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Speaker: Jack N. Rakove, Pulitzer Prize Winner; Professor of Political Science; Professor of History and American Studies, Stanford University, U.S.

Host: Professor John Harper at SAIS Bologna, Kenneth H. Keller Professor, Professor of American Foreign Policy

**Trumping the American Constitution: A Genuine Crisis?**  
*Part of the American Foreign Policy series*

In his lecture Professor Jack Rakove discussed the challenge that President Donald Trump poses to the vitality of the American constitutional system, a particularly timely argument given the highly-charged political climate in the United States. Rakove emphasized that when Trump swore the oath of office to “preserve, protect and defend the Constitution of the United States,” he was playing, “a terrible joke...on the American people.” According to Rakove, Trump has no real understanding of the Constitution, meaning that the system must now operate under a president whose knowledge and decision-making capacities are questionable. One example is the animosity Trump displays toward the press, which represents a renunciation of his constitutional duty to support the First Amendment.

In the wake of the Trump election, some academics and members of society called for action by “Hamilton Electors,” proposing that this was an occasion when members of the electoral college should take the responsibility of overturning the vote of the people within their own states. Rather, they should act independently to preserve democracy. However, Rakove believes that this would have been an affront to history and the constitutional system, as the Framers of the Constitution imagined that popular election or an appointment by the electors were alternative modes of election. The electors were not conceived as censors on an effective popular vote

Rakove went on to highlight the two constitutional mechanisms that may be used to remove Trump. The first possible method is the impeachment clause, which essentially codifies the process for the removal of the president, vice president and other officers on the charges of “treason, bribery, or other high crimes and misdemeanors.” Because there was so much uncertainty about the nature of the political power of the presidency, Rakove argues, the Framers thought it was important to have some mechanism of removal for a deficient president. The second mechanism is the 25<sup>th</sup> amendment, which effectively allows for the removal of a president if he or she is unable to fulfil the duties of the office. It does not require the legal corroboration that would go into impeachment, but simply that the president have some level of incapacity.

“Trump might well be laying a factual basis for removal by demonstrating his mental incapacity to perform his functions,” Rakove noted. He cited reports of Trump’s incompetence, including his inability to absorb information and his inconsistency on recalling facts and matters of policy. However, Rakove believes that impeachment may be the more effective remedy, because it has precedents.

Rakove then posed the question of whether it would create a constitutional crisis if either of these procedures were implemented. He believes that their use would not constitute a crisis precisely because these are the mechanisms the Constitution positively provides.. It would be a politically dramatic moment, but it is one sanctioned by the Constitution. Thus, that these actions would be harmful to our democracy is a problematic argument.

Rather, the true crisis itself comes from having elected a person to the position who is incompetent for the job, Rakove argued. “The real crisis of the Trump presidency is the Trump presidency,” he said. He goes on to describe the Unitary Theory of Presidential Power, a philosophy most Americans subscribe to. It is a core principle that the power over the entire executive branch of government is vested in a single person the president. Rakove mentions that this was a highly contentious decision for the Founding Fathers, but was ultimately agreed upon. Whereas Congress has its powers divided and distributed, the Unitary Theory provides for the president to have the concentration of executive power. There were three values which underlay this theory: energy, dispatch and responsibility. The president should display these qualities, which Rakove believes Trump does not. In fact, Rakove believes that there has been strong evidence revealed over the past few weeks that may lend itself to the impeachment of Trump or his removal through the 25<sup>th</sup> amendment.

But when it comes to preserving democracy, Rakove believes that the best way forward is through a political judgment. He states the redemption of American democracy, must come through elections by the American people. Rakove concluded by saying that the looming congressional elections in November are some of the most important in American history, and that the amount of mobilization going on suggests they will be a true test of the viability and strength of the American constitutional system.