

# NATIONAL REVIEW

## Trump, Clinton, and Executive Power

*A rocky road ahead for constitutional governance.*

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If there was one single sentence in Donald Trump's acceptance speech last week that summed up his entire campaign, it was this: "I alone can fix it." Trump's ideology may be amorphous, but he firmly believes in the "big man" school of politics. Like Putin, Erdogan, or the late Hugo Chávez, Trump sees himself as Horatius at the Bridge, the only thing standing between us and the dystopian future of his nightmares.

Meanwhile, Hillary Clinton eschews "I" in favor of the collective "we," by which she means the government, by which she means her. Hillary's book may famously have said, "It takes a village," but she clearly sees herself as the chief of that village.

We've come a long way since the founding of the Republic, when the president was seen as "an executive," who would "take care that the laws are faithfully executed," not the legislator-in-chief. As James Madison warned in Federalist 47, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

And that was against the backdrop of a time when the government itself had much less power.

But ever since, as the government accrued more and more power and authority, presidents have taken more and more of that power to themselves. And the last couple of decades have seen an acceleration of executive aggrandizement.

When Bill Clinton was first elected president, his advisor Paul Begala waxed rhapsodic about executive orders. "Stroke of the pen. Law of the Land. Kind of cool," he gushed to the New York Times. Clinton was followed by George W. Bush, whose favored mechanism was the signing statement. That allowed him to sign bills into law, while simultaneously saying that he didn't feel bound to enforce them. This led us, in turn, to Barack Obama and his famous "a pen and a phone."

Now, we have two candidates who both promise to expand executive power to as yet unseen dimensions.

Neither one seems willing to accede to the checks and balances built into our system of government. Hillary Clinton, for instance, has said that she plans to go further than President Obama's executive orders on immigration, despite the fact that those orders have been struck down in the courts. What, in her long history of contempt for the law, suggests that she would accept any restraints on her ability to do whatever she wants to do?

Donald Trump has also made it very clear that he does not intend to be held hostage by constitutional niceties. Speaking on 60 Minutes last Sunday, he paraphrased the famous dictum that "The Constitution is not a suicide pact" — loosely derived from a ruling by Supreme Court Justice Robert Jackson — to suggest that he intends to act on issues important to him no matter what Congress or the courts have to say. In an earlier interview he was asked about executive orders, and he replied that of course he was going to follow President Obama's lead on executive orders, but "I'm going to use them much better, and they're going to serve a much better purpose than he's done."

What is even more troubling is the willingness of partisans on both sides to expand executive power (and government power more generally) as long as their man — or woman — is exercising that power. But that is foolishly short-sighted. Pendulums swing in politics. Therefore, whatever new powers you give your hero today, they will someday be wielded by your worst enemy.

After all, how do fans of President Obama feel about the possibility of a President Trump using his pen and phone? Do those who cheered President Bush's appeals to executive power still think it's a good idea when it may be Hillary Clinton holding that power?

Our system of government was designed to disperse power among multiple, competing actors: the legislature (itself divided), the executive, the judiciary, and the states. We don't have, or need, a king or queen, a strongman, or a fearless leader. Most importantly, government power, at all levels, was to be extremely limited. Real power, and real sovereignty, resided with the people.

Now two candidates for president want to take even more power into their hands. They may claim to speak for "We, the People," but their power would automatically and inevitably come at the expense of our liberties. Partisans on both sides will undoubtedly cheer their candidate, who, they're certain, will only use that power to do good things.

They should be careful what they ask for.

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