

# The dictatorial threat of Trump's recess appointment plan

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Donald Trump's threat to force through his slate of far-right cabinet nominees as "recess appointments" without Senate confirmation votes marks a significant step in the *de jure* breakdown of constitutional forms of government.

Trump's plan is for his congressional allies to effectively "auto-prorogue" the legislature to evade the Advice and Consent clause of the Constitution. It comes as Trump brags of plans to rule by emergency decree and deploy federal troops to deport immigrant workers.

In April 2020, Trump threatened to prorogue the legislature and "exercise my constitutional authority [sic] to adjourn both chambers of Congress" through executive fiat.

Now, on November 10, in the run-up to the Senate Republican Conference's vote for majority leader, Trump issued a statement on social media declaring that "Any Republican Senator seeking the coveted LEADERSHIP position in the United States Senate must agree to Recess Appointments (in the Senate!), without which we will not be able to get people confirmed in a timely manner... We need positions filled IMMEDIATELY!"

The Republican conference elected John Thune of South Dakota, who declared shortly thereafter that he was open to Trump's proposal for recess appointments of far-right figures like Matt Gaetz (Attorney General), Pete Hegseth (Defense), Robert F. Kennedy, Jr. (Health and Human Services) and Kristi Noem (Department of Homeland Security).

"I think we have to have all the options on the table," Thune said. "And the Senate will perform its constitutional role under advise and consent. But we are not going to allow the Democrats to thwart the will of the American people in giving President Trump the people that he wants in those positions to implement his agenda."

Other prominent Republicans have rushed to support Trump's call for recess appointments. Alabama Senator Tommy Tuberville told the media last week, in reference to the Senate's role in confirming cabinet appointments, "It's not [up to] us to determine that," though it most certainly is.

Thune's claim that the "will of the people" means "giving President Trump" what he wants is a dangerous re-hash of the "Führer Principle," the pseudo-legal doctrine elevating the national leader above the rule of law. In reality, Thune's

warning that "all options are on the table"—a phrase out of the imperialist war playbook—is a brazen threat to the legislative branch: Either confirm Trump's nominees, or Trump will violate the Constitution and cut the legislature out of appointments.

This plan makes clear that the incoming administration will be operating with explicitly extra-constitutional methods, essentially in continuity with the coup attempt of January 6, 2021. While it is possible that Trump and his Republican Senate allies' threats to end-run the Constitution may succeed in forcing Congress to back Trump's reactionary cabinet slate, the mere threat to accomplish his goals "the easy (legal) way or the hard (illegal) way" itself means the Constitution is being transformed into a dead letter.

Trump, with the Supreme Court in his back pocket, is treating the country's founding documents like the building trades contracts he spent his career ignoring.

Guided by the experiences of their struggles against the British crown and inspired by Enlightenment theories of governance (most importantly Montesquieu's 1748 *Spirit of the Laws*), the American revolutionaries separated the functions of the different branches of government.

The first three articles of the US Constitution lay out the powers of the three branches: The role of the legislature, enumerated in Article I, is to make the law. The role of the executive, enumerated in Article II, is to enforce the law. The role of the judiciary, separated from the executive power in Article III for the first time in history, is to interpret the law.

"Separation of powers" is the principle that the powers of the branches of government "must be so divided and guarded as to prevent those given to one from being engrossed by the other," in the words of Thomas Jefferson.

During the Revolution and its immediate aftermath, the revolutionaries took particular aim at the power of the executive. The historian Gordon Wood wrote in *The Creation of the American Republic, 1776-1787* that "When Americans in 1776 spoke of keeping the several parts of the government separate and distinct, they were primarily thinking of insulating the judiciary and particularly the legislature from executive manipulation."

So powerful was the democratic mood against monarchy that

state constitutions created during the war to supplant the British colonial governments substantially limited the powers of the executive, treating new governors more as administrators than as leaders. Pennsylvania's state constitution eliminated the position of governor altogether, replacing it with an executive council.

Curbing the executive's power to unilaterally make appointments was seen as an essential element of the separation of powers. The American revolutionaries pointed repeatedly to the manner in which the Crown was able to maintain its prerogative through patronage and personal control over the various departments of government.

Thomas Paine wrote in *Common Sense* that the fact that the British crown "derives its whole consequence merely from being the giver of places and pensions is self-evident; wherefore, though we have been wise enough to shut and lock a door against absolute monarchy, we at the same time have been foolish enough to put the crown in possession of the key." The Declaration of Independence lists as a grievance against King George III: "He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."

The convention which gathered in 1787 to draft the Constitution was divided on many aspects of the exact powers of the executive. Ten years had passed since the Declaration of Independence, and the framers, increasingly fearful of popular movements from below, developed a somewhat more expansive view of executive powers compared with the wartime state constitutions.

But even so, the Constitution provided for impeachment, gave Congress important roles in approving or declaring foreign policy decisions, and refused to grant the executive the power to unilaterally appoint officers or judges. Later the Constitution was also amended to set presidential term limits.

The Constitution gave the legislature, through the Senate, the power to advise on and consent to appointments. Section 2 of Article II states that the president "by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States..."

At the time the Constitution was drafted in 1787, Congress was in session for a relatively brief period of time, and traveling to the capitol on horseback was arduous and expensive, especially for representatives from far flung regions. As such, the constitution also added a "recess appointments" clause, stating "the president shall have the Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session" (i.e., in two years).

Trump and his Republican allies claim that this "recess appointments" clause gives Trump the power to impose his "will" without Senate votes. Their plan is to pass resolutions in the House and Senate to adjourn with sufficient time for Trump

to force through his recess appointments. This essentially means the prorogation of the legislature by legislators personally loyal to the executive himself. Such powers—however "temporary"—are reserved for kings and dictators. If this plan is carried out, any legal challenge would wind up before the Supreme Court.

If the president can violate one provision of the Constitution, why not violate them all? If the president can appoint cabinet members without a vote in the Senate, why not appoint Supreme Court justices in the same way? Why allow the Senate to vote on ratifying treaties? Why allow Congress the power to declare war? In fact, why not place the lawmaking power in the hands of the president himself by eliminating the legislature's power to override a presidential veto with a two-thirds majority?

The response of the Democratic Party to Trump's recess appointment scheme has been remarkably muted. New Jersey Senator Cory Booker called it "frustrating," as though lighting the Constitution on fire were a mere inconvenience. To dull popular consciousness, Booker downplayed the possibility that Trump's plan may come to fruition: "I think people on both sides of the aisle would express that and from what I'm hearing from senators on both sides of the aisle, is that folks are not going to let that happen."

By effectively putting their trust in the Republican Party, the Democratic Party has again proven itself opposed to alerting the population of the great danger posed by Trump's threats against democracy.

It was, after all, under the two terms of Barack Obama that the executive branch arrogated for itself immense powers. George Bush pushed the limit on recess appointments in 2005 by appointing John Bolton as UN ambassador, but Barack Obama crossed numerous thresholds expanding executive power under the guise of "war powers." It was his Democratic administration which ordered the assassination of US citizen Anwar al-Awlaki, expanded NSA surveillance of the entire population, refused to investigate Bush-era CIA torture, and prosecuted wars abroad without an authorization from Congress. Indeed, the last formal declaration of war took place in 1942.

The American ruling class now views the democratic principles it once fought to establish as barriers on the accumulation of wealth. The legal and constitutional foundations of the country are collapsing under the weight of the American oligarchy. The working class is the only social force which can defend democracy, and it can only do so through a frontal assault on the capitalist system.



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