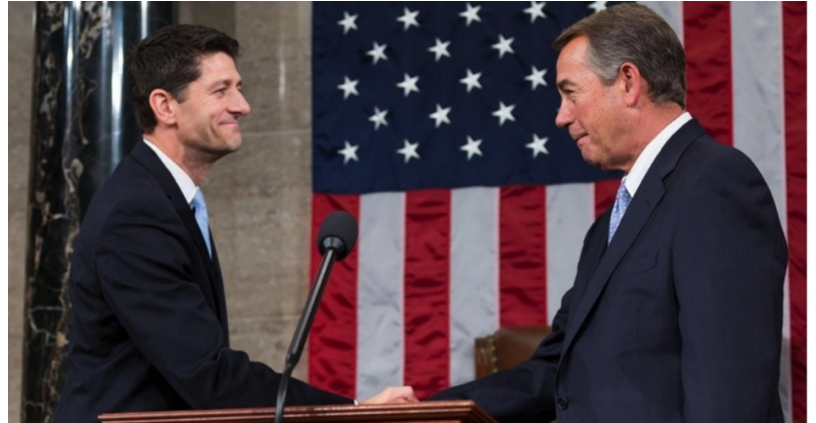




Ryan Raises Issue of Presidential Power

House Speaker Paul Ryan (R-Wis.), shown on left, used the question of whether to support expected Republican presidential nominee Donald Trump to raise the issue of the expansion of presidential power. Apparently, Ryan contends that the power of the executive branch has increased in recent years, at the expense of Congress and in violation of the Constitution. And he argues that Trump does not share his concern.



Ryan's position is clearly not a legitimate disagreement with Trump, but, rather, a part of Republican strategizing to de-fang Trump (and continue the Republicans' false front of conservatism, put on to ensure votes in the fall): One of Ryan's first roles as speaker of the House was overseeing passage of a \$1.1 trillion omnibus spending bill that had House Minority Leader Nancy Pelosi saying, "I feel almost jubilant about what is in the appropriations bill," and Ryan helped cement the disastrous and wholly unconstitutional Common Core education regime on the country via passage of the "Every Student Succeeds Act."

And if Trump did, in fact, believe the power of the president has expanded beyond its constitutional restraints, and desired to restrict the office to what is authorized by the Constitution, it would certainly make him unusual among most presidents of the 20th and 21st centuries, as almost all have "pushed the envelope" in grasping for ever-increasing power in the executive branch.

Regardless, Ryan told CNN's Jake Tapper, "I think conservatives want to know, does [Trump] share our values and our principles on limited government, the proper role of the executive, adherence to the Constitution? There are a lot of questions that conservatives, I think, are going to want answers to, myself included."

While it is not unusual for a Republican Congress to assert that Democrat presidents have usurped power from Congress beyond what is given them in the Constitution, and for a Democrat Congress to challenge similar increases when a Republican occupies the White House, the truth is that both are correct. Ryan admitted as much, blaming Republican presidents before Obama for asserting law-making authority through executive orders and federal agency rule-making.

Ryan insisted that he is not asking Trump to abandon policy positions on which they disagree, such as the ban on Muslims entering the country. "I'm not saying he's got to support my policies. ... He won fair and square on his policies."

"Of course, you're going to have policy disagreements," added Ryan. "You always have policy disagreements. Heck, Mitt Romney and I had policy disagreements. So that's just natural, and it's too much to ask someone to change their policy views that they were duly elected on, and some policy dispute. But are we putting our policies based upon the principles that all conservative and all Republicans share? You know, limited government, the Constitution, the right role for the executive?" (It would be great if *all* Republicans did share a belief in limited government and the Constitution).

Ryan contends that an appreciation for limited government, the Constitution, and the proper role of the



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executive are “principles that not only built our party, but built this country.”

During the campaign, Trump has made statements that have caused those who favor the concept of limited government to feel uncomfortable — such as his vow to change the law to make it easier to sue journalists who write negative things about him.

Ryan added, “We’ve got this fourth branch of government — unelected bureaucrats — writing our rules, writing our regulations that govern our society, that determine how our businesses are run, how our schools work. It determines almost everything we do.”

Ryan said he had “lots of ideas” on how to reverse the trend. Following the CNN interviews, Trump asserted, “I am not ready to support Speaker Ryan’s agenda. Perhaps in the future we can work together and come to an agreement.”

Hopefully a President Trump and Speaker Ryan could come to an agreement that is truly one in which the power of the executive branch is restrained, but part of the problem is with Congress itself. Members of Congress have routinely ignored the wording of the Constitution over the years in passing laws. In fact, Congress itself bears much of the blame for the expansion of presidential powers, because it has *voluntarily* delegated legislative power to the president and the federal bureaucracy. Such delegation of legislative power is not only unconstitutional, but it has had the practical effect of increasing the power of the presidency and the rule of unelected bureaucrats within the executive branch.

For example, many members of Congress think little of surrendering their power on the issue of trade agreements by passing “fast track” legislation, with such notorious legislation as Trade Promotion Authority (TPA). Under “fast track,” presidents are handed the power to negotiate multilateral trade deals, with Congress having only the power to vote up or down on the final agreement. The reality is that few members of Congress have the courage to vote down a trade agreement, once they have given the president such vast powers. But this is a violation of Article I, Section 8 of the Constitution, which gives Congress — not the president — the power to “regulate commerce with foreign nations.” (Paul Ryan has long supported Fast Track authority.)

Another way in which Congress has surrendered its constitutional authority to presidents is in the important area of foreign policy and war. Regardless of what one thinks of the merits of the Iranian nuclear deal, instead of the Senate jealously guarding its authority under the Constitution (Article II, Section 2) to make treaties with foreign nations, by requiring the constitutional two-thirds agreement, the Congress itself changed this clear constitutional requirement. Under this change, it took two-thirds of both houses of Congress to override the agreement, instead of the president having to obtain a two-thirds vote of the Senate to make his agreement law within the United States.

Presidents have routinely sent troops into real or potential combat in foreign nations for many decades, such as when President Harry Truman dispatched American soldiers to Korea in 1950 without a declaration of war by Congress. Since World War II, presidents have often relied upon authorization of the use of force resolutions from Congress in places as diverse as Vietnam and Iraq. These open-ended authorizations delegate congressional power to the president, allowing him to decide when, where, and under what conditions to take the nation to war. Clearly, this is not what was intended by the Founders, and it is another example of Congress simply turning over to the president its power to declare war. (Ryan voted for using military force in Iraq, without a declaration of war.)

But presidents have also seized power on their own, often in defiance of Congress. While various



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presidents overstepped their constitutional bounds earlier in American history, it was more sporadic than routine before Theodore Roosevelt became president in 1901. Before Roosevelt, American presidents generally exercised their duties under what has been called the “Whig Theory” of the presidency. In Britain, the Whig Party was known for its devotion to a stronger legislative branch (Parliament) in comparison to the executive branch (the king), and in America that meant that Congress should make the laws, with the president operating as an administrator — executing the laws passed by that Congress. In other words, unless the Constitution gave the president power to do something, he could not legally do it.

Roosevelt asserted a more robust vision of the presidential powers, which has been called the “Stewardship Theory.” Under this concept, the president had legal authority to do something, unless the Constitution said he could not. It is fairly obvious that most presidents since that time have operated under some version of the Stewardship Theory, whether they have expressed it as bluntly as did Roosevelt.

In his autobiography, former Vice President Dick Cheney revealed that he was impatient with President George W. Bush’s even seeking an authorization from Congress to use force in Iraq. According to Cheney’s broad view of presidential war powers, the president had been elected to make decisions on whether to go to war, and has no need to get any sort of approval from Congress.

President Bush encountered controversy during his tenure on his use of “signing statements.” When Bush would sign a bill into law, he often added his own opinions as to what the law meant, and how he intended to execute it. In 2006, a task force created by the American Bar Association argued that the use of such signing statements to modify the meaning of laws undermines “the rule of law and our constitutional system of separation of powers.” Despite criticizing Bush for these signing statements, Obama has continued to use them himself. In practice, presidents have used statements to direct executive agencies to apply the law according to the president’s particular interpretation of the Constitution.

Often misunderstood is the issuance by presidents of “executive orders.” There is nothing illegal or unconstitutional about executive orders, per se. Since the president is explicitly given the power *and the duty* to make sure the laws are “faithfully executed “ (Article II, Section 2), this is clearly a legitimate power of the president, properly used. It is the duty of the president to enforce the laws of the United States, and he therefore has the power to issue executive orders to accomplish that.

What is a violation of the constitutional separation of powers, however, is when presidents misuse executive orders in an attempt to make law on their own.

But failure to make sure the laws are faithfully executed is also a violation of the Constitution. For example, President Obama announced in November 2014 that he would unilaterally suspend immigration law as it applied to four million illegal immigrants who would otherwise face deportation. Over the years, Congress has enacted various laws to regulate legal and illegal immigration, including providing standards and procedures that determine when aliens may work in the country and when they may enjoy benefits provided from the public treasury.

In a lawsuit filed by 43 U.S. senators, it was contended that Obama’s executive orders for his subordinates to “contravene the letter and the spirit of the immigration laws” threatened the separation of powers enshrined in the Constitution.

Ryan contends that federal agencies are also making law by the issuance of rules. This is certainly a



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true and valid complaint; however, once again, Congress bears much of the blame for this situation. Over the years, Congress has chosen to pass broad policies, leaving it to federal bureaucrats to generate more specific rules. Then, of course, when constituents adversely affected by these rules complain, members of Congress can protest that it is out of their hands.

The pattern that emerges here is that many members of Congress prefer to leave much policymaking in the hands of either the president, the federal bureaucracy, or even the federal courts for one, or both, of two reasons: (1) They can avoid a possibly unpopular vote on a controversial subject; and (2) they agree with the action taken by the president, the bureaucracy, or the courts, but can pretend that they do not, thus keeping in the good graces of their constituents.

This leaves Congress to draw their breath and their salary.

Regardless of what Speaker Ryan's motivation is in the matter of Donald Trump, the expansion of presidential power at the expense of Congress is a legitimate concern, and we should all hope that the executive branch will restrict itself to its constitutional role in our federal republic.

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