

War Crimes or Crimes against Humanity: The Unaccountability of the U.S. President

This article argues that the modern United States presidency has evolved into an office with extraordinary powers that, in matters involving the use of force and international law, is insulated from meaningful domestic and international accountability. The paper introduces the Presidential Hexagon, a theoretical framework that identifies six interlocking dimensions that collectively produce presidential unaccountability: (1) singular executive authority, (2) the president's status as the sole organ of foreign affairs, (3) commander-in-chief authority over the world's most powerful military, (4) absolute immunity for core official acts, (5) the structural ineffectiveness of impeachment, and (6) legal and political obstruction of international criminal justice. The article demonstrates how constitutional, statutory, judicial, and political mechanisms reinforce one another, creating a self-sustaining architecture of executive power. It analyzes the expansion of presidential authority through judicial doctrine, congressional delegations of war powers, the Supreme Court's presidential immunity jurisprudence, and domestic measures intended to impede the International Criminal Court's jurisdiction. It further examines the limited effectiveness of impeachment, the practical constraints posed by institutional resistance within the executive branch, and the growing influence of wealthy donors on presidential foreign policy. Although the Rome Statute formally rejects immunity for heads of state, practical barriers—including U.S. domestic law, Security Council veto power, bilateral immunity agreements, and statutory protections—make international accountability for U.S. presidents highly unlikely. The principal challenge is not to reduce presidential power but to restore credible legal accountability for its exercise in matters involving war, international humanitarian law, and crimes against humanity. The Presidential Hexagon offers a new conceptual framework for understanding the constitutional and international dimensions of executive power in the twenty-first century.

Keywords: U.S. Constitution; presidency; war powers; immunity; UN Security Council; International Criminal Court

Introduction

The modern United States presidency operates with a degree of unaccountability uncommon in other democratic systems. While the president is elected and subject to two-term limits, the concentration of executive power in one person can, in some cases, resemble unchecked authority. This issue is most critical in matters involving the use of force, where presidential decisions can have profound implications for international peace and security. A president who is overly confident in his worldview and acts in ways that violate international law is likely to undermine international institutions and may even commit war crimes or crimes against humanity with impunity.

This article argues that presidential insulation from accountability is best understood through a hexagonal framework of six interlocking dimensions: (1)

singular executive authority, (2) the sole organ of foreign policy, (3) commander-in-chief of the world's most lethal armed forces, (4) absolute immunity for core official acts, (5) an ineffective impeachment mechanism, and (6) obstruction of international justice. Each dimension reinforces the others, creating a self-sustaining architecture that vests extraordinary discretion in a single individual. The president can thus do great good and profound harm to the nation and the global order, yet remain subject to limited accountability.

Neither domestic nor international law supplies robust mechanisms to prevent or punish presidential violations of the laws of war, including *jus ad bellum* and *jus in bello*. A president committed to raw power rather than legal norms can exploit the hexagonal powers to make catastrophic choices. Fortunately, a small "crack" in this hexagon can manifest as internal institutional resistance, in which various agencies, including the Pentagon, may delay or question unlawful orders. Otherwise, the presidency remains beyond effective restraint.

The most consequential element of the hexagon is the *de jure* and *de facto* immunity from accountability, which raises critical legal questions. Does presidential immunity extend to initiating an illegal war? Does it cover violations of peremptory norms of international law, such as torture or genocide? This paper contends that, under the Rome Statute, the ICC may exercise jurisdiction in appropriate circumstances and issue arrest warrants for a current or former president for international crimes. Nevertheless, the practical enforcement of such warrants remains highly improbable and could trigger fierce U.S. retaliation.

After explaining the presidential hexagon, the article examines how internal institutional resistance within the bureaucracy and military can serve as a practical, if imperfect, check on a president inclined toward unlawful action, as well as how wealthy donors strive to capture the presidency, dictating foreign policy even in violation of international law. These competing dynamics underscore the formidable nature of the office of the singular executive and the high stakes involved in controlling its immense powers.

Singular Executive

The concentration of executive power in a single individual is not merely a constitutional design; it is the foundational dimension of the presidential hexagon. Article II provides that "The executive Power shall be vested in a President of the United States." Unlike Article I, which distributes legislative authority among hundreds of elected representatives, or Article III, which disperses judicial authority among numerous judges, Article II concentrates executive authority in a single constitutional officer.¹ As the Supreme Court has

¹The Constitution establishes three coequal branches of the federal government: the legislative, the judicial, and the executive. The bicameral Congress, composed of the House of Representatives and the Senate, is a pluralistic institution with over 500 elected officials, as is the judiciary, which has hundreds of judges at the trial and appellate levels. The Supreme Court

1 said, “The president is the only person who alone composes a branch of
2 government.”²

3 The concept of a unitary executive was deliberately adopted by the delegates
4 at the Constitutional Convention and received its most forceful defense in the
5 Federalist Papers. The Framers were skeptical of diluting executive authority
6 through plurality, choosing instead to vest “the executive Power” in “a
7 President.”³ Beyond promoting decisiveness, Hamilton argued that a single
8 executive concentrates responsibility in a single elected individual, making it
9 easier for the electorate and Congress to evaluate performance and assign praise
10 or blame. A plural leadership might lead to “paralysis” and the diffusion of
11 responsibility.⁴

12 A comparison with the parliamentary system of the United Kingdom
13 illustrates the distinctive nature of the American presidency. In the UK, the king
14 or queen is the head of state, whereas the prime minister, an elected member of
15 parliament, heads the government. The president, as the singular executive,
16 serves as both the head of government and the head of state, holding authority at
17 home and abroad.

18 There is yet another structural difference. The president represents the
19 national will more than the prime minister, though neither is directly elected by
20 the people. The prime minister is elected by the majority party in parliament, not
21 by the entire national electorate. The president is elected through the Electoral
22 College, though citizens vote for the president in the general election.
23 Nevertheless, the Electoral College outcome can override the national popular
24 vote.⁵

25 Neither system produces a direct national mandate. However, only in the
26 United States is this imperfect mandate vested in a single executive authority, as
27 evidenced by the president's relationship with the cabinet.

28 29 *Singular Decision-Making and the Advisory Cabinet*

30
31 The principal institutional contrast between the American presidency and
32 parliamentary government lies in the cabinet. The cabinet does not dilute
33 presidential authority as it does the prime minister's in a parliamentary
34 government. The prime minister forms a cabinet from elected members of
35 Parliament, establishing an executive body that operates under the doctrine of
36 collective ministerial responsibility. In parliamentary systems, the cabinet is

itself has nine Justices. Unlike the plural structure of Congress and the judiciary, the executive power is vested in a single individual, creating a structural asymmetry in decision-making authority.

²Trump v. Mazars USA, LLP, 591 U.S. 848, 868 (2020).

³“The executive Power shall be vested in a President of the United States of America.” U.S. Const. art. II, Sec. 1

⁴Federalist Papers, 70. *But see* Pfiffner, J. P. (2011). Federalist No. 70: Is the President Too Powerful? *Public Administration Review*, 71, s112-s117.

⁵In 2016, for example, Hillary Clinton received more popular votes nationwide, yet Donald Trump secured the presidency by winning the Electoral College.

1 much more closely tied to the will of the people, as each cabinet member remains
2 accountable to the district that elects them.

3 Furthermore, the executive authority in parliamentary systems is pluralistic.
4 The prime minister alone cannot make the decision; a cabinet decision is
5 presumably the decision of the entire cabinet, whether by consensus or by
6 majority. The cabinet members may vigorously debate or oppose a decision
7 during confidential proceedings. Once a cabinet decision is made, dissenting
8 cabinet members either resign or publicly support it.

9 In contrast, the president appoints cabinet members to handle portfolios
10 such as foreign policy, the treasury, and homeland security, with the advice and
11 consent of the Senate. It could be argued that the Senate's approval injects some
12 additional popular will into the government. The Senate approval of each
13 member of the cabinet, however, does not restrain the president's authority. The
14 Constitution allows the president to seek written opinions from cabinet members
15 on domestic and international matters.⁶ Because these written opinions lack
16 binding authority, the cabinet serves as a purely advisory body, leaving the
17 nation's executive power solely in the hands of the president.

18 The president may encourage vigorous debate within cabinet proceedings
19 and, as a personal rule, may follow the cabinet's majority decision. However, any
20 presidential reliance on cabinet input remains a matter of personal style rather
21 than an institutional mandate, reinforcing the office's unilateral nature.⁷ The
22 Supreme Court recognizes that the president "occupies a unique position in the
23 constitutional scheme."⁸ Such normative declarations bolster presidential
24 authority. Consequently, the president can dismiss cabinet reservations and order
25 the assassination of a foreign leader deemed a threat.⁹

26 The president's singular authority becomes even starker when compared
27 with the other two branches of government, which are pluralistic in their
28 decision-making. No law can be passed without a majority vote in both houses
29 of Congress, and no Supreme Court decision can be made without a majority of
30 five justices. Even at the appellate level, decisions are made by panels of two or
31 three judges. District courts consist of a single judge, but appellate courts can
32 review their decisions. Thus, the legislature and judiciary are pluralistic
33 institutions, whereas the presidency concentrates the decision-making authority
34 in a single individual.

35 The Constitution is renowned worldwide for its system of checks and
36 balances, where one branch of government keeps the others in check. However,
37 the presidency represents an exception to the balance doctrine. The Supreme
38 Court has noted that the Framers "sought to encourage energetic, vigorous,
39 decisive, and speedy execution of the laws by placing in the hands of a single,

⁶U.S. Const. art. II, Sec. 2.

⁷Murray, I., & Stoddart, M. (2026, January 8). Trump says his 'own morality' is a limit to his global power. ABC News. <https://abcnews.com/Politics/trump-morality-limit-global-power/story?id=129033900>.

⁸Nixon v. Fitzgerald, 457 U.S. 731, 749 (1982).

⁹The president may invoke his additional powers as the sole organ of foreign policy and the commander in chief to defend his assassination decision.

1 constitutionally indispensable, individual the ultimate authority that, in respect
2 to the other branches, the Constitution divides among many.”¹⁰

3 By itself, a singular executive is neither good nor bad. Singularity can
4 produce speed, accountability, and coherent leadership, as the architects of the
5 presidency intended. Yet they did not design a presidency insulated from
6 effective legal accountability when executive power is exercised unlawfully.
7 That concern becomes substantially greater when the singular executive also
8 functions as the nation's sole organ in foreign affairs.

11 **Sole Organ of Foreign Policy**

13 The president’s status as the ‘sole organ’ of foreign policy stands out as a
14 particularly decisive grant of centralized power. This power, combined with
15 others, determines whether and how the president upholds international law,
16 which countries the president decides to attack, which nations face economic
17 sanctions, and whether the U.S., holding a veto in the UN Security Council,
18 would cooperate with other permanent members of the Council to promote peace
19 and security. The president alone decides these and other monumental issues.
20 What makes this part of the hexagon even more formidable is the limited number
21 of checks and balances on this power. The more power the president
22 accumulates, the less accountable he is.

23 The contrast is vivid. Domestic governance disperses authority among
24 Congress, the courts, federal agencies, and the states. Foreign affairs are
25 uniquely centralized in the president. As the sole organ, the president invokes
26 numerous foreign policy powers, some of which are enumerated in the
27 Constitution. “He shall have Power, by and with the Advice and Consent of the
28 Senate, to make Treaties . . . and appoint Ambassadors.”¹¹ The courts have
29 recognized the president’s powers to recognize foreign states and governments.
30 Congress cannot force the president to recognize a state or government, nor can
31 it compel him not to. Neither can previous presidents bind a future president
32 through executive orders or customs. Breaking with precedent, for example,
33 President Trump recognized Jerusalem as Israel's capital.

34 Even the treaty-making powers are, in essence, presidential. Before treaties
35 are submitted to the Senate, the president negotiates their terms. He makes
36 foreign visits and invites foreign leaders to the United States. He makes
37 international trade decisions. Some of these trade agreements with other
38 countries are made with the approval of both houses of Congress. Yet the
39 president initiates treaties and agreements. The termination of international
40 commitments has, in practice, been largely exercised by the president, often
41 without prior congressional approval, though the constitutional basis for
42 unilateral withdrawal remains contested.

43 For example, President George W. Bush withdrew the United States from
44 the Rome Statute that President Bill Clinton had signed, but the Senate had not

¹⁰Clinton v. Jones, 520 U.S. 681, 712 (1997) (Breyer, J., concurring in judgment).

¹¹U.S. Const. art. II, Sec. 2.

1 yet approved it. President Trump withdrew from the Joint Comprehensive Plan
2 of Action (JCPOA), known as the Iran nuclear deal, on his own authority, just as
3 President Barack Obama had concluded the agreement without Senate advice
4 and consent. These presidential reversals of international commitments
5 introduce instability into foreign relations and weaken international peace and
6 security.

7 The president is the Commander-in-Chief of the armed forces, a power
8 enumerated in the Constitution and discussed in more detail in Part IV. The
9 president alone enters into international agreements, known as Executive
10 Agreements, including intelligence and military agreements with other nations.
11 In 1940, President Franklin D. Roosevelt transferred 50 naval destroyers to the
12 United Kingdom in exchange for base rights—without Senate approval. In 2015,
13 President Obama joined the Paris Climate Agreement through an executive
14 agreement, from which President Trump later withdrew the United States.

15 16 *Judicial Coronation*

17
18 The Supreme Court has further reinforced the presidential powers in foreign
19 policy, which inevitably involves international law. In 1800, before becoming
20 the Chief Justice of the United States Supreme Court, John Marshall stated
21 during a House debate that “The President is the sole organ of the nation in its
22 external relations.”¹² Marshall’s statement would later become one of the most
23 influential descriptions of presidential foreign affairs authority in American
24 constitutional law. The “sole organ” framing was invoked in a seminal Supreme
25 Court case, though as a dictum, nearly a hundred years after Marshall’s death.¹³

26 In 1936, the sole organ doctrine was first introduced in a Supreme Court
27 case.¹⁴ President Franklin D. Roosevelt banned the sale of arms to Bolivia and
28 Paraguay, which were engaged in the Chaco War. This ban was placed after
29 Congress passed a joint resolution authorizing the president to ban arms sales to
30 foreign countries at his discretion. Curtiss-Wright Corporation sold arms to
31 Bolivia in violation of the executive order and challenged the presidential
32 authority to restrict such sales. The Supreme Court upheld the presidential
33 proclamation and emphasized broad executive powers, stating that he has more
34 flexibility in exercising foreign policy powers and that in this area he is “the sole
35 organ” and possesses “inherent authority.”¹⁵

36 Curtiss-Wright transformed Marshall’s political observation into
37 constitutional language. Although the Court did not hold that the president
38 possessed unlimited foreign affairs authority, its sweeping dicta describing the
39 president as the nation’s “sole organ” became the principal judicial foundation
40 for expansive executive power in international affairs. Although the Court later

¹²This statement might have earned him the office of the Secretary of State, though for less than a year.

¹³United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

¹⁴Ibid.

¹⁵Ibid.

1 attempted to claw back the sole-organ description, it was too late to restrain
2 presidential foreign policy.

3 In 1952, in a case involving President Harry Truman's seizure of steel mills,
4 the Supreme Court restricted the sole organ doctrine.¹⁶ The Court refused to
5 grant the president authority to seize the mills to avert a nationwide steelworkers'
6 strike during the Korean War. Arguably, the steel mills were related to foreign
7 policy insofar as their production affected the conduct of war. Still, steel mills
8 were domestic operations, as were the labor disputes, though the latter were only
9 obliquely related to the Korean War. Many industries produce goods and services
10 that sustain an armed conflict. Bringing them all under presidential authority
11 during a war would have been a remarkable expansion of presidential power.

12 The Steel Mills case did not overrule the sole organ effects but instead
13 restricted them with respect to the spillover effect of foreign policy into domestic
14 matters. Justice Black's majority opinion emphasized that even urgent wartime
15 needs could not transform the president into a lawmaker. By emphasizing
16 domestic limits, the Court ironically revalidates presidential powers in foreign
17 policy.

18 Even Justice Jackson's tripartite framework reinforces the sole organ
19 doctrine. Justice Jackson holds that the president has the most power when he
20 combines his own powers with those delegated by Congress, and the least when
21 he asserts a power contrary to Congressional powers. Between these two poles
22 lies the twilight zone, where the two branches of government contest for
23 superiority.¹⁷ Under the political question doctrine, which holds that courts
24 decline to resolve contested powers between Congress and the president, the
25 gray zone is functionally for the president to claim. In 1960, Dean Rusk
26 rightfully observed that the powers and responsibilities of the president had
27 "grown significantly since 1789."¹⁸

28 No monarch in the modern democratic world simultaneously exercises this
29 combination of diplomatic, military, intelligence, recognition, treaty, sanctions,
30 and executive authority subject to so few immediate legal constraints. The
31 constitutionally enumerated and de facto asserted presidential powers transform
32 the sole organ doctrine into a daunting authority on a global scale. This
33 combination becomes even more formidable when Congress delegates its
34 foreign policy powers to the president.

35 36 *Delegation*

37
38 By delegating power to the president, Congress expands the scope of the
39 sole organ of authority. If the president oversteps, Congress can withhold the
40 funds needed to exercise a delegated power. However, cutting off funds is
41 ineffective when a presidential decision is already consequential and has laid
42 facts on the ground. Every congressional delegation enlarges an office that is
43 already constitutionally powerful. Delegation, therefore, does not merely

¹⁶Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

¹⁷Ibid. (Justice Jackson, concurring) 343 U.S. 638.

¹⁸Rusk, D. (1959). The president. *Foreign Aff.*, 38, 353, 355.

1 transfer authority from Congress to the presidency; it compounds authority
2 already concentrated in a single executive, further diminishing accountability.

3 An important issue in *Curtiss-Wright* was whether Congress could delegate
4 its constitutional powers, such as the power to legislate, to the president. The
5 Court declared that in matters of foreign policy, Congress can indeed do so.
6 Congress cannot delegate its Article I domestic powers to the president, but it
7 can do so with respect to its international powers.

8 Congress has several enumerated powers related to international matters.
9 The most relevant to the subject matter of this article are the powers of Congress
10 to declare war, to provide for the common defense, to define and punish offenses
11 against the law of nations, and to regulate commerce with foreign nations.¹⁹
12 Congress can delegate all these powers to the president, creating an office with
13 powers that resemble those historically associated with monarchs.

14 In matters of international trade, Congress has passed two statutes
15 empowering the president to regulate it. The Tariff Act of 1922 allows the
16 president to adjust tariff rates to equalize production costs between the US and
17 its foreign competitors. The International Emergency Economic Powers Act
18 (IEEPA) (1977) grants the president broad authority to impose economic
19 sanctions, regulate international transactions, and freeze assets during declared
20 national emergencies related to foreign threats. Using these powers, President
21 Trump started imposing tariffs on foreign nations. However, the Supreme Court
22 disagreed with the president, holding that he lacked the authority to redesign the
23 tariff regime absent an international emergency.

24 As discussed below, the most consequential delegation of Congressional
25 power concerns the use of force. Congress has delegated its war powers to the
26 president, who, under the Constitution, is the Commander-in-Chief of the armed
27 forces. When Congress delegates an enumerated power that overlaps with an
28 enumerated presidential power, the effect of the delegation is compounded.
29 Thus, the president can claim executive authority over the use of force far
30 beyond what Congress delegates to him.

31 32 *Commander in Chief* 33

34 The most categorical power that the president can exercise in the hexagonal
35 architecture is command of the armed forces. In the case of the U.S., the decision
36 to use force is monumental because the lethal power of its armed forces is
37 unmatched worldwide. Can the president invade another nation, occupy foreign
38 territory, assassinate foreign leaders, destroy cities, kill civilians, or authorize the
39 use of nuclear weapons? The president alone possesses the nuclear launch codes
40 to initiate strategic strikes, subject only to internal military verification
41 procedures. No congressional declaration, judicial review, or international
42 approval is required. This concentration of civilization-ending power in one
43 individual is alarming. Is there anything in the Constitution and laws that vests
44 the president with unlimited authority to do as he pleases on the battlefield?

¹⁹U.S. Const. art. I.

Article II of the Constitution designates the president as Commander in Chief of the Army and Navy of the United States, in fact, “of the whole force of the nation.”²⁰ Yet neither the Constitution nor case law defines the scope of this authority. In many constitutional systems, this title is largely ceremonial. By contrast, presidents have interpreted the Commander in Chief clause to assert substantive authority to deploy military force without prior congressional authorization. This expansive reading, however, is incompatible with Article I, which vests in Congress the power to declare war. When the president and Congress contest power, courts frequently invoke the political question doctrine to declare the issue nonjusticiable, an outcome that, in practice, favors the executive in the short run.

Although historical practice, congressional acquiescence, and judicial deference have allowed some degree of unilateral presidential action, neither Congress nor the Supreme Court has endorsed an unlimited executive power to initiate large-scale or prolonged armed conflicts. The result is a constitutional tension: a formally shared war power that, in practice, has shifted toward executive initiative without a legal resolution.

In 1950, Korea marked the first major modern war undertaken without a congressional declaration, establishing a precedent. Subsequent presidents have invoked similar authority for large-scale or prolonged operations in Vietnam, Grenada, Panama, Libya, and Syria, often stretching statutory authorizations or claiming independent constitutional power. These episodes illustrate how the practical initiative in war-making has shifted to the executive, even as the formal constitutional text continues to divide war powers among the branches.

There are arguments of exigency that favor the president. The country may face war while Congress is in recess, and the president cannot wait for Congress to declare war before responding with force, blockade, or other measures, especially now, when war can cause significant damage in minutes or days. The U.S. Supreme Court has long recognized presidential military actions without congressional approval in urgent circumstances, although dissenting Justices would require congressional approval for any war, whether offensive or defensive.²¹ The exigency arguments become stronger when the president uses military force against non-state actors or militant groups.

The fact that war is something that the president conducts rather than Congress is reflected in the smaller number of declarations of war. Invoking its constitutional power, Congress has declared war 11 times so far and has not done so since 1942. After World War II, military actions worldwide have shifted into the presidential domain. Under the authorization doctrine, Congress has passed laws allowing the president to use force in international affairs, though with certain restrictions. Since Congress controls the power of the purse, it has ultimate authority over the continuation of presidential military actions and can cut off funding to signal their end. A president can start an international military

²⁰Prize Cases, 67 U.S. 635, 649 (1863).

²¹Id. at 636, at 698 (Justice Nelson, dissenting).

1 action, but Congress must provide funding to support it; this setup has become
2 the most effective partnership between them.²²

3 Still, even the power of the purse makes congressional control reactive
4 rather than preventive, allowing the president to create international facts that
5 are politically difficult to reverse. If some members of Congress challenge the
6 president, courts do not consider the president's authority to use force
7 justiciable.²³

8 9 *Statutory Authorization*

10
11 Statutory authorization for the president to use force has further
12 strengthened the presidential powers under the commander-in-chief
13 constitutional power. Between 1798 and 1800, without formally declaring war
14 on France, Congress authorized the president to take military action in the
15 Dominican Republic, resulting in the capture of a French privateer. In 1801,
16 when the Marines arrived in Tripoli, Libya, Tripoli declared war on the United
17 States. However, Congress responded by authorizing military action through
18 statute rather than issuing a formal declaration of war. These early episodes
19 illustrate a recurring pattern: presidential initiation of the use of force followed
20 by congressional authorization or acquiescence, which has, over time, evolved
21 into independent presidential war-making, reinforcing the presidential hexagon.

22 Authorizing war through legislation rather than a formal declaration of war
23 has become the preferred approach in recent decades, as it gives Congress greater
24 flexibility to tailor each military conflict, large and small. The declaration has
25 been used against sovereigns. Authorization works much better in cases of
26 military action against non-state actors, territories, and ships. Statutory
27 authorization also allows Congress to repeal some portions of the authorizing
28 statute while retaining others.

29 In matters of war, the War Powers Resolution of 1973 reaffirms the
30 collective judgment of Congress and the president regarding the use of armed
31 forces in hostilities. However, the Act recognizes that the president may initiate
32 and conduct a unilateral war without a declaration of war from Congress.²⁴
33 Nonetheless, in all such cases, the president must report in writing to the
34 Congressional leadership within 48 hours and explain the estimated scope and
35 duration of the hostilities. The president is also required to specify the
36 constitutional and legislative authority under which he takes unilateral action to
37 use armed forces in foreign hostilities.

38 In all unilateral wars, the War Powers Resolution requires that the president
39 “terminate any use” of the armed forces within 60 days, which may be extended
40 to 90 days upon presidential request.²⁵ However, Congress may direct the

²²A list of the U.S. use of force since 1800. <<https://www.congress.gov/crs-product/R42738>>

²³Campbell v. Clinton, 203 F.3d 19 (D.C. Cir. 2000), cert. denied 121 S. Ct 50 (2000). Congressmen challenged the legality of President Clinton’s airstrikes against Yugoslavia. The Court of Appeals declared the issues are not justiciable.

²⁴50 U.S. Code § 1543

²⁵50 U.S. Code § 1544

1 president at any time to cease any unilateral hostilities by a concurrent
 2 resolution.²⁶ Thus, without a declaration of war or legislative authorization, the
 3 president cannot wage war unilaterally for more than 90 days. This 90-day period
 4 is a time limit for terminating a unilateral presidential war, not affirmative
 5 permission to initiate or conduct 90-day wars.

6 In practice, presidents have frequently complied with the reporting
 7 requirements while disputing that the Resolution constitutionally binds them,
 8 thereby converting what was intended as a constraint into a procedural formality.
 9 Presidents have generally treated the Resolution as a reporting statute rather than
 10 a genuine limitation on presidential authority.

11 The post-9/11 Authorization for the Use of Military Force (AUMF)
 12 authorizes the president to use force against specific entities designated as
 13 terrorist organizations. It permits the president to employ “all necessary and
 14 appropriate force” against nations, groups, or individuals to prevent future acts
 15 of international terrorism targeting the United States. Under these broad statutory
 16 regimes, combined with his commander-in-chief power, the president may order
 17 the targeted killing of foreign military figures, such as General Suleimani, whom
 18 the president determines has committed or is likely to plan future acts of
 19 terrorism.

20 The breadth of the AUMF has been criticized as functionally open-ended,
 21 allowing successive presidents to interpret “necessary and appropriate force”
 22 expansively over time, across geography, and in terms of targets. This statute
 23 writes a blank check for the president to determine any nation, organization, or
 24 person as a present or future threat to the United States. Furthermore, the
 25 language of “all necessary and appropriate force” includes assassinations of the
 26 leaders of organizations. The only restriction appears to be logistical and
 27 pragmatic: whether the state in which the target leaders operate would coordinate
 28 with US action.

29 Note, however, that when Congress delegates a power to the president, it
 30 does not permanently relinquish that power. Congress can always repeal the
 31 delegated power, impose limitations on it, or, under the same logic, delegate the
 32 same power with fewer restrictions. In practice, however, political incentives,
 33 partisan gridlock, and the sheer pace of international crises often leave these
 34 delegations intact for decades, reinforcing the presidency’s unrivaled role in
 35 foreign affairs.

36 The practical transfer of war-initiation authority from Congress to the
 37 president is not merely institutional drift; it is a shift without corresponding
 38 accountability mechanisms. Once force is used, legal review is largely
 39 retrospective, political, and often ineffective. The question is whether any
 40 domestic or international laws can prevent or punish the president for
 41 committing international crimes. A war initiated by any party is a fact, and
 42 whether it is justified under any domestic or international law is a legal
 43 assessment of that war. Can the president ignore the law in military decisions
 44 with impunity?

²⁶50 U.S. Code § 1544

Absolute Immunity

Ordinarily, if the president has no authority to do something, he will not do it. And if he does something beyond the scope of his authority, he will be accountable. Thus, there are two barriers: the first is voluntary compliance, and the second is the fear of accountability. If both barriers are removed, the president becomes an unaccountable executive. By granting absolute immunity to presidential official acts, the Supreme Court has removed the deterrent effect that would have prevented violations of the law.

There are two sources of presidential authority: the first is the sole authority conferred by the Constitution, and the second is authority delegated by Congress.²⁷ While Congress can limit the delegated presidential authority, it has no control over the presidential authority derived directly from the Constitution. A president using his constitutional authority may act in a way “incompatible with the expressed or implied will of Congress.”²⁸ Furthermore, Congress has no authority to infringe upon the presidential authority derived directly from the Constitution. The courts, too, cannot control what the president does in the domain of his exclusive constitutional authority.²⁹ In this analysis, the Supreme Court expands on the separation of powers doctrine.

In *Trump v. United States*, the Supreme Court granted absolute immunity to the president when he breaks the law while exercising his “core constitutional powers.”³⁰ One such core power is the president's role as commander in chief of the US armed forces. Arguably, the commander-in-chief's powers relate to decisions to engage in military action, with or without Congress's authorization. And these powers could also relate to the conduct of war under humanitarian law. Note, however, the Supreme Court, including the dissenting Justices, does not discuss the impact of immunity on his foreign affairs powers.

Take Care Clause

In addition to granting the president various powers, the Constitution also outlines responsibilities. The most significant responsibility is that “he shall take Care that the Laws be faithfully executed.”³¹ The word Laws includes treaties and congressional-executive agreements that the president has signed with other nations and international organizations. If the Take Care clause is taken seriously, the president has no choice but to faithfully carry out the letter, spirit, object, and purpose of international agreements. It will be hard to argue that the Laws in the Take Care clause refer only to domestic law, and not international law. Any such restrictive reading nullifies a key provision of the Constitution that treaties shall be the supreme laws of the land.³²

²⁷*Youngstown Sheet & Tube Co. v. Sawyer* (1952), 343 U. S., at 585

²⁸*Youngstown*, 343 U.S.—at 637.

²⁹*Marbury v. Madison*, 1 Cranch 166 (1803).

³⁰144 S. Ct. 2312 (2024)

³¹U.S. Const. art. II, § 3, cl. 4

³²U.S. Const. art. VI, cl. 2.

1 The Take Care Clause has not been directly invoked or squarely clarified in
 2 Supreme Court cases to resolve whether the president is bound to enforce
 3 treaties, customary law, the Geneva Conventions, and other legal commitments
 4 the US makes to other nations or globally, on a par with domestic statutes. This
 5 jurisprudential gap reinforces presidential immunity and the associated
 6 unaccountability for violations of international law.

7 One could further argue that the Commander-in-Chief clause of the
 8 Constitution is both a power and an obligation. The obligation dimension of the
 9 clause, read with the Take Care clause, mandates that the president ensure the
 10 armed forces act within the bounds of the law and not become a lawless, lethal
 11 force. In its contemporary context, the president, as the commander in chief, is
 12 obligated to comply with the four Geneva Conventions and other treaties that the
 13 U.S. has signed in the domain of humanitarian law, also known as *jus in bello*.

14 The concept of immunity becomes irrelevant if the president faithfully
 15 enforces the laws. In an ideal situation, the president would not need immunity
 16 if he had done nothing wrong. Immunity only becomes significant when he
 17 breaks the laws that he was obligated to faithfully enforce. The laws he breaks
 18 could be in his private life, such as sexual assault, or the laws he breaks could be
 19 related to his presidency.

20 In any event, absolute immunity does not permit the president to violate his
 21 duties as Commander in Chief, because immunity is never a license, even
 22 though, in practice, it functions as one. If the president is immune from violating
 23 his responsibilities as Commander in Chief, he might assume he can do so
 24 without consequence. And if those violations lead to war crimes, he would
 25 arguably still be completely protected from prosecution, though the Supreme
 26 Court ruling may not be as catastrophic. By granting absolute immunity, the
 27 Supreme Court might have freed the president from the obligations of both the
 28 Commander in Chief and the Take Care clauses of the Constitution.

30 *Military Action Immunity*

31
 32 Under international law, the president acts on behalf of the United States,
 33 and what is prohibited for the United States is also prohibited for the president.
 34 Here, it is important to consider the well-established distinction between *jus ad*
 35 *bellum* and *jus in bello*.³³ The president can initiate a war without any lawful
 36 basis under international law, thereby violating *jus ad bellum*. However, even if
 37 international law permits a military action, such as the Security Council's
 38 authorization of the 1991 Iraq attack to free Kuwait, the president is duty-bound
 39 not to conduct the war in a way that violates the four Geneva Conventions.

40 Suppose Congress authorizes the president to go to war against a specific
 41 country, as it did in the case of the invasion of Afghanistan. Here, the president,
 42 as the commander in chief, would engage in armed conflict without violating
 43 any domestic law. However, suppose that the president orders the Pentagon to
 44 kill all the prisoners captured in the war, a clear violation of international

³³Estreicher, S. (2011). Privileging Asymmetric Warfare (Part II)? The "Proportionality" Principle under International Humanitarian Law. *Chicago Journal of International Law*, 12(1), 143-157.

humanitarian law. So, in this hypothetical case, the initiation of war is legal at least from a domestic viewpoint. Still, the prosecution of war violates humanitarian law, some of which has also been incorporated into domestic law.

The worst-case scenario will be one in which the president starts a war without congressional approval and without any basis in international law. In this blatantly illegal war, if the president also engages in the violation of humanitarian law, then there is nothing about the war that has any legal validity. Furthermore, the president commits war crimes. Since all these acts are related to his core power as the commander-in-chief, he has absolute immunity under domestic law.

However, the president has no immunity from the violations of the Rome Statute. Since the US is no longer a signatory to the Rome Statute and does not accept the International Criminal Court's jurisdiction, there is no legal basis for his prosecution under international law. Thus, the president is shielded by what might be called jurisdictional immunity, immunity that arises from a lack of jurisdiction.

One answer is that the armed forces are under an obligation not to obey any order that blatantly violates domestic or international law. If the president orders the commission of torture or genocide, the generals and the soldiers may refuse to carry out the orders based on their unlawfulness under domestic and international law.³⁴ However, if the Pentagon carries out the genocide order, arguably, the Pentagon officials may be prosecuted for carrying out the illegal orders. However, can the president also be prosecuted for the crime of genocide?

Ineffective Impeachment

Impeachment is often cited as the Constitution's ultimate safeguard against presidential abuse of power. Yet in practice, it offers only weak deterrence against a president who misuses war powers or violates international law. The impeachment process is political rather than judicial. Conviction requires an extraordinary supermajority in the Senate, and the Supreme Court's presidential immunity doctrine has substantially diminished the legal consequences that might otherwise follow removal from office.

Article II, section 4 allows the removal of the president “from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors (impeachable offenses).” Textually, high crimes must include violations of the “Laws of Nations,” a phrase used specifically in the Constitution. Nevertheless, domestic historical and jurisprudential precedents offer no indication that a president will ever face impeachment for violating the laws of war.

Regardless of the nature of impeachable offenses, the Constitution establishes a three-tier impeachment framework. The first tier vests the House of Representatives with “the sole power of impeachment.”³⁵ The second tier

³⁴Uniform Code of Military Justice (UCMJ) obliges military personnel to obey only lawful orders.

³⁵Const. Article I, Section 2

1 comprises trial, conviction, and removal. Here, the Senate enjoys the sole Power
 2 to try the president, who cannot be convicted “without the Concurrence of two-
 3 thirds of the Members present.”³⁶The third tier contemplates criminal
 4 prosecution after conviction and removal.³⁷

5 The Constitution deliberately separates the first tier from the second by
 6 assigning impeachment exclusively to the House and removal from office
 7 exclusively to the Senate. This division makes impeachment attainable while
 8 making removal substantially more difficult. Consequently, a president may be
 9 impeached by the House but acquitted by the Senate. Over more than two
 10 hundred years of constitutional history, no president has been convicted and
 11 removed from office through impeachment. Some presidents, like Richard
 12 Nixon, have resigned under the threat of impeachment. Others, including Bill
 13 Clinton and Donald Trump, were impeached but acquitted.³⁸

14 Given the two-party system, the president can be removed only if both
 15 parties cooperate in the Senate or if a single party controls two-thirds of the
 16 Senate, a rare political outcome, as the Senate is usually closely divided. In a
 17 rare historical instance of supermajority control, the Democratic Party held 76
 18 Senate seats in the 75th Congress (1937-39), commanding a two-thirds majority.
 19 However, this occurred during the tenure of one of the most popular presidents,
 20 Franklin D. Roosevelt.³⁹

21 Although the Senate has the power to remove the president from office and
 22 may disqualify him from holding the office again, it lacks the constitutional
 23 authority to impose criminal punishment for impeachable offenses. Removal
 24 from office is a constitutional sanction, but it is not a punishment for the
 25 underlying crimes. Rather, it addresses the abuse of the presidential office in
 26 committing those offenses. To draw a parallel, an individual convicted of a
 27 felony may forfeit their job, yet the penalty for a felony extends far beyond the
 28 mere loss of employment.

29 Even if the formidable political obstacles to conviction could be overcome,
 30 another question remains: does removal automatically expose the former
 31 president to criminal prosecution? The Constitution appears to contemplate
 32 precisely that result through the Impeachment Judgment Clause, which provides
 33 that a convicted and removed president “shall nevertheless be liable and subject
 34 to Indictment, Trial, Judgment and Punishment, according to Law.”⁴⁰ The dissent
 35 in the Trump immunity case embraced this reading. However, the Supreme Court
 36 majority held that the former president enjoys absolute immunity for core official

³⁶Const. Article I, Section 3

³⁷Id.

³⁸Article I, Section 3 of the Constitution states that upon conviction, the president “shall be removed from Office.” The language suggests that removal is mandatory after conviction. No additional vote or procedure is required. The suggestion that removal is not automatic even after conviction, as the Senate may convict but not remove, finds no support in the constitutional text. In a polarized two-party system, senators are often reluctant to convict and remove a popular president, lest they imperil their own prospects in the next election.

³⁹However, the total number of seats has varied over time. In the 1860s, the Republican Party held 57 of 66 seats.

⁴⁰U.S. Const. art. I, § 3, cl. 7.

acts and that this immunity exists independently of the impeachment process, regardless of whether the president has been impeached, convicted, or removed.⁴¹

The Court reasoned that impeachment and removal are political acts of Congress and cannot form the basis for criminal prosecution of official presidential acts. Under the Court's ruling, immunity derives from the separation-of-powers principle and stands independently of impeachment or removal. A president can be impeached for high crimes and may still be immune from criminal prosecution for those same high crimes. The Constitution bars the Senate from imposing criminal punishments, and the Supreme Court bars the criminal justice system from doing the same for core presidential acts. Together, these constitutional provisions and their judicial interpretations reinforce the presidential hexagon of unaccountability.

Obstruction of International Justice

While absolute immunity protects the president from domestic criminal prosecution, it does not offer international impunity. This section outlines several ways in which presidents are shielded from international accountability for crimes listed in the Rome Statute (covered crimes). Unfortunately, this shield rests on threats, the use of force, and economic sanctions against the International Criminal Court (ICC) and its prosecutorial staff, including their attorneys, tactics that would be considered obstruction of justice in federal courts in the prosecution of federal crimes. Thus, obstruction of international justice is the most unfortunate sixth side of the presidential hexagon.⁴²

The ICC, established under the Rome Statute, has jurisdiction over war crimes, crimes against humanity, genocide, destruction of historic and religious monuments, and witness intimidation. It has prosecuted several individuals for these crimes, and in 2024, issued arrest warrants for the arrest of Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant for the war crimes of starvation as a method of warfare. Currently, dozens of defendants from various countries face arrest warrants under the Rome Statute, the founding global treaty for prosecuting international crimes.

The ICC was specifically designed to ensure that no political leader stands above international criminal law. Ironically, however, the United States has developed an extensive legal framework intended to prevent precisely that outcome for its own officials.

Rome Statute

The Rome Statute is the most comprehensive international criminal law treaty under which heads of government and state can be held accountable for war crimes, crimes against humanity, and other listed crimes (covered crimes).

⁴¹144 S. Ct. 2312 (2024)

⁴²A version of this section was published in Jurist. <<https://www.jurist.org/commentary/2026/03/force-vetoes-and-sanctions-why-the-icc-cant-touch-a-us-president/>>

Article 27 of the Statute states that it applies “equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative, or a government official shall in no case exempt a person from criminal responsibility under this Statute.” Thus, the president would have no immunity whatsoever under the Statute if the U.S. were a party.

The U.S. first signed the Rome Statute but later withdrew its signature, thereby refusing to be bound by the treaty's object and purpose, let alone its letter and spirit. Under the U.S. Constitution, a treaty, such as the Rome Statute, creates no rights or obligations without the advice and consent of the Senate. Still, presidents are not fully protected from the reach of the Rome Statute.

As a general rule, the Rome Statute does not apply to the covered crimes committed within the jurisdiction of a country that is not a party to the Statute, unless another basis of jurisdiction is available. Because the U.S. is not a party to the Rome Statute, the ICC has no jurisdiction over crimes committed by the president within the United States and territories under U.S. control, such as Puerto Rico or the U.S. Virgin Islands. The president is similarly beyond the reach of the ICC jurisdiction for crimes committed in another country, such as Israel, which is not a party to the Rome Statute. Note, however, that Israel does not include the occupied territories, like Gaza or the West Bank.

However, presidents are subject to the ICC's jurisdiction if they commit covered crimes in a State Party to the Statute, such as the State of Palestine, Venezuela, and 123 other countries. So legally, presidents are not fully exempt from the Rome Statute or possible prosecution by the ICC.

To obstruct the reach of the Rome Statute, the U.S. has signed bilateral immunity agreements with nearly 100 countries, under which nations are bound not to surrender U.S. citizens, including of course the president, to the ICC's jurisdiction. Some of these nations were coerced into signing such immunity agreements under the threat of sanctions. However, many such agreements did not enter into force for various reasons. It is doubtful whether these bilateral immunity agreements, which undermine the Rome Statute, can withstand legal scrutiny.

Even where bilateral agreements fall short, the U.S. retains another structural check on ICC reach: its permanent seat on the UN Security Council.

UN Security Council

The U.S. can successfully veto any UN Security Council resolution that might send a sitting or former president to the ICC. Article 13(b) of the Rome Statute grants the Court jurisdiction over individuals whom the UN Security Council, acting under Chapter VII of the UN Charter, refers to the Court. The Security Council can refer any individual, regardless of their rank or position, to the ICC, whether the country of which the individual is a national is a party to the Rome Statute.

Thus, theoretically, the president is vulnerable to such a possibility. However, since the U.S. can veto any Security Council resolution, it is unlikely

the U.S. would allow this to happen in the case of a sitting president. There is a remote possibility that the U.S. may abstain or vote in favor of the resolution to refer a former U.S. president to the ICC.

Yet even if the Security Council route were somehow activated, domestic law provides a parallel layer of insulation through the principle of complementarity and absolute immunity.

Complementarity

The Rome Statute (Article 17) endorses the principle of complementarity, which allows states to prosecute the covered crimes in domestic courts, thereby avoiding the need for the ICC to prosecute the accused. The ICC will hear a case only if the state is genuinely unwilling or unable to investigate or prosecute it.

Under the Supreme Court ruling in *Trump v. United States*, sitting and former presidents enjoy absolute immunity from criminal prosecution for any crime related to their official acts. U.S. domestic courts may prosecute presidents if the crimes in question were not part of their official acts. In most criminal cases, however, the domestic option to prosecute the president is unavailable, allowing the ICC to exercise its jurisdiction. The Supreme Court has placed core commander-in-chief and foreign-affairs decisions within the zone of absolute immunity; the complementarity principle—designed to encourage national prosecutions—becomes, in the US context, a mechanism that reinforces rather than remedies presidential unaccountability. The president thus benefits from both the domestic constitutional shield and the international procedural bar

The "unofficial acts" exception to presidential immunity is technically a window for accountability. Still, in practice, the Supreme Court's definition of "official acts" is so broad that it encompasses almost any communication or command from the executive branch regarding the use of force in foreign policy, in which the president is elevated to the sole organ.

The ICC has no authority to accept or extend presidential immunity to international crimes. Provided proper jurisdiction is established, the ICC may lawfully issue an arrest warrant against a current or former president. The Court would do so fully aware that enforcement is highly unlikely and may provoke significant U.S. countermeasures, in line with established U.S. policy and legal responses.

Rather than serving as the first line of accountability envisioned by the Rome Statute, domestic law becomes the first line of immunity. Congress has gone further still, enacting legislation that authorizes the use of force to prevent any ICC prosecution from proceeding.

Hague Invasion Act

In 2002, right after the 9/11 terrorist attacks and the invasion of Afghanistan, Congress passed the American Servicemembers' Protection Act (2002), nicknamed the Hague Invasion Act, to oust the ICC's jurisdiction by force. The Act rightly anticipates the possibility of ICC prosecution. In addition to exposing members of the U.S. armed forces to the risk of international criminal

1 prosecution, the Rome Statute creates a risk that the president and other senior
2 elected and appointed officials may be prosecuted by the ICC.⁴³

3 Section 2008 of the Hague Invasion Act grants the U.S. president the
4 authority to use "all means necessary and appropriate," including military force,
5 to free any detained U.S. or allied individual from ICC custody. This statute
6 would allow the use of force in case a president is brought before the ICC.
7 Congress has not merely obstructed international justice; it has statutorily
8 augmented the commander-in-chief's extraordinary military tool.

9 The Act also warns third parties that might enforce the ICC arrest warrant
10 against the U.S. president or a U.S. ally that the U.S. may respond with force or
11 economic sanctions to discourage nations from attempting such actions. The
12 Hague Invasion Act also applies to the Netherlands, the seat of the ICC, and the
13 U.S. may seek to have the detained president released from the Court by all
14 means necessary.

15 Few domestic statutes explicitly contemplate the use of military force
16 against an international judicial institution. The Act therefore represents one of
17 the most aggressive legislative repudiations of international criminal justice
18 enacted by any democratic state.

19 Representative Ilhan Omar introduced a bill in April 2022 to repeal the Hague
20 Invasion Act. This bill seems more like a protest than a real effort to repeal it.
21 Right at the beginning of his second term, the Trump administration
22 strengthened this legislative shield with an executive order that added new
23 levels of personal protection for a legion of individuals.

24 25 *Protective Executive Order* 26

27 In February 2025, President Trump issued Executive Order 14203 to protect
28 himself and Israeli Prime Minister Benjamin Netanyahu, who has an outstanding
29 arrest warrant against him, from ICC jurisdiction. The Order states: "The ICC
30 has no jurisdiction over the United States or Israel, as neither country is a party
31 to the Rome Statute or a member of the ICC." The Executive Order lists several
32 protected individuals, reinforcing the Hague Invasion Act.

33 The Executive Order targets the property of the ICC's prosecutorial staff
34 who investigate, arrest, detain, or prosecute protected persons. Karim Khan, the
35 ICC prosecutor, was placed on the sanctions list. These sanctions are familial in
36 scope, as they apply to the prosecutorial staff and their "immediate family
37 members."

38 Thus, both the Hague Invasion Act and Executive Order 14203 obstruct
39 legal provisions of the Rome Statute with force and economic sanctions.
40 Ironically, federal law prohibits and punishes individuals who threaten
41 prosecutors or other officials to influence, intimidate, or hinder them in
42 performing their duties. The Act carves out an exception against international
43 prosecutors. If similar economic threats were directed against federal
44 prosecutors or judges in domestic proceedings, they would likely be

⁴³Hughes, R. C. (2004). Abstention and Exemption: American Exceptionalism and the International Criminal Court. <https://core.ac.uk/download/46703664.pdf>

1 characterized as attempts to obstruct justice. The Executive Order employs
2 comparable coercive tools against international prosecutors performing
3 analogous judicial functions.

4 The obstruction mechanisms operate at multiple stages. Bilateral immunity
5 agreements seek to prevent surrender to the ICC. The Security Council veto
6 prevents referrals. Domestic immunity frustrates complementarity. The Hague
7 Invasion Act authorizes intervention after detention. Executive Order 14203
8 targets prosecutors during investigation and prosecution. Together, they obstruct
9 international justice before, during, and after criminal proceedings.

10 Legally, the investigation and prosecution of any covered crime remain valid
11 even if the threat to prosecutors is credible. Considering its blatant obstruction
12 of justice, the next U.S. president might revoke Executive Order 14203, which
13 would be much easier than repealing the Hague Invasion Act. However, in
14 practice, current and former U.S. presidents will likely remain insulated, both at
15 home through immunity and abroad through obstruction of justice.

18 Institutional Resistance

20 If a president contemplates actions that would violate international law,
21 internal executive branch institutions, particularly intelligence agencies, the
22 Department of Defense, senior Pentagon leadership, and legal officials within
23 the Department of Justice, may serve as informal constraints. These state actors
24 do not function as a unified “deep state,” but as a network of professionals
25 shaped by legal obligations, institutional norms, and bureaucratic processes.
26 They are also called the administrative state, which can delay, reinterpret, or
27 oppose directives it considers unlawful or dangerously reckless. A presidential
28 policy can, in fact, be negated by “unwilling subordinates.”⁴⁴

29 This resistance can take several forms. Legal advisors might refuse to
30 endorse questionable actions, creating internal obstacles to implementation.
31 Military officials, bound by both domestic and international law, may question
32 or refuse to carry out clearly illegal orders. Bureaucratic processes can cause
33 delays, requiring extra review, consultation, or procedural steps that effectively
34 block execution.⁴⁵ In more visible situations, senior officials might resign or
35 publicly distance themselves from presidential decisions, signaling internal
36 dissent.

37 Such dynamics have appeared across administrations. During George W.
38 Bush’s presidency, senior officials and legal advisors in the Department of
39 Justice and the Department of Defense showed strong internal resistance to
40 certain enhanced interrogation techniques at Guantanamo and detention policies,
41 leading to resignations and internal legal reviews.⁴⁶ In Barack Obama’s

⁴⁴Rusk, D. (1959). The president. *Foreign Aff.*, 38, 353, 356.

⁴⁵Sitaraman, G., & Zions, D. (2015). Behavioral war powers. *New York University Law Review*, 90(2), 516–589 <<https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-2-Sitaraman-Zions.pdf>>

⁴⁶Ingber, Rebecca (2024), Essay: The Insidious War Powers Status Quo, *Yale Law Journal*, 133,

1 administration, disagreements over the use of drone strikes and targeted killings
 2 sparked internal debates, resignations, and selective public disclosures.
 3 Similarly, during Donald Trump’s first term, disagreements over national
 4 security and foreign policy led to resignations, dismissals, and public disclosures
 5 that exposed internal conflicts. These episodes confirm that institutional
 6 resistance is a recurring feature of executive governance.

7 Yet this resistance generates constitutional tension. It may seem to
 8 undermine democratic accountability by blocking an elected president's policy
 9 choices. However, it can also serve as a practical safeguard when the cabinet
 10 members are ineffective or too slow to prevent serious violations of international
 11 law.⁴⁷ The very bureaucratic mechanisms that critics decry as an "undemocratic
 12 deep state" often serve as the final functional safety rails that preserve
 13 democratic and international legal norms when formal constitutional checks fail.
 14 Unlike impeachment, institutional constraints are informal and inconsistent,
 15 relying on the character and judgment of leadership across various agencies.
 16 They cannot reliably replace formal accountability mechanisms.

17 Nor does the 25th Amendment provide a meaningful solution, as it is meant
 18 to address presidential incapacity rather than disagreements over policy or
 19 legality. The 25th Amendment requires the cooperation of the Vice President and
 20 a majority of the Cabinet—the very individuals being entirely dependent on
 21 presidential favor. Moreover, the 25th Amendment procedure becomes political
 22 if the president contests his disability, since a two-thirds vote in Congress is
 23 required to remove him and replace him with the vice president. In its net effect,
 24 institutional resistance functions as a temporary and imperfect safeguard. It
 25 might delay or lessen unlawful presidential actions, but it does not address the
 26 fundamental issue of accountability.

27 A recent Supreme Court decision has dealt a severe blow to the
 28 administrative state by holding that the president can remove federal agency
 29 officials at will, without cause, thereby overruling a 91-year-old precedent.⁴⁸ The
 30 Court reasoned that “the President must have the assistance of officers he can
 31 trust. . . Subordinates who exercise the President’s power are subject to removal
 32 by him. Then, and only then, can they remain accountable to the President, and
 33 the President to the people.”⁴⁹ This holding further empowers the presidential
 34 hexagon. Now that the president can more readily and effectively suppress
 35 internal resistance by dismissing agency heads who might oppose his decisions,
 36 wealthy donors can still capture and weaponize the presidency for their narrow
 37 interests.
 38

⁴⁷Ingber, R. (2019). Bureaucratic resistance and the national security state. *Iowa Law Review*, 104(1), 123–208. <<https://ilr.law.uiowa.edu/sites/ilr.law.uiowa.edu/files/2023-02/ILR-104-1-Ingber.pdf>>

⁴⁸*Trump v. Slaughter*, 609 U. S. ---- (2026) <https://www.supremecourt.gov/opinions/25pdf/25-332_qn12.pdf>

⁴⁹*Ibid.* at 36.

1 Donor Capture

2
3 The concentration of authority in a single executive creates a strong
4 incentive to capture the presidency. Wealthy individuals, powerful domestic
5 lobbies, and entities with foreign ties can exert disproportionate pressure on the
6 president through campaign donations, super PAC spending, dark-money
7 contributions, and direct access. The Supreme Court's 2010 decision in *Citizens*
8 *United* dramatically expanded corporate funding by removing limits on
9 independent expenditures, enabling corporations, including those with
10 substantial foreign ownership, to pour billions into presidential elections.⁵⁰

11 Large contributors expect access, influence, and policy outcomes consistent
12 with their interests. By allowing unlimited corporate funding, *Citizens United*
13 does not expand the power of the presidency but enables its capture. While a
14 resolute president might theoretically resist donor pressure, *Citizens United*
15 institutionalizes financial dependence, exposing the singular executive to
16 disproportionate influence from non-democratic forces. Consequently, the
17 president, beholden to donors, may pursue policies that jeopardize national
18 interests.

19 Ruling that money is inseparable from free speech, the Supreme Court in
20 *National Republican Senatorial Committee v. FEC* (2026)⁵¹ struck down long-
21 standing limits on coordinated party expenditures. With no ceiling on such
22 spending, parties, funded overwhelmingly by mega-donors, can now channel
23 unlimited resources directly to congressional and presidential candidates. This
24 decision further exposes the singular executive to capture, tying the president's
25 formidable commander-in-chief and sole-organ powers ever more closely to
26 donor preferences in international relations and the use of force.

27 Yet another aspect of donor influence comes through dark money, defined
28 as political contributions routed through tax-exempt social welfare organizations
29 established under Section 501(c)(4) of the Internal Revenue Code. While these
30 organizations themselves are public, the donors that fund them remain shielded
31 from public view. Although many such organizations have surfaced with various
32 political agendas, mega-donors leverage them to shape the political debate with
33 outsized effectiveness. Campaign finance laws bar explicit strategic coordination
34 between campaigns and political action committees (PACs) that must disclose
35 their donors. No legal mechanism prevents anonymous contributors to 501 (c)(4)
36 organizations from privately signaling their backing for a presidential candidate.
37 This architecture of dark money opens a backdoor to buy direct access and
38 influence, effectively transforming executive policy into a transactional
39 marketplace.

40 Between 2010 and 2024, outside spending in presidential cycles surged from
41 roughly \$144 million to over \$1.4 billion in some cycles, with foreign agents and

⁵⁰*Citizens United v. FEC* | 558 U.S. 310 (2010).

⁵¹609 U.S. ----- (2026). <https://www.supremecourt.gov/opinions/25pdf/24-621_h315.pdf>

1 lobbyists contributing tens of millions more.⁵² Because the president alone
 2 wields the “sole organ” powers of foreign policy and the Commander-in-Chief
 3 authority over the world’s most powerful military, the points discussed in Part
 4 III, donor preferences can translate rapidly into concrete decisions on war,
 5 sanctions, arms sales, treaty negotiations, or treaty abandonment, decisions that
 6 do not require the advice and consent of the Senate.

7 More broadly, presidents have faced accusations of tailoring foreign policy
 8 to align with major lobbies, as in the recent conflict with Iran. There are
 9 assertions that U.S. lobbies pressured President Trump to launch attacks on Iran
 10 in 2025 and 2026, a course of action that prior presidents have consistently
 11 resisted.⁵³

12 Even if specific claims are contested, the structural reality is clear: a singular
 13 executive is far more susceptible to capture by non-democratic forces, such as
 14 donors with specific agendas, than a parliamentary cabinet, where elected
 15 ministers must collectively defend policy and dissenting voices can expose
 16 undue influence or precipitate a government collapse.

17 Undue donor influence on the president does not merely affect domestic
 18 politics; it can steer the nation toward military commitments that strain or violate
 19 international legal norms, while the singular executive retains the tools to act
 20 swiftly and with relative impunity. The result is a presidency whose formidable
 21 powers—already concentrated by constitutional design and judicial doctrine—
 22 are further amplified by donor pressures, with no effective counterweight within
 23 the current hexagonal architecture.

24 In a constitutional system that entrusts extraordinary authority to a single
 25 individual, even the perception that major donors can shape foreign policy
 26 decisions weakens public confidence in democratic accountability and
 27 strengthens concerns about the concentration of executive power.

30 Conclusion

31
 32 The modern presidency holds a powerful role in both domestic and
 33 international law. This paper has argued that, in matters of international law
 34 regarding the use of force, constitutional checks on presidential accountability
 35 are least effective. The combined impact of unilateral military actions, broad
 36 statutory grants to use force, the “sole organ” doctrine, and the recently
 37 established doctrine of absolute immunity has created an office that can, in
 38 critical situations, act without effective legal constraints.

39 Domestically, the constitutional design assumes that Congress will serve as
 40 a strong watchdog, holding the president accountable for breaking the law.

⁵²Michael Sozan, Citizens United Paves Way for Foreign Governments to Influence U.S. Elections, Politics, (Jan 29, 2020) <<https://insidesources.com/citizens-united-paves-way-for-foreign-governments-to-influence-u-s-elections>>

⁵³Former US Secretary of State John Kerry said Israeli Prime Minister Benjamin Netanyahu had repeatedly urged US administrations to carry out military strikes on Iran, but previous presidents declined. Tzvi Jasper, Netanyahu presented Iran attack plan to former US presidents, former secretary of state claims, The Jerusalem Post (April 12, 2026).

1 Congress has formal authority over declarations of war and appropriations, but
2 history shows a tendency to accept or delay responding to presidential military
3 actions. Impeachment, while theoretically strong, is limited by partisanship and
4 the supermajority needed for conviction and removal. Impeachment without
5 conviction is more of a political stunt that can sometimes weaken the president
6 and cause him to resign. Judicial oversight, meanwhile, is limited by the political
7 question doctrine and the tendency to defer to the president on foreign policy.
8 The outcome is not a lack of law, but a more active Presidency.

9 Internationally, the unaccountability gap continues to grow. The Rome
10 Statute promotes a universal principle of accountability that rejects immunity
11 based on official capacity. However, the United States has declined to become a
12 party to the Statute and refuses to accept the jurisdiction of the International
13 Criminal Court. Furthermore, tools like bilateral immunity agreements, the veto
14 power in the UN Security Council, and laws such as the American
15 Servicemembers' Protection Act collectively shield the president from
16 international criminal law. Even when the ICC can validly invoke its jurisdiction
17 over US persons, enforcement remains unlikely, highlighting a disconnect
18 between legal norms and willful obstruction of justice.

19 Looking forward, the trajectory of presidential power raises pressing
20 questions for both constitutional governance and the international legal order.
21 One possibility is the continued normalization of expansive executive authority,
22 particularly in an era of persistent global threats that invite rapid and unilateral
23 responses. Under this path, accountability mechanisms may become increasingly
24 symbolic, reinforcing a model of concentrated presidential power justified by
25 necessity and imminence.

26 An alternative path, however, remains available. Congress could reassert its
27 constitutional role to balance by adopting more effective, time-bound
28 authorizations for the use of force, coupled with meaningful enforcement of
29 funding constraints. The judiciary, while cautious in foreign affairs, could refine
30 the boundaries of "official acts" to prevent the complete foreclosure of legal
31 accountability. At the international level, the global community must, both
32 individually and collectively, increase the costs of cooperation, diplomatic
33 reliance, and reputational damage to gradually deter the presidency from
34 disregarding international law.

35 Ultimately, the question is not to alter the Constitution to create a weaker
36 presidency, but to find legal solutions that balance a strong presidency with the
37 rule of law in both domestic and international settings. The strength of
38 democratic governance depends not only on legal norms but also on their
39 credible enforcement for all actors, including the singular executive. Without this
40 credibility, the line between lawful authority and unchecked power risks
41 becoming more ambiguous.

42