

Presidential Power

2002

Deanna M. Morrison J.D.

authority + influence = power [Richard E. Neustadt, Presidential Power]

[only military orders are "self-executing" all others require the president to exercise influence in order to turn his authority into power]

Presidential Powers [ie. authority]

Executive

- 1 appointments - superior/inferior Art II s 2
- 2 enforce the laws Art II s 3
- 3 Commander in Chief Art II s 2
- 4 head of State-tradition/inherent/implicit

Diplomatic

- 1 negotiate treaties - Art II s 2
- 2 recognition of foreign govt. - inherent
- 3 executive agreements - inherent
- 4 formulate policy - inherent

Judicial

- 1 pardon Art II s 2
- 2 reprieve Art II s 2
- 3 commutation
- 4 amnesty

Legislative

- 1 sign/veto/pocket veto laws Art I s 7
- 2 State of Union Address Art II s 3
- 3 call special sessions of Congress Art II s 3
- 4 executive orders tradition

executive order = presidential proclamations or directives that carry the force of law w/o prior congressional approval - derived from implied powers of Article II, based on existing statutes or constitutional authority, usually pertains to executive agencies but can apply to almost anything, filed in Federal Register, after 30 days it becomes law as if congress passed it

Modern "powers" by Statute or Tradition

- economic
 1 Manager of prosperity
 2 budget + Credit (real)

administrative

• 60 departments (in charge)

party leader

(leader of own party),

X world leader!

crisis manager

(9-11 → world emergency!)

Reasons for Increase in Power

1 Great Depression → legislative veto dec. 1933
 (UK constitution touched)

2 War Powers -

traveling to other

3 Globalization - Countries to services
 by growth of US into w. power

4 Federal Bureaucracy growth! → R

5 Television / Mass Communication!

- Better looking.

6 Gene Roosevelt - expect Prez to fix!

like Prez to take charge.

7 Appointed Delegates of power to Prez by laws.

8

Congress' would have to pass a law to counter this.

Presidential Power

Limits on Presidential power

- 1 a congress - power of the purse
- b congress - veto override
- c congress - power to legislate [legislative veto 1932 - 1983]
- d Senate approval - appointments & treaties
- e power of investigation - impeachment
- 2 Supreme court - judicial review
- 3 bureaucracy
- 4 party politics
- 5 U.S. public opinion
- 6 World public opinion
- 1973 War Powers Act
- 1974 Congressional Budget and Impoundment Act
- 1977 amended Trade With the Enemy Act to curb presidential use of economic controls
- 1978 Independent Prosecutor's Act, part of Ethics in Government Act
- 1978 National Emergencies Act - ended current states of emergencies - established rules for future - starting, terminating emergencies

Important Supreme court decisions re presidential power

- ↓ Ex parte Milligan 71 U.S. 2 (1866) - couldn't have Mil Courts when US courts available
- ↑ In re Debs 158 U.S. 564 (1895)
- ↑ US v Curtis Wright Corporation 299 U.S. 304 (1936)
 - Pres sole organ of Fed power in intl relations
- ↑ Ex parte Quirin 317 U.S. 1 (1942)
 - Mil Trib - WWII
- ↓ Youngstown Sheet & Tube v. Sawyer 343 U.S. 579 (1952)
 - Truman - Sec. of Commerce - took over Steel Mills
- * U.S. v Nixon 418 U.S. 683 (1974)
 - W-G tapes - 80 executive priv doesn't apply in gov mtr.
- Dames & Moore v. Regan 453 U.S. 654 (1981)
 - lift Iranian assets if free hostages
- ↑ Nixon v Fitzgerald 457 U.S. 731 (1982)
 - Immune from civil suit while in office
- ↑ Harlow v. Fitzgerald 1982
 - asks qualified immunity
- Clinton v. Jones 520 U.S. 681 (1997)
- Clinton v. City of New York 524 U.S. 417 (1998)
 - inc - item veto

power ↓ or ↓

FA

How to get
Congress
to get
1973
1974
1977
1978
1978
1978

Presidential Power

Presidential use of military force historically

Post Vietnam	use of troops w/o declaration of war
1973	Chile
1979 - 82	Afghanistan
1980 - 92	El Salvador
1981 - 92	Nicaragua
1982	Chad
1982 - 90	Libya
1982 - 90	Honduras
1982 - 84	Lebanon
1983 - 84	Grenada
1987 - 88	Iraq - support in war w/Iran
1989	Libya
1989	Panama Invasion - capture of Noriega
1991	Kuwait - Persian Gulf War
1990 - present	Iraq - no fly zones, raids
1992 - 94	Somalia
1992 - 01	Peru
1992 - present	Columbia
1993	Bosnia

President's War Powers 2002

Article II s 2 - Commander in Chief

Issue - does president have inherent powers to deal with crises? see Youngstown

War Powers Resolution [passed over Nixon's veto]

Pres. can send troops 60 DAYS w/o approval - after 60 troops home or Congress acts it. quickly tell leaders of Congress w/ 48hrs!

1990 Dellums v Bush

Senators against war in Iraq - said against w Powers needed.

1999 Campbell v. Clinton

Clinton's war in Kosovo! - said troops + remove Clinton kept them

Congressional Resolution of 9-18-01 S.J. Res. 23

Bush power to deal w/ terrorists use of force against those

H.J. Res 114 - Authorization for Use of Force Against Iraq

keep terrorist attacks

*9-18-01 after Clinton's veto
Terrorists
H.J. Res 114
Pres's inherent power
Senators in Congress
President's inherent power*