

Presidential Powers

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Disclaimer

- Topics over the next 4 weeks may upset you. You have a right to feel and believe whatever you want.
- **It is okay to disagree with someone. It is not okay to be disrespectful.**
- This class focuses on what power is, who is supposed to have it in our system and examples of where the goals of that system are failing to match reality.
 - Examples will be from current and past presidential administrations.

Presidential Power Grew in the Twentieth Century

- During the nineteenth century, Congress was the nation's dominant institution of government, but that is not true today.
- Today, presidents seek to dominate policy making and claim inherent power.
- Presidents expand their power in two primary ways.
 - Popular mobilization (“going public”)
 - More independent and governing and policy-making capabilities

Sources of Presidential Strength

- Party
- Popular mobilization
- Administration



Bettmann/Corbis

Party

- When the president's party controls Congress and they share policy goals, the president can have tremendous influence provided the party is cohesive.
- This is a double-edged sword when the opposing party is in power.

Popular Mobilization

- Popular Mobilization: **Going Public**
 - Nineteenth-century presidents were expected to be unifiers and not speak out in public about policies.
 - Now, presidents must carefully cultivate their public image.
 - Known as using the ‘**bully pulpit**’ to try to sway the public to their side of an issue

Presidential Power: Limits of Going Public

- Popular support is not a firm foundation for presidential power.
- There are several limitations to going public:
 - Public opinion is fickle.
 - Public approval declines during a president's term.
 - Presidential performance rarely meets expectations.

Administrative State

- The administrative state—over time presidents have tried to grow their power by:
 - Enhancing the reach and power of the Executive Office of the President
 - Increasing White House control over bureaucracy
 - Expanding the role of executive orders and other instruments of direct presidential governance

Checks and Balances

Presidents are powerful,
but still must work with
Congress, the Supreme Court,
International Agencies,
and State and Local agencies.

- Trump comments on
Judiciary are problematic.
-challenge the court's 'right'
to question the president.



JEWEL SAMAD/AFP/Getty Images

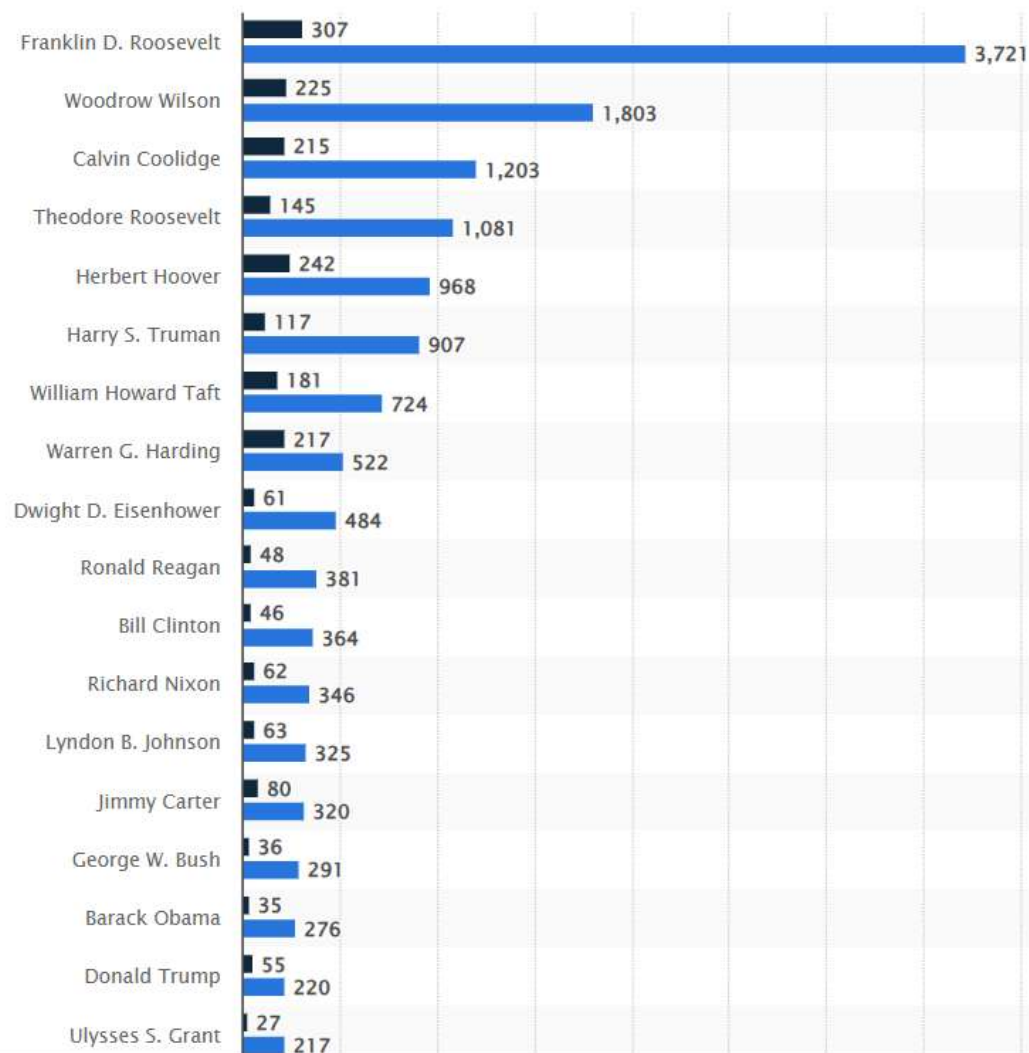
Administrative Strategy: Governing by Decree, Part 1

- A third mechanism through which presidents have sought to enhance their power is the use of executive orders and other presidential decrees.
- An **executive order** is a rule or regulation issued by the president that has the effect and formal status of legislation.
 - Historically, executive orders have been used to impose a number of important policies, such as the Louisiana Purchase, emancipation of enslaved people, and creation of federal agencies.

Administrative Strategy: Governing by Decree, Part 2

- Presidents must state the constitutional or statutory basis for their actions .
- Other forms of presidential decree include administrative orders, national security directives, presidential memoranda, and proclamations.
- Congress can overturn executive orders by passing new legislation, but this legislation can be vetoed.

Number of executive orders signed by each U.S. president from 1789 to 2025



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Release date

January 2025

Region

United States

Survey time period

1789 to 2025

Supplementary notes

*As of January 19, 2025.

**While there is a difference between executive orders and proclamations issued by presidents, the Emancipation Proclamation was both a proclamation and an executive order.

Citation formats

→ View options

<https://www.statista.com/statistics/1125024/us-presidents-executive-orders/>

Administrative Strategy: Signing Statements

- Presidents can also act unilaterally with signing statements.
- **Signing statements:** announcements made by the president when signing bills into law, often presenting the president's interpretation of the law
 - Presidents may use signing statements to point to sections of law that they believe are improper or unconstitutional

Administrative Strategy: Nonenforcement of Laws

- Congress may make the law, but the president can ultimately decide on what enforcement will look like.
- Both President Obama and President Trump used nonenforcement with different portions of the Affordable Care Act.
- The administrative strategy as a whole has given presidents more authority and allowed them to achieve policy results despite Congressional opposition to their agendas.

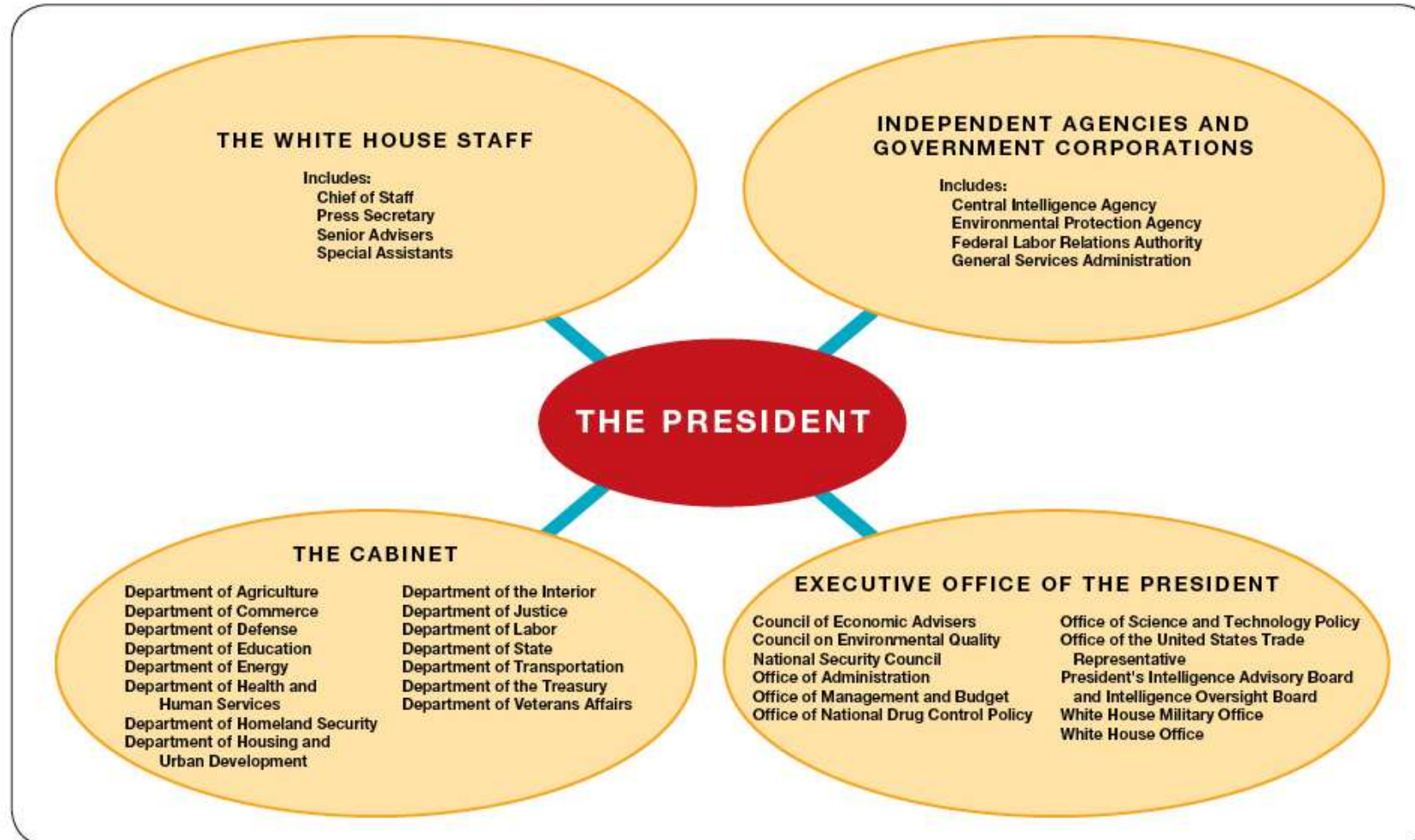
Presidential Power: Limits

- The framers were concerned that executive power could be abused and thus stifle liberty.
- To guard against this possibility, they contrived a number of checks and balances on executive power:
 - Four-year term limit
 - Congress can:
 - Impeach and remove the president from office
 - Reject presidential appointments and refuse to ratify treaties
 - Deny funding to presidential programs
 - **Override** presidential vetoes
- Recess appointments have become more common and are quite contentious.

Institutional Resources of Presidential Power

FIGURE 13.3

The Institutional Presidency



Institutional Resources of Presidential Power: The Cabinet

- The Cabinet
 - Heads of the major executive branch departments
 - Because most are new to working with each other, the president rarely relies on the Cabinet as a whole

Institutional Resources of Presidential Power: Staff

- White House staff
 - Analysts and political advisers who inform the president about policies and their political implications
- Executive Office of the President
 - Permanent agencies that perform specific management tasks for the president
- Office of Management and Budget (OMB)
 - Must approve every proposal from an executive agency that requires spending

Institutional Resources of Presidential Power: The EOP

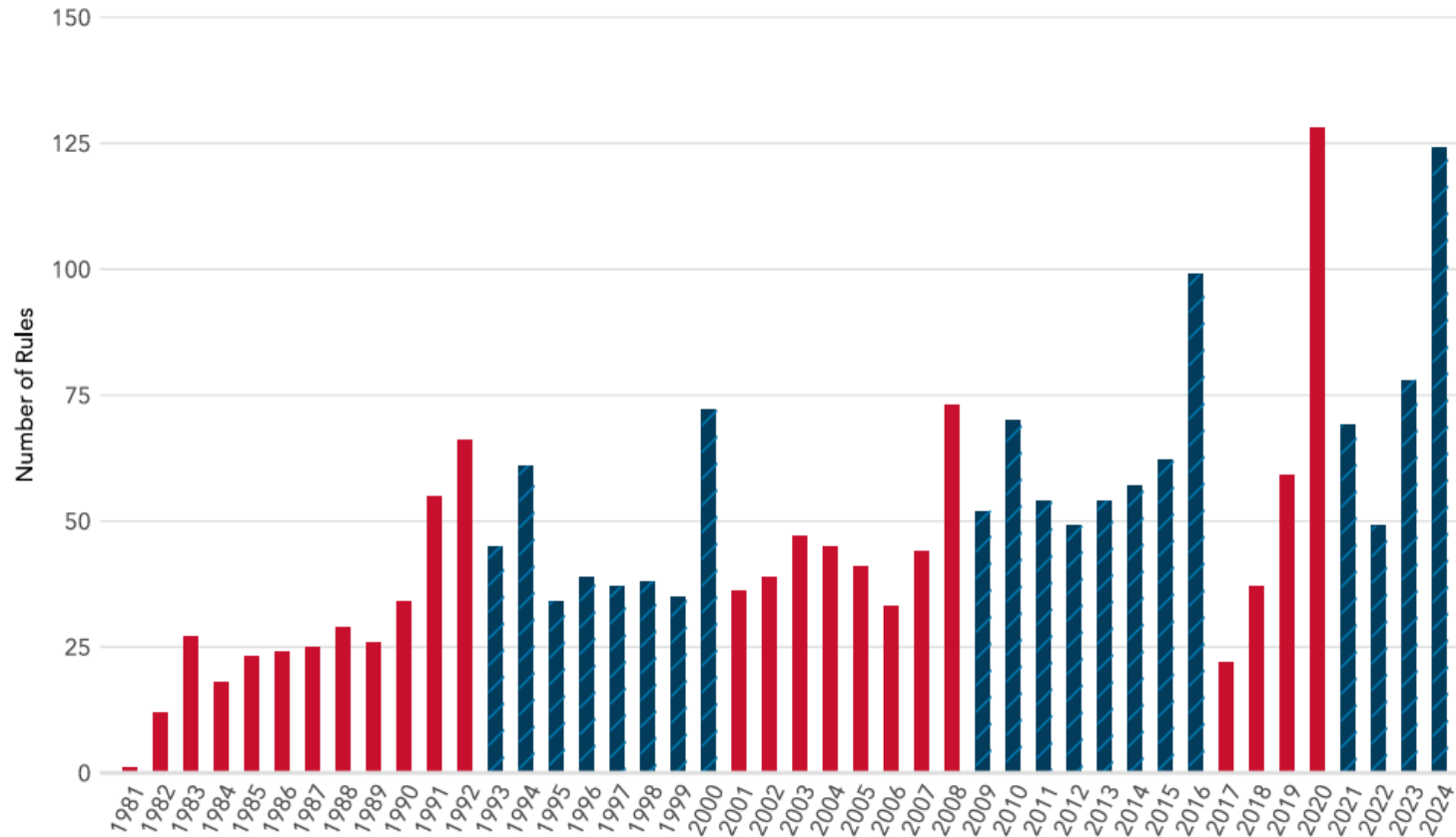
- The **Executive Office of the President (EOP)** is a major part of what is often called the “institutional presidency.”
- The EOP is composed of agencies that perform specific management tasks for the president, including:
 - **Office of Management and Budget (OMB)**
 - Prepares the national budget, helps presidents define programs and objectives, audits executive branch agencies
 - **National Security Council (NSC)**
 - A presidential foreign policy advisory council composed of the president, the vice president, the secretaries of state and defense, and others

Ways to measure control/power

- Regulatory statutes/rules being implemented
- Executive Orders
- Size of the bureaucracy

Regulatory State

Economically Significant Final Rules Published by Presidential Year

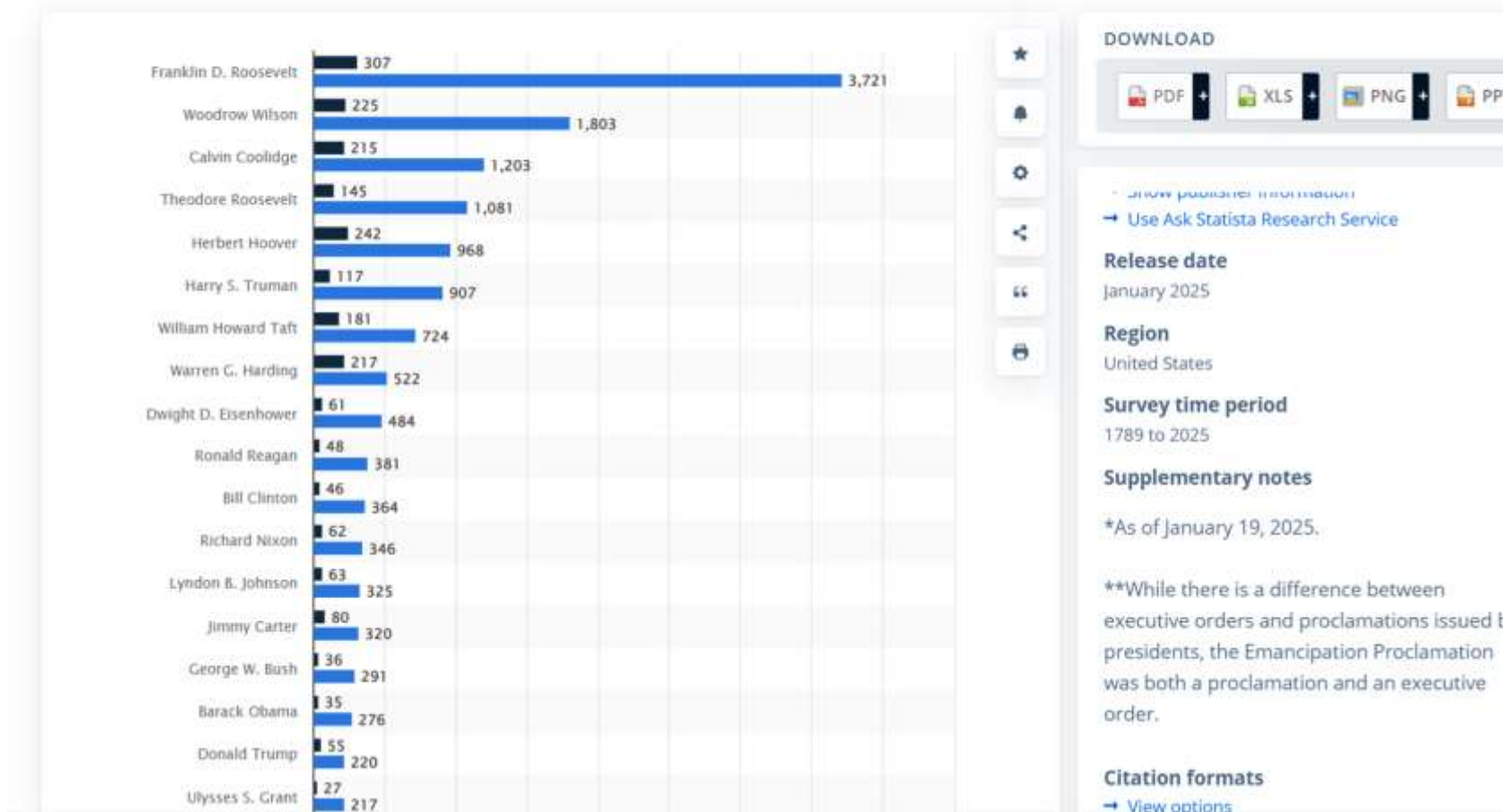


- How much bureaucratic rulemaking occurs

**More rules=
more control=
more power**

Executive Orders

Number of executive orders signed by each U.S. president from 1789 to 2025



- Changing the focus of the bureaucracy impacts all of us

<https://www.statista.com/statistics/1125024/us-presidents-executive-orders/>

Executive Branch Employees

- More people needed to do more regulation?
- <https://www.pewresearch.org/short-reads/2025/01/07/what-the-data-says-about-federal-workers/>

FIGURE 1: The Federal Government's Blended Workforce, 2015 (federal, contract, and grant employees)

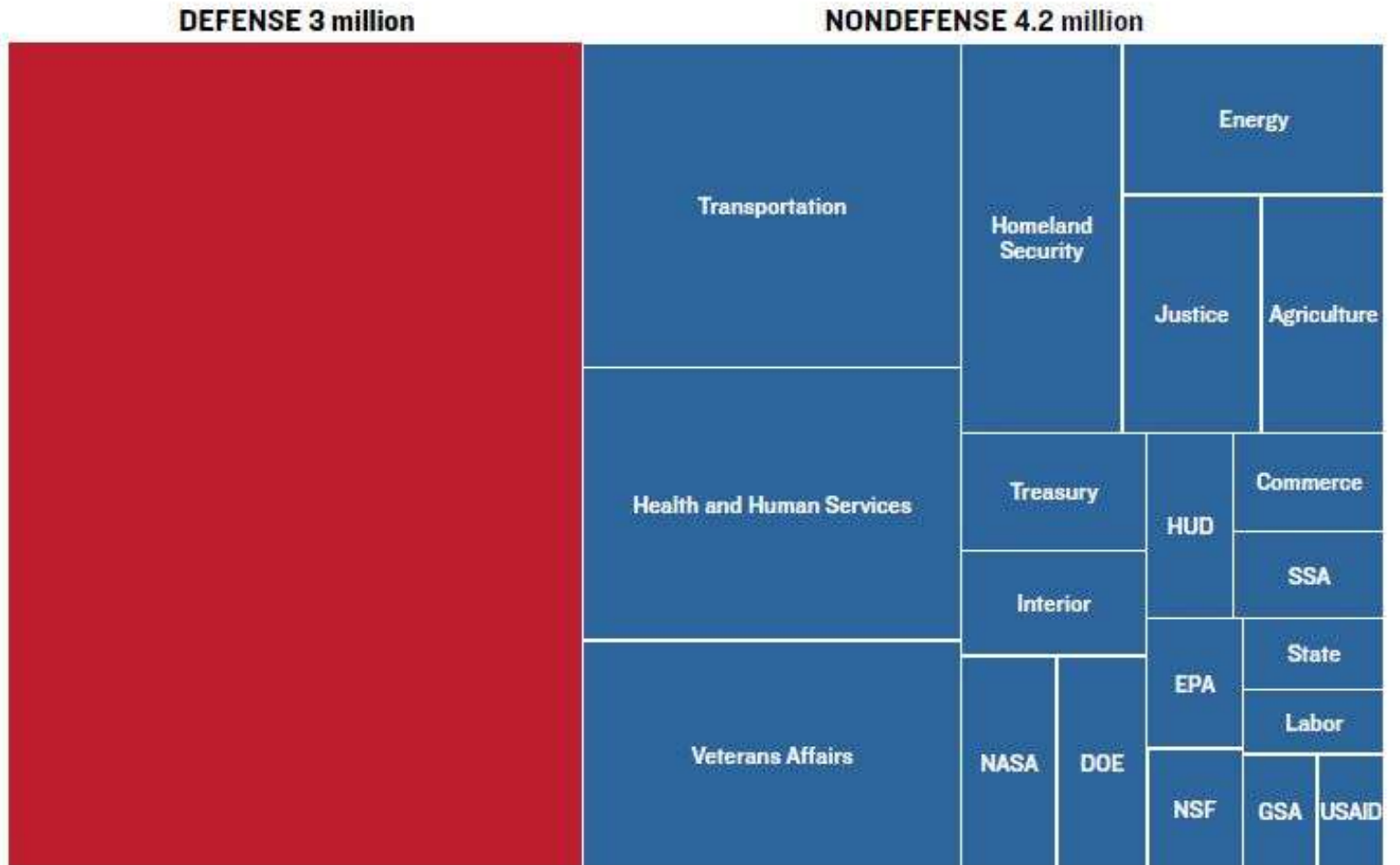


TABLE 1: The True Size of the Federal Government's Blended Workforce, 1984–2015

TYPE OF EMPLOYEE	1984	1990	1993	1996	1999	2002	2005	2010	2015
FEDERAL EMPLOYEES	2,083,000	2,174,000	2,139,000	1,891,000	1,778,000	1,756,000	1,830,000	2,128,000	2,042,000
CONTRACT EMPLOYEES	3,666,000	3,427,000	3,245,000	3,042,000	2,398,000	2,791,000	3,882,000	4,845,000	3,702,000
GRANT EMPLOYEES	1,234,000	1,352,000	1,344,000	1,351,000	1,415,000	1,236,000	1,578,000	2,344,000	1,583,000
ACTIVE-DUTY MILITARY PERSONNEL	2,138,000	2,044,000	1,705,000	1,472,000	1,386,000	1,412,000	1,518,000	1,384,000	1,315,000
POSTAL SERVICE EMPLOYEES	673,000	761,000	692,000	761,000	798,000	753,000	705,000	584,000	492,000
TOTAL	9,794,000	9,758,000	9,125,000	8,517,000	7,775,000	7,948,000	9,513,000	11,285,000	9,134,000

<https://www.volckeralliance.org/resources/true-size-government-1>

Total federal employees

Obama

Trump

Biden



Last Verified data for federal workforce is March 2025- employees laid off & suing still counted as employed.

<https://federalnewsnetwork.com/workforce/2025/07/how-the-trump-administrations-workforce-cuts-stack-up-against-federal-employment-history/>

Institutional Resources of Presidential Power: Vice Presidency

- Vice presidency
 - Some VPs are more powerful than others
 - Only constitutional role is to preside over the Senate
 - Expected to remain informed enough to take over immediately as president



Rational for a V.P. Pick

- Choosing a V.P. running mate is a huge gamble. Candidate picked to fulfill one of 3 roles.
 1. Mobilize/solidify/appease the party base
 2. Electoral math (carry home state)
 3. D.C. powerhouse

Institutional Resources of Presidential Power: The First Lady



Conrad Schmidt/AFP/Getty Images

Historic Growth of Executive Power

- The Pendleton Act of 1883 restricted the president's power to appoint bureaucratic positions- instead have a civil service system
- Still have roughly 4000 appointed positions in today's government
 - Some require approval of the Senate (per the Constitution), but most do not.

Current Presidential Appointments

- **Presidential Appointments with Senate Confirmation:** around 1,200 top-level positions that require confirmation by the U.S. Senate.
 - **Examples:** Cabinet secretaries, agency heads, ambassadors, U.S. Attorneys.
 - **Confirmation process:** Nominees undergo vetting, committee hearings, and a vote by the full Senate.
- **Presidential Appointments:** approximately 450 senior-level positions that do not require Senate confirmation.
 - **Examples:** Most senior White House aides and advisors within the Executive Office of the President.

Presidential Appointments Cont.

- **Non-Career Senior Executive Service:** about 750 of these positions, which are just below the top presidential appointees.
 - **Function:** They serve as the link between political leaders and the career federal workforce.
 - **Process:** Appointments are made by the agency and approved by the Office of Personnel Management and the Presidential Personnel Office.
- **Schedule C:** around 1,550 positions for confidential or policy-determining roles.
 - **Function:** Appointees work in close relationships with high-level officials and often change with each new administration.

Expanding Presidential Power- In Wartime

- Lincoln-
 - Recruited soldiers for the Civil War (Congress)
 - Suspended Habeus Corpus (Courts)
 - Military Trials of Civilians (Courts)
- FDR-
 - War Powers Act-
 - Reorganized entire bureaucracy and independent agencies to support war effort
 - Censored the Mail
 - Broke Census Records privacy to allow for Japanese Internment Camps

Expanding Presidential Powers- In Crisis

- In an emergency the President/executive branch moves faster than Congress
 - Many delegated powers started being delegated in these times
- Congress has passed many laws that when invoked delegate powers to the executive
 - **The National Emergencies Act of 1976 (NEA):** Formalized the War Powers Act- still in law, but has been ‘tweaked’ after court cases (1980s)
 - Provides a formal procedure for presidents to declare a national emergency & 6 mo. checks by Congress to verify emergency still exists
 - When invoked unlocks over 120 statutory powers scattered throughout the U.S. Code.
 - A president can access authorities covering matters from military composition to communication control and freezing assets.
 - <https://www.congress.gov/crs-product/R46567>

FDR's Massive Expansion

- With landslide election became 'legislative leader'
 - Had party majorities in House & Senate to support his agenda
- FDIC insuring Banks, Securities & Exchange Commission (SEC) created- oversee stock market
- Civilian Conservation Corps (CCC) & WPA paid individuals from federal funds to complete projects
- Social Security Act- Older Age Pensions, unemployment compensation etc.
- Wagner Act (National Labor Relations Act 1935)- Workers collective Bargaining Act
- Fair Labor Standards Act 1938- Federal Minimum Wage

Courts Rein In FDR

- Congress was controlled by same party as FDR, so courts only stop on his power grab.
- National Recovery Administration (1933) – parts were ruled unconstitutional in 1935
 - The agency established 557 basic codes and 208 supplementary codes that affected about 22 million workers.
 - FDR Threatens to Pack the Courts in 1937 in retaliation
 - <https://guides.loc.gov/national-recovery-administration>
- Many of the NRA policies were brought back in later legislation and withstood court cases against them.

September 11 & the Patriot Act

- Detaining Enemy Combatants at 'off country' locations for 18+ months with no trial or legal rights
- Secret surveillance in domestic issues
 - Warrantless surveillance (FISA Court expansion)- can target individuals.
 - Access to electronic communications
- National Security Letters
 - Required businesses to turn over customer records without probable cause or warrant
 - Eventually ruled unconstitutional and 'reworked'
- \$\$\$- Financial surveillance to combat money laundering

Survey for Next Week

Turn it in or email me your answers before Saturday (midnight)

I'll compile the top and prep next week's class on Sunday.

If you want the slidedeck from today email:

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