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Introduction

The executive power was at first devised as a mere organ of implementation of laws. During the first years of the republic, the presidency was regarded as a nearly powerless body, given that the Constitution provides much more prevalence to the Congress. This was done on purpose because the founding fathers wanted to avoid the problems caused by kings and despots in countries that did not restrain the power of their rulers. Nonetheless, the executive office has gradually increased its power, especially during the last century. Right now, the executive is the dominant force in foreign policy making but, through history, the Congress has made attempts to regain the lost power in this area. This work will try to find out the reasons why the executive is now considered the sole organ of the United States in their foreign relations, and what the Congress has done to assert its own role in this policy area.

The government of the United States was conceived in a way that the power would reside mostly in the legislative branch. The lack of confidence the Founding Fathers had in autocratic figures was reflected in the Constitution they helped shape. The powers vested in the Congress were significantly greater than what was given to the executive and the judiciary branches. Yet there has been a permanent struggle for power between all three branches of government, which was also foreseen by the Founders, as a way to maintain certain checks and balances that would keep any of them from becoming too powerful .

However, there have been times when the executive power has shifted the

distribution of power for its benefit, and has been gradually transformed into what some might call an imperial presidency. Political science professor Thomas Dye is of the opinion that from the early days of the republic, officials considered that the president is the main organ for foreign affairs, and that the Supreme Court reinforced this characterization in 1936, effectively giving the executive branch more policy-making capabilities. Though it is generally assumed that the executive branch is the sole organ in the field of international relations, what the early officials were trying to convey was something completely different to what was assumed in 1936 after the Curtis-Wright versus U. S. case by the Supreme Court. When Dye speaks of early officials, he most probably is referring to John Marshall, a congressman in 1800 who defended “ the authority of President John Adams to carry out an extradition treaty” . What Marshall clearly said was that, after a policy was jointly made by the president and the senate, the president was the sole organ in implementing it through the modes prescribed by the Congress . Marshall never advocated for policy-making powers in the hands of the presidency, but the power of implementing treaties , and what this official of the early days of the republic ultimately stated was that other nations could only establish communications with the executive branch, but he didn't imply that the president decides what actions to take (Powell, 2009).

As clear as Marshall could have been, his words did not escape misinterpretations. One of the most distinctive events that caused a shift in the distribution of power between the executive and the legislative branches, the Curtis-Wright case during the Gran Chaco war, was based on a loose

interpretation of Marshall's Sole Organ doctrine.

The Gran Chaco war was a military conflict between Bolivia and Paraguay from 1932 to 1935, in which an American arms company was involved as the main arms provider for at least one of the warring countries. The then president Roosevelt wanted to end the conflict, so he decided that the best way to resolve this issue was to impose an arms embargo. However, he could not violate any trade agreement the U. S. had with those two countries, so the Congress and the president formulated a joint resolution that prohibited any U. S. company to sell arms to Bolivia or Paraguay in order to stop their ability to harm each other. By that time Curtiss-Wright Export was the main arms supplier for the government of Bolivia and saw its business threatened by the joint resolution, so they had to find a way to defend it. Eventually, the defense found that this resolution conferred the executive the ability to legislate, which should reside exclusively in the congress, and the sweeping language used in it also gave the president discretionary powers since it depended on whether the executive found that the embargo would contribute to the establishment of peace (Powell).

One of the most influential opinions during this case was that of Justice Sutherland, who discussed independent and inherent powers of the presidency in order to support his claim that the source of power of the president in foreign affairs was not grounded in any authority delegated by Congress. Dye states that Sutherland's interpretation is controversial because it gives the Congress powers over foreign affairs. However, the controversial aspect of this interpretation lies in the fact that Sutherland takes the words of Marshall out of context and uses them to imply a whole

new set of presidential powers unintended by Marshall nor the Founding fathers .

Limiting the Executive

Curtiss-Wright was not the only case where government officials deliberately go against the original constitutional design. The Iran-Contra Scandal was another attempt made by the executive to expand its already broad powers, but the Congress posed serious obstacles and reasserted its power over the purse.

The Framers knew they could not grant any one branch of the government the power to make war and the power to fund war, because they were afraid that it would cause the same problems faced by England and their warmonger kings. Consequently, they gave the power to conduct a war to the executive branch, and the power to fund it to the Congress exclusively, so the war power passed from those who spend to those who pay (Fisher, How Tightly Can Congress Draw the Purse Strings?). This not only means that the Congress has the power to withhold appropriations, but it also means that foreign policy must only be conducted using funds appropriated by the Congress.

During the Reagan administration, the president tried to bypass this safeguard. Through various means, Reagan tried to provide assistance to an insurgent group in Nicaragua called the Contras that aimed to overthrow the Sandinista government via military confrontation. The Congress made various attempts to restrict the assistance, but the executive always found a way around the legislative resolutions, using the CIA to provide aid to the

insurgents. It was in 1985 when the Congress resorted to the adoption of extremely detailed and restrictive language in their resolutions in order to discourage the administration from assisting the Contras in any way. Of course, Reagan found a way to obtain funds from other sources other than the Congress, going against what the Framers ordained originally . Inside the administration some tried to justify these actions, and there were assertions made by some officials saying that the Congress could not steer foreign affairs by prohibiting the use of appropriations , maybe based again on the interpretation made by Sutherland of Marshall 's words.

The idea of this leverage over the executive was defended by James Madison, who considered it as the most effective measure for assuring that the American president was “ far less threatening than the King of England” . So, according to what the framers implied, the congress remains as the sole organ that can both appropriate funds and decide how to use them, domestically and internationally.

Terrorism and Government Powers

After the terrorist acts of September 11 of 2001, the reaction of President Bush was to seek the help of the Congress in giving a blunt response to the aggressors. His objective was to have more discretionary power over military actions and commit the military forces to a war against any country that could harbor terrorist groups, but always under the assumption that it would be done following the provisions of the War Power Resolution . Maybe because of the context and a sense of impending danger, the way the U. S. employed military force after the terrorist attacks changed in two ways. The

first obvious difference was the increased authority the president now had to take preemptive actions against international terrorists who would pose a potential threat to the U. S . This would certainly give the executive discretionary powers to make strategic military decisions against entities that had not yet proposed a direct and concrete threat to the country but could probably do so in the future. The second difference was that the U. S. could now take military actions, not only against other nations which were the sole subjects of international relations, but against organization and individuals, changing the conception of international conflicts and the subjects and actors that could affect or be affected by said conflicts .

In the light of what happened in Iraq, it is now clear that the executive branch should have been more carefully limited by the Congress in the way it used the military forces, and it should only act in the light of more solid evidence before compromising military resources to conflicts.

Conclusion

The notion that the executive branch should have more power and independency when it comes to foreign affairs seems to come from a misunderstanding of the words originally expressed by George Marshall.

Justice Sutherland opened a door that has led some to believe the president of the United States has uncontested authority in international relations, and others to feel that the Congress should not meddle too much in foreign affairs or that they should step back and give policy-making powers to the executive if it considers that the nation is in danger.

The Founding Fathers knew that the sword and the purse, or the power to

make and execute laws, should never rest in the same hands. The Congress should be the sole organ capable of creating laws and treaties, with some participation of the executive, and should never lose its power to appropriate and withhold funds.

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