

The Imperial Presidency

IMPERATIVE OR DANGEROUS?

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The Power of **AND**

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INTRODUCTION

The question of the "Imperial Presidency" is one of long-standing in United States (US) politics, but it has become especially controversial since the "Great Debate" over the Korean War. This debate has intensified due to the actions of the Bush and Obama administrations after September, 11th 2001.

A presidency becomes "imperial" when it relies on powers beyond those allowed by the Constitution of the United States. This study asks whether executive imperial powers are necessary in the modern international system or whether they undermine US and global security.

It concludes with suggestions for how the Executive's imperial powers might be curtailed.

Constitutional Separation of Powers

The US Constitution assigns commander in chief powers to the president. "[t]he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."

Additionally, the US Constitution assigns the power to declare war to the Congress. "to declare war, grant letters of marque and reprisal, and make rules concerning capture on land and water."

Principle Issue Areas

Drone Operations

As Zenko stated in 2013, "You know, if you had told anybody...after 9/11, that the U.S. would [have] conducted something like 425 targeted killings in at least three countries, killing over 3,000 people...nobody would have believed you, even after 9/11."

Is the use of drones under the Authorization to Use Military Force passed by Congress in 2001 "imperial?"

Is the President's power to kill at a distance without Congressional oversight undermining US and global security?

Yemen

The US is providing targeting intelligence and refueling to Saudi planes (bought from the US) bombing in Yemen. This campaign has caused a humanitarian catastrophe and implicated the US in war crimes. All this has been done without even a Congressional debate on US involvement.

Libya

The Obama Administration argued that the need to intervene was an impending humanitarian disaster, although it evolved from that to a mission to support local ground forces and eventually to 'regime change.' Zenko argues Gaddafi was the intended target of the initial US attack, thus making it an act of war without Congressional authorization.

The Obama Administration argued the intervention did not start the 90-day clock imposed by the 1973 War Powers Resolution because US ground troops were not involved in 'hostilities'.

LITERATURE REVIEW

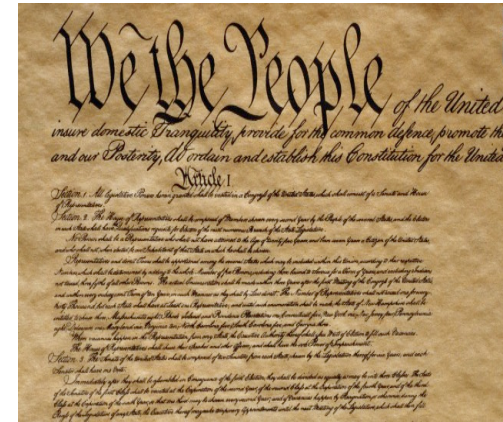
One of the oldest conflicts in the American system of government is that between Congress and the President over the right to formulate and implement foreign policy. These are not just debating points for historians and constitutional lawyers, but critical issues which need to be addressed if we are to see the successful exercise of American diplomacy as we did in the 1980s. Our effectiveness in dealing with the problems ahead, especially U.S.-Soviet competition in the Third World, will depend to a significant degree on our ability to resolve the adversary relationship between the President and Congress. (Tower, 1981, p. 229)

"the policy of indiscriminate global intervention, far from strengthening American security, seemed rather to weaken it by involving the United States in remote, costly and mysterious wars, fought in ways that shamed the nation before the world and, even when thus fought, demonstrating only the inability of the most powerful nation on earth to subdue bands of guerrillas in black pajamas." (Schlesinger, 1973, p. 299)

Identifying only the war-declaring clause of Congress ignores seven other clauses in the U.S. Constitution that vest in the legislative branch military and national security powers (raise and support armies, make rules for the military, grant letters of marque and reprisal, call forth the militia, provide for organizing, arming, discipline the militia, etc.) (Fisher, 2009, p. 129)

Textual grants of war power to the President are paltry in relation to grants of that power to the Congress. The President is denominated "commander-in-chief." In contrast, Congress is given power to "declare war," to lay and collect taxes "to provide for a common defense," to "raise and support armies," to "provide and maintain a navy," to "provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions," to "provide for organizing, arming, and disciplining, the militia," and to "make all laws necessary and proper for carrying into execution . . . all . . . powers vested by this Constitution in the Government of the United States." (Glennon, 2011, p. 3)

A bipartisan group that we led, the National War Powers Commission, has unanimously concluded after a year of study that the law purporting to govern the decision to engage in war - the 1973 War Powers Resolution - should be replaced by a new law that would, except for emergencies, require the president and Congressional leaders to discuss the matter before going to war. (Baker & Christopher, 2008)



CONCLUSION

The effects of the Imperial Presidency have already manifested themselves in the Trump Administration.

President Trump ordered a military strike on a Syrian airfield, comprised of 59 Tomahawk missiles, without Congressional debate and authorization.

Additionally, President Trump is threatening to strike North Korea, or to shoot down a North Korean ballistic missile, without Congressional debate or authorization.

Ultimate authority and guidance for the conduct of government activities originates from the Constitution.

No external directive or desire to support the veracity of external institutions may supplant the Constitution's place as final determinant.

The primacy of the Constitution and the demands it places upon the legislative branch require the breadth of war activities to pass the entirety of the body's judgment.

This judgment may not be skirted by precedent as historical patterns, regardless how long-lived, may be flawed. It may not be avoided by external agreement, as such bargains may bear ulterior motives. This judgment may not be vexed by quibbles over definitions, which are designed only to evade the point at issue.

In short, the Congress must wrest war powers from the Executive as demanded by the Constitution in order to place the power appropriately and avoid continued activities of an unconstitutional nature.

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