

By James L. Sundquist

The writer is a senior fellow at the Brookings Institution and author of "Dynamics of the Party System."

AFTER A DECADE of war in Vietnam and Watergate at home, it has dawned on many that our system of checks and balances is not as effective as had been believed, that a troubling degree of power has become concentrated in the presidency.

At the same time, however, many serious observers are aware that the President has required most of his added powers for good reason. In our fast-moving and complex world, for example, it is naive to believe that the effective power to declare war can be returned to a 535-member deliberative body like the Congress. Indeed, the Congress itself has virtually acknowledged this in the war-powers bill it has passed over Mr. Nixon's veto, a measure which proposes that only after the President has committed the country to war should he submit his decision for approval.

Nor can we expect the sudden reappearance of the restraining force once provided by strong Cabinet members with power bases of their own, now replaced by an all-powerful White House staff beholden only to the President, as has been clear in the Watergate affair. The fact is that the executive branch today does need strong central control.

The national dilemma, then, is how to provide an effective check on the presidency without hindering the powers now needed in the Oval Office.

At the moment, amid emotions aroused by the battle over presidential tapes and documents, what is being considered by some is the ultimate check of impeachment, which would require proof that the President has acted unlawfully. But impeachment obviously cannot be used on a regular basis to restrain the presidency. And it cannot ease the sense of national frustration about how to deal with a President who, even if he has acted technically within the law, is considered by many to have behaved so improperly as to raise serious doubts about his ability to continue governing.

This is not a new frustration. On more than one occasion in the past, a President whose effectiveness has been destroyed by incompetence, gross negligence, rash actions, errors in foreign and domestic policy or high crimes and misdemeanors commit-

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ted by those who shared his confidence and acted in his name has remained in office until the end of his allotted four years — and nothing could be done about it. No other democratic government leaves itself so vulnerable to impotence.

Fundamental Flaws

IF WE ARE to find a lasting solution to these difficult problems — and I believe a solution may be available—we must first understand that there have always been flaws in our checks and balances, that they have been severely limited in practical effect.

The judicial check, like the impeachment process, is clearly restricted to questions of actual lawbreaking. Senate confirmation of presidential nominees has never been much of a check for the obvious reason that nobody can know in advance which persons will abuse their power.

Congress' ability to amend legislation to

A common weakness of almost all these checks and balances is that they operate after the fact, and often long after. Congress has been able to exercise a review power in the case of both Vietnam and Watergate—and in the Watergate affair judicial checks have been operating, too—but only well after the damage has been done. The one exception, Senate confirmation, operates before the fact, and sometimes long before. None operate during or close to the fact, which is when the abuse of power needs to be prevented.

The Expanding Government

EVEN THESE CHECKS and balances weak as they have been throughout our history, have been further weakened lately by several factors which, for the most part, are not reversible. While the federal government's budget has increased 500 per cent in a quarter century and the government has

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prevent presidential actions opposed by the majority is more theory than fact. The President still can veto bills, and the veto is usually sustained by the required minority of two-thirds plus one in either house. Besides, a new law usually cannot be made retroactive to force a reversal of what the President has already done.

The veto problem also limits Congress' power of the purse. The President can veto money bills carrying unpalatable riders, and he is usually upheld. If the Congress denies funds, it will have to cut programs it has authorized and presumably still supports. Finally Congress can bulldoze, kibitz, heckle, entreat and threaten through its oversight function, but it cannot command or compel the President to change his course.

been thrust into a multiplicity of complex new activities, for example, Congress' capacity to check executive operations has not increased by anything like the same scale. And the Congress cannot be expected to keep pace, no matter how much it improves itself through reorganizing, obtaining bigger and better staff resources, electing stronger leadership, and attending to its duties with greater diligence. Its checks and balances will still have to be exercised through difficult, demanding work by individual members, acting mainly in committees. As the size and scope of government expand, the attention of committees, subcommittees and devoted individual members is inevitably spread thinner and thinner.

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Partly because of Congress' incapacity to cope with an expanding government, the line separating executive from legislative power has been shifted in favor of the executive. Some of this has been done with congressional consent. The Congress has willingly and repeatedly delegated to the executive, for example, the former legislative power to set tariff rates, subject to its ratification. It has recognized, in the case of price and wage control, that measures to control inflation must be left to executive discretion; in extending that authority this year, it even passed up the chance to legislate the standards to be applied.

In other cases, the shift has occurred without express congressional consent but with its acquiescence. In foreign affairs, much of what used to be done through treaties, which require ratification by the Senate, is now done through executive agreements, which do not. Above all, the effective power to declare war, which was granted to the Congress by the Constitution in clearest terms, has passed to the President.

The Congress has not yet accepted any general principle that the President should be free to impound appropriated funds, but it has repeatedly let Presidents do so without rebuke, providing the precedent and the encouragement for President Nixon to go further in this direction than any of his predecessors. Indeed, while congressmen this year protest the President's impoundments, last year both houses voted to grant him broad authority to do exactly that. One day, it can confidently be predicted, the power to adjust tax rates, within defined limits, will also pass to the President so that fiscal policy can be "fine tuned" to cope with inflationary or recessionary trends.

Increased Secrecy

FINALLY, congressional checks have been further weakened by executive with claims of executive privilege and "national security" extending ever lower into the executive branch. The courts are now reviewing what can be withheld from the Congress and from the courts themselves, and some retreat on the part of the President may be forced. But it is difficult to imagine that the long-term trend toward increasing secrecy will be decisively reversed.

Despite cries for the Congress to "reassert" itself, there has been no action that would rectify the imbalance even to a slight degree. And it is difficult to see how the balance can be shifted much. The government is not going to get easier for Congress to oversee. The speed with which domestic and foreign problems arise and grow is not going to slow down to the pace of even a Congress aroused and streamlined, should that ideal condition ever be attained. Diplomacy will continue to be carried on as every other country carries it on: by the executive in secret. The Congress cannot control inflation except through delegation of discretion to the executive. The presidential right of impoundment and executive privilege may be curtailed a little, but that is about all. And even with the fullest "reassertion" of its powers, the Congress cannot reassert authority it has never had: Its powers will be still those of a confirming body, before the fact, and a reviewing body, after the fact, with no means of preventing the abuse of executive power when it is taking place.

The Decline of the Cabinet

IF PRESIDENTIAL power has been suddenly aggrandized, it is not only because power has flowed laterally from the Congress but also because it has flowed upward from the Cabinet. The decline of the authority of Cabinet members has been perhaps the most fundamental of all the forces affecting the power balance in the national government.

In the early days of the Republic, the Cab-

inet was composed of the party's principal leaders and covered the spectrum of the party's composition. Often Presidents named men who had been their principal rivals for the party's nomination. Prominent members of the Senate were commonly appointed, along with political leaders from the major states. Men like Clay and Calhoun, Webster and Seward, Sherman and Bryan sat in presidential Cabinets, put there because they had independent power bases that demanded, or deserved, recognition. Presidents could still overrule their Cabinets, of course. Lincoln could say, "Seven nos and one aye; the ayes have it." But at least he asked for his Cabinet's opinion, and he took a vote.

Now, all this has changed. Replacing the cabinet as the President's consultative group has been a presidential-level staff, which has no outside power bases and hence no independence, and which is not subject to Senate confirmation. This staff now formulates policy for the President, issues orders on his behalf, and supervises and coordinates their execution.

The last thing an ambitious presidential staff wants is department heads with independent power bases. Such men have the strength to be defiant and cause trouble. What such a White House staff wants in department heads is, in the immortal words of one now-deposed Nixon aide, men "who will, when the White House orders them to jump, only ask 'How high?'" But to make doubly sure that the departments would be compliant, the White House systematically placed in sub-Cabinet positions trusted political and White House aides. (After Watergate, some of these men lost their jobs.)

By now, the flow of power upward within the executive branch to the single individual at the top seems to be approaching its limit. There can no longer be effective restraint from within the government departments on anything the President might choose to do.

But the flow of power from the departments to the presidency, like the shift in the congressional-presidential balance, has not been the product of pure willfulness. Here, too, the development has had a basis in the realities of modern government. The fact is that the executive branch *does* need central direction and coordination. It cannot be allowed to be treated as a series of independent satrapies, each responsive only to its separate clientele. There *has* to be a coordinated budget. Department *do* have to respond to common policies, established by officials responsible to the people through elective processes—and the only such official in the executive branch is the President. All this, too, is affected by the greater complexity, the faster tempo, the closer relationships among governmental activities. In domestic fields, as in war and diplomacy, the government must be able to marshal its resources and act decisively and consistently, in a coordinated way, whether the battle is against inflation or pollution or urban blight or a recession or an energy shortage.

The answer to the problem of misused presidential power is not to try to disperse the essential components of that power to semi-independent elements within the executive branch. That would only reintroduce the problems of conflict and administrative

weakness that compelled the centralization of power in the first place.

A "No Confidence" Vote

IF WE CANNOT realistically expect to reduce the power of the presidency by very much—and if in most cases we should not—then how do we solve the basic problem of too much power in one man? What has to be sought is a remedy that can be grafted onto our system with the least possible disruption of its basic structure.

The simplest device that might introduce an element of collective judgment on presidential power may be the one by which the executive in a parliamentary system is controlled. That is the device of dismissal of a government through a simple parliamentary vote of "no confidence," which could be added by a simple constitutional amendment.

This would have both a direct and an indirect effect. The direct effect would be to make it possible to remove a President who, while not guilty of provable "high crimes and misdemeanors," has nevertheless lost the capacity to lead and unify the country, as a President must. A President, to keep his office, would have to satisfy the Congress—which would mean satisfying the people, for the Congress would hardly act in such a matter in defiance of the people—with his conduct of the government.

The probability, of course, is that the power to vote "no confidence," like the power to impeach, would rarely be used. That is what would make the indirect effect more important. The indirect effect, while

she says:

"When you start saying Boston's a bad city, hell, America's a bad country. My white people aren't worse than your white people (in Washington). Agnew didn't come from here. Nixon didn't come from here. It's the system. It doesn't work any better here than there. It's the same everywhere."

But it is not the same everywhere. Boston is unique in many ways, and one of those is in its racial crisis.

For Boston has ethnic neighborhoods whose rigidity is legendary. It has a per capita tax burden amassed by no other city. Its per capita annual household income is lower than any other big city's — thousands of dollars lower, for instance, than Washington or Newark or Philadelphia or Buffalo.

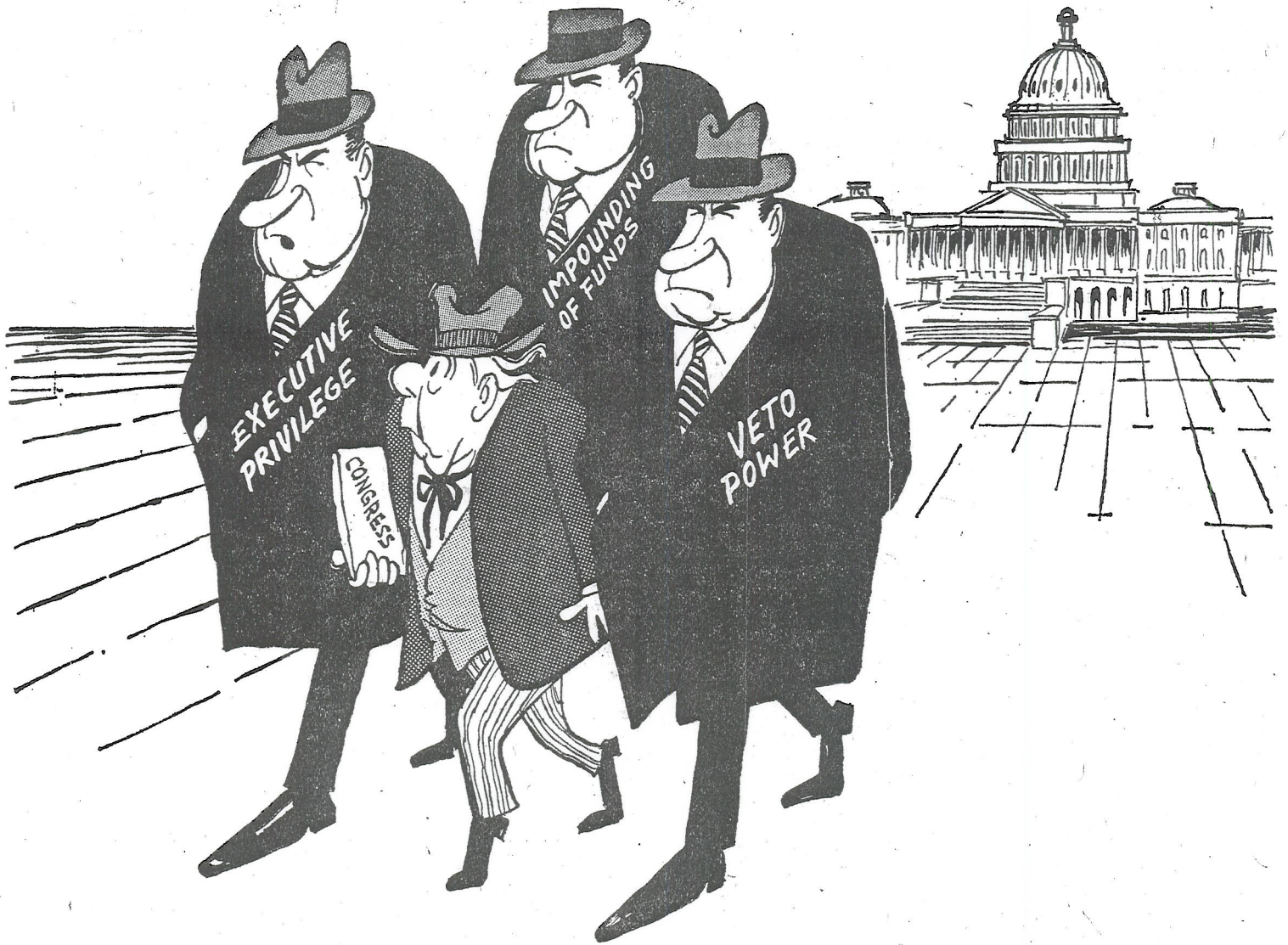
And, with a tenacity that has been a hallmark of the American Irish, Boston has hung on by its fingernails to keep "the others" out. In particular, its local politicians have blatantly flaunted their opposition to those "others," have successfully pandered to fears in ways that would probably be shocking in comparable cities in Alabama or Mississippi.

And all in the city that was the fount of the American abolitionist movement, the home of William Lloyd Garrison, the first major American city to prohibit segregation in its schools, in 1855. And all in a state that has the only black United States senator (Edward W. Brooke), and that was the first state to enact a law forbidding racially imbalanced schools.

"A Deeply Conservative Place"

BOSTON'S CITY election system, installed by "Yankee" reformers years ago to dilute the power of Irish ward bosses, now requires nonpartisan, at-large contests for all city council and school committee posts. This has translated into the Irish majority's domination of elections and, because elections fall every two years, into incessant, fear-baiting political rhetoric.

Checking the Presidential Powers



Veltman in the Hartford Times

"Don't put up any resistance! Just keep in step."

As a result, says political scientist and State Rep. Barney Frank, "The candidates are desperate for headlines. They can't build any record with a particular district. It's a random lottery in which names are everything. Issues are rarely discussed. The whole system puts a premium on irresponsibility."

Frank, Mayor Kevin White's liaison with black community groups during White's first three years in office here, says, "People are misled by the voting image of Massachusetts and of Boston. They think of Ed Brooke, of the McGovern vote, of the Kennedys. But this is a deeply conservative place socially. It's probably got the most left-wing congressional delegation in the country, but on social issues, it's the other way.

"... I think people vote for people 'like them' for city council and for the school committees. But they vote 'up' for mayor, for governor, for senator, for President."

Voting for people "like them" has evolved

into an acrid racial tenseness isolated primarily in inner Boston and perceived hardly at all in the more comfortable Boston outside the technical city limits nor in the image of the city held by the rest of America.

When one thinks of Boston, the imagery is likely to be of neighboring Harvard University and of Massachusetts Institute of Technology; of Paul Revere and the old North Church; of the basketball Celtics and the hockey Bruins and the baseball Red Sox; of Beacon Hill and the lovely Public Gardens downtown; of the Isabella Gardner Museum and the Museum of Fine Arts; of the Boston Symphony Orchestra; of the 700-plus electronics firms ringing the city along Route 128.

The Real Bostonians

ALL OF THAT MEANS little or nothing —except for frustrating unattainability—to the real Bostonians, the Irish, Italians, blacks and growing numbers of Puerto Ricans who rub up against one another in this 47-square-mile city.

The real Bostonians are the ones who