



## The uneasy relationship

Marie-France Toinet

**N**ever in the twentieth century has a newly elected president taken power with a Congress totally in the hands of the opposition party. Yet this is the case in 1989 for the Republican George Bush, who will find himself faced by a Senate and a House of Representatives clearly dominated by the Democratic Party, the latter having managed to make even further progress on the 1986 gains.

Since 1787, relations between the president and Congress have been basic to the functioning of the American institutions in force, and whichever party the executive and legislative branches belong to, even if the same, these relations have always been difficult. Bush will inevitably be faced with this reality whenever he has to deal with Congress.

### The fear of George III

The institutional system established by the Founding Fathers seems to lead to permanent checkmate. As emphasized by one of the greatest American constitutionalists, Edward Corwin, it is all organized in such a way that the division of power is "an invitation to struggle for the privilege of directing American foreign policy." One could add for the privilege of directing domestic policy as well.

As much as the framers of the Constitution undoubtedly wanted to construct a strong and powerful government, however, they also wanted to avoid anyone being able to concentrate in one pair of hands the remarkable instrument of might they were creating. Indeed, one of their basic ideas was the distrust of power-holders in general, including any holder of the small fraction of

authority. Hence the idea of creating powers which shared authority, and which would be in a permanent situation of conflict: "conflict as a guarantee of freedom." But for the system to be able to work, this latent conflict must obviously not degenerate into open feuding. Relations between power-holders must therefore be limited, and even basically negative: the price of liberty requires each branch to check the other two in order that none can ever achieve a situation of total dominance or dictatorship. Everything is therefore organized so that the system is constantly blocked, and as Judge Brandeis noted, the aims of the system are "not to promote efficiency but to preclude the exercise of arbitrary power."

Put differently, the apparently clear text of the Constitution provides for a double contradiction: on the one hand, strong but divided central power, and on the other hand, power centers which are clearly autonomous, but which are also supposed to keep a reciprocal check on each other. One can suspect, however, that things will not go smoothly, with each branch, and in particular the executive and legislative ones, intending without end to increase its own prerogatives and dominate the other.

With regard to this, the authors of the Constitution have constructed a game of dice, to use Benjamin Franklin's expression, where each branch, one by the other (or at random?), will try to control at least a greater slice of power given that it can never hope to conquer it all.

This is especially true in the field of foreign policy. The framers of the Constitution wanted to avoid an American George III, a sovereign-president, at all costs. The Constitutional Assembly was thus unanimous in distrusting the executive and in wanting to restrict its powers clearly to the advantage of the legislative branch. The president was not to become a King of England. Thus only Congress can declare war, raise, support and regulate armies, (article 1, sect. 8, clauses 11 to 14), and control "Forts, Magazines, Arsenals, dock-Yards and other needful buildings" (clause 18). It is also responsible for controlling immigration and naturalization (clause 4), and regulating commerce with foreign countries (clause 3). Finally, it is Congress which controls the purse: the only branch permitted to levy taxes (art. 1, sect. 8, clause 1), and appropriate funds by law (art. 1, sect. 9, clause 7).

In this context, the presidential powers seem almost ridiculous. He receives ambassadors and other dignitaries (art. 2, sect. 3). He is "commander-in-chief

of the army and navy of the US" (art. 2, sect. 2, clause 1), and conducts military operations once war has been declared. Other powers are shared between the president and the Senate, such as the appointment of American ambassadors and, above all, the negotiation of treaties. Finally, on certain important points such as the recognition of foreign states, declarations of neutrality or emergency situations, the Constitution is surprisingly silent.

### **Built-in conflict**

In the last resort, then, who is to decide the orientation of the United States in the field of foreign affairs? In the struggle which was to begin immediately after the adoption of the Constitution, the president would prove to be on the winning side, if not the exclusive victor.

In fact since George Washington that, presidents have appropriated those powers - to the approval of certain framers of the Constitution - that were not clearly attributed to any particular branch, and have usurped some powers which were specifically and constitutionally entrusted to Congress.

The Constitution thus establishes that the president "has the power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur." Constitutionally, then, this power is shared: negotiation and ratification are the prerogatives of both the legislative and the executive branches. Washington did try to respect this principle, in fact, and in 1789 asked the Senate (which had only 26 members, a fact that should have facilitated things) to advise him in his negotiations for a treaty with the Indians. Under the wrong impression that the president was trying to encroach upon its powers, the Senate refused him its advice.

Since 1789 the making of treaties has consequently been divided into two phases: the president first negotiates the treaty, completely alone, and then the Senate may or may not ratify the treaty he is proposing, occasionally also making amendments to it, this implying re-negotiation. Authorization thus becomes a kind of veto power.

It is the progressive accession of the United States to the rank of a great power at a very early point in its history, that has transformed the presidency into the dominant branch, an institution which has ignored the advice of Congress as often as possible, and has enlarged its powers on occasions of territorial

conquests and armed conflicts. Despite his opposition to any extension of federal powers, Thomas Jefferson achieved the acquisition of Louisiana in 1803. In 1846, President Polk opened hostilities against Mexico without the least authorization by Congress, and only after the fact was he able to ease the recognition of a state of war out of Congress. John Quincy Adams, while serving in the House of Representatives after his presidency, affirmed that war had never been declared by Congress, and that the subsequent Act of Mexico was a direct and blatant violation of the truth. After this precedent, all presidents have had to do to declare war is to affirm that another country has attacked the US. In disagreement with the Senate, however, the House of Representatives declared in 1848 that the war in this case, however, had been unnecessarily and unconstitutionally begun by the President of the United States.

This practice was often repeated. According to Edward Corwin, the four "great" American wars (the war against Mexico, the Civil War, and World Wars I and II) "were the outcome of presidential policies in the making of which Congress played a distinctly secondary role." Had he been writing more recently, he would certainly have added to his list the Korean and Vietnam Wars. Since independence, the United States has constitutionally declared war only five times. It has, however, intervened abroad more than 130 times by the unilateral decisions of the president.

### **The path to the "Imperial Presidency"**

Up to and including World War II, it may be asserted that presidential encroachment of power in foreign policy was globally carried out in the names of both necessity and urgency, and in general, Congress ended up by rallying around presidential decisions, though with some reluctance. Even the Supreme Court ratified the constitutionality of this growing predominance of the presidency, asserting "the very delicate, plenary and exclusive power of the president as the sole organ of the federal government in the field of international relations."

Yet in affirming these wide powers, the Court did not attribute unlimited authority to the president: the case was principally aimed against a specific delegation of power by Congress in favour of the president, which the plaintiff considered too vast, and the Court simply affirmed its constitutionality. There was no accusation of encroachment of power - and the president was in no way

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authorized to act against the express will of Congress. On the contrary, this is precisely what the Reagan administration was accused of in the Iran-*contra* affair: of having ignored Congress, as expressed by the Boland amendments.

In fact it is during the last forty years that the means for autocracy have been made available to the presidency. As Theodore Draper pointed out, "before the end of the Second World War, presidents did not have the bureaucratic means to carry out policy by themselves ... Roosevelt did not have a Central Intelligence Agency or a National Security Adviser with his own staff; the 'destroyer deal' was no secret from the State Department, Congress or anyone else."

The CIA and the National Security Council were created in 1947, and neither of the two was intended to have any "active" role. The former was responsible for information, not for covert activities, and Truman's first mistake was to link it to the presidency instead of the State Department, which was thus cut off. His second mistake was in 1951, when he authorized the CIA to annex the Office of Policy Coordination, which was created in 1948 and was in charge of covert activities: the CIA thus became "operational." And for his part, John F. Kennedy later gave a larger role to his National Security Adviser, thus widening the gap between the State Department and real decision-making.

The way was paved, then, for American presidents to be able to decide - alone and secretly - the country's foreign policy. They have obviously not tried to get rid of this power, and Congress has let them have their way. As Arthur Schlesinger wrote in *The Imperial Presidency*, the reinforcement of presidential powers is "as much a matter of congressional abdication as of

## Marie-France Toinet

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presidential usurpation.” But why has the legislative branch been so passive? Congress itself replied to this question in a report of the Senate Committee on Foreign Relations in 1967, then under the chairmanship of Senator Fulbright. Even though it clearly restates the powers of Congress, the report confirms that Congress itself bears the main responsibility for a negative evolution, pointing out that Congress: “has given away that which is not its to give, notably the war-power, which the framers of the Constitution vested not in the executive, but, deliberately and almost exclusively, in the Congress.”

According to the Committee, this renunciation of power can be attributed to “American involvement and responsibility in a violent and unstable world,” accompanied by “unfamiliarity of world involvement and recurrent crises” and the need to act rapidly. The apex of this process of abdication was to be found in the resolution of the Gulf of Tonkin, which “represents the extreme point in the process of constitutional erosion.” It was thus necessary to act, and the committee verbalized the fact that it strongly recommended “that the Congress reassert its constitutional authority over the use of the armed forces.”

This took six years, however, and the weakening of President Nixon’s authority due to the Watergate scandal. In 1973, overriding a presidential veto, Congress adopted the War Powers Act, a good number of progressive members rallying around this only in order to weaken Nixon’s political power even further. This law, in fact, authorized the president from then on to intervene militarily in case of hostility, and limited “unauthorized” intervention to 60 days, extendible to 90 days, unless Congress gave its express permission. The president was thus obliged to consult Congress, by written notification, before engaging American forces in “armed conflict,” and even in a situation where “acts of hostility” were imminent. The law was ambiguous, then, and could be interpreted as being either a limitation or a reinforcement of presidential powers. Most “successful” interventions since World War II have only taken a few days, such as in Guatemala, Lebanon under Eisenhower, the Dominican Republic or Grenada, while the United States has always gotten stuck when it stayed longer than 60-90 days, as in Korea, Vietnam or Lebanon under Reagan.

In fact, no president has acknowledged the constitutionality of this law, which, along with various others adopted around the same time, would stop the presidency from acting efficiently in the field of foreign policy, given that Congress would not cease to oppose the latter’s decisions.

THE  
CONSPIRACY  
OF  
K I N G S;  
A POEM:  
ADDRESSED  
TO THE INHABITANTS OF EUROPE,  
FROM ANOTHER QUARTER OF THE WORLD.

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BY JOEL BARLOW,  
Author of the VISION of COLUMBUS, ADVICE to the  
PRIVILEGED ORDERS, &c. &c.

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"But they, in sooth, must *reason*. Curles light  
"On the proud talent! 'twill at last undo us.  
"When men are gorged with each absurdity  
"Their subtil wits can frame, or we adopt,  
"For very novelty they'll fly to sense,  
"And we must fall before the idol, Fashion."

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878

From the Mayaguez incident in Cambodia in May, 1975, to the invasion of Grenada in October, 1983, Congress has bowed before the decisions of the president. In the Lebanon in autumn, 1983, just as in Central America in summer, 1985, it authorized the president, albeit reluctantly, to station troops abroad or to agree to the funds required. In the defense field, Congress has been rather less generous than the president, but since 1945, both before and after the Vietnam War, it has never refused any major weapons program.

### Congress in the dark

The reason for this congressional moderation is simply the fact that there is fundamental consensus over the most important questions of foreign policy: such as relations with the main powers, definition of American interests in areas of tension (the Near East or Central America), and monetary or trade policy. This is precisely what has been pointed out by the *Congressional Quarterly* in some of its three-monthly estimations regarding the powers of Congress, ("Current American Government"): "With the exception of a few votes during the Vietnam War in the early 1970s, Congress in the twentieth century has chosen to use its powers to support the president rather than to challenge him."

The situation is no different in regards to Nicaragua, one of the basic causes of Reagan's difficulties in the Iran-*contra* affair. Congress, in fact, will always agree with one objective: that Central America must not become Communist. The disagreement is over the methods used, because Congress knows that public opinion disapproves of them, as surveys show. But Congress' reticence is still relative: it has not cut, and will never cut, *all* the funds requested by the president. It is satisfied with limiting their use, and with suggesting negotiations, without ever specifying how and with whom the US should negotiate.

In the period after 1984, the Reagan administration considered a "reevaluation" of its position with respect to Iran, at the moment when Americans were being held hostage. Publicly, President Reagan put firm pressure on his allies to stop arms supply to Iran, and to avoid any concessions to terrorists in order to liberate hostages. Congress, however, was kept in the dark until the matter was revealed by an obscure Lebanese publication.

With this "new" policy with regard to Iran, "almost from the beginning, the



initiative became in fact a series of arms-for-hostages deals.” It was a total failure, amidst ridicule, amateurism and stupidity. One of its effects was to provide money (produced by the sale of arms, and deposited in Swiss banks) for Reagan’s staff in the National Security Council, and this at a moment when the government feared it would get no more funds to help the Nicaraguan *contras*, even though Congress had already voted new aid amounting to \$100 million. It was in February, 1986, that Colonel North suggested to his superior, National Security Adviser Admiral Poindexter, that the profits of the Iranian arms sales might go to the *contras*, and the Admiral accepted immediately. Whatever the political responsibility that can personally accrue to him, in all these decisions of doubtful legality and virtually no political value, it is undeniable that President Reagan allowed - at the very least - his aides to get entangled in the mess.

**Why?** First of all there was the cult of secrecy and the fear of leaks, which led to an outbreak of measures destined to protect the prince much more than with previous presidents. Ronald Reagan has been the most secretive president, not only with regard to journalists and members of Congress, but also with regard to the members of his own entourage : restrictions on contacts between journalists and government aides (the latter were threatened with reprisals if they broke government solidarity); limitation of access to government documents; reinforcement of security in the classified sector; bills to pursue those responsible for leaks just as for those who publish them; controls over the publications of present and former officials; and finally, increased security investigations for the higher ranks of the Administration.

This distrust has also applied to the President Reagan’s closest aides. Secretary of State George Schultz and former Secretary of Defense Casper Weinberger both ended up by being kept in the wings due to their disagreement over Iranian policy, and neither was ever informed of the diversion of funds to the *contras* . As Weinberger said during the congressional hearings: “People with their own agenda [in the National Security Council] ... were doing everything they could ... to keep away from the president views that they suspected, correctly most of the time, differed with theirs.”

Disagreement was thus a proof of “disloyalty” or “treason” and implied being kept out of the main action. It is a fact that presidents find it difficult to collaborate with whoever does not agree with them, whether it be a member of Congress or even of his cabinet. It was all very well for Kissinger to write that

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last occasions were some 150 years ago: Thomas Jefferson (in 1801) and John Quincy Adams (in 1825) were elected by the House of Representatives, and Richard Johnson was elected vice-president by the Senate in 1837.

In principle the Senate has a say in the formation of the government, as it is only with its “advice” and “consent” that the president can choose the members of his cabinet. But in the immense majority of cases, the presidential nominations are accepted by the Senate. Nonetheless the possibility of a refusal does influence presidential choices.



Once in office, however, the members of the government are no more responsible than the president or vice-president before Congress. This is the basic rule of the presidential system, which involves a clear separation of powers: no dissolution of parliament, and no presidential or cabinet responsibility before Congress. Yet Congress can convoke the president and his cabinet to explain their actions, and precedents for this do indeed exist.

## Marie-France Toinet

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Thus Washington went twice in person before the Senate in plenary session, in August 1789, to negotiate (as the Constitution required) a treaty with the Indians. The obtuseness of the Senate and its short views caused Congress to lose a precious lever of action, however, as no following president - or his cabinet - ever presented themselves again before Congress in plenary session in order to debate with the members.

All the same, in 1862 Lincoln was convoked by the laws committee of the House of Representatives to explain how it could happen that his "State of the Union" address was given to the press before being communicated to Congress. On various occasions he was obliged to justify his policies before a war conduct committee. Since then only cabinet members have appeared before committees: even the direct aides of the president are dispensed from this if the president invokes executive privilege - a principle which Congress has ended up by acknowledging.

There remains the procedure of impeachment. The Founding Fathers did not intend this to become a means for the legislative branch to dominate the executive. They limited it to criminal acts and deliberately avoided making it easy to use. Despite this, Congress attempted to use it against President Johnson in 1868; what they intended was to obtain political accountability of the members of the cabinet, but the procedure failed because, as Lord Bryce noted: "impeachment is the heaviest piece of artillery in the congressional arsenal, but it is so heavy, it is unfit for ordinary use." The prospects of losing an impeachment trial did, however, persuade Nixon to resign in 1974.

### Chief legislator

The participation of Congress in the creation and support of governmental authority is thus minimum. Its role in this field, if it ever did exist other than only potentially, is no longer of any consequence. If this function is considered to be essential, then it is clear that the American Congress is most limited in this respect. But it also implies admitting that the making or undoing of governments is not necessarily so closely related to the real or supposed power of a legislative branch.

It is in the legislative and budgetary areas that Congress has lost most of the prerogatives attributed to it by the Constitution. For laws just as for budgets, Congress has essentially lost its power of initiative. In reality it is the president

who determines the general orientation of the legislative program which Congress has to discuss: the most important bills are effectively proposed by the president, and plans for treasury laws are now drawn up by the executive with the legal benediction of the legislative branch. This evolution is such that the role of "chief legislator" is now one of the classic functions attributed to the president.

Constitutionally the president has the power to execute laws (art. 2, sect. 3), and this, in fact, is his fundamental power. With time, this power has been extended widely, and Congress has more and more frequently adopted laws which are often quite general programs of action. It is up to the president to determine the rules of implementation, a fact which gives him the possibility to orient the sense of laws and decide the range he would like them to have. As President Taft maliciously pointed out: "I leave the possibility of making the laws of this country to whoever wants it, given that I can interpret them."

The legislative branch has certainly tried to limit this delegation of power, reserving the right to annul decisions made by the administration in this area. But the Supreme Court declared these legislative dispositions anti-constitutional. Legally, then, Congress can no longer annul executive decrees of implementation

The president, however, is not omnipotent. John Stuart Mill thought that parliamentary institutions were better equipped to check the application of laws than to propose them. With the enormous development of governmental activity, this would seem to be truer than ever. Daily control of government is carried out through the mediation of commissions which check executive application of laws voted by Congress, and if the information supplied by the executive seems insufficient, then a special commission is created, thus reviewing governmental organization and practice.

The simple possibility of an enquiry, in fact, influences and perhaps dominates administrative practice, though this does not stop the administration, and in particular the Pentagon, from trying to hide its mistakes. But it rarely succeeds for long, except when it manages to get Congress to turn a blind eye. Put more generally, although faced with a president and his administration who both dispose of superior means of information and documentation and a great number of experts, Congress has achieved a real *tour de force* in obtaining from a technically more competent bureaucracy a degree of political

accountability - as well as the information it needs, and which it uses to devolve on public opinion with the help of the press.

If on the one hand the president has extended his prerogatives into areas which in principle were not his, on the other hand Congress has retaliated, though to a much lesser extent. Congress is less independent of the executive than it could have been, yet rather than "dependent," executive-legislative relations would be better termed as being "interdependent": more specifically, the legislative branch is able to slow down or modify, that is, reject the plans of the executive. In one sense, it might be said that the roles provided for by the Constitution have been reversed, it being the president who proposes the laws in most cases, and Congress which exercises a kind of veto power by either avoiding to decide on, or refusing, presidential proposals. Congress can freely block the plans of even the most powerful president, and the latter is thus obliged to cajole, negotiate, surrender or admit compromise.

To a not-negligible extent, then, the Congress of the United States has retained its powers. These powers have clearly become less "legislative," but they remain no less an element of real strength. By the control it exercises, and by the fact that it can retard the action of the president, by refusing him the means to carry out a given policy, Congress sets a limit to presidential omnipotence. Congress is no Rump-Parliament.

### **Bush's "rebel" Congress**

Structurally, then, things can not change under President Bush: both executive and legislative branches are obliged - by their very essence, it might be said - to compete with each other, and the latter must continue to concede the former a pre-eminence which has been only acquired with much effort and which is constantly put into doubt. Congress has lost a good number of its prerogatives, but it will never accept this fact, and will continue trying to gain the upper hand. Referring to the Democratic Speaker of the House, the *Wall Street Journal* wrote: "Jim Wright says Congress was created by Article 1 of the Constitution. Therefore he views Congress as the first branch of government, and thinks Congress should try and govern."

It is not necessary for legislative and executive to be dominated by different parties for their relations to be bad. Jimmy Carter, for instance, had a bitter experience of this, his policies often being maltreated by a Congress which

shared the same party label as he himself, while relations between Republican Ronald Reagan and a Democratic House of Representatives were, on the whole, much more peaceful. However, this will not stop both the present economic situation and party differences between executive and legislative from making George Bush's task more awkward than it was for Ronald Reagan.

First of all, when faced with a "rebel" Congress, the president disposes of two main weapons: his popularity, and the mandate given him by the electorate, and on both those accounts, Bush will be weaker than Reagan. It is not so much the fact that opinion was favourable to him during the last elections, as the figures were no better for Reagan in 1980 than for Bush in 1988: the voters were hardly more satisfied, in the first case just as in the second, with the choice they were offered; each time they abstained in more or less the same proportions, and split-ticketing became an undeniable sign of their wish to divide the power they was called upon to confer.

But Reagan followed Jimmy Carter, a particularly unpopular president, while Bush is following Reagan, a particularly popular one, and whether it be illusion or reality, Reagan is leaving peace and prosperity in his wake. He even decided to negotiate with the Soviet Union of Gorbachev, and signed a treaty for nuclear disarmament. Yet only specialists are worried about the real - and really worrying - state, in which he is leaving the American economy; the rest admire the creation of new jobs and the lower inflation rates. Bush, on the other hand, might easily find himself in a more difficult situation, as comparison between himself and Reagan could turn out to be not at all favourable. It will be difficult to go any further with Gorbachev in the near future, and the problems left to fester by his predecessor - especially in Central America - will soon return to haunt him. Finally, on the economic front, as *The Economist* has noted: "Almost anything Bush does will make him unpopular.... Because of heavy foreign borrowing, Reagan was able to give Americans the chance to spend more than they earned, and they liked that. Under Bush, they will have to earn more than they spend - and won't like it."

In addition to a very mitigated popularity, at least at the time of the election, then, Bush also has a very mitigated mandate. Reagan got to power by promising a stronger America - less state and less taxes - and it was clear that this was possible for the executive, though provisionally and at a high price. Bush promised less taxes, which no-one believes in any longer, and based his

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By James Otis, Esq;

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*Hæc omnis regio et celsi plaga pinea montis  
Cedat amicitia Teucrorum : et fœderis aquas  
Dicamus leges, sociisque in regna vocemus.  
Confidant, si tantus amor, et mœnia condant.*

VIRG.

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campaign mainly on problems such as crime, school prayer, and the Pledge of Allegiance, which are in no way under the jurisdiction of the president. What is more, the electorate has divided power between the Republicans and the Democrats, and has thus paralyzed President Bush.

On the whole, then, Bush's main hope is certainly to wait, and act slowly, in order to avoid shaking and upsetting this excessively fragile equilibrium, and falling back into recession. But there are already pressing excesses at play which will stop Bush from taking his time, such as in savings and loans, where it is simply not known whether it will take 50 or 100 billion dollars of public funds to re-order the situation. There is also the nervousness of the stock and financial markets, both American and foreign, which seemed so anxious to see the new president act that they did not even give him the time to settle into power.

In any case there are choices which he will have to make one day or another, not the least of these being a reduction of the federal budget deficit, and there is no-one - even going up so far as the chairman of the Federal Reserve Board, Alan Greenspan, who does not think that "failure to trim the federal deficit 'courts a dangerous corrosion' of the economy."

Bush well realises that he will need the cooperation of Congress, and on the very night of his election made a point of publicly stating his intention to "work constructively with Congress to attain the will of the people." Will he be followed? Probably - if the crisis is serious. But in the meantime, the new president should not expect too many gifts, and this, in the first place, from his own camp. The Senate minority leader Robert Dole (Republican) has not forgotten the twists and turns of the election campaign, and is not exactly enthralled with George Bush, as he made known on the very evening of the latter's election: "George Bush faces trouble from day one," he declared on all the television networks, openly accusing him of not campaigning enough for the Republican candidates.

As far as the Democrats are concerned, they do not only criticize him for his vicious campaign, but above all for the fact that the Republicans managed to make public opinion believe that the Democrats themselves were responsible for the budget deficits. As George Will noted (and he is a hearty conservative, little to be suspected of any weakness towards the Democrats): "Bush announced triumphantly: 'By two-to-one Congress is blamed for these deficits'



... The public is mistaken. Congress' disagreement with Ronald Reagan has been marginal and mostly about the composition rather than the amount of spending. In the six budgets before the post-crash Reagan-Congress 'summit' agreement, deficits averaged \$184 billion and Reagan's budgets proposed at least \$169 billion of that." Which means that President Reagan was responsible for at least 92% of the deficit..

Under these conditions, then, it is not surprising that over tax problems Congress intends to do nothing unless on the initiative of President Bush. As Senator Johnston of Louisiana, a conservative Democrat, declared with some jubilation: "If he thinks we Democrats are going to drag him kicking and screaming into taxland and take all the heat, he's dreaming." Put in another way, it is not necessary for Congress to fall into systematic opposition to embarrass the President: it is enough to let him go back on his electoral promises on his own. But then again, will he have the time? President Bush's basic problem, as has already been noted, is the undoubted fact that he is faced with not one but two adversaries: Congress ... and time. And the latter is not necessarily the less dangerous of the two. Although too early to judge, time is Congress' ally, and could weaken the presidency at least for a while, given that the latter institution has never ceased reinforcing itself in the course of its historical evolution. As Aaron Wildavsky correctly wrote: "Limiting presidential importance would require the one thing no one expects - limiting what government does."

### References

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- 2 - Schlesinger, A.M. Jr., *The Imperial Presidency*, Popular Library, New York, 1974.
- 3 - *Myers v. United States*, 1272 U.S. 52, 293 (1926).
- 4 - "The formation of the new government, as Franklin observed to a foreign correspondent in 1788, was not like a game of chess, methodically and consciously played. It was more like a game of dice, with so many players ... 'that not a move can be made that is not contested,'" in Wood, Gordon S., *The Creation of the American Republic, 1776-1787*, Norton & Co., New York, 1972.
- 5 - Corwin, Edward, *op. cit.* p. 234.
- 6 - Henkin, Louis, *Foreign Affairs and the Constitution*, Norton & Co., New York, 1975.
- 7 - *United States v. Curtiss - Wright Export Company*, 299 U.S. 304 (1936).
- 8 - Judge Sutherland, responsible for the decision, based his judgment more on a very personal interpretation of American history than on the text of the Constitution itself: "the 'implicit power' of the president in the field of foreign

affairs is not shared, and constitutes a kind of original reserved domain, conferred by tradition prior to the drawing up of the Articles of Confederation. In foreign policy, the presidency incarnates national sovereignty in its irreducible uniqueness." Lacorne, Denis: "Une cohabitation américaine: la politique étrangère" in Toinet, M.F. (ed.): *Et la Constitution créa l'Amérique*, PUN, Nancy, 1988.

9 - Draper, Theodore: "Reagan's Junta," in *The New York Review of Books*, January 29, 1987. The information which follows was largely drawn from this excellent article.

10 - Schlesinger, Arthur Jr., *op. cit.*, p. 11.

11 - *National Commitments*, Senate report no. 797, 90th Congress, 1st session. Large extracts of this report are quoted in Gunther, Gerald, *Constitutional Law: Cases and Materials* (10th ed.), Foundation Press, Mineola (NY), 1978.

12 - We would like to note that this interpretation is fully in line with the Madison tradition. In 1798 James Madison wrote to Thomas Jefferson: "the Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war in the Legislative." Quoted in Schlesinger *op. cit.* p.17.

13 - In August, 1964, after an incident at sea between American and North-Vietnamese ships (a matter which would seem to have been magnified, not to say created, by the American side) Congress (with enormous majorities in both Houses) accorded *carte blanche* to Lyndon Johnson so that he could carry out the policy of his choice in Vietnam.

14 - The creation under the Ford administration of congressional committees designed to control intelligence operations: the House Select Committee on Intelligence and the Senate Study Committee on Intelligence Activities; the Arms Export Control Act of 1968; the Hughes-Ryan Amendment of 1974.

15 - These were the famous Boland amendments: 1) tax year 1983: the Pentagon and the CIA could not supply the *contras* with military aid designed to overturn the Sandinista government; 2) tax year 1984: this military aid was limited to \$24 million; 3) tax year 1985 (after the illegal mining of the Nicaraguan ports): no aid at all by the Pentagon, the CIA, "or any other agency or entity of the United States engaged in intelligence activity"; 4) tax year 1986: military credits (the total is still a secret) were granted to the *contras* for their communication and information activities; 5) tax year 1987: military aid was fully re-established (*Congressional Quarterly*, May 23, 1987). Despite its oscillations, the desire of Congress to limit presidential freedom of action is constitutional. Congress has never cut humanitarian aid.

16 - Cf. *The Tower Commission Report*, Bantam Book, New York, 1987.

17 - *Ibid.*, p.64.

18 - Cf. the evidence before the Elliot Abrams commission (Assistant Secretary of State for Inter-American Affairs), in *ibid.*, pp.338-339.

19 - Some \$30 million, of which \$3.5 million went to the *contras*. Cf. *Congressional Quarterly*, May 9, 1987. Between mid-1984 and January 1987, they reached some \$34 million, of which about 90% was given by Saudi Arabia. Cf. *Congressional Quarterly*, May 23, 1987.

20 - Cf. *Congressional Quarterly*, August 8, 1987, p.1846.

21 - Kissinger, Henry, *Department of State Bulletin*, no. 72, 1975, p. 562.

22 - Caplan, Lincoln: "Annals of Law: the Tenth Justice," in *The New Yorker*, August 10, 1987.

23 - Bryce, James, *The American Commonwealth*, Macmillan Company, New York, 1901 (3<sup>rd</sup> reprint).

24 - William Howard Taft has the reputation of having been a much more passive president, and much more anxious to follow the letter of the Constitution than his predecessor Theodore Roosevelt. But, as Louis Fisher notes: "When Taft's study is read in full, it is evident that he adhered to a generous interpretation of executive power," in *The Constitution Between Friends*, St. Martin's Press, New York, 1978.

## Marie-France Toinet

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- 25 - *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).
- 26 - Editorial, "Jim Wright's Mandate," in *The Wall Street Journal*, November 9, 1988.
- 27 - "That was the Easy Part," in *The Economist*, November 12, 1988.
- 28 - "Almost eight of ten people in a survey of 599 likely voters [interviewed from November 5-8, 1988] said that they would like to see no tax changes in the next four years. But only one in three expected to see that hope fulfilled." Broder, David S., and Morin, Richard: "Voters Doubt Bush Can Avoid a Tax Increase, a Poll Shows," in *The International Herald Tribune*, November 14, 1988.
- 29 - Wessel, David: "Greenspan Warns U.S. Budget Gap Must Be Pared," in *The Wall Street Journal*, November 17, 1988. Cf. also Murray, Alan: "Will Foreigners Shape Bush Politics?" in *The Wall Street Journal*, December 5, 1988.
- 30 - As quoted in Apple, R.W. Jr: "For Bush, a Mandate in Search of a Way," in *The International Herald Tribune*, November 11, 1988.
- 31 - Harbrecht, Douglas: "Can Bush Make Peace With The Enemy - Bob Dole?" in *Business Week*, November 28, 1988.
- 32 - Will, George: "Bush: Tomorrow is Apt to be Much Like Today," in *The International Herald Tribune*, November 17, 1988.
- 33 - Kramer, Michael: "Congress Has Lips Too," in *Time*, November 28, 1988.
- 34 - Wildawsky, Aaron: "The Past and Future Presidency," in *The Public Interest*, Fall 1975.