

Presidential Powers Under the Constitution and the Courts

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Introduction

Article I

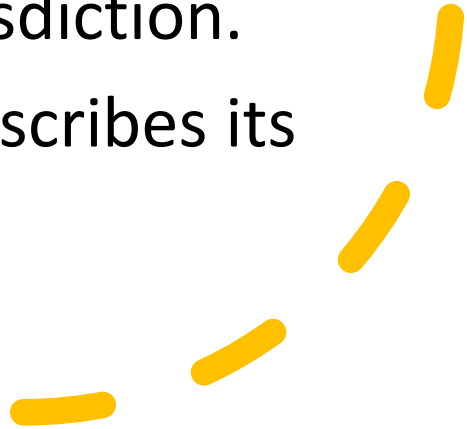
- Structure, Authority and Powers of Congress
- Who can serve
- How they are elected
- Section 8 details the specific powers of the legislature



Article II

- Vests Executive Power in the President of the United States
 - Describes how the President and Vice President are elected (process changed by the Twelfth Amendment)
 - Sections 2 and 3 describes Powers, Authority and Responsibilities of the President.
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Article III

- Vests the judicial power of the United States “in one Supreme Court , and in such inferior Courts as the Congress may from time to time ordain and establish.”
 - Judges shall hold their offices during good behavior (lifetime appointment) and
 - Shall receive compensation that will not be diminished during their time in office.
 - Section 2 defines the courts’ jurisdiction.
 - Section 3 defines treason and describes its punishment
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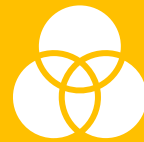
Article IV



Full faith and credit to the official acts and records of every state



Citizens of every state are entitled to “all the Privileges and Immunities of Citizens of the several states.”



The United States guarantees every state “a Republican form of Government.”




Article V

Defines the process
by which the
Constitution can be
amended.



Article VI

- Status of public debts
 - Supremacy of the Constitution and the laws made under it
 - Oath of allegiance to the Constitution all public officials, federal and state, must take
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Article VII

The Constitution will go into effect when it has been ratified by convention in nine states.



Constitutional Amendments

Bill of Rights sent to the states by the first Congress in 1789 and ratified and made effective in 1791

17 amendments since the Bill of Rights

21st Amendment repealed the 18th and ended Prohibition




Constitutional Amendments (cont.)

- 13th Amendment prohibited slavery
- 14th Amendment established birthright citizenship, a national right to due process of law and prohibited states from denying anyone equal protection of the law
- 15th Amendment guaranteed that the right to vote of U.S. citizens could not be denied “on account of race, color or previous condition of servitude.”
- 27th Amendment one of original 12 amendments sent to states but not ratified. Says no change in congressional compensation shall take effect until after the next election.



Article II


“The executive Power shall be vested in a President of the United States.”





Article I

“All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”





Article II

Sections 2 and 3 define several powers and responsibilities of the President, including

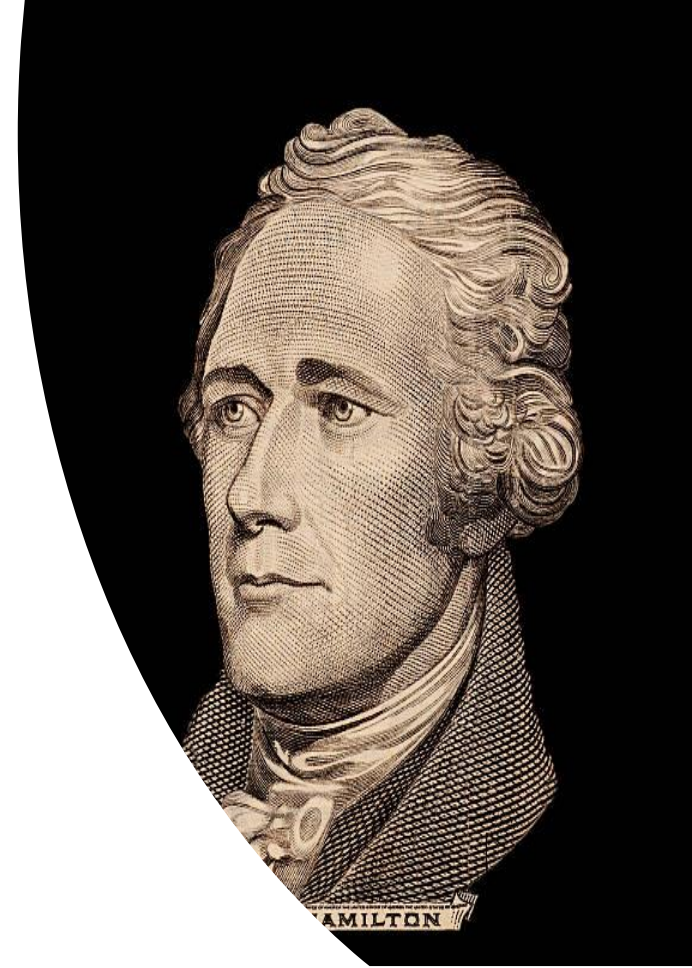
- Commander in Chief of the Army and Navy
- Makes treaties with the advice and consent of the Senate
- Appoint ambassadors and Supreme Court justices

Proclamation of Neutrality

- France declare war on Great Britain and several of its allies.
- Washington issued a Proclamation of Neutrality “forbidding citizens to take part in any hostilities in the seas, on behalf of or against any of the belligerent powers.”
- The U.S. had signed a treaty of alliance with France under the now abolished monarchy.
- Hamilton and the Federalists supported the neutrality proclamation.
- Madison, Jefferson and the Democratic-Republicans wanted to support France.

Alexander Hamilton (Pacificus)

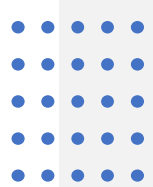
- Defended Washington's authority to proclaim neutrality
- Claimed that the Senate's role in making treaties and Congress' power to declare war were exceptions to the broad grant of executive powers to the President under the Constitution and should be construed narrowly.
- Washington's proclamation had neither declared war nor made a treaty and because the Constitution did not limit the President from declaring neutrality the proclamation was constitutional.
- The treaty with France was a defensive alliance and since this was an offensive war by France the U.S. had no obligation to enter it.





James Madison (Helvidius)

- Argued that the power to declare war and make treaties were constitutionally delegated to Congress
- The Neutrality Proclamation infringed on the legislature's powers because it prevented Congress from deciding whether or not to declare war
- The collapse of the French monarchy and the change of government did not alter U.S. obligations under the treaty
- The Executive had no power to suspend or prevent the operation of a treaty



Youngstown Sheet and Tube Co. v. Sawyer (1952)

- Decided for Youngstown 6-3
- Six separate decisions written in favor of Youngstown and a dissent for remaining 3 justices
- Steel workers union announced a planned nationwide strike after failed negotiations with management
- President Truman issued an Executive Order Directing Commerce Sec. Sawyer to seize the mills and keep them running
- Truman argued a steel strike would endanger the national defense and the Korean war effort
- Sawyer ordered seizure, Truman reports this to Congress, it takes no action



U.S. Supreme Court Decisions

- Holding –The part of a court’s decision that says who won the case and the legal principle to be drawn from the opinion
- Concurring opinion – Opinions that agree with the holding in the Court’s majority opinion but does so for other legal reasons
- Legal reasoning of a decision may be more important than the holding because it tells future litigants and lower federal courts how similar cases are likely to be decided.

No Inherent Presidential Power

- Presidents may act only pursuant to express or clearly implied statutory or constitutional authority
- Justice Black concluded Truman's seizure of the steel mills was unconstitutional because "[t]here is no statute that expressly authorizes the President to take possession of property as he did here"
- Truman did not claim "that express constitutional language grants this power to the President."

Interstitial Executive Power

- Justice Douglas wrote that that President is allowed to act without express statutory or constitutional authority so long as he does not usurp the powers of another government branch or keeps another branch from performing its duties.
- Constitution gives president no power to recognize foreign governments or remove executive branch officials, nor has Congress given him these powers, but it is agreed he has such powers.
- Mill seizure still unconstitutional because Fifth Amendment prohibits property being taken without just compensation and Truman forcing government to spend money, usurping Congress' spending power.

Legislative Accountability

- President may take any action not prohibited by the Constitution or Congress.
- Justice Frankfurter believed that a “systematic, unbroken, executive practice, long pursued to the knowledge of Congress, and never before questioned, engaged in by Presidents who have sworn to uphold the Constitution...may be treated as a gloss on the executive Power vested in the President.”
- Frankfurter found seizure unconstitutional because statutory history of labor laws explicitly rejected giving President authority to seize industries.

Legislative Accountability (cont.)

- Justice Jackson's three-part scheme for when President may exercise authority not granted by Congress or the Constitution.
- "When the President acts pursuant to an express or implied authorization of Congress, his authority is at the maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."
- "When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, Congressional inertia, indifference or quiescence may sometimes, as least as a practical matter, enable, if not invite, measures on independent presidential responsibility."

Legislative Accountability (cont.)

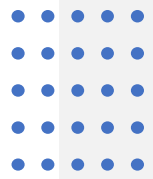
- “When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.” Here presidential action will only be allowed if the law enacted by Congress is unconstitutional.
- Jackson found against Truman because he felt seizures fell in this third category. Congress had not left seizure of private property an unanswered question but had ruled it out in its statutes.

Broad Inherent Authority

- President has broad authority in some areas and may act unless such conduct violates the Constitution. In this approach federal laws restricting President's power are unconstitutional.
- This approach was suggested in Chief Justice Vinson's dissent in *Youngstown*.
- He cited Teddy Roosevelt's Stewardship Theory that "the executive is subject only to the people and under the Constitution bound to serve them affirmatively in cases where the Constitution does not explicitly forbid him to render the service."

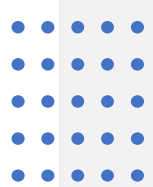
United States v. Curtiss-Wright Export Corp. (1936)

“The two classes of power [domestic and foreign] are different, both in respect of their origin and their nature. The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution...is categorically true only in respect to our internal affairs.”



Trump v. Hawaii (2018)

- So-called “Muslim travel ban” decision.
- Third of three proclamations issued by the President.
- Immigration and Nationality Act
“Whenever the President finds that the entry of any aliens or any class of aliens in the United States would be detrimental to the interest of the United States, he may by proclamation, and for such period as he may deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”



Trump v. Hawaii (cont.)

- Chief Justice Roberts wrote for the majority that the law, by its terms, “exudes deference to the President in every clause.”
- Echoes the analysis in the Court’s Curtiss-Wright decision about presidential power and foreign policy.
- “[J]udicial inquiry into the national security realm raises concerns for the separation of powers by intruding on the President’s constitutional responsibilities in the area of foreign affairs...[A]ny rule of constitutional law that would inhibit the flexibility of the President to respond to changing world conditions should be adopted only with the greatest caution.”



Choosing An Approach

- No Supreme Court decision declares any of these approaches definitively correct. Which one is chosen has important effects.
- President Nixon claimed he had authority to impound congressionally appropriated funds, i.e. to choose not to spend them.
- Under first approach impoundment is unconstitutional by the President because there is no constitutional or statutory authority.
- Under the second approach is probably unconstitutional because it usurps Congress' spending power.
- Under third approach was likely constitutional until Congress pass Impoundment Control Act of 1974 forbidding the practice.
- Under the fourth approach if impoundment is regarded as an inherent power of the President then Impoundment Control Act is unconstitutional.

Article I, sec. 8

“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”