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Trump says his ‘authority is total.’ Constitutional experts have ‘no idea’ where he got that.

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When President Trump was asked during Monday’s news briefing what authority he has to reopen the country, he didn’t hesitate to answer. “I have the ultimate authority,” the president responded, cutting off the reporter who was speaking.

Trump later clarified his position further, telling reporters, “When somebody is the president of the United States, the authority is total and that’s the way it’s got to be. ... It’s total. The governors know that.”

The local leaders, Trump said, “can’t do anything without the approval of the president of the United States.”

Trump’s eyebrow-raising assertions about the reach of his office during national emergencies, which were also echoed by Vice President Pence at the briefing, came on the same day governors on both coasts announced their own plans to begin working toward reopening their states amid the ongoing global coronavirus pandemic.

While the president appears convinced he is the only one empowered to make the critical determination, his extraordinary assertions of authority over the states astounded legal scholars, leaving them wondering, as they have before about Trump’s broad claims, where on earth he got them.

“You won’t find that written in the Federalist Papers anywhere,” Robert Chesney, a law professor at the University of Texas at Austin, told The Washington Post.

Not only does the power Trump asserted have no basis in reality, experts said, but it’s also completely antithetical to the Constitution, the concept of federalism and separation of powers — whether during a time of emergency or not.

“This isn’t ancient Rome where there’s a special law that says in the event of an emergency all the regular rules are thrown out the window and one person, whom they called the dictator, gets to make the rules for the duration of the emergency or for a period of time,” Chesney said. “We don’t have a system like that.”

On Twitter, Steve Vladeck, another professor at the University of Texas School of Law, rebutted Trump’s “authority is total” remark.

“Nope,” Vladeck wrote. “That would be the literal definition of a *totalitarian* government.”

Various Democrats and Republicans appeared to be in agreement on this basic democratic principle. Rep. Liz Cheney (R-Wyo.) tweeted the full text of the 10th Amendment, which says

any powers not specifically delegated to the federal government in the Constitution are reserved to the states. The federal government, she said, “does not have absolute authority.”

Appearing on CNN, New York Gov. Andrew M. Cuomo (D) scoffed at that idea as well, telling host Erin Burnett, “You don’t become king because there’s a federal emergency.”

The federal government does not have absolute power.

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” United States Constitution, Amendment X

Josh Blackman, a constitutional law professor at the South Texas College of Law Houston, told The Post that if Trump were to call up Cuomo tomorrow and order him to send everyone back to work, Cuomo could easily tell Trump to “get lost, and that would be his prerogative.”

It’s the most basic tenet of federalism, he said: “The federal government can’t give orders to governors. That’s a very simple fact of life.”

At least one former governor took Trump’s side: Vice President Pence, who offered a forthcoming legal brief on the subject at the news conference Monday.

“Make no mistake about it, in the long history of this country, the authority of the president of the United States during national emergencies is unquestionably plenary,” Pence said.

Blackman said he had “no idea” what law or legal precedent Trump believed granted him such sweeping authority, because none do. He said there is a long history of presidents using “creative arguments” to assert executive authority during wartime or emergencies — but contrary to Pence’s assertion, there is not a long history of presidents getting away with nearly unfettered authority. There is no “emergency clause” in the Constitution for presidential power, he said.

Case in point: During the Korean War, President Harry Truman declared a national emergency and seized private steel mills to preempt a steelworkers’ strike, arguing that the mills were essential to the national defense. The Supreme Court, in a case called Youngstown Sheet & Tube Co. v. Sawyer that continues to guide the courts today, stopped Truman in his tracks.

That was before the National Emergencies Act of 1976, which did give presidents authority to declare a national emergency without the prior approval of Congress. Still, Vladeck stressed in an email to The Post that while presidents “do and should have broad powers to respond to crises, broad is not the same as ‘total.’ ”

In this case, he said, it’s critical to remember that Trump never issued any kind of national lockdown order like other countries did. Trump thus cannot reopen something he never shut down. Vladeck said he does not believe that Trump would have had the authority to do that anyway. At most, he said, Trump might have been able to ban interstate travel under the Public Health Service Act.

“But for better or worse, the president has left most of the big decisions to local and state authorities. That makes it only that much harder for him to try to override them,” Vladeck said.

Blackman and Chesney said the president is free to issue “guidelines” urging states to go back to work, but the states are also free to ignore them.

Trump, if he were to act on his impulses, would probably discover that states and local governments “don’t work for him,” Chesney said, but he stressed that Trump’s sweeping assertions need to be kept in check before he gets to that point.

The federal system created by the framers of the Constitution divided power between the national and state governments. While the Constitution’s supremacy clause means acts of Congress can override the laws of states, the same does not apply to the president acting unilaterally.

As a result, various police powers, as well as authority over functions such as zoning and regulation of business, belong to the states because the Constitution does not grant them to the federal government. The states, in turn, are constrained by the constitutional grant of the power to regulate interstate commerce, for example, and the Bill of Rights.

The federal government has exerted its greatest power over the states by withholding or threatening to withhold money from recalcitrant states, though even that authority has been limited by the Supreme Court.

Trump has made many extreme claims of power, previously declaring that Article II of the Constitution, which vests executive power in the president, gives him “the right to do whatever I want.”

“On the one hand, we shouldn’t freak out over every blustering claim of power he asserts, but on the other hand, there’s something very harmful in failing to rebut those claims every time they happen,” Chesney said Monday. “There are plenty of people who will credit what he says, and if he repeatedly asserts he has such powers perhaps, that will help him get away with asserting powers he should not have.”

Ultimately, Vladeck said, the real problem only begins if Trump’s claims to nearly boundless power are left unchallenged through the system of checks and balances by the courts or Congress.

“It’s not a crisis when a president claims powers unfettered by those constraints, and unconfined by written law and settled precedent,” he said. “It’s a crisis when those other institutions don’t push back.”