



Cato Institute VP On The Evolution Of Executive Power

Michael Martin

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NPR's Michel Martin talks with the Cato Institute's Gene Healy about the back-and-forth between Congress and the White House over the president's ability to take military action against Iran.

MICHEL MARTIN, HOST:

Fallout over the killing of Iranian General Qassem Soleimani also played out in Congress this week. The House on Thursday passed a resolution limiting President Trump's ability to engage in further military action against Iran without seeking approval from Congress. The White House called the House resolution ridiculous and in a statement said it would, quote, "undermine the ability of the U.S. armed forces to prevent terrorist activity by Iran and its proxies" - unquote.

The resolution passed by the House is nonbinding. But among the options members of the Senate are considering is a measure that would be legally binding.

We wanted to talk more about this, so we've called Gene Healy. He's spent years thinking about the reach of presidential powers, including war powers, over the last three presidencies. He's the author of "The Cult Of The Presidency: America's Dangerous Devotion To Executive Power," and he's a vice president at the Cato Institute, which is a libertarian think tank. And Gene Healy is with us now in our studios in Washington, D.C.

Welcome. Thank you for joining us.

GENE HEALY: Thanks for having me on.

MARTIN: So the fact is this isn't the first time that the U.S. government has aimed lethal force at a top official, right?

HEALY: That's right.

MARTIN: But still, put this into context for us. I mean, how out of the ordinary was the action that President Trump took in authorizing the killing of Soleimani without consulting Congress?

HEALY: Well, you could say that it's crossed a constitutional Rubicon. You know, as you said, this isn't the first time that there've been attempts to do targeted killings on top government officials. You have the checkered history of the CIA assassination attempts, JFK trying to get Fidel Castro with exploding cigars and that sort of thing.

But you also have in the past a couple of occasions when the United States has aimed lethal force at top government or military officials in legally authorized wars, as the downing of Admiral Yamamoto's plane in World War II. There was a attempted decapitation strike on Saddam Hussein at the very beginning of the Iraq War - which is, again, a war that Congress authorized.

MARTIN: So...

HEALY: This is...

MARTIN: Why do you say this crosses the constitutional Rubicon?

HEALY: This is the first time that the president of the United States has publicly ordered the assassination of a senior government figure for a country with which we're not legally at war. And that's a big deal. And it is beyond his constitutional authority to do this sort of thing.

MARTIN: Has this evolved? You've been studying this - I mean, let's see, the first book that we cited, "The Cult Of The Presidency: America's Dangerous Devotion To Executive Power" was released in the final months of George W. Bush's presidency, and then you've observed two other presidents, you know, since then. Has this issue been evolving, in your view?

HEALY: Yeah. I mean, I might argue with the word evolving (laughter) because it's not - it's sort of, like, progressing. It's not getting better. Yes. You had after - I think Sept. 11 is a big inflection point. Or you might actually say, you know, there's this phrase - Sept. 11 changed everything. In a way, it's Sept. 14 that changed everything because three days after Sept. 11 is when Congress passed the 2001 authorization for the use of military force, this congressional resolution that has become a blank check for counterterror operations.

But, you know, until now, the post-Sept. 11 programs of targeted killing, which had always been directed towards non-state actors - the keys to that machinery were handed over to Donald Trump in early 2017, and now they're being turned against, you know, actual foreign governments. And I think the - a lot of this discussion, we talk about, well, Soleimani was a bad guy with blood on his hands. Fine. Yes, he was. That has nothing to do with whether this policy is wise, let alone constitutional.

MARTIN: According to lawmakers who attended the White House briefing about the killing of Soleimani, administration officials justified the action based on a 2002 authorization of force in Iraq. As briefly as you can, can you explain the origins of that? And was that intended to be used in perpetuity? I mean, how did this 2002 resolution become something that's cited 18 years later as justification for a completely different action?

HEALY: Right. This - so that's the 2002 AUMF, was passed by Congress to authorize the Iraq War. And it says that the president has the power to address the national security threat from Iraq. Now, unless the - President Trump is going to get out the presidential Sharpie and change all the Q's to N's, it's not worth much when we're talking about a new war and new operations against a different country. But you have seen these AUMFs, these authorizations for the use of military force, take on a life of their own far beyond what they were intended to authorize.

MARTIN: And some have said that both of those authorizations were a mistake. But yet it's been an uphill battle to repeal or change them - and even, it seems, even to debate them. And why is that?

HEALY: Well, that's for a number of reasons. I mean, Congress is complicit in this. As you say, we've been, you know, going on two decades with these broad authorizations. We've watched them morph from their original targets to groups that did not exist on Sept. 11 and had nothing to do with it. And Congress likes to duck responsibility for the most important responsibility that the Constitution gives it.

But it's also - it's not just Congress's fault. We have drifted into a system that turns the original scheme for war powers upside down. The modern system is the president acts first, and Congress has to meet all these barriers that were designed to stand in the way of a war in order to restrain him.

MARTIN: But why do you call your work "The Cult Of The Presidency" as opposed to the passivity of Congress?

HEALY: Well, there...

MARTIN: What does the cult of the presidency have to do with it?

HEALY: Ultimately, a lot of this has to do with the American people and the powers and responsibilities we're willing to invest in this office. It was supposed to be a limited office with defensive powers that mostly took care that the laws were faithfully executed.

Sort of, you know, the old - the reverse of the Spider-Man phrase - you know, with great power comes great responsibility. This is, with great responsibility comes great power. If you place these demands on what was supposed to be a limited office, it only makes sense that the people in that office are going to try to seek the power that would be necessary to meet this series of demands.

MARTIN: That's Gene Healy. He is a vice president at the Cato Institute. It's a libertarian think tank. His research interests include executive power. And among his books is "The Cult Of The Presidency: America's Dangerous Devotion To Executive Power." He was kind enough to join us here in our studios in Washington, D.C.

Gene Healy, thank you so much for joining us.

HEALY: Thanks again.