron, *Presidential Speeches: Downloadable Data*, MILLER CTR., <https://millercenter.org/presidential-speeches-downloadable-data> (last visited July 31, 2023).

46. Joe Biden, *Remarks by President Biden on the Continued Battle for the Soul of the Nation*, WHITE HOUSE (Sep. 1, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/01/remarks-by-president-bidenon-the-continued-battle-for-the-soul-of-the-nation/>.

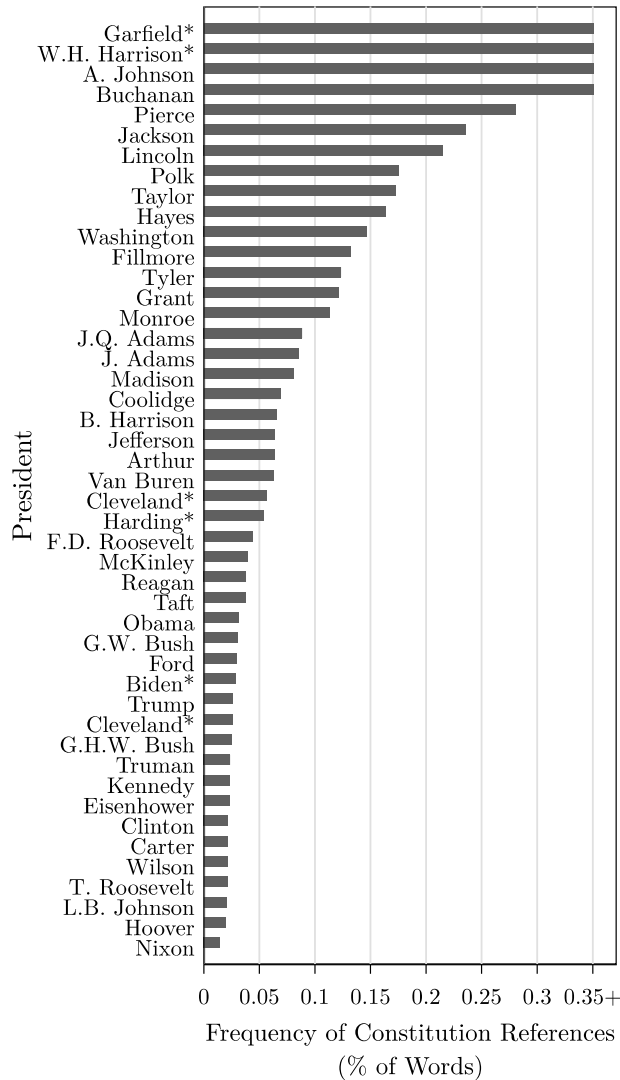
47. WHITE HOUSE HIST. ASS’N, *THE WHITE HOUSE AND PRESS TIMELINE 1* (2017), <https://d1y822qh55g6.cloudfront.net/pdfs/2017-01-17-White-House-and-Press-Timeline.pdf>.

48. Jeroen Ooms, Duncan Temple Lang, & Lloyd Hilaiel, *Jsonlite: A Simple and Robust JSON Parser and Generator for R*, CRAN.R-PROJECT, <https://cran.r-project.org/web/packages/jsonlite/index.html> (last visited July 31, 2023).

49. The proportion of any rhetorical theme is likely to be distorted when the denominator of communications is so artificially small. I also flag Presidents Cleveland, Harding, and Biden as potential outliers because each has very few speeches in the sample.

constitutional failure. Perhaps the two most surprising findings are at the very bottom: Two of the four presidents who served as law professors (Bill Clinton and Barack Obama)⁵⁰ were least likely to reference the Constitution.

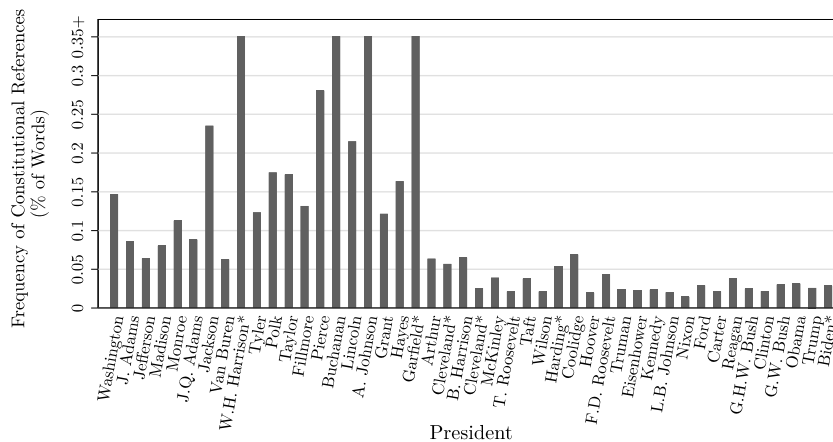
Figure 1: Frequency of Presidential Constitutional References



50. The other former law professors to become president are Presidents Taft and Wilson. Gene Healy, *Never Let Law Profs Near the Oval Office*, REASON (Feb. 7, 2012, 1:30 PM), <https://reason.com/2012/02/07/never-let-law-profs-near-the-oval-office/>.

Figure 2 displays the same information over time. Constitutional references drop precipitously in the twentieth century and beyond. The question is why. Table 1 provides some additional information about the consequences of the rhetorical presidency. From Wilson onwards, the number of presidential communications per year skyrocketed, but only spoken communications are driving the trend. The average annual number of written communications in my sample increases slightly from 40.0 in the period before Wilson to 42.7 afterwards,⁵¹ but this difference is not statistically significant.⁵² Spoken communications per year increase, on average, by over 160 among presidents from Wilson onwards.

Figure 2: Longitudinal Changes in Presidential References to the Constitution



Note: * indicates potential outlier.

51. To allow for comparability over time, I analyzed only those written communications categorized as proclamations and messages in the APP data.

52. It is possible that what looks like evidence for a hypothesis is merely a coincidence. The term statistical significance means that a finding is very unlikely to occur (less than five percent chance) if the hypothesis were false. See Amy Gallo, *A Refresher on Statistical Significance*, HARV. BUS. REV. (Feb. 16, 2016), <https://hbr.org/2016/02/a-refresher-on-statistical-significance>.

Table 1: Difference of Means Tests of the Effect of the Rhetorical Presidency on Communication Frequency and Simplicity

Period	Presidents	Average Annual Communications				State of the Union		
		Written		Spoken		Years	Simplicity	
		Mean	S.D.	Mean	S.D.		Mean	S.D.
Before Wilson	27	40.0	26.8	1.4	2.6	124	0.149	0.041
Wilson and After	19	42.7	38.3	161.4	135.7	107	0.352	0.080
Difference		2.7		160.1*			0.203*	

* $p < 0.05$ * $p < 0.05$

The far right two columns of Table 1, which utilize measures of the linguistic complexity of the State of the Union Address,⁵³ provide additional confirmation that the modern president speaks more but says less. From the presidency of Woodrow Wilson onwards, the simplicity of State of the Union addresses has, on average, more than doubled.

I proceed to multivariate analysis to see if these two developments—the increase and simplification of rhetoric in the modern presidency and a decline in references to the Constitution—are related. I have six independent variables of interest. First, using a dichotomous indicator,⁵⁴ I classify whether a communication took place after the rise of the rhetorical presidency, which, consistent with Jeffrey Tulis’s scholarship,⁵⁵ I define as the beginning of the Wilson presidency.⁵⁶ Second, I examine the frequency of each president’s spoken communications—the total number of speeches delivered by a president, divided by their length of time in office.⁵⁷ Third, I use the same data on rhetorical simplicity as Table 1.⁵⁸

53. Kenneth Benoit, *Replication Data for: Measuring and Explaining Political Sophistication Through Textual Complexity*, HARV. DATAVERSE (2019), <https://doi.org/10.7910/DVN/9SF3TI> (providing linguistic data for a corpus of State of the Union addresses); see Benoit, Munger, & Spirling, *supra* note 21. For most of American history, what we call the State of the Union was a written communication called an “Annual Message to the Congress.” Regardless of its format, these scholars have calculated the probability that a given State of the Union address is easier to understand than a text assigned to a fifth grader. If a State of the Union address perfectly reflects a fifth grade reading level, it would take a value of 0.5. For ease of interpretation, I reversed the scale of the original measure so that higher values indicate linguistically simpler speeches.

54. A dichotomous indicator takes the value of either zero or one, depending on a classification schema.

55. TULIS, *supra* note 18.

56. See *infra* Table 2, Model 1.

57. See *infra* Table 2, Model 2.

58. Benoit, *supra* note 53; see *infra* Table 2, Model 3.

Fourth, I gathered available data (from 1924 onwards) on the size of the White House Office staff.⁵⁹ Fifth, to measure the economy as a rhetorical theme, I tally up the combined number of references to “jobs,” “employed,” “employment,” and “econom” in each speech and create a combined measure, which I label Economy References.⁶⁰ Finally, I use data from the Federal Reserve, available from 1929 onwards, on transfer payments as a share of federal tax receipts.⁶¹ Transfer payments include Social Security, Medicare, and other government benefits distributed to citizens. If economic issues are crowding out the Constitution as a rhetorical theme, then we should expect constitutional references to decline as the government’s involvement in the economy increases over time.

I control for presidential party affiliation, with Republicans serving as the baseline category.⁶² I also predict that constitutional references will be more prevalent in years when Congress proposes a constitutional amendment⁶³ or when the Supreme Court strikes down a larger number of federal laws.⁶⁴ I searched each communication for instances of the term “rights” as a robustness check to see if constitution talk is associated with rights talk. Finally, I classify spoken communications into categories: inaugural addresses, State of the Union addresses, a legislative or executive action—such as a speech accompanying a bill signing, veto, or the nomination, appointment, or resignation of an official—or a baseline category for all other communications.

59. LYN RAGSDALE, VITAL STATISTICS ON THE PRESIDENCY: THE DEFINITIVE SOURCE FOR DATA AND ANALYSIS ON THE AMERICAN PRESIDENCY 349–54 (4th ed. 2014); *see infra* Table 2, Model 4.

60. *See infra* Table 2, Model 5.

61. U.S. Bureau of Econ. Analysis, *Federal Government Current Transfer Payments: Government Social Benefits: To Persons*, FED. RESERVE BANK OF ST. LOUIS, <https://fred.stlouisfed.org/graph/?id=B087RC1A027NBEA> (last visited July 31, 2023); *see infra* Table 2, Model 6. Transfer payments are defined as a wealth transfer from some people to others. John Lounsbury, *A Look at Personal Transfer Payments and GDP*, SEEKING ALPHA (Dec. 27, 2010), <https://seekingalpha.com/article/243760-a-look-at-personal-transfer-payments-and-gdp>.

62. When conducting statistical analyses on categorical variables, one category serves as a statistical baseline against which the effect of membership in another category is measured. Thus, in every model of Table 2, the party affiliation variable measures whether a president of a particular party is more or less likely to mention the Constitution, as compared to Republican presidents. I classify George Washington as a Federalist because of his support for Federalist policies, even though he rejected party labels. Adam Meehan, *The Federalist Papers*, GEORGE WASHINGTON’S MOUNT VERNON, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/federalist-papers> (last visited July 31, 2023).

63. *See Amendments to the U.S. Constitution*, NAT’L ARCHIVES FOUND., <https://www.archivesfoundation.org/amendments-u-s-constitution/> (last visited July 31, 2023).

64. *See Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court*, CONST. ANNOTATED, <https://constitution.congress.gov/resources/unconstitutional-laws/> (last visited July 31, 2023).

The dependent variable in Table 2 is a count of the number of times the phrase “constitution” appears in every speech. In theory, this count could go from zero to infinity. In reality, the number of references will depend on the length of the communication, so I include the number of words of each communication as an exposure term.⁶⁵ The dependent variable is a count term that is overdispersed, meaning its variance is significantly larger than its mean. Negative binomial regression is the appropriate statistical method to handle a dependent variable with such a structure.⁶⁶ Furthermore, there are multiple observations for almost every year, which violates the assumption of observational independence.⁶⁷ Thus, I use a multilevel, mixed-effects model with random intercepts for each president-year.⁶⁸ Multi-level models allow for making valid inferences, estimating the effects of group-level predictors, while correcting for unobserved group-level factors.⁶⁹

Table 2 presents the results of six models of presidential spoken communications, testing each of the independent variables described above. The $\ln(\alpha)$ and $\text{var}(\text{Year})$ terms are significant in every model, indicating (respectively) that there is overdispersion in the data and significant, unobserved, between-year differences in the propensity to reference the Constitution. The Akaike Information Criterion (“AIC”) is a comparative measure of how well the model should predict if new data is added to the sample. Lower AIC scores indicate better model fit.⁷⁰

65. Exposure terms convert each observation in a count model into a rate per period to allow for better comparisons across phenomena of differing periods. Jeff Meyer, *The Importance of Including an Exposure Variable in Count Models*, THE ANALYSIS FACTOR (Nov. 19, 2020), <https://www.theanalysisfactor.com/including-an-exposure-variable-in-count-models/>.

66. See *supra* note 23 and accompanying text.

67. Statistics Online Support, *Independent Observations Assumptions*, UNIV. TEX AT AUSTIN, <https://sites.utexas.edu/sos/indobs/> (last visited July 31, 2023) (“A common assumption across all inferential tests is that the observations in your sample are independent from each other, meaning that the measurements for each sample subject are in no way influenced by or related to the measurements of other subjects.”).

68. For most observations, a president-year is the same as the year. However, years in which one president leaves office and another takes office will have two president-years. Random intercepts allow for the variance of each cluster of data—in this case speeches within a president-year—to be modeled separately. See ANDREW GELMAN & JENNIFER HILL, *DATA ANALYSIS USING REGRESSION AND MULTILEVEL/HIERARCHICAL MODELS* 237 (2006).

69. *Id.*

70. See Alexandre Zajic, *What Is Akaike Information Criterion (AIC)?*, BUILTIN (Nov. 29, 2022), <https://builtin.com/data-science/what-is-aic>.

Table 2: Multilevel Negative Binomial Regression Models of Presidential References to the Constitution

Predictor	(1)	(2)	(3)	(4)	(5)	(6)
Federalist	0.419 (0.661)	0.676 (0.578)	0.475 (0.601)		0.801 (0.574)	
Democratic- Republican	-0.880 (0.837)	-0.781 (0.807)	-0.875 (0.824)		-0.665 (0.804)	
Whig	0.624 (1.159)	0.714 (1.130)	0.658 (1.393)		0.883 (1.125)	
Democratic	-0.320* (0.134)	-0.403* (0.122)	-0.326* (0.129)	-0.494* (0.125)	-0.337* (0.129)	-0.332* (0.133)
Inaugural Address	1.657* (0.360)	1.748* (0.299)	1.658* (0.320)	1.042* (0.445)	2.045* (0.292)	1.156* (0.462)
State of the Union	0.746* (0.210)	0.678* (0.210)	0.725* (0.214)	0.709* (0.231)	0.920* (0.209)	0.711* (0.233)
Legislative/Executive Action	0.219* (0.098)	0.226* (0.098)	0.252* (0.098)	0.223* (0.100)	0.171 (0.098)	0.217* (0.101)
References to Rights	4.331* (0.231)	4.319* (0.231)	4.311* (0.231)	4.409* (0.240)	4.146* (0.226)	4.375* (0.242)
Amendment Proposals	-0.044 (0.215)	-0.249 (0.200)	-0.303 (0.218)	0.090 (0.208)	-0.088 (0.208)	-0.142 (0.228)
Judicial Review	-0.076 (0.050)	-0.042 (0.047)	-0.079 (0.049)	-0.032 (0.046)	-0.077 (0.049)	-0.028 (0.051)
Rhetorical Presidency	-0.753 (0.387)					
Spoken Comm. Frequency		-0.263* (0.051)				
SOTU Simplicity			-3.286* (0.895)			
White House Office Staff				-0.243* (0.041)		
Economy References					-0.800* (0.083)	
Transfer Payments						-0.014* (0.004)
Constant	-8.044* (0.379)	-8.244* (0.145)	-7.580* (0.339)	-7.975* (0.178)	-8.590* (0.113)	-8.377* (0.181)
ln(α)	1.117* (0.044)	1.116* (0.044)	1.114* (0.044)	1.174* (0.044)	1.078* (0.044)	1.198* (0.045)
var(Year)	0.382* (0.065)	0.298* (0.053)	0.342* (0.059)	0.269* (0.051)	0.355* (0.061)	0.302* (0.058)
Years	1789- 2022	1789- 2022	1789- 2022	1924- 2022	1789- 2022	1929- 2022
Observations	16,883	16,883	16,845	16,593	16,883	16,515
AIC	16,953.8	16,933.3	16,803.2	16,256.4	16,856.9	15,995.6

* $p < 0.05$

The models provide support for the claim that the rhetorical presidency has led to a decline in constitutional rhetoric.⁷¹ Model 1 uses a dichotomous measure of whether a given speech was given from the beginning of the Wilson presidency onward. The coefficient is negative, as expected, but it falls just short of statistical significance ($p = 0.052$).⁷² More specific measures of the effects of the rhetorical presidency, on the other hand, yield stronger findings. According to Model 2, as the frequency of spoken communications increases, constitutional references decrease significantly. Model 3 shows a similar finding with respect to the simplicity of presidential rhetoric. Consistent with the findings of Table 1, presidents are speaking more and saying less, and that combination is associated with a decline in references to the Constitution. Model 4 suggests one source for this shift in rhetorical strategy: The decline in constitutional rhetoric is significantly associated with staffing increases in the White House Office.⁷³

As politics has become more professionalized, constitutional rhetoric has been deemphasized. The remaining models also support my hypotheses about other rhetorical themes that have replaced the Constitution. Throughout American history, every president has talked about the economy at least once. Of course, this theme has become more prominent over time, and it is strongly associated with the decline in constitutional rhetoric, as shown in Model 6. Model 7 provides another robustness check: The decline in constitutional rhetoric mirrors increases in transfer payments by the federal government.

It is very difficult to state which of these models is the most accurate. One modest first step is to compare the AIC scores of each model. Again, a lower AIC score indicates a comparatively better model fit. In Table 2, the lowest AIC score belongs to Model 6, suggesting that there is a relatively meaningful trade-off between speeches that talk about the economy and speeches discussing the Constitution.⁷⁴ There is likely an interrelationship between the increases in rhetorical simplicity and references to the economy, which gives the phrase “it’s the economy, *stupid*” a whole new meaning.⁷⁵

71. See *supra* notes 18–19 and accompanying text.

72. This is akin to saying there is a 5.2% chance that the finding is merely a coincidence.

73. See *supra* note 20 and accompanying text.

74. For a valid comparison of AIC scores, models should draw on the same sample with the same number of observations and predictors. Obviously, the number of observations in Table 2 varies across models. However, further analysis (not included here) indicates the Economy References variable still provides the strongest fit in an apples-to-apples comparison.

75. This phrase originated with Bill Clinton’s 1992 campaign manager, James Carville. Stephen Moore, *Thirty Years Later, Voters Are Still Telling Us It’s About the Economy Stupid!*, N.Y. POST, (Oct. 24, 2022, 10:35 PM), <https://nypost.com/2022/10/24/thirty-years-later-voters-are-still-telling-us-its-about-the-economy-stupid/> (emphasis added).

One other interesting finding is that in every model, Democrats are significantly less likely to mention the Constitution in their speeches than their Republican counterparts. Additional analysis (not included here) indicates that these results hold when limiting the sample to only nineteenth-century presidents or examining presidents who served since 1900. The fact that this finding is robust to both time periods is very interesting, as the two parties differed across the centuries in terms of their policy agendas and electoral dominance. For example, Republicans dominated national politics between the Civil War and the Great Depression. References to the Constitution during this time frame might justify their position as the dominant party. Perhaps after the resurgence of the Democratic Party in the 1930s and the emergence of the administrative state, constitutional rhetoric aided Republican presidents wishing to critique the excesses of modern politics.

Likewise, the agenda of the Democratic party today bears little resemblance to its nineteenth-century roots. Throughout the twentieth century, progressive reformers found a home in the Democratic Party and tried to advance their goals via constitutional amendments. It is surprising that, even when the analysis is limited to presidents from 1900 onwards, Democratic presidents are less likely to discuss the Constitution, compared to Republicans. One would think that the desire for constitutional amendments would create opportunities for constitutional rhetoric.

The effects of the remaining variables were mixed. Differences in speech type were significantly related to the propensity to reference the Constitution. Inaugural addresses and State of the Union addresses contain the highest rates of constitutional rhetoric, which is unsurprising considering both speeches are closely tied to the constitutional text.⁷⁶ As expected, presidents are significantly more likely to reference the Constitution when they also mention the term “rights” in the same speech. On the other hand, activity in the other two branches of government does not appear to influence the propensity of presidents to discuss the Constitution. The variables measuring constitutional amendment activity in Congress and declaration of unconstitutionality on the Supreme Court are not statistically significant in any of the models.

76. U.S. CONST. amend. XX, § 1, cl. 1 (“The terms of the President and the Vice President shall end at noon on the 20th day of January . . . and the terms of their successors shall then begin.”); *id.* art. 2, § 3, cl. 1 (“He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient . . .”).

CONCLUSION

Given the breadth of this research question, I urge caution in interpreting my results. Social scientists cannot be totally certain that they have employed the most accurate statistical model of a complex phenomenon. Furthermore, I doubt that having access to better data would fundamentally solve the problem of identifying what factors led to the decline of presidential rhetoric (or which factors mattered the most). There is likely some path dependency between Wilson's strategic choices and future presidents' needs to sell more and more policies to the public.⁷⁷ While this paper may not solve the problem of causal identification, it corroborates the idea that something fundamental has changed in presidential rhetoric since the days of the Lincoln-Douglas debates, and this shift coincides with broader transformations of presidential rhetoric in the early twentieth century.

The normative implications of these findings are, depending on the reader's views of popular constitutionalism,⁷⁸ quite disconcerting. The predominant theory of public opinion formation within political science is premised on the notion that citizens must hear elites discuss an issue for them to form an attitude.⁷⁹ By avoiding constitutional rhetoric, modern presidents signal that elected officials and citizens should concern themselves with ordinary politics, nothing more. Under this conception of politics, civic duty is reduced to answering the simple question: "Are you better off than you were four years ago?"⁸⁰ This rhetorical posture not only infantilizes politics, it helps to enable judicial supremacy by implying that only judges can solve constitutional conflicts.⁸¹

On the other hand, when presidents discuss the Constitution more frequently, they are signaling to their audience that the Constitution is not "like the ark of the covenant, too sacred to be touched."⁸² Accepting this argument from Jefferson does not mean that you must commit to wholesale constitutional revision once every nineteen years.⁸³ It only means that *all* of

77. See *supra* notes 39–40 and accompanying text.

78. KRAMER, *supra* note 15, at 8.

79. ZALLER, *supra* note 30, at 94–96.

80. Then-candidate Ronald Reagan spoke this famous line in the second presidential debate in 1980. Bret Schulte, *Ronald Reagan v. Jimmy Carter: "Are You Better Off Than You Were Four Years Ago?"*, U.S. NEWS & WORLD REP. (Jan. 17, 2008, 5:00 PM), <https://www.usnews.com/news/articles/2008/01/17/the-actor-and-the-detail-man>.

81. See generally WHITTINGTON, *supra* note 15.

82. Thomas Jefferson, *Thomas Jefferson to "Henry Tompkinson" (Samuel Kercheval)*, FOUNDERS ONLINE (July 12, 1816), <https://founders.archives.gov/documents/Jefferson/03-10-02-0128-0002>.

83. Thomas Jefferson, *To James Madison from Thomas Jefferson*, FOUNDERS ONLINE (Sept. 6, 1789), <https://founders.archives.gov/documents/Madison/01-12-02-0248> ("Every constitution

“we the people” have a role to play in constitutional politics. Those in the audience at the Lincoln-Douglas debates engaged with the Constitution through their senses of touch, sight, and hearing in ways that would flummox the modern political consultant (and the modern political scientist).

American politics is in a sorry state today, and unfortunately, neither political party has an incentive to raise the sophistication of their rhetoric. However, if the incentive structure were somehow to change, these results suggest that the public would exhibit the sophistication needed to evaluate complex constitutional arguments from their leaders. Even if this prediction seems naive, I hope that these initial findings lead to further theoretical refinements and empirical testing of issues relating to constitutional rhetoric.⁸⁴

then, & every law, naturally expires at the end of 19 years. If it be enforced longer, it is an act of force, & not of right.”).

84. One interesting avenue for future research comes courtesy of the Schmooze’s own Mark Graber, who has found that presidential references to the Declaration of Independence have increased at roughly the same time that constitutional rhetoric has decreased. Mark A. Graber, *Trumping the Declaration: Presidents and the Declaration of Independence in the Twentieth and Twentieth-First Centuries*, in *THE CAMBRIDGE COMPANION TO THE DECLARATION OF INDEPENDENCE* (Michael Zuckert & Mark A. Graber eds., forthcoming 2023).