

Executive Orders

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Article I, Section 1 of the United States Constitution is concise in its language, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." When the Constitution was proposed, those opposed to a strong central government, the anti-Federalists, argued that there was no Bill of Rights to protect the people and that a centralized government would become too powerful, usurping the rights of the individual States.

At the time of its formation, the Constitution was created in secrecy and in direct contradiction to the mandate of the Congress, which was to amend the Articles of Confederation that were governing the infant nation since the end of the American revolution. Under the Articles of Confederation, the President of the United States was known as the President of the United States in Congress Assembled. The one-year Presidency was very limited in its scope, responsibility and authority. The Constitution, in contrast to the Articles of Confederation, established a strong four-year Presidency, but still only providing extremely limited powers to the office.

The greatest fear the founders of this nation had was the establishment of a strong central government and a strong political leader at the center of that government. They no longer wanted kings, potentates or czars, they wanted a loose association of States in which the power emanated from the States and not from the central government.

John Adams advocated that a good government consists of three balancing powers, the legislative, executive and the judicial, that would produce an equilibrium of interests and thereby promote the happiness of the whole community. It was Adams' theory that the only effectual method to secure the rights of the people and promote their welfare was to create an opposition of interests between the members of two distinct bodies (legislative and executive) in the exercise of the powers of government, and balanced by those of a third (judicial).

THE BILL OF RIGHTS

On June 8, 1789, James Madison proposed the Bills of Rights to the new Congress. Its eventual creation was the outcropping of arguments made in the respective State legislatures debating ratification of the new Constitution. Madison had previously been opposed to the establishment of the Bill of Rights, but the treatises of Thomas Jefferson convinced him of the necessity of such Constitutional amendments. The concept was simple, according to Madison, "That all power is originally vested in, and consequently derived from the people. That government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty and the right of acquiring property, and generally of pursuing and obtaining happiness and safety. That the people have an indubitable, unalienable, and indefeasible right to

reform or change their government whenever it be found adverse or inadequate to the purpose of its institution."

He further advocated, "The civil rights of none shall be abridged on account of religious belief or worship...The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable. The people shall not be restrained from peaceably assembling and consulting for their common good; nor for applying to the legislature by petitions or remonstrances for redress of their grievances...The right of the people to keep and bear arms shall not be infringed."

The framework of this nation is embodied in the Bill of Rights, unequalled in its time, and surpassed by none to date. Madison also stated, "The rights of the people to be secured in their persons, their houses, their papers, and their other property from all unreasonable searches and seizures shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized." He added, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial to be informed of the cause and nature of the accusation, to be confronted with his accusers and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense."

THE EXECUTIVE ORDER IN TIME OF WAR

Many of the fears of the founding fathers may now be coming to fruition. Today, the executive branch of the government is immensely powerful, much more powerful than the founding fathers had envisioned or wanted. Congressional legislative powers have been usurped. There is no greater example of that usurpation than in the form of the Presidential Executive Order. The process totally by-passes Congressional legislative authority and places in the hands of the President almost unilateral power. The Executive Order governs everything from the Flag Code of the United States to the ability to single-handedly declare Martial Law. Presidents have used the Executive Order in times of emergencies to override the Constitution of the United States and the Congress.

President Andrew Jackson used executive powers to force the law-abiding Cherokee Nation off their ancestral lands. The Cherokee fought the illegal action in the U.S. Supreme Court and won. But Jackson, using the power of the Presidency, continued to order the removal of the Cherokee Nation and defied the Court's ruling. He stated, "Let the Court try to enforce their ruling." The Cherokee lost their land and commenced a series of journeys that would be called The Trail of Tears.

President Abraham Lincoln suspended many fundamental rights guaranteed in the Constitution and the Bill of Rights. He closed down newspapers opposed to his war-time policies and imprisoned what many historians now call political prisoners. He suspended the right of trial and the right to be confronted by accusers. Lincoln's justification for such drastic actions was the preservation of the Union above all things. After the war and Lincoln's death, Constitutional law was restored.

In 1917, President Woodrow Wilson could not persuade Congress to arm United States vessels plying hostile German waters before the United States entered World War One. When Congress

balked, Wilson invoked the policy through a Presidential Executive Order.

President Franklin Delano Roosevelt issued Executive Order No. 9066 in December 1941. His order forced 100,000 Japanese residents in the United States to be rounded up and placed in concentration camps. The property of the Japanese was confiscated. Both Lincoln's and Roosevelt's actions were taken during wartime, when the very life of the United States was threatened. Wilson's action was taken on the eve of the United States entering World War One. Whether history judges these actions as just, proper or legal, the decision must be left to time. The dire life struggle associated with these actions provided plausible argumentation favoring their implementation during a time when hysteria ruled an age.

THE NEW DANGERS

A Presidential Executive Order, whether Constitutional or not, becomes law simply by its publication in the Federal Registry. Congress is by-passed. Here are just a few Executive Orders that would suspend the Constitution and the Bill of Rights. These Executive Orders have been on record for nearly 30 years and could be enacted by the stroke of a Presidential pen:

- **EXECUTIVE ORDER 10990** allows the government to take over all modes of transportation and control of highways and seaports.
- **EXECUTIVE ORDER 10995** allows the government to seize and control the communication media.
- **EXECUTIVE ORDER 10997** allows the government to take over all electrical power, gas, petroleum, fuels and minerals.
- **EXECUTIVE ORDER 10998** allows the government to take over all food resources and farms.
- **EXECUTIVE ORDER 11000** allows the government to mobilize civilians into work brigades under government supervision.
- **EXECUTIVE ORDER 11001** allows the government to take over all health, education and welfare functions.
- **EXECUTIVE ORDER 11002** designates the Postmaster General to operate a national registration of all persons.
- **EXECUTIVE ORDER 11003** allows the government to take over all airports and aircraft, including commercial aircraft.
- **EXECUTIVE ORDER 11004** allows the Housing and Finance Authority to relocate communities, build new housing with public funds, designate areas to be abandoned, and establish new locations for populations.
- **EXECUTIVE ORDER 11005** allows the government to take over railroads, inland waterways and public storage facilities.

- **EXECUTIVE ORDER 11051** specifies the responsibility of the Office of Emergency Planning and gives authorization to put all Executive Orders into effect in times of increased international tensions and economic or financial crisis.
- **EXECUTIVE ORDER 11310** grants authority to the Department of Justice to enforce the plans set out in Executive Orders, to institute industrial support, to establish judicial and legislative liaison, to control all aliens, to operate penal and correctional institutions, and to advise and assist the President.

Without Congressional approval, the President now has the power to transfer whole populations to any part of the country, the power to suspend the Press and to force a national registration of all persons. The President, in essence, has dictatorial powers never provided to him under the Constitution. The President has the power to suspend the Constitution and the Bill of Rights in a real or perceived emergency. Unlike Lincoln and Roosevelt, these powers are not derived from a wartime need, but from any crisis, domestic or foreign, hostile or economic. Roosevelt created extraordinary measures during the Great Depression, but any President faced with a similar, or lesser, economic crisis now has extraordinary powers to assume dictatorial status.

Many of the Executive Orders cited here have been on the books for over a quarter of a century and have not been applied. Therefore, what makes them more dangerous today than yesteryear? There has been a steady, consistent series of new Executive Orders, originating from President Richard Nixon and added to by Presidents Ronald Reagan, Jimmy Carter and George Bush that provide an ominous Orwellian portrait, the portrait of George Orwell's 1984.

THE EROSION OF INDIVIDUAL RIGHTS

A series of Executive Orders, internal governmental departmental laws, never passed by Congress, the Anti-Drug Abuse Act of 1988 and the Violent Crime Control Act of 1991, has whittled down Constitutional law substantially. These new Executive Orders and Congressional Acts allow for the construction of concentration camps, suspension of rights and the ability of the President to declare Martial Law in the event of a drug crisis. Congress will have no power to prevent the Martial Law declaration and can only review the process six months after Martial Law has been declared. The most critical Executive Order was issued on August 1, 1971. Nixon signed both a proclamation and Executive Order 11615. Proclamation No. 4074 states, "I hereby declare a national emergency", thus establishing an economic crisis. That national emergency order has not been rescinded.

The crisis that changed the direction of governmental thinking was the anti-Vietnam protests. Fear that such demonstrations might explode into civil unrest, Executive Orders began to be created to allow extreme measures to be implemented to curtail the demonstrations. The recent Los Angeles riots after the Rodney King jury verdict only reinforced the government's concern about potential civil unrest and the need to have an effective mechanism to curtail such demonstrations.

Here are the later Executive Orders:

- **EXECUTIVE ORDER 11049** assigns emergency preparedness function to federal departments and agencies, consolidating 21 operative Executive Orders issued over a

fifteen year period.

- **EXECUTIVE ORDER 11921** allows the Federal Emergency Preparedness Agency to develop plans to establish control over the mechanisms of production and distribution, of energy sources, wages, salaries, credit and the flow of money in U.S. financial institution in any undefined national emergency. It also provides that when a state of emergency is declared by the President, Congress cannot review the action for six months.
- **EXECUTIVE ORDER 12148** created the Federal Emergency Management Agency (FEMA) that is to interface with the Department of Defense for civil defense planning and funding. An "emergency czar" was appointed. FEMA has only spent about 6 percent of its budget on national emergencies, the bulk of their funding has been used for the construction of secret underground facilities to assure continuity of government in case of a major emergency, foreign or domestic.
- **EXECUTIVE ORDER 12656** appointed the National Security Council as the principal body that should consider emergency powers. This allows the government to increase domestic intelligence and surveillance of U.S. citizens and would restrict the freedom of movement within the United States and granted the government the right to isolate large groups of civilians. The National Guard could be federalized to seal all borders and take control of U.S. air space and all ports of entry. Many of the figures in the Iran-Contra scandal were part of this emergency contingent, including Marine Colonel Oliver North.

The Federal Emergency Management Agency has broad powers in every aspect of the nation. General Frank Salzedo, chief of FEMA's Civil Security Division stated in a 1983 conference that he saw FEMA's role as a "new frontier in the protection of individual and governmental leaders from assassination, and of civil and military installations from sabotage and/or attack, as well as prevention of dissident groups from gaining access to U.S. opinion, or a global audience in times of crisis."

The Violent Crime Control Act of 1991 provides additional powers to the President of the United States, allowing the suspension of the Constitution and Constitutional rights of Americans during a "drug crisis". It provides for the construction of detention camps, seizure of property, and military control of populated areas. This, teamed with the Executive Orders of the President, enables Orwellian prophecies to rest on whoever occupies the White House. The power provided by these "laws" allows suspension of the Constitution and the rights guaranteed in the Bill of Rights during any civil disturbances, major demonstrations and strikes and allows the military to implement government ordered movements of civilian populations at state and regional levels, the arrest of certain unidentified segments of the population, and the imposition of Martial Law.

When the Constitution of the United States was framed it placed the exclusive legislative authority in the hands of Congress and with the President. Article I, Section 1 of the United States Constitution is concise in its language, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." That is no longer true. The Bill of Rights protected Americans against loss of freedoms. That is no longer true. The Constitution provided for a balanced separation of powers. That is no longer applicable.

Perhaps it can be summed up succinctly in the words of arch-conservative activist Howard J. Ruff. "Since the enactment of Executive Order 11490, the only thing standing between us and dictatorship is the good character of the President, and the lack of a crisis severe enough that the public would stand still for it."

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