

# March 2025 *Rant*



## Should There Be Limits on Executive Powers?



The legality and extent of certain aspects of the U.S. President's power have dominated recent news cycles, often without informed, factual backup. This *Rant* will examine the two most controversial, recently used presidential powers:

- Executive Orders
- Presidential Pardons and Commutations

### Executive Orders

Executive orders are not explicitly defined in the Constitution and rest on historical practice, executive interpretations, and court decisions. According to the Congressional Research Service, "...although the U.S. Constitution does not address executive orders and no statute grants the President the general power to issue them, authority to issue such orders is accepted as an inherent aspect of presidential power."

According to a National Constitution Center online article by Scott Bomboy, its editor in chief, “The president has two primary sources of power to issue directives and executive orders: the Constitution and powers granted to the president by Congress.” This was stated in the *Youngstown Sheet and Tube Co. v. Sawyer* (1952) Supreme Court decision by Justice Hugo Black: “The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”

Article II., Section 1. of the Constitution vests executive powers in the President, requiring that the President “shall take Care that the Laws be faithfully executed.” The President is also the “Commander in Chief of the Army and Navy of the United States,” as stated in Article II. Section 2. The President is further understood to have broad powers in areas such as control and operation of the federal government, federal agencies, and in foreign affairs.

So, it is readily apparent that the President does not have unlimited authority to issue enforceable executive orders. However, over the years numerous presidents have issued questionable executive orders under the “better to ask for forgiveness than ask for permission” doctrine.

Over the years, all presidents have issued a multitude of executive orders. Below is a list of the average number of executive orders issued per year during the terms of recent presidents:

- Joe Biden (D) – 41
- Donald Trump (R) – 55
- Barack Obama (D) – 35
- George W. Bush (R) – 36
- Bill Clinton (D) – 46
- George H.W. Bush (R) – 42
- Ronald Reagon (R) – 48
- Jimmy Carter (D) – 80

Let’s look at a few questionable recent examples:

President Obama’s DACA (“dreamers”) executive order allowing protected status to millions of illegal immigrant children was issued even though neither the Constitution nor Congress gave him this authority.

President Biden’s executive order on “Revitalizing Our Nation’s Commitment to Environmental Justice for All” for which there is no constitutional or congressional authority.

President Trump’s executive order imposing 25% tariffs on Mexico and Canada, despite the fact that Article 1. Section 8. of the Constitution says “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises.”

Thus, there are hundreds of questionable executive orders, most of which haven't been challenged in court.

Certainly, Donald Trump's executive orders will receive substantial judicial scrutiny, and rightly so. However, decades of previous unchallenged executive orders have set a dangerous precedent of allowing unbridled presidential power.

## Presidential Pardons and Commutations

Article. II. Section 2. of the U.S. Constitution, with regards to powers of the President, states "...he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."

I don't believe our founding fathers ever envisioned the extent to which recent presidents have abused this responsibility, to the detriment of the American people.

According to Wikipedia, "Though pardons have been challenged in the courts, and the power to grant them challenged by Congress, the courts have consistently declined to put limits on the president's discretion. The president can issue a full pardon, reversing a criminal conviction (along with its legal effects) as if it never happened. A pardon can also be offered for a period of time to cover any crimes that may have taken place or stop any charges from ever being filed during that period. A pardon can be issued from the time an offense is committed, and can even be issued after the full sentence has been served. The president can issue a reprieve, commuting a criminal sentence, lessening its severity, its duration, or both while leaving a record of the conviction in place."

A list of the number of pardons by president follows:

- Jimmy Carter (D) – 534
- Ronald Reagan (R) – 393
- George H.W. Bush (R) – 74
- Bill Clinton (D) – 396
- George W. Bush (R) – 189
- Barack Obama (D) – 212
- Donald Trump (R) – 144
- Joe Biden (D) – 80
- Donald Trump (R) – 1500 so far in current term

A list of the number of commutations by president follows:

- Jimmy Carter (D) – 29
- Ronald Reagan (R) – 13
- George H.W. Bush (R) – 3
- Bill Clinton (D) – 61

- George W. Bush (R) – 11
- Barack Obama (D) – 1715
- Donald Trump (R) – 94
- Joe Biden (D) – 4169
- Donald Trump (R) – 14 so far in current term

Some recent egregious examples follow:

- Jimmy Carter (D) – Vietnam war draft evaders, G. Gordon Liddy Watergate burglar
- Ronald Reagan (R) – George Steinbrenner, illegal campaign contributions, obstruction of justice
- George H.W. Bush (R) – Myra Soble, connected with Rosenberg spy ring
- Bill Clinton (D) – Brother Roger Clinton, Jr., cocaine distributor, 16 FALN Puerto Rican gang members
- George W. Bush (R) – John Forte, cocaine smuggler
- Barack Obama (D) – Chelsea Manning, WikiLeaks perpetrator
- Donald Trump (R) – Charles Kushner, son-in-law's father and tax evader
- Joe Biden (D) – Hunter Biden, son and tax evader, illegal drug user, illegal gun possession; Adrian Peeler, convicted of murder conspiracy in the killing of a mother and her child to prevent the child from testifying in another murder case; dubiously legal pre-emptive pardons for future acts
- Donald Trump (R) – January 6<sup>th</sup> rioters

Clearly, this madness has to stop, and we can do something about it. I strongly believe we should enact a constitutional amendment strictly limiting the President's commutation and pardon powers to cases of the military, to which he is commander in chief.

Stay tuned for my upcoming April **Rant** concerning prosecutorial discretion.

**Roger**

P.S. Kudos to my wife, June, for her tenacious editing of my **Rants**, effectively putting "lipstick on a pig."