

We the People

THE CITIZEN & THE CONSTITUTION



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We the People: The Citizen & the Constitution, Level 3.

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WHAT IS THE ROLE OF THE PRESIDENT IN THE AMERICAN CONSTITUTIONAL SYSTEM ?



LESSON PURPOSE

The president of the United States is among the most powerful political figures in the world. In the international realm the president speaks for the country and is the symbol of America. At home the president suggests the policy agenda for Congress and is the leader of his or her political party. Americans look to the president for leadership, while at the same time fearing the concentration of political power in the executive branch. This lesson examines sources of presidential power and ways that checks and balances limit presidential power.

When you have finished this lesson, you should be able to explain the president's constitutional responsibilities and how the office of president has evolved. You also should be able to identify various constitutional and political checks on the president's power. You should be able to explain fundamental differences between the office of prime minister in a parliamentary system and the American presidency. Finally, you should be able to evaluate, take, and defend positions on issues involving the exercise of presidential power and the relationship between the president and the other branches of government.

TERMS AND CONCEPTS TO UNDERSTAND

- commander in chief
- executive order
- executive power

WHAT ARE THE PRESIDENT'S CONSTITUTIONAL RESPONSIBILITIES?

Article II of the Constitution places “the **executive Power,**” the powers of the executive branch of government, in the president of the United States. Unlike Article I, which gives Congress those powers “herein granted,” Article II does not define executive power. The Constitution lists some of the president’s powers, but those listed have never been thought to be the president’s only powers. The listed powers include the following:

- Commanding the army and navy as **commander in chief**
- Heading the executive department (cabinet and executive departments)
- Granting reprieves, or postponement of punishment, and pardons
- Making treaties, subject to the advice and consent of the Senate
- Nominating ambassadors, public

ministers, consuls, and judges of the Supreme Court and other federal courts

- Recommending legislation to Congress
- Reviewing legislation passed by Congress and returning bills to which the president objects
- Receiving ambassadors and other public ministers (chief diplomat)

The Constitution further directs the president to “take Care that the Laws be faithfully executed.” It also requires the president to take an oath that includes a promise to “faithfully execute the Office of President and...preserve, protect, and defend the Constitution of the United States.”

Presidents have asserted many reasons to justify a broad definition of executive powers, particularly in times of national emergency, such as the Great Depression, and war. The Constitution has proven flexible enough to adapt to changing understandings of presidential power.



Should the president have the power to veto bills passed by majorities of both houses of Congress? Why?

WHAT DO YOU THINK?

- 1 Article II, Section 1, gives the president “executive Power” but does not define what that power is. What other provisions of Article II give an indication of what the Framers meant by executive power?
- 2 What additional insights into the nature of executive power are provided in Article I?

HOW DID THE FRAMERS ENVISION THE PRESIDENCY?

The Framers envisioned the president as an official above partisan politics, that is, a person not devoted to a particular political party. Publius explained in *Federalist* 68 that they wanted the president to be a person who had earned the esteem and confidence of the entire nation, with a character “preeminent for ability and virtue.” They designed the Electoral College to identify people of such character. There was no expectation that candidates would campaign for the office. The Framers thought that the president should remain above partisan politics. But their expectations were unmet even during President Washington’s administration, when factions arose that led to the development of political parties.

The Framers did not want the president to have the powers of a monarch. But they did want the president to be “energetic,” a quality they contrasted with legislative “deliberation.” “Energy” refers to the capacity of one person to act efficiently and vigorously on behalf of the nation. The Framers feared what they called a “feeble executive.” As Alexander Hamilton argued in *Federalist* 70, “A feeble execution is but another phrase for a bad execution; and a government ill executed, which a fever it may be in theory, must be, in practice, a bad government.”

HOW HAS THE PRESIDENCY EVOLVED?

Occupants of the office of president have varied in stature and achievements. Some have been undeniably great, others have been mediocre, and still others are regarded as failures. The precedents for the modern presidency are the powerful figures who took a broad view of their authority under the Constitution.

Early examples of powerful presidents are our first and third presidents, George Washington and Thomas Jefferson. However, some scholars trace the rise of the powerful modern presidency to Andrew Jackson. Before Jackson presidents used the veto power sparingly to aid Congress in the performance of its deliberative functions. They returned bills to Congress for “reconsideration,” or further reflection. Jackson used the

power differently. He vetoed the recharter of the Second Bank of the United States. In the resulting battle between the president and Congress, Jackson appealed directly to the public to support his position on the bank. During his two terms in office President Jackson used the veto twelve times, more than all his predecessors combined. He used it not only against bills that he considered unconstitutional but also against those he viewed as bad policy.

Abraham Lincoln contributed significantly to the growth of the office, even though he rarely used the veto power. Confronted with the Civil War (discussed in Unit Three), Lincoln asserted unprecedented, unilateral executive power. He justified actions such as imposing a blockade on southern ports, suspending the writ of habeas corpus, nationalizing the militia, and expanding the size of the army and the navy as exercises of what he called an “inherent executive power” in times of emergency. Congress ultimately authorized most of Lincoln’s actions.

Theodore Roosevelt and Woodrow Wilson also helped transform the presidency into the powerful institution it is today. Roosevelt used the office as a “bully pulpit” to shape public opinion and frame debates on domestic legislation that he proposed to Congress. A bully pulpit is a position of visibility and influence, often a political office, from which to advocate a particular point of view. The word *bully*, in this case, means “very good” or “excellent.” Wilson similarly carried issues directly to the public, notably in his unsuccessful fight for America’s entry into the League of Nations after World War I.

The most influential president in the twentieth century was Franklin D. Roosevelt. Roosevelt was elected during the Great Depression and served until nearly the end of World War II. He used both crises to consolidate presidential power. At home Roosevelt took direct control of the policy process, submitting a wide range of reforms to Congress as part of his New Deal. These included Social Security, employment programs, and extensive reforms of executive agencies. As commander in chief during World War II Roosevelt helped to establish America’s preeminence in the international arena. He also was the first president to make extensive use of public opinion polls, which informed him about how Americans were responding to his proposals. He talked directly to the people through radio “fireside chats,” using a conversational, personal style to establish trust and confidence.

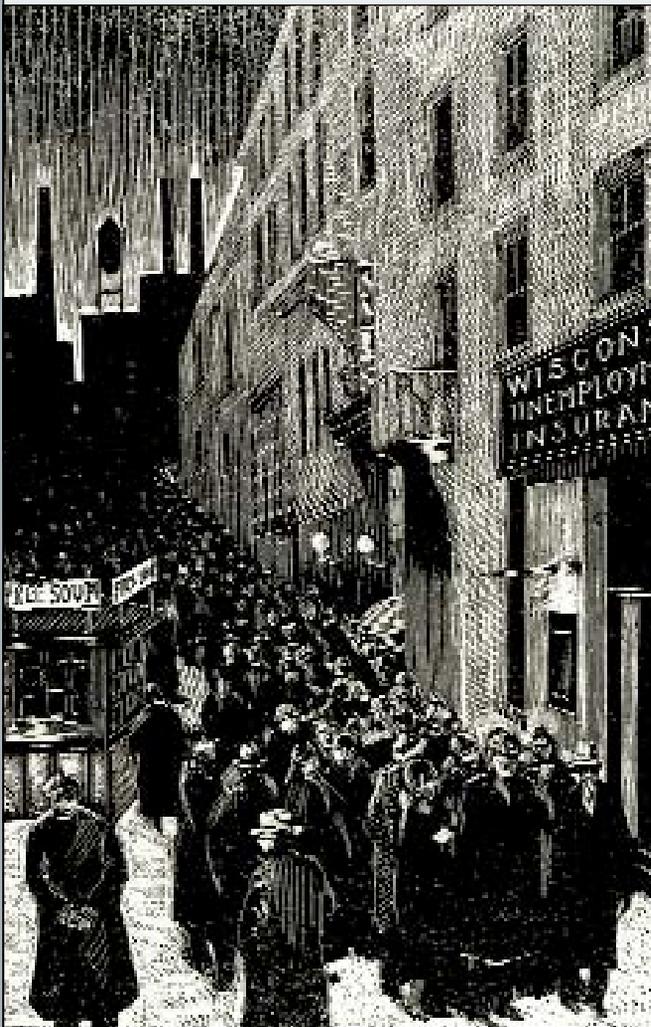
Presidents since Roosevelt have served in his shadow. Some have agreed with Roosevelt’s domestic policies. Others have sought to dismantle them. However, all effective presidents have relied on strategies that Roosevelt used to bolster presidential power. Ronald Reagan, for

example, established himself as the Great Communicator, whereas John F. Kennedy and Bill Clinton used their personal charisma to win political allies and to persuade the American people to support their policies.

CRITICAL THINKING EXERCISE

Examining Presidential Qualifications

The Constitution lists three formal requirements for the office of president: natural born citizen, resident of the United States for fourteen years, and at least thirty-five years of age. Work in small groups to make a list of the *informal* qualifications that you think a president should possess. For example, should a president be well educated? Have previous government or military experience? Be charismatic, articulate, and personable? Why? Compare your list with the lists prepared by other groups. Are there informal qualifications that appear on everyone's list? How does your list compare with the qualifications the Founders believed were important?



What responsibility, if any, should government take regarding unemployment?

WHAT IS THE PRESIDENT'S ROLE IN FOREIGN POLICY?

Article II grants four powers that, taken together, establish the president as the nation's leader in foreign policy. Congress also has enormous powers over foreign policy because it establishes and collects taxes, declares war, pledges the credit of the United States, and regulates foreign commerce. Congress also funds the armed forces, makes rules governing them—the Uniform Code of Military Justice—and makes rules related to “Captures on Land and Water,” as contained in Article I, Section 8, of the Constitution. However, Congress's role is largely one of reacting to the president. The president's powers in foreign relations include the following:

- **Commanding the armed forces**
The nation's military power can be used both to protect the nation from hostile powers and as a threat to help persuade other countries to comply with America's policies. Congress has declared war only five times. However, every president after Roosevelt has used the commander in chief's power to send American troops to countries abroad—including Korea, Vietnam, Lebanon, Grenada, Kuwait, Somalia, Kosovo, Afghanistan, and Iraq—without declarations of war.
- **Making treaties** Treaties are agreements with other nations and international organizations. They can address matters ranging from economics to defense. The president has sole authority to negotiate and make treaties on behalf of the United States. However, the treaties must be approved by a two-thirds vote of the Senate. In 1949, for example, President Harry Truman made the United States one of the founding members of the North Atlantic Treaty Organization, a military alliance. The Senate approved. But other treaties, notably the Treaty of Versailles after World War I, have not been ratified.
- **Appointing ambassadors and consuls**
The president decides who represents the United States within other countries. The president's appointees, who must be approved by a majority vote in the Senate, help to shape the image of the United States overseas and to advise on foreign policy, including monetary assistance to other countries, or foreign aid.
- **Receiving ambassadors and other public ministers**
President Thomas Jefferson helped to establish the principle that this provision of the



What are some of the checks on the president's powers in foreign relations?

Constitution means that the president is “the only channel of communication between the United States and foreign nations.” The right to receive ambassadors and other public ministers from abroad includes the right not to recognize them. Withholding recognition can be used as a policy tool. For example, in 1913 President Woodrow Wilson’s refusal to recognize the provisional government of Mexico contributed to the downfall of that government.

HOW DO THE PRESIDENT’S POWERS EXPAND IN WAR AND EMERGENCY?

During wars and emergencies presidents commonly exercise powers not granted by the Constitution. President Grover Cleveland deployed federal troops without congressional authorization in 1894 to put down a strike among Pullman train car workers. President Franklin Roosevelt transferred destroyers to Great Britain in 1940, a year before the United States entered World War II. And President Truman ordered the secretary of commerce to operate the nation’s steel mills during a strike to ensure an adequate supply of steel during the Korean War.

On occasion Congress and the Supreme Court have tried to rein in the president. In 1952 the Supreme Court held that President Truman had exceeded his authority in seizing the steel mills. In the 1970s, Congress also debated withdrawing funding for the Vietnam War as the war continued to lose public support. In 2006 the Court held that President George W. Bush’s creation of special military commissions to try alleged terrorists violated the Uniform Code of Military Justice passed by Congress in 1950 and the 1949 Geneva Convention, an international treaty that the United States had signed. These examples aside, during wars and national emergencies both Congress and the Court tend to defer to the president.

HOW AND WHY HAS PRESIDENTIAL POWER EXPANDED HISTORICALLY?

It sometimes is argued that the two-plus centuries of American experience have been characterized by a general drift of authority and responsibility toward the executive branch. In fact, the preponderance of power has flowed over time from one branch to another. During most of the nineteenth century Congress predominated. In the twentieth century as the role of the United States in world affairs grew, so did the formal and informal powers of the president. The administrations

of Franklin Roosevelt, Lyndon Johnson, Richard Nixon, and George W. Bush were marked by increased assertions of presidential authority.

There are several reasons for the increase in the powers of the presidency. One reason is that Americans have always expected their chief executives to act vigorously and to address the nation's problems. Alexander Hamilton in Federalist 70 claimed, "Energy in the executive is a leading character in the definition of good government." Thomas Jefferson contended that circumstances "sometimes occur" when the president must assume authorities beyond the law when necessity or self-preservation require. Interestingly, however, public opinion polls taken since the 1930s reflect two unchanging popular attitudes toward the presidency. The first is that people want strong, activist presidents. The second is that people fear and distrust activist presidents. Americans want and expect the other two branches of government to act as checks and balances on the executive.

A second reason for the enlargement of executive authority is that the constitutional powers of the president are stated in broad terms. It is possible to interpret them in ways that have permitted an expansion of presidential influence.

A third reason for the growth of executive power is the president's role in recommending legislation to Congress (Article II, Section 3). The executive branch proposes most of the bills that Congress considers. Enforcing decisions of the Supreme Court and carrying out and enforcing laws enacted by Congress also have led to a more central role for the executive. Moreover, the executive has played an increasingly active role in the development of federal regulations. Federal regulations are rules created by executive agencies to elaborate the often general laws passed by Congress to make them operational. They are printed in the *Federal Register*, a daily government publication of notices, rules, and other information, and are open to public comment for 30 days before they are approved and become law. As such, they are an example of the shared power of lawmaking.

A fourth reason for the growth of executive authority is the use of executive orders. An **executive order** is a rule or regulation issued by the president. The use of executive orders by presidents has greatly increased in recent years as a result of the tendency of legislative bodies to leave the details of laws they pass to be filled in by the executive branch. All executive orders issued by the federal government must be published in the *Federal Register*. Some states have similar publications.

Finally, presidential and executive power has increased as the federal government has assumed responsibilities that formerly were seen as the responsibilities

of individuals or of local and state governments. Examples of responsibilities shifted to the national government range from education to health care, transportation, and product safety.

HOW ARE PRESIDENTIAL POWERS LIMITED?

Despite the president's immense powers, the system of checks and balances limits presidents in a number of ways. For example, the Twenty-second Amendment limits the president to two elected terms in office. This amendment was adopted after Franklin Roosevelt abandoned the tradition begun by George Washington of stepping down after two terms. Even though Roosevelt had been immensely popular, Americans feared a president who remained in power too long.

Congress can check the exercise of the president's power by

- **Rejecting the president's legislative agenda or modifying it in ways that make it unacceptable to the president** Examples include the rejection of Franklin Roosevelt's proposal to increase the number of justices on the Supreme Court and his plans to reorganize the executive branch.



What opportunities does the Federal Register provide for citizens to monitor and influence government?

- **Asserting its constitutional authority**
An example is the 1973 War Powers Resolution intended to reinforce the constitutional power of Congress to declare war. Among other things it requires the president to consult with Congress before initiating any foreign hostilities and regularly thereafter until American armed forces no longer are engaged in hostilities.

- **Refusing to ratify treaties**
For example, in 1996 Bill Clinton signed a comprehensive nuclear test ban treaty with 137 other nations. Ten years later the Senate had neither ratified nor held major hearings on it.

- **Refusing to confirm presidential nominees to the judiciary or top administrative posts**
Examples are the Senate's refusal to confirm Richard Nixon's nominations of G. Harrold Carswell and Clement Haynsworth to the Supreme Court and George H. W. Bush's nomination of John Tower to be secretary of the Department of Defense.

- **Refusing to fund the president's programs**
By cutting off or reducing funds, or by threatening to do so, Congress can abolish agencies, curtail programs, or obtain requested information. An example is the refusal of Congress to provide funding for emergency aid for Vietnam as requested by President Lyndon B. Johnson.

- **Removing the president from office by impeaching, trying, and convicting him**

The Supreme Court also can check the exercise of presidential power. Examples include the following:

- ***Humphrey's Executor v. United States* (1935)**
Congress must approve the president's decision to remove an official of an independent regulatory agency.
- ***United States v. Nixon* (1974)**
The president is not entitled to automatic immunity from the legal process (reaffirmed in *Clinton v. Jones*, 1997).
- ***Train v. City of New York* (1975)**
The president cannot refuse to spend money that Congress has appropriated unless Congress gives the president discretion to do so.



What are some of the principal means by which the powers of the president can be limited?

The executive branch itself also can limit the president, as will be discussed in the next lesson. Executive agencies and bureaus develop their own change-resistant traditions and styles of performing their jobs. Career civil service employees—many of them experts in their fields—may resist the president's political priorities without fear of losing their jobs.

Finally, public opinion limits the exercise of presidential power. A president who lacks public support is handcuffed in his efforts to carry out his policy agendas at home and abroad. President Truman once lamented, "I sit here all day trying to persuade people to do the things they ought to have sense enough to do without my persuading them.... That's all the powers of the president amount to."



Which branch of government was responsible for the integration of the military?

CRITICAL THINKING EXERCISE

Examining the Role of the Executive Branch in Promoting the Protection of Individual Rights

The actions of the executive branch in developing federal regulations and executive orders are subject to the same democratic political processes made possible by our Constitution. Private citizens and interest groups and movements have used these processes to influence executive branch decisions.

Work in groups of three to five students. Each group should select one of the regulations or executive orders listed below and determine what rights it was designed to protect and how the political process was used to influence the actions of the government. Each group should answer the questions following the list and prepare a short presentation for the class.

- **Emancipation Proclamation (1863)**
Freedom of slaves in territory of the Confederate States of America that did not return to Union control by January 1, 1863
- **Executive Order 8802 (1941)**
Nondiscrimination in employment
- **Executive Order 9981 (1948)**
Integration of the military
- **Executive Order 10730 (1957)**
Integration of schools in Little Rock, Arkansas
- **Executive Order 11246 (1965)**
Enforcement of affirmative action
- **Philadelphia Plan (1969)**
Affirmative action in federal employment
- **Code of Federal Regulations, Title 34 (C.F.R. 34) (2000)**
Implementation of parts of the Civil Rights Act of 1964 regarding nondiscrimination in education, as follows:
 - **Part 100**
Prohibits discrimination on the basis of race, color, or national origin
 - **Part 104**
Prohibits discrimination on the basis of disability
 - **Part 106**
Prohibits discrimination on the basis of sex
 - **Part 110**
Prohibits discrimination on the basis of age
- **Code of Federal Regulations, Title 28, Part 35 (1991)**
Prohibits discrimination on the basis of disability



What are some of the differences between the roles of prime minister and president?

- 1 What were the historical circumstances that led to the executive action?
- 2 What are the major provisions of the executive order or federal regulation?
- 3 What rights does the order or regulation promote or protect?
- 4 How does the order or regulation reflect a major shift in American public policy?
- 5 How has the order or regulation changed the course of private and public action?
- 6 How was the democratic political process used to influence the executive branch to issue this order or regulation?
 - Was this order or regulation a result of congressional action? If so, what was the cause of the action?
 - Was this order or regulation the result of the influence of civil society interest groups? If so, what were they and how did they help get the order or regulation enacted?
 - What other factors contributed to the enactment of this order or regulation?

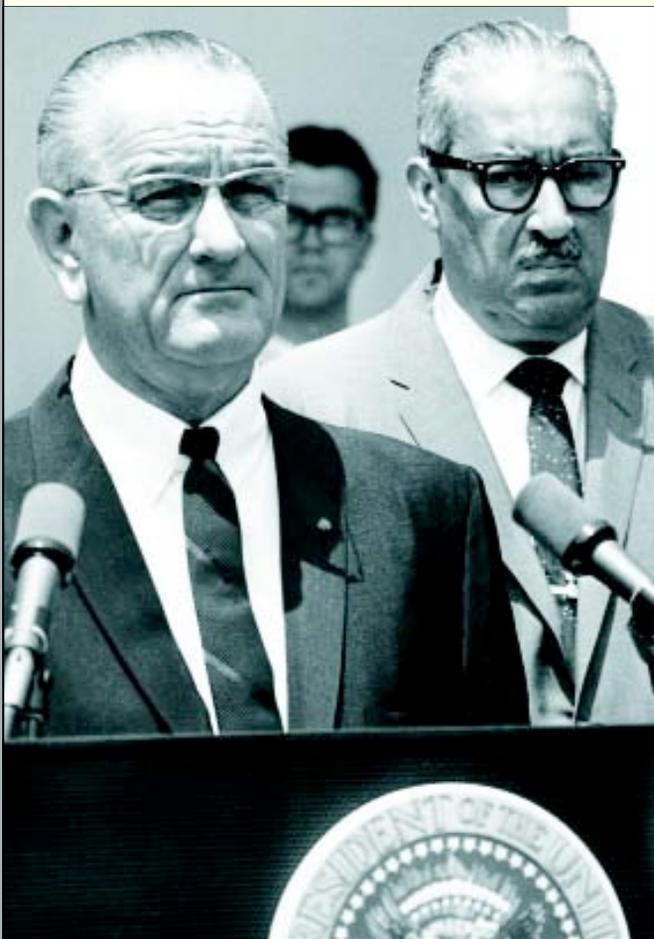
HOW DOES THE AMERICAN PRESIDENT DIFFER FROM A PRIME MINISTER?

In a parliamentary system the majority party or coalition in Parliament appoints the prime minister, the highest-ranking member of the executive branch of a parliamentary government. Cabinet ministers usually are the leading parliamentary figures in the majority party. In Britain the prime minister must have served in Parliament so that he or she comes to the office of prime minister with extensive government experience. Legislative and executive powers are integrated in parliamentary systems. That integration is believed to make government more efficient and better able to reflect the popular will. A prime minister who submits a list of measures to Parliament can be confident that Parliament will enact the proposals. However, if the prime minister loses the confidence of Parliament, he or she can be removed immediately.

In the United States the legislative, executive, and judicial branches are not integrated. The country as a whole chooses the president. Congress usually has no say in who is elected, and the Constitution does not require a president to have any prior experience in national government. Neither must the majority in either the House or the Senate be of the same political party as the president. The Constitution does not require Congress to adopt legislation that the president proposes, approve treaties that the president negotiates, confirm the president's judicial or other nominees, or

fund wars. The president's actions also are subject to review by the judiciary and may be declared unconstitutional. Unlike a prime minister, the president serves a fixed four-year term and does not lose office merely because of low public opinion or failure to persuade Congress to enact proposed legislation.

If the president of the United States has become the preeminent figure in domestic and international politics, it is because presidents have used their constitutional and discretionary powers to advantage. Presidential power depends on the ability to persuade, to navigate through the complexities of separation of powers, to garner trust, and to shape public opinion. History also shows that the president's roles in foreign affairs and as commander in chief are great sources of power. However, as Lyndon Johnson discovered during the Vietnam War, if public opinion turns against the president's foreign policies, that president's power is in jeopardy. Finally, since the United States has become a world power, the president's standing in the eyes of the public and, in the words of the Declaration of Independence, in the "Opinions of Mankind," may enhance or detract from the international reputation of the nation.



Why might presidents be less vulnerable to public opinion than prime ministers?

WHAT DO YOU THINK?

- 1 Would you support a constitutional amendment to change the president's tenure in office from a fixed term to a vote-of-confidence system as in Great Britain? Why or why not?
- 2 What are the advantages and disadvantages of having the president chosen by the people rather than the legislature?
- 3 Should the president be required to appear before Congress from time to time to answer direct questions, as prime ministers are required to do in parliamentary systems? Why or why not?

REVIEWING AND USING THE LESSON

- 1 What factors explain the growth of presidential power during our nation's history?
- 2 Has Congress relinquished too much power to the president? Explain your view.
- 3 How is the system of checks and balances designed to limit the exercise of presidential power?
- 4 How well does the system of checks and balances work? Why?
- 5 How can public opinion affect presidential power?
- 6 How would you define a "feeble" executive? In what ways might a feeble executive be as dangerous as an overly "energetic" executive?
- 7 What are the differences between a president and a prime minister?