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Why the Impeachment Fight Is Even Worse Than You Think

Political scientists have studied what our democracy is going through. It usually doesn't end well.

By THOMAS PEPINSKY | October 31, 2019

For decades, Republicans and Democrats fought over the same things: whose values and policies work best for American democracy. But now, those age-old fights are changing. What was once run-of-the-mill partisan competition is being replaced by a disagreement over democracy itself.

This is particularly evident as the president and many of his allies crow about the illegitimacy of the House impeachment inquiry, calling it an attempted coup, and as the

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White House refuses to comply with multiple congressional subpoenas as part of the probe.

This marks a new phase in American politics. Democrats and Republicans might still disagree about policy, but they are increasingly also at odds over the very foundations of our constitutional order.

Political scientists have a term for what the United States is witnessing right now. It's called "regime cleavage," a division within the population marked by conflict about the foundations of the governing system itself—in the American case, our constitutional democracy. In societies facing a regime cleavage, a growing number of citizens and officials believe that norms, institutions and laws may be ignored, subverted or replaced.

And there are serious consequences: An emerging regime cleavage in the United States brought on by President Donald Trump and his defenders could signal that the American public may lose faith in the electoral process altogether, or incentivize elected politicians to mount even more direct attacks on the independence of the judiciary and the separation of powers. Regime cleavages only emerge in governing systems in crisis, and our democracy is indeed in crisis.

Just look at the hardening split among the American people on impeachment: The fraction of citizens who oppose the impeachment inquiry is the same as that who approve of the president, signifying that partisan disagreement over policy has turned into a partisan divide over political legitimacy. This cleavage shows up in discourse across the American political spectrum that labels one's political opponents as un-American, disloyal, even treasonous. But it is clearest in the argument that it would amount to a "coup" to remove the president via conviction in the Senate, and thus that the regular functioning of the legislative branch would be illegitimate. These divisions are over the laws that set out plainly in our Constitution how the president can be subject to sanction.

Regime cleavages are different from other political "cleavages." Conflict between left and right, for example, over issues such as taxation and redistribution, is healthy. Other cleavages are based on identity, such as racial conflict in South Africa, or religious divides between Hindus and Muslims in India or Protestants and Catholics during the last century in the Netherlands. Identity cleavages can be dangerous, but they are common across the world's democracies and can be endured, just so long as different groups respect the rule of law and the legitimacy of the electoral process.

Regime cleavages, by contrast, focus the electorate's attention on the political system as a whole. Instead of seeking office to change the laws to obtain preferred policies, politicians who oppose the democratic order ignore the laws when necessary

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their political goals, and their supporters stand by or even endorse those means to their desired ends. Today, when Trump refuses to comply with the House impeachment inquiry, he makes plain his indifference to the Constitution and to the separation of powers. When Senate Majority Leader Mitch McConnell argues that impeachment overturns an election result, he is doing the same. In the minds of Trump, his allies and, increasingly, his supporters, it's not just Democrats but American democracy that is the obstacle.

As Harvard political scientists Steven Levitsky and Daniel Ziblatt have argued, democracy can only manage political conflict if citizens and politicians allow the institutions of democracy—elections, representative bodies, the judiciary—to do so. Parties and politicians must not be rewarded for refusing to adhere to laws and institutions. Decades ago, a regime cleavage divided Chileans, with conservatives aligning against the elected government of Salvador Allende and eventually leading to a coup that replaced him with General Augusto Pinochet. The United States has confronted a regime cleavage, too: The last emerged in the 1850s, prior to the Civil War, when many in the slave states began to advocate for secession—a clear challenge to the legitimacy of the Union.

Growing fights over executive power can mark an emerging regime cleavage in a democracy like ours. One side will hold that “democracy” means empowering the executive and freeing him or her from the strictures of legislative and judicial accountability (in other words, a hollow democracy, one in name only in which executive authority is bound only by the whims of those in power). The other will hold that democracy means strengthening other institutions in order to hold the executive branch to account.

This, in turn, creates a form of outbidding: Even if Democrats oppose an unfettered executive now, they will have every incentive to use whatever presidential powers available to them when they do hold the White House. This has already begun to happen in the U.S. to some extent: Competition over an unconstrained executive branch, of course, motivated Republicans to oppose President Barack Obama, who also capitalized on the long-term increase in executive authority in the United States. The academic term for this sort of see-saw electoral politics is “democratic careening.” Politics becomes no longer about who delivers the best policy or who best represents voters' ideals, but rather who can control the executive and how far they can push the limits of the rule of law.

But what distinguishes the current moment under Trump from the normal, albeit worsening, politics of executive-legislative relations in the United States is the

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politicization of the very notion of executive constraint in the face of an impeachment hearing—this is the source of the regime cleavage.

American politics is not yet fully consumed by this current, emerging regime cleavage. But if it continues without a forceful, bipartisan rebuke, we can expect that politics in the United States will increasingly come to be characterized by the kinds of intractable conflicts between populist outsiders, old-guard politicians, and the machinery of the state that have characterized presidential democracies in countries like Argentina and, more recently, Taiwan. Our regime cleavage has not yet hardened to the extent that it has in these countries, but if it does, it will not be possible to elect a president who can “end the mess in Washington” because both sides of the regime cleavage will argue that the other is illegitimate and undemocratic. Voters, understandably, will lose what faith they have left in the value of democracy itself. In the worst-case scenario, presidents and their supporters would be entirely unaccountable to Congress, while their opponents would reject the legitimacy of the presidency altogether.

Even worse: What if Trump refuses to acknowledge defeat by a Democratic opponent in 2020? What would happen in that case? Might the president’s supporters resort to violence? Might broad segments of the GOP simply refuse to recognize an elected Democratic executive as well?

Protecting the rule of law, defending the separation of powers and restoring constitutional order to Washington increasingly seems like it will require the impeachment, conviction and removal from office of the current president. At the very least, Americans of every political persuasion must demand that the administration take part in the impeachment proceedings, even if the Republicans in the Senate ultimately weigh partisanship over evidence in their vote. So long as the executive and legislative branches respect the procedures and powers outlined in the Constitution, we must all respect their legitimacy—regardless of the outcome. If we fail to agree on and abide by our common democratic principles, our emerging regime cleavage will harden, and the future for American democracy will be bleak.