

## ONE

# The President, Executive Orders and Memos, and Public Policy

President Barack Obama faced another year of fiercely divided government as he convened his first cabinet meeting of 2014, on January 14. Republicans in Congress, who had a very different ideological vision for the nation, were publicly committed to blocking his agenda at every turn. His public support a year after his landslide reelection was shaky; Democrats would go on to lose nine seats and control of the Senate in the November 2014 election. Obama was frustrated but unbowed on that January morning. The prospects for major legislation may have been beyond dim, but the president told his cabinet he had plenty of authority to act, stating: “We are not just going to be waiting for legislation in order to make sure that we’re providing Americans the kind of help that they need . . . I’ve got a pen . . . and I can use that pen to sign executive orders and take executive actions and administrative actions.”<sup>1</sup>

Obama delivered on that promise, using the unilateral authority of the chief executive to advance his policy priorities.<sup>2</sup> For example, after Congress refused to raise the nation’s \$7.25-per-hour federal minimum wage, Obama issued an executive order to increase it to \$10.10 an hour for all employees of federal contractors and subcontractors.<sup>3</sup> Through this lever of power, Obama pressured Congress to act.

Although executive powers are rooted in the United States Constitution ratified in 1788 and have long been a source of presidential authority and controversy, the Obama presidency can be seen as a coming-out party for them. The concept of unilateral executive power has gained far wider traction in

recent years, as Obama has touted its use to achieve political and policy goals that faced dim prospects in Congress and Republicans have used his exercise of such power to attack him.<sup>4</sup> For the first time in history, executive authority was a major campaign issue in 2016. Despite their many disagreements, almost all of the seventeen Republicans who sought their party's presidential nomination repeatedly pledged to undo Obama's executive actions. It is telling that the candidates trusted that their voters cared about this issue. The irony is that the partisan and gridlocked state of contemporary politics makes it almost certain that Obama's very different successor, Donald J. Trump, will overturn many of his "illegal" and "unilateral" orders while issuing a slew of his own.

Presidents are central actors in our politics, and one cannot understand the making of American public policy without taking their executive power into account. The United States Constitution lays out three hypothetically equal branches of government—the executive, the legislative, and the judicial—but over the years, the president, the chief executive, has emerged as the dominant political and administrative force at the federal level. The president is advantaged by his position as the chief executive, which gives him the right to make unilateral decisions about the federal bureaucracy and policy.<sup>5</sup> In response to this increasing use of unilateral executive power, we need to think more deeply about the historical patterns that have informed the use of this authority and its implications for contemporary public policy.

*Calling the Shots* documents a fundamental phenomenon of modern American politics and policy: the rapid increase in the size and scope of the federal government and the ways it has transformed—and been transformed by—the presidency. This study broadens our understanding of presidential power in two ways. First, it focuses on the president's role as a chief executive officer (CEO) of the federal government and his or her motivations to achieve political goals. The president is, in fact, the CEO of the largest and most powerful enterprise in the United States: the federal bureaucracy. Although Trump is the first actual CEO elected in modern times, his new job is exponentially larger than the one that made him a billionaire.

The president stands at the apex of a hierarchy of executive departments and independent agencies, boards, commissions, and committees that purchase billions of dollars' worth of goods and services. In 2015 the health-care domain included almost 500 agencies and subagencies, \$447 billion in federal purchases of goods and services, and at least 2.8 million federal employees—plus millions more who work for private companies that contract or sub-

contract with the federal government. Moreover, the federal government expends almost \$1.03 trillion on health programs. Second, *Calling the Shots* broadens our understanding of presidential power by exploring specific ways presidents use their authority as CEO to achieve their political and policy goals. Specifically, it identifies and conceptualizes three vast but underappreciated forms of executive power: the power of the purchaser, the power of the employer, and the power of the payer.

The president deploys the “power of the purchaser” to exercise direct political control over federal procurement rules and to influence policy in a range of areas somewhat related to the “economical and efficient” purchase of goods and services.<sup>6</sup> Since the depression of the 1930s, presidents with increasing frequency attempted to use the economic leverage provided by its purchasing power to achieve social and economic policy objectives. As the CEO of the federal bureaucracy (and the largest purchaser of goods and services) in the United States, the president can dictate additional contractual terms and conditions on which the federal government will do business with the private sector.<sup>7</sup>

The president uses the “power of the employer” to exert political control over federal personnel (civil services) rules and to advance human resource policies. As the CEO of the largest employer in the country, presidents can dictate additional terms and conditions of employment between the federal government and its civilian employees. As just one example, when Obama was facing congressional opposition to paid family and medical leave reform, he granted all federal employees six weeks of paid leave after the birth or adoption of a child, plus the right to six additional weeks of unpaid leave. His memo also applied to federal employees caring for ailing family members.<sup>8</sup>

Exercising the related “power of the ethical employer,” the president can also delimit additional principles of ethical conduct and dictate how federal (executive branch) civilian employees and high-ranking political appointees should conduct themselves. Executive orders and memos on ethics rules are shaped by both electoral and partisan politics. Historically, ethics reforms have been associated with a pattern of rare—but highly visible—scandals that have ignited public appeals for new laws or rules from the incoming chief executive. According to a recent work on ethics laws, ethics policies are shaped by politics. “There are the cumulative responses to decades of political position and calculations of political opportunity and advantage: presidents who participated in the construction of ethics policies always did so with an eye on their public appearance—often more than on their practical

impacts.”<sup>9</sup> For example, Obama issued an executive order requiring every appointee in each federal agency to sign an ethics pledge. Obama’s pledge attempted to fulfill a campaign promise to reform politics and create a more ethical federal government.<sup>10</sup> Although the executive order laid out tough rules on how executive branch appointees are to conduct themselves, it also allowed the president to grant waivers.

Finally, the president uses the “power of the payer” to exercise political control over federal health payment rules and to influence the coverage, cost, and quality of health-care services in the United States. As the CEO of the largest payer of bills for health care in the United States, presidents can amend federal health-related program rules and dictate additional terms and conditions of payment to private sector health insurers and providers. For example, in an effort to shape private health market reform, George W. Bush required federal agencies that oversee large health-care programs to gather information about the quality and price of health care and to share that information with one another and with federal program beneficiaries.

Presidents use their executive power in all three areas to accomplish many of the same goals they seek through legislation: to obtain political (electoral) advantage, to deliver benefits to key political constituencies and organized groups, and to influence the behavior and policies of private sector actors. Unlike legislation, which usually involves compromise and coalition building, by using executive orders and memos presidents can act on their own. In simple terms, the president calls the shots. The authority to issue executive orders and memos and impose rules without legislative approval in order to control and influence this vast public organization is more important for presidential power, for the administrative presidency, and for policymaking than political scientists and policy scholars have previously recognized.

#### THE PRESIDENT AS CEO OF THE FEDERAL BUREAUCRACY

“Chief executives are distinct principals of power,” Tom C. W. Lin argues, “and thus, should be understood distinctly.” This is true of corporate leaders as well as presidents, who, as the CEOs of the federal bureaucracy, manage a very large political organization that influences the lives of everyday Americans. Indeed, the president is held politically accountable for the functioning of the federal government as is no other type of official or elected representative. As a result, says Lin, “Almost uniquely in government, pres-

idents act on a vision, purpose, and power to shape governance.” This framework can help decipher “a long-standing paradigm of power and offer[s] an understanding of executive governance.” In comparing presidents and private sector CEOs, Lin concludes that all CEOs operate within larger organizations “that are susceptible to being perilously captured by powerful chief executives.”<sup>11</sup>

Throughout history, says Lin, “Presidents of both parties have acted like unitary executives, accumulating power (or attempting to do so), term after term, administration after administration—a constant practice in the winds of political and policy change.” As Justice Robert Jackson observed in 1952, “Executive power has the advantage of concentration in a single head in whose choice the whole nation has a part, making him the focus of public hopes and expectations.” This unitary vision of the presidency has persisted since the founding of our republic; as the presidency has changed hands and parties over two centuries, it has frequently grown in power. In terms of the politics and policy, says Lin, “Unitary presidents can, in theory, efficiently and effectively execute a national objective without dilutions and distractions from other governing stakeholders.” Unilateral action is a vital tool because it can serve as a “bulwark” against political actors with “disparate, competing, and conflicting interests.”<sup>12</sup>

Kevin Stack explains that in contrast to legislation or agency rulemaking, for the president there are almost no legally enforceable procedural requirements that he or she must satisfy before issuing (or repealing) an executive order or other presidential directive. In sum, executive orders “rid the president of the need to assemble majorities in both houses of Congress, or to wait through administrative processes, such as notice-and-comment rulemaking, to initiate policy.”<sup>13</sup> This explains both their political appeal to the president and the resentment they fuel in the president’s rivals.

Presidents are motivated to seek power: to exercise political control over the federal bureaucracy and to exert political influence over public policy. Unilateral action allows them accomplish this, and to act as first movers on a wide array of issues. Indeed, presidents hope that Congress will follow their lead by affirming their executive orders and memos through formal statutes and extending the rules to cover the private sector. Presidents also attempt to expand (or add additional terms and conditions) after prior congressional action, a strategy of “Now that you gave me some, I’ll ask for more.” Even though executive actions bypass the procedural restraints imposed on other forms of lawmaking, they have a direct public policy impact

by implicating individual rights and the structure of the federal government, thereby affecting millions of people.<sup>14</sup> Regardless of partisan affiliation and across time, presidents use these executive powers—of the purchaser, of the employer, and payer—to shape the policy agenda, to secure political control over agency rulemaking, and to exercise political influence over public policy.

Political scientists have shown interest in unilateral action by presidents, creating a growing body of scholarship on the subject.<sup>15</sup> Much of this work occurred during and after Bill Clinton's second term, as the Democratic president turned to executive orders in areas where he couldn't find common ground with a Republican Congress. This work includes three books that focused on the president's unilateral powers as well as a number of articles on executive orders.<sup>16</sup> More recently, and for the first time, edited volumes on the topic of the presidency are devoting chapters to unilateral powers.<sup>17</sup>

*Calling the Shots* draws upon and contributes to multiple streams of recent scholarship to help illuminate a narrative of the modern president as CEO of the federal bureaucracy.

First, in terms of theory, it affirms that the president is advantaged by his position as the chief executive, which gives him the right to make unilateral decisions about structure and policy.<sup>18</sup> Terry M. Moe and William G. Howell argue that an important aspect of presidential power derives its strength and resilience from the ambiguity of the formal structure. Presidents have “strong incentives to push this ambiguity relentlessly—yet strategically and with moderation—to expand their own powers,” and “for reasons rooted in the nature of their institutions, neither Congress nor the courts are likely to stop them.”<sup>19</sup>

The president is a unitary political actor in the electoral context. The one individual chosen by a national electorate, he serves as the singular epitome of political vision and electoral mandate.<sup>20</sup> Moe and Howell highlight a key institutional basis for presidential power: the president's formal capacity to take unilateral action and thus make law on his own. As a result, presidents can make policy, shifting the existing status quo without the explicit consent of Congress. Presidents' powers of unilateral action are a force in American politics because they are not specified in the formal structure of government.<sup>21</sup> The struggle is most apparent in the making of public policy, say Moe and Howell, “where elected officials from both institutions wrangle endlessly over the goals and details of public policy.”<sup>22</sup> *Calling the Shots* shows how presidents have long used these particular unilateral powers to shape

the national agenda, secure control over agencies, influence policy, and shift the prevailing status quo.

Second, in terms of the powers illuminated here, *Calling the Shots* affirms that the president uses executive orders and presidential memoranda as strategic political and policy tools.<sup>23</sup> Historically, presidents issue executive orders in an effort to “plant a flag in a particular policy sphere, to reorganize the structure of the executive branch, or to provide policy leadership when Congress is stuck in the mud.” Executive orders vary greatly in their forms, sources of authority, purposes, and interactions with congressional statute—to name just a few variables. Modern presidents have often been criticized for overstepping their authority, yet executive policy actions stemming from presidential executive orders and memorandum are rarely illegal. Each executive order, like every act of governance, is part of the larger narrative of a particular presidency.<sup>24</sup>

Formally, presidential power is derived from Article II of the U.S. Constitution, which states that “the executive power shall be vested in a President of the United States,” that “the President shall be Commander in Chief of the Army and Navy of the United States,” and that the president “shall take Care that the Laws be faithfully executed.” Informally, and in addition, the power to issue policy-related executive orders and presidential memorandum has been recognized by the courts and Congress as an implied constitutional and statutory authority.<sup>25</sup>

Indeed, political scientists recognize executive orders as an important policy tool, despite the constraints of legal and political considerations.<sup>26</sup> Executive orders are not defined in the Constitution, and there are no specific provisions in the Constitution authorizing the president to issue them.<sup>27</sup> They are, instead, directives that draw on the president’s unique legal authority to require or authorize some action within the federal government, based on the statutory authority to enforce it, an act of Congress, or the Constitution.<sup>28</sup> These executive orders are used to direct federal agencies and officials in their execution of congressionally established policies. In many instances they have been used to guide federal agencies in directions contrary to legislative intent.<sup>29</sup> In fact, Phillip Cooper calls presidential memoranda “executive orders by another name,” and a court ruling has implied that memoranda are legally interchangeable with executive orders. There is no public policy area in which the president operates that has not been shaped by the use of executive orders and memorandums.<sup>30</sup>

Executive orders are accepted by Congress, the courts, and the public as an inherent element of presidential power.<sup>31</sup> Presidents use them to act

boldly and unilaterally to effect changes in public policy. They also use them for political ends, as they are “effective devices for paying political debts, demonstrating action for a constituency, responding to adversaries, or sending political signals—real [and] symbolic.”<sup>32</sup>

In recent years there has been renewed interest in the opportunities and constraints of executive power and the proper use and possible abuse of executive orders and other presidential directives.<sup>33</sup> Recent evidence suggests a president’s use of executive orders increases when he is facing a hostile Congress.<sup>34</sup> New evidence also confirms that the use of presidential memoranda has surged as the issuance of executive orders has decreased, indicating that unilateralism is not declining but rather that the means of such executive action may be shifting.<sup>35</sup>

Third, *Calling the Shots* affirms insights from the literature on the administrative presidency: presidents’ efforts to gain political control over administrative agencies and exercise political influence over the implementation of policy. In “The Politicized Presidency,” Terry Moe claims that modern presidents politicize administrative arrangements and centralize policy-related concerns in the White House.<sup>36</sup> This regularized and predictable behavior is “driven by institutional incentives and opportunities shared by nearly all presidents and rationally acted upon in their pursuit of strong leadership and bureaucratic control.”<sup>37</sup> Moe argues that the “heightening of politicization and centralization during the Reagan White House was the more recent expression of this historical process.” Ronald Reagan, more than any modern president before him, moved to take hold of the federal government, especially after his landslide reelection in 1984: “At the heart of his approach was the politicization of administrative arrangements and centralization of policy-related concerns in the White House.”<sup>38</sup>

Elena Kagan—a former Harvard law professor, deputy assistant to the president for domestic policy under Clinton, and an Obama appointee to the U.S. Supreme Court—has argued:

The history of the American administrative state is the history of competition among different entities for control of its policies. All three branches of government—the President, Congress, and Judiciary—have participated in this competition, but at different times one or another has come to the fore. In this time, that (political) institution is the Presidency. We live today in an era of presidential administration.<sup>39</sup>



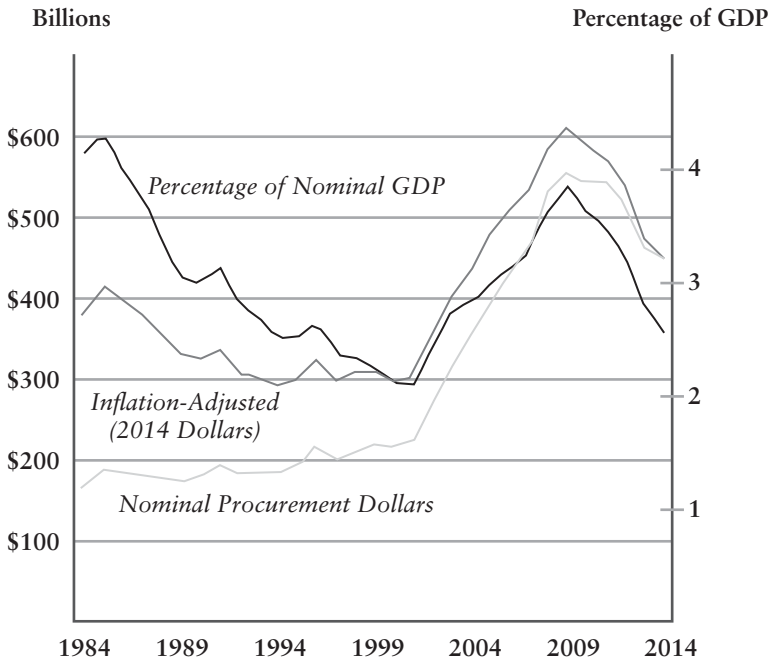
Subsequently, Kagan argued that presidential control of administration expanded dramatically under Clinton, transforming the regulatory activity of federal agencies into an extension of the president's own policy and political agenda. Faced with a Republican Congress after the 1994 midterm election and eager to make progress on policy issues, Clinton "turned to the [federal] bureaucracy to achieve, to the extent it could, the full panoply of his domestic policy goals." Whether the policy area was health care, welfare reform, tobacco or gun control, Kagan notes that a "self-conscious and central object of the White House was to devise, direct, and/or finally announce administrative actions (regulations, guidance, enforcement strategies, and reports) to showcase and advance presidential policies." With this executive action strategy, Clinton "in large measure set the administrative agenda for key agencies, heavily influencing what they would (or would not) spend time on and what they would (or would not) generate as regulatory product."<sup>40</sup> Administrative agencies, through the rulemaking process, in turn make important policy decisions that have broader electoral and political relevance. Thus, presidents have a unique ability to gain political control over administrative agencies and secure political influence over policy.<sup>41</sup>

*Calling the Shots* argues that exercise of these executive powers is a regular and predictable behavior across time. Throughout American political history, as new presidents came to the White House, they learned from their predecessors how effective, and tenuous, these orders can be. The paradox is that the authority to take unilateral action also makes each president "free to revoke, modify, or supersede his own executive orders or those issued by any predecessor." This occurs most commonly when orders are issued to assert political control over the agency rulemaking process. In the decades of increasing political polarization, *Calling the Shots* illuminates how presidents have issued these executive orders and memos on an ever widening range of controversial and contested policy areas.<sup>42</sup>

#### THE SIZE AND SCOPE OF EXECUTIVE POWER

The rapid increase in the size and scope of the federal government has transformed the presidency, and been transformed by it. The president, as the CEO of a very large organization, the federal bureaucracy, relies by need and instinct on the three types of authority explored in this book to make the federal government succeed as a tool of policy and politics. First, presidents

FIGURE I-1. Federal Procurement Spending by Fiscal Year, 1984–2014



Source: National Contract Management Association and Bloomberg Government, *Annual Review of Government Contracting, 2015 Edition* (<http://www.ncmahq.org/docs/default-source/default-document-library/pdfs/exec15---ncma-annual-review-of-government-contracting-2015-edition>).

rely on the power of the purchaser to exercise political control over federal procurement rules and to influence policy in a range of areas often unrelated to the efficient purchase of goods and services. Presidents use this executive power to shape the federal government's procurement policies and to influence Congress to extend the same policies or protections to all private sector workers and workplaces. Presidents exercise this extraordinary power of the purchaser because the federal government is the world's largest buyer of goods and services.<sup>43</sup> This power has grown since the dawn of the twentieth century, when the federal government's expenditures for goods and services were still relatively small. However, as figure 1-1 shows, by fiscal year (FY) 1984, federal procurement spending had reached \$168.1 billion annually and a high of 4.2 percent of gross domestic product (GDP). Total federal

procurement spending continued to grow to \$218.2 billion in FY 2000, and then to a high of \$555 billion by FY 2009, before falling to \$447 billion in FY 2013. Although spending on federal procurement declined as a percentage of GDP between 1984 and 2014, from 4.2 to 2.6 percent of GDP, the president's purchasing power remains unrivaled.<sup>44</sup>

The president enjoys further power as purchaser-in-chief because approximately one-quarter of all U.S. workers are employed by federally funded contractors and subcontractors.<sup>45</sup> Thus, the president influences substantial segments of the U.S. private sector workforce.

The private sector companies that contract with the federal government and must conform to its rules are not small players: the top fifty federal contractors in 2014 accounted for nearly half of all federal procurement dollars in 2014, the top twenty-five contractors accounted for nearly 37 percent, and the top ten contractors accounted for over 25 percent (see table 1-1). The top five contractors in terms of dollar value of their contracts were Lockheed Martin, Boeing, General Dynamics, Raytheon, and Northrop Grumman. Moreover, as a result of "flow down" requirements commonly written into contracts between the federal government and a prime contractor, a subcontractor may be bound by provisions identical to those of the principal contractor. Unlike a negotiated agreement between two private individuals, the president's contract provisions are an executive order with the force of law.<sup>46</sup> For more than half a century, presidents have exercised political control over procurement and exerted influence on private sector behavior, affirming executive power to set terms and conditions beyond a traditional proprietary contractual relationship.

Second, as the chief executive officer of the largest employer in the country, the president can dictate terms of the employment relationship between the federal government and its civilian employees and conditions of the workplace. Presidents have signed orders and memos to demonstrate their political support for federal benefits and workplace rights that are popular among federal and private sector employees. Presidents use executive power to shape the federal government's human resource policies and to influence Congress to extend these same or similar protections to private sector workers and workplaces.

With approximately 2.7 million civilian employees, the U.S. government is the largest employer in the country. For reference, Wal-Mart has 2.2 million employees worldwide.<sup>47</sup> Thus, the president is the employer-in-chief. Federal government jobs are located in every state and large metropolitan area; the federal government also has employees in 140 foreign countries.

**TABLE I-1. Top Fifty U.S. Federal Contractors: Actions, Dollar Value of Contracts, and Percent of Total Federal Procurement Spending, 2014**

Rank	Contractor	Actions*	Value of contracts	Percentage of all federal procurement spending
1	Lockheed Martin Corporation	20,846	\$32,229,878,000	7.26
2	Boeing Company	13,232	\$19,610,963,000	4.41
3	General Dynamics Corporation	17,490	\$15,350,243,000	3.46
4	Raytheon Company	10,945	\$12,619,848,000	2.84
5	Northrop Grumman Corporation	11,575	\$10,262,979,000	2.31
6	McKesson Corporation	82,969	\$6,210,505,000	1.40
7	United Technologies Corporation	9,251	\$5,976,712,000	1.35
8	L-3 Communications HOLDINGS Inc.	9,432	\$5,789,742,000	1.30
9	BAE Systems PLC	9,868	\$4,988,057,000	1.12
10	Huntington Ingalls Industries Inc.	3,230	\$4,660,530,000	1.05
11	SAIC Inc.	15,820	\$4,582,006,000	1.03
12	Bechtel Group Inc.	186	\$4,100,624,000	0.92
13	Humana Inc.	395	\$3,585,484,000	0.81
14	Booz Allen Hamilton Holding	7,683	\$3,473,952,000	0.78
15	URS Corporation	4,052	\$3,382,566,000	0.76
16	Unitedhealth Group Inc.	413	\$3,251,012,000	0.73
17	Health Net Inc.	40,544	\$3,225,829,000	0.73
18	Computer Sciences Corporation	3,887	\$2,946,646,000	0.66
19	United Launch Alliance L.L.C.	134	\$2,883,772,000	0.65
20	Hewlett-Packard Company	43,583	\$2,850,849,000	0.64
21	Exelis Inc.	2,894	\$2,480,824,000	0.56
22	General Electric Company	7,405	\$2,453,989,000	0.55
23	Los Alamos National Security LLC	45	\$2,294,192,000	0.52
24	Battelle Memorial Institute Inc.	2,052	\$2,132,000,000	0.48
25	CACI International Inc.	4,054	\$2,126,134,000	0.48
26	Bell Boeing Joint Project Office	2,859	\$2,018,972,000	0.45
27	Honeywell International Inc.	6,928	\$1,947,245,000	0.44
28	Harris Corporation	3,637	\$1,915,631,000	0.43
29	California Institute of Technology	2,074	\$1,726,581,000	0.39
30	General Atomic Technologies	779	\$1,633,991,000	0.37
31	Royal Dutch Shell PLC	528	\$1,615,435,000	0.36
32	Textron Inc.	3,839	\$1,598,600,000	0.36
33	Jacobs Engineering Group Inc.	3,763	\$1,531,014,000	0.34
34	Amerisourcebergen Corporation	69,045	\$1,509,492,000	0.34

Rank	Contractor	Actions*	Value of contracts	Percentage of all federal procurement spending
35	Lawrence Livermore National Security LLC	95	\$1,458,140,000	0.33
36	Merck & Co. Inc.	127	\$1,386,416,000	0.31
37	Alliant Techsystems Inc.	2,265	\$1,383,319,000	0.31
38	UT-Battelle LLC	55	\$1,347,424,000	0.30
39	International Business Machines	2,034	\$1,343,253,000	0.30
40	Mitre Corporation	834	\$1,309,499,000	0.29
41	Cardinal Health Inc.	95,253	\$1,269,944,000	0.29
42	Consolidated Nuclear Security LLC	17	\$1,265,644,000	0.28
43	Fluor Corporation	584	\$1,222,204,000	0.28
44	State of California	1,882	\$1,215,695,000	0.27
45	Accenture Public Limited Company	1,153	\$1,141,656,000	0.26
46	CH2M Hill Companies Ltd.	1,765	\$1,122,790,000	0.25
47	Deloitte LLP	2,083	\$1,122,449,000	0.25
48	Babcock & Wilcox Company	269	\$1,114,307,000	0.25
49	Sterling Parent Inc.	2,261	\$1,109,090,000	0.25
50	B. L. Harbert Holdings LLC	117	\$1,087,701,000	0.24
TOTAL		526,231	\$198,865,828,000	44.8

*Source:* Federal Procurement Data System, fpds.gov (<https://www.fpds.gov/fpdsng cms /index.php/en/reports/62-top-100-contractors-report3.html>).

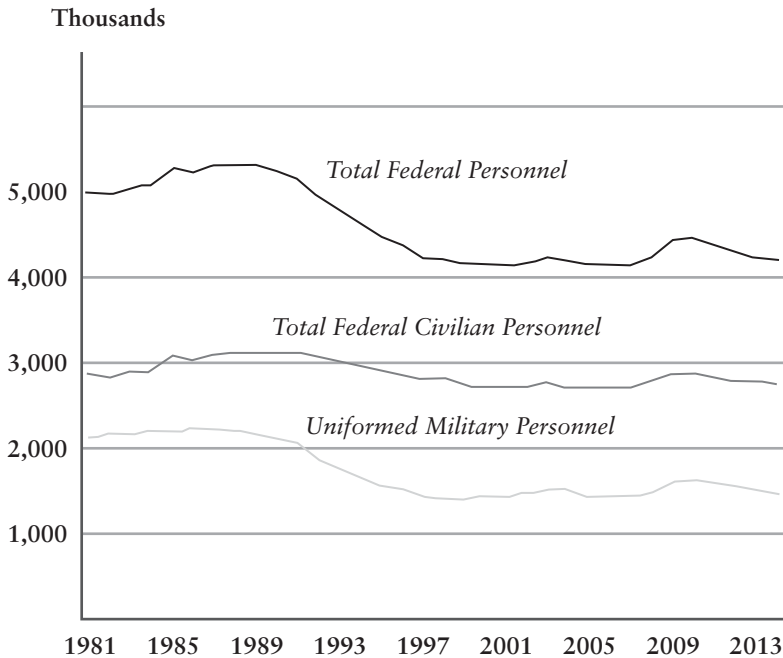
\*Actions means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value.

The federal government employs approximately 2.7 million civilian government employees plus 1.5 million uniform military employees (see figure 1-2a). These employees constitute almost 3 percent of the employed workforce in the United States (see figure 1-2b).<sup>48</sup>

The executive branch of the federal government is also the largest employer of veterans in the United States—one of every four federal employees is a veteran.<sup>49</sup>

The president can influence the ethical behavior of a large number of federal employees.<sup>50</sup> The president also uses the power of the employer-in-chief

FIGURE I-2A. Total Federal Personnel, 1981–2014

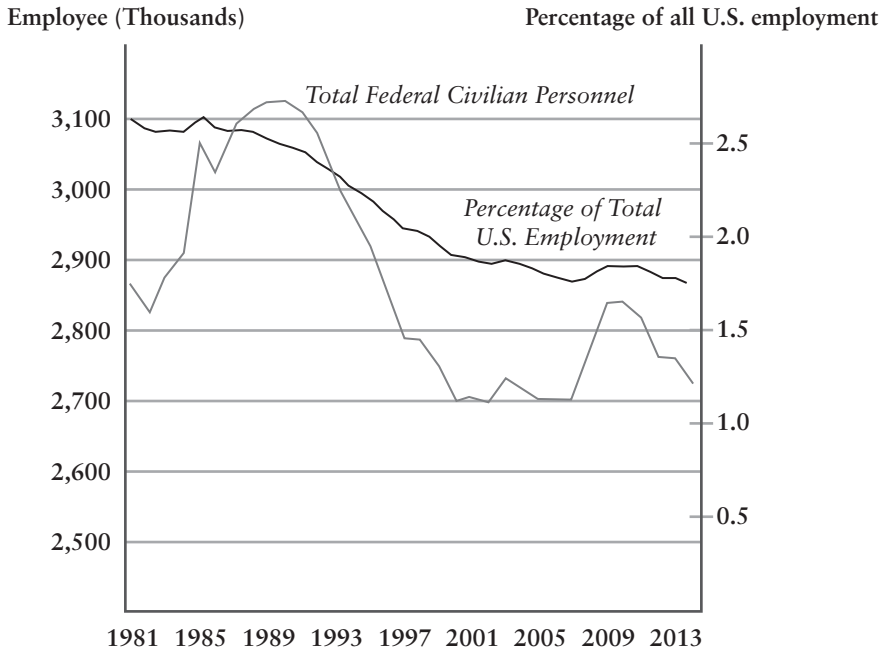


*Sources:* Federal employment data from U.S. Office of Personnel Management, “Historical Federal Workforce Tables: Executive Branch Civilian Employment since 1940” (<https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/historical-tables/executive-branch-civilian-employment-since-1940/>); U.S. Office of Personnel Management, “Historical Federal Workforce Tables: Total Government Employment since 1962” (<https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/historical-tables/total-government-employment-since-1962/>).

*Note:* Total federal personnel is the sum of all civilian personnel and uniformed military personnel.

to exert political control over federal ethics rules and dictate how executive branch employees should conduct themselves ethically—that is, the president can formulate additional ethics rules and standards of ethical conduct that all employees should know and follow. Overall, approximately 3,000 Obama appointees were required to comply with new ethics

FIGURE I-2B. Total Federal Civilian Employees and Uniform Military Employees, 1981–2014

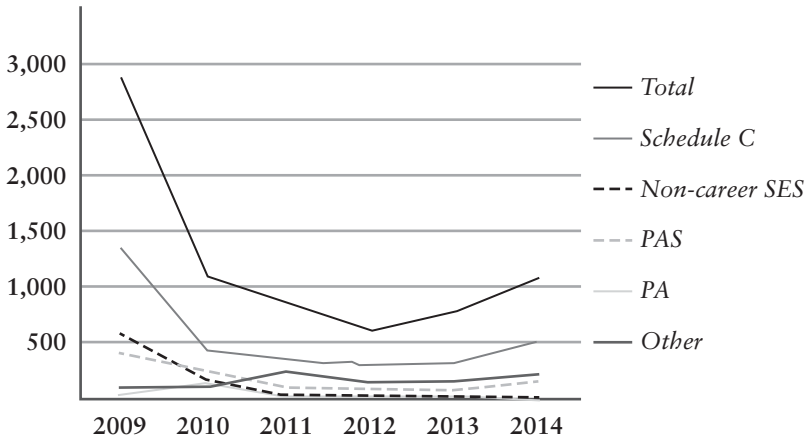


Sources: Federal employment data from U.S. Office of Personnel Management, “Historical Federal Workforce Tables: Total Government Employment since 1962” (<https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/historical-tables/total-government-employment-since-1962>); civilian employment data from the Bureau of Labor Statistics, “Occupational Employment Statistics” (<http://www.bls.gov/oes>).

Note: Federal civilian personnel include all federal (full-time permanent, temporary, part-time, and intermittent) employees of the legislative, judicial, and executive branches, including postal employees. Percentage of total refers to federal civilian personnel as a percentage of total U.S. employment.

FIGURE 1-3. Number of Obama Appointees Required to Sign an Ethics Pledge and Types of Appointment, 2009–14

Number of appointments



Source: U.S. Office of Government Ethics, “Annual Report on Executive Order 13490 (Ethics Pledge),” May 26, 2016 ([https://www.oge.gov/web/oge.nsf/Annual+Report+on+Executive%20Order%2013490%20\(Ethics%20Pledge\)](https://www.oge.gov/web/oge.nsf/Annual+Report+on+Executive%20Order%2013490%20(Ethics%20Pledge))).

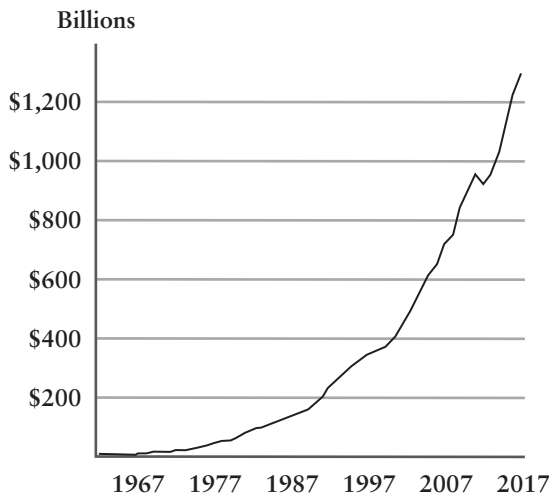
Note: Schedule C refers to noncompetitive appointments to accepted service positions graded GS-15 and below; non-career SES refers to political appointees at the senior executive level; PAS refers to presidentially appointed, Senate-confirmed employees; PA refers to presidentially appointed employees (without Senate confirmation requirement); other refers to all other categories of non-career position appointments.

requirements. Figure 1-3 shows the number of full-time, non-career appointees who were required to sign the ethics pledge between 2009 and 2015.<sup>51</sup>

Third, as the CEO of the largest payer for health care services in the United States, presidents exercise political control over federal health program rules to influence the coverage, cost, and quality of health care in the United States. Three programs—Medicare, Medicaid, and the Child Health Insurance Program—currently account for almost one-third of U.S. health expenditures.<sup>52</sup> The Department of Defense and Department of Veterans Affairs also make up a significant part of federal health program outlays.



FIGURE 1-4A. Federal Health Program Outlays, 1962–2017



Source: Office of Management and Budget, Table 15.1—Total Outlays for Health Programs: 1962–2021 (<https://www.whitehouse.gov/omb/budget/Historicals>).

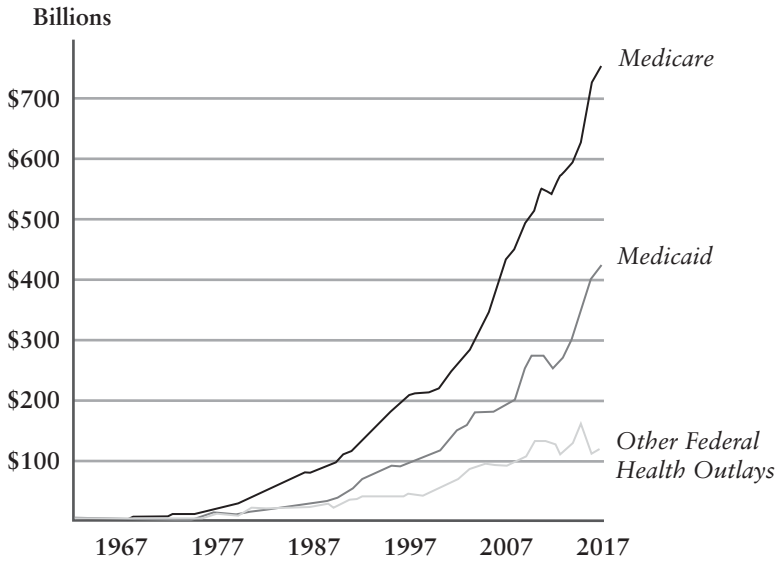
Other significant outlays are made for the largest employer-based group payer of health insurance, the Federal Employees Health Benefits Plan, which contracts with health insurance companies that offer a complete line of medical services.

Figure 1-4a shows the growth in federal health program outlays and figure 1-4b highlights the distribution of the federal government’s two largest health program outlays in FY 2015: \$630 billion for Medicare, \$350 billion for Medicaid, and \$159 billion for all other federal health expenditures.<sup>53</sup>

Medicare has consistently accounted for a large portion of total federal health spending, representing 45 percent of total health-care outlays in 1967 and 55 percent of total health-care outlays in 2015. The share of total outlays for Medicaid has been smaller than for Medicare, but Medicaid spending has roughly doubled as a share of total health outlays from 16 percent in 1968 and to 31 percent in 2015.

Figure 1-4c shows the distribution of non-Medicare and non-Medicaid federal health outlays in FY 2015: \$48 billion on the Defense Health Program, \$61 billion on Veterans Health Care, \$48 billion on FEHBP, and \$29 billion on health insurance assistance.

FIGURE I-4B. Federal Outlays for Health Care,  
by Program, 1962–2017



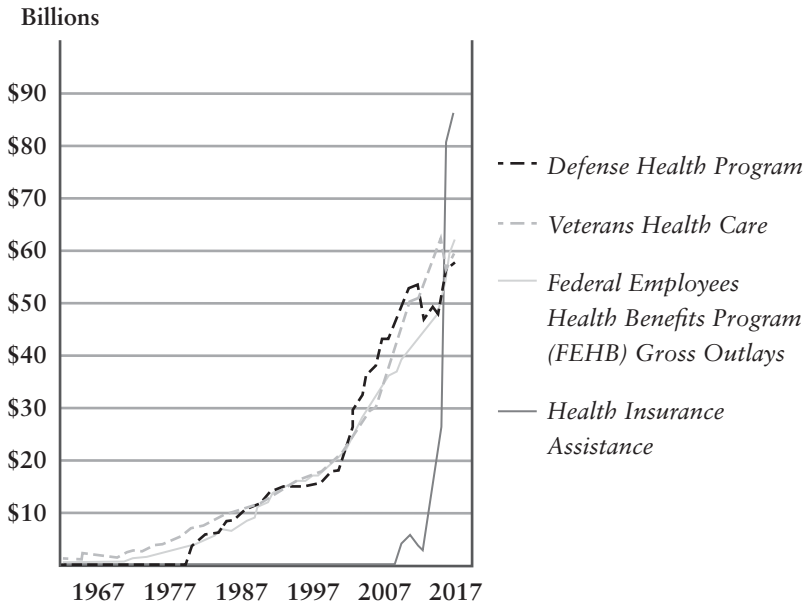
Source: Office of Management and Budget, Table 15.1—Total Outlays for Health Programs: 1962–2021 (<https://www.whitehouse.gov/omb/budget/Historicals>).

Note: Other federal health outlays include Veterans Health Care, health insurance assistance, Federal Employees Health Benefits Program, and other health expenditures.

Total federal health outlays have increased substantially since the 1960s, from approximately 0.4 percent of GDP in 1962 to 6.7 percent of GDP in 2017, most of it due to increased spending on Medicaid and Medicare (see figure 1-4d).<sup>54</sup>

Approximately 19.1 million additional people are expected to enroll in Medicare over the next eleven years as more baby boomers, those born between 1946 and 1964, become eligible for Medicare. For the period from 2014 to 2024, health spending is projected to rise at an average rate of 5.8 percent per year.<sup>55</sup> As these numbers grow, the president will accrue increased power in the health-care market as the payer-in-chief.

FIGURE I-4C. Other Federal Health Outlays, by Program, 1962–2017



Source: Office of Management and Budget, Table 15.1—Total Outlays for Health Programs: 1962–2021 (<https://www.whitehouse.gov/omb/budget/Historicals>).

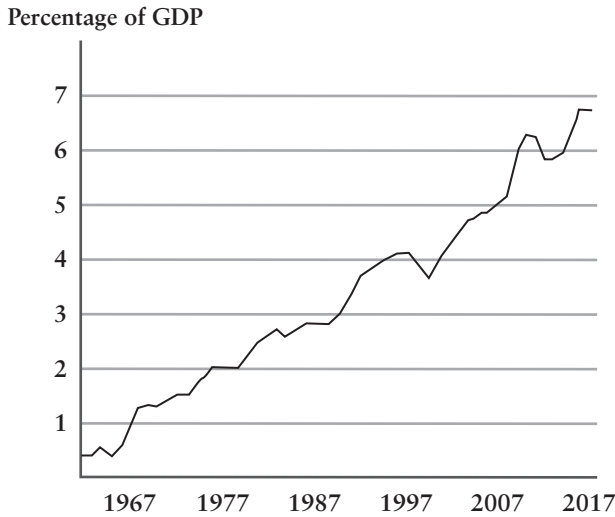
Note: Health insurance assistance includes health insurance tax credit and programs like the Pre-Existing Condition Insurance Plan Program.

CALLING THE SHOTS AND THE CHAPTERS TO COME

The chapters that follow identify how presidents use the power of the purchaser, employer, and payer to gain control over federal agency rulemaking and to influence a wide range of public policy in the United States. Chapter 2 focuses on how presidents from Franklin D. Roosevelt to George W. Bush have used the power of the purchaser-in-chief to influence policy in a range of areas. Chapter 3 examines how Obama used the power of the purchaser-in-chief to influence policy in a range of old and new areas.

Chapter 4 analyzes how presidents use the power of the employer-in-chief to exert political influence over the federal employment system—the

FIGURE I-4D. Outlays by the Federal Government for Health Programs, as Percentage of GDP, 1962–2017



*Source:* Office of Management and Budget, Table 15.1—Total Outlays for Health Programs: 1962–2021 (<https://www.whitehouse.gov/omb/budget/Historicals>).

federal civil service—in a range of policy areas. Chapter 5 explains how presidents use the power of the employer-in-chief to dictate the federal government’s equal employment opportunity policy and to create a diverse and inclusive federal workplace. Chapter 6 illuminates how Obama used executive power to dictate the employment relationship between the federal government and its employees in a range of existing and new areas.

Chapter 7 describes how modern presidents, particularly since the Watergate scandal, have used the power of the ethical employer to delimit the basic principles of ethical conduct for federal employees and political appointees. Typically, new ethical guidelines introduced by a president have stayed in effect unless they were lifted or modified by a subsequent president. The chapter also highlights Obama’s recent efforts to shape the principles of ethical conduct for federal employees and political appointees.

Chapter 8 explores how presidents have used the power of the payer-in-chief to exercise political control over federal health program payment rules and to influence the coverage, cost, and quality of health care, not just for federal health program beneficiaries and enrollees but also for the broader

privately insured population. This chapter also explains how presidents, as the largest premium payer of employer-sponsored health insurance, have used the power of the payer to dictate the terms and conditions of private sector health plan options available for federal employees.

Chapter 9 concludes *Calling the Shots* by offering an assessment both of how other political actors respond to these unilateral actions and of the impact of these executive orders and presidential memos on public policy. Presidents rely on these executive powers to shift the policy status quo, and the final chapter assesses how voters, Congress, the courts, presidential successors, and the private sector or market respond to such shifts. Although executive orders and memos bypass the procedural restraints imposed on other forms of lawmaking, they implicate individual rights and the structure of the federal government, thereby affecting millions of people.<sup>56</sup>

Many citizens will almost certainly continue to measure and remember presidents on the basis of their major domestic legislative accomplishments and foreign policy challenges. But, given the deep differences between the parties and the continuing expansion in the size and scope of government, executive power will increasingly define the institutional presidency as presidents continue to use executive authority to further their agendas. In contrast to legislation or agency regulation, there are almost no legally enforceable procedural requirements that the president must satisfy before issuing or repealing an executive order or memo. That, no doubt, is central to their appeal to presidents.<sup>57</sup>

It is ironic that the gridlocked nature of current hyper-partisan American politics has created the context in which the next president, whether Republican or Democrat, will be obliged to uncap the presidential pen—whether to undo some of Obama’s efforts or to build and expand on them, and to further her or his own policy objectives. As the political scientist Phillip J. Cooper has observed, “Executive orders can be used to do an end-run around Congress. They are quick and easy ways to take action. They can convey a sense of purpose, rally supporters and address dire problems, and they are not easy to challenge—at least while the president who signed them is in office.”<sup>58</sup> In sum, the next president can, and will, call the shots.