

Invoking the 25th Amendment: A “Constitutional Coup” Provision for Replacing the U.S. President

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Global Research, January 11, 2018

Region: [USA](#)

Theme: [History](#)

Two-hundred and thirty years after the US system of government was created in Philadelphia, it is slowly unraveling. A recent sign is the growing talk about invoking the 25th Amendment, a “constitutional coup” provision for replacing the president in cases of death, resignation or incapacity. But even removal won’t counter the long-term drift toward executive supremacy. The country may need another Constitutional Convention.

While speaking to California’s Public Interest Research Group in 1980, Ralph Nader put the presidency in an ironic, yet global perspective. At the time, President Jimmy Carter was struggling with a hostage crisis in Iran. Meanwhile, with the Republican nomination wrapped up, Ronald Reagan promised to win a renewed arms race with the USSR while simultaneously cutting taxes and implementing the conservative nostrum known as “supply-side economics.”

Noting that the race could have drastic global implications, Nader suggested a radical solution.

“Ronald Reagan is such a threat to humanity,” he quipped, “that the whole world should be allowed to vote for US president.”

Well, that didn’t happen. But Nader’s basic point seems more valid than ever. Power without accountability is unfair and dangerous.



The election of a US president is a global event. Leading candidates shape worldwide perceptions of critical issues, drawing media and public attention to whatever helps their poll numbers, while providing convenient excuses to ignore topics that discomfit the political establishment. And that's before someone wins.

In 2000, for example, Al Gore wanted the nation, the media, and the world to focus on the "wonders" of US prosperity and the risks of change. George W. Bush, despite his "compassionate conservative" rhetoric, ultimately ran on moral outrage and resurgent nationalism. With John McCain and Bill Bradley in the race at first, there was a chance that the need for real change, or at least reform, might become the nexus of debate. But campaign talk soon shifted back to safer ground. Perhaps more important, issues that could raise doubts about basic priorities and challenge corporate power were taken off the table.

Neither candidate chose to discuss the growing poverty, inequality and insecurity that accompanied the push for deregulation, privatization, and reducing the scope of government. The benefits of what had become known around the world as "structural adjustment" were considered a given, with the costs written off as aberrations or failure to embrace the magic of capitalist democracy.

An equally potent "non-issue" was resurgent US militarism and the prospect of a new arms build up. Bush and Gore had little to say about recent or potential military adventures — from Yugoslavia, Iraq, the Sudan, and Afghanistan to Columbia and North Korea. Their basic agreement on the use of unilateral force, as well as plans to militarize space, meant that war and peace were only discussed in terms of US strategic advantage. Have most Republican and Democratic presidential candidates since 2000 been so different?

And where candidates go, most media follow. As a result, the ongoing bombing of Iraq and devastation caused by sanctions were no longer a news focus by 2000. Ditto the "drug war" — primarily a war on indigenous cultures in the quest for strategic resources. Trade was defined as the key to liberation, despite a track record of neocolonial exploitation. Corporate globalization was considered either inevitable or a done deal. And reform of a corrupt political system — well, any real discussion just would not be prudent.

Yet the impacts of such censored debate are profound and long-lasting. Around the world, the message received is that, whoever wins, expect only more of the same — national narcissism disguised as altruism, corporate appeasement, and the arbitrary use of US military and economic might. That fails to inspire much confidence or hope among the billions who don't get to vote for the world's most powerful leader, yet feel the effects of US policies every day.

No wonder that endless waves of protest, strikes, rallies, guerrilla wars, and mass resistance continue to roll across the world — mainly off camera.

Two centuries after the US constitutional system was created, it is slowly unraveling under the explosive force of the imperial presidency. The framers, although they could not anticipate everything, were certainly aware of the dangers of a drift toward monarchy and empire. Unfortunately, their 18th Century vision no longer meets the test. Even though the president technically needs congressional approval for expenditures and declarations of war, almost anything is possible if the appropriate “national security” rationale can be manufactured.

Even removal won't counter the long-term drift toward executive supremacy. A president can be impeached for “treason, bribery, or other high crimes and misdemeanors,” but only if Congress chooses to act. And the truth is, many of the arguably illegal actions inspired, condoned or actively promoted by presidents are actually tried-and-true tactics that most members of Congress dare not publicly condemn, questionable as they may be. Too many are complicit.

Lately, there has even been talk of invoking the 25th Amendment, which deals with replacement of the president or vice president in the event of death, removal, resignation, or incapacity. One of the most recent additions to the Constitution, it was proposed by Congress and ratified by the states after the assassination of President Kennedy, and was first applied during the Watergate scandal, when Gerald Ford replaced Spiro Agnew as vice president, then replaced Richard Nixon as president. Nelson Rockefeller filled the new vacancy as appointed vice president. It looked a lot like a quiet constitutional coup.

So, how would it work this time? Under Section 4, the Vice President and a majority of the Cabinet would have to write the Senate President (currently Orrin Hatch) and House Speaker (the obsequious Paul Ryan), explaining that the President “is unable to discharge the powers and duties of his office.” Mike Pence would then become “Acting President.” But Trump could respond by sending Ryan and Hatch his own “written declaration that no inability exists.” He could also threaten to retake control unless — within four days — Pence and a majority of either (a) the cabinet that Trump appointed, or (b) another body established by Congress says he is unable to do his job.

This in turn would force Congress to assemble within 48 hours, and to vote less than 21 days later. If two-thirds of both Houses decided that Trump simply couldn't do the job, Pence would continue as Acting President. If they failed to decide, however, Trump would regain control of the presidency and we'd be in bigger trouble than ever. There must be a better way to run a government, especially since a “successful” transition in this case would mean handing the presidency to an evangelical extremist, backed by the Koch Brothers, who actually thinks he is on a mission from God.

The 25th Amendment to the Constitution of the United States

"Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office."

submitted in 1965 - approved in 1967

According to historian Barbara Tuchman, the office of president "has become too complex and its reach too extended to be trusted to the fallible judgment of one individual." Thus, she and others have suggested restructuring; one example is a directorate or Council of State to which the president would be accountable. Ironically, such ideas were discussed but ultimately dropped at the original Constitutional Convention.

While embracing limits on executive power like "advice and consent" on treaties and appointments, the 1787 Convention narrowly rejected having the president operate in conjunction with a Council, specifically to serve as a check on executive power. Benjamin Franklin said at the time that a Council of State "would not only be a check on a bad president but be a relief to a good one."

Delegates to the Convention struggled with how to give a president sufficient authority, free from dependence on the legislative branch, without allowing him to become an "elective monarch." As a result, Article II does not clearly define the term "executive power" or any specific presidential authority in times of war. Congress was given control of military appropriations and rule-making for the regulation of land and naval forces, suggesting that the delegates wanted the two branches to share decision-making power over war. But their general confusion and vagueness about the relationship between the president and Congress left the door open for a gradual expansion of executive power, especially over foreign policy.

Fundamental changes are clearly needed. Even if the US constitutional system survives Trump, presidents will still seek more power until clear limits are imposed and public pressure reverses the trend. In the end, the country may need another Constitutional Convention. Even then, the rest of the world probably won't get to vote for president. But Trump's brazen abuse of the office certainly invites some rethinking.

As happened during America's original Convention, the stated purpose could be eclipsed (or even hijacked) by a "revolutionary" move to revamp the entire system. Still, it does take the

approval of two-thirds of state legislatures just to call a Constitutional Convention, and three-fourths of them to ratify its results. That's a pretty high bar. As a result, the US Constitution has only been amended when an overwhelming majority of the public views the change as extremely important — and sometimes not even then.

There is nevertheless a risk that something inadequate or worse might emerge, along with new restrictions of basic rights. After all, autocratic leaders and policies have been gaining ground lately around the world. But that makes the risks of renegotiating some of the terms struck 230 years ago in creating the US government even more preferable to the current drift toward royalism and tyranny.

As Thomas Jefferson wrote to James Madison in 1789, reflecting on whether their new national government would endure,

“no society can make a perpetual constitution or perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please.”

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*Some concepts and sections of this article were originally developed for reports and editorials written as editor of [Toward Freedom](#), an international affairs periodical. Greg Guma is a journalist, historian, and author of *Dons of Time*, *Spirits of Desire*, *Uneasy Empire*, *Big Lies*, and *The People's Republic: Vermont and the Sanders Revolution*. His latest book is [Green Mountain Politics](#).*

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