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Who's Afraid of an Active President?

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President Obama took a pair of actions on Tuesday aimed at exposing pay discrimination and improving wages for women. Together, these measures will affect twenty-two per cent of the workforce and could, over time, make it harder to underpay women, at least in the quiet and covert way that many employers do. These two executive orders are also, as it happens, two more measures than the House of Representatives has taken this week, unless you count its stiff-arming of a Senate bill that would extend expired jobless benefits. And it's the latest indication that Obama meant what he said, in January's State of the Union Address, about using the full scope of his Presidential powers, particularly where Congress fails or flat-out refuses to act.

As a forthcoming report by the Brennan Center spells out, the Obama Administration has, this year, raised the minimum wage for employees of federal contractors, released new data on racial gaps in education, set aside sixteen hundred acres in California as a national monument, and taken other steps that do not require the President to play golf with John Boehner. Indeed, one of the principal merits of this approach, as the White House no doubt understands, is that it gives congressional Republicans fits. "The President's dangerous search for expanded power appears to be endless," Eric Cantor, the House Majority Leader, said in March.

Cantor was speaking in support of a bill that he and other House Republicans are calling the Executive Needs to Faithfully Observe and Respect Congressional Enactments of the Law Act, or the ENFORCE the Law Act. (You knew there was an acronym in there somewhere.) Cantor has also been compiling a list of Presidential abuses, "numerous break-downs in the rule of law," ranging from recess appointments and the regulation of fracking to delays in implementing elements of the Affordable Care Act. What this adds up to, in Cantor's view, is an "imperial Presidency"; his report with that title features an image of Obama leaning back in a chair, eyes narrowed, half-smiling, the very picture of a man planning to nationalize the banking industry.

As the *Times* reported last week, the "imperial Presidency" is, for Republicans, a new "rallying cry," a midterm-year mantra that captures their loathing of Obama, of government, and of Obama's government. The slogan is shouted from the stump and, in a more sober, sorrowful tone, in op-eds by Senators Ted Cruz, of Texas, and Roger Wicker, of Mississippi. To listen to these charges is to get the impression that the American Presidency was intended by the Founders as little more than a ceremonial role—like, say, the Presidency of Singapore—charged with the solemn duty of assenting to bills passed by Congress and throwing out the first pitch on Opening Day. Anything more is "overreach." Obama's statement, earlier this year, that "I've got a pen, and I've got a phone"—as tepid an assertion of Presidential power as one hears outside a concession speech—is cited by Republicans as proof positive of dictatorial intent, as if the President had said "I've got a hammer, and I've got a sickle."

Before it became a conservative catchphrase, "the imperial Presidency" was the name of a book by the late historian Arthur M. Schlesinger, Jr., who was not a conservative. The book, as Schlesinger wrote in the foreword to the first edition, in 1973, concerned a "shift in the constitutional balance" of power—chiefly, in foreign affairs—from Congress to the Presidency over an extended period of time. It was not, however, an argument *against* a strong Presidency; Schlesinger, whose books had celebrated Andrew Jackson, Franklin Roosevelt, and John Kennedy, envisioned—as, indeed, the Constitution does—"a strong presidency within an equally strong system of accountability." By the latter, he meant, primarily, "the countervailing branches of the national government—the legislative and the judiciary." (The public and the press have a role to play, too.)

Of these two branches, the judiciary—under Chief Justice John Roberts—seems mostly at ease (and sometimes quite pleased) with its prescribed role as a check on Presidential authority, though the courts continue to give the President wide latitude in the conduct of international relations. It's Congress that's falling down on the job. Schlesinger had noted that when Presidents assumed more control of decisions of war and peace, "it was as much a matter of congressional abdication as of presidential usurpation." In other words, Congress receded, and Presidents stepped into the breach. And that is what we're seeing today—not so much in foreign policy but in domestic policy, where congressional abdication is nearly absolute. Obama is stepping into a void.

Lay down your pen and your phone, Ted Cruz implores the President; if there's disagreement over a law, "work with Congress to change the law" instead of operating "above the law." And this would be the right argument if there were, within it, a shred of sincerity. By closing off Capitol Hill as an avenue of national progress—by seeking repeal of the A.C.A. instead of reforming it, by obstructing even the most routine Presidential appointments, by turning congressional oversight into a theatre of the absurd—the G.O.P. invites the very exercise of executive authority that it loudly deplores. Congressional Republicans are like the state trooper who tries to run you off the road and then charges you with reckless driving. The Obama Presidency is far short of imperial, but it is, at least, purposeful. Two out of three branches isn't bad.

A L'ATTENTION DES CANDIDATS

- Ne pas écrire sur le texte, ne pas surligner ou souligner
- Rendre l'article à l'examineur avant de quitter la salle