



## A Presidency Fit for a King

The Honorable John V. Denson, a Circuit Court judge from Alabama and editor of *Reassessing the Presidency: The Rise of the Executive State and the Decline of Freedom*, explains that "the Founders intended for the legislative branch of Congress, composed of both the House and Senate, to be the dominant branch of the federal government, which was then very limited in scope and power. Today the executive has become, by far, the dominant branch of government, even to the point that it is the main threat to the liberty and freedom of American citizens." (Emphasis added.)



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It must be stressed that the aggrandizement of power within the executive branch certainly did not start under the current occupant of the White House. President Barack Obama is simply the latest in a long line of presidents who is all too happy to wield expansive presidential power that would have horrified the Founding Fathers. Obama's "progressive" agenda and his actions after being in office for a little over a month illustrate that he plans to build upon that legacy of centralization and control by leaps and bounds.

### Obama's Imperial Presidency

When writing in the Declaration of Independence about the "long train of abuses and usurpations" committed on the colonists by the tyrannical king of Great Britain, Thomas Jefferson identified a series of such abuses, including "[the king] has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance." The description of this abuse has eerie similarities to the growing list of executive departments collectively referred to as "the administrative state." Defenders of liberty have much to worry about as unelected bureaucrats based out of D.C. exercise powers that were once solely reserved to Congress, the states, or the people themselves.

What is the administrative state? Attorney and researcher Donald S. Dobkin explains: "Most of the real lawmaking in modern-day America occurs in bureaucracies. The Federal Register alone comprises some 70,000 pages annually. Any attempt at congressional oversight of these bureaucracies is impossible; the sheer size of the Administrative State is as incomprehensible as it is unconstitutional. Scholars will tell you that we no longer live under the Constitution and its three branches of government. Rather, we live under the administrative law of an administrative state, a de facto fourth branch of government. This fourth branch of government is one that James Madison in *The Federalist* would have deemed 'the very essence of tyranny.'" These bureaucracies are all under the control of the president and allow him to have far-reaching control acting as America's administrator. It is through this administrative state that the president wields much of his power. Obama can simply direct an agency to change policy, which will allow him to impact state laws across the country.

How does Obama plan to use the power of the administrative state to enact his agenda? Obama has



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boasted that his administration plans to enact massive regulatory "reform" (create more obstacles for free enterprise), create a lending fund to provide loans for multiple purposes (furthering the U.S. debt spiral), directly intervene in bank lending practices including mortgage agreements facing foreclosure (to pump more fiat money into the economy and give the government more control over banking), nationalize healthcare, enact a national service program, and impose stricter standards for auto emissions. Obama might try to go through Congress to get some of the initiatives passed but if that fails, he can just use the new fourth branch of government as he sees fit.

A perfect example of how a president can avoid Congress and instead use an executive department is how Bush created the auto bailout. When Congress failed to pass the auto bailout, Bush simply diverted funds from the earlier financial bailout to the auto industry while Congress sat on the sidelines. Presidents have learned by example that if Congress won't do as they're told, they simply make it work through the gargantuan administrative state. The concepts of separation of powers and checks and balances are mere afterthoughts.

The king used to appoint governors to see out his agenda, and a similar method is employed today by Obama in the appointment of "czars." Czar is a popular term for an individual who will act like a top-level deputy administrator for the president in governmental departments but who doesn't have to go through the constitutional requirements for filling that role. Joe Biden boasts that he coined the term "drug czar," and there was talk of a "car czar" that was abandoned after it was met with some ridicule by the public. Czars are regarded by the mainstream press as seemingly all-knowing experts who are above our traditional constitutional restraints.

Fellow Democrat Senator Robert Byrd even criticized the president for his contemplated use of czars to oversee energy and climate policy. In a letter written to Obama, Senator Byrd warned: "The rapid and easy accumulation of power by White House staff can threaten the Constitutional system of checks and balances.... At the worst, White House staff have taken direction and control of programmatic areas that are the statutory responsibility of Senate-confirmed officials."

### **Absolute Power of the President's Pen**

As Lord Acton famously said, "Power tends to corrupt; absolute power corrupts absolutely." Perhaps no presidential action evidences the king-like power of our president more than the issuance of an executive order. Much like the "king's decree" of old, executive orders are a law unto themselves. In today's world of executive power, the president can accomplish with a swipe of the pen what used to take an act of Congress.

Among the now 17 executive orders issued by Obama was a rescission of the "Mexico City" policy prohibiting foreign aid being used to fund abortion worldwide. Because of a letter containing 416 words signed by Obama, the U.S. government will resume its role in globally funding abortions. The religious right who support so-called "humanitarian" foreign aid should pause to consider how it is that the United States has become one of the world's biggest financiers of abortion on demand. Another order directed the secretary of Transportation to increase fuel-emission standards by 2011. The president can impact what kind of car you may purchase by simply signing his name.

President Obama also plans to "rescind a Bush Administration rule that granted protection to doctors, nurses, pharmacists, and other health care workers who refuse to perform or assist in abortions, sterilizations, and other contraceptive procedures on moral grounds" if their organizations receive federal funds. The pro-life groups who supported the Bush administration's unconstitutional forays into



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areas reserved to the states, such as sumptuary laws, are now witnessing the inherent dangers of an Imperial Presidency when the pendulum swings the other way. Obama has also vowed to continue Bush's faith-based initiatives but to add stringent secular mandates to the funding. None of the above-stated goals included any mention of oversight by Congress or constitutional authorization. It will simply come about because Obama says so.

A dangerous second cousin to executive orders is signing statements. A signing statement is a written statement by the president that accompanies the signing of a bill into law. Todd F. Gaziano, director of the Center for Legal and Judicial Studies for the Heritage Foundation, explains: "Presidential signing statements are themselves a type of directive, but they can incorporate language similar to that in an executive order or a presidential proclamation. For example, some signing statements identify a provision of the bill that the President believes is unconstitutional and instruct executive branch officials not to enforce the provision."

George W. Bush enthusiastically adopted the concept of using signing statements as a pseudo line-item veto. Bush only had the constitutional authority to sign the bill or veto it, not to play "pick and choose" with it. By openly declaring not to enforce the laws as passed or to enforce them in a unique way desired by the president himself, he circumvented the legislative process. Obama has not renounced this use of signing statements, and it remains to be seen if he will adopt them as well. This highlights another means of centralizing authority in the presidency. Each president usually takes it a step further than his predecessor. Obama already has adopted many of Bush's unique interpretations of presidential powers.

### **Obama on Civil Liberties**

President Obama has continued on the worst abuses of the Bush administration claims Bruce Fein, associate deputy attorney general under Ronald Reagan and constitutional scholar. Fein was one of the fiercest critics of the Bush administration's violations of our Constitution. He is especially disgusted about the Obama administration's willingness to continue on these abuses despite all of his proclamations about "change."

In an article for the *Washington Times*, Fein assailed Obama for his "betrayal [concerning] the imperial powers of his office, which he inherited from the Bush-Cheney duumvirate. He has either embraced or acquiesced in every one of their usurpations or abuses." Fein reminds readers about how Senator Obama criticized numerous Bush administration methods but has now adopted all of them. One of these methods was the use of the "state secrets" legal defense to prevent trials against those who may have participated in torture. Now Obama has asserted that very same defense. "In other words, individual constitutional rights of the highest order should be sacrificed on the altar of national security." Obama also used the state-secrets defense to stop challenges to the Bush "Terrorist Surveillance Program" (TSP) that he had attacked as a senator. Perhaps having the ability to now control the massive wire-tapping program has lessened the president's disdain for its violations of privacy.

Fein summarizes how Obama has incorporated the Bush abuses into his administration: "President Obama has left undisturbed the bulwark of other Bush-Cheney usurpations or constitutional excesses: the Military Commissions Act of 2006; the Foreign Intelligence Surveillance Act Amendments Act of 2008, which eviscerates the Fourth Amendment; the Status of Forces Agreement with Iraq concluded by Bush-Cheney as an executive agreement (despite its placement of U.S. troops under foreign command) to evade Senate scrutiny as a treaty requiring a two-thirds majority; and, President Bush's hundreds of signing statements. If the American people and Congress do not wake up from their Obama



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infatuation, presidential powers will soon be indistinguishable from King George III's that provoked the 1776 Declaration of Independence." This means that Obama can wiretap and listen to Americans at random and detain people indefinitely as "enemy combatants," denying them the right of habeas corpus (to challenge their detention in court). Are these really powers we want one individual holding? Should Americans feel safe keeping these powers imbued in our Imperial Presidency just because Obama seems like a nice person?

Shortly after his inauguration, Obama signed executive orders closing Guantanamo Bay in an effort to end torture, but civil libertarians question the effectiveness of these measures. Ivan Eland, author of *Recarving Rushmore: Ranking the Presidents on Peace, Prosperity, and Liberty*, has warned that Obama's show-boating gestures on torture obscure the fact that he is continuing the Bush policies. "Politicians love symbolic acts and Obama's rapid pledge to shutter the high profile prison at Guantanamo and secret CIA prisons was widely praised. But if civil liberties continue to be violated elsewhere, have we made much progress? Obama's nominees have said the administration will continue the CIA's policy of 'extraordinary rendition' of terrorism suspects — a euphemism for secret kidnapping without the legal nicety of extradition or any other procedural due process rights." The publicity over the executive order closing Guantanamo Bay omitted that the administration kept the Bush administration tactic of holding "enemy combatants" without trial at the Bagram Air Force base in Afghanistan.

Economist Paul Craig Roberts, who served as assistant secretary of the Treasury in the Reagan administration, is another former Bush critic who is getting a sense of déjà vu from the new Obama administration. "Now we have the Democrats, and the assault on civil liberty continues. President Obama doesn't want to hold Bush accountable for his crimes and violations of the Constitution, because Obama wants to retain the powers that Bush asserted.... The civil liberties that Bush stole from us are now in Obama's pocket. Will it turn out that we enjoyed more liberty under Bush than we will under Obama? At least the Republicans left us the Second Amendment. The Obama Democrats are not going to return our other purloined civil liberties, and they are already attacking the Second Amendment." Attorney General Eric Holder has already voiced support for reinstating the so-called assault weapon ban, which banned certain guns based solely on whether they "looked like a military weapon." One can only imagine that the Obama administration is just getting warmed up.

Obama also inherited two wars from President Bush, and Obama's Chief of Staff Rahm Emanuel is quoted as saying, "You never let a serious crisis go to waste." Obama is dead-set on escalating the Afghanistan quagmire while maintaining a long-term commitment with Iraq. As commander-in-chief, Obama should be able to decide how to best deploy troops during war. However, neither war (Afghanistan or Iraq) was declared by Congress, so now Obama is able to use the U.S. armed forces without any regard for our founding document. His recent decision to increase the conflict in the Afghanistan war by sending 17,000 more troops into the battlefield barely raised a peep from Congress. His announcement to keep up to 50,000 troops in Iraq past 2011, which even was endorsed by war hawk John McCain, has already been accepted as a reality.

There are some voices in the wilderness expressing outrage as Obama, the "peace candidate," follows the Bush-McCain plan for Iraq. Writing for CounterPunch.com, Chris Floyd was incredulous. "But the hypocrisy — the literally murderous hypocrisy — of claiming that this plan 'leaves Iraq to its people and responsibly ends this war,' as Obama asserted in his State of the Union speech, is sickening. It does no such thing, and he knows it. Instead, it entrenches the United States more and more deeply in a



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'counter-insurgency' war on behalf of whichever clique or faction of sectarian parties [is in control].... But what it won't do is 'end this war' - 'responsibly' or otherwise. When Obama says it will ... he is, quite simply, and very deliberately, lying." Too bad members of Congress do not have Floyd's courage.

### **All the President's Enablers**

What *can't* Obama do? It would appear that President Obama has very little that limits his ability in office. So who is to blame for the constant centralization of power in the president? Of course, the presidents themselves, but they wouldn't be able to accomplish this without some very powerful enablers. Namely Congress, the states, and ultimately the American citizens themselves have allowed, and even encouraged, the wild power grab by the executive.

Congress gives up power to avoid blame for failures. When things go bad, members of Congress can shrug their shoulders and blame it all on the president. Both John Kerry and Hillary Clinton voted to authorize the U.S. invasion of Iraq not in a constitutional declaration of war but rather in a six-page "Authorization for use of military force against Iraq resolution of 2002." This resolution effectively (and unconstitutionally) transferred to the president the decision of whether or not to go to war based on UN resolutions. Both Clinton and Kerry defended their vote for the resolution as merely trying to give the president more bargaining power at the UN Security Council. They stressed that they didn't actually vote for the war but rather it was the president himself who decided to enter that conflict. Clinton and Kerry are actually correct when they say they did not actually vote to go to war, but they did vote for the president to be able to make the decision to go to war, and in so doing they turned their back on their own responsibilities under the Constitution. Such tortured reasoning and job-shirking go hand in hand with an empowered president.

The states have also sold their souls to the executive in order to receive federal funding. Control from D.C. always accompanies federal funding, and now that state governments are dependent on federal funds, they have to march to the beat of the president's drum. An article entitled *Federal Interference with Checks and Balances in State Government: A Constitutional Limit on the Spending Power* in the University of Pennsylvania law review explained that the "contribution of federal grant money to state budgets has so increased in amount and changed in form that state legislatures increasingly find themselves with little real control over substantial portions" of what were typically state matters.

The American people have also been willing accomplices in the president's power grab. Voters allow themselves to be enamored with partisanship and leader-worship by focusing all their energy on the president. David Theroux, founder of the Independent Institute, wrote the following about the media circus surrounding Obama's inauguration. "For most Americans, the Presidency has become their sovereign king and father figure who stands above and beyond us mere citizens in order to oversee our lives and our well-being and assuage our fears. As such the Imperial Presidency is really a secular religious 'divinity,' an earthly 'messiah' who many believe will save them from all forms of harm by wielding government power against others, even if this means trampling on their lives, liberties and property." If you have any doubts about the celebrity of the president, ask yourself, "How many magazine covers has Obama been on?" From *People* to *US Weekly* to *Vogue*, Obama has graced enough covers to make even the most successful Hollywood agent jealous.

### **A Post-constitutional Presidency**

Anyone thinking that this problem can be solved by simply hoping the next commander-in-chief has an (R) after his name is seriously deluding themselves. This is a problem that has grown over time and will





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require a sea change in the widely held view that the president "runs the country."

So where do we go from here? The first step should be to identify and expose all the unconstitutional excesses of the modern presidency. Daniel McCarthy, in an article entitled *Our Enemy, The President*, writes, "Right-wing presidentialism failed spectacularly under Bush and has now yielded to what may be the strongest expression of left-wing presidentialism since Franklin Roosevelt. Conservatives have an important lesson to learn here. They must not only oppose Obama as they once opposed FDR, they must recognize the threat that presidential power represents to an ordered Republic no matter which party occupies the Oval Office." That is, grass-roots activists who want to restore constitutional liberty to the "land of the free" should work to strip the president of powers he was never intended to have.

Change will require a national movement to remind both Congress and the president of their constitutional roles. President Obama might be the latest wielder of unconstitutional executive power, and he certainly plans to use it like no one before, but the problem is bigger than Obama. America needs to return to the role for the federal government designed by the attendees of the Constitutional Convention.

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