The American Throne

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**Introduction**

One tweet could have started WWIII. In Bob Woodward's new book, *Fear: Trump in the White House*, he states that:

Trump drafted a tweet saying 'We are going to pull out dependents from South Korea ... Family members of the 28,000 people there.' That tweet was never sent, because of a back channel message from North Korea that it would regard a pullout of dependents as a sign the U.S. was preparing to attack. At that moment there was a sense of profound alarm in the Pentagon leadership that, 'My God, one tweet and we have reliable information that the North Koreans are going to read this as an attack is imminent,' (301-302).

Short of war, Trump has taken unilateral executive actions of withdrawing from the Paris Accords, the Trans Pacific Partnership, and the Iran Deal. Trump wields tremendous unchecked power abroad, while Congress remains polarized; unwilling to carry out the powers vested in them to balance foreign policy decisions. This is the imperial Presidency in action, and thus illustrates how the constraint of executive power is decaying. The founding fathers made an effort to separate powers and early statesmen maintained a rough balance of said powers through written and unwritten checks; yet, through the inherent obscurity of the constitution, Supreme Court support, post 9/11 unilateral presidential power, and congressional frailty, Americans are now in danger of a potential ‘King George III’ like tyrant, one that threatens the very nature of the democracy.

**Inherent Obscurity**

Pervaded by the results of immense tyrannical power that European kings wielded and enormous legislative control under the Articles of Confederation, the founding fathers intended to design an executive branch, with separation of powers as their core objective, that had limited external powers, but in doing so triggered an ongoing deliberation over the obscurities within the respective roles of Congress and the Presidency in foreign matters. The drafters delegated powers of treaty signing, ambassador appointments (both with approval of the Senate), and the Commander and Chief to the President, while powers concerning appropriations, commerce, raising the military, and most importantly declaration of war were bestowed onto Congress. Given the delegated mixture of foreign powers, the founders still left questions regarding war powers, especially in times of defending the nation and emergencies, unanswered. In Arthur Schlesinger’s book, *The Imperial Presidency*, the author describes how the Madison-Gerry intervention, which struck out Congress’s power to “make” war and instead “declare” war - leaving the executive to repel attacks - was crucial to the founding fathers because they intended that the whole “national government should have all the authority required to defend the nation,” not “a single man.” He also explains how the founders wanted the President to be able to use prerogative in a state of emergency to “initiate extralegal action, but would be sustained and vindicated in the action only if his perception of the emergency were shared by the legislature and the people” (5-9). Unlike domestic affairs, the points above illustrate a lack of inherent separation of labor in foreign relations. Edward S. Corwin, one of the most cited sources on the presidency and the constitution, stated that the intermingling of powers fostered “an invitation to struggle for the privilege of directing American foreign policy” (Boylan 234). Though the founding fathers laid strong democratic foundations, their distribution of foreign powers elicited the potential for a tyrant executive, not to ward one off.

Some scholars and Presidents, utilizing the point of *in times of defending the nation* and *in times of emergences*, have argued that the centralization of American foreign affairs is a positive one and exactly what the founding fathers desired, but this is not the case whatsoever. As I stated in the above paragraph, the founders had three points in mind regarding foreign affairs administration: disputation by design, cooperation abroad, and room for equal power adjustments under the constitution. Schlesinger describes how George Washington had the intentions of complying with these points by balancing the conflictual views of Hamilton and Jefferson, but the temptation to add power to the presidency in its application was too strong. In addition, James Madison proclaimed that “the degree of separation which the maxim requires, can never in practice be duly maintained” and that “the management of foreign relations appears to be the most susceptible of abuse of all the trusts committed to a Government” (7-15). Even if the founders couldn’t practice what they preached or adhere to the constitutional powers vested in them, the centralization of American foreign affairs was never intended nor produced positivity among the young nation, only abusing the powers even more.

**The Supreme Court’s Blessing of the Imperial Presidency**

As the legislative and executive branches struggled for control over American foreign policy throughout the 20th century, the Supreme Court, after over 150 years of paying little to no attention to foreign affairs, allowed for the increased abuse of unilateral foreign powers vested in the president, specifically due to Supreme Court Justice George Sutherland and the pivotal opinions he issued on two court cases. As Damon Root explains in his article, *When the Supreme Court Justice Blessed the Imperial Presidency*, Justice Sutherland had two faces in his jurisprudence before becoming a Justice on the Supreme Court: “on domestic matters, he was a strict Madisonian, favoring checks and balances and limited government… on foreign matters, he was an ardent Hamiltonian, championing virtually unlimited war powers” (32). Justice Sutherland’s philosophy of law was the complete opposite of what the Founding Fathers intended, which heavily favored the Presidency in the cases of *Curtiss-Wright* and *Belmont*. The *Curtiss-Wright* case surfaced in 1934 because of the joint resolution passed by Congress which gave the President permission to halt sales of arms. The corporation, brought into court on conspiracy charges related to the sales of arms, asserted that this was an “unlawful delegation of authority” under the constitution (Schlesinger 101). After the district court dismissed the charges, the government appealed the case to the Supreme Court where Justice Sutherland could sink his Hamiltonian teeth into the case. Justice Sutherland stated in his far-reaching opinion that “the broad statement that the federal government can exercise no powers except those specifically enumerated in the constitution is categorically true only in respect of our internal affairs… the powers of external sovereignty do not depend upon the affirmative grants of the constitution” (Root 33). Sutherland did not quit with *Curtiss-Wright* case*,* but continued on his imperial presidential crusade in the case of *Belmont*, one which involved constitutionality of executive agreements. He went on to give the verdict of the Court which stated that “international compacts did not always have to be treaties requiring the participation of the Senate” (Schlesinger 103). Justice Sutherland illustrates in both cases how the Supreme Court was willing to open up the floodgates of unilateral executive overreach without the consideration of congressional cooperation abroad or equal power adjustments under the constitution.

Even though the above cases, particularly *Curtiss-Wright*, provided latter presidents and advocates a potential legal foundation for wielding more foreign war powers and centralization, the basis for these cases are derived from extreme opinion, which digresses from the founders original intentions. The *Curtiss-Wright* case was actually concerned with the power to act under Congress, not independent of Congress and one that was focused on foreign commerce, not war powers. Schlesinger explains how Sutherland was far-reaching because of the case’s “expansive contentions were in the nature of *obiter dicta,*” which is the judge’s expression of opinion, not essential in establishing precedents (103). This opinion and his jurisprudence, as stated in the above paragraph, is the complete opposite of what the founding fathers intended and further illustrates how it threatens the very nature of the democracy.

**Post 9/11 Unilateral Presidential Power and Congressional Frailty**

September 11th, 2001 and its aftermath, under the Bush, Obama, and Trump administration's, has invited immense presidential leverage in defending the nation in times of emergencies and revealed the congressional status quo, which further abuses the trusts committed to a balanced democracy and exacerbates congressional frailty to constrain executive power in foreign relations. Goldgeier and Saunders in, *The Unconstrained Presidency: Checks and Balances Eroded Long Before Trump*, have provided two examples that illustrate the above points: the Authorization for Use of Military Force and trade wars/international agreements. The Authorization for Use of Military Force was passed by Congress on September 14th, 2001, and “intended to combat terrorism” but “for nearly 17 years, the bill has served as the legal justification for expanding military operations across the Middle East,” nowhere near the original intent. Congress had the ability to constrain Bush and Obama on further military operations, but chose to let counterterrorism missions continue in Somalia, Syria, and Yemen because it let “them avoid voting on military operations—always risky, since they can be held accountable for their decision on the campaign trail” (Goldgeier and Saunders). Obama extended Congress the opportunity to vote on whether to attack Syria after its use of chemical weapons and the legislative body did not want to be involved in the political backlashes that could have happened. Even Trump has taken additional unilateral executive actions that tread into a power vested in Congress - commerce. The balance of powers begin to truly erode when “Congress has even proved unable to block the president from starting a trade war with China and with U.S. allies” (Goldgeier and Saunder). It goes against the foundations of democracy even further when Congress can’t stop Trump from withdrawing from the Paris Accords, the Trans Pacific Partnership, and the Iran Deal.

**Conclusion**

The founding fathers originally intended to create strong democratic foundations, but because of inherent obscurities and lack of adherence to constitutional powers, they bolstered the potential for a tyrant. Latter presidents have added enormous amounts of unilateral power to the executive with help from far-reaching Supreme Court rulings and congressional weaknesses. Can anything be done to regain what the founders intended? If we start to go back to the roots of disputation by design, cooperation abroad, and equal power adjustments under the constitution, then we will be moving one step closer towards protecting the very nature of our democracy.

Works Cited

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