

Democracy Under Threat: The Rise of Presidential Power

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The United States of America is a country founded on the democratic principle of governance by the people. Since the establishment of the country in 1776, upholding democracy has always been a concern, but the Trump administration and subsequent reckoning with presidential power have brought democracy and its intricacies to the forefront of political discourse in the U.S. The Constitution, the governing document of the nation, has historically preserved democracy through mechanisms that balance power between the branches of government. A cyclical pattern has emerged that tests these mechanisms, where the presidency overextends its reach and in turn Congress reasserts its own role to prevent abuses of power. In the underlying long term, presidential power follows an upwards trend as the executive retains some measure of increased influence following each resurgence of Congress. The overall trend of increasing presidential power forces one to question the resilience of American democracy. Therefore, this paper aims to contextualize the status of presidential power within the history of the U.S. from World War II to the present in order to shed light on possible implications of the changing government dynamics on the future of American democracy.

I. The Relationship Between the President and Congress: Intentions vs Reality

To understand how and why the role of the president today has expanded from its original scope, to what historian and prominent author on the subject Arthur Schlesinger calls the “imperial presidency,” it is necessary to analyze the intentions of the framers of the Constitution.¹ When drafting the U.S. Constitution, the founding fathers envisioned a government comprised of three branches: judicial (Federal and Supreme Courts), legislative (Congress), and executive (Office of the President), each with their own responsibilities. The branches were designed with a system of “checks and balances” in mind to prevent any single section of government

from abusing its power and threatening democracy.² Responsibilities were divided so that no single branch could enact policy without consultation with the other two, especially for decisions concerning the tools of power such as the military or finances.³

After extensive deliberation, the division of powers was outlined in the first three articles of the Constitution. Two sections are notable as they dictate the areas where abuses of power are typically in question and are therefore pertinent when discussing the balance of power between the legislative and executive branches. The first section is Article I Section 8, which states the role of Congress. It declares that Congress has the ability to make laws, and “to lay and collect Taxes, Duties, Imposts and Excises,” giving Congress control of the country’s finances, and the responsibility to raise, organize, arm, and discipline the military. It also states that Congress is granted the ability to declare war.⁴ The second article dictates the powers of the president. The president can appoint ambassadors and Supreme Court judges with the approval of Congress, “grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment,” and is named Commander in Chief of the Military, making them the highest ranking official.⁵ This section also establishes that foreign policy is within the president’s purview through appointing ambassadors that act as representatives of the United States abroad, as it implies the president has a “responsibility for the conduct of the nation’s foreign relations.”⁶

Despite the Constitution’s explicit specifications of most responsibilities, it also contains intentional ambiguity. The founding fathers predicted that the duties of the president would need to evolve as national and international circumstances changed.⁷ To ensure this necessary transformation of power was kept in check, the process of impeachment, whereby Congress removes the president, was created as a failsafe against tyranny.⁸

The founding fathers' predictions were correct; the emergence of globalization created conditions necessitating a larger role for the executive branch of government. The technological advances initially spurred by the industrial revolution led to a more easily accessible and interconnected world, which in turn created a greater need for foreign policy. The executive assumed much of that responsibility in the case of the U.S. The executive is best suited to handle sensitive information and act quickly and was therefore the branch of government most appropriate for handling foreign policy. Congress is unable to handle these tasks because the legislative process involves extensive deliberation. The congregation of many perspectives is meant to ensure that the best possible course of action is taken but is counterintuitive to quick action.⁹ Congress is also too large to be trusted with sensitive information. The president, on the other hand, can act quickly because the executive is not a divided body and is able to act unilaterally.¹⁰ In addition, as a smaller body, the executive is more trustworthy in the retention of matters of secrecy. International law dictated that there was a need for a national point of contact and given the executive's capability for swift and discreet action, the president was made the face of the United States abroad.¹¹

These practical acts of the presidency, the ability to act quickly and discreetly, allow for instances when the president can make decisions without the approval of Congress. For instance, under the claim of national security, the president can refuse to share information with Congress.¹² This creates a loophole that enables presidents to justify acting beyond their purview. It does not go against the Constitution since one of the more ambiguous portions of Articles I and II is foreign policy. The vague division of power between the two branches on matters of foreign policy allowed presidents to interpret their role in ways never imagined by the founding fathers.¹³ While a broader presidential role can be deemed necessary, it opens the door for the abuse of power as it circumvents the aforementioned checks and balances. The evolution of the foreign policy aspect of the presidency has become increasingly relevant in a globalized world and is attributed to being the root cause of the "imperial presidency."¹⁴

The other major realm through which the President can extend their power is during times of crisis. Similar to foreign policy, this is due to a need for swift action that only the executive can

provide.¹⁵ An example would be the "New Deal" policies enacted by President Franklin D. Roosevelt to mitigate the effects of the Great Depression, a severe economic recession from 1929-1933. Roosevelt enacted welfare policy in the form of relief programs, increased regulation of banking, and protections for labor organizing, all of which were considered beyond the scope of presidential power. The "New Deal" was contested by Congress, but Roosevelt's agenda was eventually granted, allowing the president to use powers originally delegated to the legislature in the Constitution.¹⁶

In cases of crisis, presidential power is expanded out of necessity, and is therefore not perceived as an abuse of power.¹⁷ People put aside their concern in favor of action, leading to what is called a "savior" presidency where the public praises a strong executive.¹⁸ Since this augmentation is intended to be temporary, if presidential power does not decrease following the crisis, and is deemed excessive by the public, a resurgence of Congress ensues. Public opinion plays a significant role in this cycle, drawing the line where executive power is considered excessive.¹⁹

Due to the influence public opinion has on the degree to which executive power is tolerated, the media has become an important tool of the presidency. Through the media, the president can address the public directly and gain support for their agenda.²⁰ As long as the public is on board, presidential measures are less likely to be seen as an abuse of power. If the president is facing opposition from Congress, they will use contact through the media to sway public opinion. To some degree, Congress must concede to reflect this opinion, ultimately carrying out the wishes of the president.²¹ Despite not having supremacy in decision making, the executive is able to shape the decision process and direct Congress to match their agenda.²²

If presidential power remained at the level intended by the founding fathers, the relationship between the two branches would be constant. Circumstances such as globalization have changed the demands placed on the executive and allowed for presidential influence to grow, initiating a cyclical pattern. It is the nature of each branch of the government to assert their power, and by doing so, it gives rise to an "equal and opposite" reaction from another branch of the government.²³

II. The Cycle from WWII to Obama

The evolution of presidential power began almost immediately after Washington's Farewell Address; the actions of each president since then have been affected by whichever body of government had the most power at the time they entered office. Presidents whose terms were in times of crisis, such as war or economic recession, often experienced enhanced presidential power, and those who came into office after these periods generally faced limitations from Congress. The following is a timeline of the tradeoffs in dominance after WWII and the acceleration of globalization.

As argued by Arthur Schlesinger, presidential power entered a resurgence during WWII after a period of congressional suppression. He argues that through WWII and the subsequent wars in Korea and Vietnam, the power of the presidency increased. The transformation of the role was significantly impacted by the Supreme Court case *U.S. v. Curtiss-Wright Corporation et al.* (1936) where an arms producer contested a U.S. embargo on arms deals enacted by President Franklin Roosevelt on the basis that only Congress could enforce such a policy, not the executive. The Court ruled that the president, as the unified representative of the U.S. abroad, has the power to make foreign relations without consultation with Congress, which has had major implications for opening unilateral action by the executive.²⁴ This ruling was used in three significant instances. President Franklin D. Roosevelt used it to act during WWII, President Truman to enter the war in Korea, and President Lyndon B. Johnson to deploy troops during the Vietnam War — all instances without the approval of Congress.²⁵

This progression of presidential power culminated in the Watergate Scandal, when a strong executive was no longer needed to address a crisis. President Richard Nixon used his position to obstruct justice and tamper with the 1972 election.²⁶ The result was Nixon's impeachment and a period of great mistrust of the presidency by the American people.²⁷ This event marks a turning point between the president holding relatively more power than Congress, to what James L. Sundquist calls a "resurgence of Congress."²⁸

To regain control, Congress had to reassert dominance through legislation. They reorganized fiscal policy²⁹ to recover the power of the purse, tried to claim more control in the realm of foreign policy, and implemented measures of oversight to

rein in the executive.³⁰ Andrew Rudalvige substantiates Sunquist's concept of the resurgent Congress with evidence such as the War Powers Resolution (1973). The document was intended to "enhance legislator's ability to control president's use of force" and The Intelligence Oversight Act (1980), which "limits the autonomy of executive branch law enforcement and intelligence activities at home and abroad."³¹ However, this resurgence was seen as an insufficient solution. Re-asserting the role of Congress did not reverse the precedents set during the period of presidential expansion.³²

Following this period of congressional revival, the terrorist attack on September 11, 2001, created new circumstances to justify an inflated presidential role. Leading up to 9/11, a new cycle of the presidency gaining power was initiated by President Ronald Reagan who was gaining influence abroad against the backdrop of the Cold War, but it was the national crisis of 9/11 that truly reasserted presidential dominance within the government.³³

Presidential power has continued to grow in the post 9/11 world. President Obama was accused of extending his power by maintaining George W. Bush's policies, implementing healthcare policy, pushing for environmental preservation measures, and implementing Deferred Action for Childhood Arrivals (DACA), an immigration policy meant to protect undocumented children. The implementation of these policies was only possible with unrestrained presidential ambitions. As Obama was leaving office, many were concerned about who his successor would be, as they would be inheriting an office more powerful than the one Obama entered.³⁴

This trepidation towards the upswing in presidential power was well founded, as the presidency of Donald Trump pushed presidential power past its limits, leading to articles of impeachment. Trump faced investigations into both his campaigns and a case of obstruction of justice. While the resolution of impeachment failed in the house, it was clearly a moment marked by what many called imperial actions.³⁵ Trump's unprecedented threat to refuse to vacate the presidency heightened concerns about how far executive supremacy has come, as well as the potential impacts of a powerful executive on democracy.³⁶ Following the 2020 election, the legislative branch has been attempting to reign in executive power with the "Protecting Our Democracy Act," which attempts to restore checks and balances and protect election processes from

interference. It was approved in December of 2021, signaling a resurgence of Congress.³⁷

Considering a timeline of power shifts since WWII illustrates the cyclical pattern where executive influence extends beyond its intended bounds and is subsequently met with a challenge by Congress. This short run pattern is evident, as well as the long-term changes to the executive; after each short run cycle, the role of the president still retains some of the power gained during the expansionary period.³⁸

III. Implications

What are the long-term implications of the increase of presidential power? Should the American public be concerned that the executive will eventually obtain enough power to overrule Congress and dismantle democracy? To date, the measures designed by the framers of the Constitution to act as checks and balances on the abuse of power have proven effective in addressing domestic instances of excessive power. When the presidential role is overextended, it has consistently been met by impeachment or congressional suppression, however, the lack of constraints on presidential power when enacting foreign policy is a continued cause for concern. As there is no higher authority capable of governing globally without bias and meaningfully mitigating the actions of the U.S. government in the international arena, presidential power can go unchecked. Without opposition, the executive can act to further its own agendas, such as the Bush administration's manipulation of the vulnerable state of the nation to justify entering a war in Iraq.³⁹ To prevent abuses of presidential power abroad, there is need for a clear strategy to limit foreign policy powers not explicitly dictated in the Constitution.⁴⁰

Therefore, regulating presidential power remains an issue. The actions of Donald Trump during his presidency have exacerbated concerns that the policies in place to constrain the executive may eventually reach an impasse where they are no longer effective. Many link the growth of presidential power to the weakening of democracy, citing concern that Trump's unique time in office is a symptom of a larger problem.⁴¹ While these sentiments are speculative in nature, they draw on a historical background which this paper has attempted to address.

While the modern democracy discourse

tends to center on a pessimistic view of the future trends of a powerful executive, scholar Gene Healy takes an optimistic stance, proposing methods to stunt the long-term growth of presidential power. Executive expansion was made possible by the United States' pivotal international role since the end of WWII, therefore, if the international influence of the U.S. decreases, so will the power of the president.⁴² Domestically, the rising mistrust of the government and the fragmentation of politics may prevent the president from acting unilaterally as it is more difficult to garner public support. However, mistrust could have the same effect in the wrong direction, encouraging democratic collapse.⁴³

It is impossible to tell what the future holds for American democracy in the underlying long run of the cycle of congressional and presidential power. Just as the founding fathers could not have predicted the globalized world of today, no one can confirm that the system of checks and balances will remain intact, or what other global changes may influence U.S. politics. The survival of U.S. democracy rests on the strength of the Constitution or its ability to adapt. It leaves only one question – how long can the Constitution endure before drastic world changes make it obsolete?

Endnotes

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5. U.S. Constitution, art. 2, sec. 2.

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29. Fiscal policy is a strategy that alters government spending and taxes to influence the economic conditions in a country (Horton and El-Ganainy, "Fiscal Policy," International Monetary Fund, 2020).

30. Sundquist, *The Decline and Resurgence of Congress*, 199; 275; 324.

31. Rudalevige, *The New Imperial Presidency*, 7.

32. Cronin, "A Resurgent Congress and The Imperial Presidency," 216.

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