

Discuss the policy-making authority a President can exercise independently of Congress.

The powers of the President as stated in Article II of the United States Constitution are as follows: The President has “executive Power”, is named as the “Commander in Chief of the Army and Navy”, he can sign Treaties (though to be binding, the Senate must ratify them) and he may make appointments to some Federal positions without the ratification of the Senate. However, he cannot propose laws in Congress, and the Presidential veto of a bill may be overridden with a two-thirds majority in both chambers.

The President can make laws with immediate effect without the input of Congress, called 'Executive Orders'. These can cover a wide range of issues, including the armed forces, national parks and other federal agencies. These orders are not supposed to be contrary to the 'will of Congress'. However, the only check on this power is the Supreme Court; there is no Congressional oversight of these orders, and unless successfully challenged in court, they remain law. Only two Executive Orders have been ruled unconstitutional by the Supreme Court. Executive Orders are vulnerable to abuse by an imperial president and several Executive Orders have attracted criticism for violating the spirit of the Constitution.

President George W. Bush has, to date, only vetoed one bill. However, his use of 'signing statements' – signing a bill into law but expressing a written intention not to enforce it – has been criticised by the American Bar Association as unconstitutional¹. It is not clear how much legal weight these signing statements hold.

Article I, Section 8 of the Constitution gives Congress the power to declare war. Despite this, the last time the United States declared War was 1941 against Japan and Germany. Since the Second World War various Presidents have usurped this power, deploying armed forces into prolonged combat situations (e.g. Vietnam) without war officially being declared. The War

¹ Blue-Ribbon Task Force Finds President Bush's Signing Statements Undermine Separation of Powers, available online at <http://www.abanet.org/media/releases/news072406.html>, accessed 10th Jan 2008

Powers Act of 1973 was intended to redress this. Under this law, the President had to secure Congress' approval for the continuation of troop deployment sixty to ninety days after the beginning of conflict. Unfortunately, this has given the President more leeway to start unconstitutional conflicts, since ninety days after fighting begins, it is usually too late and impractical to call for an immediate end.

I have discussed, above, the historical extension of the Presidential power beyond the limits set out by the Constitution. However, if the President assumes powers assigned to Congress, or imagines that Congress' laws do not apply to him, this undermines the separation of powers, thereby threatening the Republic and the rights of its citizens. I maintain, therefore, that any policy-making authority the President has without Congressional oversight is too much.