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THE SYSTEM OF "CHECKS AND BALANCES" IN THE RELATIONSHIP BETWEEN THE U.S. PRESIDENCY AND AMERICAN CONGRESS

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***Abstract*:** *This paper is meant to outline the modalities in which US President exercises his powers and prerogatives as the head of state, leader of the executive branch of the federal government; chief diplomat, commander-in-chief of the armed forces, and the highest political official in United States and how through a system of separation of powers and the system of "checks and balances," presidency has the authority to act on its own, some authority to regulate Congress, and how it is regulated by the legislative branch.*

Keywords: *presidency, separation of powers, system of "Checks and Balances".*

1. Introduction

The federal government of the United States is the central United States governmental body, established by the United States Constitution. The federal government has three branches: the legislative, executive, and judicial. Through a system of separation of powers and the system of "checks and balances," each of these branches has some authority to act on its own, some authority to regulate the other two branches, and, in turn, is regulated by the other branches. All executive power in the federal government is vested in the President of the United States, although part of it is delegated to the Cabinet. The President, the highest political official in United States, is the head of state, leader of the executive branch of the federal government; chief diplomat and commander-in-chief of the armed forces. To understand the President's role in exercising executive power, a historical perspective and a comparison with the prerogatives of the constitutional monarch will highlight the changes that the American Revolution produced by investing the greatest part of the executive power of the federal government in the presidential institution.

2. Historical Background

After the Treaty of Paris in 1783 the United States remained independent but with a feeble governmental structure. Articles of Confederation in 1777, had granted to the Congress - the only federal institution - little financial power and a reduced capacity to enforce its resolutions. This is a consequence of the anti-monarchy view of the Revolutionary period, and the new American system was practically

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conceived to prevent the rise of an American tyrant to replace the British King. However, during the economic depression following the Revolutionary War, the Congress appeared unable to become a forum for productive cooperation among the States encouraging commerce and economic development. In response a Constitutional Convention was convened, which began to draft a new system of government that would include greater executive power. With the 1788 ratification of the Constitution, a separate executive branch was created (President of the United States). The President's executive authority, regulated by the checks and balances of the judicial and legislative branches, was conceived to solve political problems confronted the new formed American nation, while still preventing the rise of an autocrat with royal authority. Alexis De Tocqueville in "*American Institutions and Their Influence*" considers that: *"When a monarchy is being gradually transformed into a republic, the executive power retains the titles, the honours, the etiquette, and even the funds of royalty, long after its authority has disappeared*". (De Tocqueville, 2006, 91)

In the United States the president's power is limited and partial; the monarch really exercises a portion of the sovereign power, since the laws can't be enforced without his/her assent; h/she is also their executor. The president is also the executor of the laws, but he does not really participate to their elaboration.

Monarch has the privilege of appointing the members of one chamber of the legislature, and of dissolving the other. The president of the United States has no influence in the formation of the Congress, and may not dissolve it or call special election.

The monarch has the same right of bringing forward measures as the legislature; a right which the president does not have. His ministers represent him/her in Parliament, explain his intentions and support his views. The president's opinions can only penetrate indirectly in the Congress. While monarch is on an equal footing with the legislature, the president exercises an authority inferior to legislature, and dependent on it.

The president of the United States is subjected to public scrutiny and has responsibility for his acts; but the person of the monarch is inviolable.

After World War II, having the status of a superpower, the United States transformed its President into one of the most influential public figures in the world. Considering his elevated role in the world's affairs, the President has obtained the appellation "leader of the free world" frequently used in reference to him since the Cold War. In spite of this world recognition, the authority of the president in the United States is only exercised within the limits of a partial sovereignty. The Constitution prevents the President with a set of checks and balances from taking absolute power. His permanent co-operation with the Congress is indispensable in accomplishing his public duties.

3. Relationship with Congress

All president`s important decisions *"are directly or indirectly submitted to the legislature; and where he is independent of it he can do but little. It is therefore his weakness, and not his power, which enables him to remain in opposition to congress"*. (De Tocqueville, 2006, 95) The legislative branch maintains checks and balances on the powers of the president, and vice versa. For this reason his relationship with the Congress will be of great significance from the presidential elections to the vacancy in the office.

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4. Election of the President

The president is an elective magistrate. He is elected for four-year terms by the Electoral College. The American legislators attempted to create an executive power subjected to the majority of the people and in the same time strong enough to exercise independently in its own area which is a characteristic of the republican form of government.

According to Tocqueville *"In the examination of the institutions, and the political as well as the social condition of the United States, we are struck by the admirable harmony of the gifts of fortune and the efforts of man"*. (De Tocqueville, 2006, 99) America was a new country, inhabited by a people grown in the spirit of freedom which represented a major cause of maintaining internal peace. America had no hostile neighbours; and the American legislators, taking advantages on these favourable conditions, created a weak and elective executive power. Then they tried to choose the most secure mode of election; "*their object was to find the mode of election which would best express the choice of the people with the least possible excitement and suspense"*. (De Tocqueville, 2006, 99)

The President is elected indirectly through the United States Electoral College for a four year term, with a limit of two terms.

"He shall hold his Office during the Term of four Years". (The Constitution of the United States, 10)

It is very difficult that an individual can at once collect the majority of the suffrages in a confederative republic where the local spirit of each state is preponderant. The means by which this obstacle might be avoided was to entrust the people's power of electing the president to a body of representatives, *"for the fewer the electors are, the greater is the chance of their coming to a final decision"*. (De Tocqueville, 2006, 99) Every state should name a certain number of electors, collectively known as the United States Electoral College, who in their turn should elect the president. Legislatures of the states are empowered to appoint electors equal to the size of its delegation in both houses of Congress. *"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector"*. (The Constitution of the United States, 10)

Voters in each of the states elect a president on Election Day, the first Tuesday after the first Monday in November. Voters in all states choose a presidential candidate who receives all electoral votes of that state. To become President is necessary to receive a simple majority of electoral votes; the winning set of electors gathers at their state's capital on the first Monday after the second Wednesday in December, to vote, and sends a vote count to Congress. The vote count is opened by the sitting vice president, acting as President of the Senate, in the joint session of the incoming Congress.

In the case in which no candidate receives this majority, three measures might be taken into consideration; either to appoint new electors, or to consult a second time those already appointed, or to defer the election to another authority. The first two of these alternatives, may delay the final decision. The third solution was adopted; The House of Representatives by state delegation elects the president from among the top three contenders. Each state delegation is offered only one vote, marginalizing in this way the most populated states.

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Once being elected, the president should exercise his prerogatives and powers to enforce national law as given in the Constitution and written by Congress: appointments of high federal officers and diplomats, promotion of his agenda, the power to sign into law or veto bills, military power.

5. The President's Prerogatives and Powers

5.1. Appointments Made by the President

To exercises this duty, he has under his control the four million employees of the federal executive branch, from which one million military personnel. President makes numerous appointments in executive and judicial branches. Up to 6,000 appointments may be made before taking office and 8,000 during his mandate. The president appoints ambassadors, judges of the federal courts, including Justices of the Supreme Court, members of the Cabinet, and other federal officers, only with the advice of the Senate and the consent of its simple majority. Before the end of the presidential term, he usually grants pardons.

5.2. Promotion of the Presidential Agenda

The President can directly propose the federal budget, but he can't promote his legislative agenda without supporters in Congress.

If the president's political party has a majority in Congress, he can have an important influence in shaping it. Since members of the executive branch are not allowed to be simultaneously members in legislature, they often write legislation and ask a member of Congress to introduce it for them. The President has the Constitutional duty to deliver a State of the Union Address to Congress (usually once a year). It may be delivered in person or in the form of a letter. The State of the Union Address often represents the president's legislative proposals for the next year and this is another means through which the president can further influence the legislative branch.

5.3. The Power to Sign into Law or Veto Bills

Tocqueville pointed out that: *„The president was made the sole representative of the executive power of the Union; and care was taken not to render his decisions subordinate to the vote of a council--a dangerous measure, which tends at the same time to clog the action of the government and to diminish its responsibility. The senate has the right of annulling certain acts of the president; but it cannot compel him to take any steps, nor does it participate in the exercise of the executive power".* (De Tocqueville, 2006, 90)

For this reason Article Two of the Constitution granted the President's the power to sign into law or veto bills. After a particular bill has been approved by a majority of both houses of Congress, the President's should promulgate it to make this bill a law. The President has the power to veto congressional bills.

„The president is, moreover, provided with a suspensive veto, which allows him to oppose the passing of such laws as might destroy the portion of independence which the constitution awards him. The struggle between the president and the legislature must always be an unequal one, since the latter is certain of bearing down all resistance by persevering in its plans; but the suspensive veto forces it at least to reconsider the matter". (De Tocqueville, 2006, 90) Presidential veto can be

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overridden with a two-thirds majority vote from the entire Congress.

5.4. Military Power and Foreign Policy

Article Two of the Constitution establishes the President as commander-in-chief of the armed forces and Navy, but the president's military powers have been limited since the Constitution was framed. Alexander Hamilton explains this in „*Federalist No. 69*":

„The President is to be commander-in-chief of the army and navy of the United States. [...] It would amount to nothing more than the supreme command and direction of the military and naval forces [...] while that [the power] of the British king extends to the declaring of war and to the raising and regulating of fleets and armies, all [of] which [...] would appertain to the legislature". (Hamilton, 23)

The president commands the military forces and plans military strategy, but the power to declare war is constitutionally the responsibility of Congress. According to the War Powers Act, it must authorize any troop deployments longer than 60 days. Congress is also responsible for military spending and regulations, checking once again presidential power.

The president directs not only armed forces, but also the foreign policy, having the power to negotiate treaties, which should be ratified by two-thirds of the Senate. Thames Ross Williamson highlighted in "*Problems in American Democracy*" that "*during the process of negotiation it is customary for the President to consult with the Senate committee on foreign relations, as well as with the leaders of the senatorial majority. Such consultation is a wise step, because no treaty may become law unless ratified by the Senate*" (Williamson, 337)

„*While exercising his authority the president cannot be said to be perfectly independent; the senate takes cognizance of his relations with foreign powers, and of the distribution of public appointments, so that he can neither be bribed, nor can he employ the means of corruption"*. (De Tocqueville, 2006, 90)

6. Removal from Office

` The House of Representatives is allowed by Articles One and Two of the Constitution to impeach the president. He *"shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanours"*. (The Constitution of the United States, 14), and the Senate is empowered to remove him from office.

For the president's impeachment a simple majority in the House is necessary and for his conviction a two-thirds majority in the Senate, which may stipulate that he be forbidden to hold office in the future.

Two presidents have been impeached by the House, Andrew Johnson in 1868 and Bill Clinton in 1998. Neither was convicted by the Senate;

Vacancies in the office of President may arise because of removal from office but also of death, or resignation.

The vice president is the president's successor in the case of a vacancy. If both the president and vice president die or are unable to exercise their function, the Speaker of the House becomes the next in succession. The list continues with the President pro tempore of the Senate, followed by every member of the Cabinet according to pre-established rules.

7. Conclusions

The influence of Congress on the presidency has varied during the last two centuries; the degree of power depending on the leadership of the Congress, political

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influence, the character of the president's initiatives. During the first presidential administrations, power was equally shared between the president and Congress, because early presidents largely restricted their right of suspensive veto. The impeachment of President Andrew Johnson reduced largely the influence of presidential power upon Congress. During the late nineteenth century, President Grover Cleveland voted over 400 bills, increasing the executive branch's power. In the twentieth and twenty-first centuries, we have been the witnesses of the rise of the power of the Presidency due to a series of energetic presidents: Theodore Roosevelt (1901–1909), Woodrow Wilson (1913–1921), Franklin D. Roosevelt (1933–1945), Richard Nixon (1969–1974), Ronald Reagan (1981–1989), and George W. Bush (2001-2009**).** In spite that The Congressional Budget and Impoundment Control Act of 1974, as well as the War Powers Resolution have restricted the powers of the President in recent decades; the Presidency remains an institution considerably more powerful an influential than during the nineteenth century. Although, "*the struggle between the president and the legislature must always be an unequal one, since the latter is certain of bearing down all resistance by persevering in its plan*, as Tocqueville pointed out", (De Tocqueville, 2006, 90) the presidency carries enormous prestige that typically eclipses the power of Congress.

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