
File 9 –The executive – Testing the rule of law

Text 1 - Strongmen around the world are increasingly inspired by America's example

A permissive Supreme Court and a supine Congress have turned the executive into something the Framers feared.

Opinion, Fareed Zakaria** *The Washington Post*, November 28, 2025

In a conversation with a friend from Pakistan, I lamented that country's recent decision to give the head of its army expanded powers, including lifetime immunity from legal prosecution. My friend replied, "We're just following in America's footsteps. Didn't your Supreme Court rule that the president could kill his political opponent and yet be immune from prosecution?"

Welcome to America's new democratic export: the unchecked executive.

If America's Founding Fathers** were to come back and look at their legacy, what would without doubt stun them is the modern presidency. They designed the American political system explicitly to fragment power. They were reacting against a monarch and the "accumulation of all powers ... in the same hands" (Federalist No. 47). They purposefully conceived of a decentralized and restrained executive, described in the notably brief Article II. The presidency was an office for "faithfully executing the laws," bounded by carefully constructed checks from the legislature and the judiciary.

Congress, by contrast, was named the first branch of government and vested with the lion's share of authority — the powers to tax, spend, declare war and regulate commerce. James Madison**, the de facto author of the Constitution, explicitly acknowledged this fact in Federalist No. 51, writing that "in republican government, the legislative authority necessarily predominates."

Even Alexander Hamilton**, often thought to have urged an imperial presidency, in fact believed strongly that the president had few monarchical powers. In Federalist No. 69, he contrasted the British king with the American president, saying that the latter is elected for merely a four-year term and is "amenable to personal punishment and disgrace." He added that Congress — and not the president — was given the powers to provide advice and consent on treaties, declare war and raise an army. One reason the president's foreign policy powers are mostly limited to military command, he explained in Federalist No. 75, is that "an avaricious man might be tempted to betray the interests of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid of a foreign power, the price of his treachery to his constituents."

Yet by the 1960s, this finely tuned mechanism had seized up. Wars, economic crises and the media's tendency to nationalize and centralize attention created a one-way ratchet for increasing, unchecked presidential power. This dramatic imbalance culminated in the constitutional crises of the Vietnam War and Watergate**. In the 1970s, Congress, finally energized by bipartisan outrage, passed a series of laws designed to rein in executive excess. For example, the Inspector General Act of 1978 created a cadre of internal watchdogs to root out waste and fraud, premised on the understanding that they would be protected from political retaliation.

The whole set of restraints didn't work. While Congress established the legal mechanisms for control, including regarding war powers, it lacked the collective political will to hold the president to them. Furthermore, after 9/11, war-on-terror resolutions effectively nullified these restraints, all but giving presidents carte blanche for the use of military force.

Beyond the legal restraints, after Richard M. Nixon's presidency, both parties agreed to a set of powerful norms — for example, firewalling the Justice Department from the White House to keep the president from directing the attorney general** to investigate or prosecute specific individuals. Additionally, presidents voluntarily released their tax returns and placed assets in blind trusts, part of a commitment to financial transparency designed to assure the public that the commander in chief was not profiting from the office.

The Trump administration has shredded these constraints. Even worse, the most egregious violations have been sanctified by the Supreme Court based on the bizarre unitary executive theory.** This once-fringe legal doctrine asserts that a terse phrase in Article II somehow grants the president unrestricted authority over the

executive branch. Even though Congress has been explicitly given the power of the purse and can create agencies and departments, determine their structures and functions, and direct where its funds be spent, the president, the theory claims, has virtually unlimited power to run those agencies, even when he violates specific congressional intent.

This expansion of executive power has culminated in the Supreme Court's 2024 decision in *Trump v. United States***, in which the court held that presidents enjoy absolute immunity for actions within their “core constitutional powers” and presumptive immunity (at a minimum) for all other “official acts.” In a blistering dissent, Justice Sonia Sotomayor noted that under this standard, a president could arguably order SEAL Team 6 to assassinate a political rival and be shielded from criminal liability, provided the order was given through official channels.

The American presidency has journeyed from a modest, constitutionally constrained office to a super presidency that commands total attention and power. And while President Donald Trump has pushed these powers to the utmost, he has been enabled by a failure of political courage in Congress and an ideological Supreme Court that seems to have lost any respect for original intent and precedent. The result is a structural asymmetry where the first branch of government is now the weakest, and the Supreme Court is a rubber stamp.

The court has a chance to stop this accumulation of power by asserting what they plainly know is true: that the president can't declare national emergencies at will to place and remove tariffs unilaterally. If not, the American presidency will become for the world not an example of limited, constitutional government, but rather of rule by a strongman wielding even more unbridled power than King George III** did when the Founding Fathers rebelled against him 250 years ago.

QUESTIONS ON TEXT 1

1/ As you explore the text, do some research on the words and phrases indicated by **.

2/ What effect does Fareed Zakaria intend to produce in choosing this anecdote in his ‘introduction’?

3/ Explain in your own words the sentence lines 6-7 “*If America's founding fathers were to come back... modern presidency*”.

4/ From l 5 to L 23, pick all the words used to describe:

- The executive
- The legislative

5/ Hyperlinks to what is referred to as “Federalist No XX” are included. What do they correspond to?

6/ Lines 21-23: why do you think Fareed Zakaria chose this particular quote? And by the way, who wrote this?

7/ There are several allusions to ‘the monarch’ and ‘monarchy’ in the text. What is or what are the point(s) that the columnist tries to make?

8/ Line 26: what does the phrase “dramatic imbalance” refer to? What factors contributed to this?

9/ What was the reaction? What motivated such reaction? Did it work?

10/ What is the Supreme Court blamed for? What does the readers learn about their decision? (*Trump v. United States*)

11/ From the last paragraph of the text, can you guess what Supreme Court decision is pending?

12/ Now that you have finished working on the text, analyse how the headline, the introduction and the conclusion echo each other.

13/ Pick one key sentence and two key phrases that best encapsulate the main point of the piece.

VOCABULARY

As you go, try to work out a definition or French equivalent for the following wordsL2 to follow in s.o.'s footsteps

- L6 legacy
- L9 purposefully
- L12 to be vested with
- L 18 the latter
- L 25 ratchet
- L28 watchdogs
- L 31 to hold s.o. to sthg
- L37 tax returns
- L39 to shred
- L39 egregious
- L41 terse
- L48 blistering
- L48 dissent
- L56 a rubber stamp

VERSION

Have fun translating the sentence running from l 6 to l 7 and the last paragraph.

TEXT 2 -After Watergate, the Presidency Was Tamed. Trump Is Unleashing It.

In the 1970s, Congress passed a raft of laws to hold the White House accountable. President Trump has decided they don't apply to him.



President Nixon waves goodbye after leaving the White House. Credit...Chick Harrity/Associated Press

By Matthew Purdy, *The New York Times*, Jan. 2, 2026

A power-hungry president had twisted the government into a tool for his personal political benefit. His aides kept an “enemies list” of opponents to be punished. His cronies ran the Justice Department and he made puppets of other agencies that were meant to be independent. Corporations that wanted favorable treatment from the White House were pressured to make illegal contributions to the president’s political coffers.

As revelations of rot in the Nixon administration tumbled out through the 1970s, Senator Lawton Chiles, Democrat of Florida, captured the alarm of the Watergate era: “Nothing will bring the Republic to its knees so quickly as a bone-deep mistrust of the government by its own people,” he said. “We have seen other democracies fall within our own lifetime. Fall through internal corruption rather than outside invasion.”

The Watergate scandal had convulsed the nation. Coming near the end of the disastrous war in Vietnam, the scandal sent trust in the presidency into a tailspin. The sense of shock and shame prompted an extraordinary period of bipartisan congressional activism to impose checks on the power of the presidency.

Nearly all corners of the government were touched by the reforms, which included new ethical safeguards, strengthened protections for federal workers against political pressure, restrictions on the president’s power to unilaterally declare war. And a succession of attorneys general established rules to block White House involvement in Justice Department prosecutions.

Image



The Senate Watergate committee, pictured here in 1974, helped to tame the power of the presidency. Credit...George Tames/The New York Times

The aim was not just to excise what one aide to President Richard M. Nixon described as “a cancer,” but to prevent a recurrence. “Watergate reform is not for the past or for the present,” Senator Lowell P. Weicker Jr., a Connecticut Republican, wrote in a 1976 addendum to a Senate report. “Our memories may indeed keep us free today. It is for unborn generations who will never know firsthand how close a democracy came to oligarchy.”

From the opening days of his second term, President Trump took aim at Watergate’s ethical checkpoints as if in a shooting gallery. First, he fired 17 inspectors general, a job established in the Watergate era to ferret out waste, fraud and abuse in government. He also fired the head of the Office of Special Counsel, an independent agency created by legislation in 1978 to protect government whistle-blowers. Then he fired the director of the Office of Government Ethics, created around the same time to guard against financial conflicts of interest by top government officials. And he has used the Justice Department and the F.B.I. as political tools, roles they worked to shed after Watergate.

A strain of conservative legal thinking has been aiming to reassert the president’s powers ever since they were curbed in the post-Watergate era. But while Mr. Trump’s lawyers successfully make the case for expanding presidential authority based on a high-minded Constitutional argument, there is a raw political result. He has removed barriers that might slow his pursuit of a highly personal presidency — punishing opponents and rewarding allies and financial backers while also reaping profits for family businesses that intersect with his powers as president.

Full article [HERE](#)

Text 3 - Trump Tramples Congress's Power, With Little Challenge From G.O.P.

On national security, spending and oversight, the president continues to undercut the legislative branch, and Republicans in charge have done little to stop him.

By Julian E. Barnes and Catie Edmondson

The New York Times, Sept. 9, 2025

The Pentagon barred the senior Democrat on the Senate Intelligence Committee from making an oversight visit to a military spy agency.

Armed forces off the coast of Venezuela began a military campaign against alleged members of a drug cartel without any authorization from Congress, and without notifying key members.

The White House informed Congress it planned to use a rare maneuver to skirt a vote and cancel nearly \$5 billion in foreign aid funding that lawmakers had already approved, the latest escalation of its campaign to undercut the legislative branch's spending powers.

And just a month after senators had confirmed her, Robert F. Kennedy Jr., the health secretary, ousted the director of the Centers for Disease Control. He also put forward changes that would effectively restrict access to Covid-19 vaccines, after pledging to senators during his own confirmation hearings that he would not make it more difficult.

The Trump administration continues to erode the power of Congress, trampling on its constitutional prerogatives in ways large and small. Through it all, Republicans in charge have mostly shrugged — and in some cases, outright applauded — as their powers, once jealously guarded, diminish in ways that will be difficult to reverse.

In recent weeks, G.O.P. leaders have looked on passively as the president has fired a litany of agency leaders whom senators worked for weeks to confirm, from the C.D.C. to the Internal Revenue Service to the Federal Reserve.

And they have shown little appetite for challenging the administration, even as a few have expressed occasional displeasure about the consequences of their decisions earlier this year to swallow their reservations about some of his nominees and confirm them. (...)

For nearly a century, Democratic and Republican presidents alike have sought to amass more power, particularly to conduct foreign policy and military operations, and with a few exceptions, succeeded in chipping away at congressional influence. What is different now is the degree of disdain Mr. Trump has shown for Congress — and the willingness of G.O.P. leaders to defer to him even when it means undercutting their coequal branch of government.

Full article [HERE](#)

Text 4 - Trump's Maximalist Assertion of Presidential Power Tests the Rule of Law

The United States has never seen an effort to expand presidential authority at the scale of Donald J. Trump's second term.

By [Charlie Savage](#)

Charlie Savage has been writing about presidential power for more than two decades. He reported from Washington.

The New York Times April 30, 2025

Nearly every president has pushed the bounds of executive power to try to achieve something specific. And a handful of presidents who took office during a true national crisis, like the Civil War or the depths of the Great Depression, swiftly made a series of legally aggressive moves to grapple with the challenges facing the country.

But the sheer volume and intensity of the power grab President Trump has undertaken in the first 100 days of his second term is unlike anything the United States has experienced.

The rule of law in the United States has been traditionally understood to use checks and balances to prevent too much

concentration of arbitrary executive power. But the **maximalist approach** in the early days of Mr. Trump's second term is testing the fundamental structures of American democracy in a way that has never been seen before.

Mr. Trump, pursuing a confrontational style of presidential politics, has unleashed an assault on counterweights to his authority:

attacking judges, sidelining Congress's role in making decisions about taxes and spending, steamrolling internal limits on the executive branch and using the levers of government to try to force outside centers of power like law firms and universities to submit to his will.

Akhil Reed Amar, a Yale Law School professor, said the broader picture was of an administration that was “proudly lawless and anti-law.”

30 In a recent interview with Time magazine, Mr. Trump was repeatedly pressed on his attempts to increase presidential power. While his answers largely meandered off topic, he denied that he was expanding executive authority, said he was deploying power as it was meant to be used and claimed

35 an electoral mandate for his actions.
“I think I’m using it properly, and I’m also using it as per my election,” he said.

Yet Mr. Trump has flaunted his disrespect for the other
40 branches of government. When it comes to the courts, he has denounced judges who rule against him and called for their impeachment while his administration has exploited loopholes and sidestepped complying with some of their injunctions.

45 (...) When critics accuse Mr. Trump of being too aggressive in his use of executive power, his team dodges the question of whether he is abusing his authority by stating that the power legally exists. But the administration is also pushing to
50 change mainstream understandings to expand the authorities available to him.

For example, Mr. Trump has repeatedly challenged the power of the legislative branch. He unilaterally dismantled agencies Congress has said shall exist as a matter of law. And
55 he fired civil servants, inspectors general and independent agency heads in defiance of job protections lawmakers wrote into statutes.

His goal appears to be to get the Supreme Court’s conservative majority to strike down those statutes and
60 enshrine into law **the so-called unitary executive theory**. Developed by the Reagan administration’s legal team, **the**

Full article [HERE](#)

Text 5 - Supreme Court decision could reshape Trump’s tariffs — and presidential power

5 The Supreme Court may rule soon on President Trump’s “Liberation Day” tariffs. Mark Schiefelbein/Associated Press
Larry Edelman, Globe columnist, *The Boston Globe*, January 12, 2026

Today, I look at the pending Supreme Court decision on tariffs.

The Supreme Court may rule soon on President Trump’s “Liberation Day” tariffs — a cornerstone of his economic
5 policy that has nudged inflation higher and sent import-reliant businesses scrambling, but hasn’t caused the disruptions many predicted.

It’s possible the high court will deliver a straight thumbs-up or thumbs-down decision on whether Trump has the
10 authority to impose tariffs under a nearly five-decade-old emergency powers law that’s never been used for this purpose.

theory is a revisionist interpretation of the Constitution. It would undercut the power of Congress to structure the government and expand presidential power, rendering the
65 executive branch more comprehensively subject to Mr. Trump’s whims.

Mr. Trump has also assumed some of the traditional constitutional control delegated to lawmakers over decisions about government spending and taxation. He froze the
70 expenditure of funds that Congress appropriated, and he unilaterally imposed taxes on almost all imported goods from around the world.

Mr. Trump claimed the power to institute those sweeping tariffs by invoking a 1977 emergency powers law that allows
75 him to impose economic sanctions to address an “unusual and extraordinary threat” from abroad. That law does not mention tariffs and has never been used in that way before. Scholars of presidential power can identify seeds for some of Mr. Trump’s moves in precedents set by past presidents, but
80 they expressed shock at the number of contestable actions he has initiated and the aggressive use to which he has put them. Many of his executive orders, they say, are difficult to connect to mainstream understandings of the law.

“We’ve been for a long time marching toward greater
85 executive power and more feckless Congresses — Republicans and Democrats both, but a couple things seem to be different here,” said Michael W. McConnell, a Stanford law professor and a former federal appeals court judge appointed by Mr. Bush.

90 “One is just the volume — it’s an incredible spate of activity on all kinds of different fronts, and at some point volume begins to have a qualitative feel to it,” he said. “The second is that it seems to me that a lot of it is being done with much less legal care. Every president makes mistakes, but there has
95 been a lot more sloppiness and I just can’t believe they could possibly have been approved by the Office of Legal Counsel.”

A firm endorsement would free the president to continue using import duties as leverage in trade negotiations, an
15 incentive for domestic production, and a source of hundreds of billions of dollars a year in government revenue. An outright rejection would raise complicated questions about refunds to tariff payers and how Trump will respond.

20 But it’s more likely the justices will come down somewhere in the middle, creating “ambiguity that ripples outward,” according to Harvard University economist Jason Furman.

“If some tariffs stay in place, businesses that have so far absorbed much of the costs may no longer be able to shield consumers from higher prices,” Furman, a top economic adviser to President Obama from 2013 to 2017, wrote recently. “And if any tariffs are struck down, the administration will almost certainly try to reimpose them using alternative legal authorities, which will set off still more litigation.”

Beyond the tariffs themselves, the court’s ruling could expand or curb the president’s power to advance his agenda without congressional approval.

Catch up: In November, the justices heard oral arguments in a case combining lawsuits from small businesses — including a Vermont cycling gear manufacturer — and 12 state attorneys general.

The plaintiffs argued Trump exceeded his authority under the International Emergency Economic Powers Act of 1977. Trump’s declared “emergencies” — trade deficits and fentanyl trafficking — didn’t meet IEEPA’s requirement of an “unusual and extraordinary threat,” they said.

Moreover, the plaintiffs contended that tariffs are taxes, which only Congress can institute.

A majority of justices — including three conservatives — appeared skeptical of Trump’s reliance on IEEPA.



Chief Justice John G.

Roberts Jr. Melina Mara/The Washington Post

Chief Justice John Roberts noted that while tariffs involve foreign relations, where the president has a wide berth, “the vehicle is imposition of taxes on Americans.”

Solicitor General D. John Sauer, representing the administration, countered that the tariffs were regulatory tools falling within the president’s foreign affairs purview. The justices agreed to hear the case on an expedited schedule, and court watchers say a ruling might come as soon as this month or next.

The impact: Predictions that Trump’s tariffs would tank the economy and spike inflation haven’t materialized — at least not yet.

After a sharp sell-off early in the year, the stock market rallied, ending the year up 16 percent. The economy expanded at a solid 2.5 percent average annualized rate in the first three quarters. But annual inflation, as measured

by the Consumer Price Index, rose to 2.7 percent in November from 2.3 percent in April.

Research by Harvard’s Gita Gopinath and the University of Chicago’s Brent Neiman found several explanations for the muted impact.

Businesses stockpiled goods before tariffs took effect and, loath to lose customers, absorbed much of their higher costs through smaller profit margins, they wrote in a recent working paper. Actual tariff rates also proved lower than advertised because of shipping delays, product exemptions, and increased compliance with the US-Mexico-Canada trade agreement.

Zoom in: Still, it was a year marked by confusion and frustration for companies, especially smaller firms with fewer resources to adapt.

Gopinath and Neiman calculated that overall manufacturing costs rose by about 1 percentage point, with some sectors, such as heavy-duty trucks and construction machinery, seeing increases of 2 to 3.9 percentage points.

“It is exhausting to be kind of beaten down by this sense of uncertainty, checking the news every morning and checking the White House tariff schedule,” Claire Cheney, founder of Curio Spice Co. in Winchester, told the Globe’s Jim Puzzanghera last month.

What’s ahead: The high court’s 6-3 conservative majority has frequently ruled in favor of Trump in so-called shadow-docket cases. These fast-tracked cases — which usually involve limited briefing, no oral argument, and rulings with little or no explanation of the court’s reasoning — have challenged administration actions such as deportations, firing leaders of independent agencies, and DOGE spending cuts.

That record is why the skeptical grilling of the solicitor general by conservative justices during oral arguments was seen as a bad omen for the administration.

Final thought: But a Supreme Court loss doesn’t mean Trump’s tariff policy is dead.

The president could pursue congressional authorization for reciprocal duties. Or he could seek to restore them under Section 232 of the Trade Expansion Act of 1962, which allows tariffs on national security grounds, or Section 301 of the Trade Act of 1974, which covers retaliation for unfair trade practices. Both would require time-consuming investigations.

“I will tell you that’s one of the most important cases in the history of our country because if we don’t win that case, we will be a weakened, troubled, financial mess for many, many years to come,” Trump said in October.

Trump accepts few restrictions on presidential power. One Supreme Court defeat is unlikely to make him surrender on tariffs.

See Also

- **What Americans think about President Trump's use of executive power**

The Brookings Institute

<https://www.brookings.edu/articles/what-americans-think-about-president-trumps-use-of-executive-power/>

- **Most Americans think Trump is trying to exercise more power than previous presidents**

Pew Research Center, October 8, 2025

<https://www.pewresearch.org/short-reads/2025/10/08/most-americans-think-trump-is-trying-to-exercise-more-power-than-previous-presidents/>

- **Comparative study of number of executive orders signed by presidents – The Pew Research Center, Dec 2025**

<https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/>

Videos (both on cahier de prépa)

- **How Trump is testing the limits of presidential power**

<https://www.youtube.com/watch?v=anBagpWoyXc>

- **“The Legal Theory Behind Trump's Plan to consolidate power**

https://www.youtube.com/watch?v=Ebdz4DIdiPM&ab_channel=TheWallStreetJournal