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HISTORY OF EMERGENCY POWERS OF THE US PRESIDENTS: FROM ABRAHAM LINCOLN TO DONALD TRUMP

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Abstract. *Introduction.* In the context of the COVID-19 pandemic announced by the WHO in 2020, American researchers bring up the question of the legitimacy, adequacy, or, on the contrary, redundancy of measures taken by the US leadership to protect the population. The study of the US President's history of emergency powers can demonstrate how previous American Presidents managed to preserve or, conversely, subvert the established liberal foundations of American society in emergency situations. *Methods and materials.* The author used methods of structural analysis and synthesis, historical and legal comparative method, formal legal method, and method of legal modeling. *Analysis.* The author studied A. Lincoln's extra-constitutional authority to emancipate slaves, suspend the Habeas Corpus Act, create a volunteer army, and declare a naval blockade. On the basis of legal sources, we carried out the analysis of F. Roosevelt's decisions on the creation of courts-martial and the internment of people of Japanese descent; reviewed the activities of G. Bush after the September 11 attacks and D. Trump's emergency measures related to building the border wall in the south of the USA. *Results.* During the research, we found, that each military, economic, or social crisis increased the political significance and role of the executive branch in emergencies. We can characterize the increase of the emergency powers, delegated to the US Presidents, as steadily growing due to the crises that took place in various periods of American history. It was proved, that the precedents of emergency measures created by A. Lincoln, F. Roosevelt and George W. Bush had a long-term impact on the actions of the next US Presidents, opening up new legal opportunities for the use of emergency powers. At the same time, Congress and the US Supreme Court have taken a controversial stance on the validity of the President's actions at various historical stages. Most of the time, the status of the legislative and judicial branches of government, as well as the understanding of "emergency situation" itself depended on the specific case and practical political needs.

Key words: the US Constitution, President's emergency powers, American Civil War, COVID-19 pandemic, Emancipation Proclamation, President Roosevelt, US Supreme Court, Trump's emergency powers.

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ИСТОРИЯ ЧРЕЗВЫЧАЙНЫХ ПОЛНОМОЧИЙ ПРЕЗИДЕНТА США: ОТ АВРААМА ЛИНКОЛЬНА ДО ДОНАЛЬДА ТРАМПА

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Аннотация. *Введение.* В условиях объявленной Всемирной организацией здравоохранения в 2020 г. пандемии COVID-19 среди американских исследователей вновь встает вопрос о правомерности, достаточности, либо, наоборот, избыточности мер, предпринимаемых руководством США для защиты населения. Исследование истории чрезвычайных полномочий Президента США продемонстрирует, каким образом предшествующим американским президентам удавалось сохранить, либо, наоборот, разрушить устоявшиеся либеральные основы американского общества в чрезвычайных ситуациях. *Методы и материалы.* Автором использованы методы структурного анализа и синтеза, историко-правовой и формально-юридический методы, метод правового моделирования. *Анализ.* Исследовано использование А. Линкольном своих внеконституционных полномочий для приостановки Хабеас корпус акта, создания добровольческой армии и объявления морской блокады. На основе правовых источников проведен анализ решений Ф. Рузвельта о создании военных трибуналов и интернирования лиц японского происхождения, рассмотрена деятельность Д. Буша после террористических атак 2001 г. и чрезвычайные меры Д. Трампа в связи со строительством стены на южной границе США. *Результаты.* Исследование позволило определить, что каждый военный, экономический или социальный кризис усиливал политическое значение и роль исполнительной власти в чрезвычайных обстоятельствах. Установлены факты эпизодического увеличения объема чрезвычайных полномочий, делегируемых Президентам США в различные исторические периоды, в целом характеризующиеся их поступательным ростом. Доказано, что созданные А. Линкольном, Ф. Рузвельтом и Дж. Бушем-младшим прецеденты применения чрезвычайных мер оказали долгосрочное влияние на действия последующих Президентов США, открыв перед ними новые правовые возможности использования чрезвычайных полномочий. При этом Конгресс и Верховный суд США занимали противоречивые позиции относительно обоснованности действий Президента на различных исторических этапах. В большинстве своем позиция законодательной и судебной ветвей власти, а также само понимание «чрезвычайности» зависели от конкретной ситуации и практических политических нужд.

Ключевые слова: Конституция США, чрезвычайные полномочия Президента США, Гражданская война в США, пандемия COVID-19, прокламация Линкольна, Президент Рузвельт, Верховный суд США, чрезвычайные полномочия Трампа.

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Introduction. The historical experience of the development of the American Institute of President's Emergency Powers, which was tested by the Civil War, the Great Depression, two World Wars, the terrorist threat and the pandemic, seems to be unique in terms of the possibility to maintain the foundations of a democratic system in emergency situations, as well as to keep a balance between rights and freedoms of citizens and to maintain total control. However, in the history of one of the oldest world democracies, there were examples of ineffective governance and violation of this balance, and it is also of research interest.

The history of the United States is a rare example of the commitment of the country's Presidents to the idea of liberal democracy and the rule of law, despite the almost unlimited possibilities of using emergency powers.

As E. Gottain notes, "Throughout the late 18th and 19th centuries, Congress passed laws to give the president additional leeway during military, economic, and labor crises" [36].

As a result, by 2020, the President of the United State has the access to emergency powers contained in 136 statutory provisions [25], which have been recently calculated by the Brennan Center for Justice at the Law School of New York University. Various historical examples of the state response and the reaction of the head of the executive branch to critical, emergency circumstances within the country demonstrate the variability of ways and means of overcoming them. Scientific research in this area under the current conditions of the economic crisis and the declared COVID-19 pandemic has not only theoretical but also practical significance.

Methods and materials. The basis of the research is general scientific and private scientific methods. As for the research of the Institute of Emergency Powers of the President in the United States structural analysis and synthesis methods have been used to determine the structures and essences of the President's constitutional and non-constitutional powers. Within the framework of

the research, an attempt has been made to form a comprehensive view of the possibilities for applying the President's emergency powers under the current conditions of the COVID-19 pandemic, and the usage of the legal modeling method. The study is also based on an analysis of regulatory acts of the President of the United States, laws of Congress and court decisions examined using comparative legal and formal legal methods. The historical and legal method, in turn, has made it possible to assess the genesis of the institution of emergency powers in historical retrospective.

The sources of the study were normative acts and court decisions adopted during the presidency of A. Lincoln, F. Roosevelt and G. Bush, D. Trump, appeals to the nation, and publication in the mass media of the relevant periods. The data from the Brennan Center for Justice at the Law School of New York University [26], the electronic archives of the US Government and the Supreme Court have also been used. As for scientific literature, the author has studied the works of American, Italian and British researchers: D. Ticnora, E. Gothen, E. Rostow, T. Crownin, D. Goldsmith, B. Kleinerman, D. Farber, L. Coinin, G. Tessuto, S. Horton, P. Harris and others.

Analysis. It should be noted that there is no any legal definition of the concept of emergency powers of the President in the US legislature so far. In the 1952 Youngstown judgment in which the US Supreme Court blocked President Truman's attempt to seize the country's steel mills, Judge Jackson noted that the court "declare the existence of inherent powers ex necessitate to meet an emergency", however, these broad emergency powers were something that the ancestors missed [63] from the Constitution. Indeed, the US Constitution itself only states that the President's emergency powers "He shall... recommend to Congress Consideration such Measures as he shall judge necessary and expedient… and he may, on extraordinary Occasions, convene both Houses, or either of them" [13].

Moreover, the occurrence of "emergency circumstances" in relation to the President's powers only serves as an excuse for the Senate to consider the measures proposed by the President, however, within the meaning of the Constitution, it is not the basis for taking on special powers.

Let us turn to the theoretical aspects of understanding the emergency power used by the Founding Fathers. The American political theory of emergency management was formulated under the influence of the ideas of the English political philosopher John Locke, whose thought influenced the authors of the Constitution. Locke argued that the threat of a national crisis – unforeseen, sudden, and potentially catastrophic – required the creation of broad executive emergency powers that should be exercised by the head of executive branch in situations when the legislative branch did not provide any means or procedure for protecting the state.

Emergency power is mentioned in chapter 14 of its Second Civil Management Treatise, in which Locke speaks of emergency powers as a "prerogative" that should be left to the discretion of who owns the executive branch, as the legislative body is usually too numerous and, as a result, too slow, and also because it is impossible to provide for all emergency situations and the corresponding needs of society in the legislation. Thus, the executive branch remains free to act on many issues that are not regulated by laws [62].

The extent to which the Founding Fathers adhered to this view of the role of the executive branch in emergency situations remains a highly controversial issue. Whatever their understanding of this role was, historical experience has shown that its development in practice was largely based on how individual Presidents viewed their position and its functions.

For example, F. Roosevelt during the period of his presidency significantly expanded the concept of "emergency situations", when it would be possible for the executive branch to use its broad powers. Beginning with F. Roosevelt, the widespread use of delegated authority in times of crisis significantly expanded the meaning of the concept of "emergency" – this term was used to get the approval of the public and Congress, often without any relation to real threats. As a result, F. Roosevelt and his successor Harry S. Truman referred to a formal state of emergency to justify the broad powers delegated to them.

A similar approach to use the "limited emergency" was taken by D. Trump when a state of emergency in order to finance the construction of a wall on the border with Mexico was introduced. The majority of researchers and

congressmen also did not find these circumstances sufficiently "extreme". It was noted that "A failure to secure money is just not just the same as a natural disaster or terrorism event" [61].

Thus, the use of emergency powers by F. Roosevelt during the economic crisis, by Harry S. Truman during the Korean War, although Congress never officially declared it a "war", and by D. Trump during the construction of the wall on the southern border with Mexico have blurred the idea of what constitutes "emergency" and circumstances that are critical enough to delegate emergency powers to the President.

National Emergencies Act of 1976, which calls the emergency measures previously taken by the Presidents as the authority granted by law to the President, introduced some clarity in determining the procedure for applying emergency powers and their scope "as a result of the existence of any declaration of national emergency" [44].

Moreover, the law states that "the words" any national emergency in effect "means a general declaration of emergency made by the President", and still does not explain the meaning and limits of "emergency".

In the Report of the Special Committee on the Cessation of the State of Emergency in the Country of 1973, which heralded the adoption of the National Emergencies Act of 1976, the President's emergency powers are understood through the prism of their relationship with the constitutional prerogatives of Congress and significance for American society: "These hundreds of statutes delegate to the President extraordinary powers, ordinarily exercised by the Congress, which affect the lives of American citizens in a host of all-encompassing manners" [54].

Thus, in a broad sense, the emergency powers of the US President should mean the powers directly granted to the President of the United States by the Constitution, Acts of Congress, as well as the implied powers that must be exercised by the head of the executive branch to deal with an emergency situation.

The doctrine of A. Lincoln's implied authority. Throughout the first half of the 19th century, preceding the Civil War, in many cases Congress had superiority over the President in the issue of the distribution of powers, although not without exception [7, p. 11]. S.G. Parechina emphasized, "for almost the entire century, the presidency has remained as a subordinate branch of the government of the National Administration" [9, p. 80]. The period of the Civil War became a vivid example of the unprecedented growth in the importance of the executive branch, the strengthening of its political role and expansion of powers by cutting back on the prerogatives of Congress, and a certain "transformation of the form of state" took place [8, p. 26]. The precedent was created by A. Lincoln, the 16th president of the United States, and as many researchers note, he was the first President who began to use his emergency powers actively in times of martial law [1; 5; 11].

The usage of extra-constitutional authority by A. Lincoln is evidenced by numerous regulations adopted by the head of the executive branch in the period from 1861 to 1865. In conditions of active military operations, the President of the United States convened an army, declared a sea blockade, lifted the Habeas Corpus Act [20], and abolished slavery in the rebellious states without the sanction of Congress.

After the shelling of Fort Sumter on April 12, 1861, the day is considered as the day when the Civil War began, A. Lincoln declared the southern states to be in a state of rebellion. In one of the first proclamations of the war period, "Proclamation 80 – Calling Forth the Militia and Convening an Extra Session of Congress" of April 15, 1861, the head of state announced the extraordinary convocation of Congress and the creation of a volunteer army. According to this act, the President called for joining the armed forces in order to wage war on the South. "The militia of the several States of the Union to the aggregate number of 75,000 in order to suppress said combinations and to cause the laws to be duly executed" [17].

The proclamation also indicated the need to convene an extraordinary session of parliament on July 4, 1861 in order to determine the set of measures necessary to ensure state security and public interests [17], which, unlike the convocation of the militia, was on the list of his constitutional powers discussed above (Section 3, Article 2 of the US Constitution).

In a new proclamation, "Proclamation 83 – Increasing the Size of the Army and Navy", dated May 3, 1861, the President announced a significant increase in the strength of the army

and navy. The document proclaimed that 42 thousand volunteers were called up for military service in the Union army for three years, and the number of regular troops was increased by the same amount [19].

It should be emphasized that according to the US Constitution (Section 8, Article I) only Congress has the exclusive right "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions" [13, p. 39]. A. Lincoln's new plan to increase the size of the army was not agreed and authorized by parliament. At the same time, it should be noted that the proclamation text nevertheless provided for the approval of this decision with Congress, but later: "The call for volunteers hereby made and the direction for the increase of the Regular Army... will be submitted to Congress as soon as assembled" [19].

As a result, on July 17, 1862, the US Congress passed the Militia Act, and on March 3, 1863, the Enrollment Act [22], which fixed the previous decisions of the President in due process.

Guided by the same goals "to the protection of the public peace and the lives and property of quiet and orderly citizens" [18] in the proclamation "Proclamation 81 – Declaring a Blockade of Ports in Rebellious States" of April 19, 1861, the President without the authorization of Parliament announced a sea blockade of the southern ports of the Confederation. The proclamation stated that "For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid" [18].

It seems obvious that from the first days of the Civil War there was a redistribution of powers between the executive and legislative branches of government, namely, an imbalance in the system of costs and balances in favor of the President's broad emergency powers.

The normative act that caused the most discussion about its legitimacy, both among contemporaries and among historians, was the decree on the suspension of the Habeas Corpus Act [37] – "Executive Order" of April 25, 1861. The decree gave permission to military commander A. Scott to use weapons in the case of arming the inhabitants of the state of Maryland and their appearance on the side of the Confederation, if necessary, use weapons, "in the extremest necessity, the suspension of the writ of habeas corpus" [15]. As V.V. Sogrin notes, "On April 25, the choice between law and expediency was made in favor of the latter" [12, p. 184].

The president suspended his action along the route from Philadelphia to Washington by a proclamation of April 27, 1861. The military was prescribed: "...If at any point on or in the vicinity of any military, line which is now or which shall be used between the city of Philadelphia and the city of Washington you find resistance which renders it necessary to suspend the writ of habeas corpus for the public safety, you ...are authorized to suspend that writ" [16].

On the territory of the whole country, the action of the Habeas Corpus was suspended by the proclamation "Proclamation 94 - Suspending the Writ of Habeas Corpus" declared by A. Lincoln on September 24, 1862.

It must be emphasized that, similar to the previously considered presidential proclamations, the decision to suspend the Habeas Corpus according to Section 9 Article I of the Constitution [13, p. 34] was the exclusive prerogative of the US Congress, and not the President. Following the need for legislative consolidation of the President's decisions, the parliament nevertheless adopted the corresponding law [22] on a national scale, but only six months later at the March session in 1863.

Further evidence of the use of "implied powers" in emergency situations was the presidential act to abolish slavery in rebellious states – the Proclamation 95 – Regarding the Status of Slaves in States Engaged in Rebellion Against the United States [21] of January 1, 1863. Decisions to ban slavery and proclaim the new status of slaves in the southern states were also taken bypassing Congress on the basis of the act of the executive branch, not law. A. Lincoln himself in the text of the proclamation justified the need and availability of authority to accept it "necessary war measure for suppressing", and also "by virtue of the power in me vested as Commander in Chief of the Army and Navy of the United States in time of actual armed rebellion against the authority and Government of the United States" [21].

Only after the end of the war in 1865, this act of the executive branch which had been adopted in an emergency, and actually lost its legal force in peacetime, was legally enacted by the Thirteenth Amendment to the US Constitution [13, p. 43].

It should be noted that in almost all cases the use of extra-constitutional powers by the President, the US Supreme Court took his side and supported these actions in the court decisions. An example is the decision of the Supreme Court in the Milligan case of 1866, which ruled that the suspension of the Habeas Corpus Act by A. Lincoln in an emergency was legal [35]. At the same time, the court emphasized that the President could not use a war or a state of emergency as an excuse to ignore the established procedure for legal proceedings and "a citizen not connected with the military service and a resident in a State where the courts are open and in the proper exercise or their jurisdiction cannot, even when the privilege of the writ of habeas corpus is suspended, be tried, convicted, or sentenced otherwise than by the ordinary courts of law" [32].

Also the provision regarding the functioning of a jury in emergency situations is of special interest: "The guaranty of trial by jury contained in the Constitution was intended for a state of war, as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances" [32]. This provision once again testifies to the presence of the axiom of the need to maintain liberal democratic values, even in a state of emergency, in the political thought of the United States.

After analyzing the acts of A. Lincoln concerning the use of emergency powers, it should be noted that the President's decisions adopted during the Civil War obviously went beyond the limits of his constitutional powers, most of which was the prerogative of Congress. On this issue, the American researcher L. Cooney noted that the Commander-in-Chief of the United States Army and Navy and the police of certain states became the legislator of the nation for twelve critical weeks. Normal joint legislative enforcement procedures were suspended, and America gained its first experience of dictatorship [43, p. 176]. It is difficult to disagree with this statement, since "indeed, in an emergency, A. Lincoln, by his actions, expanded the powers of the President, implemented essentially a new concept of the executive branch in a state of emergency, and in fact he created a kind of constitutional dictatorship with the support of Congress" [7, p. 14].

However, it should be recognized that neither Congress nor the Supreme Court during the war and subsequently made decisive attempts to declare the acts of the President unconstitutional. Partly the support of the legislative and judicial branches of government was due to the adequacy of the measures taken by the President, their proportionality with the current military situation and the lack of attempts to usurp power by the current head of state under the pretext of emergency measures.

Speaking about upholding the legality of his decisions, A. Lincoln himself insisted that the federal government was obliged to resist the secession of the southerners, since it violated the US Constitution, and the powers of the President as the head of the executive branch to restrict the rights of individuals were used for the sole purpose of preserving the Union

Toward the end of the war, such an expansion of A. Lincoln's presidential powers was formulated by himself in the form of a "prerogative theory". According to it, the President has the right "for the good of the nation" and to solve extraordinary problems facing the state, to take on unconstitutional powers. Thus, emphasizing that the institution of the presidency must be flexible and become what the time and the situation require.

Emergency Powers of F. Roosevelt. At a time when Abraham Lincoln was creating a modern concept of presidential authority, authorizing decisive measures of the President in legislature and foreign policy under exceptional conditions, another American president, Franklin Delano Roosevelt, finally institutionalized it during his term as head of the executive branch.

In response to the economic crisis and the Great Depression, F. Roosevelt radically revised the distribution of powers between the three branches of government, placing the institution of the presidency at the center of the political system and crisis management system of the American state.

Unlike A. Lincoln, F. Roosevelt demanded almost complete submission from other branches of government in relation to decisions related to ensuring national security. In turn, Congress and the Supreme Court, as D. Tichenor notes, "mostly obliged with this domineering commander-in-chief regardless of the civil liberties implications" [58, p. 770].

During the presidency of F. Roosevelt (1933–1945), the jurisdiction of the executive

branch was significantly expanded due to the destructive challenge to the economic system and the threat to national security posed by Hitler and the Japanese attack on Pearl Harbor. As D. Madison correctly noted, "war is the mother of the exaltation of the executive branch" [38, p. 400]. Due to the fact that "victory could be won only by means that were difficult to find in the democratic arsenal" [3, p. 129] during the Second World War, the American presidency became an extremely powerful institution. The economic crisis of the Great Depression and the outbreak of war required unprecedented and sustainable national political leadership and vigorous government action. At the same time, as T. Crownin emphasizes, "Plainly, however Roosevelt's spirited enthusiasm, his understanding of the office and its promise, and his skilled use of the presidency as both a moral and political pulpit contributed to the evolution of the modern presidency" [29, p. 277].

Cases of German saboteurs and Japanese internment give a clear idea of the nature and content of the implied powers of F. Roosevelt during the Second World War.

At the beginning of the war, in his radio address to the nation on December 29, 1940, F. Roosevelt emphasized that "never before since Jamestown and Plymouth Rock has our American civilization been in such danger as now" [59, p. 598]. The threats of fascist Germany about world domination could not worry the American government. In the ranks of the Third Reich Army, saboteurs who were capable to commit subversive activities in the United States were actively trained. As a result of the emergence of a real threat of sabotage on American soil by Nazi Germany on May 27, 1941, F. Roosevelt declared a state of emergency.

A year later, the President took advantage of his implied powers with respect to the trial of German saboteurs.

On July 2, 1942, F. Roosevelt, as President and Commander-in-Chief of the Ground Forces and Navy, signed the Proclamation on the establishment of a military commission, authorizing it to conduct war crimes trials, and approved the rules of procedure for the trial and review of the verdict of the military commission.

In the Proclamation of July 2, 1942 № 2561, the President declared: "I, Franklin D. Roosevelt,... by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States... and who during time of war enter or attempt to enter the United States... and are charged with committing or attempting or preparing to commit sabotage, espionage... shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding... in the courts of the United States" [48].

The U.S. Supreme Court in the judgment in the case of Quirin v. Cox of July 31, 1942 supported the use of emergency powers by Roosevelt in the trial of intelligence officers, saboteurs and other persons directed by hostile Nazi Germany. In fact, this confirmed the legitimacy of the actions of the President and initiated some review of judicial practice. In a similar case during the Civil War (Milligan case of 1866 [32], examined by us above), the court did not support the decision of A. Lincoln to conduct a trial of traitors by a military court. However, in the case of German saboteurs, the Supreme Court sided with F. Roosevelt, adding a new prerogative to the US President's emergency powers.

In essence, it was established that, "In time of war between the United States and Germany, petitioners, wearing German military uniforms and carrying explosives... were landed from German submarines in the hours of darkness, at places on the Eastern seaboard of the United States... All had received instructions in Germany from an officer of the German High Command to destroy war industries and war facilities in the United States, for which they or their relatives in Germany were to receive salary payments from the German Government" [33].

Based on the analysis of the acts committed by saboteurs, the Supreme Court qualified them as a "crime against the laws of war", and the President, as the Supreme Commander-in-Chief, quite legitimately based on Proclamation № 2561, submitted cases to the military commission. At the same time, the court noted that the plaintiffs could not invoke the decision of the Supreme Court in the Milligan case [32] of 1866, despite the fact that at the time of their arrest the civil courts were open and were functioning normally

and that the military commission was legally established by F. Roosevelt. It was said that " 'military commission' appointed by military command as an appropriate tribunal for the trial and punishment of offenses against the law of war" [33].

Judge Biddle, speaking on behalf of the President, argued that the Milligan doctrine, which established a common right to a civil process if civil courts continued to function, became "absurd" because "the war today is so quick, so sudden". He also justified the President's decision to create a military commission from the perspective of the executive branch: "I have always argued that the President has special powers as the Supreme Commander. ...I affirm that the Supreme Commander, acting in the circumstances of the war and reflecting the invasion, is not bound by statutes" [33].

Thus, the decision of F. Roosevelt to transfer all cases of sabotage by German agents to the military commissions was fully supported by the Supreme Court, which established the legitimacy of Proclamation № 2561. On August 3, 1942, two days after the trial, all eight saboteurs were found guilty and sentenced to death.

An illustrative example of the use of F. Roosevelt's emergency powers during the Second World War was also the Japanese internment of 1942.

Tension between the white-skinned population of the western coast of the USA existed even before the outbreak of World War II, however, according to D. Tichnor, "Envy over economic success, combined with a distrust over cultural separateness and long-standing anti-Asian racism, turned into disaster for Japanese Americans when the Empire of Japan attacked Pearl Harbor on December 7, 1941" [58, p. 769].

Western lobbyists, many of whom represented competing economic interests, pressured Congress and the President to deport people of Japanese descent from the west coast. The FBI Director J. Edgar Hoover, having studied intelligence, reported to F. Roosevelt in a confidential note: "The necessity for mass evacuation is based primarily upon publicand political pressure rather than on factual data" [55, p. 383].

F. Roosevelt also received reports from General Ralph Van Deman, the head of military intelligence during the First World War, that he "after studying available information, he concluded that evacuation and internment of Japanese Americans was not only unnecessary but about the craziest proposition that I have heard of yet" [55, p. 324].

During the hearings in the Congress Committee on this issue, representatives of the Ministry of Justice presented their objections to the proposal for Japanese internment based on constitutional and ethical standards, but mass nervousness and media reports influenced public sentiment and put pressure on the President, as well as the US Army representatives.

The introduction of curfews and the relocation of people of Japanese descent was supported by Lieutenant General D.L. Devitt, who believed that "most Japanese immigrants and Japanese-American citizens on the Pacific Coast had divided loyalties and in many cases activdy aided the enemy" [58, p. 780]. Secretary of Defense G. Stimson and army officials also shared his position.

In the end, F. Roosevelt supported their proposal by signing Executive Decree № 9066 on February 19, 1942, allowing people of Japanese descent to be relocated to special military zones. The decree provided for the purpose of "successful warfare" and "all kinds of protection against espionage and sabotage" to create "to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine" [57]. From the military districts defined by the command, it was possible to remove and evict "any or all persons", whom "the Secretary of War or the appropriate Military Commander may impose in his discretion", or to establish the conditions under which persons could enter such regions, to remain in them or leave them. Moreover, "Secretary of War is hereby authorized to provide for residents of any such area who are excluded there from, such transportation, food, shelter and other accommodations as may be necessary" [57].

In practice, this decree meant the creation of military zones on the West Coast, from those territory people of Japanese descent were to leave and move to specially created resettlement camps controlled by the US military command. As a result of signing of this decree, according to the estimates of D. Tichnor, approximately "120,000 men, women and children of Japanese ancestry – more

than two-thirds of whom were birthright citizens – were interned under armed guard in 'relocation camps' from Wyoming to Arkansas" [58, p. 769].

It is noteworthy that the restrictions applied only to Japanese citizens and citizens of Japanese descent who were ordered to come to checkpoints and then move to camps run by the recently organized military resettlement department, which was subordinate to the Ministry of the Interior. These measures were not applied to citizens of German and Italian descent. F. Roosevelt quickly rejected the idea of their internment as harmful to national unity and morale.

The legislative branch represented by the US Congress, despite internal disagreements, sided with the President on this issue. The US Congress supported and legitimized the decree of F. Roosevelt, signed by him in the framework of his emergency powers, on March 21, 1942, and Congress passed public law № 503, which provided "a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones". At the same time, a rather high measure of responsibility was established for violation of the regime of stay in military zones – "a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both, for each offense" [24].

The U.S. Supreme Court also provided unconditional support to the executive branch in resolving the legality of the evacuation of people of Japanese descent and reflected its position in the decision in the Korematsu v. USA case of December 18, 1944. The decision in the case established that an American citizen of Japanese descent Korematsu was convicted in accordance with the Law of March 21, 1942 "for remaining in San Leandro, California, a 'Military Area' contrary to Civilian Exclusion Order No. 34 of the Commanding General of the Western Command, U.S. Army, which directed that, after May 9, 1942, all persons of Japanese ancestry should be excluded from that area" [40].

The opinion of the court seems to be controversial. On the one hand, "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect" regarding their legitimacy and "courts must subject them to the most rigid scrutiny". On the other hand, "that is not to say that all such restrictions are unconstitutional», because "public necessity may sometimes justify the existence of such restrictions" [40].

This conclusion of the Supreme Court confirms the thesis that there was public pressure and biased judgments regarding the danger of people of Japanese descent, but not confirmed by actual documentary sources.

With unconditional support from the legislative and judicial branches of government, F. Roosevelt was able to exercise emergency powers not provided for by the US Constitution or special statutes. Moreover, the measures taken were dictated, often not by the presence of a real threat to public and national security, but by the desire to mitigate public unrest, panic and satisfy the interests of large entrepreneurs and the military leadership. The level of restriction of the rights and freedoms of US citizens significantly exceeded the limit established by A. Lincoln during the Civil War, and indicated the approval of such measures by other branches of government, an unprecedented strengthening of the role of the executive branch in the middle of the 20th century. It is difficult to judge the validity, and, most importantly, the effectiveness of Japanese internment and the creation of military commissions, since the President's goals regarding public peace were achieved, but the question if the means were comparable to the real threat remains debatable.

According to a contemporary of the events under consideration, I. Rostow "war-time treatment of Japanese aliens and citizens of Japanese descent on the West Coast has been hasty, unnecessary and mistaken", the regulation "converts a piece of war-time folly into political doctrine, and a permanent part of the law", which created "precedent which may well be used to encourage attacks on the civil rights of citizens and aliens" [52, p. 489]. In part, this assumption was confirmed when D. Bush exercised his emergency powers in relation to foreign citizens after the September 11, 2001 attacks.

Critics of the concept of using the presidential power of F. Roosevelt saw in his actions the beginning of the "imperial presidency", and the "unhealthy concept of presidential power" [29, p. 277].

It should be noted that assessments of the actions of F. Roosevelt vary depending on the

political positions of the authors and the period of the research. From a conservative point of view, F. Roosevelt can be considered as a dictator who limited rights and freedoms. As Herbert Hoover, the head of the FBI, wrote, "The effort to crossbreed some features of Fascism and Socialism with our American free system speedily developed in the Roosevelt administration» [29, p. 277].

Supporters of F. Roosevelt note that the period of his presidency should be assessed in the context of the necessary and possible in difficult and extraordinary conditions of the war. Difficult times required bold, experimental, and sometimes bold leadership. The development of the institution of the presidency in the hands of F. Roosevelt reflected the development of events in Western society, both in the private and public sectors. Noting the validity of both points of view, one has to agree with the fact that the doctrine of emergency powers and the expansion of executive powers during the war with Germany and Japan laid the foundation for the creation of a military-industrial state in the United States.

In particular, it is worth noting the Report of the Special Committee on the Termination of the State of Emergency in the Country, also known as Senate Report 93-549 of 1973, which heralded the adoption of the National Emergencies Act of 1976. The report noted that prior to Franklin Roosevelt, Presidents responded to emergencies through existing legal authority or through the adoption of emergency legislation. F. Roosevelt took a more decisive approach, believing that "it was not only [the President's] right but his duty to do any thing that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of departments. I did not usurp power but I did greatly broaden the use of executive power" [54]. Responding to the Great Depression and World War II, F. Roosevelt used the state of emergency to demonstrate his intention to expand the powers of the executive branch, and he succeeded with the support of Congress and the Supreme Court of the United States.

It should be noted that, undoubtedly, the use of emergency powers by the Presidents of the USA during all crisis periods of history provided flexibility and speed of response, however, it should be recognized that they were not always used for their intended purpose. In particular, a certain excess of the limits of application of emergency powers took place at the beginning of the 21st century during the presidency of G. Bush.

Emergency Presidential Powers of George W. Bush. As a result of the attacks of September 11, 2001 in New York, the US leadership was faced with a new national threat, and emergency measures were required to protect society and the state, as well as to restructure domestic and international politics. In this situation, the executive branch represented by the President, as in the cases considered earlier, insisted on its dominant role and the constitutional principle of the separation of powers against the existing threat.

It is significant that in his official address to the nation on September 11, George W. Bush pointed out that "Terrorist attacks can shake the foundations of our biggest buildings, but they cannot touch the foundation of America… America was targeted for attack because we're the brightest beacon for freedom and opportunity in the world" [23, p. 1291]. Moreover, the very beacon of freedom over the next few years often demonstrated excessive measures to protect the nation, significant restrictions on the rights and freedoms of citizens. Most of the measures taken to protect the state from terrorism were taken within the framework of the institution of emergency powers of the President under consideration.

On September 14, 2001, President George W. Bush signed a state of emergency Proclamation "Declaration of National Emergency by Reason of Certain Terrorist Attacks". According to the Proclamation, the state of emergency in the country "exists by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States" [49, p. 1291].

At the same time, using his emergency powers, on September 14, 2001, the President signed Decree № 13223 "Ordering the Ready Reserve of the Armed Forces to Active Duty" [46], giving the right to "recall any regular officer or enlisted member on the retired list to active duty and to detain any enlisted member beyond the term of his or her enlistment " [46].

It was pointed out that it was necessary to increase (taking into account restrictions established by law) "the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense" [46].

Some researchers [31; 58] noted that G. Bush later used the state of emergency to call several thousand reservists and members of the National Guard for military service for the Iraq war, but the war was not related to the September 11 attacks. Moreover, "the classical effect of the unity of citizens around the president during the war acted in his favor" [10, p. 3].

Congress initially supported the emergency actions of the President by adopting a joint Resolution of September 14, 2001, referred to as "Permission to Use Military Force". This Resolution received the legal status on September 18, 2001 and authorized the use of the United States Armed Forces against those who were responsible for the attacks on September 11. This act provided the President with the opportunity to apply "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks" [41].

Thus, George W. Bush, as the supreme commander in chief and head of the executive branch, was given broad military powers by the US Congress, which had a significant impact on the scope and capabilities to carry out emergency military operations by subsequent US Presidents. In particular, according to the Report of the Congressional Research Service [45], published on May 11, 2016, when adopting executive acts, the President referred to the law discussed above 37 times in connection with military operations in 14 countries with the aim of using the Armed Forces outside the United States and organizing military tribunals (Executive Decree № 13425), to authorize "special" methods of interrogation suspects in terrorism (Executive Decree № 13440) and other measures. Among the designated countries Afghanistan, Georgia, Iraq, Libya, Somalia, Syria and others are mentioned. Moreover, "18 cases of using the" Permission to Use Military Force "occurred during the presidency of George W. Bush, and 19 – during the presidency of B. Obama" [45]. Updated in 2018, the report documented 2 additional cases of using the powers provided for by the law by the B. Obama administration and 2 by the D. Trump administration [45].

At the same time, the Supreme Court on several occasions declared the use of the "Permission to Use Military Force" by the President unreasonable and illegal. In the decision in the Hamdan v. Rumsfeld case, the US Supreme Court found that during a military operation in Afghanistan in 2001, a Yemeni citizen was detained for conspiracy with al-Qaeda and transferred to Guantanamo Prison, where a year later his case was referred to a military tribunal, and later a bill of indictment was imposed. Hamdan argued that the military tribunal did not have the power to convict, since a conspiracy was not a war crime.

In this proceeding, the Supreme Court ruled that the military tribunals in Guantanamo Bay "lacks the power to proceed because its structure and procedures violate both the UCMJ and the four Geneva Conventions signed in 1949" [42]. Representatives of the administration of George W. Bush, in contrast to the plaintiffs, referred to the doctrine of emergency powers that had been formulated in the earlier decision in the case of Quirin v. Cox during the presidency of F. Roosevelt, who recognized the application of the military tribunal to German saboteurs as legal. However, the court in its decision noted that "Congress had, through Article of War, sanctioned the use of military commissions to try offenders or offenses against the law of war" and "contrary to the Government's assertion, even Quirin did not view that authorization as a sweeping mandate for the President to invoke military commissions whenever he deems them necessary" [42].

The following decree № 13224 "Blocking Property and Prohibiting Transactions" [34, p. 1358] of September 23, 2001 prohibited any transactions not only with suspected foreign terrorists, but also with any foreigners or any US citizens who were suspected of supporting terrorism. This decision was made "because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists" [34, p. 1358].

According to Bush's Emergency Decree, sanctioned individuals were "foreign persons to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the

security of U.S. nationals or the national security, foreign policy, or economy of the United States; to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism" [34, p. 1359].

Once a person was recognized as such in accordance with the Decree, not a single American had the right to hire him, provide an apartment for rent, provide medical services or even sell bread, unless the Government granted the relevant permission to complete the transaction.

The specified list of persons seems to be quite objective and proportionate to the alleged threat. However, it should be noted that the practical implementation of the President's Emergency Decree in the future allowed researchers to talk about gross violations of human rights in some cases. In this context, we fully see the practical application of the precedent of the use of emergency powers in relation to foreign persons. This precedent appeared during the internment period of people of Japanese origin by F. Roosevelt.

It is noteworthy in this aspect, the court decision in the case of D. Padilla. The court decision concerning the trial in the case of D. Padilla indicated the process to define "the balance between national security and the rights of American citizens" [56, p. 4], which is of particular research interest in terms of the boundaries of the President's emergency powers, that are sufficient to eliminate the threat, but not destroy the liberal foundations of the state.

The decision cites the plight of D. Padilla [56, p. 5], an American citizen who was arrested at O'Hare Airport and charged of conspiracy to create and operate a bomb. However, the court found that the Bush administration lacked evidence to support its allegations. Lawyers were not allowed to visit the accused and D. Padilla was detained in prison without charge or investigation for two years.

As it was noted in the decision of the Supreme Court, "some argue the Bush administration was justified in arresting a U.S. citizen and holding him for two years without due process because, after all, he was in league with terrorists. The logical fallacy here is known as begging the question you assume the conclusion in the proposition. How can the administration know Jose Padilla was a terrorist intent on mass killings through use of a 'dirty' bomb without due process? And if this can be proven, why doesn't the government initiate a trial?" [56, p. 7].

Drawing a historical parallel, the Supreme Court explained that it is impossible: "It's hard to see how the Supreme Court could side with the administration in the Padilla case, even if a few other presidents, most notably Abraham Lincoln during the Civil War, have gotten away with the suspension of due process" [56, p. 5]. The Supreme Court and the public saw the obvious problem in the case of D. Padilla. If the President and his administration, within the framework of the exercising emergency powers, could authorize the arrest of D. Padilla as long as it was necessary, without an indictment or trial, then "why can't it do the same thing with any of us?" [56, p. 9].

Another controversial case when US President George W. Bush used his emergency powers was the permission to open a prison in Guantanamo Bay. Using the "prerogative of the executive branch to protect the country from terrorists, the head of the administration also ordered the prisoners to be given a special status - 'enemy combatants'" [2, p. 153] and actually authorized the torture of prisoners by Executive Decree № 13440 on the application of the Geneva Conventions to detention and Executive Decree № 13567 on Guantanamo.

According to the official report (currently declassified) of the CIA Detention and Interrogation Program of the CIA under the US Senate (hereinafter referred to as the Report) issued on December 13, 2012, "the full Committee Study, which totals more than 6,700 pages, remains classified but is now an official Senate report", which was presented to the public and to the President. The Report was presented to the public and to the President "in the hopes that it will prevent future coercive interrogation practices" [28].

According to the conclusions made in the official Report, intelligence officers, with the sanction of the President and the government, used torture on prisoners who were suspected of involvement in terrorist organizations: "The CIA placed detainees in ice water 'baths', ...led several detainees to believe they would never be allowed to leave CIA custody alive". It was also proved that "one interrogator told another detainee that

he would never go to court, because "we can never let the world know what I have done to you" [28]. It was pointed out that the use of their "improved methods" of interrogation by the intelligence department as a result did not become an effective means of obtaining information from detainees, and the justification for their use was based on inaccurate data on effectiveness. The US Senate Intelligence Committee Chairperson, Diana Feinstein, became a supporter of emergency measures by President George W. Bush. She, in her opening remarks to this Report, justified the adoption of such emergency measures by the President in the context of events in which decisions were made. She noted that "it is easy to forget the context in which the program began, ...It is worth remembering the pervasive fear in late 2001 and how immediate the threat felt... I can understand the CIA's impulse to consider the use of every possible tool to gather intelligence... and which was encouraged by political leaders and the public to do whatever it could to prevent another attack" [28].

Speaking generally about the use of his emergency powers by President George W. Bush in the framework of the declared state of emergency, it should be noted that lawyers and representatives of the presidential administration during this period put forward their own theory of presidential power, which has been supported for a decade.

According to K. Edelson [31, p. 376], emergency powers, implemented by the Bush administration, actually justified the uncontrolled presidential powers to use the armed forces, detain and interrogate prisoners, extraordinary extradition and intelligence gathering. And since the Constitution calls the President the head of the executive branch, he could repeal any laws restricting his powers in the field of national security.

Thus, the September 11, 2001 attacks and the subsequent use of emergency presidential powers by George W. Bush once again demonstrated an example of the "implementation of the concept of "integrity of the executive branch", which, broadly interpreting Article II of the US Constitution, gives the President the inalienable right to act independently" [4, p. 97]. At the same time, the adopted Law on "Permission to Use Military Force", which was the result of the redistribution of the prerogatives of the use of the Armed Forces under the threat of terrorism, was another act that supplemented the doctrine of emergency powers of the President. The law significantly expanded their scope compared to the predecessors and opened a window of opportunity to use the Armed Forces by the subsequent Presidents – B. Obama and D. Trump, and as the study has showed, they used repeatedly during the period of their presidency.

Emergency actions of D. Trump. Another controversial example of the use of emergency powers can be considered the actions of the current US President D. Trump in the construction of the wall on the US-Mexican border. On February 15, 2019, D. Trump signed Proclamation № 9844, declaring a state of emergency and implying the possibility of attracting billions of dollars from the budget for the construction of the border wall, which "involves the re-equipment of 376 km of the wall and the construction of about 160 km of a new fence" [14]. The Proclamation was signed after the US Congress refused to redirect $ 8 bln in its new draft budget but D. Trump insisted on it.

The Proclamation stated that "the current situation at the southern border presents a border security and humanitarian crisis that threatens core national security interests and constitutes a national emergency" [50] and based on data on an increase in the number of immigrants and difficulties in their deportation the President "declares that a national emergency exists at the southern border of the United States" [50].

The Proclamation signed by D. Trump is unprecedented in the sense that none of the emergency situations officially announced by the US Presidents since 1976 was intended to circumvent Congress in order to gain the opportunity to spend money that Congress had expressly refused to allocate. In this regard, the Speaker of the House of Representatives N. Pelosi and Senator C. Schumer in a joint official statement noted that "Declaring a national emergency would be a lawless act, a gross abuse of the power of the presidency" [47]. Senator B. Schatz also considered that "A failure to secure money is just not just the same as a natural disaster or terrorism event" [27].

In response to Congress, a joint resolution was passed on the same day to end the state of

emergency in the country: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that... the national emergency declared by the finding of the president on February 15, 2019, in Proclamation 9844 (84 Fed. Reg. 4949) is hereby terminated" [39]. However, on March 15, 2019, the president vetoed a joint resolution of Congress, in the text of the appeal he referred to statistics and showed an increase in immigration from Mexico and Latin America, the organization of drug trafficking from these countries and an increasing crime rate among immigrants. He stressed that the adopted resolution "It is a dangerous resolution that would undermine United States sovereignty and threaten the lives and safety of countless Americans" [60]. The President vetoed it, and later Congress could not overcome without gaining the required 2/3 of the votes. Subsequently, in July 2019, the Supreme Court indirectly supported the President's actions in the trial of the Sierra Club v. D. Trump [30], reversing the decision of the lower district court to block funds for the construction of the wall, and allowed money to be used pending further trial.

Regarding the historical significance and interconnectedness of the measures taken by D. Trump, it is worth agreeing with the point of view of Congressman M. Rogers that such a declaration of a state of emergency in the country creates a dangerous precedent that undermines the constitutional principle of separation of powers. Bypassing Congress and Article I of the Constitution, President Trump has opened up the possibility for any future President of the United States to take such measures alone without Congress approval [51], thus further expanding the capacity of the institution of emergency powers.

On March 13, 2020, D. Trump signed a decree declaring a state of emergency in connection with the coronavirus pandemic. To what extent the current president will be able to follow the liberal traditions that were honored by his predecessors, history will show. However, several researchers [53] in the United States have already raised the issue that there is a threat to democratic values in the current situation.

Results. The study of a number of emergency situations that took place during the presidency of A. Lincoln, F. Roosevelt, George W. Bush and D. Trump testifies to the historical transformation of the concept of "emergency", the change in the scope of authority granted to the President in different historical periods and the controversial position of Congress and of the US Supreme Court regarding their legitimacy.

Summarizing the experience of using emergency powers by American Presidents, it should be noted that the considered emergency situations have become historical examples that show the sharp strengthening of the executive branch due to the redistribution of constitutional powers between the President and Congress. Since it is the executive branch, headed by the President, that has emergency capabilities, and the institutional features of the executive branch itself are favorable in an emergency situation, such the redistribution of powers in favor of the President seemed quite reasonable. Congress, as a body that does not have the legal capacity to implement emergency measures in practice, as a rule, went into the background in the historical examples that have been studied. Moreover, it should be noted that such a transformation was always temporary, and was caused only by a threat to national security that required the consolidation of administrative functions in the President's hands.

Despite the temporary nature of the redistribution of constitutional prerogatives, the emergency measures taken by the US Presidents have become precedents and a part of the doctrine of "implied" powers. As it was established in cases of emergency measures taken by A. Lincoln, F. Roosevelt and George W. Bush, such precedents had a long-term impact on the legal possibilities of using emergency measures by subsequent US Presidents, creating the so-called clause powers [6, p. 92]. A. Lincoln initiated the creation of a modern concept of presidential authority, authorizing the use of extra-constitutional powers by the President in the name and for the benefit of the nation, F. Roosevelt, in turn, formulated this concept by placing the institution of the presidency at the center of the political system and crisis management system of the American state. During the presidency of George W. Bush, the powers of the President expanded significantly beyond what the Constitution prescribes, especially in matters of national security. The presidency of D. Trump will also

leave an imprint on the doctrine of emergency powers, expanding the concept of "emergency" situations and providing subsequent US Presidents with a precedent for using emergency powers to circumvent Congress in the allocation of finances.

Comparing quantitative indicators of the volume of powers granted, it should be noted that the institution of the presidency since 1789, the period of the election of the first President of the United States, in fact has not included additional emergency powers, except those provided by the Constitution, namely, recommendations to Congress and the convening of an emergency session. A. Lincoln became the first head of the executive branch who initiated his actions during the Civil War (1861–1865) and created the prerogative theory, which implied the right to suspend the Habeas Corpus Act, to declare a draft in the army and to create military tribunals. At the same time, the exact number of statutes delegating emergency powers to the President of the United States was not calculated until 1933.

From 1933 to 1976, according to the report of the Senate Special Commission, it was established that Congress adopted or revised more than 470 statutes [54] that delegated powers to the President of the United States, which had previously been the prerogative of Congress. Such an extraordinary extension of emergency powers, including during the presidency of F. Roosevelt, which significantly expanded the executive power of the President, became the basis for the adoption of the National Emergencies Act of 1976, which regulates the procedure for declaring and lifting a state of emergency.

In the period between its adoption and the COVID-19 pandemic declared in 2020, the President was also given wide powers in a state of emergency, although with fewer acts. Between 1976 and 2020 136 statutory provisions were adopted [25], which relate to various fields; from military to criminal law, and 96 statutory provisions require only the signature of the President. At the same time, speaking about the number of emergency situations themselves, which have been declared since 1976, it should be noted that in just 44 years, 61 states of emergency were declared in the USA: George W. Bush declared 13, and President D. Trump has declared 5 so far.

Thus, the results of the study indicate an episodic increase in the volume of emergency powers granted to the President during various historical periods, but in general, characterized by their steady growth. The number of emergency provisions declared since the adoption of the Act of 1976 and the considered examples of their use in recent decades clearly indicate the expansion of the concept of "emergency" and "emergency situation".

It should be noted that over the past 200 years, Congress has provided the US Presidents with something that the Constitution did not provide: in fact, unlimited emergency powers, which, if misused, can cause an emergency, not its liquidation. What has hindered the massive abuse of this power so far is the effective functioning of the system of checks and balances, which, even in emergency situations, does not allow US Presidents to encroach excessively on civil rights and freedoms, as well as to attempt to usurp power. The Presidents' commitment to liberal values was also partly significant. The Institute of Emergency 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" [36].

Obviously, in many respects this success was due not only to the heads of state, but also to Congress and the US Supreme Court, that did not allow the adoption of laws and relevant judicial decisions that could violate the basic principles of a democratic society.

At the same time, Congress and the US Supreme Court showed a different attitude to the emergency measures taken by the President. Congress in some cases supported the emergency actions of the President, such as during the presidency of A. Lincoln and F. Roosevelt, at the same time, the actions of George W. Bush and D. Trump were assessed by Congress as erroneous and unconstitutional. The US Supreme Court also demonstrated various opportunistic positions regarding the President's emergency acts, in some cases condemned the excessive measures taken by the President (Milligan case, Padilla case), in others – supported the position of the head of the executive branch (Korematsu case, Sierra Club case). These circumstances, as well as the analysis of the use of emergency presidential powers, indicate the dependence of the position of the legislative and judicial branches

of government on the issue of supporting the President on the specific socio-political situation and the practical needs of the emergency period. The level of confidence in the sitting President and the degree of his commitment to liberal values in the eyes of Congress and the Supreme Court has significant importance.

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