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IS CONSTITUTION OUT OF DATE?

I do not agree with the statement that the Constitution is out of date. The precedents show the the executive branch accumulating more power in the sphere of foreign relations, which contributes to a collapse of democratic institutions and the undermining of human rights. This evolved executive branch will lead to a different, authoritarian government, which was the biggest fear of the Founders.

The Founding Fathers may have been unclear and not specific enough, but they laid out precisely what the roles of executive and legislative branches should be. Their intention was to invest all the legislative power into Congress and the executive power into the President who is responsible for faithful implementation of the laws. Thus, in foreign affairs, as Henkin says, “Congress makes foreign policy, and the president executes foreign policy and conducts foreign relations in accordance with that policy.”¹

In his article, Henkin analyses congressional-presidential relations of foreign policy such as war powers, nuclear strategy, spending power, covert activities and treaty makings. Some may argue that the constitutional blueprint is out of date and the presidents need more power in a contemporary world to conduct successful foreign policy. I see the necessity to go back to the original power distribution designed by the framers where collective public opinion and multilateral consideration were the basics of the policy-making.

War-making power is delegated to Congress where as war-leading power is delegated to the president. The supporters of congressional authority argue for careful consideration and

¹ Louis Henkin. 1987/88. “Foreign Affairs and the Constitution.” *Foreign Affairs*. P. 294.

collective decision, which can only be brought to the process through participation of Congress. The opponents of the War Powers Resolution see it as an obstacle for a decisive presidential action that contributes to the picture of the weak government. The weak government, however, is not the one limiting presidential actions, but it is the government that cannot be controlled. The U.S. was founded by people, who tried “to create a more perfect union”², guarantee human rights, protect people from a despot ruler. Only with people themselves in charge of the decision-making process this “perfect union” can be possible.

Nuclear arms strategy is a controversy connected directly to the war-making issue. As Henkin shows in his article, nuclear exchange is destined for war, and the declaration of war is the constitutional power of Congress. Therefore if Congress agrees to provide weapons this automatically means its approval of the proposed strategy. In reality presidents tend to persuade Congress to not hinder the executive policy and allow the provision of weapons. The constitutional provision is for the president to faithfully implement the laws rather than attempt to make laws. This turn of duties violates the Constitution and may lead to the emergence of the authoritarian president who is more prone to subject the citizens to go to war. The authoritarianism will also lead to the decline of human rights, economic and political freedoms.

The Power of the Purse is a constitutional power of Congress. It delegates Congress with the power to levy taxes and decide the spending. The president’s role is to implement the laws. In foreign policy the two main expenses are defense and foreign aid. While defense spending is more or less controlled by Congress, foreign aid has become a process regulated by executive agreements. Being a people’s democracy it is crucial to be aware of, and have support of public

² The Constitution of the United States

opinion in all matters including how the citizens prefer to distribute national revenues. This can only be achieved through the representation of their views in Congress.

The treaty-making process. The intention of the Constitution is clear: the president and the Congress should work together in making the policy with other governments. The lack of the precise steps in the Constitution is making it vulnerable to debate whether it is the president or the Congress that is accountable for a decision. Knowing that Congress is designed to make laws and the president - to implement them, it is Congress who should be held at least partly accountable for the treaties. The opponents argue that Senate's approval or disapproval contributes to the image of divided government and brings the U.S. position down in the international arena. The late congressional involvement and the international pressure became serious obstacles in the way of following the Constitution. Keeping up with constitutional provisions will ensure collective spirit of decisions and eliminate the risk of personal presidential ambitions.

In sum, it is clear that the “country we have become” is far from the country that was designed by the framers. While it became more democratic, the role of the executive enlarged tremendously and the role of the Congress became marginal. The government that operates the U.S. these days is violating the original Constitution. In this case I think the U.S. government collectively should make necessary arrangements to revive the spirit of the Founders' intention and go back to what they designed. Abolishing or rewriting the Constitution, as it does not correspond to the way policies are made right now, is the wrong way. It will only contribute to the growing role of the executive and lead to the emergence of the autocracy that the framers were trying to avoid.