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## *U.S. Politics and the Presidency: Should Presidents Claim Strong Executive Power?*

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### Introduction

#### **SUPPORTERS ARGUE**

The Constitution provides power to the executive branch to allow the president to effectively enforce the laws of the nation. Constraining those powers weakens the office and creates an imbalance within government that threatens the health of American democracy.

#### **OPPONENTS ARGUE**

The power of the executive branch is limited by the Constitution to prevent the president from abusing the authority of the office. Permitting the president too much power undermines American democracy and will lead to corruption or far more serious consequences.



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**President-elect Donald Trump (R) speaks at a rally in High Point, North Carolina, in September 2016.**

The government of the United States consists of three branches: the legislative branch, which is composed of the two chambers of Congress and writes all national laws; the executive branch, headed by the president, which is responsible for implementing and enforcing the law; and the judicial branch, which is charged with interpreting and applying laws, as well as determining their constitutionality.

The framers of the U.S. Constitution, which was written in 1787, crafted this system of checks and balances to ensure that no one individual or group would wield too much power in the country, and politics throughout the nation's history have been defined by the tensions and compromises among the three branches. Nevertheless, the president of the United States is the most prominent individual in the government, and the question of how much power he or she should have has been central to U.S. politics for more than 200 years.

Few Americans dispute the fundamental importance of the president's duty to, as is stated in the presidential oath of office, "preserve, protect, and defend the Constitution of the United States." Yet there have been many arguments over precisely how the president should uphold this pledge. The Constitution details specific roles for the president, including serving as the commander in chief of the armed forces, negotiating treaties with other nations to be submitted for approval by the Senate, and nominating heads of federal departments, federal judges, and Supreme Court justices, also for Senate approval.

In addition, the Constitution grants the president the power to issue pardons for federal offenses, summon Congress for special sessions, veto legislation approved by Congress (though a veto can be overridden by a two-thirds vote by each chamber of Congress), deliver an address on "the State of the Union," and, perhaps most important of all, make sure "that the Laws be faithfully executed." Presidents have also often used their influence to promote a particular legislative agenda in Congress.

Among the most controversial actions taken by presidents is the issuance of executive orders, which have the force of law but do not need approval by Congress. (They can, however, be reversed by a later president.) Executive orders are generally used to direct federal agencies on how to enforce laws passed by Congress. Nothing in the Constitution explicitly grants the president the power to issue an executive order, but under the authority to ensure that "the Laws be faithfully executed," presidents have claimed this right. Some observers have argued that allowing presidents to issue executive orders circumvents the role of Congress and allows them to essentially make whatever laws they want.

The controversy over executive orders reflects a deeper disagreement over the proper reach of the U.S. presidency. Most historians and political observers agree that the power of the president has dramatically expanded since the early years of the United States.

The debate over how best to calibrate the power of the president has been lively since before the Constitution was even ratified in 1788. The debate has centered on a couple of critical questions: What is the proper relationship among the branches of government, particularly between the president and Congress? How much power should the president have?

Should presidents claim strong executive power?

Supporters contend that strong executive power is permissible, desirable, and unavoidable, particularly in a far more dangerous and complex world than the one that existed in the 18th and 19th centuries. The Constitution, they point out, created a strong executive to ensure effective enforcement of the law. The president is responsible for the safety of hundreds of millions of people, proponents argue, and must therefore have enough power to properly fulfill that role.

Opponents argue that executive power can easily lead to the kinds of abuses more associated with dictatorships than democracies. Excessive executive power, they contend, can allow the president to engage in a range of abuses, from covering up illegal activity to unnecessarily bringing the nation to war. Too much power in the hands of the president, critics maintain, undercuts the separation of powers and the system of checks and balances set out in the Constitution.

## Executive Power in U.S. History

Concern over autocratic government has been a persistent thread in American politics since the colonial movement

for independence from Great Britain. During the American Revolution (1775–83), colonists fought for independence from what they considered the abusive, arbitrary, and unaccountable power of the British monarch King George III. During the war, leading American statesmen drafted the Articles of Confederation, which established a national system of governance that deemphasized executive power by crafting a loose confederation of states governed by a Congress. Under this plan of government, the president presided over the Congress but had no independent executive power. Although the United States won the Revolutionary War under the Articles of Confederation, the national government proved too weak to effectively manage the country.

In 1787, delegates from the original 13 states—with the exception of Rhode Island, which boycotted the proceedings out of concern that states' rights would suffer under a stronger national government—gathered in Philadelphia to revise the Articles of Confederation. They ultimately decided to scrap the Articles and draft a constitution detailing a new type of government. Delegates agreed on creating three branches—executive, legislative, and judicial—but argued extensively over each branch's powers, especially the role and reach of the executive. They wanted the president to be strong enough to be a vigorous leader, but not so strong that he or she would become autocratic or tyrannical.

Delegate Alexander Hamilton, who would later become the first secretary of the Treasury, favored a very strong executive along the lines of an elected monarch. The role of the president adopted in the Constitution, however, reflected more the views of delegate and future president James Madison (Democratic-Republican, 1809–17), who promoted a system of checks and balances intended to keep any one branch of the government from becoming too powerful. "The Framers were designing something the modern world had never seen," University of Baltimore law professor Garrett Epps explained in the *Atlantic* in January 2009, a "republican chief executive who would owe his power to the people rather than to heredity or brute force."

The states ratified the Constitution in 1788, and the following year, George Washington (1789–97) became the nation's first president. Over the next eight years, President Washington organized the executive branch, negotiated treaties, and served as commander in chief of the armed forces. He also issued several executive orders (although the term did not come into use until 1907, when the State Department began numbering them, starting retroactively with orders issued during the 1860s).

In 1798, Washington's successor, John Adams (Federalist, 1797–1801)—fearing domestic dissent as the United States veered dangerously close to war with France—supported passage of the Alien and Sedition Acts. These laws expanded executive power beyond its previous bounds by authorizing the president to deport any noncitizen he believed was "dangerous to the peace and safety of the United States" and made it a crime to criticize the government in public speech or writing. As a result, many Americans—including a U.S. congressman—were imprisoned for disparaging the U.S. government. The most controversial aspects of the Alien and Sedition Acts expired in 1800 and 1801.

President Adams lost his bid for reelection in 1800 to Thomas Jefferson (Democratic-Republican, 1801–09). In 1803, the Jefferson administration negotiated the Louisiana Purchase, acquiring more than 800,000 square miles of land from France and doubling the size of the United States. The Louisiana Purchase was executed without congressional approval, and many critics at the time argued that the move violated the Constitution. Jefferson himself agreed that the acquisition was outside the scope of his authority, writing that the Constitution granted the government no "power of holding foreign territory, and still less of incorporating it into the Union." President Jefferson suggested amending the Constitution to allow land purchases, though Congress took no such action. Recognizing that France might withdraw its offer, and that the Louisiana Purchase was too good a deal to pass up, Jefferson moved forward with the purchase despite his reservations about its constitutionality.

Debates over the scope of presidential power subsided somewhat in the 19th century. For much of the 1800s, historian James Patterson has written, the presidency was "an insignificant institution." Nevertheless, there were several periods in the century when Americans fiercely debated the role of the executive. President Andrew Jackson

(D, 1829–37), for example, was famed for his battles with Congress, vetoing legislation 12 separate times—more than the combined total of vetoes used by all six previous presidents. He also asserted his independence from the U.S. Supreme Court. When the Court ruled in 1832 that the Cherokee were entitled to protection from the federal government, President Jackson called the decision "still born" and refused to enforce it. Some of Jackson's critics, including newspaper cartoonists, described him as "King Andrew."

Presidential power expanded again during the Civil War (1861–65), when President Abraham Lincoln (R, 1861–65) issued a flurry of executive orders in his quest to preserve the Union and defeat the secessionist Confederacy. Almost all the orders were largely unopposed and later ratified by Congress. Among them were increasing the military budget, blocking southern ports, censoring the mail, and ordering the arrest of people considered to be guilty of or "contemplating" treason. Also during the Civil War, Lincoln issued calls for troops, allowed authorities to hold prisoners indefinitely without trial, and abolished slavery in the Confederacy—all without legislation from Congress (although Congress later permanently abolished slavery by passing the Thirteenth Amendment to the U.S. Constitution, which the states then ratified).

Lincoln considered these actions "necessary" to suppress the "insurrection" and claimed authority for them by citing the president's "war power," which he viewed as inherent in his constitutional role as commander in chief. Lincoln admitted that some of his moves could be considered unconstitutional, but he insisted they were essential to saving the United States. He wrote in 1864:

*I did understand...that my oath to preserve the Constitution to the best of my ability imposed upon me the duty of preserving, by every indispensable means, that government.... Was it possible to lose the nation and yet preserve the Constitution?... I could not feel that, to the best of my ability, I had even tried to preserve the Constitution if...I should permit the wreck of the government, country and constitution altogether.*

After the Civil War ended in 1865, presidents through the rest of the 19th century seldom exerted strong executive power. In 1902, however, the United States faced a crisis when a protracted coal strike in Pennsylvania threatened to disrupt energy supplies as winter approached. Fearing that a "coal famine" would leave many Americans without fuel to heat their homes, President Theodore Roosevelt (R, 1901–09) invited striking miners and mine owners to the White House to negotiate a compromise. Miners accepted the offer, but the owners refused. An angry Roosevelt then threatened to send federal troops to take over the operation of the mines. The threat worked: The owners relented, and both sides agreed to government arbitration of the strike, during which the miners would return to work. The coal strike ended, and the two sides reached an agreement a few months later. Although President Roosevelt had no specific authority to intervene in the strike, his vigorous action expanded the power of the presidency.

Fifteen years later, President Woodrow Wilson (D, 1913–21) also expanded executive power, this time with congressional cooperation. After the United States entered World War I (1914–18) in 1917, Congress passed legislation authorizing the president to draft Americans into the U.S. armed forces. Also in 1917, the Wilson administration established the War Industries Board, which set production quotas and steered U.S. manufacturers to make materials needed for the war effort. In addition, Congress authorized the president to regulate foreign-language newspapers published in the United States and to censor telephone and telegraph messages.

These expanded powers made Wilson a strong wartime president, but they also posed a threat to civil liberties, even after the war ended. In late 1919 and early 1920, Attorney General A. Mitchell Palmer ordered the arrest and deportation of Americans he deemed radical or dangerous. Without search warrants, U.S. government agents conducted raids, took more than 4,000 leftists and anarchists into custody, ignored their basic rights to due process under the law, and forced hundreds of them to leave the country.

Presidential power expanded again during World War II (1939–45). From 1940 to 1945, President Franklin D. Roosevelt (D, 1933–45) issued 286 executive orders related to the war effort. Even more than President Wilson, Roosevelt enjoyed overwhelming support from Congress for his requests for increased powers.

In 1940, President Roosevelt authorized the transfer of U.S. naval destroyers to Britain. This action violated the Neutrality Acts of the 1930s, which had sought to keep the United States out of the European conflict by forbidding the sale of weapons to belligerent nations. Roosevelt claimed that he had the constitutional authority to circumvent the laws because of his role as commander in chief of the military. Congress approved his actions when it passed the Lend-Lease Act in March 1941.

Following the Japanese attack on Pearl Harbor in December 1941, which drew the United States into the war, President Roosevelt's executive power expanded beyond the wartime powers of either Lincoln or Wilson. In addition to pursuing economic production and military preparedness measures, Roosevelt issued Executive Order 9066 in February 1942, which forcibly relocated Japanese Americans to internment camps based on the premise that they were potential threats to national security. Many Japanese internees were U.S. citizens who had committed no crime and broken no law. In 1944, the U.S. Supreme Court upheld the executive order as a necessary wartime measure in the case *Korematsu v. United States*.

Executive orders proved contentious following World War II. In 1948, President Harry Truman (D, 1945–53) issued Executive Order 9981, which desegregated the U.S. armed forces. Though controversial at the time, the move is now widely viewed as one of Truman's greatest achievements. Truman also convinced Congress to enact laws giving the president greater power in military and national security affairs. One such law, the National Security Act of 1947, resulted in the creation of the Central Intelligence Agency (CIA) and the National Security Council, both of which were under the direct supervision of the White House.

President Truman experienced one of his greatest setbacks during the Korean War (1950–53), when he issued Executive Order 10340 to seize the nation's steel mills, where workers had gone on strike. Truman argued that steel was essential to the war effort and that his action was constitutional under his power as commander in chief. In a 6–3 ruling, however, the Supreme Court rejected Truman's action, declaring that the president had no power to seize private industry and that the president's power "must stem either from an act of Congress or from the Constitution itself." A gap "exists between the President's paper powers and his real powers," Supreme Court Justice Robert Jackson wrote, and "vast accretions of federal power" have "magnified the scope of presidential activity." He added:

*The Constitution...must be understood as an Eighteenth-Century sketch of a government hoped for, not as a blueprint of the Government that is.... Executive power has the advantage of concentration in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude and finality his decisions so far overshadow any others that almost alone he fills the public eye and ear. No other personality in public life can begin to compete with him in access to the public mind.*

In 1964, Lyndon Johnson (D, 1963–69), who had become president after the assassination of President John F. Kennedy (D, 1961–63) the previous year, won a full term in a landslide that brought the Democratic Party large majorities in Congress. Johnson worked with Congress to institute a wide range of anti-poverty and social programs, collectively known as the Great Society.

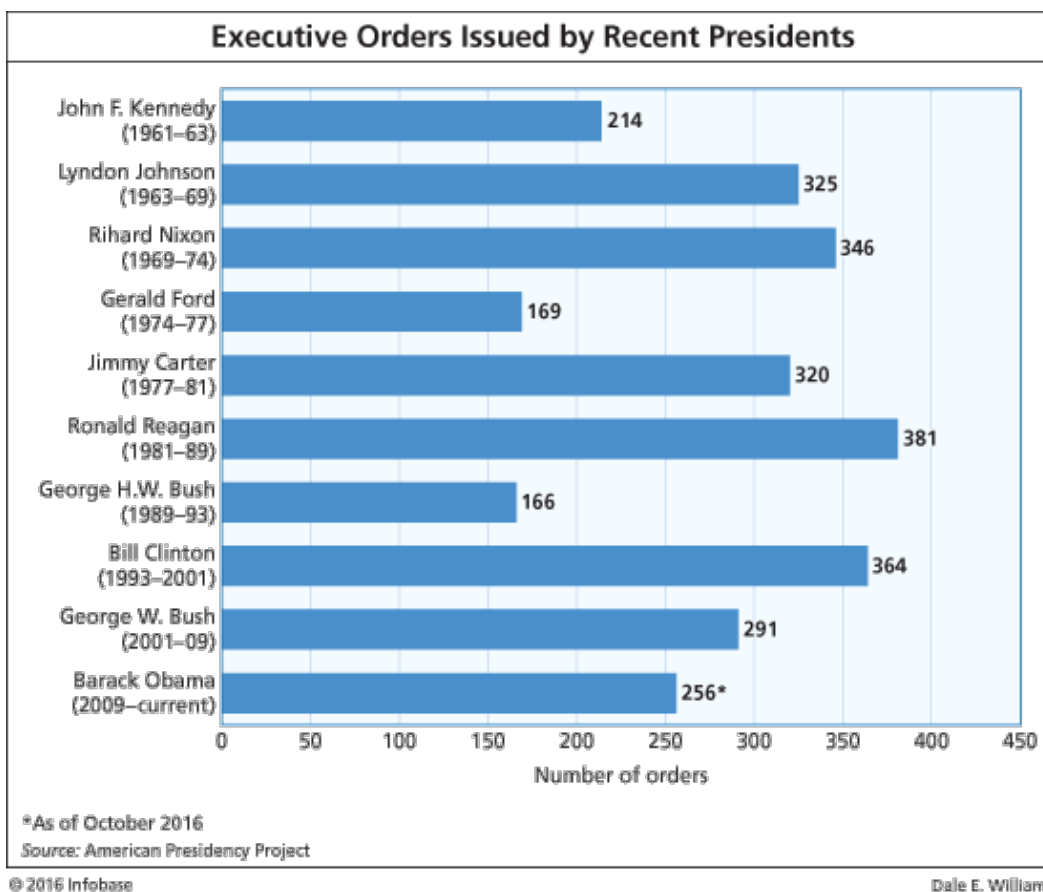
President Johnson also escalated U.S. involvement in the Vietnam War, a conflict between South Vietnam and North Vietnam in which the United States backed the South against the communist North. In 1964, Johnson claimed that North Vietnamese forces had attacked U.S. ships in the Gulf of Tonkin in North Vietnam, and he asked Congress for the authority to retaliate. Congress overwhelmingly passed the Gulf of Tonkin Resolution, giving him such authority. Although Congress never declared war, President Johnson sent hundreds of thousands of troops to Vietnam over the next few years. As the war dragged on and American casualties mounted, public opposition to the conflict grew, as did the belief that U.S. involvement in Vietnam had resulted from unchecked executive power. In 1973, Congress sought to address this concern by passing the War Powers Act, which required the president to seek congressional approval for any military action exceeding 60 days. [See War Powers Act Limits Executive Power primary source]

Debate surrounding executive power continued after President Richard Nixon (R, 1969–74) became president. During the Watergate scandal, evidence emerged that President Nixon had covered up knowledge of criminal activity conducted on his behalf during his 1972 reelection campaign. As the Watergate investigation intensified in 1973 and 1974, Congress demanded that Nixon deliver secretly recorded audio tapes to a special prosecutor. Nixon refused to hand the tapes over, claiming executive privilege—a power asserted by the president and various members of the executive branch to decline subpoenas and other requests from the legislative and judicial branches. Executive privilege is a presidential power separate from executive orders, and has caused considerable controversy over the years.

The crisis over the Watergate tapes was resolved in a unanimous ruling against President Nixon by the Supreme Court in the 1974 case *United States v. Richard M. Nixon*. Nixon complied with the Court ruling and released the tapes, which provided evidence of his guilt. On August 9, 1974, Nixon became the only American president to resign from office.

During the Watergate investigation, historian Arthur Schlesinger, Jr., wrote *The Imperial Presidency*, a book that argued that the power of the U.S. presidency had increased immensely throughout the 20th century. Citing the actions of numerous presidents, including Franklin Roosevelt, Truman, and Johnson, Schlesinger analyzed "the appropriation by the Presidency...of powers reserved by the Constitution and by long historical practice to Congress." The term "imperial presidency" is often used to describe the growing power and authority of the executive, often beyond the bounds prescribed by the Constitution.

The effort to define the proper role of executive power continued in the late 20th and early 21st centuries. Presidents Ronald Reagan (R, 1981–89), George H. W. Bush (R, 1989–93), and Bill Clinton (D, 1993–2001) all issued executive orders. Other mechanisms to assert presidential authority also emerged, including the presidential signing statement. Presidents have long issued signing statements when they sign bills into law to comment on or explain the new legislation. More recently, however, presidents have controversially used the practice to object to provisions within the law, signal their unwillingness to enforce portions of the law, or direct government agencies on how to enforce the law. Some observers have pointed out that, in some cases, presidents have used signing statements to undermine legislation while avoiding a veto that might prove unpopular. All recent presidents have issued signing statements.



## Presidents Bush and Obama Assert Executive Power in 21st Century

Less than eight months after George W. Bush (R, 2001–09) became president, members of the Al Qaeda terrorist group hijacked four commercial airliners on September 11, 2001, crashing two into New York City's World Trade Center, the third into the Pentagon near Washington, D.C., and the fourth into an empty field in Shanksville, Pennsylvania. Almost 3,000 people were killed in the attacks, the deadliest ever to take place on American soil. In response, President Bush declared a "war on terror," vowing to bring the killers to justice, punish any nation that harbored terrorists, and ensure that such attacks never happened again.

In October 2001, Bush signed the USA Patriot Act into law. The act gave the government enhanced surveillance and law enforcement powers, which, the law's proponents argued, were necessary to protect the United States against future attacks. Opponents of the law pointed out that it allowed law enforcement agencies to eavesdrop on private phone calls and emails, search people's library records, and detain suspects without charging them with any crime.

Although President Bush sought and received congressional approval for military actions in Afghanistan and Iraq, his administration took many measures without direct congressional approval in its fight against terrorism. These included the indefinite detention and suspension of *habeas corpus*—the legal writ that entitles prisoners to challenge their detention in a court of law—of individuals deemed "enemy combatants," as well as the use of torture against terrorist suspects. The Bush administration also proposed trying such prisoners in military commissions rather than the civilian court system.

Several memos drafted by Bush officials justifying the use of such practices eventually became public and proved highly controversial. The *New York Times* reported that the memos, many of them written by University of California law professor John Yoo, who was then serving in the U.S. Department of Justice's Office of Legal Counsel, argued that the president had virtually limitless power in the war on terror. Northwestern University

constitutional law professor Steven Calabresi told the *Christian Science Monitor* in January 2009 that the Bush administration's "basic strategy was to assert that the president could do various things like [authorizing domestic] wiretaps, detaining enemy combatants, and setting up military commissions solely on his own, [and that] he didn't need congressional authorization. The hope was that by President Bush doing those things on his own, it would vindicate presidential power in those areas."

As a presidential candidate in 2008, Barack Obama (D) was often critical of the Bush administration's expansive approach toward executive power. Upon entering office in January 2009, *New York Times* journalists Binyamin Appelbaum and Michael Shear noted in August 2016, Obama was "determined to make his mark by passing bold new laws, not by tinkering with rules."

President Obama's legislative agenda, however, met fierce resistance from Republicans in Congress. The signature initiatives of his first term—the American Recovery and Reinvestment Act, an economic stimulus package passed in 2009 costing almost \$800 billion; the Patient Protection and Affordable Care Act, a sweeping health care reform bill passed in 2010; and the Dodd-Frank Act also passed in 2010, which levied new regulations on the banking industry—all received few or no votes from Republicans in Congress. Additionally, as a result of the 2010 midterm elections, Democrats lost their majority in the House of Representatives, making it even more difficult for the president to promote laws in Congress.

As his first term wore on, President Obama turned increasingly to the use of executive actions to implement his agenda. In addition to executive orders issued by the president, heads of government departments under the Obama administration used their power to impose various rules and regulations. In 2009, for example, Ray LaHood, secretary of the Department of Transportation, authorized rules that fined airlines that kept passengers waiting on the runway for longer than three hours. "We didn't want to wait around for Congress to take five, 10 years to do this," LaHood told the *New York Times*. "We could do this by rule and regulation, so we were pretty much off to the races."

LaHood's initiative, which came early on in the Obama administration, was a precursor to many more regulations that would be implemented throughout Obama's two terms in office. According to Appelbaum and Shear, the Obama administration took hundreds of executive actions. "Many of the new rules are little known, even as they affect the way Americans eat, love and die," they wrote. "People can dine on genetically engineered salmon. Women can buy emergency contraceptive pills without prescriptions. Military veterans can design their own headstones."

As with his predecessors, much of President Obama's use of executive power surrounded military and foreign policy. Obama expanded the use of unmanned drone attacks on terrorist suspects—including Anwar al-Awlaki, an American citizen accused of inspiring various Al Qaeda attacks—in which targets were killed based solely on the judgment of the executive branch. Obama also ordered the May 2011 raid on a compound in Pakistan where Al Qaeda leader Osama bin Laden had been hiding, ultimately killing him.

In April 2011, President Obama ordered U.S. forces to participate in a United Nations–sanctioned campaign of air strikes in Libya aimed at helping rebels seeking to unseat the country's dictator, Muammer el-Qaddafi. Obama ordered the strikes without seeking congressional approval, explaining that the action was limited and temporary. Republicans criticized the move, arguing that the president had no authority to take the United States to war without seeking congressional approval. The military campaign in Libya ended in October 2011, after Qaddafi was killed and his government overthrown, though the country has since suffered from instability and fighting among warring factions.

Much of President Obama's assertion of presidential power surrounded his issuing of executive orders. In June 2012, after Congress failed to pass the Development, Relief, and Education for Alien Minors (DREAM) Act, which would have allowed young undocumented immigrants to remain in the United States if they attended college or served in the military, Obama issued an executive order allowing close to 1 million young immigrants facing deportation to request "temporary relief from deportation proceedings and apply for work authorization."



Also in June 2012, Obama asserted executive privilege for the first time in his presidency to prevent the disclosure of Justice Department documents pertaining to a failed gun-trafficking investigation known as "Fast and Furious." The operation, which allowed guns purchased in the United States to make their way into the hands of Mexican drug cartels in an effort to trace them to high-level smugglers, was botched after U.S. agents lost track of the guns, which likely remained in the possession of the drug gangs. One of the stolen guns was found near the body of a U.S. border patrol agent in 2010. Obama's invocation of executive privilege to reveal more information about the operation prompted harsh criticism from Republicans.

President Obama's use of executive power grew in his final years in office. "Whenever I can take steps without legislation to expand opportunity for more American families," he said during his State of the Union Address in January 2014, "that's what I'm going to do."

One of these initiatives was the Environmental Protection Agency's Clean Power Plan. Announced by President Obama in August 2015, this program imposed new regulations on power plants with the goal of significantly cutting the emission of pollutants that contribute to global warming. While the House of Representatives passed a bill that would have capped such emissions in 2010, it faced major opposition from Republicans in the Senate and never became law. [See Clean Power Plan]

Similarly, President Obama rebuked Congress on numerous occasions for not passing gun control measures in the wake of various mass shootings during his presidency. In January 2016, he announced a series of executive actions that placed stricter limits on the sale of firearms, required more gun dealers to have a federal license, and ordered all licensed dealers to conduct background checks on buyers. "I want to be clear. Congress still needs to act," President Obama said in January when announcing the new measures. "Because once Congress gets on board with common-sense gun safety measures we can reduce gun violence a whole lot more. But we also can't wait. Until we have a Congress that's in line with the majority of Americans, there are actions within my legal authority that we can take to help reduce gun violence and save more lives—actions that protect our rights and our kids." [See Gun Control]

In November 2016, Republican nominee Donald Trump was elected president of the United States, defeating former secretary of state Hillary Clinton. An ardent critic of President Obama's policies, it is likely that Trump will reverse many of Obama's executive actions. Additionally, many observers throughout the 2016 presidential race noted that Trump exhibited authoritarian tendencies, arguing for policies—such as the erection of a wall between Mexico and the United States and a ban on Muslim immigrants—that would require a large amount of executive power. "Plenty of politicians have pledged wholesale, game-changing shifts in policy," *Washington Post* contributor Marc Fisher wrote in July 2016, "but Trump's hot rhetoric stands out because his promises are rarely accompanied by details on how he might implement his initiatives. He doesn't say...how he would get Mexico to pay for a border wall, or how he would impose a ban on Muslims entering the country. He says he will make it happen—'believe me.'"

## Supporters Argue: Strong Executive Power Is Necessary for Effective Government

Supporters argue that presidents should exercise strong executive power. Such power, they note, is within the scope of the U.S. Constitution. The framers of the Constitution did not seek to block bold leadership, they contend, only to prevent the rise of a monarch or tyrant. "It is true that the Revolutionaries rebelled against King George III.... But it does not follow that they opposed the idea of executive power," John Yoo, who, as a lawyer for the administration of President George W. Bush supported the notion of a strong president, wrote in 2009 for the *University of Chicago Law Review*. "To most who gathered in Philadelphia in the summer of 1787, post-revolutionary efforts by the states to allow only weak executives...had led to unstable, oppressive legislatures. The drafters of the Constitution came to Philadelphia in large part to restore the independence and unity of the executive branch—a republican, not a royal, restoration."

From a practical sense, supporters argue, the president of the United States has a huge responsibility to run the country and must take whatever steps are necessary to fulfill that duty. In his influential 1956 book *The American*

*Presidency*, which analyzed the executive's roles, historian Clinton Rossiter called the president the nation's "chief legislator," "manager of prosperity," "protector of the peace," "world leader," and "voice of the people." None of these roles, supporters contend, could be properly achieved if presidents were not allowed to use the instruments of power at their disposal, including the application of executive orders.

Some presidents have argued that whoever holds the office has a responsibility to act in the best interest of millions of people and must therefore sometimes take extraordinary steps. John F. Kennedy (D, 1961–63), in a speech in January 1960, the year in which he was elected president, maintained that the president is "the center of moral leadership...for only the president represents the national interest. And upon him alone converge all the needs and aspirations of all parts of the country, all departments of the government, all nations of the world."

Presidents generally do not wield executive power for its own sake, supporters argue, but to ensure that crucial tasks are performed for the benefit of the American people. "I'm not interested in regulating just for the sake of regulating," President Obama said in May 2016 during a visit to Indiana. "But there are some things like making sure we've got clean air and clean water, making sure that folks have health insurance, making sure that worker safety is a priority—that, I do think, is part of our overall obligation."

Defenders of executive power maintain that in situations where Congress completely rejects a legislative agenda, as it did with President Obama, executive actions are necessary. "The weight, if you will, changed with a very recalcitrant Republican House," Obama adviser John Podesta told the *New York Times*. "It meant that you had to be seriously concerned with trying to make change happen with the tools that you had available."

## Opponents Argue: Excessive Executive Power Undermines American Democracy

Opponents argue that presidents should not exercise strong executive power. The U.S. Constitution, they contend, purposely limited the authority held by the executive branch of the United States. "[I]f anything is clear about the framers [of the Constitution]," constitutional lawyer and head of the Irvine School of Law at the University of California Erwin Chemerinsky wrote for the *US Law Review* in 2006, "it is that they deeply distrusted executive power. Unchecked executive authority cannot be reconciled with the text of the Constitution, and the framers accepted significant executive power only as a necessary evil."

The executive branch has grown too powerful in recent years, opponents charge, and other parts of the federal government must challenge it. "Only when the other two branches of government—Congress and the judiciary—[muster] up the courage to take on executive unilateralism will a rebalancing of powers be possible," *Weekly Standard* editor Terry Eastland wrote in October 2016, "a rebalancing essential if the federal government is to respect liberty and leave more issues to the states and private society."

Presidents like Obama have used executive power not to protect Americans in extraordinary circumstances, critics argue, but to enact burdensome regulations on businesses and private citizens. "I believe presidents ought to have executive power," Thomas Donohue, head of the U.S. Chamber of Commerce, a pro-business lobbying group, told *The Hill* in January 2016, "but there are instances or times when it is abused and used basically to get around the Congress—not to deal with emergencies or particular sensitive issues that everyone sort of agrees on."

Opponents point out that, although presidents often face massive political hurdles and complications in dealing with Congress, that is the way democracy—and the U.S. system of government—is meant to work. "Yes, our checks and balances lead to gridlock," Stanford Law School professor Michael McConnell told the *Wall Street Journal* in March 2012, "but I think gridlock's better than unchecked power in the hand of one person."

Similarly, critics argue, the drafters of the U.S. Constitution carefully separated the powers of each branch of government and required them to often work together to enact change. This prevents any single branch—especially the presidency—from becoming too powerful. Republicans and Democrats both tend to criticize executive overreach when they do not hold the presidency, opponents note, and both parties would do well to remember its importance

when they do not wield power. "The U.S. constitutional system" invites gridlock, Bloomberg contributor Noah Feldman wrote in December 2015. "Our two-party system over time developed the norm of allowing the party without the presidency to block action, especially when it controls Congress. Liberals today might not like that. But they should remember that if [2016 Republican presidential nominee] Donald Trump became president, they'd suddenly become ardent advocates for limitations on what the president could do alone. As for conservatives, the next time they control the presidency, they should remember their own arguments for limiting presidential power."

## Debate over Use of Executive Power Continues with Each Administration

It remains to be seen how President-elect Trump will wield his executive power, or what his specific legislative agenda will be. A harsh critic of President Obama's positions on immigration, gun control, and the environment, it is likely that Trump will reverse Obama's executive actions on these issues. Only time will tell how the Trump administration will unfold.

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## Additional Sources

*Additional information about U.S. politics and the presidency can be found in the following sources:*

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Yoo, John. *Crisis and Command: A History of Executive Power from George Washington to George W. Bush*. New York: Kaplan Publishing, 2009.

## Contact Information

*Information on how to contact organizations that either are mentioned in the discussion of U.S. politics and the presidency or can provide additional information on the subject is listed below:*

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*For further information about the ongoing debate over U.S. politics and the presidency, search for the following words and terms in electronic databases and other publications:*

Checks and balances  
Executive order  
Executive power  
Imperial presidency  
Signing statement  
U.S. Constitution, Article II

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