

UNITED STATES OF AMERICA DECISION-MAKING: THE ATTRIBUTIONS OF THE PRESIDENT AND THE US CONGRESS

The Congress will push me to raise taxes and I'll say no, and they'll push, and I'll say no, and they'll push again. And I'll say to them: read my lips: no more taxes!
(George Bush, *Acceptance Speech*, Republican Party Convention, New Orleans, August 18, 1988)

The two decision-making entities chosen for analysis in this paper have been widely researched due to their constantly changing features. Until the end of the Second World War, both Congress and the President of the United States fulfilled their attributions assigned by the Constitution, without generating significant criticism. On the contrary, after 1945, the manner in which each institution accomplished its tasks generated a series of predictions and criticisms that multiplied especially during the Vietnam War. The reason lies in the fact that each American President chose to work along with Congress and implement its attributions in a particular manner, relying mostly on his personal abilities to “hijack” Congress into following the President’s own policies and strategies. By doing this, Presidents prevented Congress from fulfilling its classic attributions. Naturally, there were moments when Congress reacted vehemently and it is a certain fact that reactions shall follow – in this respect, the ending of Nixon’s presidency or the moderate reactions of Congress to President’s Bush demands for an augmentation of the number of soldiers in Iraq are mere examples of the power to rectify unnatural behaviors of the President.

It is a fact that the two institutions no longer live together in harmony. The silent conflict between the two generated heated debate over the compatibility of the two, over the manner in which each of them should be reformed and last but not least, it generated a debate among the American public who no longer sees itself and its interests best represented in this confrontation.

Therefore, the aim of this paper is firstly to draw a short presentation of the two institutions – the President and the Congress, and secondly to draw an analysis of the manner in which the two accomplish their attributions – either separately or together. Moreover, the analysis will also focus on the ways in which the two institutions can impress modifications one on the other, by emphasizing the

limitations they can impose reciprocally through the *impeachment* procedure. Finally, attempts will be made to portray the manner in which they both adapt to the realities of the 21st century.

The institution on the Capitol Hill – the United States Congress – is the legislative branch in the structure of American political power. Congress is composed of two chambers, both with equal power – the 100-member Senate and the 435-member House of Representatives. According to the United States' Constitution, Congress holds entirely the legislative power and has an extremely important role in its relationship with the President as one of its attributions is to supervise and control the White House. Legislative power is obviously divided among the two chambers, each having precise attributions: the House of Representatives can pass laws to collect taxes or set the impeachment procedure, while Senate is in charge with trying the impeachment accusations, as well as passing treaties and presidential initiatives.

Congress as a decision-making forum evolved mostly after the end of the Second World War. The 50's and 60's ended its historical role of wording foreign policy and turned it into a legitimiser of presidential decisions. At the time, Communist threat was extensive and justified full subordination of the legislative to the executive. Things changed during the Vietnam war, when presidential discourse proved helpless while confronted with the failures of the war. It was then that Congress re-became the producer of American foreign affairs. The same seemed to occur during the Bush Jr. administration, with the Iraq war of 2003 being seen either as a new Vietnam or a valid war for freedom. However, it was during the Iraq war of 2003 that Congress confederated around the President, since this was a time of crisis and during crises, all decision – makers need to unite.

Article 1 of the Constitution regulates the powers of Congress, while ammendments to the Constitution enrich the number of its attributions. Congress has authority over financial and budgetary issues, collects taxes, such as income taxes (this became its attribution due to the 16th Ammendment), controls appropriated funds (mostly governmental expenses included in the funds appropriated by Congress), which is a highly important mechanism to control the executive. Apart from this, Congress may also take loans in the name of the US, enter economic relations with other nations and issue currency. As far as self-defense is concerned, Congress can declare war, gather and maintain an army and establish military rules. But the most important prerogative of Congress remains that of control over the American executive, which is done through a series of committees such as: Standing Committees, Select and Special Committtees, Select Committees, Joint Committees. The essence of this control power lies in the

impeachment procedure that Congress applies and which once finished can lead even to the removal of the President.

The influence of Congress over the Presidency varied in time, based on the power exerted by Congress, by the President and even based on the boldness of presidential initiatives. Even if many American Presidents feared to limit Congress power and only vetoed unconstitutional laws, the more daring Presidents Ford, Carter and Reagan saw many of their foreign affairs policies stumble upon Capitol Hill. Another example of the constant game of hide-and-seek is the relationship between Congress and President George W. Bush Jr.

The influence of Congress over the Presidency varied in time, based on who ran Congress, the political influence of the President, the influence of several members of Congress, as well as on the boldness of presidential initiatives. Based on the Constitution, the power to remove the President resides with the House of Representatives, which has to use the *impeachment*¹ against federal officials in cases of "Treason, Bribery, or other high Crimes and Misdemeanors". Constitutionally, the Senate has the power and the obligation to trial for all the above. To trial an official, a simple majority of the House is required, whereas to convict - a two thirds' majority in the Senate is required. A convicted official is automatically discharged and is forbidden to ever have a similar higher position in Senate or elsewhere ever.

In the history of the United States, there were only two cases of impeachment: Andrew Johnson in 1868 and Bill Clinton in 1999. There was also the case of Richard Nixon, in the context of the Watergate affair in 1974, but he resigned since the on-going impeachment procedure showed that he would definitely be removed from office. The purpose of impeachment is not necessarily reduced only to offering legislative means of control over the executive, but eventually to insure executive submission to criminal law. From the point of view of the House Judiciary Committee, the one responsible for putting impeachment into practice, this procedure is an important element of the checks and balances system, maintaining a balance among Government powers and restraining the possibility of Government to abuse power.²

¹ "Impeachment is a Constitutional remedy addressed to serious offenses against the system of government", Richard E. Israel, *Grounds for Impeachment: Summaries of the Reports of the Department of Justice, House Judiciary Committee Staff, and White House Staff on the Grounds for the Impeachment of the President*. Washington, D.C.: Congressional Research Service, 1974. p. 121.

² Richard E. Israel, *Grounds for Impeachment: Summaries of the Reports of the Department of Justice, House Judiciary Committee Staff, and White House Staff on the Grounds for the Impeachment of the President*. Washington, D.C.: Congressional Research Service, 1974, p. 154.

On the other hand, the White House views impeachment as an infringement on presidential power and on the balance of power inside the state. From a strictly theoretical aspect, impeachment was established, according to Alexander Hamilton in the *Federalist*, No. 84, for "Those offences which proceed from the misconduct of public men or, in other words, from the abuse and violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself".³

By corroborating the two versions of offences that undergo impeachment, it is difficult to accurately explain what "high crimes and misdemeanors" refer to. The offences that could undergo impeachment are those that undermine the structure and integrity of Government and even Constitution, abuse of power, ignorance towards Constitutional attributions etc. As far as the President of the United States undergoing impeachment is concerned, this is a very extreme situation, since it has to be pursued only when evidence showed incompatibility with governmental and Constitutional principles or a faulty understanding of Constitutional duties. The fact that this procedure has only been used twice until present stands as an important argument for the gravity of the matter. The cases when impeachment has not been fully implemented demonstrate the extent to which this procedure can affect and destabilize the decision-making system.

As far as decision-making to declare war is concerned, the War Powers Resolution, passed by Congress in 1973 shows to which extent is the responsibility divided between the President and Congress. Sections 2, 3, 4, 5 and 6 specify which are the responsibilities of Congress and President in this respect. Here they are:

- Sec. 2 (b) in accordance with art. 1, section 8 of the Constitution, Congress has the power to pass the necessary laws which can facilitate the usage of not only its powers invested by the Constitution, but also those of the Government;

- Sec. 2 (c) – the Constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces;⁴

³ Alexander Hamilton, James Madison, John Jay, *The Federalist Papers*, Oxford, Oxford University Press, 2008, p. 418.

⁴ Michael Bellesiles, *The War Powers Resolution 1973*, from *Bibliobase*, Washington D.C., Houghton Mifflin Company, 1998, p. 56.

- Sec. 3 – The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations;⁵

- Sec. 4 (b) – The President has to inform Congress of the possibility to engage American military troops into combat. This prerogative became even more visible during the war of Iraq of 2003, when President Bush attempted to have Senate support on this. However, the Senate rejected such a demand, in the absence of a Security Council resolution to legitimate such an intervention. The fact that in the case of Iraq in 2003, the Senate and the UNSC have been disregarded shows how flexible the relationship between the President and the Congress is.

- Sec. 4 (c) – Whenever United States Armed Forces are introduced into hostilities[...], the President shall, so long as such armed forces continue to be engaged in such hostilities[...], report to the Congress periodically on the status of such hostilities [...] as well as on the scope and duration of such hostilities[...], but in no event shall he report to the Congress less often than once every six months.⁶

According to former President Ronald Reagan, “as far as defense and foreign affairs are concerned, the Nation should speak with only one voice, and only the President can be that voice”.⁷ Wittkopf and Kegley show why this is true. Firstly, they use several examples to show that the President’s preeminence stems from “the combination of judicial interpretation, legislative acquiescence, personal assertiveness, and custom and tradition that have transformed an otherwise co-equal branch of the federal government into the most powerful office in the world”.⁸ They also refer to “imperial presidency”, a concept introduced by Arthur M. Stoessinger, which speaks about a kind of discretionary presidency always having the last word, a type of leadership that carries on the support of Congress until it becomes the final decision-maker. The presence of persons such as Henry Kissinger or Zbigniew Brzezinski in the Presidential entourage, their expertise, as well as their bias, explain the momentum experienced lately by the Presidency.

Until the 90’s, the American decision-making environment was populated by structures such as the State Department, the NSC, both more or less effective,

⁵ *Ibidem*, p. 51.

⁶ *Ibidem*, p. 57.

⁷ Charles W. Kegley, Eugene R. Wittkopf, *Pattern and Process – American Foreign Policy*, Fourth Edition, New York, St. Martin’s Press, 1991, p. 325.

⁸ *Ibidem*, p. 326.

which allowed the President to choose between active involvement or a rather “hands-off management style”,⁹ as was the case with the Reagan administration. At the end of the 20th century and the beginning of the 21st century major changes occurred with Congress passing the decision-making powers to the President. The transformation resides in the fact that the resolutions of Capitol Hill are mostly assumed by/assimilated with the President, who makes them even more visible and pleads for them to the public. A main instrument in this respect is the legislative veto¹⁰ that Presidents can impose on Congress. The procedure is the following: a joint resolution is subjected to presidential veto, which means that Congress has to gather two thirds in both houses in order to block a presidential veto. Presidential veto refers in fact to a higher degree of liberty of the Presidency to constrain Congress to tacitly agree with more controversial initiatives – such as selling weapons to unstable regimes, such as Iraq during the Gulf War. Presidents often abused this power, refraining from consultation with Congress in the allotted time, acting on their own, thus enraging Congress, but eventually reaching a *modus vivendi*. Since, Congress is more domestically oriented – voters’ interest are on the first place – “being national minded can be a positive hazard to a legislative career”,¹¹ this means the President is entrusted with foreign affairs management. Therefore, the Nation expresses itself through one voice, which could only be that of the President, since Congress rarely expresses itself with only one voice. Inside Congress, decision-making is done individually by members who follow their own initiatives and agendas. This power dispersion only emphasizes how irresponsible¹² Congress is and the imperative never to entrust Congress with the final word on decision-making. To this, one might add the “information leakages” from Congress, performed with the futile hope of achieving a better control over the executive.

As referred to above, the relationship between the President and the Senate is one of interdependence, since, in the absence of the information provided by the Presidency, the Senate’s constitutional prerogatives would be seriously affected. Unfortunately, there is no mechanism to ensure that Congressional decisions will be taken into account by the presidency, which means that Congressional power is in fact circumscribed. It is thus a fact that the President is the final decision-maker in settling treaties or declaring war,¹³ although the Senate is in charge of financing

⁹ *Ibidem*, p. 347.

¹⁰ *Ibidem*, p. 413.

¹¹ *Ibidem*, p. 420.

¹² Charles W. Kegley, Eugene R. Wittkopf, *Pattern and Process – American Foreign Policy*, Fourth Edition, New York, St. Martin’s Press, 1991, p. 424.

¹³ See the Iraq War of 2003.

them. The best example is that of December 1982, when Congress refused to authorise funding for the production of the first MX missiles. It was the first time, after the Vietnam war, when Congress refused to offer the President the needed funding for weaponry.¹⁴ Before going further, it is highly important to underline the fact that Presidential policies need to be implemented with Congressional funding, or else, the Presidency runs the risk of being confronted with accusations of corruption and compromise.

The President's power to act is based on a large bureaucracy. The President as a source of decision-making can only be seen as such by having behind him this bureaucracy, his own charisma and Congress to act as a validator of his decisions. "The office can make the person as much as the person can make the office. People become elites only because they occupy elite positions and not because, as they sometimes assume, they are inherently special".¹⁵ To put it plain, although the US president is one of the most powerful decision-makers, memorable and singular decisions are few. Behind this decision-maker there are mechanisms that head decisions towards the achievement of national interest, which remains a primary goal of American policy.¹⁶

As far as the Obama administration is concerned, its relationship with Congress has been questioned even before the moment when Obama became President. He inherited a large amount of internal disruptions, such as a budget out of control, a growing national debt, a military incapable to live to the political commitments made by the government, a broken immigration policy, vexatious education and healthcare policies, an increasingly criminalized society¹⁷ etc. All these were extreme challenges to the Presidency, and any future President needed to be endowed with special leadership attributes to be able to sway among them. Unlike previous American Presidents, during the Cold War and after, Presidents had to focus both on the nation's business issues and the military aspects. In the case of President Obama this rather new practice became even more pressing. The even more challenging aspect of Obama's role stems from the need of the Presidency to re-shape and rebuild the American Presidency in order to re-make it liable to the public. He had to bridge the gap that existed between what people thought their government should be doing and what their government actually did in various

¹⁴ Kegley, Wittkopf, *Pattern and Process*, p. 42.

¹⁵ *Ibidem*, p. 517.

¹⁶ *Ibidem*, p. 522.

¹⁷ Molefi Kete Asante, *Barack Obama and the Dilemma of Power: An Africological Observation*, in *Journal of Black Studies*, Vol. 38, No. 1, *The Barack Obama Phenomenon* (September, 2007), p. 108.

situations, as was the case with the Iraq war of 2003.¹⁸ As far as setting straight which is the order of precedence in the American system, by establishing his priorities in 2007,¹⁹ during the campaign, Barack Obama showed himself strong on defense and foreign affairs, leaving the Congress on a secondary place, with the mission to help implement the Presidency's policies. Nevertheless, President Obama is well aware of the fact that he must not enrage the legislative branch, since no executive could ever function without a working relationship with the legislative. As a result, his attitudes and demands of Congress are fairly moderate, with the American public interest always at stake – a very good example is the constant pressure put on Congress not to fail again the bill for health care reform, back in 2009 – “Do not walk away from reform. Not now. Not when we are so close. Let us find a way to come together and finish the job for the American people”²⁰.

Taking everything into consideration, the two American decision-making institutions are not contrasting, but rather interdependent. The American decision-making process is not extremely straightforward, as it is based mostly on document analysis- often done by the establishments behind the President and the Congress. When investigating these institutions, references to national interest, public opinion, information community and other institutions are inevitable. However, despite all the laws that regulate the decision-making process, all the statutes and resolutions established along centuries, it is a fact that this process is a particular one in the case of the United States of America, one in which actors and institutions alike have the leading part. And this part evolves in time, based on the situation, the actor and the institution involved.

OANA ELENA BRÂNDA

PROCEDURA DE LUARE A DECIZIE ÎN STATELE UNITE ALE AMERICII:
 ATRIBUȚIILE PREȘEDINTELUI ȘI ALE CONGRESULUI AMERICAN
 Rezumat

Procedura de decision-making în spațiul american este una aparte datorită mecanismelor implicate și mai ales a actorilor care vin fiecare cu propria agendă. Elementele care se constituie într-o decizie de politică națională, care va fi apoi implementată în practică, trec

¹⁸ *Ibidem*, pp. 110-111.

¹⁹ *Ibidem*, p. 112.

²⁰ Alex Spillius, *State of the Union speech: Barack Obama begs Congress not to abandon healthcare reform*, January 28th, 2010, taken from <http://www.telegraph.co.uk/news/world-news/barackobama/7089279/State-of-the-Union-speech-Barack-Obama-begs-Congress-not-to-abandon-healthcare-reform.html> (accessed November 10th, 2010).

printr-o întreagă ierarhie instituțională în care fiecare componentă își lasă amprenta asupra ceea ce va deveni apoi act de politică.

Cele două instanțe decizionale pe care le-am ales ca studii de caz se află în permanentă schimbare. Cu toate că relația dintre cele două este una de interdependență, ea nu a fost lipsită de momente tensionate. Atât Președintele cât și Congresul au agende proprii și pârghii proprii de putere cu care și le pot pune în practică și de care s-au folosit de-a lungul timpului ajungând aproape la un joc de-a v-ați ascunselea politic care a atras mereu atenția presei.

Lucrarea de față se axează în primul rând pe o prezentare comparată și contrastantă a puterilor și atribuțiilor celor doi factori decizionali, iar în al doilea rând vizează prezentarea și analiza unor cazuri concrete în care puterea de luare a deciziei în cazul Congresului și al Președintelui a fost fie chestionată, fie au existat dispute înainte de a se ajunge la o cale de lucru concertată.