

Trust the Process: How the National Emergency Act Threatens Marginalized Populations and the Constitution—And What to Do About It

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On February 15, 2019, President Donald Trump issued Proclamation 9844 pursuant to the National Emergencies Act of 19761 (NEA), declaring a “National Emergency Concerning the Southern Border of the United States.” On February 27, the House of Representatives voted 245-182 to overturn the declaration of national emergency; on March 14, the Senate agreed with the House in a 59-41 vote. The following day, the President vetoed the joint resolution. Neither house of Congress was able to override the veto and so, more than a year later, the emergency remains in place.

The border wall emergency declared by President Trump has awakened strident opposition in Congress, which is a historical anomaly. And yet, although virtually none of the previous declarations engendered the vehement outcry that accompanied the border wall emergency declaration, they were substantially different only in scope, not in kind. Including Trump’s border wall emergency declaration and four subsequent emergency declarations, Presidents going back to Jimmy Carter have declared a total of 57 emergencies under the NEA. Thirty-four of these are still active. And all but four of them could hardly be called emergencies. Even without the partisan political context of the border wall dispute, any of these should have been sufficient to raise the question of whether and how to rein in presidential power.

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