

Imperial or Imperilled Presidency

The president's powers to carry out an agenda may have increased, but what implications does that have for American democracy? Has the presidency grown too powerful? Are there enough checks and balances in our system to make sure that we can rein in an executive who goes too far?

The power of the presidency has grown at the expense of Congress. President Donald Trump's absconding of military funds and applying to them his wall without Congressional approval is the latest example. Since the 13th century in England, most democracies give the power of the purse to the legislative branch. In addition, Trump's claiming of Executive privilege for all of his staff demonstrates a level of immunity from the law that even Nixon never sought. Do we now have the "Imperial Presidency?" Historian Arthur Schlesinger coined the term "imperial presidency" in his book of the same title, writing that the Nixon administration represents the culmination of a gradual but stunning shift towards greater executive power. In a later epilogue, he summed up his point:

"The vital difference between the early republic and the imperial Presidency resides not in what Presidents did but in what Presidents believed they had the inherent right to do. Early Presidents, even while they circumvented the Constitution, had a cautious and vigilant concern for consent in a practical if not a formal sense. They had legislative majorities; they obtained broad delegations of authority; Congress approved their objectives and chose to let them take the lead; they acted in secret only when they had some assurance of support and sympathy if they were found out; and, even when they occasionally withheld essential information, they willingly shared much more than their twentieth-century successors ... In the late twentieth century Presidents made sweeping claims of inherent power, neglected the collection of consent, withheld information ad libitum and went to war against sovereign states. In so doing, they departed from the principles, if less the practice, of the early republic.

The founders meant the presidency to be a powerful yet limited office. But President Woodrow Wilson viewed the Constitution's separation of powers as a problem to be overcome by a powerful president, who would run the administrative state and inspire the people with his progressive oratory. And since the start of World War II, in the name of national security or political convenience, Congress has sidelined itself by delegating power after power to the executive. This is not — strictly speaking — unconstitutional. But it traduces the spirit of the Constitution.

After Republicans took control of the Senate in 2011, President Obama said he would "look every single day to figure out what we can do without Congress." Over the past couple of years, he's made good on that promise — extending the Affordable Care Act's employer mandate, raising the minimum wage for federal contractors, shielding up to 5 million immigrants from deportation and, most recently, expanding background checks for gun sales. During each of these episodes, the president met with a round of critics who decried his efforts to subvert Congress, reigniting a familiar debate: Has the president and the use of executive action become too powerful?

Executive action — which includes any of the president's orders, proclamations or memorandums — is a broad term referring to the president's ability to direct policy without legislation. Republican House Speaker Paul Ryan called Obama's executive action on gun control "a form of intimidation that undermines liberty." Of course, this kind of rhetoric is nothing new to American democracy. Congress and presidents have always squabbled over perceived infringements of their authority. Democrats accused Abraham Lincoln of "executive usurpation" after he suspended habeas corpus in 1862. Andrew Johnson, on the other hand, regarded Republicans in Congress as "factious, domineering, tyrannical" men, and fought bitterly with the "common gang of cormorants and bloodsuckers" as it attempted to control whom in his staff he could fire.

But in the past century, modern presidents have amassed extraordinary new powers to carry out the law, mostly because the federal government has grown rapidly, especially since Franklin D. Roosevelt's New Deal. Bigger government means more regulation, larger agencies and a deeper bureaucracy that the president can use to develop policy.

The Constitution says little on the issue of executive power — and in fact, the phrase “executive action” does not appear anywhere in the document. Article II, however, does say that the president “*shall take care that the laws be faithfully executed,*” leaving a fair amount of wiggle room as to how laws should be faithfully executed. And as is often said about the law, ambiguity is power.

Because of that loose framing, presidents may have a huge leg up in the balance of powers. Many of the laws governing the modern executive bureaucracy were designed to be vague so that the White House had greater power to fight unforeseen battles down the road.

For example, the Constitution gives Congress the power “to regulate Commerce with foreign nations.” But as Trump’s imposition of tariffs shows, Congress has delegated much of this power to the president.

Historical norms, not laws, govern much of what we think of as appropriate presidential conduct, making it especially hard to rein in a US president. There is no law stopping a president from ordering the end of an FBI investigation, for example, or hiring his daughter in the White House, or keeping his private businesses while in office.

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But there is a flipside to this famous declaration: presidents may also eschew matters imperial, and instead of that particular moniker, they may have the sobriquet of ‘imperilled’ – in the words of Shakespeare’s Malvolio – ‘thrust upon ‘em’. Presidents still have real limitations. They can go only so far in how they interpret a law, and any time they decide to “go it alone” they risk being dragged into lengthy court battles. In addition, executive orders are easy to reverse when the White House changes party banners.

After the Watergate affair of the 1970s, people in the United States stopped trusting their Presidents. This lack of public support led to a decline in Presidential power, leading to the Imperilled Presidency.

The same thing happened again under President Ronald Reagan after the Iran-Contra scandal, and could be said to have happened to President George W. Bush in the wake of the Iraq War. The growth in the size of the bureaucracy surrounding the President since the New Deal of the 1920s has made the [executive](#) more difficult to control. President Ford argued that:

[A] principal weakness in the presidency is the inability of the White House to maintain control over the large federal bureaucracy. There is nothing more frustrating for a President than to issue an order to a Cabinet officer, and then find that, when the order gets out in the field, it is totally mutilated.

Since the passing of the War Powers Act in 1973, Presidents have had less control over where they can fight a war. Although technically the President is Commander in Chief of the Armed forces, this act seriously limited his control over foreign policy, where the President should have the most power.