

Inquiring Minds Topic- 2 July 2021

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What Really Saved the Republic from Trump?

Timothy Wu - Dec. 10, 2020 - New York Times:

Americans are taught that the main function of the U.S. Constitution is the control of executive power by an elaborate constitutional system of checks and balances, engineered largely by James Madison and protecting us from despotism.

But, is this so? The presidency of Donald Trump, aggressive in its autocratic impulses but mostly thwarted from realizing them, should prompt a re-examination of that idea. For our system of checks and balances played a disappointingly small role in stopping Mr. Trump.

What really saved the Republic from Mr. Trump was a different set of limits on the executive: an informal and unofficial set of institutional norms upheld by federal prosecutors, military officers and state elections officials, whose values are our “unwritten constitution.”

It’s true that the courts at times provided a check on Mr. Trump with [their dismissal](#) of his frivolous attacks on the 2020 election and their striking down some of his extreme immigration executive actions..

The bigger and more important failure was Congress. Madison intended Congress to be the primary check on the president. Unfortunately, that design has a key flaw (as Madison himself realized). The flaw is vulnerability to party politics. It turns out that if most members of at least one body of Congress exhibits a higher loyalty to its party than to Congress, Congress will not function as a reliable check on a president of that same party. This was what happened with Mr. Trump and the Republican-controlled Senate.

Confronted with a president who was heedless of rules, Senate Republicans, let Mr. Trump do what he wanted. They allowed acting appointees to run the federal government. The impeachment process was reduced to nothing but a party-line vote. The Senate became a rubber stamp for executive overreach.

Instead, the president's worst impulses were controlled by the three pillars of an unwritten constitution. The first is the customary separation between the president and federal criminal prosecution. The second is the traditional political neutrality of the military. The third is the personal integrity of state elections officials.

If any of these informal "firewalls" had failed, President Trump might be on his way to a second and more autocratic term. But they held firm, for which the Republic should be grateful.

Consider the first firewall: prosecutorial independence. The prosecution function of the executive branch is not mentioned in the Constitution and based on the text alone some might think that the president has the power to order federal prosecutors to do his bidding. Mr. Trump [claimed that power in 2017.](#)"

But an unwritten norm has long held that the president should not dictate law enforcement decisions and criminal prosecutions. That is why, throughout this fall of 2020, even as Mr. Trump [urged his appointees](#) in the Justice Department to openly announce a criminal investigation into the Biden family, they did not comply. None of Mr. Trump's appointees was willing to openly investigate Joe Biden or his family members.

Imagine during the 2020 Presidential Campaign, if the Justice Department had followed Mr. Trump's lead, causing a U.S. attorney to charge Mr. Biden with criminal fraud. Even if Mr. Biden ultimately prevailed in court. He would have possibly lost the election.

Prosecutorial independence was further shown by the indictment and the conviction of Mr. Trump's political allies, including Steve Bannon, Paul

Manafort and Michael Cohen even in a department run by a loyalist, Attorney General, William Barr.

The second firewall of the unwritten constitution was the U.S. military's longstanding custom against getting involved in domestic politics. It was invaluable in checking Mr. Trump's militaristic instincts.

On June 1, as protests and counter-protests following the killing of George Floyd became violent and destructive of property, Mr. Trump, threatened to "deploy the United States military" by invoking the Insurrection Act of 1807. Mr. Trump's threat had written law on his side. He even staged a photo op of himself flanked by Mr. Barr, Defense Secretary Mark Esper and Gen. Mark Milley. Soon, active-duty Army forces of the 82nd Airborne Division were called and positioned outside of Washington.

This was an extraordinarily dangerous moment for the country. But on June 3, Mr. Esper [publicly broke with the president](#), stressing that active duty forces should be used domestically only "as a matter of last resort, stating "I do not support invoking the Insurrection Act." General Milley [later issued a public apology](#) for participating in Mr. Trump's photo op. The active-duty 82nd airborne troops were sent home.

The final firewall of the unwritten constitution has been the integrity of state elections officials. There were many election and public officials who stood firm against Trump and Republican forces who sought to undermine the legitimacy of the 2020 Election presidential results, especially and surprisingly, it was [Brad Raffensperger](#), the secretary of state and by the governor, Brian Kemp in Georgia who stood firm despite being attacks by the Republican public and members of their own party.

Was it the Constitution which saved the day? Not really. The states are given in the Constitution a central role to play in federal elections. But what seems to have mattered the most was the personal integrity of the state elections officials.

The last four years suggest that structural checks and balances can be overrated. The survival of our Republic depends as much, if not more, on the decision of the individuals in government. It is called civic virtue, and at the end of the day, there is no real alternative.

I found it necessary to edit the original article (because of space constraints) by Mr. Wu, a law professor at Columbia University. For those interested in reading the unedited article, use this link:

<https://www.nytimes.com/2020/12/10/opinion/trump-constitution-norms.html>

We have lived through tumultuous times in the last 4 years. We survived a close call. Our country remains polarized. The former president has not admitted defeat and many of his supporters and politicians alike believe his claims of the 'Big Lie'. The author states we may not be able to depend on our constitutional framework of check/balances to save us in the future from an autocrat. He ends by saying that, at the end of the day, it is 'civic virtue' which will save us.

- What is 'civic virtue'?
- Do you think that the author is correct that 'civic virtue' saved us?
- How does it develop and thrive? Can it be learned at home or school?
- How can we be sure that our elected and appointed officials we vote for have it?
- Would the proposed 'For the People Act of 2021' awaiting Senate approval be helpful. It will address voter access, election integrity and security, campaign finance, and ethics for the three branches of government needed? Link for quick summary:
<https://www.congress.gov/bill/117th-congress/house-bill/1>