Presidential Powers 2: Crash Course Government and Politics #12

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

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Craig: Hello. My name's Craig, and this is CrashCourse Government and Politics, and today we're gonna really figure out why the President is the most powerful man in the world. Okay, not really, I guess, obviously, the reason he's the most powerful person in the world is he leads what's currently the most powerful nation in the world, and he can't really take credit for America's global position.

Besides, there's a good case to be made that the richest man in the world is the most powerful, and if we're talking cultural influence, then who's more powerful than Kanye? According to Kanye, no one. But rather than go down the rabbit hole of power and the secret Cabal that actually runs the world, let's talk about the powers of the President that are not in the Constitution, at least, not literally.

(CrashCourse Government intro)

So the Constitution lays out a specific limited number of expressed powers, but the President's able to do a lot more than what the Constitution says. Expressed powers are sometimes called 'formal powers', but the President also has informal powers that do not appear within the written text of the Constitution. Sometimes the powers he has are implied by the wording of the Constitution, while sometimes, they're considered inherent in the office of the Presidency, which means that they flow logically from the ideas in the Constitution. A little confusing, right? Well, maybe the Thought Bubble can explain.

Let's start easy with an expressed power, which is not the same as an espresso power, which is what I'm currently running on. The Constitution says right here in the text that the President is the commander in chief of the army and the navy. This also implies that he can and perhaps will lead the armed forces when the nation is at war. It also implies that he can command the Air Force, even though it only mentions the Army and Navy. So far, so good, but what about when the nation is not technically at war?

Remember that the Constitution gives Congress the power to declare war as a check on Presidential power, but the President still has the inherent power to use troops even when Congress hasn't actually formally declared war. Logically, if there's an immediate threat to the US and Congress doesn't have the time or the opportunity to declare war, the Commander in Chief must be able to use force. So this power is said to be inherent in the office. The problem is that once you grant that the President must have the power to use troops, how do you limit him? What sorts of threats are so immediate and dangerous that the President should have free reign to send troops? Other than Martian invasions or Taco Tuesday riots, obviously. If you look at most of the times America has sent troops into conflict, especially during the 20th and 21st centuries, it's been done with him acting as Commander-in-Chief without a formal declaration of war. We sent troops to Korea, Vietnam, Afghanistan, and twice to Iraq without Congress declaring war, and these are just the big ones. We're not even gonna talk about Grenada and Panama and all the other small interventions, so is there any check on this power?

After Vietnam, Congress tried to put on the brakes by passing a War Powers Resolution, which requires the President to get authorization to use troops within 60 days of when he first commits them, or else he has to bring the troops back. This sounds like a pretty powerful check, but in practice, Congress always authorized the President to use force. Thanks, ThoughtBubble. Sometimes I use force without being authorized.

The President has informal powers in foreign policy, too. Formally, the Constitution says that the President has the power to make treaties, receive foreign ambassadors, and appoint ambassadors and ministers. The President has developed the power to negotiate executive agreements, which are nowhere in the Constitution. Executive agreements are, well, they're agreements between the US and foreign nations that look like treaties but aren't formally treaties. They can come with treats, though. Brownies. Cookies. Trade concessions.

The most important difference between an executive agreement and a treaty is that the agreements don't need to be ratified by 2/3rds of the Senate, but they become valid with only a majority of vote in both houses. This makes them easier to pass than a formal treaty and explains why Presidents prefer executive agreements to treaties.

Lately, there have been some very important executive agreements, like the general agreement on tariffs and trade or GATT that has morphed into the WTO, and the North American Free Trade Agreement, better known as NAFTA, 'cause if it were a treaty, it'd be NAFTT, and that would be NAFTY.

Although it isn't mentioned in the Constitution, the President is effectively the Chief Executive Officer or CEO of the US. Where does this power come from? Formally, it's in the faithfully executed clause in the Presidential Oath of Office, but more practically, it comes out of his power to appoint judges, ambassadors, and other ministers. Sorry, judges and ambassadors, but when it comes to executive power, it's the other ministers that matter here, because there are the cabinet secretaries and other heads of administrative agencies that make up the bulk of the government.

The President chooses agency heads that agree with his policies- at least he hopes they do. So his appointments shape the political agenda. But more importantly, in appointing the ministers, the President assumes an inherent power to direct them and their agencies on how to implement laws. This makes since. As anyone who's ever worked for a boss knows, once you're hired you're sort of expected to know what your boss wants and to do it. This power to direct agencies and how to execute laws is enormous. It basically directs the way the government acts.

The President has pretty limited formal powers over Congress. Other than convening special sessions, and the veto, and the State of the Union Address, maybe, he can't do all that much to influence them. I mean Congress usually meets without the President telling them to and he almost never vetoes bills. But that doesn't mean that the President doesn't have a big informal role to play in the legislative process.

The President can attempt to set the legislative agenda by making recommendations for laws that he'd like to see passed. This is sometimes called the Legislative Initiative, and in practice it usually means that executive branch officials will actually draft the legislation they want and give it to Congress to refine into something they can pass. This is what happens with big agenda items like the Affordable Care Act. You may know it as ObamaCare. Or the Dodd-Frank Act, which, despite being named for its two Congressional sponsors was actually written with a lot of input from the White House.

I should note here that even though it might look like the President is usurping legislative power, Congress often gives its power to the President willingly, because it wants to avoid responsibility for unpopular policies. He said it. I didn't say it. He said it. Also this is pretty limited power for the President because he can't force Congress to pass anything, even if he wrote it and says "Please, please, please, please, please." And because a President's ability

to move the agenda decreases as his popularity decreases.

There's another legislative power that the President has that is probably the most important one. He can give executive orders. These are presidential directives, or rules, that have the force of law. Executive orders can be overturned by actual Congressional lawmaking, or by Supreme Court decisions. These executive orders allow the President to circumvent the legislative process and act unilaterally. Ideally the President and Congress should work together, but c'mon! Sometimes the President decides to go it alone. 'Cause they're... they don't work together that often. These days anyway.

Some really important policies have been made by executive orders, including desegregating the military and the creation of the Environmental Protection Agency. But executive orders may not be as durable as a law passed through the normal channels. If the next president in office disagrees with the order as a president put in place, he or she can get rid of them just as easily as his or her predecessor put them in place.

The other informal power the President has is kind of obscure, but also pretty important. The President can impound the funds that Congress has appropriated for certain programs or projects if he doesn't want them implemented. More generally, under his power to execute the laws, he can order the bureaucracy to implement policies in a certain specific way. Or sometimes not at all. Although this can get him in to trouble

There's one last inherent power I'll mention that the President currently has and that's executive privilege. There's probably more, but no president has asserted them yet. Basically this is the President's ability to keep information secret by claiming that it's too important to be revealed, usually for reasons of national security. There's a check on executive privilege though. It can be overturned by a court order as happened in the landmark Supreme Court case U.S. vs. Nixon. There they court ordered Nixon to turn over tapes of his conversations with aids that might have related to the Watergate Scandal.

So even though the President isn't given a ton of power in the Constitution, the President is pretty powerful. This is especially true during war. Even if that war hasn't been declared. And this is a point you should remember. You should remember everything I say, but you should remember this too. Congress and the American people are usually willing to defer to the President on military matters and the inherent powers of the Commander in Chief are enormous.

Often increased presidential power has been the result of a president seizing the initiative and expanding his own inherent or implied power. And once a president has established an implied power, the next president's very unlikely to do away with it. Oh, please, more power? No thank you. But just as often as presidents imply their own powers, Congress willingly hands over more power. And that's what we're going to talk about in the next episode. Thanks for watching.

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