

Trump's Impeachment: The Greed for Presidential Power and the Limits of the Constitution

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ABSTRACT

Prompted by populist rhetoric Donald Trump has spent his time in office trying to bend the conventions of the American presidency to his will. Since taking office, he has repeatedly taken unilateral actions to defy Congress and push the limits of his own power. Now he appears to be trying to override a core principle of democracy: that no one is above the law. Faced with an impeachment inquiry, Trump has openly defied the core constructs of the Constitution. President Donald Trump is incensed by the idea of co-equal branches of government and rejects the House's right to investigate him. The main aim of this paper is to find out the extent of constitutional limits put on the Executive and the validity of the system of check and balance and to what extent executive privilege would save Trump. Thus, this paper reveals that regardless of the result of the impeachment process, it is critical that those on both sides of the political spectrum work to assure that the growth in presidential power is at least checked, if not reversed.

Keywords: Impeachment, Congress, US President, Constitution, Check and Balance, political parties

ABSTRAK

Didorong oleh retorika populis, Donald Trump telah menghabiskan waktunya di kantor untuk mencoba membengkokkan konvensi kepresidenan Amerika sesuai keinginannya. Sejak menjabat, ia telah berulang kali mengambil tindakan sepihak untuk menentang Kongres dan mendorong batas kekuasaannya sendiri. Sekarang ia tampaknya mencoba untuk mengesampingkan prinsip inti demokrasi: bahwa tidak ada seorang pun di atas hukum. Dihadapkan dengan penyelidikan pemakzulan, Trump secara terbuka menentang konstruksi inti Konstitusi. Presiden Donald Trump marah dengan gagasan cabang pemerintahan yang setara dan menolak hak DPR untuk menyelidikinya. Tujuan utama dari makalah ini adalah untuk mengetahui sejauh mana batasan konstitusional yang dikenakan pada Eksekutif dan validitas sistem check and balance dan sejauh mana hak istimewa eksekutif akan menyelamatkan Trump. Dengan demikian, makalah ini mengungkapkan bahwa terlepas dari hasil proses pemakzulan, sangat penting bahwa kedua sisi spektrum politik bekerja untuk memastikan bahwa pertumbuhan kekuasaan presiden setidaknya dikendalikan, jika tidak dibalik. Kata kunci: Impeachment, Kongres, Presiden AS, Konstitusi, Check and Balance, partai politik

INTRODUCTION

Since the nation's founding, Congress and the Executive have struggled for supremacy. The 20th Century witnessed a steady if irregular expansion of presidential authority that has been carried over into this first decade of the 21st Century. The clash between the executive and legislative branches has raised fundamental questions about the power of the presidency, the balance of powers under the U.S. Constitution and the state of American democracy. The delegates to the Constitutional Convention of 1787 gave surprisingly little attention to the executive branch of government. In contrast to the protracted debates over the powers of Congress, the powers of the president were defined fairly quickly and without much discussion.

Over the nation's long history, with only short interruptions, power has flowed increasingly to the Executive Branch. The reasons are numerous but include the successful and desirous exercise of power by ambitious presidents from Lincoln to the two Roosevelts, the growth of the administrative state in the 20th century, and the realization that Congress is ill-suited compared to the President to make timely responses to national security threats and crises. A good many presidents since Woodrow Wilson have asserted that the Constitution is challenging. Presidents are understandably unwilling to admit that their battles with Congress are not the result of a blunder in the design of the Constitution. They are the result of Checks and balances. The federal government was meant to be powerful but limited, and the Constitutional order was created to preserve those limits.

The power of the President is something that has been expanding since the founding of the United States ([Greene, 1994, p.123,125](#)), raising the need to consider the implications of this expansion within the constitutional structure of separation of powers, no matter which party controls the White House. This expansion in presidential power has created a constitutional imbalance between the executive and legislative branches, calling into doubt the continued efficacy of the structure of separation of powers set forth by the Framers. Because many, if not all, the factors that have led to increased presidential power are the products of inevitable social and technological change, they are not easily remedied ([Marshall, 2008](#)).

Donald Trump has spent his time in office trying to bend the conventions of the American presidency to his will. Now he appears to be trying to override a core principle of democracy: that no one is above the law. Faced with an impeachment inquiry, Trump has openly defied the core constructs of the Constitution. He was irritated at the idea of co-equal branches of government and rejects the House's right to investigate him. He has deployed a convoluted logic in which he has declared that the courts cannot investigate him because as president he cannot be charged with a crime but also that Congress cannot impeach him because its inquiry is politically illegitimate.

Trump's White House has ignored document requests and summons and readily invokes executive privilege - going so far as to argue that the privilege extends to informal presidential advisers who never held White House jobs ([Cox, p. 1384](#)). The impeachment standoff follows a pattern Trump has established throughout his presidency as he has jettisoned experienced advisers and flouted conventions. The fact that he survived the special counsel's Russia investigation without paying much of a political penalty left him all the more emboldened ([Lemire, 2019](#)).

One day after Robert Mueller's faltering testimony brought an end to that threat, Trump unleashed a new one by asking Ukraine's president to investigate his political foe Joe Biden ([Lee, Daniel, Lieberman, Migliozi, and Burns, 2019](#)). That prompted the fast-moving impeachment inquiry that Trump resisted. The White House's refusal to cooperate with the House impeachment inquiry amounts to an unabashed challenge to America's longstanding constitutional order. Although the Constitution created a federal government of limited powers, the Supreme Court has ruled that the government has certain 'implicit' powers that are necessary for it to function properly.

LITERATURE REVIEW

The capacity of chief executives to fulfill their tasks and exercise their powers to affect the output of government have been the focus of unremitting analysis. Scholars such as ([Richard J. Ellis, 2013](#)), ([George C. Edwards III & William G. Howell, 2011](#)), ([George C. Edwards, III, Kenneth R. Mayer, & Stephen J. Wayne, 2018](#)) illustrate their analysis by fully integrating timely and fascinating examples. Guiding their analysis by the examination of two broad perspectives on the presidency - the constrained president ("facilitator") and the dominant president ("director") they show how different cases illuminate our basic understanding of the presidency, making presidential power and leadership the perfect vehicle for understanding the president and his impact on the office and policy. ([Charles W. Dunn, 2011](#)) and ([Richard Elliott Neustadt, 1990](#)) explore the growth of presidential power, investigating its social, political, and economic impact on America's present and future. They discuss the role of the presidency in a government designed to require cooperation with Congress and how this relationship is further complicated by the expectations of the public.

However, the emphasis on the unitary executive, agoverning style that continues to be highly controversial, is flawed as few examples of this type of presidential leadership exist. The President to act as ultimate decider on policy actions is con- strained by things like Congress, his own prestige and ability to persuade, and the competing interests within his own administration in addition to his personality.

Presidential image would give a more realistic and less idealized view of presidential decision-making. Nonetheless, we often learn more about a president from his failures than his successes. The focus on policy failures rather than successes, then are we really getting an accurate view of leadership? Presidents seem to have taken more powers upon themselves from the 1990's onward with Congress and thus playing less of the role ascribed to them. While I was tempted to agree thinking about the Clinton and Bush administrations or even Obama, couldn't we say that elements of Neustadt's logic help explain the current governmental dysfunction evidenced by the battles between the Trump White House and Congress?

RESEARCH METHOD

Understanding the historical practices of Congress with regard to impeachment and its outcome is central to fleshing out the meaning of the Constitution's impeachment clauses. For that reason, examining the history of actual impeachments is crucial to determining the meaning of the Constitution's im- peachment provisions and the president's response. Consistent with this backdrop, this paper begins with an examination of the growth of the executive power and its influence on impeach- ment, including the perspective of the Framers.

Through a closer examination of presidential power and the limits put by the constitution, this paper looks into the potential problems encountered by the political system over the impeachment of President Trump and the implications this might have on the present and future policies.

The main aim of this paper is to find out the extent of constitutional limits put on the Executive and the validity of the system of check and balance and to what extent executive privilege would save incumbent Trump. Through the examination of archival research and secondary source materials produced by historians on previous cases, the paper outlines the different weaknesses and obstacles that hinder the well functioning of the impeachment process. This paper responds to the scattered state of constitutional and practical impeachment manipulations by identifying and exploring a series of key issues common to impeachment. These manoeuvres have exacerbated the balance of power within the structures of the government. Specifically, the U.S. is the world's oldest democracy, with a purely presidential system, an old constitution, a stable two-party system in which the parties regularly alternate in holding the presidency and a system of checks and balances among the three branches.

Thus, this paper reveals that regardless of the result of the impeachment process, it is critical that those on both sides of the political spectrum work to assure that the growth in presidential power is at least checked, if not reversed. The result is that a presidential impeachment carried out in the early 21st century simply cannot carry the gravitas of previous examples.

THE MODERN PRESIDENCY: TOOLS OF POWER

The growing expectations that the public has of presidents creates a gap between expectations and formal powers. Presidents seek to bridge this gap, by using personal attributes and cultivating strong public support. They have increasingly centralized, at the expense of many of the cabinet officials, policy-making authority as a means of maximizing their own power to control the political environment.

The American Presidency has changed dramatically over American history. Beginning with George Washington, many presidents have used their implied and informal presidential powers to enhance their personal influence, and often the power and potential influence of later presidents. Many of these implied powers, which are assumed as granted under the Constitution although not explicitly listed, stem from a president's responsibilities during times of national emergency or crisis. For example, early presidents, including Washington and Jefferson, didn't hesitate to exercise their commander-in-chief authority by ordering Navy ships into hostile waters without an express declaration of war from Congress. And in his bold Louisiana Purchase, Jefferson showed that a president who acts decisively might successfully compel others to follow his lead after the fact.

A president's informal powers, or the powers to persuade others to follow his lead, derive in part from his use of the visibility and prestige of the office itself. As America's only nationally elected leader, the president is considered the country's 'first citizen' who stands and acts for the American people as a whole. Some presidents, such as Lincoln, Wilson, Theodore Roosevelt, and Franklin Roosevelt, drew upon their informal powers during times of national crisis to increase their influence over others in Congress and the executive branch. Other presidents, including Lyndon Johnson, drew upon their personal skills and intimate knowledge of legislative processes to pass bold national initiatives such as the Civil and Voting Rights Acts (["The Modern Presidency", 2017](#)).

During the twentieth century, the presidency itself was transformed. As they presided over two world wars, a major depression, and a Cold War, several twentieth century presidents increased their powers and influence at the cost of Congress and other government institutions. Presidents now compete with Congress in setting and enacting the country's legislative agenda, and the White House is the focal point for setting foreign and domestic policy. Presidents Nixon, Reagan, and Clinton, for example, conducted specific foreign policy initiatives almost wholly from within the White House, sometimes at the cost of a consistent and unified U.S. foreign policy.

The institutional presidency has also grown during the twentieth century. It includes the White House Office (WHO) and the Executive Office of the President (EOP). These offices surround modern presidents in layers of bureaucracy that they can use to enhance their power and influence. However, some presidents have found that the White House bureaucracy can actually make them feel isolated and out-of-touch. A key position is White House chief of staff. The chief of staff serves as the president's 'gatekeeper,' and is often credited or blamed for helping or detracting from the support and effectiveness of recent presidents (["The Modern Presidency", 2017](#)).

Although the presidency offers a range of formal, implied, and potential informal powers, modern presidents struggle with the inherent limitations of the office and often have difficulty coping with conflicting public expectations. For example, most Americans want their president to be a 'regular person' who understands them and their daily struggles. Yet, many Americans also expect their presidents to rise above commonality and command the international stage. Similarly, Americans usually prefer pragmatic approaches to governing and executive leadership, but also expect presidents to lead with visionary policy initiatives. Modern presidents must meet these and other conflicting assumptions in a political environment where institutional challenges, including the opposing party in Congress and orga-

nized special interests, daily attempt to thwart or fundamentally reshape the president's policy initiatives.

THE STRUGGLE FOR POWER

In the twentieth century the power of the executive has been extended significantly. Chiefs of the Executive have major responsibilities, and their public profile is markedly high. Much of their increase in power derives from the growth in governmental interventionism, but the globalization of economic and political concerns has also added to their responsibilities and recognition. In 1933, the Great Depression accelerated a fundamental change in political behavior and led to the emergence of modern presidency. The sheer scale of economic dislocation and hardship required a national lead, and the administration of Franklin D Roosevelt was only too willing to respond. Since then, the American system has become a very presidential one and the political process now requires a continued sequence of presidential initiatives in foreign policy and in the domestic arena to function satisfactorily.

As enthusiasm for presidential power increased in the 1960s, there was general agreement that the federal government should have a significant role in the nation's economy and in creating and maintaining a welfare system. This growth of executive power prompted ([Arthur Schlesinger, 1973](#)) to argue that the concept of the constitutional presidency had given way by the 1970s to an imperial presidency, a revolutionary use of power very different from what had originally been intended. He was largely basing his argument on the Nixon presidency and concluded that the institution no longer seemed to be controllable via the supposed constitutional checks and balances. At the Philadelphia convention, some of the framers argued that the president should be subordinate to Congress. The scope of a president's power depends largely on the views of the president. Congress has delegated a great deal of authority to the president because Congress has time to provide only gen-

eral outlines for public policy.

The President of the United States is certainly the most powerful person in the world - but, interestingly, the Constitution's drafters did not expect this to be the case. In fact, James Madison, the Constitution's principal architect, worried that the 'balance of powers' tilted toward the House of Representatives. But from the start, presidents worked to protect and expand their turf and they generally succeeded. George Washington set the precedent; when Congress requested documents pertaining to the controversial Jay Treaty, he refused to turn them over, introducing the doctrine of executive privilege and making a point about the autonomy of the executive branch.

Over the course of the nineteenth century, other presidents added new weapons to the office's arsenal of powers. Andrew Jackson was the first to make extensive use of the veto and Abraham Lincoln read broadly into his wartime powers as commander-in-chief. But with Teddy Roosevelt and the arrival of a new, more complex century, the office's power grew at an even faster rate. Part of this growth in the presidency might be classified as organic - the inevitable result of the historical process.

As the nation's economy grew, the government needed to assume a larger regulatory role. As the world shrank, enabling the United States to increase its international presence, the federal government needed to expand its diplomatic presence. And many of the new demands placed on government could not be easily met by Congress. Take foreign policy, for example. Congress may be well suited to the task of drafting educational reform legislation - but 535 people cannot negotiate treaties or efficiently respond to a national security crisis.

And even complicated domestic legislation can be difficult for Congress to manage. When confronting the scientific complexities of environmental supervision or the financial intricacies of banking regulation, Congress's 535 members rarely manage to agree on more than the broad outlines of a legislative proposal. Consequently, many of the details are left for the presi-

dent to work out after he is handed the bill for implementation. The president gets to decide how to prioritize the legislation's content and how to interpret its critical sections. And the president also possesses the authority to appoint the staff that will oversee or run any agency or board created by the congressional act.

Thus, there was a certain 'natural' tendency for the presidency to expand as history progressed. But there were other factors contributing to the growth of the office, as well. For example, the presidency is more unified than the legislative branch. The executive office centers on one person- and therefore, the office more easily speaks with one voice. A president who knows how to use that voice is particularly powerful. The most effective presidents of the modern era have known how to work the national media that emerged at the turn of the twentieth century. Theodore Roosevelt was the first to recognize that the presidential office was a 'bully pulpit,' a great podium from which to shape public opinion. Franklin Roosevelt and John Kennedy were also effective communicators. Ronald Reagan was, hands down, the best at turning the presidential pulpit to his advantage. The 'Great Communicator' was masterful not only at delivering a message, but also at controlling the delivery of that message (Shmoop, 2008). Substantially, the Executive became an unequivocal position pregnant with the possibility of the abuse of power.

THE 1970S TO THE PRESENT DAY

Such abuses of presidential power did occur – Vietnam and Watergate were but the most significant. Many Americans realized for the first time in 1974 the tremendous stock of power in the hands of the President. The principle of a separation of powers had been incorporated into the Constitution to prevent a concentration of power in one part of the government. Watergate and the revelations of the misuse of power by the Executive Branch during several past presidencies reminded

people of the message spelt out by the Founding Fathers – a system that placed too much responsibility in the hands of one man must offer temptations for wrongdoing.

The nature of the presidency at a particular moment depends considerably upon the incumbent. Great men tend to make great Presidents, but the active presidential leadership of the 1960s and the habit of congressional compliance is out of fashion. It is commonplace among academics of recent years to think more about the limitations of the office than of its opportunities for leadership, even if those Presidents they admire have been those who imposed their stamp upon the office.

Presidents, either by their nature, by coincidence, or a combination of both, are never keen on the idea of giving up power and always seem welcoming to the idea of acquiring more. Therefore, through the years, the President of the United States has built up so much power that each election round brings with it enormous complications. Consequently, even if the Oval Office was occupied by an individual other than Donald Trump, it would still be a worthwhile and timely debate. It is a fundamental clash of ideas. On the one hand, there's an idea of convenience.

In many instances, some could argue, that it is better to act imperfectly than to delay the perfect action. Had Congress been the actor for nuclear launches in the 1940s, the outcome of World War 2 arguably could have been different. The ability to act swiftly is crucial in uncertain situations, and allowing the President such power arguably protects Americans and national security. On the other hand, it is against the very core of democratic principles to place the most important decisions in the hand of a single individual. That is, two minds are better than one. The 2016 election may have produced Donald Trump, despite losing the popular vote, but such a feat is not new in the American system of democracy.

The name Donald J. Trump alone is enough to spark heated debate across the country. It is nearly impossible to not hold an opinion of the individual who currently holds the most power-

ful position in the world. Beyond the controversial figure himself, however, lies a fundamental question related to how powerful the most powerful person in the world should be. The question of separation of powers necessitates enduring disagreement over the specifics ([Flaherty, 1996, p. 1816-20](#)). The fact that the office is currently occupied by one of the more polarizing figures does not establish this topic as debatable – it has been debated long before Trump entered into the public view and it will continue long after he leaves it. However, the current polarization of Trump specifically and America broadly makes a nationwide discussion over separation of powers and checks and balances essential for the future generation.

DISCUSSION AND RESULTS

Understanding America's presidency requires to do more than assess the relative merits of the presidents. It requires a careful look at the institution, its Constitutional character, and its history. The framers of the Constitution thought Congress would be the most important branch of government but the institutional structure they devised led to the gradual and inexorable growth of presidential power ([Ginsberg, 2016](#)).

GROWTH OF THE PRESIDENCY AND THE CONSTITUTIONAL LIMITS

Because of the vast array of presidential roles and responsibilities, coupled with a conspicuous presence on the national and international scene, political analysts have tended to place great emphasis on the president's powers. Some have even spoken of "the imperial presidency," referring to the expanded role of the office that Franklin D. Roosevelt maintained during his term. President Theodore Roosevelt famously called the presidency a 'bully pulpit' from which to raise issues nationally, for when a president raises an issue, it inevitably becomes subject to public debate.

A president's power and influence may have limits, but po-

litically the president is certainly the most important power in Washington and, furthermore, is one of the most famous and influential of all Americans. The powers of the president of the United States include those powers explicitly granted by Article II of the United States Constitution to the president of the United States, powers granted by Acts of Congress, implied powers, and also a great deal of soft power that is attached to the presidency ("[Annotated Constitution Article II](#)"). The role of the presidency has changed dramatically over the last several hundred years. First of all, when the founders created the presidency, they left it kindaloose. They weren't exactly very specific about what a president would do. As George Washington, was a man of virtue and that he in his behavior would set the precedence for the next president after him, the job is basically handed off by tradition from president to president.

The founders projected two things: they did not want a king they had just gotten rid of and designed a government that would resist mob rule. Those were the two things they were trying to get in between. But, a president has a lot of room to move in between the two of them. Obviously the constitution talks about the powers of the president. However, it provides little hint that the president would become as powerful as he has in modern times. What happened was, when they originally created the presidency they needed somebody who can move quickly. But, as people wanted quick action they handed over more and more power to the president. Substantially, Congress, which used to fight with the president a lot, during the Second World War and then nonintopresent day, has given up a lot of its power to the president.

The establishment of the presidency in 1789, by the framers of the Constitution of the United States, was an act of political creativity. The presidency had no real counterpart in historical experience. The framers aimed to have a strong, but responsible, chief executive, and to this end the office was made to consist of a single incumbent whose power would not be shared

with a cabinet or council. The president would be elected by a source outside the legislature - the Electoral College - and thus could govern without being indebted to Congress. The Constitution granted the presidency powers of its own. Believing, however, in balanced government, the framers created a strong Congress and a judiciary to check the chief executive.

The first incumbent of the office, George Washington, was an assertive executive who was active in both foreign and domestic affairs and who interpreted his powers broadly and defended them against congressional encroachment. Thomas Jefferson exploited the presidential role of party leader and won exceptional congressional support. Under his weaker successors, however, the office was eclipsed by Congress. Andrew Jackson revived the presidency by reinterpreting it as an organ of popular leadership. Abraham Lincoln, in the crisis of the Civil War, largely on his own claimed authority, expanded the armed forces, imposed a naval blockade, and used funds from the Treasury without congressional appropriation. Although Congress ratified many of Lincoln's acts after the deed, it soon reacted against the expanded power that he had given the presidency; his successor, Andrew Johnson, was impeached and narrowly escaped conviction.

Presidents want to accumulate power to accomplish their ends - it is just that some presidents are more effective than others in accumulating this power ([Neustadt, 1960](#)). Thus, it would be possible for a President to wield absolute power and authority, and often wields that power unjustly, cruelly. And that is precisely what the Founders wanted to prevent. They were far more worried about what an over-mighty executive might do than they were about the laws a recalcitrant Congress wouldn't pass. Of course, they didn't simply want a weak executive. In foreign policy, they wanted a strong one. Even today, presidents tend to move from domestic policy (The economic policies of Donald Trump, for example) to foreign policy (the Iran nuclear deal) as they realize how constrained they are at home. But ultimately,

there's a reason Congress is on top of Capitol Hill - looking down on the White House.

Nothing reaffirms the Founders' wisdom more than the fact that presidents complain so much about the Constitution: If it gave them the power they want, it would be worthless. Yet, the fact that presidents since 1789 have regularly signed bills into law shows the error of their complaints ([Bromund, 2017](#)). Yet in a curious way, Trump has a point - not about the Constitution, but the system that surrounds it. Over time, that system has become more and more constraining. Much of this system is not law, but natural practices of incumbents. Instead, it consists of rules made by administrators, drawing on powers unwisely - often unconditionally - delegated to presidents by Congress.

A strong belief that government power corrupts and destroys individual liberty has existed in the United States since the 18th century. The federal government was supposed to be powerful but limited. The Constitutional order was created to defend those limits. But its walls were breached by the rush of Wilson's progressivism. As Trump's complaints testify, the constraints of that order endure - but now, perversely, they make it harder to restore its limits ([Bromund, 2017](#)). The American operating system now defaults not to limited government, but to big government.

BALANCING THE PRESIDENT'S POWER

With this background, the drafters of the new constitution faced a delicate balancing act when they met in 1787 in Philadelphia. On one hand, most everyone despised the idea of a king or any similar autocrat who would threaten America's hard fought freedoms. On the other hand, most realized that for practical reasons, America needed a president - someone in whom America's executive power would be vested. The Constitution did a superb job of striking that balance. Specifically, how the Constitution empowers and constrains the President. In Article 2: "The executive Power shall be vested in a President of the

United States of America,” known as the vesting clause, this short but potent sentence gives the President enormous power and responsibility to enforce federal laws. The vastness of this power lies in large part in the discretion given the President to decide just how to carry out the laws.

For too long, the power of the executive branch has long exceeded the narrow set of powers and expectations set out by the U.S. Constitution. Unfortunately, there is little sign of this changing, with President Trump and the Democratic candidates alike perpetually seeking to push the limits of executive authority. Just because someone is elected president doesn't mean they can do whatever they'd like. And even for those who claim a 'mandate,' any purported mandate must be constrained by the limits of the constitution. While presidents have a tendency to take on an almost cultish devotion among their strongest supporters, Americans ought to see the dangerous path of infusing a single individual with so much power. Though there is still plenty of information to sort through, there is legitimate cause for concern about President Trump's apparent order to hold up congressionally approved aid to Ukraine ahead of a call with Ukraine's then newly-elected president Volodymyr Zelensky.

HOW DOES THE CONSTITUTION CHECK AND BALANCE THE VESTING CLAUSE?

The clash between the executive and legislative branches has raised fundamental questions about the power of the presidency, the balance of powers under the U.S. Constitution and the state of American democracy. The Separation of Powers devised by the founding fathers was designed to do one primary thing: to prevent the majority from ruling with an iron fist (“[Federalist Papers No. 51](#)”). Based on their experience, the framers shied away from giving any branch of the new government too much power. This separation of powers provides a system of shared power known as ‘checks and balances’ ([Taylor, 2017](#)).

The checks and balances have become the US Constitution's

greatest weakness over the last three decades. Since 1995, US government at federal level has arguably become dysfunctional. Legislation on key areas does not get passed as Congressional leaders refuse to time table legislation or leaders of the minority party in the Senate filibuster it - see, for example, immigration reform or gun control. Key pieces of legislation are seriously diluted by Congressional Committee chairs with links to big business –eg. The Affordable Care Bill ('Obamacare'). Senate leaders refuse to confirm presidential appointments, for example the Republicans' treatment of Merrick Garland in 2016. Budgets do not get passed and the federal government shuts down as a result, as in 1995, 2013 and 2018-2019.

Interestingly, all of the examples cited above were when one party controlled one or both houses of Congress and the other party controlled the White House. This is known as 'divided government' or 'gridlock'. This situation has become increasingly common in recent years. So, the checks and balances - potentially the US Constitution's greatest strength compared to the UK - has arguably become its greatest weakness as US government grinds to a halt.

Under Article 1 Congress can check executive power in many ways. First, only Congress - not the President - can actually 'make' laws. Second, if Congress dislikes how the President is enforcing a law, it can block the President's actions by amending the law or passing a new law. Third, while the Constitution empowers the president to ensure the faithful execution of the laws made by Congress and approved by the President, Congress may itself terminate such duties by impeachment and restrict the president. Congress can impeach the President if he truly fails to execute the laws (and that failure rises to treason, bribery or another high crime or misdemeanor) ([Lenhart, 2017](#)).

Presidents have accumulated vast powers and great armies under their command. Nevertheless, they have always conformed to the "rule of law". Yet one need look no further than other countries lacking rule of law to see how easy it is for a

president, even an elected one, to amass power to the point where he is no longer subject to checks and balances, and then the precious liberties of the citizens are in peril. The Constitution employs several techniques as limits on executive power. One is impeachment.

A few questioned its necessity, but for most of the delegates to the constitutional convention in Philadelphia in 1787 giving Congress the right to impeach the President was an obvious move. It was not to be used lightly. It was an emergency break against authoritarianism. Outside the convention, proto-democratic radicals warned of the danger in investing in one man so many kingly privileges. What if a would-be dictator bribed his way into office? What if he colluded with foreign powers, or abused his power: would it be sufficient simply to wait until the next election to remove him? Impeachment was a possible solution. Impeaching a president is the most consequential thing Congress can do - other than declaring war. So, President Trump not only should be impeached, he must be impeached if America's democracy is to remain intact.

This actually is a practice deeply rooted in English history and legal precedent, as is the phrase the Founders included in the Constitution as the criteria that would justify it: "treason, bribery or other High Crimes and Misdemeanors." The Founders did not discuss in any detail what this phrase meant, but that was because they thought it was pretty obvious - it meant crimes against the state, not personal crimes ("Presidential Impeachment", 2019). A president shouldn't be impeached for dodging taxes, swindling people as a private businessman, or any other criminal offences that had no direct bearing on the exercise of his presidential powers. Such matters could be dealt with once the man left office (one respect in which the president retained kingly powers was in his apparent immunity from prosecution). Impeachment was not about punishment - it was simply about preserving the republic by removing from office someone who constituted a danger to liberty.

EXACERBATING PARTY POLARIZATION

No one ever imagined impeachment would be anything other than a national trauma. The Founding Fathers saw impeachment as a safety valve, but they also worried it would devolve into partisan bickering if put into action. Alexander Hamilton outlined his fears about how partisan the impeachment process would become in the *Federalist Papers*, writing: “The prosecution of them,” he predicted in *Federalist* paper no. 65, “Will seldom fail to agitate the passions of the whole community and to divide it into parties, more or less friendly or inimical, to the accused”. Thus, it will so often, spur “the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other”; and in such cases “there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.”

An impeachment was well known to be the beaten road for running down a hated or successful political rival. This shows how the impeachment process could play out: beset by partisanship and broken down by factions. Republicans who spoke almost universally accused Democrats of looking for an excuse to impeach Trump, while Democrats are injecting an urgent new argument into their already fast-moving impeachment drive: President Donald Trump poses such a flagrant threat to the republic. The Democrats have taken pains to frame their impeachment inquiry as a defense of national interests.

This was precisely why the constitution makes impeachment a tricky business. First, the House of Representatives needs to pass articles of impeachment – a list of charges – by a majority vote. At that point the president has been impeached but he has not yet been removed from office: his case then goes to the Senate, which convenes itself as a court and hears evidence on both sides. Only if the Senate then votes to convict by a two-thirds majority does the president then have to leave office.

WHAT ARE THE HISTORICAL PRECEDENTS FOR IMPEACHMENT?

History therefore suggests that a pre-requisite for any serious moves towards impeachment is not the committal of an impeachable offense but partisan opposition from Congress. Even so, the severity of the alleged offences makes a difference - there are numerous examples of presidents who have faced a hostile Congress but who have never been anywhere close to impeachment, though the wilder fringes of the opposition demanded it (George W. Bush after 2006) and Obama after 2010 being recent examples).

The alleged offences and the clarity of the evidence matters - and it undoubtedly helps if the president's crimes can be boiled down to a simple idea by the media ("he lied under oath" or "he covered up a crime"). Congress has sometimes taken seriously the views of constitutional lawyers and tried to distinguish between what is truly an "impeachable offence" and what is not. For example, in his first term as president Richard Nixon seriously underpaid his taxes, which some at the time believed to be a criminal offense, but he wasn't impeached for that, and nor should he have been.

And now in September 2019, Speaker of the House Nancy Pelosi has announced impeachment proceedings against President Trump. Some Democrats wanted the House to impeach as soon as they took control after the 2018 elections (coming into effect in January 2019). There is a case that Trump's contacts with Russia before the 2016 election, his firing of FBI Director James Comey and many other actions rise to the level of being "impeachable". This is the view of some conservatives like Jennifer Rubin as well as liberals like Robert Reich and scholars like Alan Lichtman, and even a tiny number of dissident Republicans ("Presidential Impeachment", 2019).

The requirement that the president be subject to re-election was "not a sufficient security" thought James Madison. The president might "lose his capacity after his appointment. He might

pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers.” And President Trump has been accused of all these things - of not being mentally stable, of abusing his office to enrich himself and his family, of conspiring with Russian secret services in the crime of computer hacking to aid his election, as well as of disclosing classified information to the Russian ambassador.

PREVIOUS CALLS FOR TRUMP’S IMPEACHMENT

Efforts to impeach President Trump have been made by a variety of people and groups ([Revesz, 2017](#); [Gold, 2017](#)). The first efforts in the Republican-controlled Congress were initiated in 2017 by Representatives Al Green and Brad Sherman, both Democrats (D), in response to Trump’s obstructions of justice in the Russian influence investigations begun during the first year of Trump’s presidency ([Singman, 2017](#); [McPherson, 2017](#)). A December 2017 resolution of impeachment failed in the House by a 58–364 vote margin ([DeBonis, 2017](#)).

Following the 2018 elections, Democrats gained control of the House of Representatives and made Nancy Pelosi the new Speaker. While initially opposed any move toward impeachment, she supported multiple committees’ respective investigations into Trump’s actions and finances ([Werner and DeBonis, 2018](#); [Fandos, 2019](#)). New allegations involving Trump surfaced on January 17, 2019, claiming he instructed his long-time lawyer, Michael Cohen, to lie under oath about Trump’s conflict-of-interest involvement with the Russian government to erect a Trump Tower in Moscow ([Leopold and Cormier, 2019](#)). This invoked renewed requests for an investigation and for the president to “resign or be impeached” should such claims be substantiated ([Barnes, 2019](#)).

Soon after the release of the Mueller report, Trump began urging an investigation into the origins of the Russia probe, wanting to “investigate the investigators” and possibly discredit the conclusions of the FBI and Mueller (“Trump Steps up Calls

for Investigation”, 2019). In the wake of the inquiry, the White House threatened to shut down all major legislation as political leverage ([Bennett, 2019](#)). Trump and his surrogates engaged in a misinformation campaign to discredit impeachment ([Stanley-Becker and Romm, 2019](#)), with Giuliani taking a lead role ([Pilkington, 2019](#)). Efforts focused on attacking Joe Biden and his son (“White House ‘Tried to Cover Up’”, 2019) and attempting to discredit the whistleblower over their motivations and for making the complaint based on hearsay ([Pilkington, 2019](#)). The White House officially responded to the impeachment proceedings in a letter from White House Counsel Pat Cipollone to House Speaker Pelosi that it would cease all cooperation with the investigation due to a litany of concerns, including that there had been no vote of the full House, and the secrecy of the proceedings. Subsequently, On October 31, the House of Representatives voted 232–196 to establish procedures for public hearings (“Trump Impeachment”, 2019). On December 10, the House Judiciary Committee unveiled their articles of impeachment: one for abuse of power and one for obstruction of Congress (“Read the Articles of Impeachment”, 2019; Wagner, 2019). Three days later, the Judiciary Committee voted along party lines (23-17) to approve both articles (Siegel and Faulders, 2019). On December 16, the House Judiciary Committee released a report specifying criminal bribery and wire fraud charges as part of the abuse of power charge (“Democrats Accuse Trump”, 2019). On December 18, the House voted to impeach Trump for both charges ([Shear and Baker, 2019](#)).

The historic vote split along party lines, much the way it has divided the nation over a charge that the 45th president abused the power of his office and sacrificed national security for personal greed. No Republicans voted to impeach Trump. Narrow in scope but broad in its charges, the impeachment resolution said the president “betrayed the nation by abusing his high office to enlist a foreign power in corrupting democratic elections,” says the 650-page report. Actually, Republicans have focused

heavily on criticizing the impeachment effort as politically biased. Rep. Debbie Lesko (R., Ariz.) railed against what she called “the most unfair, politically biased, rigged process that I have seen in my entire life.” She said it was the “most partisan impeachment” in the US history (2019).

IMPEACHMENT ARTICLES: TRUMP IS A THREAT TO THE CONSTITUTION

The House voted to impeach President Trump as a threat to the Constitution whose conduct must not go unpunished. Impeachment debate played out in one- or two-minute bursts from Republicans and Democrats. House Democrats charged President Donald Trump with at least two articles of impeachment - abuse of power and obstruction of Congress - making him only the fourth president in U.S. history to face such a formal effort to remove him from office. The House Judiciary Committee approved two articles of impeachment against President Trump. “No one, not even the president, is above the law,” said Chairman Jerrold Nadler (D-NY), head of the committee that drafted the articles. “We do not take this action lightly, but we have taken an oath to defend the Constitution,” where it created (“Read articles of impeachment”, 2019).

Democrats say Trump’s pressure on Ukraine to investigate his Democratic rivals - which came while he withheld a promised White House visit for Ukraine’s president, Volodymyr Zelenskyy, and nearly \$400 million in congressionally mandated security aid for the Eastern European country - is an abuse of power. “President Trump, by such conduct, has demonstrated that he will remain a threat to national security and the Constitution if allowed to remain in office” the abuse of power article states. The Constitution does not directly mention abuse of power among the reasons that Congress can impeach a president. Instead, “treason, bribery and high crimes and misdemeanors” are listed. Democratic lawmakers, legal experts and precedent support the approach.

It is against the law to solicit a foreign entity to interfere in a US election, and for any candidate to accept contributions of 'value' of any kind from foreign entities; by pressuring Ukraine to investigate Biden's son, the president could be said to be seeking to extract a contribution of value to his re-election bid. Trump then publicly called for China to investigate Hunter Biden, and implied that his tariff policy might change if it did, which would also seem to be an invitation to break this law. He also labelled his Congressional critics 'traitors', and the whistle-blower a 'spy' who should be exposed and possibly executed ("Trump Publicly Urges China", 2019). Trump has resisted Congressional demands to interview officials such as secretary of state Mike Pompeo. All of this could be read as constituting contempt of Congress.

Trump has said he did nothing wrong and that House Democrats' allegations are "flimsy, pathetic, ridiculous articles of impeachment" ([Gypson, 2019](#)). The abuse of power charge is centered on the allegation that Trump predicated the release of \$391 million of congressionally approved military aid to Ukraine and a White House meeting for Ukrainian President Volodymyr Zelenskiy upon an announcement by Ukraine that Joe Biden, a potential 2020 election rival of Trump, and Biden's son Hunter would be investigated ([Ballhaus, Restuccia, and Hughes: Gypson, 2019](#)). "President Trump engaged in this scheme or course of conduct for corrupt purposes in pursuit of political benefit," said the first article of impeachment introduced Tuesday by House Democrats. In so doing, President Trump used the powers of the presidency to imperil the national security, undermine the US democratic process and harm the national interest.

The second charge, obstruction of Congress, focuses on Trump's attempts to block congressional oversight by prohibiting federal officials from complying with requests and subpoenas for testimony and evidence. "In the history of the republic, no president has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so com-

prehensively the ability of the House of Representatives to investigate ‘high crimes and misdemeanors,’ the obstruction of Congress article states.

The president has also refused to send an attorney to participate in the hearings, which would have given him a chance to present evidence in his defense and question witnesses. “The president’s continuing abuse of power has left us no choice,” said House Intelligence Committee Chairman Adam Schiff, whose committee conducted the bulk of the investigation into Ukraine.

Republicans argue Trump was working within his authority to direct foreign policy and had legitimate concerns about corruption in Ukraine. They say Democrats had always intended to impeach him and were just looking for a reason. “There’s nothing that has actually come close to an impeachable offense,” Judiciary Committee ranking member Rep. Doug Collins, R-Ga., told reporters after the announcement (“House Democrats Announce Two Articles of Impeachment”, 2019). Collins was incredulous that Democrats would want to charge Trump with obstructing Congress during such a short investigation and said the charge of abuse of power is too broad.

White House press secretary Stephanie Grisham said in a statement that Democrats have announced the “predetermined outcome of their sham impeachment.” “The announcement of two baseless articles of impeachment does not hurt the president; it hurts the American people, who expect their elected officials to work on their behalf to strengthen our nation. The president will address these false charges in the Senate and expects to be fully exonerated, because he did nothing wrong,” she said (“Democrats Unveil Two Articles”, 2019; “Articles of impeachment, 2019”).

Trump was finally impeached, and impeachment devolves into a partisan brawl. Even with the House leadership’s announcement, the Republican majority in the Senate does not conceal that it is going to exonerate the president, through a

speedy trial that would manipulate or even without trial. That is why the Speaker of the House, Nancy Pelosi, decided not to formally raise the charges to the Senate, and not to appoint 'commissioners' for the prosecution before the Republican majority agreed with the Democratic minority in the Senate on the nature of the trial procedures and summoning witnesses from the administration who refused to testify before the parliamentary committees ([Frazin, 2019](#)).

Because there is no precedent for this case, a constitutional dispute arose over whether the President actually was charged. And there is another opinion that the President was not formally charged by the House of Representatives as long as the charges were not brought to the Senate ([Feldman, 2019](#)). While another constitutional opinion, which seems to be stronger, says that the president has officially been accused, because the power to accuse is the exclusive prerogative of the House of Representatives, whether the president was tried in the Senate or not ([Tracy and Segers, 2019](#)). All modern presidents have exceeded constitutional limitations on their power and thus could have, and maybe should have, been impeached. The reason they were not impeached is that a majority of Congress members support allowing presidents to wage war abroad and destroy liberty at home without being constrained by Congress. The only real dispute among the political class is which party should wield the levers of power.

CONCLUSION

The Republican-controlled chamber is expected to acquit, meaning Trump would remain in office. In the scope of time, the impeachment of President Donald J. Trump will be remembered as a much broader statement about his presidency. Whatever verdict the Senate adopts will inevitably create a precedent with potential consequences for future administrations. Too broad and simplified an account of Trump's conduct may risk encompassing less objectionable executive branch conduct,

which could facilitate later effort stouse impeachment as partisan political tool. While these concerns are often over stated by those who oppose Trump's impeachment, they reflect real concerns that there were no doubts on the minds of the former executive branch attorneys advising House Democrats on the impeachment proceedings.

Thefounders alwaysknewthat noconstitutionthey devised could, in and of itself, preserve liberty and republican government. All of President Trump's scandals are fusing together into a momentous fight over his staggeringly broad claims of expansive presidential power. Trump's broad claims of executive immunity lead to criticism he is acting above the law. The issue of President Trump's impeachment highlights theamount of division, chaos, and faltering values that American political life lives in, especially with a president willing to use all means to achieve his personal interests, even if this leads to damaging his country's interests and image in the world, and this may be what drives his opponents to move forward to contain his harm.

The Trump impeachment features a rigged system designed to ignore the constitution and the desires of the people. To date, Senate Republicans have given no indication that they would break with Trump. Senate Republicans may acquit Trump, but cannot save him from being discreditedin the eye so fa majority of Americans. As Trump fights for his political survival, that struggle will overwhelm other concerns. This is the benefit of impeachment: It paralyzes a wayward leader. Even if democrats failed to removePresident Trump, they were able to at least defend American values by making Trum pofficially the thir dpresident in American history to bear the title of "Impeached", and this in itself is a stain that will tarnish his presidential legacy forever.

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