

The President's Enumerated Powers, Rulemaking by Executive Agencies, & Executive Orders.

By Publius Huldah.

On election night, November 2, 2010, Rep. John Boehner said in **his victory speech**:

...While our new majority will serve as your voice in the people's House, **we must remember it is the president who sets the agenda for our government.** ... [emphasis added]

Next morning, Ezra Klein commented in **the Cult of the President lives on**:

I'd like Boehner to show us where in the Constitution it says that the president sets the agenda for the government.

But Boehner is not as astute as Ezra Klein, and does not know that it is **our Constitution which sets the "agenda" for the federal government.** The agenda **the Constitution sets** restricts the federal government to war, international relations & commerce; and domestically, the establishment of a uniform commercial system: a monetary system based on gold & silver, weights & measures, patents & copyrights, a bankruptcy code, and mail delivery (Art. I, Sec. 8, cls.1-16). ¹

And because *none* of the House Republicans seem to know that our *Constitution* sets the agenda, and don't know that **our Constitution also enumerates the powers delegated to the President**, they are allowing Obama to carry out **his** "agenda" to transform our Country into a fascist dictatorship.

What are the Enumerated Powers of the President?

The powers of the President are "carefully limited" and precisely defined by our Constitution. In **Federalist Paper No. 71** (last para), Alexander Hamilton asks,

...what would be ... feared from an elective magistrate of four years' duration, with **the confined authorities of a President of the United States?**...[emphasis added] ²

The answer to Hamilton's question is this: There would be nothing to fear if Presidents obeyed the Constitution. But they don't obey it because the dolts in Congress don't *make* them obey it!

Well, then! Here is the complete list of the President's enumerated powers:

Art. I, Sec. 7, cls. 2 & 3, grants to the President the power to approve or veto Bills and Resolutions passed by Congress.

Art. I, Sec. 9, next to last clause, grants to the executive Branch – the Treasury Department – the power to write checks pursuant to Appropriations made by law – i.e., by Congress.

Art. II, Sec. 1, cl.1, vests “executive Power” [see below] in the President.

Art. II, Sec. 1, last clause, sets forth **the President’s Oath of Office – to “preserve, protect and defend the Constitution of the United States”**.

Art. II, Sec. 2, cl.1:

- makes the President Commander in Chief of the armed forces when they have been called **by Congress** into the actual service of the United States. ³
- authorizes the President to require the principal Officers in the executive Departments to provide written Opinions upon the Duties of their Offices.
- grants the President power to grant Reprieves and Pardons for offenses against the United States, ⁴ but he can not stop impeachments of any federal judge or federal officer.

Article II, Sec. 2, cl. 2 grants to the President the power:

- to make Treaties – with the advice and consent of the Senate. ⁵
- to nominate Ambassadors, other public ministers and Consuls, federal judges, and various other officers – with the advice and consent of the Senate.

Article II, Sec. 2, cl. 3 grants to the President the power to make recess appointments, which expire at the end of Congress’ next session.

Art. II, Sec. 3:

- Imposes the duty on the President to periodically advise Congress on the State of the Union, and authorizes the President to *recommend* to Congress such measures as he deems wise.
- Authorizes the President, on extraordinary Occasions, to convene one or both houses of Congress [e.g., when he asks *Congress* to declare War]; and if both houses can not agree on when to adjourn,

he is authorized to adjourn them to such time as he deems proper.

- Imposes the duty upon the President to receive Ambassadors and other public Ministers.
- Imposes the duty upon the President to take care that the Laws be faithfully executed, and
- Imposes the duty upon the President to Commission all the Officers of the United States.

That's it! Anything else the President does is unlawful and a usurpation of powers not granted.

What is the “executive Power”?

So! The granting of the “executive Power” to the President is not a blank check giving him power to do whatever he wants. The “executive Power” is merely the power to put into effect – to implement – those Acts of Congress which are within Congress’ enumerated powers. Thus, if Congress establishes “an uniform Rule of Naturalization” (as authorized by Art. I, Sec. 8, cl. 4), it is the President’s *duty* to implement and enforce the law *Congress* makes. The President is to carry out – to execute – Acts of Congress.

But note well: His Oath of Office – to “preserve, protect and defend the Constitution”, shows that the President must use his independent judgment⁶ as to which acts of Congress are and are not constitutional. Thus, as shown in this paper, “**The Oath Of Office: The Check On Usurpations By Congress, The Executive Branch, & Federal Judges**“, the President has *the duty*, imposed by his Oath, to act as a “check” on Congress (and on federal courts, as well).

Accordingly, when Congress makes a “law” which is not authorized by the Constitution, it

...would not be the supreme law of the land, but a usurpation of power not granted by the Constitution”... **Federalist No. 33** (last two paras);⁷

and since the President’s Oath requires him to “preserve, protect and defend ***the Constitution***“, the President must refuse to enforce an unconstitutional “law” made by Congress. Otherwise, he’d be in collusion with the legislative branch to usurp power over The People.⁸

So, then! Acting as a check on Congress (and federal courts) by refusing to enforce unconstitutional “laws” (and opinions), as well as the duty of entertaining foreign dignitaries, are the only occasions where the President may act alone. His prime responsibility is to do what *Congress* tells him.

Article I, Sec. 1 & The Unconstitutional Administrative Law State

Now, you must learn of “administrative law” – i.e., rulemaking by Executive Agencies. ⁹

Article I, Sec.1, U.S. Constitution, says:

All legislative Powers herein granted shall be vested in a Congress of the United States.

That little phrase is of immense importance. It means what it says, that only Congress may make laws: laws are to be made **only** by Representatives whom we can fire every two years, and by Senators whom we can fire every six years.

But in Joseph Postell's “must read” paper, “**Constitution in Decline**“, he shows that during the administration of the nefarious Woodrow Wilson, Congress began delegating its lawmaking powers to agencies within the Executive Branch. Since then, Congress passes an overall legislative scheme, and delegates the details to be written by un-elected, un-accountable bureaucrats in the various Executive Agencies. *They* write the “administrative rules” which implement the Legislation. The result is the execrable Code of Federal Regulations (CFR), which is accepted, by the indoctrinated members of my profession, as “law”. Go [here](#) to see the abominable CFR.

May the President *Lawfully* Make “Executive Orders”?

The Guiding Principle is this: The President has no authority to do ANYTHING apart from *constitutional* authority or *statutory* authority (assuming the statute itself is constitutional).

1. So! Respecting those matters within his *constitutional authority & duties*, and authority & duties imposed by constitutional statutes, the President may make “orders” – call them “executive orders” if you like.

For example: It is the President's constitutional duty “to take care that the Laws be faithfully executed”. Thus, he has the *duty* to enforce [constitutional] laws made by Congress. How does he enforce the laws? Sometimes, by means of “orders”.

To illustrate: Say Congress makes a law, as authorized by Art. I, Sec. 8, clause 6, making it a felony to counterfeit the Securities and current Coin of the United States. If U.S. Attorneys are not prosecuting counterfeiters, the President should “order” them to do it. Or fire them.

But say Congress makes a law which purports to make possession of shotguns shorter than 18 inches a

crime. Since the President's Oath requires him to “preserve, protect and defend the Constitution”, he is obligated to “order” the U.S. Attorney General and the U.S. Attorneys to refuse to prosecute anyone for possession of sawed-off shotguns. Why? Because such a “law” is unconstitutional as outside the scope of the legislative powers granted to Congress in Our Constitution. It also violates the Second Amendment.

Clearly, such an order to refuse prosecution falls within the President's *constitutional duties* (enforce the Constitution), and he is giving an order to people within the Executive Branch. The President is the one who is charged with carrying out the Acts of Congress – he has the “executive Power”. But because of his Oath, he may not carry out unconstitutional “laws”. That is one of the checks on Congress.

The President may also properly make orders addressing housekeeping issues *within the Executive Branch*: Dress codes, no smoking or drinking on the job, he may encourage executive agencies to hire qualified handicapped people, and the like. Just as if you have a business, you may make orders addressing such matters.

So! Do you see? The President may lawfully make orders to carry out his *constitutionally imposed powers* and *duties*, and powers bestowed *by statutes* which are constitutional; and he may address “housekeeping” issues within the Executive Branch.

2. But a President may not lawfully, by means of “orders”, exercise powers not delegated to him by the Constitution or by (constitutional) Acts of Congress.

Yet Obama has issued various executive orders ***which are unlawful*** because they are not authorized by the Constitution or by (constitutional) Acts of Congress. Here are two executive orders which are particularly pernicious because they undermine our foundational Principle of “Federalism”, and have as their object the “improper consolidation of the States into one ... republic.”: ¹⁰

E.O.13575 – Establishment of the White House Rural Council: This E.O. provides for over 25 federal departments & agencies to run every aspect of rural life!

E.O. Establishing Council of Governors: The effect of this E.O. is to erase the Independence and Sovereignty of the States and consolidate us into a national system under the boot of the Executive Branch.

Joseph Stalin couldn't do better than this. These E.O.s are blatantly unconstitutional as usurpations of powers not granted in The Constitution! So, **Nullify** them!

3. Likewise, **executive agencies** may not, by means of “administrative rulemaking”, usurp the powers of Congress. (Remember, because of Art. I, Sec.1, **all** rulemaking by executive agencies is unconstitutional)!

Here are several cases of such unconstitutional rulemaking:

a) When Congress refused to pass **the DREAM ACT**, which provided a path to citizenship for certain categories of illegal aliens, **ICE** had no authority to implement it, in whole or in part, by executive “memo”! Power over Rules of Naturalization (i.e., who qualifies for citizenship and what are the procedures) is expressly granted *to Congress* by Article I, Sec. 8, cl. 4, which grants to *Congress* alone the Power “To establish an uniform Rule of Naturalization”.

The President has no constitutional power over immigration & naturalization except to enforce the Acts of Congress respecting those subjects. Article II, Sec. 3, which imposes upon the President the duty to “take care that the Laws be faithfully executed”, *requires* the President to enforce such constitutional Acts of Congress.

But if Congress refuses to make a law respecting naturalization, a President who enacts it anyway, via “executive order”, or “administrative regulation”, or “administrative memo” by his underlings in the various executive agencies, is acting lawlessly. His unlawful acts should be nullified, and he should be removed from office for his usurpation.

b) Congress recently did not pass three sinister and grotesquely unconstitutional bills Obama wanted: “**Card check**“, “**Cap and Trade**“, and the **Disclose Act**. These bills are unconstitutional as outside the scope of the legislative powers granted by our Constitution to Congress. **Nowhere** does our Constitution give Congress authority to make laws about labor unions (“card check”), or to regulate carbon emissions – CO², the stuff humans and animals exhale, and plants & trees need for photosynthesis (“cap and trade”), or requiring people with federal contracts to report their personal political activities to the Executive Branch (“Disclose Act”)!

Since Congress may not lawfully make laws on such subjects, no one can. Yet, Obama is circumventing the Constitution and implementing these three failed & unconstitutional bills by agency rulemaking or executive order!:

The National Labor Relations Board, is implementing “card check” by agency regulation. Read **this**.

The Environmental Protection Agency is implementing “cap and trade” by agency regulation. Read **this**.

And it appears that Obama – in furtherance of his “agenda” to reward his supporters and punish non-supporters – is considering signing an executive order to implement the Disclose Act. Read [this](#).

So! Let us sum this up: The President must always uphold our Constitution. When Congress makes an unconstitutional law, the President must refuse to implement it; and he may, by means of executive orders, instruct people in the Executive Branch not to comply. E.g., if a President orders the U.S. Attorneys to decline to prosecute persons for possession of sawed-off shotguns, he would be acting lawfully because Congress has no authority to ban them. But the President is violating the Constitution when he implements “card check” by agency rules made by the NLRB; when he implements “cap & trade” by agency rules made by the EPA; and the “Disclose Act” by executive order, because the President and executive agencies (as well as Congress) do not have authority over these objects; and further, no one in the Executive Branch has authority to make “laws”!

What Should we do about illegal Executive Orders & Rules made by Executive Agencies?

A Congress filled with he-men and she-women, instead of ignorant cowards, wusses, and wimps, would impeach Obama for his usurpations in signing unconstitutional executive orders, and in circumventing Congress by having executive agencies implement, by means of administrative rules, legislation which Congress did not pass. In [Federalist Paper No. 66](#) (2nd para), Hamilton expressly states that impeachment is an essential check on a President who encroaches on the powers of Congress; and in [Federalist No. 77](#) (last para), points out that impeachment is the remedy for “abuse of the executive authority”.

But since the people in Congress are too ignorant and weak to rid us of the abomination in the White House, the States and Counties must nullify unconstitutional executive orders and administrative rules, or submit to slavery and the destruction of our Constitutional Republic. Since State and County officials have taken the Oath to support the U.S. Constitution (Art. VI, last cl.), **they are bound by Oath to refuse to submit to illegal executive orders and illegal agency rules.**

And of course, WE THE PEOPLE and our businesses must also spit on such illegalities by the Executive Branch. Our “creature” ([Federalist No. 33](#), 5th para, Hamilton), has turned into Frankenstein, and has lost all legitimacy. PH

Endnotes:

¹ In [Federalist No. 45](#) (9th para), James Madison, Father of Our Constitution, says,

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. **The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce;** with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. [boldface added]

² In **Federalist No. 48**, Madison points out that in our representative republic,

...the executive magistracy is carefully limited; both in the extent and the duration of its power... (5th para) [i.e., limited & enumerated powers and 4 year terms]

...the executive power being restrained within a narrower compass [than that granted to the legislative branch], and being more simple in its nature... (6th para)

In **Federalist No. 75** (3rd para), Hamilton says,

...The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; **while the execution of the laws, and the employment of the common strength, either for this purpose or for the common defense, seem to comprise all the functions of the executive magistrate...** [boldface added]

In **Federalist No. 78** (6th para), Hamilton says,

...**The Executive not only dispenses the honors, but holds the sword of the community.** The legislature not only commands the purse, but prescribes the rules ... The judiciary ... has no influence over ... the sword or the purse ...and ...must ultimately depend upon the aid of the executive arm ... for the efficacy of its judgments. [boldface added].

Read the list of the President's enumerated powers! The President's powers really are "confined" and "carefully limited" to carrying out laws made by Congress and enforcing certain judicial decisions, military defense (a power shared with Congress), appointing officials (subject to Congress' approval), and entertaining foreign dignitaries. ***That's it!***

³ Only **Congress** has the power to declare war (Art. I, Sec. 8, cl. 11)! See clauses 12-16 showing that **Congress** has the power to determine the funding for the military, and to make the Rules for the

discipline & training of the military and the Militia.

⁴ Re “Offenses against the United States”: I explain [here](#) the criminal laws Our Constitution permits Congress to make. It’s a short list. Take note, you federal criminal defense lawyers.

⁵ I explain the treaty making power of the United States in two papers [here](#)

⁶ During the Terri Schiavo case, [Alan Keyes](#) spoke on the radio about the constitutional powers of the President. I seem to recall that Dr. Keyes spoke of the President’s obligation to exercise his “independent judgment” as to whether an act of Congress or a federal court opinion is constitutional. Whatever he said, he opened *my* eyes, and enabled me to see the elegant beauty of our Constitution.

⁷ Hamilton also says in [Federalist No. 33](#) (6th para)

...it will not follow...that acts of ...[the federal government] which are NOT PURSUANT to its constitutional powers, but which are invasions of the residuary authorities of ... [the States], will become the supreme law of the land. **These will be merely acts of usurpation, and will deserve to be treated as such...** [T]he clause which declares the supremacy of the laws of the Union [Art. VI, cl. 2]...EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION ... [caps are Hamilton's, boldface mine]

⁸ Madison says in [Federalist No. 44](#) (last para before 2.):

...**the success of the usurpation** [by Congress] **will depend on the executive and judiciary departments**, which are to expound and give effect to the legislative acts; ... [boldface added]

The President must not collude with the legislative or judicial branches to usurp power over The People! He must *honor his Oath!*

⁹ Most of the existing “federal” executive agencies are unconstitutional. They meddle in matters which are not the business of the federal government, as power over the matters is not granted by our Constitution to the federal government. Here are a few of the unconstitutional federal agencies: the Departments of Agriculture, Labor, Health and Human Services, Housing and Urban Development, Energy, Education, Transportation, and Homeland Security. Likewise for the Environmental Protection Agency, the Federal Communications Commission, the Office of Science and Technology Policy, the Office of National Drug

Control Policy, the National Economic Council, the Small Business Administration, the Council on Environmental Quality, etc., etc., etc.

¹⁰ Progressives have erased the concept of “federalism” from our minds. “**Federalism**” refers to *the form* of our government & *the division of powers* between the national government and the States. A “Federation” (which is what our Constitution creates) is an alliance of independent States associated together in a “confederation” with a national government to which is delegated authority over the States in ***specifically defined areas ONLY*** (i.e., the enumerated powers granted to Congress by our Constitution). Those enumerated powers are the only areas wherein the national government is to have authority over the States. **In all other matters, the States have supremacy, are independent, and sovereign!** Learn more of “federalism” [here](#) and [here](#).

Our Framers warned against the consolidation of the sovereign States into one national sovereignty: [In Federalist No. 32](#) (2nd para), Hamilton writes,

An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention [the Constitution] aims only at a partial union or consolidation, **the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, EXCLUSIVELY delegated to the United States....** [caps are Hamilton's; boldface mine]

[Federalist No. 62](#) (5th para) says,

... the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous **to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.** [boldface mine]

And in [Federalist No. 39](#) (6th para), Madison says,

“But it was not sufficient,” say the adversaries of the proposed Constitution, “for the convention to adhere to the republican form. They ought, with equal care, to have preserved the FEDERAL form, which regards the Union as a CONFEDERACY of sovereign states; instead of which, they have framed a NATIONAL government, which regards the Union as a CONSOLIDATION of the

States.” And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision....[caps are Madison's]

Madison then gives a brilliant exposition of the “national” and “federal” aspects of Our Constitution. More than any other Paper, No. 39 addresses the primary political problem of our Time: The destruction of “federalism” by eradicating all vestiges of sovereign & independent States.

We are a trusting People easily lead astray. Make something sound “patriotic”, and we are all for it. Since 1892, American public school children have been indoctrinated with the statist Lie that ours is an *indivisible national* government. This was done by means of the Pledge of Allegiance: “...one nation ... indivisible...”. Is it any wonder that the author of this nasty bit of poison, **Francis Bellamy**, was a socialist who worked with the National Education Association to institute this statist indoctrination into the public schools? **This pernicious pledge is why you don't know, and no one knows, that our Constitution created a “federation” of sovereign & independent States, united *only* for the limited purposes enumerated in the Constitution.** [Wikipedia](#) has good info on Bellamy. PH

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