Congressional Delegation: Crash Course Government and Politics #13

Crash Course: U.S. Government and Politics
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(PBS Digital intro plays)

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Craig: Hi. I'm Craig, and this is CrashCourse Government & Politics, and today we're gonna cross the streams of the legislative and executive branches and talk about delegation. I thought we weren't supposed to cross the streams, Stan. Oh, that's ghostbusting. Sorry about that.

We're far away from the text of the Constitution here, deep in the realm of informal powers, but basically, delegation explains why the President is so powerful, even though the Constitution and its framers were terrified of creating a Presidentzilla. (Dinosaur noise)

(CrashCourse Gov & Politics Intro)

Craig: So, what exactly is delegation? First of all, to clear up some confusion, it's not the same as being a delegate, which in political science has two meanings. That sounds like we're making it more confusing, Stan. First off, a delegate is a representative at something like a caucus or in Congress, usually in the US when we talk about delegates, it's in the context of political conventions and choosing presidential candidates. Political scientists also talk about the delegate role that a representative can have. If a representative is acting like a delegate, she does what her constituents want, acting in their interests as much as she can. The other role that a representative can have is that of a trustee. When a representative behaves like a trustee, he acts in what he believes are the best interests of the community as a whole. In general, the Senate was designed to act more like trustees, and the House to be more like delegates. But neither of those is the delegation we're talking about. Congressional delegation happens when Congress gives, or delegates, a power to the executive branch through legislation. Whenever Congress sets up an agency or program, it decides how much discretion to give the agency's personnel in doing whatever job Congress created the agency to do. The greater the discretion, the more power Congress delegates. This is how delegation works in general. The amount of discretion that Congress can give an agency varies a lot, sometimes the laws that Congress writes are very specific instructions on what the agency can do and how it can do it, severely limiting the agency's discretion. A good example of Congress's limiting an agency's discretion is the tax code, which is about 2,600 pages long, without even including all the very detailed rules and regulations that the IRS has to follow. Even with thousands of pages of rules, sometimes the IRS acts beyond its discretion, as it did when it investigated the tax exempt status of 501(c)4 groups linked to the Tea Party. Remember that scandal?

Other times, Congress grants broad discretion to agencies. We'll learn more about this when we talk about bureaucracies in future episodes, but as you might imagine, agencies will try to take all the power they can get. OSHA regulations are a good example of an agency having broad discretion over its rules.

One thing to remember is that even when Congress does delegate powers to the executive branch, which can look like trouble for the whole separation of powers thing, these delegated powers can still be checked by the courts, which can review laws and bureaucratic rules and regulations. The most memorable time that this happened was when the court overturned the legislative veto in the famous INS vs Chadha case. What? You never heard of INS vs Chadha? Well, look it up!

So that's what delegation is, fair enough, but it doesn't explain why Congress delegates powers to the executive branch. For this, I think we need a little help from the ThoughtBubble. There are three reasons that Congress delegates power to the executive branch: practical reasons, historical reasons, and political reasons.

To start with the practical reasons, Congress delegates power because it has to. Today's government, whether you like it or not, does a lot of things, and it would be pretty much impossible for Congressmen to administer all the programs that it creates. Imagine your local Congressman taking the time to inspect meat like the USDA does.

You can also make a Constitutional argument that Congress should delegate power, since execution of laws is the job of the executive branch. There's another practical reason for delegating: writing detailed legislation is really hard, and since Congressmen are not usually experts in the policies they create, it's often better to let the people who will be implementing the rules have more say in what the rules will be.

Congress also delegates for historical reasons. In fact, until the 20th century, any governing that the national government did do was done by Congress, and you'll remember, that was the age of dual federalism, so most of the governing was done by the states. When Congress did delegate power, it sought to keep it away from the President. For example, the Interstate Commerce Commission, which was established to regulate railroads, was set up as an independent regulatory commission. Things started to change in the progressive era, when the national government began to actually regulate things, like the aforementioned meat. Thanks, Upton Sinclair. But the size and reach of the federal government really exploded with the New Deal. Now, one story of the New Deal is that FDR took the initiative and expanded executive power by creating all sorts of new agencies, setting us down the path to the large-scale government we know and love--or hate--but that's not the whole story. The problems facing the US overwhelmed Congress, so they delegated power to the executive branch and the federal government grew into something approaching what we know it as today. The key thing to remember is that the New Deal was primarily a legislative program of laws that created new agencies and programs, not just a series of executive orders. Thanks, ThoughtBubble.

The political reasons for delegation may sound cynical, and I guess they are, but they reflect the political reality that getting blamed for a bad outcome can cost you an election. Often, Congress grants broad discretion in a law so that they can avoid responsibility and/or blame the executive branch if it goes sour. You saw this in the debate over ObamaCare, if you're being generous, you'd call it a debate. You could call it a playground slap-fight. So this is a good place to stop, because it leads us into the next topic, bureaucracy, that we're gonna take up in the next few episodes, but before we end, let me point out two important things.

The first is that Congressionally delegated power is always contingent on time, place, and national mood. Congress has the power to rescind, amend, or claim oversight over the powers it delegates. Although, as we'll see, it's hard to control bureaucracies. Congress can do it if they want to, and they can also draft laws more carefully to set strong limits. Who is in office at the time the law is written often can have a big effect on the degree of power Congress delegates. As a general rule, when there's unified government with one party controlling both Congress and the White House, Congress will delegate more power to the executive, 'cause he's their bro. Or she's their bro.

Historical context can matter, too. After September 11th, Congress delegated a lot of authority to the executive branch to protect Americans from terrorism, and when the country is at war, Congress tends to delegate to the executive branch, too.

The second important thing to remember about delegation is that, overall, it represents a shift of power from the legislative to the executive branch. Why this has happened is complicated, and

whether it's a good thing or a bad thing is an important and interesting discussion that you should have in your classes and with your friends and with your grandma and with your grandma's friends. But that it has happened is a fact that you and your grandma and your grandma's friend need to recognize.

Thanks for watching, I'll see you next week. CrashCourse Government & Politics is produced in association with PBS Digital Studios. Support for CrashCourse US Government comes from Voqal. Voqal supports non-profits that use technology and media to advance social equity. Learn more about their mission and initiatives at Voqal.org. CrashCourse was made with the help of these nice delegates. Thanks for watching.

(CrashCourse Endscreen plays)