

## **abstract**

Much of Americanist literature on the presidency contends with concept of an imperial presidency. Similarly, extensive comparativist literature exists about the comparative advantages and disadvantages of presidential systems relative to parliamentary systems. What is lacking is an understanding of why it an executive figure can gain so much power compared to the legislative body in a republican form of government and what ramifications that may have for a republic.

If we believe Robert Michels then there are not three forms of government but two. Rather than democracy, aristocracy and monarchy, there is only oligarchy or monarchy (Michels may dispute the possibility of monarchy). I contend here that, as Aristotle teaches, monarchy tends to exist because the common people are dissatisfied with a ruling elite and see the aspiring tyrant as a champion of their interests. It is when the ruling elites fail to serve the people as the people believe they ought to be served that monarchy arises. That is also the precondition that has accompanied the rise of the imperial presidency in the United States: crisis and a lack of standing by other government institutions. the problem is (following Michels) that the unorganized people have even less influence over the big man than they had over the incompetent small men he replaced.

## **The Imperial Presidency and the End of Republics**

The United States has seen an extreme concentration of executive power over the course of its history. It is the position of this paper that the concentration of executive power is fundamentally dangerous to the health of a republican form of government and that the case of the Roman Republic can serve as a cautionary tale for expanded executive power in the American republic.

If we wish to understand the evolution of the American republic, it is important to begin with an understanding of its original form and then to explore how it has or has not changed over time. Aristotle and his six basic forms of government are a proper basis for understanding the basis of politics. Within that framework (and incorporating elements from Montesquieu) most would say that the United States with its representative form of government is properly considered to be an aristocratic form of government as it is directly governed not by the people but by the elites.

Robert Michels posited that true democracy is largely impossible because people must be organized if they are to be involved in the course of government. Governments allow for this participation through their institutions and through their accommodation of political parties. To the extent that the people are able to exert themselves directly on the political process, they can act as a counterweight to either expanded monarchical (i.e. executive) power or to expanded aristocratic (i.e. legislative branch) power. The problem, as Michels seems to have understood, is that absent some kind of institutional access, the

will of the people can only exert indirect influence on the political system. In modern terms, they can protest, write letters and sign petitions, but their influence only extends so far as their current actions portend some future action which may threaten the power of those in government (e.g. voting in the next election).

Due to the limited institutional access granted to citizens, there has always been a tension between the more democratic elements of American society and the more aristocratic or oligarchical elements of American society. Because, as Michels says, there was no possibility of direct democratic involvement, the choice of the American people has ever been between competing visions held by different rulers. The possibility of self-rule has always existed rhetorically but not realistically. The most the American people can do is to threaten to “throw the bums out” but even that has proven easier said than done throughout American history. The question for the people has therefore been who those rulers should be. The question for the rulers has been how best to rule. Because of the unique elements of the American system, there has always been the temptation to expand executive power to achieve one’s ends.

Long before Dr. Schlesinger wrote his now-classic work, Woodrow Wilson echoed Madison and wrote that if an institution cannot properly organize itself, its power will naturally flow to other institutions. He was speaking of the Presidency and the Supreme Court yielding power to Congress.<sup>1</sup> We may today cite the reverse. Powers owned but unexercised are powers lost. The founders

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<sup>1</sup> Lawrence C. Dodd, “Congress, the President, and the Cycles of Power” in *The Post-Imperial Presidency*, Vincent Davis (ed.) (New York: Praeger Publishers. 1980). 72.

held that the union of legislative, executive and judicial power was the very definition of tyranny (Federalist, 47). Neustadt argued that the United States does not create separated powers, “it created separated institutions sharing powers”.<sup>2</sup> In this sense, The United States has always had the seeds of tyranny. As Rossiter argued, “The more complete the separation of powers in a constitutional system, the more difficult and yet the more necessary will be their fusion in a time of crisis.”<sup>3</sup>

The problem with constitutional government is that there are times when it is very inconvenient. In 1948, Clinton Rossiter, wrote a monumental book on the important role played by emergency powers in a constitutional republic. His book, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, demonstrates repeatedly and to great effect the ways in which the use of emergency powers has enabled democracies to survive in times of great trials. Indeed, a large portion of the purpose in his work is the practical need at times to abandon the constitutional system of protections in order to save it.<sup>4</sup> Rossiter gave numerous reasons for emergency powers in a constitutional democracy or republic. None of these would be unfamiliar to the student of current events in the modern world. The argument is simply that in a state of emergency it is dangerous to the health of the state to continue to abide by conventional means of governance because the need is for quick and decisive

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<sup>2</sup> Richard E. Neustadt. *Presidential Power: the politics of leadership* (New York: Columbia University. 1960). 33.

<sup>3</sup> Clinton Rossiter. *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton: Princeton University Press. 1948). 289.

<sup>4</sup> *Ibid.*, 3-14.

action. Rossiter contends that “[i]n normal times the separation of powers forms a distinct obstruction to arbitrary governmental action. By this same token, in abnormal times it may form an insurmountable barrier to decisive emergency action in behalf of the state and its independent existence.”<sup>5</sup>

As in so many instances, it is helpful at this moment to turn to the grandmaster of politics Niccolò Machiavelli. Machiavelli tells us that

But coming to the other point – where a leading citizen becomes the prince of his country, not by wickedness or any intolerable violence, but by the favor of his fellow citizens – this may be called a civil principality: nor is genius or fortune altogether necessary to attain to it, but rather a happy shrewdness. I say then that such a principality is obtained either by the favor of the people or by the favor of the nobles.<sup>6</sup>

In Machiavelli’s reckoning, princes, kings and tyrants do not come about in constitutional systems because of their own force of will but because they can capitalize on the discontent either of the people or of the nobles. When one class or the other becomes sufficiently powerful that the other cannot hope to gain power, it will resort to whatever means are necessary in order to gain and hold power. Perhaps this is why Aristotle, nearly two thousand years earlier, advocated a regime based on elements of democracy and oligarchy as his ideal system. Without both factions actively in play, there will be no incentive for all parties to share power and maintain a peace within the polity.

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<sup>5</sup> Ibid., 288-289.

<sup>6</sup> Niccolò Machiavelli, *The Prince* chapter nine paragraph one.

This is directly relevant in the modern United States because there is an ongoing concentration of executive power and one that shows no signs of abating. The question is what kind of government the United States will become, whether there is anything that can be done to push the outcome in one direction or the other and whether anyone is likely to try or succeed in pushing away from the executive and toward another pole of governmental power.

The question before us is what might cause one faction or another to lose faith in the system and to shift it toward a less-balanced form of government more akin to a continuous constitutional dictatorship and whether that is possible in the American system. This paper serves to outline the process by which the Roman and American republics have allowed for the consolidation of power in their executive functions, the reality that this power has remained in the hands of the executive over time, and the danger that this poses to the health of republics. This paper contends that the specific trigger in the collapse of a republic is twofold. First is the manifest reality that the governing body cannot adequately address the problems faced by the people of a polity. Second is the presence of a crisis. The whole process works whether it is seen as the result of pressure from different segments of society or the inexorable forces of institutions. The result is the same.

If we want to understand the slide from republic to tyranny, the Roman Republic is an excellent case study. The Roman Republic lasted for almost five hundred years. Its institutions were constructed to protect the freedom of the people of Rome; not only their independence from domination by rulers abroad

but also from tyrants and oligarchs at home. Rome tends to be remembered for its empire, but the Republic was Rome for nearly five hundred years. After they expelled the kings, the Roman government held a large portion of its power in the Senate and gave the people a final say over legislation through their assemblies. The system was always stacked in favor of the wealthy but at least in principle it protected the rights of the poor. The Republic balanced power between the aristocracy who controlled the Senate and the people whose Assemblies had to ratify or reject the votes taken in the Senate. The Roman model employed direct democracy in the Assemblies and aristocracy in the Senate, as a result the people had the potential to directly influence the course of politics in the Republic even if in practice that influence was extremely limited.

Like its Roman counterpart, the American republic was founded on the overthrow of a king's rule. In their youth, both republics believed they had found a formula not only for success but for justice. While some of the founding fathers were nearly monarchists in their vision of the presidency (e.g. Hamilton) the powers granted to that presidency by the Constitution itself were very limited. Indeed, the non-monarchical nature of the constitution was a strong selling point for its backers. However, nothing is ever so stable as it might appear. Just over a decade after the Constitution was ratified, the Jeffersonians launched a strong attack on the court which struck at the heart of the conception of a divided and balanced government. Within the next generation, Andrew Jackson exerted strong executive authority over the rest of the government based in no small part on his perceived ability to speak for the people. In both cases, the power of

the executive was limited by his ability to command in the other branches of government. In Jackson's case, the power of the other branches even extended so far as to provoke his censure by the Congress.

Similarly, Rome was never so unchanging as it appeared. Rome had long rested on two classes: a landed aristocracy and a rural peasantry; the former were leaders and the latter were soldiers. In the beginning Rome conducted its wars with a citizen army where everyone was required to serve in a capacity determined by their wealth so that each could provide their own tools of war for the campaign.<sup>7</sup> The practical result of this was that there was no division between the people and the military, and because Rome was a military state, that meant that there was no effective distance between the people and the state. This situation is reminiscent of the days of a militia-based army in the United States before standing armies became the norm.

The Roman Republic was never static. A conflict called the social war raged for centuries between the aristocracy (the patricians) and the populace (the plebeians). At times, the struggle directly challenged the foundations of the Roman Republic. Those struggles resulted in more power for the people's Assemblies, more rights for the people, and also served to rein in the excesses of the patricians. It may have been a rocky road but it steered the Roman people toward a stable society in which all of its members could claim to be part of the Republic.

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<sup>7</sup> Livy, I. xlii-xliii.



The great challenge to the Roman Republic was the Second Punic War (217-202 BC). Over the course of the war, Rome did not abandon its political traditions but operated as normal through standard procedures and the dictatorship. Because the Romans were paranoid on the subject of tyranny, the dictatorship was only taken up in the most extreme circumstances. Those circumstances could be an invasion, an insurrection or anything deemed to threaten the constitutional order of Rome. According to Rossiter, the Romans included class warfare as a valid reason for use of the dictatorship, especially in the late Republic, for “[t]he dictatorship could be used, however, as can all devices of constitutional emergency government, as an instrument of class warfare.”<sup>8</sup> No one familiar with the history of the United States could contend that the American government did not similarly treat social unrest as a threat. Most of its moments of crisis however have come in the more conventional form of external threats.

The first great test of the American constitutional system was the Civil War in which Lincoln in a great many cases circumvented the Constitution only to ask the Congress to retroactively authorize his actions. Whether the case was suspending habeas corpus and civil liberties in the battleground states and rebellious territories, or effectively waging war in the absence of an assembled Congress to empower him to conduct war, raise armies, invoke a blockade or anything else he did regarding the Civil War, Lincoln was stepping well beyond his constitutional authority in conducting his war. Though he asked for

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<sup>8</sup> Rossiter, 21-22.

retroactive congressional authority for his actions, as Rossiter says however, this set a dangerous precedent.

“If Lincoln could calmly assert: ‘I conceive that I may, in any emergency, do things on a military ground which cannot constitutionally be done by Congress,’ then some future President less democratic and less patriotic might assert the same thing. The only check upon such a man would be the normal constitutional and popular limitations of the American system. They were not too rigid to prevent Lincoln’s noble actions; time alone will tell whether they will be rigid enough to prevent a tyrant’s despotic actions.”<sup>9</sup>

Wilson’s actions in the Great War were the next great threat to the nation, but once again the Constitution proved largely equal to the task. Building on a history of government intervention in labor disputes, Wilson used the same powers that Lincoln had used but tended to ask permission first. Simply because executive power expanded did not mean that the powers of Congress were reduced.<sup>10</sup>

In the Depression and the Second World War, FDR exerted the same kinds of emergency powers that were in practice long before he arrived in the White House. It is important to emphasize that he never asserted serious control over Congress and its legislative purview. “The British Parliament in the first war was a stripped-down “machine for registering magisterial edicts”; the British Parliament in the second war was a respected council of state. Congress in both wars was Congress.... What was said of Lincoln may be said of Roosevelt.

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<sup>9</sup> Ibid., 239.

<sup>10</sup> Ibid., 240-245.

Whatever he was in the White House or in Yalta, he was no dictator on Capitol Hill.” The important thing was that in the course of war and Depression, Congress never ceased to be Congress. It acted as it always did.<sup>11</sup>

In the United States, the expansion of executive power continued throughout the Cold War but has reached its apex in the modern war on terror. In addition to the national defense powers that have seemingly-always been present in the American presidency, the modern president has also maintained the capacity to exert control over the executive branch and the civil service (to the extent that it exists in the United States). Throughout the postwar era, the president has been given leeway and ability to interpret the law as he executes it. Apart from a rebuff of Nixon’s claimed ability to unilaterally defund portions of the government he did not like, there has been no substantial push-back against the expanded power of the presidency.

In the American case, most of these expansions of executive power have come in moments of crisis. Most often in the light of the danger from an external threat. At the same time, the government and the presidents took direct and calculated action against any who fought against an increasing level of inequality.

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<sup>11</sup> Ibid., 271-272.

“The pattern of 1941-1945 was roughly this: a president who went beyond Wilson and even Lincoln in the bold and successful exertion of his constitutional and statutory powers; a Congress which gave the President all the power he needed to wage a victorious total war, but stubbornly refused to be shunted to the back of the stage by the leading man; a multitude of presidentially created boards and bureaus which regulated the nation’s economic life and which, for all the false starts and mistakes and prophesies of doom, could point to the most incredible triumphs of production, research, and supply in the history of man; a governmental record of non-interference in the political liberties of the American people that would have been well-nigh perfect but for one dictatorial performance, the evacuation of 70,000 American citizens of Japanese descent from the Pacific Coast area; and finally, a Supreme Court that once again *durante bello* gave judicial sanction to whatever actions the President and the Congress found necessary to the prosecution of the war, and then post bellum had a lot of strong but unavailing things to say about the limits of the Constitution-at-War.”

Ibid., 265.

The labor movement, the grange, the populists and anyone else who sought to address the issues facing the system was in danger of its wrath.

After its war with Hannibal (217-202 BC) the Roman state militarized as never before and upended the social order. By the mid-second century BC, to meet the mounting demands for soldiers to fill the legions, property requirements for military service had dropped to effectively one-fifth of their former levels.<sup>12</sup> With long terms of service in the military and the resulting extended absences from the family farm, more and more Romans lost their livelihoods. As Rome expanded, its military and its society changed. The gulf between rich and poor widened over the course of the second century BC and became a constant source of bitterness and political conflict in the Republic until the death of the Republic.<sup>13</sup> The combined stresses of Rome's military campaigns and commitments, along with the political power of the nobility pushed many small farmers off of their land (which was then amalgamated into the large estates and worked by slaves) those farmers then came to the city in ever-increasing numbers. At first they could work in the city's building projects, but in time the economy declined and the projects trailed off, leaving large numbers of Romans in the city without real means of support.<sup>14</sup> In 133 BC, Tiberius Gracchus, acting as a Tribune of the Plebs tried to enact land reform which would have taken public land back from the super-rich and given it to the poor citizens of the republic. Following the violent rejection of reforms by Tiberius Gracchus and his

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<sup>12</sup> Henry C. Boren. *The Gracchi* (New York: Twayne Publishers Inc. 1969). 47.

<sup>13</sup> David Stockton. *The Gracchi* (Oxford: Clarendon Press. 1979). 7.

<sup>14</sup> Boren, 41-42.

brother Gaius, the Republic became an increasingly violent and dangerous place. The politics became more extreme and the rampant inequality was never checked.

In the language of modern scholarship, the period of the late Roman Republic was one in which the state was not able to meet the needs of its people and thus it became illegitimate. Caesar rallied the people with populist rhetoric set against the backdrop of an aristocratic Senate-dominated government. The problem for his opponents was always that he wasn't as wrong as they hoped he was. Half a century before Caesar, Sulla had led his armies against the Republic to restore the powers of the Senate. The masses were poor, unrepresented and desperate; they saw a lack of civic virtue among the leadership. The Romans were disgusted with the world of the late republic, the only source they could blame for it was personal morality.<sup>15</sup> Thus it may be said that Rome's Republic fell because it ceased to have contact with the masses of Rome. All important power went to the Senate which had no incentive to be responsive to the will of

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<sup>15</sup> Christopher S. Makay. *The Breakdown of the Roman Republic: From Oligarchy to Empire* (Cambridge: Cambridge University Press. 2009). 4.

He goes on to say, "Since the Romans tended to view wealth with suspicion and were quite conscious of the extent to which the riches that had poured into Rome after the conquests greatly surpassed the resources available in the early days of the Republic, it is not surprising that they chose to connect the apparent decline in morality with this increase in wealth and to imagine that these developments were at the root of the problem, even if the exact mode of causality was left unclear."

This is not fundamentally different from Nancy Bermeo in her 2003 book *Ordinary People in Extraordinary Times* wherein she argues that the key issue in democratic collapse is the division of elites on the question of belief in the democratic system. In this case, the Romans faulted their leaders for immorality, but if that is taken in the morality of duty, honor and classical civic virtue, it is not functionally different from the commitment to democracy in the hearts and actions of Bermeo's elites.

the people apart from a vague sense of duty.<sup>16</sup> The common people of Rome had no stake in the government and as such when they had no reason to defend it and its Senate from challengers like Caesar, a man who at least claimed to support them against the aristocracy. Caesar may have dealt the death knell to the Republic, but it was a rotting husk of its former self for more than a century before he crossed the Rubicon. A government which cannot provide for or engage with its people has no right or claim to call on them for its defense.

In the late Republic, the ethos of the Roman Senate was such that men who were too powerful to be controlled by the Senate ought to be opposed as much as was humanly possible.<sup>17</sup> Such a sentiment might have riled Hamilton but it would certainly have come close to the heart of Madison's political ideology. Caesar saw his fight as between himself and his political opponents, not the Republic. He viewed the political institutions of the Republic as secondary and thus the citizen body was outside the conflict and matters of patriotism need not have drawn them in. History records that the common people seem to have agreed as they largely stayed out of the fight.<sup>18</sup>

Caesar's genius lay in that he understood that the politics of Rome had changed. They had moved from a hatred of kings to a hatred of the aristocracy. The Roman people said that they hated kings but they hated the word more than

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<sup>16</sup> Senators were chosen by the Censor (a former Consul, or co-leader of the Senate) and the Centuriate assembly which was heavily dominated by the wealthy elites of Rome. Their lifetime appointments (barring bad behavior) were never subject to review and thus they had no incentive to play to the crowd or solve its problems.

<sup>17</sup> Christain Meier (David McLintock translator). *Caesar: A Biography* (New York: Basic Books. 1982). 9.

<sup>18</sup> *Ibid.*, 7-11.

they actually hated the idea of a king. When Caesar arranged for Marc Antony to offer him the crown, in a move that most historians believe was a trial balloon to see if the people would accept him as King of Rome, the people loved him because he turned it down. After his death, the people accepted his heir as Emperor. They may not have given him the title of king but they gave him the power and position which he would have had as king.

While the United States never had a vigorous welfare state by world or historical standards, it managed to mitigate the worst of the inequality which emerged in the late nineteenth and early twentieth centuries. This lack of institutional pressure on the people certainly helped the people of the United States to avoid the kind of desperation which led the people of Rome to turn to Caesar to solve the problems that the Republic could not.

An inescapable element in the collapse of the Roman Republic, in addition to all of the structural factors which increased wealth polarization and alienated the army from society, was the increasing prominence of dictatorial powers. The Romans always used dictators to solve crises when they occurred and they were very careful about the men who would take on that power. The man who would become the dictator was offered that honor by the Senate. The Consuls (co-leaders of the Senate) both had to agree as did the Senate itself, only then could those vested with the power to choose the dictator make that choice with the stipulation that they could not choose themselves.<sup>19</sup> Once the dictator was chosen, he essentially assumed all the powers of the kings of Rome who had been

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<sup>19</sup> Rossiter, 21.

overthrown when the Republic was established. Even in the course of the dictatorship, the powers of the Dictator were never without limit. They were unable to raise revenues without the consent of the Senate and they could not initiate an offensive war. Their power lasted for six months and the dictator never failed to lay down his charge when his crisis was resolved, an act that Machiavelli tells us was the highest honor a citizen in Rome could achieve.<sup>20</sup>

The Senate had been appropriating more power for itself since 241, through the Centuriate (one of the other popular assemblies that passed laws in Rome and was dominated by the wealthy classes); the Tribune had become a subsidiary of the Senate.<sup>21</sup> Originally, the tribunes interceded between the Plebs and the magistrates to protect the Plebs from the powers of the aristocratic Senate but by the second century they had ceased to maintain their autonomy from the Senate. As it was important to an understanding of the emergency powers that would be invoked in a “constitutional dictatorship.” Contrary to popular conceptions, the Roman institution of the dictator was not the downfall of the Republic. The dictatorship was used over 90 times in this history of the Republic (dating from 509 BC until the rise of Caesar and the emperors in the the 40s and 30s BC), though never constitutionally or legitimately after 202 BC.<sup>22</sup> In the Late Republic, the constitution had come to be ignored in practice and while Sulla and Caesar would both claim the title of dictator, they did not hold the same office that had existed in the past. Indeed, in their day, those absolute powers which

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<sup>20</sup> Ibid., 23-24.

<sup>21</sup> Boren, 55.

<sup>22</sup> Rossiter, 21, 26.



were once the preserve of the Dictator were vested in the Consuls and used to forcibly maintain social order in the city.<sup>23</sup>

The Roman Dictator was the ideal of emergency power management for Rossiter. He continually emphasizes the need for emergency powers due to the presence of emergencies. He does so however with several important caveats, most of which can be derived from the Roman case. Perhaps the most basic caveat is that the powers be temporally limited. The problem with the Roman dictators was not that they existed, it was that their powers became a constant in Roman politics.

The American system of government by contrast has no such contingency. The president can claim powers and issue orders only to be rebuked by the court or the Congress if the action was sufficiently egregious. The powers are claimed and more often than not they are only rescinded formally when the president has no further use for them because the crisis has passed. However, the fact that the powers were not usually expressly granted but were rather just claimed serves to undermine the possibility that those powers could be contained or restricted in a future crisis. This was a problem that the Romans did not have for most of their history as a free people.

Rossiter built his argument first in the context of the Roman Republic because of its very literal institution of the temporary dictator, which is the every embodiment of his concept of a “constitutional dictatorship” whereby the state can protect itself until order can be restored. He then proceeded to analyze the

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<sup>23</sup> Ibid., 26-27

English, French, Germans and Americans in turn according to their modes of crisis governance. In the face of the emergencies that face the modern executive, Rossiter held that:

“The power of the state in crisis must not only be concentrated and expanded; it must also be freed from the normal system of constitutional and legal limitations. One of the basic features of emergency powers is the release of the government from ‘the paralysis of constitutional restraint.’.... The classic example of the liberation of governmental power from the chains of constitutionalism is the Roman dictatorship.”<sup>24</sup>

When we ask whether a people is vulnerable to the temptation of dictatorship and monarchy, the question is not whether they say they want more power given to the leader or whether they support their executive. The question is rather how they react when an executive who they favor claims new powers. Everyone seems to believe in limited presidential or governmental power when their faction is out of power and most dismiss such limits when their faction is in power. The people supported Caesar because he brought them glory and reforms which for the last century had been impossible in the Roman system. They supported Lincoln to win a Civil War. They supported Roosevelt to overcome a Depression and a World War. And they have supported Bush and Obama as they claimed powers to act outside of the former powers of their office first to prosecute a war on terror and then to also break political gridlock.

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<sup>24</sup> Ibid., 290.

The question which faces modern American politics is whether the Congress is still necessary or whether the American system has evolved a presidency akin to the consulship of the late Roman Republic which had most of the powers of the dictator but those powers did not expire as they had in years past. I do not claim to know what the transition would look like or how far along we might be.

Rossiter held that a crisis was necessary to the expansion of executive power. The other key addition I make is the loss of confidence in the legitimate government. If the government does not work (regardless of the immediacy of a crisis) then the people will look to another source of power to satisfy their needs. If we desire to maintain a legitimate and republican form of government, it will be important to ensure that the traditional institutions of government function well and fulfill the needs of the people. Rossiter offers eleven points that ought to be observed in the imposition of a constitutional dictatorship as required in the modern era. Essentially, they amount to (1) establishing the temporal limits of the dictatorship and its actions, and (2) separating the power to invoke and revoke the dictatorial powers from the person who will serve as dictator.<sup>25</sup>

Neither of these warnings have been heeded in the years since Rossiter's work. Since Rossiter, the literature on presidential power has moved in a very different direction, one focused on the expansive powers of the presidency rather than the ramifications of those powers. This is where the argument rests today. The key question is whether the presidency has accumulated too much power to the point

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<sup>25</sup> Ibid., 297-306.

that it threatens our individual liberties or whether it will need that power to fulfill its obligations.

Rossiter understood the dramatic and extreme levels of power which an American President could hold in an emergency.

“To a Van Buren, a Buchanan, or a Taft the Presidency is an instrument of government whose powers and status are virtually the same in peace, war, rebellion, or depression. To a Lincoln, a Wilson, or a Roosevelt it becomes in time of national crisis a mighty weapon of freedom, absolute in its authority and conditioned only by its purpose: the preservation of the American constitutional system and American liberty.

“Because it is so ideal a matrix for constitutional dictatorship, the Presidency does present a serious potential danger to the American people. It is for them to be eternally vigilant, to demand that this vast display of power be wielded in their behalf, as hitherto it always has been, and not against them. It is not too much to say that the destiny of this nation in the Atomic Age will rest in the capacity of the Presidency as an institution of constitutional dictatorship.”<sup>26</sup>

The Romans were highly paranoid about the prospect of tyranny and had many constitutional protections which the modern United States does not enjoy. Roman politics were religious in a way that it is difficult for the modern reader to truly understand. Many western states in the modern era have a history of state religion, but civic culture was never tied to religious tradition in the same way

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<sup>26</sup> Ibid., 286-287.

that it was in Rome.<sup>27</sup> By way of illustration, when the dictator was chosen, the final selector of the dictator did so through a religious rite to which he alone was competent.<sup>28</sup> Apart from all of the civil guards on dictatorial power, this cannot be underestimated. The ancient Romans also regularly tried their political leaders for crimes against the republic. Those trials may have been political, but they happened to those who abused their office.<sup>29</sup>

Rossiter argued more than sixty years ago that the President ought to be given expanded statutory powers to meet emergencies. The practice since then has been to allow the executive branch all but complete freedom and autonomy from the Congress in foreign affairs and only slightly less than that in domestic affairs. The temptation to presidents to disregard the traditional and legal path to power will be high. The temptation to citizens and legislators to forgive such an overreach will also be high. The reward for achieving tangible results regardless of the means employed will be far too much for our all-too-human presidents to let alone. Ultimate blame for this reality rests with a political system dominated by organized factions which are only too happy to fall into Machiavelli's trap and use executive authority when it is available only to denounce that power when they no longer control it. None of this is to say that the United States cannot solve

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<sup>27</sup> It is beyond the scope of this paper to explore the totality of the impact of the Roman religion or the degree to which Columbia was an effort in the first century of the United States to replicate that experiment. It may one day make for very interesting research.

<sup>28</sup> *Ibid.*, 20.

<sup>29</sup> It is possible that the presence of such political trials could have induced the Republic both toward collapse and stabilized it. Such trials would have allowed the Republic to maintain a modicum of legitimacy in the face of charges of corruption. At the same time, the threat of prosecution (or assassination) was one of the prime drivers which induced Caesar to lead his army against the Republic (he was facing legal challenges if he returned unarmed), however by that time the Republic may well have been beyond saving.

its problems through its traditional legislative processes. It is to say that we will not. The citizenry of the United States has no direct lever to exert control and rein in the powers of an unwieldy executive and even if they did there is no evidence that we possess sufficient civic virtue that we would rein in the imperial presidency given the opportunity.