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The Alarming Scope of the President's Emergency Powers

From seizing control of the internet to declaring martial law, President Trump may legally do all kinds of extraordinary things.

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In the weeks leading up to the 2018 midterm elections, President Donald Trump reached deep into his arsenal to try to deliver votes to Republicans.

Most of his weapons were rhetorical, featuring a mix of lies and false inducements—claims that every congressional Democrat had signed on to an "open borders" bill (none had), that liberals were fomenting violent "mobs" (they weren't), that a 10 percent tax cut for the middle class would somehow pass while Congress was out of session (it didn't). But a few involved the aggressive use—and threatened misuse—of presidential authority: He sent thousands of active-duty soldiers to the southern border to terrorize a distant caravan of desperate Central American migrants, announced plans to end the constitutional guarantee of birthright citizenship by executive order, and tweeted that law enforcement had been "strongly notified" to be on the lookout for "ILLEGAL VOTING."

These measures failed to carry the day, and Trump will likely conclude that they were too timid. How much further might he go in 2020, when his own name is on the ballot—or sooner than that, if he's facing impeachment by a House under Democratic control?

More is at stake here than the outcome of one or even two elections. Trump has long signaled his disdain for the concepts of limited presidential power and democratic rule. During his 2016 campaign, he praised murderous dictators. He declared that his opponent, Hillary Clinton, would be in jail if he were president, goading crowds into frenzied chants of "Lock her up." He hinted that he might not accept an electoral loss. As democracies around the world slide into autocracy, and nationalism and antidemocratic sentiment are on vivid display among segments of the American populace, Trump's evident hostility to key elements of liberal democracy cannot be dismissed as mere bluster.

The moment the president declares a "national emergency"—a decision that is entirely within his discretion—he is able to set aside many of the legal limits on his authority.

It would be nice to think that America is protected from the worst excesses of Trump's impulses by its democratic laws and institutions. After all, Trump can do only so much without bumping up against the limits set by the Constitution and Congress and enforced by the courts.

Those who see Trump as a threat to democracy comfort themselves with the belief that these limits will hold him in check.

But will they? Unknown to most Americans, a parallel legal regime allows the president to sidestep many of the constraints that normally apply. The moment the president declares a "national emergency"—a decision that is entirely within his discretion—more than 100 special provisions become available to him. While many of these tee up reasonable responses to genuine emergencies, some appear dangerously suited to a leader bent on amassing or retaining power. For instance, the president can, with the flick of his pen, activate laws allowing him to shut down many kinds of electronic communications inside the United States or freeze Americans' bank accounts. Other powers are available even without a declaration of emergency, including laws that allow the president to deploy troops inside the country to subdue domestic unrest.

This edifice of extraordinary powers has historically rested on the assumption that the president will act in the country's best interest when using them. With a handful of noteworthy exceptions, this assumption has held up. But what if a president, backed into a corner and facing electoral defeat or impeachment, were to declare an emergency for the sake of holding on to power? In that scenario, our laws and institutions might not save us from a presidential power grab. They might be what takes us down.

DAVID FRUM

Russian-Style Kleptocracy Is Infiltrating America

FRANKLIN FOER

1. "A LOADED WEAPON"

The premise underlying emergency powers is simple: The government's ordinary powers might be insufficient in a crisis, and amending the law to provide greater ones might be too slow and cumbersome. Emergency powers are meant to give the government a temporary boost

until the emergency passes or there is time to change the law through normal legislative processes.

Unlike the modern constitutions of many other countries, which specify when and how a state of emergency may be declared and which rights may be suspended, the U.S. Constitution itself includes no comprehensive separate regime for emergencies. Those few powers it does contain for dealing with certain urgent threats, it assigns to Congress, not the president. For instance, it lets Congress suspend the writ of habeas corpus—that is, allow government officials to imprison people without judicial review—"when in Cases of Rebellion or Invasion the public Safety may require it" and "provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."

Nonetheless, some legal scholars believe that the Constitution gives the president inherent emergency powers by making him commander in chief of the armed forces, or by vesting in him a broad, undefined "executive Power." At key points in American history, presidents have cited inherent constitutional powers when taking drastic actions that were not authorized—or, in some cases, were explicitly prohibited—by Congress. Notorious examples include Franklin D. Roosevelt's internment of U.S. citizens and residents of Japanese descent during World War II and George W. Bush's programs of warrantless wiretapping and torture after the 9/11 terrorist attacks. Abraham Lincoln conceded that his unilateral suspension of habeas corpus during the Civil War was constitutionally questionable, but defended it as necessary to preserve the Union.

The Supreme Court has often upheld such actions or found ways to avoid reviewing them, at least while the crisis was in progress. Rulings such as *Youngstown Sheet & Tube Company v. Sawyer*, in which the Court invalidated President Harry Truman's bid to take over steel mills during the Korean War, have been the exception. And while those exceptions have outlined important limiting principles, the outer boundary of the president's constitutional authority during emergencies remains poorly defined.

Presidents can also rely on a cornucopia of powers provided by Congress, which has historically been the principal source of emergency authority for the executive branch. Throughout the late 18th and 19th centuries, Congress passed laws to give the president additional leeway during military, economic, and labor crises. A more formalized approach evolved in the early 20th century, when Congress legislated powers that would lie dormant until the president activated them by declaring a national emergency. These statutory authorities began to pile up—and because presidents had little incentive to terminate states of emergency once declared, these piled up too. By the 1970s, hundreds of statutory emergency powers, and four clearly obsolete states of emergency, were in effect. For instance, the national emergency that Truman declared in 1950, during the Korean War, remained in place and was being used to help prosecute the war in Vietnam.

Aiming to rein in this proliferation, Congress passed the National Emergencies Act in 1976. Under this law, the president still has complete discretion to issue an emergency declaration—but he must specify in the declaration which powers he intends to use, issue public updates if he decides to invoke additional powers, and report to Congress on the government's emergency-related expenditures every six months. The state of emergency expires after a year unless the president renews it, and the Senate and the House must meet every six months while the emergency is in effect "to consider a vote" on termination.

By any objective measure, the law has failed. Thirty states of emergency are in effect today—several times more than when the act was passed. Most have been renewed for years on end. And during the 40 years the law has been in place, Congress has not met even once, let alone every six months, to vote on whether to end them.

As a result, the president has access to emergency powers contained in 123 statutory provisions, as recently calculated by the Brennan Center for Justice at NYU School of Law, where I work. These laws address a broad range of matters, from military composition to agricultural exports to public contracts. For the most part, the president is free to use any of them; the National Emergencies Act doesn't require that the powers invoked relate to the nature of the emergency. Even if the crisis at hand is, say, a nationwide crop blight, the president may activate the law that allows the secretary of transportation to requisition any privately owned vessel at sea. Many other laws permit the executive branch to take extraordinary action under specified conditions, such as war and domestic upheaval, regardless of whether a national emergency has been declared.

PABLO MARTINEZ MONSIVAIS / AP

This legal regime for emergencies—ambiguous constitutional limits combined with a rich well of statutory emergency powers—would seem to provide the ingredients for a dangerous encroachment on American civil liberties. Yet so far, even though presidents have often advanced dubious claims of constitutional authority, egregious abuses on the scale of the Japanese American internment or the post-9/11 torture program have been rare, and most of the statutory powers available during a national emergency have never been used.

But what's to guarantee that this president, or a future one, will show the reticence of his predecessors? To borrow from Justice Robert Jackson's dissent in *Korematsu v. United States*, the 1944 Supreme Court decision that upheld the internment of Japanese Americans, each emergency power "lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

2. AN INTERNET KILL SWITCH?

Like all emergency powers, the laws governing the conduct of war allow the president to engage in conduct that would be illegal during ordinary times. This conduct includes familiar incidents of war, such as the killing or indefinite detention of enemy soldiers. But the president can also take a host of other actions, both abroad and inside the United States.

These laws vary dramatically in content and scope. Several of them authorize the president to make decisions about the size and composition of the armed forces that are usually left to Congress. Although such measures can offer needed flexibility at crucial moments, they are subject to misuse. For instance, George W. Bush leveraged the state of emergency after 9/11 to call hundreds of thousands of reservists and members of the National Guard into active duty in Iraq, for a war that had nothing to do with the 9/11 attacks. Other powers are chilling under any circumstances: Take a moment to consider that during a declared war or national emergency, the president can unilaterally suspend the law that bars government testing of biological and chemical agents on unwitting human subjects.

The president could seize control of U.S. internet traffic, impeding access to certain websites and ensuring that internet searches return pro-Trump content as the top results.

One power poses a singular threat to democracy in the digital era. In 1942, Congress amended Section 706 of the Communications Act of 1934 to allow the president to shut down or take control of "any facility or station for wire communication" upon his proclamation "that there exists a state or threat of war involving the United States," resurrecting a similar power Congress had briefly provided Woodrow Wilson during World War I. At the time, "wire communication" meant telephone calls or telegrams. Given the relatively modest role that electronic communications played in most Americans' lives, the government's assertion of this power during World War II (no president has used it since) likely created inconvenience but not havoc.

We live in a different universe today. Although interpreting a 1942 law to cover the internet might seem far-fetched, some government officials recently endorsed this reading during debates about cybersecurity legislation. Under this interpretation, Section 706 could effectively function as a "kill switch" in the U.S.—one that would be available to the president the moment he proclaimed a mere threat of war. It could also give the president power to assume control over U.S. internet traffic.

The potential impact of such a move can hardly be overstated. In August, in an early-morning tweet, Trump lamented that search engines were "RIGGED" to serve up negative articles about him. Later that day the administration said it was looking into regulating the big internet companies. "I think that Google and Twitter and Facebook, they're really treading on very, very troubled territory. And they have to be careful," Trump warned. If the government were to take control of U.S. internet infrastructure, Trump could accomplish directly what he threatened to

do by regulation: ensure that internet searches always return pro-Trump content as the top results. The government also would have the ability to impede domestic access to particular websites, including social-media platforms. It could monitor emails or prevent them from reaching their destination. It could exert control over computer systems (such as states' voter databases) and physical devices (such as Amazon's Echo speakers) that are connected to the internet.

Video: Trump's Emergency Powers Are "Ripe for Abuse"

To be sure, the fact that the internet in the United States is highly decentralized—a function of a relatively open market for communications devices and services—would offer some protection. Achieving the level of government control over internet content that exists in places such as China, Russia, and Iran would likely be impossible in the U.S. Moreover, if Trump were to attempt any degree of internet takeover, an explosion of lawsuits would follow. Based on its First Amendment rulings in recent decades, the Supreme Court seems unlikely to permit heavy-handed government control over internet communication.

But complacency would be a mistake. Complete control of internet content would not be necessary for Trump's purposes; even with less comprehensive interventions, he could do a great deal to disrupt political discourse and hinder effective, organized political opposition. And the Supreme Court's view of the First Amendment is not immutable. For much of the country's history, the Court was willing to tolerate significant encroachments on free speech during wartime. "The progress we have made is fragile," Geoffrey R. Stone, a constitutional-law scholar at the University of Chicago, has written. "It would not take much to upset the current understanding of the First Amendment." Indeed, all it would take is five Supreme Court justices whose commitment to presidential power exceeds their commitment to individual liberties.

3. SANCTIONING AMERICANS

Next to war powers, economic powers might sound benign, but they are among the president's most potent legal weapons. All but two of the emergency declarations in effect today were issued under the International Emergency Economic Powers Act, or ieepa. Passed in 1977, the law allows the president to declare a national emergency "to deal with any unusual and extraordinary threat"—to national security, foreign policy, or the economy—that "has its source in whole or substantial part outside the United States." The president can then order a range of economic actions to address the threat, including freezing assets and blocking financial transactions in which any foreign nation or foreign national has an interest.

In the late 1970s and ’80s, presidents used the law primarily to impose sanctions against other nations, including Iran, Nicaragua, South Africa, Libya, and Panama. Then, in 1983, when Congress failed to renew a law authorizing the Commerce Department to control certain exports, President Ronald Reagan declared a national emergency in order to assume that control under ieepa. Subsequent presidents followed his example, transferring export control from Congress to the White House. President Bill Clinton expanded ieepa’s usage by targeting not just foreign governments but foreign political parties, terrorist organizations, and suspected narcotics traffickers.

President George W. Bush took matters a giant step further after 9/11. His Executive Order 13224 prohibited transactions not just with any suspected foreign terrorists, but with any foreigner *or any U.S. citizen* suspected of providing them with support. Once a person is “designated” under the order, no American can legally give him a job, rent him an apartment, provide him with medical services, or even sell him a loaf of bread unless the government grants a license to allow the transaction. The patriot Act gave the order more muscle, allowing the government to trigger these consequences merely by opening an investigation into whether a person or group should be designated.

Designations under Executive Order 13224 are opaque and extremely difficult to challenge. The government needs only a “reasonable basis” for believing that someone is involved with or supports terrorism in order to designate him. The target is generally given no advance notice and no hearing. He may request reconsideration and submit evidence on his behalf, but the government faces no deadline to respond. Moreover, the evidence against the target is typically classified, which means he is not allowed to see it. He can try to challenge the action in court, but his chances of success are minimal, as most judges defer to the government’s assessment of its own evidence.

Americans have occasionally been caught up in this Kafkaesque system. Several Muslim charities in the U.S. were designated or investigated based on the suspicion that their charitable contributions overseas benefited terrorists. Of course if the government can show, through judicial proceedings that observe due process and other constitutional rights, that an American group or person is funding terrorist activity, it should be able to cut off those funds. But the government shut these charities down by freezing their assets without ever having to prove its charges in court.

In other cases, Americans were significantly harmed by designations that later proved to be mistakes. For instance, two months after 9/11, the Treasury Department designated Garad Jama, a Somalian-born American, based on an erroneous determination that his money-wiring business was part of a terror-financing network. Jama’s office was shut down and his bank account frozen. News outlets described him as a suspected terrorist. For months, Jama tried to gain a hearing with the government to establish his innocence and, in the meantime, obtain the government’s permission to get a job and pay his lawyer. Only after he filed a lawsuit did the

government allow him to work as a grocery-store cashier and pay his living expenses. It was several more months before the government reversed his designation and unfroze his assets. By then he had lost his business, and the stigma of having been publicly labeled a terrorist supporter continued to follow him and his family.

Despite these dramatic examples, ieepa's limits have yet to be fully tested. After two courts ruled that the government's actions against American charities were unconstitutional, Barack Obama's administration chose not to appeal the decisions and largely refrained from further controversial designations of American organizations and citizens. Thus far, President Trump has followed the same approach.

That could change. In October, in the lead-up to the midterm elections, Trump characterized the caravan of Central American migrants headed toward the U.S. border to seek asylum as a "National Emergency." Although he did not issue an emergency proclamation, he could do so under ieepa. He could determine that any American inside the U.S. who offers material support to the asylum seekers—or, for that matter, to undocumented immigrants inside the United States—poses "an unusual and extraordinary threat" to national security, and authorize the Treasury Department to take action against them.

Americans might be surprised to learn just how readily the president can deploy troops inside the United States.

Such a move would carry echoes of a law passed recently in Hungary that criminalized the provision of financial or legal services to undocumented migrants; this has been dubbed the "Stop Soros" law, after the Hungarian American philanthropist George Soros, who funds migrants'-rights organizations. Although an order issued under ieepa would not land targets in jail, it could be implemented without legislation and without affording targets a trial. In practice, identifying every American who has hired, housed, or provided paid legal representation to an asylum seeker or undocumented immigrant would be impossible—but all Trump would need to do to achieve the desired political effect would be to make high-profile examples of a few. Individuals targeted by the order could lose their jobs, and find their bank accounts frozen and their health insurance canceled. The battle in the courts would then pick up exactly where it left off during the Obama administration—but with a newly reconstituted Supreme Court making the final call.

4. BOOTS ON MAIN STREET

The idea of tanks rolling through the streets of U.S. cities seems fundamentally inconsistent with the country's notions of democracy and freedom. Americans might be surprised, therefore, to learn just how readily the president can deploy troops inside the country.

The principle that the military should not act as a domestic police force, known as "posse comitatus," has deep roots in the nation's history, and it is often mistaken for a constitutional rule. The Constitution, however, does not prohibit military participation in police activity. Nor does the Posse Comitatus Act of 1878 outlaw such participation; it merely states that any authority to use the military for law-enforcement purposes must derive from the Constitution or from a statute.

The Insurrection Act of 1807 provides the necessary authority. As amended over the years, it allows the president to deploy troops upon the request of a state's governor or legislature to help put down an insurrection within that state. It also allows the president to deploy troops unilaterally, either because he determines that rebellious activity has made it "impracticable" to enforce federal law through regular means, or because he deems it necessary to suppress "insurrection, domestic violence, unlawful combination, or conspiracy" (terms not defined in the statute) that hinders the rights of a class of people or "impedes the course of justice."

Presidents have wielded the Insurrection Act under a range of circumstances. Dwight Eisenhower used it in 1957 when he sent troops into Little Rock, Arkansas, to enforce school desegregation. George H. W. Bush employed it in 1992 to help stop the riots that erupted in Los Angeles after the verdict in the Rodney King case. George W. Bush considered invoking it to help restore public order after Hurricane Katrina, but opted against it when the governor of Louisiana resisted federal control over the state's National Guard. While controversy surrounded all these examples, none suggests obvious overreach.

And yet the potential misuses of the act are legion. When Chicago experienced a spike in homicides in 2017, Trump tweeted that the city must "fix the horrible 'carnage' " or he would "send in the Feds!" To carry out this threat, the president could declare a particular street gang —say, MS-13—to be an "unlawful combination" and then send troops to the nation's cities to police the streets. He could characterize sanctuary cities—cities that refuse to provide assistance to immigration-enforcement officials—as "conspiracies" against federal authorities, and order the military to enforce immigration laws in those places. Conjuring the specter of "liberal mobs," he could send troops to suppress alleged rioting at the fringes of anti-Trump protests.

MANDEL NGAN / AFP / GETTY

How far could the president go in using the military within U.S. borders? The Supreme Court has given us no clear answer to this question. Take *Ex parte Milligan*, a famous ruling from 1866 invalidating the use of a military commission to try a civilian during the Civil War. The case is widely considered a high-water mark for judicial constraint on executive action. Yet even as the Court held that the president could not use war or emergency as a reason to bypass civilian courts, it noted that martial law—the displacement of civilian authority by the military —would be appropriate in some cases. If civilian courts were closed as a result of a foreign

invasion or a civil war, for example, martial law could exist "until the laws can have their free course." The message is decidedly mixed: Claims of emergency or necessity cannot legitimize martial law … until they can.

Presented with this ambiguity, presidents have explored the outer limits of their constitutional emergency authority in a series of directives known as Presidential Emergency Action Documents, or peads. peads, which originated as part of the Eisenhower administration's plans to ensure continuity of government in the wake of a Soviet nuclear attack, are draft executive orders, proclamations, and messages to Congress that are prepared in advance of anticipated emergencies. peads are closely guarded within the government; none has ever been publicly released or leaked. But their contents have occasionally been described in public sources, including FBI memorandums that were obtained through the Freedom of Information Act as well as agency manuals and court records. According to these sources, peads drafted from the 1950s through the 1970s would authorize not only martial law but the suspension of habeas corpus by the executive branch, the revocation of Americans' passports, and the roundup and detention of "subversives" identified in an FBI "Security Index" that contained more than 10,000 names.

Less is known about the contents of more recent peads and equivalent planning documents. But in 1987, *The Miami Herald* reported that Lieutenant Colonel Oliver North had worked with the Federal Emergency Management Agency to create a secret contingency plan authorizing "suspension of the Constitution, turning control of the United States over to fema, appointment of military commanders to run state and local governments and declaration of martial law during a national crisis." A 2007 Department of Homeland Security report lists "martial law" and "curfew declarations" as "critical tasks" that local, state, and federal government should be able to perform in emergencies. In 2008, government sources told a reporter for *Radar* magazine that a version of the Security Index still existed under the code name Main Core, allowing for the apprehension and detention of Americans tagged as security threats.

Since 2012, the Department of Justice has been requesting and receiving funds from Congress to update several dozen peads first developed in 1989. The funding requests contain no indication of what these peads encompass, or what standards the department intends to apply in reviewing them. But whatever the Obama administration's intent, the review has now passed to the Trump administration. It will fall to Jeff Sessions's successor as attorney general to decide whether to rein in or expand some of the more frightening features of these peads. And, of course, it will be up to President Trump whether to actually use them—something no previous president appears to have done.

5. KINDLING AN EMERGENCY

What would the Founders think of these and other emergency powers on the books today, in the hands of a president like Donald Trump? In *Youngstown*, the case in which the Supreme Court blocked President Truman's attempt to seize the nation's steel mills, Justice Jackson observed that broad emergency powers were "something the forefathers omitted" from the Constitution. "They knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation," he wrote. "We may also suspect that they suspected that emergency powers would tend to kindle emergencies."

In the past several decades, Congress has provided what the Constitution did not: emergency powers that have the potential for creating emergencies rather than ending them. Presidents have built on these powers with their own secret directives. What has prevented the wholesale abuse of these authorities until now is a baseline commitment to liberal democracy on the part of past presidents. Under a president who doesn't share that commitment, what might we see?

Imagine that it's late 2019. Trump's approval ratings are at an all-time low. A disgruntled former employee has leaked documents showing that the Trump Organization was involved in illegal business dealings with Russian oligarchs. The trade war with China and other countries has taken a significant toll on the economy. Trump has been caught once again disclosing classified information to Russian officials, and his international gaffes are becoming impossible for lawmakers concerned about national security to ignore. A few of his Republican supporters in Congress begin to distance themselves from his administration. Support for impeachment spreads on Capitol Hill. In straw polls pitting Trump against various potential Democratic presidential candidates, the Democrat consistently wins.

Trump reacts. Unfazed by his own brazen hypocrisy, he tweets that Iran is planning a cyber operation to interfere with the 2020 election. His national-security adviser, John Bolton, claims to have seen ironclad (but highly classified) evidence of this planned assault on U.S. democracy. Trump's inflammatory tweets provoke predictable saber rattling by Iranian leaders; he responds by threatening preemptive military strikes. Some Defense Department officials have misgivings, but others have been waiting for such an opportunity. As Iran's statements grow more warlike, "Iranophobia" takes hold among the American public.

Proclaiming a threat of war, Trump invokes Section 706 of the Communications Act to assume government control over internet traffic inside the United States, in order to prevent the spread of Iranian disinformation and propaganda. He also declares a national emergency under ieepa, authorizing the Treasury Department to freeze the assets of any person or organization suspected of supporting Iran's activities against the United States. Wielding the authority conferred by these laws, the government shuts down several left-leaning websites and domestic civil-society organizations, based on government determinations (classified, of course) that

they are subject to Iranian influence. These include websites and organizations that are focused on getting out the vote.

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Lawsuits follow. Several judges issue orders declaring Trump's actions unconstitutional, but a handful of judges appointed by the president side with the administration. On the eve of the election, the cases reach the Supreme Court. In a 5–4 opinion written by Justice Brett Kavanaugh, the Court observes that the president's powers are at their zenith when he is using authority granted by Congress to protect national security. Setting new precedent, the Court holds that the First Amendment does not protect Iranian propaganda and that the government needs no warrant to freeze Americans' assets if its goal is to mitigate a foreign threat.

Protests erupt. On Twitter, Trump calls the protesters traitors and suggests (in capital letters) that they could use a good beating. When counterprotesters oblige, Trump blames the original protesters for sparking the violent confrontations and deploys the Insurrection Act to federalize the National Guard in several states. Using the Presidential Alert system first tested in October 2018, the president sends a text message to every American's cellphone, warning that there is "a risk of violence at polling stations" and that "troops will be deployed as necessary" to keep order. Some members of opposition groups are frightened into staying home on Election Day; other people simply can't find accurate information online about voting. With turnout at a historical low, a president who was facing impeachment just months earlier handily wins reelection—and marks his victory by renewing the state of emergency.

This scenario might sound extreme. But the misuse of emergency powers is a standard gambit among leaders attempting to consolidate power. Authoritarians Trump has openly claimed to admire—including the Philippines' Rodrigo Duterte and Turkey's Recep Tayyip Erdoğan—have gone this route.

Of course, Trump might also choose to act entirely outside the law. Presidents with a far stronger commitment to the rule of law, including Lincoln and Roosevelt, have done exactly that, albeit in response to real emergencies. But there is little that can be done in advance to stop this, other than attempting deterrence through robust oversight. The remedies for such behavior can come only after the fact, via court judgments, political blowback at the voting booth, or impeachment.

By contrast, the dangers posed by emergency powers that are written into statute can be mitigated through the simple expedient of changing the law. Committees in the House could begin this process now by undertaking a thorough review of existing emergency powers and declarations. Based on that review, Congress could repeal the laws that are obsolete or unnecessary. It could revise others to include stronger protections against abuse. It could issue new criteria for emergency declarations, require a connection between the nature of the

emergency and the powers invoked, and prohibit indefinite emergencies. It could limit the powers set forth in peads.

Congress, of course, will undertake none of these reforms without extraordinary public pressure—and until now, the public has paid little heed to emergency powers. But we are in uncharted political territory. At a time when other democracies around the world are slipping toward authoritarianism—and when the president seems eager for the United States to follow their example—we would be wise to shore up the guardrails of liberal democracy. Fixing the current system of emergency powers would be a good place to start.

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