

Informal Powers of the President

Executive Orders

The section of the Constitution that allots to the president "executive power" is one of the least specific but potentially most important in the document. When paired with the provision requiring presidents to take care that laws are faithfully executed, the executive power clause provides for a range of implied powers whose extent and potency have grown beyond anything the framers could have foreseen.

An offshoot of the implied powers doctrine is The Presidency A to Z *executive order*. This critical instrument of active presidential power is nowhere defined in the Constitution but generally is construed as a presidential directive that becomes law without prior congressional approval. It is based either on existing statutes or on the president's other constitutional responsibilities. Executive orders usually pertain specifically to government agencies and officials, but their effects often reach to the average citizen. For example, in 1965 Lyndon B. Johnson issued Executive Order 11246 which required companies that win federal government contracts to create programs for hiring more minorities, significantly affecting private sector employment practices. For the most part, presidents issue executive orders to establish executive branch agencies, to modify bureaucratic rules or actions, to change decision-making procedures, or to give substance and force to statutes.

Executive Agreements

The Presidency A to Z *executive agreement* is a pact other than a treaty made by the president with a foreign government. Presidents have asserted that their constitutional powers give them authority to make these pacts without Senate approval. For presidents, the executive agreement is a particularly powerful foreign policy tool because it allows them to act without seeking congressional backing. The chief limitation on executive agreements is that, unlike treaties, they do not supersede any U.S. laws with which they might conflict.

The executive agreement power was used as early as 1803, when Thomas Jefferson arranged for the Louisiana Purchase without congressional approval. Throughout the nineteenth century presidents made little use of the power, concluding on average only one executive agreement per year. The use of such agreements grew dramatically in the twentieth century. Between 1945 and 1996 only 6 percent of all international agreements entered into by the United States were treaties. Executive agreements are now used to conduct business once reserved for treaties. For example, trade agreements, the annexation of territory, military commitments, and arms control pacts have all been concluded through executive agreements.

Executive privilege

Executive privilege is a claim asserted by the president of the United States and other members of the executive branch to justify withholding of documents and information from other branches of government. As presidents since George Washington and Thomas Jefferson have argued, the separation of powers embodied in the United States Constitution implies that each branch will be permitted to operate within limits free to some degree from the control or supervision of the other.

The concept of executive privilege is a legally murky one, since the Constitution does not mention it anywhere. The history of the doctrine underscores that point, since Presidents have generally