



# The Law of the Executive Branch: Presidential Power (Oxford Commentaries on American Law)

By Louis Fisher

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The scope of presidential authority has been a constant focus of constitutional dispute since the Framing. The bases for presidential appointment and removal, the responsibility of the Executive to choose between the will of Congress and the President, the extent of unitary powers over the military, even the ability of the President to keep secret the identity of those consulted in policy making decisions have all been the subject of intense controversy. The scope of that power and the manner of its exercise affect not only the actions of the President and the White House staff, but also all staff employed by the executive agencies. There is a clear need to examine the law of the entire executive branch.

*The Law of the Executive Branch: Presidential Power*, places the law of the executive branch firmly in the context of constitutional language, framers' intent, and more than two centuries of practice. In this book, Louis Fisher strives to separate legitimate from illegitimate sources of power, through analysis that is informed by litigation as well as shaped by presidential initiatives, statutory policy, judicial interpretations, and public and international pressures. Each provision of the US Constitution is analyzed to reveal its contemporary meaning in concert with the application of presidential power. Controversial issues covered in the book include: unilateral presidential wars; the state secrets privilege; extraordinary rendition; claims of "inherent" presidential powers that may not be checked by other branches; and executive privilege.

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## **Editorial Review**

### Review

"Louis Fisher's work has for many years been indispensable to me while I served in Congress. His superb scholarship on the separation of powers and the encroachment of the imperial presidency will be ever more valued when the history of our era is written. With the publication of *The Law of the Executive Branch: Presidential Power*, Dr. Fisher makes an enormous contribution to the study of the presidency. The book is a masterwork of scholarship, a remarkable milestone in a remarkable career. We all owe him an enormous debt of gratitude." -Ron Paul, M.D., former Member, US House of Representatives

"This is a book that all of us wish we could have written, but it is a feat that only Louis Fisher, with his experience not only in testifying on the laws and practices governing the executive but in drafting some of them as well, could have accomplished. It is filled with authoritative accounts of how constitutional law is made - not only by courts, but also by Congress and the Executive. It provides a long-needed rejoinder to the arguments of what Corwin referred to as 'the high-flying prerogative men.' Students, scholars and legal counsel will find this an indispensable volume." -Richard M. Pious, Adolph and Effie Ochs Professor, Barnard College, Graduate School of Arts and Sciences, Columbia University

"Louis Fisher is the dean of presidential scholars. His work is known and admired throughout the world. No one has done more to remind Americans that the Constitution is about legitimacy as well as power, that law is much more than what politicians cannot get away with, and that the Constitution does not just belong to judges. Fisher has not only educated generations about major constitutional issues through his award-winning writing; he has anticipated crucial debates with ground-breaking scholarship and has done so with remarkable balance, integrity, clarity, and grace. This book is a must read." -Christopher H. Pyle, Professor, Mount Holyoke College

"In all of American law, history, and politics, no one is more well qualified to write this unprecedented, authoritative, and utterly exhaustive volume than Louis Fisher. Not only should this book sit on the desks of lawyers, executive branch officials, presidency scholars, and in the Oval Office, but it should be the prerequisite for any future presidency scholarship - not because our understanding of the presidency ends with this book, but because it must begin with it. Fisher is the Edward Corwin of our day, and as long as there is an America, this will be his immortal volume." -Robert J. Spitzer, Distinguished Service Professor and Chair of Political Science, SUNY Cortland

"Lou Fisher's deeply learned and masterful analysis of presidential power and the Constitution illuminates history, law, and contemporary debate. *The Law of the Executive Branch: Presidential Power* is a magnificent, meticulously researched scholarly exploration of a timely subject that has stirred controversy since the founding, and it will be universally heralded as an instant classic." -David Gray Adler, Cecil D.

Andrus Professor of Public Affairs, Boise State University, Director of The Andrus Center for Public Policy

"Lou Fisher's *The Law of the Executive Branch: Presidential Power* is must reading for anyone who is interested in our constitutional system. Fisher brings a wealth of experience and understanding about the Framers' design and how it has evolved over time. In many important areas that have been debated since the founding - such as the war powers, executive privilege and claims of inherent presidential power - Fisher provides encyclopedic analyses of how the Executive has been changed from a subordinate constitutional branch that carries out policies made by Congress into the most powerful branch of the government." -Robert J. Reinstein, Clifford Scott Green Professor of Law, Temple University, Beasley School of Law

"Lou Fisher is an intellectual giant among constitutional scholars who has consulted with all three branches on separation of powers issues. In *The Law of the Executive Branch*, Fisher draws on nearly a half century of his scholarship based in original documents, precedent, and historical analysis while highlighting the legal controversies surrounding each constitutional provision related to presidential power. This authoritative analysis provides a major intellectual benchmark that will inform and inspire present and future constitutional scholars." -James P. Pfiffner, George Mason University

"Louis Fisher's *The Law of the Executive Branch* is an enormous contribution. For the first time, it presents in one place a complete, accessible account of the constitutional text, history and practice of presidential power in the United States. In the tradition of the best academic work, it presents a wealth of facts and arguments fairly and dispassionately, yet with insightful commentary and observations reflecting the author's long engagement with the topic. The book will surely become the leading reference in the field and an essential item on the shelf of scholars and practitioners of presidential power." -Michael D. Ramsey, Professor of Law, University of San Diego Law School

"For constitutional scholars, the publication of a new book by Lou Fisher is cause for celebration. In *The Law of the Executive Branch: Presidential Power*, Fisher covers the field, demonstrating his expertise in an incredible number of diverse areas. By providing ready access to primary materials, the book allows readers to reach their own judgments about the appropriate scope of presidential power. Like the framers of the Constitution, Fisher rejects dogma, pragmatically exposing all claims about presidential power to the light of experience in the real world. This book will be an essential, invaluable resource for scholars, students, legislators, judges, and executive branch officials." -Chris Edelson, Assistant Professor of Government, American University, School of Public Affairs

"They could not have picked a more ideal subject-author combination to launch such a project. Professor Fisher enjoys unparalleled status as an acclaimed national expert on questions of separation of powers, in general, and on presidential authority, in particular. Given the author's background, this particular offering in the Oxford Commentaries on American Law series fulfills an important and pressing need. No significant topic in the law of the executive branch goes uncommented on in this volume's 400-plus pages of case analysis and commentaries." -David Yalof, University of Connecticut, Congress & the Presidency

## About the Author

**Louis Fisher** is Scholar in Residence at the Constitution Project. Previously he worked for four decades at the Library of Congress as Senior Specialist in Separation of Powers (Congressional Research Service, from 1970 to 2006); and Specialist in Constitutional Law (Law Library, from 2006 to 2010). During his service with CRS he was research director of the House Iran-Contra Committee in 1987, writing major sections of the final report. Dr. Fisher has authored more than 20 books, almost 500 articles, and hundreds of reports.

Dr. Fisher has been invited to testify before Congress nearly 50 times on such issues as war powers, state secrets privilege, NSA surveillance, executive spending discretion, presidential reorganization authority, Congress and the Constitution, the legislative veto, the item veto, the Gramm-Rudman deficit control act, executive privilege, executive lobbying, CIA whistleblowing, covert spending, the pocket veto, recess appointments, the budget process, the balanced budget amendment, biennial budgeting, and presidential impoundment powers.

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