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Why You Can't Count On Congress to Rein In a President Trump

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Why You Can't Count On Congress to Rein In a President Trump

"There is nothing to stop a president from initiating action, even if unconstitutional," one scholar observes.

By [Lori Cox Han](#) | July 21, 2016

Donald Trump has made many promises on the campaign trail about things he will fix (a broken immigration system), change (the way trade deals are negotiated), and build (a wall on the southern border) if elected president. Those who do not support Trump, regardless of political party, comfort themselves with the constitutional reminder that our government includes three co-equal branches designed to protect against the accumulation of too much power in too few hands. Those checks and balances aside, could President Trump accomplish any of his stated objectives through unilateral actions?

Scholars of the presidency and political pundits alike have noted the expanding presidential powers during the George W. Bush and Barack Obama administrations. Each relied on executive action (executive orders, agreements, proclamations and signing statements) to implement and at times to bypass Congress on policies both foreign and domestic (particularly regarding war powers in the fight against terrorism since 9/11). This trend is not new, as the expansion of presidential power has often occurred during times of political crisis. Revered presidents such as Thomas Jefferson, Abraham Lincoln and Franklin D. Roosevelt all relied on broad interpretations of their constitutional powers to shape government policies, guided by the theory that the “silences of the Constitution” did not deter bold presidential action. Both the Vesting and Take Care clauses found within Article II of the Constitution provide broad guidelines for inherent and implied powers, but do little to specifically define how and when “executive power” should be exercised.

“The executive Power shall be vested in a President of the United States of America.”

— *US Constitution, Article II, Section 1*

Having spent his entire career in the corporate world, it is not hard to imagine that Trump's leadership style as president would be similar to that of a CEO — a take-charge, top-down, uncompromising approach to getting the job done. Presidents do have discretion over the implementation of policies within the executive branch, and Trump has already promised to rely on executive orders to take action on immigration, energy and environmental regulations, trade issues, tax policies and numerous foreign policy matters. He has also promised to undo many of Obama's executive orders, which is not that uncommon when a new president from the opposite party takes over.

Perhaps the most important thing to remember about executive power is that there is nothing to stop a president from initiating action, even if unconstitutional. The consequences — whether legal or political — come after the fact. If Trump issued an executive order to ban Muslim immigrants, the directive would stand unless and until checked by Congress or the courts. Congress can pass legislation to overturn an executive order, or through its power of the purse, it can refuse to provide funding. Federal courts can place an injunction on an executive order (as was the case earlier this year regarding Obama’s executive order to protect millions of undocumented immigrants from deportation), or declare a presidential action to be unconstitutional. Public opinion can also turn against a president, as can support within the president’s party, and both can have electoral consequences.

“[The president] shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.”

— *US Constitution, Article II, Section 3*

Would any of this be enough incentive to give President Trump pause before taking action? An accurate prediction would be difficult, but aggressive action by Trump regarding key issues on his policy agenda would not be shocking. Of course, the constitutionality of executive power is often in the eye of the beholder. For those who support Trump, bold executive action would confirm their choice for president. For Trump’s detractors, it would probably initiate calls for impeachment. The bottom line: the definition of executive power can be fluid, especially in the context of changing political and social circumstances as well as partisan motivations. As a result, the legislative and judicial branches need to remember their roles in providing the checks and balances of the constitutional structure.

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