



Ruling by decree

BY DAVID M. DRIESEN, OPINION CONTRIBUTOR - 03/03/17 04:30 PM EST

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The Feb. 28 executive order overturning a Clean Water Act rule clarifying EPA's jurisdiction over wetlands furnishes but the latest example of President Trump's propensity to rule by almost daily fiat. Trump has ruled by decree ever since he assumed office. He has not proposed a single bill to our elected representatives, not even a bill to help blue-collar workers and rebuild America through infrastructure projects, one of his main campaign promises. Nor has he supported [a bill introduced by others to accomplish this](#).

Our [Constitution](#), however, authorizes an elected legislature to establish laws and directs the president only to "faithfully execute" them. And it requires all government officials to swear an oath to obey the law. The introduction of the [oath clause](#) into our Constitution marked a sharp departure from prior practice, under which government officials swore fealty to obey a supreme leader.

This rule of law has served America well. In countries like Putin's Russia, where one ruler controls, [the law does not establish just standards but](#) instead authorizes the ruler to punish adversaries and to empower and enrich his cronies. The most prosperous countries on earth have divergent tax and regulatory regimes, but they all have a [stable rule of law](#).

Even though elected legislatures often move with painful slowness, citizens' ability to control the law's content through locally elected representatives limits the damage a single erratic person can do to society and the economy and over time corrects many egregious errors.

Liberals and conservatives usually react to Trump's decrees in predictable ways, decrying the orders they do not agree with and supporting the ones they like. Trump's supporters seem delighted because some of the orders implement campaign promises. But in reacting this way, we may be missing the point.

These orders taken collectively systematically enhance Trump's personal power at the expense of our Constitution. They take the form of

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commands to disobey the law's key purposes in favor of some new purpose currently favored by the new chief executive. This obviously galls the majority of Americans who did not vote for Trump. But it should concern even his supporters, because experience indicates that once a society loses the rule of law, it usually cannot get it back. After the ruler gets rid of civil servants committed to following the law, which Trump has begun to do, even court orders will not make the leader follow the law. And any politician, no matter what he promises and does at first, may enrich himself and his supporters once firmly entrenched.

Trump's decrees collectively undermine much of our constitutional structure. They challenge constitutional restraints on the commandeering of state officials to enforce federal law against their will, the federal government's ability to use spending cuts to coerce state governments into surrendering their sovereignty, presidential spending without appropriations from Congress, deprivations of due process, religious discrimination, and the establishment of state religion. They destroy legal commitments to protect public health, safety, and the environment. One order systematically undermines enforcement of the Affordable Care Act to make sure that even if Congress decides that repeal is irresponsible, it will collapse, thereby triggering rising premiums and loss of coverage. Another blatantly contradicts fundamental international obligations established by numerous treaties ratified by the Senate. Trump has directed federal officials to obey orders to undermine the Constitution to the extent that they can get away with it, in violation of their oaths of office.

A good example of the breadth of the president's commitment to undermining the rule of law comes from the so-called 2-for-1 regulatory decree. It essentially requires that federal agencies establish no standards that cost anything to implement. This protects big firms from spending a single additional dime to prevent harming people and undermines numerous federal statutes duly enacted by Congress to protect us all from serious harms.

Although the Framers intended the president to be only the "Chief Magistrate," many recent presidents have promulgated executive orders. No president, however, has devoted the first month of his presidency to promulgating a collection of executive orders that so blatantly ignores our constitutional system's fundamental tenets.

The Constitution has served us so well because we have elected public servants who cherish our democracy and our shared traditions, whatever their differences. Other countries' experiences, however, teach us that constitutions are mere pieces of paper that cannot ensure a rule of law when politicians place ideology and special interests' wishes above their

duties to their country. The tradition of American democracy faces a fundamental challenge, which many of our elected representatives do not even appear to see.

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