

Presidents and Guardrails

Mr. Trump explained his declaration in extended remarks Friday, and he didn't help his legal case. "Look, I went through Congress. I made a deal. I got almost \$1.4 billion when I wasn't supposed to get one dollar—not one dollar. 'He's not going to get one dollar.' Well, I got \$1.4 billion," he said, referring to the border security bill he signed Friday to keep open the government. "But I'm not happy with it. . . . In fact, the primary fight was on the wall. Everything else, we have so much, as I said, I don't know what to do with it we have so much money. But on the wall, they skimped."

He added that "I could do the wall over a longer period of time. I didn't need to do this [declare an emergency]. But I'd rather do it much faster."

Donald Trump, meet Robert Jackson. He's the Supreme Court Justice whose concurrence in *Youngstown v. Sawyer* may define the legal fate of Mr. Trump's declaration. Harry Truman nationalized the steel mills during the Korean War, citing his powers as Commander in Chief. The Court overruled Truman, and as our friends at the New York Sun remind us, Jackson is famous for pointing out that presidential power depends on its relationship to congressional power and intent.

A President's authority is at its peak when he acts with the support of Congress. It is somewhat weaker if he acts on his own but Congress hasn't spoken. But a President's power is "at its lowest ebb," Jackson wrote, when "the President takes measures incompatible with the expressed or implied will of Congress."

Mr. Trump's comments may haunt him. He admitted that he acted in frustration because Congress refused what he wanted on the wall. He means the current Congress that includes a Democratic House. But Mr. Trump even criticized the last Congress, saying "I'm very disappointed at certain people, a particular one, for not having pushed this faster."

The last Congress was run by Republicans, and presumably Mr. Trump is referring to former Speaker Paul Ryan. But if he couldn't get his wall money from either a Democratic House or a Republican House, his case for acting alone is even weaker.

As it happens, Mr. Trump's history is also blinkered. In February 2018 he was offered a deal that included money for the wall in exchange for legalizing the Dreamers, who were brought to the U.S. illegally as children. But the President walked away because White House aide Stephen Miller and GOP restrictionists told him he'd be better off making immigration an election issue. Mr. Trump took their advice, and Republicans lost 40 House seats. That wasn't Paul Ryan's fault.

Congress has granted Presidents the power to declare emergencies under the 1976 National Emergencies Act, and perhaps the Supreme Court will find that delegation enough to justify Mr. Trump's declaration. As we've argued, it is not an easy constitutional call.

But Mr. Trump is taking an enormous risk with presidential authority, as Harry Truman did in nationalizing the steel industry. Mr. Trump is inviting judges to intervene in a way that could further restrict the ability of Presidents to act in emergencies that are far more urgent than the current troubles at the U.S.-Mexico border.

Republicans should have learned this lesson from Mr. Obama's overreach. Mr. Obama was rebuked by the Supreme Court on recess appointments and environmental regulation. And he may be rebuked again on immigration if the Court rules on Mr. Trump's order rescinding Mr. Obama's unilateral grant of work permits for Dreamer immigrants.

A federal judge also ruled for the Republican House that Mr. Obama had violated the Constitution by spending money on ObamaCare that Congress hadn't appropriated. The great irony is that House Democrats will now cite that precedent when they challenge Mr. Trump's emergency declaration.

Mr. Trump is right that Democrats never objected to Mr. Obama's abuses. "Does the public know that the Emancipation Proclamation was an executive order?" Nancy Pelosi said in 2014 about Mr. Obama's Dreamer order. "People have to understand how Presidents have made change in our country."

But Democratic abuses of power are no excuse for Republicans to do the same. The Framers created constitutional guardrails precisely to protect against the political passions of the moment.