

WAR AND THE AMERICAN PRESIDENCY



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THE IMPERIAL PRESIDENCY REDUX

My book *The Imperial Presidency* was written in the latter days, hectic and ominous, of the presidency of Richard M. Nixon. The American Constitution, the book argued, envisages a strong presidency within an equally strong system of accountability. When the constitutional balance is upset in favor of presidential power and at the expense of presidential accountability, the presidency can be said to become imperial.

The perennial threat to the constitutional balance, I suggested, arises in the field of foreign affairs. Confronted by presidential initiatives in domestic policy, the countervailing branches of the national government—the legislative and the judiciary—have ample confidence in their own information and judgment. In this area they do not hesitate to challenge what they deem executive pretensions, nor do they lightly surrender power to the presidency. The media and public

opinion, those extraconstitutional checks on the abuse of executive power, are similarly assured in dealing with domestic policy.

But confronted by presidential initiatives in foreign affairs, Congress and the courts, along with the press and the citizenry too, often lack confidence in their own information and judgment and are likely to be intimidated by executive authority. The inclination in foreign policy is to let the president have the responsibility and the power—a renunciation that results from congressional pusillanimity as well as from presidential rapacity. The more acute the crisis, the more power flows to the president.

"It is chiefly in its foreign relations," Alexis de Tocqueville noted early on, "that the executive power of a nation finds occasion to exert its skill and its strength. If the existence of the American Union were perpetually threatened, if its chief interests were in daily connection with those of other powerful nations, the executive would assume an increased importance." But the young republic Tocqueville visited in the 1830s had lived, at least since the War of 1812, in happy isolation from world power struggles. So "the President of the United States," Tocqueville observed, "possesses almost royal prerogatives which he has no opportunity of exercising."

By the twentieth century the United States itself had become a world power, its interests in daily connection with those of other powers; and the half century from Pearl Harbor to the breakup of the Soviet Union was experienced as a time of perpetual threat to the American Union. The chronic international crisis known as the Cold War at last

gave presidents the opportunity for sustained exercise of those almost royal prerogatives. What began as emergency powers temporarily confided to presidents soon hardened into authority claimed by presidents as constitutionally inherent in the presidential office: thus the imperial presidency.

The rise of the imperial presidency ran against the original intent of the framers of the Constitution. With the warming propensities of absolute monarchs in mind, the framers took care to assign the vital foreign policy powers exclusively to Congress. Article I gave Congress not only the appropriations power—itsself a potent instrument of control—but also the power to declare war, to raise and support armies, to provide and maintain a navy, to regulate commerce, and to grant letters of "marque and reprisal." This last provision represented the eighteenth-century equivalent of retaliatory strikes and empowered Congress to authorize limited as well as general war.

Even Alexander Hamilton, the Constitutional Convention's foremost proponent of executive energy, endorsed this allocation of powers. "The history of human conduct," he wrote in *Federalist* 75, "does not warrant that exalted opinion of human virtue which would make it wise to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of . . . a President of the United States." What seemed at stake was not only the wisdom of the policy but the freedom of the people. "Perhaps it is a universal truth," said James Madison, "that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad."

The specific grants of authority to the executive in foreign policy were trivial compared with the authority specifically granted to Congress. The presidency was only given the power of receiving and appointing ambassadors and, by implication, of serving as the channel of communications to foreign states. As commander in chief, the president was given the power to direct the armed forces when war was authorized by Congress and, by implication, the power to repel sudden attacks when Congress was not in session. However, Article II vested broad executive power in the presidency. And, as *Federalist* 64 and 75 emphasized, the structural advantages of the presidency—unity, decision, secrecy, dispatch, stability of purpose, special sources of information—made the executive the prime agent in dealings with foreign affairs.

Those structural advantages worked against the framers' original intent. "It is of the nature of war," Hamilton wrote in *Federalist* 8, "to increase the executive at the expense of the legislative authority." The pattern of presidential aggrandizement under the spur of international crisis was visible from the start. In opposition, Thomas Jefferson had been the apostle of strict construction and the foe of executive initiative. But viewing problems from the White House, he sent a naval squadron to the Mediterranean under secret orders to fight pirates in the Barbary War, applied for congressional sanction six months later, then misled Congress as to the nature of his orders. He unilaterally authorized the seizure of armed vessels in waters extending to the Gulf Stream, engaged in rearmament without congressional appropriations, withheld information from Congress, and invoked John Locke's doc-

trine of emergency prerogative—the law of self-preservation—to justify action beyond congressional authorization.

Early presidents did not hesitate to engage in what later generations called "covert operations" against foreign states and to do so without congressional knowledge. James Madison sent Joel K. Poinsett as a secret agent to Latin America and winked at his clandestine revolutionary adventures in Argentina and Chile; the secretary of state removed Poinsett's dispatches from State Department files lest Congress request them. Both Madison and James Monroe used covert action to facilitate the annexation of Florida.

Presidential adventurism in the early republic differed in salient respects, however, from the imperial presidency. As Abraham D. Sofaer shows in his magisterial work, *War, Foreign Affairs, and Constitutional Power: The Origins* (1976), early presidents deliberately selected venturesome agents, deliberately kept their missions secret, deliberately gave them vague instructions, deliberately failed either to approve or to disapprove their constitutionally questionable plans, and deliberately denied Congress the information to determine whether aggressive acts were authorized—all precisely because the presidents wanted their men in the field to do things they knew lay beyond their constitutional right to command. "At no time," Sofaer writes of the early period, "did the executive claim 'inherent' power to initiate military actions."

The early presidents thus usurped power, and usurpation creates no constitutional precedents. It is the assertion of inherent powers that defines the imperial presidency and creates precedents for the future. The contrast in constitutional

claims between the emergency policies of Abraham Lincoln and Franklin D. Roosevelt and those of post-Second World War presidents illustrates the distinction.

Both Lincoln and Roosevelt were well aware what the Constitution said about the war-making power. In 1848, Lincoln called the Mexican War illegal and unconstitutional because it was unilaterally provoked, so he believed, by President James K. Polk. The founding fathers at Philadelphia, Lincoln said, had "resolved to so frame the Constitution that *no man* should hold power of bringing this oppression [war] upon us." Similarly Roosevelt in 1940, promising supplies to a French government under Nazi assault, carefully added: "These statements carry with them no implication of military commitments. Only Congress can make such commitments."

Yet after the attack on Fort Sumter in 1861, Lincoln, on his own, without congressional authorization, assembled the militia, enlarged the Army and Navy beyond their authorized strength, called out volunteers for three years' service, spent unappropriated public funds, suspended habeas corpus, arrested persons "represented" as involved in "disloyal" practices, and instituted a naval blockade of the rebel states. Similarly in 1941, when German submarine warfare threatened to sever the lifeline of supplies to Britain, Roosevelt, on his own, without congressional authorization, dispatched troops to Iceland, instituted a convoy system, issued a "shoot-on-sight" order to the U.S. Navy, and launched an undeclared war in the North Atlantic.

But neither president based his action on claims of inherent power. His emergency measures, Lincoln told Congress

when he finally convoked a special session, "whether strictly legal or not, were ventured upon under what appeared to be a popular demand and a public necessity; trusting then as now that Congress would readily ratify them." Roosevelt, like Lincoln, relied on his sense of popular demand and public necessity. The passage of the Lend-Lease Act (1941) after uninhibited public and congressional debate had aligned the United States with Great Britain in the European war. If Congress voted arms to Britain as national policy, then, inferentially, national policy was to make sure the arms got to Britain. Roosevelt added a murky proclamation of "unlimited national emergency." But, like Lincoln, he made no claims of inherent power to do what he believed necessary to save the nation.

Both Lincoln and Roosevelt undertook acts they knew to be beyond the Constitution. Both did so in times of transcendent crisis when the life of the nation seemed truly at stake. Both acted, knowingly or not, on Locke's doctrine of emergency prerogative, trusting that Congress would eventually approve their actions. Both men understood and affirmed that emergency prerogative must expire with the emergency. "The Executive power itself," said Lincoln, "would be greatly diminished by the cessation of actual war." "When the war is won," said Roosevelt, "the powers under which I act automatically revert to the people—to whom they belong." Neither Lincoln nor Roosevelt claimed an inherent and routine presidential right to do what they did. That claim, the essence of the imperial presidency, was a product of the second half of the twentieth century.

The rarity of international crisis delayed the emergence of the imperial presidency. For, while war increased presidential power, peace brought a reaction against executive excess. The Civil War, Henry Adams wrote, "for the time obliterated the Constitution." It produced what Benjamin R. Curtis, one of the two dissenting justices in *Dred Scott v. Sandford* (1857), charged was "a military despotism." But once the crisis ended, the other two branches of government lost no time in reasserting their constitutional powers. A year after Appomattox, the Supreme Court held in *ex parte Milligan* (1866) that Lincoln's prosecution of a proslavery conspirator under martial law behind the lines violated the Constitution. In another two years, Lincoln's successor in the White House found himself at the bar of impeachment. The republic entered the era characterized by Woodrow Wilson as one of "congressional government."

Wilson himself, writing a new preface to *Congressional Government* after the Spanish-American War, remarked on "the greatly increased power . . . given the President by the plunge into international politics." When foreign policy became the nation's dominant concern, Wilson said, the executive "must of necessity be its guide: must utter every initial judgment, take every first step of action, supply the information upon which it is to act, suggest and in large measure control its conduct." As president during the First World War, Wilson acted on his own model.

But once again the return of peace shrank presidential power, as the Senate quickly showed by rejecting the Treaty of Versailles. In the next decade Roosevelt, a persuasive

domestic president, could not prevent Congress from imposing rigid neutrality legislation that put American foreign policy in a straitjacket while Germany and Japan ran amok in Europe and Asia.

The end of the Second World War brought the usual diminution of presidential power. A year after Roosevelt's death, his successor was so unpopular that voters said "To err is Truman" and elected a Republican Congress. The next year Congress gained posthumous revenge against the powerful wartime president by proposing what became the Twenty-second Amendment, thereby limiting all future presidents to two terms.

But this time the diminution was brief. The Cold War, by generating a climate of sustained and indefinite crisis, aborted the customary reversion of power to the coordinate branches. The most visible sign of growing executive imperialism was the transfer of the power to go to war from Congress to the presidency. Ten years after Roosevelt told France that only Congress could make military commitments, President Harry S. Truman, confronted by the North Korean invasion of South Korea, sent American forces to war on his own.

Historically, Congress had preserved the rough balance of the Constitution because it retained three vital powers: the war-making power; the power of the purse; and the power of oversight and investigation. In 1950 it relinquished the war-making power. Truman fought in Korea, Lyndon B. Johnson in Vietnam, and Richard M. Nixon in Cambodia without believing that their dispatch of troops into combat required explicit congressional authorization (Congress provided

ambiguous authorization in the case of Vietnam through the 1964 Gulf of Tonkin resolution). In 1969–74, the Nixon administration tried systematically and, until the Watergate affair, successfully to restrict the other two powers: counter-impounding of the purse by the doctrine of the unlimited impoundment of appropriated funds and countering the power of oversight and investigation by the doctrine of unreviewable “executive privilege” (a novel term, first used officially in 1958) and the extension of the executive secrecy system. Had Nixon succeeded in imposing these doctrines on top of his amplified claims for the presidential warmaking power, he would have gravely weakened Congress as a serious partner in the constitutional order.

Nixon carried the imperial presidency still further by using against his political opponents at home—“enemies,” he called them—powers that the presidency had accumulated to save the republic from foreign foes. Invoking national security as an all-purpose justification, Nixon and his attorney general, John Mitchell, set up a secret White House posse to burgle offices, forge historical documents, and wiretap officials, embassies, newspapermen, and “enemies.” “When the President does it,” Nixon claimed in 1977, “that means that it is not illegal.” Congress eventually roused itself. Articles of impeachment charged Nixon with acting “in a manner contrary to his trust as President and subversive of constitutional government,” and Nixon resigned rather than be impeached and face a trial. Mitchell was later found guilty of perjury, conspiracy, and obstruction of justice, and served a prison term.

The imperial presidency reached a twentieth-century climax with Nixon. The post-Watergate reaction cut back on presidential excesses. None of Nixon’s successors, for example, used emergency powers against political opponents. The presidency of Jimmy Carter even led to concerns about the impotence of the office. “We have not an imperial presidency,” former President Gerald Ford said in 1980, “but an imperiled presidency.” But such lamentations were soon refuted when Ronald Reagan showed that a president with only a vague understanding of issues could still dominate the government and lead the country.

Nor did the reaction constrain executive assumption of the warmaking power. Reagan in the case of Grenada and George H. W. Bush in the cases of Panama and Iraq insisted on what Bush called “the President’s constitutional authority to use the armed forces to defend vital U.S. interests.” In the Iraq case, Congress rescued Bush from a constitutional conflict by voting to authorize the first Gulf War. However, the end of the Cold War materially weakened arguments for the imperial presidency.

The farewell to the Cold War and, for a moment, to international crisis meant the customary setback for presidential power. The presidency was evidently in decline once again. In August 1998, I wrote an Op Ed piece for the *New York Times* entitled “So Much for the Imperial Presidency.” These were the latter days, also hectic and ominous, of the beleaguered presidency of Bill Clinton—“a presidency,” I wrote, “harried and enfeebled by an obsessed special prosecutor.”

Fellow presidential scholars shared in obituaries for the

imperial presidency. "The U.S. presidency," wrote Richard E. Neustadt, "has been progressively weakened over the past three decades to the point where it is probably weaker today than at almost any time in the preceding century." Michael Beschloss, titling his column "The End of the Imperial Presidency," portrayed George W. Bush as "the first truly post-imperial president."

We presidential scholars reckoned without Osama bin Laden, who of course has resurrected the imperial presidency. Much of the impact of resurgent presidential power on American liberties is dependent on the presidential choice of attorney general. After the First World War, a sick and distracted Woodrow Wilson permitted his attorney general, A. Mitchell Palmer, the Fighting Quaker (aka the Quaking Fighter), to run wild in fomenting a Red Scare series of raids and mass arrests. During the Second World War Franklin D. Roosevelt's selection as attorney general was Francis Biddle, a strong civil libertarian. The result was a pretty good wartime record on individual rights (with, of course, the notable exception of the internment of Japanese-Americans, which Biddle opposed). During the Cold War, John Mitchell, Nixon's attorney general, happily connived with his boss at dirty tricks and became the first attorney general to go to jail.

The situation in Washington today? President Bush's attorney general, John Ashcroft, a former senator, a politician of the hard right, and a religious zealot, is on the model of A. Mitchell Palmer rather than of Francis Biddle. According to Steven Brill, the legal critic, "even some of his own deputies at Justice were surprised by how uninterested he was in the

niceties of the law. One veteran staffer recalls that . . . he had never once heard Ashcroft cite a legal case and had watched him blanch when someone in the room cited a case, as if that person was discourteously speaking another language." A righteous fellow, a communicant of an evangelical sect that disapproves of drinking, dancing, going to movies, and gazing at nude statues, Ashcroft puts one in mind of Mr. Dooley's definition of a fanatic—someone who "does what he thinks th' Lord wud do if He only knew th' facts in th' case."

John Ashcroft is given to early morning prayer meetings held in his office. When he was elected to the Senate, according to Judy Bachrach's sketch in *Vanity Fair* (February 2004), friends anointed his head with oil in the style of the ancient kings of Israel, although in this case it was Crisco oil from the kitchen. Ashcroft, a man of pious poses, lacked when young a stern view of his patriotic duty. During the Vietnam War, he sought and received seven deferments, including an occupational deferment for teaching business law to undergraduates at a Missouri college, "an assignment," according to the *New Republic*, "he lined up with the help of a family friend." Since Ashcroft was presumably in favor of the Vietnam War, he joins the serried ranks of chickenhawks that adorn the second Bush presidency. In Vice President Cheney's felicitous phrase, the Bush chickenhawks had "other priorities" than military service in Vietnam.

Ashcroft's chosen national security vehicle is the 342-page USA Patriot Act, rushed to passage without hearings or committee reports forty-five days after 9/11 by a vote of 357 to 66 in the House and 98 to 1 in the Senate. All honor to Russ

Feingold of Wisconsin, the single Senate holdout! The Patriot Act increases the discretionary power of federal agents to collect information about individuals, to search their homes, to inspect their reading habits and their Internet queries, to view their credit reports, to conduct wiretaps without warrants and overhear lawyer-client telephone conversations without court orders, to reduce judicial supervision, and to spy on domestic organizations and advocacy groups. In a report to Congress, the Department of Justice said that federal agents had conducted hundreds of bugging and surveillance operations and visited numerous libraries and mosques.

The FBI is part of Attorney General Ashcroft's domain. On Christmas Eve 2003, the FBI sent a zany bulletin to eighteen thousand police organizations warning against people carrying almanacs. There is nothing more innocent, one would think, than to give next year's *World Almanac* for Christmas. But, according to the FBI, terrorists might use the almanacs "to assist with target selection and preoperational planning." Citizens are asked to report almanac carriers to the local U.S. Joint Terrorism Task Force.

The Patriot Act alarmed libertarians on the right, like William Safire of the *New York Times*, as well as the American Civil Liberties Union crowd on the left. In a case before the Supreme Court, the Cato Institute, a rightist libertarian think tank, filed a brief arguing that "if the government determines that an American citizen must be deprived of his liberty because he poses a threat to public safety, it must be prepared to defend that assessment in a court of law." Bob Barr of Georgia, the dogged impeacher of Bill Clinton, joined

Grover Norquist and David Keene, veteran right-wing leaders, in an ACLU rally protesting the Patriot Act. As Norquist said, "Some day Hillary Clinton's going to be attorney general, and I hope conservatives keep that in mind."

The temper of the administration as shown by its wish lists is even more alarming. In January 2003, there fell into the hands of Charles Lewis, head of the invaluable Center for Public Integrity, an eighty-page draft of a presumed Patriot Act II. The proposed amendments would authorize secret arrests, would relax restrictions on wiretapping, would facilitate the stripping of citizenship, and would in general limit the role of judicial oversight and give the Department of Justice looser standards to brand individuals and groups as terrorist suspects. The libertarian, left-wing coalition bridled; thus far there has been no Patriot II.

The Bush Pentagon meanwhile hauled out of oblivion a discredited official, John Poindexter, convicted of five felony counts of lying to Congress about the Iran-Contra affair (the verdict was reversed on a technicality). Poindexter headed a so-called Total Information Awareness (TIA) project, an electronic databank based on federal, state, local, and commercial records, credit card transactions, telephone calls, travel reservations, and so on. This Orwellian concept was too much even for Republicans, and TIA was stopped in its tracks.

The plight of the 660 men (and boys) picked up in Afghanistan after 9/11 and transported to Guantánamo Bay, the American base in Cuba, excited little interest in the United States, but a good deal abroad, especially in Great Britain. The U.S. government declined to grant al-Qaeda

jihadists prisoner-of-war status for plausible reasons—there was no organized state behind them. Also government lawyers denied that Guantánamo, held under lease, was sovereign U.S. soil; so U.S. law did not apply. The detainees were kept in ignorance of the charges against them and were denied access to counsel, to hearings, and to their families. They existed in legal limbo.

It is difficult to find serious security reasons for presidential suspension of due process. Some detainees were unquestionably al-Qaeda or Taliban thugs, fanatics, and killers; others may have been innocent bystanders, snatched up by accident in random sweeps. The detainees included octogenarians and teenagers. They were collectively defined as “unlawful enemy combatants,” a classification unknown to international law. They were subject to intensive regimens of day-and-night interrogation. A “senior defense official” told the *New York Times* that detainees would be held for many years, perhaps indefinitely. Some among them have attempted suicide.

“If the government denies that foreign nationals have rights,” argued one brief submitted to the Supreme Court, “then by confining them at Guantánamo, it is engaged not in legal detention, but in a lawless exercise of legal force.” The brief was signed by eight former officials, including two secretaries of the Navy. “The question,” said Lord Steyn, a judge on Britain’s highest court, “is whether the quality of justice envisaged for the prisoners at Guantánamo Bay complies with the minimum international standards for the conduct of fair trials. The answer can be given quite shortly. It is a resounding ‘No.’” After pleas from Tony Blair, five British

prisoners were released, some of whom then claimed to the London press that they had been beaten by American guards. “Three of the other released British detainees,” reported *The Economist*, “confirm Mr. Al-Harith’s claim of frequent physical abuse and beating. They had each been subject to more than 200 interrogations lasting up to 12 hours.” American officials in turn denied the stories. No photographs have thus far emerged as in Abu Ghraib, and the conflict in testimony invites a congressional investigation.

The second Bush presidency is the most secretive administration since Nixon. Indeed, John W. Dean, who knew the Nixon White House well, writes that “George W. Bush and Richard B. Cheney have created the most secretive presidency of my lifetime. Their secrecy is far worse than during Watergate.” Dean should have added Ashcroft to his list of secrecy addicts.

In 1966, Congress had passed the Freedom of Information Act based on the proposition that disclosure should be the rule, not the exception, and that the burden should be on government to justify the withholding of records. This was a most beneficial law until Ashcroft got hold of it. Rejecting the spirit of the law, the attorney general advised federal officials that when they “decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions.”

Following the argument over who owned Richard Nixon’s papers, Congress had passed in 1978 the Presidential Records Act based on the proposition that White House records belonged to the American people and should be

made available within a dozen years. A president could restrict access to six enumerated categories, ranging from national security papers to medical files. But the 1978 act breathed the post-Watergate spirit of open government.

One of President Bush's early actions was to alter the methodology and to narrow the scope of the Presidential Records Act, and to do so—i.e., amend a congressional statute—by executive order. His Executive Order 13223 gave sitting presidents the right to cancel the release of papers from a previous administration, even though the previous administration had approved their release. This gave rise to the uneasy suspicion that the people behind Executive Order 13223 had secrets they wished to hide from Congress and the media. President Bush's attack on the Presidential Records Act enraged historians, political scientists, archivists, and journalists, and the American Historical Association organized a lawsuit. In Congress the executive order offended Republicans as well as Democrats, and in October 2002 the House Government Reform Committee unanimously voted to overturn it. The White House moved quickly to suppress the rebellion.

The most famous case involving official secrecy was the disclosure by Daniel Ellsberg of the highly classified Pentagon Papers during the Nixon presidency. It fell to a conscientious solicitor general, Erwin Griswold, former dean of the Harvard Law School, to make the case for the prosecution. Griswold asked three high-level security officials to pick out items that could conceivably constitute threats to the security of the republic. They came up with around forty items. Most

Griswold dismissed as trivial, thereby reducing the list to eleven items he thought faintly arguable.

The eleven did not impress the Supreme Court, and the Pentagon Papers were published in their entirety. The republic survived. The threats to national security? As Griswold observed eighteen years later, "I have never seen a trace of a threat to the national security from the publication. Indeed, I have never seen it even suggested that there was such an actual threat. . . . It quickly becomes apparent to any person who has considerable experience with classified material that there is massive overclassification and that the principal concern of the classifiers is not with national security, but rather with governmental embarrassment of one sort or another."

Imperial suggests empire, and the status of the United States as the world's unchallengeable superpower headed by an imperial presidency rouses speculation over the future and fate of the American Empire. Comparisons are often made to the Roman Empire and to the modern British and French empires. Is the American Empire a fitting successor?

Now Americans, unlike Romans, Britons, and the French, are not colonizers of remote and exotic places. We peopled the vacant spaces, as we whites deemed them, in continental expansion from sea to shining sea, but we did not send away our youngest sons to man the outposts of empire. Britain really created a British world in India and Africa, as the French did in equatorial Africa and Indochina. Americans, wrote James Bryce in 1888, "have none of the earth-hunger which burns in the great nations of Europe."

Some of our political leaders did. Jefferson thought Cuba

"the most interesting addition which could ever be made to our system of States" and told John C. Calhoun in 1820 that the United States "ought, at the first possible opportunity, to take Cuba." John Quincy Adams agreed, considering the annexation of Cuba "indispensable to the continuance and integrity of the Union itself," and supposing Cuba would inexorably fall to the United States by the law of political gravitation.

As for Canada, John Quincy Adams held "our proper domain to be the continent of North America." "That the whole continent of North America and all its adjacent islands," said Henry Adams, JQ's grandson, in 1869, "must at last fall under the control of the United States is a conviction absolutely ingrained in our people." "Long ere the second centennial arrives," Walt Whitman wrote in *Democratic Vistas* (1871), "there will be some forty to fifty great States, among them Canada and Cuba." As late as 1895, Henry Cabot Lodge declared, "From the Rio Grande to the Arctic Ocean there would be but one flag and one country."

These things, so authoritatively predicted, never came to pass. The American people were not much interested in empire. The United States has not annexed Cuba or Canada. There is no likelihood that we ever will. Texas waited outside the Union for a decade as an independent republic and then entered only through presidential sleight-of-hand, John Tyler procuring admission by joint resolution after the U.S. Senate had rejected a treaty of annexation. The movement during the Mexican War to take "all Mexico" failed. President Polk even feared that Congress would turn against the war and

that he would lose California and New Mexico. The Ostend Manifesto was disclaimed, and the filibusters of the 1850s were repudiated.

After the Civil War, Secretary of State William H. Seward's ambitious expansionist program got nowhere, except for the flyspeck of Midway and for Alaska, which Russia wanted to get rid of and which Congress reluctantly accepted after members were bribed, perhaps by the Russian minister. The Senate rejected the Hawaiian reciprocity treaty, the purchase of the Virgin Islands from Denmark, the annexation of Santo Domingo, and the annexation of Samoa. It took half a century of argument before we annexed Hawaii, and this might not have taken place had it not been for the Spanish-American War. Even with that war, we still did not annex Cuba. We did annex the Philippines, but the number of Americans who lived out their lives in the archipelago was negligible, and we set the islands free forty years later. The imperial dream has encountered consistent indifference and recurrent resistance through American history. The record hardly sustains the thesis of a people red hot for empire.

Then there is the question of control. "The term 'empire,'" writes Professor G. John Ikenberry, summing up the common understanding, "refers to the political control by a dominant country of the domestic and foreign policies of weaker countries." Rome, London, Paris, despite slow and awkward lines of communication, really ruled their empires. Today, communication is instantaneous; but, despite the speed of contact, Washington, far from ruling an empire in the old sense, becomes the prisoner of its dependent states.

This was the case with South Vietnam in the 1960s, and it has been the case ever since with Israel. Governments in Saigon forty years ago and in Tel Aviv today have been sure that the United States would not pull out, or even significantly reduce American aid. They therefore were enabled to defy American commands and demands with impunity. Pakistan, Taiwan, Egypt, South Korea, the Philippines are similarly unimpressed, evasive, or defiant. For all our superhuman military strength, we cannot get our Latin American neighbors, or even the tiny Caribbean islands, to do our bidding. Americans are simply not competent imperialists, as demonstrated in Iraq in 2005. The so-called American Empire is in fact a feeble imitation of the Roman, British, and French empires.

And yet the American presidency has come to see itself in messianic terms as the appointed savior of a world whose unpredictable dangers call for rapid and incessant deployment of men, arms, and decisions behind a wall of secrecy. This view seems hard to reconcile with the American Constitution. The impact of 9/11 and of the overhanging terrorist threat gives more power than ever to the imperial presidency and places the separation of powers ordained by the Constitution under unprecedented, and at times unbearable, strain.

But superhuman military power cannot solve everything, even if American presidents were free to use such power without constraints, as they are not. As a world empire, the United States is undone by its own domestic politics and its own humane, pluralistic, and tolerant ideals. The premises of

our national existence undermine our imperial aspirations. So the imperial presidency redux is likely to continue messing things up, as we are doing so successfully in Iraq, the needless war. Then democracy's singular virtue—its capacity for self-correction—will one day swing into action.