

NAME _____

Does the Constitution Limit Presidential Powers?

The debate over the role of the President of the United States emerged almost as one with the debate over the Constitution. “This Constitution,” proclaimed Patrick Henry in his speech in 1788, “is said to have beautiful features; but when I come to examine these features . . . they appear to be horribly frightful.” He went on to explain: “Among other deformities . . . it squints toward monarchy. . . . Your President may easily become king.”

Although no monarchy arose in the United States, scholars do agree that today’s modern presidency is far stronger than it was years ago. Americans continue to debate exactly how powerful the President should be.

Pro

Scholars often categorize past Presidents according to their views of the constitutional powers of their office. Those categorized as literalist Presidents believe in strict adherence to the Constitution and its concept of separation of powers. One of these Presidents was James Buchanan. Faced with the possible secession of the southern states before President-elect Abraham Lincoln could take office, President Buchanan stated:

Apart from the execution of the laws, so far as this may be practicable, the Executive [the President] has no authority to decide what shall be the relations between the federal government and South Carolina. He has been invested with no such discretion. He possesses no power to change the relations existing between them, much less to acknowledge the independence of that State. This would be to invest a mere executive officer

with the power of recognizing of the confederacy [the Union] among our thirty-three sovereign states. . . .

—JAMES BUCHANAN, MARCH 3, 1860

More than 50 years later, President William Howard Taft took a similar position regarding the constitutional limits on the powers of the President.

The true view of the Executive function is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included with such express grant as proper and necessary to its exercise. Such specific grant must be either in the federal Constitution or in an act of Congress in pursuance thereof.

—WILLIAM HOWARD TAFT, 1916

Con

Dale Vinyard, in his book *The Presidency*, sums up the literalist point of view as a “view of presidential power . . . generally held by presidents who have little taste for policy innovation or change.” Few recent Presidents would accept the literalist point of view.

The opposite point of view is the position often referred to as that of the strong President. “The days of a passive Presidency,” future President Richard Nixon said in 1968, “belong to a simpler past. . . . The President today cannot stand aside from crisis; he cannot ignore division; he cannot simply paper over disunity. He must lead.”

It is this concept of the presidency that Abraham Lincoln brought to the White House when he succeeded James Buchanan in 1861. By that time seven

More About Issues to Debate

Abraham Lincoln took office during one of the nation’s greatest crises. Several Southern states had left the union and seized federal land and property within their borders. When federal troops refused to vacate Fort Sumter in the harbor of Charleston, South Carolina, Southern forces fired on the fort

and ignited the Civil War. Lincoln then instituted several measures to preserve the nation. He put some areas under martial law and suspended or restricted civil rights. He imposed a blockade on Southern ports, raised an army, and waged a four-year war without formal congressional approval.

southern states had seceded. President Lincoln proclaimed his response to the nation's crisis:

If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all to lawfully rescind it? . . .

I therefore consider that in view of the Constitution and the laws, the Union is unbroken; and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States.

—ABRAHAM LINCOLN, MARCH 4, 1861

Throughout the Civil War, President Lincoln used his power to raise an army and to suppress criticism of his sometimes harsh steps.

During the Great Depression, President Franklin D. Roosevelt echoed Lincoln's concept of the need for strong presidential action:

I am prepared under my constitutional duty to recommend the measures that a stricken nation in the midst of a stricken world may require. These measures, or such other measures as the Congress may build . . . I shall seek, within my constitutional authority, to bring to speedy adoption.

But in the event that the Congress shall fail to take one of these two courses, and in the event that the national emergency is still critical, I shall not evade the clear course of duty that will then confront me. I shall ask the Congress for the one remaining instrument to meet the crisis—broad executive power to wage a war against the emergency as great as the power that would be given me if we in fact were invaded by a foreign foe.

—FRANKLIN D. ROOSEVELT, MARCH 4, 1933

No one questioned that President Roosevelt intended to exercise the full powers of his office.

The Debate Continues

After the experience of the long war in Vietnam, more political scientists began to question the growth of the President's power. As one observer, Arthur M. Schlesinger, Jr., noted, "The Vietnam experience thus provided an unexpected demonstration that a strong Presidency might have its drawbacks."



While some literalist Presidents believed in strict adherence to the constitutional concept of separation of powers, strong Presidents like Lincoln believed the presidency is capable of innovation and change.

Within recent years there have been a number of suggestions for presidential reforms that range from a parliamentary system to a single six-year term for President. What the outcome will be in the future remains uncertain.

Examining the Issue

Recalling Facts

1. State the major point of the literalist point of view.
2. Explain Franklin D. Roosevelt's view of presidential power.

Critical Thinking Skills

3. Recognizing Bias How does the statement that the literalist viewpoint is "generally held by presidents who have little taste for policy innovation or change" reflect the writer's feelings about the presidency?
4. Demonstrating Reasoned Judgment Do you agree that the "days of a passive Presidency belong to a simpler past?" Why or why not?

Investigating Further

Use your textbook and other sources to compile two lists: the powers of Congress and the powers of the President. Compare the lists and identify the powers shared by the two branches.

The Great Depression was a national crisis of another kind. Two days after taking office in March 1933, President Franklin D. Roosevelt suspended all banking activity in order to save the nation's financial system. During his first 100 days as President, he worked closely with Congress to enact and

implement 15 major laws that attacked the nation's worst economic crisis in history. Most were proposed by the President and were passed by Congress with little or no debate. Seldom before, or since, has a President enjoyed such overwhelming support and power.

Nixon's Views on Presidential Power: Excerpts from a 1977 Interview with David Frost

The following is an excerpt from an interview with former President Nixon conducted by David Frost. It aired on television on May 19, 1977.

Frost: The wave of dissent, occasionally violent, which followed in the wake of the Cambodian incursion, prompted President Nixon to demand better intelligence about the people who were opposing him. To this end, the Deputy White House Counsel, Tom Huston, arranged a series of meetings with representatives of the CIA, the FBI, and other police and intelligence agencies.

These meetings produced a plan, the Huston Plan, which advocated the systematic use of wiretappings, burglaries, or so-called black bag jobs, mail openings and infiltration against antiwar groups and others. Some of these activities, as Huston emphasized to Nixon, were clearly illegal. Nevertheless, the president approved the plan. Five days later, after opposition from J. Edgar Hoover, the plan was withdrawn, but the president's approval was later to be listed in the Articles of Impeachment as an alleged abuse of presidential power.

So what in a sense, you're saying is that there are certain situations, and the Huston Plan or that part of it was one of them, where the president can decide that it's in the best interests of the nation or something, and do something illegal.

Nixon: Well, when the president does it that means that it is not illegal.

Frost: By definition.

Nixon: Exactly. Exactly. If the president, for example, approves something because of the national security, or in this case because of a threat to internal peace and order of significant magnitude, then the president's decision in that instance is one that enables those who carry it out, to carry it out without violating a law. Otherwise they're in an impossible position.

Frost: So, that in other words, really you were saying in that answer, really, between the burglary and murder, again, there's no subtle way to say that there was murder of a dissenter in this country because I don't know any evidence to that effect at all. But, the point is: just the dividing line, is that in fact, the dividing line is the president's judgment?

Nixon: Yes, and the dividing line and, just so that one does not get the impression, that a president can run amok in this country and get away with it, we have to have in mind that a president has to come up before the electorate. We also have to have in mind, that a president has to get appropriations from the Congress. We have to have in mind, for example, that as far as the CIA's covert operations are concerned, as far as the FBI's covert operations are concerned, through the years, they have been disclosed on a very, very limited basis to trusted members of Congress. I don't know whether it can be done today or not.

Frost: Pulling some of our discussions together, as it were; speaking of the Presidency and in an interrogatory filed with the Church Committee, you stated, quote, "It's quite obvious that there are certain inherently government activities, which, if undertaken by the sovereign in protection of the interests of the nation's security are lawful, but which if undertaken by private persons, are not." What, at root, did you have in mind there?

Nixon: Well, what I, at root I had in mind I think was perhaps much better stated by Lincoln during the War between the States. Lincoln said, and I think I can remember the quote almost exactly, he said, "Actions which otherwise would be unconstitutional, could become lawful if undertaken for the purpose of preserving the Constitution and the Nation."

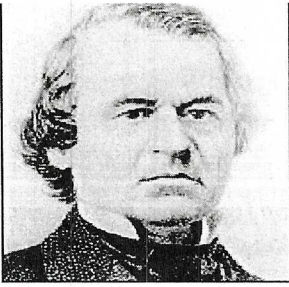
Now that's the kind of action I'm referring to. Of course in Lincoln's case it was the survival of the Union in wartime, it's the defense of the nation and, who knows, perhaps the survival of the nation.

Frost: But there was no comparison was there, between the situation you faced and the situation Lincoln faced, for instance?

Nixon: This nation was torn apart in an ideological way by the war in Vietnam, as much as the Civil War tore apart the nation when Lincoln was president. Now it's true that we didn't have the North and the South—

Frost: But when you said, as you said when we were talking about the Huston Plan, you know, "If the president orders it, that makes it legal", as it were: Is the president in that sense—is there anything in the Constitution or the Bill of Rights that suggests the president is that far of a sovereign, that far above the law?

Nixon: No, there isn't. There's nothing specific that the Constitution contemplates in that respect. I haven't read every word, every jot and every tittle, but I do know this: That it has been, however, argued that as far as a president is concerned, that in war time, a president does have certain extraordinary powers which would make acts that would otherwise be unlawful, lawful if undertaken for the purpose of preserving the nation and the Constitution, which is essential for the rights we're all talking about.



President Andrew Johnson

On February 24, 1868 Andrew Johnson (who succeeded to the presidency in 1865 after the death of Abraham Lincoln) became the first U.S. president to be impeached. It was the first — but not the last — time in American history that a president was impeached, and took place less than three years after the first presidential assassination. Today, in the popular lexicon, “impeachment” has become synonymous with “removal from office.” But this is not at all what the term actually means. Under the Constitution, impeachment only refers to the legal process whereby charges are brought against the accused, similar to the indictment power of a grand jury. Once articles of impeachment are agreed upon, a trial commences and, if found guilty, the accused is then — and only then — finally removed from office. The quiz below, from the Ash-brook Center at Ashland University in Ohio, provides an opportunity for you to test your knowledge of Andrew Johnson and the impeachment process.

1. Besides Andrew Johnson, the House has impeached what other president(s)?

I. Richard Nixon

II. James Buchanan

III. Donald Trump

IV. Bill Clinton

V. Gerald Ford

A: I only

B: III and IV only

C: I, III, and IV only

D: All of them

2. How many presidents have been removed from office as a result of impeachment?

A: 0

B: 1

C: 2

D: 3

E: All of them

3. According to the Constitution, who is responsible for bringing charges of impeachment?

A: The attorney general appoints a “special prosecutor,” who has the power to impeach.

B: The House of Representatives

C: The Senate

D: The House of Representatives and Senate voting together

4. After charges of impeachment, what political body holds the trial?

A: The Supreme Court

B: The House of Representatives

C: The Senate

D: The House of Representatives and Senate together

5. Who is subject to impeachment?

A: The president only

B: The president and vice president

C: The president, vice president, and all civil officers of the United States except the judiciary

D: The president, vice president, and all civil officers of the United States including the judiciary

6. Who presides over the trial if the president is impeached? Who presides over the trial if someone other than the president is impeached?

A: Chief justice of the Supreme Court; vice president

B: Vice president; chief justice of the Supreme Court

C: The chief justice always presides, unless he is the one on trial

D: The vice president always presides, unless he is the one on trial

7. According to the Constitution, what are the legal grounds for impeachment?

A: Treason, bribery, or corruption

B: Treason, bribery, or other high crimes and misdemeanors

C: Dereliction of duty

D: Malpractice and maladministration

8. Why was Andrew Johnson impeached?

A: For conspiring with the Confederacy during the Civil War

B: For violating the Tenure of Office Act

C: For violating the Emancipation Proclamation

D: For conspiring to assassinate Abraham Lincoln

9. What happened to Andrew Johnson as a result of his impeachment?

A: He was found guilty and removed from office

B: He resigned from office before the trial

C: He resigned from office after the trial

D: He was acquitted by one vote

10. In order to remove an official from office, how many members present at the trial must vote to convict?

A: 1/2

B: 2/3

C: 3/4

D: The vote must be unanimous