



What Constitutes a Constitutional Crisis?

In scandal-ridden Washington, every crisis is a mortal threat to our constitutional order, or so the hysteria mongers in the mainstream news media would have us believe. From Watergate to Iran-Contra to Whitewater to Russian collusion, every major scandal (and a host of minor ones along the way) is styled a menace to the body politic, proof positive that our Declaration of Independence and Constitution are teetering on the brink.



The impeachment of President Clinton was such a “constitutional crisis,” we were informed a generation ago, as are now the allegations of collusion between Russia and the Trump campaign. But in reality, neither of these — nor any of the other dozens of scandals that have defaced the body politic in recent years — have been genuine “constitutional crises,” in the sense that none of them posed any threat to the Constitution itself, nor to the government defined and empowered by it.

In fact, even so rare an event as a presidential impeachment is no threat to the Constitution. The reverse is true: impeachment and removal from office upon conviction in a Senate trial are both robust checks against a corrupt and overweening executive branch, provided for in the Constitution itself. Far from constituting crises, impeachments of presidents, the resignations of corrupt legislators, and other headline-grabbing political actions to remove corrupt or criminal magistrates are among the healthiest actions our limited constitutional government can undertake, since they correct abuses of power and discourage other would-be abusers from making bad choices.

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None of which is to suggest that we do not suffer from a “long train of abuses and usurpations” that do amount to a grave constitutional crisis. We do. But much of the crisis stems from our failure to acknowledge it as such.

By “constitutional crisis” is meant that the Constitution itself — and, by extension, the constitutional order that has served America well for 230 years — is under threat of destruction. This is assuredly not the case when a president is impeached or a scandal-ridden Congress sees some of its own investigated, indicted, or even forced to resign. Such sensational events are unfortunately used as distractions to divert popular attention from the very real damage being inflicted on the Constitution by elected and unelected government officials who refuse to acknowledge limits on their power.

A case in point is the abandonment of Congress’ constitutional authority to declare war, last exercised in 1941 when the U.S. Congress declared war on Japan, Germany, and their allies upon entry into World War II after the Japanese attack on Pearl Harbor. With the outbreak of the Korean War in 1950, President Truman cited the UN Security Council as his authority to commit U.S. forces to war on the Korean peninsula. The UN treaty, Truman averred, was superior in authority to the U.S. Congress, and therefore the congressional authority of declaring war was no longer necessary. In 1973, Congress formalized its abdication of warmaking authority by passing the War Powers Act, which grants the president essentially unlimited power to start and wage war, provided he report to Congress within 48



Written by [Charles Scaliger](#) on January 9, 2018

hours after initiating hostilities.

We have thus become accustomed to American presidents exercising the unconstitutional monarchical prerogative of waging war according to personal whim, with one president, Bill Clinton, even starting a week-long air war against Iraq (Operation Desert Fox) the day before an impeachment vote in the House, in a transparent attempt to cow Congress. We now live in a state of open-ended, endless war, conveniently labeled a “war on terror,” whereby the president and military are constantly at war, much of it hidden from public view, in far-flung parts of the Earth. This is a constitutional crisis of the first order, since it is steadily and very perceptibly converting the United States from a constitutional republic to a militaristic imperial state of the type that Rome turned into in the final decades before the rise of the Caesars.

More broadly, the corrosion of constitutional limits on federal government power has been under way since the Great Depression, when America’s political leadership first embraced the notion that no societal ill is too severe for the creative application of government power to solve. Out of this notion grew the New Deal, the Great Society, and countless other egregious usurpations of federal power. The most recent, and one of the most pernicious, is the Affordable Care Act, otherwise known as “Obama-Care.” Not only did this revolutionary piece of legislation create a vast new entitlement program entirely disallowed by the U.S. Constitution, it compelled Americans to purchase healthcare insurance and imposed an enormous range of other mandates on healthcare providers. The contractions of individual liberty brought about by ObamaCare were certainly as severe as those occasioned by the introduction of FDR’s New Deal programs.

Why do such “welfare” programs, which many Americans now accept as necessary, constitute such a grave crisis? Because nowhere are such programs authorized by the Constitution. In order for any power exercised by the federal government to be legitimate, it must be enumerated in the Constitution, or strongly implied by a power that is. Any power not enumerated is to remain with the states or with individuals. This is not one man’s opinion; it is made explicit in the 10th Amendment, the final amendment of the Bill of Rights. Yet the 10th Amendment is routinely disparaged, misrepresented, marginalized, and outright ignored by a political class determined to accrue power.

This, then, is the true nature of the constitutional crisis faced by the United States. We are now governed by an entire class of elites (known these days as “the swamp”) who are determined to use the power of the federal government to radically remake American society, and massively reduce individual liberty into the bargain. Their motives are little different from those of usurpers and enemies of liberty in all ages and lands. But the amplifying power of modern media technology has rendered their pleas for support more persuasive than ever before. To avert this crisis, Americans must once again hold their elected leaders accountable to their oaths of office.

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