

For What It Is Worth, Executive Orders

By Keith S. Brown

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In a recent discussion with a friend, I claimed that the President Directives and Executive Orders had the force of law, bypassed Congress and had increased in number in recent history (since 1900).

My friend challenged me to back up the claim.

Though, I did not find a specific listing for all administrations of the number of Presidential Directives and Executive Orders, I did find the following: Codificationⁱ of Executive-Ordersⁱⁱ by administration. And the definition of an "Executive Order"ⁱⁱⁱ...

"Stroke of the pen. Law of the Land. Kinda cool."

Paul Begala, former Clinton advisor,
The New York Times, July 5, 1998

"We've switched the rules of the game. We're not trying to do anything legislatively."

Interior Secretary Bruce Babbitt,
The Washington Times, June 14, 1999

In brief, Executive Orders (EOs) are legally binding orders given by the President, acting as the head of the Executive Branch, to Federal Administrative Agencies. Executive Orders are generally used to direct federal agencies and officials in their execution of congressionally established laws or policies. However, in many instances they have been used to guide agencies in directions contrary to congressional intent.^{iv}

Number of EOs by administration since Herbert Hoover:

President	Years in Office	EO Numbers	EOs Issued	EOs/year
Hoover	1929-1933	5075—6070	996	~249/year
FDR	1933-1945	6071—9537	3467	~301/year
Truman	1945-1953	9538—10431	893	~105/year
DDE	1953-1961	10432—10913	482	~121/year
JFK	1961-1963	10914—11127	214	~107/year
LBJ	1963-1969	11128—11451	324	~54/year
Nixon	1969-1974	11452—11797	346	~69/year
Ford	1974-1977	11798—11966	169	~56/year
Carter	1977-1981	11967—12286	320	~80/year
Reagan	1981-1989	12287—12667	381	~48/year
G Bush	1989-1993	12668—12833	166	~42/year
Clinton	1993-2001	12834—13197	364	~46/year
GW Bush	2001-7Feb06	13198—13396	199	~50/year

From another source^v, we have (the numbers for other administrations are the same):

President	Years in Office	EOs Issued	EOs/year
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Lincoln	1861-1865	3	~1/year
TR	1901-1909	1006	~126/year
Wilson	1913-1921	1791	~224/year
Coolidge	1923-1929	1253	~209/year
FDR	1933-1945	3728	~324/year

However, as the Heritage article (above) points out, the number and the impact are not directly correlated (for example, many EOs are hortatory). Apparently one reason the recent count is so low is because many modern EOs are now classified as National Security Orders and thus no longer counted as EOs.

EOs per year since 1929 = $(13396-5074)/(2006-1928) = 8322/78 = \sim 107/\text{year}$

EOs per year until 1929 = $5074 / (1929-1789) = 5074/140 = \sim 36/\text{year}^{\text{vi}}$

Executive Orders have Power!

For example, contrary to the glowing picture of Lincoln in most school history books, Lincoln's usurpation of authority via Executive Order is rather mind-boggling.

- Suspended writ of habeas corpus (thereby allowing anyone to be arrested and detained indefinitely without charges) The suspension was used to arrest 31 Maryland legislators and the mayor of Baltimore. The government threatened the arrest of the governor of Maryland.
- Tried former Ohio congressman Clement Vallandigham in a military tribunal, and sentenced him to prison for the duration of the war. Lincoln later commuted the sentence and ordered him banished to the Confederacy.
- Issued an arrest warrant for and ordered the arrest of the Chief Justice of the US Supreme Court.

FDR's EO 9066 ordered the arrest of 110,000 persons of Japanese descent -- including 77,000 American citizens -- for no crime other than having the wrong biological parents.

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ⁱ Codification of Presidential Proclamations and Executive Orders
<http://www.archives.gov/federal-register/codification/chapter.html>

ⁱⁱ Executive Orders Disposition Tables
<http://www.archives.gov/federal-register/executive-orders/disposition.html>

ⁱⁱⁱ What is an Executive Order?
<http://www.thisnation.com/question/040.html>

^{iv} The Impact of Executive Orders on the Legislative Process: Executive Lawmaking?
<http://www.cato.org/testimony/ct-wo102799.html>

Executive Orders, A Blueprint for Dictatorship?

http://www.millennium-ark.net/News_Files/Exec.Orders/EOs.Blueprint.for.dictator.html

The Use and Abuse of Executive Orders and Other Presidential Directives

<http://www.heritage.org/Research/LegalIssues/LM2.cfm>

Inside the Shadow Government, National Emergencies and the Cult of Secrecy

http://www.thirdworldtraveler.com/FBI/Executive_Orders_ITSG.html

Presidential Policy & National Strategy

http://www.dean.usma.edu/sosh/Academic%20Program/Courses/ss493/presidential_policy.htm

^v The Use and Abuse of Executive Orders and Other Presidential Directives

<http://www.heritage.org/Research/LegalIssues/LM2.cfm>

^{vi} EOs were unnumbered (and occasionally unrecorded or lost) until rather late in the game. The numbering scheme was applied retroactively back to Lincoln's term of office. From what I've read, EOs were rather occasional until TR's term in office. Since that time, they've increased from a few 10s of EOs per term to the current hundreds (and thousands) of EOs per term.