



University of Tehran Press

Comparative Law Review

Homepage: <https://jcl.ut.ac.ir>

Online ISSN: 2423-3404

Volume: 17, Issue: 1
Spring & Summer
2026

Lawmaking by the Stroke of a Pen: Presidential Unilateral Actions in the U.S. Legal System

Fardin Moradkhani¹ | Mohammad Reza Pakizeh² | Mohammad Hossien Ghias³

1. Corresponding Author; Associate Prof, Department of Law, Faculty of Humanities, Bu-Ali Sina University, Hamedan, Iran. Email: f.moradkhani@basu.ac.ir
2. MA. in Public Law, Department of Public Law, Faculty of Law, Shahid Beheshti University, Tehran, Iran. Email: m.pakizeh@mail.sbu.ac.ir
3. MA. In Public Law, Department of Law, Farabi College, University of Tehran, Qom, Iran. Email: m.h.ghias99@ut.ac.ir

Article Info

Article Type:
Research Article

Received:

2025/06/28

Received in revised form:

2025/10/11

Accepted:

2025/10/30

Published online:

2026/08/23

Keywords:

*Executive Order,
Prerogative Powers,
Separation of Powers,
U.S. Constitution,
Unilateral Directives.*

Abstract

This article offers a comprehensive account of unilateral presidential directives in the United States, explaining their nature, sources, forms, and limits, and assessing implications for separation of powers and democratic accountability. Presidents from Washington onward have used unilateral tools to steer administration and policy, and reliance has grown as the modern presidency confronts polarization and legislative delay. Examples include Lincoln's Emancipation Proclamation, Roosevelt's internment order, Truman's desegregation of the armed forces, Obama's immigration initiatives, and Trump's travel ban. These episodes show how directives implement priorities quickly and shape bureaucratic behavior without waiting for new statutes.

Unilateral presidential directives are written instruments by which the president guides, commands, or structures executive branch activity. Labels differ—executive orders, proclamations, national security directives, executive agreements, findings, memoranda, certifications, tariff letters, military orders, and reorganization plans—but the functional core is direction to subordinate officials and agencies. A leading survey identifies more than two dozen types, with the count rising when determinations and administrative memoranda are included. Despite shifting labels, the practical effect is similar: directives allocate authority, set priorities, trigger regulatory processes, coordinate interagency action, and turn policy objectives into operational instructions. Do executive orders and proclamations meaningfully differ? Formally, courts and Congress have treated them as broadly interchangeable and subject to the same publication regime under the Federal Register Act. Historically, proclamations often carried ceremonial content, whereas executive orders more commonly managed daily administration. Yet the boundary is porous. Presidents have used proclamations to regulate trade and manage public lands, and they have used executive orders for symbolic purposes. The label reflects

Article Info	Abstract
	rhetoric or drafting convention, not legal consequence, so substance, audience, and implementation machinery matter more than the caption. Because secrecy complicates accountability, the article analyzes national security directives. Issued within the National Security Council system and commonly classified, these instruments authorize sensitive diplomatic, intelligence, and military actions while limiting visibility to legislators, courts, and the public. Evidence indicates heavy reliance during and after the Cold War, with hundreds, sometimes more than a thousand, issued. Classification can insulate controversial choices and reduce litigation risk, but opacity erodes trust and hinders learning. Presidents sometimes repackage initiatives as security directives to avoid scrutiny that attends conspicuous orders or major legislation. Executive agreements form another major category. They permit international commitments without the Senate's treaty consent and are frequently paired with statutes or with executive orders. Presidents often combine instruments to pursue a single objective; responses to hostage crises and sanctions regimes have rested on a web of orders, agreements, proclamations, and classified directives. This portfolio character complicates oversight yet reflects administrative logic: presidents integrate legal bases, agencies, and timelines to align diplomacy, regulation, and enforcement. In practice, unilateral tools are components of governance strategies designed to survive bargaining, litigation, and bureaucratic drift. The article surveys intellectual lineages. One runs through John Locke's prerogative, a discretionary authority to act for the public good without, and sometimes against, positive law when necessity demands. Mid-century scholars invoked prerogative to rationalize presidential initiative. Yet the foundation is contested. Many historians doubt the framers embraced prerogative, emphasizing a republican tradition wary of concentrated executive power. Madison and Montesquieu stressed divided institutions and mutual checks. American thought also features Theodore Roosevelt's stewardship view—act unless law forbids—and Taft's competing view, permitting only powers traceable to explicit grants. These frameworks still shape debate over unilateralism. Constitutional analysis centers on Article II. The Vesting Clause may be read modestly as an office-designating clause or ambitiously as a grant of residual executive authority. The Take Care Clause supports either a narrow duty to implement statutes or a broader capacity to adopt incidental measures that make execution effective. The Commander in Chief Clause justifies security directives but not a roving warrant for domestic policy. The Opinions Clause underwrites internal management, and the Oath is sometimes invoked to defend extraordinary measures. No single provision suffices; presidents assemble authority from several clauses and statutes. Judicial doctrine neither wholly blesses nor forbids unilateralism. In <i>Myers v. United States</i> the Supreme Court described the executive power capaciously in removal, while in <i>re Neagle</i> acknowledged obligations not reducible to statute. At the same time, courts invalidate directives that conflict with clear

Article Info	Abstract
	statutory commands, exceed delegated authority, or disregard procedural requirements, and they police implementation through reason-giving and review. The jurisprudence alternates between deference and constraint, sustaining initiative where law leaves room while ensuring unilateral action does not displace congressional choices or established processes. The article next analyzes checks and incentives outside the courts. One influential account emphasizes asymmetric motivation: presidents, pursuing national agendas and historical legacies, press outward; legislators, focused on reelection and constituency service, mobilize only when costs concentrate or salience spikes. Under this view Congress often criticizes yet rarely acts decisively. A contrasting account highlights robust legislative leverage through appropriations, riders, authorizations, and organizational design. Even when a directive takes immediate effect, many programs require money, personnel, or statutory permissions that Congress controls, enabling delayed vetoes and tailored constraints. These dynamics are illustrated by Ronald Reagan's Drug-Free Federal Workplace program. Announced by executive order, the initiative ultimately proceeded within legislative constraints and detailed bureaucratic process, showing that ambitious directives require negotiation, budgeting, and implementation compromises. More broadly, the scale and complexity of the administrative state both empower unilateral action—by multiplying points of presidential control—and dilute monitoring—by dispersing responsibility across many actors. Public opinion, media attention, inspector general oversight, and advocacy litigation can raise costs for contested directives, while supportive constituencies can entrench them before Congress or courts act. The article concludes that unilateral presidential directives are a structural feature of American governance. They help presidents coordinate bureaucracies and respond to emergencies, but they also risk concentrating power and weakening deliberative checks. Legitimacy is cumulative and contingent: durable directives rest on clear statutory footing, traditional executive functions, transparent justification, and toleration by Congress, courts, and the public. Because Article II is sparse and founding traditions are plural, no single clause or philosophy supplies an all-purpose warrant. In practice, authority is assembled from text, delegation, and historical gloss, moderated by appropriations, judicial review, and accountability.
How To Cite	Moradkhani, Fardin; Pakizeh, Mohammad Reza; Ghias, Mohammad Hossien (2026). Lawmaking by the Stroke of a Pen: Presidential Unilateral Actions in the U.S. Legal System. <i>Comparative Law Review</i> , 17 (1), 305-326. DOI: https://doi.com/10.22059/jcl.2025.396868.634776
DOI	10.22059/jcl.2025.396868.634776
Publisher	The author(s) retain the copyright. 