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Trump isn't the first to overreach, and there's bipartisan support for reform.



POLITICS & IDEAS

Congress Can Rein In Executive Power

The U.S. Constitution was designed for safety, not efficiency. The separation of powers provides safeguards against threats to liberty stemming from the accumulation of powers in any single man or institution. As James Madison warned in Federalist No. 47, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny."

The greatest constitutional pathology of our time is the dangerous growth of executive power. Frustrated by a polarized and often gridlocked Congress, recent presidents of both parties have often pushed to accomplish through executive orders or legal loopholes what they couldn't through the legislative process. Presidents and judges now glare at each other across the supine body of Congress.

Of the 21st-century presidents, Donald Trump has gone furthest in expanding executive power. The Republican-dominated House and Senate have done almost nothing to stop him. Hyperpartisanship has vitiated Madison's expectation that legislators would recognize the importance of preserving their institution's independence. Meanwhile, the Trump administration's contempt for lower courts' decisions leaves the Supreme Court as the last bulwark against an executive who is not only unitary but all-powerful.

This situation can't be sustained indefinitely. Republican lawmakers should ask themselves whether in time they will come to regret allowing expansions in executive power. If the next president is a Democrat, he may wield these expansive powers against them. They can mitigate this risk by cooperating with like-minded Democrats.

In most instances, Mr. Trump has justified his actions not as inherent in his Article II powers but as the appropriate use of statutes already on the books. As legal challenges to his actions multiply, it's possible that the judiciary will determine that he has exceeded his legal authority. But the opposite is also possible: Strengthening executive authority has been an important theme of some conservative jurisprudence since the 1980s, and the Supreme Court could further bolster presidential power. If that happens, it will be up to Congress to write legal language defining clearly the limits of presidential power.

Even in today's highly partisan environment, agreement on some meaningful limits to executive power isn't entirely out of reach. Three years ago Democrats and Republicans agreed on important reforms to the Electoral Count Act, clearing up ambiguities that had enabled Mr. Trump to try to pressure Vice President Mike Pence to subvert the 2020 election outcome. The rewrite of the act made it clear that the vice president's role in the Electoral College certification process is simply to administer the counting of the votes. If this updated legislation had been in force during the 2020 postelection controversy, Mr. Trump would have had no basis for browbeating his vice president as he did.

More-recent ideas show that there's still bipartisan interest in reining in executive power. A proposed reform of

the Insurrection Act, a statute that gives the president alarmingly broad authority to deploy the U.S. military against Americans on American soil, made considerable headway in 2024, although it fell short in the end. A drive to reform the National Emergencies Act, which creates the operating manual for a presidential emergency declaration, passed with overwhelming bipartisan support in the House and Senate committees of jurisdiction before failing to reach the floor during the waning days of the 118th Congress.

Lawmakers should revive both these measures, if not during the midterm election year, then when the 120th Congress convenes in January 2027.

Public opinion favors limits on executive power, which means that lawmakers' efforts to curb presidential overreach would have strong public backing. The latest Harvard Harris poll found that 55% of Americans believe that Mr. Trump is exceeding his presidential authority. A recent New York Times/Siena poll similarly found that 54% of registered U.S. voters believe Mr. Trump "is exceeding the powers available to him as the president."

Mr. Trump isn't the first president to argue that he holds the only national office elected by the entire people and therefore is entitled to deference from both the legislature and the judiciary. This claim fundamentally misunderstands the nature of American constitutional government.

In Federalist No. 39, Madison defines a republic as a form of government that derives all its legitimate authority "directly or indirectly from the great body of the people." Congress and the judiciary are coequal with, not subordinate to, the president. Even when presidents are elected by a landslide, a large share of the people vote against them, and the opposition party in Congress speaks for this minority more than the president usually does. For their part, judges speak for the Constitution and the rule of law. Mr. Trump is entitled to wield the constitutional power of his office, but no more than that.

By William A. Galston

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