



This isn't your Founding Fathers' impeachment

William Yeatman

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The Founding Fathers intended for impeachment to serve as Congress's "essential check" on executive overreach.

Rather than checking the president's power, this impeachment is all about winning the White House. Getting two-thirds of the Senate to go along with removing President Trump was never going to happen, so instead House Democrats are using the impeachment inquiry to sway next November's vote. For their part, Senate Republicans are embracing a trial, reportedly in the hope that a drawn-out process will keep Democratic presidential candidates in the Senate off the campaign trail during the crucial first primaries in Iowa and New Hampshire.

What's going on here? Why have the House and Senate, through the impeachment process, become willing cogs in the oily machinery of the 2020 presidential contest?

The answer involves a tectonic shift in American government, from a functioning separation of powers to one that is out of whack. To appreciate today's perverted impeachment process, one must understand how the president supplanted Congress as policymaker-in-chief.

Over the last century, Congress has given away, or "delegated," much of its policymaking initiative to the executive branch. In part, Congress delegates out of necessity—there isn't enough time in the day for lawmakers to execute the laws they pass. And in part, Congress delegates to pass the buck by having agencies make tough choices.

Through these grants of authority, Congress created an alphabet soup's worth of regulatory agencies collectively known as the administrative state. At first, Congress took pains to oversee its delegations through a system of strong committees in the House and Senate. From the New Deal to the Reagan era, powerful committee chairs vied with presidential appointees for influence at regulatory agencies.

During the last 40 years, however, Congress changed. Demographic shifts led to the end of blocs of southern Democrats and northeastern Republicans, which rendered the parties more uniform. While hive-mentalities were taking hold in Congress, opportunistic leaders, such as former House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader George Mitchell (D-Maine), consolidated power with rules changes, procedural maneuvering, and the distribution of party resources.

As power shifted from committees to party leadership, Congress lost the capacity to oversee its delegations. In the power vacuum left behind, modern presidents have seized undisputed supremacy over the administrative state by increasing control over agency budgets and regulatory management.

Policy now flows from the White House.

Congress couldn't pass immigration reform, but President Obama achieved the same results with DACA. Congress denied President Trump funding to build a border wall, but then he exercised his delegated authority to declare an "emergency" and funded the wall unilaterally.

In this context—where the president calls the shots and Congress is beholden to party leadership—half the legislature always is unbothered with unbound executive authority whenever "their guy" occupies the White House.

It's a vicious feedback loop. The more powerful the president becomes, the more our party-centric Congress rationally believes that the Oval Office is the most efficient means to implement the planks of a given party's platform.

Of course, the parties whine about executive overreach, but only when they don't occupy the White House. Neither party seeks to claw back power from the presidency, because each side wants its respective team to exercise executive authority.

So, congressional Republicans cried foul about executive power when President Obama resorted to his "phone and pen," but then rallied to the support of President Trump when he disregarded Congress's "power of the purse" in funding the border wall. And Democratic lawmakers now complain about presidential power, even though they gave President Obama an ovation when he threatened to bypass Congress on climate change during the 2013 State of the Union address.

Today's supine Congress would be unrecognizable to the Founding Fathers. They understood that a concentration of power threatens individual liberty, so they designed a government with three branches—executive, legislative, and judicial—and gave each the means to check the other. By dispersing power into competing institutions, the Founders' constitutional design serves as a bulwark for freedom.

At present, this constitutional design is buckling under the weight of partisanship. The impeachment brouhaha is the latest conspicuous example. Rather than competing *with* the president, both chambers in Congress are leveraging the proceedings to conduct partisan political campaigns *for* the presidency.

For as long as love of party trumps institutional pride in Congress, lawmakers will undermine crucial safeguards for "We the People." The first step back to a healthy separation of powers is for lawmakers to recognize that the presidency—and not just the office-holder—is Congress's constitutional rival.

William Yeatman is a research fellow at the Cato Institute.