

Democrats, Don't Fight Fire With Fire

di William A. Galston

As Democrats wrestle with the second Trump presidency, they face a crucial choice: rein in executive power and restore the rule of law, or prepare for a future Democratic president to use the powers President Trump has arrogated for his own purposes.

Influential Democratic voices are urging the latter course. “In order for us to correct the abuses that are happening now, we have to act the same in similar capacities that Trump has given himself,” Rep. [Alexandria Ocasio-Cortez](#) (D., N.Y.) [said](#) earlier this year.

Sen. [Elizabeth Warren](#) (D., Mass.) is as blunt on the subject. “[Donald Trump](#) has made clear that there are no guardrails on executive power that are effective,” she [told](#) the news source NOTUS. “So, the idea that the next president somehow just doesn’t pick up the tools and use them to execute on the policies that they run on makes no sense. . . . We can’t play the game that Republican presidents get lots of power and Democratic presidents don’t.”

[Kamala Harris](#), the once and perhaps future Democratic presidential nominee, believes the party should fight fire with fire. “This is a moment where there are no bad ideas,” she said last week while discussing what she dubbed a “no bad idea brainstorm” for Democrats.

I beg to differ. There are plenty of bad ideas. In their zeal to erase the legacy of the Trump administration, Democrats could end up perpetuating its worst excesses.

During his first term, Mr. Trump [told](#) an audience at a 2019 event: “I have an Article II, where I have the right to do whatever I want as president.” His actions since are evidence that he was serious about this, as are the people who work for him.

The Constitution gives the president broad powers, but within a system of checks and balances. Senior administration officials have waved Article II like a magic wand to

justify their excesses as legal, constitutional behavior. Office of Management and Budget Director Russell Vought insists that the Impoundment Control Act of 1974—which limits a president’s ability to withhold, delay or cancel funding appropriated by Congress—is unconstitutional. Why? Because it somehow infringes upon the president’s inherent powers. This view turns Congress’s Article I power of the purse into a mere suggestion, giving the president the last word on whether to spend funds appropriated for specific purposes. Should Democrats embrace this fringe view, rejected by prominent conservative legal scholars, in the name of fighting fire with fire?

The U.S. faces serious policy challenges at home and abroad. But the threat to constitutional government and the rule of law is even graver, and Democrats have a responsibility to confront it, even if others won’t.

The expansion of executive power has disrupted the balance among the branches of government. It didn’t start with Donald Trump, but it must end with him. Restoring balance means respecting the legislative process as the main way to achieve policy changes. It means presidents’ issuing executive orders that remain within legal and constitutional bounds. It means using the emergency powers granted by legislation only when necessary and clearly warranted. It means executing the laws—all of them—regardless of whether the chief executive likes them or not, and it means doing so evenhandedly. (Partisan considerations should never influence the distribution of funds for disaster relief, for example.) It means adhering scrupulously to the requirements of the War Powers Resolution of 1973 unless the Supreme Court decides that it is unconstitutional. That presidents of both political parties regard it as unconstitutional proves nothing.

When the next president swears an oath to “preserve, protect and defend the Constitution of the United States,” he undertakes both to obey the Constitution and to remove threats to it. Poorly drafted emergency-power laws, some dating back to the early days of the Republic, are unexploded ordnance that could blow up the constitutional order. They should be repealed, and all such powers should be time-limited.

Even if the next president gives his responsibility to the Constitution the priority it deserves, no one should expect a new Era of Good Feelings to break out. Partisan polarization is entrenched and will ebb only slowly.

But as we fight fiercely among ourselves, none of us are really winning. Only our foreign adversaries are. The national interest requires what I am convinced most Americans really want—a time of healing, when we relearn the ancient truth that what unites us is more important than what divides us.