Executive Orders and Effectiveness

Charles Titus, MPA

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Dr. Tom Kelly

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American Public University System

Throughout the United States' history, almost every President has issued executive orders that have been used to help members of government and federal agencies run the government. This paper will explore the history and use of executive orders and examined to see if they are used in accordance with the Constitution, if they have been effective, if they are actually necessary to use by Presidents, and what can be done if they are not issued in accordance with the law. A strong thesis statement should be here in the intro paragraph. This paragraph tells the reader what will be examined, but the primary finding should be presented at the beginning (unlike a good fiction novel).

One needs to have an understanding of what executive orders are. Smith, Roberts, & Wielen (2011) found that “executive orders are directives issued by the President to require or authorize some action of executive agencies” (p. 280). In other words, an executive order is something that the President of the United States issues that has to be followed by the executive agencies that it is issued towards.

It is important to examine executive orders and understand how they came about to be used. A common misunderstanding of executive orders is how they came into existence. It is often thought that the Constitution is what allows executive orders to be used by the President. However, this is not actually the case. It is very important to point out that the Constitution of the United States does not have a constitutional provision or a statute that gives the President permission to use executive orders (Pika & Maltese, 2014). With that being said, one can argue that executive orders are not used in accordance by the constitution. That statement could be argued since the Constitution does not discuss executive orders. However, it is important to note that the use of executive orders has taken place with almost every single President that has been in office. The use of executive orders started with George Washington when he issued a total of eight during his time as the President (The American Presidency Project, 2014). With that being said, the use of executive orders has been accepted as one of the Presidential powers, and when issued correctly, they do have the full force of law (Chu & Garvey, 2014). One needs to understand that they don’t have to be approved by Congress (Milkis, 2011). Executive orders don’t have to be approved by Congress to go into effect. However, Congress can modify or nullify an executive order.

Now that one understands that the use of executive orders has been supported over the years, one needs to take a look at what they can be used for. Executive orders can be used for a number of different reasons. A President can issue an executive order to overrule Congress in an emergency (Legal Information Institute, 2013). A few examples of them being used during an emergency are when President Abraham Lincoln used an “order to fight the Civil War, Woodrow Wilson issued one just before the United States entered World War I, and Franklin Roosevelt approved Japanese internment camps during World War II” (Legal, Information Institute, 2013, para. 7).

Questions can be raised if the use of executive orders is necessary to use by Presidents. Some people have said that they are not necessary and pointed to a few different reasons as to why they are not. One argument that has been used is that there was one President that did not use executive orders. Another argument that was used is that executive orders are not supported by the Constitution; therefore they should not be used.

There was indeed one President that did not use any executive orders while he was in office. The President that did not issue any executive order was William Henry Harrison (The American Presidency Project, 2014). One could look at this President and argue that he did not need executive orders in order to run the government of the United States. However, this would not be a good argument due to the simple fact that President William Henry Harrison died thirty-one days after taking over the Presidential office from pneumonia (Collins & Schlesinger, 2012). This makes the argument that the use of executive orders is not necessary because there was a President that did not use them void because President Harrison served a short amount of time. Plus, one can simply look at President John Tyler who replaced Harrison when he died. He issued some executive orders during the time that Harrison would have been in office had he not died meaning it is very possible that President Harrison would have had used them (The American Presidency Project, 2014).

Another argument that has been used to say that Presidents should not use executive orders is that the Constitution of the United States does not state or give Presidents permission to use them. This is not actually the case because “authority for the execution and implementation of these written instruments stems from implied constitutional and statutory authority” (Chu & Garvey, 2014, p. 2). Article II of the United States Constitution states that:

“The executive power shall be vested in a President of the United States…

The President shall be Commander in Chief of the Army and Navy of the United States…

[The President} Shall take Care that the Laws be faithfully executed” (U.S. Const. art. II, § 1-3).

Article II of the United States Constitution gives the President the implied right to do what is necessary to faithfully execute the laws of the United States making the argument that the President does not have the right to use them because it is not stated in the United States' Constitution void. The President has to be able to issue executive orders to successfully run the government.

There is also the possibility of the argument being made that the number of executive orders has been decreasing since President Clinton was in office. President Clinton issued a total of 364 executive orders, President George W. Bush issued a total of 291 executive orders and President Barack Obama has issued a total of 198 as of January 1, 2015 (The American Presidency Project, 2014). However, it is important to note that just because the amount of executive orders has decreased it should not be taken away. Executive orders are very important for the President to use to run the Federal government. Executive orders allow a President to issue guidelines to federal organizations. It is also important to remember that Executive orders can be used by Presidents to respond to an emergency. It would not be wise to take away an instrument that a President could use to respond to an emergency.

After looking at the past three arguments, it then bears the question of whether executive orders are truly necessary? The simple answer is yes. Executive orders are necessary for Presidents to use in order to run the federal government. That is if they are used correctly. However, if the executive orders are used incorrectly then they are not necessary. A quick summation of the criteria for judging whether or not one has been used correctly could go here.

Executive orders are used to require or order an action be taken by a government agency and officials. Presidents also can use executive orders in times of emergency. A few examples of when a President used an executive order during an emergency was when President “Abraham Lincoln used an executive order to fight the Civil War, Woodrow Wilson issued one to arm the United States just before it entered World War I, and Franklin Roosevelt approved Japanese internment camps during World War II” (Legal Information Institute, 2013, para. 7). It is important to point out that a President can use an executive order to go to war because the President is the Commander in Chief of the United States' military.

A common misconception of executive orders is that a President can just issue them for any reason. This is not actually the case. A President can only use executive orders to direct or authorize actions to be taken by executive agencies. One thing that is important to remember is that a President can’t just use an executive order to create a brand new law that he wants passed. If a President does issue an executive order, there are actions that can be taken to not have to enforce the order.

It is important to point out that there are ways that executive orders can be overturned and not enforced. One way that an executive action can be overturned is that a Court rules that it is unconstitutional. Possibly one of the most important court cases dealing with executive orders is that of Youngstown Sheet & Tube Co. v. Sawyer which involved executive order 10340 (Nelson, 2014). In executive order 10340, Harry Truman (1952) found that “in order to assure the continued availability of steel and steel products during the existing emergency, it is necessary that the United States take possession of and operate the plants, facilities, and other property of the” steel companies (para. 9). The United States Supreme Court case that was brought forth ruled that the order was overstepping his powers as the President of the United States (Nelson, 2014). The Supreme Court found that this executive order was an example of a President making his own law and was not a valid use of an executive order (Nelson, 2014). In other words, the judicial system can step in if a case is brought forth and rule that an executive order is unconstitutional.

The Congress of the United States has ways that it can limit executive orders as well. . First, Congress can simply decide not to fund something that is being called for in an executive order. The way that this can limit an executive order is because if there is no money for something to be done, then there is no way for that action to be carried out. In other words, Congress has the power of the purse when it comes to funding items within the Federal government (Smith, Roberts, & Wielen, 2011). An example of this taking place was when Congress in 1943 did not fund a position that was to be created by executive order 9358 (Chu & Garvey, 2014). In executive order 9358 that was issued by President Franklin D. Roosevelt he ordered that a Legal Examining Unit be created in the Office of Personnel Management (Chu & Garvey). Congress did indeed decide not to fund this unit within the Office of Personnel Management which resulted in it not taking place. The reason it was not created was because the unit did not have any funding to operate.

Another way that Congress can limit executive orders is by either modifying or nullifying the executive order. Congress has the right to modify or nullify an executive order that was put forth. It is important to point out that if this is done, a President could attempt to veto the legislation that was passed undoing the executive order. However, if a President was to veto an item, Congress could still do a Congressional override to keep the executive order from going into effect (Chu & Garvey, 2014). There was a study done back in 2006 looking to see how many executive orders have been modified or nullified by Congress. In the study that was done in 2006 it pointed out that less than 4% of executive orders have been modified or nullified by Congress (Warber, 2006).

One of the most interesting ways that an executive order can be overturned or changed is by other United States' Presidents. A President of the United States can actually “revoke, modify, or supersede his own orders or those issued by a predecessor” (Chu & Garvey, 2014, p. 7). In other words, a President might pass an executive order before they leave office thinking that it will be in place for a long time. However, this might not be the case. The reason is any time a new President is elected and takes office they can come in and change or revoke an executive order that was put into place by another President.

There are a number of ways that executive orders can be evaluated. They can be evaluated based upon how many have been issued by each President. Another method that can be used is looking at how many have been overturned or modified by Congress. Then there is looking at how many have been modified, or nullified by other Presidents. One other way is looking at how many have been overturned by the judicial system. Each way will be examined to see which method would be best to use.

The first method that was discussed is examining how many have been issued by each President. The President that issued the most executive orders to date has been Franklin D. Roosevelt by issuing a total of 3,728 executive orders (Federal Register A, n.d). President George W. Bush he issued a total of 291 total executive orders during his Presidency (Federal Register B, n.d). There is a huge difference between the number of executive orders issued between President Roosevelt and President George W. Bush. Can one use the amounts that are issued as a method of checking for effectiveness? It is important to point out that this method of evaluation would not be an ideal way to check for effectiveness because the number of executive orders that are issued does not tell us if they have been effective or not. The reason is because having a difference in numbers of executive orders just tells us that Franklin D. Roosevelt issued far more then President George W. Bush did. It does not tell one if President George W. Bush was less effective in regards to the use of executive orders.

Also, the number of executive orders could potentially be skewed if a President finds a way around calling an order an executive order. For example, it was reported that President Obama has been bringing orders forth by issuing Presidential memorandums instead of executive orders (West, 2014). If one looks at the amount of Presidential memorandums that President Obama has issued and add that together with the amount of executive orders that have been issued, one can see that President Obama is actually on track to issue more “executive actions than any President since Harry Truman” (West, 2014, para. 3). In other words, when looking at the amount of Presidential memorandum's that have been issued by President Obama, it is clear to see that the executive order number is skewed. This along with the difference between the amount one President issued and another is not a good way to evaluate if they have been effective.

Another method that could potentially be used to evaluate the effectiveness of executive orders is by examining the amount that have been modified or nullified by other Presidents. This could potentially be a great way to evaluate executive orders. One needs to take a look at political parties before it can be determined if this would be an effective method. It is important to remember that a President has the right to modify or nullify an executive order a previous President has issued (Chu & Garvey, 2014). With that being said, it would not be wise to use this method to evaluate the effectiveness of an executive order because in theory a new President could just simply be voted into office and undo other executive orders that were put into place just to please his political party. The past two Presidents of the United States have indeed nullified and modified previous President's executive orders (Chu & Garvey, 2014). By looking at what was nullified, one can assume that it was due to the political party's views that they were done away with or changed, and not because it was determined that the executive orders that were changed or done away with were unconstitutional. Therefore, this method would not be a wise choice to evaluate the effectiveness of executive orders.

A method that could also be used to determine the effectiveness of executive orders is by examining the amount that Congress has modified or nullified. Just like what was discussed above, Congress has the right to “revoke all or part of such an [executive] order by either repealing the order, or by removing the underlying authority upon which the action is predicated” (Chu & Garvey, 2014, p. 9). One could see that this has potential to be a great method to evaluate executive orders. The downfall to using this method is very similar to that of the method of looking at the ones that have been modified by Presidents because Congress in theory could possibly nullify or modify executive orders based upon what party is in power in Congress. Say for instance, the President is a Democrat and Congress is led by Republicans. Congress could pass legislation that would modify or nullify an executive order. However, it is important to point out that if Congress tried to do this then the President could veto the legislation that Congress was trying to pass (Cooper, 2014).

Another method that could be used to determine the effectiveness is by examining the amount that has been thrown out by the judicial system. An executive order could by ruled invalid by the courts meaning they can't be enforced. This method is not like the other two methods that were discussed due to the fact that the members of the court system would not be affected by the political parties. This method is the best way to evaluate the effectiveness of executive orders since the issue of the political parties is not an issue in this case.

Now that it has been figured out which method is best, it is important to see how many executive orders have been ruled unconstitutional by the judicial system. Researching this topic of executive orders having been overturned by the judicial system was very tough because there was not much data available. Many different reputable academic resources had conflicting data. As a result for the purposes of this research paper, it was decided to look at a few different resources to come to a more accurate number. The data that was gathered shows that President Franklin D. Roosevelt had five executive orders overturned which included the orders of 6199, 6204, 6256, 6284, and 6855 (Milkis, 2014). President Truman had executive order 10340 overturned (Nelson, 2014). President Bill Clinton had two executive orders overturned by the courts which included 12954 and 13155 (Cooper, 2014). Then in 1999, the Court system “struck down an 1850 executive order issued by President John Tyler” (Cooper, 2014, p. 25). One can see with this information that there have been less than 10 executive orders that have been overturned by the judicial system.

The use of executive orders has been effective. The way this can be proven is by examining two things. First, one needs to look at the number of executive orders that have been issued. There have been over 13,000 executive orders issued (White House, 2014). With that being said, there have only been nine executive orders that were overturned. One can conclude that if more executive orders would have been overturned then they would not have been effective. As a result of the research that was composed, it is clear to see that executive orders have been used in the accordance of law. They have also been necessary to use by Presidents as proven for a way for Presidents to respond to emergencies.

When looking at this research project there are a few things that can be done in the future to evaluate the effectiveness of executive orders differently. First, more research could be done in regards to see how many executive orders have been modified or nullified by President. The issue with this in the research project was there was not much information available to do a good research project on this topic. If more time was allowed other than the eight weeks it would be have been interesting to see how many executive orders have been modified or nullified by other President. Another thing that could be looked at in future research projects is the total number of executive orders that have not been funded by Congress. However, the time that was allowed for the project was not enough in which this would have been a good method to base the paper on. One other thing that could be looked at for future projects in this area is how many executive orders have been modified or nullified that is up to date. There was some research done on this, but it was done before 2006. This means that the data that was discussed in that research is not up to date as of 2015. It would be interesting to see what the total number and percentage is at as of 2015 compared to 2006. The last thing that could be looked at with future research is to see how many executive orders have been modified by a different political party than the President that issued it. By looking at this it could show if there is a correlation between executive orders being nullified or modified by opposite political parties in power in Congress.

Throughout the history of the United States, there have been a lot of executive orders issued by the Presidents of the United States. Almost every President of the United States has issued an executive order. It is clear to see that the use of executive orders is necessary, have been effective, and have been used in accordance of the law. By understanding this, we can see that executive orders have been used to help better the United States.

History, examples, research, and writing structure in the examination of executive orders are all high level. The soft spot of the essay is that it keeps the reader guessing as to what the main takeaway of the essay will be until near the end. That works better for a mystery novel, but for a scholarly piece, sometimes people don’t get passed the first paragraph or even the abstract for that matter in published piece. Wrap up the entire argument within the first paragraph, then use the rest of the essay to show why you’re right.

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