

## APGoPo Unit 5

# THE IMPERIAL PRESIDENCY

The concept of the "Imperial Presidency" first came about during the 1960's, and was later made popular by historian Arthur M. Schlesinger Jr., after he wrote a book on the subject entitled *The Imperial Presidency*. It is a term used to describe the modern executive branch, and the unconstitutional powers the office has gained since the early 1900's. The book itself was written as a result of Schlesinger's observations of recent presidents of his time, including Nixon, Coolidge, and Roosevelt, and commented in particular on abuses of executive power in regards to the armed forces. Recently, the "Imperial Presidency" term has come into usage once again following the George W. Bush administration, which took many actions qualifying it as an "Imperial Presidency".

The President wields an enormous amount of power. Vetoing bills in and of itself invests an enormous amount of power in the president. As the number of staff members has increased, so has the amount of people with personal loyalties to the president, thus increasing the influence the president has over his cabinet even further. The constitutional boundaries of the president do not restrict them, because of the powers that the president invokes are often "executive" in nature. From "executive orders" to "executive privilege" the president invokes many powers not granted them in the Constitution. During Nixon's presidency, the use of executive privilege to conceal the contents of tapes recorded in the oval office was specifically declared unconstitutional, yet both President Bush and Obama have invoked it on several occasions, usually when concerning the military.

Even though the president has many powers inherent through the Constitution, the extent to which he stretches them is often called into question. George W. Bush is one example of that. Bush is often thought of as an Imperial president as his presence in the Middle East was unprecedented and unsupported with such ferment in his two term presidency. Many conflicts were not officially wars, as they were on terrorists, and not quite a political group. The decades of war far surpassed the few months that a president is allowed to have non-verified presence in a foreign country on a military basis.

- Throughout much of this century, the President has been the "great engine of democracy"
- The President was supposed to exercise great power to meet his goals
- In the wake of the Vietnam War and Watergate, however, Congress reasserted itself against what came to be seen as an "Imperial Presidency"
- The "Imperial Presidency" suggested that presidential power had grown excessive ("imperial")
- Response:
  - Economic growth necessitated a strong executive branch
  - Congress itself delegated strong powers to the executive branch, esp. in area of foreign policy
- Areas of abuse
  - War powers
    - Constitutional conflict of Congress' power to declare war vs. President's power as Commander-in-Chief.
    - In the 18th century, Congress had more time to deliberate war issues; in the modern era, however, Presidents have argued that they need more flexibility to meet rapidly changing conditions.
    - Presidents have sent troops without a congressional declaration of war more than 125 times. This has happened very frequently since 1945.
    - Congress has in fact generally gone along with these operations, and has of course funded them, as well. When public opinion turns against the operations, however, Congress has often responded (e.g., Vietnam War).
    - One of the reasons Congress has gone along with these operations without a formal declaration of war is that such a declaration carries with it the transfer of great emergency powers to the President that the Congress may not want to grant him.
  - Emergency powers
    - In time of war or emergency, the President assumes great powers
      - Examples: Suspension of habeas corpus; Control of communication and transportation; Declaration of martial law; Patriot Act
  - Use of executive agreements rather than treaties
    - The former does not require Senate ratification, as does the latter. The former are "deals" between the President and the head of another nation (e.g., the destroyers-for-bases deal between FDR and Churchill in 1940).
    - Since WWII, the number of executive agreements has vastly outnumbered the number of treaties. Between 1980-1991, there were > 4100 of the former, and less than 200 of the latter.
    - What is particularly galling to Congress is that treaties are often on relatively trivial issues (e.g., archaeological artifacts in Mexico), but executive agreements are often on matters of great importance (e.g., military commitments to various nations)
  - Executive Privilege
    - Definition: The right of president to NOT divulge conversations between himself and his advisers.
    - Presidents claim that if such conversations were not "privileged," advisers would be hesitant to give straightforward advice.
    - Critics claim that Presidents have abused this privilege by claiming it under the guise of "national security."
    - In *U.S. v. Nixon* (1974), the Supreme Court stated that Presidents are in fact entitled to executive privilege most of the time, but not in criminal cases.
  - Impoundment
    - The refusal of the President to spend money that has been appropriated by Congress.
    - In the past, this was done when there was an obvious need, e.g., reducing defense spending after a war ended.
    - Nixon, however, impounded funds for policy objectives. Some members of Congress were livid that money was not spent when it had been lawfully appropriated by legislation. Such impoundment seemed unconstitutional.